

FD 30400

5/6/85

Pgs.

13986-14044

C O N T E N T S

1	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
2	John H. Williams				
	By Mr. Mackenzie	13987			
3	By Mr. Moates		13991		
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6	By Mr. Scheirman	14223			
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19	<u>EXHIBIT NO.</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>		
	SFSP-C-156	14025	14222		
20	SFSP-C-157	14056	14222		
	SFSP-C-158	14096	14222		
21	SFSP-C-159	14122	14222		
	SFSP-C-160	14126	14222		
22	CPUC-5 and 6		14219		
	CPUC-1	14223	14223		
23	DRGW-C-58		14303		
24					
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P R O C E E D I N G S

(9:00 a.m.)

JUDGE HOPKINS: Let's get back on the record.

Whereupon,

JOHN H. WILLIAMS

was called as a witness by counsel for the California
Public Utility Commission and, having been first duly
sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MACKENZIE:

Q Would you state your full name and address for
the record?

A John F. Williams, 2925 Woodside Road,
Woodside, California 94062.

Q And by whom are you employed?

A The Woodside Consulting Group.

Q Have you prepared testimony in this matter
which has been marked for identification as CPUC-5?

A I have.

Q Are there any corrections, deletions or
additions to your testimony?

A Yes. I have six corrections.

Q Would you make the references necessary?

A The first would be on page 2, Roman II-69.
This is Table II-22, and I noted going over it on the

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1 weekend that I had not indicated that this is van
2 traffic. It is not counted in carloads; it is counted
3 in vans. So if we put under the heading (Vans), and
4 then at the bottom of the page the source of the table
5 was the tables from Appendix A.

6 Turning to page II-73, this is Table II-24,
7 and in the fourth line that has numbers under the column
8 that says "Rate per ton," the fourth line, the number
9 now reads \$43.05. It should read \$51.37. The next
10 column, "Tons per van," now reads 19.8; it should read
11 16.6 tons per van.

12 Now, neither of these numbers was used in my
13 calculations, but they need to be corrected.

14 Turning to page II-76, which is Table II-25,
15 the identical corrections need to be made in the fourth
16 line under the column "Rate per ton," which now reads
17 \$43.05, should read \$51.37. The next column, "Tons per
18 van," now reads 19.8, should be corrected to read 16.6.
19 Again, these numbers were not used in the calculation.

20 Turning to Appendix B-2, which is on the page
21 numbered B-3 at the bottom of the page, page B-3, Table
22 B-2, in the "Tons" column the two, four, six, eighth,
23 ninth number from the bottom reads 17,200, and it should
24 be corrected to 1,700. That, in turn, corrects the tons
25 total at the bottom of the column from 95,580. It

1 should be corrected to 80,080.

2 The next column is entitled "Revenue." The
3 second number from the bottom reads 100,900, and it
4 should read 100,000. The total of the revenue at the
5 bottom of the column should be revised to read 4,113,380.

6 And then in the last column, the average
7 revenue per ton should be corrected from the \$43.05 it
8 reads now to \$51.37.

9 Turning to page B-9, this is Table B-7, and
10 the heading in the second line reads "Grain meal
11 movements, Council Bluffs, Iowa to Livingston,
12 California." That should be corrected to read "Grain
13 meal movements North Central Region to North San Joaquin
14 Valley."

15 Turning back to the first page in Appendix B,
16 I have a listing of all the tables in Appendix B, and so
17 we need to make the same change in the title that I just
18 gave you for Table B-7. So if you look on that listing
19 of tables, it's the -- about the eleventh line down, and
20 it should -- the words should be changed from Council
21 Bluffs, Iowa to Livingston, California to read North
22 Central Region to North San Joaquin Valley. And
23 unfortunately, there is yet another listing of Appendix B
24 tables way at the front of my statement at small Roman
25 numeral viii, and so that same correction needs to be

1 made on Table B-7.

2 Q With those corrections as you've indicated on
3 the record, do you state that your testimony is true and
4 correct to the best of your knowledge and belief?

5 A Yes, I do.

6 MR. MACKENZIE: The witness is available for
7 cross examination.

8 JUDGE HOPKINS: Thank you.

9 Mr. Mcates.

10 MR. MCATES: Thank you, Your Honor.

11 I wonder if as a preliminary matter I might
12 ask Mr. MacKenzie to state whether Mr. Williams is in
13 fact appearing on behalf of the California Public
14 Utility Commission and CalTrans, and if so, whether Mr.
15 Williams' views as expressed in this statement
16 constitute the views of the sponsoring agencies?

17 MR. MACKENZIE: The witness has been sponsored
18 by the California Public Utility Commission and the
19 people of the State of California under the statutes of
20 California, and he is representing the people of the
21 State of California and the California Public Utility
22 Commission. And as I understand, the California
23 Department of Transportation prefers to construe their
24 representation of Mr. Williams on the basis that it
25 presents their views at this time, and they reserve the

1 right to state their final position on brief.

2 JUDGE HOPKINS: Like the Department of
3 Transportation, right, and the Department of Justice?

4 MR. MACKENZIE: Exactly.

5 MR. MCATES: Thank you.

6 CROSS EXAMINATION

7 BY MR. MOATES:

8 Q Good morning, Mr. Williams. My name is
9 Moates. I am one of the counsel for Applicants.

10 Mr. Williams, when were you retained by CPUC
11 and CalTrans for this project?

12 Q I was selected -- Woodside Consulting Group
13 was selected as a contractor for this project on May 29,
14 1984. The final approval of the expenditure of funds
15 was dated June 20, 1984.

16 Q Were you contacted initially by someone
17 representing the State about this project, or did
18 Woodside contact the State?

19 A Well, this contract was awarded on the basis
20 of a competitive bid. My recollection is that the
21 advance publication of the request for qualifications
22 was published in the Contracts Register of the State of
23 California.

24 Q Was the contract that was let pursuant to this
25 competitive bidding included in your work papers? I

1 didn't see it.

2 A No, the contract was not.

3 Q Can you tell me whether the terms are to pay
4 you and Woodside on an hourly basis, or is there a
5 stated project fee, total fee?

6 A Well, the stated project fee at the time of
7 the award was \$100,000.

8 Q Has that changed during the course of the
9 undertaking?

10 A Yes. At present the authorized amount has
11 been raised to \$117,500.

12 Q Within that budgetary constraint were you
13 given ample opportunity to do a complete job, in your
14 view?

15 A Oh, I think so. I think my testimony speaks
16 for itself. It's not the best job that could be done
17 with unlimited resources, but it's satisfactory to state
18 the impact of the proposed transaction on the State of
19 California, as well as present the recommendations.

20 Q Yes, I understand. What I'm driving at is to
21 see whether you feel there was any constraint on the
22 analysis from your perspective simply by the budget?

23 A I think there is always a constraint on a
24 competitive analysis such as is required in a proceeding
25 such as this by time and by budget.

1 Q Were you given particular instructions as to
2 this analysis?

3 A No, I was not. The contract basically read
4 and charged me, as I stated at page 1 of my testimony,
5 with analyzing the impacts of the proposed transaction
6 on the public and on transportation services in
7 California. And then I was also charged with analyzing
8 the potential mitigation measures to the most serious
9 adverse impacts. Finally, of course, it was understood
10 from the beginning that testimony, including
11 recommendations before this Commission, was likely to be
12 a part of the project.

13 MR. MCATES: I'd like to request a copy of the
14 contract as well as the competitive listing of the bid
15 by the State. Is there any problem with that, Mr.
16 MacKenzie?

17 MR. MACKENZIE: I don't believe it is, Your
18 Honor. I think it's a matter of public record.

19 MR. MCATES: I assume it is.

20 JUDGE HOPKINS: Thank you.

21 BY MR. MCATES: (Resuming)

22 Q Now, was your draft verified statement, Mr.
23 Williams, reviewed by anyone with the State?

24 A Yes.

25 Q Who would that have been?

1 A Well, we had a working group that directed my
2 activities, reviewed my activities, and I must say
3 challenged most of my findings, conclusions,
4 recommendations along the way. That group consisted of
5 representatives of the California Public Utilities
6 Commission, staff, Mr. MacKenzie, and Mr. Oliver,
7 assistant director of the Transportation Division, as
8 well as another member of the Transportation Division.
9 In addition, CalTrans had usually three members on the
10 working committee consisting of Mr. C.J. Solander, the
11 attorney of record, their attorney of record in this
12 case, and a couple of people from the staff.

13 Q As a result of the analysis -- rather of their
14 review of your analysis of the draft statement, did you
15 make any changes to your final verified statement?

16 A Well, the initial work product was delivered
17 in September -- in fact, September 4th was when I
18 delivered the initial work product, and at that point in
19 time all I was asked to do was to prepare a draft report
20 of the impacts on the State. Most of that impact
21 analysis is contained in part II, Roman numeral II of my
22 statement today.

23 Q Were any particular conclusions that you drew
24 altered or changed in any significant way as a result of
25 the comments made by either the California PUC's members

1 or the CalTrans members of this working group?

2 A No, I don't believe so. We did analyze -- we
3 presented an analysis of the impacts on the highway
4 system in California in that earlier draft report, but
5 we didn't think that was appropriate for submission in
6 this case, so that was deleted.

7 Q Was your recommendation that the Commission
8 not only grant Rio Grande the trackage rights it seeks,
9 but also extend those rights to Bakersfield, California,
10 something that was suggested to you, or was that your
11 own original idea?

12 A I think that was probably my idea. It's hard
13 to sort out where each and every idea in the final
14 recommendations package came from. That recommendation
15 was never contained or put into my statement until
16 subsequent to the cross examination of the Rio Grande
17 witnesses.

18 Q In the course of doing your analysis and
19 preparing the statement that you have offered today, did
20 you in fact have any contacts either in the form of
21 meetings or otherwise with any of Protestants?

22 A Yes, we did.

23 Q Could you briefly enumerate those for us?

24 A We had a series of you might call them
25 official meetings both with the Woodside Consulting

1 Group and representatives of the CPUC and CalTrans to
2 whom I have referred earlier.

3 On November 29, 1984, the Union Pacific made a
4 presentation to our working group. On December 4, 1984,
5 the Rio Grande made a presentation to our working
6 group. On December 10th the KCS made a presentation to
7 our working group. On January 14, 1985, we received a
8 letter with some requested information from the Kansas
9 City Southern, and that was received by the Woodside
10 Consulting Group. On March 7th the Rio Grande made a
11 second presentation to the working group. As a result
12 of a request for information to the Rio Grande, on March
13 14 I received a phone call from Ted Harvey of the Rio
14 Grande with information about the expected traffic gains
15 in the San Joaquin Valley by the Rio Grande.

16 On February 27, 1985, at the request of
17 counsel I had a phone conversation with Dick Klem of the
18 U.S. DOT, and on March 4, 1985, I transmitted a portion
19 of my analysis to counsel for U.S. DOT.

20 I've constructed this to the best of my
21 recollection, and the notes I have in my own files to
22 the best of my knowledge. There were no other telephone
23 conversations or any other meetings. But I don't claim
24 to necessarily have perfect recollection.

25 Q These meetings with the UP, D&RG and KCS, I

1 assume that these were for the purpose of those carriers
2 presenting to you their arguments in support of their
3 requested conditions?

4 A Yes.

5 MR. MACKENZIE: Your Honor -- excuse me,
6 counsel.

7 I think for the record that I should state
8 even though Mr. Williams had not been retained by the
9 State as of that date, but I understand -- this was when
10 I was out of the country -- that in March or April of
11 1984 that representatives of Applicants, both Southern
12 Pacific and Santa Fe, requested and were permitted to
13 have audience with members of both CalTrans and --

14 JUDGE HOPKINS: Was the Pope there, too? Go
15 ahead. I'm sorry.

16 MR. MACKENZIE: And, in fact, they were given
17 an opportunity to present their views to the agencies.

18 MR. MCATES: My question was only as to
19 Protestants and wasn't meant to imply --

20 BY MR. MCATES: (Resuming)

21 Q My next question was did you meet with
22 Applicants? I guess we now have an answer. Did you
23 receive cooperation from Applicants with respect to any
24 data that you may have requested?

25 A Yes. I don't recall that we requested any.

1 Subsequent to my retention we did never meet with the
2 Applicants. To the best of my knowledge they never
3 asked to make a presentation to us.

4 Q Mr. Williams, am I correct that you worked for
5 the Southern Pacific for approximately 17 years with a
6 three-year leave of absence to work for the Federal
7 Railroad Administration?

8 A That's correct.

9 Q During that time did you ever work in the
10 traffic or sales area?

11 A At Southern Pacific?

12 Q Yes.

13 A No.

14 Q When you left the Southern Pacific you then
15 were employed by Consolidated Rail Corporation?

16 A That's correct.

17 Q For how long a period were you at Conrail?

18 A Approximately one year.

19 Q In what area did you work at Conrail?

20 A I worked in the Executive Department. I
21 reported to the chairman, Mr. Edward G. Jordan.
22 Subsequently -- I have to correct myself -- subsequently
23 I did report to Stan Crane when he became chairman, and
24 then later during my tenure he reorganized the Executive
25 Department and changed my reporting responsibility to

1 James A. Hagen, senior vice president-marketing and
2 sales. So, in effect, during that tenure I was a part
3 of the marketing and sales group.

4 Q Was that the only time during your railroad
5 career that you had any marketing or sales -- well, let
6 me ask you a preliminary question. Even though you were
7 reporting to Mr. Hagen, did you in fact in that job have
8 marketing or sales responsibility?

9 A I find it hard to answer that question
10 directly. In terms of actually selling to the customers
11 out in the field, I have not had that responsibility. I
12 think my statement of qualifications indicates that I
13 have done marketing analyses throughout my career,
14 whether it be at the Federal Railroad Administration,
15 Conrail or Southern Pacific.

16 Q You basically come up on the operating
17 executive side of the house, did you not, not the
18 marketing side?

19 A That is correct. But the responsibilities I
20 had at Southern Pacific included a lot of the marketing
21 type projects that nobody else wanted before Southern
22 Pacific developed its marketing group. As I indicate in
23 my statement of qualifications, many of the deficit
24 commodities, the so-called losers, if you will, such as
25 passenger train services, perishables, sugar beets, and

1 a number of others, wood chips, were commodities whose
2 marketing problems were addressed at the instruction of
3 the Executive Department by me and by my staff.

4 Q Now, when you left Conrail after a year you
5 then went to work for Manalytics Corporation?

6 A That's correct.

7 Q And that is a consulting firm, too?

8 A That is, yes.

9 Q How long were you with Manalytics?

10 A I was with Manalytics -- as I say on page C-4
11 of my Appendix C, I returned to Manalytics in late
12 1981. My recollection is that was about September of
13 1981. And then in October '83 I went to Woodside
14 Consulting Group as president, so it was a two-year
15 stint at Manalytics.

16 Q Mr. Williams, weren't you the conlawyer merger
17 team coordinator for Southern Pacific's so-called
18 Tucumcari application?

19 A I was.

20 Q And, in fact, you testified in support of that
21 application before this Commission, did you not?

22 A Yes, I did.

23 Q Didn't you also testify late last year before
24 this Commission in the Milwaukee Road proceedings for
25 the Chicago Northwestern?

1 A Yes, I appeared. I did appear, and I like to
2 be careful about this, but I did appear in the
3 opposition case on behalf of the Northwestern in
4 opposition to the Grand Trunk Western's proposed
5 acquisition of the Milwaukee. The Northwestern used a
6 separate team to present their affirmative case for
7 acquisition of Milwaukee. As you know, the Grand Trunk
8 did not acquire the Milwaukee, so we won our part of the
9 case. The other team lost.

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1 Q Mr. Williams, isn't it a fact that before you
2 were retained by the state of California, in fact in
3 late 1983 that you approached and solicited the Southern
4 Pacific to hire you to work in support of this merger?

5 A Yes, that's true. I'm not sure of the date,
6 but I talked to a number of carriers about retention of
7 the Woodside Consulting Group.

8 Q You say you talked to a number of carriers.
9 First of all, I take it the Applicants, or Southern
10 Pacific in that event, didn't employ your services at
11 that time?

12 A That is correct.

13 Q And when that occurred, did you approach any
14 of the other parties to this case before you agreed to
15 work for the State?

16 A Well, yes. Yes. I think I may have contacted
17 most of the parties to this case, including the U.S.
18 Department of Transportation.

19 Q When you say most of the parties, did you
20 approach the Union Pacific?

21 A Yes.

22 Q The Denver & Rio Grande Western?

23 A Yes.

24 Q And how about the Kansas City Southern?

25 A Yes.

1 Q Mr. Kharasch isn't here, but he would be
2 offended if I didn't ask, did you approach the MKT?

3 A Mr. Kharasch personally.

4 Q Sir, are you a trained economist?

5 A Yes.

6 Q Can you tell me in what sense you answered
7 that question? I note from your Appendix C that you do
8 not appear to have a Ph.D. in economics. Is that
9 right?

10 A I hold a bachelor's degree in economics from
11 the University of Illinois. And my principal training
12 was in transportation economics. I'm therefore holding
13 a major in economics. I am a trained economist.

14 Q Okay, I understand. Have you done any
15 postgraduate work in the field of economics?

16 A No.

17 Q Have you ever published anything in the field
18 of economics?

19 A I have published papers on transportation
20 economics topics, not on theoretical economics, no.

21 Q I don't want to make you list all of these if
22 there are a number of them, but could you give me an
23 idea of where you may have published some of these
24 papers?

25 A Well, my usual forum for publication would be

1 the Transportation Research Forum.

2 Q Can you recall offhand when the last time you
3 have published something in the Transportation Research
4 Forum?

5 A Well, it was probably about 1980. The paper
6 that I recollect was a paper about merger policy,
7 railroad consolidation, and rationalization policy. And
8 it dealt with the issues of competition, network
9 restructuring, the number of carriers that were expected
10 to remain in the industry over time, and so on.

11 I may not have the date perfectly correct.

12 Q Sir, are you familiar with the Department of
13 Justice merger guidelines?

14 A In general, yes.

15 Q Are you in particular familiar with the 1984
16 revisions to those guidelines?

17 A I would have to say no to that. I am familiar
18 with them in general.

19 Q Did you make any attempt to use the DCJ
20 guidelines for the purposes of the analysis that is in
21 your present verified statement? In other words, did
22 you apply them directly to this analysis?

23 A Well, I reviewed the DOJ guidelines. I
24 reviewed the Interstate Commerce Commission's
25 consolidation procedures, and the recent merger

1 decisions, and proceeded with my work.

2 Q Okay.

3 One last question about your credentials, if I
4 may. Do you have any formal training as a
5 statistician?

6 A Only as a part of the two degrees I hold. I
7 did have statistics courses both in my undergraduate and
8 in my graduate master's degree in business
9 administration courses.

10 Q Do you consider yourself a statistical
11 expert?

12 A No.

13 Q Did you consult with any statistical experts
14 about the methodology you utilized in this case?

15 A No.

16 Q Are you testifying as an expert, Mr.
17 Williams?

18 A Yes.

19 Q An expert on what?

20 A Railroad transportation economics.

21 Q Now, if I could just start by referring to
22 your conclusions to set the frame of analysis for us.

23 In your introduction at pages 1 and 2, do you
24 not state, sir, and I have particular reference to the
25 last paragraph on page 1 which carries over to page 2,

1 that in your view California will realize benefits from
2 this merger, but that you have also identified
3 anticompetitive effects tha concern you.

4 Is that a fair summary?

5 A It is.

6 Q Now, on page 2 again of the introduction, I
7 think in the second full paragraph, you say that you
8 believe the merger should be approved, but only if its
9 effects are mitigated by the imposition of those
10 conditions "which I recommend in Part 3."

11 Do you see that?

12 A This is on page 2?

13 Q Yes, sir. Page 2, the second full paragraph.
14 It starts off, "Unless litigated." I am in the
15 Introduction.

16 A Oh, I beg your pardon.

17 Q I'll try to refer to the Roman numerals so we
18 won't be confused.

19 A Thank you.

20 Q Do you see where I am now?

21 A Yes.

22 Q It is your position that the merger should be
23 approved only if the conditions that you have
24 recommended are imposed?

25 A Yes.

1 Q Do you believe that there is any possibility
2 at all that your analysis could be defective in any
3 manner?

4 A Well, it's certainly possible that my analysis
5 can be challenged and improved upon and modified.

6 Q Well, if it turned out that you may have
7 overlooked some relative, perhaps even important
8 factors, would you be willing to reconsider your
9 position?

10 A No. I don't believe that mergers should be
11 approved unless a level of intramodal competition is
12 retained in California.

13 Q The answer is no, you wouldn't reconsider your
14 position even if it were to turn out that some of your
15 important facts were wrong?

16 A No. I think this statement is drawn both from
17 my knowledge and experience and training over a 20-plus
18 year time period, as well as based on the facts that are
19 contained in it.

20 Q All right, Mr. Williams. Can you tell me
21 briefly, sir, what you relied upon in making your
22 analysis? In this regard, beyond your experience, I'm
23 interested in things in this case.

24 Like maybe I should ask you: Did you review
25 the entire application?

1 A Yes.

2 Q Did you have opportunity to review the entire
3 responsive applications, or at least those of the three
4 railroads you discussed?

5 A Yes.

6 Q Did you review the opposition filings as
7 opposed to the trackage rights filings?

8 A Yes.

9 Q Did you have an opportunity to review the
10 Applicants' February 21, 1985 filing in opposition to
11 the trackage rights application? There were three
12 volumes that looked like this.

13 A Yes.

14 Q I show the witness SFSP-44. Do you recall in
15 SFSP-44, one of the three volumes submitted by
16 Applicants on February 21, reading the verified
17 statement of Mr Forrest Baker?

18 A Yes, I think I read Mr. Baker's statement.

19 Q And, Mr. Williams, have you had occasion to
20 read any of the transcripts of these proceedings?

21 A I have read most of them.

22 Q Most of them?

23 Did you also review the shipper verified
24 statements submitted with the various applications?

25 A Yes, but with emphasis on those that were

1 important to California.

2 Q But that would be both with respect to the
3 Applicants supporting shippers, as well as those
4 supporting UP, I&RG, and KCS?

5 A Yes.

6 Q Did you do any actual shipper interviews
7 yourself for the purposes of this case?

8 A No. No. Some of the shippers had, of course,
9 contacted either Cal Trans or the PUC staff and I was
10 told what had gone on, but I didn't conduct any shipper
11 interviews myself. No.

12 Q Sir, did you do any field research for the
13 purposes of this case? By that I mean did you, for
14 example, survey truckers or talk to other railroads or
15 talk to water carriers, anything like that?

16 A Well, in terms of talking to the other
17 railroads, I've already told you what I did. I have
18 inspected the various and sundry facilities from
19 Lathrop, California to down into and including the
20 Imperial Valley that are the subject of the proposed
21 conditions in this case.

22 Q Did you do any actual interviewing, or did you
23 make an attempt to contact truckers, truck companies?

24 A No. Not beyond the expertise in my own
25 firm.

1 Q Okay. Now, let me refer back again to your
2 discussion of the benefits that you believe may be
3 derived by California if this merger is approved.

4 Do you believe those benefits would be
5 significant?

6 A Yes.

7 Q May I refer you, please, to page I-6 or Roman
8 I-6? In the last full paragraph on the page, am I
9 reading that paragraph correctly to interpret it that
10 you are suggesting that the savings may be even greater
11 than the Applicants have projected?

12 A I believe that's possible in terms of the
13 savings, particularly in the general administrative
14 functions which were not fully quantified by the primary
15 Applicants.

16 My estimate would be that there is an
17 additional \$50 to \$60 million that may ultimately be
18 realized from the consolidation. And that's based, just
19 looking at the total G&A experienced -- incurred by
20 Southern Pacific as reported to this Commission, and
21 accepting the variability of about 50 percent of that
22 being variable.

23 Q Mr. Williams, you're going to have to excuse
24 us for asking, what is G&A?

25 A General and Administrative. I beg your

1 pardon.

2 Q Now, at the top of page I-7, you note that
3 there is no guarantee that these efficiencies and
4 savings would be passed on to shippers, although that is
5 one possibility.

6 What are the various possibilities for the use
7 of savings that may be engendered by this or any other
8 merger? Isn't one the possibility, as you suggest here,
9 that they could be passed on to the shippers in the form
10 of either lower rates or hold-downs on rates?

11 A Yes. Of course, that's one possibility and
12 that's one that we would hope that the California
13 shipping public would realize.

14 But having read the transcript and having read
15 the report the Santa Fe people have made to the Board of
16 Directors, I think it's very likely that until the
17 earnings of that property are up to the \$500 million a
18 year level that Mr. Schmidt desires, in all likelihood
19 he's going to keep the consolidation savings for
20 himself.

21 Q All right.

22 Without arguing about whether or not that is
23 likely, let's assume for purposes of my question that he
24 does keep those savings in some way.

25 Is that a bad thing?

1 A Not necessarily. We're talking about the
2 savings in this case. I don't think it's -- so long as
3 the railroad as a whole is not earning a decent return,
4 I don't think it's unreasonable to keep the savings.

5 What I would think would be unreasonable would
6 be to keep the rate increases that would result from
7 reducing or eliminating competition.

8 Q The savings that, as you say, might be
9 retained by the company if they were not passed on to
10 shippers, they could also be used to improve the
11 property, couldn't they? To reinvest in the property.

12 A They could be.

13 Q Or they could be returned to shareholders in
14 the form of higher dividends?

15 A They could be.

16 Q And if that's the case, that tends to attract
17 capital to the industry, doesn't it?

18 A It does.

19 Q On page I-14, sir, you commence a discussion
20 or you're in the middle of a discussion of the financial
21 position of these companies.

22 Do you agree, Mr. Williams, that the Southern
23 Pacific and the Santa Fe do not have a good long-term
24 prospect standing alone?

25 A Well, I think I have addressed that. The

1 Santa Fe is a little more difficult to call in terms of
2 its ability to stand alone. I thin there's no question
3 in my mind that the Southern Pacific's financial
4 condition is not good.

5 And I think, given the size of the competing
6 large systems in the West, that it's unlikely that Santa
7 Fe can stand alone successfully over time.

8 Q In fact, on page I-13, you say there does
9 appear to be reason for Mr. Schmidt's lack of optimism
10 about the long-term prospects of the Santa Fe; correct?

11 A Yes.

12 Q On page I-15, you have a brief discussion of
13 balance, particularly balance with respect to the UP and
14 the EN.

15 Won't allowing the Union Pacific into the
16 Southern Corridor and up San Joaquin Valley upset this
17 balance you're talking about in a very dramatic
18 fashion?

19 A Oh, I don't think so. No.

20 Q You don't think that allowing the UP to have
21 routes via both the Central and Southern Corridors in
22 competition with BN and SPSF will significantly increase
23 the strength of that system?

24 A I don't believe the Union Pacific would gain
25 in the competitive struggle with the BN from this

1 proposition. It would add some miles to its route
2 structure and some revenue and presumably profit to its
3 bottom line. But I don't think it would really gain at
4 the expense of Burlington.

5 Q Let's put the Burlington aside. You certainly
6 don't maintain, do you, Mr. Williams, that the
7 conditions that you advocate on behalf of UP/MP would
8 not very seriously strengthen that system as a
9 competitor to the SPSF?

10 A I don't "very serious" is a proper way of
11 phrasing it. My recollection is the predicted
12 diversions are only around \$100 million to the Union
13 Pacific.

14 They intend to run a couple of trains a day is
15 all, between El Paso and Los Angeles. And that compares
16 to probably another 20 for the primary Applicants.

17 The Union Pacific proposes to run a single
18 train each direction each day, up and down the
19 San Joaquin Valley between Los Angeles or Colton and
20 Lathrop, and just compared with the total traffic in
21 those areas, it doesn't seem to me that's a very
22 substantial harm.

23 Q Now, with respect to your analysis of balance,
24 I would like to take a brief look at your table I-4
25 which you'll find on page I-11.

1 Here you are arraying the financial
2 performance of Southern Pacific, Santa Fe, BN, and
3 UP/MF; correct?

4 A Correct.

5 Q Now, if we look at the column for railway
6 operating revenues, and we look at 1983, the last year
7 of your table, isn't it true that the Southern Pacific
8 and Santa Fe together would have represented the largest
9 of these three Western systems in terms of revenues?

10 A Yes.

11 Q Gross railway operating revenues.

12 By the same token, the table shows that the
13 Union Pacific system -- excuse me -- that the Burlington
14 Northern would have been the second largest with 4.02
15 billion roughly?

16 A Yes.

17 Q And the UP system would have been the third
18 largest, about 3.61 billion.

19 A Yes.

20 Q Now, keeping those figures in mind, showing
21 that the SPSF would be one, the BN two, and the UP
22 three, let's look at the net railway operating income
23 column on the same table.

24 Don't we find quite a shift? Don't we find
25 that the BN would be number one or was number one by

1 far?

2 A Yes. They have Powder River Basin coal.

3 Q They sure do. And the Union Pacific was
4 second at 255.9 million?

5 A Yes.

6 Q And the combined SPSF in 1983 would have been
7 a dismal third, wouldn't it, with about \$133 million in
8 net railway operating income?

9 A Yes, that's true. That's before considering
10 the consolidation efficiencies.

11 Q I understand. Or diversions.

12 Now, I have done the percentages here. I
13 think we would find that that comes out to about a 10.8
14 percent return for the Burlington, and a 7.1 percent for
15 the UP, and a 3 percent for the SPSF.

16 Is that what you call balance?

17 A No, that's not what I call balance. I think
18 that's the rationale or one of the reasons, one of the
19 bases for our support of the merger.

20 The Southern Pacific/Cotton Belt combination is a
21 very weak carrier.

22 Q Okay. So when you say on the top of I-16, the
23 sentence just before your summary: "Taken together, all
24 of these measures demonstrate that a merged SPSF would
25 be comparable to the two other large Western railroad

1 systems now operated by Burlington Northern and Union
2 Pacific," you're not making particular reference there
3 to the measure of net railway operating income, are
4 you?

5 A Well, of course, what you're asking me to
6 compare was 1983, which is the premerger figures. The
7 postmerger figures I think would be substantially
8 enhanced by the added efficiencies, and most of that
9 ought to come right down to the bottom line.

10 And the efficiencies you people have
11 estimated, even excluding the diversions, have got to be
12 200 -- I guess it would be \$235 million.

13 Q Those would all be realized in year one, is
14 that correct?

15 A Oh, not in year one. We're not talking about
16 creating a balanced system overnight. You all will have
17 to work and earn those efficiencies over time.

18 Q Now, you made allusion a minute ago, Mr.
19 Williams, to the Burlington Northern's having some
20 advantage in its access to the Powder River Basin;
21 correct?

22 A Yes.

23 Q Isn't it true that both the Union Pacific and
24 the Burlington Northern has fairly significant
25 advantages that the SP and SF don't have today and won't

1 have after merger, and that one of those is access to
2 significant coal deposits?

3 A Well, I think that's true. I happen to be
4 great believer in the potential for coal for the Santa
5 Fe also, though. But each carrier has benefits in its
6 own service territory.

7 Q The UP has significant advantage, doesn't it,
8 in its access to the Green River and the soda ash
9 deposits?

10 A Yes, that's one of the Union Pacific's
11 benefits.

12 Q And doesn't Union Pacific have an advantage in
13 the sense of the design of its route structure?

14 A Compared with the Santa Fe system, Santa Fe
15 Southern Pacific proposed system, yes, the Union Pacific
16 does have an advantage because of the way it comes
17 across the center part of the country and reaches into
18 the Bay Area, Los Angeles, and the Pacific Northwest all
19 from that one, what I call the bottom of the Y.

20 But so far as some of the particular markets,
21 Los Angeles to Chicago, I think the Santa Fe is very
22 comparable. So far as the Union Pacific's competition
23 on the so-called northern tier, the northern corridor, I
24 think it's comparable to the Burlington Northern.

25 In fact, the Burlington Northern might even be

1 considered to have the advantage. Since it really
2 doesn't have an immediate competitor, there is no -- I
3 mean another railroad competitor in the northern tier
4 as a result of the BN merger -- intramodal competition
5 was pretty much eliminated there.

6 Q Mr. Williams, have you done any independent
7 analysis of the probable diversions from the SPSF to the
8 UP and the Rio Grande if the conditions you recommend
9 were granted?

10 A No, I have not.

11 Q Do you have any idea what those diversions
12 might do to the viability of the SPSF as a merged
13 system?

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1 A Are you asking me just about the Union
2 Pacific, or the Union Pacific and the Rio Grande?

3 Q I asked you initially about both.

4 A Both? Well, it seems to me from the estimates
5 that are in the record Rio Grande proposes to divert
6 about \$200 million in round numbers from the primary
7 applicants. Union Pacific proposes to divert about \$100
8 million.

9 That is approximately comparable to what the
10 Santa Fe Southern Pacific claims will be diverted from
11 other carriers in its application, allowing for what may
12 be a slight understatement of diversions on your part or
13 on the primary applicant's part.

14 So, as I see it, the proposed conditions which
15 I recommend would in effect offset what SP and Santa Fe
16 propose to take from the other carriers.

17 Q Would it be helpful to the viability of the
18 merged system if as a result of the condition grants
19 diversions were a wash?

20 A I think the merged system would still gain
21 very, very substantial consolidation efficiencies, most
22 of which I would categorize as public benefits as a
23 result of the transaction. What would be eliminated
24 would be the public harm from the enlargement of the
25 market power of SP Santa Fe at the expense of California

1 shipping public.

2 Q So you are not concerned, I take it, that the
3 diversions that would occur regardless of whether you
4 say our studies are right or the UP studies are right,
5 that the diversions that would occur from the SPSF and
6 to its rival, the Union Pacific, you are not concerned
7 that that would further broaden the gap that you show on
8 Table I-4 between these systems?

9 A Well, again, Mr. Mcates, I think you are
10 comparing a premerger income statement or premerger
11 income statements in terms of revenues and income and so
12 on without considering what has to be added in as a
13 result of the transaction. As I see it, even allowing
14 for the conditions that I recommend, the SP and the
15 Santa Fe would gain immensely in their position
16 vis-a-vis the two other big systems, Burlington Northern
17 and the Union Pacific. They wouldn't gain quite as much
18 as they propose, but they would gain substantially.

19 Q Assuming for the sake of this question that in
20 the scenario you have sketched out of granting the UP
21 the D&RG trackage rights, assuming that the merger took
22 place, and I am sure you know that there is some doubt
23 about that in light of Mr. Schmidt's testimony, but
24 assuming that that happened, do you think that based on
25 your experience in the industry, that SPSF would in fact

1 expend all the funds and make all the changes in its
2 operating plan that it has projected?

3 A I think most of what has been proposed in
4 terms of consolidation efficiencies would still be
5 realized. As I have indicated, I think there is an
6 opportunity for even more to be squeezed out as a result
7 of the consolidation.

8 Q If the UP and the Rio Grande get to
9 California, there is going to be a lot of squeezing,
10 isn't there?

11 A No, I don't think that's true. You shouldn't
12 ignore, if you actually sell to the Rio Grande, as the
13 Rio Grande has proposed, the line between Roseville and
14 Ogden, which from what I have read in the transcript
15 appears to be a marginal contributor to the SP's income
16 statement, yes, you are giving up some traffic, but you
17 should be able to do something with the capital
18 generated from that sale.

19 Q You made reference a moment ago to one of my
20 questions to the Northern Lines merger and the fact that
21 the Burlington Northern has no intermodal competition
22 across the northern tier. Do you recall that?

23 A Yes.

24 Q In your view, is the Burlington Northern today
25 extracting monopoly rents from shippers on that northern

1 tier?

2 A I think it is likely that they are, yes.

3 Q Thank you. Now, would you turn to Page II-2 of
4 your verified statement? At the top of the page, in the
5 first full paragraph, you say "One measure of the market
6 concentration in the aggregate is simply the route
7 mileage under each carrier's control in California. At
8 present Southern Pacific dominates California by its
9 operation of 4,000 route miles," and so on.

10 What does SP's domination of California route
11 miles mean? Does that mean that it has lots of market
12 power?

13 A I think what it means is that it has lots of
14 market concentration. That is what we were trying to
15 measure.

16 Q Does that result in high profits?

17 A No.

18 Q It certainly hasn't for the Southern Pacific,
19 has it?

20 A No.

21 Q What does the number of route miles tell us
22 about the ability of the railroad with all those route
23 miles to raise rates?

24 A Oh, I don't think it tells us much at all
25 about that. What it tells us is that this carrier is

1 the largest carrier in California in terms of its
2 operations.

3 Q Now, Mr. Williams, Southern Pacific has two
4 routes through much of the San Joaquin Valley today.
5 Isn't that right?

6 A Yes.

7 Q Does having two routes increase SP's ability
8 to raise rates above competitive levels to San Joaquin
9 Valley shippers?

10 A I don't think having the routes itself permits
11 Southern Pacific to do that. I think whether it can
12 raise those rates is a question of the intensity of the
13 competition for the traffic that are served by those
14 routes.

15 Q Now, I think you have already indicated, did
16 you not, that in the Tucumcari case, Finance Docket
17 28,799, you were the coordinator for the Southern
18 Pacific submissions to the Commission?

19 A I was.

20 Q And in that capacity, did you request
21 Analytics, Incorporated, by whom you were later
22 employed, to prepare some rebuttal testimony in that
23 case on the very issue of SP dominance in California and
24 Oregon?

25 A Yes.

1 MR. MCATES: Your Honor, could we have a
2 counsel's exhibit marked, please, for identification?
3 That is a five-page exhibit. It is excerpts from the
4 rebuttal statement referred to.

5 JUDGE HOPKINS: You are going to make me look
6 and find out which number this is?

7 MR. MCATES: 156, I believe.

8 JUDGE HOPKINS: Thank you. I will mark it for
9 identification as SFSP-C-156.

10 (The document referred to
11 was marked for
12 identification as Exhibit
13 Number SFSP-C-156.)

14 BY MR. MCATES: (Resuming)

15 Q Mr. Williams, do you recall Mr. Bertram E.
16 Rifas?

17 A I do.

18 Q Was Mr. Rifas one of the individuals from
19 Analytics, Incorporated, whom you retained to help
20 Southern Pacific in the Tucumcari case?

21 A He was retained by Southern Pacific, yes. I
22 am not sure that I personally retained him, but
23 certainly he was retained by our collective group and by
24 the company.

25 Q All right. Now, if you would turn to the

1 second page of the exhibit, which is the first page of
2 Mr. Rifas's rebuttal statement, the summary, do you see
3 that he says in the second full paragraph, skipping the
4 beginning of the sentence, "We recommended to Southern
5 Pacific that Analytics develop and present statistical
6 studies and rebuttal testimony relating to the following
7 three issues: the issue of "related Southern Pacific
8 dominance of California and Oregon."

9 Do you see that?

10 A Yes.

11 Q Was that a project that you approved for
12 Analytics to undertake and develop?

13 A I think our working group in that proceeding
14 approved that Mr. Rifas prepare and present studies just
15 as he has outlined in here.

16 Q Is that in issue that you thought was
17 important that it be addressed by Southern Pacific in
18 rebuttal in that case?

19 A To the best of my recollection, yes.

20 Q Now, at the bottom of the same page, Page 2 of
21 the Exhibit, Page 1 of the testimony, Mr. Rifas says,
22 "The concept of dominance as carelessly used by the
23 protestants mixes the quantitative use of the word
24 meaning prevailing in numbers, frequency, or extent,
25 with a qualitative use of the word meaning prevailing in

1 power and ascendancy."

2 In which context have you used the word
3 "dominance" at Page II-2 of your testimony?

4 A I have used the word "dominates" on II-2 in
5 terms of market concentration, not in terms of market
6 power.

7 Q Okay. On the next page, Page 2 of Mr. Rifas's
8 statement and Page 3 of the exhibit, you see at the
9 bottom of the page he says, "We conclude that SP does
10 not dominate or control the routing of relevant
11 transcontinental traffic."

12 Is that a statement you agree with?

13 MR. MAC KENZIE: Your Honor, may I clarify
14 whether he is talking about whether Mr. Williams agrees
15 with that as of the date this testimony was submitted,
16 or does he believe it now, in light of the --

17 JUDGE HOPKINS: You are talking about at
18 present, aren't you?

19 MR. MCATES: I certainly am.

20 THE WITNESS: No, I think that passage of the
21 Staggers Act has enhanced the ability of Southern
22 Pacific to dominate and control its routing of relevant
23 transcontinental traffic.

24 BY MR. MOATES: (Resuming)

25 Q So it is your testimony sitting here today,

1 your expert judgment is that Southern Pacific today does
2 dominate and control the routing of transcontinental
3 traffic from stations it serves on the west coast?

4 A Their ability to do so has been enhanced by
5 the Staggers Act, yes.

6 Q And I take it that you would anticipate since
7 they now in your view can dominate this traffic
8 post-Staggers that the Southern Pacific must be enjoying
9 a dramatic resurgence financially since the Staggers
10 Act. Is that right?

11 A No, I don't think those two factors
12 necessarily go together. I think it is clear from the
13 traffic study put in the record in this proceeding that
14 they have the ability to take traffic away from
15 relatively more efficient routes and put it on less
16 efficient routes, such as the 30 percent of the Oregon
17 traffic they intend to divert away from the overland
18 route and the Ogden interchange and move the long way
19 around via Barstow and the Santa Fe.

20 Q Okay, Mr. Williams. Look at the last two
21 pages of the exhibit. I want to draw your attention to
22 two places that deal with the same topic. On Mr.
23 Rifas's numbered Page 3 you see I have underlined some
24 language there.

25 It says "SP has a large share of the rail

1 route miles in California and Oregon counties that
2 originate or terminate low volumes of traffic, a lesser
3 share in the major rural and urban heavy traffic
4 areas."

5 Isn't that a true statement, sir? Isn't it as
6 true today as when he said it?

7 A Certainly the first part of it is true, that
8 the SP has a large share of the route miles in the
9 counties that originate or terminate low volumes of
10 traffic. I know that for a fact. I suppose the lesser
11 share in the major rural and heavy traffic areas is true
12 simply because we usually have an additional competitor
13 or more in those areas, such as Fresno or Bakersfield.
14 We have a second competitor in Los Angeles or the Bay
15 area. We have second and third competitors, so their
16 share would be less.

17 Q Again on Page 46, Mr. Rifas is summing up, and
18 he says, "Clearly, this large track network serves
19 relatively sparse traffic areas. SP does not present an
20 overwhelming power."

21 Did you disagree with Mr. Rifas when he
22 drafted that statement in 1979?

23 A No, I did not at that time.

24 Q Do you disagree with it sitting here today?

25 A No.

ss

1 Q Now, do you recall that the ICC addressed this
2 issue of SP's alleged dominance of California and Oregon
3 traffic in its Tucumcari decision, Mr. Williams?

4 A Not specifically.

5 Q I would like to show you a copy of the
6 decision, if I may. This was the Commission's decision
7 in Finance Docket 28,799. It appears at 363 ICC 320 and
8 thereafter.

9 I am showing the witness Page 348 of the
10 decision.

11 Do you see the topical heading in the middle
12 of that page, Mr. Williams, that says major issues?

13 A Yes.

14 Q What is the first major issue the Commission
15 dealt with?

16 A SP's dominance.

17 Q And dominance is in quotation marks, isn't
18 it?

19 A Yes.

20 Q Would you just read the first paragraph?

21 A Aloud?

22 Q Yes, if you don't mind.

23 A "Protestants argued that SP dominates the
24 western rail freight market and could exercise undue
25 influence over routings to and from points in Oregon and

1 California. Further, protestants claim that through
2 this control SP will be able to shift substantial
3 traffic away from the other western carriers and the
4 other transcontinental routes to the Tucumcari route.
5 Without commenting on whether or not such a shift would
6 be bad in itself, we find claimaint SP's market
7 dominance unsupported by the evidence."

8 Q Does that refresh your recollection of the
9 Commission's dealing with this issue?

10 A Yes, we won that case.

11 Q Yes, you did. Congratulations.

12 Now again if we could look at Page II-17 of
13 your verified statement, the second full paragraph, I am
14 still here, sir, trying to explore your meaning of
15 certain terms that you use, so we are in a terminology
16 context, if you will.

17 In that second full paragraph you say "Based
18 on net tonnages shown in your Table II-3, the combined
19 Southern Pacific Santa Fe would control," and that is
20 the word I want to focus on, "control about 83 percent,"
21 and so on.

22 What do you mean by control in that context?

23 A They would be the originating or terminating
24 carrier.

25 Q All right. Does that mean that they would

1 then exercise some influence over the routing of the
2 traffic?

3 A That's right.

4 Q Do you agree, Mr. Williams, that it still
5 remains, even post-Staggers, a fundamental tenet of
6 railroading that the shipper does have the right to
7 route his traffic?

8 A The shipper has the ultimate right and the
9 carriers have a great deal of ability to close gateways
10 and restrict that right under the Staggers Act.

11 Q Do you know whether any significant amount of
12 traffic is tendered unrouted today by shippers?

13 A I doubt that much is.

14 Q Does the ability to exercise influence over
15 the routing equate to market power in your view, Mr.
16 Williams?

17 A Yes.

18 Q And does the ability to exercise routing
19 influence depend on any variables? For example, whether
20 the carrier originates, terminates, or bridges the
21 traffic?

22 A Yes.

23 Q Now, whether the carrier provides equipment
24 for the move, is that sometimes a factor that influences
25 that routing influence?

1 A Yes.

2 Q And whether perhaps the carrier is able to
3 enter into what we today would call a Staggers Act
4 contract with the shipper for his traffic for a
5 particular period of time?

6 A Yes. That is another factor.

7 Q Now, generally speaking, in your experience,
8 does a bridge or overhead carrier exercise much
9 influence over the routing?

10 A No, the bridge or overhead carrier has
11 substantially less influence than the originating or
12 terminating carrier.

13 Q If you could imagine for a minute a five-line
14 haul with three bridge carriers, would the first bridge
15 carrier typically be in a position to exercise any
16 significant market power?

17 A Well, he might.

18 Q In what circumstances might he be able to do
19 that?

20 A He might if he placed equipment, if the
21 originating carrier had been willing to permit him to
22 place equipment, if he controlled an efficient route,
23 and the originating carrier were willing to work with
24 him. There are all kinds of circumstances under which a
25 bridge carrier may have power.

1 Q Let me give you a hypothetical. Suppose we
2 have a point that my bridge carrier doesn't physically
3 serve. Let's call it Lake Charles, Louisiana. And the
4 bridge carrier is bridging the traffic in this route
5 between Kansas City and Chicago. Okay?

6 And assume further that this traffic is going
7 beyond Chicago into the northeast, and other carriers
8 are handling the traffic to get it to its destination.

9 In your opinion, does this hypothetical bridge
10 carrier bridging that traffic originating in Lake
11 Charles and going from Kansas City to Chicago have any
12 significant degree of market power over that shipment?

13 A He probably has very little.

14 Q Do you personally expect any adverse
15 competitive effects from this merger for traffic moving
16 between Kansas City and Chicago?

17 A Well, I am not sure I understood the precise
18 direction of your question, Mr. Moates. I looked
19 primarily at California traffic. I could envision a
20 movement from the San Joaquin Valley and Fresno destined
21 to Chicago that is currently routed via Kansas City and
22 a connecting carrier that would be diverted to the
23 merged carrier, and therefore as a result of the merger
24 eliminating competition in the San Joaquin Valley would
25 permit rates to go up and your carrier, Santa Fe

1 Southern Pacific, to harm California just because of
2 that ability.

3 Q Under that scenario you sketch out that is
4 something that you deal with in here because it occurred
5 in California, and if I understand you, you are saying
6 it would be a downstream effect in the Kansas to Chicago
7 corridor if the shipment were moving to Chicago. Is
8 that right? Is that the gist of what you are saying?

9 A That's correct. I wasn't trying to identify
10 the precise impacts on the connecting carriers between
11 Kansas City and Chicago. I did have to look at that
12 impact whenever it was California traffic.

13 Q I am trying to state what I think is a fairly
14 straightforward proposition, Mr. Williams. Southern
15 Pacific doesn't go between Kansas City and Chicago, does
16 it?

17 A Correct.

18 Q So from that standpoint it is at least a fair
19 statement, is it not, that any competitive effects in
20 that corridor will be minimal?

21 A Well, not to the connecting carriers, I don't
22 think so. Not to the bridge carriers, who are squeezed
23 out of the routing.

24 Q Do you equate the participation of a
25 particular carrier in the route to effects on

1 competition?

2 A I think there is no direct correlation between
3 participation in the route and the effect on
4 competition, but I think that the bridge carriers do
5 have some potential part to play in the competitive
6 struggle for traffic.

7 And so I can't agree that eliminating them
8 from the routes even between Kansas City and Chicago
9 doesn't create competitive harm.

10 Q And that is true even if it is the shipper who
11 elects to eliminate them?

12 A Yes. If the shipper himself makes that
13 selection without being forced to it as a result of
14 having gateways closed or other economic pressures
15 brought to bear on him.

16 Q Would you look at Page II-48, please, sir?

17 Focusing on the last two sentences before the
18 caption at the bottom of the page, read as follows,
19 "Limiting the number of railroad competitors could lead
20 not only to less vigorous competition but also to
21 noncompetitive or even collusive market behavior, thus
22 retaining additional carriers and important California
23 markets as clearly a mitigating measure which should
24 prevent these possible abuses."

25 What I want to know, Mr. Williams, in your

1 view is, when do these noncompetitive or collusive
2 market behavior characteristics manifest themselves? Is
3 it when a market goes from two carriers to one, three to
4 two? What is the test?

5 A I think particularly when you go from two to
6 one you have noncompetitive intramodal market behavior
7 for the most part in California's markets. When you go
8 from three to two railroads in a market, you also have
9 more opportunity for noncompetitive or collusive market
10 behavior.

11 Q When you use these terms, noncompetitive or
12 collusive market behavior, are you implying with those
13 terms that that means rates will go up, that there will
14 be an exercise of market power in one of these matters
15 that results in rates going up?

16 A Well, that could be one of the effects. There
17 are a number of others that could occur. What I mean
18 is, the market doesn't function as it should with two
19 intense competitors. It could be that there is a tacit
20 splitting of the markets. It could be that there is a
21 price leader either hopefully tacitly acknowledged by
22 the other carrier in the market. It could be that there
23 is service leadership expressed by one carrier. So all
24 of those and other occurrences are possible.

25 Q In your opinion, Mr. Williams, is there

1 collusive market behavior today in movements to or from
2 Philadelphia?

3 MR. MAC KENZIE: Excuse me, Your Honor. Is he
4 suggesting that that movement would include a California
5 origin and destination?

6 MR. MCATES: No, I don't think it matters.

7 BY MR. MOATES: (Resuming)

8 Q Mr. Williams, how many railroads serve the
9 Philadelphia market?

10 A I think there are three in there now, the B&C,
11 Conrail, or course, and I think the D&H has now got
12 rights into Philadelphia.

13 Q Do you think there is collusive behavior in
14 that kind of market?

15 A I don't think so. Not with the D&H's addition
16 to the two carrier system.

17 Q Do you think there is noncompetitive or
18 collusive behavior today in Atlanta?

19 A I really don't know about Atlanta. I have
20 never looked at it. I don't recall any traffic that we
21 had of consequence to Atlanta.

22 Q Do you know how many carriers serve Atlanta?

23 A Basically two.

24 Q Would you answer me the same if I asked you
25 whether there is any collusive or noncompetitive market

1 behavior today at a point like Tampa, Florida, served
2 exclusively by one railroad?

3 MR. MAC KENZIE: Your Honor, we are getting
4 pretty far afield from the direct testimony related to
5 California impacts.

6 JUDGE HOPKINS: He is testing him. I will
7 allow it on that basis. Go ahead.

8 THE WITNESS: I don't really know whether
9 there is or not. There could be.

10 BY MR. MOATES: (Resuming)

11 Q All right, let's make Mr. MacKenzie happy.
12 Let's come closer to home. Do you think there is
13 noncompetitive or collusive behavior today at Phoenix?

14 A No, I don't believe so, because I think Santa
15 Fe and Southern Pacific have been intense competitors.

16 Q Would you answer me the same about Barstow?

17 A Well, to the extent traffic is originated or
18 terminated at Barstow, both the Union Pacific and Santa
19 Fe serve it, and I am sure -- I think they are
20 competitors also.

21 Q Does anyone besides Southern Pacific serve
22 Santa Barbara? You could look at the map I gave you if
23 you would like.

24 A Yes, I think the record is relatively clear
25 that competition between railroads exists throughout

1 California, and that the Santa Fe has been an intense
2 competitor over many coastal cities such as Salinas, the
3 Santa Maria Valley, and to the extent there is much
4 traffic in Santa Barbara, there really isn't, but they
5 may have dipped into that using their Plan 3 TOFC.

6 Q So I take it you answer is that while there is
7 one railroad to Santa Barbara, that railroa, the SP, is
8 not charging supracompetitive rates to shippers and
9 receivers at Santa Barbara?

10 A No, that wasn't my answer, Mr. Moates. My
11 answer was that I don't believe because of their
12 behavior historically that Southern Pacific and Santa Fe
13 are colluding. I think they have been intense
14 competitors.

15 Q Well, let me ask you the question directly,
16 Mr. Williams. Is Santa Fe in a noncompetitive situation
17 today vis-a-vis the other railroads at Santa Barbara?

18 A Santa Fe, they compete in Santa Barbara.

19 Q Is Southern Pacific in such a situation at
20 Santa Barbara?

21 A Southern Pacific may compete with other rail
22 carriers in Santa Barbara, etc.

23 Q Via TCFC service as you describe?

24 A Yes.

25 Q One last question in this regard. Is it your

1 opinion that the Santa Fe is today earning monopoly
2 profits on traffic it carries to and from San Diego?

3 A Well, they may. That is a hard question to
4 answer. As someone who kept the profit and loss
5 statement by commodity on Southern Pacific for a number
6 of years, which I did in my career, I really can't
7 answer that question based on just whether one carrier
8 exists in a market or two or more exist. You have to
9 look commodity by commodity, movement by movement, and
10 you could have monopoly profits either under competition
11 between railroads at common points. You could have
12 monopoly profits at exclusively served points.

13 Q Did you utilize any of these internal Southern
14 Pacific records or documents that you had access to
15 during your employment for purposes of your analysis in
16 this case?

17 A No.

18 Q would you look at Page II-6 of your verified
19 statement? The first full paragraph, in the first
20 sentence, you say, "In terms of traffic flows, those
21 which must utilize the southern corridor between
22 Southern California and other states across the southern
23 part of the country will be most severely impacted," and
24 so on."

25 My question is, where in your statement have

1 you identified the traffic that "must utilize the
2 southern corridor?"

3 A I think when I referred to Los Angeles Basin
4 traffic destined to Texas, Louisiana, Oklahoma,
5 Arkansas, as well as to portions of the southeast in
6 some of my tables, that is where I identify it.

7 Q So broadly speaking this traffic in your terms
8 must utilize the southern corridor because that is the
9 most efficient rail route for such traffic?

10 A That is not the only rail route, because the
11 Union Pacific would have a circuitous route via Salt
12 Lake City and so on.

13 Q That is why I asked you is it your opinion
14 that you say it must utilize this corridor because it is
15 the most efficient rail route for that traffic.

16 A Yes.

17 Q Do you regard that traffic as captive to the
18 Southern Corridor?

19 A At present price and service levels, yes.

20 Q All right. Now let's talk very briefly about
21 your discussion of market shares and traffic diversion.
22 First, in Section II of your verified statement you
23 first state what you believe are the relevant geographic
24 markets, do you not? That starts on Page II-4.

25 A Yes.

1 Q And you identify, if I understand your
2 testimony, eleven what you call substate areas, and then
3 those are shown in Figure II-1 on Page II-7.

4 A Yes.

5 Q These eleven areas are more numerous, are they
6 not, than the Bureau of Economic Analysis areas or BEA's
7 that the Department of Commerce has applied?

8 A Yes, they are.

9 Q Now, you consider, do you not, rail
10 transportation of commodities to be your relevant
11 product market?

12 A Yes.

13 Q And then you proceed and you analyze market
14 shares in California for Southern Pacific, Santa Fe, and
15 the Union Pacific, right?

16 A Yes.

17 Q Do you anywhere calculate market shares for
18 other modes, trucks or water carriers?

19 A No.

20 Q I would like to ask you about a particular
21 statement, Mr. Williams, on Page II-24, if I may, the
22 second paragraph. You say, "I believe the participation
23 share concept used by witness Liba on behalf of primary
24 applicants is erroneous. Instead, I conclude that the
25 use of originating or terminating tonnage is the correct

1 basis for measuring the competitive impact of the
2 proposed SPSF merger in California."

3 Do you see that reference?

4 A Yes.

5 Q Would a methodology, in your view, would a
6 methodology that assigned automatically 100 percent of a
7 movement to the applicants regardless of the nature of
8 their participation in a movement reasonably and
9 accurately reflects the significance of their
10 participation?

11 A Not their participation, no. Not if it
12 assigned 100 percent of the movement, regardless of the
13 other carriers who were participating.

14 Q Let me go back to my earlier hypothetical. Do
15 you recall we talked briefly about hypothetical movement
16 from Lake Charles to the northeast, and I was referring
17 there to the Kansas City-Chicago corridor?

18 A Yes.

19 Q Focusing on that hypothetical Kansas
20 City-Chicago carrier, which of course is the Santa Fe,
21 and assuming my hypothetical is accurate, the movement I
22 described is a five-railroad haul from Lake Charles
23 which Santa Fe doesn't serve, and focusing on the
24 participation share concept as you describe it on Page
25 II-24, wouldn't it seriously distort the significance of

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1 Santa Fe's participation in that kind of a move to
2 assign a 100 percent share to it?

3 A Well, if Santa Fe were neither the originating
4 or terminating carrier, I didn't propose to do so.

5 Q No, sir, I am not suggesting you did. If you
6 were concerned about the effect of the merger on the
7 applicants' influence over a movement of a commodity
8 being transported from Lake Charles, in other words, if
9 you were focusing on Lake Charles as the origin point,
10 assigning a 100 percent share to the Santa Fe as a
11 bridge carrier for Kansas City to Chicago would in fact
12 seriously distort the market power of the participating
13 carriers, wouldn't it?

14 A Well, I don't -- if I understood your
15 question, I don't see that that means much at all.

16 Q Thank you. Now, with respect to your analysis
17 of the diversions, Mr. Williams, you have made some
18 judgments about probable diversions resulting from the
19 merger, haven't you, that are reflected in the
20 testimony?

21 A In terms of the overland route, yes.

22 Q That's right, the overland route. Did you
23 actually conduct your own traffic diversion study?

24 A No.

25 Q I apologize if this is duplicative. I asked

1 you before about shipper interviews in the context of
2 competitive impacts generally. Now I want to ask you,
3 did you interview any shippers about the prospects for
4 traffic diversion?

5 A No.

6 Q Now, you say on Page II-15 in the paragraph
7 that starts, "Similarly, I anticipate," you say you
8 anticipate that these diversions would produce no
9 substantive changes in originating or terminating
10 traffic volumes, correct?

11 A Yes.

12 Q You then expect, as I read this testimony,
13 that the diversions will result chiefly in route
14 changes?

15 A Yes, I do.

16 Q Since the shipper has the ultimate control
17 over the routing as we have agreed, can changes in that
18 route be accomplished without acquiescence from the
19 shipper?

20 A Yes, they can be accomplished with forced
21 acquiescence.

22 Q By that you mean the exercise of market power
23 on the shipper causes him to route the traffic in a way
24 the carrier prefers?

25 A Yes, he may lose the option of routing by his

1 existing route completely.

2 Q If the merger system has a single system route
3 from, let's say, Fresno to Chicago, which is a corridor
4 you analyzed, it will have such a route via the Southern
5 Corridor, right?

6 A It will, yes.

7 Q And if the Ogden gateway remains open for
8 joint line routing in conjunction with the DPGW and the
9 Union Pacific, then the shipper at Fresno wanting to
10 ship his goods to Chicago would at least have two routes
11 to choose from, wouldn't he?

12 A If the Ogden gateway remains open, that is
13 correct.

14 Q Don't you assume in your testimony that --
15 well, don't you in fact find that roughly 50 percent of
16 the tonnage moving over the Ogden gateway today would
17 still move that way after the merger, even if all the
18 diversions you predicted occur?

19 A Well, I think it is not quite fair to
20 characterize what I put in my testimony vis-a-vis the
21 Ogden gateway as a diversion study. What we were trying
22 to estimate was how much traffic is likely to stay on
23 that route just because it fit there naturally, so I
24 don't claim it to be a diversion study.

25 In fact, I didn't even reflect the 30 percent

1 diversion of the Oregon traffic destined to the
2 northeast that was predicted in the primary applicants'
3 diversion study. My objective was to see insofar as
4 California shippers are concerned how much, or perhaps I
5 should say how little traffic would actually remain on
6 the overland route.

7 Q Mr. Williams, I want to focus on this. I
8 think it is an important point. Look at Page II-59.
9 Look if you would at the last sentence on the page.
10 Haven't you concluded here that the overland route will
11 remain in existence, to use your term? Conceivably you
12 say there will be reduced usage, but you say it will
13 remain in existence. Isn't that right?

14 A Yes, and the overland route can remain in
15 existence, for instance, to connect California with Utah
16 or Colorado, but be closed so far as shippers from
17 California are concerned with traffic destined to the
18 northeast or the southeast and other destinations.

19 So, there need not be a complete closure of a
20 gateway.

21 Q Are you talking now about a partial closure in
22 the sense of an actual routing restriction, or are you
23 talking about a commercial closure due to different
24 rates?

25 A It could be either.

1 Q Do you predict that either one is going to
2 happen?

3 A Yes.

4 Q Which one?

5 A I predict both.

6 Q Where in your testimony do you say that?

7 A Perhaps I don't ever say it explicitly, but
8 this whole section expresses it implicitly. This is
9 what I think is likely to happen to the overland route
10 and the Ogden gateway subsequent to merger.

11 Q Okay. Now, again, on II-59, even assuming
12 everything you have just stated would happen, that the
13 applicants would partially close the Ogden gateway and
14 divert all this traffic, even in those circumstances you
15 say that there would still be 4.2 million tons based on
16 '82 traffic moving via Ogden, don't you?

17 A Yes.

18 Q Do you have any idea how much traffic moved in
19 conjunction with SP via Ogden in 1984?

20 A No, I don't have 1984 data.

21 Q Now, a few questions about the Central Pacific
22 conditions. On Page II-49, in the middle paragraph, if
23 I am reading you correctly, you say that Oregon traffic
24 is not subject to the CP conditions. Is that right?

25 A Yes.

1 Q And traffic to or from eastern points coming
2 from outside the northwest is not subject to the CP
3 conditions, correct?

4 A I beg your pardon? Could you repeat the
5 question, please?

6 Q I am trying to pin down what I think you are
7 telling us on Page II-49, that there is traffic moving
8 via the Overland route through Ogden today in addition
9 to the Oregon traffic now that is not subject to the CP
10 conditions.

11 A Yes.

12 Q I realize this is fundamental, but I am trying
13 to set something up. Now, if you will look at your
14 Table II-17 on Page II-54, which depicts eastbound Ogden
15 gateway traffic originated by the SP, can you tell me
16 how much of this traffic is subject to the CP
17 conditions?

18 And an easy way to do this, if you don't mind,
19 I might just suggest to you where I think those tonnages
20 are, and you confirm them or not confirm them as the
21 case may be.

22 I would like to keep a tally of the numbers as
23 we go. Do you have a calculator? If you don't, I do.

24 A I do.

25 Q First of all, we would look under the column

1 Northeast, wouldn't we?

2 A Yes.

3 Q Would your Bay area substate be one of the
4 areas in which tonnage would be subject to the
5 conditions?

6 A Yes.

7 Q And the south San Joaquin Valley area?

8 A Yes.

9 Q And northwest California area?

10 A Yes.

11 Q The Sacramento Valley?

12 A Yes.

13 Q The north San Joaquin?

14 A Yes.

15 Q And the northeast California?

16 A Yes.

17 Q Are there any other tons on that table that
18 are subject to the conditions?

19 A I think they may be a part of the southwest
20 that is subject to it.

21 Q Southwest?

22 A Yes, we have to go back to Figure 1. I didn't
23 break my southwest California --

24 Q What figure on that on?

25 A II-7. It shows my substate area. And Number

1 8, southwestern California, unfortunately, for purposes
2 of your inquiry, includes counties as far north as Santa
3 Cruz County and as far south as Ventura County, so I
4 think we probably have some traffic mixed up in that
5 that is subject to the conditions and some that is not.

6 Q Subject to the preferential solicitation
7 conditions?

8 A Yes.

9 Q Do you have any idea how much?

10 A No, sir. I really don't.

11 Q Well, taking the tonnages that we do know that
12 we have just identified, do you get 988,600 tons?

13 A I didn't add it up, but I will.

14 I have got 988.6.

15 Q Correct. Now, since you have that number in
16 your calculator, before you clear it, would you just
17 tell me what the percentage of the total of this table
18 that represents? I think it is about 24 percent.

19 A Yes, 24 percent.

20 Q You get that by dividing the 4,000 -- excuse
21 me, 4,141,000 total number, right?

22 A Yes.

23 Q Now, I won't make you do the exercises. We
24 understand what we are doing. Let me just tell you, if
25 you look also at your Table II-19 on Page II-58, which I

1 think is the matching table for westbound traffic
2 terminated over Ogden?

3 A Yes.

4 Q If we identify those same six substates the
5 way we identified on Table II-17 and do the same
6 calculation for the northeast, the number you will get
7 is 770,200 tons, or about 14 percent of the total, and
8 if you will just accept that for purposes of my question
9 -- I don't want to take the time to do it -- if that is
10 right, then we have identified about 1,758,800 tons
11 between the two tables, since we have to match them,
12 that is subject to the CP conditions for about 18
13 percent of the grand total. Are you with me?

14 A Yes.

15 Q If the Southern Pacific is not obliged to
16 route the remaining 80 or 82 percent via the overland
17 route, then why does that traffic go that way?

18 A Well, without the Santa Fe extension of haul
19 that is proposed, Southern Pacific probably makes the
20 most profit, maximizes their profit by routing the
21 traffic that way, and of course as I have tried to point
22 out in my testimony, some of the traffic is practically
23 captive to the gateway, such as the Utah-Colorado
24 traffic.

25 Q Well, the shippers route traffic that way

1 because they may decide there are certain benefits for
2 them. Is that true?

3 A Well, that is true, yes.

4 Q Other carriers may solicit for the gateway,
5 notably the Rio Grande?

6 A That is true, yes.

7 Q And the SP may solicit traffic that way not
8 only for profitability but perhaps to compete with the
9 Union Pacific on scheduling?

10 A Yes.

11 Q Would removal of the CP conditions in your
12 view have any effect on that 82 percent?

13 A Removal of the CP conditions I guess really
14 wouldn't affect the 82 percent of the traffic that is
15 not subject to the conditions.

16 Q Okay. Does Southern Pacific, Mr. Williams,
17 presently have an incentive to route via its long haul
18 southern corridor route whenever it can?

19 A Yes.

20 Q Under the CP conditions, isn't it possible for
21 the Southern Pacific's subsidiary, the Cotton Belt, to
22 solicit for that route even from CP territory?

23 A No.

24 Q Why not?

25 A Because the Cotton Belt isn't subject to the

1 conditions.

2 Q You are saying what I wanted you to say, but I
3 asked the question wrong. It is possible for the Cotton
4 Belt to solicit for the southern route even from CP
5 territory?

6 A Yes, it is.

7 Q Again, referring to our old friend, the
8 Tucumcari proceeding, did you testify in rebuttal
9 regarding the relative efficiencies of the UP, the D&RG,
10 the Southern Pacific, and the Santa Fe routes?

11 A Well, Mr. Moates, I tried to testify, but that
12 testimony was never accepted in the record.

13 Q Did you submit a verified statement addressing
14 the issues?

15 A Yes, I did.

16 Q Thank you for that clarification. I didn't
17 remember that.

18 Could I have a two-page counsel's exhibit
19 marked, Your Honor? The two-page exhibit, Your Honor,
20 are two noncontiguous pages of Mr. Williams' statement
21 in that proceeding. I presented him with a whole
22 statement this morning. I am sure he has not had a
23 chance to look at the whole thing.

24 JUDGE HOPKINS: It will be marked for
25 identification as SFSP-C-157.

1 (The document referred to
2 was marked for
3 identification as Exhibit
4 Number SFSP-C-157.)

5 MR. MAC KENZIE: Your Honor, excuse me. Did I
6 understand that this statement which was proposed as
7 testimony was not accepted into the record in the
8 Tucumcari proceeding?

9 JUDGE HOPKINS: We will let Mr. Williams state
10 the reason for it since it has been brought out.

11 BY MR. MOATES: (Resuming)

12 Q Was this statement submitted, Mr. Williams,
13 but not received because it was deemed by the presiding
14 judge not to be proper rebuttal?

15 A No, I am embarrassed to state that the
16 presiding judge didn't receive it because he didn't
17 think I was qualified as a witness to present it. I
18 wasn't able to describe to his satisfaction the computer
19 program that was used to develop this data.

20 Q I apologize. I thought it was because it
21 wasn't rebuttal. But in any event we have some idea of
22 the circumstances. You did prepare and submit the
23 testimony, did you not?

24 A Yes, I did, and later I corrected it also.

25 Q Okay. I have Xeroxed two pages from it, Pages

1 44 and 51. Forty-four, you have a section that is
2 captioned Relative Efficiency of the Golden State
3 Route. Do you see that?

4 A Yes.

5 Q You say the purpose of this portion of your
6 testimony is to rebut the contentions by the Union
7 Pacific that the proposed transaction, and here we are
8 talking about the SP and Cotton Belt's acquisition of
9 the Tucumcari line, we will reduce efficiency because
10 use of UP's "efficient routes will decline."

11 And you take issue with that, don't you?

12 A Yes.

13 Q A little farther down in that paragraph I have
14 underscored some language. You say, "My testimony will
15 show that the other existing central corridor rail
16 routes to and from Central Pacific condition territory
17 or to and from the expanded CP territory sought by UP
18 are less efficient than the Golden State route. This
19 statement applies to Union Pacific's central corridor
20 route to some locations within existing CP territory as
21 well as to the D&RGW-MP route within both existing and
22 expanded CP territory."

23 Is that right?

24 A Right.

25 Q The D&RGW-MP route referred to, isn't that the

1 route over which D&RGW now operates to Kansas City via
2 trackage rights?

3 A Yes.

4 Q And your conclusion, to sum it up, was that
5 the Tucumcari route as operated by SP-SSW was more
6 efficient for movements between Kansas City, to pick an
7 example, and numerous points on the west coast. Isn't
8 that right?

9 A Yes, that is true. Of course, if you look at
10 the entire statement, there are other points that
11 weren't included. There were corrections made to the
12 appendices according to my -- and it was Exhibit Number
13 594 to this which modified some of these conclusions.

14 Q Mr. Williams, I didn't have all that with me.
15 If you find after perusing these two pages that there
16 were corrections to either of these two pages, I would
17 be delighted to have you bring those to our attention.
18 It is not my intention to use the wrong testimony.

19 A Well, I don't think it is proper to put it in
20 this case, and there are two or three reasons for it.
21 First, there were corrections that I have no idea
22 without tracing them all the way through the extent to
23 which each of these measures you show on Page 51 are
24 correct.

25 Second, the process of running a computerized

1 train performance calculator model requires that you
2 outline the operating parameters of each participating
3 carrier, and we put together the best picture we could
4 at the time of the Tucumcari case, which was what, 1978
5 or '79, for each of the carriers involved.

6 But I suspect, the way railroad operating
7 people change their policies over time, that there have
8 been changes in operating philosophies such as train
9 length, horsepower per ton, schedule speeds, and so on,
10 that would need to be reflected in order to properly
11 show this comparison to date.

12 Q So, to summarize that, you think there may
13 have been changes over the last four, five, or six years
14 that would cause your conclusions to be different?

15 A Yes, you see, you set the train performance
16 calculator to estimate fuel consumption for trains over
17 the various routes reflects both the operating policy of
18 the carrier involved or each carrier involved in the
19 route as well as the basic efficiency in terms of
20 gradient, curvature, and so on of the routes involved.

21 Q Mr. Williams, that is interesting
22 speculation. My question to you, I guess, would be, do
23 you have any concrete knowledge that any such changes
24 have occurred, and if in fact you do, have you rerun
25 your TPC calculations?

1 A No, I have not. I have not rerun it since I
2 left Southern Pacific. I don't have the data in my
3 possession, but I suspect just because of the Rio
4 Grande's acquisition of trackage rights over the
5 Missouri Pacific, that their performance has changed.

6 I suspect that the Southern Pacific Union
7 Pacific route has changed simply because of the Union
8 Pacific's acquisition of the Western Pacific.

9 Santa Fe probably has not changed as SPT and
10 Cotton Belt have implemented their operating plan. I
11 understand they use connecting carriers other than the
12 Burlington Northern, which was our favorite connection
13 in 1979 and 1980, so the index of efficiency on that
14 route may have changed substantially also.

15 Q From California to Chicago, Mr. Williams, what
16 is the mileage advantage of the Tucumcari route over the
17 Corsicana route?

18 A From California?

19 Q Chicago.

20 A Well, it varies by location.

21 Q Isn't there a generally used yardstick in the
22 proceeding that is about 400 miles shorter?

23 A Yes, I am sorry, that is correct.

24 Q In the Tucumcari proceeding, do you recall,
25 did the Commission feel it necessary to award D&RGW

1 trackage rights, propose DT&I conditions, or extend the
2 CP conditions to Cotton Belt, to do any of those things
3 in order to preserve the overland route?

4 A No, not in that case.

5 Q Do you recall what the Commission concluded in
6 the case about the possible diversion threats to the
7 overland route, the threats you are concerned about
8 here?

9 A No, I don't recall, Mr. Moates.

10 Q I will show you an excerpt from that decision,
11 Page 383 of 363, ICC. If I could get you to read what I
12 have underscored down to here --

13 MR. MAC KENZIE: Excuse me, Your Honor. Can
14 we get what is being read or what portion of the
15 decision?

16 MR. MOATES: I said it, and I will say it
17 again. It is the Tucumcari decision of the Commission,
18 Finance Docket 28,799. It is 363 ICC at Page 383.

19 MR. MAC KENZIE: I am talking about the
20 section of the decision.

21 BY MR. MOATES: (Resuming)

22 Q Isn't this the same section we looked at
23 before that says Findings?

24 A Well, the section is findings, yes.

25 Q And it is findings with respect to what larger

1 topic on the preceding page?

2 A Conditions.

3 JUDGE HOPKINS: Go ahead.

4 THE WITNESS: "Moreover, an evaluation of the
5 traffic studies reveals that the overland route will not
6 lose much traffic to the Tucumcari line. The question
7 of reduction in traffic over the central corridor leads
8 us to protestants' second argument, the need to preserve
9 the Ogden gateway.

10 "Protestants note that the central corridor is
11 more efficient for traffic moving between points in CP
12 territory, we agree. The central corridor has obvious
13 advantages for traffic moving between CP territories.

14 "It is because of these natural advantages
15 that we see no need to impose artificial barriers such
16 as CP conditions. There will be little chance of less
17 cost efficient and more fuel wasting routing."

18 BY MR. MOATES: (Resuming)

19 Q Isn't that the precise position that Southern
20 Pacific advocated to the Commission in that case?

21 A Yes.

22 Q The position that you advocated right?

23 A I don't remember whether I actually presented
24 that position to the Commission.

25 Q You disagreed with that position at that

1 time?

2 A Not at that time, no.

3 Q Now, we have agreed the Tucumcari purchase
4 reduced Southern Pacific's southern corridor route to
5 Chicago by about 400 miles, and according to the excerpt
6 of the testimony we looked at that we now understand
7 wasn't received, your testimony, you said it was the
8 most efficient route for many California points to the
9 east.

10 My question is, by how much more will this
11 merger reduce the Southern corridor mileage for the
12 merged system. If you are not sure, I would suggest to
13 you about 100 miles and ask you if that sounds
14 consistent with your understanding of the routes and the
15 operating plan.

16 A Well, I think that is possible, but of course
17 to go back to my earlier analysis, one of the problems I
18 have with measuring, and have always had with measuring
19 efficiency based on mileage as indicated in this
20 previous study I did, the Santa Fe crossing of Arizona
21 and New Mexico is approximately 2,000 feet higher in
22 elevation than is Southern Pacific.

23 And if you look at my fuel consumption
24 calculations, even on Page 51 of the excerpt from my
25 earlier testimony, you see the Bakersfield, Chicago, for

1 instance, log for the Santa Fe. It is about 15 percent
2 less efficient than is the SFT-Cotton Belt-BN.

3 So, I don't think you can say, given the
4 operating plan of the Santa Fe Southern Pacific which
5 proposes to use the Santa Fe line from Northern
6 California, to and from Northern California, that you
7 are going to increase efficiency even beyond that which
8 was realized in the Tucumcari line case.

9 In point of fact, you are not. In point of
10 fact, you are going reduce efficiency.

11 Q Reduce efficiency? Well, then, if you were so
12 concerned about -- let me rephrase that. If you felt
13 and the Commission found at the time of the Tucumcari
14 case that the addition to SP's route structure of a 400
15 mile shorter route to Chicago would not devastate the
16 Ogden gateway, how is it that the addition of 100 miles
17 which you think apparently would be even less efficient,
18 how is that going to devastate the Ogden gateway?

19 A Simply because you get a longer haul as a
20 result of the merger, you have a single system haul
21 which has been widely discussed by most everyone in this
22 proceeding for the Santa Fe Southern Pacific system all
23 the way to Chicago, so there is an increment of revenue
24 and an increment of profit that will flow to the merged
25 carrier that is now going to other carriers such as

1 Burlington, Milwaukee, possibly the North Western, and
2 so on, and that has a substantial impact on the routing
3 practice under a profit maximization objective for the
4 merged system.

5 For example, if today you have a carload
6 routed from Sacramento to Chicago and it is routed
7 Southern Pacific, Union Pacific -- well, let me back up
8 and make it a simpler example, Sacramento to Kansas
9 City. Fifty percent of the revenue goes to SP, 50
10 percent of the revenue goes to UP as a rough split.

11 In terms of costs, you may have probably \$35
12 or 35 percent. I beg your pardon. Let's back up. Say
13 \$50 to the SP in revenue, \$35 in cost, \$50 to the UP,
14 \$35 in cost, so you have a net of \$30. If you now have
15 the SP-Santa Fe system and take that traffic single line
16 to Kansas City, you have revenue of \$100, your costs
17 will probably go up slightly because you have a less
18 efficient route, so your costs will go from, I would
19 say, 70 probably up to \$80, \$85.

20 But your profit overall will be greater than
21 it was using the central corridor, and that is the
22 profit motive. It enhances the earnings of Santa Fe
23 Southern Pacific. Unfortunately, it wastes resources by
24 using a less efficient route.

25 MR. MCATES: Your Honor, I am going to move to

1 strike the last answer. I did not interrupt him. It
2 didn't have anything to do with my question about a 100
3 mile shorter route and efficiencies.

4 JUDGE HOPKINS: I couldn't find what it had to
5 do with the question.

6 MR. MCATES: I think he was making the example
7 up as he went.

8 JUDGE HOPKINS: No, I think he was somewhat
9 trying to explain it, but it got to circumlocuted, I
10 wasn't sure what he was saying.

11 MR. MAC KENZIE: Your Honor, if I understand
12 what he was saying, he was trying to think out loud
13 about --

14 JUDGE HOPKINS: I understand that, but let's
15 get back to the original question. I will strike the
16 answer. Let's get back to the original question.

17 BY MR. MOATES: (Resuming)

18 Q Mr. Williams, I don't want to be unfair about
19 this, but I am on Page 12 of 52 pages of notes, and if
20 we do that all day we are going to have a problem
21 getting you out of here, and I don't want that to be a
22 problem.

23 JUDGE HOPKINS: Let's get back to the original
24 question.

25 BY MR. MOATES: (Resuming)

1 Q The original question was, given the fact that
2 the Commission found in Tucumcari that SP's acquisition
3 of a 400 mile shorter route to Chicago would not
4 devastate the Ogden gateway, how is it that the addition
5 of 100 miles to that shortness, if I could put it that
6 way, by this merger is going to have that effect?

7 A The addition of the 100 miles of shortness
8 isn't going to have that effect. What is going to have
9 that effect is the enhanced control the merged system
10 would have over the shipping public it serves.

11 Q Okay. Thank you. Sir, are you familiar with
12 the Southern Pacific and Denver and Rio Grande
13 solicitation agreement?

14 A In general terms, to the extent it has been
15 publicized in this case.

16 Q Are you aware that it covers a territory
17 larger than the so-called CP condition territory?

18 A In general, yes.

19 Q Why would Southern Pacific voluntarily agree
20 to enter into such an agreement if it preferred its
21 southern corridor long haul?

22 A Because absent the SP Santa Fe merger, they
23 could profit maximize using such an agreement.

24 Q Sir, I would like to turn now to a different
25 subject for a question or two. Would you look at you

1 Table II-8 on Page II-3? It is captioned Substate Areas
2 with Intermodal Competition Eliminated by SPSF Merger.

3 A Yes.

4 Q Would you focus on your east of Los Angeles
5 area originated entry? You show, do you not, that there
6 are 2,453,000 tcns roughly of that traffic?

7 A Yes.

8 Q Of those I will call it 2.5 million tons, how
9 much of that terminates in southwest California?

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1 You need to look at Table II-6 on page II-25
2 for the answer.

3 A Thank you.

4 353.1 thousand.

5 Q 353,000.

6 A Right.

7 Q Those 353,000 tons, how many are originated by
8 the Southern Pacific?

9 A All.

10 Q Obviously, then, the Santa Fe has a zero share
11 at that point?

12 A That's right.

13 Q How will the merger eliminate intermodal
14 competition for that traffic when there isn't any
15 today?

16 A Well, there could be potential competition for
17 that traffic.

18 Q Now, let's look -- just hold onto the table in
19 your hand. Look back at Table II-8 and look at your
20 east of Los Angeles area terminated column?

21 Do you see that? It's right under the one we
22 locked at.

23 A Yes.

24 Q And again, we want to look and see how much of
25 that tonnage terminates in your Los Angeles Basin area.

1 Excuse me. I want to look at the east of
2 Los Angeles area terminated, and I want to know how much
3 of that terminates in your Los Angeles Basin area. If
4 we look back on II-6, you will see.

5 A Mr. Mcates, I'm not sure that I've got your
6 question correct. Looking back at Table II-8 --
7 correct?

8 Q Right.

9 A It shows east of Los Angeles area terminated
10 traffic of 812.8 thousand tons. Is that right?

11 Q Yes.

12 Now, let's look at Table II-6, where it says
13 originated area east of L.A. Basin. I want to focus on
14 terminating area, L.A. Basin, and the entry is 1.657,
15 roughly.

16 A Yes. But you see, there is my confusion. If
17 you look at Table II-8, the traffic shown on Table II-6
18 originating in the east of Los Angeles Basin area and
19 terminating in the Los Angeles Basin, meaning it's going
20 west, totals 1 million 656.9 thousand tons. And that is
21 categorized on Table II-8 on page II-38 as a part of the
22 east of Los Angeles area originated traffic.

23 Q It's part of that bigger number.

24 A Yes.

25 Q All right, I understand that. Thanks for the

1 clarification.

2 Now, back on II-6 in the 1,657,000 number, I
3 guess it would be, this shows, does it not, that the SF
4 participates or terminates -- I'm sorry -- originates
5 97.6 percent of that traffic, and the Santa Fe 2.4
6 percent.

7 A That's correct.

8 Q So there is, you would agree, de minimis
9 competition between those two carriers for that traffic
10 today, isn't there?

11 A Well, there appears to be. Most of that
12 traffic is from Ferrum or was from Ferrum, F-e-r-r-u-m.
13 It's iron ore traffic, and the connecting short line
14 connected with SP exclusively at Ferrum.

15 Q Now, let's turn finally to your 12
16 representative routes, if we jump to page II-60, II-61.
17 Preliminarily, let me ask the questions, because we all
18 understand what it is we are going to be looking at now.

19 Once you had identified the market share that
20 we talked about of the three California railroads, and
21 you had discussed competition via the overland route,
22 you then attempted to quantify the probable merger
23 impacts on California shippers in this section starting
24 on page II-6.

25 Is that right? I have basically stated your

1 frame of analysis correctly?

2 A Well, I don't think that's correct. No.

3 I believe the competitive analysis shown in
4 the preceding part of the testimony in advance of the
5 section beginning at II-61 really analyzes the
6 competitive impact of the merger from the proper
7 perspective.

8 The reason I did this section was, as I say at
9 the top of the page II-61, to test the hypothesis of the
10 primary Applicants that eliminating intramodal
11 competition would not adversely affect the shipping
12 public of California.

13 Q Mr. Williams, do you have some reservations
14 about this analysis? Do I detect you backing off a
15 little bit?

16 A I think the analysis speaks for itself. I
17 think it's been properly explained and properly hedged.
18 It's an analysis that deals with 12 representative
19 commodities.

20 If we had unlimited resources, or at least the
21 160 people that Mr. Fitzgerald says are in his marketing
22 organization and we had two or three years, then we
23 could do a perfectly completely analysis.

24 But I'm convinced that this analysis shows
25 more, even using 12 representative commodities, than does

1 the entire Temple, Barker & Sloane study about the
2 competitive impact on California.

3 JUDGE HOPKINS: Mr. Moates, before you go into
4 it, why don't we take a recess?

5 MR. MCATES: I just want the record to say
6 he's entitled to his opinion.

7 JUDGE HOPKINS: We'll take a 15-minute
8 recess.

9 (Recess.)

10 JUDGE HOPKINS: Back on the record.

11 BY MR. MCATES: (Resuming)

12 Q Mr. Williams, we were about to discuss your
13 analysis of 12 representative commodities. And you say
14 on page II-61, I think you said before the break that
15 you used your analysis of these "representative
16 commodities" to test the primary Applicants' hypothesis
17 about potential rate impacts.

18 Is that right?

19 A Yes.

20 Q And you did that by examining your
21 representative movements to and from two of your
22 substate areas and for three of your traffic flows; is
23 that right?

24 A Yes. That's where the merger would impact
25 intramodal competition.

1 Q You summarized these 12 movements at page
2 II-62, so we can all focus on those.

3 Now, did you derive your 12 so-called
4 representative commodity flows from a statistical sample
5 of affected traffic?

6 A No.

7 Q Did you consult a statistical expert about the
8 methodology employed to select these representative
9 movements?

10 A No.

11 Q Don't you tell us on page II-67, sir, in the
12 first sentence that you, in your terms, judgmentally
13 identified the most likely cases which would occur for
14 each of these 12 examples?

15 Did I lose you, Mr. Williams?

16 A I think there's an earlier statement as to how
17 I actually selected the 12 representative commodities.
18 There's no question that I used judgment. But
19 generally, I selected the largest traffic flow in the
20 affected area, the largest most important commodity.
21 And I think in each case, these commodities are
22 important to California, important primarily to its
23 agriculture and commerce as I've laid out elsewhere in
24 my testimony.

25 Q Okay, thank you.

1 Are you familiar with the Commission's 1971
2 publication, Guidelines for the Presentation of the
3 Results of Sample Studies?

4 A Yes, I am.

5 Q Do you know of a statistician named E. C.
6 Rosander, R-o-s-a-n-d-e-r?

7 A I know the name.

8 Q Do you know that he was Chief of the
9 Commission's Section of Mathematics and Statistics?

10 A I don't recall what his position was.

11 MR. MCATES: Your Honor, I'd like to show the
12 witness an article by Dr. Rosander. I don't intend to
13 introduce the whole article. I just want to use it so
14 that we can refer to it.

15 JUDGE HOPKINS: Thank you.

16 BY MR. MCATES: (Resuming)

17 Q I've handed you a copy of an article entitled
18 Statistical Aspects of Legal Proceedings in a Regulatory
19 Agency by E. C. Rosander in the October 1967 Statistical
20 Reporter, which is a monthly publication put out by the
21 Bureau of the Budget, specifically its Office of
22 Statitiscal Standards.

23 Would you refer to page 60 of this article,
24 please? And would you please read for the record the
25 paragraph that begins in the lower right-hand corner, in

1 other words, the last paragraph on the page? Would you
2 read it out loud, sir?

3 A Yes.

4 "A very common recurring question is the
5 meaning of a 'representative' sample, a term commonly
6 used by lawyers as well as others. The statistician has
7 to explain that the term is not only unnecessary, but
8 has no meaning in probability sampling theory and
9 practice. Various sampling techniques can be used and
10 implemented so that adequate and trustworthy sample
11 evidence is obtained without getting entangled in the
12 semantics of the word "representative."

13 We tried to explain to the lawyer that a
14 properly designed probability sample makes the term
15 superfluous and we deliberately discourage its use.

16 Q Did you review any statistical literature
17 about the use of a "representative" set of movements
18 before you undertook this analysis?

19 A No. Of course, I don't claim to have produced
20 a representative sample.

21 Q You don't claim to have produced a
22 representative sample, but you do claim to have analyzed
23 12 representative commodities; is that right?

24 A Yes.

25 Q We now look at the first of your

1 representative commodities, which is oranges from Fresno
2 to Chicago, and your discussion commences at page
3 II-71. And I think for clarity, sir, as we go through
4 your examples, I will be referring each time to the
5 associated tables. Those usually appear in the text
6 within a page or two of the discussion, don't they?

7 A Yes, they do.

8 Q This time it's Table II-23.

9 A Yes.

10 Q That array of the principal commodities in Table
11 II-24, shows the actual analysis for oranges, Fresno to
12 Chicago?

13 A Yes.

14 Q And your conclusion here, Mr. Williams, is
15 that in your view, the most likely case, postmerger, is
16 that there would be a 53 percent rate increase by SPSF
17 before an intermodal alternative involving the Union
18 Pacific came into play?

19 A Yes. And that would result in an increase per
20 van of \$377, which would represent additional resources
21 consumed.

22 Q In your worst case scenario, which would be
23 the all-truck movement, you say that would result in a
24 224 percent increase.

25 A Yes, that's correct. That was the

1 Applicants', the primary Applicants' hypothesis that
2 trucks had a tight rate cap on the rates for that
3 commodity.

4 Q Well, let's see what does set the cap. Are
5 trucks competitive for this traffic today?

6 A For some.

7 Q Don't they in fact dominate this market, Mr.
8 Williams?

9 A They don't dominate the rail market.

10 Q Do they dominate the movement of oranges from
11 Fresno to Chicago?

12 A Measured in terms of the total amount of this
13 traffic that moves from Fresno to Chicago, the trucks
14 undoubtedly have the largest share.

15 Q Are you aware that the Commission in 1979
16 granted an exemption from regulation for fresh fruit and
17 vegetable traffic?

18 A In general, yes.

19 Q In fact, wasn't that exemption proposed by the
20 Southern Pacific while you were employed there?

21 A I don't recall.

22 Q Isn't it true that railroads had virtually
23 none of this traffic left at the time of the
24 Commission's decision to exempt the traffic?

25 A The railroads had been in and out of the

1 California perishable market for years. And precisely
2 where they were in 1979, I don't recall in that
3 marketplace.

4 Q Did you review the Commission's decision to
5 exempt fresh fruit and vegetable traffic from regulation
6 in connection with testimony?

7 A No.

8 Q Would you look to Table 223 on page II-72?

9 A Yes.

10 Q Doesn't that show that -- well, we have to do
11 some addition here. It shows that 20,023 of the 51 --
12 no, it doesn't either; I'm sorry.

13 Look at the number in the lower right-hand
14 column. 20,023 of the 51,969 total carloads, as the
15 table demonstrates, are fresh fruit and vegetable
16 products; are they not?

17 A No, it doesn't.

18 Q Your --

19 A The 011 field crops to the Southeast, shown as
20 5,128 carloads in the extreme right-hand column is
21 cotton. So that wouldn't be perishable.

22 Q It does show 8,187 carloads of fresh fruit,
23 6,708 carloads of fresh vegetables.

24 A Yes, sir.

25 Q Do you have any idea what percentage of the

1 3,119 carloads of field crops shown terminating in the
2 Northeast might also be exempt traffic? For example,
3 potatoes?

4 A Well, I could look at that. I think potatoes
5 is certainly a component of that three-digit STCC code
6 grouping.

7 Q Similarly, the 5,128 carloads that you drew my
8 attention to, going to the Southeast, would be similarly
9 constituted partially by exempt commodities like
10 potatoes?

11 A I don't believe so. I think the 5,128
12 carloads destined to the Southeast is cotton.

13 Q You think all of that is cotton?

14 A Most of it. I could check if you'd like.

15 Q At any rate, the 14 or 15,000 carloads
16 represented for fresh fruits and crops -- vegetables,
17 excuse me -- is traffic for which this Commission has
18 found such significant intermodal competition that it's
19 exempted that traffic from regulation; isn't that true?

20 A In total. In total, yes. That's what the
21 Commission found.

22 Q I want to show you a work paper, document I
23 should say that was in your work papers. Again, I don't
24 think we need to introduce this whole thing, but I will
25 make reference to it.

1 Can you confirm that this was in your work
2 papers, Mr. Williams?

3 (Pause.)

4 I'll represent to you that it was produced
5 through your work papers.

6 A Yes, I can confirm it was.

7 Q This is the United States Department of
8 Agriculture's Revised Truck Fleet Cost by Freeman K.
9 Buxton. It says here he's an economist with the
10 Department of Agriculture.

11 A Yes.

12 Q All right.

13 Just looking at the first page of the exhibit,
14 which is page 40 of the larger Department of Agriculture
15 publication to which it was appended, I draw your
16 attention to the first sentence under the caption
17 Carrier Types Hauling Produced.

18 Do you see that?

19 A Yes.

20 Q Would you read that first sentence?

21 A Aloud?

22 Q Yes, please.

23 A "The transport trends data shows that
24 irregular route common carriers share of fruit and
25 vegetable truck loadings increased to 64 percent in

1 1982, up from 47 percent in 1978."

2 Q And what does the last sentence of that same
3 paragraph say?

4 A "The independent owner/operators --

5 Q I'm sorry. I misspoke. What does the last
6 sentence on the page say?

7 A "Over 88 percent of the fresh fruits and
8 vegetables were moved by motor carriers during 1982."

9 Q Now, don't these statistics clearly confirm
10 what I think is obvious; that motor carriers dominate
11 this traffic?

12 A Motor carriers dominate the movement of this
13 commodity as a whole, but not necessarily the submarket
14 that the railroads compete for.

15 Q I see. You're saying that there's a special
16 little submarket here that the railroads have carved out
17 which is not truck-competitive.

18 Is that your testimony?

19 A Not truck-competitive at present rates on
20 present service levels.

21 Q Let's look again at your Table II-24. If, as
22 you suggest in this table, shippers can move oranges
23 from Fresno to Chicago for \$709 a van via SP or SF and
24 \$2,300 was the competing truck rate, how in the world
25 could the trucks have any share, let alone anything like

1 88 percent of this market?

2 A Oh, in some cases, the shipper has a non-rail
3 siding. In some cases he desires a mixed load of various
4 commodities that more readily are handled by truck
5 through the pickup at the origin point. In still other
6 cases, he may desire the smaller lot shipments of
7 dealing with a single trucker as opposed to having to
8 deal with a shipper's agent.

9 Q So he's going to pay \$1,600 more for this
10 convenience?

11 A It could well be. As the price of lettuce has
12 gone up, in my experience in the Imperial Valley, the
13 higher that price is, the more willing is a shipper to
14 pay higher transportation rates.

15 Q Mr. Williams, what is the source of the SPSF
16 rate of \$709 per van that you show on Table II-24?

17 A That comes from the 10 percent sample of
18 primary Applicants' data as provided to us by your
19 consultant DNS in response to my counsel's request. And
20 these are actual movement datas.

21 Q The revenue is right off the waybill?

22 A Yes.

23 Q Are you aware that the SP and SF TOFC rates
24 you have used in your analysis are for ramp-to-ramp
25 service only, and do not include drayage?

1 A Yes.

2 Q Why haven't you made an adjustment for that?

3 A Well, it wouldn't be necessary to adjust for
4 drayage because we'd be comparing the same sort of
5 service for the Union Pacific.

6 It probably, in looking at my worst case
7 postmerger, directly comparing the SPSF rate of \$709 per
8 van with the truck, I probably should have included a
9 small amount for drayage. And if I had, I might have
10 allowed drayage up to 25 miles at \$60 per van, which
11 would have reduced the increase from \$1,591 per van to
12 \$1,531 per van.

13 Q Those trailers loaded with oranges don't just
14 appear at the rail head, do they? They've got to be
15 trucked there, don't they?

16 A Yes, they do. But in terms of the incremental
17 cost to the shipper, all we're analyzing in this
18 instance is moving the rail head or the ramp point from
19 Fresno up to the Stockton ramp.

20 Q When the oranges arrive from Chicago via SPSF,
21 they've got to be trucked to their final destination,
22 don't they?

23 A Yes.

24 Q Why did you add drayage to the UP's rate but
25 not to the Santa Fe or Southern Pacific rate?

1 A Because the drayage I added to the UP rates
2 reflects the added cost of a longer haul from Fresno to
3 the Union Pacific's closest real ramp, Stockton,
4 California.

5 Q Do you know whether the TOFC rates for
6 perishables usually includes a refrigerator trailer
7 supplied by the railroad?

8 A Well, most of these are Plan 3 rates, and they
9 do not include the trailer.

10 Q So the \$709 rate does not include the cost of
11 a trailer. Does the UP rate of \$853 include a trailer?

12 A I believe in general, it would be proper to
13 say that the UP rates do not. I confess to having
14 considerable difficulty making the comparison.

15 If you turn to Table B-2, which is in my
16 Appendix B and shown at page B-3, I have all the
17 individual movements that were available to me cut of
18 the Union Pacific's data base. And the Union Pacific's
19 data base, as you constructed it, you, the primary
20 Applicants, was essentially the carload waybill sample.

21 I found in that data base only a single Plan 3
22 rate, which is directly comparable to the SPSF's rate.
23 That happens to be the entry that is shown roughly a
24 third of the way down the page as 51 vans. That is a
25 Plan 3 movement. And the rate is \$1,060.

1 That is identical to the Plan 3 rates that are
2 reflected by SP Santa Fe's \$709. I didn't think it was
3 reasonable to use that Plan 3 rate looking at the
4 various other charges the UP makes for TCFC traffic as
5 shown in Table E-2, even though the Plan 3 rate they
6 published was higher than the Plan 2-1/2 rates that are
7 shown.

8 Q Mr. Williams, if the one entry you have just
9 pointed to on Table E-2 were the only Plan 3, the rest
10 are Plan 2-1/2 aren't they?

11 A That's not quite right either. The first one
12 is Plan 2-1/4. And it was interesting to me, Plan
13 2-1/4, of course, has drayage at one end of the haul.
14 And here, the Union Pacific had published a rate, \$707,
15 and this was perishables, as I point out in my
16 testimony, from Sacramento. That includes the drayage.

17 So apparently they were willing to meet, so
18 long as they stayed in the market, which their testimony
19 and proceeding has indicated they haven't. They were
20 willing to meet the Santa Fe Southern Pacific's rate and
21 absorb the cost of the drayage at one end of the haul.

22 If you go down to the next eight movements,
23 those coded in your data base as 998, which means nobody
24 knows what they are in terms of plan, as you can see the
25 numbers vary from \$989 down to \$775. So there's a whole

1 mix in this series. Some of it is Plan 2-1/2, but an
2 awful lot of it is not identified because of
3 inadequacies in the data base.

4 Q Mr. Williams, my point is simple. Plan 2-1/2
5 contemplates that the railroad provides the trailer;
6 isn't that right?

7 A Yes.

8 Q And Plan 3 provide that the shipper or third
9 party provides the trailer?

10 A Yes.

11 Q So if you're comparing Plan 2-1/2 and Plan 3
12 rates, you're not comparing, if I may say it, apples and
13 oranges, are you? You're comparing something with
14 ownership cost and something without ownership cost.
15 Wouldn't that be true?

16 A As a general rule, that is correct. Had I
17 included trailer ownership cost, I might have estimated
18 them at a relatively high figure of \$10 per day, and
19 four days for transit time. That would allow two days
20 for the scheduled train operation, a day at origin, a
21 day at destination and that would have amounted to \$40.

22 But I don't believe in terms of predicting
23 what level of rates the Union Pacific would charge for
24 this traffic, given what they've said about the lack of
25 profitability of perishable traffic and their inability

1 to compete, and Mr. McNear's statement that the Union
2 Pacific flagged out of rail perishable rate over the --

3 Q Mr. Williams, I'm going to interrupt you.

4 JUDGE HOPKINS: Mr. Williams, we are starting
5 to filibuster now.

6 BY MR. MOATES: (Resuming)

7 Q My question was simply Plan 2-1/2 versus Plan
8 3.

9 JUDGE HOPKINS: We've been having a lot of
10 filibustering around here with economists over the last
11 several days, and I would like to see it shortened.

12 BY MR. MOATES: (Resuming)

13 Q Do Plan 3 rates include the cost of the empty
14 return of the trailer, repositioning?

15 A I'm sorry. What was your question?

16 Q Do the Plan 3 rates include the cost of an
17 empty return movement? The repositioning of the
18 trailer?

19 A They do not include the cost of an empty
20 return movements.

21 Q Do Plan 3 rates include the costs associated
22 with pretripping, inspecting and fueling the
23 refrigeration unit?

24 A No.

25 Q Would you look briefly at your Table II-34? I

1 think you see the same thing on II-38, which are at
2 pages 92 and 101 respectively of this section.

3 Let's look at 34. Do you have that in front
4 of you?

5 A What page?

6 Q Page 92 of Section 2.

7 A Yes.

8 Q This is one of two examples, II-38 is the
9 other, both involving TOFC/CCFC traffic, of which you do
10 include a drayage and brokerage cost entry for the SPSF;
11 isn't that right?

12 A That's right.

13 Q And you include how much money?

14 A I included what the primary Applicants
15 included.

16 Q \$225. Is that meant to cover drayage at both
17 the origin and destination?

18 A I believe that's what Mr. Liba said

19 Q Now, let's look at Table II-24 again. Back to
20 oranges. You included drayage at the origin, correct,
21 for the UP?

22 A No, Mr. Moates, I didn't include drayage at
23 the origin.

24 Q For the UP, Fresno to Stockton.

25 A No, I did not.

1 Q Maybe I am misreading the table. Doesn't it
2 say plus drayage, Fresno to Stockton, rail?

3 A I included drayage from the Fresno ramp served
4 by the Southern Pacific Santa Fe to the Stockton ramp
5 because that is added cost.

6 Q That is drayage at the origin.

7 A That's not at the origin.

8 Q Why are we not communicating? The origin to
9 you is the orange grower; is that right?

10 A The origin is wherever the trailer was
11 packed. What I'm trying to show with this table is the
12 incremental cost associated with moving the traffic over
13 a Stockton ramp instead of a Fresno ramp.

14 Q Okay.

15 Mr. Williams, your truck rates are
16 door-to-door rates, aren't they?

17 A Yes.

18 Q So the rail and the truck services that you
19 are comparing are not comparable services, are they?

20 A Only the comparison of the worst case
21 postmerger with the premerger SPSF.

22 Q We've already agreed that you don't have
23 origin drayage on the SPSF, and you don't have
24 destination drayage.

25 Oranges have to come from the grove and they

1 have to be delivered to the consumer at the other end,
2 don't they?

3 A Yes.

4 Q And that costs something. That service costs
5 something.

6 Is it your judgment, Mr. Williams, that rates
7 for perishable and nonperishable traffic are the same?

8 A They may be.

9 Q Didn't you use a UP nonperishable rate for
10 comparison here?

11 A Well, I think that's stated in my testimony.

12 Q It is. I'm just trying to draw the point
13 out.

14 A I used one perishable rate which was all that
15 was contained in your data base for the Union Pacific
16 and the rest were nonperishable rates.

17 Q So instead of using that one UP perishable
18 rate, which is actually \$2 cheaper than the SPSF rate,
19 you chose to use a nonperishable rate for a different
20 commodity that's \$144 higher than our rate; isn't that
21 true?

22 A Yes, because the Union Pacific movement was
23 from Sacramento, not from Fresno, nor from Stockton; and
24 because, as has been stated in the record, they are no
25 longer in the perishable business.

1 Q Page II-71 at the bottom. You referred to
2 this a couple of times. You say: "My review of the
3 waybill sample produced only a single movement of
4 perishable traffic by Union Pacific from Sacramento to
5 Chicago. "

6 My question is: Did your review show that the
7 UP carried only one movement, or that only one movement
8 was reported in the sample?

9 A Only one movement was reported in this
10 sample.

11 Q Was that one movement equivalent to just one
12 car?

13 A No. That one movement expanded -- in
14 accordance with your expansion, was 129 vans.

15 Q Okay.

16 Mr. Williams, at any point did you compare the
17 Union Pacific's nonperishable rates from the Northern
18 San Joaquin with the Santa Fe or Southern Pacific
19 nonperishable rates from the same area?

20 A No.

21 Q Okay. Now again, regarding drayage, at page
22 74, you say you've calculated a \$233 per-trailer cost to
23 dray from Fresno to the UP and Stockton; correct?

24 A Yes.

25 Q Are fresh fruits and vegetables, oranges in

1 particular, grown only at Fresno?

2 A No. They may be grown south of Fresno.

3 Q And other areas of California?

4 A Yes.

5 Q Now, isn't your \$233 charge at a \$1.11 a mile
6 based on -- by the 210, 212 mile dray?

7 A That's what I say in my footnote number 2 to
8 Table II-24 on page II-73.

9 Q Would shippers desiring to use the UP's
10 Stockton ramp or substituted service at Modesto have to
11 dray to Fresno first?

12 A Not if they were located at Modesto. If they
13 were located at Bakersfield, they'd have to go --

14 Q Let's look at our helpful little map. There
15 are lots of places they could be located that wouldn't
16 put them right at Fresno; isn't that true? They could
17 in fact be closer to Modesto or Stockton than Fresno;
18 true?

19 A I'm sorry; what was your question? They could
20 be closer than what?

21 Q There could be shippers of oranges, could
22 there not, sir, north of Fresno, if you want to put it
23 that way, closer to Modesto and Stockton than shippers
24 at Fresno?

25 A Yes. And there could be shippers located

1 south of Fresno that are farther away.

2 Q Right. Similarly, there could be some
3 shippers, I assume, of oranges west of Fresno.

4 A Perhaps.

5 Q And if there were such hypothetical shippers,
6 they wouldn't have to dray their oranges into Fresno and
7 then subsequently from there to Stockton and Modesto,
8 would they? They could take the most direct route.
9 That's my point.

10 A Well, if they were located directly west of
11 Fresno, they probably would go into Fresno and up the
12 freeway, as opposed to going over back country roads.

13 Q Mr. Williams, you utilize oranges here, as you
14 say, as a representative commodity. What is it supposed
15 to be representative of?

16 A Representative of the three-digit commodity
17 code shown on page II-23, 012, fresh fruits, a flow of
18 traffic from the south San Joaquin Valley destined to
19 the Northeast.

20 Q So it's not just oranges, as you say. It's
21 all fresh fruits and vegetables in the described area.

22 A Everything that's contained in the three-digit
23 STCC code 012.

24 Q Are three-digit STCC codes 012, fresh fruits
25 and vegetables, also grown in quantity in the Salinas

1 and Watsonville area?

2 A No.

3 Q You're sure of that?

4 A Not 012, not fresh fruits.

5 Q What about the Santa Maria Guadelupe area?

6 A No, I don't believe so.

7 Q What's the basis for your belief? Just your
8 experience?

9 A Yes. I mean I was looking at the commodities
10 shown in the data base that originated in the south San
11 Joaquin Valley area on the SF and Santa Fe where
12 competition is proposed to be eliminated.

13 Q We don't propose to eliminate any competition,
14 Mr. Williams. It was your suggestion that competition
15 may be eliminated.

16 At any rate, are fresh fruits and vegetables
17 in STCC 012 --

18 MR. MAC KENZIE: Is that a speech of some kind?

19 MR. MCATES: I think that he misspoke.

20 BY MR. MOATES: (Resuming)

21 Q Are fresh fruits and vegetables grown in
22 quantities in areas surrounding Fresno?

23 A Yes, in the South San Joaquin Valley.

24 MR. MOATES: Your Honor, may I have a two-page
25 counsel's exhibit marked? It is -- I think it will be

1 No. 158. It is an exhibit that depicts on the first
2 page highway mileage for California origins to certain
3 rail-served destinations, and it has a map attached.

4 JUDGE HOPKINS: It will be marked for
5 identification as SFSP-C-158.

6 (The document referred to
7 was marked Exhibit
8 SFSP-C-158 for
9 identification.)

10 BY MR. MOATES: (Resuming)

11 Q Mr. Williams, if we were to use your \$1.10 or
12 \$1.11 per mile figure as a representative drayage cost,
13 couldn't shippers add all of the origins that I have
14 shown on counsel's exhibit C-158, page 1, dray to the
15 Union Pacific or the Modesto and Empire Tracks for
16 considerably less than the \$223 that you show? Or \$233,
17 excuse me.

18 I am no mathematical wizard. I am just taking
19 this highway miles and multiplying them by 1.11 or 1.1.

20 A Well, you can't forget that you have two
21 directions per load. You have to take a tractor and a
22 trailer in two directions. So you have to multiply all
23 those highway miles, even accepting your assumption, by
24 two, and then by \$1.11 a mile.

25 Q And that is on the assumption that there would

1 be no backhauls for any of these trucks?

2 A No. It's under the assumption that the vans,
3 whether loaded or empty, come into the TCEC ramp, be it
4 Stockton or Fresno, and then they have to be moved out
5 into the loading area -- under your assumption, Salinas,
6 Watsonville, Santa Maria, or Guadalupe. So they have to
7 be moved out there by highway, and then they have to be
8 moved the other way.

9 Q Are you aware of testimony in this record from
10 Mr. Hemb, H-e-m-b, of the California Grape and Tree
11 Fruit League, indicating that many shipments of fresh
12 fruits and vegetables are today being trucked from
13 points like Salinas and Santa Maria?

14 A No. I've read his testimony, but I don't
15 recall that.

16 MR. MCATES: I want to show the witness, Your
17 Honor, UP/MP-23, Volume 4, part 1, verified statement of
18 Richard E. Hemb, the individual I just identified.

19 BY MR. MCATES: (Resuming)

20 Q Do you want to glance at this paragraph? I
21 have underlined what I have just represented.

22 Doesn't that statement by Mr. Hemb in support
23 of the Union Pacific indicate what I just said?

24 A Well, I'm not sure it does. I'm perfectly
25 willing to agree that there's lettuce and the sort of

1 commodities that are described in the next three-digit
2 STCC code, 013, that are trucked from the coastal areas
3 into the Fresno ramp. But I don't believe he
4 specifically says that his members, commodity group 012,
5 are trucked in.

6 Q Doesn't he say -- you mentioned Fresno.
7 Doesn't he say that these shipments are ramped to
8 Bakersfield as well?

9 A Yes. Of course, again it doesn't make any
10 difference so far as my calculation is concerned.

11 Q Now, looking at Table II-43 at page 117 for a
12 moment --

13 A What was the page?

14 Q 117. Part 2.

15 Aren't all those counties depicted on that
16 table, Mr. Williams, within 150 radius of the UP or
17 Modesto Empire Traction ramp as shown on page 2 of my
18 counsel's exhibit?

19 A I think as a general statement that's true.
20 I'm not sure the Modesto Empire Traction ramp is
21 particularly pertinent, but yes.

22 Q Is it reasonable to assume, Mr. Williams,
23 since you seem to know more about oranges than I do,
24 that oranges also originate in Kern County, California?

25 A Yes, I think so.

1 Q I think in fact your work papers confirm that,
2 don't they?

3 A Yes.

4 Q Do you know what the highway distance is from
5 -- well, first of all, Bakersfield is in Kern County; is
6 that right?

7 A Yes, it is.

8 Q Do you know what the highway distance from
9 Bakersfield to Stockton is? It's about 200 and --

10 A Yes. I would have said 225.

11 Q Okay, very good.

12 Do you know what the highway distance from
13 Bakersfield to the UP's Los Angeles ramp is?

14 A Oh, probably 100 to 125 miles.

15 Q I have 112. So we are in the same ballpark.

16 Isn't it reasonable to assume that Kern County
17 oranges would be trucked to the UP at Los Angeles rather
18 than to UP at Stockton?

19 A Not necessarily. Of course, you're going over
20 the Techachapis Mountains when you go south out of
21 Bakersfield, and that is a tortuous road that is
22 expensive for a trucker to operate over. Even worse,
23 you're going into the Los Angeles Basin which has severe
24 traffic congestion, at least twice in every day.

25 So I think most truckers would probably prefer

1 to operate from Bakersfield up to Stockton.

2 Q Let's just explore this hypothesis. Now, your
3 Table II-24 shows, does it not, that the UP ramp charge,
4 your van charge is \$853?

5 A Yes.

6 Q Now, look at your table II-30 for lettuce from
7 Elythe to Chicago, which is on page 86.

8 Don't you there show a UP rate for the van
9 from L.A. of \$634?

10 A Yes, that seems to be their rate level.

11 Q So it's a \$78 difference per trailer between
12 the UP ramp and Stockton and the UP ramp at Los
13 Angeles. Do you think the trucker might be willing to
14 put up with a little congestion in Los Angeles for that
15 kind of a differential.

16 A He might. I think it depends entirely on the
17 location of the commodity that's being transported.

18 Q Okay. Turn back to page II-5 and II-6.

19 A II-5 and II-6?

20 Q In the last paragraph on 5 and carrying over
21 to 6, aren't you there making an argument that the Santa
22 Fe has used TCFC service to penetrate SP's "exclusive
23 territory" points in the Imperial Valley, the Salinas
24 Valley, Napa Valley, and even some parts of Northern
25 California?

1 A I'm just stating a fact. I'm not arguing.

2 Q All right. And you name some points. You say
3 for the last three locations, the waybill would
4 designate either Richmond or Fresno as the origin point,
5 even though the traffic may have been loaded into a
6 trailer at Salinas, Napa, or Eureka.

7 A Yes.

8 Q How far by highway is Eureka from Santa Fe
9 ramp at Richmond? I suggest about 275 miles.

10 A I would guess 250, but I think that's
11 reasonable.

12 Q So it's your testimony that Santa Fe
13 successfully competes and constrains SP's market power
14 with a round trip dray of 550 miles.

15 A They have done so. They have done so from
16 time to time; yes.

17 Q And is Salinas about 110 miles from Santa Fe's
18 Richmond rail?
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1 A I don't know. Santa Fe customarily has used
2 the Fresno ramp for traffic, TOFC traffic originating in
3 the Salinas Valley, and that's about 150 miles.

4 Q Thank you for correcting my pronunciation.
5 I've been in Kansas too much.

6 Is it about 150 miles from Salinas to Fresno?

7 A Yes.

8 Q So you're saying the Santa Fe can and does
9 compete with SP there with roundtrip drayages of 300
10 miles?

11 A Yes.

12 Q How far is Santa Maria from Bakersfield, about
13 125 miles?

14 A Yes.

15 Q And about 165 from Los Angeles?

16 A I don't know how far it is. That sounds
17 reasonable.

18 Q So if my numbers are right, the roundtrip
19 drays to the UP ramps from a point like Santa Maria is
20 in the 250 to 330 mile range depending on whether you're
21 going to Bakersfield or Los Angeles?

22 A Yes.

23 Q Is there any point, Mr. Williams, in the
24 northern or the southern San Joaquin Valley as you
25 define it that is farther than 155 miles from other

1 Modesto or Los Angeles?

2 A I don't know without comparing the mileages.

3 I don't know.

4 Q Does that sound improbable?

5 A No.

6 Q If I'm right about that, even in the worst
7 case that you're projecting here of our raising rates,
8 UP ramps would be available well within the range in
9 which you say the Santa Fe has competed with Southern
10 Pacific using drayage; isn't that true?

11 A Well, they would be in the range, but that
12 doesn't mean they can compete from an economic
13 perspective.

14 Q They are less effective in doing that than
15 Santa Fe is, is that it?

16 A Yes, they could well be. They may have a
17 different balance of their TOFC vans, which has a big
18 impact on how you're willing to price for the eastbound
19 move.

20 Q Mr. Williams, isn't it also true that the
21 Southern Pacific has actually been a very minor factor
22 in these Plan 3 movements of fresh fruits and vegetables?

23 A Yes. The Southern Pacific has customarily
24 competed with rail cars, and Santa Fe's response,
25 competitive response, was to compete with TOFC vans.

1 Q Are you aware, sir, that Southern Pacific has
2 previously tried to institute TOFC service for shippers
3 in the Watsonville area on this kind of traffic but has
4 been unsuccessful in doing so?

5 A No, I don't know.

6 Q Are you aware that the operating plan for SP&F
7 provides for a new train from Watsonville junction?

8 A Yes, I am.

9 Q That would be a merger benefit for California
10 fresh fruit and vegetable growers?

11 A From the Salinas area, yes, sir. And I
12 believe I identified that as such in one of my tables
13 showing the improved transit times.

14 Q Now, let us turn very briefly to lettuce from
15 Fresno to Chicago. This is in a discussion that
16 commences at page 75. I think Table II-25 on page 76 is
17 your summary sheet, correct?

18 Are you with me, Mr. Williams?

19 A II-76, yes.

20 Q And this was your movement chosen as
21 representative of fresh fruit -- excuse me -- fresh
22 vegetable traffic originating in the south San Joaquin
23 Valley, right?

24 A Yes. It was the largest single movement of
25 the three-digit commodity code 013.

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1 Q According to your first paragraph on page 75,
2 you say, "The impact of the proposed Santa Fe-Southern
3 Pacific merger on this representative movement is almost
4 identical to that predicted for oranges from Fresno to
5 Chicago."

6 And, in fact, isn't your analysis of this
7 movement almost identical as well to that of the oranges
8 that we just discussed?

9 A Yes.

10 Q The only difference, I think -- and correct me
11 if I am wrong here -- is that the rate is -- the Santa
12 Fe-Southern Pacific rate is \$10 higher; instead of \$709
13 it's \$719?

14 A Yes. I believe that's correct.

15 Q And here your conclusion is that under your
16 most likely case scenario, which you again say is
17 drayage to the Union Pacific ramp at Stockton, there'd
18 be a 51 percent increase that we could exercise over
19 that option, and in the worst case 220 percent over an
20 all-truck option?

21 A Yes, that is correct.

22 Q Now, just so I'm clear -- and I apologize for
23 not being an agricultural expert, but you corrected me
24 on oranges -- lettuces are in fact grown in other parts
25 of California besides Fresno, aren't they?

1 A Yes. A substantial amount comes from the
2 Salinas Valley.

3 Q Salinas, Watsonville, that area?

4 A Yes.

5 Q Now, let's look at your third example, then,
6 on page 75 to 79, and that is cotton from Fresno to
7 Greenville, South Carolina, and this example, you say,
8 represents generally field crops to the southeast; is
9 that right?

10 A Yes, sir. 011, the three-digit commodity
11 group entitled "Field Crops."

12 Q And here your Table II-26 says that in your
13 view, the most likely case postmerger is drayage to the
14 UP, a 77 percent rate increase. The worst case would be
15 all truck or a 151 percent rate increase; is that right?

16 A Yes.

17 Q Are you aware that Applicants' witness, Mr.
18 Baker, of TRAM submitted a case study in SFSP-44 that
19 deals specifically with movements of baled cotton from
20 Fresno to Spartanburg, South Carolina?

21 A I think I read that study, but he didn't
22 mention price.

23 Q He didn't mention price.

24 A As I recall.

25 Q What do you think he mentioned? What was the

1 study about?

2 You're at a disadvantage. Let me show you the
3 study. I'm showing the witness SFSP-44, verified
4 statement of Forrest Baker, pages 33 and 34.

5 Is this the study you say you had reference to
6 that you saw?

7 A Yes.

8 Q And you say there's no reference to price.

9 A I'd forgotten that. There is reference to
10 price.

11 Q In fact, all ten of his case studies had rates
12 in them, didn't they?

13 A Yes, I guess that's true.

14 Q Do you recall what Mr. Baker concluded about
15 the rail versus truck option for baled cotton from the
16 San Joaquin to Spartanburg, South Carolina?

17 A No.

18 Q Well, he said that the rates lie right on top
19 of one another, and that the traffic is 50/50 rail and
20 truck. I take it that you disagree with those findings?

21 A Yes. And it puzzles me how I could have such
22 a different conclusion, because the rates I used for SP
23 and Santa Fe as shown in my Appendix B-4 is what they
24 were actually charged.

25 Q Are you aware that Mr. Baker actually

1 contacted and interviewed the cotton shippers, saw the
2 cotton shippers in the San Joaquin Valley, and they told
3 him, and I'm quoting from his statement, "Cotton
4 transport brokers in the Fresno area advised that there
5 was an abundant supply of trucks, primarily white goods
6 and cargo trucks out of the southeast which are eager to
7 load cotton for backhaul to southeastern points."

8 Also quoting, "The major cotton shippers in
9 California advised that rail and truck are absolutely
10 competitive pricewise for shipments to the southeast."

11 Did you consider those interviews with these
12 cotton shippers in making this analysis?

13 A Yes, I considered it. I couldn't reconcile
14 what was shown in the data base, the rail data base,
15 with what he found.

16 Q Did you make an attempt to calculate Mr.
17 Baker's rate of \$3.75 a hundredweight, which is the rate
18 that he demonstrates or shows applies both to TCFC and
19 the truck? Did you attempt to make that equivalent to a
20 dollar per ton rate?

21 A No.

22 Q Could you do that right now? Is \$75 a ton the
23 result? Did you get \$75, Mr. Williams?

24 A Yes, I did. Of course, I was dealing with a
25 1982 data base, and what was shown, that SP and Santa Fe

1 actually realized in their cotton traffic, which is the
2 average of \$55.80. So I think to some extent it's a
3 difference in time.

4 Q You think that's the only explanation for the
5 difference? Could you be perhaps comparing different
6 services again? If you want to think about that, let me
7 show you another exhibit.

8 MR. MCATES: Your Honor, we won't introduce
9 these because they're in the record. These are
10 Department of Justice shipper interviews with cotton
11 shippers that we have seen before. Specifically, I have
12 handed the witness DCJ-C-42, the questionnaire responses
13 from the Boswell Company, and Exhibit C-39, which is the
14 response from the Malsen Company.

15 BY MR. MOATES: (Resuming)

16 Q Did you have occasion to review these
17 responses, Mr. Williams, in connection with your
18 preparation of testimony?

19 A No, I have never seen this.

20 Q Okay. Let me represent to you, sir, that
21 these are responses to questionnaires that were sent out
22 by the Antitrust Division of the Department of Justice
23 to certain of Applicants' supporting shipper witnesses.
24 These two that we have selected happen to be cotton
25 shippers.

1 Now, would you please look first at the
2 Boswell Company response at page 3? I think you'll see
3 it's numbered at the bottom. See here the shipper has
4 summarized his movements both as to mode, delivery
5 point, mileage, rates and transit time. Do you see
6 these pieces of data arrayed across that page?

7 A Yes.

8 Q Doesn't he show that truck-rail and TOFC are
9 moving his cotton the same mileage blocks or distances?

10 A That's what he shows, yes.

11 Q Doesn't he show that TOFC rate to be \$3.75 and
12 the motor rate \$3.25 to \$3.75?

13 A Yes.

14 Q Per hundredweight. And Mr. Baker's number was
15 \$3.75 per hundredweight, wasn't it? Sir, do you recall?

16 A Yes, it was.

17 Q And his shows that even at those rate levels,
18 one on top of the other, that truck has the transit time
19 advantage, correct?

20 A Yes.

21 Q Would you also look at the questionnaire
22 response from the Molsen Company, which I think is the
23 second one attached? The pages start -- if you would
24 look at the Molsen questionnaire at page 3.

25 In response to question H-1 from the

1 Department, which related to whether the rates offered
2 affected the decision of the shipper to route by a
3 particular mode, do you see the answer of the Molsen
4 Company?

5 You can just read it to yourself. We have all
6 been through this before.

7 (Pause.)

8 Doesn't he say that rate does affect the
9 decision, and he gives an example of Lubbock to Oakland,
10 and says in that example truck is actually cheaper, and
11 therefore, the choice is truck?

12 A That's true. That's for westbound movement.

13 Q That's westbound, right. The previous page,
14 page 2 of the questionnaire, he indicates, does he not,
15 in the middle of the page in response to question E that
16 both the typical distance that is moved -- that is,
17 commodity moves by rail and by truck -- as well as
18 service differences. Doesn't he indicate there that
19 rail and truck are moving the commodity virtually the
20 same distances?

21 A Yes.

22 Q And that as he says in response to 3, transit
23 time differs greatly as distances increase. Over a
24 distance of about 1,400 miles, a truck will have up to
25 eight days' quicker delivery time.

1 A Yes.

2 Q Now, if the rates that you show on Table II-56
3 of \$55.80 for SPSF and \$140 for truck are really the
4 rates, why would truck have 50 percent of the
5 transcontinental movements for companies like Boswell
6 and Molsen?

7 A Well, I don't know, but I do know that the
8 \$55.80 figure is drawn from actual movement data from SP
9 and Santa Fe for 1982. So I do know that's precisely
10 what they were charging in the marketplace.

11 Q And again, do you know whether that was a Plan
12 3 or Plan 2 1/2?

13 A Yes. All those were plan 2 1/2 rates. The
14 \$55.80 is ramp to ramp.

15 Q Plan 2 1/2, ramp to ramp railroad-provided
16 trailer.

17 Now, isn't it true that you used a Union
18 Pacific carload rate on wine to make your comparison?

19 A The Union Pacific doesn't participate in
20 cotton traffic to the southeast, as I said in my
21 testimony. What I had to do was predict what level of
22 revenue they would seek to achieve, and as my Table B-5
23 and in my Appendix B shows, I used carload rates for the
24 traffic that they did handle.

25 My recollection is some of that is canned

1 goods traffic, some of it is wine traffic, all of it is
2 carload traffic.

3 Q Do you know whether the Union Pacific moves
4 any wine traffic FAK in trailers?

5 A I didn't find it in the carload waybill sample
6 for 1982.

7 Q Are you aware that in 1982 the Santa Fe and
8 Southern Pacific rates on wine were exactly the same as
9 the Union Pacific that you used?

10 A No.

11 Q Is it logical to assume that if that's true,
12 the UP cotton rate would be about the same as the SP and
13 SF cotton?

14 A No.

15 Q By choosing a UP carload rate on wine and
16 equating it to cotton traffic, you have guaranteed a
17 discrepancy in these rail rates, haven't you?

18 A That's not correct, Mr. Moates. I tried to
19 predict based on Union Pacific's actual behavior in the
20 marketplace what they would charge to take traffic into
21 the southeast from the San Joaquin Valley area, and
22 that, I believe, is by far the best method of predicting
23 what their behavior would be.

24 Q All right, sir. And again, you did not put in
25 any origin or destination drayage charges for the SP or

1 SF, did you?

2 A Again, I was looking at the incremental cost
3 of moving a van that was already being ramped at Fresno
4 the additional distance up to Stockton, and that was all
5 I was trying to identify. Had I included the drayage
6 for the Southern Pacific-Santa Fe, and had I included it
7 for the Union Pacific, the actual increase in rates and
8 drayage that I show on my various tables would not have
9 been changed.

10 Q Now, Mr. Williams, we already agreed, didn't
11 we, that this product doesn't have to, just like any of
12 these products, it doesn't have to be drayed to Fresno
13 first, does it? Haven't we already agreed that the
14 drayage could in fact be less?

15 A Yes. We also agreed that the drayage could be
16 more.

17 Q When you go through these calculations in
18 these various tables, you are not in fact making an
19 estimate of the total logistics cost to the shipper of
20 moving his product pre- and postmerger, are you? You're
21 simply making rate comparisons, aren't you?

22 A No. What I'm really making is an estimate,
23 admittedly an approximation, of the harm to the shipping
24 public of California from eliminating intramodal
25 competition.

1 Q Well, now, did you consider the shipper's
2 inventory costs as part of your equation, your economic
3 equation?

4 A Yes.

5 Q You did. In what way?

6 A Because the Union Pacific and the Southern
7 Pacific-Santa Fe have comparable TOFC schedules that
8 dropped out of the equation. It was cancelled on both
9 sides of the equation, just like the drayage costs at
10 origin.

11 Q Was it cancelled by the truck?

12 A Not by the truck. The truck comparisons
13 showed that your hypothesis was absurd, that your
14 hypothesis being that trucks always have a very tight
15 cap over the rail rates. In fact, intermodal
16 competition depresses them substantially below truck
17 levels.

18 Q Mr. Williams, didn't we just get done looking
19 at those cotton rates? They weren't just lying on top
20 of one another. They were exactly the same for truck
21 and rail TOFC, weren't they?

22 A Well, it could be, Mr. Moates, that since the
23 Southern Pacific and the Santa Fe have agreed to merge
24 that they stopped competing, because the rates have gone
25 up from what was shown in the waybill sample for 1982.

1 Q I see. So your explanation now for the
2 equivalent truck and rail rates is that the SP and the
3 Santa Fe are conspiring, and they are not competing?

4 A There has been a substantial increase in the
5 rail rates, and it could be that that is because the two
6 carriers have ceased competing.

7 Q Do you know where these truck rates came from
8 that are in Mr. Baker's testimony?

9 A Well, you already said from the shippers.

10 Q I don't believe I said that.

11 You're not aware of Mr. Baker's testimony that
12 these truck rates came directly from the truck companies
13 involved?

14 A I have forgotten what Mr. Baker's testimony is.

15 Q Well, let's see if we can help you figure out
16 why that \$55.80 rate was so low. How did you calculate
17 that rate per ton for SP and Santa Fe? Did you use
18 revenue per trailer, for example?

19 A No. In this case your data was so bad that I
20 had to use revenue per ton.

21 Q And where did that come from?

22 A It came from the 10 percent sample that you
23 provided us through counsel, and that 10 percent sample
24 of your traffic was the data base upon which you relied
25 throughout the entire proceeding.

1 Q Do you know whether the revenue data you
2 utilized to calculate the rate per ton for these cotton
3 shipments was through revenue?

4 A I believe it was.

5 Q Do you know whether it was?

6 (Pause.)

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1 A Well, it shows in the freight revenue field of
2 the data tape, and any time I have worked with the way
3 bill sample it has always had through revenue from
4 origin to destination.

5 Q Are you familiar with a practice called
6 rebilling?

7 A Yes.

8 Q If this traffic was in fact rebilled at the
9 Santa Fe and SP off junction point, your rate would
10 significantly understate the through rail rate for
11 comparison, wouldn't it?

12 A Well, if that were true, but the data base,
13 your data base shows an origin point, for instance, of
14 Fresno, California, and a terminating point of
15 Greenville, South Carolina.

16 Now, if this had been rebilled, it wouldn't
17 show that as the terminating point. The terminating
18 point would be a junction point such as Memphis or New
19 Orleans.

20 Q You are certain of that? You are certain that
21 that hasn't been adjusted for in the tape, that in fact
22 this may have gone off line in Memphis and been rebilled
23 there?

24 A I can't be certain of anything you did to your
25 data, Mr. Moates, but it doesn't make sense to have done

1 it that way.

2 Q Well, not blaming you for data problems, Mr.
3 Williams, but if hypothetically it turned out that
4 traffic like this was rebilled at river gateway cities
5 so in fact the revenue you are looking at is only the
6 revenue to the river, that would be one source of
7 explanation as to why there may be such a discrepancy in
8 these figures we have looked at, wouldn't it?

9 A That could be an explanation, but it seems to
10 me that we are talking about the difference between \$55
11 a ton and \$75 a ton, and if that were the case, I think
12 that would overstate --

13 Q You don't think the eastern carrier would
14 carry it for \$20 a ton to Greenville?

15 A Considering that we are talking 1982 versus
16 1984 or '5 data from Mr. Baker, it seems like there
17 should have been an increase also as a result of
18 inflation, but you have my movement sheets drawn from
19 your data base, and I laid them out in Appendix Table
20 B-4. Those are all I have. They are revenues both for
21 vans and for carloads.

22 Q Okay. Would you look at your Footnote 3 on
23 Table II-26? There is a reason for using this carload
24 traffic on line. You say UP handled no cotton. Is that
25 right?

1 A That's right.

2 Q Do you know whether cotton is a commodity that
3 typically is transitted at warehouses?

4 A Well, cotton could be, yes. I think the
5 movements we get from the San Joaquin Valley are to the
6 using mills in the southeast direct. At least that is
7 what the data base showed.

8 Q In your impact analyses, Mr. Williams, did you
9 ever consider as an alternative a joint SPSF and UP
10 movement through a California junction as an alternative
11 to our long haul?

12 A No, I didn't think that the merged company
13 would permit that.

14 Q Well, in your experience, do customers ever
15 discipline originating or terminating carriers by
16 shorthauling them?

17 A If they have the opportunity to do so.

18 Q Do customers do that to the Southern Pacific
19 from time to time?

20 A They have from time to time. To the extent
21 they have the economic power vis-a-vis Southern
22 Pacific's economic power to do so.

23 Q Has Southern Pacific closed the Stockton,
24 Oakland, or Colton interchanges to prevent customers
25 from shorthauling them?

1 A I believe they have, but I believe they also
2 reopened them.

3 Q They are open at the present time?

4 A I believe that is correct, yes.

5 Q Hasn't the Southern Pacific in fact agreed
6 with the Union Pacific to keep routes open over those
7 three interchanges?

8 A The three being?

9 Q Stockton, Oakland, and Colton.

10 A Stockton and Colton, yes, I believe that is
11 true. Oakland, I don't know. I don't know.

12 Q If those interchanges were open, the SP
13 customers could use or choose joint routes to ship via
14 UP over the central corridor if they are moving
15 transcontinentally, couldn't they?

16 A They could try, yes.

17 Q They could try. What happens? Does SP derail
18 the car if they do that?

19 A SP may not give them the car. SP may quote
20 rates over that joint route that are higher than single
21 line in order to discourage it.

22 MR. MOATES: Your Honor, I would like to mark
23 a counsel's exhibit, please. The first page is a
24 summary sheet we have made up. It is entitled Western
25 Pacific Railroad Company Form C-864, Switch Order from

1 Connecting Line.

2 JUDGE HOPKINS: It will be marked for
3 identification as SFSP-C-159.

4 (The document referred to
5 was marked for
6 identification as Exhibit
7 Number SFSP-C-159.)

8 MR. MOATES: Thank you.

9 BY MR. MOATES: (Resuming)

10 Q Now, Mr. Williams, this exhibit represents or
11 reflects nine carload shipments of cotton from the W.B.
12 Dunavant Company at Oakland, California, to various
13 destinations in the southeast that you can see on the
14 summary sheet on the first page. I think you can
15 confirm these facts if you want to.

16 I have actually attached the switching orders
17 for each of these moves in the exhibit if you want to
18 confirm facts, but my summary sheet may speed this
19 along.

20 I suggest they were all made in Southern
21 Pacific equipment. I think if you look under Car
22 Initial you will see they are either all SP or SSW.
23 They are all shipped just in the first 30 days of 1985,
24 and all ten of these cars were ordered by the shipper at
25 Oakland to be switched out by the Southern Pacific and

1 given to the Union Pacific at Oakland for the
2 transcontinental movement.

3 Would you confirm generally that that is what
4 this exhibit seems to show based on your experience in
5 railroading?

6 A That is what it shows.

7 Q Just for clarification, the last two pages
8 show that UP's agency address listing has checked off
9 Oakland, shows that Mr. Grant S. Nilsson, N-i-l-s-s-o-n,
10 is the agent. I think either his initials or his name
11 appears on each one of these switching orders.

12 Now, doesn't this exhibit graphically
13 demonstrate that shippers including, right here, cotton
14 shippers, have options that include short hauling, and
15 that they exercise those options on a regular basis?

16 A Well, it shows what it shows for cotton from
17 on shipper, I guess, in Oakland, California. My
18 analysis dealt with the south San Joaquin Valley.

19 Q Was this cotton grown in the streets of
20 Oakland?

21 A No.

22 Q It was probably grown in the San Joaquin
23 Valley, don't you think?

24 A I don't know.

25 Q Okay, let's look at your next example, which

1 is grain from Council Bluffs to Livingston, California.
2 The discussion commences on Page 79. Your summary table
3 is Table 28, which appears at Page 81.

4 Now, am I correct, Mr. Williams, that this
5 movement is meant to represent or be representative of
6 inbound movements to your south San Joaquin Valley
7 area?

8 A Yes. As we mentioned before, there are some
9 points in the south San Joaquin Valley that are closer
10 and some that are further away than Livingston,
11 California.

12 Q But be that as it may, this is your chosen
13 representative movement?

14 A This is the largest single movement, yes.
15 That is why I chose it.

16 Q And you conclude, as you show on Table 28,
17 that the most likely in your view post-merger scenario
18 again would involve trucking to the Union Pacific, and
19 you say that that would involve a 34 percent rate
20 increase?

21 A That's correct.

22 Q In the worst case scenario, all truck movement
23 would involve a 112 percent rate increase?

24 A Yes.

25 Q Now, the grain we are discussing here is

1 corn. Isn't that right?

2 A Yes.

3 Q And by the way -- I could ask this each time,
4 but I won't, but when you say that the most likely case
5 is a 34 percent increase on corn from Council Bluffs to
6 Livingston, it is really a little bit more than that,
7 isn't it?

8 Aren't you really saying that you are
9 concluding from that that there could be a 34 percent
10 rate increase on all traffic, grain traffic -- strike
11 that -- on all traffic inbound to the south San Joaquin
12 Valley after the merger? That is what representative
13 means, doesn't it?

14 A No. If we look at Table II-41 on Page II-106,
15 the expansion factor I use to extrapolate this increase,
16 first of all, is not the percentage. It is the \$860 per
17 carload, as shown in the fourth line down the page on
18 Table II-41.

19 Q It is 34 percent on that fourth line

20 A Yes, but I only applied this to the grain
21 carloads terminating in the south San Joaquin Valley.

22 Q Oh, I see what you are getting at. All
23 right. We will come back to that. Okay. Where is
24 Livingston, California?

25 A Livingston is south of Turlock, south of

1 Modesto, north of Fresno.

2 MR. MOATES: I would like to introduce a
3 three-page counsel's exhibit, Your Honor. The first
4 page is a map with more detail on it than the other
5 one.

6 JUDGE HOPKINS: It will be marked for
7 identification as SFSP-C-160.

8 (The document referred to
9 was marked for
10 identification as Exhibit
11 Number SFSP-C-160.)

12 BY MR. MOATES: (Resuming)

13 Q Mr. Williams, does this map accurately reflect
14 your understanding of the geography involved here,
15 particularly the geography as between Turlock and
16 Livingston?

17 A Yes.

18 Q And you say on Page II-82, do you not, that
19 you have estimated additional trucking costs of \$760 per
20 rail carload to truck the grain from the Union Pacific
21 Stockton ramp to Livingston, right?

22 Is that right?

23 A Let me see. What was the page reference?

24 Q I am back on Page 82, which is next to your
25 Table 28. You can either look at the text or the

1 table. I am just confirming you have allowed \$760 per
2 carload to truck this grain from Stockton to
3 Livingston.

4 A 760 is correct, yes. That is what I allowed.

5 Q Now, looking at this map, Stockton is somewhat
6 north and west of Livingston, is it not?

7 A Yes.

8 Q Is Stockton the closest Union Pacific railhead
9 to Livingston?

10 A No.

11 Q Isn't Turlock right next door to Livingston, a
12 UP railhead?

13 A Yes.

14 Q But in your scenario the trucks are going to
15 drive from Stockton and buzz right by Turlock and go to
16 Livingston. Why?

17 A Well, again, we had a problem in terms of
18 trying to identify what was a representative movement,
19 and as I reviewed the movements in the data base, much
20 of the grain traffic terminated at points further south
21 than Livingston.

22 So I think you are correct, but I haven't
23 stated this very well, but I really used the 50 miles
24 between Stockton and Livingston as representative of the
25 haul that would be required to get down into the Valley

1 to service the terminating grain points from the Union
2 Pacific system.

3 Q Oh, I see, so we are supposed to view that as
4 50 miles from Turlock into the valley. Is that it?

5 A Well, I think it would be best to view it just
6 as I said you should view it, which is as the
7 representative distance in order to get down into the
8 valley.

9 Q In fact, Livingston and Turlock are only ten
10 miles apart, aren't they?

11 A I think I show 16 miles, but I wouldn't
12 quarrel.

13 Q I was going by the handy Rand McNally Road
14 Atlas.

15 A Okay, ten it is, yes. I read the zero as a
16 six, so ten it is, according to Rand McNally.

17 Q Now, is the grain in question consumed at
18 Livingston where it is delivered?

19 A Some of it is, yes.

20 Q And some of it is not, some of it is trucked
21 beyond, isn't it?

22 A That is right.

23 Q But in your scenario of a rail-truck movement
24 from Stockton, you could actually -- you would be taking
25 the grain directly to the ultimate consumer, wouldn't

1 you, from Stockton?

2 A I am sorry, I don't understand that question.

3 Q My point is, you wouldn't actually just truck
4 the grain to Livingston and dump it on the ground and
5 wait for another truck to come and get it. If the
6 consumer actually was somewhere south of Livingston, the
7 truck could actually truck directly from Stockton to
8 that desination?

9 A That is right, and that is what the 50-mile
10 haul represents, is the added difference I guess I would
11 have to say judgmentally that is required in order to
12 move the traffic down into the valley to its consuming
13 points if it were not unloaded at Livingston.

14 Q Would you look at Page 2 of the counsel's
15 exhibit, Mr. Williams, which is a copy of the DNS
16 movement sheet for this move?

17 Is this one of the records for this grain
18 movement from Council bluffs to Livingston that we are
19 talking about?

20 A Well, it certainly looks like it. This is the
21 output of our computer output from the computer tape you
22 provided us, yes.

23 Q This has your origin and termination areas,
24 for example.

25 A That's right.

1 Q STCC Code 113215. That is corn, right?

2 A Yes.

3 Q Do you know who the receiver for this corn is
4 at Livingston, California?

5 A Yes, it would be Foster Farms.

6 Q Have you ever heard of that company before?

7 A Yes, I have.

8 Q In what context?

9 A Well, I first heard of them when I see their
10 label in the grocery store on turkeys, but I have seen
11 the facility at Livingston or Delhi and I have read the
12 Foster Farms statement.

13 Q They are a significant receiver of grain, I
14 take it.

15 A That is why I picked the movement, was because
16 it was the largest single movement of traffic, grain
17 traffic into the south San Joaquin Valley.

18 Q Doesn't Foster Farms have a very large
19 facility on the Union Pacific at Turlock?

20 A Yes, it does.

21 Q Okay, and this car, by the way, was routed
22 Union Pacific, Southern Pacific, right?

23 A Yes.

24 Q UP originated it?

25 A Yes.

1 Q Now, look at the circled multicar code on Page
2 of the Counsel's Exhibit C-160. Do you see that?

3 A Yes.

4 Q What does the little 3 mean?

5 A I don't know.

6 Q You are not aware of the code for what those
7 code numbers mean?

8 A No.

9 Q If I tell you that that means a movement of
10 six to 49 cars, would you agree with me that cars that
11 move in that kind of volume typically move under a
12 special multicar rate?

13 A Oh, yes. I thought it was probably the 75-car
14 train that they usually move in.

15 Q Let's look at the third page of the counsel's
16 exhibit. What commodity is moving under this record?
17 It is not corn, is it?

18 A No. 209 is --

19 Q Your soybean meal?

20 A Yes. Grain meal.

21 Q Grain meal rather. Excuse me. This is the
22 commodity that you actually used to compare the Union
23 Pacific rates, right?

24 A In the worst case, and I think I have stated
25 that in the worst case for the Union Pacific if they

1 don't choose to come in and match the SPSF rate, that is
2 the rate I used, yes.

3 Q What does the multicar code number show on
4 this record?

5 A It shows code 1.

6 Q Obviously code 1 must mean something different
7 than code 3?

8 A I presume it is a single car.

9 Q Single car. And this was routed Chicago North
10 Western Union Pacific Western Pacific Tidewater
11 Southern, correct?

12 A Yes.

13 Q Applicants were not even involved.

14 A That is correct.

15 Q Is it your testimony that the rates on a
16 single car of processed grain from Mankato, Minnesota,
17 to Turlock are similar to the multicar rates on corn
18 from Council Bluffs to Livingston?

19 A Well, no. I think that is a
20 mischaracterization of my testimony. I think I made it
21 quite clear in here that it wasn't realistic to expect
22 Union Pacific to do much more than reduce its rate to
23 match the same rate that SP Santa Fe published, and that
24 is what I assumed was the most likely case.

25 In the worst case, yes, I said at Page II-82

1 that the UP would not match those rates. Instead it
2 would go up to a higher level.

3 Q Your worst case scenario, as you say, at Page
4 II-82, does use these soybean or whatever they are,
5 these meal rates from Mankato as the basis from which
6 you calculate your harm. Isn't that true?

7 A Yes.

8 Q You said you read a lot of this record. Did
9 you read the cross examination by my esteemed colleague,
10 Mr. Hynes, of Mr. Caron?

11 A Yes.

12 Q Good. Do you recall that he indicated that
13 the 1985 UP rate on corn to the northern San Joaquin is
14 \$1.61 per hundredweight?

15 A Yes.

16 Q You noted he also indicated that the volume
17 rate was probably in the range of 10 percent lower?

18 A Yes.

19 Q And now, I submit, Mr. Williams, produces a
20 rate of about \$29 a ton. Did you make any attempt to
21 obtain similar UP rates for 1982 or to make a
22 calculation using the \$29?

23 A Well, no, I didn't. I was even more
24 generous. I used a rate per ton in the most likely case
25 of \$26.28 for the Union Pacific, which was identical to

1 the rate that was published as a joint line rate via SP
2 and UP.

3 Q Why did you need to go through the whole
4 scenario of this \$46.61 rate for meal if all you are
5 going to do is assume that UP would match the SPSF
6 rate?

7 A Well, I constructed my testimony to show a
8 most likely case and to show an absolute worst case. I
9 started out showing the worst case because that is what
10 the primary applicants had said would always occur, that
11 truck would set the ceiling on rate levels in the
12 absence of intramodal competition.

13 Now, I found that unrealistic completely so
14 far as this grain movement is concerned.

15 Q So do I. Would you show me where in our
16 evidence we ever said that truck would serve as the
17 realistic constraint on moving corn from Iowa to
18 California?

19 A In my recollection you said truck would set
20 the competitive cap on everything. Trucks are
21 everywhere, and they would set the cap on everything.

22 Q Can you tell me where in the record, anywhere
23 in our evidence we said that trucks would set the
24 competitive cap on movements of grain from Iowa to
25 California?

1 A No, I can't.

2 Q I submit to you you can't because it isn't
3 there, Mr. Williams. Aren't you exaggerating a little
4 here?

5 MR. MAC KENZIE: Your Honor.

6 JUDGE HOPKINS: There is no reason to argue
7 with him, Mr. Moates.

8 MR. ROACH: I would be happy to show him, Your
9 Honor.

10 MR. MOATES: You could show me at the recess.

11 BY MR. MOATES: (Resuming)

12 Q Are you aware that Foster Farms opened a large
13 facility at Turlock in 1983, the one that we talked
14 about?

15 A Yes. That is in their statement.

16 Q Did you know that in combination with UP's
17 rates to Turlock, Foster Farms supplied smaller
18 California facilities and other grain consuming
19 operations on the SP via rail truck movement until the
20 SP lowered its rail rates?

21 A I think that was implied in the Foster Farms
22 statement. That shows what competition does.

23 Q Mr. White of Foster Farms, the UP/MP witness,
24 testified, did he not, that he exercised his competitive
25 option by building on the UP, right?

1 A He exercised his competitive option. You
2 know, I don't remember whether he said in his statement
3 where he built, whether he built on SP or whether he
4 built on UP.

5 Q He doesn't say. You know where he built,
6 don't you? He built on the UP, didn't he?

7 A No, I guess I don't know that, come to think
8 of it. I don't know that. He may have built on the
9 SP.

10 Q Take my word for it. Mr. Caron of UP
11 testified he is on the UP.

12 A Okay, I had forgotten.

13 JUDGE HOPKINS: Mr. Moates, this might be a
14 good time to recess.

15 MR. MOATES: I have two more questions, if I
16 could finish this point.

17 JUDGE HOPKINS: Go ahead.

18 MR. ROACH: I would like to raise one point
19 before we go off the record when he is finished.

20 BY MR. MOATES: (Resuming)

21 Q Didn't Mr. Caron indicate that Foster Farms is
22 trucking inbound corn subsequent to unloading it from
23 rail at Turlock?

24 A Well, yes, I think that is indicated in the
25 Foster Farms statement also.

1 Q And Mr. Caron indicated that on his cross
2 examination, too. If they are able to do that today, to
3 truck into other facilities from Turlock, why couldn't
4 they do that if SPSF raised rates after the merger?

5 A Well, they can, but what is required is to
6 substitute truck for rail for a longer distance, and
7 there is an added cost associated with it which I have
8 estimated at \$860, counting the extra handling costs.

9 Q Very quickly, let me just ask you about one
10 thing in Table B-7 on Page B-9. This is a table whose
11 heading you corrected this morning.

12 A Yes.

13 Q You show here, don't you, that there are
14 19,400 Union Pacific tons for this movement we have been
15 talking about, right?

16 A Well, this is the worst case movement. Yes.
17 These were the only single line movements I found in the
18 data base of anything resembling grain for the Union
19 Pacific.

20 Q And is Livingston in the north San Joaquin or
21 the south San Joaquin?

22 A North San Joaquin.

23 JUDGE HOPKINS: Mr. Roach, what was it you
24 wanted to say?

25 MR. ROACH: Your Honor, you may recall that on

1 April 16, when Mr. Baker was cross examined, we asked
2 him for copies of his work papers that would show the
3 names of the shippers so that we could try to verify the
4 rate comparisons that he made.

5 Those are the rate comparisons we have been
6 hearing about today and last week. We had to ask a
7 number of time after that. We finally got some work
8 papers on Friday night at 8:00 o'clock in the evening,
9 and they did not include the work papers for the rate
10 comparisons.

11 I have been hesitant to raise this issue on
12 the record but we are reaching a point where time is
13 getting very short before the rebuttal, and it is just
14 essential that we get these work papers if we are going
15 to be able to answer this testimony which Mr. Moates
16 puts a great deal of emphasis on.

17 JUDGE HOPKINS: Mr. Moates?

18 MR. MOATES: I think Mr. Hynes will respond.

19 MR. HYNES: Your Honor, I checked during the
20 break with Mr. Baker's office. He believed all the work
21 papers were there. He was checking again. Mr. Roach
22 showed me some work papers that seemed to still be
23 redacted.

24 Forrest has told me that those are a duplicate
25 set. You have two sets of papers there in the pile that

1 are going to be identical. One is redacted, and the
2 others are unredacted. He left them both in case you
3 wanted to use them for comparison purposes.

4 JUDGE HOPKINS: Is there any way that he can
5 get in touch with Mr. Roach so that if there is any
6 question about it he can contact him? Can't you work
7 that out?

8 MR. HYNES: We could try to set up a
9 conference call this afternoon.

10 JUDGE HOPKINS: Why don't you do that, because
11 if there is any question like that, it would be easier
12 just to discuss it over the phone or something and get
13 it handled immediately.

14 MR. ROACH: I see as I look at it the point
15 about the redacted and unredacted. These are not the
16 rate comparisons, however. These are the so-called TRAM
17 screen work papers, but I did not find at all the rate
18 comparisons.

19 JUDGE HOPKINS: I think it is advisable -- why
20 don't the two of you and Mr. Baker have a conference
21 call and handle it that way. Do it right away, because
22 there is no reason -- I think it is much better to
23 handle it that way with Mr. Baker so that he is the one
24 that has the papers, and he is the one that could
25 explain it all to you.

1 MR. HYNES: He is looking at that right now,
2 and I was going to call him during the lunch break. We
3 may have an answer during the lunch break, but it is his
4 understanding that everything was there.

5 JUDGE HOPKINS: If there is any question, work
6 it out.

7 MR. ROACH: I am sorry to take up time on the
8 record, but we are getting a little frantic here.

9 JUDGE HOPKINS: You wouldn't get frantic,
10 would you?

11 MR. ROACH: We try not to.

12 JUDGE HOPKINS: I was going to recess only
13 until 1:45. Can everybody make it, including the
14 reporter, in that time?

15 Let's recess until 1:45.

16 (Whereupon, at 12:50 p.m., the hearing was
17 recessed, to reconvene at 1:45 p.m. of the same day.)

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AFTERNOON SESSION

(1:45 P.M.)

1
2 JUDGE HOPKINS: Back on the record.

3 Mr. Raker?

4
5 MR. RAKER: Thank you, Your Honor. With
6 regard to tomorrow's hearing, the KCS had noticed for
7 cross examination a the representative of the Louisiana
8 Public Service Commission, a representative of the Texas
9 Railroad Commission, and a representative of the Texas
10 Attorney General's Office.

11 We were contacted by each of those individuals
12 to see if something could be worked out in lieu of cross
13 examination, and I am happy to report that it worked out
14 the following arrangement which would obviate the
15 necessity to cross examine any of those individuals
16 tomorrow.

17 With regard to Louisiana, we have worked out a
18 stipulation which I hope to have down here later on
19 today if not tomorrow, and it will be served on all the
20 parties. With regard to the representatives of the two
21 Texas agencies, we have worked out an arrangement under
22 which we will take their depositions in Austin towards
23 the end of this month.

24 JUDGE HOPKINS: That is agreeable? None of
25 the other parties are going to ask for cross examination

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1 then? Is that correct?

2 MR. MAC KENZIE: Your honor, I indicated that
3 it would be agreeable to me if I received notice of the
4 deposition hearing and copies of the questions that
5 Kansas City Southern cared to address to the witness and
6 the right to submit questions of my own in absentia.

7 JUDGE HOPKINS: The applicant?

8 MR. MOATES: As long as it is clear, and I
9 guess it is, that we can participate in these
10 depositions, no problem.

11 JUDGE HOPKINS: Mr. Raker?

12 MR. RAKER: Absolutely.

13 JUDGE HOPKINS: It is clear on that basis then
14 we won't have cross examination of those three
15 individuals.

16 MR. MOATES: Are we then going to have the
17 state of Oregon tomorrow?

18 JUDGE HOPKINS: The state of Oregon I thought
19 had already been agreed on, unless I am mistaken.

20 MR. RATNER: That is right.

21 JUDGE HOPKINS: Thank you. Let's get back on
22 the record, then. We are already on the record. Mr.
23 Moates.

24 Whereupon,

25 JOHN H. WILLIAMS,

1 the witness on the stand at the time of recess, having
2 been previously duly sworn, resumed the stand, and was
3 examined and testified further as follows:

4 CROSS EXAMINATION - RESUMED

5 BY MR. MOATES:

6 Q Good afternoon.

7 A Mr. Moates, I misspoke just before lunch about
8 the location of Livingston. If I could correct that --

9 Q Sure.

10 A You asked me whether it was located in the
11 north San Joaquin Valley, and I said it was. I was in
12 error. It is located -- Livingston is located in Merced
13 County, which, as shown on my Figure II-1, is in the
14 south San Joaquin Valley.

15 Q That is what I thought. I didn't want to
16 pursue it just before lunch, but now that you have
17 brought it up, could we look at your Table II-7, which
18 is on Page 33? I am directing your attention, if I may,
19 Mr. Williams, to the entry for the south San Joaquin
20 Valley.

21 Under the column for UP there is nothing
22 displayed. Given the fact that at least on this
23 movement of grain to Livingston UP did participate in
24 some traffic, I take it that there is an omission in
25 that table?

1 A No, by definition of my substate areas, the
2 south San Joaquin Valley was constructed out of counties
3 in which only the Santa Fe or Southern Pacific operated
4 and Union Pacific did not. So Union Pacific did not
5 participate as an originating or terminating carrier in
6 this traffic.

7 Q Didn't we just look before lunch at the fact
8 that the Union Pacific had originated this grain from
9 Council Bluffs?

10 A Yes, it did, but the terminating carrier was
11 Southern Pacific.

12 Q Oh, I see, so even though Union Pacific was
13 the originator and carried the traffic to Ogden, since
14 it didn't physically terminate the traffic in the
15 valley, there is no share shown for that?

16 A That is correct.

17 Q All right. Now could we turn back to your
18 next example at Page 85, which is lettuce from Blythe,
19 B-l-y-t-h-e, California, to Chicago? And here you are
20 examining, are you not, the effect of the merger on your
21 east of LA basin area?

22 A Yes.

23 Q And you conclude again on Table II-32, Page 89
24 -- strike that. I am sorry -- Table II-30 on Page 86
25 that under what you perceive to be the most likely

1 post-case scenario, and again an intermodal movement
2 involving Union Pacific out of Los Angeles, the
3 applicants could raise their rates 56 percent after
4 merger, correct?

5 A Yes, and \$409 per van.

6 Q 409. In the worst case scenario, where truck
7 would be the cap, you say they could raise the rates 228
8 percent.

9 A Yes.

10 Q Now, at Page II-83 of the text, don't you note
11 that -- make a point of stating that the Kaiser Steel
12 ore traffic and sugar beets from this area are in fact
13 the two largest tonnage flows shown?

14 A Yes, I do.

15 Q You conclude that since there is no
16 competition for them today, you will examine lettuce as
17 your representative commodity instead, correct?

18 A Yes, that's right.

19 Q Are you thereby concluding what may be
20 obvious, and I apologize if it is, that the merger would
21 have no adverse effects on the ore and the sugar beet
22 traffic?

23 A Yes, I think that is true.

24 Q Okay, then could I direct your attention to
25 Table II-41 -- I think you directed me to this table

1 earlier this morning -- at Page 106, and ask you this
2 question.

3 With respect to the total commodity carload
4 number shown for your substate areas and traffic flows
5 of 425,023, doesn't that number include the ore traffic
6 and the sugar beets?

7 A Yes, it does.

8 Q So that tonnage at least should be deducted
9 from that figure, shouldn't it?

10 A Well, I considered that, Mr. Moates. Of
11 course, the difficulty in doing so is that some of the
12 other flows I examined, the bottom four flows shown on
13 Table II-41, I concluded the most likely impact of the
14 merger would be no rate increases, but it seemed to me
15 there might have been traffic in those flows that
16 actually would experience rate increases, so for that
17 reason I left the beet and the ore traffic in the grand
18 total of 425,000 cars.

19 Q Mr. Williams, did you make any attempt to
20 determine whether there was other traffic, as you say,
21 that was in the four flows for which you determined no
22 competitive effect? Did you make any effort to
23 determine if the tonnage for those flows was equivalent
24 to the tonnage of the iron ore and the sugar beets that
25 you admit will not have any adverse effect from the

1 merger?

2 A Well, I recall looking at the carloads. You
3 know, the paper flow is very substantial. For instance,
4 as shown in Table II-37 on Page II-99, the paper flow
5 had 11,938 carloads.

6 Q Did you analyze paper as one of your
7 representative commodities?

8 A No, it wasn't the biggest.

9 Q Well, am I interpreting what you are telling
10 me fairly to mean that you concluded that even in those
11 flows like LA to Portland and LA to Oakland and so on
12 where your representative commodity showed no adverse
13 effect in the sense of a rate increase post-merger that
14 you nonetheless concluded that there was other traffic
15 that you didn't study in those flows that would
16 experience an adverse rate effect, and therefore you
17 left in tons in other areas like iron ore and sugar
18 beets that you concluded with analysis would not have an
19 adverse effect?

20 A Yes, that's correct. I think what I was
21 recognizing was that my representative flows were only a
22 small portion of the total population of the movements.
23 Now, I had an alternative when I did my extrapolation,
24 the grand total on Table II-41. I could have deducted
25 all of those commodities that appear to have no impact

1 or else I could have created a weighted average across
2 all the movements. I elected to create the weighted
3 average.

4 Had I deducted those 15 or so thousand
5 carloads of iron ore and beets, it would have made a
6 small difference in my total rate increase of
7 approximately \$7 to \$8 million less, so I don't think it
8 was an earthshaking decision one way or the other. The
9 computation wasn't that sensitive.

10 Q Mr. Williams, the Kaiser ore traffic you refer
11 here doesn't even move any more, does it?

12 A No, that is true. When I was down in the
13 Imperial Valley in late March, the SP was storing cars
14 up on the interchange tracks.

15 Q In fact, Kaiser Steel sold the Fontane plant,
16 didn't it?

17 A Yes.

18 Q Now, let's look at the lettuce from Blythe to
19 Chicago that you did decide to examine. Did you just
20 construct rather your comparative rates in the same
21 manner as that which we have discussed with respect to
22 lettuce and origins from the San Joaquin?

23 A Yes. I used the actual rate data, revenue per
24 van data from your records.

25 Q Okay. Now, am I correct in my understanding

1 that for flows like these -- by these I mean the
2 vegetable products from east of the LA basin -- as well
3 as the fresh fruits that we looked at from the San
4 Joaquin to Chicago previously that you intended to
5 assign only those commodities, tonnage for those
6 commodities that actually originated in the area being
7 studied and terminated in Chicago?

8 Did I lose you on that? Was that too
9 complex?

10 A Yes, I am sorry, I don't understand the
11 question.

12 Q Just with respect to lettuce from Blythe to
13 Chicago, when you studied lettuce from Blythe,
14 California, to Chicago, Illinois, I take it that you are
15 studying the product STCC 013 that actually originates
16 in Blythe, California, and actually terminates in
17 Chicago, Illinois. It doesn't come from somewhere
18 beyond Blythe. It doesn't go somewhere beyond Chicago.

19 A Well, I wouldn't know that. What I analyzed
20 was what was shown on your way bills as originating in
21 Blythe and terminating in Chicago. The origination
22 might have been gathered from a point like El Centro in
23 the Imperial Valley.

24 The traffic might have been rebilled at
25 Chicago and gone on to destination, but I have no way of

1 knowing that from looking at your way bills.

2 Q Okay. You have anticipated what my questions
3 are. Are you aware of the fact that according to the
4 United States Department of Agriculture, approximately
5 65 to 70 percent of the fresh fruit and vegetable TOFC
6 traffic from California to Chicago arrives there only to
7 be rebilled to another destination?

8 A Well, I am not surprised based on my Conrail
9 experience.

10 Q Okay. You would agree, then, if that is the
11 case, that your analyses significantly overstate the
12 amount of tonnage of this type arriving in Chicago?

13 A Well, I guess that is true. What I used,
14 though, was the truck rates to Chicago, and what I used
15 was the UP's rates from the Los Angeles Basin to
16 Chicago. So I don't think it would change in any way
17 the cost increase that I have calculated.

18 Q Now, on Page II-83, you say that
19 "Historically, although Southern Pacific has served the
20 Imperial," and help me with that, is Chowchilla?

21 A Chowchilla.

22 Q "Chowchilla Valley exclusively, Santa Fe has
23 served the Blythe area exclusively from time to time.
24 Each has reached into the other's exclusive area using
25 intermodal service."

1 Do you see the reference I have here?

2 A Yes.

3 Q Could you explain what you mean? Are
4 realistically SF and SP serious competitors for traffic
5 in this region?

6 A Oh, yes. I recall in my own experience when I
7 was assistant train master for the SP down in the
8 Imperial Valley in El Centro the Santa Fe drayed traffic
9 from El Centro of the Imperial Valley up to Blythe.

10 Q How often is this from time to time that you
11 make reference to when they have reached into each
12 other's exclusive traffic areas, how often has that
13 occurred?

14 A Well, I don't know the precise answer to
15 that. I know the two carriers have competed in all
16 three areas based on my experience. But I don't know
17 what their frequency is.

18 Q Okay. Drawing all of our attention to Blythe
19 on the railroad atlas map that I handed out, that is a
20 point, is it not, almost exactly on the Arizona border
21 in the Imperial Valley?

22 A Yes.

23 Q And it shows a point very near the end of the
24 Santa Fe branch line?

25 A Yes.

1 Q Isn't it true that the Santa Fe ramp at Blythe
2 is only operated on a seasonal basis?

3 A Yes, I think that is correct.

4 Q And the evidence that you would cite to me
5 that the Santa Fe and the Soutner Pacific are actually
6 competing in this area is the evidence you mentioned a
7 minute ago, your observations as a train master?

8 A Well, my experience, my experience over my
9 career.

10 Q How long ago were you a train master in this
11 area, Mr. Williams?

12 A In the mid-sixties.

13 Q For what types of commodities have you
14 observed this from time to time market penetration
15 occurring? Does this happen with all commodities in
16 this area or certain ones?

17 A Primarily for perishable traffic, although the
18 potential competition for other traffic including
19 inbound grain has always existed.

20 Q Does this from time to time encroachment also
21 occur with respect to the Union Pacific traffic?

22 A I am not aware that the Union Pacific because
23 of its greater distance from the Imperial Valley has
24 been able to penetrate the Imperial Valley or the
25 Chowchilla Valley.

1 Q Of the total tonnage transported out of the
2 Imperial and Chowchilla Valleys in 1982, how much of it
3 was transported by the Santa Fe? Is the answer zero?

4 A No, I think it is greater than zero,
5 substantially. What I need is my table of originating
6 tonnage by substate area.

7 Yes, the grand total, Page II-25 -- I am
8 sorry, Page II-25, Table II-6, the total Los Angeles or
9 the total substate area which I call east of Los Angeles
10 Basin had traffic destined to the northeast of 160,000
11 or 167,000 tons, and the Santa Fe had a 71.2 percent
12 market share.

13 Now, the traffic originating in that area
14 terminating in the LA Basin and southwest California I
15 think we have already talked about as primarily the iron
16 ore and sugar beets, and that was carried exclusively by
17 SP, but the long haul traffic destined to the northeast,
18 the Santa Fe had almost three-quarters of the total
19 traffic.

20 Q Have you compared the rates for the Santa Fe
21 and SP movements of lettuce from these areas?

22 A No, I did not.

23 Q Isn't it the case that the primary effect of
24 the merger on shippers in the Blythe area will be
25 improved access via the new company to gateways like

1 Memphis, New Orleans, and St. Louis?

2 A Well, that would be a benefit to those
3 shippers. The potential or actual competition from
4 Southern Pacific will also be eliminated.

5 Q Similarly, won't Imperial Valley-Chowchilla
6 Valley shippers on the SP today have new single system
7 service to Chicago as a result of this merger?

8 A Yes. That is true. And so is the same
9 disadvantage which I cited for Blythe. The potential or
10 actual competition from the Santa Fe would be
11 eliminated.

12 Q All right. Now, let's look at your example
13 for grain from Kansas City to Brawley, B-r-a-w-l-e-y,
14 California. This commences on Page 87. This is your
15 so-called representative movement for what area?

16 A East of Los Angeles Basin terminating
17 traffic.

18 Q Here you have concluded as you show on Table
19 II-32 that there really is only one likely post-merger
20 scenario. Is that right? And that is a UP intermodal
21 movement?

22 A Yes, that is correct.

23 Q And there you project that there would be room
24 for a 43 percent SPSF rate increase before that option
25 became effective. Is that right?

1 A Yes.

2 Q Because of your conclusion that no grain moved
3 by truck from Kansas City to Brawley, haven't you
4 implicitly concluded that there is no intermodal
5 competition for inbound traffic to east of LA Basin
6 area, Mr. Williams?

7 A No, what I concluded was that it wasn't very
8 likely that the larger volumes of grain for the feedlots
9 in the Imperial Valley would be trucked.

10 Q Is your example on Page 87 of grain from
11 Kansas City to Brawley meant to be representative only
12 of grain and grain product movements inbound to the LA
13 Basin area, or is it meant to be representative of all
14 commodities moving inbound to the east of LA Basin
15 area?

16 A It is meant to be representative of the grain,
17 actually, to be precise, the three-digit STCC code 011,
18 field crops commodity inbound to the east of Los Angeles
19 Basin.

20 Q My more precise question to you should be, is
21 that representative commodity of grain inbound to the
22 east of LA Basin area meant to be representative of
23 other commodities also moving inbound to the east of LA
24 Basin area that are not grain?

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1 A Well, not really. I do my extrapolation again
2 in Table II-41, based on the inbound grain carloads as
3 shown in the sixth line. I show a total of 6,105
4 carloads. And all those were three-digit STCC code
5 011.

6 Q Mr. Williams, we're going to discuss this
7 table in more detail when we come to it, but let's just
8 pause now, since you have mentioned this twice.

9 When you take your grain, 6,105 carloads, and
10 apply your most likely rate increase of \$43 -- 43
11 percent, pardon me -- to that, don't you then
12 extrapolate from that effect to the total of 425,000
13 carloads that is shown on the bottom summary portion of
14 that table?

15 A Yes. And from that standpoint, I am
16 implicitly saying the the average rate increase for all
17 the commodities, the 8 of the 12 commodities for which I
18 predicted a rate increase would occur for all other
19 movements in and out of California.

20 Q All right. That's what I thought.

21 Now, did you study any other movements besides
22 grain from Kansas City to Brawley as representative of
23 inbound movements of commodities to the east of L.A.
24 Basin area?

25 A No.

1 Q Do any other commodities, to your knowledge,
2 besides grain move into the L.A. Basin area by truck?
3 Any commodities whatsoever?

4 A Oh, I am sure there are some that move in by
5 truck; yes.

6 Q Now, with specific reference to Brawley, can
7 we locate that on a map? Is that not a point just north
8 of Imperial near the Mexican border?

9 A Yes.

10 Q For reference, I guess it is almost due west
11 of Yuma.

12 A That's correct. It's about ten miles north of
13 El Centro.

14 Q Now, couldn't grain be moved to Brawley by
15 truck from Arizona? It's right on the Arizona border,
16 isn't it?

17 A Well, it could if that were the source of the
18 origin grain.

19 Q Do you know whether any grain is grown, for
20 example, in the Phoenix area?

21 A There is some. I don't know whether it's
22 suitable for consumption -- in the Imperial Valley.

23 Q Did you investigate that question?

24 A No.

25 Q Is it possible to move grain to a place like

1 Brawley in the Imperial Valley, say, from Los Angeles or
2 Long Beach, perhaps at a terminal?

3 A I think it's physically possible. But what
4 the flows show is that the grain, the railroad market
5 for grain terminating in the Imperial Valley was
6 long-haul grain originating in the north central Kansas
7 and Missouri areas, as shown on my Table II-31.

8 Q Do you have any personal knowledge of how
9 often Santa Fe has penetrated, to use your word, the
10 Brawley area with intermodal service?

11 A No, I don't. I regard the Santa Fe as
12 potential competition. There was one shipper that -- a
13 California feedlot representative who said pretty much
14 the same thing.

15 Potentially, the grain could be railed out of
16 the Midwest, terminate at Blythe, and then be trucked
17 into the Imperial Valley.

18 Q Had that shipper ever done that?

19 A No. It's potential competition.

20 Q Am I correct that the trucking of grain from a
21 rail head like Blythe into the Imperial Valley would be
22 a somewhat ambitious undertaking than the trucking of
23 vans of fresh fruits to a rail head?

24 A Yes, it would.

25 Q Now, let's look at your miscellaneous

1 intermodal traffic movements, and I will try to
2 short-circuit this a little bit by looking at them
3 generally as a group.

4 Am I correct first, sir, as a preliminary
5 question, that you used STCC 46 shipments as your
6 representative commodity in four of your examples?

7 We can go through them if you prefer.

8 A I think that's right.

9 Q You used two of them to examine effects on
10 L.A. Basin flows, specifically Los Angeles-Dallas and
11 Los Angeles-Portland; correct?

12 A Yes, the Los Angeles originating.

13 Q And you used one to analyze your Los Angeles
14 to North California flow. That's the L.A.-Oakland;
15 right?

16 A Yes.

17 Q Was I correct in that?

18 A Well, I'm confused. I looked at four
19 intermodal flows.

20 Q I'm trying to break them down. We agreed that
21 two of them are with respect to the L.A. Basin. That's
22 L.A.-Dallas and L.A.-Portland; right?

23 A Yes.

24 Q I'm saying one was for your L.A. north
25 California flow, and that is L.A.-Oakland?

1 A Yes.

2 Q And the other one was for the south central
3 L.A. Basin flow, and that is Houston-Los Angeles?

4 A Yes.

5 Q And again I apologize if this is confusing,
6 but I am trying to take them all at once.

7 You concluded, did you not, that rates on
8 traffic on these flows could be raised by up to 32
9 percent over truck rates in the case of the Dallas
10 move?

11 A Yes.

12 Q By 16 percent over truck for the movement to
13 Portland?

14 A Not in my most likely case; no.

15 Q That's the worst case scenario?

16 A Yes.

17 Q And in fact, just to pause on that, you
18 conclude, do you not, that the most likely scenario here
19 is no change?

20 A That's correct.

21 Q And similarly, my next example, the 14
22 percent, Los Angeles to Oakland, is also a worst case
23 scenario?

24 A Yes.

25 Q But on the south central to the L.A. Basin

1 move, that is Houston-L.A., you conclude there could be
2 a 51 percent increase over the truck rate; right?

3 A That's right.

4 Q Is there any particular reason you didn't
5 consider rail routings in this analysis as competitive
6 alternatives, in other words?

7 A Well, yes, because there would be no realistic
8 alternative rail routing.

9 Q Is that because you assume that we would close
10 the El Paso Gateway to the UP/MP?

11 A Effectively, yes. And so the alternative
12 routing would be via Salt Lake City, Los Angeles-Salt
13 Lake City, North Platte, Nebraska and so on, back down
14 to Texas.

15 Q If that assumption, sir, about the closing of
16 the El Paso and all of that, Sweetwater Gateway, was an
17 invalid assumption or some other reason that we don't
18 need to worry about -- let's assume the Commission
19 somehow imposed a condition that dealt with that -- you
20 would agree, would you not, that that intramodal
21 alternative would be a very significant one that you
22 would want to explore in the context of these examples?

23 A Even if the gateway remained open, there would
24 in effect be only a single carrier, Southern Pacific
25 Santa Fe, which would control the ratemaking capability

1 of movements in that traffic flow.

2 And so I don't think that would have changed
3 my analysis at all.

4 Q Now, isn't it true, Mr. Williams, that this
5 traffic is also deregulated traffic?

6 A Yes. It's TOFC traffic.

7 Q Do you know why the Commission deregulated
8 this traffic?

9 A Well, because there was sufficient competition
10 for it; both intra- and intermodal competition.

11 Q Did you review the Commission's decision to
12 exempt from regulation TOFC/COFC traffic?

13 A Not for this proceeding. I read it, but it's
14 been a long time ago.

15 Q Do you recall or were you aware of when you
16 drafted your testimony and submitted it to the
17 Commission, Mr. Baker's case study No. 3 which deals
18 with TOFC movements from Houston to Los Angeles?

19 A I believe that I was not aware of that.

20 Q That is -- the Houston-Los Angeles corridor is
21 indeed one of the very examples you studied, isn't it?

22 A Yes. But my analysis was done before Mr.
23 Baker submitted his case study.

24 Q Oh. Let's see now. When was your evidence
25 submitted? March 21st, I believe?

1 A Yes.

2 Q Mr. Baker's testimony was submitted on
3 February 21. Are you saying that you had no opportunity
4 in that intervening month to make any changes to your
5 testimony that might have been warranted by our
6 submission?

7 A No, I didn't mean to say that, Mr. Moates. I
8 prepared my study of the impact on California, as I
9 think I told you, and submitted it to the State in early
10 September of last year.

11 Q And you have not gone back and changed
12 anything since that time?

13 A I have changed a few things, and I've tried to
14 review the record to the extent I was able to, and see
15 whether further changes were warranted.

16 Q But that did not include reviewing the
17 evidence submitted by Applicants on February 21 I take
18 it?

19 A I reviewed the evidence. I must have missed
20 that comparison or that case study of Mr. Baker.

21 Q Okay. Let me ask you again, as I have in the
22 case of the other examples, what rail rates did you
23 assume and what plan of TOFC service did you assume SPSF
24 was affording in these examples?

25 A For which example?

1 Q Do you want to take them one at a time?

2 A I think we'll probably have to, because
3 whatever is in the data base is what I used.

4 Q Let' take Los Angeles-Dallas, Table II-34 on
5 page 92.

6 A Well, the data I used to calculate the rate
7 per van is from Table B-12 in Appendix B. It begins at
8 page B-14. It's three pages in length. The plans, the
9 TOFC plans that applied, it was mostly Plan 3 or Plan 1,
10 which is motor carrier traffic, or Plan 2-1/2.

11 But the great majority was Plan 3 or Plan 1.

12 Q Now, I notice that on Table 34 for the move to
13 Dallas, and on table 38 for the Houston-Los Angeles
14 move, you have added drayage and brokerage cost to the
15 SPSF rate.

16 Why have you added that cost here, but not
17 anywhere else?

18 A Because the most likely case in these two
19 instances was not another rail carrier service, but was
20 instead truck. And therefore, to make the two
21 comparisons comparable, drayage and brokerage cost had to
22 be added in these two instances.

23 Q Do you have any knowledge of what the current
24 third party agent's brokerage fee is for movements of
25 this type?

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1 A No. Not the current. No, sir.

2 Q Now, would you refer to your Table B-16, page
3 2 of 2?

4 A B-16?

5 Q B-16. Your Appendix B. Yes. I guess it's
6 page B-23.

7 A Yes, sir.

8 Q And I refer you to -- oh, and for context,
9 this is the Houston to Los Angeles movement; correct?

10 A Yes.

11 Q I refer you to the fifth entry in the table.
12 What is the revenue per van shown for that route?

13 A It's shown as \$132.11.

14 Q Can you think of any reason why the railroads
15 would price a load at that lower rate?

16 A No. I think probably what we have is some bad
17 data. Just as I made corrections at the beginning of my
18 testimony today to correct what was obviously an error
19 included on the waybill, I think there is probably an
20 error in the number of vans stated for this entry.

21 Q Well, let's see about that. Do you see a
22 couple below it, there's another revenue, \$128.41 and if
23 you run your eye down the column, I think I have circled
24 about eight below \$160.

25 I won't repeat each of them. Do you see other

1 entries like that?

2 A Okay, yes.

3 Q One of them is even under \$100.

4 A Yes.

5 Q Are you aware of the practice of charging for
6 empty repositioning by the railroads where an empty van
7 or container is moved as a revenue move?

8 A Yes.

9 Q Did you attempt to screen those kinds of
10 movements out of your analysis?

11 A No. And neither did I attempt to screen out
12 on the high side, traffic that is moving at rates well
13 in excess of the maximum I predicted.

14 I thought it was best, given the state of the
15 data, just to accept everything that was in the data
16 base.

17 Q I see.

18 Now, referring back again to the fifth line on
19 page 2 of 2 of Table B-16, what would you estimate the
20 net tons are for this move, if you divide the 959 by
21 355? About 2.7?

22 A I guess. That looks about right. Three tons,
23 say.

24 Q Do you know what a container weighs without a
25 chassis?

1 A No, not offhand.

2 Q Well, if it weighs three to four tons, is it
3 quite possible, as I suggested a minute ago, that this
4 is a movement of empty containers?

5 A Yes. And I thought I agreed with you on
6 that.

7 Q Well, do you think it's valid to compare empty
8 moves at lower rates with loaded truck rates that are
9 based on the inclusion of some empty return factor?

10 A Well, I didn't compare with truck rates that
11 include an empty return factor, Mr. Moates.

12 Q Oh, you didn't? What are these truck rates?
13 Where did you get them?

14 A I think I state very clearly where I got those
15 rates. They are based essentially on the cost per mile
16 -- I mean the rate per mile reported by USDA in this
17 market, except I used the lowest rate to reflect
18 consistent high-volume movements.

19 Q Footnote says USDA most frequent low rate,
20 L.A. to Dallas, adjusted for longer mileage to Houston.

21 Do you have any idea how those truck rates are
22 made? Do you know whether the trucker makes those rates
23 with the empty return factor in mind?

24 A I don't believe they would. Remember, the
25 USDA data shows, and there's been a lot of testimony in

1 the record that says that truck costs are around \$1 to
2 \$1.15 a mile. And these numbers are very close to
3 that. Those rates contemplate no or little backhaul
4 empty return.

5 Q Would you look at your Table B-12, please,
6 which is on page B-16, or at least page 3 of 3?

7 A I'm sorry. B-12?

8 Q B-12, page B-16. It's for your movement L.A.
9 to Dallas.

10 A Yes.

11 Q Could you confirm for me that the total tons
12 per van for this traffic is about 11.7? In other words,
13 if you divide the 100,580 by 8,629 vans, you get an
14 average of about 11.7 tons per van?

15 A Yes. I got 11.6.

16 Q Okay, I'll accept that.

17 Do you know what the maximum weight you can
18 load into a van is?

19 A Twenty tons, I believe.

20 Q Maybe 23 tons?

21 A It might go to 23, I guess.

22 Q Are you aware that most piggyback vans are 40
23 to 45 feet, while highway trailers are at least 45 and
24 can be even 48 feet?

25 A Well, highway vans may be that size; yes.

1 They may be as small as 27 foot.

2 Q Highway vans generally are larger than
3 piggyback vans, aren't they?

4 A Well, they may or may not.

5 Q Do you know?

6 A In general I would say at this point in time
7 they are not.

8 Q What about in 1982?

9 A In 1982, I would say they were not.

10 Q In your analysis of these two flows, that is,
11 Los Angeles-Dallas and Houston-Los Angeles, did you
12 consider that a highway trailer could haul more product
13 than a TOFC van, thereby eliminating the impact of some
14 of the weight differential?

15 A No. And in fact, as I pointed out, there was
16 no need to do it because a lot of this is Plan 1 traffic
17 which means it's motor carrier traffic.

18 Another part of the traffic is minilandbridge
19 traffic which is the ocean company or the steamship
20 company's container.

21 Q Okay. I was going to ask about that next.
22 Isn't a good deal of your Houston-Los Angeles flow
23 minilandbridge traffic, as you just said?

24 A Yes. I'm not sure how much of it is. But some
25 of it is; yes.

1 Q Don't the containers in that trade, Mr.
2 Williams, have to be repositioned back on the West Coast
3 once they are unloaded?

4 A Well, they may have to be repositioned empty.
5 The objective is to put a load in them in both
6 directions.

7 Q Which direction would have the most loaded
8 movements between Los Angeles and Houston -- east or
9 west?

10 A Probably there would be more loads going from
11 California to Texas.

12 Q East.

13 A East.

14 Q Which flow did you analyze, east or west?

15 A I analyzed Houston to California.

16 Q West.

17 A Yes.

18 Q So you analyzed against the prevailing flow of
19 loads by minilandbridge traffic; right?

20 A I guess that's possible. What I really did
21 was identified a flow between southern California, the
22 Los Angeles Basin, and what I call the South Central
23 Region. And I selected the two largest flows in each
24 direction.

25 Now, eastbound, it happened that the flow from

1 Los Angeles to Dallas was a larger flow than was Los
2 Angeles to Houston, which would have included the
3 minilandbridge traffic.

4 Q Wouldn't the inclusion of more empty movements
5 in your flow study, westbound, lower the average rail
6 rate per ton?

7 A Well, yes. And so as I mentioned, and as my
8 table B-16 shows, would have inclusion of plan 1 motor
9 carrier traffic caused a variation on the high side of
10 the revenue per ton and revenue per van.

11 Q Do you know whether the Southern Pacific gives
12 a certain percentage of free return on some of its MLB
13 traffic?

14 A I don't believe there is any free
15 repositioning anymore.

16 Q Do the ocean carriers pay a movement charge
17 for this empty repositioning?

18 A I believe they do.

19 Q And, of course, that charge isn't anywhere
20 near as high as the movement for a loaded container, is
21 it?

22 A No. I thought I agreed to that a long time
23 ago.

24 Q I'm not challenging you. I wanted to be sure.
25 Did you talk to any ocean carriers about their

1 minilandbridge movements?

2 A No.

3 Q What cargoes other than minilandbridge might
4 be included or are included, if you know, in your
5 miscellaneous intermodal traffic category?

6 A Well, as I mentioned, there is a fair amount
7 of Plan 1 motor carrier traffic.

8 Q You mentioned a fair amount a couple of
9 times. How much did you estimate?

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1 A Excuse me, but which flow are we referring to,
2 the eastbound or westbound?

3 Q We are talking about the westbound, Houston to
4 Los Angeles.

5 A Okay. Then I misspoke. There is not very
6 much Plan 1 traffic in that direction.

7 Q Okay. Did you, by the way, sir, read or have
8 occasion to read any of the testimony including the
9 cross examination of witnesses in this case who have
10 dealt with the MLB subject?

11 A Yes, I did. I think I referred to that in my
12 testimony.

13 Q You indicate, do you not, at the bottom of
14 Page 2- and the top of Page 2-102 that the merger
15 would result in SPSF minilandbridge rates increasing to
16 the level of truck rates, right?

17 A Yes.

18 Q For the reasons you said earlier, that in your
19 view there wouldn't be any more effective intramodal
20 competition for this traffic.

21 A I stated my reasons in my statement.

22 Q Are trucks the primary competition for
23 minilandbridge cargoes?

24 A No, Santa Fe and Southern Pacific are?

25 Q Does all water service provide competition for

1 these cargoes?

2 A It does.

3 Q Did you analyze the share that water transport
4 had of that traffic between Southern California and the
5 Texas Gulf Coast?

6 A No. I analyzed the rail transportation market
7 that was shared by Southern Pacific and Santa Fe.

8 Q Did you analyze the comparative rates for the
9 all water service to see if it was an effective
10 constraint on the all rail pricing of Southern Pacific
11 Santa Fe?

12 A No, what I did do was review the transcript
13 and the statements of those other expert witnesses who
14 appeared both on your behalf and on behalf of the
15 responsive applicants.

16 Q Also, just as we leave this subject, and we
17 are leaving it, would water transportation be a
18 competitive option on the flows, for example, between
19 Los Angeles, Portland, and Los Angeles, Oakland, that
20 you have concluded are not problems?

21 A I don't believe they would be realistic
22 options, no, because of transit time and the priority or
23 the transit time needs of the shipping public on those
24 traffic flows.

25 Q As promised, let's move to the subject of

1 newsprint, II-101 and II-102. I take it this is your
2 representative movement for the Oregon Los Angeles
3 Basin flow that you have identified?

4 A I am sorry. I am looking at II-102? Yes.

5 Q That is a yes to my question?

6 A Yes, that is a yes to your question. That was
7 a representative movement I selected of the flow from
8 Oregon and Washington to the Los Angeles Basin.

9 Q Okay. Specifically, you have analyzed
10 newsprint, STCC 262, from Newburg, Oregon, to Costa
11 Mesa, California?

12 A Yes.

13 Q And you have concluded, have you not, that the
14 most likely case post-merger is no change, but in the
15 worst case environment truck as the competitive cap
16 would permit a rate increase of 33 percent of SPSF?

17 A Yes.

18 Q Did you consider the possibility that the
19 shipper could truck to the Burlington Northern and
20 connect with the UP to go to Los Angeles?

21 A Well, I guess I did. He can truck to the
22 Union Pacific as readily, though, and the Union Pacific
23 has a single line service between those two geographic
24 areas.

25 Q Did you consider the fact that not all Oregon

1 newsprint, let alone all Oregon commodities moving to
2 the LA Basin, originate on the SP?

3 A Yes.

4 Q Isn't it true that there are newsprint
5 shippers located on the Burlington Northern and the
6 Union Pacific in Oregon?

7 A I think that is probably true. I didn't look
8 at them for my analysis because they weren't involved in
9 the merger.

10 Q These shippers of even that commodity, and by
11 that commodity I mean newsprint, the point is, shippers
12 of that commodity in Oregon are not captive solely to
13 the SP, right?

14 A Not all newspaper or newsprint shippers in
15 Oregon are captive to the SP. Those located in Newburg,
16 Oregon, are.

17 Q Similarly, I assume there are some that may be
18 captive to the UP or the BN.

19 A Yes.

20 Q Would you look at your Table II-39 on Page
21 103?

22 A Yes.

23 Q Is the \$3,105 truck rate that you show on that
24 table based on three truckloads per car? That is what
25 your Footnote 5 says.

1 A Then I hope that is how I did it, Mr. Moates.

2 Q Wonderful, and an average rail weight, rail
3 car net weight, rather, of 62.1 tons, this equals about
4 20 tons a truck. Is that right?

5 A Yes.

6 Q Did you determine the legal truck rates for
7 this commodity between Oregon and California?

8 A No.

9 Q If you assume that it is 25 tons, and I will
10 represent to you that it was, that would equate to 2.49
11 truckloads per carload. Isn't that right?

12 A What was your figure again?

13 Q 2.49.

14 A Yes, 2.48, I got.

15 Q I am being generous. If that were the case,
16 then your truck rate, instead of \$3,105, would be
17 \$2,577, would it not?

18 I am taking 3,105 and dividing by three to get
19 1,035, and multiplying that by 2.49 to get 2,577.

20 A It makes sense.

21 Q And at 2,577 there would only be a \$224
22 differential or about 9.5 percent?

23 A Yes.

24 Q Did you have occasion, Mr. Williams, to check
25 the detailed printout of the shipper and receiver of

1 this actual traffic that was in the DNS material?

2 A Do you mean did I look at all the shipper and
3 receivers' traffic?

4 Q Not all. On your examples.

5 A I am sorry. I don't understand the question.

6 Q Let me ask you this. Maybe this is a better
7 way to ask it. Do you know who the shipper and receiver
8 of the newsprint from Newburg to Costa Mesa is?

9 A Not at present. At one point I figured it
10 out. It may be on my way bill records.

11 Q Does Publishers Paper Company sound right?

12 A It sounds right.

13 Q Shipping from his own plant in Newburg,
14 Oregon, to itself at Costa Mesa, California?

15 A Yes.

16 Q This is the company that provides newsprint to
17 the Los Angeles Times?

18 A Yes.

19 Q Are you aware that they support the merger?

20 A No.

21 Q Okay. I am happy to report your last example,
22 cereals from Lodi, California, to City of Commerce,
23 California, which you look at on Page 104. This is your
24 choice to represent traffic from northern California to
25 the LA Basin.

1 A Yes.

2 Q And here you conclude on Table II-40 that the
3 most likely case again post-merger was no change, no
4 rate increase. The worst case is a truck cap of 16
5 percent. Is that right?

6 A Yes, that is right. I thought I was being
7 very fair by saying that there was -- most likely there
8 would no adverse impact post-merger.

9 Q I am not challenging that, sir. I am not
10 challenging the fact that there wouldn't be any
11 change.

12 Do you know who the shipper of this traffic
13 was?

14 A Again, I am sure it is on the way bills.

15 Q General Mills?

16 A That sounds like it.

17 Q Did you check to determine whether the rates
18 and other circumstances running this movement are the
19 same today as they were in 1982?

20 A No, I would have no basis to do that at
21 present.

22 Q If you were to be told that all this traffic
23 had been lost to truck some time ago, what would that
24 tell us about your analysis.

25 A That would tell us that my most likely case

1 post-merger was perfectly correct, that this traffic was
2 not subject to intense intramodal competition between
3 Southern Pacific and Santa Fe.

4 Q Okay. Now, let me just sum up some points if
5 I may from your analysis of your 12 representative
6 commodities. We will do that by looking at the table
7 you referred us to several times, Table II-41, on Page
8 106.

9 A Yes.

10 Q First of all, for four of your examples that
11 we just mentioned, the intramodal movement from
12 LA-Portland, the intramodal movement LA-Oakland, the
13 newsprint and the cereal, for those four examples, you
14 have concluded that the most likely post-merger scenario
15 was no rate increase, correct?

16 A That is correct.

17 Q Okay, let me ask you about Footnote 3, your
18 sourcing there, Table II-14. What is it that you are
19 bringing forward from Table II-14? Is it the vans
20 converted and the carloads for both your substate areas
21 and your traffic flows?

22 A Yes.

23 Q So -- and I think this is important, and I
24 want to be as precise as I can -- if we look at that
25 Table II-14, this is a summary, is it not, by substate

1 area and traffic flow where you say intramodal
2 competition will be largely eliminated by the SPSF
3 merger. Right?

4 A Yes.

5 Q You have some summary numbers for origin and
6 terminated traffic, 291,024 carloads and 227,799 vans.

7 A Yes.

8 Q You have a conversion factor for those vans.
9 You divide by 1.7 and convert them to carload
10 equivalents?

11 A Yes.

12 Q And having made that conversion, and summing
13 that result with the 291,024, that is where we get our
14 425,023 cars on Table II-41?

15 A That is correct.

16 Q Okay, so the 425,000 plus commodity carloads
17 for which you determined most likely rate increases in
18 Table II-41 don't simply represent the effect of
19 probable increases on oranges from Fresno to Chicago and
20 lettuce from Fresno and Blythe and cotton from Fresno to
21 Greenville, and grain from Council Bluffs to Livingston,
22 and TOFC from LA Dallas to Houston, do they? That is
23 not all that we are being told there, is it?

24 A No, you are correct.

25 Q Don't they in fact represent 100 percent of

1 all the traffic for all commodities moving in 1982 to
2 and from these areas, the south San Joaquin, correct?

3 A South San Joaquin Valley, yes.

4 Q To and from the east of Los Angeles Basin
5 area?

6 A Yes.

7 Q From the Los Angeles Basin to and from
8 Northern California?

9 A Yes.

10 Q From the Los Angeles Basin to and from Oregon
11 and Washington?

12 A Yes.

13 Q From the LA Basin to and from Arizona?

14 A Yes.

15 Q New Mexico?

16 A Yes.

17 Q The entire south central region which you
18 define as including the entire states of Texas,
19 Oklahoma, Louisiana, and Arkansas?

20 A Correct.

21 Q We have made a slight jump in our logic,
22 haven't we, Mr. Williams, from your 12 examples to all
23 of the tonnage to and from the areas that you and I just
24 talked about?

25 A Yes. And I think I explained that in my

1 summary.

2 Q All right. Now, let me ask you. You made
3 reference at one point today to an expansion procedure.
4 What expansion procedure did you use in going from your
5 case studies, your most likely, your most terrible -- I
6 am sorry, I forgot the words -- worst case scenario of
7 projected rate increases to the estimates of total
8 California rail customer impacts that you show on Table
9 41. Can you explain that expansion, procedure?

10 A Table II-41 shows in the first total which I
11 call representative movements totals carloads of
12 128,245 with a total most likely rate increase of \$74
13 million annually. That is based on my analyses in the
14 most likely case for each one of the representative
15 commodities.

16 And as shown, for instance, on the intermodal
17 traffic, Los Angeles to Portland, Los Angeles to
18 Oakland, I concluded those rate increases would be
19 zero. I took the average rate increase per carload
20 which I calculated to be \$577, it is an average for all
21 the movements totaling 128,245, and applied that to the
22 total of all traffic in the substate areas originating
23 or terminating there, or on the traffic flows, and that
24 is how I developed my \$245.2 million rate increase.

25 Now, what I did not do was apply the \$726

1 which was the average increase per carload for that
2 traffic I found would be adversely impacted by the
3 elimination of the intramodal competition.

4 Q But what you did do, did you not, was that you
5 did apply the \$577 to all the carloads in the four flows
6 where your analysis of a representative movement led you
7 to believe there would be no rate increase. Isn't that
8 true?

9 A Well, that is true, but I reduced the average
10 per carload to reflect the fact that there is no impact
11 in some cases in the representative movement.

12 So what the \$577 really represents is the
13 weighted average increase in rate per carload expected
14 for all the 128,245 movements studied.

15 Q Mr. Williams, did you check to see if your
16 average rate increases were applicable to other traffic
17 besides the specific commodities you studied?

18 A No, I did not. As I explained earlier, the
19 number of commodities which could be studied was limited
20 by time and resources, and so I had to look at the most
21 important commodities, commodities that are important to
22 California, and I was limited to these 12.

23 Q Did you make any attempt to differentiate
24 between contract and noncontract traffic in your
25 analysis?

1 A No, except to the extent I have mentioned it
2 in my statement or in my cross examination, no.

3 Q Now, Mr. Williams, recognizing the explanation
4 of why you could only do 12, and I understand what you
5 told me about that, nonetheless, if you made no effort
6 to determine the applicability of your hypothesized
7 average rate increases to other traffic which you did
8 not study, how do you know if the non-studied traffic
9 had or did not have options that would have held down
10 rate increases after the merger?

11 A I guess one never knows with certainty. I
12 guess based on my experience with the importance of
13 intramodal competition it seems to me reasonable to
14 expect rate increases of this magnitude across the
15 entire traffic base where intramodal competition would
16 be eliminated.

17 Q Regardless of the presence of intermodal
18 competition for these commodities you didn't study?

19 A Regardless of the existence of intermodal
20 competition for those commodities I didn't study, yes, I
21 think that is true. I considered intermodal competition
22 in my 12 commodities, and I considered intramodal
23 competition.

24 Q Sir, recognizing that the representative
25 movements you studied were in some cases the largest

1 flows that you identified, did you make any effort to
2 calculate using either the \$577 figure or the \$726
3 figure, the shipper impact that you would derive just
4 from the commodity carloads in the eight cases you
5 studied where you project some harm?

6 A Well, that shipper impact is the \$74 million,
7 as shown in Table II-41, without the extrapolation to
8 all the traffic originating or terminating in the
9 area.

10 Q I feel better. I did the mathematics without
11 seeing that and got 73.9, so I guess that is close
12 enough.

13 All right, would you turn to Page II-67 of
14 your verified statement for a minute? Do you see the
15 statement --

16 A I am sorry, II-67?

17 Q Sixty-seven. Yes. In the first full
18 paragraph, about halfway through the paragraph, you have
19 a sentence as follows: "Thus SPSF's pricing strategy
20 would be to increase its rate levels to a level almost
21 but not quite to that ceiling level; if SPSF's pricing
22 judgment is successful in doing so, no diversion of the
23 traffic away from SPSF will occur."

24 Now, doesn't that summarize the whole
25 predicate for this analysis? In other words, you are

1 stating that if SPSF prices up to the ceilings you have
2 identified, be it the most likely case or the worst
3 case, they can enjoy the percentage increase identified
4 without losing traffic?

5 A Yes.

6 Q Is it your judgment as a former railroad
7 official that in order to keep trucks from taking
8 business, all the railroad has to do is keep its rate
9 one cent below that of trucks?

10 A Oh, I think that is a matter of degree. You
11 price up as close as you can go.

12 Q I understand it is a matter of degree, but if
13 it is not one cent, is it a dollar?

14 A It might be in some cases.

15 Q Doesn't it in fact depend on a number of
16 factors, including importantly transit time or
17 service?

18 A It depends on many, many factors, and those
19 are some of the factors. That is what marketing is all
20 about, and that is a marketing decision that has to be
21 made commodity by commodity, movement by movement,
22 shipper by shipper.

23 Q Are you aware of testimony in this record
24 about the subject of relative truck and rail rates and
25 commensurate market shares?

1 A Well, I have seen a great deal of testimony,
2 Mr. Moates, and I confess that I am not sure I remember
3 all of it.

4 MR. MOATES: I would like to show the witness,
5 Your Honor, a page from Mr. Spero's testimony already in
6 evidence. I don't plan to introduce this.

7 JUDGE HOPKINS: Thank you.

8 BY MR. MOATES: (Resuming)

9 Q This is a figure in A4 from Mr. Spero's
10 testimony. Mr. Spero was an associate of Mr. Richard
11 Barber, a witness supporting the Union Pacific. Have
12 you seen this before?

13 A I think I saw it along with his testimony,
14 yes.

15 Q Okay. You note that he gives as a source for
16 this table one of our own witnesses, Mr. Liba, and a
17 company called Tri-Valley Growers?

18 A Yes.

19 Q Do you see that it relates to truck and TOFC
20 rates on canned goods from Modesto, California?

21 A Yes.

22 Q And the table purports to show when rail and
23 truck rates and transit time are all arrayed one against
24 the other what the relative shares of rail versus truck
25 are?

1 A I see what it says.

2 Q I am just setting the context so that we both
3 understand what the table says. Now, what does the
4 table suggest when the rail and truck rates and transit
5 time are equal to points like, let's say, Boston or
6 Chicago or Indianapolis.

7 If you look, oh, about two-thirds of the way
8 down the list of destinations you will see some of these
9 places. Do you see where it is about 100 percent or 101
10 percent in the rate column?

11 A Yes.

12 Q Do you see Chicago, Boston, Indianapolis,
13 Norfolk, places like that?

14 A Yes.

15 Q And when the rail rate and the truck rate are
16 equivalent, or roughly the same, to destinations like
17 that, what does the table show about the share of rail?

18 A Whatever it shows, I guess, 43 percent.

19 Q It shows about 40 percent for a place like
20 Indianapolis or 43, as you say, for Chicago?

21 A Yes.

22 Q And that is when the transit times were also
23 equal, right?

24 A That's what the table says, yes.

25 Q And as the transit times move off in favor of

1 truck and against rail. rail share drops to 20 percent
2 if it is a half day slower but 10 percent if it is a
3 full day slower?

4 A That is what the table shows.

5 MR. MAC KENZIE: Your Honor, isn't he getting
6 into argument? He has an exhibit here from a prior
7 witness. If he wants to argue that this is the superior
8 way to determine it, that is fine, but to show this
9 witness something --

10 JUDGE HOPKINS: Right now he isn't arguing.
11 He is just questioning him. If he argues, I will stop
12 him.

13 BY MR. MOATES: (Resuming)

14 Q Now, so that I don't argue, and referring you
15 back to your testimony, Mr. Williams, with this in mind,
16 particularly back to Page II-67, wouldn't you agree that
17 the reality is that rail must discount from the
18 comparable truck rate in order to stave off truck
19 inroads from the market at issue?

20 A In some cases, yes, and in some cases, no.

21 Q In most cases, yes?

22 A No. In some cases, yes, it would have to
23 discount; in some cases it wouldn't.

24 Q Can you give me some examples of cases where
25 it wouldn't?

1 A Well, I think it does depend on the individual
2 commodities, the size of the movement, the length of
3 haul, and so on. If you are working with a long
4 distance movement that is TOFC, utilizes the superior
5 transit time, a carrier such as the Santa Fe in
6 conjunction with Conrail, I would be surprised if the
7 sorts of discounts that are presented here were required
8 from truck rates.

9 Q Okay. Now, don't misunderstand me. I am not
10 for purposes of this cross examination suggesting that
11 you have to have a 40 percent discount. You would agree
12 with me, though, that all other factors being equal,
13 that in many cases rail cannot afford to price right up
14 to the truck level, it will lose share long before it
15 gets there, won't it?

16 A That may be true, but all other factors are
17 rarely equal.

18 Q I think you mentioned some of these factors.
19 Would you agree with me that the size of possible
20 discounts will in fact vary all over the lot, and they
21 will vary by, I think you mentioned the commodity, the
22 length of haul, the value of the commodity, maybe even
23 the time of year?

24 A Yes, it could, but thinking about the
25 representative commodities I reviewed, I really think

1 rail is -- or the most likely competitive is pretty
2 close in terms of transit time to that which exists in
3 the marketplace today, so I don't see any need for the
4 kind of discounting that your people seem to say is
5 required.

6 Q So it is your testimony if I understand you
7 that for all of the examples you have given for all of
8 the commodities that those "representative movements"
9 are supposed to subsume, that for all that traffic you
10 think that the SPSF would and could price right up to
11 the competitive alternative before any diversion would
12 occur?

13 A Yes, I look at the commodities that were
14 intermodal commodities, oranges, lettuce, cotton,
15 lettuce again from Blythe to Chicago, the intermodal
16 traffic from Los Angeles to Dallas, Houston to Los
17 Angeles. All of those intermodal movements.

18 I think the transit time is sufficiently close
19 with the alternative that I analyzed in most cases the
20 Union Pacific, in some cases truck that you don't need
21 to discount, and certainly for grain, where it is just a
22 question of an additional haul of perhaps 100 or 150
23 miles by truck. I don't see a need to discount on
24 that.

25 Q Now, are you testifying that the increases you

1 projected could occur, or that they will occur?

2 A I have testified that it is most likely that
3 they will occur.

4 Q So your most likely case scenario you think
5 will occur? Is that right?

6 A Yes.

7 Q Are you saying that these rate increases are a
8 fait accompli if this merger is approved?

9 A No, conditions change, times change, the
10 marketplace changes.

11 Q Is it your testimony that you worst case
12 scenario rate increases will occur?

13 A No, my testimony is basically that the concept
14 that truck rates set the ceiling on traffic, California
15 traffic that is subject to intense intramodal
16 competition today simply is not a valid hypothesis, and
17 that is what my worst case scenario shows.

18 Q Would you look at Page 111, please, of this
19 section?

20 At the top of the page you were discussing
21 your Table 42, which we are not going to go into at
22 length, but that is your worst case table, isn't it?

23 A Yes.

24 Q In the next paragraph you say "The south San
25 Joaquin Valley is most adversely affected in this

1 scenario. It accounts for about 55 percent of the total
2 rate increases I project will occur."

3 Do you reall mean will occur there?

4 A I think the word "will" is a little bit
5 strong.

6 Q Just so we are clear. I don't want to play
7 games with the language. We are clear that you are
8 projecting your most likely case is the one you think
9 will occur.

10 A Yes, sir.

11 Q Isn't it possible, Mr. Williams, that since,
12 hopefully, at least, as you and I tend to agree, since
13 operating efficiencies will improve on the new system
14 that rates can in fact be lower than they are today for
15 some of the flows that you have analyzed?

16 A I think it is unlikely, Mr. Moates. I think
17 the areas I have analyzed are the areas where intramodal
18 competition has been intense from an historical
19 perspective. And I think it is there that rate
20 increases are most likely to occur.

21 Q Would you agree with me that it is desirable
22 both from a railroad and shipper perspective to promote
23 better service at lower unit costs?

24 A Yes, that is desirable.

25 Q That is like being for motherhood and apple

1 pie.

2 A And the flag.

3 Q And the flag. Would not increasing line
4 density and train frequency then be concurrently
5 beneficial to SPSF and its shippers?

6 A Well, there are benefits from those factors,
7 yes.

8 Q And would those factors result in improving
9 financial health for the carrier that was able to make
10 those improvements?

11 A Generally they should, yes.

12 Q Conversely, would not a reduction in line
13 density adversely affect service maintenance cost and
14 financial health?

15 A Yes.

16 Q I would like to ask you a few questions about
17 your Section III that deals with recommended
18 conditions. First, as I think I alluded to this morning
19 in my first line of questions, you not only support the
20 entirety of the Denver and Rio Grande Western's request,
21 but you even recommended that the Commission grant them
22 railroad trackage rights to the entire San Joaquin
23 Valley clear of Bakersfield. Is that right?

24 A That is right.

25 Q That is even farther than the D&RG itself has

1 made application for at this point?

2 A That is farther than they have made
3 application for, though I believe they have stated on
4 the record that they are willing to go as far south as
5 Bakersfield.

6 Q That was your idea, you told me earlier. I
7 think Mr. MacKenzie asked the D&RG during cross
8 examination just that question. Is that something you
9 suggested he clarify with them?

10 A Yes.

11 Q Now, you make that recommendation because you
12 judge the D&RGW may have been, in your words, too
13 optimistic? Is that right

14 A No. The reason I make that recommendation is,
15 I am concerned as to whether the overall package
16 proposed by the Rio Grande will generate sufficient
17 revenues over and above the costs to permit it to be a
18 financially viable competitor.

19 Q I had reference to your language on Page
20 III-10, Mr. Williams. You say "Because SPSF will
21 continue to be the sole carrier directly serving the
22 shippers, it seems to me that the market penetration
23 projected by Rio Grande's witness Brainard may prove to
24 be optimistic."

25 That is what I have particular reference to.

1 A Well, I understand, but as I say in the next
2 paragraph, that was one of the reasons. There are
3 several pages of reasons that are the basis for that
4 recommendation.

5 Q Aren't you in fact concerned that the Rio
6 Grande may be overextending itself and will not be able
7 to achieve sufficient density in the trackage rights
8 territory to operate as an effective competitor?

9 A I am concerned, yes.

10 Q Is it not correct that the reason you believe
11 Rio Grande should be accorded trackage rights is your
12 conclusion that the overland route traffic would be
13 diverted from the Ogden gateway at such a significant
14 level that, and I am quoting now, "reduced use of that
15 route by SPSF would essentially deprive California's
16 shipping public competing railroad carriers operating
17 the shortest rail route to and from central California
18 via the central corridor."

19 A Well, that is a long quote, Mr. Moates.

20 Q That is you at Page 4.

21 A If it is mine, then I would agree with what I
22 said.

23 Q Does Santa Fe operate in northern California
24 or Oregon, looking at the map on the wall, which I am
25 sure you don't have to?

1 A Well, Santa Fe operates to the Bay area,
2 yes.

3 Q Is it your opinion that the merger will cause
4 a loss of competition for traffic to or from Oregon?

5 A Yes.

6 Q What is the basis for that, joint line
7 routings in which the Santa Fe is involved?

8 A No, the basis for the loss of competition for
9 the Oregon shippers is the possible loss of the
10 competing route through the Ogden gateway.

11 Q I see. It is not a result of Santa Fe and SP
12 being in the same territory? It is your concern that
13 traffic will be diverted from the Ogden gateway, and
14 there will be less reliable service for that route?

15 A Today the shippers in Oregon, and I would say
16 that I am not as concerned about the shippers in Oregon
17 as I should be because I am representing the state of
18 California, but today the shippers in Oregon have a
19 choice going out the overland route usually in
20 conjunction with an SP Rio Grande route. In addition,
21 they have a choice of going long haul SP single line
22 haul subsequent to the SP Santa Fe merger.

23 It is possible that the Ogden gateway may be
24 closed to traffic which could otherwise use it, and that
25 traffic, Oregon traffic would be diverted to a single

1 line long haul route via Santa Fe Southern Pacific,
2 which would be less efficient.

3 Q These are the same arguments that the
4 protestants made in the Tucumcari case that we talked
5 about this morning, aren't they?

6 A They may have been. I don't recall. You
7 spent more time preparing on the Tucumcari line case
8 than I did.

9 Q And I did represent a protestant, so I guess I
10 remember. For the purposes of this case, Mr. Williams,
11 let me clarify this, for the purposes of this case did
12 you conduct any studies of the profitability of traffic
13 handled by SPSF to or from particular California points
14 via the Ogden gateway to the midwest or the east?

15 A No.

16 Q For the purposes of this case, did you conduct
17 any such profitability studies for the handling of
18 traffic via the southern corridor?

19 A No.

20 Q Did you analyze the SPSF operating plan as it
21 relates to the handling of traffic to or from Oregon and
22 northern California?

23 A Yes, I did.

24 Q Did you analyze the effects of Rio Grande's
25 proposed trackage rights operations in northern

1 California and Oregon on SPSF's line densities in those
2 areas?

3 A Yes, I did

4 Q Did you analyze those effects on the merged
5 company's proposed service in those areas?

6 A To the extent it was possible, yes.

7 Q Do you know whether or not Southern Pacific
8 today has problems with low density on its lines in
9 Oregon and northern California?

10 A Well, they have some lines that have low
11 density, yes.

12 Q Hasn't low density branch lines in Oregon and
13 northern California been a plague on SP's house for some
14 time?

15 A Yes.

16 Q Is it your understanding that Rio Grande and
17 SPSF propose to operate over the same or different
18 routes to and from -- for, excuse me, for northern
19 California and Oregon traffic?

20 A Well, I am not sure how to answer that, Mr.
21 Moates. I mean, the operating plan of the Rio Grande is
22 pretty clear. They want to buy the line from Ogden to
23 Roseville and up to Klamath Falls, and then they want
24 trackage rights over the same line SP Santa Fe will
25 operate over from Klamath Falls as far as Oregon and

1 reaching over some of the branch lines up there. The
2 same is true down in the northern and central California
3 area, from Roseville into the Bay area.

4 They would be operating on trackage rights.
5 From Roseville down the valley they would be operating
6 on trackage rights. And they serve some of the outlying
7 branch lines using a joint facility arrangement in
8 conjunction with SP, with SP or SP Santa Fe actually
9 conducting the operations.

10 Q Do you know whether SPSF operating plan
11 projected a reduction in density on lines which the Rio
12 Grande seeks to operate, particularly between Klamath
13 Falls and Weso?

14 A Well, my recollection is that there was a
15 reduction in the operating density. I mean, I accept
16 whatever is in the operating plan. I don't remember the
17 number offhand.

18 Q And we projected an increase in density on the
19 Klamath Falls Roseville line?

20 A I don't recall that. I didn't pay a lot of
21 attention to it because neither Rio Grande nor UP
22 intended to operate over that.

23 Q Without getting too far in the operating plan,
24 if it turned out that the merged companies' operating
25 plan contemplates operating one set of lines and thereby

1 increasing density on them, but commensurately reducing
2 density on other lines, and those other lines are the
3 same lines that the Rio Grande seeks to operate, is that
4 a good thing? I ask you that knowing your background as
5 an operating man.

6 A Well, I don't think it matters. I reviewed
7 what the Rio Grande proposed to do in conjunction with
8 your S? Santa Fe operating plan, and I conclude what
9 they propose to do is reasonable and feasible.

10 Q Basically, Mr. Williams, aren't your
11 recommendations the Rio Grande be accorded trackage
12 rights in Oregon on the one hand and to Bakersfield on
13 the other predicated upon your judgment and concern as a
14 former railroad operating man that Rio Grande needs that
15 added density from those areas to support its proposed
16 central California extension?

17 A No, not at all. I don't recall that I even
18 mentioned density in my testimony.

19 Q No, I don't think you did.

20 A So not at all.

21 Q That is of no concern to you?

22 A It is of some concern, but I stated my
23 concerns and their financial concerns, which deal with
24 revenues, traffic, and, of course, the cost aspects.

25 Q That is fair enough, but even if Oregon and

1 Bakersfield prove not to provide sufficient density, or,
2 to use your term, sufficient traffic and revenues to
3 support this operation, would you recommend the Rio
4 Grande be permitted to go all the way to Los Angeles?

5 A No, I have not. I have not made that
6 recommendation. I stopped at Bakersfield.

7 Q I am saying if it turned out that even if
8 Bakersfield wasn't enough, would you keep going? Would
9 you go to Los Angeles? Would you go to San Diego?

10 A No.

11 Q Would you take them around to El Paso?

12 A No.

13 Q No, just a question or two about the Union
14 Pacific's -- your recommendation as to the Union
15 Pacific. Have you analyzed the effects on SPSF of
16 having its largest competitor operating in trackage
17 rights corridors that you have recommended it be
18 accorded?

19 A Yes, I have.

20 Q Have you done any diversion analyses of your
21 own.

22 A No.

23 Q What have you done?

24 A What I have done is accepted what Union
25 Pacific said the impact would be. I evaluated their

1 operating plan in conjunction with their own, and I
2 concluded that what they proposed to do between El Paso
3 and the Los Angeles Basin was reasonable and feasible
4 also.

5 Q Did you do any analysis of the effects on
6 SPSF, on us, resulting from introducing both the UP and
7 the Rio Grande directly into the entire San Joaquin
8 Valley?

9 A Well, I considered that, and I considered that
10 running one train a day in each direction on the Union
11 Pacific between Colton and Bakersfield and Fresno and
12 Lathrop as well as I think it is two trains a day for
13 the Rio Grande as far south as Fresno and as far north
14 as Roseville, and then a single train in each direction
15 a day from Fresno on down to Bakersfield would not
16 impair your operations.

17 Q You understand, I take it, that the Union
18 Pacific's proposal does not limit that carrier to using
19 the trackage rights only for traffic that originates or
20 terminates at a common point?

21 A Well, that is true. They proposed to use the
22 trackage rights to get into the San Joaquin Valley to
23 provide competition initially at what I would call the
24 five common points, Bakersfield to Fresno, Merced, and
25 Oakdale. They would, of course, have the right if they

1 elected to do so to take traffic from, say, a point like
2 Sacramento on their own lines destined to the Los
3 Angeles Basin over the trackage rights line.

4 Q Similarly, they would be permitted, wouldn't
5 they, or there would be no restriction on their shifting
6 traffic from other portions of the country over the
7 southern corridor trackage rights?

8 A There would be no restriction. That is
9 correct.

10 Q They can essentially rationalize their
11 operations using these trackage rights, couldn't they?

12 A Well, I find that those trackage rights as
13 proposed makes sense, primarily in terms of what we
14 might call the southern tier traffic to and from Texas,
15 and portion, the lower portion of the southeastern
16 region.

17 I don't think that in terms of rationalizing
18 their network or their system as a whole that they have
19 much other meaning. Of course, to California, they
20 provide the preservation of competition.

21 Q Mr. Williams, do you believe that SPSF's
22 liability would be assured or a certainty if the
23 Commission allowed UP/MP to enter the southern corridor
24 and central California via trackage rights as you
25 propose?

1 A I do not believe that adopting my
2 recommendations would adversely impact the merged Santa
3 Fe Southern Pacific.

4 Q It wouldn't adversely impact them at all?

5 A It would not adversely impact their financial
6 viability.

7 Q And what is the basis for that judgment.

8 A My analysis of what they propose to do in your
9 territory and your own analyses to the extent that I
10 have seen them at this point in time.

11 Q What does that judgment that you just stated
12 comprehend or contemplate as to the level of
13 compensation either UP or Rio Grande would be paying
14 SPSF in the event they were accorded these rights?

15 A Well, I think the level of compensation is
16 something that has to be negotiated between the
17 parties. And I would expect it is something that can be
18 negotiated satisfactorily.

19 Q Do you believe that the Union Pacific should
20 pay a fair market price for its entry over these lines
21 if it were to be granted that entry by the Commission?

22 A Well, I think one has to be careful about
23 establishing the principles of compensation for trackage
24 rights. And I think you have to recognize the return
25 that is being realized on the property, the value, the

1 true value it has as a transportation property dedicated
2 to the public service, and beyond that there is no
3 question there is room for negotiation between the
4 parties in that broad range.

5 Q In conducting those negotiations, or failing
6 that, in proposing a formula on them, would you use the
7 current depressed rate of return to the Southern Pacific
8 Railroad as a fair measure of what payments ought to be
9 made to the merged company?

10 A I am not sure what I would use, Mr. Moates. I
11 would really rather not say since I haven't evaluated
12 it. I think if there is a subsequent proceeding in
13 which the two parties can't get together, then I would
14 be happy to appear and give my comments on behalf of
15 anyone who wanted me to.

16 Q Are you offering your services to all the
17 parties again, Mr. Williams?

18 A To all.

19 JUDGE HOPKINS: He said anybody or all.

20 BY MR. MOATES: (Resuming)

21 Q All right, just a last few questions. On Page
22 III-18, you discuss the Kansas City Southern's
23 conditions.

24 A III-18?

25 Q Yes.

1 A Yes, sir.

2 Q You characterize -- actually, I will bring you
3 over to III-19, the first full paragraph, the last
4 sentence. You characterize the principal benefit of
5 KCS's proposal would be the institution of a pricing
6 discipline on the merged SPSF?

7 A Oh, yes, I see that.

8 Q Did you conduct any analyses to determine
9 whether the IRMA as proposed by KCS is operationally
10 feasible?

11 A I think the IRMA as proposed by KCS is
12 operatinally feasible, yes.

13 Q Did you review the applicant's evidence in
14 rebuttal to KCS filed again on February 21 on that
15 point?

16 A Yes, I believe so.

17 Q Witnesses Owen and Thompson and McInnes and so
18 on?

19 A Yes, I believe so.

20 Q Did you analyze the possibility that the IRMA
21 as proposed might permit cream-skimming of only whatever
22 traffic KCS chose to go out?

23 A Yes, and that is one of the potential dangers
24 of IRMA.

25 Q Did you consider, Mr. Williams, the effects of

1 other possible conditions besides the trackage rights in
2 the IRMA that might address some of the concerns that
3 you have raised here? For example, conditions keeping
4 open the Ogden, El Paso, or Sweetwater gateways?

5 A I guess my answer to that would have to be
6 no. We looked at what the various participants in the
7 case had placed on the table. We certainly debated all
8 the alternatives that were there, but we did not go
9 beyond those that were proposed as mitigating measures.

10 Q Are you aware of Mr. Schmidt's testimony in
11 this proceeding that he would recommend to his board of
12 directors nonconsummation of this merger if the UP or
13 KCS proposals were granted?

14 A I have read what Mr. Schmidt said. I am not
15 sure that I recall it being precisely as strong as you
16 have characterized it.

17 Q Do you have any kind of opinion as to whether
18 SPT could remain viable without this merger?

19 A I think it is likely in time that without this
20 merger Southern Pacific will become bankrupt and would
21 have to be liquidated or sold to another buyer.

22 Q And presumably that would be a matter of some
23 considerable concern to the state of California?

24 A Yes. Yes.

25 Q But nonetheless your personal opinion is that

1 if the Commission doesn't decide to impose all the
2 conditions that you personally have recommended, that it
3 should deny the merger? Is that right?

4 A Yes, that's correct. I have seen
5 reorganizations. I guess all of us who have worked in
6 the railroad industry have in recent years, and I am not
7 sure that a solution like the Conrail solution in the
8 northeast or the Rock Island solution in the midwest
9 would be a fatal blow in the event this merger were not
10 consummated, but our preference, I would emphasize, our
11 preference is that the merger be endorsed and approved
12 but conditioned to retain the intramodal competition
13 that we believe is important.

14 MR. MOATES: Thank you, Mr. Williams. I hope
15 for both of our sakes that I don't sit here some day and
16 cross examine you on the SP reorganization.

17 JUDGE HOPKINS: Off the record a minute.

18 (Whereupon, a discussion was held off the
19 record.)

20 BY MR. DREILING:

21 Q Good afternoon, Mr. Williams. My name is
22 Robert Dreiling. I am representing the Kansas City
23 Southern

24 A Good afternoon.

25 Q The first questions I am going to ask you are

1 about the economic content. I am trying to set a basis
2 for something.

3 Are there markets, economic markets for which
4 the capital requirements for entry and maintenance are
5 so slight that firms find it relatively easy to enter
6 those markets, to withdraw from the markets, and to
7 reenter the markets?

8 A Yes.

9 Q Are such markets generally characterized by a
10 high degree of competition?

11 A Yes.

12 Q If there are profits to be made, will firms
13 readily enter such markets?

14 A Yes.

15 Q Now, will firms withdraw from some markets
16 when the demand decreases and becomes slight?

17 A In general, yes. Sometimes they overstay the
18 time they should withdraw. But basically my answer
19 would be yes.

20 MR. MOATES: Your Honor, I am going to
21 interject, if I may. I hate to do this, but I question
22 the propriety and the competence of this witness to
23 answer these questions. He told me at the outset that
24 he is not a trained economist. He said he took some
25 courses of economics in college. I did, too. I don't

1 consider myself a trained economist.

2 I think these are fairly theoretical
3 questions. If counsel has particular questions relating
4 to his testimony --

5 JUDGE HOPKINS: How far are you going, Mr.
6 Dreiling?

7 MR. DREILING: My next question was, is the
8 railroad transportation market generally considered a
9 market of this character?

10 JUDGE HOPKINS: Go ahead.

11 THE WITNESS: No.

12 JUDGE HOPKINS: And then end on that.

13 BY MR. DREILING: (Resuming)

14 Q Is this because in the rail transportation
15 market you consider it capital intensive?

16 A Yes, yes.

17 Q Therefore wouldn't you say that the railroad
18 transportation market is characterized by a high cost of
19 entry into that market?

20 A Yes, that is correct.

21 Q Now, what I am going to ask you to do is
22 assume with me that my railroad -- first of all, do you
23 know where my railroad is located, the Kansas City
24 Southern is located generally?

25 A I do.

1 Q Assume that my railroad wants direct market
2 access to west coast common points served by the SP and
3 Santa Fe.

4 A Yes.

5 Q Now, I would have three alternatives, as I see
6 it, to get direct market access. First of all, I could
7 purchase the right of way and construct the track on
8 it. Is that right?

9 A Yes.

10 Q Or I could negotiate hopefully and obtain
11 trackage rights over the carriers serving those points.

12 A That, too, is an option.

13 Q Or, and would you accept that the IRMA
14 proposal as proposed by KCS would give us direct market
15 access?

16 A That also is an option.

17 Q Now, then, I am going to ask you -- okay, now,
18 considering those three alternatives, which would
19 require the greatest commitment of capital as a means of
20 entering the market and maintaining ourselves in the
21 market?

22 A The first one.

23 Q Which would afford the least opportunity to
24 withdraw from the market should the demand for our
25 services become so slight that there wasn't enough

1 traffic to support?

2 A The first one.

3 Q Which would require the least capital
4 commitment?

5 A The third one.

6 Q And which would afford the greatest
7 opportunity to withdraw from the market in the event
8 demand became slight?

9 A The third one.

10 Q Which would afford the least opportunity --
11 which would -- okay, assume withdrawal from the market.
12 Which would afford the least opportunity to reenter the
13 market subsequent to any such withdrawal?

14 A I am sorry. Now, that question I don't
15 understand.

16 Q Okay. Basically, which of the three
17 alternatives would afford the least opportunity to
18 reenter the market assuming an earlier withdrawal from
19 that market?

20 A I still don't have it. I think your question
21 is okay. I think I am getting tired. If you could just
22 repeat it.

23 Q Where the first alternative, that is, the need
24 to purchase track and -- to purchase right-of-way and
25 track -- I think I have gone far enough. I am going to

1 withdraw that question.

2 Would you turn to Page III-10 of your verified
3 statement?

4 A Yes.

5 Q There you discuss the financial viability of
6 the Rio Grande SPT extension would probably be impaired
7 if it didn't get the additional trackage rights down to
8 Bakersfield.

9 A Yes.

10 Q Could you explain to me basically, and I think
11 we covered this on earlier cross examination, by that
12 you mean they would not have sufficient traffic density
13 or sufficient traffic to support their lease payments on
14 the track and their other capital requirements?

15 A All I mean, very simply, is, it is
16 questionable whether they will have enough revenue left
17 after they pay all their expenses to be financially
18 viable.

19 Q When a carrier operates under trackage rights,
20 is there a minimum amount of traffic it must haul in
21 order to support its lease payments?

22 A Well, there is no fixed minimum. Usually
23 trackage rights do have an annual payment representing
24 interest on the property being utilized. It has to be
25 covered whether any traffic is moved or not, though.

1 Q And similarly, if you are operating trains on
2 these trackage rights, there would be some capital
3 committed to locomotive power or what have you, would
4 there not?

5 A Yes. I agree.

6 Q Now, with regard to the IRMA proposal, would
7 KCS be committed whether or not the IRMA traffic moved
8 over the SPSF route to pay lease payment on the track?

9 A I don't believe so.

10 Q Would it be required to commit capital for the
11 locomotive power?

12 A No, I don't believe so.

13 MR. DREILING: I believe that is all I have.

14 JUDGE HOPKINS: Thank you.

15 Any redirect?

16 MR. MAC KENZIE: A couple of questions, Your
17 Honor.

18 REDIRECT EXAMINATION

19 BY MR. MAC KENZIE:

20 Q Mr. Williams, Mr. Moates asked you questions
21 regarding the study that was marked SFS9-C-157, which is
22 several pages only of a study that you acknowledge you
23 had conducted, or at least this was the testimonial
24 portion of a study that -- two pages of a testimony
25 about a study that you indicated that you had

1 prepared.

2 As I understand, there was a study of a more
3 comprehensive nature than the two pages he showed you?

4 A Yes, the entire rebuttal statement is probably
5 several hundred pages, and the actual analyses of the
6 efficiency of the various routes consumed, in my
7 recollection, something like 25 appendices, so there are
8 points that are not listed there.

9 There are routes that are not listed in that
10 two-page summary, and so on, that are all contained in
11 the study that was actually filed with the Commission.

12 Q And for the purposes of the study that you
13 conducted that led up to your testimony in this
14 proceeding, did you rely on that study that you
15 acknowledged participating in in conjunction with the
16 Tucumcari proceeding?

17 A No, I did not, and I think I stated the
18 reasons earlier why I would not have relied on it.

19 Q Also, I have a question regarding counsel's
20 Exhibit 159, Mr. Moates -- Mr. Moates asked the
21 question.

22 This is the exhibit that was purportedly taken
23 from Form C-864, Switch Order for Connecting Lines at
24 Oakland, California, listing some nine movements of
25 cotton from Oakland presumably to points in the

1 southeast, southeastern United States. Do you recall
2 that?

3 A Yes.

4 Q Is there any way for you to tell from that
5 exhibit about the origin point of the cotton, that is,
6 the portion of the world or California or the United
7 States that that cotton was grown in, grown at?

8 A No, there is none. I thought I said that. I
9 don't know where it came from.

10 Q Would that be a factor that you would find
11 necessary to know in order to draw any conclusions based
12 upon this counsel's exhibit?

13 A Well, I just don't know. I think it is
14 important to know whether it is import cotton or whether
15 it is from California from the standpoint of our
16 analysis. But I just don't know.

17 MR. MAC KENZIE: I think that is all I have.

18 JUDGE HOPFINS: Anything further?

19 MR. MOATES: One question.

20 RECROSS EXAMINATION

21 BY MR. MOATES:

22 Q Does the Southern Pacific serve any warehouses
23 in Oakland that provide storage services for cotton that
24 is grown in the San Joaquin Valley?

25 A I don't know.

1 JUDGE HOPKINS: Thank you. Nothing further?
2 You are excused, sir. Thank you very much.

3 (Witness excused.)

4 MR. MAC KENZIE: Your Honor, I would like to
5 move for introduction into evidence CPUC-5 and 6, the
6 statement of William R. Schulte, and additionally CALT
7 Number 3, the statement of Mr. Warren Webber of
8 CalTrans.

9 JUDGE HOPKINS: Any objection?

10 MR. MOATES: No.

11 JUDGE HOPKINS: They will be received in
12 evidence.

13 (The documents referred to,
14 previously marked for
15 identification as CPUC-5 and
16 CPUC-6, were received in
17 evidence.)

18 MR. MOATES: I would like to move, Your Honor,
19 SFSP Counsel's Exhibit C-156 through C-160.

20 JUDGE HOPKINS: Any objection?

21 MR. MAC KENZIE: Your Honor, I have an
22 objection as to 157. On the basis of both direct and --
23 that is, cross examination and redirect testimony, it
24 has been established that this is merely two pages of a
25 very comprehensive and elaborate study that was

1 performed in conjunction with the Tucumcari some seven
2 or eight years ago, and for several reasons I think it
3 is not proper to receive into evidence.

4 First of all, it was not introduced into the
5 record in that proceeding. It did not become part of
6 the public record, and is no different than any analysis
7 that someone might decide to perform in conjunction with
8 some proceeding which has only very remote resemblance
9 or semblance to this matter.

10 And secondly, if Your Honor believes that it
11 should be permitted in the evidence from the weight that
12 it presents, I think it is unfair to California to
13 permit only two pages of a very comprehensive study to
14 be part of the record, and I would request that the
15 entire study be made a part of the record, if any part
16 becomes part of the record.

17 MR. MOATES: Your Honor, a couple of points.
18 First of all, Mr. Williams confirmed that he wrote the
19 statement, it was his testimony, he verified it at the
20 time he submitted it to the Commission, as we learned
21 from him, and I did not know at the time I presented it
22 to him.

23 It apparently was not received by the examiner
24 because of the issue of competence. It doesn't make it
25 any less the testimony or views of Mr. Williams, and he

1 said that they were his views then.

2 I was struck by his answer on redirect, and he
3 did not rely upon it for purposes of the testimony.
4 That is the precise purpose of my cross examination, to
5 show that. I have the entire document here. I gave one
6 to Mr. Williams this morning. I will give one to Mr.
7 MacKenzie now. If he wants to burden the record with
8 it, I guess I don't have a problem. I don't think it
9 serves any purpose.

10 MR. MAC KENZIE: I might point out also that
11 even the two pages are not even in order.

12 JUDGE HOPKINS: Do you want to present the
13 total record, Mr. MacKenzie? Do you want it as a late
14 filed exhibit?

15 MR. MAC KENZIE: I would prefer -- I think it
16 is just burdening the record to allow the thing in at
17 all. I think whatever minor weight it might have is
18 already in the record in the form of questions and
19 answers.

20 JUDGE HOPKINS: Well, the questions and
21 answers -- in my opinion, it is clear what his opinion
22 is now. You can take it from what was presented. Now,
23 if you want to present the total, I am perfectly willing
24 to accept that, too.

25 MR. MAC KENZIE: Well, I guess it would depend

1 on how voluminous it is.

2 JUDGE HOPKINS: There it is.

3 MR. MAC KENZIE: It looks pretty small to me.

4 JUDGE HOPKINS: It is up to you. I am going
5 to receive the documents in evidence.

6 (The documents referred to,
7 previously marked for
8 identification as SPSF-C-156
9 through SPSF-C-160
10 inclusive, were received in
11 evidence.)

12 MR. MAC KENZIE: If you are going to receive
13 the document, then I would request that you additionally
14 receive the full rebuttal testimony of Mr. Williams.

15 JUDGE HOPKINS: Why don't you submit it as a
16 late filed exhibit so that you will have copies? Have
17 you had any -- counsel, I don't think you have had a
18 previous counsel's exhibit, have you?

19 MR. MAC KENZIE: No.

20 JUDGE HOPKINS: It will be your counsel's
21 Exhibit Number 1. We will consider that as a late filed
22 exhibit, and you can submit it within ten days, could
23 you?

24 MR. MAC KENZIE: It would be CPUC-C-1.

25 JUDGE HOPKINS: Thank you. It will be

1 received in evidence as a late filed exhibit.

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

7 JUDGE HOPKINS: Off the record.

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

10 JUDGE HOPKINS: We will be in recess for 15
11 minutes.

12 (Whereupon, a brief recess was taken.)

13 JUDGE HOPKINS: Back on the record.

14 MR. SCHEIRMAN: Your Honor, I would like to
15 enter my appearance. I am John Scheirman, attorney for
16 the state of Kansas. Wherepon,

17 VIC MOSER

18 was called as a witness, and having been first duly
19 sworn, took the stand, and was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. SCHEIRMAN:

23 Q Would you please state your name, your
24 business address, and your title for the record?

25 A My name is Vic Moser. My business address is

1 335 North Washington, Hutchinson, Kansas, 67501. And I
2 am president of my company, Flatland Professional
3 Services.

4 Q Did you prepare this statement which appears
5 at KANS-8?

6 A I did.

7 Q Do you have any corrections to make in that
8 statement?

9 A I do.

10 On Page 17 of the statement, the third full
11 line from the bottom of the page reads from the left
12 "Competition in southwest Kansas." I would like to
13 insert "and thereby before the word "reaffirms."

14 On Page 1 of Appendix B, second paragraph,
15 fourth line starts out "List of 72 commodities." It
16 should read "70."

17 On Page 2 of Appendix B, under the comment,
18 third line, it says "May not be effected," and it should
19 be "affected."

20 If I could backtrack a bit, Appendix A, Page
21 2, Number 6, at the end of that phrase there should be a
22 second sentence which says "See Appendix B"

23 On Number 7, it has a reference to Appendix b.
24 That should be c.

25 And in Number 8, the second sentence should be