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1 included which says "See Appendix D."

2 And on Page 1 of Appendix C, I have quoted
3 Harold Gastler, president of the Katy. In the eighth
4 line of that quote, I refer to number 2879. That should
5 be 28799.

6 Those are all the corrections.

7 Q With these corrections, is that statement true
8 and correct to the best of your knowledge and belief?

9 A Yes, it is.

10 MR. SCHEIRMAN: The witness is available for
11 cross examination.

12 JUDGE HOPKINS: Mr. Wilson.

13 CROSS EXAMINATION

14 BY MR. WILSON:

15 Q Good afternoon, Mr. Moser. My name is Dennis
16 Wilson. I represent the Santa Fe Southern Pacific
17 Corporation.

18 Sir, I would like to begin by referring you to
19 Page 10 of your verified statement, if I may. There you
20 state at the top of the page that consonant with your
21 support of the merger, your concern for the resultant
22 effects on competition in isolated instances and on the
23 viability of other carriers.

24 I would like to ask you first about your
25 concern for potential adverse competitive impacts in

1 isolated instances. To begin with, I would like to ask
2 you about your competitive analysis. It is true, is it
3 not, that you analyzed two separate geographic markets,
4 southwest Kansas exclusive of Reno County and another
5 market for Reno County?

6 A In detail. Actually, I looked at seven
7 different geographic markets in southwest Kansas. Those
8 are all listed in Appendix C.

9 Q Now, in analyzing southwest Kansas, it appears
10 that you made a separate analysis for grain on the one
11 hand and for all commodities other than grain on the
12 other hand. Is that correct?

13 A Grain in particular, milo and wheat. I did
14 not -- I made an analysis, but it does not necessarily
15 appear within the statement. I looked at other
16 commodities somewhat in the analysis of Hutchinson in
17 Reno County.

18 Q Now, in connection with your southwest Kansas
19 analysis of commodities other than grain, that is the
20 analysis that is reflected in your Appendix B. Is that
21 correct?

22 A Maybe I should clarify that. Appendix B is
23 statewide analysis. It does not reference southwest
24 Kansas.

25 Q Okay, I am sorry. Now, in connection with

1 this, this is a study of SFSP traffic in the four-digit
2 STCC digit level. Is that correct?

3 A Yes.

4 Q And you have explained that it is a statewide
5 analysis. Now, when you looked at commodities to
6 determine whether there is a potential for market
7 dominance after the merger, you developed a particular
8 threshold which would trigger your concern and detailed
9 investigation of whether or not there would be a
10 problem. Is that correct?

11 A That's correct.

12 Q It appears from Page 1 of Appendix B that the
13 threshold that you determined to be the one which would
14 trigger a more detailed investigation was a market share
15 by SFSP of 87.79 percent. Is that correct?

16 A That's correct.

17 Q Could you explain on the record how it was you
18 came up with that threshold figure?

19 A Yes. I might begin by saying that I had first
20 looked at a complete sample, way bill samples as
21 referenced here of all of the commodities that were
22 shipped in Kansas, either origins or destinations or
23 both within the state of Kansas.

24 I had trimmed that down somewhat until I got
25 to a level which I thought was appropriate for analysis,

1 and that was a level of 300 carloads or \$500,000
2 generated within the calendar year 1982.

3 I then looked at -- in looking these over, I
4 discovered that many of them had very small market
5 share, some as low as 5.38 percent, I think, that would
6 be carried by the SFSP.

7 In looking at a method of what should be
8 looked at, which should receive the most attention, I
9 determined, first of all, it probably was the ones with
10 the highest market share, and wanted to screen those 70
11 commodities which came of this analysis in some manner.

12 It seemed appropriate to use the mean plus
13 standard deviation, assuming that first of all Santa Fe
14 Southern Pacific would carry a great deal of traffic.
15 The median turned out to be around 64 percent, I
16 believe.

17 And by adding in that area under a normal
18 curve, again, assuming that these 70 commodities were
19 normally distributed, then most or in fact 68 percent
20 are within the region defined by the mean plus and minus
21 the standard deviation.

22 So, what I used was the area under the normal
23 curve in excess of the mean plus standard deviation. I
24 felt this identified the commodities in which there was
25 at least the potential for damage, and then I looked at

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each one of these commodities in detail.

Q Are you familiar with the standard employed by the U.S. Department of Justice in this case which was that if the market share of SFSP exceeded 50 percent and there was a greater than 10 percent increase, there was a potential for anticompetitive harm?

A Yes, I am familiar with that.

Q Why was it that you selected the standard which you did instead of the standard which the Department of Justice has used in this case?

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1 A Part of the reason is the characteristic of
2 Kansas where the Santa Fe Southern Pacific has a large
3 number of lines, and one would expect that they would
4 carry at least 50 percent of most commodities, that they
5 serve at least 50 percent of the points and therefore it
6 would only be normal that 50 percent or more would be
7 carried by the Santa Fe Southern Pacific.

8 It seemed reasonable to go a little further
9 and look at commodities which really were at a higher
10 level, and the method I described previously was the one
11 I used for that.

12 Q Would you say that the Department of Justice
13 screen would have identified a number of flows with
14 respect to which there would not be a potential
15 anti-competitive problem?

16 A Yes, I think that's correct.

17 Q Do you think that your 87.79 percent market
18 share screen enabled you to examine in detail all of the
19 flows with respect to which there is a potential for
20 adverse competition?

21 A I can't say that it would have, that there may
22 not be some commodity that I didn't analyze where there
23 might be a problem. I felt, though, when I looked at
24 these 14 commodities that were identified, that if I
25 were to find any in there that worrisome to me that it

1 would have been worthwhile to go forward.

2 And I didn't, so I felt that I had adequately
3 assessed this area.

4 Q That's right. Now, it is true that the result
5 of your study was that in all of the 14 flows your
6 conclusion was that the SFSP merger would not cause
7 competitive problems, is that right?

8 A I probably should modify that somewhat and,
9 rather than have the complete and final statement, no
10 anti-competitive effect, I probably should modify that
11 with a no significant anti-competitive effect.

12 Q Now, turning to your appendix entitled
13 "Analysis," at the bottom of page 7 you discuss that no
14 instances of anti-competitive impacts were found in your
15 examination of Kansas traffic. You list one of the
16 reasons being the following: "Either the origins or
17 destinations or both were diverse and significant
18 interlining was present."

19 Could you explain what this reason means?

20 A In this instance -- and this didn't apply to
21 every case, but if this was the reason that I found,
22 origins or destinations or both were diverse, meaning
23 either within the State of Kansas or across the country,
24 and I felt it would be difficult for the Santa Fe, and
25 probably impossible, to circumscribe an entire -- for

1 Santa Fe-SP to circumscribe an entire area.

2 And especially looking at the regions, as I
3 did, and where they were coming from and what railroads
4 were being interlined, in many cases were being
5 interlined with. In many cases the Santa Fe-SP would
6 not be the originating carrier, so it would be difficult
7 for them to foreclose a movement.

8 Q Are you referring here in part to source
9 competition for the traffic flows involved?

10 A Yes, source and destination competition.

11 Q Now, you separately looked at grain movements
12 from southwest Kansas, and within that you looked
13 separately at wheat movements as distinct from milo
14 movements; is that correct?

15 A That's correct.

16 Q Now, isn't it correct that you agreed with Dr.
17 Anderson's conclusion that there would be no significant
18 anti-competitive effect with respect to wheat movements
19 from southwest Kansas?

20 A I did agree.

21 Q However, you did look at milo movements in
22 quite a bit more detail, isn't that correct?

23 A That's correct.

24 Q Now, turning to the top of page 9 of your
25 analysis appendix, you appear to have your basic

1 conclusion of the result of that analysis, where you
2 state that: "In short haul markets between one and 250
3 miles, trucks would be dominant. In long haul markets,
4 greater than 500 miles, rails would be dominant. And
5 between 250 and 500 miles, it appears that both rails
6 and trucks are effective competitors."

7 Is that a fair summary of your milo analysis?

8 A That's correct.

9 Q Okay. Now, about how much southwest
10 Kansas-produced milo is shipped less than 250 miles,
11 where you say that trucks are dominant?

12 A May I refer to my table?

13 Q Sure.

14 A Are you asking how much in tonnage or how much
15 in percent?

16 Q Well, I would say how much in percent. Why
17 don't you refer to page 9 of appendix C. It looks like
18 you may have a reference to it at the bottom of page 9.

19 A I found 59.2 percent went to destinations less
20 than 250 miles from the southwest Kansas district.

21 Q What are you referring to here? Are you
22 referring to tonnage or carloads?

23 A That would be referring to tonnage.

24 Q Now, about how much of these milo shipments
25 from southwest Kansas were shipped more than 500 miles?

1 A Again, I would have to refer to my table. If
2 you can find it faster than I can, I would appreciate
3 your helping me.

4 Q It may be at the top of page 10.

5 A 18.1 percent.

6 Q Is that figure also in terms of tonnage?

7 A That's in terms of tonnage.

8 Q Do you think that farmers' and elevators'
9 ability to ship their milo to feedlots in southwest
10 Kansas within 250 miles, instead of relying on SFSP to
11 ship their milo for distances greater than 500 miles,
12 would act as a competitive constraint upon SFSP's
13 ability to price milo traffic after the merger?

14 A I relied on statistics developed by the Kansas
15 Crop and Livestock Reporting Service, which has a
16 portion in the grain marketing and transportation study
17 which identifies truck versus rail movements, and in
18 another table that's not related asked about the
19 distance that this grain has moved.

20 And it would appear from that and it's my own
21 opinion that trucks would predominate as to feedlot
22 markets in the local area, and that's one that is
23 originated both from farmers and elevators.

24 Q I understand that, sir. But my question was
25 somewhat different. Do you think that the ability of

1 the farmers and elevators to ship their milo to these
2 local feedlots instead of to markets over 500 miles
3 away, that that ability itself would act as a constraint
4 on SFSP's ability to charge unreasonable high rates on
5 milo shipments moving greater than 500 miles?

6 A That was my conclusion. I feel that that is
7 the major factor in the market.

8 Q Okay, sir. Now, you also state that corn is a
9 substitute for milo. Do you think that the fact that
10 corn is a substitute for milo would also contribute to
11 constraining SP-SF's rate levels?

12 A Yes.

13 Q How would this constraint work?

14 A Generally, milo is preferred at a cattle feed
15 and that's where most of this is going. So the pricing
16 of it generally runs somewhat higher and it's consumed
17 generally first. In those terms, it would be a factor.
18 I don't think it would be a factor to the degree that
19 the other would be.

20 Q Okay. Now, at the bottom of page 10 you refer
21 to the Gulf export price for milo. The delivered prices
22 for milo at Gulf ports would continue to be at
23 competitive levels after the merger, would they not?

24 A Yes.

25 Q You also refer to competition from Texas

1 producers for movements of milo to the Gulf Coast
2 ports. Is this competition significant today?

3 A I believe it is significant, yes.

4 Q Then you would expect that that would continue
5 to be significant after the merger, would you not?

6 A Yes.

7 Q Now, many of these producers could use trucks
8 or railroads other than SPSF to move from the Texas
9 producing areas to the Gulf Coast ports, could they
10 not?

11 A That's true.

12 Q And this would be another constraint upon
13 SFSP's ability to price milo traffic out of southwest
14 Kansas after the merger, would it not?

15 A Yes, that's correct.

16 Q Now, sir, in Appendix C, page 32, the last
17 page, in your last sentence you point out that: "MKT's
18 conditions would not be helpful to solve potential
19 competitive problems between southwest Kansas origins
20 and destinations in Arizona and California."

21 Why is that?

22 A If they were to operate the Tucumcari line
23 from Topeka to Liberal or Liberal to Topeka, they would
24 only be able to move in an eastward direction. The only
25 interlining possibility would be the Santa Fe-SP to go

1 westward. If they were to pick up anything in that
2 area, it is possible that they would interline with the
3 Santa Fe-SP to go westward, but I don't feel that that
4 would answer the question.

5 I believe I did find some competitive damage
6 in that area, in the milo area, not significant as to
7 overturn my opinion, but the competition will exist and
8 I guess the Katy in this case would not be helpful.

9 Q Okay, sir. Now, in regard to movements from
10 southwest Kansas to California, is it part of your
11 conclusion here that Katy could not reasonably compete
12 via say Dallas in interline traffic, taking it from
13 southwest Kansas down to Dallas and then interlining it
14 into California?

15 Is part of your conclusion here that Katy's
16 routes would be too circuitous to offer an effective
17 competitive option for shipments to Arizona and
18 California?

19 A I think that it would be a possibility that
20 they could do some interlining, but I don't think it
21 would be something that would be preferred by them. I
22 think they're more interested and the line would be more
23 effective for them if they moved on eastward
24 commodities.

25 In terms of circuitry, yes, there would be some

1 circuitry and there would be some additional interchanges
2 required.

3 Q Now, sir, you also separately analyzed Reno
4 County or Hutchinson as a separate market, is that
5 right?

6 A That's correct.

7 Q Now back at page 13 of your verified
8 statement, in describing your Hutchinson analysis you
9 quote from the ICC merger policy guidelines; is that
10 correct, the reference to 49 CFR Section 1180.1?

11 A Is that page 13 of the analysis or the
12 statement?

13 Q The verified statement.

14 A I have it. And yes, your question is
15 correct.

16 Q Okay. Now, these guidelines point out in
17 part: "The reduction in the number of competitors is
18 not in itself harmful." Do you see that quote there,
19 sir?

20 A Yes.

21 Q Now, my question to you is, could you describe
22 those situations where the reduction in the number of
23 competitors is not harmful from a public interest
24 standpoint?

25 A I think the southwest Kansas situation is one

1 in terms of the large amount of truck competition that
2 is there and appears to be growing.

3 Q Okay. So is the standard that where
4 competition remains effective after the merger,
5 reduction of a competitor is not a public interest
6 concern?

7 A Yes.

8 Q Would another situation be where one of the
9 competitors that is being eliminated is only an
10 insignificant competitor today?

11 A That is possible. I'd have to look at the
12 situation.

13 Q Okay. Well now, you concluded, did you not,
14 that there would be no significant competitive problem
15 on movements of commodities other than grain out of
16 Hutchinson, Kansas?

17 A That's correct.

18 Q Now, could you turn, sir, to Appendix D, page
19 3, your discussion of the Hutchinson, Kansas, market.
20 Now, your statement that we discussed just a moment ago
21 with respect to southwest Kansas, that MKT trackage
22 rights would not be effective as a solution to
23 competitive problems between southwest Kansas on the one
24 hand and destinations in Arizona and California on the
25 other hand, would that also apply with regard to traffic

1 moving between Hutchinson origins and the Arizona and
2 California destinations that you list on page 3 of
3 Appendix D?

4 A What grain are you talking about in
5 particular? Are you just talking about the Arizona and
6 California markets when you ask that question?

7 Q Yes, just Arizona and California markets. I'm
8 just talking about, referring to page 3 of Appendix D,
9 you are showing shares of milo being handled by both
10 Santa Fe and SP to Arizona and to California. Now, my
11 question is is your reasoning that Katy trackage rights
12 would not be effective to solve a competitive problem
13 between southwest Kansas origins and Arizona and
14 California also applicable to this situation, that Katy
15 trackage rights would not be effective to solve any
16 competitive problem this merger might cause between
17 Hutchinson origins and Arizona and California
18 destinations?

19 A Yes.

20 Q So that leaves us with your third set of
21 numbers to analyze the movement from Hutchinson origins
22 to southeast Texas destinations. And there we see that
23 Southern Pacific has a share of wheat movements that is
24 1.68 percent, and a share of milo movements that is zero
25 percent.

1 I guess my first question is, why do you think
2 that SP's shares of this traffic from Hutchinson to
3 southeast Texas are so low?

4 A I think the problem that the Southern Pacific
5 has is in terms of having to interline to get to
6 southeast Texas.

7 Q In terms of single line routes of this SP from
8 Hutchinson to southeast Texas, would you say the SP's
9 routes are too circuitous to be effective competitive
10 alternatives today?

11 A Yes, I would.

12 Q Don't you think that these relatively low
13 shares, these very low shares for SP, reflect the fact
14 that SP is only an insignificant competitor between
15 Hutchinson and southeast Texas today?

16 A I think that in terms of volume they appear to
17 be insignificant. I think they may be an influence
18 there.

19 If I can continue on, that problem was one we
20 had recognized somewhat earlier in terms of the Southern
21 Pacific having to interline. And I think too there may
22 be somewhat of a problem with this data, and I might
23 discuss that later.

24 I think that my opinion is, first of all, that
25 there is quite a difference between southwest Kansas and

1 Hutchinson in terms of southwest Kansas as an origin
2 shipping toward a terminal. The Hutchinson market is
3 different in terms of its being a receiver and then a
4 shipper in major quantity, and the fact that in doing
5 that it has quite an effect on the market and is an area
6 we can't afford to have some anti-competitive problem.

7 Q Don't Union Pacific's grain rates from
8 Hutchinson to the Gulf ports today affect the rates that
9 Santa Fe can charge today?

10 A I'm sure they do.

11 Q In fact, don't Santa Fe's rates have to be
12 equal or very nearly equal to Union Pacific's rates in
13 order for Santa Fe to move the traffic out of Hutchinson
14 to the Gulf Coast ports?

15 A Yes, I believe so.

16 Q Do you have any reason to believe that --
17 well, would you describe this current competition
18 between Santa Fe and Union Pacific between Hutchinson
19 and the southeast Texas destinations as effective
20 competition today?

21 A Between which two?

22 Q Between Union Pacific and Santa Fe. Would you
23 say that the current competition between the Union
24 Pacific and Santa Fe for traffic moving from Hutchinson
25 to the Gulf ports and to Mexico is effective

1 competition?

2 A I would say it is, yes.

3 Q Do you have any reason to believe that this
4 current effective competitive between Union Pacific and
5 Santa Fe would not continue after the SPSF merger?

6 A I would hope it would continue.

7 Q In fact, you would expect that it would
8 continue, would you not?

9 A Yes, I would.

10 Q Now, sir, turning back to page 14 of your
11 verified statement, in the third paragraph of your page
12 14, there you state -- and I think this is the only time
13 in your presentation -- you state another competitive
14 reason for injecting the MKT into Hutchinson. And you
15 state that: "The addition of the MKT would restore a
16 competitive condition that existed when the Rock Island
17 was a viable carrier."

18 To what extent was this factor a reason for
19 your support of the MKT trackage rights?

20 A I think in looking at the situation and
21 looking at competition in general, we have taken more of
22 a long-range view of the way things are developing.
23 Things have happened in Kansas and across the nation
24 pretty quickly. Our view has always been that we should
25 maintain a competitive situation through these numerous

1 changes, which tend to happen in large jerks, I guess,
2 as we move along.

3 We had encouraged in every way the Southern
4 Pacific to become a complete competitor, and they were
5 not able to do so in a previous case. They were able to
6 do it in some respects through interlining.

7 Q Would you agree, though, sir, that harms
8 caused by the demise of the Rock Island would by
9 definition not be harms caused by the SFSP merger?

10 A I'm saying that we probably have to look at
11 somewhat of a broader definition than is contained
12 within the ICC guidelines when I'm looking at this on a
13 state level.

14 Q I see. So here you are going beyond the ICC
15 guidelines of looking at harm caused by the merger, and
16 you're saying that we have an opportunity to restore a
17 competitive route that was lost when the Rock Island was
18 liquidated, and therefore it's a good idea to have an
19 additional competitor at Hutchinson, is that right?

20 A Well, I think there is a competitive influence
21 with the third carrier there today, and although some of
22 the effectiveness has been related to the Rock Island
23 situation, where the effect was never quite able to
24 bring it back, that's not my total reasoning here.
25 That's the reference.

1 Q Okay. Sir, could you turn to page 11 of your
2 verified statement and look at the second paragraph, the
3 last sentence in the second paragraph. You state in the
4 second paragraph that: "It's in the public interest of
5 Kansas for a merger to occur, even where it eliminates
6 competition between two railroads, so long as one of two
7 standards are met."

8 And you list two standard in this last
9 sentence of the paragraph. You say: "One, either you
10 are convinced the competition remains; or two, there are
11 compensating benefits." Do you see that, sir?

12 A Yes, I do.

13 Q Okay. Now, looking first at your second
14 standard, what compensating benefits would you say are
15 present in connection with the SFSP merger?

16 A I think some of these occur in terms of
17 efficiency, some things that our shippers want to have:
18 improved car service, improvements in the ability to
19 work with traffic off of the Tucumcari line, the single
20 line service that our shippers indicated to us is very
21 important to them.

22 Q How do these benefits, to use your word,
23 compensate for any reductions in competition that might
24 result from the SFSP merger?

25 A I think they compensate to some degree in

1 respect of the ability of shippers to have extra
2 opportunities, market opportunities, or whatever else.
3 In my opinion, in this situation these compensating
4 benefits we've been referring to overcome the slight
5 loss in competition in southwest Kansas.

6 Q Okay. Sir, would one of the compensating
7 benefits be the new ability of Santa Fe shippers to
8 access the Port of Corpus Christi on single line
9 service, for example?

10 A Yes, it would.

11 Q Would another compensating benefit be the
12 ability of Southern Pacific shippers to obtain a new
13 direct route to Beaumont, Texas, for example?

14 A Yes, it would.

15 Q Now, turning to your analysis appendix again,
16 at page 20, the bottom of the page, I had a question.
17 There you state in the next to the last sentence that
18 your conclusion is that overall the potential benefits
19 to the Applicant and the public outweigh the potential
20 harms to the public.

21 Now, is this a result of your weighing the
22 compensating benefits we talked about earlier against
23 the potential competitive harms?

24 A That's correct.

25 Q Do you think that the ICC should engage in a

1 similar process of weighing the pro-competitive benefits
2 against the competitive harms of this merger?

3 A Yes, I assume they would under their
4 guidelines.

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1 Q On page 11, we discussed your standards of
2 compensating benefits for reductions in competition.

3 Now, your next point is it's okay to eliminate
4 a competitor if you're convinced if competition
5 remains. Do you mean by this that a competitor could
6 disappear from a market consistent with the public
7 interest, as long as effective competition remained in
8 that market after the merger?

9 A That's a wholesale statement, I guess, but
10 yes, I would agree in specific instances; for example,
11 southwest Kansas.

12 Q Okay, sir. Now, have you read the testimony
13 of Dr. Klem of the U.S. Department of Transportation?

14 A Yes, I have.

15 Q Do you recall that Dr. Klem's testimony was
16 that a lack of market dominance by a carrier in
17 connection with a given traffic flow was the same thing
18 as effective competition with regard to that traffic
19 flow?

20 A I remember the statement.

21 Q Do you agree with that analysis?

22 A Yes, I agree with it, again, looking at
23 specific situations.

24 Q Right. I'm just trying to get the principles
25 down.

1 Now, Dr. Klem also testified that one could
2 assume a lack of market dominance and could be assured
3 that there was effective competition where railroad rate
4 levels were below 180 percent of the railroad's variable
5 cost.

6 Do you recall that Dr. Klem said that?

7 A Yes.

8 Q Do you agree with that standard?

9 A Yes. I am sure there are some exceptions
10 there. But yes, I do agree with that standard.

11 Q Okay. In general?

12 A In general.

13 Q At the top of page 13, sir, you refer to
14 relying on the zone of rail carrier rate flexibility in
15 49 USC, Section 10707 A.

16 Now, that provision which would regulate
17 prices in certain circumstances doesn't even come into
18 effect until a railroad's revenues exceed 180 percent of
19 its variable cost; isn't that correct?

20 A That's correct.

21 Q So your testimony, even as written, implicitly
22 says, does it not, that if rail rates are less than 180
23 percent of the railroad's variable cost, there is
24 effective competition and no competitive problem.

25 A There's two parts to that sentence. The first

1 says reliance on market forces.

2 Q Yes, sir.

3 A And the zone of rail carrier flexibility;
4 yes.

5 Q Now, turning back to the top of page 10 of
6 your verified statement, Mr. Moser. Now, I think we
7 have covered about all we can about the effects of
8 competition in isolated instances, so I want to move on
9 to the viability of other carriers.

10 Now, I guess the way to do that is to go to
11 Appendix E. Can we go back to Appendix E, which is the
12 results of your shipper survey? In fact, perhaps you
13 could start by -- well, never mind.

14 If you look at Appendix E, page 4, this
15 reports some of the results of your Kansas shipper
16 survey, does it not?

17 A Correct.

18 Q Now, if you look at the results in line B of
19 page 4, this asks shippers whether they believe the SFSP
20 merger would lead to destructive competition to other
21 carriers. And shippers who had an opinion stated by a
22 margin of 68 to 20, or nearly 3-1/2 to 1, that the SPSF
23 merger would not lead to destructive competition to
24 other carriers; is that right?

25 A That's correct.

1 Q This has been one of the most clearcut
2 responses in your entire shipper survey, is it not?

3 A There were not very many clearcut responses in
4 this survey. I think I have qualified that in terms of
5 how we use it and the effect we thought it should have.

6 Q Would you regard this as a fairly clearcut
7 statement that shippers do not think that the SPSF
8 merger will lead to destructive competition to other
9 carriers?

10 A There are a couple of things to consider.
11 One, that is about half of the total response. I don't
12 know how to evaluate the "don't know." It maybe split as
13 well if we were to go further. But most of the survey
14 questionnaires were sent to Santa Fe shippers who
15 probably, I would expect, would not have the
16 sensitivities of a Katy or a Denver Rio Grande or
17 whatever else shipper in mind.

18 Q Okay, sir.

19 Well now, could you turn to your analysis
20 appendix at page 15? There you report in the last
21 paragraph that MKT estimates it would lose \$19.4 million
22 gross revenues annually as a result of the merger and
23 that SFSP states that it will gain from MKT \$5.2 million
24 annually as a result of the merger.

25 Do you see those figures, sir?

1 A That's correct. I was just reporting the
2 figures in the appropriate statements.

3 Q I assume that the reason you reported both
4 figures was because you believe that the actual
5 diversion impact will be somewhere in between the two
6 numbers. Is that right?

7 A I would expect the SFSP will do an estimate
8 that would not necessarily be couched in favorable
9 terms, but would be one that is relatively favorable to
10 them. I would expect the Katy would look at the more
11 negative situation when they do their analysis.

12 So yes.

13 Q Sir, are you aware that the MKT diversion
14 estimate is based on the assumption that SPSF would
15 close all interline routes wherever SPSF could get a
16 single line or longer line haul?

17 A Yes.

18 Q Now, sir, we have talked about truck
19 competition for Kansas freight traffic and source
20 competition and other rail route competition.

21 In light of all these competitive factors for
22 Kansas traffic, does it seem at all reasonable to have
23 an assumption that SPSF would close any substantial
24 number of interline rail routes?

25 A Like I said, they would take a negative

1 viewpoint on their assumptions.

2 Q Yes, sir. And I understand that they did, but
3 I'm asking you as an expert familiar with Kansas
4 traffic, does that assumption seem to you to be
5 reasonable with regard to Kansas rail traffic?

6 A That's a broad brush criteria, and I'm sure it
7 wouldn't apply in certain instances.

8 Q Do you think that the large grain shippers and
9 brokers in Kansas have considerable leverage in dealing
10 with railroads?

11 A I think they have some leverage.

12 Q Do you expect that the leverage that they have
13 would continue after the SPSF merger?

14 A I think it would.

15 Q Wouldn't you expect in fact the shippers to
16 use their leverage to require SPSF to keep interline
17 routes and rates open and competitive after the merger?

18 A Would you repeat the question?

19 Q Do you expect that the --

20 JUDGE HOPKINS: Off the record a minute.

21 (Discussion off the record.)

22 JUDGE HOPKINS: Back on the record.

23 BY MR. WILSON: (Resuming)

24 Q To repeat my question, would you expect that
25 the large grain shippers and brokers in Kansas would use

1 their leverage if necessary to require SPSF to keep open
2 interline rail routes after the merger?

3 A I think they would express their opinion. I
4 think they would have some leverage. They may not get
5 all the results that they would like to have.

6 Q Okay. Well, now you understand, sir, I am not
7 suggesting that every rail route would remain open after
8 the merger.

9 My question really is, wouldn't you expect
10 that any efficient rail route. to or from the state of
11 Kansas, would remain open after the merger in light of
12 the competition and the leverage of the shippers?

13 A Expecting rationality, I would say yes.

14 Q Now, assuming that the traffic diversions to
15 the MKT are somewhere in between the two figures, \$7 or
16 \$8 million of diversions or \$10 million in diversions,
17 wouldn't you think that MKT management facing the
18 prospect of losing a substantial amount of traffic to
19 SPSF would try to reduce losses by competitive responses
20 including rate reductions?

21 A I expect they would. I think there is some
22 testimony, though, that they have done that in the past
23 and feel it would be very difficult to attempt to go
24 much further.

25 Q If these potential harms to MKT and other

1 railroads did spur further competitive responses such as
2 rate reductions or improved service, those competitive
3 responses by other railroads would be of benefit to the
4 shipping public, would they not?

5 A Apparently they would be of benefit in terms
6 of just the lower rate increase; if it would affect the
7 viability of the railroad itself, then in the long run
8 it may not be a real benefit.

9 Q Okay, sir. Well, you have some testimony
10 referring exclusively to the Katy estimates of damage.
11 Now, if the actual losses that Katy were to incur would
12 be quite a bit less than they estimate, and the actual
13 net revenue loss is quite a bit less than they estimate,
14 would it be correct that you have not studied whether or
15 not those losses would be of a sufficient level that
16 they would harm Katy's competitive capabilities?

17 A I have not studied that. No. And I would
18 hesitate to comment on that. I don't have the ability
19 to do the comparisons that they could.

20 Q Okay.

21 Now, turning to the conditions that you
22 support to some extent, I'd like to ask you first about
23 your concern for competition in the central corridor. I
24 believe that comes at pages 17 and 18 of your
25 statement.

1 At the bottom of the page, page 17, you state
2 that: "Should the merger endanger the viability of this
3 line by which you mean the Rio Grande's line from Pueblo
4 to Kansas City, appropriate action should be taken by
5 the Commission."

6 You're not saying here, are you, that in fact
7 the SPSF merger will endanger the viability of Rio
8 Grande's line between Pueblo and Kansas City?

9 A I'm not saying that. I do not have the data
10 available to analyze that.

11 Q Okay, sir. Well, I'd like to ask you a couple
12 of hypothetical questions then. The first is, if the
13 evidence demonstrated that competition and SPSF's
14 current and joint rate and route policy would work to
15 keep the Ogden gateway open and the routes and rates
16 competitive, would you see any need for any further
17 condition in this case to benefit the Rio Grande
18 railroad?

19 A It sounds like you're looking at a private
20 sector solution which is a possibility. If it were
21 demonstrated, not so much to me, but I guess to the Rio
22 Grande and the Interstate Commerce Commission, then I
23 could agree with your hypothetical.

24 Q Okay, sir.

25 If the ICC imposed a condition, a guaranteed

1 effective competition following the SPSF merger for all
2 traffic moving over the Ogden gateway, then in that
3 instance would you agree that there is no need to have
4 any additional condition that would benefit the Rio
5 Grande?

6 A Could you repeat that, please?

7 Q Yes, sir. If the ICC imposed a condition in
8 this case that guaranteed effective competition for all
9 shippers routing their traffic over the Ogden gateway,
10 would you agree that there would be no need for any
11 additional condition benefiting the Rio Grande?

12 A I guess there is somewhat of a difference
13 between effective competition to shippers and the effect
14 on the railroad, and I would have to look at most of
15 those together. The shippers may be satisfied in terms
16 of having competition, but there may still be some
17 effect on the Rio Grande.

18 Q Okay, I understand your problem.

19 If I would build into my question the
20 additional assumption that the viability of the Rio
21 Grande would not be brought into question, then ask the
22 question, if the shippers using the Ogden gateway were
23 guaranteed effective competition for their routings via
24 condition imposed by the ICC and the ICC were to find
25 that the viability of the Rio Grande would not be

1 brought into question by this merger, then in that case
2 would you agree that the Rio Grande would not need to
3 have any other conditions in this merger?

4 A Your hypothetical is stating that the Rio
5 Grande would not be damaged according to the ICC
6 decision? Or are you reserving that in itself?

7 Q Yes, sir; that the viability of the Rio Grande
8 would not be put into question. They might lose some
9 traffic, but they wouldn't lose so much that their
10 viability would be threatened.

11 A In those terms of effective competition as
12 guaranteed to the shippers, I would say yes.

13 Q Thank you.

14 Now, turning to the MKT conditions, I think
15 I'd like to go back to the bottom of page 7 and the top
16 of page 8 of your statement.

17 There you list a number of goals, eight goals
18 that the state of Kansas has used in rail merger cases.
19 Is that correct?

20 A That's correct.

21 Q And is it correct that these goals still
22 govern Kansas policymaking with respect to rail mergers
23 today?

24 A Yes, they do.

25 Q Directing your attention specifically to goal

1 number three, is it correct that a viable rail network
2 which provides branch line and local services within the
3 state is still consistent with the public interest of
4 the state of Kansas?

5 A That's correct.

6 Q Now, sir, don't you think that MKT's entry
7 into Hutchinson, Kansas would put pressure on the SPSF
8 and on Union Pacific to abandon branch lines in south
9 central and southwest Kansas?

10 A It is a possibility. I think the grain system
11 itself, the market, the way the grain is handled, is
12 causing some pressure on branch lines without the Katy
13 influence.

14 Q Yes, sir. But the Katy influence would be an
15 additional incremental pressure over and above what
16 you've just referred to. Isn't that right?

17 A I would expect so, but I certainly can't
18 evaluate that in terms of percent or any value
19 whatsoever.

20 Q Do you know how the MKT intends to operate at
21 Hutchinson?

22 A From reading their application, I have a feel
23 for it, although I would say that their application
24 addresses a different situation than we have requested
25 in our response. So I'm not sure. There could well be

1 some changes in terms of their operating procedures.

2 Q Do you know what yard, rail yard, MKT intends
3 to use in Hutchinson?

4 A It's the Cotton Belt yard, former Rock Island
5 yard.

6 Q Do you foresee any operating problems at
7 Hutchinson as a result of the use of that rail yard?

8 A I would expect there would be some operating
9 problems; yes.

10 Q Do you know whether Katy intends to serve and
11 switch the industries at Hutchinson itself or to request
12 other railroads to do that work for it?

13 A I think they have stated it on an either or
14 basis.

15 Q If the MKT intends to do the switching itself,
16 would you see congestion and operating problems from two
17 railroads switching the facilities at Hutchinson?

18 A I've had an opportunity to review the
19 Hutchinson yard and discuss with some Santa Fe officials
20 problems that might occur.

21 It appeared to me that it would be a problem
22 in some degree, either way this is handled. I also had
23 the opinion that it might well be something that could
24 be overcome.

25 Q Okay.

1 Now, sir, at the bottom of page 15 of your
2 verified statement, you state your concern that the
3 Hutchinson Topeka line segment of the SPSF might be
4 abandoned after five years; is that correct?

5 A That's correct.

6 Q Now, would your concerns diminish if the SPSF
7 operating plan were changed and SPSF proposed to
8 continue the present SP Rio Grande run-through train
9 operations at Herington, Kansas?

10 A I believe that would just operate over the
11 Herington through Topeka portion, which would alleviate
12 some of my concern there. Yes. It would not alleviate
13 any concern for Hutchinson to Herington.

14 Q Would you think that if the SPSF had through
15 train operations over the Herington to Topeka portion of
16 the line, that those operations, in addition to the need
17 to have a backup through route for the main line through
18 Kansas and the good condition of the line could combine
19 to assure that the line would be retained after the
20 merger?

21 A My concern, I guess, is exclusively
22 underutilization which would lead to abandonment. Under
23 the Applicants' application, I found that there was a
24 severe traffic reduction.

25 If there is something else proposed or some

1 other usage which is not included there, I would
2 consider it. But I'd have to know something about
3 volume and type of traffic and so on and so forth.

4 Q Wouldn't abandonment require a cost drain from
5 the line?

6 A Would abandonment -- would you repeat that?

7 A Wouldn't a precondition to abandonment be the
8 fact that SPSF would not be able to recover its cost for
9 operating the line?

10 A Yes.

11 Q And isn't the fact that the line is currently
12 in very good condition and would not be highly used
13 after the merger an indication that the cost of
14 maintaining and operating over the line would be
15 relatively low?

16 A I think that's true.

17 Q Now, you do point out your underutilization
18 concern at the top of page 16 where you say that the line
19 would be underutilized from the standpoint of SPSF and
20 that the line would fit very well into the MKT's system.

21 Now, haven't you described circumstances here
22 indicating that SPSF and MKT could negotiate these
23 trackage rights in the marketplace wholly apart from the
24 trackage rights being imposed as a condition to the
25 merger?

1 A That's a possible situation.

2 I think it might -- if I could say something
3 about trackage rights, trackage rights are the only
4 thing that we have, as a state party, had an opportunity
5 to deal with. If there are other solutions that would
6 accomplish some of the things that we have put together
7 and perhaps some others, I would have no problem with
8 that, if they are acceptable to the party and any number
9 of other caveats.

10 Q Do you agree with Professor Baumol that there
11 is a much better chance that the trackage rights price
12 will be fair if the price is negotiated without the
13 trackage rights being imposed as a condition to the
14 merger?

15 A I think that's possible. Anytime something is
16 imposed, there may well be a problem in terms of
17 negotiations.

18 Q What would the problem be?

19 A The problem may be that one party may be
20 forced to accept a price that they wouldn't wish to
21 have. On the other hand, it is difficult to rely on the
22 ability of two parties to negotiate and achieve the
23 desired result outside some type of order.

24 Q Now, on page 17, sir, at the top, you mention
25 the two other conditions that you support. MKT's

1 trackage rights to Beaumont into Corpus Christi -- as I
2 understand it, the purpose of these conditions are to
3 give MKT and OKT shippers better competitive access to
4 the Gulf Coast ports than they enjoy today. Is that
5 right?

6 A Yes, that's true. And for Kansas shippers,
7 not to be foreclosed on the ability to go to those
8 places.

9 Q Yes, sir. Well, Santa Fe, of course, doesn't
10 go to Corpus Christi today, does it?

11 A That's correct.

12 Q So Santa Fe's ability to gain access to Corpus
13 Christi would not in itself be a competitive harm of the
14 merger, but that would be a competitive benefit of the
15 merger; isn't that right?

16 A It would be a competitive benefit to Santa Fe
17 shippers.

18 Q Now, Southern Pacific doesn't carry any grain
19 from Kansas to Beaumont today either, does it?

20 A They may carry some, but it would be a
21 circuitous process.

22 Q It doesn't carry more than an insignificant
23 amount of grain to Beaumont today; isn't that right?

24 A That's correct.

25 Q So again, Southern Pacific's new direct line

1 access to Beaumont again would be a competitive benefit
2 to Southern Pacific shippers and it would not be a
3 competitive harm; isn't that right?

4 A That's correct.

5 Q Now, sir, at the bottom of page 19 of your
6 statement and going on to the top of page 20, you state:
7 "It is my view that these conditions will not have a
8 deleterious effect on the SFSP system."

9 Was this assumption an important factor in
10 your decision to support the MKT trackage rights
11 conditions?

12 A It was important in terms that we are very
13 strong in terms of wanting the merger. We think there
14 are certain benefits that will be very good for Kansas.
15 If we felt these conditions would be harmful to the
16 point that it would overturn the merger, we would not
17 have gone on record supporting them.

18 Q Sir, after you wrote and filed your verified
19 statement, did you become aware that the Southern
20 Pacific lost \$26.3 million in the first quarter of
21 1985?

22 A I have heard that.

23 Q Has this caused you concern about the future
24 viability of Southern Pacific as an independent
25 railroad, has your concern increased as a result of your

1 learning that?

2 A I guess it increased to some degree. My
3 attention was again brought to a condition I thought was
4 occurring.

5 Q In fact, I believe that your shipper opinion
6 survey revealed that improved financial condition of the
7 SFSP was probably the most important benefit that
8 shippers foresaw from this merger. Isn't that right?

9 A I think that's correct.

10 Q You also regard the improved financial
11 condition of the SFSP as one of the primary benefits of
12 this merger?

13 A I think that's important.

14 Q And this is from the point of view of the
15 Kansas shipping public that it's also a benefit?

16 A That's correct. That's my own personal view
17 in terms of trying to put together the Rock Island
18 system in Kansas and seeing the problems that were
19 caused at that time.

20 Q What do you think would likely happen to
21 Southern Pacific's rail system in Kansas if too many
22 conditions were imposed on this merger and SFSP did not
23 consummate the transaction?

24 A Would you restrict that territory to Kansas,
25 southern Kansas?

1 Q Not necessarily. What do you think would
2 happen to Southern Pacific's rail system as a whole? If
3 you would like to answer it, either way you would like
4 to answer it, either SP's rail system as a whole, or
5 SP's rail system in Kansas.

6 A I'm having trouble following your question.
7 Would you please repeat it?

8 Q Okay. What do you think would likely happen
9 to Southern Pacific's rail system, either as a whole or
10 with regard to their system in the state of Kansas, if
11 too many conditions were imposed on this merger and it
12 were not consummated?

13 A My problem is you are separating out Southern
14 Pacific from Santa Fe Southern Pacific. And I have
15 trouble seeing them, the Southern Pacific, with
16 conditions without the merger.

17 I see conditions following an allowing of the
18 merger.

19 Q My question is not clear. Let me try again.

20 If the ICC imposes too many conditions on this
21 merger and SFSP does not complete the transaction, so
22 that Southern Pacific has to try to compete as an
23 independent railroad, in that circumstance what do you
24 think would happen to the Southern Pacific rail system?

25 A I think it would have some problems in

1 surviving.

2 Q Would you foresee liquidation of the Southern
3 Pacific system?

4 A I want to make sure I'm following you. I am
5 thinking of this in terms of the merger not being
6 approved, the Southern Pacific on its own, without
7 conditions.

8 Q Think of it in terms of too many conditions
9 being imposed so that SFSP could not afford to
10 consummate the merger and SP is on its own.

11 In that situation, would you foresee
12 liquidation of the Southern Pacific system?

13 A I would expect that there are a lot of
14 assumptions implicit in what you are asking for.

15 Q Yes.

16 A The Santa Fe SP being a shareholder or the
17 owner of the SP, I'm not sure what process would be
18 followed to liquidate or whatever else. But I would see
19 it as being a problem.

20 When you say conditions in general and too
21 much, I'm having trouble defining what is too much in
22 terms of your question.

23 I have a feel for what is too much but --

24 Q Okay, sir.

25 Finally, if SPSF were to develop, as an

1 alternative to MKT trackage rights a condition that
2 would assure effective competition to MKT and OKT
3 shippers over Denison and Dallas routes and would assure
4 effective competition for Hutchinson shippers over
5 Denison and Dallas routes, would you and the state of
6 Kansas consider that condition preferable to the MKT
7 trackage rights you're supporting?

8 A I would consider it an alterative.

9 MR. WILSON: Thank you. Those are all the
10 questions I have.

11 JUDGE HOPKINS: Ms. Mahon.

12 BY MR. MAHON:

13 Q Mr. Moser, I'm Kathleen Mahon, representing
14 the MKT.

15 You have said in your analysis on page 23 that
16 Katy access at Hutchinson to restore the loss of a third
17 carrier is an important market. Is that right?

18 A That's right.

19 Q And then going on to page 24, that access
20 there would "neutralize the ability of any carrier to
21 again 'tie markets it serves with contract arrangements
22 that would act to exclude the MKT.'"

23 Is that correct?

24 A That's correct.

25 Q A couple of questions on that point.

1 First, you have had an opportunity to read Mr.
2 Fitzgerald's cross examination last October on the
3 subject of Santa Fe grain contracts, some of which have
4 been entered into evidence as confidential exhibits in
5 this case?

6 A I have read that. I can't recall it very well
7 at this point.

8 Q Do you recall that under the terms of a
9 contract such as the ones Mr. Fitzgerald was testifying
10 about, the shipper agrees to tender to the Santa Fe all
11 of its transit rail shipments of grain to Texas Gulf
12 ports served by the Santa Fe from any Santa Fe origin in
13 Kansas, Oklahoma, and several other states?

14 A I recall that.

15 Q Do you recall that those contracts also
16 require that in return for getting that transit rate,
17 the shipper must also tender a minimum percentage of its
18 nontransit tonnage moving to those Gulf ports?

19 A That's correct. I remember that.

20 Q And do you recall that sometimes the amount of
21 flat tonnage that had to be tendered was as great as 95
22 percent?

23 A I don't remember the amount. I remember that
24 there was an amount involved.

25 Q And do you recall Mr. Fitzgerald mentioned

1 that the Santa Fe at that time had 13 such contracts?

2 A I don't recall the number, but I recall the
3 fact that there were contracts.

4 Q Now, assume with me that one of the locations
5 from which the shipper is required under one of those
6 contracts, under that kind of contract, is required to
7 tender a substantial percentage of his flat tonnage as
8 well as all of his transit grain is Hutchinson.

9 And assume further that after the merger, the
10 Santa Fe Southern Pacific's contracts have that same
11 requirement.

12 If that situation prevails and a substantial
13 portion of those shippers' flat grain at Hutchinson is
14 required to be carried by the SFSP, then no other
15 railroad can compete to carry that grain.

16 Is that right?

17 A I would think there would still be the
18 opportunity for some grain to be carried in flat truck
19 or whatever that another railroad might have an
20 opportunity with.

21 In terms of your question, there would be an
22 opportunity for another railroad to compete until that
23 grain is in the terminal and free of any restriction.

24 Q But as to the percentage of grain that the
25 shipper is required -- the percentage of flat grain that

1 the shipper is required under those contracts to also
2 tender to the SFSP, as to that grain, no other railroad
3 has an opportunity to compete for it? Is that true?

4 A That's true.

5 Q So if the SFSP makes such contacts with its
6 major shippers, then the MKT's access at Hutchinson
7 alone wouldn't totally neutralize the ability of the
8 SFSP to tie the markets it serves with contracts that
9 would actually exclude the MKT, would it?

10 A You say would totally neutralize?

11 Q It would not totally neutralize.

12 A I'll have to ask you to repeat that again,
13 please.

14 Q If the SFSP makes contracts such as the ones
15 we have been discussing with its major shippers, the
16 Katy's access at Hutchinson alone would not totally
17 neutralize the ability of the SFSP to tie the markets it
18 serves with contracts that would act to exclude the
19 MKT.

20 A It would not totally neutralize it. No.

21 Q In that situation, wouldn't the MKT be better
22 able to compete for grain at Hutchinson if it also
23 directly serves southwest Kansas if it offered transit
24 rates to the Gulf?

25 A It would in respect to those particular

1 shippers. I'm not sure, though, that -- well, I think
2 my analysis shows that I feel it is not warranted as
3 such to have a presence in that area. But there still
4 is an ability to market that the Katy would have, were
5 they in Hutchinson on a flat gain basis.

6 They would have to compete such that the flat
7 contract or tied contract that you mentioned could be
8 overcome.

9 Q How could it be overcome?

10 A It would be in terms of price.

11 Q As to the grain that is tied to the SFSP, how
12 could that --

13 A It could not with grain that is tied to the
14 SFSP if the shipper enters into that contract. I guess
15 I'm saying that the potential shippers who do not enter
16 into those contracts, and therefore that grain would be
17 free to move as it best suits the shipper.

18 Q For shippers who do not enter into the
19 contract with the SFSP?

20 A Right.

21 Q Is it not true that shippers view transit
22 grain rates as very desirable?

23 A Yes.

24 Q So to be fully competitive, doesn't a railroad
25 have to be able to offer transit rates?

1 A It's an additional service; yes. And to be, I
2 guess, fully competitive in the sense that you use it,
3 it would be desirable. But I don't think it precludes
4 effective competition.

5 Q Would a railroad that is able to offer transit
6 rates have the capability of being more competitive than
7 a railroad that has no gathering area and cannot offer
8 transit rates?

9 A I would think so.

10 Q Do I gather correctly from your testimony on
11 pages 10 to 11 that the State supported the SSW's
12 purchase of the Tucumcari line specifically in order to
13 retain rail competition in southwest Kansas as well as
14 to restore service?

15 A That's correct.

16 Q Isn't the presence of truck competition in
17 southwest Kansas the reason the State is no longer
18 concerned about the absence of rail competition there
19 after the merger?

20 A I think it's almost exclusively that. If I
21 can come back to my experience when we were considering
22 the Tucumcari line acquisition in 1979, I believe, we at
23 that time tried to gather information from our shippers
24 as to their practices.

25 It was almost a uniform response that truckers

1 were not an alternative. And so at that time, we felt
2 that the the rail alternative was extremely important.
3 As a part of the results of that experience, I worked
4 with the Kansas Crop and Livestock Reporting Service to
5 develop this grain marketing and transportation study in
6 order to get those kinds of figures, so we would know
7 what the modal split is between truck and rail.

8 The result has been, I think -- well, the
9 result has been that we now have at least three years'
10 worth of figures where we can make some real
11 comparisons. And the comparison that came up at this
12 time did in fact overturn my conclusion from a few years
13 ago that truck competition is effective.

14 Q And is that true with respect to truck
15 competition for shippers going from southwest Kansas to
16 the Gulf?

17 A No. That's the short haul less-than-250-mile
18 market.

19 Q So with respect to talking about wheat, is
20 truck competition, is that the only reason or is part of
21 the reason your view that the SSW and the SF do not
22 compete in the movement of wheat from southwest Kansas
23 to the Texas Gulf?

24 A I think that they do compete to some degree.
25 I'm not saying that they don't compete altogether. I'm

1 saying that with the trucking alternative in there for
2 the short haul movements, that that has become very
3 effective and will continue to be effective, and
4 therefore there's not that much damage.

5 And I believe I also discussed with Mr. Wilson
6 the compensating benefits which were part of my personal
7 equation.

8 Q Now, on page 13 of your testimony, you quoted
9 the ICC's Rail Consolidation Guidelines, a part of which
10 reads: "Even if the consolidating carriers do not serve
11 the same market, there may be a lessening of potential
12 competition in other markets."

13 Do you remember that?

14 A Yes.

15 Q Do you think that even if it were true that
16 the SSW does not compete to a great extent to the Texas
17 Gulf market from southwest Kansas, that at this time the
18 SSW provides at least potential competition at that
19 market through joint line service?

20 A That's correct.

21 Q Have you looked at -- have you reviewed Mr.
22 Morand's testimony on cross examination in this case?

23 A I have.

24 Q Do you recall his testimony, that in his
25 experience the Santa Fe and the Southern Pacific are

1 presently competing from southwest Kansas to the Texas
2 Gulf?

3 A I recall his statement.

4 Q Do you disagree with his assessment?

5 A I do not agree with his assessment because he
6 is much more of an expert on his own operation than I
7 am. I will say that I was not able to find those kind
8 of figures in my analysis.

9 Q I'm sorry. Did you say that you do not
10 agree?

11 A I do not disagree.

12 Q Who would you say would have the more active
13 knowledge of the current situation on competition to the
14 Gulf from southwest Kansas, Mr. Morand or you from your
15 experience?

16 A I think his experience is overwhelming. He
17 has many many years in the grain trade. But I think he
18 speaks for his own company, his own situation as he sees
19 it. And my view would be more of an overall view, which
20 not only includes grain in southwest Kansas, but
21 throughout the rest of the State.

22 I'm not sure that he's quite as familiar.

23 Q If Mr. Morand is correct and the Santa Fe and
24 the Southern Pacific are presently competing from
25 southwest Kansas to the Gulf, would the loss of that

1 competition in southwest Kansas disturb you?

2 A My conclusions were that it would not because
3 of compensating benefits. The major area I found that
4 there were some competition or is some competition today
5 is the southwestern destinations for milo, and this is
6 where my concern came in.

7 Q But looking only, for example, at wheat that
8 is going from southwest Kansas to the Texas Gulf?

9 A My experience is that trucking is a very
10 powerful alternative, and I think there are some charts
11 in the testimony and the analysis that show how powerful
12 they really are for the short haul movements when
13 they're able to enter a terminal and get the advantage
14 of a rail contract.

15 Q If the 1982 data or if more recent data showed
16 that in fact a significant amount of grain is shipped
17 from the Tucumcari line all the way to the Texas Gulf,
18 would that change your view of whether there is a need
19 to maintain rail competition in southwest Kansas?

20 A It could change my view, I guess, according to
21 the amount; but it would not change my view that
22 trucking is extremely competitive.

23 Q But extremely competitive for the short haul?

24 A For the short haul.

25 Q What if, for example, the data showed that 20

1 percent of the grain on the Tucumcari line flowed to the
2 Texas Gulf now? Would that change your view?

3 A I have trouble in terms of dealing just with
4 numbers. If I had found 20 percent, I would have looked
5 at it a lot more deeply than I did. I did not find 20
6 percent. I found a very small percentage.

7 Q In that situation, if a significant amount of
8 grain on the Southern Pacific line were flowing to the
9 Texas Gulf, say, do you consider 20 percent a
10 significant amount?

11 A Yes, I would say it's significant.

12 Q All right. If a significant amount of grain
13 were flowing from the Tucumcari line to the Texas Gulf,
14 I take it you would then consider that there is
15 competition between the Santa Fe and the SSW from
16 southwest Kansas to the Gulf?

17 A Yes. I guess it would be a greater degree
18 that I certainly considered when I did my analysis.

19 Q And say if the absolute volume of grain that
20 were moving off the Tucumcari line to the Texas Gulf
21 were over 1,400 carloads a year, would you consider that
22 a significant amount?

23 A I'd have to look at the total volume that the
24 Santa Fe would be moving to the same destination. If
25 that amounts to 100 cars or more a year from those

1 points, it would be a significant amount of traffic.

2 I am having trouble going further than the
3 significant. In other words, it causes some notice.

4 Q If those were the facts, if the data showed a
5 significant amount of direct competition between the
6 Santa Fe and the Southern Pacific for grain from
7 southwest Kansas to the Gulf, then would you still
8 consider the loss of that rail competition as
9 insignificant?

10 A I would still be looking at compensating
11 benefits as well. And I think there are some that are
12 substantial. I guess I can't give an answer until I
13 really have a good chance to analyze those figures.

14 Q When you talk about trucks being effective
15 competitors for wheat from southwest Kansas, I properly
16 understand that you're not talking about wheat that's
17 moving all the way from southwest Kansas to the Gulf?

18 Is that correct?

19 A I think that probably most of it ends up at
20 the Gulf. Now, if the truck turns out to be the first
21 leg of a chain that goes to Wichita or Enid or
22 Hutchinson, it eventually will move to the Gulf.

23 Q So you're saying that wheat from southwest
24 Kansas can move first to Hutchinson, and for that move
25 there is plenty of truck competition?

1 A Yes.

2 Q And once it gets to Hutchinson, if it's to
3 move to the Gulf, then trucks are no longer competitive
4 because of the long move?

5 A That's correct.

6 Q Now, you've explained in your Appendix C on
7 page 16 how the price of transportation is the most
8 critical part of the equation that determines how much
9 the farmer is paid for his grain.

10 Is that correct?

11 A That's correct. What was the page again,
12 please?

13 Q Page 16 of Appendix C.

14 A Thank you.

15 Q So that putting aside elevator margins that
16 you indicated are fairly standard, basically the price
17 paid to the farmer at the country elevator for wheat is
18 the Gulf export price, less transportation costs. Is
19 that right?

20 A I wouldn't necessarily confine it to the Gulf
21 export price. There may be a local flour miller who is
22 involved in the equation, or a processor or whatever.
23 When I look at it, I did not use the Gulf price there.

24 I did not use the Gulf price or Gulf export
25 price for a reason. I used market price because it may

1 be a local market. And especially in terms of milo, if
2 I can go on a little further --

3 Q I am focusing more on wheat here. Assuming
4 that the delivered price of wheat at the Gulf is fixed,
5 would you be concerned if the portion of that price
6 that's paid to the southwest Kansas farmer went down and
7 the portion that's paid for transportation went up?

8 A Yes.

9 Q Have you studied trucking rates in southwest
10 Kansas in any detail?

11 A In some detail. I don't consider myself
12 necessarily an expert on the trucking rates. I have
13 looked more, I guess, at trucking rates in northeast
14 Kansas, which also affected southwest Kansas.

15 Q Now, assume hypothetically the trucking cost
16 to Hutchinson is a high proportion of the total cost to
17 the Gulf. In that situation, would it not be an
18 advantage to the shipper to have rail transit rates from
19 the origin in southwest Kansas to the Gulf?

20 A If the trucking rate is a high proportion and
21 also causes the rail, including transit rate, to be -- I
22 guess what I'm trying to say is, the trucking rate that
23 you're talking about would be so much higher that it
24 would not be competitive with the transit rate, so I
25 would say yes.

1 Q In that situation, wouldn't southwest Kansas
2 shippers actually benefit from the presence of a rail
3 competitor on the line in southwest Kansas?

4 A If that situation were to occur.

5 Q And is that because, to the extent that
6 transportation costs are lowered as a rail competition,
7 they could get a higher price for their grain?

8 A Please repeat that.

9 Q Is that because, to the extent that the
10 shipper's transportation costs are lowered as a result
11 of rail competition, they would get a higher price for
12 their grain?

13 A Yes.

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1 MS. MAHON: That's all I have.

2 BY MS. DE SANTI:

3 Q Mr. Moser, I'm Susan DeSanti, representing the
4 Denver and Rio Grande Western. If the evidence in this
5 case were to show that the volume of traffic on the
6 Pueblo to Kansas City line were dropped substantially,
7 for instance, 30 to 40 percent as a result of the merger
8 without the Rio Grande's condition, would that evidence
9 be of concern to the state of Kansas?

10 A It would be of concern to the extent that it
11 would affect the future operation of the Denver Rio
12 Grande, of that line. In my opinion, that is the major
13 portion of the traffic, and to a great degree would
14 probably help support the local service provided by the
15 Missouri Pacific.

16 MS. DE SANTI: That's all I have, Your Honor.

17 JUDGE HOPKINS: Mr. Ratner.

18 BY MR. RATNER:

19 Q Mr. Moser, my name is James Ratner. I'm with
20 the United States Department of Justice.

21 In response to a question by Mr. Wilson of the
22 Applicants, you referred to competitive problems, and
23 you said it would be better to add no significant
24 competitive problems.

25 Do you remember that?

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1 A That's right.

2 Q What do you mean by "significant"?

3 A I guess "significant" in these terms. I had
4 problems previously with the word "significant." To the
5 degree that I think it would cause an effect, loss of
6 competition, it would be a market-dominant situation or
7 a monopoly situation.

8 Q If a situation causes an increase in market
9 power on behalf of the merged firm which is short of
10 monopoly, do you consider that a significant competitive
11 problem?

12 A Well, on an individual situation. My analysis
13 found that there was in many cases market power.
14 Sometimes it was very high in terms of the Santa Fe was
15 carrying 100 percent today, and that's very high market
16 power.

17 Q You mean a high market share or high market
18 power?

19 A That's high market share, which probably leads
20 to some market power.

21 Q If there is high market power short of
22 monopoly power, do you consider that a significant
23 competitive problem?

24 A Well, again, we're talking in terms of
25 degrees, but if there's an increase in market power,

1 it's something that I consider a problem and something
2 that I felt I should look into.

3 Q Also in discussion with Mr. Wilson, correct me
4 if I'm -- I'm paraphrasing here, so correct me if I'm
5 wrong -- you indicated that the Department of Justice
6 screen used in this case might identify or include some
7 flows that were in fact not a competitive problem.

8 Do you remember saying something like that?

9 A Yes.

10 Q Which flows are those?

11 A I was responding to a hypothetical. So --

12 Q I'm sorry. I didn't take the question as a
13 hypothetical question. I thought it was a specific
14 question asked about the specific methodology that was
15 used by the Department in this case, and that you
16 identified, or that the Department identified some flows
17 that were not a competitive problem.

18 A I thought he said "might" identify some, just
19 in terms of the test itself.

20 Q So is it your testimony --

21 A I think, on the other hand, I said that my
22 test might miss some that were a problem.

23 Q So that this is clear, is it your testimony
24 that there are no Department of Justice flows or markets
25 that you know of which were included in the Department

1 testimony, which in fact do not indicate a competitive
2 problem?

3 A Are you asking for the ones that I feel do not
4 or the ones that I feel do?

5 Q I'm asking if you know of any that were
6 included in the Department testimony which do not.

7 A Yes.

8 Q Yes, that is your testimony, you do not know?

9 A Yes, I do know.

10 Q Which flows are the ones that were included
11 which do not indicate a competitive problem?

12 A I would say salt from the Wichita BEA would be
13 one.

14 Q Any others?

15 A I had some problem with corn in particular,
16 out of Topeka. I think I had some problems with animal
17 fats or tallow and hides in the Wichita BEA.

18 Q Starting with salt from Wichita, what is your
19 basis for having problems?

20 A There are only three producers in the area.
21 Two are in Hutchinson. One is in Alliance. Both are
22 served by the Santa Fe SP at this time, and Missouri
23 Pacific. And I think, if I remember correctly, and you
24 may have to correct me, I think the market share for
25 Missouri Pacific was around 40 percent.

1 Q If the market share for Missouri Pacific was
2 around 40 percent, then the market share for Southern
3 Pacific and Santa Fe combined would be 60 percent?

4 A I believe. If my memory is correct, that
5 would be right.

6 Q Do you consider yourself a qualified expert in
7 industrial organization economics?

8 A No.

9 Q Is it your testimony that -- and this is
10 hypothetical -- that if you had a merger, if you had a
11 market with three firms in it, with 44 percent of the
12 market and 43 percent of the market and 13 percent of
13 the market respectively, and the two large firms merged,
14 leaving a share of 87 for the larger firm and 13 for the
15 other firm, that industrial organization economics would
16 not suggest that there would be increased economic harm
17 associated with that merger?

18 MR. SHEIRMAN: Your Honor, the witness has
19 stated he doesn't consider himself an expert in that
20 field.

21 JUDGE HOPKINS: What about that, Mr. Ratner?

22 MR. RATNER: Fair enough.

23 JUDGE HOPKINS: Sustained.

24 BY MR. RATNER: (Resuming)

25 Q Take this same hypothetical. Is it your

1 testimony that that merger would not cause an economic
2 harm?

3 A Same criteria? My own view?

4 Q Yes, your own view.

5 A Yes. That's a possible problem. It's one that
6 I would look into if I found it in my analysis.

7 Q Isn't it correct that using the screen you
8 used, that merger would not show up as a particular
9 problem?

10 A 87 percent?

11 Q Yes.

12 A I think it would. I am thinking my figures
13 are 86 percent, or my mean plus standard deviation.

14 Q I have now lost the page where you identified
15 the figures.

16 A 87.79. And you are correct in the way you
17 stated that question. 87 percent would have fallen out
18 of my screen.

19 Q But do you agree with me that nevertheless
20 there might be very significant economic harm that could
21 occur as a result of a merger along the lines of the
22 hypothetical example I gave you?

23 A There could be, in line with the hypothetical
24 example.

25 Q On page 7 of what I think is your analysis, I

1 think it's the second section, you see the sentence that
2 says either the origins or destinations or both were
3 diverse, and significant interlining was present.

4 A Yes.

5 Q What do you mean by "diverse"

6 A Lots of destinations or lots of origins. I
7 think part of -- if I can go on a little bit, part of
8 the distinction I had to make when I made this analysis
9 was the fact that we were cutting Kansas out of the
10 whole United States.

11 Whatever we did, we were only dealing with
12 part of the market. So when I found that what I felt
13 was a market that was a large one, and even in Kansas
14 destinations or origins were diverse, I felt there was
15 little chance for exercising market power.

16 Q When you say in the sentence just prior to
17 that, "No instances of anticompetitive impacts were
18 found at this level," are you referring solely to
19 problems within Kansas?

20 A Yes.

21 Q When you refer to origins or destinations in
22 the sentence on page 7, are you referring solely to
23 origins or destinations in Kansas?

24 A No, not necessarily.

25 Q Are you referring to all origins and

1 destinations in the United States?

2 A I could have been. But I'm looking at the
3 impact on the Kansas market.

4 Q Did you evaluate the competitive effect of
5 this merger on all origins and destinations in the
6 United States?

7 A No.

8 Q Did you evaluate the competitive impact of
9 this merger on origins and destinations in locations
10 other than Kansas?

11 A No.

12 Q Did you evaluate the competitive implications
13 of this merger on a flow basis? Or did you evaluate it
14 by looking solely at origins and solely at
15 destinations?

16 A Looking solely at the traffic, waybill traffic
17 sample, and reviewing -- in this case, I looked at the
18 four-digit level and went further to the seven-digit
19 level and then looked for origins and destinations,
20 major flows and so on.

21 Q I understand. But in looking at the waybill
22 data, did you take a particular origination/destination
23 movement, or did you look at competition at origins and
24 competition at destinations?

25 A Competition at origins and competition at

1 destinations.

2 Q Is it correct that you did no flow analysis at
3 all? Flow analysis meaning origin to destination
4 analysis?

5 A Only in respect to wheat and milo.

6 Q When evaluating competition at the origin, did
7 you make an assumption that the producers at the origin
8 face supply curves that are not upward sloping?

9 A Did I make that assumption?

10 Q Yes.

11 A No, I did not make that assumption.

12 Q Did you consider in any way the supply curves
13 that producers faced at the origin?

14 A No, I did not.

15 Q On page 7 of the analysis, you refer to truck
16 competition being significant and effective. Do you see
17 that?

18 A Yes.

19 Q Is the basis for saying that the testimony of
20 Dr. David Anderson?

21 A In this particular, yes. Some of that, and
22 some of my own experience. Some interviews with
23 shippers, too, I should add.

24 Q In Appendix B, this is the area I couldn't
25 find before.

1 A Could I interrupt and add that I also read the
2 other applications, the inconsistent applications, and
3 considered those viewpoints?

4 Q Sure.

5 In Appendix B on page 1, which was I think
6 what I couldn't find before, you referred to the mean
7 and standard deviation.

8 Where does that approach come from?

9 A It's a statistical method.

10 Q What was -- did you consider using any other
11 statistical method, other than the one you chose?

12 A Yes, I did.

13 Q What other methods did you consider?

14 A I could have used standard error of the
15 estimate. This seemed to be appropriate in a couple of
16 ways. First of all, I think I testified earlier, that
17 SF controls -- "control" may not be the right word --
18 but has a great number of origins and destinations in
19 the state, and naturally carries a good amount of
20 traffic.

21 So it doesn't surprise me that the median was
22 as high. I was looking for a method to help me sort out
23 the ones that might be a problem, and I felt the ones
24 with the highest dominance would be, and this did it for
25 me.

1 Q Isn't it correct that where merging firms have
2 high shares, it's an area where a policymaker should be
3 very concerned about allowing the merger because there
4 are possible economic -- there is possible economic harm
5 that could result?

6 A Should be very concerned; yes.

7 Q So isn't it correct that the fact that you
8 start out with high shares is a somewhat inappropriate
9 screen -- strike that. Let me start over.

10 Isn't it correct that it is not necessarily
11 appropriate to exclude shares that are high, yet below
12 some of the mean and standard deviation if you were
13 concerned about all markets where there are relatively
14 high shares of the firms participating?

15 A It may not be necessarily appropriate. It's
16 the screen that I used.

17 I might add a second part of the method. If I
18 found some significant things, these would in my own
19 opinion have to be the ones where market dominance would
20 show up. And they did not to me.

21 If I had found some, I probably would have
22 gone to a lower level.

23 Q Have you done any analysis which indicates to
24 you that a rail share under 87 percent will suggest that
25 railroads would not have any degree of market power?

1 A Under 87 percent would not?

2 Q You did not understand my question? Assume a
3 railroad with market share under 87 percent. Have you
4 done any study that indicates that such a railroad would
5 be, for example, very unlikely to have market power?

6 A No, I have not done such a study.

7 Q Have you done any study of the correlation
8 between rail share and market power?

9 A No study myself. I have read some
10 literature.

11 Q Did you review any study that evaluated a
12 correlation between share and market power for purposes
13 of deciding upon the test to use, which was the sum of
14 mean and standard deviation?

15 A I read some things. I can't give you a
16 source. But I don't know that any of them cited this
17 particular method.

18 Q On page 2 of Appendix B, to use the first
19 example of STCC 2033, it indicates SFSP rail market
20 share, 93.47.

21 That's a market share of what?

22 A That's 93.47 percent of the tonnage.

23 Q Tonnage -- I'm asking you, what is the
24 market?

25 A These are Kansas origins or Kansas

1 destinations.

2 Q In this case, it says primary destinations are
3 Kansas destinations. Does that mean that the SFSP rail
4 market share of all Kansas destinations for this
5 commodity is 93.47 percent?

6 A That's right.

7 Q You make a conclusion at the bottom there
8 where it says merger has no anticompetitive effect.

9 To what extent is that conclusion based on
10 David Anderson's exhibit 19-10?

11 A I think only that I looked for some assistance
12 with the trucking share or the amount of trucking that
13 took place from California in this case.

14 His analysis showed that for STCC 20, it was
15 effective.

16 Q Do you know how much trucking from California
17 to Kansas occurs for STCC 2033135, which is the focused
18 commodity?

19 A No, I do not.

20 Q Do you know how much trucking occurs in STCC
21 code 2033 from California to Kansas?

22 A No. I would say what I relied on in these
23 terms -- I think I face the same situation here that I
24 did several years ago with grain, where we just simply
25 did not have the numbers. No one reports them in this

1 form.

2 I didn't feel it was necessary or even
3 possible to go to a survey method, so I relied on the
4 word of shippers.

5 Q Can I assume for STCC code 2038 and 2039 as
6 well that you have no idea how much of either of those
7 moved by truck?

8 A The few shippers I talked to, their feeling
9 was 100 percent in LTL movements.

10 Q If it was 100 percent, how can there be any
11 rail market share at all?

12 A Evidently these shippers didn't ship by rail.

13 Q Did you talk to any shippers who did ship by
14 rail for any of these three commodities?

15 A No. I took a few days, not even days, a few
16 hours and made a few phone calls, trying to identify
17 shippers in this category. I used the Kansas Directory
18 of Manufacturers.

19 Of the ones I was able to locate, which was
20 two or three in this area -- there aren't very many in
21 the first place -- those were the responses I received.

22 Q You've indicated, I think in response to
23 questions by Mr. Wilson, and also in previous answers to
24 me, that you believe a lack of market dominance implies
25 effective competition.

1 Is that correct?

2 A Yes, it implies that.

3 Q What do you mean by effective competition?

4 A Effective competition in terms of the
5 inability of a shipper to raise prices above competitive
6 level and keep them at that level for a long period of
7 time.

8 Q By market dominance, you mean market dominance
9 as it is defined in the ICC Act?

10 A I would assume so, although I can't recall
11 it. But it referred to the sources.

12 Q Do you also believe that if a railroad's rate
13 is below 180 percent of its variable cost, that implies
14 there is effective competition taking place?

15 A It's an indication or a measure that the
16 Interstate Commerce Commission uses. I'm not sure it's
17 everything.

18 Q I understand where it's come from. I'm asking
19 you if that is your belief.

20 A I think there are certain places, other
21 factors that enter into it.

22 Q Suppose tomorrow all rail rates rose from
23 wherever they are to 180 percent of variable cost. Is
24 it your testimony that there would be no significant
25 economic harm that would occur as a result of that rate

1 increase?

2 A I think there would be a revolution. It
3 would amount to a lot of change in a lot of areas.

4 Q Could you answer my question specifically in
5 terms of economic harm?

6 A Well, the higher transportation rate would
7 cause a change in the price which would be moved along
8 to both shippers and receivers, buyers, whatever else,
9 and would probably cause -- unless there was the ability
10 to move to truck transportation, which there may well be
11 in some markets.

12 Q You indicated in response to Mr. Wilson that
13 Southern Pacific's financial condition is a concern to
14 you.

15 A Yes.

16 Q Are there methods for improving Southern
17 Pacific's financial condition other than merging with
18 Santa Fe?

19 A I would assume there would be. And I can't
20 predict the extent. I know there are different
21 practices in just Southern Pacific itself that may well
22 make some difference.

23 Q Is it also possible that they could improve
24 their financial condition by merging with a railroad
25 other than Santa Fe?

1 A That's possible, but I certainly don't have
2 the information to answer that that I do in this case.
3 I'm answering that in terms of everything is possible.

4 MR. RATNER: I think that's all I have. Thank
5 you very much.

6 JUDGE HOPKINS: Any redirect?

7 MR. SHEIRMAN: Just one question.

8 BY MR. SHEIRMAN:

9 Q Mr. Moser, Mr. Ratner asked you for -- I think
10 it was a definition of effective competition. I think
11 you stated that it was the inability of a shipper to
12 raise rates above a reasonable level for a long period
13 of time.

14 Is that what you meant to say -- the inability
15 of a shipper? Do you recall that question?

16 A Oh, excuse me. I didn't catch it at that time
17 either. No, not the inability of the shipper. In this
18 case, it would be the inability of the carrier.

19 MR. SHEIRMAN: Thank you.

20 JUDGE HOPKINS: Anything further?

21 You are excused, sir.

22 (Witness excused.)

23 MR. SHEIRMAN: Your Honor, I'd like to move
24 the admission of KANS-8.

25 JUDGE HOPKINS: Any objection? It will be

1 received into evidence.

2 Before we recess for a period until next
3 month, I'd like to make certain for the record that the
4 verified statements filed at the stage of the
5 proceeding, as well as those submitted at other stages
6 of the proceeding, have not been withdrawn and to which
7 there was no cross-examination are hereby received in
8 evidence.

9 There were quite a few that have been
10 submitted. I don't want to have any question that
11 they're in the record.

12 Also, at various times, we receive petitions
13 for intervention from a few counties and cities in the
14 state of California. For example, I received a petition
15 to intervene by the Kings County, by the County of
16 Fresno, and by Orange County.

17 There's been no objection. I'm going to
18 indicate for the record that they have been allowed to
19 intervene.

20 We received also a large number of resolutions
21 from various counties and cities in the state of
22 California, including Kings, Fresno, Merced, Merceda,
23 Stanislaus County, Tulara, City of Tracy, Orange County,
24 San Joaquin County, Kern County, and the Washington
25 Utilities and Transportation Commission. They will all

1 be put in the docket. The resolutions and comments will
2 be put in the docket for whatever use the Commission
3 will make of them.

4 But I wanted to indicate clearly for the
5 record what has happened, so that the parties don't
6 think nobody has thought of them and everybody has
7 forgotten them.

8 Ms. Mahon?

9 MS. MAHON: Your Honor, the protesting
10 railroads would like to inquire whether, in view of the
11 fact that our rebuttal testimony is due the day after
12 the Memorial Day holiday, whether we might be given an
13 extra day to May 29th.

14 JUDGE HOPKINS: Have they discussed with with
15 the other side, too?

16 MS. MAHON: No, we haven't.

17 JUDGE HOPKINS: You gentlemen don't see any
18 problem, do you?

19 MR. WILSON: We may need it ourselves.

20 JUDGE HOPKINS: I didn't think you'd see any
21 problem. Well, I'll put out an order indicating that.
22 That's on a Wednesday.

23 MS. MAHON: Wednesday, May 29th. Yes.

24 JUDGE HOPKINS: And I will indicate now that I
25 want the same committees for this next stage of the

1 proceeding, not only for the working together like we've
2 done in the past, and I will put out an order on this.

3 Also, Ms. Mahon, I guess you and Mr. Moates
4 are also in charge, if there are any corrections in the
5 transcript. I'm designating you two for the rest of the
6 period. And the committee that I've appointed
7 previously I am designating for the rest of the period,
8 too.

9 Also, I guess it was the Denver and Rio Grande
10 had Exhibit DRWG-C-58. Remember they were supposed to
11 put in the rest of an exhibit. I might as well give it
12 to the reporter now, since the copy was -- I gather
13 everybody else has received a copy of it.

14 This is something that was indicated on the
15 record, that they would put the rest of it in at that
16 time. So I will give it to you, and that will be
17 received in evidence.

18 (The document referred to,
19 previously marked Exhibit
20 DRGW-C-58 for
21 identification, was received
22 in evidence.)

23 MR. STEPHENSON: A copy may have been sent to
24 me, and I have not received it as yet. But I would like
25 to be sure that the Applicants get it.

1 MS. DE SANTI: It's my understanding that all
2 the active parties have been served.

3 JUDGE HOPKINS: I just wanted to make certain
4 that we didn't forget it and it was put back in the
5 record.

6 Is there anything further? I'm never certain
7 that I might have forgotten something. Remind me if I
8 have at any time. Don't be afraid to do it, because I
9 can forget any number of things.

10 Anything further?

11 We'll be in recess until -- is it June 17th,
12 as I remember -- the next stage. We'll be in recess
13 until June 17th. I'll put out an order as soon as I
14 can, but go forward with the idea that the same
15 committee, et cetera, et cetera, and you will have to
16 notify as to cross examination, probably since it's --
17 what date would that be? The 28th? 29th?

18 MS. MAHON: The 29th.

19 JUDGE HOPKINS: Well, two weeks after that.
20 I'll put out an order indicating clearly what the dates
21 are that you'll have to indicate your request for
22 cross-examination, et cetera.

23 MS. MAHON: Will you also set a date for
24 transcript corrections?

25 JUDGE HOPKINS: No. You two can work that

1 out. I'm not going to indicate a date now, because I
2 know there's always problems on that.

3 Anything further before we recess? We'll be
4 in recess until June 17th.

5 (Whereupon, at 5:40 p.m., the hearing
6 recessed, to reconvene on Monday, June 17, 1985.)

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