

Docket No. F.D. 30400 - 10/11/84 - PAGES - 1805 - 1864

1 continue to operate the sunset route as it is operated
2 today at the same volumes?

3 A No. My understanding of the improvement in
4 operation will be to rationalize the service over the
5 sunset route as well as the Santa Fe double track line,
6 so as to take advantage of the density capacity and the
7 service requirements with respect to movements over
8 those two lines.

9 Q Yes. And as a result of that planned
10 operation, the planned operating plan, will that not
11 reduce the capacity or alleviate the capacity on the
12 sunset route post-merger?

13

14

15

16

17

18

19

20

21

22

23

24

25

1 A I think if I understand the operating plan --
2 and I am really not the best witness with respect to the
3 details of the operating plan -- but my understanding is
4 that the whole idea of the change in the plan is to
5 make -- is to rationalize the use of those two lines so
6 as to improve the operation.

7 Q I understand. I should have read further.

8 As I understand it from your prior
9 testimony -- well, let me ask you directly. Did you
10 consider in your study whether shippers, primarily
11 California shippers I'm interested in, will experience
12 any disbenefits as a result of the merger?

13 A No, I didn't undertake to do the downside
14 study. We were asked to look for improvements that
15 might come about for the shipper as a result of that.

16 Q I stated that as broadly as possible. In
17 other words, not only competitive impacts, any kind of a
18 disbenefit was not considered. Your study did not
19 consider whether or not any of those disbenefits may
20 occur as a result of the merger?

21 A No, it did not.

22 Q Then this next question may or may not be one
23 that you care to answer or have experience to answer,
24 but let's assume for the moment that some California,
25 large California cotton producers are concerned that

1 their rail competition is going to be reduced from two
2 to one postmerger, and if they choose to rather than
3 ship to the southeast, to have the goods finished,
4 choose to ship it to the far east for that purpose, you
5 didn't consider that or didn't consider that possibility
6 as a factor in your conclusions?

7 A No, I didn't consider the options that might
8 be available to the shipper.

9 MR. MAC KENZIE: Thank you.

10 JUDGE HOPKINS: Is that all?

11 Mr. Hynes?

12 MR. HYNES: Yes, I have a few questions to
13 redirect.

14 REDIRECT EXAMINATION

15 BY MR. HYNES:

16 Q Mr. Rhodes, the first relates to your grain
17 statement, and cross examination with respect to that
18 verified statement.

19 I would like to direct your attention back to
20 the discussion that you had with Mr. Greenberg
21 concerning the railroad lines that operate in what Mr.
22 Greenberg termed southwest Kansas.

23 Do you remember that discussion?

24 A Yes, I remember it generally.

25 Q I believe you indicated at that time, did you

1 not, that both the Santa Fe and the Southern Pacific
2 operate railroad lines in southwest Kansas, is that
3 correct?

4 A Yes.

5 Q Do any other railroad carriers operate rail
6 lines in southwest Kansas?

7 A Well, of course, southwest Kansas has to be
8 defined. When I was responding to Mr. Greenberg, I was
9 considering a very confined area that is served by the
10 Santa Fe and the SP. However, a look at the map up here
11 or the one that is over here would indicate that the
12 Missouri Pacific operates a line not too far north of
13 the Santa Fe line, and east of that there are several
14 carriers that serve to the south.

15 Q Is transportation other than by rail available
16 in southwestern Kansas?

17 A Yes.

18 Q What type of transportation would that be?

19 A Truck transportation is available. We
20 eliminated barge as a competitive route in that area.

21 Q Okay.

22 And my only other question relates now both to
23 grain and to cotton. It relates to a theme that came up
24 a number of times during the cross examination.

25 You recall, do you not, several questioners

1 asked you about the question of whether or not you
2 conducted any shipper interviews in the course of
3 producing your study.

4 A Yes.

5 Q In your professional judgment, Mr. Rhodes, did
6 the elimination of the shipper interviews, interview
7 step, which was initially part of your methodology, in
8 any way adversely affect the quality of the results of
9 your study, of either of your studies, because this
10 question relates both to grain and cotton?

11 A I think the answer to that is absolutely no.

12 MR. HYNES: I have no further questions, Your
13 Honor.

14 JUDGE HOPKINS: Any further questions?

15 MR. GREENBERG: Yes, Your Honor, if you don't
16 mind, just one little question.

17 RECROSS EXAMINATION

18 BY MR. GREENBERG:

19 Q I'm not going to fence with you, Mr. Rhodes,
20 but I would just ask you about the line of the Missouri
21 Pacific. Do you know how far north of the Santa Fe?

22 A Not in miles, but if we have a map I could
23 probably give you an estimate of that using my finger as
24 a ruler. I don't know how many miles it is actually.

25 Q Let me also ask you, while you are looking at

1 that, what do you include in the term "southwest
2 Kansas?" What do you include in that?

3 A In response to your question, because I
4 thought you were directing your attention to this narrow
5 area in the lower part of southwest Texas --

6 JUDGE HOPKINS: Kansas.

7 THE WITNESS: I mean Kansas, but in looking at
8 this map, we see that the MF and the UP -- UP is lying
9 across just across the Colorado line about, oh, if you
10 will give me a minute, or if I can find the scale on
11 this map --

12 (Pause)

13 THE WITNESS: Eyeballing that, it would look
14 to me to be about somewhere 25 to 50 miles, probably
15 closer to 25 at the border.

16 BY MR. GREENBERG: (Resuming)

17 Q At the border?

18 A At the border of Colorado and Kansas.

19 Q So that is 25 to 50 miles north of?

20 A Twenty-five, you know, without a ruler or
21 something to give you a better estimate. But that is
22 certainly within the ballpark.

23 Q Do you have any idea what the average distance
24 grain moves by truck in the State of Kansas?

25 A No, I have not made any studies on that.

1 Q Have you had an opportunity to read Mr.
2 Dimmerman's testimony submitted by the MKT in this
3 proceeding?

4 A No.

5 Q Did you have an opportunity to review a
6 publication called Kansas Grain Marketing and
7 Transportation?

8 A I have looked at that study, but I can't
9 recall in relation to that study any specific distances
10 that were involved.

11 Q Do you know if anybody on behalf of the
12 applicants used the information contained in the Kansas
13 Grain Marketing and Transportation Report?

14 A No, sir. I haven't seen any of the other
15 witnesses' testimony with respect to this case.

16 Q In preparing your particular report, did you
17 analyze the transportation by mode on a county-by-county
18 basis?

19 MR. HYNES: Your Honor, I am going to object
20 at this point. This is getting far beyond the scope of
21 redirect examination.

22 JUDGE HOPKINS: It sure is.

23 I will sustain the objection.

24 MR. GREENBERG: Fair enough. Thank you, Your
25 Honor.

1 JUDGE HOPKINS: Anything else?

2 You are excused, sir.

3 (The witness was excused.)

4 MR. HYNES: Your Honor, at this time I would
5 like to move the admission of both Mr. Rhodes' verified
6 statements with respect to cotton and that with respect
7 to grain.

8 JUDGE HOPKINS: Any objection?

9 (No response.)

0 JUDGE HOPKINS: They will be received in
1 evidence, I believe Denver and Rio Grande, is that 12,
2 13, and 14, is that correct?

3 MR. HYNES: No, Your Honor, subject to one
4 stipulation. During the break we had a discussion with
5 counsel for the Rio Grande and noted that with respect
6 to Exhibit C-13, the last page of that package was a
7 memorandum from Mr. Wilson of the Santa Fe, and that
8 memorandum refers to a paper.

9 We have discussed this with the Rio Grande,
10 and they are willing to stipulate, because the fact is
11 that this was not the covering memorandum for the pages
12 that come before.

13 JUDGE HOPKINS: What are you stipulating?

14 MR. HYNES: We will stipulate to its admission
15 in evidence with the clarification that the last page is
16
17
18
19
20
21
22
23
24
25

1 not related to the first.

2 JUDGE HOPKINS: Thank you.

3 MR. LEARY: With the one addition, Your Honor,
4 that the last page was fastened to the document at the
5 beginning when it was found in the depository.

6 JUDGE HOPKINS: So you people didn't put it
7 together that way.

8 MR. LEARY: That's correct.

9 JUDGE HOPKINS: I understand.

10 We will accept it with that stipulation.

11 So 12, 13, and 14 are also received in
12 evidence.

13 (The documents referred to,
14 previously marked Exhibits
15 DRGW-C-12, DRGW-C-13 and
16 DRGW-C-14 for
17 identification, were
18 received in evidence.)

19 JUDGE HOPKINS: Who is the next witness?

20 MR. WILSON: Your Honor, Applicants' next
21 witness is Mr. James Heuer.

22 MR. ROBERTS: Mr. Heuer, my name is Barry
23 Roberts.

24 JUDGE HOPKINS: He hasn't said anything yet.
25 We are waiting for Mr. Wilson.

1 (General laughter.)

2 Whereupon,

3 JAMES S. HEUER

4 was called as a witness by counsel for Applicants and,
5 having been duly sworn by the Administrative Law Judge,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. WILSON:

9 Q Mr. Heuer, do you have before you a 61-page
10 document bearing your signature of March 13, 1984, is
11 that correct?

12 A That is correct.

13 Q Is that your verified statement and testimony
14 in this proceeding?

15 A Yes, it is.

16 Q With that statement and the errata which was
17 filed three weeks ago, do you have any additional
18 modifications you would like to make to your statement
19 at this time?

20 A Yes, I do.

21 There is one small wording change. On page
22 35, in the first full paragraph, fourth line down, I
23 would like to strike the word "virtually" and insert the
24 four words "in single line service" after the word
25 "traffic."

1 That is the only change I have to make in the
2 statement.

3 Q Mr. Heuer, your Tables 6, 7, and 8 in your
4 statement which appear, Table 6 on page 31, Table 7 on
5 page 39, and Table 8 on page 41, are stated on an
6 unexpanded basis.

7 A Could you state for the record approximately
8 what those volumes would be on an expanded basis?

9 A It's approximately 100 times the numbers that
10 are in those tables.

11 Q Okay.

12 A With that change and your other testimony, is
13 your testimony true and correct to the best of your
14 knowledge and belief?

15 A Yes, it is.

16 MR. WILSON: I tender the witness for cross
17 examination.

18 JUDGE HOPKINS: Now you can start, Mr.
19 Roberts.

20 CROSS EXAMINATION

21 BY MR. ROBERTS:

22 Q Mr. Heuer, my name is Barry Roberts. I
23 represent Sunkist Growers in this proceeding.

24 A Mr. Heuer, turning to page 3 of your verified
25 statement, the first line, you refer to the purpose of

1 the statement.

2 May I ask, who instructed you to prepare a
3 verified statement?

4 A Well, I was part of the A. T. Kearney team
5 that was assigned to this project, and Mr. Kloss
6 assigned me to this particular subject area.

7 Q What were your instructions?

8 A To examine the benefits to be enjoyed by
9 shippers as a result of the merger, with respect to the
10 intermodal perishables area.

11 Q Were you instructed to consider any detriments
12 to shippers?.

13 A The instructions were, as I indicated to you,
14 to look at the benefits associated with and from the
15 merger. That I think is quite clear.

16 Q When you say benefits, do you mean benefits on
17 balance, considering all effects of the merger, or
18 benefits in isolation?

19 A The benefits to be derived from the merger are
20 benefits, and with respect to disbenefits, we did not
21 explicitly try to weigh one against the other, although
22 I would say that for my purposes, at least, with the
23 statement that I have prepared, I felt the benefits were
24 very clear and unambiguous.

25 Q Further on down the first paragraph, you state

1 that the analysis took the perspective of shippers.

2 A Mm-hmm.

3 Q Have you ever been a shipper of perishable
4 commodities?

5 A I have not personally been a shipper of
6 perishable commodities.

7 Q Have you ever been employed by a shipper of
8 perishable commodities?

9 A The firm for which I work, in assignments for
10 that firm, I have been assigned to do transportation
11 analysis for companies who ship both frozen and
12 perishable products in equipment that is provided with
13 temperature control.

14 Q Have you ever been involved, either directly
15 or through the Kearney Company, in handling, dealing
16 with the actual shipment of perishable products?

17 A In the physical loading of the cars and the
18 equipment, no, not particularly.

19 Q Have you had any day-to-day experience in the
20 handling and shipping of perishable commodities?

21 A Day-to-day experience? I am not sure I
22 understand what you are driving at there.

23 Q Have you ever dealt with one or more rail or
24 motor carriers as a shipper making arrangements for the
25 transport of perishable commodities?

1 A If you are asking whether I have been a
2 traffic manager in a company that ships perishables, no,
3 I have not been a traffic manager in a company that
4 ships perishables.

5 Q So that in summary, your experience has been
6 strictly as a consultant with the Kearney Company, and
7 when you refer to a study is that the TOPCO study that
8 Mr. Kloss referred to earlier?

9 A No, it isn't.

10 Q Have you ever done any work for a shipper of
11 perishable agricultural commodities, fresh fruits and
12 vegetables in particular?

13 A Yes. They were confidential studies.

14 Q Can you tell us which commodities were
15 involved?

16 A I think I can be safe in generalizing to
17 tomatoes.

18 Q And can you tell us whether that involved
19 shipments from California to points elsewhere in the
20 United States?

21 A That was part of the study.

22 Q And was that the extent of your experience in
23 dealing with fresh produce?

24 A To the extent that projects that I have
25 performed for Kearney involving intermodal

1 transportation and other types of transportation
2 analysis, including those for the Commission, have dealt
3 with perishable freight, I have had exposure to the
4 perishable industry.

5 Q Now, in taking the perspective of shippers,
6 did you interview any shippers of fresh product or any
7 other perishable commodity in connection with the
8 study? S

9 A No, I did not.

10 Q So that your perspective as a shipper is based
11 strictly on your experience within Kearney?

12 A That's not quite completely true. The
13 perspective in the study is derived from all the source
14 that we relied upon, including extensive use of
15 government documents which labor at considerable length
16 over the issue of shipper interests and shipper
17 concerns.

18 Q What I am trying to understand is what you did
19 to posture yourself to take a shipper's perspective?

20 A The objective that I believe we all have had
21 is to understand those issues which are of interest and
22 concern to shippers in their choices of carriers and
23 choices of modes, and through the research that we
24 accomplished in this study with respect to the
25 government documents, with respect to our prior

1 experience with mode choice and mode selection, our
2 conversations with other sources of information, why, I
3 think we have at least assembled a reasonably good
4 understanding of those factors which shippers are most
5 concerned about with respect to not only the movement of
6 perishables but also intermodal products in general,
7 which of course is the larger purpose of the statement
8 that I prepared.

9 Q Don't you think that getting facts and
10 information directly from shippers of perishable
11 commodities is the best way to determine what influences
12 those shippers in their choice of carrier?

13 A Well, there are interesting issues that might
14 have been illuminated thereby. However, one of the
15 sources of information that we used was the filings that
16 had been prepared by shippers with respect to this
17 merger up until the point at which we submitted our
18 statement.

19 They addressed such specific issues as were
20 not elaborated upon in great detail through the
21 government documents we referred to. It studied very
22 comprehensive studies of perishables transportation that
23 were undertaken by various government agencies.

24 Q What interesting issues might have been
25 illuminated had you spoken with actual shippers of

1 perishable commodities?

2 A Primarily those issues which we ultimately got
3 at through other sources, those being concerns for very
4 immediate kinds of situations. Typically, shipper
5 interviews wind up focusing on the affairs of the
6 moment, not necessarily strategic considerations, not
7 necessarily long term issues.

8 They usually bring out rather anecdotal
9 information with respect to the current problems and
10 concerns, and those issues were rather amply illuminated
11 not only in the testimony provided by those shippers
12 with respect to this case, but also certainly touched on
13 regularly in the public press, the trade press.

14 Q Now, that conclusion is based upon your
15 supposition as to what you might hear from shippers
16 rather than from actual interviews with shippers?

17 A Bear in mind that I have worked with hundreds
18 of shippers over time, and I am pretty familiar with the
19 nature of shipper decisions and the types and schemes by
20 which systems that shippers use to select modes and
21 carriers, and I am not necessarily coming at this
22 unprepared with respect to the types of decisions the
23 shippers make.

24 There tends to be more commonality across
25 shippers, across industries, than is normally supposed.

1 Shippers often think of themselves as being very unique
2 in having a set of characteristics that distinguishes
3 them totally from everyone else, and having dealt with
4 shippers in a large number of industries, I can tell you
5 that is not the case.

6 Q So that in sum, what you are relying upon is
7 your expertise, generally, and not any particular
8 shipper analysis with respect to this merger, is that
9 correct?

10 A Not with respect to -- you said any
11 particular?

12 Clarify the question if you would, please.

13 Q I'll try that again.

14 Do I understand you to say that you are
15 relying on what you consider to be your general
16 knowledge of shipper behavior rather than on any
17 particular effort to determine shipper reaction to this
18 merger?

19 A Well, that is not at all true. The input to
20 this paper, like that of my other colleagues, is a
21 blending of sources derived from our experience, from
22 our research, from information provided as is mentioned
23 elsewhere, from the market managers, from the railroads,
24 from the publications in the trade and public press.
25 There is a broad array of inputs to the process by which

1 we have arrived at our statement.

2 Q Let me try it one more time.

3 Could you tell us what inputs from shippers
4 you used that pertained directly to this merger?

5 MR. WILSON: Objection, Your Honor. I think
6 it has been asked and answered.

7 JUDGE HOPKINS: Well, was there anything, any
8 direct input?

9 What do you consider direct input?

10 THE WITNESS: If you consider the reference to
11 shipper testimony, to shipper statements reported in the
12 public press, to shipper statements summarized in
13 government surveys of the perishables industry, USDA
14 information about perishables transportation, if you
15 regard those as sources of information, then I would
16 have to say yes, there was shipper input, interest,
17 concern, consideration brought to bear on this
18 statement.

19 BY MR. ROBERTS: (Resuming)

20 Q Turning to the top of page 4 of your
21 statement, you suggest that purported operating
22 improvements, service improvements will result in
23 operating cost reduction.

24 A Mm-hmm.

25 Q In characterizing that as a shipper benefit,

1 do you mean to say that shippers will obtain lower
2 rates?

3 A I believe this issue has been addressed
4 extensively during the course of this hearing. It is
5 our belief, and I think that we can substantiate this
6 with more discussion later, if it is appropriate, that
7 the transport of perishables as well as intermodal
8 products in general is intensively -- intensively
9 competitive primarily because of the extensive truckload
10 transportation system we have in this country.

11 In the face of that competitive environment, I
12 would suppose, although I have no information
13 specifically to go on in this regard because it is
14 really related to the internal marketing decisions of
15 the railroads involved, but prudent managers confronting
16 a very, very intensely competitive environment, would
17 certainly be expected in some instances to translate a
18 cost reduction into a corresponding reduction in rates.

19 Q Understanding that both TOFC and all fresh
20 produce is now exempt from regulation, would you agree
21 that costs are but one element in railroad pricing
22 decisions?

23 A Costs are but one element in railroad pricing
24 decisions?

25 They are certainly a significant one with

1 respect to this area because it is so intensely
2 competitive.

3 Q Would the question of charging what the market
4 might bear be relevant to the exempt commodities?

5 A The market price, to a large degree, for
6 intermodal as well as -- for all the intermodals, a full
7 range of commodities, is set in a rather messy, sloppy,
8 but more or less classic marketplace for transportation
9 in which the primary producers of transportation, motor
10 carriers, resembles the classic market in the sense that
11 there are thousands of producers independently setting
12 their prices, and at any point, if any one of them
13 chooses to be avaricious with respect to his pricing, he
14 finds he has no business.

15 Q At the bottom of page 4 of your statement you
16 indicate that you relied on Santa Fe and Southern
17 Pacific operating department personnel.

18 Can you tell us which Santa Fe operating
19 department personnel you relied upon?

20 A The operating information was provided to me
21 primarily through Mr. Steve Mitchell who actually served
22 as a coordinator, providing current information, up to
23 the minute, as the process moved along on changes
24 contemplated in intermodal schedules and operations.

25 Q Did you request any particular information

1 from Mr. Mitchell, or did he determine what it would be
2 appropriate to give you?

3 A I made a very strong argument early on in the
4 process that in order to do what I felt was a
5 satisfactory job of preparing this statement, that I
6 needed to have in my hands a complete picture of the new
7 proposed intermodal schedules, and there was some
8 anxiety on the part of the railroads because those
9 schedules were in a state of flux.

10 There were many operating considerations. The
11 Booz-Allen, Hamilton study was in process at the time,
12 so there was concern as to giving me information which
13 was preliminary rather than final.

14 But I ultimately said this is my statement, I
15 have to have that information, and the railroad complied
16 and made a very, very vigorous effort during the course
17 of my work to keep me up to date as they refined the
18 operating information. And I believe that the
19 information which was ultimately relied upon was that
20 which was incorporated in the verified statements which
21 were submitted to this proceeding.

22 Q So are you telling the Commission that you
23 obtained all of the information you requested and deemed
24 desirable from the Santa Fe?

25 A I have to say yes, that's true.

1 Q And the same for the Southern Pacific?

2 A Well, the Santa Fe, because they happen to be
3 eight blocks away from where our offices are, happened
4 to actually provide the conduit for the information, but
5 the development of the operating plan, as I understand
6 it, was a joint effort, and therefore, the personnel
7 from both railroads were involved.

8 Of course, I did talk to Southern Pacific
9 people, I made a trip to San Francisco, and they were
10 very cooperative in providing the information I
11 requested.

12 Q When you said the Santa Fe was the conduit, by
13 that do you mean that information coming from the
14 Southern Pacific was transmitted to you via the Santa
15 Fe?

16 A With respect to the operating plan that
17 ultimately has been submitted to the Commission, that is
18 correct.

19 Q And who did you deal with independently at the
20 Southern Pacific?

21 A Primarily marketing people, Norm Kirsh and Tom
22 Ellen of Pacific Fruit Express.

23 Q And how would you describe your dealings? How
24 extensive were they with those individuals?

25 A I am trying to think exactly how long the

1 sessions lasted.

2 I believe I spent a rather intensive, long day
3 with Norm and his people. Tom Ellen lasted the better
4 part of a morning plus part of an afternoon.

5 Q Did you get all of the information you
6 requested or deemed desirable directly from the Southern
7 Pacific?

8 A Every question that I posed to them was
9 answered to my satisfaction.

10 Q Turning to page 6 of your statement, the first
11 line in the first paragraph refers to this growth has
12 come both from diversions for boxcars and motor
13 carriers. I assume by the phrase "this growth," you are
14 referring to TOFC traffic?

15 A Excuse me.

16 Oh, at the bottom.

17 Q At the bottom of page 6.

18 A The first line of the last paragraph?

19 Q Yes.

20 A Yes. We are talking here about the growth of
21 intermodal transportation generally. That, by the way,
22 is referring to national growth of intermodal
23 transportation.

24 Q Would that same statement hold true with
25 respect to the growth of intermodal transportation on

1 either or both of the applicant carriers here?

2 A I don't have any direct evidence to make a
3 comment on that. From what I know about the changes in
4 the boxcar business on those railroads, I would suppose
5 that some of that traffic has migrated to intermodal,
6 and what I know about shipper decisions with respect to
7 truck traffic, the lanes served by these carriers, I am
8 quite confident that a share of it, a significant share
9 of it, has migrated from the motor carriers. I couldn't
10 begin to tell you precisely what the split would be.

11 Q When you refer to diversions from boxcars, are
12 you including within that statement any diversion of
13 perishable traffic that would have moved in refrigerated
14 boxcars to TOFC?

15 A In a very general way, the answer is yes,
16 because it is a matter of rather clear public record
17 that the transport of perishables and frozen product in
18 refrigerator cars has declined very, very substantially
19 over the last 20 years, and there has been a very strong
20 growth in the transport of perishables and frozen
21 product by intermodal.

22 Without knowing specifically shipment for
23 shipment what proportion has moved over there, I would
24 suppose that a portion of that has moved to intermodal
25 and a portion of it has moved to truck.

1 Q Have you looked specifically at what has been
2 the pattern with respect to perishable traffic
3 originating in California on the lines of either of the
4 applicant carriers?

5 A Looked at it with respect to what, sir?

6 Q Looked at it with respect to what the pattern
7 has been of refrigerated boxcar traffic on either
8 carrier, and whether there has been any shift in that
9 traffic to TOFC.

10 A Based on the discussions I had with Tom Ellen
11 and with the Santa Fe personnel, I would suppose that a
12 significant quantity, but I couldn't begin to say what
13 proportion, of the freight once handled in PFE
14 refrigerator cars has been drained off both to trucks
15 and to intermodal.

16 But again, no one was in a position, and I
17 don't think it is very clear in terms of the statistics
18 as to just what proportion it might be. Clearly, when
19 you have a decrease in volume of one type of
20 transportation, a corresponding increase in truck and
21 intermodal, you would have to assume that that is where
22 it is going since the production of perishables in that
23 territory continues to be strong.

24 Q When you say PFE, just so the record is clear,
25 that is --

1 A Pacific Fruit Express, a subsidiary of the
2 Southern Pacific Railroad.

3 Q And we can use that term synonymously with the
4 Southern Pacific?

5 A Well, in general, yes. There is a fairly
6 clear distinction between the PFE and the railroad with
7 respect to their marketing decisions, their pricing
8 decisions. They operate as a more or less independent
9 company, and I wouldn't want to suggest that there is
10 any more of a relationship there than there really is.

11 Q But refrigerated traffic that PFE is able to
12 obtain in fact moves on the Southern Pacific?

13 A That is correct, for the most part. I
14 understand that they have broadened their mandate
15 somewhat, and if they can use the cars for revenue
16 service on some other railroad, they are free to do so.
17 That is not particularly relevant to the statement.

18 Q Are you aware of the current amount of
19 perishable traffic moving in refrigerated boxcars
20 originating on the Southern Pacific as compared to those
21 that would originate on the Santa Fe in California?

22 A The relationship of the boxcar -- refrigerated
23 car to refrigerator car?

24 Q Refrigerator car, comparing originations on
25 the two railroads.

1 A I have to be quite clear on this point. I may
2 have some general sense for it because I know
3 approximately the relative size of the fleets, but I
4 would like to emphasize to you that the statement which
5 I developed here and which I have presented to the Santa
6 Fe and which they -- and the SF, you know, which they in
7 turn are presenting to the Commission, has to do with
8 intermodal transportation, and that portion of it as
9 well which involves the intermodal transportation of
10 perishables.

11 I did not make a systematic study of the
12 carload transport of perishables, and that is
13 emphasized, I think, by the errata which was submitted
14 somewhere along the line over the last month or so in
15 which we put a slash after the word "intermodal" and
16 before the word "perishables" and took out the "and."

17 I am focusing on intermodal transportation.

18 Q All right.

19 Would you agree, however, that in the
20 transportation of perishables, that TOFC not only
21 competes with motor carriers, ICFC competes with
22 refrigerated boxcars? Basically you have three
23 competing modes?

24 A Well, in the sense that the 747 competes with
25 Amtrak, I suppose you are right. The refrigerated

1 boxcar -- and I'm on the public record as saying this
2 generally with respect to the boxcar itself, in all of
3 its ramifications, the boxcar is dead, dead, dead, and
4 much as the passenger train was dead in 1958 and took a
5 long time for that to actually work its way through the
6 system, and in the sense that yes, there are still
7 refrigerator cars there, yes, they are still being used,
8 but do they constitute a long term type of
9 transportation option which shippers should incorporate
10 into their long term distribution plans? The answer is
11 no.

12 Q So are you stating on behalf of the applicants
13 that in the event the merger is approved, that we can
14 expect to see the complete demise of refrigerated
15 boxcars?

16 A The applicants have made their statements with
17 respect to their plans on the refrigerator cars, and
18 they intend to use those that they have, as I understand
19 it, until the end of the economic life. However, it is
20 my understanding that the equipment that the Southern
21 Pacific has -- and that is the largest fleet -- the
22 newest car was acquired in 1971, the oldest car in
23 1964.

24 Those dates may be off by a year or two, but
25 they certainly are correct in terms of the order of

1 magnitude. It is an old fleet, and there is only so
2 long that you can keep obsolescent equipment rolling.

3 Q Is it correct to state that you are not
4 familiar with the current Southern Pacific program, that
5 is, Southern Pacific/PFE program, to refurbish and
6 rebuild those cars?

7 A I understand that there is a program afcot to
8 maintain those cars in such a way that they will have
9 the longest practicable life, but the fact remains that
10 a 20 year old piece of equipment with respect to running
11 gear and other aspects is still 20 years old, and there
12 is a limit for any piece of rail equipment as to its
13 life, no matter how many rehabilitations it might go
14 through.

15 Q Let me get back to the basic question that I
16 asked you, and in the marketplace today, would you agree
17 that shippers of perishable commodities have their
18 choice of three modes: over-the-road motor carrier,
19 TOFC, or refrigerated boxcars; and providers of those
20 three modes compete with one another for that traffic?

21 A I am not sure I still want to agree with
22 that. You know, you take those refrigerator cars with a
23 transit time of eight or ten days, everything that I
24 have heard from perishable shippers and the reading that
25 I have done, the information I have gathered, suggests

1 to me that the standard of service against which all
2 modes of transport are compared is the performance of
3 regular route or contract motor carrier that is able to
4 pick up a load and deliver it at a relatively high speed
5 directly to the destination, with a transcontinental
6 time of perhaps 60 hours.

7 I think it is stretching a point to consider
8 the refrigerator car as basically a competitor any
9 longer when in fact the real competitor is the motor
10 carrier. And in fact, I suspect if refrigerator cars
11 were to be replaced at \$100,000 to \$150,000 per unit,
12 which soon they will have to be, no one in his right
13 mind would pay that kind of a price to ship by those
14 cars.

15 Q And once again, to relate this testimony to
16 your earlier testimony, that is your opinion, not based
17 on discussions with shippers of perishable commodities,
18 including those shippers who might currently be using
19 refrigerated cars?

20 A It is based on several things, the fairly
21 extensive work I have done personally with frozen food
22 shippers who confront exactly the same issue. The
23 issues transcend this merger completely. The issue is a
24 declining, deteriorating fleet.

25 And those issues are being addressed

1 aggressively by shippers, including your client, as near
2 as I can determine through his purchases through agents
3 and various owned, partially owned entities, purchase of
4 trailers and so forth. Every indication that we have is
5 that the shippers are steadily organizing, reorganizing
6 their distribution patterns to recognize the long term
7 prospects of the refrigerated rail car.

8 JUDGE HOPKINS: Excuse me, Mr. Roberts.
9 How many more minutes would you take?

10 MR. ROBERTS: Let me be bold and suggest ten
11 to fifteen.

12 JUDGE HOPKINS: And the Department of
13 Justice?

14 MR. RATNER: It is the usual questions, Your
15 Honor. I estimate 15 minutes.

16 JUDGE HOPKINS: Does this gentleman need to
17 get away or anything?

18 MR. WILSON: Not particularly, Your Honor.
19 But on the other hand, I am a patient person. I would
20 just as soon go on.

21 JUDGE HOPKINS: The State of California?

22 MR. VINCENT MAC KENZIE: I have a few
23 minutes.

24 JUDGE HOPKINS: We will just recess for a
25 minute.

1 (Brief recess.)

2 JUDGE HOPKINS: Let's go back on the record
3 then.

4 BY MR. ROBERTS: (Resuming)

5 Q Mr. Heuer, on pages 10 through 14 of your
6 statement, you discuss each of the various factors in
7 the intermodal marketplace.

8 A Uh-huh.

9 Q In the course of preparing this study, did you
10 interview any freight forwarders?

11 A No, we did not.

12 Q Shippers' agents?

13 A I think I indicated to you that I did not
14 conduct any interviews of transportation users or
15 shippers, if you will, during the course of my
16 preparation.

17 Q So that would include freight forwarders,
18 shippers' agents, shipper association representatives,
19 and Plan 3 operators?

20 A That's correct.

21 Q In today's deregulated environment, these
22 middle men, would you characterize the relationship
23 between the railroad middle men and the shipper as one
24 of wholesale/retail customer?

25 A That is generally the framework that is

1 presented. It's not 100 percent accurate, because in
2 that classic framework there is a product to be stored
3 and contained and other things that are involved in the
4 retailing of the service.

5 But in general, I think that's an accurate
6 characterization.

7 Q Would you agree again with the same general
8 thing, that today, both the Southern Pacific and the
9 Santa Fe are essentially wholesalers of TOFC service, at
10 least to perishable shippers relying upon these various
11 categories of middle men to market?

12 A I believe that they have tended to take a
13 relatively strong position with respect to perishables
14 and the wholesaling of that through a large number of
15 Plan 3 operators and the like.

16 This is certainly the case of other
17 commodities, although in the case of the other
18 intermodal type commodities, both carriers have
19 solicited traffic on their own from time to time
20 successfully.

21 Q Once again, limiting the question to
22 perishables, have you had any discussions with any
23 personnel at either of the applicant railroads as to
24 what their policy will be in the future?

25 That is, will they continue to be primarily in

1 the wholesale business with respect to perishable TOFC
2 shippers, or they indicated their intention, upon
3 consummation of the merger, to enter the retail
4 business?

5 A There is very, very little discussion of what
6 I would call long range marketing policy issues, and I'm
7 certainly not in a position to speak for the carriers as
8 to how they intend to accommodate that, although I would
9 think, as an outside observer looking into the railroad,
10 that it would be rather silly to kill the goose that
11 laid the golden egg.

12 And there has been such striking success by the
13 Plan 3 program that I think it would be to be expected,
14 but purely speaking, as an outsider looking in, that
15 they would wish to continue that.

16 Q On page 16 in the bottom paragraph, you've
17 stated, with a few exceptions, shippers have reported
18 few problems with equipment supply. You would agree
19 that at least as far as fresh produce shippers are
20 concerned, there is what I will call an annual equipment
21 shortage during peak harvest and shipping seasons?

22 A There are cyclical demands for equipment in
23 the perishable business, that certainly is true. Your
24 industry makes quite an effort to provide information to
25 the transporters so that there is an understanding where

1 the shortages are, so that the motor carriers can move
2 equipment in quickly to accommodate those problems.

3 Q And on page 17, you refer to the pivotal
4 position of the Santa Fe and the Southern Pacific in
5 perishables transportation.

6 A Let me clarify that for just a moment, because
7 you look at the railroads who transport perishables,
8 there once was a substantial volume of perishables
9 moving on virtually every carrier. And that perishable
10 business, ranging from Maine potatoes and green beans
11 from Indiana and whatnot, is largely gone, and really
12 there just remains that rather small market share of the
13 total transportation picture that the SF and the Santa
14 Fe enjoy, if you will.

15 So the reference to the word "pivotal" there
16 or the purpose of the word "pivotal" is to simply
17 indicate that these are pretty much the only two
18 railroads in the country that are significant in the
19 perishables business.

20 Q And would you say that is because California
21 is probably the most important production area for fresh
22 perishable commodities?

23 A If you look at the table on page 20, I think
24 that's made very clear.

25 Q And would you further agree that the key

1 consuming markets are the large population centers of
2 the Midwest and Northeast?

3 A Well, there really are quite a number of
4 consuming markets. With the population of the West
5 Coast that's grown so substantially, the West Coast
6 constitutes a very, very substantial market in and of
7 itself.

8 Texas, with the major population centers
9 there, constitute a very significant population
10 concentration. Of course, there are the traditional
11 centers of population, but it is no longer a fact that
12 virtually all demand for consumer products is located in
13 the Northeast. That is definitely not the case.

14 Q Let me rephrase the question then. Would you
15 agree that the reason that the Santa Fe and the Southern
16 Pacific have remained important factors in the rail
17 transportation of perishables is because they each
18 participate in the longest haul movement; that is, the
19 transcontinental movement of perishables from the
20 California production areas to the Eastern consumption
21 areas?

22 A I haven't looked at the numbers specifically,
23 but I would suspect that if you compare the rate of
24 traffic loss for the Western carriers, it would probably
25 track pretty well with the rate of traffic loss for the

1 other carriers, and there still is a trivial amount of
2 proportion of the freight of perishables handled in the
3 other areas of the country.

4 I wouldn't want to go so far as to say that
5 that share that these carriers have today, you know,
6 has -- that they have lost any less or any more than
7 other carriers in other circumstances, because every
8 indication we have is that the superior service and
9 widespread availability of motor carrier transportation
10 certainly extends to the West Coast as well.

11 Q Do the Santa Fe and Southern Pacific compete
12 with one another in the transportation of fresh
13 perishables?

14 A Well, that goes back to the question we
15 touched on earlier about the so-called option of the
16 refrigerator car as a option with respect to
17 perishables versus the intermodal transportation.

18 Santa Fe, by virtue of the fact it has a
19 smaller fleet and it may be somewhat older, of the
20 boxcars -- I hate to call them boxcars -- boxcars are
21 dry freight cars and these are refrigerator cars -- they
22 have a smaller fleet of the refrigerator cars, and
23 certainly now a preponderance of the Santa Fe perishable
24 activities is in the new Plan 3 intermodal side.

25 And to the extent that the SP still is heavily

1 involved in the carload movement, as I indicated
2 before, I don't see these as directly substitutable, one
3 for one, in a distribution system and therefore I don't
4 see these as being direct competitors in the traditional
5 sense of offering essentially identical services on
6 identical lanes with very close prices and comparable
7 quality of service, comparable vehicles. That just
8 isn't the case.

9 Q If I understand what you are saying --

10 JUDGE HOPKINS: Can we get short questions and
11 short answers here?

12 BY MR. ROBERTS: (Resuming)

13 Q Did I understand you to say that the Santa Fe
14 primarily competes for perishable traffic in the TCFC
15 mode and the Southern Pacific primarily competes in the
16 mechanically refrigerated car?

17 A They have certainly placed a much greater
18 degree of emphasis on the mechanical refrigerated car
19 transportation. They do have some intermodal perishable
20 shipment as well.

21 Q In a deregulated environment, do you believe
22 that the existence of those alternative modes places any
23 restraint on the pricing ability of providers of each of
24 the alternative modes?

25 MR. WILSON: I'd like a clarification -- we've

1 had this problem before -- on what Mr. Roberts means by
2 "modes." Perhaps if he just used "alternatives pieces
3 of equipment," maybe that would be clearer.

4 JUDGE HOPKINS: Go ahead. Do you want to use
5 it that way, Mr. Roberts?

6 MR. ROBERTS: As long as we can get the
7 question answered.

8 JUDGE HOPKINS: As long as you can get the
9 answer?

10 MR. ROBERTS: Yes.

11 BY MR. ROBERTS: (Resuming)

12 Q Given the fact that the shipper would have the
13 option of selecting mechanically refrigerated cars with
14 all of the service that goes along with it, or the
15 option of selecting TOFC equipment and service, would
16 you say that the fact that the shipper has those two
17 options places any restraint upon the abilities of the
18 provider of either of those two service options with
19 respect to price?

20 A As I spoke with the marketing people of the
21 two carriers, neither was terribly excited about what
22 the other railroad was doing. They were both focusing
23 almost 100 percent of their marketing attention and
24 pricing attention, to the extent that there was any
25 discussion of that, on the motor carrier segment of the

1 market.

2 So, you know, I can't answer the question.
3 The form of transportation in perishable shipment that
4 essentially sets the benchmark in service and rates is
5 the motor carrier, and I don't know how else to say
6 that.

7 JUDGE HOPKINS: Well, you've said it. That's
8 all right.

9 BY MR. ROBERTS: (Resuming)

10 Q Considering that you looked at this from the
11 standpoint of a shipper, would you agree that in
12 deciding on the transportation alternatives, the shipper
13 would compare the per-unit cost, in the case of fresh
14 produce, the per-carton price of transportation from
15 origin to destination, along with the service, other
16 features of one option as against another, so that the
17 price of one option -- that is, the TOFC option -- might
18 have an impact on whether that shipper would choose what
19 might be an inferior option, the mechanically
20 refrigerated car option, but at a price differential
21 that would warrant such a choice?

22 A Every shipper makes -- his choice is based on
23 a variety of factors, and price is one of the several
24 options that perishable shippers use.

25 But, given the concerns that they have for the

1 quality of the product upon arrival, which is very, very
2 important, given the concerns that they have for timely
3 arrival, with respect to market prices and commitments
4 they have made to their customers, service looms very
5 large in the equation.

6 Q Let me try and speed this up. Turning to page
7 19 of your statement, you refer to the San Joaquin
8 Valley and Salinas area as providing the bulk of the
9 volume.

10 Do you know if any railroads, other than the
11 applicant carriers, serve either of the origin areas,
12 the San Joaquin Valley or Salinas area?

13 A Intermodal transportation is available to
14 those shippers by trucking to a number of rail heads.

15 Q Do you know where the closest rail head would
16 be to Fresno, California, other than the
17 Santa Fe/Southern Pacific?

18 A I suppose Stockton is closer. I'd have to
19 consult the map in order to determine that. And, quite
20 honestly, the scope of my testimony and the scope of my
21 study was not to explore in detail the services provided
22 by other carriers for perishable or intermodal
23 transportation.

24 So if you want to get the map out, we'll start
25 getting mileages off of it, as Mr. Rhodes was compelled

1 to do.

2 Q On page 28, you refer to eastbound rates as
3 low as \$746 per trailer. Can you just tell us what
4 market factors might have influenced the carriers to
5 provide that a low a rate?

6 A The traditional problem with transcontinental
7 intermodal service, and the thing that had historically
8 limited its effectiveness in competing against motor
9 carriers, was the problem of imbalance.

10 There has always been, and remains today, a
11 very very large flow of manufactured containerizable
12 type product from east to west. One way that the
13 carriers have, under deregulation, of attempting to
14 balance that is to aggressively price their back hauls.
15 This has been a practice for years with the motor
16 carriers.

17 The railroads were really restrained from
18 using these techniques until after Staggers gave them
19 the greater freedom to price and intermodal
20 transportation was deregulated.

21 This is essentially a back haul pricing
22 arrangement that is rooted in transportation flow
23 patterns that are deeply imbedded in the economic
24 structure of the United States.

25 Q Do you know which carrier offered that \$746

1 rate?

2 A I believe that number was provided by the
3 Santa Fe. It was the then-current number I don't know
4 what it is now.

5 Q Do you know whether pricing activities of the
6 Southern Pacific had any influence on that rate?

7 A I have no idea what the Southern Pacific
8 prices are for anything comparable. The thing is, when
9 that rate is combined with --

10 JUDGE HOPKINS: Why don't you just say no, and
11 then we don't need to keep on going.

12 Thank you.

13 THE WITNESS: I'm sorry.

14 JUDGE HOPKINS: Thank you.

15 BY MR. ROBERTS: (Resuming)

16 Q On the bottom of page 28, you refer to a route
17 through Ogden, Utah. Do you see that?

18 Could you tell us -- I assume you're talking
19 about the movement -- at what time -- is this current,
20 or is this some past movement?

21 A It's my understanding that there remains a
22 significant flow across the Ogden Gateway. However,
23 within the last two years or so, primarily with respect
24 to the carload movement, Tom Ellen provided some
25 insights into the flows that were more recent than the

1 ones we had in our data base.

2 The data base suggested intermodal flows
3 generally moved in large quantities over the Ogden
4 Gateway, but apparently there has been some shift of
5 traffic down through the southern gateways with respect
6 to the carload freight.

7 Q And that would include the carload movement of
8 perishables?

9 A I understand that is apparently the situation
10 in more recent months and years, but every indication I
11 have is that there still is some volume of perishable
12 business over the Ogden Gateway.

13 Q Turning to the period you refer to as the last
14 couple of years with respect to the carload movement of
15 perishables, what route do you understand it is now
16 taking in lieu of the Ogden Gateway?

17 A I'm really not sure I can answer that.

18 Q You have no understanding?

19 A I did not explore the carload perishables
20 question in any great detail.

21 Q On page 34 of your statement, the first
22 complete paragraph, you state that "Yet, for all the
23 operational disadvantages on these routes, Southern
24 Pacific still maintains its service at a sufficiently
25 high standard to be a credible competitor to the motor

1 carrier."

2 Does that statement apply equally insofar as
3 being a credible competitor to the Santa Fe?

4 A I'm afraid, in general, the shipper's
5 perception of SP service is that it's not as good as
6 Santa Fe, and therefore while it is one reasonable
7 alternative to motor carriers, the schedules that are
8 published and the reliabilities that I have been made to
9 understand to be in place for the SP in its
10 transcontinental services are not as good as those that
11 are currently achievable and achieved on a regular basis
12 by the Santa Fe.

13 Q Is it your understanding that it is within the
14 power of the SP marketing operational people to change
15 the shippers' perception of the Southern Pacific
16 service?

17 A I suspect that that perception has accumulated
18 over a long history of experience.

19 Q Let me ask the question again. Is it your
20 understanding that it is within the power of the
21 Southern Pacific marketing and operational people to
22 change that perception?

23 A I would think that that would be relatively
24 difficult. I sense what you're driving at is, could the
25 SP on its own, without benefit of the merger,

1 sufficiently enhance the quality of its services to be
2 equivalent to the Santa Fe?

3 And while I have not done a comprehensive
4 study of the operations, I have been over the Southern
5 Pacific's line and I am aware of how difficult a piece
6 of mountain railroading it is, and my suspicion is
7 probably not.

8 And certainly, there are several interchanges
9 with other carriers involved in the middle route.

10 Q Turning to page 45 of your statement, the
11 middle of the first paragraph, under the subcaption
12 "Capacity Relief," you state that both routes
13 periodically experience capacity problems.

14 Now, with respect to perishable commodities,
15 wouldn't those capacity problems be due primarily to the
16 seasonal patterns of agricultural harvest and so on?
17
18
19
20
21
22
23
24
25

1 A That may be a contributing factor. I did not
2 explore with the railroads in great detail all of the
3 sources of the capacity difficulties, since it in many
4 instances could have been derived from commodities which
5 were not of interest to me.

6 Q Focusing on perishable commodities and the
7 seasonal nature of the shipments, would you agree that
8 the high season would essentially be the same for both
9 the Southern Pacific and the Santa Fe?

10 A Uh-hmm, yes. For the Central Valley, that's
11 certainly true.

12 Q So that to the extent that they have capacity
13 problems in the transportation of fresh fruits and
14 vegetables, they would have it with or without the
15 merger?

16 A Not necessarily. I have been over riding on
17 Amtrak, a line that wasn't part of the study, but I did
18 it some years ago, and if memory serves me correctly the
19 line is single track and that's true of the SP line.
20 And if you have two single track lines operating
21 independently the capacity of those is considerably less
22 when summed than taking two single track lines and
23 operating them in a coordinated fashion.

24 Q So you would say that putting the two tracks
25 together gives you more than two tracks?

1 A Essentially, that's true. Obviously,
2 physically you're not going to put them together, but
3 coordinating the services.

4 Q On page 52, the last complete paragraph, you
5 indicate that the Salinas Valley is not currently served
6 well by intermodal trains of either carrier. Do you
7 mean that to say that TCFC shipments of fresh produce in
8 Salinas -- do not know or originate in the Salinas Valley?

9 A It's my understanding that they do, but that
10 they are handled in local freight from there and there
11 is an interchange movement, and the transit time, at
12 least as I was supplied by the carriers, is well in
13 excess of what could be achieved by coordinated solid
14 block train service from that territory.

15 Q What can the combined carriers do for
16 intermodal shippers in the Salinas Valley area,
17 perishable shippers, that could not be done by either
18 the Santa Fe or Southern Pacific today individually?

19 A Certainly, a coordination of operations, a
20 combination of that tonnage with tonnage which
21 originates in other areas where it's coordinated in the
22 Richmond area. So you're talking about greater volume,
23 a more expeditious flow of equipment through the yard
24 and across the lines.

25 Certainly no one of the two carriers is going

1 to be able to accommodate that, since there are pieces
2 of each of the railroads that have to be coordinated to
3 make that single line service work.

4 Q Do you know which TOFC ramps today serve the
5 Salinas Valley?

6 A I believe that some of the freight is trucked
7 over to Fresno, and I believe -- I don't know the
8 precise location. There's some sort of a facility in
9 the Watsonville area, I believe.

10 Q Do you believe there will be any new
11 facilities independent of the merger?

12 A I do not remember which locations -- I have
13 somewhere in my working papers, there is a long list of
14 the new facilities. I could not tell you right now if
15 that's one of them. I do not remember.

16 Q Have the Applicant carriers provided you with
17 a list of new TOFC facilities?

18 A They have and I just don't remember right at
19 this point.

20 MR. ROBERTS: Perhaps I can address this to
21 counsel. Would you be willing to make that available?

22 MR. WILSON: Well, it's in the operating
23 plan.

24 MR. ROBERTS: Is it?

25 JUDGE HOPKINS: It's already in the operating

1 plan?

2 THE WITNESS: Yes, it's all detailed there.

3 MR. ROBERTS: I have no further questions.

4 Thank you.

5 JUDGE HOPKINS: Mr. Ratner. Try your best.

6 CROSS EXAMINATION

7 BY MR. RATNER:

8 Q Mr. Heuer, my name is James Ratner. I am with
9 the U.S. Department of Justice.

10 Would you turn to page 3 of your testimony,
11 the last sentence. Do you see the last sentence?

12 A Uh-hmm.

13 Q Did you specifically investigate how easy it
14 would be for shippers to implement programs to take
15 advantage of the benefits you have discussed?

16 A I'm not sure I fully understand what "easy"
17 is, but since I've heard you ask that question before of
18 other witnesses I think I can make a stab at it. We are
19 primarily talking about changes in distribution
20 procedures. We're talking about changes in selection of
21 carriers and modes. We're talking about changes in
22 inventory policies and practices.

23 And I happen to make my livelihood for the
24 most part helping carriers -- rather, helping shippers
25 do that on a day to day basis, and they seem to be able

1 to do it pretty well.

2 Q On page 4, you list two categories of shipper
3 benefits: impacts on logistics cost and impacts on
4 service levels.

5 A Uh-hmm.

6 Q Is it possible that the merger could
7 detrimentally affect both the logistics costs and the
8 service for shippers?

9 A With respect to those categories that I
10 addressed, I just don't see how.

11 Q You are saying it's impossible?

12 A I say -- no, I didn't say it's impossible. I
13 said that I, in my limited and human way, do not see a
14 very good likelihood that there would be a detriment to
15 shippers.

16 Q I understand that. I asked you if it was
17 possible.

18 A To what degree is possible? One percent?

19 MR. WILSON: I object. I think the answer is
20 clear enough.

21 JUDGE HOPKINS: Mr. Ratner, isn't anything
22 possible?

23 MR. RATNER: That's solely the point I wanted
24 to make. I don't understand why I can't get a straight
25 answer on this.

1 JUDGE HOPKINS: I agree. This gentleman
2 dcesn't have to be so specific. He can say just that
3 anything is possible if he wants to.

4 THE WITNESS: It's wildly, remotely possible.
5 (Laughter.)

6 JUDGE HOPKINS: He won't say it, will he.

7 MR. RATNER: Counsel, will Applicants
8 stipulate that the witness has not examined the possible
9 anti-competitive effects from the merger?

10 MR. WILSON: That's right.

11 BY MR. RATNER: (Resuming)

12 Q So it's correct, then, that you think that it
13 is extremely unlikely, but you have not examined the
14 anti-competitive effects of the merger?

15 A With respect to the commodities in question,
16 the Interstate Commerce Commission conducted two lengthy
17 proceedings on the competitiveness of the commodities
18 and found them sufficiently competitive to deregulate
19 both of them. And competitiveness was not derived from
20 rail competitiveness; it was derived from truck
21 competitiveness.

22 In view of those proceedings, I just don't see
23 where there is any significant anti-competitive
24 factors.

25 Q So your position is that no merger of

1 railroads could ever cause any anti-competitive effect
2 in any of the commodities that you've investigated in
3 your testimony?

4 A With respect to the commodities that are in
5 question here, I'd say that that is largely true.

6 Q Are you aware of whether the standard for
7 whether a merger is anti-competitive at the ICC may be
8 different from the standard of whether a commodity
9 should be deregulated or not?

10 A I honestly do not remember any situation where
11 the Commission addressed the issue of
12 anti-competitiveness on a commodity-wide basis. There
13 may be one and I am not familiar with it.

14 Q Didn't they address it as to TOFC traffic?

15 A The issue there was competitiveness generally
16 of TOFC traffic and the motor carrier competition, which
17 was and is pervasive.

18 Q But not according to a specific study that you
19 have done for this merger?

20 A Not for a specific study that I have done for
21 this merger in particular.

22 Q On page 30 of your testimony, you're talking
23 about transcontinental services.

24 A Uh-hmm.

25 Q On page 33, the last line of the first full

1 paragraph you say: "Now Southern Pacific is competing
2 vigorously for traffic to the northern gateways." Do
3 you see that line?

4 A Oh, the spot in the middle of the page, yes.

5 Q You see that?

6 A Uh-hmm.

7 Q Is Santa Fe also competing for that traffic?

8 A Against the motor carriers, yes.

9 Q Is Santa Fe competing against Southern
10 Pacific?

11 A I think I addressed this question earlier with
12 respect to the quality of service provided by the SP,
13 and the quality of service provided by the Santa Fe is
14 far superior to that provided by the SP, in that, though
15 they both serve the same end points, the type of service
16 that they provide is not exactly the same and the
17 quality of service is different.

18 Q Is it true that none of the shippers that are
19 currently using Southern Pacific would ever use Santa
20 Fe?

21 A It's more likely that those who are using
22 Santa Fe would not be particularly excited about using
23 the Southern Pacific.

24 Q That wasn't my question, unfortunately.

25 A What was the question? I'll try to answer

1 your question.

2 Q Is it true that shippers who are using
3 Southern Pacific would never use Santa Fe?

4 A Is it true that shippers using Southern
5 Pacific would never use Santa Fe? I certainly could not
6 assert to a "never."

7 Q Fine. Page 38. I believe this is referring
8 to the Texas-Oklahoma market. The first line of the
9 first full paragraph, you say: "Both Santa Fe and
10 Southern Pacific compete against motor carriers for this
11 business."

12 A Uh-hmm.

13 Q Do they compete against each other as well?

14 A Even to a greater degree. In the lanes to and
15 from the southwest Texas, Oklahoma, the motor carriers
16 constitute the preponderance of the transportation.
17 Southern Pacific and Santa Fe both participate in that,
18 and to the extent that they mutually compete against the
19 truckers they're both there. I can't deny that.

20 Q So the answer is yes?

21 A The statement reads they compete against the
22 motor carriers, and I stand by my statement.

23 JUDGE HOPKINS: Well, can't you answer the
24 question? Do they compete against each other?

25 THE WITNESS: To a degree, I'm sure they do.

1 BY MR. RAINER: (Resuming)

2 Q On page 54 of your statement, underneath
3 "transcontinental traffic," the last sentence of the
4 first paragraph, you say: "Here more than in any other
5 transportation arena, shippers have shown a clear
6 enthusiasm for intermodal service."

7 A Uh-hmm.

8 Q Why is that?

9 A The Santa Fe several years ago led the pack in
10 defining very, very high quality service. At one time
11 they thought they would get premium rates for that and
12 they set up something called the Super C to actually
13 almost give airfreight level service. That bombed and
14 they found that they had to charge truck competitive
15 rates and provide truck competitive service with
16 dedicated high-speed, no stops en route type trains.
17 They did that.

18 Other carriers elsewhere have followed suit
19 with that type of service. Where the railroads provide
20 a good service and rates they have gotten some
21 business.

22 Q In this transportation arena, does rail have
23 an advantage over truck?

24 A With respect to what? To rates or service?

25 Q With respect to why shippers have shown a

1 clear enthusiasm for the intermodal service.

2 A Certainly in any area, this is one they are
3 going to be intensely competitive. The thing is, there
4 are both motor carriers and railroads participating
5 aggressively for the traffic, and clearly the shippers
6 who are using motor carriers in the lane feel that the
7 motor carriers have an advantage.

8 So I cannot categorically give you the answer
9 that the railroads have the advantage. If they did
10 they'd haul it all.

11 Q To the extent that a shipper uses rail, what
12 is the rail advantage, if you know?

13 A Certainly it's a very high level of
14 consistency of service, somewhat greater level of
15 weather resiliency compared to motor carrier service,
16 particularly for winter transportation, and, you know,
17 the small spread in the rates.

18 Q They have a cost advantage of some kind?

19 A There is -- whoever happens to be carrying
20 freight at any one time may have a slight differential
21 in the freight.

22 Q On page 55 you are referring to movements of
23 perishables from Fresno and the northern San Joaquin
24 Valley.

25 A Uh-hmm.

1 Q You have a sentence there, unless it's been
2 changed, which says: "These changes will mean that
3 perishable shippers from Fresno and the northern end of
4 San Joaquin Valley." Do you see that sentence?

5 A Uh-hmm, yes.

6 Q It says "perhaps offering the opportunity to
7 penetrate."

8 A Uh-hmm.

9 Q How confident are you of this benefit?

10 A Well, penetration of a new market is a
11 combination of marketing policies, desire, rate levels
12 -- a whole host of things. It provide the opportunity
13 and whether the shippers involved take advantage of that
14 or not I cannot say.

15 Q So anything is possible; is that what you're
16 telling us?

17 A This is a situation where there is an
18 advantage offered and we expect, as aggressive as the
19 perishable marketeers are and as eagerly as they
20 penetrate new opportunities, I suspect that they will at
21 least make a stab at going after that.

22 Q If there is a new opportunity for penetration,
23 does that mean that the motor carriers are not currently
24 providing effective service for those shippers?

25 A They may not be as attractive an option as

1 shipping to other areas elsewhere geographically. There
2 may be service there, but the point is that the shippers
3 may have -- you know, they ship their product to the
4 places where the revenue is the greatest.

5 Q I'm sorry. Let me ask the question another
6 way. If you know, is there currently effective truck
7 service for perishable shippers in Fresno and the
8 northern end of the San Joaquin Valley to eastern
9 gateways?

10 A By truck transportation?

11 Q Yes.

12 A Near as I can tell, there certainly is.

13 Q Is there effective truck service for these
14 same shippers for transcontinental market expansion
15 possibilities?

16 A The motor carriers are in those areas.
17 Obviously, there is a penetration -- potential for
18 change in the degree of penetration, if the railroads
19 are able to offer a few cents a hundredweight lower
20 rate.

21 Q On page -- oh, okay, one other question on
22 that. You referred to wine and canned goods shippers.

23 A On which page, 55?

24 Q I knew where it was once.

25 JUDGE HOPKINS: It's 55.

Docket No. F.D. 30400 - 10/11/84 - PAGES - 1865 - 1870

1 BY MR. ROBERTS: (Resuming)

2 Q Okay, on 55 as well, that's correct. The same
3 question for them: Are they currently unable to reach
4 the entire eastern third of the United States in a
5 systematic manner using currently offered truck
6 service?

7 A They reach into that area. The situation with
8 those shippers is a little different in that they have
9 some very old and established practices with respect to
10 boxcar shipment, and many of the destinations are only
11 now shifting over from the ability to handle deliveries
12 by boxcar versus truck.

13 So as those destinations are shifting over,
14 they tend to be migrating to either truck or intermodal
15 services.

16 Q On page 58 of your testimony, the second
17 sentence.

18 A Page 58, the top of the page?

19 Q Yes, second sentence. Are you stating by that
20 sentence for almost all cases there is no tradeoff in
21 shipper preference factors between rates and transit
22 time?

23 A "Almost no" is very little. But the fact
24 remains that when the railroads have improved service to
25 a level where it was comparable or competitive to motor

1 carriers, then significant increases in their volume of
2 traffic ensued. When they did not do that, they have
3 tended to have a minimal volume of intermodal freight.
4 And that has been demonstrated on lane after lane, by
5 carrier after carrier.

6 Q Put that's a different thing from saying that
7 motor carrier-rail service has to be comparable no
8 matter what the rate levels may be, is it not?

9 A Interestingly enough, there are many shippers
10 who would simply not ship by an inferior quality service
11 mode even if the transportation were given away.

12 Q Isn't it true that some shippers are concerned
13 with rates and others are concerned with service, and
14 some are concerned with both?

15 A Most are concerned with both to one degree or
16 another.

17 Q Have you examined any shipper preference
18 models in any depth?

19 A For what purpose?

20 Q For the purpose of this testimony.

21 A This study was not done on a quantitative
22 model-building type basis. Other people have done those
23 kinds of analyses for this case and we were not asked to
24 do that.

25 Q You're not familiar, then, with the shipper

1 preference model that's in Mr. Liba's testimony?

2 A I have no idea what it was or how it works.

3 Q For the purpose of this testimony, have you
4 ever done any value of time evaluations for various TOFC
5 shippers?

6 A For this testimony?

7 Q Yes.

8 A No, we did not.

9 Q Did you in any way estimate or evaluate
10 whether the benefits that you discuss in your testimony
11 could be achieved other than through a merger of the
12 Southern Pacific and Santa Fe?

13 A As has been mentioned innumerable times, our
14 charter was to look at a particular arrangement of
15 merger conditions, two railroads getting together and
16 merging. Now, in the particular instance of the
17 improvements that I examined I had the benefit of
18 looking at train schedules for, God knows what, 30 or 40
19 trains.

20 Those new train schedules were predicated upon
21 a complete restructuring and reorganization of the flows
22 of freight across the transcontinental lanes of these
23 carriers. And as I looked at that at the time, and I
24 might say, where it was obvious that a particular
25 benefit could be achieved by the carriers independently,

1 I just ignored it.

2 For example, equipment acquisition. A carrier
3 particularly could for our purposes acquire his own, but
4 with respect to this very complex integration of
5 services, moving drag freights from one line to another,
6 moving high-speed intermodal to one line, consolidating
7 terminals, consolidating routes, to me it was simply
8 beyond the realm of reason to suppose that that
9 complexity of integration could be accomplished short of
10 a merger of the managements.

11 Q Did you do any testing other than this
12 analysis using your reason? Did you systematically go
13 through each one of these benefits and evaluate through
14 interview and analysis whether it could be achieved
15 without a merger of the Santa Fe and the Southern
16 Pacific?

17 A No, because it would have been irrelevant to
18 look at any one in particular.

19 Q The answer is no?

20 A The answer is no.

21 MR. ROBERTS: I have no other questions, Your
22 Honor.

23 JUDGE HOPKINS: Thank you.

24 Mr. MacKenzie.

25 CROSS EXAMINATION

1 BY MR. VINCENT MacKENZIE:

2 Q I'm reluctant to ask any questions. I think
3 I'm going to ask questions, Mr. Heuer, that are subject
4 to very simple factual answers, if I know. Maybe you
5 can even point me to your study.

6 I'd like to have you break down, if you can,
7 the term "intermodal," especially as it pertains in
8 California, as to what percent of the present intermodal
9 traffic moves by -- is a movement of perishable goods
10 and the other categories, and if you can break down
11 those other categories.

12 A I don't have those statistics.

13 Q Okay. Is it in your testimony at all?

14 A I don't believe we developed any detail at
15 that level.

16 MR. VINCENT MacKENZIE: Then I assume,
17 counsel, that there will be some witness later on of
18 Santa Fe that would have that information?

19 MR. WILSON: I doubt that. I don't think that
20 we developed that for any purpose.

21 JUDGE HOPKINS: Is that all? That's fast.
22 You're a good anchor man.

23 Mr. Wilson?

24 MR. WILSON: No redirect, Your Honor.

25 I move the admission of Mr. Heuer's verified

1 statement.

2 JUDGE HOPKINS: Any objection?

3 (No response.)

4 JUDGE HOPKINS: It will be received in
5 evidence.

6 Thank you.

7 (Witness excused.)

8 JUDGE HOPKINS: Well, I'm still going to hold
9 you to 9:00 o'clock tomorrow morning, even though it's
10 late this afternoon, because these people want to get
11 out of town. We might as well start early again.

12 We will be in recess until 9:00 o'clock.

13 (Whereupon, at 5:50 p.m., the hearing in the
14 above-entitled matter was recessed, to reconvene at 9:00
15 a.m. on Friday, October 12, 1984.)

16 * * *