

Docket No. 30400-10/2/84- PAGES-309-366



C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Warren Cena				
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E X H I B I T S

<u>Exhibit No.</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
Ex. No. KCS-C-2	340	
Ex. No. DRGW-C-1	377	429
Ex. No. KCS-C-1		428
Ex. No. MKT-C-1	435	545
Ex. No. MKT-C-2	435	545

E X H I B I T S

<u>Exhibit No.</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
Ex. No. MKT-C-3	436	545
Ex. No. MKT-C-4	439	545
Ex. No. MKT-C-5	475	545
Ex. No. MKT-C-6	487	546
Ex. No. MKT-C-7	526	546
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BEFORE THE  
INTERSTATE COMMERCE COMMISSION

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In the Matter of: :

SANTA FE SOUTHERN PACIFIC CORPORATION : Finance Locket

-- CONTROL -- : 30400 et al.

SOUTHERN PACIFIC TRANSPORTATION :

COMPANY :

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Hearing Room A

12th & Constitution, N.W.

Washington, D.C.

Tuesday, October 2, 1984

The hearing in the above-entitled matter was convened, pursuant to notice, at 9:25 a.m.

BEFORE:

JAMES E. HOPKINS,

Administrative Law Judge

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## I P R O C E E D I N G S

(9:25 a.m.)

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2  
3 JUDGE HOPKINS: Let's call the hearing to  
4 order. Are there any preliminary matters?

5 MR. DREILING: Your Honor, my name is Robert  
6 K. Dreiling. I am an attorney with the Law Department  
7 of Kansas City Southern Industries. I did not have an  
8 opportunity to enter my appearance yesterday morning. I  
9 would like to do that. I'm appearing on behalf of KCS  
10 Lines.

11 MR. NELSON: Your Honor, I just have an  
12 announcement to make. Because of scheduling problems,  
13 we plan to put Dr. MacVoy on the 15th of October as a  
14 date certain. I thought I'd make that announcement  
15 ahead of time so that the parties can be prepared.

16 JUDGE HOPKINS: Any other preliminary  
17 matters? Oh, I say meant to say something yesterday. I  
18 would like to thank Mr. Kharasch and Ms. Mahon for all  
19 the work they have done in coordinating the Proct starts'  
20 witnesses and testimony, et cetera. Thank you very much.

21 MR. KHARASCH: Thank you.  
22 Whereupon,

23 WARREN CENA  
24 was called as a witness by counsel for the Atchison,  
25 Topeka & Santa Fe Railroad company and, having been

1 first duly sworn, was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. NELSON:

4 Q Mr. Cena, do you have before you a document  
5 entitled "Verified Statement of Warren Cena?"

6 A Yes.

7 MR. NELSON: For the record, Your Honor, that  
8 statement is contained as the statement which appears in  
9 SESF-12 in the application. And I should say that I  
10 have made available separate copies which I put on the  
11 back table for parties' convenience if they want to  
12 follow it.

13 BY MR. NELSON: (Resuming)

14 Q Mr. Cena, are you aware that errata has been  
15 filed which resulted in a change in some of the figures  
16 in your testimony?

17 A Yes.

18 Q As changed by the errata, does that statement  
19 constitute your testimony in this proceeding?

20 A Yes.

21 JUDGE HOEKINS: Thank you.

22 Who will be the first questioner?

23 Mr. Dreiling.

24 CROSS EXAMINATION

25 BY MR. DREILING:



1 Q Mr. Cena, are you familiar with the Santa Fe's  
2 interchange operation with the Louisiana & Arkansas  
3 Railway Company at Dallas, Texas?

4 A Generally, yes.

5 MR. DREILING: Your Honor, for the record I  
6 think it's been stated a number of times that the  
7 Louisiana & Arkansas Railway Company is a wholly-owned  
8 subsidiary of Kansas City Southern Railway company, and  
9 we refer to them from hereon as KCS, but the interchange  
10 is actually with the L&A at Dallas; is it not?

11 THE WITNESS: That is correct.

12 BY MR. DREILING: (Resuming)

13 Q Now, are you familiar with certain innovations  
14 that were introduced to that interchange operation by  
15 the Santa Fe and the KCS starting in about late 1979,  
16 early 1980?

17 A I am aware of the operation down there. I  
18 don't know what you're referring to in innovations, but  
19 I'm aware of what we have done down there.

20 Q Well, are you familiar with the term "Big D?"

21 A I am.

22 Q And that Big D interchange operation is  
23 generally used to the Santa Fe-L&A run-through  
24 interchange operation at Dallas on TOFC trains; isn't  
25 that true?

1 A I believe that's correct.

2 Q Now, to refresh your recollection, among the  
3 innovations that were introduced were a run-through  
4 train operation?

5 A There is a run-through operation through the  
6 Big D connection at Dallas with the I&A.

7 Q Okay. And does this primarily treat with  
8 TOFC/COFC traffic?

9 A It does.

10 Q And does it treat with a dedicated train  
11 interchange between the KCS and Santa Fe to handle  
12 TOFC/COFC traffic?

13 A Yes, as I would understand the dedicated train.

14 Q Now, the run-through train operation runs  
15 basically from Brownwood, Texas on the Santa Fe through  
16 Dallas to Shreveport, Louisiana stationed on the I&A; is  
17 that correct?

18 A That's correct.

19 Q And as I understand it, the Santa Fe engine  
20 will attach to the train at Brownwood, operate into the  
21 Santa Fe's East Dallas yard at Dallas. A crew change is  
22 made. The I&A crew boards the train at the East Dallas  
23 yard and handles it with the Santa Fe engine on through  
24 into the I&A Shreveport Doremus yard; is that correct?

25 A That is my understanding.



1 Q And in the reverse direction basically the  
2 opposite happens. An I&A engine is attached at  
3 Shreveport, goes into East Dallas yard. A crew change  
4 is made, but the train remains intact and goes on  
5 through to Brownwood, Texas; is that correct?

6 A That is correct.

7 Q Now, among the innovations also is a  
8 preblocking of traffic for various points along the  
9 route; is that correct?

10 A I am not particularly aware of the preblocking  
11 there, but I would be very, very surprised if it did not  
12 exist. I would expect it to be.

13 Q Out of Brownwood let's talk about a westbound  
14 train out of Brownwood. You split your traffic at  
15 Brownwood, do you not, in a sense into blocks to handle  
16 northern California traffic, on the one hand, and  
17 southern California traffic on the other hand?

18 A Yes.

19 Q And does any of that preblocking occur at  
20 Shreveport, Louisiana on the westbound movement?

21 A I don't know, but I would fully expect it to  
22 be.

23 Q Now, are you at all familiar with any of the  
24 I&A's handling of the run-through train operation?

25 A No, I am not.

1 Q Are you at all familiar with their interchange  
2 operations at New Orleans, Louisiana with the Norfolk &  
3 Southern and the Seaboard Coast Line?

4 A No, I am not.

5 Q Let me ask you this. To your knowledge, were  
6 there any studies, analysis, plans or reports developed  
7 by the Santa Fe preparatory to establishing the Big D  
8 interchange operation?

9 A I don't believe so.

10 Q Were you involved in any discussions among  
11 Santa Fe executive personnel with regard to its  
12 establishment?

13 A If I understand your question, did I discuss  
14 this with some of my staff; is that correct?

15 Q Yes, sir.

16 A Yes, I did.

17 Q In the course of your discussions did the  
18 topic of the need or purpose for the Big D interchange  
19 operation come up?

20 A I don't believe specifically. There's always  
21 the need for business. There are always these types of  
22 discussions that I participated in. We certainly have  
23 had those conversations. But I believe most of them  
24 with my staff would be of an operational nature.

25 Q Did you make any executive business decisions,



1 executive determinations as to whether the Big D  
2 operation would be put into effect or not?

3 A No, I did not. But that would not be  
4 unusual. That decision would be made on our property by  
5 the operating vice president, and I believe that would  
6 have been either D.C. Ruegg, who is now executive vice  
7 president, or J.R. Fitzgerald, who is presently vice  
8 president of operations -- one or the other.

9 Q Were any Santa Fe marketing or traffic people  
10 involved in those discussions?

11 A I am sure they were. I was not actually  
12 involved, and if I had to really say, I don't know.

13 Q Did any Santa Fe marketing or traffic person  
14 talk to you about the Big D operation?

15 A Yes.

16 Q And in the course of your discussion with  
17 those people did you discuss the reason for Big D or the  
18 benefits to be achieved from Big D?

19 A My conversation in that area would have been  
20 with the vice president of traffic, who I believe then  
21 was F.J. Wright. If it wasn't F.J. Wright, it was  
22 someone just like him. He is vice president of sales  
23 and marketing, and that's who I do my business with on  
24 those types of conditions.

25 Q Was there any consensus based upon that

1 conversation as to why Big D would be beneficial to the  
2 Santa Fe?

3 A No consensus as such. Obviously, we're always  
4 looking for traffic. It is a good gateway, and those  
5 are the considerations given as far as my participation  
6 in subjects of this nature.

7 Q Could you briefly describe to the Commission  
8 for the record the type of traffic you were aiming at  
9 handling through the Big D connection?

10 A I was really not involved in this thing. I  
11 know generally I could give an opinion. Because I have  
12 been on the property more than a few years, I could give  
13 you that opinion. Generally speaking, through the  
14 gateway of Dallas, referred to as Big D, we receive by  
15 and large petrochemical traffic plus other general  
16 traffic that would tend to gravitate to the terminating  
17 areas that we serve -- general all-around traffic.

18 Before this operation had begun there was  
19 little intermodal traffic through that gateway. In a  
20 such situation as this you would try to balance  
21 traffic. Our traffic eastward before the Big D  
22 connection was established, as you were referring to,  
23 our interchange to the L&A was, I would have to say,  
24 general commodities, a little bit of everything -- some  
25 grain.



1           After that gateway was established -- and this  
2 is from watching what I generally watch -- I observed  
3 some intermodal movements, and that began to grow as I  
4 would like to expect, and finally at some point out  
5 there, a run-through, which we have just discussed, was  
6 placed into effect.

7           Now, does that sufficiently answer your  
8 question?

9           Q     Yes. I'd like to follow up. Generally, what  
10 we're talking about here is TOFC/COFC intermodal traffic  
11 moving between California points, West Coast points on  
12 the one hand, and through the New Orleans gateway into  
13 the southeast on the other; is that not correct?

14          A     Yes.

15          MR. NELSON: Excuse me.

16          Mr. Cena, would you keep your voice up a  
17 little bit? I think people here are having a little  
18 difficulty hearing you. Excuse me.

19          BY MR. DREILING: (Resuming)

20          Q     Mr. Cena, prior to the establishment of the  
21 Big D, you had indicated that you had been involved in  
22 basically commodity traffic on the interchange with the  
23 I&A. Is it that you were not handling any TOFC traffic  
24 prior to that time, or is it that you just weren't  
25 handling it via the Dallas interchange?

1           A     Again, this is a qualified statement because I  
2 was not there, and I assume this is still the  
3 explanation you would like me to present to this Court.

4           Many things were going on about that time in  
5 the intermodal area. By that I mean deregulation, there  
6 were more commodities, perishables, what have you, that  
7 could be offered. I just have to say that a market also  
8 generated for whatever reasons out there, and the  
9 marketing people on the respective railroads that did  
10 their job put a package together, convinced the shipper  
11 that this was a good deal. The shipper was convinced  
12 that it was a good deal. I think that it's just a  
13 normal thing that would happen.

14          Q     Are you familiar -- I imagine you are since  
15 you helped develop the operating plan that's submitted  
16 to the Commission -- you are familiar with the layout of  
17 the SP's system routes between the West Coast and the  
18 New Orleans gateway; are you not?

19          A     Yes.

20          Q     Now, the SP has a single line route from most  
21 points in California to the New Orleans gateway; is that  
22 not true?

23          A     I would say many points in California to that  
24 gateway, yes.

25          Q     Does the SP compete with the Santa Fe on the



1 movement of TOFC/CCFC traffic between West Coast points  
2 and then the New Orleans gateway and through the New  
3 Orelans gateway?

4 A I would just have to believe they do.

5 Q In your discussions with Mr. Wright or  
6 whatever marketing-traffic type person you were talking  
7 to, did the question of the need to compete with the SP  
8 single line route between the West Coast and the New  
9 Orleans gateway come up?

10 A No.

11 Q Who is Mr. J.E. Wourck?

12 A He is an assistant vice president I believe is  
13 his proper title, assistant vice president, assistant to  
14 vice president T.J. Fitzgerald, who will be part of this  
15 proceeding. Mr. Wourck works at 80 East Jackson in  
16 Chicagoc.

17 Q Do you know Mr. Wourck?

18 A Yes, I do.

19 Q Did you ever have occasion to discuss the Fig  
20 D connection with Mr. Wourck?

21 A If I did, it would have been of a casual  
22 nature. I just don't handle my business that way. I  
23 tend to put the responsibility on the vice president.  
24 If I did -- and I do not remember having a specific -- I  
25 see Joe Wourck often, but not in the nature of business

1 as you are asking. I do virtually no business with Joe  
2 Wourck.

3 Q In the course of your functions as the chief  
4 executive officer of the Santa Fe Railway, do you take  
5 into account the need to compete with other railroads in  
6 determining how you're going to structure your train  
7 operations?

8 A I take into account all the competitive, all  
9 the operational, all the problems that our railroad is  
10 faced with. You know, one of the problems that I find  
11 myself in now and trying to control is I got out of the  
12 operating department in 1966, and I have been at 80 East  
13 Jackson or traveling about this nation and abroad  
14 worrying about everything that this railroad is  
15 connected with.

16 Now, the biggest problem that I have is trying  
17 to -- trying not to be trainmaster. And I'm just trying  
18 to set a basis here, because I qualified my statements.  
19 You know, I really believed that I was the best  
20 trainmaster in the land, not only the Santa Fe, and I  
21 have a hard time believing that I still am not, and I'll  
22 be the first to admit that I'm not. And I don't do this  
23 to be facetious. I'm just trying to be honest and fair  
24 with you.

25 Q First of all, Mr. Cerna, I have no question



1 about your abilities in the operating area, and I know  
2 you have a tremendous amount of knowledge there. I'm  
3 not trying to put you on the spot. I'm not asking you  
4 to go too in depth into the operations. On the other  
5 hand, what I'm asking for is precisely what you're  
6 talking about; that is, you necessarily have had to take  
7 a rather broad and general view of not only competitive  
8 factors, marketing factors, but operating factors. And  
9 is it unfair to ask you whether the decision to  
10 establish a more efficient interchange operation at  
11 Dallas is not more of a general decision within your  
12 bailiwick than it would be a specific operational  
13 decision down at the trainmaster level?

14 A No. The Santa Fe has been known -- and I hope  
15 I am part of what I am telling you -- as a  
16 service-oriented, customer-related railroad. We hold  
17 out for service.

18 Now, in answering your question specifically  
19 regarding the Dallas gateway -- and I will complete that  
20 -- but I also want to add all gateways are of interest  
21 to us. All customers are of interest to us. All  
22 schedules are of interest to us. Forming a rate is  
23 obviously of interest to us, but I also know the  
24 competitive situation out there between railroads and  
25 from other modes -- truck, waterway, what have you --

1 and I also know that we have to be very, very  
2 competitive, and we must have a cost efficient railroad  
3 and attempt to be the low cost operator. And with all  
4 these things in mind, we approach the Dallas gateway  
5 undertaking I am certain as we would do for any other  
6 gateway that is out there. We want the business, we  
7 want to handle it for these good customers, and we want  
8 to do a better job at a lesser price than anyone out  
9 there. And I can assure you we'll fill up the trains.

10 Q Well, in that regard, I take it you would  
11 agree that the introduction of run-through train  
12 operations, preblocking and the like at Dallas made that  
13 a more competitive service route; is that correct?

14 A I would have to agree it would be more  
15 competitive; but I would like to put it another way. I  
16 really have to be honest. I don't care whether D&FC --  
17 the L&A really likes this. Obviously I do. The  
18 customer is the guy -- that's what I'm trying to -- you  
19 guys are real nice, and I worked with you for a long  
20 time. But if we could collectively put a situation  
21 together that will attract business, now, that's the  
22 kind of economics that I understand. I sometimes have a  
23 little difficulty following some of the other types of  
24 economics, but I might be able to respond to it.

25 Q I appreciate that, and I would like to follow



1 along on that. I take it what you're saying is one of  
2 your major desires is to provide transportation services  
3 and good transportation services to the public.

4 A And profitably.

5 Q And therefore, to the extent that your  
6 provision of these good transportation services to the  
7 shipping public allow you to more effectively compete  
8 against a competitor and gain traffic and profits, you  
9 like that, too, don't you?

10 A Certainly. If we can be more competitive to  
11 any mode of transportation, it means that -- it means to  
12 me that we quite likely have the most efficient  
13 property, regardless of how it's routed. I'm saying if  
14 we can provide that service at a lesser price than  
15 anyone else out there, we are going to get the business,  
16 and we are going to be profitable.

17 Q And your verified statement indicates that  
18 you're very interested in passing those benefits on to  
19 the shipping public or making those benefits available  
20 to the shipping public; is that correct?

21 A Yes. And that's the only way you're going to  
22 get business. You can price yourself right out of  
23 business.

24 Q And I take it it's fair to say that all of  
25 that thinking -- this isn't anything new for you. This

1 is the philosophy you have carried forward through your  
2 years in railroading; isn't that true?

3 A Yes.

4 Q And I take it it's also fair then to say that  
5 that thinking went into your discussions and  
6 determination to establish the Big D run-through  
7 interchange operation.

8 A Any discussions that I would have had with  
9 anyone -- your question is absolutely right. Again, I  
10 was not, you know -- I want to qualify it again. I'm  
11 not the hero who built the Big D gateway, is that's what  
12 the question is.

13 Q You've already testified that the Santa Fe  
14 competes with the SP on traffic moving between the West  
15 Coast to and through the New Orleans gateway. In your  
16 judgment, has the Big D interchange operation allowed  
17 Santa Fe to more effectively compete with the SP for  
18 that traffic?

19 A Let me answer it this way. We compete with  
20 the Southern Pacific. We compete with other railroads,  
21 but we also compete with a very, very formidable  
22 competition from the highways -- the trucks. There's  
23 also some competition from waterways, and it is very  
24 effective competition on the West Coast.

25 Now, obviously, if a customer chooses to use



1 the Dallas Big D gateway, I need not answer your  
2 question. We have provided a service that some customer  
3 likes. We apparently are satisfying him. He may have  
4 reasons beyond what we're able to provide in  
5 transportation and services and all the things that make  
6 up our portion of this route. But he may have  
7 additional, and these, taken into consideration, car and  
8 do affect the total cradle-to-grave movement. And Big D  
9 works well, and we are attracting business. And I just  
10 think that many or part or all of these things that I've  
11 been talking about cause that gateway to exist, but it's  
12 because the customer likes it.

13 Am I --

14 Q I think you are very well. Let me ask you  
15 this. If this Commission authorizes the merger of the  
16 Santa Fe and the SP, would the new SPSF continue the Big  
17 D run-through interchange with the L&A at Dallas?

18 A I'd like to answer it another way, because  
19 you're asking me something that's going to happen out  
20 there in the future.

21 Q I'm going to forewarn you, as long as you're  
22 going to answer my question, that's fine. Now, if  
23 you're answering it another way to avoid answering my  
24 question, I'd like my question answered.

25 A Well, I can't answer that question. Let's try

1 again.

2 Q No. I can't strike the question. I'm going  
3 to ask you if you, as the man who developed the  
4 post-merger operating plan, have made a determination  
5 whether if the Commission authorizes the merger of the  
6 Santa Fe and the SP, the SPSF will continue the  
7 run-through interchange operation with the L&A at  
8 Dallas, Texas?

9 A Put the way you put that, I would have to  
10 answer it no. I am trying to avoid that, and I'm not  
11 trying to be argumentative.

12 Now, if I could qualify this by telling you  
13 what I understand to be -- what I understand your  
14 question is and why I am saying -- why I am answering  
15 you as I am, maybe this could be straightened out. But  
16 I would have to do that for reasons that I can't  
17 understand in your in question. I cannot answer that  
18 question. If you can straighten me out, I will.

19 Q If your answer was no, I maybe can help you  
20 off the hook by asking you why not?

21 A Because I don't understand your question.

22 MR. NELSON: Could we have the question  
23 restated and start this one over? Could you restate  
24 your question?

25 MR. DREILING: My question was whether if the



1 Commission authorized the merger, SPSF would continue  
2 the Big D run-through interchange operation. He said  
3 his answer was no, but he didn't feel it was --

4 MR. MARTIN: He said he hadn't made a  
5 determination.

6 JUDGE HOPKINS: Why don't you let him  
7 explain? Go ahead and explain. I would like to get the  
8 answer that you want to give.

9 Go ahead.

10 THE WITNESS: Every time I get in a situation  
11 like this, everything gets so damn complicated, and to  
12 me it is so easy. All I'm saying -- I think you're  
13 asking me to refer to something that I'm going to do for  
14 ever more, what Santa Fe is going to do for ever more,  
15 and I cannot sit here and tell you we're going to do for  
16 ever more. That's what my problem is.

17 BY MR. DREILING: (Resuming)

18 Q I appreciate that. I guess maybe the fair  
19 question then would be do you have plans to discontinue  
20 the Big D operation if the Commission authorizes this  
21 merger?

22 MR. NELSON: Your Honor, we are getting  
23 awfully far afield of Mr. Cena's testimony. I  
24 understand he is knowledgeable about the railroad and is  
25 fair game to a large extent, but we do have an operating

1 plan that has been submitted. And contrary to the  
2 premise of Mr. Dreiling's earlier question, it wasn't  
3 developed entirely by Mr. Cena, i.e., the operating  
4 plan. But the impact on the Big D connection is clearly  
5 set forth therein, and I think a lot of discussion here  
6 is really consuming time that could be better --

7 JUDGE HOPKINS: If you can answer this  
8 question -- if this witness isn't the best witness to  
9 ask that particular question --

10 MR. DREILING: Your Honor, I'm trying to stay  
11 away from the specifics of the operating plan with him.  
12 On the other hand, he does say at the outset in the  
13 first sentence of his verified statement -- the second  
14 sentence: "I have been given the responsibility to  
15 develop a plan for the management and operation of the  
16 new rail system."

17 JUDGE HOPKINS: Well, I'm going to allow you  
18 to ask the last question you asked anyway. Go ahead.

19 Could you repeat it?

20 BY MR. DREILING: (Resuming)

21 Q In your development of these plans, do you  
22 have plans to eliminate the Big D operation with the L&A?

23 A No.

24 Q Are you familiar -- and I guess you're not,  
25 from prior discussions -- with the Santa Fe's



1 designations for its trains that handle the Big D  
2 traffic through Dallas?

3 A I'm not aware -- I ought to be able to  
4 understand your question. I don't even understand it.  
5 The cranes?

6 MR. NELSON: Train designation.

7 THE WITNESS: Oh, I'm sorry. Train.

8 BY MR. DREILING: (Resuming)

9 Q Train designations.

10 A The symbols on the trains, is that what you're  
11 talking about?

12 Q Well, Santa Fe -- preliminarily, Santa Fe does  
13 designate or differentiate among its trains by giving  
14 them number designations. Are you familiar with that?

15 A Yes. Generally, yes.

16 Q And are you generally familiar with Santa Fe's  
17 periodic freight train schedules and instructions that  
18 are published for its operating personnel?

19 A Just generally.

20 MR. DREILING: Your Honor, I think the last  
21 KCS exhibit was KCS-C-1.

22 JUDGE HOPKINS: That's right.

23 MR. DREILING: Well, I'm going to mark for  
24 identification KCS-C-2.

25 JUDGE HOPKINS: This will be marked for

1 identification as KCS-C-2.

2 (The document referred to was  
3 marked Exhibit No. KCS-C-2  
4 for identification.)

5 BY MR. DREILING: (Resuming)

6 Q Mr. Cena, you have in your hands what has been  
7 marked for identification as KCS-C-2. Preliminarily I  
8 will advise you this is portions of a document provided  
9 KCS by Santa Fe on discovery, formal discovery. And I  
10 will ask you whether it is not -- let's turn to the  
11 second page -- whether that is not the cover page for a  
12 Santa Fe freight train schedule and instructions dated  
13 October 1, 1983?

14 A It is.

15 Q Then I'd ask you to turn to the next page  
16 which has the index and ask you whether the first  
17 listing there covering pages 1 through 3 is a numerical  
18 listing of Santa Fe through freight trains?

19 A It is.

20 Q Now, could we turn to page 2?

21 MR. DREILING: Your Honor. I apologize. I  
22 will have to replace page 2.

23 BY MR. DREILING: (Resuming)

24 Q Mr. Cena, I would ask you to look down at  
25 train designation number 575. Do you see it?



1 A I see it.

2 Q That is a train from Brownwood to Zacha  
3 Junction?

4 A That is correct.

5 Q Zacha Junction is basically Dallas?

6 A That is correct.

7 Q And train number 579 listed there is from  
8 where to where?

9 A From Dallas to Richmond.

10 Q Now, on page 3 -- would you look at page 3?  
11 Could you pick out train number 975 for me?

12 A 975 train designation from Richmond to Dallas.

13 Q Now, then, I refer you to page 11, which is  
14 the next page after page 3. This is a listing of your  
15 train block names. Could you explain what that means?

16 A I can explain what train blocking generally  
17 is, and I can generally -- if I don't get this for you,  
18 I suggest that you get it from a much more appropriate  
19 witness than I. And I'm having a little difficulty with  
20 you in reading this.

21 Q Mr. Cena, I'm not trying to put you on the  
22 spot. Again, basically this is for my own edification.  
23 I think I know what train block means. I take it it has  
24 to do with a blocking practice where you set up specific  
25 blocks for specific trains; they are blocks within

1 trains, right?

2 A Yes. We build a train with segments of the  
3 train properly placed in this train so they can be  
4 distributed along the way at the proper point of  
5 distribution. That's really what this thing is.

6 Q And on page 11 I would ask you to head on down  
7 to the first D entry under your names, the DALAI. Do  
8 you see that?

9 A I believe that that should be DALA1. That's  
10 the way they used to do it.

11 Q I will accept that. And that represents the  
12 Dallas-I&A interchange of TOFC/COFC traffic?

13 A That is correct.

14 Q Okay. Now, below that is a DALLA. That's a  
15 Dallas-I&A Railroad interchange.

16 A That is correct.

17 Q Now, I take it the difference between the two  
18 is one is dedicated to TOFC/COFC service, and the other  
19 is basically commodity traffic?

20 A That's what I would expect that to say.

21 Q Now, I would ask you to go to the third to the  
22 last page of the group, and that is the first page of a  
23 train schedule.

24 A Train 575, Brownwood to Dallas?

25 Q That's exactly it.



1 A Okay.

2 Q So this goes back to that numerical listing we  
3 had before, and this is a more specific schedule for  
4 train 575 from Brownwood to Dallas; is that correct?

5 A That's right.

6 Q And in description it says "protects TOFC/COFC  
7 off train 975 from Brownwood."

8 A That's right.

9 Q Can you explain what they mean by protecting?

10 A That means that a schedule of 975 will move on  
11 this train 575 to the final destination. Is that --

12 Q I think so.

13 Now, the next page -- this is train 579,  
14 Dallas to Richmond, and in the description this shows it  
15 as being described "a run-through train with the L&A  
16 Railroad that originates in New Orleans with connections  
17 from the Southern and the L&N Railroads. From Brownwood  
18 will handle all loads available for Barstow and beyond.  
19 Southern California traffic will depart Barstow on first  
20 available connection."

21 I take it from that description it's fair to  
22 say that train number 579 is the westbound train  
23 handling the Big D run-through interchange traffic.

24 A I believe it's just the opposite. Maybe I  
25 misunderstood. I'm struggling, to be frank.

1 Q I'm trying to basically get the train  
2 designations straight here for the record. It's a  
3 westbound train, isn't it?

4 A That train 579 originates in Dallas and goes  
5 to Richmond, right?

6 Q It's westbound.

7 A Maybe I misunderstood you. Okay. That's  
8 westbound. Now what?

9 Q Okay. And it says it's a run-through train  
10 with the L&A Railroad.

11 A That's correct.

12 Q That originates in New Orleans with connection  
13 to Southern. That basically is the train we've been  
14 describing as the Big D run-through interchange train.

15 A Yes.

16 Q Now, the next page, train 975, this is the  
17 eastbound train from Richmond to Dallas; is it not?

18 A Yes, sir.

19 Q It shows it is a run-through train with the  
20 L&A.

21 A Yes, sir.

22 Q Operating from Richmond to Dallas with a  
23 southern California connection at Barstow.

24 A That is correct.

25 Q Now, one thing I noticed about trains 579 and



1 975, 579 originates in Dallas, does it not?

2 A Yes.

3 Q So there is no movement from any point east of  
4 Dallas that would bear the Santa Fe train designation.

5 A Okay. Yes.

6 Q And 975 terminates at Dallas, which means if  
7 that train goes east to Dallas, it's not going to carry  
8 the Santa Fe train designation.

9 A That's right.

10 Q And that's because east of Dallas, whether  
11 it's coming westbound, it's an L&A train, and if it's  
12 going eastbound, it's again an L&A train; is that  
13 correct?

14 A That's right.

15 Q Do you have a copy of your operating plan in  
16 front of you?

17 A No, I do not.

18 Q I'd like you to look at page 67 of the  
19 operating plan, Exhibit 13, submitted by the SP-Santa Fe  
20 in this proceeding. Page 67 sets forth modifications of  
21 existing train schedules and services, and it has train  
22 symbols. Does it have a statement covering train 579,  
23 which is the westbound Big D run-through train?

24 A On page 67, 579 designation has been I think  
25 changed.

1           Q        Could you read the entry beside 579 to tell us  
2 what modification is going to be made to train 579?

3           A        "Route shortened. Formerly ran Dallas to  
4 Richmond. Will run Dallas to Clovis."

5           Q        Thank you.

6                    Now, that is as to 579. Do you know whether  
7 there's going to be any modification to train 975, which  
8 is the eastbound train?

9           MR. NELSON: Your Honor, I really would like  
10 to object at this time. If we're going to get into the  
11 operating plan, we have several witnesses that are  
12 sponsoring the operating plan directly.

13           JUDGE HOPKINS: Mr. Dreiling, is he the best  
14 witness to question on all of these questions?

15           MR. DREILING: I will back off if he tells me  
16 he doesn't know.

17           THE WITNESS: I thought I told you that in the  
18 first place.

19           JUDGE HOPKINS: That's what he said. He's  
20 been trying to tell you that for a while.

21           MR. DREILING: Your Honor, he has known  
22 certain things.

23           JUDGE HOPKINS: I know, but why go on and on  
24 with this witness when there are operating witnesses who  
25 could answer it better?



1 MR. DREILING: Okay. I guess I will just ask  
2 him one question, if I might.

3 JUDGE HOPKINS: Go ahead.

4 BY MR. DREILING: (Resuming)

5 Q Were any particular changes or modifications  
6 to existing Santa Fe train operations as proposed in  
7 your operating plan presented to you for determination?

8 A Not for determination, no.

9 Q If you are to shorten the route on 579 so that  
10 it no longer runs from Dallas to Richmond but suddenly  
11 now only runs from Dallas to Clovis, will you be able to  
12 continue the Big D run-through train operation?

13 A I just have to answer generally. You know, it  
14 just doesn't make sense to me, and I would probably fire  
15 about 17 guys if they ran into Clovis and stopped. I  
16 assume you know what Clovis is and what's there. The  
17 only thing at Clovis is Santa Fe, and the only reason we  
18 are there is to change crews so those guys can take the  
19 next big run at it.

20 I can't sit here and tell you what goes on,  
21 but there will be a bunch of nonsense if we stop that  
22 train, if we terminate it at Clovis. Clovis is just a  
23 crew change point.

24 Q Who shall I talk to for the purposes of this  
25 record as to why that route was shortened?

1           A     You may want to talk to what I refer to as the  
2 Fitzgerald cousins -- I have a hard time keeping them  
3 apart -- T.J. on the traffic side and J.R. on the  
4 operating side. And I can assure you they are much more  
5 qualified to answer your questions than I am.

6           Q     So Mr. T.J. Fitzgerald, who will be testifying  
7 here later, and Mr. J.R. Fitzgerald from an operating  
8 standpoint.

9           Q     Yes. And anyone else that comes up there,  
10 because nearly anyone is more capable than I am.

11           JUDGE HOPKINS: A very modest man.

12           BY MR. DREILING: (Resuming)

13           Q     Well, I'm going to try to shorten this then.  
14 My next question involved the proposed new TOFC and  
15 perishable train as proposed in the operating plan. Are  
16 you at all familiar with those?

17           A     Generally, yes.

18           Q     I'll show you page 66 of the operating plan  
19 which sets forth the new and rescheduled TOFC and  
20 perishable trains. We're also going to have to look at  
21 certain other pages. I'd like to refer you to the ARBAT  
22 and BAAPT.

23           A     I could tell you right now you're wasting your  
24 time. Those are symbols that I have never heard of,  
25 saw, have no idea where they go. I hope some of them



1 run on our railroad. Really, I just can't. That is way  
2 beynd me on these train symbols.

3 Q I guess I'll ask you this. From your  
4 familiarity with the operating plan is it your judgment  
5 that there was no -- the proposed operations are not  
6 intended to eliminate the Big D run-through interchange  
7 with the L&A?

8 A Putting the operating plan together, we tried  
9 to produce a plan that could produce the most  
10 competitive, least cost operation obviously. That's  
11 what we're here for. It wasn't intended to close any  
12 gateway or to inconvenience you. It was put there  
13 hopefully to improve service, and some good customers  
14 will be attracted there, and all of us will be better  
15 off. That was the purpose of the plan. I think it's  
16 there.

17 Now, that's what I'd have to testify to.  
18 We're obviously trying to maximize our service as well  
19 as maximize the profits, but that's always back there.  
20 If you don't have customers, you don't have the  
21 profits. So we've attempted in this operating plan to  
22 make the keenest railroad that we can cut of it.

23 Q If either of the Misters Fitzgerald had come  
24 to you in the course of preparing the operating plan and  
25 said Mr. Cena, from the manner in which we have

1 constructed this, we are going to make it impossible to  
2 continue a run-through train operation with the L&A at  
3 Dallas, would you have objected?

4 MR. NELSON: Your Honor, I would like to  
5 object. That is so speculative.

6 JUDGE HOPKINS: It is so speculative, Mr.  
7 Dreiling. I will sustain the objection.

8 BY MR. DREILING: (Resuming)

9 Q Well, if this operating plan shows that your  
10 modification or changes in your train operations makes  
11 it impossible for the Santa Fe to continue a run-through  
12 train operation with the L&A, would you approve of it or  
13 would you object to it?

14 MR. NELSON: Same objection, Your Honor.

15 MR. DREILING: Your Honor, this time I'm  
16 asking for his opinion right here and now.

17 JUDGE HOPKINS: I'm going to allow.

18 THE WITNESS: I would be surprised.  
19  
20  
21  
22  
23  
24  
25



1           MR. DREILING: Your Honor, my further  
2 questions were about to establish that the operating  
3 plan in fact does make it impossible, but I will save  
4 those for either Mr. Fitzgerald.

5           JUDGE HOPKINS: Thank you. That is what we  
6 could do as we go along with a lot of these questions,  
7 and we will speed the whole course of this proceeding  
8 that way. Thank you.

9           BY MR. DREILING: (Resuming)

10          Q     I do have a question that involves the  
11 operating plan, but it also involves something you had  
12 talked about. On Page 1 of your verified statement --  
13 Do you have it in front of you?

14           You talk about your responsibility to develop  
15 an operating plan, a plan for the management and  
16 operation of the new rail system. You go on down a bit  
17 farther in that first paragraph, and you say, "This is  
18 not to say that all decisions have been made, or that  
19 everything is set in concrete. These are dynamic times  
20 in transportation, and our own operations may be  
21 adjusted to meet new challenges."

22           I am not entirely certain what you mean  
23 there. Are you telling us then that the operating plan  
24 that you have submitted may well not be the operating  
25 plan that the Santa Fe and SF will operate under if

1 allowed to merge?

2 A I am telling you there that there may be some  
3 reasons out there to change that operating plan that I  
4 don't perceive to be here and now. I could also tell  
5 you there has been no change in the operating plan up to  
6 this time, nor are there any plans for that. I am just  
7 saying that, you know, you have got to look at the  
8 situation that exists.

9 Q Perhaps we can explore it from this  
10 standpoint. You talk about the new challenges. Could  
11 you give us some examples of new challenges you would  
12 foresee causing or requiring modification of your  
13 plan?

14 A Well, hopefully we could attract more business  
15 or whatever, hopefully because the customer likes it,  
16 and I assure you everyone would be interested in that  
17 change.

18 Q So an increase in traffic might call for a  
19 modification?

20 A That could be one.

21 Q What about a change in the demand of shippers  
22 as to the character of their needs for service?

23 A Well, you know, I think this plan is beyond  
24 that. I can foresee a shipper coming in and saying, why  
25 don't you change your operating plan because of thus and



1 such? It is a pretty complicated thing to do. I  
2 couldn't agree with that.

3 Q Santa Fe in the past has done things like put  
4 in dedicated train service for particular types of  
5 commodities, hasn't it?

6 A Dedicated?

7 Q Dedicated to a particular commodity.

8 A I understand the dedicated service, but for  
9 whom did we do this?

10 Q Santa Fe has done this in the past.

11 A Has done what in the past?

12 Q Has established dedicated trains to meet  
13 demands and needs of given shippers.

14 A Yes.

15 Q And they have put in unit trains, have they  
16 not?

17 A Yes.

18 Q And they provided multiple car carload  
19 movements and rates?

20 A Yes.

21 Q I guess basically what I am saying is, are  
22 these the types of new challenges that would cause you  
23 to make a modification in your operating plan?

24 A No.

25 Q Did you say no?

1 A Yes. Yes, I said no.

2 Q Yes, you said no.

3 You go on to say, these new challenges could  
4 affect your plans, and what you are presenting here is  
5 your best appraisal based upon today's circumstances.  
6 Now, I guess I am wondering by today's circumstances do  
7 you mean that you have established your operating plan,  
8 the parameters for your operating plan is to take an  
9 existing SP and Santa Fe traffic and merely combine  
10 them, and then determine the most efficient way of  
11 handling the combined traffic flows?

12 A I don't want to say no again, because you have  
13 a multifaceted question there, and I have to say no to  
14 part of it and -- I will say no.

15 Q Well, in developing the parameters for your  
16 operating plan, did you use existing SP Santa Fe  
17 traffic, existing as of the date you put it together?

18 A There was a base period that the then existing  
19 traffic of both railroads combined and the operating  
20 plan was created around that.

21 Q You are familiar with the fact that the  
22 applicants have prepared and submitted as a required  
23 exhibit in this case a market impact analysis, have you  
24 not?

25 A Yes.



1 Q And are you familiar with the fact that this  
2 market impact analysis among other things shows traffic  
3 anticipated or projected to be diverted to the new SISP  
4 system from other railroads?

5 A Generally, yes.

6 Q And other carriers?

7 A Generally, yes.

8 Q That would constitute an increase in your  
9 traffic flow beyond what you measured in establishing  
10 your operating plan, would it not?

11 MR. NELSON: Your Honor, I hate to interrupt  
12 and object, but this is obviously an operating plan time  
13 question.

14 JUDGE HOPKINS: Well, I think this question  
15 can be answered. I will overrule your objection.

16 THE WITNESS: I don't know.

17 JUDGE HOPKINS: That is all you have to say in  
18 any of these. If you don't know, just say it.

19 BY MR. DREILING: (Resuming)

20 Q Would that again be something I would ask Mr.  
21 Owen and Mr. Fitzgerald?

22 A Yes.

23 Q I guess what I am wondering, Mr. Cena, again,  
24 I am asking you as a major policy witness, a man who has  
25 taken overall responsibility for overseeing the

1 preparation of the operating plan, and I am not  
2 suggesting you got into the nuts and bolts of it, but I  
3 am suggesting that you must have given some guidance as  
4 to the parameters, why you didn't suggest to Mr. Owen  
5 and to Mr. Fitzgerald that they not look to the traffic  
6 projected to be handled by the SP Santa Fe under the  
7 market impact analysis rather than looking at an  
8 existing traffic base.

9 A I am very happy the way you worded that,  
10 because I can use your own wording. You are suggesting  
11 that maybe I don't get into it. I am telling you I  
12 don't get into the nuts and bolts. There are a hell of  
13 a lot of nuts and bolts out there on that railroad, and  
14 I have got a staff out there, and I expect that staff to  
15 keep me abreast generally so that I can come up here or  
16 any place else and convince anyone that I know something  
17 about running that railroad, and I do not get into nuts  
18 and bolts. I have a very confident staff, and you can  
19 have at them any time you want.

20 Now, whatever they tell you, I tell you that  
21 is right, and I will march into hell with all of them.  
22 I don't mind sitting here answering the question, but  
23 these are my experts. I have a doctor on the staff,  
24 too.

25 MR. NELSON: Your Honor, I might point out



1 that Mr. Dreiling's assumption is incorrect when he is  
2 asking the question. It disables me somehow to know how  
3 to object in that situation when the witness is not  
4 familiar with it.

5 JUDGE HOPKINS: Thank you.

6 BY MR. DREILING: (Resuming)

7 Q In your mind, being assigned to the task to  
8 oversee the preparation of the operating plan, what did  
9 you see as the purpose of the operating plan?

10 A The purpose of the operating plan was to put  
11 together these two properties to see how we can perform  
12 a better transportation service, an efficient  
13 transportation service, a less costly transportation  
14 service, a more competitive transportation service, to  
15 compete with inter and intra types of competition, and  
16 to see if we could not sell -- could not achieve an  
17 economy with which we can be a more effective railroad  
18 than we could do it alone individually, and we have  
19 indeed done it.

20 That is going to be a beautiful railroad.  
21 That is the purpose.

22 Q And I guess my next question is, can you make  
23 that judgment based upon existing traffic flows or  
24 should not that judgment be based upon projected changes  
25 in the traffic flows as you determined in your marketing

1 impact analysis?

2 MR. NELSON: Excuse me. I object to that,  
3 because the assumption underlying Mr. Dreiling's  
4 question is that projected traffic flows were not  
5 utilized in developing the operating plan, and that is  
6 just plain contrary to fact. Mr. Fitzgerald and Mr.  
7 Owen will be available to explain why that is not the  
8 fact to Mr. Dreiling.

9 JUDGE HOPKINS: You are just objecting on the  
10 fact that he assumes something that isn't correct?

11 MR. NELSON: He is making an assumption  
12 contrary to facts of record which are in the  
13 application.

14 JUDGE HOPKINS: This gentleman isn't the one  
15 that is most cognizant of the individual items you are  
16 talking about, so that is the problem with your  
17 question, and I will sustain the objection on that  
18 basis.

19 MR. DREILING: Fine, Your Honor. I will ask  
20 Mr. Owen about this.

21 JUDGE HOPKINS: Thank you.

22 BY MR. DREILING: (Resuming)

23 Q Mr. Cena, my next question is going to involve  
24 some terminology with respect to the Hodge yard at Fort  
25 Worth, and answer this only if you feel you can.



1           In the operating plan there is an indication  
2           that Hodge yard would be "removed from active service."  
3           My question to you is, do you know why that terminology  
4           was used rather than saying it would be abandoned?

5           A       You are asking me to translate terminology. I  
6           can tell you what I think it means. I think it is going  
7           to be used for some other purpose. I don't think it is  
8           going to be abandoned. If they were going to abandon  
9           it, they would abandon it.

10          Q       Do you know what it is going to be used for?  
11          Do you know the answer to that question?

12          A       I could guess with you. Store maintenance of  
13          way cars.

14          Q       Were you present during the cross examination  
15          of Mr. Schmidt yesterday?

16          A       Yes.

17          Q       Do you recall the discussion of an exhibit  
18          called KCS-C-1?

19          A       I had just a little bit of difficulty in two  
20          areas yesterday, hearing and staying warm.

21                   JUDGE HOPKINS: You and everybody else.

22                   THE WITNESS: I don't know.

23                   BY MR. DREILING: (Resuming)

24          Q       Did you hear enough to know that apparently  
25          KCS-C-1 was a report prepared for and submitted to Santa

1 Fe, Santa Fe's board of directors?

2 A That KSC prepared it?

3 Q No, it's an exhibit that was marked for  
4 identification as KCS-C-1.

5 A I didn't hear enough. I have to know a little  
6 more about what you are talking about, or what he was  
7 talking about.

8 MR. DREILING: Do we have a copy of KCS-C-1?

9 MR. KHARASCH: If I get it back.

10 BY MR. DREILING: (Resuming)

11 Q Have you ever seen that document before?

12 A Yes.

13 Q I mean before yesterday.

14 A Yes.

15 Q Did you participate in its preparation?

16 A No.

17 Q Did you participate in discussions of its  
18 contents?

19 A Not precisely.

20 Q How unprecisely did you participate?

21 A No one asked me anything about something that  
22 was going to go in here that I precisely knew that was  
23 going in here.

24 Q Are you aware of any other persons who  
25 participated in the preparation of that document?



1 A Yes.

2 Q Could you provide me their names?

3 A I did hear Mr. Schmidt referring to Booth. I  
4 assume there would have to be others, because -- and I  
5 believe that Mr. Schmidt said that there were probably  
6 some other type people. I couldn't name them. But just  
7 seeing this, I would think that maybe he had some  
8 assistance or something.

9 Q Do you know whether Mr. Tom Fitzgerald  
10 participated in it?

11 A No.

12 Q Mr. J.R. Fitzgerald?

13 A They did not participate in this. Neither of  
14 them participated in this.

15 Q Mr. Keyes?

16 A Keyes? I couldn't answer that.

17 Q So aside from what you heard Mr. Schmidt say  
18 yesterday, do you have any independent knowledge of  
19 anybody who participated in its preparation?

20 A No.

21 Q Did you discuss that document with Mr. Schmidt  
22 before it was submitted to the board of directors?

23 A No.

24 Q Did you see it at any point in time before it  
25 was submitted to the board of directors?

1           A       I received it with the other materials that we  
2 would generally get before the board. To that extent,  
3 yes.

4           Q       How long beforehand?

5           A       Well, I complained a little bit. I am ten  
6 floors away, and I am usually about the last guy to get  
7 it, but about three to four days.

8           Q       Did you read it upon your receipt of it?

9           A       Yes.

10          Q       Did you have occasion to discuss it with the  
11 board at the board of directors' meeting?

12          A       No.

13                 MR. DREILING: Your Honor, I have no further  
14 questions.

15                 JUDGE HOPKINS: Who is next? And how long  
16 will you be?

17                 MR. PRETTYMAN: I should be only an hour.  
18 Maybe less.

19                 JUDGE HOPKINS: We will recess at 11:00  
20 o'clock. If this gentleman can wait, we will recess at  
21 11:00.

22                 Go ahead, Mr. Prettyman.

23                 BY MR. PRETTYMAN:

24                 Q       Mr. Cena, back in June of '78, you testified  
25 before the Subcommittee on Economic Growth and



1 Stabilization of the Joint Economic Committee of the  
2 Congress. Do you recall that?

3 A Yes, sir.

4 Q I brought that testimony to your attention  
5 through your counsel last night.

6 A Yes, sir.

7 Q And you had a chance to read it?

8 A Yes, sir.

9 Q Did you discuss it with your counsel?

10 A Yes, sir.

11 Q And if I may summarize your testimony, you  
12 seemed to be making three basic points in that  
13 testimony, and you correct me if I mischaracterize  
14 it.

15 The first is that some people are arguing that  
16 the railroads are inherently in a state of decline.  
17 Santa Fe emphatically disagrees with that. Indeed,  
18 there is an unprecedented demand for rail service, and  
19 that demand is going to increase.

20 Have I accurately summarized your first  
21 point?

22 A I said some of those things, yes.

23 Q I think the second point you made was that the  
24 real problem is inadequate earnings, and the real root  
25 causes of that are, A, inflation, and B, unequal

1 regulation between competing modes, and C,  
2 overregulation by the government, and D, the failure of  
3 the ICC to implement the 4R Act, that is, the Railroad  
4 Revitalization and Regulatory Reform Act of 1976, and  
5 the principal reasons for inadequate earnings, you said,  
6 was the regulatory impediment to establishing prices in  
7 accordance with the demands for service.

8           Q       Again, have I accurately summarized your  
9 testimony?

10           A       Generally, yes.

11           Q       And the third point seemed to be that if these  
12 impediments were changed, you are confident that the  
13 railroads would achieve adequate earnings. Did you  
14 testify to that?

15           A       Yes.

16           Q       Now, Mr. Cena, since then the inflation has  
17 largely disappeared as a problem, has it not?

18           A       Largely.

19           Q       And has regulation between competing modes  
20 become fairer?

21           A       It has become more intense.

22           Q       The regulation has become more intense?

23           A       I thought you said the competition. I am  
24 sorry.

25           Q       You were referring to the overregulation and



1       unequal regulation between competing modes, and I am  
2       asking you if that problem has largely straightened  
3       itself out.

4             A       To a degree.

5             Q       Is the ICC still failing to implement the  
6       law?

7             A       No.

8             Q       And are there still the same old economic  
9       impediments to establishing your own prices?

10            A       Some.

11            Q       But less?

12            A       Maybe. Maybe more. I don't know where you  
13       are coming from.

14            Q       Well, tell me where you are coming from.

15            A       I say maybe.

16            Q       You don't have a better ability today than you  
17       did in 1978 to establish your own prices?

18            A       Yes.

19            Q       I take it then that you are very optimistic  
20       about the future both of the Santa Fe and of other  
21       railroads generally in light of these changes?

22            A       Optimistic is pretty hard to describe. I am  
23       an optimistic person, given the right conditions. I am  
24       optimistic about all that you say.

25            Q       Well, in that regard, do you agree with Mr.

1 Schmidt's testimony yesterday that the Santa Fe is going  
2 to go out of business if you don't get this merger?

3 A Santa Fe Railroad will have problems out there  
4 some place in time, and that is what he said, and that  
5 is what I say, and that is what I agree, yes.

6 Q I am not sure you answered my question, unless  
7 the yes is the answer to the question. Do you agree  
8 with him that the Santa Fe is going to go out of  
9 business unless you get this merger? That is the  
10 question. I am not asking whether you are going to have  
11 problems.

12 A Well, what part of the Santa Fe, for  
13 instance? That is my problem with your question.

14 Q Did you hear his testimony?

15 A Absolutely.

16 Q Well, did you agree with it?

17 A I agreed with his testimony.

18 Q When did you develop the view that the Santa  
19 Fe was going to go out of business if it didn't get this  
20 merger?

21 A I have had it for many years.

22 Q I would like to avoid going through each one  
23 of these speeches, if I can, Mr. Cena, but I will if we  
24 have to. Is it a fair summary of the speeches which I  
25 also called to your attention last night over the years



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1 going back certainly to 1981, that you are constantly  
2 optimistic in these speeches about the future of the  
3 Santa Fe?

4 A You took some testimony out of this hearing.  
5 I would like to read just another little piece, if it is  
6 all right.

7 Q Sure.

8 JUDGE HOPKINS: Sure, go ahead.

9 THE WITNESS: If you have the same one, I  
10 think this is the one that -- these hearings are awfully  
11 long and tedious.

12 JUDGE HOPKINS: Just like this, huh?

13 THE WITNESS: Yes. On Page 227, please, sir,  
14 next to the bottom, next to the last paragraph, and if  
15 you will agree that this was the same document that you  
16 cross examined me on there, I also said, "We on the  
17 Santa Fe are encouraged by a general traffic growth and  
18 by the continued increases in piggyback and coal  
19 business. Our optimism must be guarded, however,  
20 because of two," and I am sorry, I can't say that next  
21 word, because you probably gathered already I have a  
22 speech impediment. You say the word. I will read that  
23 again.

24 "Our optimism must be guarded, however,  
25 because of two related facts."



1 Q "Inextricably related facts."

2 A Thank you. I can't even say it after you  
3 helped me. "Santa Fe will have to generate a tremendous  
4 amount of capital to maintain and enhance its service  
5 capabilities to meet its present and increasing  
6 transportation responsibilities, and second, Santa Fe's  
7 continued ability to raise that capital will require  
8 that its present inadequate earnings be brought to a  
9 level necessary to enable it to compete fairly for  
10 scarce capital in the money market."

11 I am optimistic, but it is qualified.

12 Q Would you just read the next sentence right  
13 along with that?

14 A Okay. "While the foregoing observations are  
15 related directly to Santa Fe, of which I have specific  
16 knowledge, I want to emphasize my belief that the same  
17 observations are applicable to the industry in  
18 general."

19 Q And the next sentence?

20 MR. NELSON: Your Honor, I think we could  
21 simplify this both for Mr. Cena and Mr. Prettyman. I  
22 intend to, when I get copies, just simply make that 1978  
23 document part of the record.

24 MR. PRETTYMAN: Fine.

25 JUDGE HOPKINS: Thank you.

1 BY MR. PRETTYMAN: (Resuming)

2 Q I am happy to have that testimony, Mr. Cena,  
3 but my question was, have you not over the years  
4 consistently and repeatedly in your speeches to the  
5 industry made clear your optimism about the future of  
6 the Santa Fe Railway?

7 A Yes.

8 Q You refer on Page 1 of your testimony to your  
9 "principal railroad competitors." Who are they? Who  
10 were you referring to?

11 A Can you help me just a little bit there,  
12 please? Page 1?

13 Q Yes, sir.

14 MR. NELSON: Where is that?

15 MR. PRETTYMAN: Maybe it is on Page 2.

16 JUDGE HOPKINS: Maybe it is on Page 3.

17 MR. PRETTYMAN: It is on Page 2, near the  
18 beginning, probably the fifth or sixth line down.

19 JUDGE HOPKINS: What is the question again,  
20 Mr. Prettyman? He is waiting.

21 BY MR. PRETTYMAN: (Resuming)

22 Q The question is, to whom were you referring?

23 A I am referring to the principal carriers, but  
24 I am referring to all competition, the principal rail  
25 carriers being --



1 Q No, it is not the principal rail carriers, it  
2 is your principal railroad competitors.

3 MR. NELSON: Which have enlarged their systems  
4 through consolidation. That is the way that reads.

5 MR. PRETTYMAN: Pardon me. I can't hear you.

6 JUDGE HOPKINS: He just finished reading the  
7 rest of that sentence.

8 MR. NELSON: I just read the rest of the  
9 sentence.

10 THE WITNESS: "Another factor giving emphasis  
11 to this philosophy of the last two years is that the  
12 increased level of competition we faced from motor  
13 carriers and our principal railroad competitors which  
14 have enlarged their system through the consolidation."

15 BY MR. PRETTYMAN: (Resuming)

16 Q I am just asking you who they are.

17 A They are the recently merged railroads, Union  
18 Pacific, Western Pacific, Missouri Pacific, Burlington  
19 Northern, Frisco.

20 Q Thank you. And on that same page you say that  
21 your railway earnings during the period 1980 to '83  
22 "were simply not adequate." Would you explain what you  
23 mean by that? Adequate for what? Adequate to stay in  
24 business? Or give adequate service? Or to maintain the  
25 system? Or what?

1           A     Not enough to provide the capital that I  
2 needed to perpetuate and improve that property, so I  
3 continued to perform an efficient, competitive  
4 operation. That is what I mean.

5           Q     So that you became noncompetitive during this  
6 period?

7           A     I don't understand what you are saying. If I  
8 became noncompetitive during what period?

9           Q     During the period that we are talking about.

10          A     All right. Tell me what period we are talking  
11 about then.

12          Q     Well, you tell me what period you are talking  
13 about. It is your testimony. I assume it was between  
14 1980 and 1983.

15          A     I just don't know.

16          Q     You don't know whether you became  
17 noncompetitive?

18          A     I just don't know what your question is now,  
19 when we have not become noncompetitive.

20          Q     Let's get straight here, Mr. Cena.

21          A     Yes.

22          Q     In the previous paragraph you talk about  
23 during the period from 1980 to 1983, and then you say,  
24 "Despite the substantial efficiencies, the railroad's  
25 earnings during the period were simply not adequate."



1                   What period are you referring to?

2                   A     Between 1980 and '83.

3                   Q     That's what I thought. And now you have just  
4 told me that during that period what you meant was that  
5 the earnings were not sufficient to keep you  
6 competitive, if I understood you.

7                   A     No, that is not what I meant at all.

8                   Q     All right. Well, don't let me put words in  
9 your mouth. What did you mean?

10                  A     I meant that we did not get sufficient  
11 revenues between 1980 and 1983 to provide enough profit  
12 from which we could continue our business in the manner  
13 in which I would like to. Is that a better answer?

14                  JUDGE HOPKINS: It is your answer anyway.

15                  BY MR. PRETTYMAN: (Resuming)

16                  Q     Yes. Thank you.

17                             I would like one clarification here. On Page  
18 8, the top two lines on that page talk about "with  
19 approximately 1.5 million fewer train miles and over 50  
20 million" Should the word "fewer" be inserted there in  
21 front of "car miles? In other words, are you saying  
22 that there were also 50 million fewer car miles?

23                  MR. NELSON: I think that is implicit in the  
24 sentence.

25                  MR. PRETTYMAN: Well, I am just trying to get

1 the meaning. It doesn't say that.

2 BY MR. PRETTYMAN: (Resuming)

3 Q Is that what you mean there?

4 A Yes.

5 Q Thank you.

6 You say on Page 11, Mr. Cena, that it would be  
7 imprudent to impose substantial abandonments until you  
8 have had an opportunity to gain experience in operating  
9 the merged properties. How much time are you talking  
10 about here? Can you tell the Commission that? You are  
11 talking about experience for a few months, or a few  
12 years? Or are we talking about the three-year period  
13 referred to on Page --

14 A Beginning from the time of the merger. I  
15 really think we ought to look at that thing for three or  
16 four years to really understand what we are doing, did  
17 we call the right shots. You know, we are not trying to  
18 get out of business.

19 Q So we can assume that you are not going to  
20 have any abandonments for three or four years?

21 A I would assume that, yes.

22 Q You say yes?

23 A I would assume it.

24 Q Thank you. And you say on -- as we have just  
25 discussed, you say on Page 2 that your earnings have not



1 been adequate, and then on Page 12 you say that you see  
2 "no other course of action remaining open to us but to  
3 merge ATSF and SPT."

4 Now, I take it that that is your way of saying  
5 the same thing that Mr. Schmidt said yesterday about  
6 going out of business.

7 A It could be construed that way, yes.

8 Q Are you involved along with Mr. McNear in  
9 developing the SFSP operating plan? And I think you  
10 have made that clear this morning, that you were. Is  
11 that correct?

12 A I was.

13 Q And can you tell us a little bit more  
14 precisely what your role was in developing that plan?

15 A Yes. We had several of our operating people,  
16 staff members who worry about these kinds of things,  
17 transportation experts, mechanical experts, worrying  
18 about the total picture, several, including vice  
19 presidents on both sides.

20 They know how a railroad runs, obviously, but  
21 they start formulating a plan, what do we want to do to  
22 maximize the efficiencies, how can we minimize costs,  
23 all these types of things, how can we produce an  
24 improved train service.

25 They had many, many meetings. I attended

1 several. But the people on Santa Fe's side would report  
2 back to me on a schedule. I would see the vice  
3 president of operations on a daily basis if we were in  
4 town. That just happens. And of course that was of  
5 such an important nature that I kept pretty well abreast  
6 with that.

7 But there were others, and that is the way  
8 this thing was formulated. Now, Mr. McNear and I were  
9 meeting on a weekly basis on this, and it went on for  
10 several weeks. He, I assume, had a similar method. He  
11 had questions sometimes. I had questions. We would  
12 exchange this information, do you agree or don't you  
13 agree.

14 We would agree if we agreed or didn't agree,  
15 and then we would send it back and say, try this or do  
16 that. But by and large it was more of an oversight  
17 arrangement to see if these things were doable. There  
18 was a lot of effort. We looked at a lot of things, and  
19 we, I hope, assisted a little bit in making some  
20 changes, and we are generally very active in it, yes.

21 Q What happened when you disagreed? Who won?

22 A Well, at Santa Fe there is no doubt who is  
23 going to win. I don't know how Danny runs his business,  
24 but I usually win. But then I sometimes win the battle  
25 and most of the times lose the war.



1 Q Perhaps you misunderstood my question. I  
2 didn't mean within Santa Fe, who won. I assume you did,  
3 but if you and Mr. McNear disagreed, who won?

4 A There were none of those types of -- what we  
5 exchanged information, you know, I would not disagree.  
6 That is not the thing. He would come in with problems.  
7 My guys are telling me this, and what are your guys  
8 telling you, and we would figure it out.

9 Q And you would reach a joint decision?

10 A Sure.

11 Q The Commission said in its UF-McP-WF decision  
12 that "DRGW has persuaded us that it is an efficient and  
13 well run railroad." Would you agree with that?

14 A Could you help me? Is that in my testimony?

15 Q No, that is what the Commission said.

16 A Oh. I would agree with whatever the  
17 Commission said.

18 JUDGE HOPKINS: Not at all times.

19 THE WITNESS: Well, on that question.

20 BY MR. PRETTYMAN: (Resuming)

21 Q Well, on your own, could you agree with that,  
22 Mr. Cena?

23 A I am not trying to do this. Could you read  
24 that again? I was trying to get down to my testimony.  
25 You had me painted in a corner for only a second.

1 Q "DRGW has persuaded us that it is an efficient  
2 and well run railroad."

3 A Oh, yes.

4 Q Of course, even the best run regional railroad  
5 has got to have friendly connections, doesn't it?

6 A It helps.

7 Q Now, you have lauded single line service a  
8 good deal in the past, have you not, Mr. Cena?

9 A Single line service, I have talked about. I  
10 don't know about lauded. But I will say yes.

11 MR. PRETTYMAN: Your Honor, I have marked this  
12 DRGW-C-1 for identification.

13 (The document referred to  
14 was marked for  
15 identification as Exhibit  
16 Number DRGW-C-1.)

17 JUDGE HOPKINS: Are you going to have long  
18 questioning on this? It is time for a break. We could  
19 take it now.

20 MR. PRETTYMAN: I don't have too much more,  
21 but we can go ahead and take it.

22 JUDGE HOPKINS: If you only have a few more we  
23 can finish with you.

24 MR. PRETTYMAN: I only have a few more.

25 BY MR. PRETTYMAN: (Resuming)



1 Q I called this speech to your attention last  
2 night, did I not?

3 A Yes, sir.

4 Q This is an address on January 19, 1983, before  
5 the Pacific Northwest Shippers Advisory Board.

6 A In Portland, Oregon.

7 Q And you had a chance to review that last  
8 night?

9 A Yes, sir.

10 Q Does it generally state your views, sir?

11 A It does.

12 Q It accurately states your views? Thank you  
13 very much.

14 In the UP-MoP-WP case, you testified as  
15 follows, Mr. Cena, and again I believe I called this to  
16 your attention last night. This is on Page 3. Why  
17 don't we read it together?

18 "Southern Pacific's market power in the  
19 western United States is unrivaled by any other railroad  
20 system. Its lines blanket the west coast from Portland,  
21 Oregon, to southern California. Access to and from  
22 these markets is dominated by Southern Pacific through  
23 both the central transcontinental corridor via Utah  
24 gateways and the southern transcontinental corridor.

25 "Its coverage of eastern gateways is almost as

1 extensive as its dominant position in California and  
2 Oregon. Its single line service to the key interchange  
3 points of New Orleans, Memphis, and St. Louis is  
4 unmatched by any other western rail carrier."

5 Do you recall testifying to that effect?

6 A Yes.

7 MR. NELSON: Excuse me. Which page was that  
8 on?

9 MR. PRETTYMAN: Three.

10 MR. NELSON: This was, you say, the MoP-UP  
11 case? It doesn't sound like the MoP-UP case.

12 MR. PRETTYMAN: No, I am sorry, I misstated.

13 BY MR. PRETTYMAN: (Resuming)

14 Q I see on the front this is in your opposition  
15 to SP's bid to acquire the Rock Island lines between St.  
16 Louis and Kansas City gateways at Santa Rose, New  
17 Mexico? Is that right?

18 A Well, if that is there, yes.

19 MR. PRETTYMAN: I apologize. I did not mean  
20 to misstate that.

21 MR. NELSON: We did not pull the Tucumcari  
22 case out last night.

23 MR. PRETTYMAN: Oh, I am sorry.

24 BY MR. PRETTYMAN: (Resuming)

25 Q In any event, that was your testimony, and did



1 it accurately state your view at that time about the  
2 Southern Pacific?

3 A Yes.

4 Q Would you describe the Santa Fe as the premier  
5 intermodal carrier in the railroad industry?

6 A One of them, yes.

7 MR. PRETTYMAN: Well, Your Honor, this may  
8 take a few minutes.

9 JUDGE HOPKINS: We will take a 15-minute  
10 recess.

11 (Whereupon, a brief recess was taken.)

12 JUDGE HOPKINS: Let's go back on the record.  
13 Mr. Prettyman.

14 BY MR. PRETTYMAN: (Resuming)

15 Q Mr. Cena, you just testified that in your view  
16 Santa Fe is one of the premier intermodal carriers in  
17 the industry. In a speech on October 18th, 1982, at  
18 MIT, on Page 7, did you say, "With a complete lack of  
19 modesty, I will describe Santa Fe as the premier  
20 intermodal carrier in the industry?"

21 A Yes.

22 Q And in a speech on October 7th, 1982, before  
23 the First Boston Transportation Seminar, did you say on  
24 Page 6, "Turning now to piggyback, with a complete lack  
25 of modesty, I will describe Santa Fe as the premier

1 intermodal carrier in the industry?"

2 A Yes.

3 Q And in a speech on May 11th, 1982, before the  
4 National Association of Shippers Advisory Boards on Page  
5 7, did you say, "I don't mean to sound boastful when I  
6 say that Santa Fe is the leader in piggyback operations  
7 in the west, it just happens to be a fact?"

8 A Yes.

9 Q And were those your views?

10 A Yes.

11 Q And are they your views now?

12 A Yes.

13 Q You are a very strong believer, Mr. Cena, are  
14 you not, in working with trucks instead of against  
15 them?

16 A Yes.

17 Q And in fact you have division agreements with  
18 over 75 separate trucking firms?

19 A Probably more, yes.

20 Q More than that. How many would you guess?

21 A I don't know. I imagine you have gotten that  
22 out of some of my speeches.

23 Q I did.

24 A Okay, then we have gotten several more since  
25 then. I don't care when that was.



1 MR. PRETTYMAN: That is all I have, Your  
2 Honcr. Thank you.

3 JUDGE HOPKINS: Who is next?

4 BY MS. KIRSCHENBAUM:

5 Q Good morning, Mr. Cena. My name is Ellen  
6 Kirschenbaum. I representing the Trustee of the  
7 Milwaukee Road today.

8 Mr. Cena, what is the Santa Fe's general  
9 policy on joint route cancellations?

10 A I am sorry. I didn't hear you.

11 Q What is the Santa Fe's general policy on joint  
12 route cancellations, gateway closures?

13 A Yes. I think we have a flexible policy.

14 MB. PRETTYMAN: Your Honor, I am sorry, I  
15 can't hear either one of them.

16 JUDGE HOPKINS: Would you speak up?

17 BY MS. KIRSCHENBAUM: (Resuming)

18 Q My question was, what is the Santa Fe's  
19 general policy of joint route cancellations?

20 A Generally -- cancellations?

21 Q Yes.

22 A We have no policy regarding cancellations.

23 Q On what basis will the Santa Fe close a  
24 gateway or a joint route?

25 A I assume it is not -- let me qualify myself

1 here, and then I will answer your question. This  
2 business comes under the heading of Mr. T.J.  
3 Fitzgerald. He would be the proper one. He dictates  
4 that policy. I just overlock the policy and agree or  
5 disagree as to policy. Now, policy per se, nothing in  
6 writing.

7 I just have to assume that it is an economic  
8 analysis of why you should or not. I would just have to  
9 assume that you close a gateway for economic reasons. I  
10 do not close gateways, is what I am trying to tell  
11 you.

12 Q What will be the policy of the merged company  
13 on joint route cancellations?

14 MR. NELSON: Could I interrupt for just a  
15 moment? I don't mean to object necessarily to the  
16 question, but I don't know if counsel was here yesterday  
17 when we distributed the joint rate policy statement,  
18 which will be sponsored by Mr. Fitzgerald.

19 MS. KIRSCHENBAUM: I have seen the handout.  
20 Is that in the record at this point?

21 MR. NELSON: It is not in the record. I  
22 expect it to be marked for identification and moved into  
23 evidence when Mr. Fitzgerald takes the stand.

24 MS. KIRSCHENBAUM: Is it your suggestion that I  
25 postpone my questioning until Mr. Fitzgerald is on the



1 stand?

2 THE WITNESS: That would be my suggestion.

3 JUDGE HOPKINS: I am not the one making the  
4 suggestion to you, but it sounds to me like that would  
5 be the logical way to handle it.

6 MS. KIRSCHENBAUM: Let me keep on going for  
7 just a few more questions.

8 BY MS. KIRSCHENBAUM: (Resuming)

9 Q Are you aware that the Milwaukee Road  
10 interchanges with the Southern Pacific in Kansas City?

11 A Generally, yes.

12 Q How would you -- would you say that the  
13 Milwaukee competes with the Santa Fe between Kansas City  
14 and Chicago?

15 A Yes.

16 Q How would you describe that competition? How  
17 would you characterize it?

18 A It is competition. I assume -- Are you asking  
19 maybe degree?

20 Q Some type of strength, yes.

21 A It is an effective competitive route.

22 Q Do you know the volumes of traffic that the  
23 Milwaukee has handled off the Southern Pacific?

24 A No.

25 Q Do you know whether the Santa Fe or the

1 Southern Pacific has unilaterally closed any joint  
2 routes?

3 A I do not know.

4 MS. KIRSCHENFAUM: I think that is all the  
5 questions that I have.

6 JUDGE HOPKINS: Who is next?

7 BY MR. CRAIG:

8 Q Mr. Cena, my name is Peter Craig. I am  
9 associate general counsel of Amtrak. I have a few  
10 questions about passenger service as it relates to the  
11 operating plan on which you and Mr. McNear  
12 participated.

13 Was Amtrak at all involved in the preparation  
14 of your operating plan?

15 A No, sir.

16 Q What is going to be the overall effect on  
17 Amtrak's passenger operation as a result of the  
18 operating plan? Do you foresee service improvements for  
19 the rail passengers?

20 A I would expect no problem whatsoever  
21 servicewise for any Amtrak operation that I have been  
22 aware of from what is in the operating plan, if that is  
23 your question. I can foresee none.

24 Q You don't see any impact on service one way or  
25 the other? Is that correct?



1           A     No, sir. I do not see -- I am agreeing with  
2     you, if I can get the words out right. I can see re  
3     impact on Amtrak.  
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1 Q And you would represent to the Commission  
2 there would be no adverse impact on Amtrak services?

3 A No adverse impact that I'm aware of. Yes,  
4 sir.

5 Q And no adverse effect on their operating  
6 cost?

7 A On their operating cost?

8 Q Operating cost.

9 A I couldn't answer that.

10 Q Do you represent that after the merger, the  
11 quality of service rendered for Amtrak will be  
12 maintained at existing levels?

13 A As good or better.

14 Q And do you represent to the Commission that  
15 after merger, the cost level to Amtrak will be  
16 maintained so that it will not adversely impact  
17 passenger operation?

18 A I cannot testify to the cost.

19 Q Have you reviewed the agreements that Santa Fe  
20 and Southern Pacific have with Amtrak?

21 A I know generally what is in the  
22 Amtrak/Santa Fe agreements. I do not know what is in  
23 the Southern Pacific agreement. I have not seen or  
24 reviewed them.

25 Q You are aware that those agreements run until



1 1996?

2 A This is the first I have heard, but I would  
3 agree, yes.

4 Q And you would represent that the merged  
5 railroad would live up to the terms of those  
6 agreements?

7 A Yes, sir.

8 MR. CRAIG: I have no further questions.

9 JUDGE HOPKINS: Thank you. Who was next?

10 BY MR. DELANEY:

11 Q We represent the Railway Labor Executives  
12 Association. I'm John Delaney and this is Kimberly  
13 Madigan.

14 As far as labor relations, will  
15 representatives of the Southern Pacific/Santa Fe Railway  
16 or members of the holding company negotiate with  
17 employees?

18 A The same negotiating pattern will be continued  
19 as heretofore, if I understand your question. There  
20 will be no change in who will be negotiating with the  
21 organizations.

22 Now, the person who will do all of my  
23 negotiating will be Frestel. Now, if that a sufficient  
24 answer, he is the one that has that responsibility to  
25 Santa Fe. He has the total responsibility. He will be

1 here and will be making a presentation, and I'm sure  
2 would be able to answer everything that you have.

3 But I could do it generally, and would be  
4 happy to do it.

5 Q That's fine. That's answers my question.

6 If I could just go on and ask you a few  
7 questions. On page 9 of your verified statement, you  
8 say that the merged carrier is going to have one set of  
9 reporting marks. Is this also going to apply to the  
10 Santa Fe subsidiaries?

11 A Let me catch up with you, please.

12 Q That's page 9.

13 A Now, again, can you help me a little? Page  
14 9? I have equipment utilization.

15 Q Right under equipment utilization, the second  
16 sentence.

17 A All right. Is this sentence, "The three  
18 individual carriers"?

19 Q Yes.

20 A "The three individual carriers' separate  
21 reporting marks will be combined so that the merged  
22 carrier's equipment will have a single set of reporting  
23 marks."

24 Q Right.

25 A Yes.



1 Q My question is, does that also apply to Santa  
2 Fe's subsidiary companies?

3 A I'm just trying to think this out. Now, the  
4 Santa Fe's subsidiary companies, I don't know the point  
5 of your question. We would have Santa Fe markings.

6 Q Well, in your application you have a corporate  
7 chart that starts off with the Santa Fe/Southern Pacific  
8 Corporation. I don't know if he has this in front of  
9 him.

10 A That's all right. But see if you can  
11 straighten me out.

12 JUDGE HOPKINS: Why don't you state  
13 specifically which subsidiaries you're referring to.

14 THE WITNESS: That would be fine.

15 BY MR. DELANEY: (Resuming)

16 Q You break this down into three categories:  
17 wholly owned rail operations, jointly owned rail  
18 operations, and non-rail operations.

19 Let's just take the wholly owned, somebody  
20 like the Clinton & Oklahoma Western. Will they have  
21 their own markings?

22 A They will be ATSF. I see where you're going.  
23 They will be SPSF markings as all others. As Mr.  
24 Schmidt testified yesterday, they're just paper  
25 companies.

1                   Now, we will have one marking for the total  
2 combined ownership of what I refer to as Santa Fe and  
3 what is referred to as Southern Pacific Transportation  
4 Company. If they now own them, they will be one  
5 marking, yes.

6           Q       Okay

7                   Can you say the same thing for the Houston  
8 Belt?

9           A       Houston Belt, I don't know of them having any  
10 ownership, but if they did, they would not be in these  
11 markings.

12          Q       They would not?

13          A       And I don't know if they own any equipment or  
14 not.

15          Q       They're listed here on the chart as being  
16 under the jointly owned rail operations.

17          A       Let me go the other way. If they owned a  
18 boxcar, it would not be on this.

19          Q       All right.

20                   Well, what is the criteria then for  
21 determining whose markings --

22          A       It's what generally -- I don't know of any  
23 subsidiary that owns a car, so the question is pretty  
24 difficult. Any other company -- all of our markings are  
25 ATSF.



1           Now, I can go back in history. For a lot of  
2 reasons, we had mostly -- Texas law -- we had the PC&SF  
3 and the GC&SF because the state law required we have  
4 those markings. But when that went by the by, we had  
5 the ATSF marking.

6           And I would expect this joint operation to be  
7 as it is now.

8           Q     Which person, which expert witness will be  
9 able to tell us whether or not a railroad has boxcars  
10 that will have markings?

11          A     I'm sure there are several. Mr. J. R.  
12 Fitzgerald, Operating Vice President, would. And  
13 possibly others. Any transportation people.

14          But I am more than certain for at least Santa  
15 Fe that we don't have any other markings.

16          Q     You will have the merged carrier marking?

17          A     We're going to have one marking out there on  
18 the merged carrier. Now, I would have to look -- if  
19 this thing is there and I just can't conceive that it is  
20 -- if someone in our joint ownership owns one, I'll have  
21 to look at it. I don't know what it is.

22          We want to haul under one marking all of our  
23 ownership, but I have to qualify it if there's something  
24 out there that I haven't seen in 38 years. Well, there  
25 are a lot of things I haven't seen in 38 years.

1 Q Okay, thanks.

2 Who controls the Santa Fe subsidiaries now?

3 A I'd say I do. If they are railway  
4 subsidiaries, to the extent that you control them, they  
5 are paper companies.

6 MR. NELSON: For clarification, when you say  
7 "these subsidiaries," are you looking at the wholly  
8 owned subsidiaries or the ones that are jointly owned,  
9 sometimes as little as 10 or 12 percent?

10 MR. DELANEY: The wholly owned, we assume,  
11 were ATSF. But the question does go to jointly owned.  
12 Who are the decisionmakers? Who are the people who  
13 control these railroads?

14 THE WITNESS: Okay. Now, if you would tell me  
15 which ones.

16 BY MR. DELANEY: (Resuming)

17 Q We can go right down the list if you want to  
18 do that.

19 A Sure. Well, really, you could qualify that  
20 with the people in transportation. I would have to go  
21 on my part. HB&T I think you asked, did you not? Well,  
22 that's a company down there that is jointly owned and,  
23 to my knowledge, they don't own any equipment.

24 The HB&T property is 50 percent owned by MoP.  
25 It was the Missouri Pacific Railroad, 25 percent Santa



1 Fe, 12-1/2 percent Burlington Northern, and 12-1/2  
2 percent Rock Island.

3 Now, if the HB&T has any cars, those will not  
4 be in Santa Fe markings, I can assure you.

5 Q After the merger, who will control these  
6 companies?

7 A For instance, the HB&T?

8 Q Yes.

9 A They will, HB&T. It's a company.

10 Q So that the Santa Fe/Southern Pacific  
11 Corporation won't have any?

12 A No. We have the legal interest as a part  
13 owner, but I think we're talking operational things.  
14 And again, I'll tell you, if they own a boxcar and it  
15 has markings, they will stay the way they are. They're  
16 not in our account and will not be.

17 Q Who is going to set the labor policy for --  
18 take the Houston Belt?

19 A They have a person at HB&T that sets that, and  
20 I just have to lay it off the president now.

21 Q I think you answered the question. We were  
22 informed Friday that Southern Pacific Transportation  
23 Company furloughed a number of employees, close to  
24 1,000.

25 What I'd like to know is, do you,

1 Santa Fe/Southern Pacific, have any plans for future  
2 furloughs on the Santa Fe?

3 A I think I heard you, your associate, make  
4 mention of that yesterday. That's the first that I  
5 heard of any furlough.

6 If you're asking are we anticipating planning  
7 furloughs, I'm sure you know how furloughs come around,  
8 mainly for the people that you represent, is through  
9 increase and decrease of business. To that extent, I'd  
10 have to say sure. But to say planning now, I think that  
11 when Mr. Frestel takes you through this thing, that it  
12 will be profitable to ask him and probably armed with a  
13 lot more information than I could provide for you.

14 Now, what comes out of that thing is what we  
15 intend to do. And at that point, I think you can  
16 identify it. I really don't foresee too large a  
17 problem. But again, what is too large a problem?

18 If that's a fair enough answer, that's the way  
19 I'd like to answer it.

20 Q Why don't we move on to major line  
21 abandonments? You say at this stage you don't have any  
22 plans for major line abandonments. Just for the record,  
23 is this still accurate?

24 A I'm still looking for -- I found it. And the  
25 only reason -- that's probably two words we will never



1 use in my testimony anymore. I have a hard time with  
2 major and minor. We don't intend to have any  
3 abandonments of any size.

4 Now, what this testimony really relates to is  
5 -- I'm sure you're aware that in our plan we have  
6 approximately 120 miles over the two systems that are  
7 going to be abandoned. It is trackage that we  
8 identified as having virtually no use or a minimal  
9 amount, and that's a horrible word, too -- a minimal  
10 amount.

11 But to that extent, that's what makes the 120  
12 miles over various places in the case. That, to me, is  
13 minimal. We could argue all day.

14 Now, what is major is pretty pretty dogged  
15 difficult to identify. By and large, what that thing  
16 means, abandonment program -- and maybe I can clear this  
17 up. We have for years abandoned railroads. In fact, in  
18 the testimony there it says that we have done 600 miles  
19 in six years. That's an average of 100 miles a year. I  
20 don't think that that's major abandonment.

21 Now, you could disagree and I would have to  
22 agree that you think what you think. Now, what we do --  
23 and I'm not trying to make a speech -- what we do, we  
24 watch these segments of railroad where we see a lack of  
25 business. They're not profitable. We continue to look

1 at these things. We look out there. Can they be made  
2 profitable? Is there going to be something out there?

3 Maybe, for whatever reason, the business that  
4 was out there disappeared or changed. In many cases,  
5 farmland has turned to homes and whatever because of the  
6 value of land. It just changed. We have watched those  
7 things when, in our minds, they become unprofitable.

8 Then there's a procedure that we go through,  
9 and we follow this procedure, we give notice, and  
10 finally we abandon this given piece of trackage with ICC  
11 approval. So there's not going to be anything different  
12 there.

13 Then I will finalize this thing by saying we  
14 don't intend to do any kind of abandonments if we are  
15 allowed to proceed with this merger for at least four  
16 years. We are going to have to take a look to see if  
17 it's right.

18 You might have been in here when I testified  
19 earlier on that, we do indeed intend to do that. After  
20 that, we will go through the procedure. There will be  
21 the proper notification. We will run the regular  
22 procedure, and I suspect somewhere out there there will  
23 be some abandonments. There always have been, but we  
24 are not seeking any, and I hope that takes care of  
25 major.



1                   And I'll tell you, I can assure you, you're  
2 never going to cross-examine me again on major or  
3 minor.

4           Q       While I have you, I don't want to belabor the  
5 point, but you have been coming close. Can you  
6 characterize what you consider to be a major line  
7 abandonment?

8           A       No.

9           Q       All right.

10                   Let's get back to the point then about the  
11 merger. Mr. Schmidt said yesterday that the main reason  
12 was to create some efficiency in operating the railroad  
13 out there in the West.

14                   Part of that efficiency is getting rid of  
15 duplicative lines. I guess we can look over at the map  
16 over there and see that this is pretty much a parallel  
17 as opposed to an end-to-end merger, so that the question  
18 here is when and where abandonments will be made in the  
19 name of efficiency as opposed to whether or not there  
20 will be abandonments.

21                   MR. NELSON: Counsel, I have an objection. A  
22 little more specific here. We are glancing at a map  
23 that is 40 feet away over there. Mr. Cena has his back  
24 to it.

25                   If you could point more specifically to --

1                   MR. DELANEY: I don't think we have to look at  
2 the map, although I'm sure Mr. Cena is familiar with  
3 it.

4                   BY MR. DELANEY: (Resuming)

5                   Q     What we are talking about here in all these  
6 proceedings is what's characterized as a parallel merger  
7 as opposed to an end-to-end merger.

8                   MR. NELSON: I object to that  
9 characterization.

10                  JUDGE HOPKINS: That is his characterization.

11                  BY MR. DELANEY: (Resuming)

12                  Q     Would you agree with that?

13                  A     No.

14                  Q     How would you characterize it?

15                  A     Well, you have been talking for about five  
16 minutes. You can call that whatever you want. I don't  
17 call that a parallel. I thought you were setting up a  
18 situation where you were going to ask me about  
19 something, abandonment or whatever.

20                  I don't have any reason to break in here, and  
21 I haven't agreed with you. You haven't asked me a  
22 question yet in the last five minutes.

23                  Q     Well, let me ask you a question then.

24                  JUDGE HOPKINS: Go right ahead.

25                  BY MR. DELANEY: (Resuming)



1 Q The purpose of the merger is mainly, as Mr.  
2 Schmidt said, to create a more efficient operation out  
3 there in the West. Part of that efficiency is to  
4 eliminate duplicative lines, is it not?

5 A That is not so. Why would we want to be  
6 abandoning any lines? Now, you call it duplicate.  
7 Maybe we don't agree on that. But I'm telling you that  
8 we have no plans for any -- skip that foul word --  
9 abandonments out there for three or four years at  
10 least. We have to see what happens out there.

11 Q Would you commit that there would be no  
12 abandonments then for the next four years?

13 A I will commit to nothing. I just told you  
14 there won't be. Why would I sit here and commit to  
15 something? We are going through a shakedown period. I  
16 tell you we need three to four years. And then there is  
17 the due process that goes in place. We say okay, here  
18 is a stretch of railroad that fits into the parameters  
19 of these things. We will run the track and then --

20 Q That's fine.

21 A No. I want to answer your question.

22 JUDGE HOPKINS: Let him finish now, since he  
23 started.

24 THE WITNESS: When we get finally get approval  
25 from ICC, we will abandon it. We always have.

1 BY MR. DELANEY: (Resuming)

2 Q Fine, thank you.

3 The next series of questions will deal with  
4 the employee protective conditions. And perhaps in the  
5 interest of saving time, are you the person that I  
6 should talk to about any questions concerning the  
7 acceptance by the Applicants of any --

8 A Let me answer you this way. Again, on our  
9 property, the person that handles those matters is a  
10 fellow by the name of Frestel.

11 Q Pardon?

12 A A man by the name of Frestel, F-r-e-s-t-e-l,  
13 and he will be on this thing. I'll show you -- I will  
14 have a lot of input in his thinking analysis. I will  
15 check this. But he is the man that does it on our  
16 property.

17 He will be here. He is not the man that will  
18 be dictating additions, if you understand that, but he  
19 will be evaluating along with others. We will then make  
20 -- he will make a recommendation; I will either go or  
21 not go.

22 Mr. Schmidt at that point in time will be  
23 included, and he'll agree or not agree. And that's the  
24 way we do business over there.

25 But Mr. Frestel has that responsibility.



1 Application of conditions, we would look to him to tell  
2 us all about that. You know, you have to know what the  
3 conditions are and what the application is. He will be  
4 making that application and he will be the one that  
5 would be the proper one to cross-examine.

6 Q Well, who would be making the decision as to  
7 whether the Applicants accept these conditions?

8 A I'm sorry, I didn't hear you.

9 Q Who would be making the decision as to whether  
10 or not the Applicant would be accepting the conditions.

11 A Oh, you know, it's got to be chairman. That  
12 is, I think, a corporate thing. There will be a lot of  
13 input from a lot of people. But basically, it will be a  
14 decision of the chairman whether he will accept or not,  
15 if I understand your question properly.

16 Q The RLEA has submitted some proposed  
17 conditions in addition to what is specified in New York  
18 Dock. Has Southern Pacific -- I'm sorry -- has Santa Fe  
19 performed any cost analysis as to what these proposed  
20 conditions --

21 A No. I really just have been informed  
22 generally, informed that we received them. No one, as  
23 far as I know, has had a chance to look at them and  
24 analyze them or whatever. But the answer is no.

25 Q As the president of Santa Fe and the

1 supervisor of the rail merger study, can you, to the  
2 best of your ability --

3 A I'm not supervisor of anything.

4 Q Well, in your --

5 A Okay, let's go. I just sort of reacted.

6 JUDGE HOPKINS: Why don't you continue with  
7 the question?

8 BY MR. DELANEY: (Resuming)

9 Q We have calculated that there would be over  
10 1,400 positions abolished after the merger. Can you  
11 tell me how many employees will be furloughed?

12 A No.

13 Q Who could tell us that?

14 A I assume -- well, the proper person to ask  
15 would be Mr. Frestel again. All matters that you are  
16 relating to, that will be the man. If you ask me about  
17 four or five more areas, it will be the man. Mr.  
18 Frestel for Santa Fe does all of that business for me.  
19 He is my guy there and we rise and fall with that.

20 Q The same for any temporary furloughs or  
21 transfer of employees?

22 A I don't know how you can get more  
23 all-inclusive than "all," but yes.

24 Q Just for the record, sir.

25 All right. In your primary and related



1 applications, do you have an opinion as to whether the  
2 carriers are asking the Commission to grant them any  
3 exceptions in the Railway Labor Act obligations?

4 A No.

5 Q How about any exemptions in the provisions of  
6 any collective bargaining agreements?

7 A I know nothing of this subject.

8 Q Fine. That is responsive. Thank you, sir.

9 Since October of 1983, has the Santa Fe  
10 requested from the Commission any authority to abandon  
11 or relocate trackage outside of the abandonments and  
12 relocations listed in your applications within finance  
13 docket 30400?

14 A We have the system that I describe in place.  
15 I look at that quite often. There are some portions of  
16 track that are in line for abandonment, and the  
17 procedure generally is that, you know, and this is  
18 requested and we have to give at least four months  
19 notice to the Interstate Commerce Commission that, hey,  
20 we're locking at this piece of trackage.

21 And I have seen trackage on there. We have  
22 some that's been on there for five or six years that is  
23 just marginal. But we are hoping that it stays alive.  
24 We don't want to abandon it.

25 Now, if it becomes more profitable, then we

1 take it off the list. But when it's margin and we sit  
2 there and when it goes below, then we go to the ICC and  
3 start the procedure.

4 Now, to answer your question, I know of none.  
5 But that's the procedure.

6 Q The answer would be no?

7 A About all I'm telling you, there may be. I'm  
8 just trying to -- out there in the future. I don't  
9 know. There are several that are on there, and I don't  
10 know how many, but five or six portions of track that  
11 are not scheduled but could go if the economy takes them  
12 that way.

13 Q Can you tell me, sir, who we could ask for  
14 more information about that?

15 A About what's on that list?

16 Q Yes.

17 A You can write me a letter and I could answer  
18 it. It has nothing to do with the case, and I'd be  
19 delighted. I have about four or five assistants out  
20 there that have been sitting around too long, and I'll  
21 tell them to give it to you.

22 Q We would just like the information to  
23 determine whether or not it has something to do with the  
24 case.

25 A I can arrange to give it to you. It's



1 public.

2 MR. DELANEY: That's it. Thank you very  
3 much.

4 JUDGE HOPKINS: Thank you.

5 Is Mr. Roberts going to have any questions?

6 MR. ROBERTS: Just a couple, Your Honor.

7 BY MR. ROBERTS:

8 Q Mr. Cena, my name is Harry Roberts and I  
9 represent Sunkist Growers. I'd like to ask you a couple  
10 of question and I'll try to relate them to your  
11 statement.

12 Mr. Cena, on page 2 of your statement, you  
13 refer to principal railroad competitors which have  
14 enlarged their systems through consolidation. Are there  
15 any railroad competitors other than the Southern Pacific  
16 for fresh citrus traffic in California and Arizona?

17 A I would say that the Union Pacific, Missouri  
18 Pacific, Western Pacific combination would be, yes. I  
19 would say that.

20 Q In what particular regions of California and  
21 Arizona do you experience real competition for that  
22 traffic from the UP, WP, or any carrier other than the  
23 Southern Pacific?

24 A Just as far as a truck would want to haul it  
25 in. I don't know where you're going. I have citrus in

1 California. My family has citrus in California.

2 Now, I know your clients and, in fact, have  
3 been a member of your organization. So I can be very  
4 specific if you would want. Whatever distance someone  
5 would desire to drive -- and I'm talking about a truck  
6 or an owner -- would want to drive to Union Pacific, he  
7 will do so.

8 When he gets there, that's where the  
9 competition is. To that extent, that's all I'm saying.  
10 They are there, but the massive competition, as you well  
11 know, is trucks. And that's all over the damn place.

12 Q Now, on page 2 of your statement, you indicate  
13 that you have taken steps to make the Santa Fe more lean  
14 and mean. Who are you going to be mean to?

15 A I can assure you we are not going to be mean  
16 to the customers. You know, I would like to get that  
17 straight before I get off of here. It looks like I'm  
18 going to get off -- and if you will allow it, I am  
19 really not a mean guy. Some of these characters out here  
20 think I am mean.

21 I can tell you what the "lean" means. "Lean"  
22 means that they're not fat. This is a thing I've  
23 allowed my people to do this to me, and this is a form  
24 of confession. "Lean" means that they're not fat. And  
25 over the past several years, I've been trying to squeeze



1 the fat cut of this thing. And that makes it leaner.

2 Now, I find that you have to be a little bit  
3 mean to keep that fat cut of there when you're doing  
4 it. While I was doing this thing, I got involved in,  
5 you know, what is major. Now, when we were locking, we  
6 made some reductions, and I found out that we had  
7 several economists.

8 Now, several economists means, to me, more  
9 than two. Today, we don't have several economists.  
10 Those are the kinds of reductions we're making. That's  
11 what is getting us what I call lean and mean.

12 On the "mean" side -- and this sure wasn't  
13 directed to customers -- we just have to have  
14 customers. We have to have your types of customers and  
15 we can go from there.

16 Q Now, your statement discusses generally the  
17 organization of the merged railroads. Can you describe  
18 on the record who will be responsible for dealing with  
19 your fresh perishable traffic?

20 A There are many. By and large, from what I  
21 know of your clients, that would be the traffic sales  
22 marketing group. I am very involved -- I don't know  
23 whether you know it or not, but I am very involved and  
24 actually was the person that triggered the reentry into  
25 the perishable business for railroads. You know, we

1 were virtually out six, seven, or eight years ago. And  
2 about four or five years ago we got in. I was working  
3 with your types of organizations, and we are back in.

4 So I am very, very involved and all other top  
5 guys are involved. It's a piece of business out there.  
6 We've gotten back in, and we're really working like heck  
7 to get there, but we have a lot of competition.

8 And your very client, of which I am a member,  
9 just runs trucks like hell. It's a competitive thing.  
10 I'm not complaining about it. It indeed happens. They  
11 are out there. And that's what we're trying to do.  
12 We're getting better at it. We're going to work at it.

13 I'm not mean. I love you, really.

14 Q Mr. Cena, on page 9 of your statement, you  
15 refer to your single pool of cars and locomotives. Can  
16 you tell us what the merged railroads' plans and  
17 policies will be with respect to the mechanical  
18 refrigeration cars?

19 A Yes. It will be just exactly like any other  
20 capital investment is handled today at Santa Fe,  
21 probably all other companies, any other transportation  
22 company. It comes from the bottom up.

23 But finally, the Vice President of Operations  
24 comes in and say, you know, I want to purchase X cars,  
25 any kind of cars, X cars. And he has a return on



1 investment figured out.

2 He comes to me and we have a process, and they  
3 always ask for more than they're going to get, and we go  
4 through this. And by and large, you look at those that  
5 would give you the greatest rate of return.

6 Then we go another step, and I go to Mr.  
7 Schmidt. We go through the process again and somehow we  
8 decide whether or not. But they won't get past me  
9 unless they have a rate of return.

10 That is where the Vice President of  
11 Operations, if it is zilch, he knows he hasn't got a  
12 chance to get that through unless I see a rate of  
13 return. No way. If that answers your question.

14 Q Does the Santa Fe today have a program to  
15 either acquire or refurbish any mechanical refrigeration  
16 cars or, conversely, are you gradually phasing them  
17 out?

18 A We have no program or plan to acquire or  
19 refurbish. We only keep working on those that are out  
20 there. I know their problem, and it's a joint problem.  
21 I'll take the blame.

22 The problem with the MTC car is that we can't  
23 get enough returns on them. We can't figure out how to  
24 get utilization in there. And to be very specific on  
25 Santa Fe, last year -- and the reason I'm so good on

1 this is that I met with your people just before I came  
2 here -- we got about 7-1/2 turns, loads, 7-1/2 loads a  
3 year, the last year.

4 Now, you don't have to have an economist --  
5 and, incidentally, after I think about that, we will  
6 have no economists. You don't have to have an economist  
7 when you get 7 loads a year.

8 Now, our problem is, we've got to figure out  
9 how in the world to get some kind of a package, some  
10 kind of a box. Now, we are working with your people to  
11 go into the refrigerated trailer. Refrigerated trailer  
12 looks like it's going to work. And so that is where we  
13 are.

14 But at this point in time, there is no way  
15 from Santa Fe's standpoint, that I can assure you or  
16 anyone else, because of the lack of utility. Maybe it  
17 is our fault, but we've got to get someone who can put  
18 something in there somehow to generate some profits.

19 Q So if I understand what you're saying, your  
20 policy today and for the foreseeable future will be to  
21 move the perishable traffic from the mechanical boxcars  
22 into refrigerated TCFC trailers?

23 A I would have to say no, but let me qualify  
24 it. We have several options in talking with your  
25 people. This is not the place, because it has nothing



1 to do, but there are several options we are addressing,  
2 and I'd be delighted to talk to you. But, yes, there  
3 are some options.

4 Q Have you discussed -- are you aware of what  
5 the Southern Pacific is doing today in this area?

6 A Only generally, and I would have to say no.  
7 You know, I got most of my information from you good  
8 guys down there. So, no, I don't.

9 Q Well, are you the best person to ask about  
10 what the policies will be and what we can expect from  
11 the merged carrier with respect to refrigerated  
12 transportation?

13 A Yes, I think so.

14 Q Mr. Cena, turning to your testimony on page 11  
15 of your statement with respect to abandonments, are you  
16 familiar with the abandonments that had been posed by  
17 the Santa Fe, both north and south of Visalia?

18 A Yes. Could I get you off the hook on this,  
19 please, sir? I heard you, and I'm doing this really --  
20 you made mention -- and I'm just guess, and if I'm wrong  
21 I can be thrown out of court. But you mentioned  
22 yesterday in passing, when you departed from your seat  
23 there, you asked Mr. Schmidt was he aware of whether or  
24 not your packinghouse at Visalia was abandoned. I don't  
25 know how that came out.

1           But you probably have not been told, that does  
2 not exist. Your packinghouse at Visalia is on track  
3 that's always going to be served, if that's your  
4 question. They were misinformed. And I was fearful  
5 that you were misinformed.

6           That's the story.

7           Q     Are you familiar with what the plans are to  
8 serve that packinghouse?

9           A     Yes. And it will be served service-wise just  
10 as it's always been served. It will be from another  
11 direction. And if you'd want to cross-examine someone,  
12 I am not the guy, but I got into it enough to know that  
13 you are going to get the service that you had, that  
14 you've always had there, and you won't be abandoned.

15          Q     Mr. Cena, I appreciate your reassurances, but  
16 according to your application, you have abandoned all  
17 the track north of our packinghouse and all the track  
18 south of our packinghouse, and would leave a ten-mile  
19 stretch in our which packinghouse is located, connected  
20 to nothing.

21          A     I could take you through that, but I won't.  
22 You will be -- you just have to accept it or not accept  
23 it. I'm sitting here telling you you're not going to  
24 be. That trackage out there criss-crosses, and there  
25 will be bits and pieces. I tell you, that Visalia line



1 is 16 miles long. You are milepost 13-1/2. You are not  
2 going to be served the same way that you were served  
3 historically, but you will be from another direction.

4 That's all I'm telling you. You are going to  
5 get the service on the Visalia branch to take care of  
6 you, and we didn't do it because of that. You were  
7 misinformed.

8 JUDGE HOPKINS: Mr. Nelson.

9 MR. NELSON: Could I make a suggestion that we  
10 attempt, rather than through cross-examination of this  
11 witness, to try to clear up off the record with the  
12 Sunkist representative, and if it's not satisfactory,  
13 Mr. Fitzgerald will be available, and other witnesses,  
14 on the operating plan to reopen the subject.

15 MR. ROBERTS: Your Honor, for many months,  
16 I've attempted to clear this up off the record. I've  
17 spoken to many of the Santa Fe attorneys. I've  
18 submitted discovery requests, none of which have been  
19 answered, that have asked for information about the  
20 abandonment.

21 We've checked with the Santa Fe's office in  
22 Los Angeles. They tell us we're on the portion to be  
23 abandoned. So I served discovery requests on them many  
24 weeks ago. I have received no answers to discovery  
25 requests. I've talked to them on the phone.

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1 All I wanted to know is, are we going to  
2 continue to have service, how and when? If construction  
3 is needed, what are the plans? These seem to me to be  
4 reasonable. And if they're not willing to answer the  
5 discovery requests, I would like to move at this time  
6 that the entire portion of the application pertaining to  
7 the abandonment be stricken.

8 JUDGE HOPKINS: Mr. Nelson, can you provide  
9 him with that information that he is seeking?

10 MR. NELSON: Yes. I have just been informed  
11 that through some foul-ups at this end, your discovery  
12 is in the mail. You have not received it yet.

13 MR. ROBERTS: I know about things in the mail.

14 (Laughter.)

15 MR. NELSON: You will be in Washington, I  
16 gather, and you'll have that available to you no later  
17 than tomorrow morning.

18 JUDGE HOPKINS: This hearing is going on for  
19 some time, and I assure you if you don't get the  
20 information you can ask again and I will direct that  
21 they provide you with that information.

22 MR. ROBERTS: Thank you, Your Honor, because  
23 one of the questions was, very simply, which witnesses  
24 would have knowledge pertaining to the abandonment, the  
25 continued service, and any construction needed. And



1 since I had no answers --

2 JUDGE HOPKINS: Why don't we proceed on the  
3 basis that you're going to get the information. If you  
4 don't get the information, bring it to my attention  
5 again. And I am directing that they give you that  
6 information.

7 MR. ROBERTS: Thank you. I have no further  
8 questions.

9 Thank you, Mr. Cena.

10 JUDGE HOPKINS: Mr. MacKenzie.

11 BY MR. MAC KENZIE:

12 Q Good morning, Mr. Cena.

13 A Good morning.

14 Q I have some questions about -- I'll try not to  
15 belabor this point of significant abandonments -- but as  
16 it relates to California in general.

17 You did make the statement in your testimony  
18 that there appears that significant abandonments could  
19 be achieved without adverse impacts on your rail  
20 service.

21 I would like to talk more about the long-range  
22 future rather than the short-range or what is  
23 specifically being proposed by you, your operating  
24 plan.

25 AS I understand it from your dialogue with

1 some of the other counsel this morning, you indicated  
2 that if you perceive in three or four years, that lack  
3 of business indicates -- I assume you mean low traffic  
4 volumes -- that it is not a profitable line, it will  
5 become a candidate for abandonment; is that correct?

6 A Yes, sir.

7 Q I'd like to talk to you specifically about  
8 California. As I understand it, in the San Joaquin  
9 Valley between Stockton and Bakersfield through Fresno,  
10 there is a great deal of existing Santa Fe and Southern  
11 Pacific trailerload traffic; is that correct?

12 A Yes.

13 Q Now if, in the future, if in this four-year  
14 period and beyond, operation indicates -- experience  
15 indicates that one of the lines is experiencing  
16 low-volume traffic so that its retention does not appear  
17 to be justified on the basis of paying for its costs,  
18 will it not become a viable candidate for abandonment?

19 A Really not. Now, let's take Fresno. There  
20 are reasons other than the merger why we're trying to  
21 straighten up something with the state and the city and  
22 the county, and it's been, you know, a longstanding  
23 thing.

24 We can straighten that out here. Really, all  
25 we're going to do is move one track to solve that, but



1 there will not be any abandonment. We're going to  
2 finally be able to do what they've been requesting, and  
3 we couldn't do it as two lines. We would do that.  
4 There are several others I know you're aware of, if  
5 that's what you're asking.

6 Now, for that area, I can foresee nothing in  
7 the way, other than these things that we started off  
8 with, 110 miles. I believe that we would have some  
9 other considerations at Fresno there from some  
10 developers and things like that that we would take into  
11 consideration, but no abandonments.

12 Q Let me ask the question another way. I am  
13 concerned about the broader picture. I am concerned  
14 about -- I guess in part it would be a hypothetical.

15 If in the future, after this three or  
16 four-year period, the so-called shakedown period, in  
17 your actual operations, post-merger, it is clear to you  
18 that any parallel trackage between Stockton and  
19 Bakersfield through Fresno, because of the actual  
20 operation of your rail business, shows that one of the  
21 two parallel trackages does not have the sufficient  
22 traffic volume to justify its retention on the basis of  
23 paying for its costs, does it not become a viable  
24 candidate for abandonment?

25 A I would think not in that situation.

1 Q Why not?

2 A Well, you talk about two operations of two  
3 separate companies. There is a pretty good bit of  
4 traffic, as you know, up there. The two tracks will  
5 become one ownership with a double track, and you see  
6 that on most of your tonnage maps.

7 When you have two, the tonnage really  
8 decreases. Well, what we really need that for is -- and  
9 I'm talking about the long haul here -- we're going to  
10 get more business up there; we're going to be more  
11 competitive, and we're going to need it -- could you do  
12 without it? Well, maybe you could, but that's not the  
13 plan.

14 The plan is we are begging for this so we can  
15 become more efficient and hopefully get more traffic,  
16 but that trackage out there, I just can't conceive of a  
17 situation where we would have any kind of abandonments  
18 other than minor, if any.

19 Q So your hope, then, is that in the long-range  
20 future, that there will be enough trackage volume due to  
21 simulation of added business that would justify the  
22 retention of all of the parallel trackage in California  
23 in the San Joaquin Valley?

24 A Yes. That's what we hopefully want. We're  
25 not out to try to abandon any of it.



1 Q Okay. Let's turn a little bit now to the  
2 Southern Pacific's route from Northern California to  
3 Ogden and the long-term viability of that route.

4 Under the same philosophy that I understand  
5 you will utilize, will you not look at that particular  
6 route as it relates to the costs of maintaining that  
7 route, as I understand it, an extremely high cost  
8 because of the mountainous nature of it, because of the  
9 fact that it goes through the Salt Lake fill with often  
10 high water, experiencing high water problems?

11 Is it not a company philosophy, or will it be  
12 a company philosophy that in the future, after this  
13 four-year period or so, that even under your operating  
14 plan, if you have reduced the traffic volume to  
15 approximately half of what the Southern Pacific operates  
16 over there now, is it not a candidate for abandonment in  
17 the future because of this low volume traffic; and, if  
18 you choose to operate your system, with operating more  
19 and more over the Southern route to Santa Fe to the  
20 Midwest?

21 A No. That particular piece of trackage we  
22 refer to as the Central Corridor. We intend to make  
23 that more efficient. We hope to be able to attract  
24 business over there. I believe we can attract business  
25 over there.

1                    Now, the division there of where it becomes  
2 more profitable or less profitable to go there is just  
3 going to be a matter of economics. But it is our intent  
4 to intensify our efforts over there. We've just got to  
5 maintain that central gateway, and we've got to be able  
6 to intensify our efforts, and we indeed will.

7                    Q        Would that be in conjunction with working with  
8 Rio Grande?

9                    A        Sure. We work with the Rio Grande now. I  
10 don't know how we're going to come down on this thing.  
11 We've always worked with the Rio Grande. Both railroads  
12 have worked with the Rio Grande. There are not problems  
13 of working with any railroad, and fewer with Rio Grande  
14 than with any other.

15                    Q        Do you have a position on a company policy vis  
16 a vis Rio Grande in continuing the agreement that you  
17 had entered into with them in 1983 as far as interchange  
18 of traffic at Ogden?

19                    A        Assuming the merger, we would have to agree to  
20 those contracts with them, as we have several with you,  
21 as I understand. We're going to have to abide by those  
22 contracts. There's no intent to do that. We have  
23 several with Amtrack. We intend to do that. You know,  
24 you have to do that.

25                    Q        And if there was an expiration date on that



1 contract, you would intend to offer Ric Grande the  
2 opportunity to enter into a future agreement with you of  
3 a similar nature?

4 A I would offer them the opportunity to  
5 negotiate, as I would Amtrak or whatever. You know,  
6 we're not trying to get out of business. We're trying  
7 to stay there. But it would just be a business  
8 situation. Sure, we will negotiate with them.

9 Q The same questions I'd like to ask you about  
10 the coastal route between San Francisco and Los Angeles  
11 and its long-term viability.

12 First of all, specifically, the San  
13 Francisco/San Jose freight portion of the Southern  
14 Pacific. Do you have any plans for, or can you perceive  
15 in the future that if freight traffic is not justified  
16 on that route on the basis of paying for its cost, that  
17 it becomes a candidate for abandonment?

18 A We plan to use it. We have no plan to not use  
19 it, and hopefully we could do something out there.  
20 That's sort of a tough one. You know the reasons as  
21 well as I do. It is not an area for smokestack  
22 industries, et cetera. It's sort of tough to generate  
23 business there, but I think it's doable and we're going  
24 to try to use it in our plan. But for these purposes,  
25 it's going to stay there and hopefully we will get some

1 more business on it.

2 Q Would that also apply to the portion of that  
3 coastal route between Salinas and San Jose and San Luis  
4 Obispo south of Los Angeles?

5 A I would think so. I don't see any reason why  
6 not.

7 Q Mr. Cena, do you agree that today there exists  
8 in California intense competition between the Santa Fe  
9 and the Southern Pacific for rail traffic not only at  
10 common rail head points where parallel trackage exists,  
11 but at points and for business that the Santa Fe has  
12 penetrated into the Southern Pacific's exclusive  
13 territory by offering intermodal services?

14 A I have to say that the degree of intensity in  
15 that area today is the same as it's always been. Yes.  
16 We compete any way you compete. But, you know, my prime  
17 problem out there is trucks, as you know. We compete  
18 with everyone and everything, but still I get back to  
19 the problem is we're losing it to the trucks.

20 Q But it's business as usual as far as SP and  
21 Santa Fe are concerned.

22 Q And you pride yourself, do you not, on being  
23 able to penetrate into exclusive SP territory in  
24 California by the use of extensive intermodal services?

25 A Yes, sir.



1 Q Have you had a chance to examine the requests  
2 of the Union Pacific, Rio Grande, and KCS as to their  
3 inconsistent applications and requests for authority to  
4 operate?

5 A I have not examined them. I have only been  
6 casually -- and it's not very casually -- I have only  
7 been briefly briefed by my attorneys regarding that.  
8 That is my only information, other than general.

9 Q You haven't had a chance to arrive at an  
10 opinion as to whether or not you feel that one of the  
11 requests is more onerous than another or some sort of  
12 comparative analysis of them?

13 A After the initial shock, no.

14 Q I have a few questions that the Department of  
15 Transportation has asked me to question either you or if  
16 you would refer me to --

17 A Well, that's good. We've got it going pretty  
18 good so let's go.

19 Q If you could refer me to the witness who would  
20 have the specific information. The first question has  
21 to do with the existing contract that exists between the  
22 State of California and the Southern Pacific to operate  
23 the San Francisco to San Jose peninsula passenger  
24 service.

25 A That contract will stay in place as you have

1 it.

2 Q Thank you.

3 Do you know whether or not there has been  
4 assigned to this commute service a line operating  
5 supervisor, or whether a decision has been made by Santa  
6 Fe to, in fact, select such a supervisor to solely be  
7 dedicated to the San Francisco/San Jose peninsula  
8 passenger service?

9 A I do not know the answer, but if you have that  
10 arrangement and if that's your understanding, that's the  
11 way it will continue. We don't intend because of this  
12 merger to do anything to that service, and I'm really  
13 treading where I don't know. And we intend to continue  
14 basically as you have been continuing -- been  
15 operating.

16 Q Who would be the witness? Would that be Mr.  
17 McNear or a Southern Pacific operating witness?

18 A I suppose so, but in the merged situation I am  
19 the guy. So we can get back any way you want.

20 Q You intend to comply with the contract in  
21 every respect.

22 A We intend to comply with the contract.

23 Q Do you have any knowledge of where this person  
24 might be located and what his duties might be? Would  
25 that be Mr. McNear or some --



1           A     No. You would have to get it. I just don't  
2 know about that. I'm just saying what we will do after  
3 the merger.

4           Q     Are you are aware, Mr. Cena, that Cal Trans,  
5 that is, the Department of Transportation of California,  
6 will be providing Southern Pacific with 63 new passenger  
7 cars in the spring of 1985 for the San Francisco/San  
8 Jose passenger service?

9           A     I know that generally, yes.

10          Q     Do you know whether or not any provisions have  
11 been made to maintain these cars?

12          A     I don't know.

13          Q     Who would be the witness for that.

14          A     I would imagine Mr. McNear, and if not, he can  
15 direct you to someplace.

16          Q     And whether any policy guideline has been  
17 established -- I'm sorry, I've already answered that.  
18 Thank you.

19               MR. NELSON: I have a couple of questions on  
20 redirect.

21               JUDGE HOPKINS: All right.

22                       REDIRECT EXAMINATION

23               BY MR. NELSON:

24          Q     Mr. Cena, would you turn to page 11 of your  
25 verified statement, please? I refer you there to your

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1 discussion about abandonments.

2 Am I correct, Mr. Cena, that your discussion  
3 there relates to abandonments attributable to the  
4 merger?

5 A Yes.

6 Q Am I also correct that your discussion with  
7 respect to your shakedown period following the merger is  
8 also limited to abandonments attributable to the  
9 merger?

10 A Yes.

11 Q When Mr. Prettyman cross-examined you and read  
12 not from the MoP-UP, but from the Tucumcari testimony in  
13 which you used the term or you suggested that Southern  
14 Pacific has market power in the State of California, in  
15 what sense were you using the term "market power"?

16 A I get in trouble with this all the time.  
17 Market power, to me, is an area, a territory. It is not  
18 market power in the economic sense of economic terms.  
19 Market power does not mean I have the opportunity to  
20 gouge a customer or raise a rate. There was no such  
21 intent.

22 My ideal market power is a vast area. It's an  
23 area that you have lots of market power or you don't.  
24 But I'm not going to use that word anymore.

25 MR. NELSON: No further questions.

1 JUDGE HOPKINS: Any other questions?

2 MR. NELSON: I move the admission of Mr.  
3 Cena's statement.

4 JUDGE HOPKINS: Any objection?  
5 His statement will be received in evidence.  
6 You are excused.

7 (Witness excused.)

8 JUDGE HOPKINS: There were two counsel's  
9 exhibits, one for the Rio Grande and one for the KCS.

10 MR. DREILING: On behalf of KCS, I would move  
11 KCS-C-2.

12 JUDGE HOPKINS: Any objection?

13 MR. NELSON: No objection.

14 JUDGE HOPKINS: It will be received in  
15 evidence.

16 (The document referred to,  
17 previously marked KCS-C-1  
18 for identification, was  
19 received in evidence.)

20 JUDGE HOPKINS: Mr. Prettyman, do you move the  
21 admission of your counsel's exhibit?

22 MR. PRETTYMAN: I do indeed, Your Honor.

23 JUDGE HOPKINS: Any objection?

24 MR. NELSON: I have no objection. Mr.

25 Kharasch kindly pointed out to me that the date, January



1 19, 1983, must be in error because the speech speaks  
2 quite a bit about the merger itself, which means it must  
3 have been 1984.

4 JUDGE HOPKINS: All right. With that  
5 correction, it will be received into evidence.

6 (The document referred to,  
7 previously marked Exhibit  
8 DRCW-C-1 for identification,  
9 was received in evidence.)

10 MR. KHARASCH: Your Honor, may we be off the  
11 record?

12 JUDGE HOPKINS: Off the record.

13 (Discussion off the record.)

14 JUDGE HOPKINS: Let's be in recess until  
15 1:30.

16 (Whereupon, at 12:30 o'clock p.m. the hearing  
17 recessed, to reconvene at 1:30 o'clock, p.m., this same  
18 day.)  
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21  
22  
23  
24  
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## AFTERNOON SESSION

(1:30 p.m.)

1  
2  
3 JUDGE HOPKINS: Back on the record.

4 MR. STEPHENSON: For the record, my name is  
5 Douglas Stephenson. The next witness for the Applicants  
6 is Mr. Denman McNear. Can he be sworn?

7 Whereupon,

8 DENMAN K. MC NEAR

9 was called as a witness by counsel for Applicants and,  
10 having first been duly sworn by the Administrative Law  
11 Judge, was examined and testified as follows:

12 JUDGE HOPKINS: One point I want to raise. We  
13 are going to be put out of this room about 3:30 tomorrow  
14 afternoon. The Commission is having the oral argument  
15 in 347 on Thursday. They wanted to get us out of here  
16 at 2:30. I said I wouldn't go until 3:30.

17 So we will try our best. And then on  
18 Thursday, we move over to Hearing Room B. Unless  
19 there's some further trouble, that's the way we have to  
20 move it. So I am afraid we will have to recess about  
21 3:30 tomorrow afternoon.

22 MR. KHARASCH: How about our exhibits that  
23 we're storing in these two rooms?

24 JUDGE HOPKINS: That's another problem. The  
25 Commission is having some of the congressmen, et cetera,



1 et cetera, coming in. I'll try to see if we can move --  
2 if you can move some of them into the anterooms of E for  
3 at least tomorrow, tomorrow night, and the next day.  
4 I'll check with them today to see if we can get a key.

5 We don't run Hearing Room B anymore. It's run  
6 by the International Trade Commission. So we are in  
7 there at their suffering. I will work on that.

8 Mr. Kharasch. Well, do you have anything  
9 further?

10 MR. STEPHENSON: I want to identify the  
11 document.

12 DIRECT EXAMINATION

13 BY MR. STEPHENSON:

14 Q Mr. McNear, before you is a document entitled  
15 "Verified Statement of D. K. McNear." Is that your  
16 verified statement in this proceeding?

17 A It is.

18 Q And with the exception of the errata that had  
19 been previously filed with the Commission, do you have  
20 any other changes, corrections, or additions to this  
21 verified statement?

22 A I have no further corrections or additions.

23 Q Is this verified statement true and correct,  
24 to the best of your knowledge?

25 A It is.

1 MR. STEPHENSON: Your Honor, Mr. McNear is  
2 tendered for cross-examination.

3 JUDGE HOPKINS: Thank you.

4 Mr. Kharasch. Oh, I'm sorry.

5 CROSS EXAMINATION

6 BY MS. KIRSCHENBAUM:

7 Q Good afternoon, Mr. McNear. My name is Ellen  
8 Kirschenbaum. I represent the Trustee of the Milwaukee  
9 Road.

10 Mr. McNear, how would you characterize the  
11 relationship between the Milwaukee Road and the Southern  
12 Pacific and Kansas City today?

13 A It's one of our connecting carriers at Kansas  
14 City.

15 Q Would you describe the connection as  
16 friendly?

17 A Yes.

18 Q Do you know the volumes of traffic that had  
19 been moving over that gateway, over that joint line  
20 during recent years?

21 A Some of them.

22 Q In general terms, do you know whether that  
23 traffic has been growing or decreasing during the past  
24 few years?

25 A The interchange at Kansas City with our lines



1 and the Milwaukee has grown over the last several  
2 years.

3 Q What do you attribute this growth to?

4 A Primarily, a good portion of it has been the  
5 agreement that the Milwaukee has had with the GTW for  
6 moving auto parts and related equipment from Detroit  
7 through to the southern California area.

8 Q Would you agree that this increase indicates  
9 shipper satisfaction with the joint Milwaukee/Southern  
10 Pacific route?

11 A In part. It also, as far as the automobile  
12 traffic, is really the policy of the shipper from --  
13 they favor the originating and terminating line.

14 Q Would you describe the joint route as  
15 efficient?

16 A It's a viable competitive route right now, and  
17 it's drawing traffic.

18 Q It's reliable and consistently maintained?

19 A As far as I know.

20 Q Are you able to testify today regarding  
21 Southern Pacific's policy on joint route cancellations?

22 A As to Southern Pacific today?

23 Q Yes.

24 A Actually, if we have really any policy, Mr.  
25 Edwards can more fully describe that. He is charged

1 with the responsibility of getting traffic, working with  
2 the connecting carriers for the satisfaction of the  
3 customers. And, along those guidelines, he proceeds.

4 Q I will hold off asking joint route  
5 cancellation questions for Mr. Edwards.

6 I have one more question. Your verified  
7 statement focuses on the need for the Southern Pacific  
8 and the Santa Fe to merge in order to regain a  
9 competitive rail balance with the BN and the UP. And my  
10 question to you is, where do the regional carriers fit  
11 in to this national rail system in your view?

12 A That's the decision or the determination that  
13 has to be made up by their managers.

14 Q Your verified statement is directed towards  
15 competing with larger line haul, long-haul carriers.  
16 Does that imply that you don't believe that regional  
17 carriers can compete in a long-haul route?

18 A We continue to interchange and exchange with  
19 regional carriers, and we look forward to that  
20 continuation because there are certain shippers that --  
21 origin and destination of traffic and the low-cost  
22 efficiency lines, if that's the way the traffic should  
23 flow, it's in the best interests of the carriers and the  
24 industry.

25 MS. KIRSCHENBAUM: Thank you. That's all the



1 questions I have.

2 JUDGE HOPKINS: Mr. Kharasch.

3 BY MR. KHARASCH:

4 Q Mr. McNear, do you recall last November and  
5 December, there was some litigation prior to the merger  
6 of the parent companies, the SP Company, and the Santa  
7 Fe?

8 A Yes.

9 MR. KHARASCH: Can we have marked, Your Honor,  
10 as counsel's exhibit MKT-C-1 a 23-page affidavit of  
11 Denman K. McNear?

12 JUDGE HOPKINS: It will be marked for  
13 identification.

14 (The document referred to  
15 was marked Exhibit MKT-C-1  
16 for identification.)

17 MR. KHARASCH: Let's do this in order and get  
18 some of the paper shuffling out of the way.

19 As MKT-C-2, a 12-page affidavit of Joseph G.  
20 Fogg.

21 JUDGE HOPKINS: That will be marked for  
22 identification.

23 (The document referred to  
24 was marked Exhibit MKT-C-2  
25 for identification.)

1 MR. KHARASCH: As MKT-C-3, a six-page  
2 affidavit.

3 (Discussion off the record.)

4 MR. KHARASCH: As the exhibit next in order, a  
5 six-page affidavit of E. F. Biaggini. That's C-3.

6 JUDGE HOPKINS: That will be marked for  
7 identification.

8 (The document referred to  
9 was marked Exhibit MKT-C-3  
10 for identification.)

11 BY MR. KHARASCH: (Resuming)

12 Q You recall one of the issues in the litigation  
13 was the financial health of SPT and its viability during  
14 the voting trust.

15 A Yes.

16 Q Is Exhibit MKT-C-1 the affidavit or one of the  
17 affidavits you gave in that proceeding, in proceedings  
18 before the court?

19 A That was my affidavit.

20 Q What role did Morgan Stanley play at the time  
21 of the merger, or what role were they playing in  
22 November-December 1983?

23 A Morgan Stanley was the adviser to Mr. Biaggini  
24 on the total merger of the Southern Pacific Company for  
25 the Santa Fe Industries.



1 Q All right. And Mr. Joseph G. Fogg III, who  
2 was he?

3 A As stated in his affidavit, he's the Managing  
4 Director of Morgan Stanley, Inc. and the Director of  
5 Morgan Stanley's Merger and Acquisitions Department.

6 Q Okay. And finally Mr. Biaggini; what role was  
7 he playing in November and December 1983?

8 A Mr. Biaggini at that time was Chairman and  
9 Chief Executive Officer of the Southern Pacific  
10 Company.

11 Q Now, all those people gave affidavits with  
12 respect to the financial health or viability of SPT --  
13 correct -- among others?

14 A Among other things, yes.

15 Q In MKT-C-1 at page 19, it says that SPT has  
16 more than adequate financial backing. Do you see that  
17 heading in the middle of the page on page 19?

18 A I do.

19 Q And that SPCo. has recently contributed \$150  
20 million in capital to SPT.

21 A That is correct.

22 Q As of today, is that \$150 million in capital  
23 in SPT?

24 MR. STEPHENSON: I'm not sure I understand.

25 THE WITNESS: They have not withdrawn the

1 contribution.

2 BY MR. KHARASCH: (Resuming)

3 Q SPT, which is the company that is in the  
4 voting trust --

5 A That's right.

6 Q -- still has the \$150 million contributed  
7 capital?

8 A Contributed capital; yes, sir.

9 Q Do you know, Mr. McPhee, what amount of cash or  
10 equivalent was transferred by SP Company into  
11 Santa Fe/Southern Pacific Corporation, the existing  
12 merged parent?

13 A I don't recall the total amounts, no. I think  
14 the statements would reflect that.

15 Q Was it more than \$150 million?

16 A Yes.

17 Q Are you the witness or is Mr. McPhee the  
18 witness who might inform us about the current financial  
19 status of SPT in more detail?

20 A In more detail would be Mr. McPhee.  
21 Generally, I'm aware of the financial conditions.

22 MR. KHARASCH: Let's mark one more exhibit at  
23 this time perhaps, Your Honor. MKT-C-4, David A.  
24 Smith.

25 JUDGE HOPKINS: That will be marked for



1 identification.

2 (The document referred to  
3 was marked Exhibit MKT-C-4  
4 for identification.)

5 BY MR. KHARASH: (Resuming)

6 Q Please look at page 3 of MKT-C-4, Mr. McNear.  
7 Has the asset base of SPT changed since December 1983?

8 A Yes.

9 Q What assets has SPT acquired or disposed of  
10 since December 1983?

11 A Various pieces of capital improvements and  
12 normal retirements.

13 Q Other than in that respect?

14 A I believe that was the majority of them.

15 Q Have you continued your capital expenditure  
16 programs since December 1983 into the present year?

17 A Yes.

18 Q Can you give us an idea of how much SPT has  
19 put into its capital expenditure programs so far this  
20 year?

21 A I don't have the exact figure, but I would say  
22 it's in excess of 200 million to date.

23 Q And what is scheduled for this year, 1984?

24 A Somewhere around 300 million.

25 Q Has any additional money been contributed to

1 SPT since the \$150 million dollar capital infusion at  
2 the time of the voting trust establishment?

3 A No.

4 Q Would you please refer to page 7 of MKT-C-4 in  
5 paragraph numbered 10, but it's the second part of the  
6 paragraph numbered 10 that I direct your attention to,  
7 beginning, "Since 1980 when total SPT debt amounted to  
8 1.37 billion, management of SPT has made a concerted and  
9 successful effort to reduce its indebtedness. In a  
10 little less than three years, debt has decreased by \$315  
11 million."

12 That is on page 7. I assume that 315 refers  
13 to events prior to December 1983? Would that be  
14 correct, Mr. McNear?

15 A It's somewhere in that time frame. I'm not  
16 sure. Either the third quarter or the end of the year.

17 Q Has SPT's debt been reduced since December  
18 1983 by any further amount?

19 A The figures would bear me out, but I think  
20 it's decreased somewhat. Probably we retired on the  
21 amortization schedule a little more than we put on the  
22 books this year.

23 Q I'm sorry, Mr. McNear. You probably retired  
24 on the amortization schedule?

25 A A little more than we have added.



1 Q Now, Mr. McNear, if we could turn away from  
2 these dull financial matters to your statement. Do you  
3 have a copy in front of you?

4 A Yes, sir.

5 Q Let's look at page 13 under the heading  
6 "Regained Competitive Rail Balance." You seem to be  
7 talking about the BN first there, sir.

8 You say: "The BN is without effective rail  
9 competition in many parts of the six northern tier  
10 states."

11 A That's what it says.

12 Q Is that an advantage to a railroad, to be  
13 without effective rail competition in parts of states?

14 A Advantage in what respect?

15 Q Is it an advantage in respect of being a  
16 strong and profitable railroad to be without effective  
17 rail competition in parts of many states?

18 A Not necessarily. What we're referring to here  
19 is that as you look once again at the map -- and you  
20 don't have the BN lines on there -- but through their  
21 merger, they have a geographical presence in some of the  
22 Montana and Dakotas since the merger of the two northern  
23 lines into the complete system.

24 That's what I was referring to there. So they  
25 have some benefit from rail competition, but the real

1 question is what other markets, what other modes are in  
2 the area to provide transportation competitiveness to  
3 the shippers?

4 Q Mr. McNear, I think we can speed along in the  
5 examination here if you would listen very carefully. I  
6 will try to phrase my questions very carefully, and try  
7 to answer the question I'm asking.

8 Let's start with effective rail competition.  
9 What do you mean by effective rail competition on page  
10 13 of your statement?

11 A In certain states, in their territory, there  
12 is not a competing rail carrier adjacent to it.  
13 Therefore, that would be non-effective.

14 Q Now, my question is, would that lack of  
15 effective rail competition, would that be an advantage  
16 to the BN? Is that why you're reciting it when you said  
17 how happy the BN is situated?

18 A I'm just more or less stating a fact of how  
19 they exist there.

20 Q If that's what you're stating as a fact, is it  
21 an advantage to the BN in making money to be without  
22 effective rail competition?

23 A In that area, you would have to ask them.

24 Q You wouldn't know that?

25 A That's their territory.



1 Q In your territory, would it be an advantage to  
2 be without effective rail competition in making money?

3 A In our territory there's very few locations  
4 where we don't have effective rail competition.

5 Q Now, Mr. McNear -- I think, Your Honor, I  
6 might have the question read back, and if he could  
7 answer my question.

8 JUDGE HOPKINS: Please read it back.

9 THE REPORTER: "C. In your territory, would  
10 it be an advantage to be without effective rail  
11 competition in making money?"

12 THE WITNESS: I wouldn't agree that it would  
13 be effective in making money. It would be effective in  
14 working with a customer. We could sit down with a  
15 customer and work on his package of what his desires  
16 are.

17 BY MR. KHABASCH: (Resuming)

18 Q Do you ever experience rail rate competition  
19 from other railroads today, Mr. McNear?

20 A Vigorously.

21 Q You do?

22 A Yes.

23 Q And is the effect of rail rate competition  
24 between two railroads to raise rates or to lower rates?

25 A The majority of the time it's to lower rates.

1 Q And therefore, if there was no rail  
2 competition, would rates not increase and would you not  
3 make more money?

4 A It depends what other competition is in the  
5 market. We're just talking about rail competition.

6 Q Yes. Just at the moment, we're talking about  
7 rail competition.

8 MR. STEPHENSON: The witness is entitled to  
9 answer the question in the context in which it is made.  
10 And the context in which it is made is that there is  
11 other competition in the market.

12 JUDGE HOPKINS: I think he has a right to  
13 answer the way he was attempting to answer in that  
14 regard. Go ahead.

15 THE WITNESS: If there is no other rail  
16 carrier in the immediate territory, there may be a  
17 perceived indication that one carrier could raise  
18 rates.

19 But what I am saying is, there's also other  
20 competition that puts a cap on it and many other factors  
21 that comes into what rate you charge the customer.

22 Q Focusing on the effect of rail competition,  
23 can we agree that the effect of rail competition is to  
24 cause rates to be lower than they would be without rail  
25 competition?



1           A     Rail competition is more than just rates.  
2     It's service, it's routes, it's reporting relationships  
3     and everything else.

4           Q     Well, let's focus on the effect on rates, rate  
5     competition between two railroads. Does that tend to  
6     lower the rate?

7           MR. STEPHENSON: The question has been asked  
8     and answered. He said it has a tendency to lower it.

9           JUDGE HOPKINS: He did answer that way.

10          BY MR. KHARASCH: (Resuming)

11          Q     Now, while we're still on page 13, you were  
12     talking about the BN and its advantages. You say the BN  
13     has extraordinary geographic reach.

14                 Do you see that sentence, sir?

15          A     Yes, sir.

16          Q     And it was reoriented from east-west, coal,  
17     grain and lumber originating carrier to a coal and grain  
18     terminating carrier as well with other advantages, too.

19                 Is the point you're making in that sentence  
20     that the BN is both able to originate coal on its lines  
21     and deliver coal on its lines to the customer for that  
22     coal?

23          A     That's part of it; yes.

24          Q     Is that the part that you wished to emphasize  
25     when you put this in your statement; that it reoriented

1 the BN from an originating carrier to a terminating  
2 carrier as well?

3 A In the territory where the Frisco serves.

4 Q Yes. And by having this coal and grain in the  
5 territory that the BN part served, they then acquired  
6 the destinations within the Frisco territory.

7 A That's correct.

8 Q So they have single line service for this coal  
9 and grain.

10 A Yes.

11 Q Now, also on page 13, you talk about the BN's  
12 good fortunate still, and you say they have significant  
13 coal reserves. That's good fortune?

14 A That's a good resource.

15 Q Why is coal a good thing for a railroad to  
16 carry?

17 A It's one of the more stable commodities in  
18 today's life.

19 Q Let's look at page 14 of your statement, Mr.  
20 McNear. Down at the bottom of page 14, in that  
21 paragraph, you talk about the UP.

22 A In the first full paragraph?

23 Q The paragraph that begins on page 14 of your  
24 statement. You're talking about the UP there. Do you  
25 see that?



1 A Yes, sir.

2 Q And you talk about the UP's origination of  
3 substantial volumes of coal, chemicals, grain, soda ash,  
4 and other important rail-dependent minerals.

5 Coal, chemicals, grain, soda ash are  
6 rail-dependent stuff?

7 A To a higher degree than other commodities.

8 Q And later on in your statement -- we will get  
9 to it later -- you state that the Southern Pacific today  
10 is basically a light loading railroad and it's carrying  
11 stuff that is more subject to competition from trucks  
12 than the BN and the UP.

13 A I make that distinction between the  
14 commodities that we have and the UP and the BN.

15 Q What else can we add to the list of important  
16 rail-dependent minerals other than coal, grain,  
17 chemicals, soda ash? What else is rail-dependent?

18 A I can't think of any.

19 Q In your statement you mention soda ash, and  
20 other important rail-dependent minerals. Would that be  
21 ores, things like that?

22 A Copper in Arizona.

23 Q Heavy loading things? Heavy loading things,  
24 Mr. McNear?

25 A Not necessarily only heavy loading things, but

1 other commodities that are going back and forth in a  
2 regular flow movement.

3 Q I'm trying to see what's in your mind when  
4 your statement talks about other important  
5 rail-dependent minerals.

6 A All I'm saying is it's more than just --

7 Q You mentioned copper. Copper ores?

8 A Another partially rail-dependent is the set-up  
9 automobiles which are light loaded.

10 Q Now, while we're on page 14, let's notice what  
11 you say about the Union Pacific being a big rail system  
12 with 22,800 route miles serving 21 states, 11 ports, and  
13 3 Mexican gateways.

14 MR. KHARASCH: Your Honor, there is already in  
15 the statement of Mr. Gastler, President of the MKT, a  
16 table. I don't think it needs to be put into the record  
17 at this point as an exhibit. I'd like to supply the  
18 exhibit with a single-page copy of it for reference.

19 JUDGE HOPKINS: Go ahead.

20 BY MR. KHARASCH: (Resuming)

21 Q Mr. McNear, while we are getting these pages  
22 distributed, have you read the statement of Mr. Gastler  
23 that has been submitted in this case?

24 A I have not.

25 Q So, Mr. McNear, you now have before you



1 attachment 2 to the statement of Mr. Gastler, and I  
2 thought it might be useful at this point to check with  
3 you the Mexico border points served by the SF today and  
4 the Santa Fe today and those that would be served by the  
5 combined system.

6 Would you run down this list? I count 10  
7 border crossings served by SP. Is there anything that's  
8 not on that list for SF or that should be on that list?

9 A What's the definition of this "border  
10 points."

11 Q Border points where rail traffic would  
12 transit.

13 A This is where cars from Mexico go into the  
14 United States and the United States into Mexico? Is  
15 that your understanding?

16 Q That's my understanding.

17 A Well, then this statement is not a fact.

18 Q Well, give me what's wrong with it.

19 A I don't know of any trackage going across the  
20 border at Del Rio, Texas.

21 Ashley, Texas is up on high, dry line -- as a  
22 couple of examples. There may be some more. And NACO,  
23 I'm not sure whether there's any trackage left there.  
24 There used to be one.

25 Q These are points shown in the Rail Guide as

1 places of crossing. You say those two are not  
2 functional; right? Ashley and Del Rio not functioning  
3 today?

4 A There's a Mexican branch line that comes up to  
5 their side of the border. Our laying goes through Del  
6 Rio, but there's no physical connection.

7 Q I'm sorry; there's railroad there on both  
8 sides but --

9 A I think if you look at the Guide, that's where  
10 I think you may have been misguided.

11 Q Okay. Of the Mexican border points served by  
12 the Southern Pacific, what's your biggest traffic  
13 point? Laredo, isn't it?

14 A That isn't our point.

15 Q Traffic destined for Laredo is the greatest  
16 traffic you carry to Mexico?

17 A I'm not sure.

18 Q Who would be informed on that?

19 A It's a matter of traffic statistics. Mr.  
20 Edwards may have the answer, or he can provide it.

21 Q You reach Laredo, Texas by the Tex-Mex  
22 connection at Corpus Christi. Is that correct?

23 A That's correct.

24 Q All right. Perhaps you can help us with the  
25 Santa Fe points, if you know. Is Santa Fe at National



1 City, California and El Paso and Presidio?

2 A They are.

3 Q Have we left any rail border points off this  
4 list, sir?

5 A None come to mind right now.

6 Q Thank you.

7 Now, referring back to your statement on page  
8 14, you say the UP system would serve three Mexican  
9 gateways.

10 A That is correct.

11 Q And it looks to me from this list that the  
12 SFSP would serve ten.

13 A I haven't added them up. It's somewhere in  
14 that neighborhood.

15 Q Is it an advantage to serve many Mexican  
16 gateways?

17 A One of the real advantages of serving Mexican  
18 gateways and one of the advantages of this merger is to  
19 provide customers that we're serving access to more  
20 points by one system so that we can get the advantage of  
21 being a low cost operator and providing direct service  
22 through routing, billing, car efficiencies of getting  
23 the products of the shippers from the point of origin to  
24 the point of destination; in this case, interchange with  
25 Mexico.

1                   And I think that's one of the advantages that  
2 we will have for the benefit of the shippers.

3           Q        Would that be true of you or the BN or anybody  
4 else, that it would be an advantage to give single line  
5 service to Mexico for that railroad's shippers?

6           A        Yes.

7           Q        Could we now look at a little thing that says  
8 attachment 3 to Mr. Gastler. Again, this is not going  
9 in as an exhibit, Your Honor, because it's already in  
10 the exhibits.

11                   Page 14 of your statement, you talk about the  
12 Union Pacific system which, like BN, dominates rail  
13 transportation in many regions and you list the fact  
14 that they serve a lot of ports there.

15                   Do you see that in your statement, page 14?

16           A        Yes, sir.

17           Q        Let's look at attachment 3 to the statement of  
18 H. L. Gastler, and there is a list of Gulf ports. Let's  
19 again look down the list of ports. Are there any ports  
20 there that are incorrectly listed as served by the  
21 Southern Pacific that are in fact not, sir?

22           A        They look reasonable.

23           Q        And the Santa Fe, they serve Houston, Texas  
24 City, Galveston, Beaumont today?

25           A        I believe so.



1 Q The SP seems to have a rather handsome Gulf  
2 port coverage. Would you agree?

3 A That's where we physically operate.

4 Q Do you think it's an advantage for a railroad  
5 to serve many ports?

6 A It's an advantage to the railroad to serve a  
7 customer, whether it's a port or a gateway or a branch  
8 line, shipper at the end of a branch line. We're  
9 customer oriented, trying to get business from the  
10 customers. And the other balance on that is how much  
11 traffic is available to provide the economic wherewithal  
12 to have your facility to be at that location.

13 Q And, of course, if you don't serve a port, you  
14 can hardly carry traffic to it, can you?

15 A You can interchange with a connecting  
16 carrier.

17 Q To interchange with a connecting carrier  
18 requires the connecting carrier's agreement, does it  
19 not?

20 A That is correct. And the shipper's  
21 concurrence. They're all part of it.

22 Q On page 14, you're still talking about the  
23 Union Pacific dominance. You talk about this dominance,  
24 plus UP's naturally strong route structure.

25 Is the route structure the service at 21

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states, 11 ports, and 3 gateways into Mexico?



1 A That would be part of the structure.

2 Q And we've already talked about the UP's having  
3 rail-dependent things like chemicals and grain. That's  
4 another good thing for the UE, right?

5 A Yes.

6 Q And then you go on and talk about newly  
7 acquired access to Gulf Coast petrochemicals. They near  
8 they can serve Gulf Coast petrochemicals because they  
9 acquired the Frisco; is that right?

10 A No, sir.

11 Q What does the newly acquired --

12 A I think we're talking about the UP. They  
13 didn't acquire the Frisco. I think it's the MoP.

14 Q Thank you. I appreciate that.

15 It is the UP's acquisition of the Missouri  
16 Pacific that gave it access to Gulf Coast petrochemicals?

17 A And that is one of the major things that I  
18 have tried to set forth in my testimony of the  
19 competition we're seeing that is depriving us of the  
20 balance in the railroad system. And this is why the  
21 merger with the Santa Fe of providing, on the one hand,  
22 you might say, our access to ports and gateways that you  
23 have just brought up with the Santa Fe's base in coal  
24 and grain that you brought up as part of the UP and BN.  
25 It's a combination of those two that are going to

1 provide a better balanced company for the future, to  
2 provide low-cost traffic and therefore be more  
3 competitive.

4 MR. KHARASCH: What's my question, Your  
5 Honor? Can I have it read back?

6 JUDGE HOPKINS: Yes. You can have it read  
7 back.

8 THE REPORTER: "It is the UP's acquisition of  
9 the Missouri Pacific that gave it access to Gulf Coast  
10 petrochemicals?"

11 BY MR. KHARASCH: (Resuming)

12 Q Are you saying, Mr. McNear, yes, it was the  
13 UP's acquisition of the Missouri Pacific which gave it  
14 access to Gulf Coast petrochemicals?

15 A That is correct.

16 Q Now, they have accessed Gulf Coast  
17 petrochemicals as an origin, and the UP is also  
18 fortunate in having a lot of destinations on its track  
19 so they can carry single line between the origins and  
20 destinations.

21 A In some instances they do.

22 Q Over on page 15 of your statement, in the  
23 first new paragraph --

24 A "Whether by design?"

25 Q Starting with "Whether by design or



1 happenstance, the Commission's historical merger  
2 policies and decisions have resulted in two massive  
3 western systems, each of which monopolizes rail  
4 transportation and substantial parts of its service  
5 area."

6 Your statement there is both the UP and the BN  
7 have a monopoly of rail transportation in substantial  
8 parts of the areas they serve. Is that correct so far?

9 MR. STEPHENSON: Are you asking if you read it  
10 correctly?

11 MR. KHARASCH: No. I'm asking if the sense of  
12 his statement is that both the UP and the BN severally  
13 have a monopoly of rail transportation in substantial  
14 parts of each of their service areas.

15 MR. STEPHENSON: Your Honor, he simply reads  
16 the text of Mr. McNear's verified statement and asks him  
17 if that is the sense of his testimony. It is in fact  
18 the literal reading of his testimony. And I don't think  
19 that is an appropriate question.

20 MR. KHARASCH: All right. I will take  
21 counsel's reading of it.

22 JUDGE HOPKINS: Mr. McNear sometimes goes on  
23 and gives a little different picture of what he has  
24 stated in the statement.

25 Go ahead, Mr. Kharasch.

1 BY MR. KHARASCH: (Resuming)

2 Q Name some of the parts of the service areas of  
3 the BN in which the BN monopolizes rail transportation.

4 A What I refer to in that statement --

5 Q If I could ask you to answer my question.

6 A You said monopolize, and I want to modify or  
7 explain that as I indicated before, monopolize here --  
8 and we discussed before about the dominance of the BN  
9 and the UP. And as I refer to the map, there are  
10 certain areas where the presence, their geographic  
11 presence -- and that is the sentence where they  
12 monopolize or have dominance.

13 On that basis they have, as I have indicated  
14 before in previous cross, is in the northern tier states.

15 Q In that sense, would the SFSP monopolize rail  
16 transportation in southern California?

17 A No.

18 Q Would it monopolize rail transportation in  
19 Arizona and New Mexico?

20 A Geographically, from the geographic of rail  
21 coverage, yes.

22 Q How would you get from southern California --  
23 let's say Los Angeles -- by rail other than by using the  
24 SFSP?

25 A To where?



1 Q To Phoenix, Arizona.

2 A Currently, the Southern Pacific and Santa Fe  
3 routes are the only routes between southern California  
4 and Phoenix directly.

5 Q And the rail route to Texas, how are you going  
6 to get to Texas from Los Angeles?

7 A The UP has a single line route, and they also  
8 have a joint route with us or the Santa Fe.

9 Q A joint route.

10 A And a single line route.

11 Q Now, the Union Pacific single line route from  
12 Los Angeles seems to me, from looking at a Union Pacific  
13 map in my handy Official Railway Guide, to run up to  
14 Salt Lake City and then across to Cheyenne, Denver and  
15 Topeka and Kansas City, and then it would come south.  
16 Is that a very good way to get from Los Angeles to Texas  
17 points?

18 A I indicated a single line route. It may not  
19 be the efficient route.

20 Q Is it the efficient route?

21 A Probably not.

22 Q What effect on the Southern Pacific is there  
23 from the BN monopoly of rail transportation in  
24 substantial parts of BN's service area?

25 A In the territory which is Montana, the

1 Dakotas, which by their geographic presence and no other  
2 railroad, your question is what does that effect have on  
3 us, traffic originating or terminating from that  
4 territory?

5 Q Yes. I'm reading your statement where, as  
6 part of your reason for granting your merger  
7 application, you seem to be talking about the BN and  
8 UP's monopoly. I ask you what effect, starting with the  
9 BN, does their monopoly of rail transportation have on  
10 your company?

11 MR. STEPHENSON: Your Honor, I'll object to  
12 the question. Counsel has prefaced it with a predicate  
13 that's not in the verified statement. At least he has  
14 not pointed to it. That is, that this merger is  
15 dependent on whether Mr. McNear has said that the reason  
16 for this merger is the BN and UP monopoly. There was no  
17 testimony of Mr. McNear to that effect in this  
18 statement, nor has counsel referred to it. He simply  
19 alludes to the fact that they have dominant positions in  
20 their market area.

21 MR. KHARASCH: Without arguing about it, let's  
22 withdraw that question and have another one.

23 BY MR. KHARASCH: (Resuming)

24 Q Is it bad for the Southern Pacific that the BN  
25 has a monopoly rail position in substantial parts of its



1 service area?

2 A I'm having trouble in the way you phrased the  
3 question and how traffic flows. Maybe you can come  
4 again so that I better understand what you're asking.

5 Q I don't know how to ask it much simpler. Is  
6 it bad for the Southern Pacific -- is there a bad effect  
7 on the Southern Pacific because the BN has monopoly of  
8 rail transportation in substantial parts of its service  
9 area?

10 A I'm trying to figure out the effect. Are you  
11 talking about single line service?

12 Q Does it harm you, sir? The question doesn't  
13 have to do with single line service. Does it harm you,  
14 you, the Southern Pacific?

15 A I understand that. In certain areas if they  
16 are single line they can be more competitive, and if  
17 they are the low cost operator, then they can go that  
18 way.

19 Q Let me see if I can help you out, Mr. McNear,  
20 with this question. Do you keep up with the BN's  
21 routing policies?

22 A No, I don't.

23 Q Do you know whether the BN publishes tariffs  
24 today which restrict their joint routes so as not to  
25 permit joint routing between points that are local to

1 the BN at both ends?

2 A I'm not sure of that.

3 Q Suppose with me that the BN has such a routing  
4 policy. The policy says that the BN serves both ends of  
5 the route, the origin and the destination. I'm not  
6 going to make a joint route that will allow anybody else  
7 to carry it along there. Suppose that. Can you suppose  
8 that?

9 A All right.

10 Q Does it shock you?

11 A No.

12 Q Is it not a railroad policy you have heard of  
13 before?

14 A If you're referring to our --

15 Q How about my question? Is it not a railroad  
16 policy you have heard of before to restrict its joint  
17 routes so that they will not apply between any two  
18 points the railroad serves itself?

19 A That has been done.

20 MR. PRETTYMAN: I'm sorry, Your Honor. We  
21 could not hear.

22 THE WITNESS: That has been done.

23 BY MR. KHARASCH: (Resuming)

24 Q Let us assume that BN has that policy. When  
25 the BN has that policy, did the PN -- and the BN has



1 acquired the Frisco, did that hurt the SP?

2 A I wouldn't know what specific traffic it may  
3 or may not have.

4 Q Did the BN-Frisco merger cause any loss of  
5 revenues to the Southern Pacific?

6 A Yes.

7 Q Did you oppose the merger?

8 A I believe so.

9 Q And you lost revenues that were essentially  
10 revenues from connecting with the BN or possibly the  
11 Frisco because the two of them were together now?

12 A That is correct.

13 Q Did you see Exhibit KCS-C-1 prior to its  
14 introduction yesterday?

15 A I haven't seen it at all.

16 Q Oh, you never have.

17 A That is the report for identification? That  
18 is the report that Mr. Schmidt had prepared and  
19 presented to his board?

20 Q Yes.

21 A No, I have not seen that document.

22 Q Let me read you a statement from page 3.

23 Well, excuse me. I have to identify this page as 000024.

24 "The majority of most railroads' traffic is  
25 involved in some sort of interconnection with another

1 carrier." Do you agree with that so far?

2 A That's what it says.

3 Q No. Do you agree with it? My question is do  
4 you agree with the statement: "The majority of most  
5 railroads' traffic is involved in interconnection with  
6 another carrier?"

7 MR. STEPHENSON: Your Honor, I will object to  
8 the use of this document with Mr. McNear. He said he  
9 has not read the document. He has never seen the  
10 document. If counsel wants to show him the entire  
11 document and let him study it in the context in which  
12 that statement was made, it's a different thing.

13 Mr. Schmidt was able to be cross examined on  
14 this document because essentially it was one that he had  
15 ordered to be done. Mr. McNear is not the author nor  
16 the instigator nor the director of this study, and ought  
17 not to be cross examined on something that is a Santa Fe  
18 matter that he has not seen.

19 JUDGE HOPKINS: Let's first see where Mr.  
20 Kharasch wants to get on this.

21 BY MR. KHARASCH: (Resuming)

22 Q Never mind where the sentence comes from.  
23 Tell me whether you agree with this sentence: "The  
24 majority of most railroads' traffic is involved in some  
25 sort of interconnection with another carrier." Is that



1 a true statement?

2 A A good portion. I don't know whether it's the  
3 majority, but depending on the individual carrier.

4 Q With your carrier?

5 A I'm not sure.

6 Q Now, keep in mind the sentence we just read,  
7 the interconnection. "This factor is a key to  
8 understanding the consequence of major rail  
9 consolidations, as wherever possible the combining  
10 carriers can be expected to reroute traffic interchanged  
11 with unaffiliated companies to the new combination."

12 Do you agree with that statement?

13 A That's what you were asking about the FN, yes.

14 Q It's a true statement?

15 A Yes.

16 Q It's a generally true statement of combining  
17 the carriers, isn't it?

18 A That's one of the underlying conditions.

19 Q Let's spend a little more time if we could on  
20 truck competition and the position of the SPT. I'd like  
21 to go back to page -- pages 4 and 5 of your statement.

22 On page 5 you say, "SPT has traditionally  
23 depended on revenues from truck competitive product,"  
24 and you give perishable, lumber and consumer goods,  
25 right? Do you see that statement?

1 MR. STEPHENSON: Top section under highway  
2 subsily, the last sentence.

3 THE WITNESS: Yes.

4 BY MR. KHARASCH: (Resuming)

5 Q And you are not as fortunate as other  
6 railroads, I gather, in that you don't have that  
7 heavy-loading traffic, bulk commodity traffic that is  
8 not as vulnerable to truck competition; is that correct?

9 A That is correct.

10 Q On page 8 you call grain and coal benefactors  
11 of railroads.

12 A As I stated before, yes. They are in the  
13 current economy. They're a very delightful commodity to  
14 have, to be hauling.

15 Q Would you say, comparing the SP to the Union  
16 Pacific, that the Union Pacific has greater pricing  
17 freedom than the SP?

18 A Not necessarily.

19 Q Would you say that the Union Pacific derives a  
20 larger share of its revenues from traffic where no real  
21 transportation is available.

22 MR. MARTIN: Did you say "real" or "rail?"

23 MR. KHARASCH: Excuse me. I'd better restate  
24 the question.

25 BY MR. KHARASCH: (Resuming)



1 Q Would you say that the UP derives a larger  
2 share of its revenues from traffic where no real  
3 transportation alternative to rail carriage is available  
4 than the SP?

5 A What they realize as revenue by commodity  
6 group depends on whether -- such as grain or coal,  
7 whether they have a source of grain. If they have a  
8 source of grain or coal on their lines and the volume is  
9 greater in ton miles or carloads in piggyback traffic,  
10 then presumably they will get more revenue from that  
11 source.

12 Q Does the UP, in your opinion, have greater  
13 pricing freedom than the Santa Fe in general terms  
14 because the UP derives a larger share of its revenues  
15 than the Santa Fe from traffic where no real  
16 transportation alternative to rail transport is  
17 available?

18 A I think I'm having trouble understanding the  
19 word "pricing freedom." We're all commonly regulated  
20 with certain options within the market to price, and I  
21 don't quite understand your word "pricing freedom," what  
22 you mean by that.

23 Q Don't you think that the Staggers Act gave  
24 railroads greater freedom to price?

25 A It gave virtually all carriers the same

1 freedom to price. It's the exercise of that freedom.

2 Q It gave you the right to enter into contracts  
3 with shippers, the Staggers Act?

4 A Absolutely. And we fully subscribe to that.

5 Q And those contract rates may be any rate you  
6 wish without regulation?

7 A Within tolerances, yes.

8 Q Within what?

9 A Within the guidelines of the 1.8 or whatever  
10 the ratio is. Contracts, all right.

11 Q Staggers Act contract rates, you may charge  
12 any rate that you wish nowadays under a contract; isn't  
13 that correct?

14 A If you can negotiate with a shipper, we're  
15 agreed.

16 Q You don't have any price problem on that?

17 A No.

18 Q And you can raise your tariff rates to at  
19 least 180 percent, can't you?

20 A Whatever the current ratio is now.

21 Q And that's a pricing freedom, a flexibility.

22 A That we're all under the same freedom is my  
23 point. But I think what you're saying is --

24 Q I'm not asking you to compare you and others  
25 at the moment. I'm just saying let's first explore in



1 an orderly way there is a new pricing freedom.

2 A That is right.

3 Q And indeed, you mention that on page 9 of your  
4 statement, don't you?

5 A Sure do.

6 Q And with that pricing freedom, you say, "The  
7 Staggers Act has greatly benefitted rail carriers with  
8 wide geographic reach, such as UP and EN."

9 Now, just looking for a moment at the red  
10 lines on the map on the wall, wouldn't you say the  
11 Southern Pacific today has a rather good geographic  
12 reach?

13 A We have a good reach, right. Not as extensive  
14 as the other two lines you mentioned.

15 Q And how does the Staggers Act benefit a rail  
16 carrier with wide geographic reach? Explain first about  
17 how it benefits the UP, if you would.

18 A The wide geographic reach, what I am saying  
19 there is not monopoly dominating. It is more or less  
20 single line service, the opportunity of single line  
21 service. And with that, with single line service, they  
22 could either negotiate a contract directly without  
23 having to be involved with another carrier in  
24 negotiating the price.

25 Q And if they should happen to be in the

1 unfortunate position of being the only rail carrier that  
2 can provide the rail transportation with a shipper, the  
3 pricing flexibility allows them to raise their price,  
4 does it not?

5 A There are very few cases that I see where  
6 there isn't other modes of competition, and I think you  
7 have to bear that in mind through this whole  
8 discussion. We're talking about whether there's one or  
9 two railroads or only one or two railroads. There's a  
10 lot of other competition, and I think --

11 Q Let's suppose that it would cost, just to give  
12 you a dummy figure, let's suppose that it would cost  
13 \$100 to truck something from -- to carry a truckload of  
14 coal from the coal fields to the utility a thousand  
15 miles away. Anywhere up to that \$100 if the railroad  
16 can give a cheaper price, they can charge it, can't it?

17 A It may even charge above that price and still  
18 retain the business.

19 Q Oh, how would they be able to charge above the  
20 truck-competitive price?

21 A The utility may have its own cars.

22 Q Now, below the ceiling on price in the  
23 movement which is placed by the possibility of a truck  
24 carrying it from point to point, I thought we had agreed  
25 earlier having rail competition between two railroads



1 tends to lower the price; is that correct?

2 A Between rail and between truck and any other  
3 modes.

4 Q Competition has a lowering effect. No one can  
5 charge an infinite price. We both agree on that. There  
6 are limits on all the prices.

7 A Yes. Price and service included.

8 Q Do you agree with Mr. Edwards of your company  
9 when he said that the Santa Fe and the Southern Pacific  
10 and other western railroads attempt today to maximize  
11 their long haul wherever possible?

12 A Yes.

13 Q Have you read Mr. Edwards' statement?

14 A I did.

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1 Q And do you agree with Mr. Edwards that as a  
2 consequence of this effort to maximize long hauls  
3 efficient joint line service and competitive rates are  
4 not available generally today?

5 A Would you repeat that again, please?

6 Q Let me help you out with a quote. Do you  
7 agree with Mr. Edwards, and I will quote here, "Today  
8 Santa Fe, Southern Pacific and other western railroads  
9 attempt to maximize their own long haul wherever  
10 possible." I think we had that question, yes, you  
11 agreed.

12 Next question. Do you agree that as a  
13 consequence efficient joint service and competitive  
14 rates often are not available to many customers on the  
15 separate rail systems?

16 MR. STEPHENSON: Your Honor, my objection is,  
17 and I apologize to Mr. Kharasch because he is not aware  
18 of the fact that Mr. Edwards is going to make a change  
19 to that sentence because it doesn't make sense the way  
20 it is written, and he will testify to it tomorrow  
21 morning at the outset of his testimony.

22 But the objection is that since it is a  
23 sentence that is going to be changed because something  
24 was dropped from the word processor or something it  
25 can't be used as a predicate or should not be used as a



1 predicate for a question to Mr. McNear.

2 JUDGE HOPKINS: All he has to do is drop out  
3 Mr. Edwards' name and then ask the question anyway.

4 BY MR. KHARASCH: (Resuming)

5 Q I'm saying do you agree.

6 A I don't understand the question.

7 Q When a railroad maximizes its own long haul it  
8 may sometimes tend to carry cargo more circuitously than  
9 the cargo could move via a shorter joint line, is that  
10 true?

11 A That can happen, yes.

12 JUDGE HOPKINS: Can you gentlemen hear him  
13 over there?

14 VOICES: No.

15 JUDGE HOPKINS: Would you please speak up and  
16 speak towards the whole group?

17 BY MR. KHARASCH: (Resuming)

18 Q Over on page 18 of your statement, Mr. McNear,  
19 you are talking about the Central Pacific conditions.

20 A Yes, sir.

21 Q You don't seem to think much of them.

22 A Not today.

23 Q And you object to a continuation of the  
24 conditions forcing SPT to preferentially solicit for the  
25 Ogden gateway instead of for its own long haul. That's

1 what you say on page 18. Do you see that on page 18?  
2 You want to instead solicit for your own long haul, is  
3 that right?

4 A If that is the most efficient way to route the  
5 traffic and run the traffic.

6 Q Would you say it would be unfair to force you  
7 to solicit for someone else's gateway instead of for  
8 your own long haul? What's unfair about --

9 MR. STEPHENSON: I don't think that's what it  
10 says, counsel. It says UP will work with its long haul  
11 with Western Pacific. That's what it says would be the  
12 unfairness.

13 BY MR. KHARASCH: (Resuming)

14 Q What would be unfair about forcing Southern  
15 Pacific to preferentially solicit for the Ogden gateway  
16 instead of for its own long haul? That is a open  
17 question, Mr. McNear.

18 A If the traffic is moving over the Ogden  
19 gateway and that's the way the customer wants to move  
20 it, we want to be able to move it free of our own  
21 choice. There's two conditions on the CT condition.  
22 One is solicitation and the other is the price parity.

23 Q You want to be able to solicit for your own  
24 long haul instead of giving it up to the UP at Ogden?

25 A If the numbers and the profitability says



1 that's the way it's our best interest, yes.

2 Q Do the numbers and the profitability usually  
3 say it's in your own best interest generally to solicit  
4 for your own long haul?

5 A Most of the time.

6 Q I'll give you a little sketch map that we can  
7 look at.

8 MR. KHARASCH: Let me inform you of the  
9 origins of Counsel's Exhibit MKT-C-5, which I would be  
10 request so, Your Honor.

11 JUDGE HOPKINS: Mark it for identification.

12 (The document referred to  
13 was marked Exhibit Number  
14 MKT-C-5 for  
15 identification.)

16 BY MR. KHARASCH: (Resuming)

17 Q This is the tracing over the map you were kind  
18 enough to give us in your application of the red line  
19 only from Kansas City-St. Louis-Galveston, this area.  
20 It's SP/SSW Lines. Do you recognize that layout, sir?

21 A It looks familiar, yes.

22 Q Now as I'm looking at this MKT-C-5 it seems  
23 that in order to get traffic from Kansas City down to  
24 Houston if the SP or SSW has traffic in Kansas City, you  
25 have two alternatives if you want to carry it yourself.

1 One, you carry it from Kansas City off to St. Louis and  
2 go east to St. Louis and then you come down to Houston  
3 from St. Louis.

4 Is that a possible way you could carry it?

5 A That is a possibility.

6 Q And, second, you could carry it all the way to  
7 El Paso and then back from El Paso. El Paso sort of  
8 fell off the end of our tracing here. Is that true,  
9 tcc?

10 A That's similar to the single line UP from  
11 California to Houston.

12 Q You know, again, Mr. McNear, it's just going  
13 to speed the whole thing up.

14 JUDGE HOPKINS: Yes. Would you answer the  
15 question?

16 BY MR. KHARASCH: (Resuming)

17 Q We're not comparing it with the UP. There are  
18 two ways to get from Kansas City to Houston on Southern  
19 Pacific System lines.

20 A Yes.

21 Q One via St. Louis, one via El Paso. St. Louis  
22 looks to me to be the shorter route. Would you agree to  
23 that?

24 A Yes.

25 Q Now in fact does SP solicit traffic and move



1 traffic on the SP system from Kansas City all the way  
2 east to St. Louis and then down to Houston?

3 A I don't know.

4 Q Who in the railroad is in charge of knowing  
5 how your traffic moves?

6 A Mr. Edwards, who will be a later witness, can  
7 testify of how we would move traffic, what would be our  
8 solicitation policy.

9 Q Do you happen to know anything about the rail  
10 mileages from Kansas City to Houston?

11 A On our line?

12 Q Do you happen to know which is the shortest  
13 way to get from Kansas City to Houston?

14 A By single line or joint line?

15 Q Joint line.

16 A There are several of them. There are several  
17 of them that are pretty close.

18 Q Does the Southern Pacific move substantial  
19 grain together with the MKT on the route Kansas City to  
20 Denison, Texas, via MKT and Denison to Houston via the  
21 Southern Pacific?

22 A I'm sure we do. I also know we run grain with  
23 the Katy down to Corpus Christi.

24 Q And again does that come Kansas City, Denison,  
25 Houston and then Corpus Christi?

1           A     My understanding is it's the north Texas  
2 gateway.

3           Q     North Texas gateway.

4           A     Denison, Ft. Worth, whichever one.

5           Q     You get the grain to Denison and you carry it  
6 on down to Mexico gateway, Corpus Christi, where it goes  
7 on to Mexico via the Tex-Mex?

8           A     We have been trying to effectively work with  
9 the Katy on that.

10          Q     It's been working pretty good, hasn't it, on  
11 grain?

12          A     I believe so. Mr. Edwards can verify that.

13                JUDGE HOPKINS: I don't think they still can  
14 hear you over there.

15                THE WITNESS: I'm sorry. Normally I speak so  
16 loud. I'm sorry.

17                JUDGE HOPKINS: Well, speak loudly.

18                BY MR. KHARASCH: (Resuming)

19          Q     Do the Southern Pacific tariffs in effect  
20 today require that if the Southern Pacific is to be  
21 used, Southern Pacific service is to be used, grain must  
22 move from Kansas City off to St. Louis and then down to  
23 Houston and Galveston?

24          A     I don't know.

25          Q     You don't know what your policy is in your



1 grain tariffs today?

2 A Mr. Edwards, as our senior traffic officer,  
3 has the responsibility to work out the policies of  
4 routes and rates on maximizing our profit and working  
5 with the customers and the connecting carriers on  
6 bringing us as much traffic as we can handle  
7 profitably. That's his responsibility.

8 Q Now we're not talking about that subject, but  
9 the question is whether you know what your tariff  
10 routing policies are today.

11 A No.

12 Q Did you know a year ago?

13 A No.

14 MR. KHARASCH: I have an extensive new subject  
15 matter, Mr. McNear, Your Honor, if you will tell me what  
16 time you want to break for recess.

17 JUDGE HOPKINS: I normally like to break  
18 around 3:00. Why don't you go ahead with a little more  
19 on it. We will break in-between.

20 BY MR. KHARASCH: (Resuming)

21 Q Under certain circumstances, Mr. McNear, can a  
22 railroad require that traffic move over its own  
23 circuitous long haul route rather than over shorter  
24 routes?

25 A Can it require?

1 Q Yes, that if it is to move over Y railroad it  
2 will use my long route.

3 A If the shipper is willing, I guess it could.

4 Q Well, let's explore this in a little detail.  
5 If traffic is moving from a point that is open to  
6 several railroads and to a point that is open to several  
7 railroads, can any one railroad effectively require a  
8 long, circuitous route over its own line?

9 A You're saying there is reciprocal switching or  
10 open to both, different carriers at origin and  
11 destination?

12 Q Yes.

13 A And can the carrier force the commodity over  
14 its own line that is circuitous. Is that your  
15 question?

16 Q Yes.

17 A I don't know.

18 Q If a railroad is the exclusive railroad  
19 serving the origin or the destination, does it acquire  
20 more power to control the movement of rail traffic to  
21 the origin or destination that it serves exclusively?

22 A It would have more opportunity to provide for  
23 the customer a contract at a rate that would be more  
24 attractive, I would think, by single line being the cost  
25 effective route, yes.



1           Q     Let's talk about not what is cost effective  
2 but about railroad power. Does a railroad have more  
3 power to dictate how the traffic will move if it has the  
4 exclusive service to the origin or the destination?

5           A     I have a hangup on your word "power". I think  
6 it is more of sales and solicitation, and that's more a  
7 question of Mr. Edwards as to how a single line service,  
8 whether he can more effectively solicit it for his  
9 benefit versus -- without competition.

10          Q     I'm talking at the moment about solicitation,  
11 Mr. McNear.

12          A     What power are you talking about?

13          Q     The power to tell any other railroad that I  
14 will not make a joint route with you because I serve  
15 this point exclusively and I'm going to make a rail rate  
16 that applies on my own system. Is that a power?

17          A     You're eliminating the customer in this  
18 hypothetical question.

19          Q     We're not talking about customer. We're  
20 talking about relative power.

21               MR. STEPHENSON: It's sort of a theoretical  
22 question, Your Honor. If you're taking the customer out  
23 of the equation, I don't see how the question makes  
24 sense.

25               JUDGE HOPKINS: Are you changing it now, Mr.

1 Kharasch? Are you going to ask something different?

2 MR. KHARASCH: Yeah, why not? I'll give him a  
3 specific example.

4 JUDGE HOPKINS: Go ahead.

5 BY MR. KHARASCH: (Resuming)

6 Q There is a Southern Pacific line that runs  
7 from Houston to Texas City, sir. It runs through  
8 Bayport.

9 A Yes, sir.

10 Q The Bayport line contains on it some  
11 industries that are served only by the Southern  
12 Pacific.

13 A That was our investment in that property and  
14 building it up.

15 Q I really think, Mr. McNear, I did not ask you  
16 about investment. I ask the answer be struck and the  
17 witness be instructed to answer the questions as posed.

18 JUDGE HOPKINS: I will strike that and would  
19 you please answer the question. Wait until he is  
20 finished with the question before you answer it.

21 THE WITNESS: Can you repeat the question,  
22 please? Do you want to rephrase it?

23 BY MR. KHARASCH: (Resuming)

24 Q I think it's a very simple question.

25 JUDGE HOPKINS: He likes his question.



1 THE REPORTER: Question: "There is a Southern  
2 Pacific line that runs from Houston to Texas City, sir.  
3 It runs through Bayport. The Bayport line contains on  
4 it some industries that are served only by the Southern  
5 Pacific."

6 BY MR. KHARASCH: (Resuming)

7 Q Is that true?

8 A Yes.

9 Q Now in order to move traffic from these  
10 industries served only by the Southern Pacific on that  
11 line you -- the customer must obtain a rate from the  
12 Southern Pacific, must it not, Step 1?

13 A That's my understanding.

14 Q And the customer in order to -- the customer  
15 cannot get a rate from the Southern Pacific if the  
16 Southern Pacific objects to giving it, for example, a  
17 joint rate with the MKT or some other railroad. Let's  
18 talk about points on that line to St. Louis, for  
19 example, to make it simple.

20 A All right.

21 Q I'll give you a specific example. The  
22 Southern Pacific serves from Houston to St. Louis, does  
23 it not?

24 A Yes.

25 Q And the Southern Pacific served from this

1 Bayport line, I have been calling it, to Houston.

2 A Yes.

3 Q And so the Southern Pacific may offer the  
4 shipper a rate from the Bayport line to St. Louis?

5 A Yes.

6 Q Do you know whether the Southern Pacific does  
7 offer such rates?

8 A I would assume they do.

9 Q Now the Southern Pacific could also, if they  
10 wish, say to the customer I will carry the cargo  
11 Southern Pacific up to Houston and make a joint rate  
12 with the MKT to carry it to St. Louis. You could do  
13 that if you wanted to, couldn't you?

14 A A joint rate could be made if all parties to  
15 the joint rate agreed to it.

16 Q Do you want to make such a joint rate?

17 MR. STEPHENSON: Today?

18 BY MR. KHARASCH: (Resuming)

19 Q Today.

20 A I would say normally not.

21 Q Normally not because you want your own long  
22 haul.

23 A And, once again, to support the investment we  
24 have in the building up and serving that traffic.

25 Q You make more money carrying it yourself than



1 if you let someone else in on part of the haul?

2 A Generally we make more revenue, yes.

3 Q You make more profit, too, don't you, net?

4 A It depends on the conditions.

5 Q Do you agree with this statement? "The  
6 results of the Staggers Act and deregulation are that  
7 railroads have enhanced opportunities to favor their own  
8 single line routes between origin and destination  
9 pairs."

10 A I subscribe to that as one of the major  
11 benefits of the Staggers Act.

12 Q Let me continue and see if you subscribe to  
13 this: "This gives railroads flexibility in setting  
14 single line rates provided two conditions can be met.  
15 (a) The carrier can have the movement on a single line  
16 basis without any great circuitry and, (b) it is the only  
17 carrier serving either or both the origin or  
18 termination."

19 A What was the first part of that? It can  
20 handle it easier?

21 Q It gives railroads flexibility in setting  
22 single line rates provided two conditions can be met.  
23 (a) The carrier can handle the movement single line  
24 without any great circuitry.

25 A That refers to efficiency, yes.

1 Q (b) It is the only carrier serving either or  
2 both the origin or termination. Is such case you ca  
3 have flexibility in setting single line rates?

4 A Yes.

5 Q And you may set them up or down as you  
6 choose?

7 A Depending on the traffic demands and the other  
8 competition.

9 Q Now in terms of the question that led us this  
10 far, you were asked whether you have more power to  
11 affect the price because you are the carrier serving  
12 either or both the origin or termination. You will  
13 agree with me. I hope, that you have more power to set  
14 the price if you are the carrier serving either or both  
15 the origin or termination.

16 A Yes.

17 JUDGE HOPKINS: Mr. Kharasch, this might be a  
18 good time. We will recess for 15 minutes.

19 (A brief recess was taken.)

20 JUDGE HOPKINS: Let's get back on the record.  
21 Mr. Kharasch.

22 MR. KHARASCH: Your Honor, preliminarily here  
23 may we have marked a 33-page exhibit as Exhibit MKT-C-6,  
24 being a set of documents produced by Southern Pacific.  
25 It was stamped subject to protective order. I have



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1 given notice to counsel for the other side and I am  
2 informed they have no objection to these coming into the  
3 hearing in this form now.

4 Certain places deletions were made to remove a  
5 shipper's name.

6 JUDGE HOPKINS: Thank you. It will be marked  
7 for identification.

8 (The document referred to  
9 was marked Exhibit Number  
10 MKT-C-6 for  
11 identification.)

12 BY MR. KHARASCH: (Resuming)

13 Q Before we get on to MKT-6, Mr. McNear, is it  
14 true that a few years ago the Southern Pacific entered  
15 into Kansas City as a result of its acquisition of the  
16 Tucumcari line?

17 A That is correct.

18 Q Do you agree with this statement? "Concurrent  
19 with SP's entry into Kansas City it published TOFC rates  
20 west to California and Arizona that 'significantly  
21 undercut' then-existing rates."

22 A I don't have any knowledge of that. I think I  
23 heard it yesterday, but I don't have any knowledge of  
24 it.

25 Q What position did you have with the Southern



1 Pacific at the time of acquisition of the Tucumcari?

2 A Do you want to give me a date on that,  
3 please?

4 MR. STEPHENSON: It's '79 or '80.

5 THE WITNESS: '79-'80 I was President of the  
6 Southern Pacific Transportation Company.

7 BY MR. KHARASCH: (Resuming)

8 Q And as President of the Southern Pacific  
9 Transportation Company would the policies of the company  
10 be subject to your approval?

11 A No. I was not the Chief Executive Officer.

12 Q Who was the Chief Executive Officer?

13 A Mr. Biaggini.

14 Q What was the function of the President under  
15 Mr. Biaggini?

16 A More or less the operating officer.

17 Q So you were not concerned with pricing at  
18 all?

19 A To a degree, yes.

20 Q You were concerned with pricing. Did the  
21 pricing or marketing people report to you?

22 A Yes.

23 Q Let's move ourselves to January 1983. Do  
24 pricing and marketing people report to you?

25 A No.

1 Q Ah. To whom do they report?

2 A Mr. D. M. Mohan.

3 Q And to whom does Mr. Mohan report?

4 A He reports to me.

5 Q So at this point are the pricing and marketing  
6 policies of the Southern Pacific Transportation Company  
7 under your direction?

8 A Ultimately, yes.

9 Q In the year 1983, Mr. McNear, did the Southern  
10 Pacific adopt a strategy concerning route closing?

11 A Adopt a strategy?

12 Q Did they adopt "a general strategy concerning  
13 route closing"?

14 A That is what page one of your exhibit shows.

15 Q No. I am asking you did the SP adopt a  
16 general strategy concerning --

17 A I believe our traffic department did.

18 Q What's the NWP, please?

19 A Northwestern Pacific Railroad.

20 Q And according to page 1 of Exhibit MKT-C-6 a  
21 Mr. McNear had questions about the NWP in connection  
22 with the steering committee meeting that you were  
23 holding. Is that you?

24 A I refer you to the first sentence of that  
25 submission and it's the revenue enhancement cost



1 reduction organization, and they had three functions,  
2 and one was abandonments, and that's why that was  
3 addressed to me in that statement there.

4 Q Would you look at page 2 of Exhibit MKT-6?

5 A I have it.

6 Q What's the name under the signature Senior  
7 Vice President-Traffic?

8 A It's Senior Vice President-Traffic, by G. E.  
9 Farosich.

10 Q I still don't get that. I'm sorry.

11 A George E. Farosich. You'll ask Mr. Edwards  
12 how to spell it. F-a-r-o-s-i-c-h, I believe, and that is  
13 by him in the name of the Senior Vice President.

14 Q I see. Now according to pages 1 and 2 of  
15 Exhibit MKT-6 the following was accomplished: during  
16 the month of December, routes for lumber from SP Oregon  
17 and California origins to SF/SSW destinations west of  
18 New Mexico were limited to SP direct or via Ogden.

19 Let's stop there at the moment. What does it  
20 mean, the statement limited to SP direct -- must move  
21 SP?

22 A That's my understanding of it.

23 Q And that was accomplished on December 17,  
24 1982. Your steering committee agreed on a general  
25 strategy concerning route closing and the question is

1 not over yet. Intra-Texas route restrictions were  
2 submitted to the appropriate tariff agencies. All  
3 right. Let's stop there.

4 Now are general strategies concerning route  
5 closings the sort of thing under your jurisdiction?

6 A No. Well, indirectly by Mr. Edwards and Mr.  
7 Mohan, or at this time it was January 3, Mr. Krebs.

8 Q On January 3 Mr. Krebs' function was?

9 A January 7, '83, Mr. Krebs was the President.

10 Q And you were --

11 A The Chairman.

12 Q I see. And would the railroad adopt general  
13 strategies or general policies without your approval at  
14 this time?

15 MR. STEPHENSON: Your Honor, I'm not sure I  
16 understand what counsel means by "general strategies" or  
17 "general policies". Maybe he can be a little more  
18 specific.

19 JUDGE HOPKINS: Why don't you explain to him  
20 what you mean.

21 BY MR. KHARASCH: (Resuming)

22 Q I mean by "general strategies" such general  
23 strategies as a general strategy for route closing  
24 referred to on page 1 of Exhibit MKT-C-6.

25 A That was one of the items discussed at the



1 steering committee meeting and I don't recall or didn't  
2 pay particular attention to the general strategy. They  
3 were working on that and the other five identified items  
4 at that steering committee meeting.

5 Q You were not a member of the steering  
6 committee?

7 A No, sir.

8 Q Now I'm asking you in your capacity that you  
9 held in the company at that time could general  
10 strategies concerning route closing be adopted without  
11 your approval?

12 A Yes.

13 Q Incidentally, do you know that your company  
14 has had during 1983 a route closing program? Is that  
15 news to you today?

16 A No, it is not news to me today.

17 Q So you know they have this general route  
18 closing program?

19 A I know that they have the revenue enhancement  
20 cost reduction organization. They have three primary  
21 functions. One was route closing strategies, what we  
22 call the gateway simplification. Another one was  
23 abandonments, constantly looking at abandonments. And  
24 the third was revenue enhancement, looking for low spots  
25 and what could be done to correct low spots.

1 Q Let's look over on page 2. On page 2 of 33 we  
2 see planned January accomplishments. Routes for Oregon  
3 and California lumber to the southeast, northeast and  
4 midwest will be restricted. Routes for all commodities  
5 moving west of El Paso will be restricted, et cetera.

6 Now again these are the sort of things that  
7 would not be within your ken if they were occurring. Is  
8 that what you are telling me?

9 A I was aware that they were occurring. As far  
10 as the details and what they were specifically  
11 accomplishing, my concern is as the CEO, was that these  
12 are opportunities to look at, and the people that are  
13 responsible for enhancing revenue, as this committee is  
14 designated, should be in their own best judgment taking  
15 those actions that will provide increased revenue and  
16 contribution to the company and in consideration of the  
17 shipper and their desires.

18 Q Well, I may say that I have looked all over  
19 Exhibit 33 and I don't find much about the shipper and  
20 their desires in your route closing program.

21 MR. STEPHENSON: Your Honor, I think that's  
22 argumentative. I think I want to set the record  
23 straight.

24 JUDGE HOPKINS: He's withdrawing it.

25 MR. STEPHENSON: Well, this document is a



1 small batch of documents, of letters and correspondence,  
2 that have been gleaned from a thousand pages of  
3 documents and if he wants to go through the thousand  
4 pages of documents I can show you there are lots of  
5 references to shipper needs and shipper desires.

6 JUDGE HOPKINS: Well, we have your testimony  
7 on the record now, too. All right. Mr. Kharasch.

8 MR. KHARASCH: We have enough testimony on  
9 both sides?

10 JUDGE HOPKINS: Right.

11 BY MR. KHARASCH: (Resuming)

12 Q In your instructions to the officers of the  
13 company in connection with this program, did you put any  
14 limits on the routes they could close? Maybe I better  
15 ask you a foundation question.

16 Did you give any instructions to the officers  
17 of the company?

18 A Not specifically.

19 Q You did not follow the progress of this  
20 program?

21 A I would get periodic reports or the Vice  
22 President or the President, Mr. Krebs, would advise me  
23 what's going on.

24 Q In January 1983 what position did Mr. R. A.  
25 Sharp have?

1 A Vice President of Marketing, I believe.

2 Q And Mr. K. E. Bosanko -- B-o-s-a-n-k-c?

3 A I'm not sure what his title was at that time.

4 He was in the marketing department, I believe.

5 Specifically his title I don't recall.

6 Q Let's look at page 3 together, please, of  
7 Exhibit MKT-6. Please look at the second paragraph, the  
8 second sentence. "It was also assumed that on shipments  
9 that are moving on joint line service and originated by  
10 the SP we could control such movements even to  
11 competitive destinations for SP or SP/SSW direct  
12 handling."

13 Is that a sound assumption, from your  
14 railroading knowledge, Mr. McNear?

15 A I sometimes have great difficulty in  
16 understanding the terms of these traffic department  
17 reports. This is an internal department report from Mr.  
18 Bosanko to Mr. Sharp and my focus in this revenue  
19 enhancement program, which I subscribed to, was to get  
20 our end results and get some periodic reports of what  
21 was happening and what were the results.

22 MR. STEPHENSON: Your Honor, may I make a  
23 suggestion? Mr. Edwards, who is the Senior Vice  
24 President of Traffic for Southern Pacific and who is  
25 going to be a witness, hopefully at the end of this



1 week, is the man who has the responsibility for these  
2 route closing/route simplification programs. These are  
3 documents out of his files. They are out of the files  
4 of the traffic department.

5 Mr. McNear has already indicated that he is  
6 not familiar with these except in a general sense, with  
7 what was going on. I think it would be very productive  
8 of all of our time if Mr. Edwards were to be the witness  
9 to respond to these and we will give counsel carte  
10 blanche to ask him what he can ask of him.

11 But I just think it's a waste of time.

12 MR. KHARASCH: I think that we have the  
13 President and Chief Executive Officer of the railroad  
14 here. The railroad has had a massive program under  
15 way. The railroad's policies must be, I think,  
16 addressed by the Executive Officer here. I think this  
17 witness has shown that if he doesn't know something he  
18 will tell us -- I think.

19 Now let's look back. He has been in the  
20 business a long time.

21 JUDGE HOPKINS: If we're talking about policy  
22 matters, go ahead. There's no sense of getting too  
23 specific with this gentleman because we will be faced  
24 with the same problem we were with the prior witnesses  
25 as to certain specific questions. Generally I don't see

1 why he can't answer.

2 BY MR. KHARASCH: (Resuming)

3 Q Now I'm asking in terms of the discussion we  
4 had earlier about power of the railroad, is it basically  
5 a good assumption, based upon your railroad experience,  
6 Mr. McNear, that on shipments that are moving in joint  
7 line service and originated by the SP, the SP could  
8 control such movements even to competitive  
9 destinations?

10 A Once again, I was never a traffic officer. I  
11 have never been in the traffic department. And as I  
12 just previously answered to this statement, I have  
13 problems understanding the exact meaning of this page  
14 and the individual sentences.

15 Q Would that be true of the sentence that says  
16 "on shipments received from connecting lines that  
17 originated at competitive points and terminated at  
18 SP-exclusive points our route limitations will control  
19 future movements for system-direct or Ogden gateway  
20 handling"?

21 A You'll get a much better answer to that  
22 question --

23 Q I'm not asking whether I'll get a better  
24 answer. Is it true that you don't understand that  
25 sentence as President of this railroad? You don't



1 understand the sentence that says shipments received  
2 from connecting lines? Do you understand that part of  
3 it?

4 A Continue.

5 Q Is that okay, "that originated at the  
6 competitive points"? Does not a competitive point mean  
7 another railroad could serve that point?

8 A Continue.

9 Q And terminated at an SP-exclusive point.  
10 Doesn't that mean the point that is served only by the  
11 SP?

12 A Continue.

13 Q So far the sentence is clear, I think, to  
14 you?

15 A Continue.

16 Q Then it says "our route limitations". That  
17 would surely be the Southern Pacific's route  
18 limitations.

19 A I'm not positive of that.

20 Q Well, is not Mr. Fosanko an SP officer, so  
21 "our route limitations" would presumably be SP's route  
22 limitations? Why don't you assume that "our" means SP  
23 "route limitations will control future movements." Any  
24 problems with those words?

25 A Yes.

1 Q All right. What does "will control future  
2 movements" -- what's your problem with understanding  
3 that?

4 A It just doesn't come through right now.

5 Q Suppose you would assume for the purpose of  
6 the question that the SP's tariff publications say that  
7 we will not allow a route to an exclusively SP-served  
8 point. Would that make sense for "will control future  
9 movements" that they will not be allowed to move unless  
10 the SP says they may move?

11 A You're still getting into an area that I'm not  
12 comfortable with.

13 Q It's not a question of whether you are  
14 comfortable but whether you understand my question.

15 A I don't.

16 Q You're having trouble, you say, with "control  
17 future movements"?

18 A Yes.

19 Q Now please assume that control means that the  
20 Southern Pacific will have a tariff provision in effect  
21 that says no traffic may move here unless it moves via  
22 our system. Would that make sense of the word "control"  
23 to you?

24 A All right.

25 Q System direct handling means on the SP



1 system?

2 A Or Ogden gateway handling.

3 Q We're just focusing on the word  
4 "system-direct" Do we understand what that means?

5 A Single line, yes.

6 Q Ogden gateway handling. If I asked you the  
7 question do you know today that the SP has in effect a  
8 great number of tariff provisions that do not allow  
9 traffic to move except via the SP on points that only --  
10 to or from points that only the SP serves, my question  
11 is do you know that you have such tariff in effect, such  
12 tariffs in effect today?

13 A I assume we do, but I have no idea of how many  
14 or whether they apply.

15 MR. STEPHENSON: Your Honor, I am curious as  
16 to where we are going on this and what the relevance of  
17 SPT's route closing program in 1983 has to this case.

18 MR. KHARASCH: I'd be delighted to tell you  
19 what the relevance is.

20 JUDGE HOPKINS: Go ahead.

21 MR. KHARASCH: The SPT route closing policy  
22 has two important applications to this case. In the  
23 first place, it is a question of the market power by one  
24 of the merging partners and how the market power of the  
25 partner was applied to eliminate competition.

1           We are not litigating whether they should or  
2 shouldn't have closed routes. It is a fact that they  
3 did. And I intend to demonstrate in detail that they  
4 did. This applies directly to the witness' testimony  
5 about the great competition and the great new  
6 competitive ability that will be provided by the SF/SP  
7 merger.

8           Second, it also applies most directly to the  
9 anti-competitive effects of the merger which in the case  
10 of my client at least will prevent my client from  
11 reaching Mexico, because if you use the SP tariffs in  
12 effect and the same is true of the Santa Fe, there will  
13 be no way for traffic to reach Mexico and other  
14 destinations.

15           Third, the massive, enormous computer study  
16 that was made in this case depends entirely throughout  
17 on an assumption that there is no such thing as a route  
18 closing, and if there is in fact a route closing it is  
19 highly relevant to show it.

20           I want to make it plain that I am not in any  
21 way litigating in this case whether there should or  
22 should not have been route closings. It is a fact of  
23 life. It is the Commission policy to allow it, and it  
24 is these railroads' policy to do it. In Exhibit KCS-1  
25 you will see it is the driving force of this merger that



1 these new Staggers Act freedoms will allow the merged  
2 carriers to raise rates and make more money.

3 That is my statement.

4 MR. STEPHENSON: May I be heard?

5 JUDGE HOPKINS: Surely.

6 MR. STEPHENSON: With respect to the question  
7 of the policy of SPT in 1983, I find it hard to believe  
8 that the policy of SPT in '83 is going to carry the day  
9 when Mr. Cena is the Chief Executive Officer of the new  
10 company -- that's been announced -- and where the route  
11 policy of the new company, which has been spread out for  
12 all to see, is going to be testified to by Mr.  
13 Fitzgerald, it would seem to me that the policy with  
14 respect to future gateway and routing decisions ought to  
15 be left to Mr. Fitzgerald to testify to.

16 With respect to the anti-competitive effects  
17 of what has happened in 1983 or 1984 prior to the  
18 merger, that can't be relevant to what happens as a  
19 result of the merger. It is an existing condition that  
20 is not going to be impacted one way or another by this  
21 merger and it was wholly independent of the merger.

22 With respect to the argument that the route  
23 closing issue may impact on or may have influenced the  
24 decision on the traffic diversion study, that may be the  
25 case, but Mr. McNear is not the witness sponsoring the

1 traffic diversion study. We are having four or five  
2 witnesses later on in the case who can address that  
3 issue, and it's more appropriately placed with all these  
4 other people than it is with Mr. McNear, who has no  
5 testimony in his verified statement that addresses these  
6 subjects.

7 JUDGE HOPKINS: Mr. Kharasch, I can see it's a  
8 legitimate line of questioning, in my feeling, but there  
9 is some question also whether this gentleman can really  
10 answer the questions you are asking.

11 I think your line of questioning is  
12 legitimate, though, and I will allow you to, but I find  
13 it a little difficult to understand whether Mr. McNear  
14 will be able to answer your questions that extensively.

15 BY MR. KHARASCH: (Resuming)

16 Q Mr. McNear, would you look, please, at June  
17 13, 1983, page 25 of MKT-6? Apparently this is the file  
18 on railroad route closing. Now again you have told us  
19 who Mr. Chapman is. Who was the fellows whose names  
20 appear above Mr. Chapman?

21 A I don't think the record will show that I have  
22 said who Mr. Chapman is.

23 Q Will you please tell us?

24 A He's one of the people in the marketing  
25 department. Mr. Neal at the time was Vice President of



1 Sales. Mr. Scholibo at that time was our AVP sales at  
2 Portland. Mr. Brown, same position at Oakland, San  
3 Francisco. Mr. Cynor, same position in Chicago. Mr.  
4 Delmater, same position in New York. Mr. Thruston, same  
5 position at Houston.

6 Mr. Vaughn, same position, Atlanta. Mr.  
7 Lautsch, the same position, Assistant Vice President of  
8 Sales in Los Angeles. Mr. Skelton, the same position in  
9 St. Louis. And Mr. Rayley, the same position in  
10 Detroit.

11 Q Now help us out at the bottom.  
12  
13  
14  
15  
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17  
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24  
25

1           A     These are staff support people in San  
2     Francisco.

3           Q     Mr. Spaulding and Harris would be getting  
4     blind copies?

5           A     That's what it shows here.

6           Q     Who are they?

7           A     They are people -- well, I don't know Harris.  
8     Harris is a name I can't place. Spaulding is in the  
9     traffic department.

10          Q     Now, things like the CP conditions did come to  
11     your attention in the preparation of testimony in this  
12     case and work on this case. You issued some  
13     instructions about that, didn't you?

14          A     The CP conditions? We have a separate filing  
15     with the Commission on the CP conditions.

16          Q     Yes. And I say in this case, you issued some  
17     instructions about traffic study personnel as to how to  
18     behave with the CP conditions.

19          A     Oh. The overall instructions or the  
20     guidelines for the traffic diversion studies was that  
21     they assume that the CP conditions were not in effect,  
22     and therefore the traffic diversion studies were not  
23     restricted by that condition.

24          Q     Yes.

25                     Now, since you have told us about all of these



1 AVPs and VPs, you yourself, if I am understanding your  
2 previous testimony, do not have any real knowledge of  
3 this route closing program and what it has got to  
4 today.

5 A I told you when you were referring to page 1  
6 of 33, that this program I was aware of and I had been  
7 kept abreast of some of the changes. And I just might  
8 add, on December 1st definition there -- and this, I  
9 think, gives you an understanding and the rest of the  
10 people an understanding of my involvement.

11 I am looking for where we are going in the  
12 company, what our people are doing. The first item was  
13 referring to route closing of lumber between SP origins  
14 and down into the Southwest. I know for a fact that  
15 they are open now, and that is in my testimony where I'm  
16 referring to our agreements with the Santa Fe and the UP  
17 and that.

18 So from that point of things, I know some of  
19 that.

20 The other concern I have is the shipper  
21 concern, and that is what has come about in reopening  
22 some of those and it certainly subscribes to the docket  
23 in the joint route and policy statement that will be  
24 forthcoming that was submitted by Mr. Fitzgerald, that  
25 was identified yesterday.

1 Q Looking at page 5 of Exhibit MKT-C-6, I see  
2 that some fairly heavy money is involved in this route  
3 closing policy. Doesn't that come to your attention?

4 A I look for the traffic department to meet  
5 their forecast, whether it is by route closing or by  
6 soliciting new business or whatever.

7 Q Page 11 of your testimony here, at the bottom  
8 of page 11, you were saying what a carrier needs to  
9 sustain a vigorous long-term competitive posture. And  
10 you say you need more than luck and good intentions.

11 Do you see that?

12 A Yes, sir.

13 Q You say you need good management, direct  
14 routes between healthy, growing markets, and financial  
15 strength.

16 A Yes, sir.

17 Q Do you understand enough about your route  
18 closing policy to understand that if you close routes,  
19 some other people don't have a direct route between  
20 healthy growing markets?

21 A A direct route or a joint route?

22 Q They don't have any route at all, do they, if  
23 you close their routing?

24 A By us. But there may be another carrier that  
25 they can join with and make an effective route between



1 the pairs. It depends what pairs of cities, points of  
2 origin and destination you're talking about.

3 Q Did you participate in the development of any  
4 so-called routing policy for the SFSP which was  
5 developed since the time the application was filed?

6 A The routing policy for the SFSP?

7 Q Yes.

8 A The statement that was presented yesterday?

9 Q Any routing policy whatsoever, yesterday  
10 presented or not.

11 A I had some discussions on that.

12 Q With whom did you have discussions?

13 A With my traffic officers and with Mr.  
14 Schmidt.

15 Q You talked to Mr. Schmidt and you talked to --  
16 please give names.

17 A Mr. Edwards. And our counsel, our counsel  
18 were there.

19 Q Oh, your counsel were there, too. When did  
20 you have these discussions about a new routing policy  
21 with Mr. Schmidt, Mr. Edwards, and your counsel?

22 A This wasn't a new routing policy. This was  
23 trying to devise a statement that we could put forth in  
24 this proceeding.

25 Q When did that meeting take place?

1 A This past week.

2 Q That is a new routing policy.

3 A It's a plan of a proposed new routing policy  
4 to be adopted by the company if the Commission allows  
5 the merger.

6 Q Do you know enough about those discussions to  
7 know -- which occurred last week -- to tell me whether  
8 that routing policy will be suggested as an obligation  
9 of the merged lines?

10 MR. STEPHENSON: Your Honor, I'm not quite  
11 sure -- if counsel could define an obligation.

12 BY MR. KHARASCH: (Resuming)

13 Q Are you going to suggest to the Commission  
14 that it be a condition of the merger that you have a  
15 certain routing policy which you developed last week in  
16 discussion with counsel and Mr. Schmidt and Mr.  
17 Edwards?

18 MR. STEPHENSON: I think that's a question for  
19 counsel to take up, Your Honor. I think that's a  
20 question for us to respond to.

21 JUDGE HOPKINS: Oh, are you going to respond  
22 to it?

23 MR. STEPHENSON: In due course, yes.

24 MR. KHARASCH: I have the Chief Executive of  
25 one of the Applicants, who is supposedly an independent



1 voting trust here. I think I can ask him about an  
2 important future policy.

3 JUDGE HOPKINS: I think if he knows, yes.

4 THE WITNESS: Whether it would be a condition,  
5 I don't know. But what we are recommending here, that  
6 as the document says, that we plan to adopt existing  
7 joint rates and routes and rates upon consummation of  
8 merger.

9 So it's predicated on the agreement, the  
10 consummation of the merger. And that is our intent.

11 BY MR. KHARASCH: (Resuming)

12 Q That's your intent.

13 Just tell me, this occurred last week that you  
14 had these meetings, you say? Do you remember the day?

15 A Mid-week last week sometime.

16 Q And that took place in what city, sir?

17 A Washington, D.C.

18 Q And you, Mr. Schmidt, Mr. Edwards, any other  
19 railroad people present?

20 A Yes. Mr. Fitzgerald was there.

21 Q Mr. Fitzgerald was there. Who else?

22 A Mr. Cena, I believe, and the counsels.

23 Q And that occurred Wednesday.

24 What was the reason for adopting last  
25 Wednesday, the discussion of adopting a routing policy

1 last Wednesday?

2 A I think in the testimony, in our  
3 cross-examination here, it is kind of a confusing issue,  
4 and what we were attempting to do is to see whether we  
5 could state something that would identify to the  
6 concerns of your carrier as well as other carriers  
7 represented here, what would come to pass after the  
8 merger.

9 Q You participated in this discussion. Did you  
10 offer opinions during it?

11 A I favored as it came out, yes.

12 Q Did you talk as it was being drafted?

13 A Yes.

14 Q In what respect does this policy that you  
15 participated and talked in while it was being drafted  
16 differ from the present routing policy of the Southern  
17 Pacific?

18 A The guidelines that our traffic department  
19 works under now is more or less the same thing of  
20 working for consideration of what are the interests of  
21 the parties, the efficiency of the route.

22 Q You have just told me for the previous half  
23 hour that you don't really know what the current routing  
24 policies of the SP are because that is off in the  
25 traffic department.



1 MR. STEPHENSON: I beg to differ with you.  
2 What Mr. McNear just said is exactly what he said one  
3 hour ago and about a half an hour ago. He has twice  
4 said exactly the same thing. Those are the general  
5 guidelines.

6 JUDGE HOPKINS: All right, Mr. Kharasch. I  
7 will sustain the objection. Go ahead.

8 BY MR. KHARASCH: (Resuming)

9 Q Is it true, or do you know if it's true that  
10 today the Southern Pacific has a great number of tariffs  
11 out that say no traffic shall move between points that  
12 are on our line except via the Southern Pacific? No  
13 joint routes.

14 Is it true or do you know if it's true?

15 A I don't know.

16 Q And without knowing whether that's true, you  
17 nevertheless participated in the high-level executive  
18 discussion of what the new routing policy of the SFSP  
19 will be; is that correct?

20 A What the philosophy should be.

21 Q The philosophy. But you didn't know what was  
22 going on today. So do you know whether your philosophy  
23 is different from what you're doing today?

24 A As I think I referred to earlier, Mr. Edwards  
25 can provide you with that detail.

1 Q How long were the discussions that took place  
2 last Wednesday on adoption of the new routing policy?

3 A I think we discussed it one day, slept on it,  
4 and decided the next day.

5 Q So it was Wednesday and --

6 A Whatever. Sometime last week.

7 Q So it happened over two days?

8 A As I said, we brought it up one day, slept on  
9 it, and came out with the answers --

10 Q What period of time was occupied in the  
11 discussions?

12 A Probably about an hour each time, something  
13 like that.

14 Q Why was it necessary to adopt a new routing  
15 policy last Wednesday and Thursday? Did anybody tell  
16 you that you ought to adopt this statement?

17 A No one told me.

18 Q You had a bunch of lawyers there. Did they  
19 tell you it would be a good idea in this case?

20 MR. STEPHENSON: Objection.

21 MR. MARTIN: Objection.

22 MR. STEPHENSON: Objection. That's  
23 attorney-client privilege, Your Honor. You can't go  
24 into what the lawyers suggested to him.

25 MR. KHARASCH: Your Honor, if it please, I



1 happen to be an expert on attorney-client privilege in  
2 this area. There are two competing lines here that  
3 met. There is no attorney-client privilege when the  
4 advice of counsel has been given publicly to outsiders  
5 who are not in the attorney-client relationship.

6 The case -- if you want an extensive memo,  
7 that is standard. This is supposed to be not one  
8 company getting advice from its lawyers, but two  
9 companies who are supposed to be vigorously competing  
10 under the voting trust, and when they meet there is no  
11 privilege possible in the discussion.

12 If counsel says anything that is heard by  
13 someone that is not counsel's client, there is no  
14 attorney-client privilege.

15 I'm glad to see Judge Prettyman is nodding.

16 MR. STEPHENSON: The flaw in the argument is  
17 for purposes of putting this application together, and  
18 there are a legion of cases -- we are one and the same  
19 for purposes of the adoption of the attorney-client  
20 privilege.

21 We have a combined collective effort in the  
22 discussions that go on, notwithstanding the voting  
23 trust. If you didn't have the ability to communicate,  
24 you couldn't put an application together.

25 JUDGE HOPKINS: One of the problems I find,

1 Mr. Kharasch, how could they put an application  
2 together? Would any of their advice not be open then,  
3 according to --

4 MR. KHARASCH: They can put an application  
5 together. That's all right. The question here is  
6 whether, if you have a meeting, there is an  
7 attorney-client privilege. There is no question that  
8 Mr. McNear may be advised by his counsel with  
9 attorney-client privilege.

10 JUDGE HOPKINS: Are you saying because the  
11 other side hears it, there is no attorney-client  
12 privilege?

13 MR. KHARASCH: That's the general rule.

14 MR. STEPHENSON: That is not the general  
15 rule.

16 JUDGE HOPKINS: What is your question exactly  
17 right now?

18 MR. KHARASCH: Let me restate it in the good  
19 old English counsel way.

20 BY MR. KHARASCH: (Resuming)

21 Q I put it to you, Mr. McNear, that what  
22 happened last week was that your counsel told you you  
23 were going to be in trouble with your route closing  
24 policies and you'd better get up something to tell the  
25 Commission.



1 Do you object to that?

2 JUDGE HOPKINS: Are you saying is that true?

3 BY MR. KHARASCH: (Resuming)

4 Q Is that true?

5 MR. STEPHENSON: I object to the form of the  
6 question as well as to the --

7 JUDGE HOPKINS: I'm going to let him answer if  
8 he can.

9 THE WITNESS: The matter of routes and  
10 gateways has been an issue, as I indicated, going back  
11 to your exhibit C-6, of concern of where it's all coming  
12 out, what's the end result. And that's what I'm  
13 interested in.

14 And as I indicated to you before, I don't  
15 understand the detail, but my concern is where, as we go  
16 forward, one, Southern Pacific and then with Southern  
17 Pacific and Santa Fe as a merged company, is what is our  
18 basis? We have the same thing -- and the other concern  
19 I have on this, it's an issue before the AAR on this  
20 whole issue with the shippers on route closings and  
21 gateways and rates.

22 As I get around and talk to shippers, this is  
23 their main concern and this is coming to the Commission  
24 ultimately. And what we are attempting to do,  
25 industry-wide, is to get an agreement. And we have now

1 between the carriers, yours included that you represent,  
2 we've got an agreement, and now we are approaching the  
3 shippers to see that we have an understanding there, so  
4 then we can come and represent our understanding jointly  
5 to the Commission.

6 JUDGE HOPKINS: Is this also a preparation for  
7 Thursday's Ex Parte 436? Or do you know?

8 THE WITNESS: Is Ex Parte 436 where the  
9 Commission is having kind of an open hearing on what are  
10 the good and bad of the Staggers Act?

11 JUDGE HOPKINS: Yes.

12 THE WITNESS: This will ultimately. Our next  
13 route is talking the shippers, and if we can agree on  
14 that, we will come in with a joint statement of both the  
15 carriers and the shippers in that respect.

16 So this has been a concern to us all along.  
17 And it's of equal concern in this case.

18 BY MR. KHARASCH: (Resuming)

19 Q Yes. But my question to you is not what you  
20 gave an answer to, whatever the answer is. My question  
21 to you is, I put it to you that on last Wednesday and  
22 Thursday, your counsel told you that you were going to  
23 be embarrassed if you didn't get up some sort of  
24 statement in this case about your route closing policy.

25 A My traffic officer has been trying to get a



1 definition for the future on --

2 Q You're really having trouble answering my  
3 question.

4 JUDGE HOPKINS: Why don't you answer the  
5 question?

6 THE WITNESS: I don't recall who said it.

7 BY MR. KHAFASCH: (Resuming)

8 Q I will buy that. You don't recall who said  
9 it.

10 Let's move on, Your Honor.

11 JUDGE HOPKINS: Thank you.

12 BY MR. KHAFASCH: (Resuming)

13 Q All right.

14 Direct routes that you're talking about on  
15 page 9 of your statement, Mr. McNear.

16 A Where in particular?

17 Q Staggers Act places a premium on the ability  
18 of any railroad to be able to provide a given service, a  
19 given shipper with a single line service. Unquote.

20 Do you see that statement in the middle of the  
21 paragraph on page 9?

22 A Yes.

23 Q When you say "any railroad," I assume you will  
24 include my client, the MKT, in that statement? "The  
25 result of the Staggers Act changes places a premium on

1 the ability of any railroad to provide single line  
2 service."

3 A Yes.

4 Q And so MKT shippers would be benefitted if  
5 they could obtain single line service from the MKT.

6 A Sure.

7 Q And that would include service to Mexico?

8 A When you say single line service and the  
9 benefits of the shipper, which was your question, you  
10 also have to consider the volume of the shipment, the  
11 routes involved, and whether there is enough traffic for  
12 more than one shipper to economically serve a corridor  
13 or a gateway.

14 Q I think you mean more than one carrier.

15 A Carrier. Yes, thank you.

16 Q Well, let's look today for a moment at Mexico,  
17 since we were talking about it. Today, Mexico is  
18 served, Mexico gateways are served by the MP, part of  
19 the UP system; correct?

20 A Yes.

21 Q And they're served by the Santa Fe?

22 A Yes.

23 Q And it's served by the Southern Pacific; yes?

24 A That's three of them.

25 Q Any others today that you know connect with



1 Mexico?

2 A TexMex.

3 Q The TexMex connects between Corpus Christi and  
4 Laredo, is that correct, and only there?

5 A Yes, sir.

6 Q A short line railroad, 160 miles long, between  
7 Corpus Christi and Laredo?

8 A Yes, sir.

9 Q The TexMex's only connections are, the U.S.  
10 side, the MP and the SP; is that correct?

11 A That's correct.

12 Q So the TexMex doesn't give you any independent  
13 third way, fourth way, to get to Mexico; is that  
14 correct?

15 A It does.

16 Q Since you have to reach it via the MP or the  
17 SP, how does it give any other railroad the opportunity  
18 to connect?

19 A There's traffic coming from imports. And it's  
20 a question of whether it comes to the Port of Corpus  
21 Christi and the TexMex handles it to Laredo, or whether  
22 it comes into Galveston and one of the other carriers  
23 delivers it to another gateway or to the TexMex.

24 Q Wait a minute. We're talking about rail  
25 traffic here. How do you get rail traffic to or from

1 the TexMex, except via the SP or the MP?

2 MR. STEPHENSON: He just said by impcrt to  
3 Corpus Christi.

4 THE WITNESS: These are options we have all  
5 the time. We are soliciting against the water as well  
6 as other rail carriers and other trucking carriers.

7 BY MR. KHARASCH: (Resuming)

8 Q Let's stick to my rail in my question which  
9 was limited to rail. What are the rail connections to  
10 the TexMex, other than the MF and the SF?

11 A There are none, as we previously said, rail  
12 connections.

13 Q And if we look at the City of Corpus Christi,  
14 there is no rail connection at the City of Corpus  
15 Christi, except the MF and the SP?

16 A That is correct.

17 Q Now, after the Santa Fe/Southern Pacific  
18 merger, only the MF and the SFSP will be able to carry  
19 directly to Mexico unless conditions are allowed; is  
20 that correct?

21 A TexMex can still carry directly to Mexico rail  
22 traffic that originates at Corpus Christi.

23 Q Oh, I see. Corpus Christi has a factory at  
24 Corpus Christi?

25 A Yes.



1 Q I beg your pardon, sir. And Corpus Christi  
2 has a factory, and the stuff at that factory goes to  
3 Mexico via the TexMex.

4 A Come or go, and they can consume Mexican  
5 products.

6 Q Point taken.

7 Do you have any idea of what volume of Corpus  
8 Christi production there is?

9 A And once again, over their port. That's rail  
10 traffic going to and from Mexico.

11 Q Very good.

12 Other than that rail traffic originating in  
13 Corpus Christi which will have the TexMex connection,  
14 there would then be only two megasystems -- your word --  
15 that connect to Mexico, the SFSP --

16 A Directly to Mexico; right. And there will be  
17 opening up of gateways for other traffic to connect with  
18 those two serving carriers.

19 Q Now, today, you do very considerable grain  
20 traffic with the MKT moving over Denison, as we have  
21 discussed, and then down into Mexico, don't you?

22 A Yes.

23 Q I believe you also do to Eagle Pass, Texas  
24 considerable traffic with the MKT, don't you, including  
25 in the MKT the CKT system?

1           A     Yes. In fact, the MKT comes directly into San  
2 Antonio if they want to.

3           Q     They can. And then would you carry their  
4 traffic to Eagle Pass for them?

5           A     That would be a joint route; yes.

6           Q     Would you carry the MKT's traffic to Mexico  
7 today via San Antonio if the traffic had originated at a  
8 point served by the SP?

9           A     It's a possibility.

10          Q     It's a possibility.

11                 Do you know whether or not your tariffs do not  
12 permit MKT-SP route to Mexico for commodities generally  
13 from any point served by the SP to Eagle Pass? I  
14 thought we had established you don't know that.

15          A     I was going to say that.

16          Q     Okay.

17                 Page 10 of your statement, you are talking  
18 about the loss of traffic diversion because of the MP-UP  
19 merger. Do you see that testimony there?

20          A     Yes, sir.

21          Q     Does a loss of traffic such as from the merger  
22 of the UP-MP have an effect on the density of traffic on  
23 the SP's lines?

24          A     Yes.

25          Q     It decreases the density, does it not?



1 A And that's what we were concerned about.

2 Q It concerns you -- that the decreasing density  
3 concerns you because it affects your profitability.

4 A Our revenue and contribution.

5 Q And railroading is a high fixed cost industry,  
6 one hears it said. Do you agree with that?

7 A One hears that, yes.

8 Q Well, do you agree with it?

9 A I think I have used it in my speeches.

10 Q And as a high fixed cost industry, it is quite  
11 important to get as much density of traffic as possible  
12 over your lines. Yes?

13 A That is true.

14 Q And to the extent that this merger brings new  
15 diverted traffic now carried by other railroads to the  
16 SP lines, that strengthens the SP, does it not?

17 A It may bring some of the traffic home to the  
18 SP that we lost as a result of the UP merger and the BN  
19 merger before that.

20 Q Do you expect to bring home any traffic that  
21 was lost by the SP because of the MKT merger?

22 MR. STEPHENSON: Objection, Your Honor. That  
23 is argumentative.

24 BY MR. KHARASCH: (Resuming)

25 Q Have you lost any traffic to the MKT?

1           A     I'm sure we lose traffic every day and we gain  
2 traffic from them.

3           Q     As a result of any mergers.

4           A     I wouldn't know of any.

5           Q     That's not the kind of traffic you're talking  
6 then about recapturing?

7           A     No. We're talking about what traffic is  
8 available and what is the most efficient route it should  
9 travel.

10          Q     Page 13, you refer to shippers who are  
11 dependent on the SP and say that they should have a  
12 strong railroad.

13          A     Yes.

14          Q     How about shippers on other people's  
15 railroads? Should they not have strong railroads?

16          A     That's the charge of the Commission to  
17 determine. What's the benefit of the shipper?

18          Q     What effect would it have on the SP if the  
19 Commission said you couldn't carry -- that your rail  
20 access to Mexico would be cut off. You can merge, but  
21 you can't have your rail access to Mexico.

22          A     That would be a very devastating blow.

23          Q     Page 12, you talk about how tough it is to  
24 compete with the merged megarailroads for the SPT.

25                   Is it tough for regional rail carriers to



1 compete with megarailroads?

2 A I would assume yes.

3 Q You were president or chairman during the time  
4 the SP acquired Tucumcari line from the Rock Island?

5 A I was president, yes.

6 MR. KHARASCH: May we mark as the next counsel  
7 exhibit, which would be MKT-C-7, a 10-page exhibit  
8 captioned "Verified Rebuttal Testimony of William C.  
9 Hoenig," H-c-e-n-i-g.

10 JUDGE HOPKINS: It will be marked for  
11 identification.

12 (The document referred to  
13 was marked Exhibit MKT-C-7  
14 for identification.)

15 MR. KHARASCH: And as MKT-C-8, a 23-page  
16 exhibit called "Extracts from Brief of Applicant,  
17 Southern Pacific Company et al.," dated 24 March 1980.

18 JUDGE HOPKINS: That will be marked for  
19 identification.

20 (The document referred to  
21 was marked Exhibit MKT-C-8  
22 for identification.)

23 MR. KHARASCH: Your Honor, I apologize for the  
24 state of the xeroxing. This is part of the Commission's  
25 "put everything on microfiche," and that's the best you

1 can get cut of it.

2 JUDGE HOPKINS: I understand.

3 MR. KHARASCH: I will state for the recrd  
4 that in each case these are extracts of very long  
5 documents. I am concerned with the part of this case  
6 that had to do with grain service in southwest Kansas.  
7 That's what I have extracted.

8 I believe I have everything, and certainly  
9 would be happy to have the Applicants add any other part  
10 of this that they want.

11 JUDGE HOPKINS: Thank you.

12 BY MR. KHARASCH: (Resuming)

13 Q Does your memory, Mr. McNear, tell you what  
14 the position of the Santa Fe Railroad was about the  
15 Southern Pacific's acquisition of the Tucumcari line?

16 A I think my memory tells me that they opposed  
17 the acquisition.

18 Q And does your memory stretch to reminding you  
19 that, in fact, the Santa Fe suggested that the line  
20 should be allowed to rather wither away, be closed  
21 down?

22 A I believe so.

23 Q But the SP badly wanted that line and pushed  
24 to get it, did it not?

25 A Yes, sir. I was trainmaster at Tucumcari



1 back in the mid-50s. At that time, it was a very viable  
2 connection to us and it meant a lot to us in reaching to  
3 Kansas City and Chicago as an extension of our system.  
4 And at this time, the Rock Island had gone awry.

5 We tried one case before the Commission to  
6 acquire the line. We were unsuccessful in partnership  
7 with the UP. And we then made this application to  
8 acquire the line to get back to Kansas City.

9 Q Let's look at the situation of local shippers  
10 in southwest Kansas. The Santa Fe position, I seem to  
11 see from page 6 of Exhibit 6, was that local shippers  
12 could get service from other railroads in bigger places  
13 than along the Tucumcari line.

14 A That is represented, that's what's represented  
15 in this testimony.

16 Q But the SP's position was that there are a  
17 substantial number of people located on the Tucumcari  
18 line that need the Tucumcari line's local local  
19 service.

20 A That covers on page 3 and page 4.

21 Q Throughout the statement here, your general  
22 position was you should be allowed to serve the SP and  
23 you would be giving valuable local service; is that  
24 right?

25 A The thrust of our application was to get and

1       reinitiate a through viable connection over Tumcumcari  
2       to Kansas City and to get that gateway, and then at the  
3       same time, our position was we would provide service,  
4       local service to those people and those identified mills  
5       and grain handlers that are along the line. And they  
6       were concerned that there wouldn't be any railroad  
7       there.

8           Q       And if we look at Exhibit MKT-C-8, and we look  
9       at page 19, we see the Southern Pacific's brief telling  
10      the Commission that complete loss of the line would  
11      spell economic ruin for grain shippers in the area  
12      served by the line.

13          A       Right. It was our opinion then and still is  
14      today that the route should have been reestablished,  
15      which it was, and should be continued (1) as a through  
16      corridor and (2) to provide service. And since we've  
17      been operating that line, we can see without viable  
18      through service, it would end up more or less when we  
19      acquire it as almost a perishable commodity, going out  
20      of business because there wasn't enough traffic to  
21      support it.

22                  So the economies of that route now are  
23      twofold: (1) of the limited local traffic on the line,  
24      as well as the through integral route of our system.

25          Q       Please look at page 20 of MKT-C-8, sir. Since



1 you have some exact knowledge of this, tell us if you  
2 agree with the statement that the SF was making to the  
3 Commission at this time, that the only alternative open  
4 to the shippers -- talking about shippers on that line  
5 -- trucking the grain to distant lines served by  
6 Protestant Santa Fe or other carriers is simply not  
7 economically feasible.

8 A That was a representation made at that time.  
9 I think that we're all aware there are certainly  
10 changing conditions and economics and choices, and it's  
11 my understanding that as far as what is an economical  
12 truck haul today may be different than what was a truck  
13 haul in 1980 at the time of this document as far as  
14 getting grain from out of the fields to the local  
15 grainery, and then whatever the terminal grainery,  
16 whatever the sequence of events is.

17 Q It's your understanding that between March 24,  
18 1980 and October 2, 1984, economic factors changed so  
19 that now it is not economically feasible to truck grain  
20 to distant lines off Tucumcari?

21 A It may be more economically feasible.

22 Q It may be more. Do you have any figures about  
23 that?

24 A No.

25 Q What is the source of your understanding that

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1 that may be true today?

2 A The source of that understanding is being  
3 somewhat initiated into the grain hauling by acquiring  
4 the Tumcumcari line and what is represented by my  
5 traffic officers to me in the variability of their  
6 alternatives today.

7 Q You feel today that trucking is relatively  
8 cheaper than it was four years ago?

9 A I'm talking about primarily the pickup and  
10 delivery getting between the -- whatever -- the field  
11 elevator and the main terminal elevator. There are  
12 different options available today than there were in  
13 1980, and I think they will change in the future.

14 Q Elevators on the Tumcumcari line are of two  
15 types, aren't they sir -- local elevators which you  
16 might call terminal elevators, or what are called  
17 terminal elevators?

18 A That's correct.

19 Q And that the farmer trucks to a local elevator  
20 more generally than to a terminal elevator.

21 A He has an option to do either.

22 Q Let's assume that there's a farmer in  
23 southwest Kansas and he is at a point, and let's say  
24 he's ten miles from the Tucucari line and ten miles --  
25 that is, south, let's say -- and ten miles north is the



1 Santa Fe line.

2 That's a situation that does occur throughout  
3 that area, doesn't it?

4 A That is correct.

5 Q And such a farmer -- are you saying today it  
6 is relatively cheaper for him to truck up to the Santa  
7 Fe line or down to the Tumcumcari line? His options are  
8 cheaper today than they were in 1980? He's more  
9 flexible in his ability to go to one line or the other?

10 A I'm saying that it's my understanding as he  
11 looks at the picture now, he can go to one of the local  
12 elevators, or he may truck it into the terminal elevator  
13 where he wasn't doing it before.

14 I think that movement is occurring.

15 Q Have you had reference to any figures --

16 A No.

17 Q -- in reaching your judgment.

18 Have you ever seen the figure put out by the  
19 Kansas Department of Agriculture that tell you in great  
20 detail how far grain is trucked and where it moved?

21 A No.

22 Q Let's just look at the shipper's point of  
23 view, sir. If you were a shipper, in general, would you  
24 rather have rail competition or not?

25 A A shipper where?

1 Q Can you make a general statement whether  
2 shippers prefer to have rail competition?

3 A Are we talking about this route here? Is this  
4 what is before us? Let's take those shippers.

5 Q No. Let's take a point like -- let's take a  
6 good point. Let's take Hutchison, Kansas. At  
7 Hutchison, Kansas there's some nice big grain terminal  
8 elevators, isn't that right?

9 A Yes.

10 Q And those people want to ship their grain to  
11 Gulf ports in some cases.

12 A In some cases Gulf ports; in some cases to the  
13 river.

14 Q Now, would such a shipper desire to have rail,  
15 competitive rail service or not?

16 A He would be looking for low cost  
17 transportation.

18 Q And didn't we have a little talk earlier today  
19 in which you agreed that rail competition tends to lower  
20 rates?

21 A Yes.

22 Q Okay. Let's look at this line that I've been  
23 calling the Bayport line, the chemical industry line  
24 from Houston down to Texas City of Southern Pacific.

25 On that line, the Southern Pacific is the only



1 carrier?

2 A At Bayport, which we call Strange, yes. There  
3 is -- across the fence there is a PTRR that serves the  
4 general area with competing chemical companies with  
5 similar products that are going out.

6 Q At Bayport, beyond the place the PTRR serves  
7 -- and we will get into this with another witness -- I'd  
8 be glad to go into it with you if you know the details.  
9 But beyond the place on the Bayport line that is served  
10 by the PTRR, the Southern Pacific is the only carrier;  
11 is that correct?

12 A That's what I said; at Strange, yes.

13 Q Now, if you were a shipper on that line, would  
14 you like to have the competitive service?

15 A I think we've done a good job with those  
16 shippers down there.

17 Q I didn't ask you whether you've done a good  
18 job. I asked whether, if you were a shipper --

19 MR. STEPHENSON: I think the witness was  
20 attempting to answer that.

21 THE WITNESS: I'm referring to the shippers in  
22 my area. He's asked about shippers in a particular  
23 area, and I am saying that they located there on our  
24 tracks, knowing it was exclusively served. They knew  
25 our service, they knew our geographic coverage, they

1 knew our history, and they said that they would want to  
2 be there.

3 BY MR. KHARASCH: (Resuming)

4 Q I asked you if you were a shipper there, would  
5 you like some competitive service?

6 MR. STEPHENSON: I think he's answered. They  
7 came to the property in the first place. It was our  
8 exclusively served property and they came there.

9 JUDGE HOPKINS: I still think he didn't answer  
10 the question that he has been specifically asked. If he  
11 doesn't agree with that, then it's perfectly all right  
12 for him to say no.

13 THE WITNESS: They can change their minds, but  
14 they came there with that initial intent, and I think  
15 the are satisified -- the ones I talked to.

16 BY MR. KHARASCH: (Resuming)

17 Q My question to you is if you were a shipper  
18 there, would you like some competitive service?

19 MR. STEPHENSON: Your Honor, I think we are  
20 going around --

21 JUDGE HOPKINS: Why don't you answer yes or  
22 no? Can you answer it? If you don't think they would,  
23 then say no.

24 THE WITNESS: I think they're satisfied.

25 MR. KHARASCH: Next, may we have marked as the



1 next counsel's exhibit what appears to be a 21-page  
2 exhibit, the first page of which is dated February 23,  
3 1984, as MKT-C-9.

4 JUDGE HOPKINS: It will be marked for  
5 identification.

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

9 BY MR. KHARASCH: (Resuming)

10 Q Let's get out of the chemical belt for a  
11 moment and discuss an arrangement that seems to have  
12 been entered into between the Santa Fe and the Southern  
13 Pacific in the year 1984.

14 I think your record has told us who Mr. Sharp  
15 is. If not, perhaps you had better state it again. Who  
16 is R. A. Sharp?

17 A Vice President of Marketing.

18 Q Are you aware of the arrangement and indeed  
19 contract made between the Southern Pacific and the Santa  
20 Fe, dated June 1, 1984?

21 A I'm aware that there was a contract concluded  
22 with the Santa Fe, similar to the contracts we concluded  
23 with the BN and the UP on gateways and reciprocal  
24 switching.

25 Q Let's take reciprocal switching. Let's take

1 the two aspects and see if you can help us. Briefly, as  
2 to reciprocal switching, it said that if either carrier,  
3 the Santa Fe or the Southern Pacific, served a city,  
4 that reciprocal switching would be provided by the other  
5 carrier at that city.

6 Is that right?

7 A I think to save a lot of confusion, as far as  
8 the details of it, you should refer those questions to  
9 Mr. Edwards and to whatever was finally agreed.

10 I think I have indicated to you that I am  
11 aware that an agreement was reached regarding reciprocal  
12 switching with the Santa Fe. And my knowledge of it is  
13 that this was precipitated originally by our closing  
14 some gateways to lumber traffic originated in Oregon  
15 down to west of New Mexico, and in turn there was some  
16 retaliation by our vigorous competitor, the Santa Fe, as  
17 to that.

18 So they -- and Mr. Edwards can give the  
19 details -- closed some reciprocal switching areas and  
20 raised prices regarding reciprocal switching.

21 The end result was that the shipper was the  
22 person that was being deprived. And my understanding  
23 and my, once again, philosophy and guidance was that the  
24 shipper should not be deprived or hurt by really  
25 agreements on related costs or benefits or service by



1 the two carriers providing the joint service.

2 And under that basis, it was my understanding  
3 that they went ahead and worked out this agreement with  
4 the Santa Fe. That's about the extent of my knowledge  
5 on this.

6 Q And that is about the switching. But if you  
7 would look at page 12, please, of Exhibit MKT-C-9, there  
8 appears to be also an agreement as to joint routing.

9 Do you know anything about that?

10 A I just mentioned in my last answer that we  
11 have closed routes that caused a problem with the Santa  
12 Fe. They closed some switching agreements, and then we  
13 sat down and resolved both of them.

14 Q You have resolved both and you have a formal  
15 switching agreement that's a contract. You have never  
16 seen that?

17 A I haven't seen the contract. No, sir.

18 Q And then you seem to have some sort of routing  
19 agreement. Do you know what that is?

20 A I don't know the details of it. I know we had  
21 closed some gateways and then we reopened them and  
22 worked out an accommodation because of the shipper's  
23 interest.

24 Q When you worked out an accommodation on  
25 routing, you worked out joint routes with them?

1 A On gateways opened, yes.

2 Q So you would enter into joint route. But  
3 these apparently were between points in some parts where  
4 both carriers served. You were competitive, the Santa  
5 Fe and the Southern Pacific.

6 Do you know whether that was so?

7 A The only areas I know were in the Phoenix  
8 area, lumber from the northwest. If there are other  
9 areas, I haven't been informed. This specific incident  
10 I was aware of as to all of the ramifications throughout  
11 our system and throughout the Santa Fe system.

12 Q Look at page 9, sir. Mr. Rolland writes to a  
13 Mr. Ellebracht. Who is Mr. Ellebracht?

14 A He's in our marketing department.

15 Q And Mr. Rolland?

16 A I don't know.

17 Q It says, "From my cursory review of single  
18 line versus joint line rate situations, it appears that  
19 there are substantial instances where there's a  
20 difference."

21 He's talking between Santa Fe and SP. Do you  
22 know whether that's true

23 A You would have to defer that question to Mr.  
24 Edwards.

25 Q Look at page 10 of 21, about three lines up



1 from the bottom. The summary seems to say there is  
2 longstanding rate competition, especially in the  
3 chemical intermediates market from the Gulf Coast to Los  
4 Angeles. SP direct rate is substantially less  
5 apparently than the Santa Fe rate.

6 A I don't know.

7 MR. STEPHENSON: It doesn't say Santa Fe  
8 rates, at least I don't see where it says Santa Fe  
9 rates. You may read that, but I don't.

10 BY MR. KHARASCH: (Resuming)

11 Q All right. This stuff is not known to you,  
12 whether there are discussions between your two companies  
13 involving rates that seem to be different, that as a  
14 result of these agreements will become non-different.

15 Do you know anything about that at all?

16 A As to what is represented in this statement  
17 that you presented to me, you can ask that question of  
18 Mr. Edwards.

19 Q Is it true that there is competition between  
20 the Gulf Coast and Los Angeles today for energy and  
21 chemicals, chemical intermediates?

22 A There is competition by rail, by truck, and by  
23 water.

24 Q Is there competition with the Santa Fe by  
25 rail?

1           A       That would be one of the rail competitors.  
2           Another rail competitor -- and they're just as strong --  
3           is the MoP-UP. And there's also geographic competition  
4           from that area to whatever markets we are serving.

5           Q       What is routing matrix?

6           A       Ask the traffickers.

7           Q       Let's look at the principal places, Mr.  
8           McNear, where the Santa Fe and the Southern Pacific  
9           today compete as rail competitors. What are the  
10          principal markets in your view in which the Santa Fe and  
11          the Southern Pacific today compete as rail competitors?

12          A       One of the principal markets we're competing  
13          in is in the consuming area of Los Angeles and the  
14          gateway of manufacturing consumer goods coming out of  
15          Chicago. That's one.

16                 And the same thing out of the Bay Area,  
17          northern California, to the Transcontinental route. We  
18          are competing, to a degree, on chemicals out of the  
19          Texas area to the northeast. We're competing out of the  
20          Salinas, Watsonville, San Joaquin Valley on perishable  
21          traffic.

22                 We're competing somewhat on grain to Mexico  
23          from our originating areas and from their originating  
24          areas to grain going into Mexico, plus the Missouri  
25          Pacific. And I have stayed away from other modes of



1 transportation which I think we are all aware are there,  
2 and a very strong competitor.

3 Q The point I asked you about earlier was your  
4 instructions to the people preparing the traffic studies  
5 for this case to consider that the Central Pacific  
6 conditions will not be in effect after merger.

7 Do you recall that your statement says that  
8 you so instructed --

9 A I was aware that that was the guideline. I  
10 don't remember who --

11 Q Your statement says, "Mr. Cena and I  
12 instructed the traffic study personnel."

13 A That was agreed upon.

14 Q You discussed this with Mr. Cena and you  
15 agreed that's the way it was going to be?

16 A Because in that, we did not put in a  
17 restriction that would prevent traffic from flowing more  
18 naturally if that restriction wasn't there. So if  
19 there's traffic, due to the Central Pacific condition,  
20 that went over Ogden, under the evaluations and the way  
21 the computer worked in the traffic study, it would go,  
22 it would be unrestricted for that condition.

23 Q Did you and Mr. Cena issue any other  
24 instructions to your traffic study personnel?

25 A I think that was the main one that the

1 trafficker came to us and said here is an existing  
2 condition; is it realistic that as we go forward with  
3 the merger, that it should still be in after the  
4 merger?

5 And as I indicated before, we are in a  
6 separate proceeding before the Commission to eliminate  
7 the CP conditions outside of this merger.

8 Q Now, did you or Mr. Cena, or anybody to your  
9 knowledge, instruct the people preparing the exhibits  
10 for this case to give no effect to possible rail rate  
11 increases that might follow the merger?

12 A I don't know whether we specifically did or  
13 not. It's my understanding that the model looks at the  
14 routes. I don't think there's any change in prices, if  
15 that's what you're getting at.

16 Q Yes. The question was, did anyone tell all  
17 these people who were doing all this work, don't assume  
18 that we will raise rates when we aren't competing  
19 anymore.

20 A I don't know.

21 MR. KHARASCH: If you give me one second, I  
22 think we will be out of the trenches.

23 JUDGE HOPKINS: Sure.

24 (Pause.

25 BY MR. KHARASCH: (Resuming)



1 Q One last question. Did anybody make notes at  
2 the meeting last week, Wednesday and Thursday, in which  
3 a new route policy was --

4 A Not to my knowledge.

5 Q You didn't?

6 A No.

7 JUDGE HOPKINS: Is that all?

8 MR. KHARASCH: Yes, Your Honor.

9 JUDGE HOPKINS: Thank you.

10 Off the record.

11 (Discussion off the record.)

12 JUDGE HOPKINS: We will continue until 9:30  
13 tomorrow morning.

14 MR. KHARASCH: Your Honor, I did not get the  
15 counsel's exhibits in. May I?

16 JUDGE HOPKINS: Sure. That's right. I forgot  
17 you won't be here tomorrow.

18 MR. KHARASCH: I offer in evidence counsel  
19 exhibits MKT-1, 2, 3, 4, which are affidavits.

20 MR. STEPHENSON: I object to all of those,  
21 Your Honor. None of them were used for purposes of  
22 cross-examination, and I don't think that the ought to  
23 go into the record.

24 JUDGE HOPKINS: What is your reason?

25 MR. KHARASCH: They were used for

1 cross-examination.

2 JUDGE HOPKINS: What is your reason?

3 MR. STEPHENSON: The reason is they weren't  
4 used for cross-examination purposes. They were simply  
5 marked for identification, and he asked the witness  
6 about matters wholly extraneous to that.

7 JUDGE HOPKINS: I'm going to receive them in  
8 evidence. They will be received.

9 (The documents referred to,  
10 previously marked Exhibits  
11 MKT-C-1 through MKT-C-4 for  
12 identification, were  
13 received in evidence.)

14 MR. KHARASCH: I have Exhibit 5. That's just  
15 a tracing of a map. I think the witness can --

16 JUDGE HOPKINS: Any objection to Exhibit 5?  
17 That will be received in evidence.

18 (The document referred to,  
19 previously marked Exhibit  
20 MKT-C-5 for identification,  
21 was received in evidence.)

22 MR. KHARASCH: And Exhibit 6, 7, 8, and 9  
23 which are material produced by the Applicants in the  
24 course of discovery, and they're offered as admissions  
25 against interest.



1 JUDGE HOPKINS: Any objection, Mr.  
2 Stephenson?

3 MR. STEPHENSON: No objection.

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

6 (The documents referred to,  
7 previously marked Exhibits  
8 MKT-C-6 through MKT-C-9 for  
9 identification, were  
10 received in evidence.)

11 JUDGE HOPKINS: We will be in recess then  
12 until 9:30 tomorrow morning.

13 (Whereupon, at 4:50 o'clock p.m. the hearing  
14 in the above-entitled matter recessed, to reconvene at  
15 9:30 o'clock a.m. the following morning, Wednesday,  
16 October 3, 1984.)  
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