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BEFORE THE
INTERSTATE COMMERCE COMMISSION

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In the Matter of: :

SANTA FE SOUTHERN PACIFIC CORPORATION : Finance Docket

- CONTROL - : 30400 et al.

SOUTHERN PACIFIC TRANSPORTATION :

COMPANY :

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Hearing Room A
 12th & Constitution, N.W.
 Washington, D.C.
 Friday, October 26, 1984

The hearing in the above-entitled matter was
 convened, pursuant to notice, at 9:03 a.m.

BEFORE:

JAMES E. HOPKINS,
 Administrative Law Judge

APPEARANCES AS HERETOFORE NOTED

C O N T E N T S

	<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	<u>WITNESS:</u>				
4	Rodman Kober				
5	By Mr. Svolos	3914			
6	By Mr. Baltera		3914		
7	By Mr. Ratner		3923		
8	By Mr. Svolos			3926	
9	Anthony O. Croak, Jr.				
10	By Mr. Smith	3929			
11	By Mr. Baltera		3930		
12	By Ms. Budeiri		3935		
13	By Mr. Smith			3939	
14	Dale H. Crawford				
15	By Mr. Cowell	3942			
16	By Mr. Baltera		3942		
17	By Mr. Ratner		3955		
18	By Mr. Cowell			3963	
19	Jeffrey Werner				
20	By Mr. Cowell	3966			
21	By Mr. Greenberg		3966		
22	By Mr. Ratner		3971		
23	By Mr. Cowell			3984	
24	By Mr. Ratner				3985
25	William Zive				
26	By Mr. Cowell	3987			
27	By Mr. Baltera		3987		
28	By Ms. Budeiri		3995		
29	By Mr. Cowell			4005	
30	J. L. Tompkins				
31	By Mr. Cowell	4008			
32	By Mr. Baltera		4009		
33	By Mr. Budeiri		4014		
34	By Mr. Cowell			4016	
35	Raymond M. Champion, Jr.				
36	By Mr. Lane	4019			
37	By Ms. Kooperstein		4022		
38	By Ms. Madigan		4036		
39	By Mr. Lane			4053	

C O N T E N T S

E X H I B I T S

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P R O C E E D I N G S

1 JUDGE HOPKINS: Let's go on the record.

2 Please call the first witness.

3 MR. WILSON: Your Honor, I have one procedural
4 matter I'd like to raise on the record. The Union
5 Pacific requested a copy of the final output of the Rio
6 Grande trackage rights run about four days ago during
7 cross-examination of our traffic study witnesses. I'm
8 just reporting that that was sent to the Union Pacific
9 yesterday for 10:00 a.m. delivery today, just so that's
10 clear that that matter has been resolved.

11 JUDGE HOPKINS: Thank you.

12 Did the representative of the Union Pacific --
13 have you entered your appearance on the record?

14 MS. WATKINS: Yes, I have, Your Honor.

15 MR. SVOLOS: Your Honor, my name is Gus
16 Svclos. I entered my appearance on the first day.

17 I call Mr. Kober.

18 (Witness sworn.)

19 Whereupon,

20 FODMAN KOBER

21 was called as a witness by counsel Applicants and,
22 having been first duly sworn, was examined and testified
23 as follows:
24

25 DIRECT EXAMINATION

1 BY MR. SVOLOS:

2 Q Would you state your name and business
3 address, please.

4 A Rodman Kober, Continental Grain Company, 277
5 Park Avenue, New York, New York, 10172.

6 Q Did you file a statement in support of the
7 application in this case?

8 A Yes, I did.

9 Q Is it contained in volume SFSP-7, number 47?

10 A It was in the volume I looked at, yes.

11 Q Was that statement prepared by you?

12 A Yes, sir.

13 Q Do you have any changes to make?

14 A No, sir.

15 Q Is it true and correct to the best of your
16 knowledge and belief?

17 A It is.

18 MR. SVOLOS: I tender the witness.

19 JUDGE HOPKINS: Who's going to start?

20 CROSS EXAMINATION

21 BY MR. BAITERA:

22 Q Good morning, Mr. Kober. My name is Victor
23 Baltera and I represent the Kansas City Southern. I'd
24 like to direct your attention to the top of page 5 of
25 your verified statement, please.

1 Do you see where you state the merger is not
2 entirely end to end, in the first line?

3 A Yes.

4 Q What do you mean by "not entirely end to
5 end"?

6 A That part of the plants of the Santa Fe and
7 Southern Pacific, if not in an engineering sense at
8 least in a practical sense, seem to parallel each
9 other.

10 Q And what is the significance of the lines
11 parallel to each other?

12 A Well, one would presume that there is traffic
13 moving on both of those line segments, and one might
14 presume that that traffic is what railroad and shipper
15 perrons might refer to as competitive traffic.

16 Q You also state in that same paragraph that the
17 merged system would face continually effective
18 competition from the UP and the BN systems; is that
19 correct?

20 A Yes, as well as competition from other modes
21 of transportation.

22 Q What do you mean by continually effective
23 competition?

24 A Well, if you separate the western part of the
25 country into three corridors, roughly the northern

1 corridor and a central corridor and a southern corridor,
2 you have the northern -- the Burlington Northern, which
3 has through a number of consolidations in the past 10 or
4 12 years virtually placed itself in the position of
5 being the only effective rail, or the only effective
6 company offering rail transportation in the northern
7 corridor.

8 The same is true with respect to the Union
9 Pacific system in the central corridor. And this would
10 be, I suppose, the closing of that ring by producing the
11 one and hopefully effective system in the southern
12 corridor.

13 Q Are those three corridors competitive for all
14 routes?

15 A In the grain business they are.

16 Q What's the importance of having such
17 competition?

18 A Pricing and service.

19 Q So will the competition -- am I correct in
20 assuming the competition with the UP and the BN will
21 assure reasonable rates and services?

22 A Well, I don't know what you mean by "ensure."
23 They may or may not. It depends on whether both or
24 either are willing to meet whatever truck pricing
25 competition there is, assuming there is truck volume

1 available for loading, and, more importantly, whether
2 they will be competitive with the price leader as far as
3 the transportation of dry bulk commodities and grain
4 specifically, namely the Mississippi waterway.

5 Q In transportation corridors that Continental
6 uses where barge is not available, what modes does
7 Continental use?

8 A Well, generally truck and rail.

9 Q And how do you decide whether to send a given
10 shipment by truck or by rail?

11 A The availability of the logistical capacity at
12 the time you want to make shipment and the price for
13 that service.

14 Q Is length of movement a factor involved?

15 A It is occasionally, but if you're suggesting
16 that trucks operate over small distances, that is not
17 necessarily a categorical response. Trucks can operate
18 over distances as long as 1,000 miles.

19 Q Well, I was just asking if that was a factor.
20 Is the size of the shipment ever a factor, the volume
21 being shipped?

22 A We deal in what I think could be described as
23 huge volumes each day, and the logistical principle is
24 to keep the pipeline full, so volume per se would not be
25 affected.

1 Q Is it fair to say that you believe that rail
2 is a preferred carrier for some movements, while truck
3 is preferred for others?

4 A No, I would not.

5 Q Are motor carriers, then, an adequate
6 substitute in your view for rail for all movements?

7 A Under some circumstances, yes.

8 Q Well, in what circumstances are they not
9 adequate substitutes?

10 A Where there would be insufficient truck
11 capacity to move the volume within the period of time
12 that we would hope to move it in a particular source or
13 supply area.

14 Q So are you saying that where there is adequate
15 truck capacity, then, the two modes are effective
16 substitutes for each other?

17 A Yes, if the price is equal or if the price is
18 right one mode versus the other. That is, one mode is
19 offering a cheaper price than the other mode.

20 Q Has truck always been an adequate substitute?

21 A I would say in my 24 years of experience that
22 would be categorically answered affirmatively.

23 Q Do you need rail at all?

24 A Absolutely.

25 Q And why is that?

1 A Because there isn't enough barge and truck
2 capacity collectively throughout the country to operate
3 the kind of logistical system which the domestic and
4 export grain trade collectively requires.

5 Q So is a major concern, then, a truck capacity
6 problem?

7 A Well, it ebbs and flows, and when it ebbs it
8 certainly is a major concern.

9 Q Is competitive rail service important to
10 Continental?

11 A Yes, it's important, but all rail rates are
12 ultimately controlled by the pricing of similar service
13 on the Mississippi waterway.

14 Q Now, am I to understand from your answer that
15 barge traffic is the control of prices?

16 A It is the price leader.

17 Q Do you have barge available for all of your
18 movements?

19 A Grain is a fungible, which implies that corn
20 is corn and it's grown in many places in this country,
21 and if one has the obligation of shipping, let's say,
22 50,000 tons of grain in a single cargo, one has an
23 option of moving that grain by barge to the center
24 export facilities, or by rail to the North Atlantic
25 export facilities, or by truck and rail to the Great

1 Lakes export facilities, or by rail or truck-barge to
2 the Pacific Northwest facilities, by truck or rail to
3 the Texas Gulf facilities, or by rail to the south
4 California export facilities.

5 Q When Continental makes a decision to -- well,
6 is deciding to locate a new grain elevator, does it
7 consider the availability of rail service?

8 A Absolutely.

9 Q Does it consider the availability of
10 competitive rail service?

11 A Yes.

12 Q And does it prefer to be located where there
13 is competitive rail service?

14 A In a general sense, yes.

15 Q Has Continental ever been offered better
16 service or better rates by one railroad trying to get
17 your business from another railroad?

18 A It happens every day.

19 Q Now, on page 5 again of your verified
20 statement, you speculate -- I guess this is in the last
21 sentence of the first paragraph -- that one or both of
22 the Applicants may not survive without the merger. Do
23 you see that language?

24 A I sure do.

25 Q Is this an important reason to you in

1 supporting the merger?

2 A Yes, and I have to point out that I use the
3 words "highly speculative" because I was trying to be
4 very diplomatic and not trying to hurt the feelings of
5 either Applicant to this proceeding. In fact, I think
6 the record more clearly supports my speculation at that
7 time today.

8 Q Why might one or both of the Applicants not
9 survive?

10 A Well, if you look at the Southern Pacific's
11 operating ratio over the last three quarters, you note
12 that it's approaching 100 percent rather quickly. And I
13 think, for whatever the reasons that are causing that
14 operating ratio to approach 100 percent, it will not
15 survive.

16 Can I give you the systemic reasons why it is
17 approaching 100 percent? No, I can't.

18 Q Is your opinion regarding the continued
19 viability of either of these carriers based on anything
20 you have been told?

21 A By whom?

22 Q By anyone.

23 A Oh, I talk to people about the circumstance,
24 about logistical opportunity and survival and
25 circumstance every day, sure. It's part of my general

1 experience and general interchange with people in the
2 same trade and people in the railroad business that I
3 speak to frequently.

4 Q Is it based on anything you've been told by
5 either of the Applicants?

6 A No, sir.

7 Q If one of the railroads did not survive, how
8 would this adversely affect Continental?

9 A Well, the origins that they serve as local
10 points would obviously be closed down, unless the
11 Federal Government were willing to make an investment to
12 continue that line segment in operation somehow. Any
13 expert facilities that would be located locally on that
14 line obviously would be put out of business unless
15 someone were able to either get the Federal Government
16 to support the operation of the line or were willing to
17 buy it or lease it, as in the case of the Rock Island
18 Railroad.

19 And obviously, everyone in between would be
20 disadvantaged to the extent that they did not have
21 either a replacement service or a competitive service
22 available.

23 Q Why would truck not be an adequate
24 substitute?

25 A Because there isn't enough truck capacity in

1 total able to haul dry bulk commodities throughout the
2 country to replace rail ability to provide the same
3 service where there is rail track and there are rail
4 cars available.

5 MR. BALTERA: No further questions, Your
6 Honor.

7 JUDGE HOPKINS: Thank you.

8 Who's going to be next?

9 MR. GREENBERG: Your Honor, my name is Ed
10 Greenberg, and we will not have any cross-examination of
11 Mr. Kober.

12 JUDGE HOPKINS: Mr. Father.

13 BY MR. RATNER:

14 Q My name is James Father with the Department of
15 Justice. We just have one or two questions for you that
16 weren't already covered.

17 Does Continental Grain move grain into Mexico
18 at all?

19 A Yes, sir.

20 Q What modes are available to move grain into
21 Mexico?

22 A Four: rail shipment; barge through the center
23 Gulf, which can be loaded either on a so-called
24 oceangoing barge or on an ocean vessel; and if the
25 United States and Mexico ever get their political

1 differences worked out, truck deliveries as well, which
2 are not possible today because of the politics which
3 prevent U.S. trucking from entering Mexico.

4 Q So as of now, zero grain moves into Mexico by
5 truck?

6 A That's correct, but that's not to say that
7 there are not truck movements that occur in connection
8 with shipments that ultimately go to Mexico.

9 Q I understand.

10 If Southern Pacific and Santa Fe were to merge
11 and raise their rates or dilute your service in an
12 unsatisfactory manner, is it fair to say that you
13 consider that you have satisfactory forms of
14 transportation you could turn to?

15 A Well, my first problem is with your premise.
16 I don't think the premise is going to occur.

17 Q I understand that. That's why I said if it is
18 the case that after they merge, and after they merge the
19 prices rise or the service is diluted to a point where
20 you found it unsatisfactory. If that were to be the
21 case.

22 A The answer is yes.

23 Q Do you believe you have alternative rail forms
24 of transportation to turn to?

25 A Yes.

1 Q Do you believe that motor carrier is an
2 adequate mode of transportation that you could turn to
3 in such a case?

4 A Once the political matter is straightened
5 out -- and I don't know if or whether that will occur --
6 the answer is yes. The alternative would be to
7 intensify the movement of grain by truck to places like
8 Corpus Christi or Laredo or Brownsville, and transload
9 that grain from truck to railcar for movement across the
10 border, or to an ocean vessel for movement by water to a
11 Mexican port.

12 Q For domestically moved grain, do you feel that
13 motor carrier is an adequate alternative?

14 A It's usually the principal alternative.

15 Q For the grain that currently is moving by rail
16 on Southern Pacific or Santa Fe, what costs would your
17 company have to incur to have that grain moved by
18 truck?

19 A I don't think I understand the question.

20 Q Am I correct in assuming that currently a
21 certain portion of grain that your company produces is
22 moving on Southern Pacific and Santa Fe?

23 A Much more on Santa Fe than Southern Pacific,
24 yes.

25 Q If you were to take all the grain, let's say,

1 that's moving on Santa Fe and stopped using Santa Fe and
2 switched to truck, are there any costs which your
3 company would have to incur in order to make such a
4 switch?

5 A There are no inherent costs in making the
6 switch. The issue would be whether sufficient truck
7 capacity would be available to haul the grain at the
8 Southern Pacific's or Santa Fe's former price or less.

9 Q I understand that. Then it's correct to say
10 that there would be no facilities improvements that you
11 would have to make, no change in loading docks?

12 A That's correct.

13 MR. RATNER: That's all I have. Thank you
14 very much.

15 JUDGE HOPKINS: Any other questions?
16 Redirect?

17 REDIRECT EXAMINATION

18 BY MR. SVOLOS:

19 Q Mr. Kober, responding to questions of Mr.
20 Ratner and Mr. Baltera, you mentioned truck capacity as
21 being one of the factors which influences your judgment
22 in selecting a mode of transportation. Would you
23 elaborate on whether that is a cyclical, temporary
24 phenomenon, or whether it's always present in the
25 market?

1 A Truck capacity is a highly cyclical element.
2 It appears and it will disappear, recognizing that there
3 are many more highways available and trucks can operate
4 on virtually all of them unless there's a specific
5 prohibition, whereas the rails obviously are constrained
6 to operate on trucks, and the barges obviously on a
7 navigable waterway. But it does cycle.

8 Q Would it be fair to state that there is a
9 pendulum effect going on between truck and rail
10 competition in the transportation of grain?

11 A In your area of the country, yes.

12 Q Would you describe how that occurs?

13 A Well, from time to time, just for example,
14 there is a large movement of fertilizer from one of the
15 Gulf ports, Houston for example, back into North Texas
16 and Oklahoma and perhaps southern Kansas. From time to
17 time you will see a large number of trucks appear in the
18 area unloading fertilizer. That's occurring right now,
19 as a matter of fact.

20 And they will generally look for a backhaul,
21 in this case grain. And in some cases, if there are
22 enough trucks and they want to get out of there quickly
23 enough, the price that they are willing to charge could
24 go to below their variable cost level.

25 And then, of course, as those trucks clear out

1 of that market the pendulum swings back to rail
2 loading. And that can repeat itself several times over
3 a given period of time.

4 Q Has that been your experience with Continental
5 over the period of 20 years?

6 A Oh, yes.

7 Q Now, you were asked whether or not you would
8 have satisfactory transportation options in the event
9 that this merger didn't go through. Do you, on the
10 other hand, see positive benefits resulting from single
11 line service which would benefit you if the merger is
12 approved by the Commission?

13 A Oh, absolutely. That's the whole focus of my
14 statement.

15 Q And what are those, specifically?

16 MR. BALTERA: Objection, Your Honor. That
17 goes beyond the scope of cross.

18 JUDGE HOPKINS: I agree. I'll sustain the
19 objection.

20 MR. SVOLOS: I have nothing further.

21 JUDGE HOPKINS: Thank you.

22 You're excused, sir.

23 (Witness excused.)

24 MR. SVOLOS: Your Honor, I move the admission
25 of Mr. Kober's statement.

1 JUDGE HOPKINS: Any objection?

2 (No response.)

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

5 MR. SMITH: Your Honor, I would like to call
6 the next witness, Mr. Anthony O. Croak.

7 (Witness sworn.)

8 Whereupon,

9 ANTHONY O. CROAK, JR.

10 was called as a witness by counsel for Applicants and,
11 having been first duly sworn, was examined and testified
12 as follows:

13 DIRECT EXAMINATION

14 BY MR. SMITH:

15 Q Mr. Croak, will you please state your full
16 name and address for the record?

17 A Anthony O. Croak, Owens-Corning Fiberglass
18 Corporation, Fiberglass Tower, Toledo, Ohio, 43659.

19 Q And you submitted a verified statement in this
20 proceeding that is identified as contained in volume
21 SFSP-11, statement number 282. Do you have a copy of
22 that with you?

23 A I do.

24 Q Is that a true and correct copy of your
25 testimony in this case?

1 A It is.

2 Q Do you have any changes or corrections to
3 make?

4 A I do not.

5 MR. SMITH: The witness is tendered for
6 cross-examination.

7 CROSS EXAMINATION

8 BY MR. BALTEFA:

9 Q Good morning, Mr. Croak. I'm Victor Baltera
10 and I represent the Kansas City Southern.

11 You state on page 3 of your verified statement
12 that Owens-Corning is a substantial user of truck; is
13 that correct?

14 A That is correct.

15 Q How does Owens-Corning decide for any
16 particular movement whether to use truck or rail?

17 A We make that decision based upon economics,
18 service, and the ability of the customer to receive and
19 his desires to receive either truck or rail.

20 Q Do you have some customers who cannot receive
21 one or the other?

22 A That's correct.

23 Q And what are the reasons a particular customer
24 may not be able to receive truck?

25 A Not on the truck, on the rail. Excuse me.

1 Q And are rates an important factor?

2 A Yes, they are.

3 Q What about the volume being shipped in a given
4 shipment? Is that a factor?

5 A At times it is, particularly for a customer.
6 It depends upon his inventories, whether or not he is
7 capable and desirable to take a truck or a rail versus
8 truck quantities.

9 Q Is it fair to say that there are some
10 movements for which you prefer to use rail and other
11 movements for which you prefer to use truck?

12 A Yes.

13 Q Is it fair to say that truck is not an
14 adequate substitute for rail in all cases?

15 A No, it is an adequate substitute.

16 Q It is not an adequate substitute?

17 A It is an adequate substitute.

18 Q Would you be dissatisfied if your only
19 transportation option was truck?

20 A No.

21 Q Why is that?

22 A We would need rail, as I indicated, to be
23 competitive in the marketplace because there are
24 customers that do desire rail. We would like to have it
25 as an alternative from an economic and from a service

1 standpcint.

2 Q When you said that truck is an adequlate
3 substitute, has it always been an adequlate substitute?

4 A Yes.

5 Q Now, the example on page 2 regarding the
6 movement of grouping granules from Corcna to Santa
7 Clara, California, do you see that?

8 A Yes.

9 Q Why don't you avoid the interchange problems
10 there by sending it all by truck?

11 A We prefer to handle the granules by rail
12 because of the facility that we have at Santa Clara. It
13 is easier for us to handle rail movements and it is also
14 more economic.

15 Q And what about the movements described on page
16 3 of clay from Gonzalez to Amarillo?

17 A That movement we moved in '83. We have not
18 moved that to date in 1984. That's an alternative
19 supplier and we have shifted vendors. We are not
20 currently making that move at this time. The last time
21 we did that was in 1983.

22 Q And in 1983 why did you not use truck to avoid
23 the interchange probler?

24 A Again, we like to handle some of our inbound
25 materials, based upon the plant's capacity, by rail. It

1 is easier for them to do that, and it also has economic
2 considerations.

3 Q Do you mean that rail is generally less
4 expensive than truck?

5 A In most instances that I've illustrated here
6 in my statement.

7 Q On page 3 you refer to the importance of
8 maintaining a competitive environment in the rail
9 industry; is that correct?

10 A Yes.

11 Q How is competition in the rail industry
12 important to Owens-Corning?

13 A It provides us with an alternative to the
14 truck and to barge activity, and therefore we prefer to
15 have both competitive environments available to us.

16 Q Do you mean that Owens-Corning would be harmed
17 if it lacked rail competition between rail carriers in a
18 major market where you have substantial traffic flows?

19 A It could.

20 Q Am I correct that you see the extension of
21 single line service as a major benefit of the proposed
22 merger?

23 A Yes.

24 Q And after the merger, will Owens-Corning
25 continue, at least in many cases, to have joint line

1 routes available in competition with the routes provided
2 by the merged carrier?

3 A That will depend upon pricing and service.

4 Q But the actual route will be available, as far
5 as you understand?

6 A As far as I understand.

7 Q If following the merger the merged carrier
8 opted to close gateways or otherwise eliminate a
9 competitive joint line service, Owens-Corning would be
10 restricted to the single line route, would it not?

11 A I would think so.

12 Q Would that situation concern you?

13 A It would concern us if it would eliminate a
14 competitive situation.

15 Q Where you have competitive rail service
16 available presently, how do you choose between rail
17 carriers?

18 A Pricing and service.

19 Q Have you ever had one railroad offer better
20 service or rates to get your business away from another
21 railroad?

22 A All the time.

23 Q Have you ever been told by either of the
24 Applicants that the merger was necessary to prevent one
25 of them from going out of business?

1 A Not in those terms.

2 Q Were you told something that suggested that to
3 you?

4 A I don't recall that being the reason for my
5 statement. That analysis, general analysis, was done by
6 our company.

7 Q The general analysis with regards to what?

8 A With regard to the financial viability of the
9 Southern Pacific.

10 Q And was that analysis based on anything you
11 were told by either of the Applicants?

12 A I don't recall that being a major factor.

13 MF. BALTEFA: Thank you, Mr. Croak.

14 No further questions.

15 BY MS. BUDEIRI:

16 Q Good morning, Mr. Croak. I am Priscilla
17 Budeiri for the Justice Department.

18 Do SF and Sp currently compete to serve any
19 Owens-Corning facilities?

20 A Excuse me. Say that again, please?

21 Q Do SF and SP currently compete to serve any
22 Owens-Corning facilities?

23 A Yes.

24 Q Which facilities?

25 A The Santa Clara plant, Compton, California,

1 Portland. We have several warehouses in Portland.

2 Q What products do the railroads move from those
3 facilities?

4 A Insulation, primarily insulating products.

5 Q Is any specialized equipment necessary to move
6 these insulation products?

7 A No.

8 Q You indicated previously that you used truck
9 as an alternative transportation mode.

10 A That's correct.

11 Q Is truck an alternative mode for moving the
12 insulation products from those three plants?

13 A It is.

14 Q Does truck have adequate capacity to move the
15 products that SF and SP currently move from those
16 facilities?

17 A The finished products, yes, there are
18 sufficient trucks. There are inbound materials that we
19 move by rail primarily, as I have indicated in my
20 earlier comments. I would think that it would be very
21 difficult for truck to handle that. I don't think there
22 is sufficient capacity of truck within the country to
23 handle major inbound moves.

24 Q What are those materials?

25 A Soda ash, borates.

1 Q Is it just that there isn't sufficient truck
2 capacity or is there special equipment that you need for
3 those?

4 A Not really special equipment. It would just
5 be based upon the volumes of that type of material
6 that's required. And I'm assuming that if we didn't
7 have rail, that others along the SP or Santa Fe lines
8 would not have rail also, and therefore that capacity
9 would be used up very quickly.

10 Q Is truck feasible to move those products to
11 the three facilities you mentioned over the distances
12 that you currently use SF and SP?

13 A Some it is certainly a compatible
14 alternative. There are others that we would prefer to
15 use rail.

16 Q Why would you prefer to use rail?

17 A Primarily because of pricing, or it could be
18 the customer's desires.

19 Q Is there a pricing factor having to do with
20 distance?

21 A In some instances there are, but in other
22 instances not necessarily so.

23 Q When is there a pricing factor having to do
24 with distance?

25 A I'm not so sure I can give you a specific

1 instance where one mode is more expensive than the
2 other. In most instances, we use both modes in handling
3 our product delivery, even on transcontinental
4 movements.

5 Q I believe you state in your verified statement
6 that you believe the merger will result in new marketing
7 opportunities for Owens-Corning; is that correct?

8 A That's correct.

9 Q Is truck currently unavailable to provide
10 those new marketing opportunities to you?

11 A No, truck is available also.

12 Q If you were to switch all of your traffic that
13 is currently moving by SF or SP to truck, would you
14 incur any costs in making the switch?

15 A For delivery of the product?

16 Q For any kind of movement of the product.

17 A There would probably -- we would probably
18 incur some construction costs, modifications at the
19 plants for inbound deliveries. I don't think that that
20 would be substantial.

21 MS. RUDEIRI: Okay. Thank you very much.

22 JUDGE HOPKINS: Any other questions?

23 MR. SMITH: Yes, I have one question or two on
24 redirect.

25 REDIRECT EXAMINATION

1 BY MR. SMITH:

2 Q Mr. Croak, you testified about certain plants
3 that received inbound commodities that preferred to use
4 rail. I believe you mentioned soda ash and borates as
5 traffic that tends to move by rail; is that correct?

6 A That's correct.

7 Q Can you describe for us generally what the
8 sources of those materials are, and in particular
9 whether or not there are alternative sources available
10 for such inbound commodities for your plants?

11 A Yes. In soda ash, Green River, Wyoming, is
12 the major source. There is another source in Trona,
13 California, for soda ash, but it is -- it cannot and
14 does not provide the amount of material that Green River
15 can do.

16 There is alternative transportation modes for
17 Trona; truck and rail is both used. Green River,
18 because of the quantities that are required from Green
19 River, truck is really not a viable alternative to
20 rail.

21 Q And the Green River, what railroad is that
22 located on?

23 A Union Pacific.

24 Q And that can move direct Union Pacific, can it
25 not?

1 A To some locations it can. In some locations,
2 it requires another move.

3 Q Okay. Another question, sir: You mentioned
4 the factors that go into the choice of truck versus rail
5 -- rail versus truck or other modes. Can you give us
6 some examples of situations where trucks are used for
7 transcontinental movements or other modes as well?

8 A We have movement of fiberglass mat from our
9 textile plants in South Carolina, Aiken and Anderson,
10 and that is a transcontinental move, or a portion of
11 that is a transcontinental move. We've probably shipped
12 about 20 percent or better, 20 to 25 percent of that
13 product by truck.

14 The remaining goes by rail. So we do have an
15 alternative service, and we do find in many instances
16 that we can get a fairly competitive price from truck to
17 meet the rail price.

18 Q Do you use any ocean carriage?

19 A Yes, we do.

20 Q Transcontinentally?

21 A We use river barging for our asphalt movements
22 coming from the Gulf up the Mississippi into the
23 Cincinnati area. We also have initiated an ocean barge
24 movement of diatomaceous earth out of Colorado by U.S.
25 Lines to Berlin, New Jersey.

1 Q Did that formerly, the diatomaceous earth,
2 formerly move via rail?

3 A Yes, it did. It was almost totally on rail,
4 except for a few truck movements that were required
5 periodically. But because of some rail problems at
6 destination at Berlin, we had to find an alternative
7 economical mode, and U.S. Lines offered us that.

8 MR. SMITH: Thank you. I think that's all I
9 have.

10 JUDGE HOPKINS: Any recross?

11 (No response.)

12 MR. SMITH: I move the admission of Mr.
13 Croak's verified statement.

14 JUDGE HOPKINS: Any objection?

15 (No response.)

16 JUDGE HOPKINS: Hearing none, it will be
17 received.

18 You're excused.

19 (Witness excused.)

20 MR. COWELL: Applicants call now Mr. Dale
21 Crawford.

22 (Witness sworn.)

23 Whereupon,

24 DALE W. CRAWFORD

25 was called as a witness by counsel for Applicants and,

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

3 DIRECT EXAMINATION

4 BY MR. COWELL:

5 Q Would you please state your name and business
6 address for the record, please, sir?

7 A My name is Dale W. Crawford. My business
8 address is 4800 Fournace, F-o-u-r-n-a-c-e, Place,
9 Bellaire, B-e-l-l-a-i-r-e, Texas, 77401.

10 Q And do you have in front of you a copy of the
11 three-page verified statement filed in support of the
12 Santa Fe-Southern Pacific application, which is
13 designated 153 in SPSP-9?

14 A Yes, sir.

15 Q Do you have any corrections to make to that
16 statement?

17 A No, sir.

18 Q Is the statement then correct to the best of
19 your knowledge and belief?

20 A Yes, sir.

21 MR. COWELL: The witness is available for
22 cross-examination.

23 JUDGE HOPKINS: Mr. Baltera.

24 CROSS EXAMINATION

25 BY MR. BALTERA:

1 Q Good morning, Mr. Crawford. My name is Victor
2 Baltera and I represent the KCS.

3 What facilities does Texaco Chemical have that
4 are served by rail?

5 A We have a plant at Port Neches, Texas, which
6 is served by your client. We have another plant at Port
7 Arthur, Texas, which is served jointly by the Southern
8 Pacific and the Kansas City Southern. We have another
9 plant at Conroe, Texas, which is served exclusively by
10 the Santa Fe.

11 We have a semi works and laboratory in Austin,
12 Texas -- or in Abercrombie, Texas, which is served by
13 the Southern Pacific. We have recently acquired two
14 additional facilities: one in Eldorado, Kansas, which
15 is served by Santa Fe and Missouri Pacific or Union
16 Pacific; and another one in Bayhold, Delaware, which is
17 served by Conrail.

18 Q Do you ship by any modes other than rail?

19 A Yes.

20 Q What other modes do you use?

21 A For our drum traffic we use motor carrier, we
22 use bulk highway transportation in some instances, and
23 we use barge, as well as deep sea vessel.

24 Q And from which facilities do you use non-rail
25 modes?

1 A That comes out of our Port Neches and Port
2 Arthur facilities. They are both located adjacent to
3 deep water facilities.

4 Q How does Texaco Chemical decide which
5 transportation mode to use for any given shipment?

6 A Well, it depends on what the shipment is.
7 Generally, we attempt to utilize rail where possible,
8 for simple economics. We have those situations,
9 however, where customers can't wait for rail delivery.
10 That means then that we have to go by tank truck.

11 A As a general rule, we keep as much of our bulk
12 material on the rails and on the water as possible.

13 Q Are factors other than simple economics
14 important in that decision?

15 A Service comes into that decision in many
16 cases. Particularly now with the AJTD theory or CANBAN,
17 whatever you prefer to call it, service does have a
18 great bearing on decisions as to what your vote is going
19 to be.

20 Q What do you mean by the "AJTD"?

21 A That's adjusted time delivery.

22 Q Do safety factors influence the decision to
23 ship hazardous chemicals by rail rather than truck?

24 A Very definitely.

25 Q And what is that consideration?

1 A Well, we feel that rail is the safest form of
2 transportation, and for that reason we try to move as
3 many hazardous materials by rail and keep them off the
4 highways.

5 Q Do shipper investments in special facilities
6 for rail movements limit the effectiveness of truck as a
7 competitor?

8 A Not particularly, because we have considerable
9 investments in truck facilities, truck loading
10 facilities, as well as rail.

11 Q What destinations do you ship to out of your
12 Texas facilities?

13 A We go all over the U.S. We sell the market
14 and ship to practically every state in the continental
15 United States, as well as Canada and Mexico.

16 Q Do you feel that truck or any other
17 alternative mode is an effective competitor for rail?

18 A For my company, bulk highway transportation is
19 not an effective competitor. As far as our company is
20 concerned, the railroads' biggest competitor is water
21 transportation.

22 Q Is water transportation available for the
23 majority of your movements?

24 A Yes. As I said, Port Arthur and Port Neches
25 are both located in deep water facilities.

1 Q What about from your other facilities?

2 A We don't have deep water at the Conroe plant.
3 Rayhold, Delaware, I understand is located on the
4 water. That's a new facility that I know little about
5 because we just got it.

6 Q Do you ship by water from Port Arthur and Port
7 Neches to all 48 states?

8 A No. What we do is we take material by barge
9 up the Mississippi and Illinois system and store it in
10 Chicago, in the Chicago area. From that point, then,
11 it's distributed over a geographical area, you know,
12 whatever the economics dictate.

13 That's how we're going to do it. We go around
14 to the East Coast and we go around to the West Coast by
15 water, and we sometimes go as far north as Minnesota by
16 barge.

17 Q What percentage of your shipments to southern
18 California are by rail?

19 A The majority of the shipments to southern
20 California would be by rail.

21 Q You state on page 3 -- actually, I guess it's
22 page 2, the last page of your statement -- that the
23 merger will create a new competitive force in the
24 transcontinental area; is that correct?

25 A I think it is.

1 Q What do you mean by that?

2 A I mean that with the merger of the Santa Fe
3 and the Southern Pacific, you will then have the one
4 strong carrier that can compete effectively with the
5 Burlington Northern and the Union Pacific system, all
6 the way up the southern transcontinental route, all the
7 way into the Northwest, as well as a very effective
8 competitor for your Midwestern gateways.

9 Q Do you have a concern of the viability of
10 either of the Applicants?

11 A No, sir.

12 Q What rail competition would you have in the
13 southern corridor between Texas, say, and southern
14 California?

15 A We will not have any additional rail
16 competition in the southern corridor. However, water
17 competition still remains, and I might add that there is
18 now a parcel tanker that is available and another parcel
19 tanker will be available within a year, that will be
20 available for West Coast water movements or whatever the
21 case may be.

22 Q Does Texaco Chemical consider the availability
23 of competitive rail service an important aspect?

24 A Well, yes.

25 Q Why is that?

1 A Well, the same as in your normal marketplace.
2 The more people you have competing for a market, the
3 better off we feel that the shippers are going to be.

4 Q Do Santa Fe and Southern Pacific presently
5 compete for your business?

6 A For transcontinental traffic, they do.

7 Q Out of which facilities?

8 A The Port Neches, Port Arthur, and Conroe
9 plants -- correction, not Conroe. That is served
10 exclusively by the Santa Fe.

11 Q Do marketing managers from each of those
12 railroads pay visits on Texaco Chemical?

13 A Yes.

14 Q How has that affected your rates, if any?

15 A Now, exactly what do you mean, how has it
16 affected my rates?

17 Q Has the competition -- well, let me ask you,
18 has the competition between Santa Fe and Southern
19 Pacific affected the rates that you have obtained on
20 rail traffic?

21 A There's no question that, with the two
22 carriers running the same southern corridor, there's no
23 question that the rates have stayed at a rather steady
24 level. There's no doubt about that.

25 Q And how about your service? Has that been

1 affected as well?

2 A Our service by both carriers going west is
3 good service. Not only going west but going anywhere,
4 by those two carriers, we get good service.

5 Q And has this been a situation where both rail
6 carriers were underpricing other modes?

7 A No. The Santa Fe and the SP as far as our
8 company is concerned have not come in with
9 price-cutting, if you will. That has not happened.
10 They have, however, in the past established rates to the
11 West Coast to meet the water competition.

12 Q Is it fair to say that, despite Texaco's
13 support of the merger, that you do have concerns about
14 possible anti-competitive effects of the merger?

15 A I think the term that we use is
16 pro-competition rather than anti-competitive.

17 Q Well, do you have concerns with the state of
18 competition after the merger?

19 A There's no real concern in our company on that
20 aspect.

21 Q Are you familiar with the comments filed by
22 Mr. Herrick of Texaco in this proceeding?

23 MR. COWELL: Objection, Your Honor. That's
24 beyond the scope of the witness' verified statement.

25 JUDGE HOPKINS: It's perfectly all right to

1 ask him the question of whether he's cognizant of the
2 statement.

3 You can answer.

4 THE WITNESS: I know that Mr. Herrick, who is
5 manager of of our distribution division and our
6 transportation manager, prepared a statement.

7 BY MR. BALTERA: (Resuming)

8 Q Are you familiar with the substance of that
9 statement?

10 A I do not know the entire content of that
11 statement. I read it -- I beg your pardon. I read it
12 twice, once after it was mailed and once just recently.

13 Q Is it fair to say, if you are able to tell me,
14 that Texaco expresses concerns in those written comments
15 with the effect of the merger?

16 MR. COWELL: Objection, Your Honor. The
17 witness has said he hasn't been involved in the
18 preparation of that statement. He's just read it.

19 JUDGE HOPKINS: He didn't ask him that
20 question.

21 Go ahead.

22 THE WITNESS: Would you repeat?

23 BY MR. BALTERA: (Resuming)

24 Q If you're able to tell me, is it fair to say
25 that Texaco expresses concerns that it has with the

1 possible effects of this merger in those written
2 statements, in the written statement?

3 JUDGE HOPKINS: If you know.

4 THE WITNESS: To my knowledge, we have not
5 expressed what I consider concern for what might happen
6 after the merger. From what I remember of Mr. Herrick's
7 statement, it's very much, as I recall, similar to my
8 own statement. I think both statements talk
9 considerably about competition.

10 BY MR. BAITERA: (Resuming)

11 Q Do you support competition in the rail
12 industry?

13 A We support competition everywhere.

14 Q Do you believe that the Santa Fe-Southern
15 Pacific merger has parallel aspects to it?

16 A Would you repeat that, now?

17 Q Do you feel that the proposed merger has
18 parallel aspects to it?

19 A Parallel aspects? What exactly do you mean?

20 Q Do you believe it has anti-competitive aspects
21 to it?

22 A I do not believe it has anti-competitive
23 aspects about it.

24 Q Is it important to you to keep competition out
25 of, say, the Port Arthur facility, say, available?

1 A Yes.

2 Q Are you aware of the cancellation of any joint
3 rates by any rail carriers?

4 MR. COWELL: Objection again, Your Honor.
5 That has nothing to do with this verified statement or
6 this merger.

7 MR. BALTERA: Well, Your Honor, I think the
8 question of cancellation of joint rates --

9 JUDGE HOPKINS: It's all concerned with the
10 possible anti-competitive aspects. I'll allow the
11 question.

12 THE WITNESS: The rate, the situation, the
13 item to which you are referring, if I'm not mistaken, is
14 item 1514, which is found in transcontinental tariff
15 3,001. Some time in September -- I do not recall the
16 exact date -- the Santa Fe published or mailed a letter
17 saying they were going to withdraw their participation
18 in the routes in that particular rate item.

19 Since that time, the Santa Fe's marketing
20 people -- as a matter of fact, October 23rd they were in
21 my office. We discussed this situation. That
22 cancellation has been postponed and the Texaco Chemical
23 Company and the Santa Fe Railroad are now in the process
24 of negotiating and working out what we're going to do
25 with that rate.

1 BY MR. BALTERA: (Resuming)

2 Q Where was that proposed closure --
3 cancellation, rather?

4 A Where was it? It was going the
5 transcontinental territory to southern California.

6 Q How would cancellation of that have affected
7 Texaco Chemical?

8 A It would have increased our cost.

9 Q And why is that?

10 A Well now, this is going to take a while. It
11 would have increased our cost for this reason. In going
12 back to 1975, on the transcontinental application 11875
13 which established those rates, they were established to
14 meet an annual volume situation that the Missouri
15 Pacific, as I recall, had instituted from Freeport and
16 Texas City, Texas.

17 At the outset of that proceeding, the basis
18 for the rate reduction was "water competition." We did
19 not get involved at that point. However, when Keystone
20 Shipping Company, who at that point in time had been
21 moving traffic for Dow Chemical from the Freeport,
22 Texas, plant around to the West Coast, filed their
23 petition for suspension, and in that petition for
24 suspension Keystone pointed out very vividly that those
25 rates were not -- were worse than water rates, that they

1 were actually 17 percent lower than water-compelled
2 rates, at that point we were no longer competing against
3 a bona fide competitive situation as far as water or
4 annual volume rates were concerned.

5 We then went to the railroads and were able to
6 convince them to establish rates the same as the annual
7 volume rates, but on a single car basis to the West
8 Coast. Those rates were published in item 1560 of
9 Transcontinental 3,001, and those rates are still in
10 that tariff.

11 Item 1560 was published with a tankcar mileage
12 payment holddown to the maximum of 19.44 cents per
13 mile. At that point in time, that mileage holddown was
14 nil, because the most you could get on tankcar mileage
15 was about 25 or 26 cents per loaded mile. Therefore,
16 the difference that we were giving up in the earned
17 mileage payments, as opposed to the reduction in rates,
18 we had no concern about that.

19 Item 1514 is published about 12 cents per
20 hundred higher. Those rates were established as a
21 result of action by the Southern Pacific to protect
22 shippers in Louisiana, the alamine, the placamine tap,
23 and some other points over there. Those rates are 10 or
24 12 cents higher than item 1560. However, they do
25 provide for full mileage payments.

1 Therefore, when you are moving a tankcar that
2 will draw or earn 98 cents a mile it's much more
3 feasible to go on item 1514 rates and pay 12 cents per
4 hundred more, but get your full mileage paid out.

5 MR. BALTEPA: Thank you, Mr. Crawford.

6 JUDGE HOPKINS: Mr. Ratner, are you going to
7 question?

8 MR. RATNER: I have a few questions.

9 BY MR. RATNER:

10 Q My name is James Ratner. I'm with the United
11 States Department of Justice.

12 You may have already explained this, but now
13 I'm a little bit unclear and let me ask you a question
14 to try and clear it up. Are you testifying that it is
15 the position of your company that there are no
16 anti-competitive implications of the Santa Fe-Southern
17 Pacific merger involving Texaco Chemical traffic?

18 A That's correct, and I'll tell you why. There
19 is very effective water competition from the Texas and
20 Louisiana Gulf to the West Coast. That takes care of
21 that segment of it.

22 There is very effective rail competition
23 already in position through the Midwestern gateways and
24 back to the East. For that reason, those two reasons,
25 there is water competition available to the East Coast.

1 For those reasons, I don't see where there's going to be
2 a problem with competition.

3 Q I understand that you don't. Is that the
4 position of your company as well?

5 A Yes.

6 Q Is it the position of your company that this
7 merger should be approved only with conditions?

8 A I have not seen anything in writing submitted
9 by any officer of our company that states that we
10 approve with conditions.

11 Q Is your response no or I don't know?

12 MR. COWELL: Your Honor, I object to this line
13 of questions about conditions. That's a whole separate
14 phase of the case, and this witness is sponsoring --

15 JUDGE HOPKINS: I'll allow the objection --
16 I'll allow the question. Objection overruled.

17 BY MR. RATNER: (Resuming)

18 Q Is it the position of your company that this
19 merger should only be approved with some sort of
20 conditions?

21 A No. The statement that you're reading from,
22 that you're looking at, that's Mr. Herrick's statement,
23 I assume. If you read that statement close, that is a
24 pro-competition statement. That's not an --

25 Q Mr. Crawford, I'm not referring to any

1 statement. I'm not reading from any statement. I'm
2 just trying to understand for the Department of Justice,
3 so that the record will be clear on what the position of
4 Texaco Chemical is.

5 And am I correct in saying, it is not the
6 position of Texaco Chemical that the merger should only
7 be approved with conditions of some sort?

8 A No, we're not saying that. Simply to say that
9 we believe in competition is not saying we believe in
10 constraints.

11 Q Would you describe any of the shipments to and
12 from Texaco Chemical as shipments that are rail
13 captive?

14 A Rail captive? Are you asking me if that's the
15 only possible way that we can move it? If that's the
16 question, no, we're not captive.

17 Q Well, I am asking the only possible way to
18 move it, with the implicit assumption that if something
19 could be moved by airplanes but it will cost an awful
20 lot of money, that that is not a viable alternative.

21 A We can move our material by other modes. It
22 will cost more money, there's no doubt about it. We can
23 move bulk material by highway transportation. It's much
24 more expensive.

25 Q Can you give me a feel for how much more

1 expensive?

2 A I'll just throw out one quick example. The
3 rates that Mr. Baltera and I discussed a moment ago to
4 the West Coast, I can move out there on a 182,000 pound
5 minimum ethylene glycol, it costs me \$2.35 per hundred.
6 I can go to the West Coast by tank truck on a "backhaul"
7 rate at seven dollars.

8 Q Do you happen to know what the front haul rate
9 would be?

10 A No. But you know, if you'd like to hear my
11 estimation, coming East out of California I would say it
12 would run at least \$8.75 per hundred. The reason I'm
13 not that familiar with those rates is I don't buy
14 anything from the West.

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1 Q Would you describe any of the shipments coming
2 to and from Texaco Chemical as rail captive, either
3 through the characteristic of the commodity or because
4 there is no cost feasible alternative?

5 A We only have one product that is captive to
6 rail because of the nature of the product, and that is
7 ethylene oxide.

8 Q Why is that rail captive because of the nature
9 of the product?

10 A It is an extremely explosive product.

11 Q It is unsafe to be carried on the highways?

12 A It cannot be transported DOT nor will any
13 state regulatory body allow the transportation of
14 ethylene oxide in bulk on the highways.

15 Q If you could describe for me if there are any
16 commodities that are rail captive because other
17 alternative modes are not cost effective?

18 A Because other alternative modes are not cost
19 effective? Well, we move all of our bulk material, not
20 all of it, but we move a large portion of our bulk
21 material to our storage facilities in the midwest. That
22 is captive, if you want to consider it that way. That is
23 captive because of the transportation costs.

24 A We are not about to take it out of rail and
25 put it in a tank truck and transfer inventory, so I

1 guess you could say that is captive to rail, because of
2 the economics.

3 Q Only if you know, do you have an estimate of
4 the difference in cost for that particular commodity,
5 that particular movement between truck and rail?

6 A The rate on ethylene glycol to Chicago, and
7 don't hold me to it, but I think it's about \$1.90 now.
8 A tank truck rate will run you in the \$5 range.

9 Q Are there any commodities that move to or from
10 Texaco Chemical which are predominantly moved by rail
11 because the length of haul makes truck too expensive?

12 A Oh, yes. We buy material from plants in
13 Pennsylvania that move by rail, absolutely.

14 Q Is it not cost effective to take those
15 movements by truck?

16 A No, it is not cost effective to move by
17 truck. No way.

18 Q Could you briefly describe for me what
19 materials you had in mind?

20 A We buy lubricating oil additive from Whitco
21 Chemical Company at Petrolia, Pennsylvania. That comes
22 down in -- that comes in twenties, 20,000-gallon tank
23 cars at \$3.23 per hundred. The tank truck rate even on
24 a back haul basis is going to run \$4.

25 Q Are there any other materials that move such

1 long distances that motor carrier is not a feasible
2 alternative?

3 A We also buy tetel methacrylic acid in Bell,
4 West Virginia, that moves by rail because motor carrier
5 is not cost effective.

6 Q Is water carrier a cost effective mode for
7 movement of either of those commodities?

8 A I don't think water would be a factor as far
9 as Petrolia, Pennsylvania, is concerned. I don't think
10 Petrolia is adjacent to water transportation. However,
11 in the Kanab Valley, that methacrylic acid could move
12 by barge. However, we do not buy in sufficient
13 quantities to warrant barge movements, but from a simple
14 geographic standpoint, is it on water? Yes, it can move
15 by water.

16 Q Given the quantities you purchase, is there a
17 difference between what it would cost to move by barge
18 and what it would cost to move by rail?

19 A The only way I can answer that question is to
20 just tell you that barge would be cheaper. I have no
21 idea what the barge rate would be. You know, I am not
22 conversant with barge rates. I do know they are
23 considerably cheaper.

24 Q Okay. I understand this is not your field of
25 expertise, but if you can help me out, if it is cheaper

1 to move by barge, why are you moving it by rail instead
2 of by barge?

3 A Because we don't buy in barge load
4 quantities. When you are talking barge load, you are
5 not talking 20,000 gallons. You are talking 1,500 tons
6 and up, and that is a lot of material, and we don't have
7 storage facilities to handle that much material at one
8 time.

9 Q A barge wouldn't move the small quantity as
10 far as you know? A barge wouldn't move the small
11 quantity that you wish to ship?

12 A No.

13 Q Could you answer no instead of just shaking
14 your head?

15 A Pardon me.

16 Q I asked you if barge lines wouldn't move that
17 small quantity that you shipped, and you just shook your
18 head.

19 A I am sorry. I beg your pardon.

20 Q The answer is, no, they would not?

21 A The answer is no.

22 Q Thank you.

23 On Page 2, the last page of your testimony,
24 you indicate that the merger will provide single line
25 access to additional gateways such as St. Louis, New

1 Orleans, Memphis, and Chicago from both origins, which
2 will be an aid in opening new markets.

3 Do you see that?

4 A Yes.

5 Q Is there any barge or motor carrier
6 alternative right now that would enable you to open new
7 markets in those areas that you have referred to?

8 A Not that I am aware of.

9 MR. RATNER: That is all I have. Thank you
10 very much, Mr. Crawford.

11 JUDGE HOPKINS: Any questions?

12 MR. COWELL: A few redirect questions.

13 REDIRECT EXAMINATION

14 BY MR. COWELL:

15 Q Mr. Crawford, when you were responding to Mr.
16 Ratner's question about movements between Texas and
17 Southern California, I believe you quoted a \$2.45 rail
18 rate. Is that right?

19 A Yes.

20 Q Would the water rate -- well, let me ask a
21 foundation question. Would water transportation also be
22 available to you?

23 A Yes.

24 Q Do you have any idea how the water rate would
25 compare to the rail rate?

1 A Again, I can only say that I know that it is
2 cheaper. I could not give you a specific example. The
3 last account I heard, water transportation, depending on
4 what you are lifting, the size that you are lifting,
5 water transportation, as I recall, was in the \$30, \$35
6 per ton range.

7 Q It is your view, though, that it would
8 generally be less than the rail rate?

9 A Yes.

10 Q Mr. Ratner also asked you about various
11 movements you have to the midwest and the east. Do you
12 have rail transportation options available on that
13 traffic?

14 A Yes.

15 Q Do you have a number of rail transportation
16 options available?

17 A Well, from the Port Arthur facility, as an
18 example, we have KCS as well as the SP. We have, of
19 course, only the KCS from Port Neches, Texas, and Santa
20 Fe from Conroe.

21 Q Would the merger adversely affect any of those
22 rail transportation options you have today on traffic
23 moving to the midwest and the east?

24 A The merger will not have any effect as far as
25 route changes are concerned. By that I mean we are not

1 changing routes for the simple sake of changing routes.
2 That business which Kansas City Southern now enjoys, the
3 Kansas City Southern will continue to enjoy. That
4 business that the Santa Fe now enjoys -- I mean, it is
5 not going to cause wholesale route changes.

6 MR. COWELL: Thank you. No further
7 questions.

8 JUDGE HOPKINS: Any further questions?

9 (No response.)

10 JUDGE HOPKINS: You are excused, sir.

11 (Witness excused.)

12 MR. COWELL: I move the admission of Mr.
13 Crawford's statement.

14 JUDGE HOPKINS: Any objection?

15 (No response.)

16 JUDGE HOPKINS: It will be received in
17 evidence. Call the next witness.

18 MR. COWELL: The next witness is Mr. Jeffrey
19 Werner from Chaparral Steel.
20 Whereupon,

21 JEFFERY WERNER

22 was called as a witness, and having been first duly
23 sworn, took the stand, and was examined and testified as
24 follows:

25 DIRECT EXAMINATION

1 BY MR. COWELL:

2 Q Would you please state your name and business
3 address for the record, please?

4 A My name is Jeffry Werner, with Chaparral Steel
5 Company, located at 300 Ward Road in Midlothian, Texas.

6 Q And you have in front of you a six-page
7 verified statement you submitted in support of the Santa
8 Fe-Southern Pacific merger application, designated
9 number 34 in Volume SFSP-7?

10 A Yes, I do.

11 Q Do you have any corrections to make to that
12 statement at this time?

13 A No, I don't.

14 Q Is the statement then correct to the best of
15 your knowledge and belief?

16 A Yes, it is.

17 MR. COWELL: The witness is available for
18 cross examination.

19 JUDGE HOPKINS: Are you going to question, Mr.
20 Greenberg?

21 MR. GREENBERG: Yes, Your Honor. Thank you.

22 CROSS EXAMINATION

23 BY MR. GREENBERG:

24 Q Good morning. My name is Ed Greenberg,
25 representing the MKT.

1 Can you please tell me, sir, what railroads
2 serve you in Midlothian?

3 A What railroads?

4 Q Yes, what railroads are local to your plant?

5 A We have the Santa Fe is the main line service
6 to our plant, and we utilize the Santa Fe. Of course,
7 they are a 100 percent supplier to us, but we also use
8 other carriers for delivery to our customers besides the
9 Santa Fe.

10 Q Does the Southern Pacific also come into
11 Midlothian?

12 A No, they don't, not directly into our plant.

13 Q But they do come into the city limits of
14 Midlothian?

15 A Not that I am aware.

16 Q Are you served on any inbound traffic moving
17 into your facility by the MKT?

18 A Yes, I believe we are.

19 Q Can you tell me what kind of traffic the MKT
20 currently moves for you?

21 A Well, I know that we have inbound raw material
22 comes from them.

23 Q And inbound raw material, will that be scrap
24 iron?

25 A Yes.

1 Q Do you know where that traffic originates?

2 A I am not personally that familiar with all the
3 points of shipment to our plant. I know Oklahoma is a
4 point which we get some movement from that comes from
5 the Katy, but I don't know all the other points.

6 Q Is it correct to say from reading your
7 statement that one of the reasons you are supporting the
8 merger is because it offers single line service to you?

9 A Yes, it is.

10 Q Is single line service important?

11 A Well, we have found that it has been the most
12 competitive for us in long haul shipments. We do market
13 our steel in virtually all the states in the country,
14 particularly as you move into those regions which
15 require several railroads to be involved in the
16 movement. The rates are so high they are not
17 competitive with truck.

18 Q Is that also a factor with respect to your
19 acquisition of scrap iron from your source of supply as
20 you have been moving into the Midlothian facility?

21 A I understand that it is.

22 Q Are you familiar with the MKT's trackage
23 rights application in this proceeding?

24 A I am not in detail familiar. I understand
25 that they have or are requesting trackage rights, yes.

1 I don't know the details.

2 Q Are you aware that one of the trackage rights
3 that the Katy is requesting is to be able to serve the
4 city of Midlothian?

5 A Well, I know it is specifically to service
6 Chaparral, but okay, yes.

7 Q Would those trackage rights be useful to you?

8 A I don't see where it would be. At this point
9 we don't know what immediate benefit would result, but
10 we certainly would welcome all the possible alternatives
11 to additional carriers on an outbound or inbound basis.
12 But with the system as we know it, basically it is so
13 similar to what the Santa Fe has that we don't see a
14 great deal of additional benefit, but there may be.

15 Q Would those trackage rights provide the
16 benefit of single line service from sources of supply
17 that are now local to the Katy?

18 A Would you repeat that? Would it provide
19 single line service that we don't have?

20 MR. COWELL: Your Honor, once again, this has
21 to do purely with the MKT's trackage rights request, and
22 not with Mr. Werner's statement.

23 MR. GREENBERG: Your Honor, the question that
24 was asked, the testimony talks about the benefits of
25 single line service, and now I am just asking whether or

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1 not single line service is beneficial. Is it beneficial
2 for carriers besides the Southern Pacific?

3 JUDGE HOPKINS: That is a good way to get
4 around it. I will allow it.

5 BY MR. GREENBERG: (Resuming)

6 Q If the MKT was able to obtain single line
7 service to serve your facility at Midlothian, would that
8 be beneficial to you?

9 A As I am generally aware of the points that you
10 reach from an outbound basis, not terribly, because
11 those points are already serviced strongly by motor
12 carrier very competitively, if not more competitively
13 than rail.

14 Q Perhaps I wasn't quite clear enough. The
15 question actually was intended to direct your attention
16 to inbound traffic, scrap iron, that is now served from
17 Katy points.

18 A I have to plead a little bit of ignorance in
19 that area in that I am not involved directly in that
20 area or vice president of raw materials, so I don't
21 know, I guess, enough about it to answer probably as
22 well as I should.

23 MR. GREENBERG: Fair enough. No further
24 questions. Thank you.

25 JUDGE HOPKINS: Mr. Batner?

1 BY MR. RATNER:

2 Q My name is James Ratner. I have a few
3 questions. I am from the Department of Justice.

4 Does Chaparral Steel have any facilities
5 besides the one at Midlothian?

6 A No, that's the only one.

7 Q Concerning movements to the southeast from the
8 Midlothian plant, does Santa Fe and Southern Pacific
9 compete for any of those movements?

10 A To the southeast? I am not familiar on a
11 detailed basis. I know that to go to the southeast, the
12 Southern Pacific opens up opportunities for us to get
13 into the southeast whereby now we have two or three
14 interchanged carriers, and by utilizing their trackage
15 system, that was why we liked the merger concept. It
16 would eliminate another party involved in the movement
17 of material, which tends to increase the cost.

18 Q As of right now, do the Santa Fe Railroad and
19 the Southern Pacific Railroad propose alternative
20 methods for moving shipments to the southeast?

21 A I don't know if it is really alternative
22 methods. More expeditious methods -- I mean,
23 alternative to truck. I'm not sure I --

24 Q Is it fair to say that one way you could move
25 materials to the southeast would be by a method using in

1 whole or in part a Santa Fe movement, and that a
2 different method of moving materials to the southeast
3 would use Southern Pacific in whole or in part?

4 A I probably don't know enough of the detail of
5 all of their routing systems, to be very honest with
6 you. I know to the west the Southern Pacific offers
7 that benefit. I do know that distinctly to the western
8 region.

9 Q If you don't know to the southeast, that is
10 fine. I would like to focus on the southeast at first,
11 and then we will move to the west in the second.

12 A Okay. The southeast I know has some routings
13 the Southern Pacific has that the Santa Fe doesn't
14 have. So where it is, you know, faster service, we will
15 use one over the other.

16 Q Okay. I will make one more attempt at this,
17 and then maybe we will move on. All I am asking is, if
18 we have a choice of how to get something to the
19 southeast from your plant, are you ever making a choice
20 between moving it on Santa Fe and moving it on Southern
21 Pacific?

22 A I guess I can't specifically answer that,
23 because I am not involved in the direct scheduling.

24 Q All right. Thanks. Do you know where in the
25 southeast the steel products are transported to from

1 your plant?

2 A We essentially deliver steel to all of the
3 southeastern states, all the way to the eastern
4 seaboard.

5 Q What modes besides rail are used to transport
6 your product to the southeast?

7 A Motor carrier.

8 Q Do you have any idea of the percentage of
9 material that is moved to the southeast by motor carrier
10 as opposed to the percentage moved by rail?

11 A I don't know the percentage. I know that it
12 is a majority, over 50 percent motor carrier.

13 Q Does the usage of motor carrier vary by the
14 length of the haul?

15 A Very definitely.

16 Q How so?

17 A There is a premium in terms of the rate on an
18 overlength as compared to conventional length legal and
19 overlength. The break is about 45 feet, if I am not
20 mistaken. Once the length of our material exceeds 45
21 feet, the rate goes up about 25 percent because of the
22 added cost of the carrier's equipment and permits and
23 what have you.

24 Q I see I have stumbled into a term of art in
25 your industry. When I said length of haul, I

1 unfortunately wasn't referring to product. I was
2 referring to distance. I am sorry.

3 A Distance. Okay.

4 Q This is interesting, however. Maybe I will
5 just follow up on that for a moment. What you are
6 telling me is that for particular commodities that are
7 longer, in the physical aspect of the commodity, are
8 longer than 45 feet, it is more costly to move it by
9 motor carrier than by rail?

10 A Not in all cases. It depends on the rate per
11 mile and how competitive the motor carrier chooses to be
12 with the rail, and so the longer the distance, it is
13 more likely that the motor carrier will be less
14 competitive on a delivered basis, but not in all cases.
15 It depends so much on the carrier and his back haul
16 situation and those ingredients.

17 Q If you know this, and I understand it may not
18 be within your field of expertise, but if you know,
19 could you give me an evaluation of a typical motor
20 carrier rate and a typical rail rate for the type of
21 commodity which you described as overlength?

22 A Conventional length? To where? I mean, which
23 part of the country? How far?

24 Q To the southeast.

25 A I am not aware right offhand. I can't give

1 you a specific rate comparison. I can only state in
2 general terms that motor carrier rates on conventional
3 length material is for the most part as competitive or
4 more competitive than rail due to the fact that we have
5 so many rail carriers involved in the movement of our
6 goods to the final destination.

7 Q You said before that the truck rate may vary
8 depending on the backhaul. Is that right?

9 A Yes.

10 Q Could you explain for me a little bit why that
11 is and what you meant by that?

12 A Well, I think it is fairly common knowledge in
13 the transportation industry that the key to successful
14 operation is the ability, whether it is rail cars or
15 truck, to keep them on the road as much as possible.

16 If you have an outbound movement and that
17 carrier does not have a turnaround for that piece of
18 equipment from that general area in a reasonable time
19 frame, it is not utilizing that equipment to its fullest
20 capability, and so they, I am sure, somehow have to work
21 that into their rate structures, so that it depends on
22 where that carrier is domiciled and the extent of his
23 fleet.

24 So, this is at least how it is explained to us
25 how it works.

1 Q So, as you understand it, then, a backhaul
2 rate is often lower than a front haul rate?

3 A Well, because we are not concerned with that
4 backhaul rate, the assumption can be true in what you
5 are saying, but that is what dictates what they probably
6 will charge us for the outbound movement.

7 Q And if you know, is it fair to say that the
8 availability of a backhaul may dictate the level of the
9 front haul rate as well?

10 A I would say yes.

11 Q Does the shipment of your finished product to
12 the southeast require any specialized equipment on
13 rail?

14 A No.

15 Q Do you ship any of your product to the
16 southeast by water?

17 A No.

18 Q Moving to movements to the west, to California
19 specifically, to what points in California do you ship
20 your finished product?

21 A Essentially from San Diego to Northern
22 California, San Francisco, Oakland area.

23 Q Do you use Santa Fe for any movements of your
24 product to California?

25 A Yes, we do.

1 Q Do you use Southern Pacific as well?

2 A Yes, we do.

3 Q Is it fair to say that Southern Pacific and
4 Santa Fe then compete with each other for your movements
5 to the west coast?

6 A Very definitely.

7 Q What transportation alternatives do you have
8 to Southern Pacific and Santa Fe for your movements to
9 the west coast?

10 A Essentially motor carrier.

11 Q Is it correct to say that the
12 backhaul-fronthaul phenomenon that you were discussing
13 earlier applies to movements to the west coast as well?

14 A I know it very definitely does in the area of
15 motor carrier. To what degree on the Santa Fe I don't
16 know. I know Southern Pacific has some needs on a
17 backhaul basis out of our area.

18 Q Are there any particular movements that are
19 currently moving on either Southern Pacific or Santa Fe
20 that would not be cost effective to move on a different
21 mode?

22 A Yes. Right now our rates on both the
23 railroads are more competitive than motor carrier. The
24 determination of moving to motor carrier sometimes has
25 to do with service, timeliness of delivery.

1 Q How much more competitive are the rates on
2 rail than the rates on motor carrier?

3 A I'd say it's somewhere around 10 to 15 percent
4 cheaper by rail.

5 Q What are the service attributes of the motor
6 carrier that would make you switch from rail to motor
7 carrier even though rail gives you a 10 to 15 percent
8 price edge?

9 A Well, if we are late on shipment to our
10 customer, it becomes somewhat of an intangible, you
11 know, to make a decision wholly on dollars and cents, so
12 that if we are late, and we need to make delivery in,
13 say, three days' time as opposed to rail, which can be
14 ten days, that is very much a determining factor. Also,
15 our customers request, who tend to buy these days more
16 hand to mouth, because of cost of money and storage may
17 elect to go motor carrier.

18 Q If you know, could you estimate a percentage
19 of the amount of traffic that is moving to the west
20 coast by Southern Pacific and Santa Fe as compared to
21 the amount that is moving by motor carrier?

22 A It is rather substantial. It is probably in
23 the area of 60 percent, 70 percent.

24 Q Sixty percent or 70 percent is moving by
25 rail?

1 A By rail, right.

2 Q Are any of the movements of rail moved by a
3 rail carrier other than Santa Fe or Southern Pacific?

4 A Not that I am aware.

5 Q Other than what you have just described to me,
6 are there any other reasons for why the 30 to 40 percent
7 that moves by truck does not move by rail to the west
8 coast?

9 A No.

10 Q I think on Page 4 of your testimony you
11 indicate that you think that 65-foot high side gondolas
12 will be more available to you after the merger.

13 A Yes.

14 Q What is the basis of that belief?

15 A Well, it has normally been our experience that
16 the availability of this length and high side gondola is
17 not in great supply, particularly in the southwest, and
18 it is our general knowledge, I guess, that the Southern
19 Pacific has a certain amount of fleet which would tie in
20 with this and would give us a broader base of supply.
21 We are in a fairly large growth mode in terms of
22 requirements for this type of car. And that is why our
23 interest lies there. We see it growing fairly
24 substantially.

25 Q Given your interest in growth, are you aware

1 of any other methods other than a merger that might
2 increase your availability of 65-foot high side
3 gondolas?

4 A We could buy the cars, I guess, but we can't
5 afford them.

6 Q Could you lease them?

7 A I expect you probably could. I don't think we
8 probably could afford to do that either.

9 Q Have you ever attempted to enter into a
10 relationship with one of your carriers whereby you would
11 jointly either own or lease them?

12 A No, we haven't. I think we try to stick with
13 the business we know and do best and leave it to the
14 experts in the area of transportation.

15 Q Concerning movements of raw materials into
16 your Midlothian plant, do Southern Pacific and Santa Fe
17 compete for those movements at all?

18 A I can't honestly answer the question. I don't
19 know.

20 Q Is Santa Fe the only railroad that comes into
21 your plant at Midlothian?

22 A Yes.

23 Q Taking, for example, a movement to the west
24 coast, how do you get the movement to the Southern
25 Pacific if Southern Pacific is going to be the long haul

1 carrier to the west coast?

2 A Well, as I understand it, we do have the
3 capability of, with a piggyback type shipment, for
4 example, and also a flat car movement, for example, that
5 Southern Pacific currently has these flat cars which you
6 normally would not ship steel on. Several cars a month,
7 I don't know, 100 of them, have been going back to them
8 in the west empty, and they have made those available at
9 a very, very competitive rate in order to utilize
10 equipment going back whereby we would cartage our steel
11 from a plant up to Dallas 15 miles and then they are
12 loaded on the car there, and providing a very, very
13 competitive rate to the western region, not just
14 California, by the way.

15 Q I think I understand. To make it clear, you
16 are trucking the material out of the plant and 15 miles
17 to Southern Pacific?

18 A Right. We also do that with the Santa Fe, by
19 the way.

20 Q Is there any limit in terms of mileages as to
21 when it would become not cost effective to truck
22 material to a particular railroad?

23 A Yes. Probably one mile. The difficulty is,
24 when you ship piggyback, for example, that requires
25 loading on a truck, movement to a loading facility

1 whereby it is put on a car, and that is much the same as
2 this flat car situation with the Southern Pacific. They
3 both have to be done off-site in Dallas.

4 Q I probably wasn't very clear. What I thought
5 you told me before is that you are currently moving,
6 trucking something 15 miles, and then what you just told
7 me is that it becomes not cost effective if you move it
8 one mile.

9 A Well, you don't have a choice in that type of
10 shipment out of your plant, because there is two kinds
11 of shipments out of our plant in terms of rail. You
12 have where a rail car is brought in, a gondola car, and
13 you load it with steel, okay, which is maybe what you
14 are really referring to, and then also there is a
15 piggyback form of shipment that we can't do on site.

16 Q Are piggyback forms of shipment not also
17 capable of moving in gondolas?

18 A No.

19 Q It is different material?

20 A No.

21 Q It is the same material?

22 A Same material. What they do is, they take a
23 flat bed trailer with steel on it and put it on a flat
24 bed rail car.

25 Q I understand that, but in your plant at

1 Midlothian, is it fair to say that you have a choice
2 between moving it direct rail by gondola or putting it
3 in a container and then moving it piggyback?

4 A Well, we can only do gondola cars in our
5 plant. Okay? And then at some points our customers
6 cannot receive rail car delivery. They have no siding.
7 Or it is more competitive, interestingly enough, to go
8 piggyback as opposed to gondola car.

9 Q Is it correct that it is more competitive
10 because the piggyback rate is considerably lower than
11 the gondola rate?

12 A Not always considerably lower, but
13 advantageously lower.

14 Q If Southern Pacific and Santa Fe merge, and
15 after the merger, and you understand this is
16 hypothetical, I am not saying this will happen, but if
17 Southern Pacific and Santa Fe merge, and if applicant,
18 after they merge, they raise their rates or dilute their
19 service in an unsatisfactory way to you, do you believe
20 you have alternatives that will enable you to still
21 continue to move your product at a competitive rate?

22 A Well, we have the motor carrier, which has for
23 the history of our company been the predominant
24 carrier. It has been, I guess, a function of their
25 being a leading competitive factor. Only 15 percent of

1 our outbound is rail currently. The rest is motor
2 carrier, so, you know, how dramatically that would
3 change conditions under your hypothetical situation I
4 don't know.

5 We would like to think and believe that in the
6 long term our need to be competitive with foreign steel
7 is going to be the overriding competitive factor for
8 modes of transportation in our industry, more so maybe
9 sometimes than alternate modes of transportation. If
10 they want our business, we have got to be competitive on
11 a delivered basis.

12 Q Taking for an example the 60 to 70 percent of
13 the movements that move by rail to the west coast, would
14 it cost your company anything to develop the facilities
15 necessary to move all of that material by truck?

16 A No. In terms of what we would have to do at
17 our plant location, no.

18 MR. RATNER: That is all I have. Thank you
19 very much.

20 JUDGE HOPKINS: That is all? Any redirect?

21 MR. COWELL: A couple of questions.

22 REDIRECT EXAMINATION

23 BY MR. COWELL:

24 Q You were talking to Mr. Ratner about your
25 sources of supply or other foreign steel producers with

1 whom you compete. Would you say that that foreign
2 source competition acts as a constraint on both your
3 motor and rail carrier pricing abilities?

4 A Well, it does to the extent that because we
5 are marketing about 50 percent of our volume in
6 virtually all the states, although we believe we are the
7 low cost producer of these products domestically, the
8 import situation has become rather substantial, and like
9 so many products, you must be competitive on a delivered
10 basis.

11 It is just essential that our carriers give us
12 the ultimate assistance in reaching those delivered
13 points to help us be competitive.

14 Q Has Santa Fe, who exclusively serves your
15 plant, understood that problem that you have in the
16 international marketplace?

17 A I think very definitely.

18 MR. COWELL: No further questions.

19 JUDGE HOPKINS: Anything further?

20 MR. RATNER: I guess I have one additional
21 question based on the import steel.

22 RECFROSS EXAMINATION

23 BY MR. RATNER:

24 Q How much of a cost advantage, if you know,
25 does the United States steel have over import steel in

1 general?

2 A I don't believe they have any.

3 Q None.

4 That is all.

5 JUDGE HOPKINS: That is all?

6 You are excused.

7 (Witness excused.)

8 MR. COWELL: I move Mr. Werner's statement.

9 JUDGE HOPKINS: Any objection?

10 (No response.)

11 JUDGE HOPKINS: It will be received in
12 evidence.

13 Let's take a 15-minute recess at this time.

14 (Whereupon, a brief recess was taken.)

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

16 Would you call your next witness, please?

17 MR. COWELL: Applicants call Mr. William Zive,
18 U.S. Borax.

19 Whereupon,

20 WILLIAM ZIVE

21 was called as a witness, and having been first duly
22 sworn, took the stand, was examined, and testified as
23 follows:

24 DIRECT EXAMINATION

25 BY MR. COWELL:

1 Q Would you state your name and business address
2 for the record, please?

3 A William Zive, U.S. Borax and Chemical
4 Corporation, 3075 Wilshire Boulevard, Los Angeles,
5 California.

6 Q And you have in front of you a copy of the
7 verified statement you submitted in this proceeding in
8 support of the Santa Fe-Southern Pacific merger,
9 numbered 162 in Volume SFSP-9?

10 A I do.

11 Q Do you have any corrections to make to your
12 statement at this time?

13 A None.

14 Q Is the statement then true and correct to the
15 best of your knowledge?

16 A Yes.

17 MR. COWELL: The witness is offered for cross
18 examination.

19 JUDGE HOPKINS: Mr. Baltera?

20 CROSS EXAMINATION

21 BY MR. BALTERA:

22 Q Good morning, Mr. Zive. I am Victor Baltera.
23 I represent the Kansas City Southern.

24 U.S. Borax ships by boxcar, piggyback, and
25 truck. Is that correct?

1 A We ship most of our material by covered hopper
2 car. We also ship by truck, boxcar, piggyback, you name
3 it.

4 Q How do you determine what mode to use for any
5 given shipment?

6 A Normally service and price.

7 Q Are rates then important in determining which
8 mode to use?

9 A To our customers, we are normally an FCB
10 seller. The customer pays the freight. The answer is
11 yes.

12 Q Does distance influence the decision on what
13 mode to use, distance of the movement?

14 A It can. It does not necessarily do so. Truck
15 is competitive on backhaul basis and truck has been
16 competitive to certain areas of the country much more so
17 than rail.

18 Q Does the volume of the shipment influence the
19 decision on what transportation mode to use?

20 A Domestically, 100 tons is the largest shipment
21 we make. It is four truckloads or one rail car. No, it
22 doesn't make --

23 Q Are there certain movements for which you
24 prefer to use rail?

25 A We prefer to use rail in plant for convenience

1 sake. It is more convenient to load a 100-ton hopper
2 car than it is to load four or five trucks.

3 Q Is it also less costly to load the hopper cars
4 rather than the trucks?

5 A No, sir.

6 Q On Page 2 of your verified statement, I
7 believe it is the third full paragraph, you state that
8 the Santa Fe is the originating carrier on 85 to 90
9 percent of the total tonnage produced in boron. Is that
10 correct?

11 A Yes.

12 Q Who originates the remainder?

13 A It is truck.

14 Q On Page 5, at the bottom, you refer to
15 shipments from 27 public warehouses that usually leave
16 by truck. Do you see that?

17 A Yes. The bottom paragraph.

18 Q Are those generally short haul movements?

19 A Yes. And LCL shipments.

20 Q On Page 4, this is the bottom of the first
21 full paragraph, you state that the particular movement
22 you describe there of industrial chemicals from Boron to
23 Wilmington is simpler and better managed if done by rail
24 as compared to truck.

25 Is that correct?

1 A Yes.

2 Q What do you mean by being simpler and better
3 managed?

4 A Again, a 100-ton shipment is easier to handle
5 than four or five truck shipments.

6 Q You mean that the movement is more cost
7 effective by rail?

8 A No, sir. It is almost -- well, it is a break
9 even. It is a competitive situation. We do ship one
10 product strictly by truck because it is easier to handle
11 out of truck than it is to handle out of a rail car.

12 Q Would you be satisfied if the only
13 transportation mode U.S. Borax had available to it was
14 truck?

15 A No, sir.

16 Q Why not?

17 A Volume.

18 Q What do you mean by volume?

19 A We ship enough product that we like to use all
20 of our load out facilities. We have four separate ones,
21 two for rail car, two for truck, and they are kept busy,
22 and we like to do it all in one eight-hour shift.

23 If we had to go with all truck, we would be
24 shipping 24 hours a day.

25 Q What is the distance between Boron and

1 Wilmington?

2 A 127 miles.

3 Q Has Southern Pacific ever tried to obtain U.S.
4 Borax's traffic bound for the southeast by getting into
5 a route over Colton?

6 A No, sir. To my knowledge, no.

7 Q I believe you state that U.S. Borax has been
8 faced with foreign competition. Is that correct?

9 A Yes, sir.

10 Q To what extent is the ability of foreign
11 imports to compete with your borax affected by the value
12 of the dollar in relation to foreign currencies?

13 A I wouldn't know. The ocean transportation
14 from Turkey to the east coast of the United States is
15 one hell of a lot less than either ocean or rail
16 transportation from the west coast of the United States
17 to the east coast of the United States.

18 Now, on that basis, freight has a hell of a
19 lot more to do with it than the dollar. Now, as far as
20 the dollar goes, the dollar being strong, of course, one
21 product sells for a little bit more than the other
22 does.

23 Q Do you know if economic conditions in general
24 in the exporting country affect the ability of the
25 exporters to compete?

1 A No. Most of it is government-owned, and
2 because it is government-owned, it is a method of
3 bringing in dollars rather than profit.

4 Q On Page 7, you mention that U.S. Borax is a
5 captive shipper to the Santa Fe.

6 A Yes, sir.

7 Q What is the significance of being a captive
8 shipper?

9 A The Santa Fe supplies all of our equipment
10 other than our own leased cars. They do all of the
11 switching in and out of the plant. They handle all of
12 the tonnage moving by rail for the first 37 miles. No
13 matter what happens, it has got to go to Barstow,
14 California.

15 We are 100 percent captive as far as rail goes
16 to the Santa Fe Railroad. We have been since 1928, and
17 it has been a very good relationship.

18 Q Why do you say on Page 7 in that same
19 paragraph that if the merger does not occur, U.S. Borax
20 is faced with the prospect of poor rail service or
21 higher freight rates?

22 A It is our and my belief that the Southern
23 Pacific Railroad has some financial difficulties. If
24 they go under and the Santa Fe is handling all of the
25 traffic in California without any problem, our bit is

1 that unless there is a cost efficiency picked up by the
2 Santa Fe Railroad, we won't benefit. They have to be --
3 the merger will make them more cost efficient. There
4 are parallel lines involved in this thing.

5 By doing away with interchange points, by
6 doing away with duplicity of equipment, by doing away
7 with us having to ship to Northern California through
8 Stockton and making an interchange, these are all cost
9 effective for the Santa Fe. It should increase their
10 profitability, and in that way make it stronger for
11 us.

12 Q Well, I guess I am a little confused. Why do
13 you say that if the merger does not go through you will
14 have poorer rail service?

15 A We don't believe that -- Well, the competitive
16 situation in the western railroads, leaving a
17 medium-sized railroad against two giants, the Union
18 Pacific and the Burlington Northern, is wrong.

19 We don't believe that they can keep on
20 competing.

21 Q Have you discussed this with Santa Fe?

22 A Prior to this? The answer is no.

23 Q Now, am I right by the statement on Page 7
24 relating to poorer rail service or higher freight rates
25 that you feel as compared to what you have now, if the

1 merger does not go through, service will be worse?

2 A I wouldn't say that the service will be
3 worse. I think the way to maintain the service is to
4 increase their profit -- the way to increase their
5 profit would be to charge us more money for the products
6 leaving our plant.

7 Q Do you think all Santa Fe shippers will be
8 faced with poorer service and higher rates?

9 MR. COWELL: Objection.

10 THE WITNESS: I have no idea.

11 BY MR. BALTERA: (Resuming)

12 Q What is the basis for your statement that you
13 are concerned over the viability of Southern Pacific?

14 A Well, we read the magazines. We are in
15 contact with almost every railroad company in the United
16 States, and their operating profits are not very good.

17 Q Have you been told that there is a concern
18 regarding Southern Pacific's viability by either of the
19 applicants?

20 A No, sir.

21 Q If you had your choice, would you rather not
22 be a captive to Santa Fe?

23 A Yes.

24 Q Why is that?

25 A Direct line service inside our plant from two

1 railroads would make it a very, very competitive
2 situation, and I think you could force rates a little
3 bit better or negotiate better rates.

4 MR. BALPERA: Thank you. That's all I have.

5 BY MS. BUDEIRI:

6 Q Good morning, Mr. Zive. My name is Priscilla
7 Budeiri, and I am here for the Department of Justice.

8 Are any U.S. Borax facilities besides Boron
9 currently served by SF or SP?

10 A Yes.

11 Q Which are those?

12 A Wilmington, California, serviced by the Harbor
13 Belt Railroad, which is jointly owned terminal railroad
14 by the Union Pacific, Southern Pacific, Santa Fe, and an
15 old electric company who no longer exists.

16 Q Is there any other facility?

17 A No.

18 Q On Page 4, you state that essentially all
19 industrial chemicals are moved by rail in covered hopper
20 cars from Boron to Wilmington. What railroad moves
21 those chemicals?

22 A The Santa Fe moves them to the Watson Yard.
23 They are transferred to the Harbor Belt Railroad from
24 the Watson Yard, and then they come into our plant.

25 Q You might have mentioned this previously, but

1 I just want to go over it briefly again. Is it feasible
2 for truck to take over the movement that the Santa Fe
3 has on that route should you become dissatisfied with
4 the Santa Fe?

5 A We have done it.

6 Q Pardon?

7 A We have done it.

8 Q You have?

9 A Yes, we have cut off all rail shipment to
10 Wilmington for almost a month, and gone to truck
11 service.

12 Q I am talking about the Santa Fe portion.

13 A I am talking about the whole damn line. We
14 have made the whole move for a period of 30 days. We
15 were having trouble with the Harbor Belt, not with the
16 Santa Fe.

17 Q How did it work out?

18 A Fine.

19 Q Are you switching back to rail?

20 A We switched back to rail. The rail is still
21 the best way to do it.

22 Q Why is that?

23 A Again, it is much simpler timing-wise to have
24 a railroad move 20 cars a day down than to have to move
25 80 trucks a day.

1 Q Was there sufficient capacity for the trucks
2 to take over?

3 A We have done it. Yes.

4 Q Is it the Harbor Belt Line that moves the
5 chemicals that are sold in either 50 or 100-pound paper
6 bags out of Wilmington?

7 A They move them out of the plant, and out onto
8 the three railroads. We use all three railroads out of
9 Wilmington, UP, SP, Santa Fe. The amount is quite small
10 compared to the Boron operation.

11 Q Do you use any truck to move that product?

12 A Yes, ma'am.

13 Q About how much of the product do you move by
14 truck?

15 A Well, there is different products. The
16 industrial chemical products I would guess about 25
17 percent move out by truck, 75 percent by rail. The
18 consumer products, I would guess it's about 75 percent
19 by truck and 25 percent by rail.

20 Q Is it feasible for you to expand the amount of
21 the industrial chemicals that you move by truck now?

22 A Yes.

23 Q Are there the same considerations you have
24 been discussing about the time of loading that make you
25 use 75 percent rail?

1 A And rates, and truck rates, depending upon
2 destination. Whether the truck rate is lower than the
3 rail rate is a decision point.

4 Q Is there a certain breakoff point at which
5 time the rail rate is cheaper than the truck rate?

6 A No, it is more into areas.

7 Q Pardon me?

8 A It is more into certain areas. We can move to
9 Portland, Oregon, much cheaper by truck than we can --
10 by rail than we can by truck. We have another
11 alternative which is cheaper yet, and that is move it by
12 barge if we have got the time.

13 Q Is distance a factor?

14 A It has not been.

15 Q Do you anticipate that it might become a
16 factor?

17 A If trucks are not available, the answer is
18 definitely that you don't have a backhaul system. You
19 can't compete with rail on long distance, heavy chemical
20 long distance movements if there is a backhaul
21 available.

22 We have moved as far as Edmonton, Alberta,
23 Canada, from Boron by truck. Now, I know no other way
24 to answer it. We have been able to move to the east
25 coast by container on U.S. lines cheaper than by rail.

1 Q How often is there a backhaul into, for
2 example, the Pacific Northwest?

3 A We have no problems. We have not run into any
4 problem on that. We have had problems in, say, the
5 movement up to Edmonton where you are moving bulk
6 product, and again, when the grain is moving, or where
7 there is no potatoes moving down from Edmonton into the
8 Los Angeles area, the trucks aren't available.

9 Q Why is it cheaper to move by rail to
10 Portland?

11 A The rate system was set up such that it is
12 cheaper to move by Southern Pacific than it is by any
13 other method other than by barge. I don't know why the
14 rates are that way.

15 Q Did you say that barge is as cheap as rail?

16 A Cheaper.

17 Q Cheaper than rail?

18 A Yes.

19 Q Why --

20 A Usually timing. I am sorry. Ask your
21 question.

22 Q That was my next question. Why is barge
23 slower?

24 A Why is barge slower?

25 Q Yes.

1 A They don't move very fast. Eight knots. At
2 the Pacific coast, if you want to move 1,400 miles, you
3 are going to take quite a long time to get there.

4 Q What I should have asked you is how much
5 slower is it?

6 A Probably by two or three days.

7 Q What problems does the time and distance
8 differences cause?

9 A Well, for us it is strictly on this warehouse,
10 and as was mentioned before, I don't like to maintain
11 inventories. It is just in time -- you run out of
12 inventory on the day that the shipment arrives. And
13 that is the service aspect.

14 Q Why is 75 percent of your consumer chemicals
15 moved by truck as opposed to rail?

16 A From Wilmington?

17 Q Yes.

18 A Seventy percent of the market is in the
19 greater metropolitan Los Angeles area. From San Diego
20 to Santa Barbara, we sell about 60 percent to 70 percent
21 of what we produce in the Wilmington plant.

22 That type of volume, you have either customer
23 pickup or it is much quicker and easier to go by truck.

24 Q For movements over 200 miles out of
25 Wilmington, do the consumer chemicals go by rail?

1 A Most of them.

2 Q Mostly by rail?

3 A Most of them by rail.

4 Q Why is that?

5 A Normally the rate is cheaper.

6 Q Is there any other reason?

7 A No.

8 Q On Page 4, again, you state that about 75
9 percent of your domestic business which moves east of
10 the Mississippi River is transferred at the Santa Fe
11 junction at either Chicago or Kansas City.

12 A Yes, ma'am.

13 Q What alternative transportation mode to SF or
14 company railroad is available to you to move your
15 product to Chicago or Kansas City?

16 A Truck. Two-way truck, really. We could truck
17 it all the way up, or we could truck it to a little
18 place called Yuomo, California, and you can go out on
19 the Union Pacific Railroad.

20 Q How much is currently moving by truck?

21 A Very little. I couldn't even venture a guess.

22 Q And why is that?

23 A Again, the rail freight rate is less than the
24 truck rate. Other than there is some that goes out, of
25 course, IOFC. The truck on a flat car. Those rates to

1 Kansas City are cheaper than our rates are for boxcar.
2 So we do ship out TOFC.

3 Q Is distance a factor at all?

4 A Not on TOFC, it doesn't appear to be.

5 Q By truck, I meant.

6 A Again, it is the availability of the truck.

7 Certain truck lines, there are some in the United States
8 right now -- I don't know the names of them -- do
9 nothing except try and pick up certain customers that
10 they can have the backhaul system, and those are
11 available, and they are cheaper than rail, and those we
12 use.

13 Q In reference to your shipments into Northern
14 California and the Pacific Northwest and Western Canada
15 that involve SP as a delivery carrier or a bridge
16 carrier, what alternative do you have to using SP?

17 A What alternative do we have? You can route WP
18 rather than going through Stockton and using the SP. To
19 certain areas you have no alternative other than truck,
20 and truck has taken much of that business.

21 Q And why is that?

22 A The joint line rate is such that the truck
23 rate -- the gentleman was here this morning. Santa
24 Clara, California, is cheaper than the railway. We ship
25 to that plant via truck. They supply the trucks. They

1 are paying the freight rate. There are several plants
2 in similar situations where if it were single line haul
3 you would have something to say about it. With a joint
4 carrier situation, it is very difficult to negotiate two
5 carriers into a point to where you have got a rate that
6 is even competitive with truck.

7 Q How is the 35 percent of your consumer
8 products sold in the western United States and
9 manufactured in Wilmington transported to your
10 customers?

11 A We transport it to our warehouses.

12 Q How does that happen?

13 A Rail, truck, and TOFC.

14 Q How much moves by rail?

15 A Half.

16 Q And which railroad do you move it on?

17 A SF, SF, UP.

18 Q What portion moves by truck?

19 A Half.

20 Q How about TOFC?

21 A Well, I consider TOFC truck.

22 Q How much of the truck is by TOFC?

23 A Well, let's see. There are seven warehouses.
24 We supply two warehouses by TOFC. So, approximately
25 two-sevenths, 28 percent, 30 percent.

1 Q Do either SF or SP serve your plant at
2 Burlington?

3 A No, ma'am. We are completely captive to the
4 Burlington Northern.

5 Q Is there any difference in the way borax is
6 transported from Boron to Wilmington when the borax is
7 to be used for industrial chemicals or for consumer
8 products?

9 A We have one industrial chemical that we ship
10 strictly by truck, because of the unloading facilities
11 at the plant, at the Wilmington plant. We would prefer
12 doing it by rail. We have not seen fit to put in the
13 capital investment to unload rail cars. All of the rest
14 of the products come in in exactly the same fashion,
15 have unloading facilities. They come in by rail.

16 Q On Page 6, you state that customer complaints
17 of slow service as well as high rates have influenced
18 several customers to request motor carriage instead of
19 rail service.

20 A Yes, ma'am.

21 Q Which movements have customers requested motor
22 carrier for instead of rail?

23 A Would you like the destination or the junction
24 point? The junction point is Stockton, California. The
25 customers are in, if you will give me a minute, Santa

1 Clara, California, being one, Willows, California, and
2 Cochilla, California. They are strictly truck transport
3 now. They used to be rail.

4 Q You state in your verified statement that you
5 would benefit from the merger because it would provide
6 you single line service. Is truck currently available
7 to provide you with single line service?

8 A We are talking two different animals. If you
9 have got a full truckload, you go from door to door. If
10 you are talking about single line service on the
11 railroad, what advantage we would get is that now it
12 would be Santa Fe direct to Willows, direct to Santa
13 Clara, direct to Cochilla.

14 We would not have to go through an interchange
15 point, and therefore you would have one carrier picking
16 up the car in Boron, California, and delivering it to
17 that plant.

18 Q Is truck currently satisfactory?

19 A The customer continues to buy it by truck,
20 yes.

21 MR. BUDEIRI: Thank you very much.

22 JUDGE HOPKINS: Thank you.

23 REDIRECT EXAMINATION

24 BY MR. COWELL:

25 Q You mentioned Turkish borax in response to a

1 question earlier. Are there any other foreign producers
2 which compete against U.S. Borax?

3 A Well, the Turkish mineral is the largest
4 competitor coming in. There is boric acid coming in
5 from Italy. There was boric acid coming in from France
6 and Spain during the shortage period. There is no
7 shortage any more. However, there is active competition
8 from boric acid from Italy.

9 Q And does the presence of that source
10 competition act as a check against the rates that either
11 rail or motor carriers that serve you charge?

12 A The Santa Fe has responded very nicely to us
13 about helping us maintain our competitive position.

14 Q Would the merger of Santa Fe and Southern
15 Pacific cause U.S. Borax to lose any competitive
16 transportation alternatives?

17 A No.

18 MR. COWELL: No further questions.

19 JUDGE HOPKINS: Any further questions?

20 (No response.)

21 JUDGE HOPKINS: You are excused, sir. Thank
22 you very much.

23 (Witness excused.)

24 JUDGE HOPKINS: You move the admission?

25 MR. COWELL: I am sorry. I move the admission

1 of Mr. Zive's statement.

2 JUDGE HOPKINS: Any objection?

3 (No response.)

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

6 Call the next witness.

7 MR. COWELL: The next and last of the esteemed
8 shipper witnesses is Mr. J.L. Tompkins of Potash Company
9 of America.

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1 Whereupon,

2 J. L. TOMPKINS

3 was called as a witness in the above-entitled case by
4 counsel for Atchison, Topeka & Santa Fe Railway Company
5 and, having first been duly sworn by the Administrative
6 Law Judge, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. COWELL:

9 Q Mr. Tompkins, would you state your name and
10 business address for the record?

11 A My name is J. L. Tompkins, spelled
12 T-o-m-p-k-i-n-s. I'm with Potash Company of America.
13 Business address is 1120 Boston Post Road, Darien,
14 Connecticut.

15 Q Do you have in front of you a copy of the
16 verified statement you filed in support of the Santa Fe
17 Southern Pacific merger application No. 124 in volume
18 SFSP-9?

19 A I do.

20 Q Do you have any corrections to make to your
21 statement now?

22 A Yes, I do. On page 1, the second paragraph,
23 it should be corrected to read: Potash Company of
24 America, Incorporated, a wholly-owned subsidiary of
25 Ideal Basic Industries, Incorporated, a Colorado

1 corporation with headquarters located at Denver.

2 And on page 3, the second paragraph should be
3 amended to read: "PCA leases 55 covered hoppers to
4 supplement those provided by the Santa Fe at Carlsbad."

5 Q With those changes, is the statement correct
6 to the best of your knowledge?

7 A Yes.

8 MR. COWELL: The witness is available for
9 cross-examination.

10 CROSS EXAMINATION

11 BY MR. BALTERA:

12 Q Good morning, Mr. Tompkins. I am Victor
13 Baltera, representing the KCS. Where does your company
14 presently ship potash to out of its Carlsbad facility?

15 A The production from Carlsbad normally goes to
16 the southwestern territory and to export markets.

17 Q Does any of it travel to the southeast of the
18 United States?

19 A Some of it does.

20 Q And what about the Midwest?

21 A The Midwest.

22 Q How does that product travel?

23 A Primarily via rail.

24 Q Is truck a competitive alternative?

25 A To a certain extent, in certain areas.

1 Q In what areas?

2 A Primarily, in Carlsbad, we can truck to
3 Oklahoma, Kansas, Missouri, Arkansas, and Texas.

4 Q And why is it not a competitive alternative
5 for shipments?

6 A The nature of our business is that we produce
7 large quantities of potash and it moves long distances,
8 and I don't think the availability of trucks would have
9 the capacity to carry all of our product to our
10 markets.

11 Q Is potash a low value bulk commodity?

12 A I don't know what you mean by "low value. The
13 average price per ton is around \$65 a ton.

14 Q Well, are transportation costs a high
15 percentage of delivered costs for potash?

16 A Yes.

17 Q Is it around 40 percent?

18 A Probably greater than that.

19 Q So in transporting potash, it's important to
20 minimize shipping costs; is that correct?

21 A That's correct.

22 Q This is characteristic of bulk commodities in
23 general?

24 A As far as I know, yes.

25 Q What other plants does your company have?

1 A We have the Carlsbad, New Mexico facility. We
2 have a little plant at McAvek, (ph) Texas, where we take
3 and manufacture sulfate of potash. They are the only
4 locations we have in the United States.

5 Q What foreign locations do you have?

6 A We have Canadian mines in Saskatchewan and
7 also in New Brunswick.

8 Q You note, I believe, on pages 2 and 3 of your
9 verified statement that fertilizer moves in the spring.
10 Is that correct?

11 A Normally, it peaks in the springtime.

12 Q Does your export traffic also move primarily
13 in the spring?

14 A It's seasonal. It moves more on a year-round
15 basis and doesn't peak as much as the domestic market.

16 Q Where do you take your export to?

17 A We export to Japan, to Brazil, England.

18 Q What ports do you use? What U.S. ports do you
19 use?

20 A U.S. ports? We use the Port of Houston and
21 the Port of San Diego.

22 Q Do you use regional warehouses in marketing
23 potash?

24 A Yes.

25 Q And does storing potash in regional warehouses

1 alleviate some of the pressures on transportation due to
2 the seasonality of the demand?

3 A It does.

4 Q So potash can be moved to the warehouse at
5 basically any time of the year. Is that correct?

6 A Correct.

7 Q How is potash transported to the regional
8 warehouses?

9 A We take the potash via rail down to the Port
10 of Houston, load it into barges, and then we go up the
11 rivers. And we do the same thing when we come in from
12 the Canadian mines.

13 Q Is the use of truck primarily limited to short
14 hauls out of the warehouses?

15 A Right.

16 Q Am I correct that the principal reason that
17 you're supporting the merger is that you expect that it
18 will improve transit time?

19 A Yes.

20 Q Do you use dedicated run-through trains for
21 any of your shipments?

22 A Not in the United States.

23 Q Do you use it in your Canadian facilities?

24 A We have unit train movements from Canada to
25 the United States, yes.

1 Q And in these dedicated run-through trains from
2 your Canadian facilities, do they take it to regional
3 warehouses?

4 A No, they go right to the facility where we
5 transfer it into barges.

6 Q Is this for export?

7 A No. This is for domestic use.

8 Q Now, does use of dedicated run-through trains
9 improve equipment utilization?

10 A Yes.

11 Q If you had dedicated run-through trains
12 available for your shipments out of Carlsbad, would you
13 need the merger to get improved transit time benefits?

14 A The reason we need the merger to improve
15 transit time pertains to the Port of Houston. The Santa
16 Fe has a circuitous route down to the Port of Houston.
17 They have to go through two terminal railroads there,
18 and this has in the past caused congestion and caused
19 our costs to go up because of the demurrage factors down
20 there.

21 We feel that the single line movement with the
22 SP having the more direct route will eliminate a lot of
23 this congestion.

24 Q So is it only the single line into Houston
25 that has so concerned you?

1 A We are concerned about the total overall cost
2 savings that could be effected by such a merger, and we
3 feel that in the long run this will have a tendency to
4 help us better market our product in the marketplace.

5 Q You indicate in your verified statement that
6 your major competitors are foreign sources. Is that
7 correct?

8 A They are a competitor. We also have domestic
9 competition. There are other producers in Carlsbad,
10 other than PCA.

11 Q Has the ability of Canadian producer to
12 compete in the United States been enhanced by the value
13 of the U.S. dollar as compared to the Canadian dollar?

14 A It has.

15 Q And if the two dollars reach parity, would
16 that reduce competitiveness in Canadian ports?

17 A It would have a tendency to; yes.

18 MR. BALTERA: Thank you, Mr. Tompkins.

19 JUDGE HOPKINS: Ms. Budeiri.

20 BY MS. BUDEIRI:

21 Q Good morning. My name is Priscilla Budeiri,
22 and I'm representing the United States Department of
23 Justice.

24 Mr. Tompkins, does either SF or SP serve your
25 facility at McAvek, (ph) Texas?

1 A Just the Santa Fe.

2 Q Does it serve the facility directly?

3 A We are local to the Santa Fe at both of our
4 installations, Carlsbad and McAvek (ph).

5 Q How does the Santa Fe have physical access to
6 your facility at Carlsbad?

7 A By tracks. They serve our plant.

8 Q Does the Santa Fe move any product into your
9 facility at Carlsbad?

10 A We mine the ore from underground, so there is
11 very little inbound movement, maybe one or two tank cars
12 of amine oil a year, and that's the limit of the inbound
13 movement.

14 Q You previously mentioned that truck is not a
15 feasible alternative to rail for long distance hauls.
16 And in some instances, there is just not enough capacity
17 to move by truck.

18 Is there any other reason why truck might not
19 be an alternative to rail?

20 A I think I stated the main reason that truck is
21 not suitable for the type of movement that we have is
22 because of the large quantities that we produce and the
23 long distances that we move.

24 We do use the truck in the area that I
25 mentioned -- Oklahoma, Kansas, Missouri, Arkansas, and

1 Texas. But when you have a large volume of commodity
2 that moves great distances, truck is not the feasible
3 way of moving it.

4 Q If the SF and SP were to merge and then raise
5 their rates or let their service deteriorate in an
6 unsatisfactory way, could you switch to any other
7 transportation form to move your product?

8 A I guess we could switch, but it wouldn't
9 hardly be feasible. Here again, we're about ten hundred
10 miles from ports, and the volume that we have to move
11 down, I just don't believe that truck would be capable
12 of doing it.

13 MS. BUDEIRI: Okay. Thank you very much.

14 JUDGE HOPKINS: Any redirect?

15 REDIRECT EXAMINATION

16 BY MR. COWELL:

17 Q I'll ask you the same questions I asked the
18 last witness, basically. You discussed again foreign
19 competition with respect to Canada.

20 Are there any other foreign producers that
21 compete significantly with PCA?

22 A Yes. The other foreign producers -- we have
23 foreign competition from Russia, Israeli, and Germany.

24 Q And that competition -- has that competition
25 acted to -- let me rephrase the question.

1 Has that foreign competition caused Santa Fe
2 to take a cooperative attitude with you on your
3 traffic?

4 A It has.

5 Q Do you expect that cooperation to continue
6 after the merger?

7 A I do.

8 Q Would the merger of Santa Fe and Southern
9 Pacific cause you to lose any competitive transportation
10 option?

11 A Not to my knowledge.

12 MR. COWELL: No further questions.

13 JUDGE HOPKINS: Any further questions?

14 (No response.)

15 JUDGE HOPKINS: You are excused, sir.

16 Move the admission. Any objection? It will
17 be received in evidence.

18 Off the record a minute.

19 (Discussion off the record.)

20 JUDGE HOPKINS: On the record.

21 MR. COWELL: There were two other shipper
22 witnesses who were on the list of witnesses to be called
23 by other parties, and I understand that the parties
24 requesting those witnesses, being KCS and the Department
25 of Justice, now have waived cross-examination.

1 Those witnesses are Robert J. Eaton from the
2 Gold Bond Building Products Division of National Gypsum
3 Company and George Tidmarsh of Sears-Roebuck & Company.

4 MR. BALTERA: That's right, Your Honor. We
5 have waived Mr. Eaton because we understand that the
6 plant we were interested in and the movements we were
7 interested in has been sold. And as far as Mr. Tidmarsh
8 is concerned, we waived that because we understand he
9 has scheduling difficulties.

10 JUDGE HOPKINS: Is that right?

11 MR. RATNER: That's right, Your Honor. We
12 waive the right to cross-examine at hearing both of
13 those witnesses.

14 MR. COWELL: Your Honor, should I move the
15 admission of both Mr. Tidmarsh's and Mr. Eaton's
16 statements, then?

17 JUDGE HOPKINS: Since they were specifically
18 requested, we might as well, yes.

19 Any objection? I shouldn't think there would
20 be. I will receive them in evidence.

21 Off the record now.

22 (Discussion off the record.)

23 Whereupon,

24 RAYMOND M. CHAMPION, JR.

25 a witness in the above-entitled case, was recalled to

1 the stand and, having been previously duly sworn, was
2 examined and testified further as follows:

3 JUDGE HOPKINS: For the record, I will state
4 that Mr. Champion has already been sworn.

5 DIRECT EXAMINATION

6 BY MR. LANE:

7 Q Mr. Champion, would you please state your
8 name, address, and business occupation for the record?

9 A I'm Raymond M. Champion, Jr., assistant to the
10 President for the Atchison, Topoka & Santa Fe Railway,
11 located at 80 East Jackson, Chicago, Illinois.

12 Q Have you testified earlier in this
13 proceeding?

14 A Yes, I have.

15 Q Did you prepare and submit a verified
16 statement in connection with this application?

17 A I did.

18 Q And with the corrections that were supplied
19 previously in errata to the Commission and the parties,
20 do you have any other correction to make to that
21 statement?

22 A I do not.

23 Q Is that statement, as corrected, true and
24 correct to the best of your knowledge?

25 A Yes.

1 Q Mr. Champion, are you also familiar with the
2 related applications that have been filed in this case?

3 A Yes.

4 Q Specifically, are you aware of the application
5 for the merger of the St. Louis and Southwestern Railway
6 Company and the Southern Pacific Transportation
7 Company?

8 A Yes, I'm acquainted with it.

9 Q And the application to control the Sunset
10 Railway?

11 A Yes.

12 Q And the application to control the Central
13 California Traction Company?

14 A Yes.

15 Q And the petition for approval of certain
16 merger-related abandonments?

17 A Yes.

18 Q And are you familiar with the application fo
19 the Southern Pacific and Santa Fe Railway Company for
20 joint use of terminal facilities of the Union Pacific
21 Railroad?

22 A Yes.

23 Q Likewise, are you familiar with the petition
24 for approval of the connection in Los Angeles?

25 A Yes.

1 Q And finally, are you familiar with the related
2 application for the assumption of securities?

3 A Yes.

4 Q Did you have any occasion to examine the
5 employee impact of those related applications?

6 A Yes.

7 Q What was the result of your consideration?

8 A If I can remember all of them -- and you'll
9 remind me if I leave one out -- the Sunset -- no, the
10 Cotton Belt, the SSW application for merger with the
11 SP. The Cotton Belt is an integral part of the Southern
12 Pacific System, and the labor impacts statement, as
13 submitted, include all effects of that particular
14 transaction.

15 The Sunset Railroad is now owned 50 percent by
16 Santa Fe and 50 percent by SP. We are only legitimizing
17 a situation. There is no expectation of any change in
18 the structure and therefore there is no labor impact.

19 On the CCT, as I previously testified, while
20 the combined company does end up owning two-thirds, we
21 have committed to operate impartially and without
22 discrimination, and we do not expect any change in the
23 operation, and therefore there is no labor impact.

24 On the security transactions, there is no
25 labor impact. On the connection in Los Angeles and the

1 use of trackage rights over the Union Pacific, that was
2 incorporated in the operating plan and is contained in
3 the labor impact statement.

4 Q And with respect to the abandonments?

5 A They are contained within the labor impact
6 statement where they have had to adjust locals or make
7 any of that change, so they're included, too.

8 Q So by way of summary, as I understand your
9 testimony, all employee impact associated with the
10 principal case is reflected in the employee impact
11 exhibit, and there is no additional distinct employee
12 impact as a result of these sub-applications?

13 A That is correct.

14 MR. LANE: With that clarification, Your
15 Honor, I tender the witness for cross-examination.

16 JUDGE HOPKINS: Who will start?

17 CROSS EXAMINATION

18 BY MS. KOOPERSTEIN:

19 Q Good morning. My name is Donna Kooperstein,
20 and I represent the United States Department of
21 Justice.

22 Would you please turn to page 5 of your
23 testimony?

24 A Yes.

25 Q On page 5, you list personnel savings of

1 approximately \$11 million. Do you see that?

2 A Are you referring to that in the traffic
3 portion, traffic marketing and sales portion?

4 Q Yes.

5 A Yes, I see it.

6 Q How did you calculate those savings?

7 A The unit cost that was applied against
8 people -- and I'll describe the people approach in a
9 minute, position approach -- the unit cost, since we are
10 uncertain where these changes will take place in terms
11 of which railroad, which individual, in all of our
12 calculations we took the average wage rates for the year
13 for a given craft.

14 And this case, we have some people who are
15 non-agreement and we took the average for all
16 non-agreement people. Having the average for each
17 railroad, we then averaged that for an average employee
18 of the combined company.

19 To that we added the average wage benefits,
20 fringe benefits, health, welfare, et cetera, and we came
21 up with an amalgam of costs that would represent a
22 particular position of that craft or non-agreement.

23 Now, in the case you addressed, to come back
24 to the personnel, we took the structure of the Santa Fe
25 traffic department and the structure of the Southern

1 Pacific marketing department, and we sought to make
2 comparisons so that we could compare positions, and we
3 divided it into three principal groups. First was
4 regional sales offices. Second was salesmen
5 themselves. And third, it was the marketing people,
6 pricing people, if you will.

7 Now, in the former, there are eight sales
8 offices on the SP and eight sales offices, regional
9 sales offices, on the Santa Fe. Five of those are in
10 the same cities. So we don't need both of those. So we
11 assumed they would be combined.

12 In South Texas, we had a regional sales office
13 in Dallas, and they did in Houston. We said we'll
14 combine those. Likewise, Kansas City and St. Louis.
15 And in place of 16, we ended up with 9.

16 We then looked at the personnel that we had
17 before we staffed the 9. The difference was positions
18 that would no longer be required.

19 In the sales offices, we looked at each city
20 or region in a few cases where two cities were covering
21 the same region, and compared them and decided that we
22 don't need two salesmen calling on a customer. And
23 those salesmen positions would be ones that would be
24 eliminated.

25 Finally, in the marketing area, there was a

1 difference in the structure of the two groups, but we
2 began to lay them side by side, made comparisons, and
3 said we do not need two people doing certain activities,
4 and discovered that those were positions we thought
5 would no longer be required.

6 Totaling those positions, then you multiply by
7 the numbers I previously explained how we derived them,
8 and you come up with the figure of 10.8 million.

9 Q I just did a few calculations on my own, and I
10 came up with a per person figure of about \$45,000. Does
11 that sound about right?

12 A I think that's probably right. I would call
13 your attention that in this particular category, you are
14 looking at a very high percent of non-agreement people,
15 people not under the labor agreement.

16 Q And what does that mean?

17 A That means they are higher paid.

18 Q So that 45,000 represents the average sum of
19 the salaries and fringe benefits?

20 A I would first caution that in the work papers,
21 you will find those calculations made by craft, and you
22 could literally see the number that was used for each
23 side. It's in the work papers.

24 Q Are these reductions a certainty? These
25 reductions in labor?

1 A I don't know if anything is certainty. It's
2 our best estimate of the number of positions that would
3 no longer be required, and we would expect three years
4 down the road, that those are the number of positions
5 that would no longer be required.

6 Q Would the range of salaries be in the work
7 papers, then?

8 A Oh, yes. The numbers we used for each craft.
9 And I'm calling non-agreement a craft for this purpose
10 of description. Each one of those is in the work
11 papers.

12 Q Do you happen to know that offhand?

13 A I know that.

14 Q Can you tell me?

15 A Oh, I meant I know it's in the work papers. I
16 don't know the numbers. I don't have them with me.

17 If you'll furnish me the work papers, I'll
18 identify them for you.

19 Q Would you please turn to page 7? On page 7
20 you talk about savings, about 4-1/2 million in savings
21 that you would expect in the claims area.

22 Do you see that?

23 A Yes.

24 Q Is part of that savings going to be
25 attributable to the expertise of the SF personnel?

1 A I believe so. Yes.

2 Q Do you believe that the SP personnel could
3 improve the ability of its quality control personnel
4 without the merger by better training perhaps?

5 A I think that there is a portion of that that
6 could well be done. But I want to caution. You said "a
7 part," and that's why I agreed with you.

8 A major part cannot be done that way.

9 Q And why can't a major part be done that way?

10 A A major part of this is going to be derived
11 because, if you will recall the operating plan, we could
12 assemble larger blocks of traffic, say, in the Bay Area,
13 and move to Houston, and the reduced number of handling,
14 which is most of loss and damage, is going to reduce the
15 loss and damage on both companies. And that is how we
16 believe much of this will be accomplished.

17 Q Do you know how much is attributable to that
18 and how much is attributable to the personnel?

19 A No.

20 Q How was the figure arrived at, then?

21 A Well, the text here clearly states that theirs
22 was an 83-cent -- if they had been reduced to 43 cents,
23 it's 4 cents times the revenues, 40 cents times the
24 revenues.

25 And we said we probably can't do that.

1 There's a difference in kinds of commodities, so we said
2 we'd do half of it. So if you'll take 20 cents and
3 multiply it times the SP revenues, you'll get the
4 number.

5 Q So you just kind of took an educated guess?

6 A I would hope it's more than educated. I would
7 hope it's informed.

8 Q The section on the treasury office --

9 A Yes?

10 Q You also have labor savings there. Did you
11 calculate those in the same way you explained to me
12 previously for the sale office?

13 A Yes. And, in fact, any personnel changes
14 throughout this testimony was handled exactly the way I
15 described in your first set of questions.

16 Q Could you please turn to page 8 of your
17 testimony?

18 A Yes.

19 Q There is a figure there of savings from
20 combined purchasing. Do you see that?

21 A Yes.

22 Q How did you arrive at that figure?

23 A That is an educated, informed opinion, not of
24 myself in this case, but of our purchasing departments
25 from both groups. In almost all of these cases, we

1 consulted the department head of each company, and they
2 examined some of these problems and spoke of the
3 structure that would need to be required.

4 Now, it probably isn't always the most
5 intelligent thing, but each of us have different
6 standards. To be ridiculous, we used to all write our
7 standards for locomotives, and every locomotive was
8 different.

9 Now, we still have many of these practices and
10 we believe that when we get one company and we set one
11 standard, in place of you ordering 100 of a unit, and
12 the producer has to set himself up and produce that, and
13 then the other fellow orders 100 and they have to change
14 the setup in order to produce it, we now produce 200
15 under one standard. The unit cost for the producer goes
16 down.

17 We expect to have enough influence that we can
18 encourage him to give us some benefit out of that.

19 Now, this is a small percent of our total
20 purchase bill, on the expectation that we provide him an
21 opportunity to be more efficient and we will get some
22 benefit out of it.

23 Q Is the 1.05 billion figure there, does that
24 represent purchases from outside sources solely?

25 A Yes.

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1 Q Have you ever considered joint purchasing with
2 other companies to lower your costs?

3 A I don't think so.

4 Q Could it be done?

5 A First, you've got to get to those standards I
6 talked about. We haven't got there.

7 Q Could you develop a standard with another
8 company and then do joint purchasing?

9 A It would be in all of our interests to get to
10 a joint standard, but somehow it never gets done.
11 Frankly, it's a psychological barrier, but very real.

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1 Q On that same page you talk about saving some
2 transportation of purchased materials. Do you see
3 that?

4 A Yes.

5 Q How did you calculate those savings?

6 A The Staggers Act is a rather interesting
7 thing, because we get the benefit as a purchaser of
8 transportation as well as a furnisher. What we did is,
9 where we are purchasing transportation services we went
10 in and examined this.

11 I might first point out that, out of the \$4.1
12 million the Santa Fe spent, \$3.1 million went to
13 trucks. Out of the \$19 million that the SF handled,
14 over \$15 million went to trucks. So we are interested
15 in obtaining the best we can. Now, that is in a
16 situation where we can -- and the Santa Fe has gone very
17 diligently into this -- can utilize those people and
18 acquire it.

19 Now, what we have here is two factors. One is
20 ability to negotiate better transportation contracts;
21 and two, as we consolidate the various activities and we
22 no longer repair a certain item in Roseville on the SP
23 and repair the same item at San Bernardino on the Santa
24 Fe, I can now order a quantity of materials, and
25 therefore the unit cost per ton goes down and we save

1 money that way.

2 Now, these are the sources of where we get the
3 money saved on transportation charges.

4 Q How would an expanded geographical coverage
5 reduce costs?

6 A I wish you hadn't used that phrase. We do
7 have expanded in the sense that, in place of having the
8 number of locations, we are beginning to concentrate
9 them. But that may be expanded as far as the other
10 company is concerned.

11 Q I'm not sure I understand.

12 A Well, the repair work for that commodity in
13 San Bernardino, the SP doesn't serve San Bernardino.
14 That is a new place to get repairs made.

15 Q Is part of the savings that you have computed
16 attributable to the fact that you will be moving
17 material on company lines and not making payouts to a
18 foreign line?

19 A None of this is attributed to that, not one
20 dime.

21 Q Why is there such a big difference in the
22 payout of Santa Fe for transportation and the payout of
23 SP for transportation?

24 A I'm sure I can't totally answer that, except
25 we have made a very diligent effort, once recognizing

1 the opportunity we had here, and I think we've just
2 moved into it a little more rapidly than they did.

3 Q And what opportunity is that?

4 A Of dealing with the transportation agencies.
5 Now that they have the freedom under Staggers, it also
6 gives the customer a little freedom to negotiate too,
7 you know.

8 Q Does Santa Fe have a policy of routing its
9 purchases on its own lines?

10 A It depends, I will answer it, primarily on the
11 size. We don't order everything in 100 ton lots, and
12 some of the smaller lots are certainly far more
13 efficiently handled in truck. So we have no general
14 policy.

15 Q Do you think any difference in the amounts of
16 Santa Fe and Southern Pacific is attributable to the
17 fact that Santa Fe routes more of its purchases on its
18 own lines?

19 A I don't believe that's the case.

20 Q Why did you predict that the amount saved
21 would triple over a three-year period?

22 A Well, we have items we only purchase every few
23 years. Track material, certain types of track material,
24 we don't purchase every year. It takes a little while
25 for that process.

1 Also, we have the negotiations with these
2 transportation companies and it takes a little while for
3 that. Also, the demand for this changes while we're
4 implementing this program. So it's not just going to
5 happen instantaneously.

6 Q How did you come up with that nice figure? I
7 mean, after taking all these things into account, how
8 did you arrive at that number?

9 A It is a nice figure, isn't it? That is the
10 estimated figure from the purchasing and stores people
11 who live with it daily, pay the bills daily. And they
12 feel that money can be achieved.

13 Q Is there anything to that effect in the work
14 papers?

15 A There is a description of their mental process
16 they went through in the work papers.

17 Q Could you look at page 9 where you discuss
18 combined inventory. Do you have that?

19 A Yes.

20 Q Is it correct that, in regard to the
21 inventory, you're just reducing the amount you would
22 have in inventory at any one time, not the total amount
23 purchased?

24 A I don't think this is directed at the total
25 amount purchased, no. That is reduction primarily in

1 safety stock.

2 Q Could you please turn to page 17, the
3 discussion on executives.

4 A Yes.

5 Q Is the savings you discuss there attributable
6 to a reduced number of executives or reduced salary?

7 A No, reducing the number of executives. There
8 is an item in the work papers listing the positions
9 today and listing the positions that will remain, and it
10 is the difference in the moneys envisioned for those two
11 groups.

12 Q Are you familiar with the work done by Messrs.
13 Sjostrand and Fritts to calculate savings from the
14 merger?

15 A To a degree.

16 Q Are you aware that they developed unit costs
17 using rail form A?

18 A Yes.

19 Q Did you make any effort to ensure that you
20 didn't calculate savings that were included in the unit
21 cost savings based on rail form A that they used?

22 A I did not go through their work papers in
23 detail, but I do not believe there is duplication.
24 Theirs were unit of measurement based on the current
25 situation, what a gross ton-mile costs, et cetera, et

1 cetera, and those were based on having two corporate
2 structures, two communications departments, two
3 treasuries, two police, two of all these things.

4 And this is a unique situation in the sense
5 that it is different from the rail form A calculation.
6 These are advantages that can be made, not by changing
7 gross ton miles, but by changing our method of operation
8 and our organization.

9 Q Does rail form A, however, include labor costs
10 in the unit costs?

11 A Yes, based on the present operation system.

12 MR. KOOPERSTEIN: Thank you.

13 JUDGE HOPKINS: Any other questions?

14 VOICE: Your Honor, counsel for DRGW is on
15 their way. They should be here in the next five or ten
16 minutes.

17 JUDGE HOPKINS: How much time?

18 VOICE: I don't know how much time they're
19 going to take. I put a call in about ten minutes ago.
20 I don't think they were aware that Champion was going to
21 be on this early.

22 JUDGE HOPKINS: Ms. Madigan.

23 MS. MADIGAN: Good afternoon, Your Honor.

24 CROSS EXAMINATION

25 BY MS. MADIGAN:

1 Q Mr. Champion, my name is Beverly Madigan and I
2 represent the Railway Labor Executives Association.

3 Could you turn to page 1 of your statement,
4 please?

5 A Yes.

6 Q On page 1 you state that: "The plans for
7 management and operation of the merged railroad
8 represent our best appraisal based on current
9 circumstances."

10 Have there been any circumstances which have
11 changed since the preparation of your verified statement
12 which would lead you to modify the carriers' plans with
13 respect to the merger?

14 A No.

15 Q With respect to the elimination of positions
16 reflected in your verified statement, did you do the
17 calculations involved in determining which positions
18 would be eliminated?

19 A May I be sure? I did the calculations that
20 produced the numbers. Now, the numbers of people that
21 were adjusted were depending on which group. Initially,
22 we got the department heads of each group to begin
23 talking together about what the resulting structure
24 ought to be.

25 In some cases, due to differences in the way

1 we operate, there were differences. In those cases,
2 maybe I acted as arbiter. In some cases there were
3 cases where they didn't need any guidance, they could
4 reach agreement, and I acted as a person looking over it
5 to make sure it made sense. I gave it a sanity test, if
6 you will, and said, yes, that makes some sense. And in
7 a very few cases, such as the executives that I used a
8 while ago, I did that exclusively on my own.

9 With that description, I then did all the
10 calculations.

11 Q All right. Well then, could you explain to me
12 how you arrived at, for instance, in the traffic,
13 marketing and sales section of your verified statement,
14 that you would be reducing 51 positions in the non-sales
15 area?

16 A Sure. You recall I said that we were not
17 going to need all 16 regional sales offices. Regional
18 sales offices have administrative staffs. When we
19 reduce that to nine, there are some administrative
20 positions that are no longer required.

21 Q How did you make the determination that 51
22 positions would be eliminated?

23 A By looking at the actual number of people at
24 the various offices and in consultation with the head
25 person of each of the traffic departments saying, here

1 is the staff we will need, therefore those that are
2 surplus are no longer required, and that totaled up to
3 51.

4 Q Well, is that type of analysis then -- did you
5 use that type of analysis for each section in your
6 verified statement?

7 A Exactly.

8 Q All right. Now, when you decided that you
9 would be eliminating, for instance, 51 positions in the
10 non-sales area, did you decide to consolidate different
11 jobs in order to eliminate those 51 positions?

12 A The word "consolidate jobs" bothers me a
13 little. What we said was that if we need someone, to
14 try to make it fairly simple, if we need someone to
15 answer a phone in 16 offices and I reduce it to nine, I
16 have seven people that don't have to answer phones.
17 Therefore, I don't need those seven positions.

18 Q Will those nine people be doing things that
19 they didn't do prior to the merger?

20 A We do not expect any change in that. The same
21 functions will be performed.

22 Q Now, if I wanted to determine the breakdown
23 into agreement/non-agreement employees with respect to
24 these 51 positions, would you be able to provide that
25 information to me?

1 A It's in the work papers, very clearly stated
2 by craft, as I described. Now, the non-agreement are
3 carried as one group, but each of the others -- may I
4 ask you to direct me to the 51 and maybe I can help a
5 little more? Unfortunately, there's too many numbers
6 for me to remember here.

7 Q The 51 is mentioned on page 4, the third
8 sentence or the third line from the bottom.

9 A Unfortunately, I've given you an erroneous
10 answer, and I should have checked that. Although my
11 description of the process is correct, this deals with
12 the marketing and pricing and -- no, I'm sorry, that is
13 the summary. That is the summary, and the 51 deals with
14 -- yes, it deals with the marketing and pricing group.

15 And in this case, when we have people that are
16 preparing tariffs, there was a tariff for the Santa Fe
17 and a tariff for the SP, we'll only prepare one.

18 Q All right. But you offhand today don't
19 remember the breakdown? In order for me to find out the
20 breakdown, I would have to look at your work papers?

21 A Oh, yes.

22 Q And that's with respect to any kind of
23 question I would ask?

24 A May I say one more? Not only are they by
25 craft, but they're by craft under these headings. There

1 is a separate set of papers just for this group.

2 Q All right. But the information that's
3 contained in the work papers should be reflected on the
4 labor impact study; is that correct?

5 A It is, yes.

6 Q Could you turn to page 14 of your verified
7 statement, please, under the title "Insurance."

8 A Yes.

9 Q You say: "We have reviewed the current
10 insurance programs for both Santa Fe and Southern
11 Pacific." What insurance programs were reviewed?

12 A These are, for the layman -- I'm sure the
13 insurance specialist would use something different.
14 These are catastrophe policies. You truly have a major
15 -- the companies accept a deductible, like we do on our
16 automobile, of several million dollars. But they are
17 expensive because the amount of potential liability to
18 the insurance company is almost unlimited.

19 Now, in this particular case each of us had
20 our separate policies, and we became aware that some of
21 the insurers would be more comfortable insuring a larger
22 entity. They said: Not only will we be more
23 comfortable; we'd like to do it now. But we won't let
24 you go ahead with that if you don't merge. You owe us
25 what you would have paid for the separate individuals.

1 Now, part of that also was a recognition of
2 what I described earlier as the blocking of trains. We
3 do less activities and therefore we do run less risk,
4 and the insurers can accept that.

5 Q But in your review you did not review, for
6 instance, the employees' health and welfare plans?

7 A No, that is not covered in here.

8 Q Or the employees' life insurance plan?

9 A That is not covered in here.

10 Q In response to questions in prior
11 cross-examination of witnesses, it's been indicated that
12 you could provide me with some information about
13 abandonment plans.

14 A Yes.

15 Q Do you know whether the Santa Fe or the
16 Southern Pacific are presently looking at lines to
17 abandon other than those in the abandonment
18 application?

19 A We have -- we are required for any line that
20 we wish to abandon to notify the public, really. We
21 have to tell each state commission, we have to tell the
22 ICC, we have to tell a whole number of people. And we
23 do that by furnishing a map called a system diagram map,
24 and on that map we list these various lines that are in
25 a certain status, being examined.

1 That map must have been published for at least
2 four months before you can apply for an abandonment. In
3 effect, you're being sure that the public is aware and
4 they can take whatever steps they want.

5 Now, we have prepared that map. We issue it
6 every June 30th. Once in a while we issue it in
7 between. And I think we have supplied you with one of
8 those maps.

9 Q Mr. Champion, I'm going to show you what I've
10 marked for identification as RLEA-C-1.

11 JUDGE HOPKINS: That will be marked for
12 identification.

13 (The document referred to
14 was marked Exhibit No.
15 RLEA-C-1 for
16 identification.)

17 BY MS. MADIGAN: (Resuming)

18 Q Mr. Champion, is this the map to which you are
19 referring?

20 A Yes, it is.

21 Q And is this the map that you filed with the
22 Interstate Commerce Commission?

23 A Yes.

24 Q And to your knowledge is it a publicly
25 available document?

1 A Oh, yes. Half the world has a copy of this.

2 Q Can you please explain to me what the marks
3 which look like commas are on this document?

4 A May I take you to the legend, which will lead
5 us to the marks?

6 Q Of course.

7 A Under the legend you'll see an index number.
8 Unfortunately, it didn't reproduce very well, but let me
9 assure you there is a number under each one of those.
10 Category one means it is actively being considered.
11 Category three means the application has already been
12 filed, but we have not yet obtained authority, and we
13 have to continue to show it on the map until we obtain
14 authority to abandon it.

15 Now, the commas, as you speak of it, have a
16 particular number there, and you can trace back to the
17 legend and you can thus see that comma 20 up in Kansas,
18 which is one that did come through, is one that we have
19 previously applied for, from Manchester to Earnard,
20 Kansas.

21 Q Can you tell me how many miles of trackage are
22 involved in these targeted areas?

23 A I'm just estimating it, counsel, but I would
24 say we're looking at 120.

25 Q 120 miles?

1 A (Neds affirmatively.)

2 Q And these are your only present plans for
3 abandonment?

4 A Yes. Might I also add that we keep examining
5 any line that is non-economic, and there may be some
6 other lines added, but we will have to wait four
7 months.

8 Q For four months?

9 A For four months after we file it on the map,
10 before we can proceed.

11 Q Thank you.

12 Were any lines considered for abandonment and
13 rejected prior to the filing of the merger application?

14 A Yes.

15 Q Can you give me an example of which lines?

16 A There was a line where the Southern Pacific's
17 Tucumcari Line paralleled one of our lines in Kansas
18 between Canton and -- I'm sorry, I don't remember the
19 town. And it appeared natural, since they are parallel
20 for quite some distance, that we would put all the
21 traffic on one.

22 But it turns out there was an industry on one
23 and a couple industries on the other, and we got to
24 examining the cost of making the necessary track
25 connections and it wasn't worth it. So we'll operate

1 two tracks. It was rejected.

2 Q All right. Can you think of any other
3 examples?

4 A I can't recall any others.

5 Q Yesterday I provided to your counsel a copy of
6 MKT-C-21 for your review prior to your testimony today.
7 Do you have a copy of that document with you?

8 A C-21, yes.

9 Q Mr. Champion, could you turn to page 000281,
10 and those numerals are listed at the bottom right-hand
11 corner of the pages.

12 A Yes.

13 Q Could you look at paragraph 19 -- or 9 on that
14 page, and read it aloud.

15 A "In 1980, it was considered possible to
16 utilize the Santa Fe's Longview district as far north as
17 Tenaha to shorten the mileage for SP traffic from
18 Beaumont for Memphis and St. Louis. We will continue to
19 examine this, but it may well create some very special
20 labor problems and may not be practical."

21 Q Can you tell me what you mean by "very special
22 labor problems"?

23 MR. LANE: Your Honor, I object. There's been
24 no testimony that Mr. Champion wrote this.

25 JUDGE HOPKINS: You're objecting to the

1 statement and what he means --

2 MR. LANE: I'm objecting to the form of the
3 question.

4 JUDGE HOPKINS: I'll sustain that objection.

5 BY MS. MADIGAN: (Resuming)

6 Q Mr. Champion, would you turn to page 000282.

7 A Yes.

8 Q Is that your name at the bottom of the page?

9 A It is.

10 Q Did you prepare this document?

11 (Laughter.)

12 JUDGE HOPKINS: Thank you.

13 BY MS. MADIGAN: (Resuming)

14 Q Can you now tell me what you meant by that
15 when you wrote the statement?

16 A Yes. And while I describe it as a special
17 labor problem, it is not perhaps as special as I had
18 thought at that time. In order to make that route
19 effective, a train crew would be operating part of the
20 time over the Southern Pacific and part of the time over
21 the Santa Fe.

22 Q And that's it?

23 A That's it.

24 Q Can you turn to page 7 -- or, excuse me, to
25 page 000282.

1 A Yes.

2 Q And can you read paragraph 12 aloud.

3 A "Santa Fe uses the HB&T yard, New South Yard,
4 and much of the HB&T track in order to export for
5 grain. A simpler route to get the grain to the export
6 elevators would be to go into the SP yard at Houston,
7 which has a more direct delivery to the PTRB. This
8 would involve the train operating over a combination of
9 Santa Fe and SP tracks and may well have some major
10 labor implications."

11 Q Can you tell me what you meant by "major labor
12 implications"?

13 A This would involve the train operating over a
14 combination of Santa Fe-SP; same explanation I gave you
15 on the other.

16 Q Thank you. For my information, could you tell
17 me where the Cadiz, C-a-d-i-z, Parker, and Fourth
18 districts are on the Santa Fe line?

19 A The Fourth district, can you give me a
20 reference? I think I know which one. We have more than
21 one Fourth district. I just want to be sure.

22 Q Well, it was used in context with the
23 C-a-d-i-z, Cadiz, and Parker lines. I don't know.
24 That's why I'm asking.

25 A Just east of Barstow, which is the junction

1 where we can serve southern California and northern
2 California, there is a town called Cadiz, C-a-d-i-z.
3 And there is a line that leaves our main line there,
4 heading in a southeast direction, and moves down until
5 it finally enters Phoenix.

6 Now, the line that intersects that one coming
7 from our main line from the East, originating over about
8 Williams, Arizona, and going down to the junction and on
9 down to Phoenix, is the Fourth district of our
10 Albuquerque division, and I think that's the one you're
11 referring to.

12 Q Do you have any plans for any abandonments
13 along those lines?

14 A No.

15 Q Have you ever?

16 A I'm not aware of any.

17 Q Do you know whether there have been any
18 changes in traffic routing between the Santa Fe and
19 Southern Pacific or the Cotton Belt since October of
20 1983?

21 A I am not aware of any.

22 Q Do you know whether there have been any
23 charges in how each constituent Applicant carrier has
24 utilized or repaired its rolling stock since October of
25 1983?

1 A I'm not aware of it. There may have been
2 internal changes.

3 Q What do you mean by those?

4 A You know, Santa Fe within its own structure
5 may have decided to do some things differently, or the
6 SP. But there have been no changes that would involve
7 the two companies.

8 Q Now, earlier you testified that you have
9 performed some labor or employee impact studies with
10 respect to the related applications. Have you performed
11 any analyses with respect to the motor carrier
12 applications of the Applicants?

13 A No.

14 Q And was it your decision not to do that?

15 A The "decision" is a word I'd rather not use in
16 this case, because it was the case we set out to study
17 the paramount case, the merger of the Santa Fe Railroad
18 and the SP Railroad, and that's what we did. We never
19 got to the next step, if there were a next step, and the
20 other items.

21 Q Was there any discussion of the impact of the
22 motor carrier application on employees?

23 A No.

24 Q Now, you testified that your work papers would
25 reflect your computations on the employee impact of the

1 related applications. Does it break it down into each
2 testimony application?

3 A Counsel, I said there was no effect on those
4 other applications except for the trackage rights and
5 the connections which are included in the Cotton Belt.
6 So those that are included are in the whole idea and
7 cannot be separated out, because they're part of the
8 total package.

9 Q Well, would your work papers reflect any
10 distinction?

11 A Only to this extent: The coordinations in
12 Kansas City obviously are with the Cotton Belt and the
13 Santa Fe, as opposed to the coordinations in
14 Bakersfield, which are SP and Santa Fe, and therefore
15 the first application of putting them together. So you
16 could identify those locations.

17 But really, it's all a part of the total
18 package of making one entity out of this, one rail
19 structure out of this, with those two railroads.

20 MS. MADIGAN: Mr. Champion, that's all I
21 have. Thank you.

22 JUDGE HOPKINS: Mr. Leary, did you have
23 something?

24 MR. LEARY: Your Honor, Rio Grande does have
25 some questions of this witness, which we are in the

1 middle of right now. I admit to some element of
2 surprise. Sandy Mayo is going to conduct a fairly brief
3 cross-examination of Mr. Champion and we never dreamed
4 he would be on this morning.

5 I don't know how we can get this out. Maybe
6 we could confer about it over the lunch hour and see how
7 to handle it.

8 MR. NELSON: Well, would you be ready to go
9 forward after lunch?

10 MR. LEARY: I don't know. We would prefer to
11 go forward on Monday if that's possible.

12 JUDGE HOPKINS: You say it's very brief?

13 MR. LEARY: Yes, it's brief, but it's in
14 preparation.

15 MR. NELSON: We certainly would prefer not to,
16 particularly since we're anxious to finish next week.

17 MR. LEARY: I understand that. But you
18 fellows run out of witnesses from time to time, too.

19 JUDGE HOPKINS: I understand this, too. It
20 works both ways, gentlemen.

21 Is Mr. Champion going to be around next week
22 or was he leaving?

23 THE WITNESS: I just cancelled my reservations
24 back this week.

25 JUDGE HOPKINS: You cancelled them, you say?

1 THE WITNESS: Yes.

2 JUDGE HOPKINS: Off the record.

3 (Discussion off the record.)

4 JUDGE HOPKINS: Back on the record.

5 REDIRECT EXAMINATION

6 BY MR. LANE:

7 Q Mr. Champion, you indicated in response to
8 questions from the NIEA that Santa Fe had no other
9 abandonment plans other than those listed or identified
10 on the system diagram map. Are you aware of any plans
11 that Southern Pacific currently has to abandon rail
12 lines?

13 A They likewise have to issue a system diagram
14 map. I do not have a copy, but there are some short
15 lines, like curs, lines that they feel are uneconomic.
16 Yes, they have some.

17 Q All right. And one further point. There are
18 also abandonment applications that have been sought in
19 connection with this merger that are not identified on
20 the system diagram map; is that correct?

21 A That is correct.

22 MR. LANE: That's all.

23 JUDGE HOPKINS: Any further questions?

24 (No response.)

25 JUDGE HOPKINS: You're excused for now.

(Witness excused.)

1
2 MR. LANE: I move the admission of Mr.
3 Champion's statement.

4 JUDGE HOPKINS: Is there any objection now to
5 the admission?

6 MR. LEARY: No, Your Honor. We'll see what we
7 can do.

8 JUDGE HOPKINS: His testimony will be received
9 in evidence. And also RLEA?

10 MS. MADIGAN: Please, Your Honor.

11 JUDGE HOPKINS: Any objection?

12 MR. LANE: No.

13 JUDGE HOPKINS: That will be received in
14 evidence.

15 (The document previously
16 marked Exhibit No. RLEA-C-1
17 for identification was
18 received in evidence.)

19 JUDGE HOPKINS: I gather, then, we will be in
20 recess until 9:00 o'clock Monday morning.

21 (Whereupon, at 12:35 p.m., the hearing in the
22 above-entitled matter was recessed, to reconvene at 9:00
23 a.m. on Monday, October 29, 1984.)

24 * * *

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