

FD 30400

1/10/85 -

Pages 5917--5975

BEFORE THE
INTERSTATE COMMERCE COMMISSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

----- x
In the Matter of: :
SANTA FE SOUTHERN PACIFIC CORPORATION : Finance Docket
-- CONTROL -- : 30400 et al.
SOUTHERN PACIFIC TRANSPORTATION :
COMPANY :
----- x

Hearing Room A
12th & Constitution, N.W.
Washington, D.C.
Thursday, January 10, 1985

The hearing in the above-entitled matter was
convened, pursuant to notice, at 9:00 a.m.

BEFORE:
JAMES E. JOPKINS,
Administrative Law Judge

APPEARANCES AS HERETOFORE NOTED

ALDERSON REPORTING COMPANY, INC.
20 F ST., N.W., WASHINGTON, D.C. 20001 (202) 628-9300

08140000

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	Harry T. Dimmerman				
4	By Mr. Budeiri		5918		
5	By Ms. Reed		5923		
6	By Mr. Greenberg			5934	
7	Michael K. Noser				
8	By Ms. Mahon	5940			
9	By Mr. Smith		5942		
10	By Mr. Wilson		5966		
11	By Ms. Mahon			5976	
12	Harry T. Dimmerman & Jerry Sheridan				
13	By Mr. Kharasch	5978			
14	By Mr. Moates		5979		
15	By Mr. Kharasch			6136	
16	Thomas G. Todd				
17	By Mr. Roper	6145			
18	By Mr. Blaszak		6146		

E X H I B I T S

	<u>NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
15	SFSP-C-57	5939	
16	SFSP-C-58	5948	5977
17	SFSP-C-59	5968	5977
18	SFSP-C-20		5977
19	SFSP-C-60	5984	6144
20	SFSP-C-61	5992	6144
21	SFSP-C-62	6009	6144
22	SFSP-C-63	6017	6144
23	SFSP-C-64	6029	6144
24	SFSP-C-65	6039	6144
25	SFSP-C-66	6071	6144
26	SFSP-C-67	6081	6144
27	SFSP-C-68	6092	6144
28	SFSP-C-69	6097	6144
29	SFSP-C-70	6101	6144
30	SFSP-C-71	6103	6144
31	SFSP-C-72	6109	6144
32	SFSP-C-73	6112	6144
33	SFSP-C-74	6118	6144
34	SFSP-C-75	6124	6144
35	SFSP-C-76	6133	6144
36	SFSP-C-77	6157	

ALDERSON REPORTING COMPANY, INC.

20 F ST., N.W., WASHINGTON, D.C. 20001 (202) 628-9300

001480007

P R O C E E D I N G S

1
2 JUDGE HOPKINS: Let's get back on the record.
3 Which one of you is going to handle it?

4 MS. BUDERIRI: I am.

5 JUDGE HOPKINS: Go right ahead.

6 Whereupon,

7 HARRY T. DIMMERMAN

8 the witness on the stand at the time of the recess,
9 resumed the stand and, having been previously duly sworn
10 by the Administrative Law Judge, was further examined
11 and testified as follows:

CROSS EXAMINATION

12 BY MR. BUDEIRI:

13 Q Good morning, Mr. Dimmerman. My name is
14 Priscilla Budeiri and I represent the United States
15 Department of Justice.
16

17 A Yes.

18 Q What is the final destination in Mexico for
19 the traffic you transport that crosses the border at
20 Laredo?

21 A That is not known to us. Conasupo normally
22 handles all that traffic. We just handle it to the
23 border, to the Mexico to National. It very seldom shows
24 where it's going.

25 Q Does Conasupo handle the non-grain traffic?

1 A Pardon?

2 Q Does Conasupo handle the non-grain traffic as
3 well as grain traffic?

4 A Not as far as I know; no. I am just talking
5 about the grain traffic.

6 Q Do you know the final destination for the
7 non-grain traffic you transport?

8 A We handle so very little, but yes, we would.
9 For example, there would be scrap to Monterey. We would
10 know that.

11 Q So you move to scrap to Monterey?

12 A Yes, we do.

13 Q Can you give me any other commodities and
14 their destination?

15 A When I say grain, I'm talking about all types
16 of grain products. One large commodity that moves is
17 sunflower seeds. It usually goes under farm products
18 rather than grain.

19 Q Does Conasupo handle the transport of
20 sunflower seeds?

21 A Yes.

22 Q At what border crossings, besides Laredo, does
23 grain enter Mexico that is handled by Conasupo?

24 A Well, I would imagine that they handle it, you
25 know, all of the primary crossings which would include

1 Eagle Pass; we handle some grain with the SP over Eagle
2 Pass.

3 They also move grain over Presidio. I believe
4 Calexico handles some grain. I'm sure some grain moves
5 through El Paso.

6 Q Does the MKT have any portion of the movement
7 on the grain that moves across the border at Presidio?

8 A No.

9 Q How about at Calexico?

10 A No.

11 Q And El Paso?

12 A No. To my knowledge. I don't recall any.

13 Q At what ports does grain enter Mexico that is
14 handled by Conasupo?

15 A I'm not too knowledgeable on that. Tampico is
16 one of the larger ports. Mr. Ramos will be on from the
17 Tex Mex, and he is very knowledgeable on any of that.

18 Q You currently interline with the SP on traffic
19 moving to Laredo via San Antonio and Corpus Christi,
20 don't you?

21 A Yes. Our normal interchange with the SP is at
22 Denison, Texas.

23 Q In connection with the traffic that you move
24 that moves to Laredo, I'd like you to compare the
25 service you currently provide for that traffic moving to

1 Laredo with the service you anticipate being able to
2 provide if you are granted the trackage rights over the
3 SP line between San Antonio and Corpus Christi.

4 Are you better able to compete now, or will
5 you be better able to compete if granted the trackage
6 rights between San Antonio and Corpus Christi?

7 A We will be better able to compete after the
8 granting of trackage rights, because at that time we
9 will no longer have to seek concurrence on any routes
10 and rates with the SP. It would be just simply the
11 MKT/Corpus Christi/Tex Mex to make the routes and
12 rates.

13 Q What do you see as the disadvantages of having
14 trackage rights?

15 A Disadvantages? None as far as traffic
16 solicitation. There are obviously some things that have
17 to be worked out with the operating departments of the
18 owner and the lessor. However, on our trackage rights
19 that we secured through the Union Pacific merger, I know
20 of very few problems that weren't worked out after we
21 instigated the use of them.

22 Q Is it more difficult to negotiate concurrences
23 within this instance, the SP, to move the traffic to
24 Laredo; or is it more difficult to negotiate the rent
25 for the trackage rights?

1 A I don't quite understand your question. Is it
2 more difficult to seek concurrence on rates than it is
3 to on the trackage rights?

4 Q No. Is it more difficult, do you believe it
5 is more difficult to seek concurrences on rates, or do
6 you think it would be more difficult to negotiate the
7 rent for the use of the trackage rights on the SP line?

8 A The rates would be much more difficult to
9 negotiate than the trackage rights would. If we had the
10 rights, the trackage rights, you can always work
11 something out. The operating departments of railroads,
12 all that they're interested in is getting the traffic
13 moved, and it works both ways.

14 Q On rates, somebody's always trying to get the
15 advantage.

16 Q Does the MKT currently interline with the SP
17 for traffic moving to Beaumont?

18 A We certainly can. I don't know how much
19 traffic moves that way, but we certainly can; yes.

20 Q If the MKT receives the trackage rights it
21 seeks between San Antonio and Corpus Christi to
22 Beaumont and over the Bayport line, do you expect that
23 the SFSP will then have any incentive to continue to
24 interline with the MKT?

25 A Probably not.

1 Q Why?

2 A Excuse me. On points coming from exclusive
3 MKT points? Yes, they would.

4 Q And why is that?

5 A Well, if it came from an exclusive MKT point,
6 it would be the only way that they could share in it.

7 Q And with respect to the points that do not
8 come exclusively from MKT points, what is your answer
9 for those?

10 A I would think not.

11 Q And why is that?

12 A They would have no advantage to do so if they
13 could move it themselves.

14 Q Can the railroad that owns the tracks
15 interfere with the trackage rights service enough to
16 render the trackage rights service noticeably inferior
17 to the owner-provided service?

18 A Anything is possible, but I don't think it
19 would be very practical. For example -- well, you
20 should ask Mr. Todd those questions.

21 MS. BUDEIRI: Thank you very much.

22 JUDGE HOPKINS: Ms. Reed.

23 BY MS. REED:

24 Q Hello again, Mr. Dimmerman, how are you
25 today?

1 A Just fine.

2 Q Page 2 and 3 of your statement, you discuss
3 MKT's policy of being responsive to shippers. Does this
4 responsiveness include offering shippers contracts?

5 A Yes.

6 Q Do you know how many contract rates the MKT
7 has in effect today?

8 A No, I do not. Considerable.

9 Q A considerable number. Do you know what
10 percentage would be for single line movements as
11 compared to joint line?

12 A No, I do not.

13 Q Do you know whether you have more contract
14 rates for single line than joint line movements?

15 A I would say that we probably have more
16 contracts for joint line rates. I would say we have
17 more volume movement for single line rates.

18 Q Now, does the MKT presently offer a contract
19 discount or allowance to shippers and receivers to
20 encourage their traffic to move via the MKT in a joint
21 line movement?

22 A Yes.

23 Q Do you know how many, specifically, those
24 types of contracts there are?

25 A No, I do not.

1 Q Do you know whether you have such contracts in
2 situations where one rail carrier exclusively serves the
3 original destination and has a choice of connecting
4 joint line carriers?

5 A Yes. Not exclusively; no.

6 Q You don't know how many?

7 A I don't believe we have any contracts where a
8 railroad exclusively serves the origin and destination
9 and we would be the bridge carrier. No.

10 Q Let me clarify. For example, an exclusively
11 served SP point -- and they have a choice between using
12 the MKT and the Burlington Northern to reach the
13 destination point -- do you know how many contracts you
14 would have?

15 A No, I don't.

16 Q Do you know whether it would be a large
17 number, a small number?

18 A It probably would not be.

19 Q It would be a small number of contracts?

20 A Yes.

21 Q Now, let's assume that you have one grain
22 shipper that you can serve in single line service and
23 another you can serve only in joint line service. Do
24 you try to work equally with both shippers to offer them
25 the best rate and service package?

1 A Yes, miss.

2 Q If you didn't, wouldn't you risk the
3 possibility of losing the traffic entirely?

4 A That's true.

5 Q Turning to page 10, you discuss a movement
6 from Enid to Corpus Christi. Do you know whether the
7 Santa Fe presently handles grain from Enid to Corpus
8 Christi?

9 A I do not know. I can assume they do.

10 Q Do you know whether the Santa Fe interchanges
11 traffic with the SP for movement to Laredo today?

12 A I don't know, but I assume they do.

13 Q What about to Eagle Pass?

14 A I assume that also.

15 Q But you don't know the number of cars?

16 A No.

17 Q Yesterday, you discussed with Mr. Smith the
18 types of grain that move into Mexico. Do the same types
19 of grain move via the Eagle Pass and Laredo Gateways, or
20 are there distinctions?

21 A The same.

22 Q Now, do shippers of grain located on your line
23 ever ask for a lower rate so that they can compete with
24 the shippers that have access to water carrier service?

25 A O'Mary might get some requests like that, but

1 certainly not out of southwest Kansas.

2 Q Do you handle corn?

3 A Yes, we do.

4 Q Do shippers in Iowa have access to water
5 carrier service?

6 A Yes, they do.

7 Q Are you aware of any situations where a
8 shipper of corn on your track line has said we need a
9 lower rate to be able to compete with shippers of corn
10 out of Iowa who have water carrier service?

11 A Let me tell you normally how it works.
12 Normally, the corn moves on the river when the river is
13 open, because they are the price setter. And in
14 January, when the river starts freezing up, then it
15 starts moving to the Gulf by rail.

16 Q How long is the river open?

17 A Usually, they shut down the river sometime in
18 December.

19 Q What is the period? How many months of the
20 year?

21 A Oh, December 15th to March 1st.

22 Q The river is open?

23 A Closed.

24 Q During the rest of the time, the river is the
25 price setter?

1 A Pretty much so.

2 Q During that time when the river is open, do
3 corn shippers on your line ever come to you and say we
4 need a lower rate to be able to compete?

5 A It's almost impossible to, unless they would
6 have some type of situation where they did not have the
7 barge, which is not true now and hasn't been for the
8 last several years, the river would control the price on
9 traffic moving in that corridor.

10 Q What about shippers on your line, however, who
11 don't have direct access to the river. Do they come to
12 you and ask for --

13 A Most of the corn shippers do have access. You
14 see, even at Atchinson, Kansas, they have a barge
15 terminal at Atchinson, Kansas.

16 Q So you compete today with the water carriers?

17 A Yes. But like I say, not in southwest
18 Kansas. This is in eastern Kansas, far eastern Kansas.

19 Q Now, turning to Table 1 on page 9, you
20 indicate that there are 1,559 carloads of non-grain
21 traffic moving via the MXT to Laredo, and you mention
22 that scrap was one of the non-grain commodities.

23 What other types of commodities are
24 non-grain?

25 A We handled some zinc out of Mexico going to

1 Oklahoma.

2 Q This would be northbound traffic?

3 A Yes. We handled some scrap paper going into
4 Mexico.

5 Q Now, this is traffic that is going to Laredo,
6 however, so the northbound movements of zinc would not
7 be included, would they? Or am I misreading this
8 table?

9 A I believe the only northbound traffic I
10 mentioned was the zinc. The scrap paper would be going
11 south into Mexico.

12 Q Is there anything else besides scrap paper
13 that would be going to Laredo?

14 A Oh, there could be some lumber movements.

15 Q But scrap paper is the major portion of this
16 1,559 carloads?

17 A The major carloads that we move into Mexico is
18 grain.

19 MR. GREENBERG: We can provide a breakdown of
20 the 1,500 carloads if you would like.

21 MS. REED: Thank you.

22 JUDGE HOPKINS: Thank you.

23 BY MS. REED: (Resuming)

24 Q Now, you indicate on page 10 that the 1983
25 grain statistics are not normal to Corpus Christi

1 because of the elevator explosion. How much grain, in
2 your opinion, would be normal as far as an MKT move to
3 Corpus Christi?

4 A Well, all I can say is, there are two
5 elevators in Corpus Christi. When the producers'
6 terminal -- I believe it was producers' that exploded --
7 the grain just didn't move that way. There was no way
8 to receive it.

9 So I would say probably 50 percent of it
10 anyway.

11 Q You would have had a 50 percent increase in
12 grain if the elevator had been operating?

13 A That would be a logical choice. You had two
14 large elevators and one was down.

15 Q And that is based on the past volumes of
16 traffic that the MKT handled to Corpus Christi?

17 A Yes. I think I just exploded the wrong
18 terminal. I think it was the Corpus Christi public
19 elevator that exploded, and the producers' was still
20 open.

21 Q Okay. Now, on page 27, you indicate that
22 farmers can truck grain the relatively short distances
23 between the Santa Fe and SP Cotton Belt lines in
24 southwest Kansas.

25 A Where is that?

1 Q That's in the first full paragraph, second
2 sentence.

3 Do you know the distances between those two
4 lines, the average distance?

5 A No, I do not. It can be determined.

6 Q But you don't know what it is?

7 A No.

8 Q Now, turning to page 31, you indicate in the
9 first full sentence which is a parenthetical, that the
10 gain on the Liberal Topeka trackage right is based on
11 the assumption that MKT's rights to Mexico are granted.

12 Do you know what the traffic projections would
13 be if the Mexican rights are not granted?

14 A Do I know what the projection would be if
15 what?

16 Q If your trackage rights to Mexico are not
17 granted, or the other trackage rights.

18 A If we do not receive trackage rights to
19 Mexico, the only traffic that we will be able to handle
20 into Mexico would be traffic from our own exclusive
21 points, and they are so few that it would be
22 negligible.

23 Q Excuse me. Let me clarify. What was I was
24 referring to is you state that the 5.8 million in gross
25 revenue on the Liberal to Topeka trackage rights --

1 A Oh, I see.

2 Q Am I reading it correctly, that that gain is
3 based on the assumption that MKT's Mexican access and
4 other trackage rights are granted? Therefore, am I
5 correct that you expect to divert or attract fewer
6 carloads if your other trackage rights are not granted?

7 A That's true.

8 Q Have you quantified that difference?

9 A I believe we have a scale of each individual
10 trackage, but if you don't get them all, it changes.
11 But when we diverted the traffic, we only showed, as I
12 recall, trackage rights originations, so that none of it
13 was duplicative. Is that what you are saying?

14 MR. KHARASCH: May we be off the record?

15 JUDGE HOPKINS: Surely.

16 (Discussion off the record.)

17 JUDGE HOPKINS: Back on the record.

18 BY MS. REED: (Resuming)

19 Q Now, turning to page 32 in the first full
20 paragraph, the third sentence: "After an SFSP merger
21 the SFSP will force all Bayport line traffic over the
22 SFSP to or from any point on the new, bigger SFSP."

23 Now, how much of the Bayport line traffic
24 originates on points served by the Santa Fe, do you
25 know?

1 A When you say Santa Fe, you mean SP?

2 Q No, I'm talking about the Santa Fe.

3 A Originates on the Santa Fe, on the Bayport
4 line? None. It all originates on the SP.

5 Q How much of it, or how much of the traffic
6 going to the Bayport line originates?

7 A Oh, I don't know.

8 Q Do you know how much of the traffic
9 originating on the Bayport line is terminated by the
10 Santa Fe?

11 A No, I do not.

12 Q And would you know how much of the traffic
13 involves movements to or from a Santa Fe point which are
14 also served by another rail carrier?

15 A No, I don't know that.

16 Q Now, am I correct that the Santa Fe presently
17 does not serve the Mazda Motor Plant?

18 A They have access availability, but they do not
19 serve it. That's correct.

20 Q But from your answers yesterday, their line
21 goes outside the plant but they don't have a direct rail
22 link into the plant; is that correct?

23 A That is correct. But like I explained, when
24 they put the fence around the terminal, they put a jog
25 in the fence so that they could put a spur from the

1 Santa Fe main line into the plant without disturbing the
2 fence line. All they'd have to do is put in a gate.

3 Q And, finally, do you know whether Agri
4 Industries is primarily an export shipper of grain?

5 A Yes, it is. Yes, it is.

6 MS. REED: Thank you. That's all I have.

7 JUDGE HOPKINS: Mr. Greenberg.

8 MR. GREENBERG: I have a few questions on
9 redirect.

10 REDIRECT EXAMINATION

11 BY MR. GREENBERG:

12 Q Mr. Dimmerman, would you please turn to an
13 exhibit marked by Mr. Smith, Exhibit PSP-C-50? Would
14 you turn to the last page of that exhibit?

15 A Yes, sir.

16 Q Perhaps you should turn to the
17 next-to-the-last page and identify again for us what
18 that letter is, what that memorandum is.

19 A This is the letter that I described to Mr.
20 Smith yesterday as having been wrote by my sales manager
21 at Kansas City, Elmer Koker, to me regarding
22 possibilities of securing trackage rights through the
23 SP/Santa Fe merger.

24 Q Would you please again turn to the last page
25 of that document and read -- you can read it out loud,

1 actually -- read the first paragraph.

2 A Quote: If we are successful in securing
3 operating rights to Hutchinson, we feel it would
4 eliminate problems that occurred in signing contracts
5 with both Bunge and Far-Mar-Co from Salina." Understand
6 both firms definitely needed help on moving grain from
7 Hutchinson. However, the only way the Santa Fe would
8 give them any help on rates to move grain from
9 Hutchinson was for these two firms to also sign a
10 contract on grain from Salina.

11 This is traffic we had been handling under
12 contract.

13 Q Now, does this accurately describe the
14 situation which existed at Hutchinson and Salina with
15 respect to Bunge and Far-Mar-Co?

16 A I would say so; yes.

17 Q What does this letter tell you about the Santa
18 Fe's policies on grain contracts?

19 A What it tells me in this case here is that
20 they tried to tie the Salina traffic to the Hutchinson
21 traffic. We, of course, couldn't move the Hutchinson
22 traffic, so it would end up eliminating the MKT on the
23 movement of the grain from Salina.

24 Q What does this letter tell the ICC about those
25 shippers' need for MKT service at Hutchinson?

1 A I would certainly think that the Commission
2 would take account of it because these two shippers here
3 were certainly disadvantaged.

4 Q Do you also have handy copies of exhibits
5 SFSP-C-56 and 57? Those are the Kansas Grain Marketing
6 Reports.

7 A Yes.

8 Q Do you know whether Mr. David Anderson of
9 Temple, Parker & Slocane used these reports in preparing
10 his testimony on behalf of the Applicants?

11 A I understand he did; yes.

12 Q I'd like you now to turn back to another
13 exhibit introduced by Mr. Smith. It is SFSP-C-54.

14 A All right. Letter to Mr. Kharasch from Art
15 O'Mary?

16 Q Yes. Would you please turn to the second page
17 of that document and the fourth paragraph from the top.
18 Could you please also read that paragraph out loud?

19 A Quote: I also contacted Mr. A. R. Ramos,
20 Chief Executive Officer of the Texas Mexican Railway,
21 Inc. as to the possibility of making a comparison of
22 what it would cost to ship grain from a specific origin
23 to a specific destination via rail and water or a
24 combination of both to see what was the most
25 economical.

1 He advised the shipments arriving by water
2 were based on political reasons, not economic reasons.
3 And a comparison would be pointless.

4 Further, any information obtained from
5 Conasupo, a Mexican Government grain-buying agency,
6 would be inaccurate and could not be relied on.
7 Therefore, I can't assist in this area. However, it
8 appears there is no competitive relationship between the
9 water and rail transportation costs.

10 Q What does that letter tell us about how
11 Conasupo determines whether grain moves to Mexico by
12 rail or by water?

13 A It says it is political.

14 Q Can you tell us whether that indicates to you
15 whether price has any -- price competition between barge
16 or rail has much significance?

17 MR. SMITH: Your Honor, I object. That's a
18 leading question.

19 JUDGE HOPKINS: I'll sustain the objection.
20 It already shows -- he has read the statement there
21 anyway.

22 BY MR. GREENBERG: (Resuming)

23 Q Is that your understanding as well of the
24 situation?

25 A Yes, sir.

1 Q Now, in response to a question from Mr. Smith
2 yesterday, you concluded that single line routes could
3 result in a foreclosure of competition. Do you recall
4 that?

5 A Yes, sir.

6 Q When you gave that answer, were you speaking
7 in general terms or were you addressing the specific
8 situation where there is no competitive alternative to a
9 single line route? &

10 A I was indicating that there would be certain
11 instances where single line routes would be the only
12 available routing.

13 Q Now, Mr. Smith asked you a series of questions
14 concerning statistics that appeared in the Kansas Grain
15 Reports, and as I recall, he asked you a number of
16 questions about corn which originates in southwest
17 Kansas.

18 Can you tell me, does the MKT handle any
19 substantial volume of corn which originates in southwest
20 Kansas and which moves to Mexico?

21 A To my knowledge, we haven't handled any.

22 Q Where does the corn that the Katy handles
23 originate?

24 A The corn that the Katy handles normally
25 originates in southern Minnesota, Iowa, Nebraska.

1 Q What is the primary product of southwest
2 Kansas?

3 A Wheat.

4 MR. GREENBERG: No further questions.

5 JUDGE HOPKINS: Thank you. Anything further?

6 MR. SMITH: No, Your Honor.

7 JUDGE HOPKINS: Anything further from
8 anybody?

9 You are excused, sir.

10 (Witness excused.)

11 JUDGE HOPKINS: Do you move the admission of
12 his testimony?

13 MR. GREENBERG: Yes. Thank you.

14 MR. SMITH: Your Honor, I'd move the admission
15 of SFSP-C-50 through 57.

16 JUDGE HOPKINS: Any objection to either one?
17 Hearing no objection, they will be received in
18 evidence.

19 (The documents referred to,
20 previously marked Exhibits
21 SFSP-C-50-57 for
22 identification, were
23 received in evidence.)

24 JUDGE HOPKINS: Call your next witness.

25 MS. MAHON: We call Mr. Noser back to the

1 stand.

2 Whereupon,

3 MICHAEL K. NOSER

4 was recalled to the stand, and, having been previously
5 duly sworn by the Administrative law Judge, was examined
6 and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. MAHON:

9 Q Mr. Noser, do you have before you your
10 verified statement appearing in MKT-21?

11 A Yes, ma'am.

12 Q Do you have any changes to make to that
13 statement?

14 A Yes, ma'am. I'm afraid I have a number of
15 them.

16 Q Go ahead.

17 A I don't think any of them really change the
18 meat of the subject, but I do have to change them for
19 the record, I guess.

20 On page 1, it says that I have been employed
21 with the Traffic Department. It should be Marketing
22 Department.

23 On page 4, on the last paragraph there, the
24 second sentence starts, "On March 8, '83." Strike that
25 and start the sentence with, "Effective April 15th."

1 The rest of the changes have to do with dates
2 on these various denials. Apparently, when we picked
3 these up, they picked up the date we requested a route,
4 rather than the date of the denial. So to make the
5 record straight, I think we ought to put those correct
6 dates in there.

7 On page 7, letter F should read: August 23,
8 '83."

9 On page 8, the letter P should read: January
10 11, '84.

11 And the letter U should read: May 11, '83.

12 On page 9, letter X should read: August 23,
13 '83.

14 And letter BB should read: October 31, '83.

15 On the next page, the first entry, page 10
16 should read: February 9, '84.

17 Page 11, third entry should read: 4/27/83.

18 The sixth entry under "wood pulp" should
19 read: 5/11/83.

20 On page 12, seventh entry under "copper
21 refinery, crude" should read: 4/13/83.

22 Page 14, the eighth entry should read:
23 9/26/83 in lieu of 9/21.

24 And the tenth entry should read: 11/10/83.

25 And, finally, on page 16, the first entry

1 should read: 6/21/83. And I apologize for the
2 changes.

3 Q With those changes, Mr. Noser, do you adopt
4 the statement as your testimony in this proceeding?

5 A Yes, ma'am, I do.

6 MS. MAHON: The witness is tendered for
7 cross-examination.

8 JUDGE HOPKINS: Are you handling this, Mr.
9 Smith?

10 MR. SMITH: Yes, Your Honor. On this witness
11 I'm going to have a few questions, and then Mr. Wilson
12 is going to. The reason is that he has split it up and
13 we will keep it separate.

14 JUDGE HOPKINS: I understand.

15 CROSS EXAMINATION

16 BY MR. SMITH:

17 Q Mr. Noser, I am Mike Smith and I will ask you
18 a few questions first.

19 A Fine.

20 Q I take it that in your present position, you
21 are responsible, as it says on the first page, for
22 negotiation of rates and routes with other carriers and
23 shippers.

24 A Yes, sir.

25 Q Does that mean, would that include negotiation

ALDERSON REPORTING COMPANY, INC.

20 F ST., N.W., WASHINGTON, D.C. 20001 (202) 628-9300

00140026

1 of contracts with shippers?

2 A Yes, sir.

3 Q Allowance contracts and that sort of thing?

4 A Yes, sir.

5 Q Does MKT have a substantial number -- how many
6 allowance contracts do you have?

7 A Sir, I have no idea.

8 Q Do you have any number of rate contracts? Do
9 you know what I mean by rate contracts?

10 A You're talking about through rate contracts?
11 Yes, sir; we have some.

12 Q Do you know how many?

13 A No, sir; I sure don't. I can tell you the
14 total number of contracts the Katy has on file is
15 somewhere around 700, I would suppose.

16 Q And that includes both allowance and rate
17 type?

18 A Total contracts.

19 Q Are most of your contracts allowance or rate?

20 A I really couldn't tell you. I don't know.

21 Q Can you give me an idea -- a foundation
22 question: Obviously, not all of MKT's traffic moves
23 under contracts; right?

24 A No, sir.

25 Q That's right. So some of it does and some of

1 it doesn't.

2 A Yes, sir.

3 Q Can you give me an idea, in general terms if
4 you can, when does MKT use a contract versus not use a
5 contract?

6 A I think possibly if there's a substantial
7 amount of business, a contract may be used. Or if the
8 shipper comes to us and requests a contract for his
9 business.

10 Q Basically, a contract is beneficial for a
11 shipper because it gives him a better rate?

12 A I would think so. Yes, sir.

13 Q Do you have -- does MKT have any sort of a
14 formal or informal policy for entering into contracts
15 such as it must guarantee to MKT some minimum return on
16 investment?

17 A I don't think we have a formal contract that
18 reads that way. No, sir.

19 Q I'm thinking of a policy that governs when MKT
20 will enter into a contract versus not.

21 A No policy. No, sir.

22 Q But you won't sign a contract if it doesn't
23 return some minimum adequate revenue that you have in
24 your mind?

25 A Obviously, it's got to be a profitable

1 business.

2 Q So you're not going to sign a contract where
3 you're going to lose money?

4 A No, sir.

5 Q And you don't know whether you have some
6 minimum revenue requirement.

7 A It's up to the pricing officer involved to
8 make his judgment on that particular segment of
9 traffic.

10 Q And there's no standard that he has been given
11 that you can't go below when you sign the contract?

12 A No, sir.

13 Q In general, do you think that shippers prefer
14 single line service to joint line service?

15 A If all factors are the same and that's a lot
16 of variables, but if all factors are the same, then I
17 would think that it's easier for a shipper to go to one
18 carrier than to go to two or three.

19 Q Does MKT have any contracts with shippers
20 covering movements to and from points on another
21 railroad not served by MKT?

22 A Yes, sir. I'm sure there are some of those.

23 Q Which railroads are involved in that besides
24 MKT? I'm sorry. For the contracts that MKT is a party
25 to, covering shippers whose facilities are located off

1 MKT's lines, what lines are those railroads on? Do you
2 know?

3 A You are talking about joint rate contracts
4 with another railroad? Is that what you're saying?

5 Q Well, that would be one type; yes. Let's ask
6 about that.

7 A We have them with various railroads.
8 Obviously, I just handle one segment of traffic and we
9 have various rate officers, and I couldn't tell you what
10 all of the railroads involved are. But I'm sure we have
11 them with both the companies that you people represent,
12 as well as various other railroads.

13 Q How about allowance contracts? Do you ever go
14 -- does MKT ever go to a shipper not located on MKT's
15 lines and offer that shipper an allowance contract to
16 induce the shipper to route joint routings via MKT?

17 A There's allowance contracts? Yes, sir.

18 Q You said you were only responsible for one
19 segment of traffic, I heard you say.

20 A Well, personally, I am responsible for iron
21 and steel, petroleum and various other miscellaneous
22 commodities. That's the way we are broken up, into
23 commodity groups.

24 Q Oh, I see. So you are not responsible at MKT
25 for all commodities such as grain?

1 A No, sir.

2 Q Who's responsible for grain at MKT?

3 A Art O'Mary.

4 Q So you are Art O'Mary's equivalent, except for
5 iron and steel? Is that basically it?

6 A Yes, sir.

7 Q Do you think that the ability of MKT to offer
8 these kinds of contracts to shippers, whether they be
9 rate contracts or allowance contracts -- and again, I'm
10 talking about shippers off line for MKT -- do you think
11 that your ability to do that is a way to compete?

12 A What you have to remember is, we can't offer
13 an allowance contract unless we have a route. And if
14 carriers close our routes out to us, then obviously we
15 can't offer an allowance contract.

16 Q But if the route is open, you can do that and
17 that is an effective way to compete sometimes?

18 A It has attracted some traffic, I would say.

19 Q Let's talk a little bit about your
20 negotiations with other railroads, which is one of your
21 duties; right?

22 A Yes.

23 Q Is the scope of your duties on that limited to
24 iron and steel?

25 A The commodities I handle; right.

1 Q Let me ask this question. Does MKT always
2 join in a rate or route request made by another
3 railroad?

4 A No, sir.

5 Q Can you give me an idea of what factors MKT
6 considers when it decides whether or not to join in
7 another railroad's rate or route request?

8 A Whether we make money or not is probably one
9 of the prime factors.

10 MR. SMITH: I want to mark an exhibit. I'll
11 mark as SFSP-C-58.

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

14 (The document referred to
15 was marked Exhibit SFSP-C-58
16 for identification.)

17 BY MR. SMITH: (Resuming)

18 Q I'll give you a moment to look at this. You
19 have probably seen this because I gave it to your
20 counsel. Put, for identification, this is a 16-page set
21 of documents that we extracted from Southern Pacific
22 records that consist of various requests by Southern
23 Pacific to MKT to join in joint rates or routes, and I
24 believe also, MKT's denial of those requests.

25 Have you had a chance to look at this, and is

1 that an accurate description of what this is?

2 A There are 16 pages here. I think there's only
3 seven different movements involved.

4 Q Right.

5 MS. MAHON: Excuse me. Can the witness talk a
6 little louder?

7 THE WITNESS: I'm sorry. There are 16 pages
8 here, but there's only seven different movements
9 involved.

10 BY MR. SMITH: (Resuming)

11 Q Right. Well, let's just quickly go through
12 here. If you look at the first page, it appears to be a
13 telegram to Mr. Heinrich -- that's H-e-i-n-r-i-c-h. Is
14 he with Southern Pacific?

15 A Yes, sir, in Houston I believe.

16 Q And it's from Mr. D. A. Witte, W-i-t-t-e; is
17 that correct?

18 A Yes, it is.

19 Q He is with MKT?

20 A Yes, sir.

21 Q Is it fair to say that this consists of a
22 denial in this particular letter or telegram rather, a
23 denial by MKT of a Southern Pacific route request due to
24 revenue considerations?

25 A That's what it says. Yes, sir.

1 Q And the page immediately preceding that or
2 underneath it in this exhibit, would that be the request
3 to which Mr. Witte responded?

4 A Yes, sir.

5 Q Would you tell me if you can, what do you
6 think Mr. Witte means when he says "due to revenue
7 considerations"?

8 A I don't know in this particular instance.
9 Possibly, we would either lose money or it didn't meet
10 whatever guidelines that Mr. Witte has set for
11 profitability on this particular movement.

12 Q So the guidelines -- you mean there's some
13 minimum revenue that MKT, particular managers may want
14 to --

15 A Like I say, each manager is responsible for
16 his commodities.

17 Q And that would vary from commodity to
18 commodity?

19 A I would say from movement to movement,
20 possibly.

21 Q How about the third -- page 3 of 16 in this
22 exhibit SFSP-58? That's another one from Mr. Witte to
23 Heinrich, where it says: "We do not desire to establish
24 requested routes."

25 That one doesn't mention revenue. Do you have

1 any idea from looking at this document and the document
2 following page 4, why MKT or Mr. Witte did not desire to
3 establish the requested route?

4 A From looking at this document, there's no way
5 of telling why.

6 Q And if you look at page 5 of 16, you see
7 another telegram from Mr. Witte to Mr. Heinrich
8 regarding another route. And it says: "Because of
9 revenue considerations, we do not desire to join in the
10 route."

11 Is that the same kind of a situation as we had
12 with the first one?

13 A It appears so. I have to say that Mr. Witte
14 has been frustrated by Mr. Heinrich numerous times, in
15 Mr. Heinrich refusing Katy routes; at one point, was
16 giving Mr. Heinrich the same language back that Mr.
17 Heinrich gave him, in hopes that Mr. Heinrich would wake
18 up and say, hey, wait a minute; maybe we'd better deal
19 with the Katy or they're not going to deal with us.

20 Q Are you suggesting that MKT was retaliating?

21 A It's possible that might happen. Like I say
22 from looking at this document, there's no way I could
23 tell.

24 Q Take a look, for example, at page 9 of 16 of
25 this exhibit where we have a letter instead of a

1 telegram. This one is from Mr. Hengehold. What is his
2 area?

3 A Well, he right now handles coal, but at the
4 time of this, back in '81, he was handling the job I am
5 on, iron and steel.

6 Q Well, on this one, if you take a look at it,
7 MKT -- Mr. Hengehold said that he did not desire to
8 establish routing via East St. Louis, Illincis, or St.
9 Louis, Missouri in connection with this particular
10 traffic.

11 Do you know from looking at it why it was that
12 MKT did not desire to join in this particular rate or
13 route?

14
15
16
17
18
19
20
21
22
23
24
25

1 A What was the route requested?

2 Q If you take a look at page 10 of 16, that
3 would be it.

4 A The only thing I can say is that we are short
5 mileage out of Kansas City, and apparently because of
6 that, Kansas City was a more profitable route, and they
7 decided to hold it to that gateway.

8 Q More profitable than your St. Louis gateway on
9 this move?

10 A Possibly St. Louis was not profitable and
11 Kansas City was more profitable. I don't know.

12 Q SP has a route via St. Louis, doesn't it?

13 A With the Cotton Belt, yes, sir.

14 Q Do you know, comparing the two, is generally
15 MKT's route via St. Louis as efficient, more efficient,
16 or less efficient, in your mind?

17 A To where?

18 Q Than SP's route.

19 A To where?

20 Q Let's say points in the northeast and Texas,
21 to points in the northeast on one hand and Texas on the
22 other.

23 A Well, I would say that the Cotton Belt route,
24 if you're talking about points like Dallas, the mileage
25 is probably pretty close to the same. Through St. Louis

1 our route probably is as good as theirs. If you start
2 going down to Houston with the SP, our mileage gets a
3 little more circuitous, and I would say that the
4 SP-Cotton Belt route is shorter.

5 Q How about to Canada, between Canada and points
6 to, let's say, the Mexican border crossings? Is the SP
7 route via St. Louis as efficient, more efficient or less
8 efficient than the MKT route via St. Louis?

9 A What point? Where are you coming from in
10 Canada?

11 Q Quebec.

12 A Eastern Canada?

13 Q Let's say to Denison or, I'm sorry, to a
14 Mexican border crossing, Laredo, that area.

15 A Of course, we can't get to Laredo without the
16 SP.

17 Q But you have routes -- do you have routes via
18 St. Louis, your St. Louis gateway?

19 A Yes, sir, I believe we do.

20 Q And on those routes are they as efficient,
21 more efficient, or less efficient than SP's route via
22 St. Louis?

23 A You really can't compare it, because the Katy
24 has to give it to the SP at Denison where the SP takes
25 it all the way down to the TexMex. So I would say if we

1 had the ability to take it down to Corpus Christi, our
2 route would be as good as theirs.

3 Q When you speak in terms of efficiency just
4 now, you mentioned circuitry, mileage. Is that the
5 primary factor in your mind?

6 A It's a big factor.

7 Q Big factor. Do you have any other factors
8 that go into your mind as to what makes a route
9 efficient or inefficient?

10 A I think we went through this the last time.
11 We got that in the record.

12 Q I know I did with Mr. Dimmerman. Okay. If
13 Mr. Wilson did with you, I will accept that. Okay.

14 So clearly, I guess, based on Exhibit
15 SFSP-C-58, you would agree, would you not, that one of
16 the factors MKT considers when deciding to accept or
17 reject another railroad's rate or routing request is the
18 degree of profitability to MKT.

19 A Yes, sir. That's definitely a consideration,
20 maybe a very important consideration.

21 Q How about reciprocal switching? Do you deal
22 with that and whether an industry will be open or closed?

23 A The decision whether an industry is open or
24 closed I believe is Mr. Dimmerman's.

25 Q Do you get involved in that? Would you know

1 anything about what factors go into MKT's decision as to
2 whether an industry is going to be open or closed?

3 A No, sir, I don't.

4 Q Now, in your testimony you give examples of
5 comparative route circuitry and efficiency. I think it
6 is at page 5. We are talking about your testimony in
7 support of responsive applications. Yes, it's at the
8 very top of page 5. You are talking about on the bottom
9 of 4 and onto the top of 5 the Canadian lumber situation.

10 A Yes, sir.

11 Q And at the top of 5 you say, "Thus, in order
12 for the SP-Cotton Belt to handle this traffic via Kansas
13 City, it would have to move circuitously from Kansas
14 City to St. Louis or from Kansas City to El Paso," and
15 so on.

16 A Yes, sir.

17 Q Is it fair to say that your position is that
18 SP route closings were bad or are bad where they result
19 in greater route circuitry?

20 A I think that's one of the points that would
21 indicate an inefficient route.

22 Q And that is why, I take it, that you feel that
23 the SP route closings were bad, because in this
24 particular case you say it resulted in a less efficient
25 -- a more circuitous route?

1 A In this particular case it definitely did
2 that, yes, sir.

3 Q In your opinion, is a route closing reasonable
4 or in the public interest if it results in less route
5 circuitry?

6 A Not in every case, but there are circuitous
7 routes that don't need to be in the book. I agree with
8 that.

9 Q So route closings are not always against the
10 public interest. It just depends on the situation in
11 each individual route.

12 A If you're asking for my personal opinion, I
13 think that route closings should be handled on a
14 case-by-case basis and shouldn't be done in a blanket
15 form.

16 Q When do you think, if you can tell us, a route
17 closing would be justified or justifiable?

18 A If it can be proved to be an inefficient
19 route, it is circuitous or whatever gauge you put on the
20 inefficiency.

21 Q Would one of those efficiency definitions --
22 and I'm sorry, I don't remember what definition you gave
23 Mr. Wilson -- is one of the factors in your definition
24 of efficiency of a route whether or not the
25 participating -- a participating carrier was making

1 money or losing money?

2 A I wouldn't expect any carrier to participate
3 in any route they are losing money on. I know we
4 wouldn't.

5 Q So if it's losing money, in other words, it is
6 not unreasonable to cancel the joint route?

7 A I would expect that if you are losing money,
8 you would not stay in the route.

9 Q Do you have any knowledge or information as to
10 whether Southern Pacific tried to negotiate with MKT
11 with respect to this movement of Canadian lumber for a
12 different division of revenues?

13 A As a matter of fact, I think the Katy gave
14 them a higher division back in December of '82.

15 Q December of '82?

16 A I believe so.

17 Q And the cancellation that you are speaking of
18 occurred when? That was April '83?

19 A Yes, sir. You know, we have in one of the
20 exhibits, I think the Katy had a five-page exhibit -- I
21 think I have it here. Well, I guess I didn't bring it,
22 but there was an MKT exhibit, a five-page exhibit, and
23 on the fifth page of it was a letter from Mr. Ketra or
24 something like that, I believe, which said that we now
25 have a route between St. Louis and Kansas City so that

1 we can cancel the Katy route. It had nothing to do with
2 efficiencies or revenues. It's, you know, you got your
3 route in the merger case and decided that you'll just go
4 ahead and handle it direct.

5 Q I see. Do you know whether Southern Pacific's
6 handling of this Canadian lumber that you are speaking
7 of on page 4 and 5, do you know whether Southern Pacific
8 was earning any revenue on that traffic handling it via
9 Kansas City and Denison with the MKT?

10 A I don't know what the SP costs are, so
11 obviously I couldn't tell you whether you are making
12 money or not.

13 Q Well, let's talk just briefly about the SP
14 route cancellations other than the Canadian lumber
15 situation, the general commodities that you talk about
16 on page 3, and also the domestic lumber on page 2. To
17 your knowledge, did MKT ever protest before the
18 Interstate Commerce Commission any of the Southern
19 Pacific route closings?

20 A I'm pretty sure they did not on the general
21 commodities, and I don't know on the lumber if they did
22 or did not.

23 Q Did you know that, for example, Santa Fe did?

24 A Yes, sir, I did know.

25 Q I'm going to ask you some quick questions, I

1 hope, about -- you have from page 7 to 14 of your
2 statement you list a series of SP refusals of MKT route
3 requests, and I wanted to see if you agree with me that
4 a number of these involve traffic moving between either
5 Mexican border crossings or points in the southwest, on
6 the one hand, and points in the northeast or Canada on
7 the other hand.

8 For example, look at page 7, Item J, Laredo,
9 Texas to Norlo, Ohio. Do you know whether, for example,
10 Item J was a movement for which MKT had proposed the MKT
11 St. Louis gateway?

12 A No. I will be truthful with you, sir. When
13 we put this thing together, we took a date of January of
14 '83, and we went in and took every SP and Santa Fe route
15 closing we could find and listed them in here. There
16 was no analysis done of the reasons or anything. This
17 is strictly to show what has been done. You know, it's
18 not saying you did anything wrong, you didn't do
19 anything you couldn't do. Just this is what railroads
20 do. They hold to their single line when they can. They
21 cut other carriers out. It's not saying that you did
22 anything against the law or, you know -- it was just
23 strictly to show that this has been done, that it will
24 continue to be done after the merger.

25 Q Well, so you don't know, for example, or any

1 one particular one that we might pick out to talk about
2 what the MKT -- which route the MKT proposed that --

3 A I didn't even look at them. I didn't look at
4 them for any kind of analysis. I just got the list
5 together and put it in here.

6 Q So you wouldn't know which of these, for
7 example, involved proposed MKT routes via the MKT's St.
8 Louis interchange?

9 A I would strictly be guessing.

10 Q If on any one of these in general it turned
11 out that MKT's route that MKT had proposed and which SP
12 refused to join in, if it turned out that the MKT route
13 being proposed was more circuitous than the way the
14 traffic was presently moving, would that be against the
15 public interest for SP to refuse to join in that?

16 A I don't think more circuitous. You know,
17 there's got to be a guideline. There's got to be a
18 degree of circuitry involved. What that should be
19 probably should be set by the Commission or something,
20 but there's got to be some kind of degree of circuitry.
21 Just because my route is five miles less than yours
22 doesn't mean it's better than yours, or if yours is five
23 miles less than mine. So I think there's got to be a
24 degree of circuitry involved.

25 Q I see. So you're saying that the refusal of a

1 carrier to join in another carrier's joint rate or route
2 request where that refusal is based on the fact that the
3 request is asking for a more circuitous route, whether
4 that is reasonable or not depends on the degree of
5 circuitry.

6 A I think that's one of the things that's got to
7 be considered.

8 Q In your mind, what is an unreasonable degree
9 of circuitry that would justify refusal -- 10 percent, 20
10 percent or what?

11 A I don't even want to speculate on that at this
12 point.

13 Q And I guess we've already covered the fact
14 that inadequate revenue as a reason to refuse to join in
15 a rate or route request can sometimes be a perfectly
16 justifiable reason.

17 A I believe so.

18 Q One final subject I want to talk about with
19 you, and when we cross examined Mr. Dimmerman the first
20 time, we introduced an exhibit that hasn't been accepted
21 in the record yet. It was SFSE-C-20. Do you have a
22 copy of that with you? It's a letter to Mr. Pyatt from
23 Mr. Chapman of Southern Pacific?

24 A June 25th?

25 Q Yes. June 25, 1984.

1 A Got it.

2 Q I don't think it's been accepted in the
3 record. It's been marked. We deferred it until we got
4 a chance to ask Mr. Noser, since Mr. Dimmerman referred
5 the questions on this to you.

6 A Lucky me.

7 Q Now, first of all, let me ask you a general
8 question. Are you aware that there have been some
9 discussions, negotiations, whatever you want to call
10 them, between MKT and SP on the subject of joint routes
11 and also reciprocal switching? Are you aware that there
12 have been discussions on those subjects?

13 A Yes, sir.

14 Q Now, this letter from Mr. Chapman dated June
15 25, 1984, have you ever seen this before you came here
16 to testify?

17 A Yes, sir, I did. I might say at this point
18 before we get into this too far, I just want to make
19 sure that the SP's law department changed their policy
20 in regard to this matter, because it's my understanding
21 that when we met on this, the Santa Fe and the SP people
22 both had lawyers present, and the SP lawyer prefaced the
23 meeting by saying he wasn't even going to sit down and
24 talk to us unless he was sure that this wouldn't be
25 brought into the Santa Fe-SP merger case, and in fact

1 repeated that about two or three times during the
2 meeting.

3 So I don't have any problem answering your
4 questions, but I want to make sure your policy hasn't
5 changed.

6 Q Well, I wasn't at that meeting.

7 A No. It was Mr. Wales, I believe.

8 Q Well, since I am the one asking the questions
9 about it --

10 A Well, that's fine. I'll answer your
11 questions. I'd be happy to be as cooperative as
12 possible.

13 Q So now I've forgotten what my question was.

14 A Good.

15 Q Well, we have established, I take it, that
16 there were negotiations between SP and MKT on the
17 subject of joint routes and reciprocal switching.

18 A Yes, sir.

19 Q The question I have is did you take part in
20 those negotiations at all?

21 A No, sir, I did not.

22 Q Did you know about them?

23 A I knew they were going on, yes, sir.

24 Q To your knowledge, has there been any response
25 to Mr. Chapman's June 25 letter, Exhibit 20?

1 A I don't believe there has. In fact, I know
2 there has not.

3 Q Would you agree that Mr. Chapman's proposal of
4 June 25, 1984 to the MKT would have had the effect or
5 would have the effect of reopening some of the
6 transcontinental routes that were previously closed?

7 A It would have had the effect of opening some
8 routes that we didn't -- at least my understanding is --
9 that we didn't feel that this was a very equitable
10 proposal for the MKT.

11 Q So you didn't even respond to it?

12 A Well, I don't know that -- maybe it still
13 isn't being considered. The problem with it is, the way
14 I understand it -- and I know Mr. Chapman is in the room
15 -- but it was my understanding that Mr. Chapman and Mr.
16 Pyatt were going to get together and set their
17 particular matrices down, their routing matrix, then
18 call each other and say I got mine done, you got yours
19 done, let's send them in at the same time.

20 Well, apparently somehow or other something
21 got confused, and yours was sent, and we either didn't
22 complete ours or whatever. But apparently, this was so
23 disagreeable to them that's been kind of set aside. I
24 don't know why it hasn't been answered since June 25th,
25 though.

1 MR. SMITH: I think that's all I have. Thank
2 you.

3 Mr. Wilson will ask you some questions.

4 BY MR. WILSON:

5 Q Good morning, Mr. Noser.

6 A Good morning, Mr. Wilson.

7 Q Sir, your testimony identifies two instances
8 of Santa Fe joint rate and route cancellations. If you
9 turn to the bottom of page 5, you have one instance
10 there which goes over to the top of page 6, and you
11 state in your testimony that this particular
12 cancellation was subsequently reinstated by Santa Fe.

13 How much longer after the original route
14 cancellation was it when Santa Fe reinstated this route?

15 A I don't know exactly, but it wasn't too long,
16 I don't believe.

17 Q Was it within a month of the original
18 cancellation, do you think?

19 A Very possibly. I don't know.

20 Q Who was the shipper on this move, do you know?

21 A It's not my commodity, and I really don't know.

22 Q Do you know what the reason was as to why
23 Santa Fe reinstated this route?

24 A No, sir, I don't know the reason.

25 Q Do you suppose it might have been that your

1 point is correct here that the joint route really is an
2 efficient and competitive route?

3 A Very possible. It's our feeling all along
4 that you threw the baby out with the bathwater when you
5 tried to make these cancellations. There was a lot of
6 efficient routes cancelled.

7 Q Now, the other example you give, the only
8 other example you give is a movement of carbon mixture
9 from Tulsa, Oklahoma to Youens, Texas. Now, we
10 discussed the other day that commodities moving outbound
11 from Youens, Texas are not covered by the route
12 closing. Do you recall that?

13 A That was one of the exceptions, right.

14 Q But this particular inbound commodity is
15 covered by the route cancellations, is that right?

16 A Apparently it was.

17 Q Okay. Now, you're indicating here that Santa
18 Fe's route is 44 percent more circuitous than the joint
19 route of MKT-Port Worth-Santa Fe. Do you know whether
20 Santa Fe offered a competitive rate to try to handle
21 this business on a single line basis?

22 A I don't know.

23 Q Well, you're implying here, at least it seems
24 to me, that perhaps the reason Santa Fe cancelled the
25 joint route was so we could handle it on a single line

1 basis.

2 MS. MAHON: I think you have to ask the
3 witness whether --

4 THE WITNESS: I think all we were implying is
5 that you cancelled it; the way you cancelled your
6 routing in a blanket fashion caused some efficient
7 routes to be cancelled along with the inefficient routes.

8 BY MR. WILSON: (Resuming)

9 Q Do you know if Santa Fe was making any money
10 on the route that was cancelled?

11 A I have no way of knowing.

12 Q Do you know if this traffic is moving at all
13 today?

14 A No, sir, I don't know.

15 MR. WILSON: Your Honor, I'd like to have
16 another exhibit introduced at this time, marked as
17 Exhibit SFSP-C-59.

18 JUDGE HOPKINS: That will be marked for
19 identification.

20 (The document referred to was
21 marked Exhibit No. SFSP-C-59
22 for identification.)

23 BY MR. WILSON: (Resuming)

24 Q Sir, since you brought up the example of a
25 Tulsa to Texas movement where Santa Fe refused to join

1 in a joint route, I thought we might discuss this
2 particular telegram, which it looks like it's been
3 signed by you; is that correct?

4 A I didn't say the Santa Fe refused to join in a
5 joint route. I said they cancelled --

6 Q They cancelled the joint route, correct.
7 Okay. Well, this telegram is signed by you, is it not?

8 A Yes, sir.

9 Q And it is reporting to the Southwestern
10 Freight Bureau that Santa Fe is concurring in an MKT
11 joint route on Toluene via either routings of MKT-Dallas
12 or MKT-Fort Worth-Santa Fe instead of requiring movement
13 only via Santa Fe single line haul; isn't that correct?

14 A Yes, sir. I assume because of your routing
15 circuitry going from Tulsa to Dallas.

16 Q In other words, if we did not agree to work
17 with the MKT on a joint line movement, we probably
18 wouldn't handle the business.

19 A I would assume so. In fact, I would say this
20 is an example of the Katy cooperating with you because
21 we served Tulsa and Garland and could have handled it
22 direct ourselves.

23 Q Perhaps we are both cooperating with each
24 other.

25 JUDGE HOPKINS: Good. Keep it up.

1 BY MR. WILSON: (Resuming)

2 Q Turning to Table 2 of your testimony, which is
3 on page 15, there you list a number of examples of joint
4 routes where the Santa Fe refused to join in the move.
5 I'd like to go through a few of them, not all of them,
6 this morning.

7 I believe you said when you were talking with
8 Mr. Smith that you weren't particularly aware of all of
9 the routes that were proposed, but they are in your work
10 papers, and if you have a couple that you're not aware
11 of, I can provide you with a work paper with that.

12 This first one, wheat-killing compounds from
13 Houston, Texas to Quinby, Kansas, was it Katy's
14 requested route there, MKT-Chanute-Santa Fe-Garden
15 City-GCW?

16 A Sir, like I said, I didn't analyze any of
17 these, so I don't know. Merely trying to show, you
18 know, what has happened in the past. This is just a
19 matter of record, that these routes had been refused.
20 It's as simple as that. I'm not trying to prejudice you
21 that you did anything wrong.

22 Q Well, I want to try to establish how these
23 routes compare with the remaining Santa Fe routes in a
24 few instances, sir, because the implication of some of
25 the testimony seems to me to be that in some instances

1 Katy routes are more efficient or shorter than the Santa
2 Fe competitive routes.

3 A That's probably part of it, and I think part
4 of it --

5 MS. MAHON: Is that a question?

6 MR. WILSON: There was no question.

7 BY MR. WILSON: (Resuming)

8 Q The question is if this movement was via
9 MKT-Chanute-Santa Fe-Garden City-GCW and Santa Fe's
10 competing route was simply Santa Fe-GCW, wouldn't you
11 agree that the Santa Fe route would be more efficient
12 and more competitive for this movement?

13 A I don't know about competitive. If you don't
14 give me a route, I can't compete.

15 Q Well, between the two choices here, we've got,
16 as we talked about two days ago, the Chanute interchange
17 is a two-day interchange between MKT and Santa Fe.

18 A I'm glad you brought that point back up again,
19 because that's been bothering me ever since we talked
20 about it. You say you cancelled the routing to be more
21 efficient; yet you're saying you put in the Chanute
22 route, which is an inefficient route. So are you
23 telling me that you are willing to put inefficient
24 routes back in if we ask for them? That's really been
25 bothering me. If Chanute is inefficient, why did you

1 put it back in for us?

2 JUDGE HOPKINS: Who is testifying here?

3 BY MR. WILSON: (Resuming)

4 Q My question is: Isn't the Chanute route about
5 20 percent more inefficient, 20 percent more circuitous
6 on this particular move?

7 A I don't know.

8 Q You don't know and you don't know that it
9 involves this extra two-day interchange delay?

10 A No, sir.

11 Q When you did check on the Chanute move, by the
12 way, did you check to make sure that it was a two-day
13 delay?

14 A I didn't check on it.

15 Q Your third example here is a movement of
16 calcium chloride from Luddington, Michigan to Wichita,
17 Kansas. Santa Fe's route is CSX-Chicago-Santa Fe, and
18 the route which you asked us to join in is CSX-East St.
19 Louis-MKT-Chanute-Santa Fe.

20 MS. MAHON: Is that a question?

21 BY MR. WILSON: (Resuming)

22 Q Assume that hypothetically unless you know
23 that. Do you know that?

24 A I don't know it, but I will assume it.

25 Q Now, wouldn't you agree that from your

1 knowledge of the rail industry that your route is going
2 to be about 400 miles longer, the Chanute route is going
3 to be about 400 miles longer than the Chicago-Santa Fe
4 route?

5 A I don't know that.

6 Q Well, it would be substantially more
7 circuitous, though, would it not?

8 A I'm not trying to be uncooperative, but I
9 really don't know. If you say it, I will assume that,
10 too. So what is the question?

11 Q Well, if it is substantially more secure, is
12 there any problem, any anticompetitive problem with not
13 joining in that particular route?

14 A Like I say, I don't know each one of these
15 movements, the shipper at Wichita or the receiver in
16 Wichita in this instance might be served by the Katy.
17 There may be an extra switch involved. I don't know
18 what's going on. Like I say, it's hard for me to say
19 from looking at these things. All I did was put down
20 what the Santa Fe did. I don't know.

21 Q This particular move involved the CSX also.
22 Did you have CSX's concurrence in this joint route?

23 A I don't know.

24 Q On any of these do you know whether the other
25 carriers -- when there was more than another carrier

1 required, do you know whether the other carriers had
2 concurred in these routes?

3 A Normally we ask for concurrence all at one
4 time, and whether the other concurrence had come in yet
5 or not, I don't know.

6 Q So it may well have been that some other
7 railroads also had refused to concur in these routes and
8 rates that you listed?

9 A It's a possibility.

10 Q Now, on the fifth example, alcohols, Texas
11 City, Texas to Long Beach, California, Santa Fe allowed
12 the joint rates to expire here, according to our traffic
13 people, because the traffic was no longer moving. Does
14 that sound right to you?

15 MS. MAHON: Are you going to ask him to assume
16 that?

17 MR. WILSON: I'm going to ask him if he knows
18 that that is the case.

19 THE WITNESS: Sir, I've already stated that I
20 don't know of the facts behind any of these.

21 BY MR. WILSON: (Resuming)

22 Q All right. If you assume that that was the
23 reason, then there's going to be nothing anticompetitive
24 about Santa Fe refusing to join in this particular joint
25 rate?

1 A If they have no rate or route there, obviously
2 there's nothing anticompetitive about not joining the
3 Katy.

4 Q Now, on your seventh example, the pulpboard
5 from Mulford, Texas to Conrail, Santa Fe's letter back
6 to your request, which you have in your work papers,
7 said that we could not join in the route because of
8 inadequate earnings.

9 MS. ELZON: Again, is counsel asking the
10 witness a question.

11 JUDGE HOPKINS: He hasn't finished. Give him
12 a chance, and he can ask a question. Let him finish.
13 As a matter of fact, Mr. Wilson, how many more are you
14 going to go through with these, because this gentleman
15 has indicated what his situation is, and there's some
16 question of whether there's any need to continue with a
17 long line of questions.

18 MR. WILSON: There aren't many more. I think
19 probably two or three more.

20 JUDGE HOPKINS: Thank you.

21 BY MR. WILSON: (Resuming)

22 Q So Santa Fe's response indicated that it did
23 not join in the route because of inadequate earnings.
24 Now, don't you agree that if in fact the earnings were
25 inadequate it would be appropriate not to join in the

FD. 30400

1/10/85

--

Pgs.

5976-6035

1 joint route?

2 A It depends on what your definition of
3 inadequate is. If they don't meet certain guidelines
4 that Santa Fe set for themselves and they are not
5 discriminating against the Katy, then that is true.

6 Q And did you know for any of these moves
7 whether Santa Fe had another joint rate available via
8 another route? In other words, was Santa Fe trying to
9 compete for this movement with a rate over some other
10 longer haul junction, or was it just dropping out of the
11 competition for the traffic altogether?

12 A I don't know.

13 Q And you don't know that for any of the
14 movements on your Table 2?

15 A No.

16 MR. WILSON: That's all the questions I have.

17 JUDGE HOPKINS: Thank you.

18 Ms. Reed? I thought DOT wanted to cross
19 examine. I guess not. She's not here.

20 Any redirect?

21 MS. MAHON: I just have one question on
22 redirect.

23 REDIRECT EXAMINATION

24 BY MS. MAHON:

25 Q On Counsel's Exhibit, SFSP-C-58, would you

1 take a look at that?

2 A Okay.

3 Q Do I take it correctly that these are not
4 copies from the MKT's files?

5 A No. These must be from the SP's files.

6 Q So that any of the marginal notes on these
7 pages are not MKT marginal notes?

8 A No. They all must be from the SP.

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

10 JUDGE HOPKINS: Anything further?

11 You're excused, sir.

12 (The witness was excused.)

13 MR. SMITH: We have no objection to the
14 admission of the statement, and we move Exhibits SFSP-20
15 and 58 and 59.

16 JUDGE HOPKINS: Any objection? They all will
17 be received in evidence.

18 (The documents previously
19 marked SFSP-C-20, 58 and
20 59 were received in
21 evidence.)

22 JUDGE HOPKINS: Who's the next witness?
23 Misters Dimmerman and Sheridan again?

24 For the record, you've both been sworn in
25 already, so you don't need to be sworn in again.

1 Whereupon,

2 HARRY T. DIMMERMAN

3 AND

4 JERRY SHERIDAN

5 were recalled to the stand and, having been previously
6 duly sworn, were further examined and testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MR. KHARASCH:

10 Q Mr. Dimmerman, Mr. Sheridan, are you the
11 Messrs. Dimmerman and Sheridan mentioned in Exhibit No.
12 12, the joint verified statement of Harry T. Dimmerman
13 and Jerry M. Sheridan, submitted in support of the
14 trackage rights request of the MKT?

15 A (WITNESS SHERIDAN) Yes, sir.

16 A (WITNESS DIMMERMAN) Yes, sir.

17 Q Do you have any changes in this statement?

18 A (WITNESS SHERIDAN) I have one change, sir.

19 On page 13, the last paragraph, towards the end of the
20 first line where it says "detail," would like to scratch
21 "following that in Appendix B to our applications filed
22 concurrently with our testimony," would like to scratch
23 those words and add this: "on page 8 of the verified
24 statement of William E. Anderson in volume MKT-21."

25 Q With the exception of that change, is the

ALDERSON REPORTING COMPANY, INC.

20 F ST., N.W., WASHINGTON, D.C. 20001 (202) 628-9300

001480062

1 balance of this statement true and correct to the best
2 of your knowledge and belief, and do you offer it as
3 your testimony in this case?

4 A (WITNESS SHERIDAN) Yes, sir.

5 A (WITNESS DIMMERMAN) Yes, sir.

6 MR. KHARASCH: They're submitted for cross
7 examination.

8 JUDGE HOPKINS: Mr. Moates.

9 CROSS EXAMINATION

10 BY MR. MOATES:

11 Q Good morning, gentlemen. Nice to see you
12 again.

13 A (WITNESS SHERIDAN) Good morning.

14 A (WITNESS DIMMERMAN) Good morning.

15 Q First of all, gentlemen, these are a complex
16 series of studies, so if we may, to speed things up,
17 let's briefly summarize what you are sponsoring in this
18 appearance.

19 Am I correct in understanding that the
20 verified statement which you have just adopted, Exhibit
21 No. 12 in MKT 19, is your statement in support of
22 essentially seven traffic diversion studies that you did
23 in support of MKT's trackage rights request?

24 I see you are counting, Mr. Sheridan. Why
25 don't you name the ones you did for the record?

1 A (WITNESS SHERIDAN) Yes. Well, Laredo, Corpus
2 Christi, Eagle Pass, our Liberal to Topeka, Bayport,
3 Beaumont, and our Midlothian Wards Spur line.

4 A (WITNESS DIMMERMAN) And the conditions
5 regarding Agri Industries.

6 Q Did you do separate a traffic diversion study
7 for the conditions with Agri Industries?

8 A (WITNESS SHERIDAN) No. It was included with
9 everything else here.

10 Q When did you commence these studies?

11 A (WITNESS SHERIDAN) You are talking about the
12 specific documents on the diversion study, the Santa
13 Fe-SP information and the ICC waybill studies? Is that
14 what you're asking about?

15 Q I'm asking when did you commence the study on
16 the documents that underlie the testimony you are
17 supporting here today?

18 A (WITNESS SHERIDAN) On our diversion study I
19 believe it was sometime around July, the best I can
20 recall.

21 Q And you completed the study and submitted it
22 to the Commission prior to completion and submission of
23 the diversion study about which we spoke yesterday,
24 isn't that true?

25 A (WITNESS SHERIDAN) As I recall, yes, sir.

1 A (WITNESS DIMMERMAN) Yes, sir.

2 Q Just for clarification, if I may, would you
3 look -- and maybe if you don't have it. Do they have a
4 copy of your market impact analysis? It is the exhibit
5 that their statement is attached to.

6 A (WITNESS SHERIDAN) Page 1?

7 Q That's right. Page 1. Would you look at page
8 2 of that document? For the record, this is what is
9 styled as Exhibit No. 12 to MKT-19. Page 2, the bottom
10 of the page and carrying over onto page 3 you list the
11 seven study areas. I just want the record to be clear
12 on some of these. The one that says Laredo, Mr.
13 Sheridan, that, I take it, is really a shorthand
14 notation for your trackage rights request from San
15 Antonio to Corpus Christi?

16 A (WITNESS SHERIDAN) Yes. That ties in with
17 the Corpus Christi and Laredo.

18 Q And the one that appears under Corpus Christi
19 really refers to service to the port of Corpus Christi.
20 You requested to serve the port?

21 A (WITNESS SHERIDAN) Not necessarily just the
22 port itself. It applies to all of Corpus Christi.

23 Q I understand. Okay. But you see what I'm
24 trying to distinguish here is when you say Laredo here
25 and elsewhere in the documentation, we are talking about

1 the request to have trackage rights over the Southern
2 Pacific and the Missouri Pacific from San Antonio to
3 Corpus Christi.

4 A (WITNESS SHERIDAN) Yes, sir.

5 Q And southwest Kansas, of course, refers to the
6 request for trackage rights between Topeka and Liberal;
7 is that right?

8 A (WITNESS SHERIDAN) Yes, sir.

9 Q Bayport line is a shorthand reference to the
10 request for trackage rights between Houston and Texas
11 City, Texas?

12 A (WITNESS SHERIDAN) Yes, sir.

13 Q And, again, on the top of page 3, Beaumont is
14 a shorthand reference for trackage rights from Houston
15 to Beaumont.

16 A (WITNESS SHERIDAN) Yes. And including
17 Chaison.

18 Q Including Chaison. Okay.

19 By the way, isn't it the case, gentlemen, that
20 MKT seeks in its applications in this case the right to
21 acquire an interest in the Houston Belt & Terminal
22 Railroad?

23 A (WITNESS DIMMERMAN) There was discussion, but
24 I don't know of anything. If there is, it's not in our
25 study per se, in Jerry's and my study. There has been

1 discussion about the Houston Belt & Terminal Railroad
2 but nothing in the diversion study.

3 MR. MOATES: Could I ask counsel to clarify
4 that, because I think there has been some uncertainty.

5 MR. KHARASCH: Mr. Roper can respond.

6 MR. ROPER: We have no plans to acquire the
7 HB&T, as far as I know.

8 MR. KHARASCH: Do you have anything to sell?

9 BY MR. MOATES: (Resuming)

10 Q Mr. Dimmerman, you were examined at some
11 length yesterday by Mr. Smith about, among other things,
12 about the process by which MKT and MKT management
13 identified and ultimately chose the trackage rights
14 requests that are in this case. Do you recall that?

15 A (WITNESS DIMMERMAN) Yes, sir.

16 Q I certainly don't propose to go back through
17 all of that, but let me ask you this. Did you have
18 correspondence with any shippers seeking to enlist their
19 support for the MKT trackage rights request?

20 A (WITNESS DIMMERMAN) Yes, sir.

21 Q And did you, in any of that correspondence,
22 certainly not all of which I intend to introduce, did
23 you indicate to those shippers the reasons why Katy
24 would be seeking these trackage rights?

25 A (WITNESS DIMMERMAN) I don't recall, sir, you

1 know, the specifics.

2 MR. MOATES: I'd like to have marked as
3 Counsel's Exhibit, Your Honor, a two-page document.
4 These are just two of these letters. I'm not going to
5 put them all in the record.

6 JUDGE HOPKINS: This will be 60.

7 (The document referred to was
8 marked Exhibit No. SFSP-C-60
9 for identification.)

10 BY MR. MOATES: (Resuming)

11 Q For the record, these are two one-page letters
12 stapled together. The first one is dated April 12,
13 1984, and the second December 28, 1983.

14 Mr. Dimmerman, I see your name appears in the
15 typed version on both of these letters. Did you, in
16 fact, prepare or cause to be prepared these two letters?

17 A (WITNESS DIMMERMAN) Yes, sir.

18 Q Looking first at the second one, the earlier
19 one in time, a letter from you to Mr. Henry Novell,
20 N-o-v-e-l-l, of Rio Grande Chemical Sales Company, this
21 was written, sir, in December, late December of 1983.
22 This is before the applicants had filed their
23 application with the ICC, wasn't it?

24 A (WITNESS DIMMERMAN) I don't know exactly when
25 the application was filed, but this letter was written

1 on December 28th.

2 Q Well, if you assume with me that it was filed
3 in 1984 at least, by definition it was filed sooner.

4 MR. KHARASCH: Your Honor, if we are going to
5 have an assumption on this sort of thing, I think it
6 fair that the witnesses know that there are two stages
7 in the application: notice of filing and the actual
8 volumes that are filed. Could we have at this time so
9 that the witnesses could be informed, if counsel knows,
10 the date the notice of application was filed?

11 MR. MOATES: I don't know, and I don't think
12 it's all that important. I asked him if this was before
13 we filed the application. We all know there's a formal
14 process.

15 JUDGE HOPKINS: Well, obviously they know
16 now. It's been brought out that there were two
17 different stages.

18 MR. MOATES: He could bring it out in
19 redirect, but since he has artfully gotten it in now --

20 JUDGE HOPKINS: It's out now. There's no
21 sense in arguing back and forth.

22 BY MR. MOATES: (Resuming)

23 Q Directing your attention to the middle
24 paragraph, the letter to Mr. Novell, Mr. Dimmerman,
25 would you read that, please?

1 A (WITNESS DIMMERMAN) "At that time the MKT
2 will: 1) actively oppose the merger; 2) seek to offset
3 our losses by requesting trackage rights into territory
4 we formerly served on a joint line basis. Mexico will
5 have the highest priority."

6 Q And again, looking at the first letter, the
7 one dated April 11, '84 to Mr. Warman, W-a-r-m-a-n, of
8 LUPRIZCI Corporation, would you just read the first
9 paragraph of that letter?

10 A (WITNESS DIMMERMAN) "This will confirm our
11 conversation regarding the Santa Fe-Southern Pacific
12 merger case and Katy's desire to offset our traffic
13 losses if merger is approved by seeking certain trackage
14 rights."

15 Q Did you discuss with Mr. Novell or Mr. Warman
16 the expected size of your traffic losses to this merger
17 that would justify trackage rights?

18 A (WITNESS DIMMERMAN) I don't believe so. I'm
19 sure not. I didn't discuss specifics with him regarding
20 that.

21
22
23
24
25

1 Q Gentlemen, did you conduct a pilot study for
2 your trackage rights traffic diversion study, like the
3 study we discussed yesterday?

4 A (WITNESS SHERIDAN) A pilot study on the
5 trackage rights? As I recall, we had several computer
6 runs we had pulled to look at different segments of
7 traffic we handled on various segments. And offhand, I
8 can't recall if it is on each of these, or some of them,
9 or what.

10 Q When was that done, Mr. Sheridan?

11 A (WITNESS SHERIDAN) I can't remember exactly.
12 I know when we got word of the announcement of the
13 merger, we started looking in different areas where we
14 felt we would be hurt. And some of it was piecemeal
15 stuff, and I don't recall the exact dates.

16 Q Did you change any of the assumptions that
17 applied to the study you ultimately to this Commission
18 because of -- if I could use the term -- because of that
19 pilot study or early analysis, I guess, is a better
20 term.

21 A (WITNESS SHERIDAN) Repeat that again. I'm
22 not sure what you are asking.

23 Q You had some kind of an early analysis. I
24 won't call it a pilot study, if that term signifies
25 something. But you just told me, I think, that you did

1 look at some movements for some of these trackage rights
2 areas before you actually conducted the study; isn't
3 that true?

4 A (WITNESS SHERIDAN) Yes.

5 Q I take it when you looked at those movements,
6 you were looking at them for a purpose; namely, to make
7 some preliminary determination of the gains that MKT
8 might enjoy if it received trackage rights?

9 A (WITNESS SHERIDAN) I believe on that, we only
10 looked at the volumes at the time. We tried to get an
11 idea of the number of carloads on that.

12 Q So you made no diversion judgments at that
13 time; is that right?

14 A (WITNESS SHERIDAN) It wasn't actually a
15 diversion study. We looked at what we thought we would
16 lose, trying to get an idea, because we know sometimes,
17 you know, like when traffic was not competitive or
18 rather came from a Katy local point or a closed
19 industry, we felt you know, that we would hold that.

20 Like I say, just trying to get a general idea
21 of what was going to happen.

22 Q We may be talking at cross purposes, Mr.
23 Sheridan. You are talking about traffic that you thought
24 you might lose and traffic you could hold. I'm talking
25 about traffic that you were looking at to see if you

1 could gain either extensions of haul or new
2 participation because of possible trackage rights that
3 the MKT might receive.

4 A (WITNESS SHERIDAN) Well, it would be
5 extension of, like I say, where we maybe served a point
6 locally if we handled business like to Mexico currently,
7 like with the SP; if we got trackage rights, we would be
8 able to gain the movement beyond.

9 I am trying to recollect exactly the process
10 on that study.

11 Q Did you have any written diversion rules that
12 you applied at the time you did that study?

13 A (WITNESS SHERIDAN) Not a set of written
14 rules. Like I say, here again, we were trying to get a
15 general idea of what we would be running into.

16 Q You do have a set of written rules for this
17 study, do you not?

18 A (WITNESS SHERIDAN) Oh, yes, sir. On this
19 study, like I say, we had set down, once we got the
20 documents from Mr. Anderson, we set down and kind of
21 glanced at them, and we were trying to get in our minds
22 what would be the diversion factors that we should use.
23 And we kind of wrote those down, and then from that, we
24 finalized the factors on page 12 is what we come up with
25 as the final.

1 Here again, we tried to, you know, in our own
2 mind, get what really applies on this, because here
3 again, you know, it's a case of trying to look at
4 something to be able to be competitive, and if we were
5 competitive, what did we feel we would get -- trying to
6 put it in some kind of a category.

7 Q Before we come to page 12, would you look at
8 page 10 of the statement, the first full paragraph on
9 that page?

10 I think this is a point you were trying to
11 make with me yesterday, if I'm not mistaken, Mr.
12 Sheridan. You say here: "It is important to note that
13 the 'gain' from trackage rights that we determined is
14 not an absolute net gain, but only the gain from the
15 MKT's having the right" -- and this next part is
16 underscored -- "without allowing for losses from an SFSP
17 merger, either overall losses or losses in the area that
18 the study traffic moved."

19 In other words, the MKT, again in quotation
20 marks, "gain" we show in traffic to Mexico, for example,
21 quote-unquote, gain for traffic to Mexico that the MKT
22 would obtain with the rights, underscored, without
23 subtracting losses of traffic to Mexico, underscored,
24 resulting from an SFSP merger.

25 Now, you are telling us, I take it, that these

1 are not net gains in the sense that you did not, if you
2 will, subtract the losses that you projected in the
3 study we discussed yesterday before you determined what
4 you might gain from trackage rights. Is that a fair
5 statement?

6 A (WITNESS SHERIDAN) We feel that even if we
7 were given the trackage rights in order to compete, that
8 because of the merger, we would still lose some
9 traffic.

10 Q I understand that, sir. The question was,
11 specifically, are you telling us that you did not
12 subtract the losses that you have estimated you would
13 incur because of the merger before you studied what you
14 might gain from trackage rights?

15 Which came first, the chicken or the egg?
16 That's the question.

17 A (WITNESS SHERIDAN) Well, trackage rights was
18 first. And, of course, at that time, we didn't have
19 anything, you know, as far as the study of what we would
20 lose on the opposition study.

21 Q Is that what you are telling us here in
22 essence, that you have not quantified your losses, and
23 therefore you have not subtracted them from the study
24 base in the study?

25 A (WITNESS SHERIDAN) Yes, sir.

1 MR. MOATES: We have an exhibit, Your Honor, a
2 two-page exhibit, two study movement sheets from the
3 opposition study. In fact, they are probably movements
4 that we have talked about. I really just want to use
5 these for illustrative purposes.

6 JUDGE HOPKINS: That will be marked for
7 identificatio as SFSP-C-61.

8 (The document referred to
9 was marked Exhibit SFSP-C-61
10 for identification.)

11 BY MR. MOATES: (Resuming)

12 Q Gentlemen, we discussed movement of this type
13 yesterday, but I want to ask you about these moves in
14 the context of this paragraph on page 10 that we were
15 just now discussing.

16 This is a movement, I think we discussed
17 yesterday, in fact, from Peck, Kansas to Corpus Christi,
18 routed today OKT/Ft. Worth/SP. Is that right, Mr.
19 Sheridan?

20 A (WITNESS SHERIDAN) Yes.

21 Q Okay. In the opposition phase of your
22 analysis, which as you point out correctly, came after
23 the study we are now discussing, you projected that Katy
24 would be short hauled on this movement via Enid,
25 Oklahoma. Correct?

1 A (WITNESS SHERIDAN) Yes.

2 Q Now, sir, if we were to assume for the sake of
3 this discussion that you had received trackage rights or
4 did receive trackage rights in this case to Corpus
5 Christi, as you have requested, in fact, this would
6 become or could become Katy system haul, could it not,
7 from Peck, Kansas to Corpus Christi?

8 A Yes, sir.

9 Q And, in fact, if you applied the written
10 diversion rules that you have in the present study, you
11 would have diverted this car, wouldn't you?

12 A (WITNESS DIMMERMAN) Yes, sir.

13 A (WITNESS SHERIDAN) Yes, sir.

14 Q The second exhibit is a similar kind of
15 illustration. Simply, it's a Denison movement for
16 illustration.

17 Q Would you confirm also that on this car, which
18 you diverted on a 100 percent basis from a routing of
19 MKT/Denison/SP/Corpus Christi/Tex Mex to a new route of
20 SFSP/Corpus/Tex Mex, that if you saw this car in your
21 gain study, your trackge rights study, if you will, that
22 you would have diverted it as well?

23 A (WITNESS SHERIDAN) Yes. We would have had
24 some diversion on that.

25 Q Some diversion. In that context, then,

1 gentlemen, you would agree, would you not, that to the
2 extent that there was a net effect here, the net effect
3 would be a positive one, would it not?

4 A (WITNESS SHERIDAN) Yes, sir. That's what our
5 trackage rights study was for, to show our gains.

6 Q Yes. I understand that. You are not telling
7 us in this paragraph on page 10, are you, that the gain
8 numbers that you have as a result of these studies,
9 let's say \$27.9 million in round numbers, that one
10 cannot or should not subtract the loss number from your
11 loss study to get a net number that would show what
12 Katy's position after this merger would be if you
13 receive all of the trackage rights that you request?

14 A (WITNESS SHERIDAN) Repeat that again, sir?

15 Q Let's use the numbers. If you look at page 13
16 of the statement that we're looking at now, let's assume
17 you have your trackage rights to Corpus instead of Eagle
18 Pass. I realize the numbers change based on that
19 assumption.

20 But you project a gain of \$27.9 million, do
21 you not?

22 A (WITNESS SHERIDAN) Yes, sir.

23 Q You have a projected loss from your opposition
24 diversion study of \$19.2 million; is that correct?

25 A (WITNESS SHERIDAN) If that's what you say.

1 Q The numbers are not as important as what I'm
2 trying to establish. Can I subtract \$19.3 from \$27.9
3 and have your assessment of the total traffic effects on
4 the MKT Railroad of this merger, assuming that all of
5 Katy's trackage rights are granted?

6 A (WITNESS SHERIDAN) No, sir.

7 Q That's what I thought you were saying. Why
8 can't I do that?

9 A (WITNESS SHERIDAN) Well, for example, the one
10 you are showing here that this would also be a gain,
11 well, this is taken into consideration in our trackage
12 rights study already.

13 But we hadn't taken anything for loss.

14 Q You are getting to the point that troubles
15 me. If you hadn't had to do these studies one after the
16 other because of the availability of data and the
17 Commission's time deadlines for submitting them, if you
18 in fact had looked at these cars one time and said to
19 yourself in the mental process, there's going to be a
20 Santa Fe/Southern Pacific merger and I'm going to have
21 trackage rights, what would happen to, for example, this
22 car from Peck, Kansas to Corpus Christi? What would you
23 have projected would be the ultimate net effect of
24 traffic like that after the merger?

25 A (WITNESS SHERIDAN) Well, we would not have

1 made one study. In any case we have had, we have always
2 made two studies. They have to be a separate study.

3 Q I'm trying to avoid the technical details of
4 the study, Mr. Sheridan, and bring it to the real
5 world. No matter how many studies we do, this car only
6 moved one time, right, and this car represents other
7 cars like it, doesn't it?

8 A (WITNESS SHERIDAN) Yes, sir.

9 Q Now, my question is, if the merger has taken
10 place and you have received your trackage rights to
11 Corpus Christi in this case, what ultimately do you
12 predict will happen to this kind of traffic? Do you say
13 you will lose all 100 percent to the merged railroad,
14 despite the fact that you have trackage rights?

15 Or do you say that you're going to --

16 A (WITNESS SHERIDAN) We already said we would
17 show some gain. We said that just a few minutes ago.

18 Q Therefore, you would not lose at 100 percent;
19 correct?

20 A (WITNESS SHERIDAN) No, sir.

21 A (WITNESS DIMMERMAN) Mr. Moates, could I have
22 a short off-the-record discussion with Mr. Sheridan?

23 JUDGE HOPKINS: Sometimes it might help.

24 MR. MOATES: I won't disagree.

25 (Pause.)

1 WITNESS DIMMERMAN: Mr. Moates, just a short
2 explanation of why this is different is in all of the
3 other merger cases we did this thing, the opposition was
4 done first and then we went to the trackage rights.

5 And where we had cases like you're showing us
6 right here, they were deducted.

7 BY MR. MOATES: (Resuming)

8 Q I understood that, sir. I knew it was a
9 unique situation. I was just trying to understand what
10 you were telling us at page 10. I think I now
11 understand.

12 A (WITNESS DIMMERMAN) I did not want us to look
13 evasive.

14 Q Oh, not at all. There was no implication of
15 your being so.

16 One last question in this regard. Did you
17 attempt to quantify the number and the associated
18 revenue impacts of movements in your -- I will call it a
19 gain study. Will you understand me when I say that, by
20 the way?

21 A (WITNESS SPERIDAN) Yes.

22 Q I'll refer to the trackage rights study as a
23 gain study and the other study as a loss study.

24 Let me start again. Did you attempt to
25 quantify the number and associated revenue impacts of

1 movements in your gain study which would be diversion
2 candidates?

3 I'm sorry, I misspoke. One more time. Did
4 you attempt to quantify the number and revenue impacts
5 of movements in your loss study which would be diversion
6 candidates for your trackage rights? Did you try to
7 count up the number like that?

8 A (WITNESS SHERIDAN) No, sir. I don't believe
9 so.

10 Q Now, would you look at the last sentence of
11 that paragraph that we have been talking about on page
12 10? "All the 'gain' figures we report must be
13 understood accordingly; there are traffic gains from
14 trackage rights, but not net gains, because traffic that
15 would be lost as a result of an SFSP merger, including
16 traffic moving over the trackage rights, has not been
17 subtracted."

18 Now, that does perplex me. Are you suggesting
19 in that last sentence that you will, first, gain traffic
20 due to the trackage rights and then lose it back to the
21 merged company?

22 A (WITNESS SHERIDAN) I'll try to explain it as
23 best I can from I understand that you want there. Just
24 like on the one document here, on our loss, our
25 diversion study, we did take 100 percent. But on the

1 trackage rights study, we would have taken some gain for
2 the trackage beyond where we served.

3 I don't know if that's what you're after or
4 not.

5 Q I'm really focusing on that parenthetical,
6 "including the traffic moving over the trackage
7 rights." It is my chicken and egg question again.

8 If you're going to gain some of that traffic
9 because of trackage rights, but you say because of the
10 merger you are going to lose it all, are you saying in
11 the first instance that you would gain some because of
12 trackage rights and lose from what's left; or are you
13 saying you would lose it all?

14 A (WITNESS SHERIDAN) What we said in the
15 opposition is that if we don't get any trackage rights,
16 it would be 100 percent loss. That's what the
17 opposition study was based on, that we would not get any
18 trackage rights.

19 Q I understand. But when you say on the
20 trackage rights study that you would gain something --

21 A (WITNESS SHERIDAN) Yes.

22 Q Does the gain judgment assume that the merger
23 has taken place and whatever effect of that merger there
24 might be have occurred already?

25 A (WITNESS SHERIDAN) As far as the gains?

1 Well, the gains will come along, like we say in our
2 percentage; we estimate they will come along. You know,
3 it won't happen just like that on all the gains that we
4 were saying we will get.

5 JUDGE HOPKINS: Mr. Moates, we haven't had any
6 recess this morning.

7 MR. MOATES: I will think about this.

8 JUDGE HOPKINS: There might be some point you
9 can get off the record.

10 MR. KHARASCH: I have no objection at all to
11 Mr. Moates --

12 JUDGE HOPKINS: We will take a 15-minute
13 recess.

14 (Recess.)

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

16 MR. FISHMAN: I'd like to enter an appearance
17 on behalf of Kansas City Southern Railway. My name is
18 Leonard Fishman. I'm with the law firm of Sullivan &
19 Worcester in Washington.

20 JUDGE HOPKINS: Thank you.

21 Mr. Moates.

22 MR. MOATES: Thank you, Your Honor. Let's see
23 if we can resolve our philosophical dispute.

24 BY MR. MOATES: (Resuming)

25 2 Gentlemen, with respect to the series of

1 questions I asked you before the break, would you look
2 at the exhibit that's been marked as C-61, the movement
3 from Peck, Kansas to Corpus Christi. Do you have that
4 in front of you?

5 A (WITNESS SHERIDAN) Yes, sir.

6 Q Now, assuming the merger has taken place and
7 that MKT has received trackage rights to Corpus Christi,
8 would it be accurate to state that the results of your
9 two studies would be a projection on your part that you
10 would lose 50 percent of these movements, as you show on
11 sheet 61, namely, to a short haul of Enid, Oklahoma; and
12 that on 50 percent of the movements you would project
13 that you would actually get an extension of haul from
14 Ft. Worth to Corpus Christi?

15 A (WITNESS SHERIDAN) Well, in making a
16 comparison of, you know, our gains versus our losses and
17 just subtracting them, we may or may not come up with a
18 ballpark figure. To get an exact, I think somebody
19 would have to go through and compare the documents.

20 Q Mr. Sheridan, I regret -- I thought we had
21 this resolved at the break, but your answer isn't what
22 you told me at the break. I thought that we agreed that
23 you would project a loss, as you had initially on this
24 document, of the short haul via Enid, Oklahoma rather
25 than the present routing at Ft. Worth on half the .

1 traffic, and on the other half where you project gains,
2 you would get an extension of haul from the present
3 junction of Ft. Worth to Corpus Christi which you would
4 then be able to serve via trackage rights, making it a
5 Katy system haul.

6 Is that not right?

7 A (WITNESS SHERIDAN) I was looking at the other
8 document you had there. That would be in line with the
9 percents that we talked about.

10 Q I'm talking about Peck to Corpus.

11 A (WITNESS SHERIDAN) I was looking at this one
12 when we were discussing it. I'm sorry.

13 Q Would you agree with my statement, then, with
14 respect to the movement from Peck, Kansas?

15 A (WITNESS SHERIDAN) Okay. On the document I
16 have here, we are showing a loss on our opposition study
17 of 100 percent.

18 Q Over Enid, Oklahoma as a short haul.

19 A (WITNESS SHERIDAN) Over Enid, Oklahoma.

20 Q Now, I'm asking you, sir, if you had trackage
21 rights to Corpus Christi after the merger, wouldn't you
22 then, wouldn't the reality of this car be in your
23 projections, that you would lose half of the traffic the
24 way you show, but that the other half would be subject
25 to an extension of haul from Ft. Worth to Corpus Christi

1 on a Katy single system movement?

2 A (WITNESS SHERIDAN) Yes, sir. That's right.

3 Q Thank you.

4 With respect to the fact that the word "gain"
5 is in quotation marks all over page 10, I referred to it
6 there a couple of times, is that simply your way of
7 warning the reader that those gains are not, as you say,
8 net gains? Is that why it's in a quotation mark?

9 A (WITNESS SHERIDAN) Yes, sir. That's
10 basically the reason.

11 Q Okay. I understand that with respect to the
12 Applicants, but would you turn to page 11 and look at
13 the last full paragraph on the page where, for context,
14 I believe you are explaining to us that you did divert
15 some traffic from a data base that represented movements
16 handled by railroads other than the Applicants?
17 Correct?

18 A (WITNESS SHERIDAN) Yes, sir.

19 Q And in those instances, the gains that you
20 project would be from railroads like, for example, the
21 Missouri Pacific or perhaps the Burlington Northern and
22 so forth. Is that right?

23 A Other carriers. Yes, sir.

24 Q Now, why is the term "gain" in quotation marks
25 there as well? You are not suggesting, are you, that as

1 a result of this merger those railroads are going to
2 divert traffic from you, are you?

3 A (WITNESS SHERIDAN) No, sir. I don't feel
4 that there is any loss there.

5 Q Those would be real honest-to-goodness gains
6 if you had the trackage rights, wouldn't it? There's
7 nothing to net off against that.

8 A (WITNESS SHERIDAN) That part should be gain.
9 Yes, sir.

10 Q Now, sir, look at the bottom of page 10, the
11 last paragraph, the second-to-the-last sentence. It
12 says: "Our general assumptions concerning our
13 evaluations and the divertibility factors are set forth
14 in Appendix A hereto."

15 Do you see that?

16 A (WITNESS SHERIDAN) Yes.

17 Q We can look at Appendix A. I think we have
18 discussed this. Are the general assumptions in Appendix
19 A the same general assumptions that you apply to your
20 opposition study?

21 A (WITNESS SHERIDAN) No, sir. There are some
22 differences there.

23 Q Why not?

24 A (WITNESS SHERIDAN) Why aren't they the same?

25 Q Let me ask the first question. I didn't see

1 this Appendix A with your opposition study. Do you have
2 general assumptions like this that apply to the
3 opposition study?

4 A (WITNESS SHERIDAN) There's an attachment in
5 the opposition study -- yes, sir -- filed with our
6 statement.

7 Q All right. Then I may have misspoken. I'm
8 sorry. But they are not these same general assumptions,
9 are they?

10 A (WITNESS SHERIDAN) No. Well, some of them
11 are and some of them aren't.

12 Q Why aren't they the same?

13 A (WITNESS SHERIDAN) One, we are looking at a
14 loss; and this one, we are looking at a gain.

15 Q Are the diversion percentages that you
16 described at page 12 of your study the same percentages
17 you applied in the opposition study?

18 A (WITNESS SHERIDAN) No, sir.

19 Q In fact, here you use percentages of 100, 50,
20 25, 15, and 10; correct?

21 A (WITNESS SHERIDAN) Yes, sir.

22 Q And we all remember that in the other study
23 you used four percentages: 25, 50, 75, and 100.

24 A (WITNESS SHERIDAN) Yes, sir.

25 Q Are your percentage diversion factors here for

1 100, 50 and 25, which are percentages that you used in
2 the other study, are they the same in terms of the
3 reasoning for percentage diversion at that level?

4 A (WITNESS SHERIDAN) The same reasons? No,
5 sir.

6 Q So I cannot, can I, simply go to your rule?
7 Let's say as an example on the 100 percent factor, I
8 can't go to that rule and where I see MKT, insert SPSF
9 and apply that rule to the opposition study, can I?

10 A (WITNESS SHERIDAN) That one, maybe. I would
11 have to compare it back. In other words, all of them,
12 no, you cannot do that. With maybe a few, you could,
13 but I would have to go back and compare each to give you
14 that designation.

15 Q Why don't you have a 75 percent diversion
16 factor here like you did in the other study?

17 A (WITNESS SHERIDAN) In our opinion, it wasn't
18 necessary to have that.

19 Q Why in your opinion was it necessary to have
20 so many factors below 50 percent in this study, but you
21 didn't need them in the opposition study?

22 A (WITNESS SHERIDAN) Well, you are making two
23 different types of studies as far as we are concerned.
24 On the opposition study, as an example, we are showing
25 our losses, and I think in each case we had the

1 documentation and it showed reasons for those losses.
2 And good reasons, just like we showed on our percents
3 when they would take effect, Y amount the first year and
4 X amount the second year.

5 And those percentages was based upon what we
6 felt would happen. In other words, as route
7 cancellations we talked about. Okay, a route
8 cancellation can take you out of being a carrier, like
9 right now, as soon as it is filed. And we are talking
10 about a gain study here.

11 If we are given the right to compete, and
12 that's what we are talking about -- if we're given the
13 right to compete, we've got to go out and convince the
14 shippers that we can handle this traffic, and there is
15 nothing to guarantee that we will get it or not get it.
16 We are giving you our best estimate of what we can get
17 if we are allowed to compete.

18 There's no guarantee that we will get this.
19 We may get less in some cases, we may get more in some
20 cases. We gave our best judgment as to what we felt the
21 gain would be, looking at two different types of
22 studies.

23 Q Mr. Sheridan, isn't it plain and simply the
24 truth that you created higher diversion factors to apply
25 to a loss study and found many, many more cars

1 divertible in the high percentage ranges, and that you
2 created lower ranges for the gain study because you
3 didn't want to show such large gains?

4 A (WITNESS SHERIDAN) No, sir, that is not the
5 reason.

6 Q Did you make a comparison at any point after
7 you completed these studies of how many cars you
8 diverted in your opposition study in the higher percent
9 categories, versus how many you diverted in the
10 categories utilized in the trackage rights studies?

11 A (WITNESS SHERIDAN) Repeat that again, sir?

12 Q Did you make any effort, after you completed
13 these two studies, to compare the number of cars that
14 were diverted in the higher percentage categories, 50
15 percent and above in the opposition study, versus the
16 number of cars that you diverted in the lower percentage
17 categories, below 50 percent in the trackage rights
18 study?

19 A (WITNESS SHERIDAN) I did not make a study and
20 make a comparison on that basis. I did, in fact, on the
21 opposition, just shortly before we came, did I even
22 total the number of cars in each percent. And when we
23 got that, like I say, but I did not even at that time go
24 back and compare with what we took here, the numbers.

25 No, sir; I did not.

1 MR. MOATES: Your Honor, I'd like to have a
2 counsel's exhibit marked, a two-page document captioned
3 SFSP Analysis of Diversion Percents Used by the MKT in
4 its Opposition and Trackage Rights Studies.

5 JUDGE HOPKINS: That will be marked for
6 identification as SFSP-C-62.

7 (The document referred to
8 was marked Exhibit SFSP-C-62
9 for identification.)

10 BY MR. MOATES: (Resuming)

11 Q Gentlemen, do you recall that when we did the
12 opposition study, I introduced an exhibit that looked
13 like basically half of this exhibit? I think it as
14 SFSP-C-34. It showed the left-hand side of what this
15 exhibit shows.

16 A (WITNESS DIMMEFMAN) Yes, sir.

17 Q Assuming that I have constructed this exhibit
18 accurately, and I ask you for purposes of this question
19 to assume that I have, and of course it is subject to
20 check -- doesn't this exhibit show precisely what I
21 asked you a minute ago?

22 Doesn't this, in fact, show that you diverted
23 a very large percentage of the cars in your opposition
24 category -- opposition study, rather -- in the diversion
25 percent categories above 50 percent? In fact, most of

1 it, 100 percent? And that you diverted a vast
2 preponderance of the cars in the gain study in the lower
3 categories?

4 A (WITNESS DIMMERMAN) This is where you get
5 into the regional railroad concept versus the mega-type
6 railroad. When you are talking about the origins and
7 destinations of the SFSP, it affects so many more
8 movements. And when you are just talking about what the
9 MKT can do on a regional basis to influence traffic, it
10 is infinitely smaller, and that's the reason for the
11 difference.

12 Q I take it that that answer was a yes? You
13 never said yes or no. You gave me that little
14 explanation.

15 A (WITNESS DIMMERMAN) I was trying to say why
16 this is occurring.

17 Q Look at page 2 of the exhibit. Is it your
18 testimony, Mr. Dimmerman, that for the reason you just
19 gave me, the difference between your regional railroad
20 and SFSP, that that is the justification and explanation
21 for why you diverted 83 percent of the cars in your
22 opposition study 100 percent, and fully 86 percent of
23 the cars in this case 25 percent or less?

24 A (WITNESS DIMMERMAN) I don't quite understand
25 the question.

1 Q I'll withdraw it. I think the exhibit speaks
2 for itself.

3 Would you look at page 12 of your statement?
4 I just want to clarify a few of these before we start in
5 with the movement sheets. First, your rule on the 100
6 percent diversions.

7 It says 100 percent factor was used when
8 movements involved an origin or destination on MKT
9 only. What does "only" mean? Does that mean a local
10 point or a closed point or both?

11 A (WITNESS SHERIDAN) It could mean both.

12 Q All right. Now, with respect to your 50
13 percent factor, it says a 50 percent factor was used
14 when MKT and SFSP serves both origin and destination
15 equally.

16 What does "equal service" mean in that
17 context?

18 A (WITNESS SHERIDAN) We didn't say equal
19 service. It says "serves both origin and destination
20 equally."

21 Q What does that mean?

22 A (WITNESS SHERIDAN) We're both serving it, and
23 it could be -- it also applies there, you know, like who
24 serves the industry? Is there any other particular
25 things that may develop? Here again, you know, getting

1 into the study, you don't always see them.

2 We put this down; hopefully, it would cover
3 everything that we had in there. It could be, like for
4 example, if it was an industry served at a place where
5 we both served, and it was a terminal, a terminal
6 railroad that switches. Well, that's an equal
7 situation.

8 If it's a case where we're in there, but it's
9 actually an industry served by the Santa Fe or SP, that
10 would not be equal, even though we would have rights to,
11 you know, get cars there, too. We feel that would give
12 them some advantage over us.

13 Q Do you mean to tell me that you are assuming
14 that if you get, say trackage rights on the Bayport
15 line, for example, and if the SP serves a particular
16 industry that you were studying on that line, and you'll
17 be able to serve it if you get the trackage rights. But
18 simply because they physically move the cars into the
19 plant under this rule, you decided that you didn't serve
20 them equally. Is that what that means?

21 A (WITNESS SHERIDAN) If we are there and are
22 able to serve them also, that would be equal. Yes,
23 sir.

24 Q It would be equal if the SP switches the
25 facility, that you would reach the facility through

1 trackage rights, you would be serving it equally. I
2 want this to be clear. Is that right?

3 A (WITNESS SHERIDAN) If the SP does all the
4 switching, as I recall in there, we have asked for to
5 serve either directly or through reciprocal switching,
6 where you are talking about the Bayport line.

7 In other words, if we both served, as far as I
8 am concerned it would be equally. Now, if you do the
9 switching and they give it to us on a reciprocal basis,
10 I feel that you all still have a slight advantage.

11 Q A slight advantage?

12 A (WITNESS SHERIDAN) Some advantage. Slight.
13 Some.

14 Q What about a situation where the industry is
15 served by a terminal railroad and the Southern Pacific
16 but it's an open point that you would reach because of
17 trackage rights? Would that cause the 50 percent factor
18 to be applied because you both serve the origin
19 equally?

20 A (WITNESS SHERIDAN) I don't see that that
21 would be equally because there again, the SP is serving
22 them directly. We're talking about a case like that.
23 And, of course, where we could get there through the
24 port terminal, that is an advantage to serve an industry
25 directly.

1 Now, if we had the rights, as an example, on
2 the Bayport line where the PTRR and the Katy -- excuse
3 me -- and the SF both serve, we feel there would be some
4 advantage working directly.

5 In other words, the PTRR serves an industry,
6 they serve it for all the railroads in Houston, or the
7 area they serve. If the SF switches it today, they are
8 switching only for themselves. That would be, you know,
9 for their road haul.

10 And I think that is certainly an advantage, to
11 be able to switch an industry to get cars directly from
12 them.

13 Q Let me ask you a hypothetical question. Using
14 your diversion rules, there is an industry that you will
15 reach because of trackage rights that is served, will be
16 served when you get there by the PTRR and the Southern
17 Pacific. And by "serve," you understand I mean they
18 perform the switching. But it will be an open point to
19 you through these trackage rights, and that the
20 destination is a point that you would serve equally.
21 And we won't worry about the facts there.

22 Just assume whatever you want to assume that
23 the destination is served equally, what that means to
24 you. I am focusing on the origin.

25 Would your 50 percent rule apply?

1 A (WITNESS SHERIDAN) That if the merged line
2 switches the industry --

3 Q And the PTRB.

4 A (WITNESS SHERIDAN) And the PTRB. As far as
5 we are concerned, the merged lines still have a slight
6 advantage because they are switching them directly.

7 Q So the answer is, the 50 percent rule would
8 not apply?

9 A (WITNESS SHERIDAN) On that, it would be 25
10 percent rule. We would throw it into that.

11 Q Solely on that basis?

12 A (WITNESS SHERIDAN) It's not an equal
13 situation.

14 Q All right. And on question about your Eagle
15 Pass percentage. Do you see that? The 10 percent
16 factor was used for Eagle Pass. "As we anticipate MKT
17 service being triweekly, we can only expect to secure a
18 maximum of 10 percent on time-sensitive traffic."

19 Do you see that?

20 A (WITNESS SHERIDAN) Yes, sir.

21 Q Does that mean that the 10 percent factor was
22 used at Eagle Pass for all traffic, or just traffic that
23 you determined was time-sensitive?

24 A (WITNESS SHERIDAN) That was on time-sensitive
25 traffic. Basically on that. It was on some automobile

1 traffic and we are both aware of automobile companies'
2 service on that, and based on our service, we felt we
3 should take a lesser percent.

4 We felt we could still, hopefully by
5 competing, get a part of it. But we didn't feel it was
6 as strong as the other cases.

7 Q Now, are these rules on page 12 of your
8 verified statement that we've just been talking about on
9 that first full paragraph, are these the entire rules
10 that were applied in this study? The entire set of
11 diversion rules?

12 A (WITNESS SHERIDAN) In general, like we state
13 there.

14 Q In general?

15 A (WITNESS SHERIDAN) Yes.

16 Q What does "in general" leave us room to
17 discuss? What are you trying to tell me about "in
18 general"? Does that mean that you altered these rules
19 in particular circumstances?

20 A (WITNESS SHERIDAN) No. We didn't alter them
21 in particular circumstances. Like I said to begin with,
22 on our percents, we tried to sit down and analyze by
23 looking at some of the moves on these, what percents we
24 could come up with that would cover the situations that
25 we could see.

1 Now, as you go through studies, it appears
2 that, you know, there's always something that comes up
3 that you can't see in advance. And, of course, what we
4 tried to do is, these are the general ones and if
5 something comes up that we weren't aware of, we try to
6 fit it in where it would best fit.

7 Q Did you end up with a set of more specific
8 rules when you finished the study and had seen the
9 situations that, as you say, you might not have
10 anticipated?

11 A (WITNESS SHERIDAN) No, sir. Like I say, we
12 did not come up with another set of percents than that.

13 Q I didn't ask for percents per se. I said, did
14 you come up with a more specific set of rules to apply
15 the percents?

16 A (WITNESS SHERIDAN) No, sir; we did not sit
17 down and write anything afterwards like that.

18 MR. MCATES: Your Honor, I'd like to have
19 marked as a counsel's exhibit, a 16-page document
20 produced from the work papers of these witnesses.

21 JUDGE HOPKINS: That will be marked for
22 identification as SFSP-C-63.

23 (The document referred to
24 was marked Exhibit SFSP-C-63
25 for identification.)

1 BY MR. MCATES: (Resuming)

2 Q Mr. Sheridan, these handwritten notes which
3 constitute a large portion of this exhibit, are they in
4 your handwriting?

5 A (WITNESS SHERIDAN) Yes, sir.

6 Q And, in fact, these are your work papers
7 underlying this study?

8 A (WITNESS SHERIDAN) Yes, sir.

9 Q Directing your attention to the third page of
10 the exhibit, it says Liberal-Topeka, 74 pages. Now, the
11 74 pages refers to the number of study movement or
12 abstract pages that support the Liberal-Topeka
13 analysis?

14 A (WITNESS SHERIDAN) The number of pages of
15 printout that we received. Like I said before, we tried
16 to analyze those sheets roughly, and these are my
17 handwritten notes about, you know, what would apply.

18 I did this in each of the trackage rights
19 areas and from this we wrote what we put in our statement
20 on page 12 that we have been looking at.

21 Q Okay. So if I look like a little over half
22 the way down the page, I see some notes about the TXNW.
23 It says: "50 percent gain, MKT in routing; 25 percent
24 gain, MKT not in routing."

25 Do you see that? This is on the

1 Liberal-Topeka page.

2 A (WITNESS SHERIDAN) Yes, I see that.

3 Q Now, the only mention I see in your diversion
4 rules on page 12 about short line railroads is in the
5 100 percent factor. So haven't you created a special
6 rule for the TXN on your Liberal-Topeka study that
7 doesn't appear in your verified statement?

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 A (WITNESS SHERIDAN) That is a notation that we
2 wrote down there, apparently. I don't see, without
3 analyzing further, if we fully cover that in our other
4 one or not.

5 Q Is it a rule that you used when looking at
6 possible diversions in the Liberal-Topeka study?

7 A (WITNESS SHERIDAN) I'd have to look at each
8 one of the study movements to see that, sir.

9 Q Did you write these rules down before you made
10 the analysis or did you write them down as you went
11 along as particular circumstances came up that made you
12 refine the rule?

13 A (WITNESS SHERIDAN) No, basically, like I
14 said, we tried to write them down. When we got the
15 printouts in, we scanned them and tried to pick out
16 percents that we would use, and like I say, basically
17 ahead of time on that.

18 Q If you look at the seventh page following,
19 which would be the next page of handwritten notes, it
20 also says "Liberal-Topeka" at the top. It has a lot of
21 hatchmarks on the page, the kind you make when you are
22 counting something.

23 A (WITNESS SHERIDAN) Excuse me, I dropped some
24 pages. Would you repeat the page on that?

25 Q Mr. Dimmerman maybe can show it to you.

1 Again, this is your handwriting, Mr.
2 Sheridan?

3 A (WITNESS SHERIDAN) Yes, sir.

4 Q You did in fact count up the number of
5 percentages, at least on the Liberal-Topeka study, that
6 you diverted in the 50 percent and 15 percent
7 categories, didn't you?

8 A (WITNESS SHERIDAN) Yes, sir, on that. I was
9 requested to. I'm trying to think for what reason on
10 that. I believe on that I was trying to get an idea of
11 what points we were looking at on grain, yes, sir.

12 Q You weren't trying to get an idea of how many
13 diversions in the 15 percent category that you had on
14 grain out of Hutchinson and McPherson and Topeka?

15 A (WITNESS SHERIDAN) It wasn't to get the
16 percent. I was trying to see where our grain was coming
17 from on this study.

18 Q Look at the very next page, captioned
19 "Houston-Texas City." This is the Bayport line, as you
20 and I have been calling it, right?

21 A (WITNESS SHERIDAN) Yes, sir.

22 Q Look down below your 100 percent notation.
23 There's a statement that says "No gain when to/from
24 industries served by PTRR only that are to/from points
25 other than on the Bayport line." Is that a rule that

1 you used in the study?

2 A (WITNESS SHERIDAN) It was a rule that we used
3 additionally there when we were looking at this, because
4 it was felt that, you know, when we were looking at
5 something from Bayport to the PTRA, that in all cases it
6 appeared that you would be doing the switching. And we
7 didn't feel that, you know, it would be like a short
8 local move and, you know, we just didn't feel that we
9 could compete on that, because basically you would be
10 switching it. If you came to the Katy, then we'd have
11 to switch it back to the PTRA. That's the possibility
12 that we looked at on that.

13 Q Did that rule get put in your testimony or was
14 it put in your specific instructions anywhere?

15 A (WITNESS SHERIDAN) I don't recall offhand if
16 there was any movements that really applied on that or
17 not, because again, like I say, we were looking at the
18 tables, and in our own mind we tried to get an idea --

19 (Witnesses conferring.)

20 Q I think we're going to look at some movements
21 like that a little later.

22 A (WITNESS SHERIDAN) Excuse me. I was reading
23 it as from the Bayport line.

24 A (WITNESS DIMMERMAN) This is from the PTRA. I
25 think that he's trying to tell you is that there is no

1 change. If it has come off the PTRR we could handle it
2 now, and that's why there would be no gain. I think
3 that's what you mean here.

4 A (WITNESS SHERIDAN) I was reading across. I
5 was taking this to the PTRR from Bayport origins.
6 That's what I was discussing. In other words, it says
7 points other than the Bayport line. It was from PTRR,
8 because if they are the only ones serving it we have
9 equal access today.

10 Q All right. The next line under that it says,
11 "No gain when traffic is moving via New Orleans or
12 Memphis gateways." Is that a rule that you applied in
13 this study?

14 A (WITNESS SHERIDAN) Basically, it applied to
15 any gateway that we couldn't get to. We noticed some on
16 there, but we didn't feel that it needed to be set down
17 as a separate rule because it would apply to every
18 gateway that we couldn't handle.

19 Q Okay. Put that exhibit aside for the moment.
20 We may come back to it from time to time.

21 Now let me ask you about two more general
22 subject matters and then we will turn to the particular
23 movement sheets. First I'd like to talk to you briefly
24 about the two adjustments that you describe at the
25 bottom of page 12 and the top of page 13. And again,

1 for context, either one of you gentlemen, would you just
2 tell me briefly what these adjustments were specifically
3 and when you made them?

4 A (WITNESS SHERIDAN) What page is that?

5 Q Bottom of page 12 and top of page 13. Do you
6 see the last paragraph says "Two adjustments were
7 made"?

8 A (WITNESS SHERIDAN) Yes. Okay, we have them
9 in the work papers of adjustments we made on there.

10 (Pause.)

11 A (WITNESS SHERIDAN) Okay. One adjustment that
12 we made in the papers, the printouts that we had
13 received, the grain was not reflected heavily at all
14 like we had handled in previous years. In other words,
15 this is in connection with the OKT. You know, we had
16 had the grain before that moved with OKT, and it had
17 come off of the line out there.

18 And I forget now the exact number that we had
19 shown when we originally operated the OKT. And we
20 thought that it was definitely, from the information of
21 traffic that we had handled before, that there was more
22 grain available than the report reflected. And this is
23 what we were trying to do, is to come up with a type of
24 movement that would correspond with, really with grain
25 which we feel is there.

1 Q Okay. The first adjustment, Mr. Sheridan, as
2 you say, is to add 800 cars of grain to the Gulf off of
3 the Liberal-Topeka trackage rights, is that right?

4 A (WITNESS DIMMERMAN) To the Gulf.

5 Q What did I say?

6 A (WITNESS DIMMERMAN) I think you meant from
7 the Gulf.

8 Q I meant to say to the Gulf. Is that correct,
9 that's what you have added?

10 A (WITNESS DIMMERMAN) Yes, sir.

11 Q All right. You estimate 800 cars a year on
12 the segment of the line west of Hutchinson to Liberal.
13 What is the basis for the estimate? Where did you come
14 up with 800 cars?

15 A (WITNESS SHERIDAN) Based on figures that we
16 had had when we operated the OKT the first time, back in
17 '81, we handled 1100 and some cars off of that line.

18 Q So this was based on Katy's historical traffic
19 participation in this traffic, that you decided that you
20 didn't see this traffic in the study as you had expected
21 and, based on your experience, you felt you should add
22 that much?

23 A (WITNESS SHERIDAN) From information we had on
24 grain coming off of that line and historically, we felt
25 that, yes, sir, there would be more grain.

1 Q How does that traffic, those 800 carloads, how
2 does it move today?

3 A (WITNESS DIMMERMAN) Let me interject here a
4 little bit.

5 Q Well, Mr. Dimmerman, instead of interjecting
6 could you answer the question? How does that traffic
7 move today, the 800 cars?

8 A (WITNESS DIMMERMAN) The traffic moves today,
9 it goes into Hutchinson on the SP-Cotton Belt and comes
10 out on the Santa Fe.

11 Q You didn't see that traffic in the study, is
12 that right?

13 A (WITNESS DIMMERMAN) The reason we didn't see
14 it in the study is because there were no routes
15 available. Jerry is talking about the 100 cars that
16 came in 1981, is when we had the routes with the
17 Southern Pacific over Herington.

18 Q So this is additional tonnage moving today by
19 rail and in fact by SP and Santa Fe which you project
20 will be a gain to you and therefore a loss to the
21 Applicants if you were granted the Liberal-Topeka
22 trackage rights, correct?

23 A (WITNESS DIMMERMAN) I would assume so.

24 Q Then the second adjustment, as you say on page
25 13, is you added approximately 700 cars of soybeans,

1 representing \$798,000 in gross revenues, on the
2 assumption that this is traffic from eastern Nebraska
3 and Iowa points to Wichita, Kansas, that you could
4 handle.

5 Again I ask you, how is that traffic moving
6 today?

7 A (WITNESS SHERIDAN) As I understand, some of
8 it is moving down in connection with the Missouri
9 Pacific.

10 A (WITNESS DIMMERMAN) I don't know.

11 Q I have a problem when you give me an answer,
12 Mr. Sheridan, and Mr. Dimmerman says no.

13 A (WITNESS DIMMERMAN) I said I don't know.

14 Q Oh, I'm sorry.

15 It's Missouri Pacific traffic today?

16 A (WITNESS SHERIDAN) I understand they are
17 handling some now on the move. I don't know who else
18 may be handling it, but there was an indication that
19 some of it was moving on our lines.

20 Q Did you have a data base for purposes of
21 analyzing this study that included traffic of other
22 railroads, like the Missouri Pacific?

23 A (WITNESS SHERIDAN) Not a total study, no.

24 Q Perhaps you misunderstood me. Is there --
25 didn't we make reference a little while ago at the

1 bottom of page 11 to a gain figure of \$4 million? We
2 talked about it in the context of the word "gain" being
3 in quotation marks, if you can recall.

4 Didn't we agree that that gain represented
5 gain from questions other than Santa Fe and Southern
6 Pacific?

7 A (WITNESS SHERIDAN) Yes, sir.

8 Q And in fact, didn't all of that gain represent
9 traffic that was handled by some other railroads in the
10 study year, but in which neither you nor we were
11 involved? Isn't this the waybill tape traffic?

12 A (WITNESS SHERIDAN) Yes, sir, in certain
13 areas.

14 Q And in fact, you did have traffic on this
15 study -- and we will look at some of it -- that moved,
16 as an example, MP local, right?

17 A (WITNESS SHERIDAN) Yes. This was added in
18 there strictly because we had had information from the
19 shipper that if we were able to get our trackage rights
20 across there that they would assist us in this traffic.
21 And it was sufficient that we wanted to add it on
22 because it was a gain.

23 MR. MOATES: Your Honor, could I have marked a
24 one-page counsel's exhibit which, from the work papers
25 of Mr. Sheridan, relates to this matter?

1 JUDGE HOPKINS: It will be marked for
2 identification as SFSP-C-64.

3 (The document referred to
4 was marked Exhibit No.
5 SFSP-C-64 for
6 identification.)

7 BY MR. MOATES: (Resuming)

8 Q Mr. Sheridan, is this the one-page exhibit,
9 the working paper that you referred to that supports the
10 adjustment of 700 cars of soybeans at page 13 of your
11 testimony?

12 A (WITNESS SHERIDAN) Yes, sir.

13 Q Does this document not show, sir, that you
14 telephoned three gentlemen with Cargill Corporation in
15 Minneapolis and ultimately you were directed to a
16 Cardill employee in Wichita, Kansas, about this matter?

17 A (WITNESS SHERIDAN) Yes, sir. I was asked by
18 Dave Cyrus to go ahead and call Jeff Hicks on it for an
19 exact number.

20 Q And the note says: "Mr. Hicks advised MKT
21 system would be favored with at least 700 carloads of
22 soybeans annually from Council Bluffs, Omaha, and
23 Lincoln to Wichita if we received trackage rights." And
24 then you calculate the \$798,000 that appears in your
25 testimony?

1 A (WITNESS SHERIDAN) Yes, sir.

2 Q And the notation there by your initials, is
3 that "8/20"? Does that mean that this conversation took
4 place on August 20?

5 A (WITNESS SHERIDAN) August 23rd.

6 Q 23rd. I have a hard time reading it. Okay,
7 August 23rd.

8 And your testimony was filed on September
9 10th. So this was something you did less than two weeks
10 before the filing or approximately two weeks before the
11 filing?

12 A (WITNESS SHERIDAN) It was right some time
13 before, because we were working heavily on the printouts
14 we'd received and trying to get the whole thing together
15 to beat the filing time, yes, sir.

16 Q Was this an adjustment made after you had
17 completed your analysis of the Liberal-Kansas traffic --
18 Liberal-Topeka traffic?

19 A (WITNESS SHERIDAN) This particular analysis,
20 basically, yes, sir. As far as the knowledge of them,
21 we were aware that they had already said they would help
22 us. It wasn't a case of I called and asked them could
23 they help us. It was a case of following up to beat the
24 deadline to get it in.

25 Q Did you call on any other grain shippers,

1 either one of you, and ask them for similar indications
2 of traffic commitments if you got these trackage
3 rights?

4 A (WITNESS SHERIDAN) I didn't, sir, because
5 this is the only one I was aware of. Maybe Mr.
6 Dimmerman can put something in further, because he had
7 talked with Cargill. And basically, you know, our
8 discussion with him I followed up on to get the figures
9 in here.

10 Q Mr. Dimmerman, did you make any calls like
11 this?

12 A (WITNESS DIMMERMAN) No. In fact, in this
13 here instance here with Cargill, I told Jerry to call
14 him as I had had previous conversations with Mr. Housch
15 that if we received the crossover route -- you see, we
16 already served Wichita. That was not the point. The
17 point was our route from Kansas City to Wichita was so
18 far out of route, it just wouldn't work as far as
19 transit on soybeans.

20 We had to have this crossover route betwee
21 Topeka and Herington. And I talked to Allen about it
22 before and he said, I'm sure we could do something with
23 the soybean division, call either Mike or Dave. And
24 that's the reason Jerry's got these numbers down here,
25 because he sat right in my office and wrote the numbers

1 down, and we got a hold of Dave Cyrus, and he said to
2 get a hold of Jeff Hicks. And then I lost it after
3 that.

4 Q Did either one of you gentlemen ask either Mr.
5 Anderson or Dr. Odell whether it was appropriate to
6 supplement the sample with items brought in from outside
7 the sample base?

8 A (WITNESS DIMMERMAN) I didn't discuss it with
9 him.

10 A (WITNESS SHERIDAN) No.

11 Q One last question and we will turn to the
12 movements. Would you look at your specific instructions
13 which follow your general assumptions, which follow your
14 diversion factors, all at the end of Appendix A on page
15 17.

16 A (WITNESS SHERIDAN) What page is that again,
17 sir?

18 Q 17. I want to ask you about specific
19 instruction number 2. Well, excuse me. Let's ask about
20 both of them very briefly.

21 Specific instruction number one says: "If any
22 movement is from one trackage rights area to another
23 trackage rights, only evaluate movement on origination
24 end," correct?

25 A (WITNESS DIMMERMAN) Yes.

1 A (WITNESS SHEPIDAN) Yes.

2 Q Does that mean, just as an example, that if a
3 movement that you looked at moved say from Beaumont to
4 Corpus Christi, and if that movement came up in your
5 Corpus Christi study as a termination, that you would
6 not evaluate it there; that you would rather evaluate it
7 in the Beaumont study where it originated?

8 A (WITNESS DIMMERMAN) It isn't a case of
9 rather, but we didn't want to count it twice.

10 Q When you encountered such a movement, did you
11 physically take it out and put it over in the Beaumont
12 pile to evaluate it when you came to Beaumont? How did
13 you handle that?

14 A (WITNESS DIMMERMAN) No. As I recall, it was
15 just disregarded. We took only from the origin side.

16 Q Did you, when you came to the Beaumont side in
17 my example, did you make an effort to determine if there
18 were as many Beaumont to Corpus Christi moves as you had
19 seen Corpus Christi terminations?

20 A (WITNESS DIMMERMAN) No.

21 Q Now, specific instruction number 2 says that:
22 "Any movement to or from Corpus Christi and Laredo, as
23 well as to or from Eagle Pass, A or B must be shown." A
24 says: "Gain on trackage rights received at Corpus
25 Christi not applicable if trackage rights received to

1 Eagle Pass," and B says just the opposite.

2 Would you briefly explain to me what that
3 rule, that specific instruction, was meant to do?

4 A (WITNESS SHERIDAN) Well, we applied for
5 either. We have not applied at any time for both
6 Corpus, which gets us to Laredo, or to Eagle Pass. In
7 other words, we had both types of documents in there,
8 movements going to both places, and, like I say, we had
9 to separate those because we would get one or the
10 other. We would not get them both.

11 So we identified those, just like it says,
12 under A for one side and B for the other side. That
13 way, if something would happen that we were not
14 considered for Corpus, but was considered for Eagle
15 Pass, they could, you know, take those figures for
16 whichever side we were hopefully granted.

17 Q Is it then your position, Mr. Sheridan and Mr.
18 Dimmerman, that traffic routed to Mexico over either one
19 of these gateways could not be shifted to the other
20 gateway in the event that you got the trackage rights to
21 the gateway where the traffic did not move in the study
22 year?

23 A (WITNESS DIMMERMAN) That was our assumption.

24 Q Was that an assumption you applied -- well, I
25 guess it was an assumption you applied to all traffic,

1 correct?

2 A (WITNESS DIMMERMAN) All traffic going to
3 Corpus Christi and Eagle Pass?

4 Q Yes. In other words, you didn't justify this,
5 for example, to grain traffic?

6 A (WITNESS DIMMERMAN) No, no.

7 Q Is your answer to me that that is your
8 assumption, that the routings, the gateways, could not
9 be changed, does that apply to Conasupo routings of
10 grain over Laredo and Eagle Pass?

11 A (WITNESS DIMMERMAN) When a tender is offered
12 by Conasupa, they actually name the gateways and that
13 establishes how the traffic is going to be routed. On
14 other movements -- and we have talked about zinc
15 concentrates, for example -- that is routed, you know,
16 by one or the other gateways and, you know, we don't
17 influence it. That's the way it comes. The Mexicans
18 route it.

19 Q If a railroad, a U.S. railroad that didn't
20 reach a Mexican gateway today, were able to reach that
21 gateway after this merger, do you think there would be
22 any opportunity for that railroad to influence Conasupa
23 to change the gateways that is named in those tenders so
24 that that U.S. railroad could then participate in the
25 traffic?

FD. 30400 • 1/10/85 - Pgs. 6036--6095

1 A (WITNESS DIMMERMAN) For a large railroad like
2 the SP, I would assure that could happen, because I have
3 seen, you know, in documents, SP documents where they
4 have said that they should, you know, use their
5 influence. But as far as the MKT, I am sure we could
6 not. Mr. Ramos might be able to, but we certainly
7 couldn't.

8 Q I see. The SFSP or the Tex-Mex could, but the
9 Katy couldn't.

10 A (WITNESS DIMMERMAN) I really believe that,
11 yes, sir. I think we have one person on the whole
12 railroad that speaks Spanish and he's a clerk in
13 Houston.

14 Q Well, I suspect that you could remedy that
15 situation if that's what you need to improve your
16 traffic to Mexico. But let's not get into that.

17 Mr. Dimmerman, let me just take your
18 assumption and assume for the moment that you're right.
19 And let's assume further that MKT gets trackage rights
20 to Eagle Pass in this merger. Are you with me so far?

21 A (WITNESS DIMMERMAN) Yes.

22 Q Isn't it the position of MKT as stated by Mr.
23 Gastler when he testified earlier this week that you
24 expect the merged company to handle most of its grain
25 traffic over Eagle Pass for Conasupo?

1 A (WITNESS DIMMERMAN) I know that that is your
2 preference, Southern Pacific's preference, to handle it
3 over Eagle Pass.

4 Q Do you recall that Mr. Gastler testified that
5 the Katy fully expects -- I think he said fully expects
6 -- that that will be what the merged company does, and
7 that Conasupo will shift routings to Eagle Pass?

8 A (WITNESS DIMMERMAN) I don't remember him
9 saying that. He may have said it, but I don't remember
10 him saying it.

11 Q I think his words were that there would be an
12 economic incentive to do so.

13 A (WITNESS DIMMERMAN) That's why I say that it
14 would be your preferred route. You wouldn't have to
15 share the division with another U.S. railroad.

16 Q Page 5274 of the transcript, where Mr. Svobcs
17 was cross-examining Mr. Gastler, Mr. Gastler said as
18 follows -- no, let me read the question for context.

19 Mr. Svobcs says: "Well, Mr. Gastler, the
20 world is that more grain is moving through Laredo right
21 now than the rest of the rail crossings of Mexico put
22 together."

23 Answer: "Until the Santa Fe main line goes to
24 Eagle Pass, which will happen very soon or after this
25 merger. This will be an incentive to change the

1 crossing. I don't think us or the Tex-Mex thinks you're
2 going to be dealing with us to get to Mexico."

3 Question: "You believe that because there
4 would be a single line route to Eagle Pass, Conasupo is
5 going to ship the grain that it now purchases from
6 Laredo to Eagle Pass?"

7 Answer: "There will be an economic incentive
8 for them to do it."

9 Do you agree with Mr. Gastler about that?

10 A (WITNESS DIMMERMAN) Oh, yes, sir, and that's
11 why I said it would be your preferred route.

12 Q Now, back to my hypothetical. Assume that
13 that happens, that your prediction is correct. Assume
14 also that you got trackage rights to Eagle Pass in this
15 merger. Then you would have the opportunity, would you
16 not, to participate in much more Conasupo grain at Eagle
17 Pass than you considered in this study, because you
18 didn't consider the Laredo crossing, isn't that right?

19 A (WITNESS DIMMERMAN) That's true.

20 Q Is it true to the extent that that might
21 happen you have understated the potential gain of
22 Conasupo grain movements if you got trackage rights to
23 Eagle Pass?

24 A (WITNESS DIMMERMAN) We only made our
25 diversion study on what we knew.

1 A (WITNESS SHERIDAN) We had nothing to assume
2 that we would be able to shift any grain via any gateway
3 there.

4 Q My assumption, sir, you weren't shifting. You
5 told me that we were going to do the shifting and you
6 would just benefit from it.

7 MR. MOATES: Your Honor, at this point I am
8 prepared to go to the individual movements. Can we be
9 off the record for a moment?

10 JUDGE HOPKINS: Surely.

11 (Discussion off the record.)

12 MR. MOATES: Your Honor, we have distributed
13 seven counsel's exhibits which we will be using in the
14 examination now upcoming. I'd like to have the first
15 one, which is captioned "MKT Trackage Study, Laredo,"
16 and it is a twelve-page exhibit, marked as Counsel's
17 Exhibit SFSP-C-65.

18 JUDGE HOPKINS: It will be marked for
19 identification.

20 (The document referred to
21 was marked Exhibit No.
22 SFSP-C-65 for
23 identification.)

24 BY MR. MOATES: (Resuming)

25 Q Gentlemen, would you look at this first

1 exhibit for Laredo. And again, Laredo means this is
2 your study of possible trackage rights to Corpus
3 Christi, isn't that right?

4 A (WITNESS SHERIDAN) It includes Corpus
5 Christi, yes, sir.

6 Q If you will look down to the third entry and
7 the remaining entries on the page save for the last,
8 there are about seven entries there that show that
9 movement is from Allied Chemical Company in Wyoming to
10 Laredo and the commodity is sodium carbonate. Is that
11 what we call soda ash, Mr. Sheridan?

12 A (WITNESS SHERIDAN) Yes, sir.

13 Q And -- well, we haven't seen these sheets
14 before, so why don't you just take the first one of
15 those examples for us and very briefly tell us how we
16 read these documents.

17 A (WITNESS SHERIDAN) You're talking about soda
18 ash, the first movement?

19 Q The first one, the third line item on the
20 page.

21 A (WITNESS SHERIDAN) Okay. Of course, this
22 shows the sodium carbonate, which you indicated, which
23 is soda ash, commonly referred to. And on the second
24 line, if you go past the numbers, "ALCHEM, Wyoming" is
25 the origin, Allied. It would be Allied Chemical would

1 be the shipper. And go on across, it shows the route of
2 movement.

3 On the third line, besides where the numbers
4 are, it shows Laredo, the destination. Then the next, I
5 can't read that too well. It would be the name of the
6 consignee. And other numbers in there means revenue and
7 some things. And of course you have different columns
8 over to the right, which are stated above what they
9 are.

10 Is that enough explanation?

11 Q Those columns include information like whether
12 there is a contract on the movement and whether there is
13 transit involved, whether the car was stopped in
14 transit, is that right?

15 A (WITNESS SHERIDAN) Transit, yes, sir. In all
16 cases, as I have understood, though, from Mr. Anderson
17 when they were sent to us, that all information was not
18 available in all cases in the study.

19 Q That's right. Now, where you have the
20 information available, do I understand that where it
21 says "SWT," "SWT" next to the shipper and the consignee,
22 did you fill in the switching railroads there?

23 A (WITNESS SHERIDAN) On that, Mr. Anderson was
24 making up his form. He had sent it to me how it was
25 going to be made up, and we'd asked him to put that

1 "SWT" with a space in there so that we could try to
2 identify the carrier switching the shipper or the
3 consignee, whichever applied there.

4 Q Wasn't that fact, the carrier switching the
5 consignee or the consignor, something that you gentlemen
6 told me yesterday was an important thing to know when
7 you make a diversion judgment?

8 A (WITNESS SHERIDAN) Yes, sir.

9 Q And on the sodium carbonate moves, and I will
10 represent to you or many others in this study, that
11 information is not filled in, is it?

12 A (WITNESS SHERIDAN) Well, here again, through
13 our knowledge. Those that you see, most of that was
14 done by phone in order to complete our study as quickly
15 as we could. Now, where we are knowledgeable -- we both
16 know that the soda ash comes from a local point on the
17 UP, so we saw no reason to do this where, you know, we
18 were well aware that that was the only carrier.

19 Q That's all you had to know about these
20 movements, that they were local UP originations?

21 A (WITNESS SHERIDAN) The specific one. Here
22 again, I think you have to talk about each specific
23 one. In this case, we were well aware it came from a
24 local point only served by the UP in Wyoming. So in
25 other words, we didn't see that there was any further

1 use of trying to track down, you know, anything else,
2 because that was it.

3 Q One other point for clarification. Isn't it
4 true, Mr. Sheridan, that if I were to sort of draw a
5 circle around the four line items of computer print by
6 this item you and I have just been discussing, which is
7 the third shipment shown on the first page of SFSP-C-65,
8 that when you take all of that information that that is
9 supposed to represent in essence everything that was on
10 one full page of the study movement sheets we were
11 looking at yesterday?

12 A (WITNESS SHERIDAN) When you circle all four
13 lines?

14 Q I'm trying to draw a mental circle around it.
15 Don't each of these four-line printout items equate to
16 in large part the entire study movement sheet that you
17 had in your opposition study?

18 A (WITNESS SHERIDAN) To a large part, yes.

19 Q And attempt to get all that same information
20 into a very small space?

21 A (WITNESS SHERIDAN) Well, this was the
22 information we had available. And like I say, he just
23 tried to get it on four lines, yes, sir. That's the way
24 it was done, encompassing the information that he was
25 furnished, as I understand.

1 Q And in fact, if we look at the top left-hand
2 corner of the sheet, we see that there's an entry for
3 strata, for serial, factor, STCC Code, SPIC, which is
4 your standard point location code. The factor is the
5 expansion factor, is that right?

6 A (WITNESS SHERIDAN) Yes, sir, I believe so.

7 Q So all of that information is shown in those
8 numbers and letters in the left-hand side, all right.

9 Now, with respect to these cars that are
10 moving from the Green River area of Wyoming to Laredo
11 that we were talking about, the soda ash, you didn't
12 divert any of those cars, did you?

13 A (WITNESS SHERIDAN) No, sir.

14 Q Let me see if I learned something yesterday.
15 Is the reason that you project you won't have a route
16 with the SP over Denison?

17 A (WITNESS SHERIDAN) No, we won't be able to
18 get an extended route from the UP. In other words,
19 today we have this route. In order for us to get an
20 extended route, the UP would have to agree to our total
21 route, and the UP is not giving us any extended routes.
22 They have more or less, you know, shut the door too
23 since the merger, as they can go direct. They will not
24 give us an extended route.

25 Q If you were to replace the SP between Denison

1 and Corpus Christi, that wouldn't have any impact on the
2 UP, would it?

3 A (WITNESS SHERIDAN) The full routing to my
4 knowledge is in the tariff, and it has to be agreed to
5 by both lines.

6 Q I understand they have to agree to it. But
7 what adverse consequence would there be on the UP if
8 they allowed you to substitute for the SP between
9 Denison and Corpus Christi?

10 A (WITNESS SHERIDAN) Today the UP can handle
11 all the way, and they will not give us extended routes.
12 I mean, they can go all the way. That is the adverse
13 effect it would have on them, and they won't give us an
14 extended route.

15 Q They can go all the way today, can't they?

16 A (WITNESS SHERIDAN) Yes, sir.

17 Q And they do, I take it, sometimes?

18 A (WITNESS SHERIDAN) Yes.

19 A (WITNESS DIMMERMAN) Yes, they do.

20 Q But for whatever reason, on all these
21 movements they only got the haul to Kansas City, didn't
22 they?

23 A (WITNESS SHERIDAN) Yes.

24 Q And the Katy and the UP and the Tex-Mex all
25 participated as well, right?

1 A (WITNESS SHERIDAN) Yes.

2 Q What is there adverse about another railroad
3 being eliminated from the route, if you will, downstream
4 from the UP? Why would they care?

5 A (WITNESS DIMMERMAN) Because their own route
6 applies from Denison to Corpus Christi.

7 Q Are you suggesting this might route UP-Kansas
8 City, Katy-Denison-UP?

9 A (WITNESS DIMMERMAN) No, it will be routed UP
10 all the way.

11 Q I'm simply asking you, it didn't go UP all the
12 way. It went Katy-SP.

13 A (WITNESS SHERIDAN) That's right.

14 Q Why would the UP care if, instead of Katy-SP,
15 that went Katy-Corpus?

16 A (WITNESS SHERIDAN) Why would the UP care?

17 Q Yes.

18 A (WITNESS SHERIDAN) Because they don't really
19 like us getting the haul we've got, in other words, and
20 they're not giving us the extended routes. I've already
21 said that. In other words, if they don't give us an
22 extended route, in other words, you know, there's
23 nothing further we can do on it.

24 Q Is this interline traffic that is moved from
25 an origin that is not served by Katy or SFSP? It is,

1 isn't it? You said it's a UP local point.

2 A (WITNESS SHERIDAN) Yes.

3 Q Could Katy provide a new route between Kansas
4 City and Corpus Christi if you get your trackage
5 rights?

6 A (WITNESS SHERIDAN) No, we won't provide a new
7 route.

8 Q You could physically provide the service,
9 could you not, between Kansas City and Corpus Christi?

10 A (WITNESS SHERIDAN) Yes, sir.

11 Q So you're telling me your 25 percent rule,
12 which says interline traffic moved to or from origins or
13 destinations not served by MKT or SFSP when Katy could
14 provide a new route, doesn't apply because you say the
15 UP wouldn't give you the route, not because you couldn't
16 perform the service?

17 A (WITNESS SHERIDAN) Yes, sir. In other words,
18 like our percents, we say in general, because these
19 types of things come up and it's through our knowledge,
20 like I say, on these that we've got to do it. And it's
21 hard to identify every little single item and put it
22 down. We did what we could.

23 A (WITNESS DIMMERMAN) Mr. Moates, we do not
24 show a loss either.

25 Q I sure hope not, sir. This is a gain study.

1 A (WITNESS DIMMERMAN) It will be a loss to the
2 SP and a loss to the Katy eventually.

3 Q I understand that, Mr. Dimmerman. That is the
4 nature of traffic studies, is that it may have already
5 been lost. But we have to evaluate these things the way
6 they come to us.

7 Would you turn the page, please. I'd like you
8 to look here, just as examples, at the second and third
9 movements on the page, which you see are shelled corn
10 and dried soybeans from Kansas City to Laredo. Do you
11 see those?

12 A (WITNESS SHERIDAN) The second and third
13 movements?

14 Q Yes.

15 A (WITNESS SHERIDAN) Yes.

16 Q I don't see an old route for these movements.
17 Would you tell me how you were able to evaluate those
18 movements and call them not divertable without that
19 information?

20 A (WITNESS SHERIDAN) That was part of our
21 reason for no diversion on there, was that the routes
22 were not available on these sheets. I put an "01" over
23 there. It should have probably been an "07." In other
24 words, there was not any route available. In other
25 words, we didn't know how it moved, so it was hard to

1 make a decision on it.

2 Q When an "07" appears on these sheets -- and
3 we'll talk about those in a little bit -- that means, I
4 take it from what you just said, Mr. Sheridan, that
5 there wasn't sufficient data available on this sheet
6 about that movement to enable you and Mr. Dimmerman to
7 make an informed diversion judgment, is that right?

8 A (WITNESS SHERIDAN) Yes, sir. That is our
9 number 7.

10 Q And you agree with me that when you don't have
11 even the original routing information, that that
12 certainly is an 07, isn't it?

13 A (WITNESS SHERIDAN) In this case it probably
14 should have been an 07.

15 Q Without knowing what the old route was, if
16 Katy gets trackage rights to Corpus Christi it will be
17 able to handle traffic single system from Kansas City to
18 Laredo, won't it? Excuse me, from Kansas City to Corpus
19 Christi?

20 A (WITNESS DIMMERMAN) Yes, sir.

21 Q Would you turn to the next page. I should
22 note for the record that the computer pages have
23 different numbers, obviously. We have turned from page
24 4 to page 10, as an example. So anyone reviewing these
25 later should understand that the pages in the counsel's

1 exhibit are not the same as the pages in the printcuts.

2 The next page I think is page 15, in fact, of
3 your Laredo study. Do you have that in front of you?

4 A (WITNESS DIMMERMAN) Yes, sir.

5 Q Would you look, as an example here, at the
6 movement that is the fifth one on the page. It's from
7 the point, I think in South Dakota, to Laredo. If it
8 helps you, it is routed CNW-Kansas City-MP. Do you see
9 that?

10 A (WITNESS DIMMERMAN) Mine goes from Detroit,
11 Michigan, to Laredo, Texas, the fifth one on page 15.

12 JUDGE HOPKINS: So does mine.

13 BY MR. MCATES: (Resuming)

14 Q Well, I'm sorry. I know what has happened
15 here. Can we go off the record?

16 JUDGE HOPKINS: Go ahead.

17 (Discussion off the record.)

18 JUDGE HOPKINS: Back on the record.

19 BY MR. MCATES: (Resuming)

20 Q My apologies, gentlemen. Would you turn to
21 the next page, which is marked page 16. You will notice
22 that the next two pages in fact are marked page 16, but
23 they are not the same pages. So I think we are okay on
24 this.

25 For reference, the first movement on this page

1 is one that originated in Battle Creek, Michigan. Do
2 you see that?

3 A (WITNESS SHERIDAN) Yes, sir.

4 Q It says "Pat Creek," but I think we can assume
5 that is Battle Creek. All right, we are on the same
6 page.

7 Would you come down to the fourth item, which
8 is from East Moline, Illinois, to Laredo, Texas. Do you
9 see it? You have diverted this car 25 percent, have you
10 not?

11 A (WITNESS SHERIDAN) Yes, sir.

12 Q To a route that is BN-Denison-MKT-Corpus-
13 Tex-Mex?

14 A (WITNESS SHERIDAN) Yes, sir.

15 Q Isn't it true that in the original route or
16 movement as shown on the sheet that the car was routed
17 BN-East St. Louis as the first junction point?

18 A (WITNESS SHERIDAN) Yes, sir.

19 Q Does Katy serve East St. Louis?

20 A (WITNESS SHERIDAN) Yes, sir. St. Louis.

21 Q You could handle this car single system from
22 East St. Louis all the way to Corpus Christi, couldn't
23 you?

24 A (WITNESS SHERIDAN) Yes, if we have a route we
25 can do that.

1 Q Wouldn't that be a much more probable
2 diversion route than Denison?

3 A (WITNESS SHERIDAN) No, I don't believe so.

4 A (WITNESS DIMMERMAN) BN will have the short
5 route between St. Louis and Denison.

6 Q BN has that route today, doesn't it?

7 A (WITNESS DIMMERMAN) Yes, sir.

8 Q The car didn't move that way, did it?

9 A (WITNESS DIMMERMAN) No, sir.

10 Q Would you turn to the next page. I won't even
11 say what the page number is. After the first entry on
12 the page I think you will see that all the remainder of
13 the movements on this page are from a place called Mill
14 Creek, Oklahoma, to Laredo.

15 A (WITNESS SHERIDAN) Yes.

16 Q And you have diverted the first three 25
17 percent to your new trackage rights route BN-Fort
18 Worth-Katy-Corpus Christi, have you not?

19 A (WITNESS SHERIDAN) Yes, sir.

20 Q And what you have done there is to, on a 25
21 percent basis, eliminate the Missouri Pacific from
22 participation?

23 A (WITNESS SHERIDAN) Yes, sir.

24 Q Now, in the remainder of those movements which
25 are routed BN-Fort Worth-Missouri Pacific, the

1 difference being, as I see it, that they're not
2 terminated by the Tex-Mex, you have taken no diversion.
3 Why couldn't you participate in some of that traffic
4 from Fort Worth as well and displace the Missouri
5 Pacific?

6 A (WITNESS SHERIDAN) Here again, we look at
7 trying to compete. We feel we're trying to compete for
8 what is there. It's obvious here to us that Tex-Mex is
9 getting a small percent of the business. As far as
10 we're concerned, to get to Laredo we've got to work with
11 traffic going Tex-Mex, and to us it is obvious here that
12 the MoP is getting a percent of it direct.

13 And our assumption on this is that we just
14 don't feel that we could certainly influence, our
15 railroad could influence that traffic away when it is
16 going direct. Where it is going today, like Corpus --
17 of course, in this case Robstown, which is the same as
18 Corpus -- Tex-Mex, we feel we could certainly stand to
19 gain part of that traffic.

20 Q Mr. Dimmerman, who are the shippers and
21 consignees on these movements?

22 A (WITNESS DIMMERMAN) Well --

23 Q The sheet doesn't show any, does it?

24 A (WITNESS DIMMERMAN) No, sir.

25 Q How are you able to determine that you might

1 not be able to influence some of these shipments to Katy
2 participation if you don't even know who the shippers
3 and receivers are?

4 A (WITNESS DIMMERMAN) It doesn't say who it
5 is.

6 Q I didn't hear that.

7 A (WITNESS DIMMERMAN) I say you are correct, it
8 doesn't say who it is.

9 Q Didn't you tell me yesterday that you needed
10 to know all of the routing information about a movement
11 to make a diversion judgment?

12 A (WITNESS DIMMERMAN) You have to have all of
13 the information to make an evaluation. In this case
14 here, I don't think there's any problem with it. Mill
15 Creek is an industrial sand area. It's Mill Creek,
16 Oklahoma, and I'm assuming it is shipped by the same one
17 that owned our facility in Missouri.

18 A (WITNESS SHERIDAN) It's Penn Glass Sands.

19 Here again, when we make the joint study
20 that's the way we do that. On that one, we know it is
21 Penn Glass Sands is the shipper at Mill Creek, and it's
22 served by the BN only.

23 Q Why didn't you write that in there? You're
24 telling me this is a shipper that you serve somewhere
25 else today, so it's somebody you have some influence

1 with, is that right?

2 A (WITNESS SHERIDAN) They ship small amounts
3 out of a small place up in Missouri on our line. I
4 don't know that that would influence them to, you know,
5 ship by us any more in this area here.

6 Q Do you know who the consignee is? Can you
7 figure that out from this?

8 A (WITNESS SHERIDAN) When it comes to Laredo,
9 we know it is export. And here again, when you're going
10 across the border, very rarely does it show who it is
11 really going to. Usually it is a broker or something
12 like that at the border. That is even, I think, on our
13 study. But you know, that is basically what you see, is
14 people who handle it across the border.

15 Q Is it important to you as traffic evaluators
16 to know the identity of the shipper and the consignee
17 when you evaluate the convertability of a shipment?

18 A (WITNESS DIMMERMAN) It's important, yes.

19 Q And if you don't have that information, didn't
20 you tell me before that, Mr. Dimmerman, that in the case
21 of no routing information that that should have been an
22 07, i.e., a movement that --

23 A (WITNESS DIMMERMAN) Mr. Sheridan told you
24 that.

25 Q I'm sorry, I have to keep that straight.

1 Would you gentlemen now agree that these
2 movements should be 07's?

3 A (WITNESS DIMMERMAN) No, sir.

4 A (WITNESS SHERIDAN) No.

5 Q I see. You can evaluate them without knowing
6 who the consignee is?

7 A (WITNESS DIMMERMAN) In some cases you can, in
8 some cases you can't.

9 Q In the cases you can is when you decide they
10 are not divertable, I take it.

11 JUDGE HOPKINS: Before you go to the next one,
12 this might be a good time for a luncheon recess, unless
13 you have something you want to finish. We will recess
14 until 1:30.

15 (Whereupon, at 12:30 p.m., the hearing in the
16 above-entitled matter was recessed, to reconvene at 1:30
17 p.m. the same day.)

18
19
20
21
22
23
24
25

AFTERNOON SESSION

(1:30 P.M.)

1 JUDGE MATHIAS: We will go back on the record.

2
3 MR. MOATES: Your Honor, over the lunch recess
4 we reviewed the counsel's exhibits that we had
5 distributed with respect to the MKT trackage rights
6 studies and determined that in the exhibit that is
7 marked C-65 for identification relating to Laredo there
8 were in fact three pages that were included that were
9 not meant to be, but in fact three other pages are to be
10 substituted.
11

12 For clarification, and at Mr. Kharasch's
13 request, let me state for the record what I think to be
14 the case. The witnesses can confirm this if it is the
15 case. What we have here really are printouts from two
16 different data bases, one data base from the ICC way
17 bill sample of non-applicant and non-MKT Railroad
18 traffic; the other is from the applicant's data base
19 involving SF and SP.

20 That therefore explains why we will see in
21 Laredo, as an example, the Page 15 that shows all
22 movements that involved other railroads than MKT, SF, or
23 SP, you will find another 15 that will have one or more
24 of those railroads in each of the routes.

25 JUDGE MATHIAS: Mr. Kharasch?

1 MR. KHARASCH: I think, Mr. Moates, before the
2 witnesses comment on it, so that it is accurate, you
3 said the first was the applicant's data base involving
4 SF, SP, or MKT. I don't think the "or MKT" is right.
5 It is just your first response to interrogatories,
6 tapes, and it doesn't have to involve the MKT. It is
7 just your traffic on these lines.

8 MR. MCATES: All right. I stand corrected in
9 that respect as to applicant's traffic.

10 JUDGE MATHIAS: Thank you.

11 Whereupon,

12 HARRY T. DIMMERMAN and

13 JERRY SHERIDAN,

14 the witnesses on the stand at the time of recess, having
15 been previously duly sworn, resumed the stand, and were
16 examined and testified further, as follows:

17 WITNESS SHERIDAN: If I may, could I add to
18 that, since we are talking about these study sheets? Of
19 course, we describe on Page 11 the two different
20 studies. On the 3P Santa Fe documents, that is, the
21 applicant's study that we got the information from, we
22 have already run into a couple of cases there where the
23 information was incomplete, such as a route was left
24 off.

25 Now, you will find that in the statements

1 there are several places where the information was not
2 complete, so in other words there are cases like that in
3 the applicant's information that we got from them, and
4 on the other study, which is the way bill, or 01, or ICC
5 study -- they are all the same -- which is what this is
6 referred to, that is, it comes from documents that do
7 not in any case have the names of the shippers nor the
8 consignees.

9 And of course, that study, as we show in here,
10 we prefer in any study that we make, like we have
11 already said in testimony, that we like to have complete
12 information on everything, but in this case, these
13 documents do not maintain all that information, in the
14 01 or way bill study. It does not in any case show the
15 shipper or consignee.

16 And what we have tried to do, in order to be
17 realistic and to show things that we would get under a
18 competitive situation if we did get these trackage
19 rights, we did try to understand if it is local point or
20 if we know from experience who the shipper consignee
21 was, anything that we could identify, we certainly would
22 try to fill that information in, and to be as honest
23 about it as we could.

24 So you will find a lot of things in this 01
25 study, because it is incomplete, where we could, we made

1 a decision, we tried to take a gain. Where we really
2 couldn't determine that, of course, we couldn't take a
3 gain.

4 CROSS EXAMINATION - RESUMED

5 BY MR. MOATES:

6 Q What do you mean, the 01 study, Mr. Sheridan?

7 A (WITNESS SHERIDAN) That is the ICC way bill
8 study, and it is commonly referred to as 01, is what I
9 have heard it called. It is a 1 percent study, I guess
10 is what is referred to.

11 Q You are not referring to the 0-1 reason for
12 not diverting that shows up on --

13 A (WITNESS SHERIDAN) No, sir, it again is
14 trying to designate the study. If you will, someone may
15 want to identify it so that we refer to it the same way
16 from here on. It is normally called the way bill study,
17 if that is all right. From here on we would refer to it
18 just as a way bill study.

19 Q Okay. Looking at Page 15, the newly
20 distributed Page 15 of the Laredo exhibit, I take it
21 this is from the way bill study as you have described
22 it?

23 A (WITNESS SHERIDAN) Yes, sir.

24 Q Now, I direct your attention here to the
25 middle of the page. There are two movements. One is

1 from a point in South Dakota to Laredo routed CNW,
2 Kansas City, MP. Is that correct?

3 A (WITNESS DIMMERMAN) From Belle Four, South
4 Dakota?

5 Q Yes.

6 A (Whereupon, a discussion was held off the
7 record.)

8 BY MR. MOATES: (Resuming)

9 Q Do you have that movement in front of you,
10 gentlemen?

11 A (WITNESS BRIPAN) Yes, sir.

12 Q And right there it there is a movement from
13 Omaha, Nebraska, to Laredo, routed UP, Kansas City, MP?

14 A (WITNESS SHERIDAN) Yes, sir.

15 Q Okay. Taking them one at a time, just for
16 quickness here, can you quickly tell me why it is you
17 could not participate if you had trackage rights to
18 Laredo from Kansas City in place of the Missouri Pacific
19 on the movement originated by the CNW?

20 A (WITNESS SHERIDAN) As we stated before on
21 these movements where the Missouri Pacific took them
22 directly to Laredo, our feeling was when we talked about
23 it that where it is going in there direct we do not feel
24 that we can take and cut the Missouri Pacific out by
25 going over another gateway, again stating that we felt

1 where Tex Mex is in the routing it will be our
2 connection going to Laredo, where it is routed in
3 connection with them, we feel we will be able to get
4 those movements, a percent of them.

5 Q So it is your judgment that you couldn't
6 divert any of that traffic at all in conjunction with
7 the Tex Mex over Laredo?

8 A (WITNESS SHERIDAN) As far as what we can
9 determine here from this, we did not feel that we
10 could.

11 Q And I take it your answer would be the same
12 with respect to the next move, which is a Union
13 Pacific-Missouri Pacific move?

14 A (WITNESS SHERIDAN) Yes.

15 Q All right. Look at the next page, please,
16 Page 17, a computer printout. This also is from the way
17 bill study?

18 A (WITNESS SHERIDAN) Yes, sir.

19 Q Drawing your attention here to the last two
20 movements on this page, from Korf, K-o-r-f, Texas, to
21 Laredo.

22 A (WITNESS SHERIDAN) Yes.

23 Q These cars were routed Kansas City, Southern,
24 Beaumont, MP, Robstown, Tex Mex, correct?

25 A (WITNESS SHERIDAN) Yes.

1 Q If you receive your trackage rights from
2 Beaumont to Houston and from San Antonio or Corpus
3 Christi, couldn't the MKT participate in place of the MP
4 between Beaumont and Laredo and Corpus?

5 A (WITNESS SHERIDAN) Yes, we could possibly be
6 routed that way, yes.

7 Q If I understood your answer to me this morning
8 about movements that involve more than one trackage
9 right application, it should either have been evaluated
10 here or marked 06 for evaluation in Beaumont. Isn't
11 that right?

12 A (WITNESS SHERIDAN) 06, yes, sir.

13 Q Now, if you had looked at this movement in the
14 Beaumont study, and keeping in mind what we just went
15 through in terms of your ability to participate, if you
16 had both sets of trackage rights between Beaumont and
17 Corpus Christi, wouldn't you in fact be able to
18 participate in at least a percentage of that overhead MP
19 traffic?

20 A (WITNESS SHERIDAN) I believe we would, sir,
21 yes.

22 Q Thank you.

23 Now, the next page, sir, is computer printout
24 24. I believe it is also from the way bill sample. Is
25 that right?

1 A (WITNESS SHERIDAN) Yes, sir.

2 Q If you would look, please, at the second to
3 the last movement on the page, from Argenta, Nevada, to
4 Laredo.

5 A (WITNESS SHERIDAN) Yes, sir.

6 Q This is routed today Western Pacific, Salt
7 Lake City, Denver and Rio Grande, Pueblo, Missouri
8 Pacific, Robstown, Tex Mex. Is that right?

9 A (WITNESS SHERIDAN) Yes, sir.

10 Q And you, too, have evaluated this as not a
11 divertible car if you receive trackage rights, correct?

12 A (WITNESS SHERIDAN) Yes, sir. That is for the
13 same reason we mentioned earlier, that in order to get
14 an extended route, we would have to get it from the
15 Union Pacific system, and of course it originates on the
16 WP, even though the D&RGW is in there. The WP-MP-UP
17 system would still have to agree to an extended route
18 for us, and they are not agreeable to giving us any
19 extended routes.

20 Q Mr. Sheridan, does not the Denver and Rio
21 Grande, because of trackage rights it received in the
22 Union Pacific case, now operate from Pueblo to Kansas
23 City itself over the Missouri Pacific?

24 A (WITNESS SHERIDAN) Yes.

25 Q And does it in fact not, on that line does it

1 not transit Herington, Kansas?

2 A (WITNESS SHERIDAN) Yes, it does.

3 Q And don't you serve Herington?

4 A (WITNESS SHERIDAN) Yes, we do.

5 Q What assumptions did you make about your
6 ability or inability to interchange with the Rio Grande
7 at Herington if you receive trackage rights as a
8 condition to this merger?

9 A (WITNESS SHERIDAN) In this particular
10 movement here, sir, we would not have an extended route,
11 like I said, with the Union Pacific system, so
12 regardless of what we do at Herington, I don't think
13 that applies here.

14 Q I understand what you are telling me about the
15 route. Let's address a different question. What did
16 you assume in general about your ability or inability to
17 interchange traffic with the D&RG at Herington in the
18 event that you got trackage rights as a condition to
19 this merger?

20 A (WITNESS SHERIDAN) Well, we asked for it,
21 like I say, interchange with them.

22 Q Okay, so again I am not trying to disagree
23 with or forget your first answer, but putting aside, if
24 we could, the routing problem, but just in terms of the
25 physical handling of the traffic, you would look at a

1 car like this, and you did then implicitly assume that
2 you could physically interchange with the Rio Grande at
3 Herington on a movement like this?

4 A (WITNESS DIMMERMAN) However, sir, if you
5 looked at it, and I don't want to interject, but the
6 cargo is interchanged between the DRGW and the MoP at
7 Pueblo. Pueblo is intermediate between Salt Lake and
8 Herington. The car would never have got to Herington on
9 the DRGW. I am sure that the car, the MoP has no route
10 with the DRGW. They have to short haul themselves in
11 this case here. Nor would they have given the extension
12 for the route to us.

13 Q I was going to propose to you, sir, a
14 routing. Following your trackage rights at WP, Salt
15 Lake City, DNRG, Herington, Katy, Corpus Christi, so
16 that the MoPac would not participate at all.

17 A (WITNESS SHERIDAN) We are making an
18 assumption, is what you are doing.

19 Q Making an assumption about the interchange at
20 Herington, but I don't think it is a difficult
21 assumption, since I think you just told me you assumed
22 the same thing.

23 A (WITNESS SHERIDAN) Well, in the study we
24 assumed that we would have interchange with the Cotton
25 Belt at Herington. Here again on this move we don't see

1 where that would apply.

2 Q Did you mean the Cotton Belt or the Rio
3 Grande?

4 A (WITNESS SHERIDAN) Excuse me. The D&RGW,
5 both.

6 Q Very good. Would you turn to the next page,
7 sir, which I think is also a page from the way bill
8 study.

9 A (WITNESS SHERIDAN) Do I go back to the other
10 document?

11 Q Yes, we finished those three inserts. You
12 will now go to what is computer Page Number 25 in the
13 Laredo study. It is the page that has Oakland,
14 California, to Laredo as the first movement.

15 A (WITNESS SHERIDAN) Yes, sir.

16 Q Again, I don't want to belabor these points.
17 Just look at the route there. Would you tell me for the
18 same reason that the UP wouldn't concur with you that
19 you could not participate in that movement?

20 A (WITNESS SHERIDAN) On that single movement,
21 yes, sir.

22 Q Okay. Look farther down the page. You see
23 two movements. Really it is more than two. There is a
24 whole series of movements from St. Louis, Missouri, to
25 Laredo. Do you see those?

1 A (WITNESS SHERIDAN) Yes, sir.

2 Q They are MP local. What does that mean?

3 Just for the record, tell me what an MP local
4 movement is.

5 A (WITNESS SHERIDAN) It moves single line.

6 Q Missouri Pacific all the way?

7 A (WITNESS SHERIDAN) Yes.

8 Q If you receive your trackage rights from San
9 Antonio to Corpus Christi, wouldn't you have a single
10 line movement available from St. Louis to Corpus Christi
11 with a connection Tex Mex to Laredo?

12 A (WITNESS SHERIDAN) We would, but as I stated
13 before, where the MoP took it directly to Laredo and the
14 Tex Mex was not involved, we do not feel that we could
15 entice that traffic over to us.

16 Q Not in any percentage? Not even at 10 percent
17 or 15 percent of the traffic?

18 A (WITNESS SHERIDAN) No, we don't feel that we
19 can.

20 Q Is that because, Mr. Sheridan, that generally
21 when there is an existing single line service in place
22 and available to the shipper, that creating an
23 additional single line service or an additional two-line
24 joint line move in competition with it won't result in
25 diversion of traffic?

1 A (WITNESS SHERIDAN) No.

2 Q Well, then, what is the reason?

3 A (WITNESS SHERIDAN) Well, basically, just like
4 in this case, Missouri Pacific apparently has got the
5 movement going in there direct. In other words, we were
6 assuming traffic that would move Corpus is moving that
7 way today. We are going to stop going over Corpus.
8 Again, Tex Mex, we feel we can get a percent of that,
9 but if it is going in there MoP direct, being a small
10 carrier, even though we are given the opportunity to
11 compete, it would be most difficult for us to, you know,
12 cut out the Missouri Pacific going in there direct.

13 Q Would you at least try to do that? Would you
14 solicit traffic like this?

15 A (WITNESS SHERIDAN) We will try to get every
16 pound of freight we can.

17 Q All right. If you turn the page, I hope you
18 have a Page 28. The first move on the page is Houston
19 to Laredo. Do you see that?

20 A (WITNESS SHERIDAN) Yes.

21 Q Now, I want to talk to you briefly about
22 something we referred to earlier this morning. Do you
23 see the second through seventh movements on the page,
24 all routed Houston-Laredo, MoPac, Robstown, TM?

25 A (WITNESS SHERIDAN) Yes.

1 Q And on those movements, again, we have no
2 information on consignor or consignee. Isn't that
3 true?

4 A (WITNESS SHERIDAN) That's right.

5 Q And you have question marks where that
6 information would appear?

7 A (WITNESS SHERIDAN) Yes, sir.

8 Q And you have declared those to be 0-7's for
9 purposes of your study. Could you tell us briefly what
10 0-7 means?

11 A (WITNESS SHERIDAN) It means insufficient
12 information. Part of the reason we did that, if I can
13 explain further, we do know that there is paper moving
14 today. We handle a little bit of paper today, but the
15 thing about it is, from our industry, we are handling it
16 today, MKT, I believe, over San Anton, SF, and I think
17 there may be a little bit Missouri Pacific, but in these
18 cases we have no idea who the shippers are, whether they
19 are closed on the MoP or what else have you, and we have
20 no idea who the shipper is or whether we can even handle
21 it.

22 Q So the result of that, to summarize, is that
23 you are unable to evaluate the divertibility of this
24 movement, and in essence you threw it out of the study.

25 A (WITNESS SHERIDAN) We took a non-diversion.

1 It is still there, but we took it as a non-diverted
2 movement.

3 Q You took a non-diversion because you couldn't
4 tell whether it was divertible, right? There just
5 wasn't enough information to determine whether it was
6 divertible.

7 A (WITNESS SHERIDAN) That's right.

8 Q Do you know, did this decision to classify a
9 car as non-divertible for lack of information occur very
10 often in these studies?

11 A (WITNESS SHERIDAN) I don't know how many
12 there were. There are several in there, yes, sir.

13 Q Several.

14 Your Honor, I would like to have marked as a
15 counsel's exhibit a nine-page document styled FKT
16 Trackage Rights Study Movements Which Were Not Evaluated
17 Account, "Incomplete Data," and it says under that, Code
18 07.

19 JUDGE MATHIAS: That will be marked for
20 identification as SPSF Counsel Exhibit Number 66.

21 (The document referred to
22 was marked for
23 identification as SPSF
24 Counsel Exhibit Number
25 66.)

1 BY MR. MOATES: (Resuming)

2 Q Gentlemen, we have attempted to determine how
3 many times the 07 appeared. As with all of these
4 counsel exhibits, this will be subject to check. We
5 have for simplicity done them by study, so the first
6 page is Laredo and the second page Eagle Pass, and so
7 on.

8 Mr. Sheridan, do you consider 2,200 carloads a
9 substantial amount of traffic?

10 A (WITNESS SHERIDAN) Yes, sir.

11 Q And assuming that this exhibit has accurately
12 counted the number of 07's in your Laredo study, it
13 shows that there were on an expanded basis 2,200
14 carloads that did not get evaluated by you and Mr.
15 Dimmerman counted as insufficient data. Does that give
16 you pause for concern about the reliability of your
17 study?

18 A (WITNESS SHERIDAN) Well, I would like to say
19 this. Again, we are talking about the way bill study.

20 Q We are talking about the entirety of your
21 study.

22 A (WITNESS SHERIDAN) Well, we have been
23 discussing movements on the way bill study, and I would
24 like to discuss the way bill study if I could, sir, to
25 explain on that, because on that, like I mentioned

1 previously, you know, we are not happy that we don't
2 have full information on making the study to begin with,
3 but again, we tried to make the best study we could by
4 the documents that were furnished, the information
5 furnished on this study.

6 Now, there's a lot of things, you know, in
7 question on this study that applies on there, because on
8 a way bill study as this, it is my understanding, just
9 like in this case, we show these last movements
10 discussed as being Houston as the origin.

11 Also in this study, way bill study, they are
12 known to show not just the city of Houston proper but
13 also groups, surrounding cities, and show them as that
14 principal city. So really, yes, we are concerned about
15 the information received, but again we did the best we
16 could with what we had, and that is all I can state,
17 sir.

18 Q Does the Katy Railroad go to Houston today?

19 A (WITNESS SHERIDAN) Yes, sir.

20 Q Do you serve industries at Houston?

21 A (WITNESS SHERIDAN) Yes, sir.

22 Q Do you serve any industries in Houston that
23 ship scrap paper?

24 A (WITNESS SHERIDAN) Yes, sir.

25 Q Will the Katy Railroad go to Corpus Christi

1 or, excuse me, go to Laredo via Corpus Christi if it
2 receives the trackage rights that we are discussing
3 now?

4 A (WITNESS SHERIDAN) Yes, sir, and I just
5 mentioned that we had movements, and to my knowledge we
6 are handling some of that movement today, sir.

7 Q If we had -- well, strike that.

8 Thank you. Now, would you look on the same
9 page, the bottom three movements that are also scrap
10 paper, and instead of Houston they are from Austin,
11 Texas. Do you see that?

12 A (WITNESS SHERIDAN) Yes, sir.

13 Q And again, these are MP local movements,
14 correct?

15 A (WITNESS SHERIDAN) Yes, sir.

16 Q Does MKT Railroad serve Austin, Texas?

17 A (WITNESS SHERIDAN) Yes, sir.

18 Q Do you serve any shippers of scrap paper in
19 Austin?

20 A (WITNESS SHERIDAN) Not to my knowledge in
21 Austin. I can't think of any.

22 Q Is that the reason that you evaluated those
23 movements 0-1 rather than 0-7?

24 A (WITNESS SHERIDAN) No, sir. It is the same
25 reason we gave you for the first car on that page, but

1 the Missouri Pacific has taken those cars in there
2 direct. They are not moving through Corpus, Tex Mex,
3 and we didn't feel that we could probably get them out
4 of the movement.

5 Q So let me see if I can state that in a little
6 different way. Does that mean that you don't even need
7 to know who the shipper and the consignee is in a
8 movement like that if all you know is that it is MF
9 local? You don't need to know any more than that?

10 A (WITNESS SHERIDAN) If there was information
11 on there that indicated a decision otherwise, you know,
12 it may change our mind, but the only thing I could think
13 of, it was a Katy industry as such, but here again, we
14 have nothing on there to identify who it was for and
15 like I say, we made the best judgment we could based on
16 the information.

17 Q Okay. Would you turn the page, please, to
18 Page 32? The first movement on the page is a place
19 called Barbers Cut, Texas, to Laredo.

20 A (WITNESS SHERIDAN) Yes, sir.

21 Q Would you tell us briefly where Barbers Cut is
22 and what significance it has to this case?

23 A (WITNESS SHERIDAN) First I would like to
24 identify the sheet as coming from the applicant's study,
25 not the way bill study. Barbers Cut is a place on the

1 PTRA and served by the SP along the ship channel just
2 outside of Houston.

3 Q Okay. I note that on the second movement on
4 the page from San Antonio to Laredo you have classified
5 that as an 0-7, whereas on other movements below it,
6 also San Antonio to Laredo, you have called them 0-1.

7 Why is that?

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

ALDERSON REPORTING COMPANY, INC.

20 F ST., N.W., WASHINGTON, D.C. 20001 (202) 628-9300

001488164

1 A (WITNESS SHERIDAN) I'm not quite sure on that
2 why we would show 07 or 01 on the first one.

3 Q Maybe I could help a little bit. There's some
4 writing there that looks to me like it says "no
5 listing."

6 A (WITNESS SHERIDAN) On the second shipment, on
7 the second shipment you're talking about?

8 Q Yes.

9 A (WITNESS SHERIDAN) Yes. We could find no
10 industry listing for that particular abbreviation
11 company. In other words, we had called our San Antonio
12 office and gave them this description, asked them if
13 they could find a listing for that company.

14 Q They could find no listing for Nabco Paper
15 Company in San Antonio?

16 A (WITNESS SHERIDAN) That's what the notation
17 is.

18 Q Now, on the rest of these movements, as you
19 run your eye down the page from San Antonio to Laredo,
20 these are all routed SP/Corpus Christi/Tex Mex;
21 correct?

22 A (WITNESS SHERIDAN) Yes.

23 Q If you receive these trackage rights, won't
24 you be able to operate in your own single system service
25 from San Antonio to Corpus Christi?

1 A (WITNESS SHERIDAN) That's right, sir.

2 Q So you could participate with the Tex Mex in
3 this kind of traffic, couldn't you?

4 A (WITNESS SHERIDAN) We could, but in this case
5 we don't feel we would, because they're all served by
6 the SP. The best I can read them on this, it looks like
7 they're all served by the SP. As I recollect, they
8 were.

9 Q They all say SP open. What does that mean?

10 A (WITNESS SHERIDAN) Open reciprocal
11 switching.

12 Q That means that those industries all would be
13 open to you; isn't that right?

14 A (WITNESS SHERIDAN) Yes, sir.

15 Q But you still don't think you would
16 participate in any of the traffic, even though you'd
17 have a single system haul to Corpus in competition with
18 the SP?

19 A (WITNESS SHERIDAN) I don't believe so, with
20 the SP serving the industry, sir.

21 Q Okay. Page 32 again, and I think this time we
22 are right. It is another page 32. If you turn the
23 page, it is the one from the waybill sample.

24 Look at the first one on the page. This is
25 moving in the reverse direction; that is, northbound

1 from Laredo to San Antonio. It moves
2 Tex Mex/Robstown/MP.

3 Again, we don't have shipper information for
4 the reasons you have explained. You have evaluated this
5 as an 01, not divertible. Wouldn't it be important to
6 know who served the consignee in San Antonio to
7 determine whether you could participate in this
8 traffic?

9 A (WITNESS SHERIDAN) Yes, it would. But here
10 again, in the waybill study, none of that information
11 was shown as to who serves them.

12 Q This should be an 07, shouldn't it? You just
13 told me you don't have all the information you need to
14 evaluate the divertibility of the shipment.

15 A (WITNESS SHERIDAN) Yes, sir; that should be
16 an 07.

17 Q As should the next several movements down the
18 page; correct?

19 A (WITNESS SHERIDAN) Well, on the second one,
20 there again, it moved MP direct, and when they move MP
21 direct, we did not consider that we would be able to get
22 in on any of that.

23 Q You don't need that information for that?

24 A (WITNESS SHERIDAN) Whether we knew the
25 consignee or not.

1 Q Okay. I think there's one more sheet in the
2 Laredo exhibit. Computer page 36 from the SP sample.
3 Do you see that, gentlemen?

4 The first move is from Sheldon, Texas to
5 Laredo.

6 A (WITNESS SHERIDAN) Do you know where Sheldon,
7 Texas is? Can you tell us?

8 A (WITNESS SHERIDAN) It's on a line of the SP.
9 I believe it's on the Houston to Beaumont line, just
10 outside of Houston.

11 Q Isn't that one of the lines over which you are
12 seeking trackage rights?

13 A (WITNESS SHERIDAN) Not for intermediate
14 points on the Beaumont line. Only Beaumont and Chaison,
15 sir, to my knowledge.

16 Q That's what I wanted to clarify. Okay.
17 You're not seeking any intermediate rights to serve
18 industries like -- I won't try to say what that is --
19 like this industry at Sheldon, whatever that stands
20 for. Is that correct?

21 A (WITNESS DIMNERMAN) That's correct.

22 A (WITNESS SHERIDAN) That's correct.

23 Q Okay. If we can now turn to the next
24 counsel's exhibit which I think perhaps, Your Honor, we
25 should have marked at this point. It is a six-page

1 exhibit involving movements from the Eagle Pass portion
2 of the study.

3 JUDGE HOPKINS: That will be marked for
4 identification as SFSP-C-67.

5 (The document referred to
6 was marked Exhibit SFSP-C-67
7 for identification.)

8 BY MR. MOATES: (Resuming)

9 Q Now, gentlemen, we noticed a minute ago some
10 of the Laredo or Corpus Christi movements that you
11 diverted. There were those little a's, and I think we
12 talked this morning about the little a's and the little
13 b's come from the specific instructions to your study.
14 Is that right?

15 A (WITNESS SHERIDAN) Yes.

16 Q Here we see lots of little b's. And just for
17 clarification, a little b means that you decided it was
18 divertible here if you got to Eagle Pass, but it
19 wouldn't be divertible if you got to Laredo; correct?
20 Is that correct?

21 A (WITNESS SHERIDAN) Are you looking at our
22 information sheet? I believe that's what it says. I
23 can confirm it in just a minute.

24 (Pause.)

25 a is Corpus Christi; b is Eagle Pass.

1 Q Now, look at the movement that's about at the
2 middle of the page. It's from Pillsbury in Council
3 Bluff, Iowa to Conasupo, Eagle Pass.

4 It is routed -- well, it's 100 percent
5 diversion, if that helps you. Do you see that?

6 A (WITNESS SHERIDAN) Yes, sir.

7 Q This car was originally routed
8 MKT/Denison/Southern Pacific to Eagle Pass, is that
9 right?

10 A (WITNESS SHERIDAN) Yes.

11 Q And you have projected that if you receive
12 your trackage rights, this would become on a 100 percent
13 basis, an MKT system haul.

14 A (WITNESS SHERIDAN) Yes, sir.

15 Q Briefly, can you tell me the reasons for that
16 determination?

17 A (WITNESS SHERIDAN) On our percents that we
18 gave you, 100 percent factor was used, of course, when
19 the Katy was at the origin. In other words, we were
20 there and the SP was not. We were a new single line
21 factor where you are not competitive, were not serving,
22 you are not single line yourselves.

23 That's basically what it is.

24 Q Okay. Now, would you look up to the No. 2
25 movement on the page, which is from Far-Mar-Co in Kansas

1 City, Kansas to Conasupo at Eagle Pass.

2 A (WITNESS SHERIDAN) Yes, sir.

3 Q This is also routed MKT/Denison/SP. This one
4 is a 50 percent diversion.

5 A (WITNESS SHERIDAN) Yes, sir.

6 Q Is the reason for that that the origin at
7 Kansas City is also open to the Applicants. Is that
8 your reason?

9 A (WITNESS SHERIDAN) Yes, sir.

10 Q Even though the Applicants didn't participate
11 in this from Kansas City as the car moved?

12 A (WITNESS DIMMERMAN) You don't have an
13 efficient route now.

14 Q We don't have an efficient route now. We will
15 have one after merger?

16 A (WITNESS DIMMERMAN) That's right.

17 Q Would you go to the next page of this
18 exhibit. The first movement on the page is from Cargill
19 at Kansas City to Conasupo at Eagle Pass. Do you see
20 that?

21 A (WITNESS SHERIDAN) The first one?

22 Q Yes.

23 A (WITNESS SHERIDAN) Yes, sir.

24 Q Just a detail point. How is it that you were
25 able to get the shipper and consignee and write it in on

1 that movement but not on some others? Did you assume
2 that it was Cargill and Conasupo because the ones right
3 under it are like that?

4 A (WITNESS SHERIDAN) No. If I recall, when we
5 ran across the Applicants' study where those items were
6 missing, as I recall, on all those I went back to Bill
7 Anderson who supplied the printout and told him that,
8 you know, in order to make a complete study, we would
9 like to have that if possible.

10 I believe I got that from Bill Anderson. I
11 think he was able to furnish some, but not all on that
12 information if I'm not mistaken.

13 Q Okay. I have a couple of questions here.

14 A (WITNESS SHERIDAN) That may have been. I
15 know we went back to Bill Anderson on some, but Mr.
16 Dimmerman and I are reviewing this. It may have been,
17 but here again I am not for sure. It may have been that
18 those were Cargills in a string, and we may assume that
19 it was a Cargill movement also.

20 Q For the record, Mr. Sheridan, you can confirm,
21 can't you, that every movement on this page is shelled
22 corn from Cargill at Kansas City to Conasupo at Eagle
23 Pass; isn't that right?

24 A (WITNESS SHERIDAN) Yes, sir.

25 Q And every one of these is routed

1 Cotton Belt/Santa Rosa/SP?

2 A (WITNESS SHERIDAN) Yes, sir.

3 Q Okay. First of all, using your own diversion
4 rules on page 12, wouldn't these be 50 percent
5 diversions because MKT and SFSP will serve both the
6 origin and the destination?

7 A (WITNESS SHERIDAN) On there, we gave it the
8 25 percent rule because we did not feel everything was
9 equal. In all cases here, the MKT did not participate
10 whatsoever. The SP is already handling the movements.
11 In other words, they have already worked with the
12 customer and they are handling movements, and we did not
13 feel that everything was equal, because like some
14 previous movements, we were in on it, and we felt
15 that --

16 Q Wait a minute. This is something new. Are
17 you telling me now that your rule that says when MKT and
18 SFSP serves both origin and destination equally, it has
19 nothing at all to do with the service? It has to do
20 with your judgment of whether you participated in the
21 car initially or not?

22 A (WITNESS SHERIDAN) I think I made that clear
23 when we reviewed that item, sir.

24 Q It wasn't clear to me.

25 A (WITNESS SHERIDAN) I believe when we talked

1 about that, we talked about who switches industries as
2 one of the reasons on that.

3 Q Who switches Cargill at Kansas City?

4 A (WITNESS SHERIDAN) Cargill has three
5 elevators there. The UP switches one. The Santa Fe
6 switches, I believe, two as best I can read this. It
7 looks like the Santa on the other two.

8 Q Do you know which one of the elevators these
9 cars came from?

10 A (WITNESS SHERIDAN) No, sir; I do not.

11 Q How can you tell me that you and the SSP might
12 not serve these origins and destinations equally?
13 Assume with me for a moment, sir, that this came from
14 the Union Pacific elevator. It was open to you and to
15 the Applicants, that it's going to Eagle Pass, which
16 will be available to both you and the Applicants.

17 Isn't that putting you in an equal position?

18 (Pause.)

19 Gentlemen, I asked a hypothetical. I don't
20 think you need to study the sheet to answer it. Do you
21 remember the question?

22 A (WITNESS SHERIDAN) If you would, please,
23 repeat it.

24 Q Assume with me, since you cannot tell from
25 this sheet that the movements came from the Union

1 Pacific-served Cargill elevator at Kansas City, wouldn't
2 you on the Southern Pacific Santa Fe system serve origin
3 and destination equally if you have your trackage rights
4 to Eagle Pass?

5 A (WITNESS DIMMERMAN) Except that you are
6 already in the route. With that one exception, yes.

7 Q In other words, yes, except that we are in the
8 route today?

9 A (WITNESS DIMMERMAN) Yes.

10 Q All right. Is the route that this traffic
11 moved over, SSW/Santa Rose/SP a direct efficient route
12 from Kansas City to Laredo?

13 A (WITNESS SHERIDAN) There are other routes
14 that are more efficient, I would say.

15 Q Would you mind for a moment, Mr. Sheridan,
16 walking over to the big map and showing us and the judge
17 and the staff, just trace it, the route that that
18 traffic moved SSW/Santa Rose/SP to Eagle Pass?

19 A (WITNESS SHERIDAN) Okay. You are coming out
20 of Kansas City over to El Paso, back here to Eagle
21 Pass.

22 Q Now, recognizing the MKT lines don't show its
23 color the way the Applicants do, would you show us
24 briefly how MKT would handle that traffic from Kansas
25 City to Eagle Pass?

1 A (WITNESS SHERIDAN) Basically, here and down
2 this way and across. The Santa Fe route with the new
3 route, the Applicants, would be almost directly down.

4 Q To summarize what I think you have just
5 demonstrated on the map, would it be fair to say that
6 the shipments on this page moved in a considerably
7 circuitous routing originally?

8 A (WITNESS SHERIDAN) I'd say yes, sir; it was a
9 circuitous route.

10 Q And based on the Katy direct route you showed
11 us and the Applicants' new direct route that you showed
12 us from Kansas City to Eagle Pass, you would have
13 roughly comparable routes, would you not?

14 A (WITNESS SHERIDAN) Very much so.

15 Q Routes that would be roughly equal perhaps?

16 A (WITNESS SHERIDAN) Yes. In other words, on
17 that same one, there are still two elevators served by
18 the Santa Fe at Kansas City.

19 Q I understand. Open to reciprocal switching to
20 railroads like the MKT; correct?

21 A (WITNESS SHERIDAN) Sir?

22 Q Open to reciprocal switching and to railroads
23 like the MKT; isn't that correct?

24 A (WITNESS SHERIDAN) Yes, sir. To all
25 railroads at Kansas City.

1 Q The next page in this exhibit, I'd like you to
2 look at the second and third movements on this page from
3 Sun Ray, Texas to Eagle Pass. I think these originate
4 on that railroad that we talked about a little bit
5 earlier, the TXNW, Texas Northwestern.

6 A (WITNESS SHERIDAN) Yes, sir.

7 Q They were routed Texas Northwestern/Liberal,
8 Kansas, and then in the route you have just
9 demonstrated, Cotton Belt/Santa Rosa/Southern Pacific.

10 You don't divert either one of these cars.
11 Isn't that true?

12 A (WITNESS SHERIDAN) Not going to Eagle Pass,
13 coming off the Texas Northwestern. No, sir.

14 Q Why is that?

15 A (WITNESS SHERIDAN) Well, there again, as far
16 as we are concerned, to go to Eagle Pass from the
17 origin, you would have to go all the way back up to
18 Herington and then back south. As far as we were
19 concerned, it is moving today in connection with the
20 Cotton Belt/Santa Rosa/SP route, and it's our feeling it
21 would continue to move that way.

22 Q Mr. Sheridan, wouldn't a routing
23 TX/Liberal/Katy/Herington/OKT be considerably less
24 circuitous than the Cotton Belt/SSW routing?

25 A (WITNESS SHERIDAN) What was the route again,

1 sir?

2 Q TXN/Libral/Katy/Herington/OKT.

3 A (WITNESS SHERIDAN) It would be less --

4 Q Wouldn't it be considerably less circuitous
5 than the route that the traffic moved?

6 A (WITNESS SHERIDAN) No, sir. I don't believe
7 so on that. When you are talking about the Sun Ray area
8 and Liberal, Liberal is considerably different than I
9 just demonstrated from Kansas City. You're in excess --
10 let's see. Kansas City to Liberal, you've already
11 gained 300 miles versus the Kansas City.

12 That point we were just discussing. In order
13 for the Katy to go to Eagle Pass, we would have to go
14 back north to Herington, then south, and I would just
15 from here -- I would guess the mileage would be shorter
16 going around the other way.

17 Q By the way, doesn't the fact that you
18 evaluated these movements in the Eagle Pass study
19 violate your own rule about originating from the origin
20 area? Shouldn't these movements have been evaluated in
21 the Liberal to Topeka study?

22 A (WITNESS SHERIDAN) You are correct, sir.

23 Q So they should be 06's?

24 A (WITNESS SHERIDAN) Yes, you are correct.

25 Q Could we look at the next page, please? Page

1 6 of the SP sample. About halfway down the page, I want
2 to start with a movement from Oshawa, Ontario to Eagle
3 Pass. I think this is General Motors traffic. Do you
4 see that?

5 A (WITNESS SHERIDAN) Yes, sir.

6 Q You diverted that 10 percent on a route that I
7 won't repeat. It's a long route. If you come down to
8 the next movement right under it, it's a movement from
9 Hamilton, Ontario to Eagle Pass and a relevant portion.
10 It also moved over East St. Louis, as did the prior one,
11 and yet you diverted 25 percent.

12 Can you explain to me the reason for the
13 difference?

14 A (WITNESS SHERIDAN) As we showed on page 12 of
15 our percents, the last one there, the 10 percent factor
16 was used at Eagle Pass for time-sensitive traffic, and
17 automobile traffic like this is generally
18 time-sensitive.

19 Q I see. So that would explain why the auto
20 parts on the last two movements on the page were also 10
21 percent?

22 A (WITNESS SHERIDAN) Yes, sir.

23 Q In looking at page 12 of your testimony where
24 you have that rule, you say the 10 percent factor was
25 used because you anticipate MKT service being triweekly;

1 is that correct?

2 A (WITNESS SHERIDAN) Yes, sir.

3 Q Did you apply a 10 percent rule to the Corpus
4 Christi or Laredo study?

5 A (WITNESS SHERIDAN) No, sir. We applied that
6 to the Eagle Pass portion. I don't believe it was
7 applied anywhere in the study at Eagle Pass.

8 MR. MOATES: Your Honor, could I have marked a
9 one-page counsel's exhibit, which I think would be
10 C-67?

11 JUDGE HOPKINS: 68. It will be marked for
12 identification as C-68.

13 (The document referred to
14 was marked Exhibit SFSP-C-68
15 for identification.)

16 BY MR. MOATES: (Resuming)

17 Q The exhibit is captioned "Service Plan by MKT
18 Trackage Rights Segments."

19 Gentlemen, this exhibit simply is my summary
20 of, from your operating plan, of the service that the
21 Katy proposes from San Antonio to Eagle Pass and from
22 San Antonio to Corpus Christi.

23 Doesn't it show that you plan triweekly
24 service on both?

25 A (WITNESS DIMMERMAN) This is Mr. Todd's

1 operating plan. You should probably ask him. But if
2 this represents Mr. Todd's statement, the answer would
3 be yes.

4 Q Mr. Dimmerman, it is your statement that says
5 we anticipate MKT service being triweekly to Eagle Pas.

6 A (WITNESS DIMMERMAN) That's right.

7 Q Okay. Did you know that MKT proposed
8 triweekly service to Corpus Christi?

9 A (WITNESS DIMMERMAN) No, I didn't consider
10 that.

11 Q Should the special rule at Eagle Pass also
12 have been used in the Corpus Christi study?

13 A (WITNESS DIMMERMAN) I think the reason for
14 the special rule is we know that automobile traffic is
15 predominantly going in the Eagle Pass area, and we have
16 no knowledge of it being the same thing on the Laredo
17 side.

18 Q I think we have two more sheets in this
19 exhibit. The next page is page 16 from the Applicants'
20 data base.

21 A (WITNESS DIMMERMAN) That's the last one we
22 had on that.

23 JUDGE HOPKINS: He's going back to Exhibit
24 67.

25 MR. MOATES: I'm sorry. I'm back to Exhibit

1 67, the Eagle Pass study sheets, page 16. Are you with
2 me?

3 WITNESS SHERIDAN: Yes.

4 BY MR. MOATES: (Resuming)

5 Q These movements are all movements of
6 industrial sand from Mill Creek, Oklahoma to Eagle Pass,
7 routed BN/Dallas/Southern Pacific. Would you confirm
8 that?

9 A (WITNESS SHERIDAN) Yes, sir.

10 Q And you diverted all of these 25 percent of
11 the time; correct?

12 A (WITNESS SHERIDAN) Yes, sir.

13 Q Do you recall that we discussed industrial
14 sand in the Laredo study? In fact, I think you told me
15 Pennsylvania Glass was the shipper.

16 A (WITNESS SHERIDAN) Yes, sir.

17 Q Do you recall -- well, strike that.

18 Why do you believe that you could participate
19 25 percent of the time between Dallas and Eagle Pass if
20 you receive the trackage rights?

21 A (WITNESS SHERIDAN) We will have a direct
22 connection with the BN to go there as well as you, as
23 well as the Applicants.

24 Q Wouldn't we have equally -- wouldn't we have
25 equal chances to participate in this traffic with the BN

1 from Dallas?

2 A (WITNESS SHERIDAN) The only thing not equal
3 here is the SP is handling the movement today. If we
4 are given the right to compete, hopefully we can get the
5 25 percent.

6 Q On that point, Mr. Sheridan, by definition,
7 the SP or the Santa Fe is going to be participating
8 today because that is the study base, isn't it? What
9 kind of a rule is that?

10 A (WITNESS SHERIDAN) Well, again, when you look
11 at the situation where we are a regional railroad and we
12 are trying to come in to compete, I mean we don't just
13 come in and they automatically lay down traffic to us.
14 We've got to get out there and make every effort we can,
15 and believe me, we do not have the resources that the
16 Applicant would have and things like this.

17 And hopefully, we would get 24 percent. In
18 other words, that is our best judgment factor as to what
19 we feel we would get there.

20 Q And the last page of the exhibit, please, page
21 25 of the Applicants' data base, if you look first at
22 the last two movements on the page which are from Eagle
23 Pass to Houston, northbound movements that were routed
24 SP direct initially. Do you see those?

25 A (WITNESS SHERIDAN) Yes.

F.D. 30400- 1/10/85 - Pgs. 6096-6155

1 Q You take a 25 percent diversion on these,
2 inserting yourself in place of Southern Pacific;
3 correct?

4 A (WITNESS SHERIDAN) Yes, sir.

5 Q Now, if you look at the top of the page, the
6 first movement or two, you will see those are movements
7 southbound from Houston to Eagle Pass, routed Southern
8 Pacific local. There you say no diversion. Why is
9 that?

10 A (WITNESS SHERIDAN) Sir, on that, that was
11 piggyback traffic. And we have no anticipation, talking
12 it over, that we'd probably handle any piggyback down
13 there. We will not have the facilities.

14 Q That might be a bad example. Let's come down
15 to the third one, the glass bottles.

16 A (WITNESS SHERIDAN) That is also piggyback,
17 sir.

18 Q That is piggyback traffic? Glass bottles is
19 piggyback traffic?

20 A (WITNESS SHERIDAN) That's what your report
21 shows here as piggyback, sir.

22 A (WITNESS DIMMERMAN) Alliance Shippers. It is
23 consolidated.

24 A (WITNESS SHERIDAN) If you look under the TOFC
25 plan, you show that it is ICEC.

1 Q Okay.

2 The next counsel's exhibit which has been
3 distributed are just two pages from your Houston-Texas
4 City study.

5 Your Honor, could we have them marked,
6 please?

7 JUDGE HOPKINS: They will be marked as Exhibit
8 No. 69, SFSP-C-69.

9 (The document referred to
10 was marked Exhibit SFSP-C-69
11 for identification.)

12 BY MR. MOATES: (Resuming)

13 Q Again, Mr. Dimmerman, and Mr. Sheridan,
14 Houston-Texas City is the so-called Bayport line that we
15 discussed?

16 A (WITNESS DIMMERMAN) Yes, sir.

17 A (WITNESS SHERIDAN) Yes, sir.

18 Q The first movement on the page that I am
19 drawing your attention to is from St. Paul, Minnesota to
20 Strang, S-t-r-a-n-g, Texas. Do you see that?

21 A (WITNESS SHERIDAN) Yes, sir.

22 Q It's routed Milwaukee-Chicago-Illinois
23 Central-East St. Louis-Cotton Belt-Shreveport-SP. And
24 you predict 25 percent diversion at the St. Louis
25 Gateway whereby you would terminate the traffic at

1 Strang; correct?

2 A (WITNESS SHERIDAN) Yes, sir.

3 Q On the next two movements on the page, we find
4 that those are also from St. Paul, Minnesota. All three
5 of these are shipments of liquified gases. These are
6 also going to the same consignee at Strong. And yet,
7 you don't diver them. Why is that?

8 A (WITNESS SHEPIDAN) On those, we looked at the
9 cars and analyzed them, and those cars moved Misscouri
10 Pacific-Houston-SP. And the best we could gather,
11 apparently SP doesn't have any influence today or they
12 would surely have gotten a haul further than the
13 Houston. And the MP apparently does have some influence
14 to get their long haul on that. And we just looked at
15 that and figured there's no way that we would, you know,
16 be making an effort or could get a haul from Houston out
17 to Strang.

18 Q What about from Kansas City to Strang? You
19 have these trackage rights. You could handle this and
20 make it a two-line haul, couldn't you?

21 A (WITNESS DIMMERMAN) As could the SFSP.

22 Q I understand.

23 A (WITNESS SHERIDAN) Yes, sir.

24 Q You don't think there is any chance you could
25 get any of that traffic that you could handle from

1 Kansas City to Strang?

2 A (WITNESS SHERIDAN) Maybe, but our judgment on
3 that was that we would not get that haul.

4 Q There may be some other movements like that
5 where you could?

6 A (WITNESS SHERIDAN) Well, there possibly could
7 be. Like I say, we'd have to look at the movement.

8 Q One other on the next page, the only other
9 movement on this exhibit. This page is from the SP data
10 base, too.

11 These are all movements that originate at the
12 station called Strang. If you look halfway down the
13 page, the first one that is routed from Strang to
14 Houston, as an example. Is that a United States Steel
15 Chemical Company movement? Is that right?

16 A (WITNESS DIMMERMAN) Yes.

17 Q These are moving today, local movements on the
18 Southern Pacific. If you receive your trackage rights,
19 couldn't these be local movements on the MKT as well?

20 A (WITNESS SHERIDAN) They could be, but in this
21 case we didn't figure it would be feasible. On that
22 one, we looked at it, and of course it is going to a
23 PTRR-SP served industry and destination. In other
24 words, that was one I believe that appeared in Houston.

25 Q Doesn't this sheet also show that that

1 industry at Houston is served by the PTR A?

2 A (WITNESS SHERIDAN) Yes. The PTR A and SP at
3 both ends.

4 Q Can't Katy access the industry through the
5 PTR A?

6 A (WITNESS SHERIDAN) In a movement from a PTR A
7 industry to a PTR A industry, no, sir. We wouldn't
8 handle the movement that way.

9 Q You say you wouldn't, or you cannot?

10 A (WITNESS SHERIDAN) The PTR A could, but the
11 MKT, as such, would not. Not to my knowledge.

12 A (WITNESS DIMMERMAN) What Jerry is saying is
13 with the PTR A and SP serving it on both ends, it would
14 either go PTR A-PTR A, common PTR A move, or it would go a
15 Southern Pacific move.

16 It would be difficult for us to serve it and
17 then deliver it to the PTR A and then the PTR A set the
18 car. That wouldn't be very logical.

19 Q Did you gentlemen discuss the desirability of
20 Katy's getting trackage rights on the Houston-Texas City
21 line with some of the shippers on that line?

22 A (WITNESS DIMMERMAN) Yes.

23 Q Did you have any discussions with the Diamond
24 Shamrock Company?

25 A (WITNESS DIMMERMAN) Yes.

1 MR. MOATES: Could I have marked a counsel's
2 exhibit, Your Honor, a one-page letter from a Mr.
3 Delicati, D-e-l-i-c-a-t-i, to Mr. Roper of the Katy,
4 which shows a copy to Mr. Dimmerman?

5 JUDGE HOPKINS: That will be marked for
6 identification as Exhibit SFSP-C-70.

7 (The document referred to
8 was marked Exhibit SFSP-C-70
9 for identification.)

10 BY MR. MOATES: (Resuming)

11 Q Mr. Dimmerman, did you receive a copy of this
12 letter?

13 A (WITNESS DIMMERMAN) Yes.

14 Q The letter tells us that Mr. Delicati is the
15 Manager, Transportation Pricing, Terminals and
16 Warehouses, for Diamond Shamrock Chemicals Company.
17 Does he still hold that position?

18 A (WITNESS DIMMERMAN) Yes.

19 Q The second paragraph of the letter says: "The
20 more I study the issues to be covered in a supporting
21 statement, the more I am convinced that our position is
22 extremely weak. We have, therefore, decided not to
23 enter a statement in support of the Houston to Texas
24 City request for trackage rights."

25 Did you discuss with Mr. Delicati the basis

1 for his opinion that the position was extremely weak?

2 A (WITNESS DIMMERMAN) Could you give me that
3 last again?

4 Q Did you discuss with Mr. Delicati the basis
5 for his position, for his statement that the position
6 was extremely weak?

7 A (WITNESS DIMMERMAN) Yes. Ray was at first --
8 well, it didn't start with Ray. It started with his
9 boss, Jim Patterson, who is a friend of mine. And Jim
10 says, "Harry, why don't you -- Ray Delicati handles this
11 type of thing. Why don't you get together with Ray and
12 see what you can work out."

13 So Ray Delicati and I had lunch together and
14 he was going to work something up for support. And all
15 of a sudden he backed off, and he never did tell me
16 why.

17 Q Well, he tells you in this letter, doesn't
18 he?

19 A (WITNESS DIMMERMAN) He doesn't really. He
20 says, "I'm convinced our position is extremely weak."
21 But he didn't feel that way when I first talked to him.

22 Q Did you discuss this with him after you
23 received the letter?

24 A (WITNESS DIMMERMAN) No.

25 Q Can we then turn to the next counsel's exhibit

1 which relates to Beaumont?

2 Your Honor, I believe it's a four-page
3 exhibit. Could we have that marked, please?

4 JUDGE HOPKINS: That will be marked for
5 identification as Exhibit SFSP-C-71.

6 (The document referred to
7 was marked Exhibit SFSP-C-71
8 for identification.)

9 BY MR. MCATERS: (Resuming)

10 Q Now, so all of the non-railroad people can be
11 clear on the facts, gentlemen, you propose to serve
12 Beaumont, Texas via trackage rights, but this is a
13 different line than the so-called Bayport line we have
14 been discussing, isn't it?

15 A (WITNESS SHERIDAN) Yes, sir.

16 Q Looking at the first page of the exhibit, page
17 2, from the waybill sample data base, let me direct your
18 attention first to the two movements that you have
19 diverted at the top portion of the page, movements from
20 Enid, Oklahoma to Beaumont, Texas. Do you see that?

21 A (WITNESS SHERIDAN) Yes, sir.

22 Q These movements were routed Burlington
23 Northern-Dallas-L&A-Shreveport-KCS. Correct?

24 A (WITNESS SHERIDAN) Yes.

25 Q And you project correctly that this would be a

1 single system haul on the Katy Railroad if you receive
2 trackage rights to Beaumont. The question is, since you
3 would have the direct single line route from Enid to
4 Beaumont if you had these trackage rights, why only a 15
5 percent factor for the diversion?

6 A (WITNESS SHERIDAN) Well, there would be -- in
7 other words, there is other direct line haul. We would
8 not be the only carrier. And, of course, on a 15
9 percent -- we used that because transit, like we are
10 saying, because of transit behind movements. And, of
11 course, the Applicants and other lines have a larger
12 drawing area than what we do, and we try to come up with
13 a realistic figure as to what we thought we could get.

14 Q Do you know that these movements were subject
15 to transit?

16 A (WITNESS DIMMERMAN) Do we know that this is
17 subject to transit? Yes, sir.

18 Q How do you know that?

19 A (WITNESS DIMMERMAN) Well, it almost
20 invariably is. Wheat out of Enid, Oklahoma is covered
21 by Union Equity. And in 1984, Union Equity told me they
22 have their first shipment of transit wheat to ship yet.
23 I don't know how true it is, but that's what they tell
24 me. If it's coming out of Union Equity -- other than
25 that, I don't know.

1 Q Would you're telling me, Mr. Dimmerman, is you
2 know that there are a lot of shippers' transit movements
3 from that area, but you're not telling me anything that
4 I can discern from this sheet, are you?

5 A (WITNESS DIMMERMAN) No.

6 Q This doesn't even tell us who the shipper is.

7 A (WITNESS DIMMERMAN) You are correct.

8 Q But again, if you look at page 12 of your
9 verified statement that contains your diversion rules,
10 the 15 percent factor relates specifically to milling
11 in-transit type moves, doesn't it?

12 A (WITNESS SHERIDAN) Fifteen percent factor was
13 used on grain and grain products from competitive
14 storage or milling in transit stations in Kansas,
15 Oklahoma, and Texas because so much of these movements
16 are governed by transit.

17 Q All I'm trying to establish -- and I think we
18 have, and correct me if you disagree -- is that you have
19 applied that factor here, making the assumption that
20 this movement was a transit movement.

21 A (WITNESS DIMMERMAN) Yes, sir.

22 Q Turn to the next page which is page 12 from
23 the waybill data base. Do you see, about the middle of
24 the page, gentlemen, there are a couple of movements
25 from Chaison to barberton, Ohio and then Chaison to

1 Akron, Ohio as examples?

2 A (WITNESS DIMMERMAN) Yes, sir.

3 Q These have been marked 07, which we have
4 already discussed, data insufficient to evaluate. But
5 the movement, for example, from Chaison to Barberton, we
6 know from this did move over East St. Louis, didn't it?

7 A (WITNESS DIMMERMAN) Yes, sir.

8 Q And if you receive the trackage rights to
9 Beaumont, would MKT have a single system route from
10 Chaison to East St. Louis?

11 A (WITNESS SHERIDAN) We would have a single
12 system route, sir. But it is quite a bit more
13 circuitous than what the Cotton Belt is, sir.

14 Q Were they in this route?

15 A (WITNESS SHERIDAN) Not in this one.

16 Q Cotton Belt SP has that route today, and that
17 route won't be any different after the merger, will it?

18 A (WITNESS SHERIDAN) Would you repeat that,
19 please, sir?

20 Q I said you refer to SP Cotton Belt having a
21 route. They have that route today and will have that
22 route after this merger; isn't that true?

23 A (WITNESS SHERIDAN) Yes.

24 Q The merger won't affect that, in other words.

25 A (WITNESS SHERIDAN) No, sir.

1 Q All right. Would you turn to the next page of
2 the exhibit, page 14 from the SP data base? Strike
3 that. It is page 14 from the waybill data base.

4 Again, the fifth, sixth, seventh, and eighth
5 movements on the page are from Chaison, Texas to Omaha,
6 Nebraska. Do you see that?

7 A (WITNESS DIMMERMAN) Yes, sir.

8 Q They are all routed KCS-Kansas City-Union
9 Pacific. And again, you deem them unable to evaluate.
10 But again, let me just ask a simple question. If you
11 received these trackage rights, would MKT not have a
12 direct route from Chaison to Kansas City, single
13 system?

14 A (WITNESS SHERIDAN) We would have a direct
15 route, but in this case here, where we know in that area
16 KCS has quite a few closed industries; in other words,
17 on this, of course, we were not able to determine it
18 because there were not enough facts known on it.

19 Q Correct.

20 Let me just add one other thing. Not only
21 would you have a direct route from Chaison to Kansas
22 City; you would have a direct route from Chaison to
23 Omaha, wouldn't you? This could be an MKT single system
24 route quite possibly, couldn't it?

25 A (WITNESS SHERIDAN) If the industries were

1 open where we could serve; yes. It's possible.

2 Q Which we, of course, can't determine.

3 A (WITNESS SHERIDAN) It's possible.

4 Q The last page of this exhibit, what I'd like
5 to ask you about here is something that has shown up
6 elsewhere, but this seems like a convenient place to ask
7 about it.

8 The first move on the page is an 0-6. Do you
9 see that?

10 A (WITNESS SHERIDAN) Yes.

11 Q And the movement is from Bayport to Beaumont.
12 And we discussed something like this before. If you
13 receive both the Texas City or Bayport line trackage
14 rights and the Beaumont trackage rights, you could serve
15 this MKT single system; correct?

16 A (WITNESS SHERIDAN) That's right. This shows
17 an 06 if it was taken on the origin study.

18 Q Since this is in the Beaumont study and
19 terminating at Beaumont, even though it originated at
20 Bayport, you would have evaluated it in the Bayport
21 study; correct?

22 A (WITNESS SHERIDAN) Yes.

23 Q And I think I asked you before and I think you
24 told me you weren't sure, but let me clarify it. Did
25 you, in any systematic way, keep track of the numbers of

1 06's that you saw, to see if you saw comparable
2 movements in the origin side study?

3 A (WITNESS SHERIDAN) No, not that I can
4 recall.

5 Q Did you ever go back after you were finished
6 and make that analysis?

7 A (WITNESS SHERIDAN) Not that I can recall.

8 A (WITNESS DIMMERMAN) We didn't.

9 MR. MOATES: Your Honor, could I have a
10 seven-page counsel's exhibit identified? It is
11 captioned "MKT Trackage Rights Study Movements Not
12 Diverted on Destination Side Because They were Handled
13 in Origin Track Segment (Code 06)."

14 JUDGE HOPKINS: It will be marked for
15 identification as SPSF-C-72.

16 (The document referred to
17 was marked Exhibit SPSF-C-72
18 for identification.)

19 BY MR. MOATES: (Resuming)

20 Q Just to show how this exhibit works,
21 gentlemen, if you would look at the fifth page of the
22 exhibit, I think you will find that is page 2 of the
23 Beaumont samples. The second-the-the-last entry on the
24 page shows the serial number 7644A. Do you see that?

25 A (WITNESS DIMMERMAN) Fourth one?

1 Q A movement from Bayport to Beaumont.

2 A (WITNESS DIMMERMAN) Yes, sir.

3 Q Confirm that is the movement we are looking at
4 here. I think if you look on the top line, the third
5 data entry, you will see some numbers there. I see a
6 7644A. Is that correct?

7 A (WITNESS DIMMERMAN) Yes.

8 MR. KHARASCH: I am going to object to the
9 admission of this exhibit unless the title is changed.
10 I think the title misstates, if I am understanding.
11 When you have a sample and you don't want to duplicate
12 movements in a sample, you do what was done here; that
13 is, you take it, you take the sample drawn, let's say,
14 at the Bayport end to the Beaumont destination.

15 It is not that the same car or the same sample
16 would be drawn. You are sampling both ends of the
17 movement. I think the title implies in the third line
18 that these cars were handled, these particular movements
19 were handled in the origin track segment. I do not
20 think that is correct.

21 MR. MOATES: I think part of that statement
22 was testimony, but to resolve Mr. Kharasch's problems,
23 I'd be prepared to strike the third line of the exhibit
24 so that it would simply read: MKT Trackage Rights Study
25 Movements Not Diverted On Destination Side.

1 JUDGE HOPKINS: That seems the way to handle
2 it.

3 BY MR. MOATES: (Resuming)

4 Q Now that he has kindly pointed to us what the
5 purport of this was, would you turn to page 6 of the
6 exhibit?

7 JUDGE HOPKINS: We will strike that line.

8 BY MR. MOATES: (Resuming)

9 Q Would you turn to page 6? Now, these are the
10 movements marked 06 in the Houston-Texas City study. Do
11 you see any movements there that are Bayport to
12 Beaumont?

13 A (WITNESS DIMMERMAN) On page 6?

14 Q Yes.

15 A (WITNESS DIMMERMAN) No, sir.

16 Q So, in fact, those movements didn't show up in
17 that study, did they?

18 And, Mr. Kharasch, not this movement, but any
19 movements like them.

20 A (WITNESS DIMMERMAN) We must be looking at the
21 wrong thing. I'm looking at Chaison to Deer Park and
22 Eagle Pass to Bayport.

23 Q You're looking at the right thing. What I am
24 saying is, there are no Bayport-Beaumont moves on that
25 page.

1 All right. I think we are ready to move to
2 the counsel's exhibit on Liberal-Topeka.

3 MR. KHARASCH: Wait a minute. All right. I
4 will handle it on redirect.

5 JUDGE HOPKINS: Thank you.

6 MR. MOATES: It's a four-page counsel's
7 exhibit, Your Honor, that has been previously
8 distributed.

9 JUDGE HOPKINS: That will be marked for
10 identification as SFSP-C-73.

11 (The document referred to
12 was marked Exhibit SFSP-C-73
13 for identification.)
14
15
16
17
18
19
20
21
22
23
24
25

1 BY MR. MOATES: (Resuming)

2 Q Are you gentlemen with me on the
3 Liberal-Topeka study?

4 A (WITNESS SHERIDAN) Yes, sir.

5 Q The first two movements on the page which I
6 have distributed, which is page 4 from the waybill
7 study, are two MP, and I'll just ask you about the two.
8 There are others like it.

9 There are two MP movements from Hutchinson,
10 Kansas to Galveston, Texas. Do you see those?

11 A (WITNESS DIMMERMAN) Yes, sir.

12 Q And you diverted the first two 15 percent,
13 correct?

14 A (WITNESS SHERIDAN) Yes.

15 Q The third one you did not divert, and I see
16 that you have circled the word "yes." Could you tell me
17 what the circle means and why you didn't divert that car?

18 A (WITNESS SHERIDAN) I believe on that one we
19 should have taken the 15 percent, as best I can recall.
20 I'm not sure we circled "yes" and didn't take it,
21 because on there, on the 15 percent, we know that the
22 different railroads all have transit. Like we said
23 before, we held our 15 percent figure based on the
24 bigger lines having more drawing power than what the MKT
25 would there.

1 A (WITNESS DIMMERMAN) The answer is yes, we
2 should have shown 15 percent.

3 Q My next question is you have told me several
4 times this afternoon when we looked at other MP local
5 movements that there was no way you could displace the
6 MP. What makes you think you can displace them on these
7 moves?

8 A (WITNESS SHERIDAN) We serve both the origin
9 and destination. On those others we didn't serve the
10 origins and destinations.

11 A (WITNESS DIMMERMAN) Ours is the most direct
12 route.

13 Q Are both of those things required before --

14 A (WITNESS DIMMERMAN) Between Hutchinson and
15 Galveston is the most direct.

16 A (WITNESS SHERIDAN) We're not extending our
17 route, but we said we could not extend our route with
18 them on that, and of course, where they were going into
19 Laredo direct, like I say, we had to go through the
20 TexMex. Those are the two cases that we had, sir.

21 Q Okay. If you look at the next page, it is
22 also from -- all the movements on the page are from
23 Hutchinson to Galveston, but they all involve
24 Far-Mar-Co, who is the shipper and the consignee. Do
25 you see those? You diverted them all 15 percent.

1 A (WITNESS SHERIDAN) Yes, sir.

2 Q Now, if you're going to serve Far-Mar-Co at
3 Hutchinsohn and you're going to serve Far-Mar-Co at
4 Galveston if you get these trackage rights, as you just
5 said, you have the direct route. Why do you think you
6 can only get 15 percent of this traffic?

7 A (WITNESS DIMMERMAN) Because of the transit
8 draw like we explained.

9 Q So it has nothing to do with the service
10 between the points. In your judgment it is that you
11 will not be able to offer the kind of transit services
12 that the applicants can because they are bigger
13 railroads?

14 A (WITNESS SHERIDAN) We are talking about the
15 grain transit, not transit service.

16 A (WITNESS DIMMERMAN) Not transit time. We're
17 talking about --

18 Q Transit services.

19 A (WITNESS SHERIDAN) No, sir. We will not have
20 the drawing stations that the Santa Fe-SP would or the
21 Missouri Pacific.

22 A (WITNESS DIMMERMAN) Union Pacific.

23 A (WITNESS SHERIDAN) Union Pacific system. And
24 like I say here again, if we get the trackage rights,
25 that allows us to go in there and compete. In our

1 judgment we are hopeful that we would be able to get in
2 there and be able to get 15 percent.

3 Q All right. If you look at the next page,
4 please, the first movement on the page from McPherson,
5 Kansas to Fargo, North Dakota is routed Santa Fe-Kansas
6 City-Burlington Northern, and you have taken a 25
7 percent diversion, putting yourself into Kansas City in
8 place of the Santa Fe.

9 Do you see that?

10 A (WITNESS SHERIDAN) Yes, sir.

11 A (WITNESS DIMMERMAN) Yes, sir.

12 Q And the next movement is also from McPherson
13 going to a point in Illinois, and you've only taken a 15
14 percent diversion. Why is that?

15 A (WITNESS SHERIDAN) Well, the 15 percent
16 applies on grain and grain products, which is the second
17 movement. The first movement is not grain and grain
18 products. In other words, we held the grain and grain
19 products at 15 percent because of the transit behind
20 it. And again, the MKT will not have the drawing
21 stations that railroads like the Santa Fe-SP would, the
22 UP.

23 Q I understand. You just explained that to me.
24 But that is the only reason, your assumption that this
25 traffic had transit behind it, that the Santa Fe and SP

1 have larger gathering areas?

2 A (WITNESS DIMMERMAN) Yes, sir.

3 Q Turn to the next page, please. Could you tell
4 us what the 0-5 means there in the first two movements?

5 A (WITNESS SHERIDAN) It means nondivertible.

6 Q On page 18, "SFSP serves both origin and
7 destination, giving them single line rate route service,
8 and MKT can serve only that joint route," okay?

9 A (WITNESS SHERIDAN) Okay.

10 Q First, let's talk about one movement. The
11 first movement is from Salem, Oregon to Hutchinson, and
12 it is routed Oregon Electric-Portland-BN-Kansas
13 City-Santa Fe, correct?

14 A (WITNESS SHERIDAN) Yes.

15 Q Where is the single system route that you say
16 the applicants are going to have?

17 A (WITNESS SHERIDAN) Where is the route that
18 they would have?

19 Q Yes. Rule 5 says, "SFSP serves both origin
20 and destination, giving them single line route," and so
21 on. What is the single line route for this movement?

22 A (WITNESS SHERIDAN) As I understand, Salem is
23 served by the SP railroad and also serves Hutchinson.
24 That makes it a single line.

25 Q What is the Oregon Electric?

1 A (WITNESS SHERIDAN) That's the short line
2 railroad up there. I show it served, which is, I think,
3 part of the BN, but I also show it served by the SP. I
4 show that under the switch.

5 Q The Oregon Electric Rail you say is a short
6 line railroad. It's part of the Burlington Northern
7 system, isn't it?

8 A (WITNESS SHERIDAN) Yes, to my knowledge it is.

9 A (WITNESS DIMMERMAN) It is.

10 Q Okay. We won't belabor that. Let's turn to
11 the exhibit on Midlothian Wards Spur, which is a
12 three-page exhibit previously distributed.

13 Your Honor, may we have it marked?

14 JUDGE HOPKINS: That will be marked for
15 identification as SFSP-C-74.

16 (The document referred to was
17 marked Exhibit No. SFSP-C-74
18 for identification.)

19 BY MR. MOATES: (Resuming)

20 Q Now, gentlemen, there was some testimony about
21 Midlothian Wards Spur yesterday, and I think Mr. Smith
22 asked Mr. Dimmerman some questions about it. We may
23 want to touch on that here again momentarily. Let's
24 look first, though, at these diversions. The first page
25 is page 7 from the applicants' data base. Let me draw

1 your attention to the third, fourth and fifth movements
2 on the page, which are 25 percent diversions from North
3 Little Rock, Arkansas to Wards Spur. Do you see those?

4 A (WITNESS SHERIDAN) Yes, sir.

5 Q Routed NP-Dallas-Santa Fe.

6 A (WITNESS SHERIDAN) YES.

7 Q Follow me down the page if you would to the
8 next three movements which are also from North Little
9 Rock to Wards Spur, and here you have "not divertible."
10 Why was that?

11 A (WITNESS SHERIDAN) Okay. On the first three
12 movements that you have, if you will notice, it shows
13 Missouri Pacific closed, which means they are going to
14 get a road haul out of Little Rock, and they are now
15 handling, of course, to Dallas-Santa Fe. We feel, in
16 other words, we would be a participant, you know, would
17 have a chance to handle some of that also.

18 If you notice, on the second three movements
19 we were unable to determine who they were out of. We
20 got over on the lefthand side a broker. We were unable
21 to identify who they were from. We don't know if it's
22 from somebody that is open or closed. If it's an open
23 situation, you have a direct line haul from there, and
24 of course, we would not. So in other words --

25 Q But if it is a closed station, it would be

1 just like the three above it, and you could participate
2 from Dallas, correct?

3 A (WITNESS SHERIDAN) If it was, but we have no
4 knowledge, like I say here.

5 Q Therefore, these are C7s, aren't they, because
6 you don't know, you don't have that information.

7 A (WITNESS SHERIDAN) In other words, 5 is
8 right, too. It's a direct single line for you, too, but
9 7 should have been applied also, yes, sir.

10 Q Now, one other thing, Chaparral Steel at Wards
11 Spur has supported your trackage rights application,
12 hasn't it?

13 A (WITNESS DIMMERMAN) TXI did, which is part of
14 Chaparral Steel. Chaparral Steel is part of TXI.

15 Q Would you look at the next page, please, of
16 this exhibit? These are all movements -- strike that.

17 The first movement on the page is a movement
18 from Wards Spur, Texas to Monroe, Louisiana. They are
19 all movements of hydraulic cement, correct?

20 A (WITNESS SHERIDAN) Yes, they're all cement.

21 Q The first one, from Wards Spur to Monroe,
22 which was routed Santa Fe-Dallas-L&A-Shreveport-ICG, you
23 diverted 25 percent basis to a route Katy to Dallas,
24 correct?

25 A (WITNESS SHERIDAN) Yes.

1 Q For the reasons I assume you have just
2 explained to me on this other one going in the other
3 direction.

4 A (WITNESS SHERIDAN) Yes. We felt that we
5 could get all of Dallas.

6 Q Now, the movements on the rest of this page
7 which go to Bossier City, Louisiana, and I guess the
8 last one is Shreveport, on none of them did you take a
9 diversion. Why is that?

10 A (WITNESS SHERIDAN) There is a case where they
11 could have gone applicants' single line to those place.
12 I guess those are more where we should have shown 05 and
13 7, because we did not have the information, you know,
14 who served the consignee because this is a waybill
15 study; and that information is not provided on this
16 study.

17 Q Again, if they were going to -- well, you tell
18 me. Is it right -- strike that.

19 Under what circumstances would you determine
20 that they were divertible to the MKT?

21 A (WITNESS SHERIDAN) If it was an industry --
22 well, as an example, if the destination was a local
23 point like that first one, not necessarily local but was
24 a point other than served by the applicants, we feel we
25 would have a chance of getting there. We wouldn't have

1 to know exactly who it was.

2 But in these cases -- well, like the first
3 one, let's go back up to it. The exact reason there is
4 the one that we would have where we would divert it.
5 Here again, we did not know the consignee, but there is
6 a case of Monroe, the applicants do not get to Monroe.
7 That's why we took a diversion from the origin to Dallas
8 junction, because we felt there we would be equal on
9 that. But when you go to the places where you do go to,
10 chances are we don't know. I mean if it's open to you,
11 you would have a single line rate. But it's one of
12 those things we don't know, because the information is
13 not available.

14 Q Okay. Now, the last page of this exhibit,
15 please. I think this is going to bring us to a subject
16 about which there has been some discussion. Can you
17 confirm for me that save for the first movement on the
18 page, all the other movements on this page 14 of the
19 Midlothian Wards Spur study are movements to Mazda at
20 Midlothian?

21 A (WITNESS SHERIDAN) Yes, sir.

22 Q These are the assembled automobiles that we
23 have heard testimony about going into the Mazda facility
24 at Midlothian, is that right?

25 A (WITNESS SHERIDAN) Yes, sir.

1 Q And I notice that you have not diverted any of
2 this traffic. Why is that?

3 A (WITNESS SHERIDAN) These cars, these
4 automobiles, set up automobiles coming in, are loading
5 in California at a point on BCY Railroad which connects
6 only to the Southern Pacific. And in our opinion, there
7 is not any way that the SP will give us a route on this
8 movement from this origin.

9 Q What about from some other origins?

10 A (WITNESS SHERIDAN) We understand that Mazda
11 will have automobiles from other origins, and this is
12 when they talked to Mr. Dimmerman, as I understand. And
13 maybe you want to expound on that. But as I understand,
14 they would come from other origins.

15 Q Before we do that, you would agree with me
16 from your knowledge of the traffic that there is a
17 substantial amount of attractive automobile traffic
18 moving transcontinentally from Port Hueneme, California
19 to Mazda at Midlothian, is there not?

20 A (WITNESS DIMMERMAN) There's a substantial
21 amount of traffic moving now?

22 Q Yes.

23 A (WITNESS DIMMERMAN) Yes, sir.

24 Q In fact, that's the incentive that got you to
25 seek these trackage rights to Wards Spur in the first

1 place, isn't it?

2 A (WITNESS DIMMERMAN) I didn't call Dave
3 Watson. Dave Watson called me.

4 Q I understand. But he called you and said I am
5 Mazda Motors, and I have some good traffic down here;
6 come and get it?

7 A (WITNESS DIMMERMAN) He said I am Mazda
8 Motors, and I am in trouble. I had two lines coming
9 into Midlothian, and it looks like I'm only going to
10 have one.

11 MR. MOATES: We have two letters, the first
12 from Mr. Dimmerman to Mr. Castler, the second from Mr.
13 Dimmerman to Mr. Watson at Mazda. Can we have those
14 marked as Counsel's Exhibits?

15 JUDGE HOPKINS: They will be marked for
16 identification as SFSP-C-75.

17 (The documents referred to
18 were marked Exhibit No.
19 SFSP-C-75 for identifi-
20 cation.)

21 BY MR. MOATES: (Resuming)

22 Q Before we talk about this, let me ask you
23 about something else. Isn't it a fact that MKT did not
24 even seek the rights to Midlothian Wards Spur when it
25 sought its first set of conditions in this case, if you

1 know? In other words, this wasn't on your original
2 list, was it?

3 A (WITNESS DIMMERMAN) Yes. There was like 20
4 on the list. This is certainly one of them, yes.
5 George Elking thought it was an excellent
6 anticompetitive area. Just for example, we just talked
7 about Mazda, but they're setting up a free trade zone in
8 the same area. Honda is, you know, about to do
9 something there. It's a big area, and the city of
10 Midlothian has advertised, you know, the two railroads,
11 and the city of Midlothian is a little upset.

12 Q This is a gold mine for the MKT, isn't it?

13 A (WITNESS DIMMERMAN) It looks to me like it's
14 a gold mine for the SFSP.

15 Q It's going to be a gold mine for you if you
16 get in there, won't it?

17 A (WITNESS DIMMERMAN) It will be very nice.

18 Q You bet.

19 All right. Looking first at the letter from
20 Mr. Dimmerman to Mr. Gastler dated June 20, 1984, does
21 this summarize some discussions you had had with Mr.
22 Watson, and as you have told us several times about his
23 asking you to seek trackage rights to his facility as a
24 condition on this merger?

25 A (WITNESS DIMMERMAN) What this is is a letter

1 to Mr. Gastler saying that I went down to Midlothian and
2 looked it over. I believe I said I had done that on my
3 previous testimony, and that I subsequently went down
4 with Mr. Todd. This is the first time I went down
5 there, and I gave Mr. Gastler a report of it.

6 Q Look at the fourth paragraph in the letter.
7 It says, "I would therefore recommend that we reopen our
8 case to go into Midlothian to serve TXI." That's Texas
9 Industries, TXI?

10 A (WITNESS DIMMERMAN) Yes, sir.

11 Q "And Chaparral Steel, as well as this new
12 facility."

13 Now, what does he mean, "reopen our case?"

14 A (WITNESS DIMMERMAN) I told you that
15 originally Midlothian was in our plans, and the further
16 we got into it, it was apparent that even though the SP
17 and Santa Fe were both into Midlothian, there were
18 certain areas that were served by the SP and certain
19 areas that were served by the Santa Fe. And when Dave
20 Watson called me and told me about his facility, which I
21 have to admit I overlooked, and told me about his
22 problem, then I figured we should reopen our position
23 because where it didn't look to me like the competition
24 was as I had first seen it, the competition was there
25 and being taken away by the merged SP-Santa Fe merger.

1 Q All right. Now, look at the second page of
2 the exhibit. This is a letter that you wrote to Mr.
3 Watson, I take it, after this trip you mentioned. I am
4 interested in the blind note on the bottom of the page
5 to Mr. Roper. Do you see that?

6 A (WITNESS DIMMERMAN) Yes, sir.

7 Q You say, "I have explained that we are
8 requesting trackage rights over the Santa Fe. They, of
9 course, wanted us to seek trackage rights over the SP,
10 but I explained that we had a problem if we requested
11 both and were only given the SP, which he understood."

12 Now, isn't it true that it's the SP that
13 serves Mazda at Midlothian today?

14 A (WITNESS DIMMERMAN) Yes, sir.

15 Q You have described to us in some detail, have
16 you not, how Santa Fe goes past the property, but they
17 don't have a physical connection to the property today?

18 A (WITNESS DIMMERMAN) Yes, sir.

19 Q But you're requesting the rights over the
20 Santa Fe, not the SP, isn't that right?

21 A (WITNESS DIMMERMAN) Yes, sir.

22 Q Which, of course, permits you not to divert
23 any traffic, because you won't have a physical
24 connection, isn't that right?

25 A (WITNESS DIMMERMAN) No. That had nothing to

1 do with it. I believe when you ask Mr. Todd, he will
2 tell you that it is easier to serve Midlothian on the
3 MKT by going directly out on the Santa Fe from Dallas.

4 Q Is that the problem you have reference to, an
5 operating problem?

6 A (WITNESS DIMMERMAN) Yes.

7 Q Couldn't you come over from -- and I will
8 butcher a good Texas name here -- from Waxahachie?

9 A (WITNESS DIMMERMAN) Waxahachie. We could,
10 but it would not be a good operating way to go.

11 Q Isn't it many fewer miles from the MKT to
12 Waxahachie to Midlothian than via the Santa Fe from
13 Dallas?

14 A (WITNESS DIMMERMAN) I don't believe so.

15 Q You don't think so?

16 A (WITNESS DIMMERMAN) No.

17 A (WITNESS SHERIDAN) We would have to come out
18 of Dallas to Waxahachie and go over there. Dallas would
19 be the point we were coming from. Operatingwise, like I
20 say, we would have to do that. In other words, it's not
21 a case that we have something at Waxahachie that it
22 would run over there on.

23 Q I'm glad you clarified that. If you were to
24 come from Waxahachie over the SP line to Midlothian as
25 opposed to using the Santa Fe line from Dallas to

1 Midlothian, it would require significantly fewer miles
2 of applicants' track for you to operate over, wouldn't
3 it?

4 A (WITNESS DIMMERMAN) That is true.

5 Q But you didn't.

6 A (WITNESS DIMMERMAN) Waxahachie is an
7 intermediate point for a move to Midlothian if you went
8 over the SP. If you went directly out on the Santa Fe,
9 that would be the most direct route.

10 Q You mentioned a minute ago, Mr. Dimmerman,
11 that Honda has plans to build a facility, I believe?

12 A (WITNESS DIMMERMAN) Yes, sir.

13 Q Do you propose to serve that facility?

14 A (WITNESS DIMMERMAN) It's all together. It's
15 right with the Mazda area. It's all just one big area.

16 Q Do you propose to serve the Mazda area?

17 A (WITNESS DIMMERMAN) Oh, yes, sir. It's all
18 right there.

19 Q How are you going to serve it?

20 A (WITNESS DIMMERMAN) The same way.

21 Q I'm not with you. Locomotives don't drive on
22 dirt. Are you going to put in a track?

23 A (WITNESS DIMMERMAN) The same trackage that
24 would serve Mazda would serve Honda.

25 Q I understand. We have already established

1 that there is no physical connection between the Santa
2 Fe line today and the Mazda facility at Midlothian. How
3 do you propose to serve the Mazda facility using the
4 Santa Fe track?

5 A (WITNESS DIMMERMAN) We would build a track in
6 there.

7 Q You would build it?

8 A (WITNESS DIMMERMAN) Yes, sir.

9 Q Looking at the first page of that exhibit you
10 have in front of you, don't you tell Mr. Gastler that
11 another attractive aspect of this proposal is that, on
12 the bottom of the second to the last paragraph, "There
13 is an alternate plan to come off the Santa Fe, circle
14 the acreage and bring their traffic into the so-called
15 present railhead area served by the Southern Pacific.
16 This would be considerably more costly, but I feel if we
17 were given authority to serve the plant, it would be the
18 plant's responsibility to put the trackage in at their
19 expense. As I have been told, they paid for the
20 trackage off the Southern Pacific from the clearance
21 point."

22 Don't you in fact plan for the Mazda people to
23 put that track in?

24 A (WITNESS DIMMERMAN) No. You see what I am
25 talking about, and it is common with all industrial

1 spurs, is the railroad puts the trackage into its main
2 line to the clearance point, and at that point the
3 industry makes it.

4 Q Didn't you -- have you had discussions with
5 Mr. Watson about how much of this traffic he would
6 allocate to Katy?

7 A (WITNESS DIMMERMAN) No, sir.

8 Q No?

9 A (WITNESS DIMMERMAN) No, sir. But I did tell
10 him that he understood that if we were going out there
11 that we would have to be able to -- it would have to be
12 a commitment on his part to some tonnage; otherwise,
13 there is just no way we can go out there. It would have
14 to be something that we could profit from in order that
15 we could provide the competition. If we couldn't profit
16 from it, we sure as heck wouldn't be competitive.

17 Q You're not prepared to remedy a competitive
18 problem unless there's some traffic out there that would
19 help you along?

20 A (WITNESS DIMMERMAN) I don't think there's any
21 businessman that would not require some profit on any
22 undertaking, especially when you are going to commit
23 yourself to spending money for track.

24 Q What did Mr. Watson say when you told him you
25 would have to have some assurances that there would be

1 traffic out there?

2 A (WITNESS DIMMERMAN) He understood that.

3 Q When you say he understood that, does that
4 mean that he said I understand, Harry, and don't worry,
5 I will give you some of my traffic?

6 A (WITNESS DIMMERMAN) He said I understand,
7 Harry. We will figure out a way to route something over
8 Katy.

9 Q How much Mazda traffic did you divert in this
10 traffic?

11 A (WITNESS DIMMERMAN) What?

12 Q How much Mazda traffic did you divert in the
13 Midlothian Wards Spur study?

14 A (WITNESS DIMMERMAN) Taking a sample study,
15 there's no way you could divert that unless --

16 Q The answer is zero, isn't it?

17 A (WITNESS DIMMERMAN) I believe Watson also had
18 some testimony with the Union Pacific.

19 Q What?

20 A (WITNESS DIMMERMAN) I believe Mr. Watson also
21 had some conversation with the Union Pacific.

22 Q What does that have to do with whether you
23 diverted any traffic?

24 A (WITNESS DIMMERMAN) I think it means that he
25 is going to originate traffic on the Union Pacific and

1 terminate it on the MKT at Midlothian, so that he has
2 competition on both ends.

3 Q And would this be traffic that today moves
4 over Port Hueneme?

5 A (WITNESS DIMMERMAN) I have no idea.

6 Q Where else is there traffic?

7 A (WITNESS DIMMERMAN) It could be additional
8 traffic. It could be additional port. I don't know.

9 Q The last exhibit is, happily for all of us, a
10 one-page exhibit on the Corpus Christi study.

11 Could we have that marked, Your Honor?

12 JUDGE HOPKINS: Yes. It will be marked for
13 identification as SFSP-C-76.

14 (The document referred to was
15 marked Exhibit No. SFSP-C-76
16 for identification.)

17 BY MR. MOATES: (Resuming)

18 Q Gentlemen, just for clarification again,
19 Corpus Christi, we have already talked at length about
20 trackage rights to Corpus Christi to get to Laredo. Is
21 this the study that is captioned Corpus Christi, I take
22 it, is the study of what you would gain if you served
23 the city and the port of Corpus Christi, is that right?

24 A (WITNESS SHERIDAN) This is the waybill study,
25 yes, sir, for Corpus.

1 Q I'm trying to clarify the fact this is not the
2 same study that we talked about already that said Laredo
3 at the top.

4 A (WITNESS SHERIDAN) No. This is Corpus proper.

5 Q Look at the third movement from the bottom of
6 the page, please, from Solvay, S-o-l-v-a-y, New York, to
7 Corpus Christi.

8 A (WITNESS SHERIDAN) Yes.

9 Q That was routed
10 Conrail-Chicago-MoPac-Robstown-TM. Do you see that?

11 A (WITNESS SHERIDAN) Yes.

12 Q If you had trackage rights to serve Corpus
13 Christi itself, couldn't you have handled that from St.
14 Louis, East St. Louis, and you could have eliminated
15 both the MoPac and possibly the TexMex?

16 A (WITNESS SHERIDAN) On this, as far as our
17 decision for no diversion, it moved through Chicago.
18 And it's our opinion that Conrail desires that movement
19 through Chicago. Granted they may have been able to get
20 it over Kansas City or St. Louis, but since it moved
21 Chicago, and we don't go to Chicago, we thought that we
22 should not take a diversion on it.

23 Q Doesn't Conrail enjoy better divisions over
24 St. Louis than it does over Chicago on transcontinental
25 traffic?

1 A (WITNESS SHERIDAN) On transcontinental
2 traffic? This isn't transcontinental traffic.

3 Q Excuse me. Traffic moving into the
4 southwestern territory.

5 A (WITNESS SHERIDAN) That I'm not sure what
6 their divisions are, sir. I know their desire sometimes
7 on certain parts of -- the upper parts of New York and
8 that country, they prefer -- they tell us to come over
9 the northern route.

10 Now, you know, I'm not sure exactly that zone
11 or what else have you. But since this moved Chicago,
12 and it's our feeling either Conrail had the influence to
13 move it there, or the MP did; in other words, through
14 Chicago, we did not feel that we would be able to --

15 Q So on moves like that one or the last one on
16 the page, which is Conrail-Chicago-MP, the reason you
17 didn't consider those as diversion candidates, if I
18 understand you, is that you didn't think that the
19 shipper would shift the gateway from Chicago to East St.
20 Louis?

21 A (WITNESS SHERIDAN) Yes, sir. And
22 additionally, of course, the applicants will also have a
23 single line from Chicago as well. And we just didn't
24 feel there was an opportunity for us there.

25 MR. MOATES: Thank you very much.

1 JUDGE HOPKINS: Let's take a 15-minute recess.

2 (Recess.)

3 JUDGE HOPKINS: Back on the record.

4 Mr. Kharasch.

5 REDIRECT EXAMINATION

6 BY MR. KHARASCH:

7 Q Yes. Some redirect, gentlemen.

8 On SFSP-C-60, page 2, there's a letter to Mr.
9 Novell and Mr. Dimmerman. Explain the purpose of the
10 last sentence of the letter discussing possible reprisal.

11 A (WITNESS DIMMERMAN) This is a letter from
12 myself to Dave Watson?

13 Q No. To Mr. Novell, C-60.

14 A (WITNESS DIMMERMAN) Well, I talked to Henry
15 the night before and discussed with him about the
16 trackage rights that we were seeking into Mexico, and
17 Henry is -- his mother was Mexican, his father was
18 French, and he is very knowledgeable about Mexico. And
19 one of the things, of course, he was concerned about was
20 that living down in the McAllen-Brownsville area that so
21 much of his traffic was dependent upon the SP. And I
22 had explained to him that he could actually support the
23 SP-Santa Fe merger, and at the same time assist us in
24 trackage rights, and that he would not have to be afraid
25 of any kind of retaliatory action by the SP by

1 supporting us, because he could do just what I told
2 him. He could also support the merger.

3 He asked me if I would give him a letter and
4 explain it, and that's what I did.

5 Q Would you look, please, at Exhibit SFSP-C-62,
6 SFSP analysis of diversion percents.

7 A (WITNESS DIMMERMAN) Yes, sir.

8 Q Now, first, are any of the trackage rights
9 sought by the MKT going to cut off the Santa Fe or
10 Southern Pacific's access to any point?

11 A (WITNESS DIMMERMAN) No, sir.

12 Q If you do not obtain the trackage rights you
13 seek in this case and the merger is approved, are there
14 many or few cases where the Santa Fe-Southern Pacific
15 can cut off the MKT's access?

16 A (WITNESS DIMMERMAN) Yes, sir.

17 Q Which, many or few?

18 A (WITNESS DIMMERMAN) Many. Many places. Many
19 places.

20 Q Now let's look at SFSP-C-62, page 1. If the
21 MKT obtains some trackage rights, are there some
22 instances where you in your diversion study thought that
23 the MKT would succeed in getting 100 percent diversion?

24 A (WITNESS DIMMERMAN) Yes, sir.

25 Q Explain under what circumstances in general

1 the MKT would succeed in diverting 100 percent of the
2 traffic movement from the applicant?

3 A (WITNESS DIMMERMAN) Well, where that would
4 come in is where we would have the exclusive single line
5 because of it. I'm trying to think of a point like, for
6 example, Pryor, Oklahoma, where it's now a local point
7 on the MKT; Pryor to Beaumont would be a local point;
8 Pryor to Corpus Christi would be a local point; Pryor to
9 Eagle Pass would be a local point; Pryor to Bayport
10 would be a local point. Anything of that type, it would
11 be exclusive, and it would be 100 percent.

12 Q In connection with some of Mr. Moates'
13 questions, there was some questions about changing of
14 assumptions. Are there any instances in this trackage
15 right study where either of you made any changing of
16 assumptions in order to obtain particular numbers or a
17 desired result?

18 A (WITNESS SHERIDAN) No, sir.

19 A (WITNESS DIMMERMAN) No, sir.

20 Q In SFSP-C-62, at the bottom righthand corner
21 you see a total of 29,207. Do you see that number?

22 A (WITNESS SHERIDAN) Yes, sir.

23 Q Look at page 13 of your statement, the joint
24 statement. I don't see the number 29,207,706 in
25 dollars. I see 27.9 and 27.4.

1 A (WITNESS DIMMERMAN) Yes, sir. 27.9 and 27.4.

2 Q Do you know where the figure 29,207,706 comes
3 from?

4 A (WITNESS DIMMERMAN) No, sir.

5 Q And you, Mr. Sheridan?

6 A (WITNESS SHERIDAN) No, sir.

7 Q You had some discussion with Mr. Moates about
8 use of information about shippers and consignees in
9 making an evaluation of a potential diversion. In your
10 opinion is it desirable to have information about
11 shippers and consignees?

12 A (WITNESS DIMMERMAN) Yes, sir.

13 Q Was such information available in all parts of
14 the study that you were conducting here?

15 A (WITNESS SHERIDAN) No, sir.

16 A (WITNESS DIMMERMAN) No, sir.

17 Q What part was it not available?

18 A (WITNESS SHERIDAN) In the waybill study the
19 information was not available as to shipper or
20 consignees.

21 Q Do you know of any way you could have obtained
22 that information from the waybill study?

23 A (WITNESS SHERIDAN) No, sir. We have been
24 told it is not available.

25 A (WITNESS DIMMERMAN) I think if I remember

1 right, Mr. Kharasch, the one percent waybill study was
2 put out so that it could not be used by other railroads
3 to secure traffic solicitation, and so the shipper and
4 the consignee have been left off because of that reason.

5 Q In making an evaluation of potential diversion
6 is it desirable, in your opinion, to analyze the
7 existing movement, which is subject to diversion, and
8 determine whether one carrier in the existing route of
9 movement could carry all the way or not? The question
10 is is it desirable to analyze such a fact?

11 A (WITNESS DIMMERMAN) Yes.

12 A (WITNESS SHERIDAN) Yes.

13 Q And have you analyzed such facts when they
14 were available to you?

15 A (WITNESS SHERIDAN) Yes, sir.

16 A (WITNESS DIMMERMAN) Where available.

17 Q And if your study had not analyzed such facts,
18 would it have been as good as a diversion study?

19 A (WITNESS SHERIDAN) Well, in my opinion, like
20 I think I have already said, we took the information
21 that was available to us and made the best study that we
22 could from documents and information available.

23 A (WITNESS DIMMERMAN) If we had had all the
24 information available, it would have been a better
25 study. Let me rephrase that. If we had had all of the

1 information that we had on our opposition study, it
2 would have been a better study, easier for Mr. Moates as
3 well as ourselves.

4 Q In making an evaluation study, is it important
5 to check the status of origin and destination points as
6 open or closed points?

7 A (WITNESS DIMMERMAN) Yes, sir.

8 A (WITNESS SHERIDAN) Yes, sir.

9 Q Did you, in making your study, where you could
10 check such point, status of point?

11 A (WITNESS DIMMERMAN) Yes, sir.

12 Q Explain again, if you have not already,
13 explain how you went about checking the status of a
14 shipper as an open or closed point on the railroad.

15 A (WITNESS SHERIDAN) On checking the
16 information we used what we have called the MKT list of
17 industries at competitive points. We used that to the
18 extent that we could. In many cases, industries were
19 not listed, and we would call the sales agency
20 responsible for that particular area and have them check
21 it out, whether the industry was open or closed and who
22 served it, and get back to us with the information.

23 Q Are there any instances in this study we're
24 talking about where when you didn't have information
25 about routing for the whole movement, the whole route of

1 movement, you just terminated the movement short of
2 final destination for purposes of analysis?

3 A (WITNESS SHERIDAN) Would you repeat that, sir?

4 Q Take this example. Suppose you know that the
5 destination is San Francisco, and you know that the
6 origin is Dallas, and you only had data somehow that
7 went Dallas, and it got it to Kansas City, we will say,
8 and you didn't know how it was carried beyond there.
9 Would you then treat that as a Dallas-Kansas City
10 movement; that is, truncating it there?

11 A (WITNESS DIMMELMAN) No, sir.

12 A (WITNESS SHERIDAN) No, sir.

13 Q Now, in connection with Exhibit SFSP-C-72, MKT
14 trackage rights study movement, would you or would Mr.
15 Anderson be the proper witness or witnesses to discuss
16 the sampling technique and the procedure of considering
17 movement between trackage right segments only on the
18 origin side?

19 A (WITNESS SHERIDAN) It would be totally Mr.
20 Anderson. All of our documents on this study from the
21 applicants as well as the waybill study were furnished
22 to us by him. He was in charge of doing the sampling
23 and furnishing us with the information.

24 Q All right. And, finally, let's look for a
25 moment at SFSP Counsel's Exhibit C-68, service plan by

1 MKT trackage rights segments. You recall some
2 examination from Mr. Moates about three times a week
3 trains and so on?

4 A (WITNESS DIMMERMAN) Yes, sir.

5 Q Do you anticipate more traffic in total on the
6 San Antonio-Corpus Christi rights or on the San
7 Antonio-Eagle Pass rights?

8 A (WITNESS DIMMERMAN) We anticipate handling
9 more traffic over Corpus Christi.

10 Q Is that because of the addition of Corpus
11 Christi local traffic in addition to Mexican traffic?

12 A (WITNESS DIMMERMAN) Somewhat. But really,
13 Laredo is a busier gateway than Eagle Pass, and so the
14 combination of the two would make it so.

15 Q Would the volume of traffic have an effect on
16 the frequency of trains?

17 A (WITNESS DIMMERMAN) Yes, sir.

18 MR. KHARASCH: I have no further questions.

19 JUDGE HOPKINS: Mr. Moates?

20 MR. MOATES: No.

21 JUDGE HOPKINS: Thank you. The show is over,
22 boys. You're excused.

23 (The witnesses were excused.)

24 JUDGE HOPKINS: Would you like this testimony
25 received in evidence?

1 MR. KHARASCH: We move the testimony in
2 evidence and, Your Honor, if you please, I would like
3 to, since I anticipate a similar motion, I would like
4 SFSP-C-72 to await admission until we can have Mr.
5 Anderson's testimony.

6 MR. MOATES: I'm not sure of the purpose of
7 that. I understand why Mr. Kharasch wants Mr. Anderson
8 to try to explain the problem, but I identified these
9 with these witnesses as sample movements that they have
10 affixed the term 06 to, and they agreed to that.

11 JUDGE HOPKINS: I think they were able to
12 answer as well as they could. Now, if you want to cross
13 redirect, if Mr. Moates wants to question Mr. Anderson
14 some more, he can do that. But I don't see any reason
15 why this can't be received. If you want to ask Mr.
16 Anderson some further things, Mr. Kharasch.

17 MR. KHARASCH: All right. If you will allow a
18 question or two of Mr. Anderson.

19 JUDGE HOPKINS: I will. Your exhibits, then,
20 will be received in evidence.

21 (The documents previously
22 marked Exhibit Nos.
23 SFSP-C-60 through 76 for
24 identification were
25 received in evidence.)

1 Whereupon,

2 THOMAS G. TODD

3 was recalled as a witness and, having been previously
4 duly sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ROPER:

7 Q Would you state your name for the record,
8 please?

9 A My name is Thomas G. Todd.

10 Q And, Mr. Todd, are you the same person -- are
11 you the same Mr. Todd who appeared previously in this
12 proceeding?

13 A Yes, I have.

14 Q You understand that you're still under oath?

15 A Yes, sir.

16 Q As part of MKT's presentation in this
17 proceeding did you prepare a verified statement which
18 appears in MKT-21?

19 A Yes, I did.

20 Q And is that your testimony in support of the
21 trackage rights application as filed by MKT?

22 A It is.

23 Q Do you have any corrections or changes to make
24 on that statement?

25 A No, sir.

ALDERSON REPORTING COMPANY, INC.

20 F ST., N.W., WASHINGTON, D.C. 20001 (202) 628-9300

00140233

1 Q Did you also prepare Exhibit No. 13, which is
2 the operating plan of MKT which appears in MKT 19?

3 A Yes, I did.

4 Q Do you have any additions or changes to make
5 to the operating plan?

6 A No.

7 Q Is your verified statement in Exhibit No. 13
8 true and correct to the best of your knowledge and
9 belief?

10 A Yes, sir, they are.

11 MR. ROPER: The witness is available.

12 CROSS EXAMINATION

13 BY MR BLASZAK:

14 Q Good afternoon, Mr. Todd. Mike Blaszak for
15 the applicants again.

16 A Good afternoon.

17 Q I'd like to go into your background a little
18 bit. You testify about your background at the beginning
19 of your statement, MKT 21.

20 First of all, can you tell me where you were
21 terminal superintendent for the Katy?

22 A I was terminal superintendent for the MKT at
23 Parsons, Kansas.

24 Q And what years were you terminal
25 superintendent there?

1 A I believe from June of 1965 until September of
2 1966.

3 Q Do you recall your duties and responsibilities
4 in that position?

5 A Yes. I was in charge of the transportation
6 functions for the Parsons Terminal and also had a road
7 territory for portions of the Kansas City, Chanute and
8 Joplin subdivisions.

9 Q Mr. Todd, where were you division
10 superintendent for the MKT?

11 A I've been division superintendent both on the
12 MKT southern division, at which time the headquarters
13 was at Waco, and later assigned to Denison. I was also
14 division superintendent on the northern division with
15 headquarters at Parsons, Kansas.

16 Q Okay. Approximately which years did you
17 occupy each of those positions?

18 A I occupied the southern division
19 superintendent's position from June of '68 until October
20 of '68 and then transferred to the northern division,
21 occupied that division until December of 1969 and
22 transferred back to the southern division.

23 Q Are the southern and northern divisions the
24 Katy's only two divisions?

25 A Yes, they are.

1 Q Where is the dividing point between the two?

2 A Normally the Oklahoma-Texas line, with the
3 exception of the trackage that extended northward out of
4 Wichita Falls. It was always considered as part of the
5 southern division.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Q What were your duties and responsibilities as
2 division superintendent?

3 A I was in charge of transportation functions,
4 road and yard.

5 Q On that division?

6 A Yes.

7 Q You also stated that you were assistant
8 general manager. Where were you headquartered and what
9 were your duties in that position?

10 A Well, following -- I was superintendent of the
11 system for a short while and then assigned the title of
12 assistant general manager, with supervisory of the
13 transportation functions of the entire system.

14 Q For what years did you hold that position?

15 A If I remember correctly, sir, the assistant
16 superintendent job was in 1971 and the assistant general
17 manager job was '72 and until mid-summer, probably
18 August of '73.

19 Q And after that you were general manager of the
20 Katy?

21 A That's correct.

22 Q What additional duties and responsibilities
23 did you have as general manager?

24 A As general manager, my duties and
25 responsibilities were essentially the same, except that

1 I was reporting directly to the vice president of
2 operations.

3 Q Okay. Mr. Todd, on page 2 you state that the
4 merger will, if approved, will reduce or eliminate rail
5 competition in certain areas of interest to the Katy.
6 What is the source of that statement? Is this your own
7 conclusion or did that come from someplace else?

8 A Well, the thrust of that statement results, of
9 course, from, as Mr. Gastler pointed out, meetings that
10 the officers had with regard to the pending merger and
11 where it would affect our operations and our traffic.

12 Q What are those areas of interest to MKT?

13 A It's been discussed here at quite some length,
14 I believe: the traffic from southwest Kansas and Kansas
15 City, in that area, to the Gulf or to the Mexican
16 gateways, primarily.

17 Q It's just the general area that the Katy
18 serves, in addition to these market extensions?

19 A Yes.

20 Q Mr. Todd, let's turn to Katy's request for
21 trackage rights between San Antonio and Corpus Christi
22 or, in the alternative, between San Antonio and Eagle
23 Pass. You state on pages 2 to 3 of your statement that
24 you reviewed the Applicants' operating plan, timetables
25 and maps in preparing your testimony.

1 I take it you did so with respect to both of
2 these requests?

3 A Both --

4 Q Both the Corpus Christi and the Eagle Pass?

5 A Yes. We used the same materials.

6 Q Would your answer be the same with respect to
7 all of the other trackage rights requests the Katy has
8 made?

9 A Yes.

10 Q Now, MKT's interrogatory responses indicate
11 that you used no other documents in preparing your
12 statement in your annual operating plan; is that
13 correct?

14 A That's correct.

15 Q You also stated that you observed the terminal
16 areas and the lines involved. And did you do so with
17 respect to SP's San Antonio-Corpus Christi line?

18 A Yes, I made an observation of that line.

19 Q Okay. Can you tell me about when you went?

20 A I can't give you the exact date. I can tell
21 you it was in the summer.

22 Q The summer of '80?

23 A Yes, sir.

24 Q Okay. Could you tell me about how much time
25 you spent on the line?

1 A Of course, I was not privileged to have a high
2 rail trip, as you would make on an inspection. So I did
3 the best I could by observing the track conditions at
4 crossings and various locations. And that was done on
5 an afternoon and later on toward evening. Of course,
6 the days were long then as I remember.

7 I can't give you the exact time.

8 Q So it's less than a day, in other words?

9 A A little less than a day.

10 Q Well, what parts of the San Antonio to Corpus
11 Christi line did you actually observe? The entire line
12 or just parts of it, or what?

13 A Parts of it where I could observe it.

14 Q Okay. Did you go all the way from San Antonio
15 to Sinton?

16 A Yes.

17 Q Did you go from Sinton to Odem?

18 A I beg your pardon?

19 Q Did you go from Sinton to Odem?

20 A Yes, I did.

21 Q And from Odem to Corpus Christi?

22 A Yes.

23 Q And if I understand your testimony, you
24 observed from grade crossings and that sort of thing?

25 A That's correct.

1 Q Now, you state in your testimony or, excuse
2 me, on page 1 of the operating plan, that MP's line
3 between Sinton and Corpus Christi is in good condition.
4 However, you failed to provide an opinion on the
5 condition of the SP line between San Antonio and
6 Sinton.

7 Based on your observations, do you have an
8 opinion regarding the condition of this line?

9 A The SP line from San Antonio to Sinton?

10 Q Yes, sir.

11 A It's essentially a Class II line, where some
12 of it is laid with heavier rail, and they operate at
13 speeds of 40 miles an hour. I consider it adequate for
14 the traffic that is being on it.

15 Q The traffic that's on it today?

16 A And as far as I know that would be on it.

17 Q Are you aware of any slow orders in existence
18 on this line?

19 A I am not privileged to the slow orders.

20 Q Do you know if upgrading of this line is
21 proposed under the Applicants' operating plan?

22 A I know there had been some work going on.

23 Q What kind of work?

24 A Some rail had been laid; a change-out.

25 Q Did you observe this during your trip?

1 A Yes. A short amount. It's not a big job.

2 Q Now, Mr. Todd, when exactly would MKT's Corpus
3 Christi train leave Slean Yard in San Antonio? Do you
4 have a set schedule, or how do you plan to operate that
5 train?

6 A No, if we were awarded the trackage rights I
7 would work that out with the Southern Pacific operating
8 personnel to leave at the most convenient time.

9 Q When would the MKT train leave Corpus
10 Christi?

11 A That too would be flexible.

12 Q Wouldn't you need to work with both the --
13 well, with all three, the SP, the Texas-Mexican, and the
14 MoP, on that?

15 A Yes.

16 Q Now, Mr. Todd, we asked the Katy what the
17 average train size on this line would be in discovery,
18 and we were told that we could figure it out ourselves
19 from the traffic tapes MKT was providing us. We are
20 trying to do that.

21 However, I'm going to ask you now whether you
22 have calculated an average size for this Corpus Christi
23 train in developing your operating plan.

24 A Well, the information I was given was, as I
25 recall, about 4200 carloads would be expected to be our

1 traffic.

2 Q That is per year?

3 A Per year. Now, based on that, I guess we can
4 assume that the average size would be something like 25
5 cars a train.

6 Q Now, our interrogatory 3 asked about the route
7 to be used between Sloan Yard, the proposed connection
8 near Tower 112 in San Antonio, and the Corpus Christi
9 subdivision of the SP. I've got available copies of
10 MKT's response, which I think we could hand out now so
11 that everybody has one and can follow along.

12 I don't intend to mark this as an exhibit,
13 Your Honor. This is already in the record. I put the
14 cover sheet on there, but we are interested in the
15 response to interrogatory 3 right now.

16 MR. KHARASCH: The interrogatories are not in
17 evidence, counsel.

18 MR. BLASZAK: Well then, can we mark this as
19 an exhibit?

20 JUDGE HOPKINS: Do you want it in evidence?
21 If he doesn't want it there's no reason that it has to
22 be.

23 MR. BLASZAK: Let's just leave it as something
24 we can refer to and we'll ask the witness to testify to
25 it.