

F.D. 30400, et al. - Pages 6429 thru 6488

1 MR. DELANEY: I beg your indulgence.

2 JUDGE HOPKINS: Is that all did you say?

3 MR. DELANEY: No. I just asked for your  
4 indulgence. I just want to check.

5 (Pause.)

6 That's it. Thank you, sir.

7 JUDGE HOPKINS: Thank you.

8 Now, Mr. White.

9 MR. STEPHENSON: Your Honor, I have a couple  
10 of questions that were prompted by the questions by the  
11 Department of Justice, and I wonder should I come  
12 after?

13 MR. WHITE: Why don't you go now?

14 BY MR. STEPHENSON:

15 Q You indicated in response to a question from  
16 the attorney for the Department of Justice that you  
17 would expect the same -- and I am paraphrasing now; I  
18 may not have gotten it exactly -- the same extent of  
19 cooperation from the merged company if you got your  
20 trackage rights in terms of interchange in traffic to  
21 you at San Antonio that you have today.

22 A I said because we have a joint yard agreement  
23 in Corpus Christi and a joint freight office agreement,  
24 our coming to San Antonio would not require the same  
25 thing except maybe terminal services. And it's natural

1 for us to ask the SF to furnish on the same basis we  
2 furnish them in Corpus Christi to them for their  
3 engines.

4 Q Okay. So you had reference in your answer to  
5 the cooperation at the interchange at Corpus Christi  
6 itself, how the interchange is affected?

7 A Well, over there this would be a little  
8 different. We will not have a joint yard in San  
9 Antonio. All I'm saying is we have established a  
10 relationship because we do handle a joint yard with the  
11 Southern Pacific forces in Corpus Christi where we are  
12 the operating carrier, you see.

13 Q All right. You've answered my question.

14 Now, with respect to the question about how  
15 bids come in from Conasupo, am I correct in my  
16 understanding that Conasupo will request bids, for  
17 example, for 10,000 metric tons of wheat to be delivered  
18 at the Laredo gateway?

19 A Right.

20 Q And they will put that bid out, and  
21 Continental and Cargill and the other major grain  
22 companies will --

23 A Bid on it?

24 Q They will bid on it, but before they bid on it  
25 they will talk to the various railroads that can either

1 on a single line basis or a joint line basis get them a  
2 route to Laredo.

3 A Right.

4 Q And they will then take the lowest bidder in  
5 terms of the railroads, incorporate that into their bid  
6 price and give Conasupo a bid price which includes  
7 transportation.

8 A To the middle of the ridge, at the border,  
9 whether Brownsville, Laredo, Eagle Pass or whatever.

10 Q And at that point, Conasupo will then award  
11 the bid to the lowest total transportation and grain  
12 supply dollar.

13 A That's my understanding, that they have the  
14 right to refuse any and all bids depending upon what  
15 conditions. But it's logical to assume that they could  
16 give it to the lowest bidder. That's what they  
17 advertise to begin with.

18 MR. STEPHENSON: That's all I have. Thank you.

19 JUDGE HOPKINS: Mr. White.

20 REDIRECT EXAMINATION

21 BY MR. WHITE:

22 Q Do you recall, Mr. Ramos, that Mr. Stephenson  
23 asked questions about Mexican ownership of TexMex. As a  
24 point of clarification, is TexMex indirectly 100 percent  
25 owned by Mexico?

1           A     Yes, it is, in this manner: TexMex is owned  
2 now since November 29, 1982 by a Delaware Corporation by  
3 the name of Mex Rail, Inc. Mex Rail, Inc. in turn is  
4 owned by TMM -- that's Transportacionis Maritamos  
5 Mexicanas -- a steamship line worldwide with offices in  
6 Mexico City.

7           Now, the steamship line in turn has a majority  
8 of the capital is private; however, there is 45 percent  
9 ownership by the Mexican government. So you can say the  
10 government's a minority stockholder of TMM who  
11 indirectly owns TexMex through Mex Rail.

12           Q     Sir, you were asked by Mr. Stephenson  
13 questions related to an opinion of yours that was  
14 reported in the Texas Railroad Magazine in 1980  
15 concerning a former attempt at a Santa Fe-Southern  
16 Pacific merger. Do you have the same opinion of that  
17 merger today?

18           A     Well, you know, things change during the  
19 years. Of course, there's a little difference involved  
20 or somewhat difference involved. At the time in 1980  
21 and 1981 we were handling more cars or we were offered  
22 more cars than we could handle because Mexico was unable  
23 to receive everything we offered, and that's how this  
24 embargo came about.

25           And so everybody was handling the maximum, all

1 the border points including Brownsville, Laredo, Eagle  
2 Pass and so on, the whole works was. So naturally, I  
3 felt that we were handling all we could.

4 As time goes on, and I related here to Mr.  
5 Stephenson also that I find it difficult to work, to  
6 compete with the companies in Laredo with the SP. It  
7 has to do mostly with their rate department issues and  
8 in San Francisco. I had to go over the head of the  
9 Houston rate department to get something done. I have  
10 to complain either to the president Mr. McNear, to Bob  
11 Sharp or to different other people over these people,  
12 and I have been able to get some results.

13 If we don't reduce a certain amount of  
14 divisions, they wouldn't go along, or if we leveled the  
15 rate, they wouldn't join, saying they wouldn't join,  
16 saying they couldn't afford to compete.

17 And so, therefore, I feel today a little  
18 different as to that statement I made simply because of  
19 my experience with the Eagle Pass gateway. Like I  
20 stated to him a while ago at the end of the questioning,  
21 I think I made it clear how we feel because of the  
22 different things that have changed since then.

23 MR. WHITE: Thank you, Mr. Ramos. That's all  
24 I have.

25 JUDGE HOPKINS: Anything further?

1 MR. STEPHENSON: Nothing further, Your Honor.

2 MR. WHITE: Your Honor, should I move the  
3 admission of his testimony now?

4 JUDGE HOPKINS: Go ahead.

5 MR. WHITE: I move the admission of Mr. Ramos'  
6 verified statement in opposition, TE-7, and his verified  
7 statement embodied in his trackage rights application,  
8 pages 2 to 6.

9 JUDGE HOPKINS: No objection?

10 (No response.)

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

13 MR. STEPHENSON: Your Honor, I move admission  
14 of the Exhibits 79 through 86.

15 JUDGE HOPKINS: Any objection?

16 MR. WHITE: No objection.

17 JUDGE HOPKINS: They will be received in  
18 evidence.

19 (The documents previously  
20 marked Exhibits Nos.  
21 SFSP-C-79 through 87  
22 for identification were  
23 received in evidence.)

24 MR. WHITE: Your Honor, Texas Mexican would  
25 like to call Mr. Ramirez to the stand.

1 Whereupon,

2 MANUEL RAMIREZ

3 was called a witness by counsel for the Texas Mexican  
4 Railway and, having been first duly sworn, was examined  
5 and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. WHITE:

8 Q Sir, would you state your name and title for  
9 the record?

10 A My name is Manuel Ramirez. I'm traffic  
11 manager from the Texas Mexican Railway.

12 Q And where's your office?

13 A Laredo, Texas at Washington and Convent.

14 Q Mr. Ramirez, did you cause to have prepared a  
15 verified statement which accompanies the application for  
16 Texas Mexican's trackage rights application at pages 12  
17 through 17 of the application?

18 A Yes, sir.

19 Q And, Mr. Ramirez, did you work on and are you  
20 the sponsoring witness of a document called "Texas  
21 Mexican Railway Company Responsive Statement to  
22 Applicants' Diversion Study?"

23 A Yes, sir.

24 Q Are both documents true and accurate to the  
25 best of your knowledge and belief?



1 A Yes, sir.

2 MR. WHITE: You may cross examine.

3 MR. STEPHENSON: Your Honor, I would like to  
4 have introduced as applicants' 88 -- I misspoke  
5 previously. I offered the admission of Exhibits through  
6 86.

7 JUDGE HOPKINS: Yes. The next one is 88.

8 MR. STEPHENSON: So the next could be 88.  
9 This is a collection of traffic movements from the  
10 TexMex traffic diversion study.

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

13 (The document referred to was  
14 marked Exhibit No. SFSP-C-88  
15 for identification.)

16 CROSS EXAMINATION

17 BY MR. STEPHENSON:

18 Q Mr. Ramirez, you have been TexMex's traffic  
19 manager for how long?

20 A Approximately ten years.

21 Q And what are your duties as the traffic  
22 manager?

23 A Taking care of rates, divisions and other, you  
24 know, traffic matters.

25 Q How many of your 44 years with TexMex have

1       been spent in the traffic-related areas?

2           A       I would say about 25, between 25 and 30.

3           Q       In connection with the handling of divisions,  
4       have you been called upon since 1980 and the passage of  
5       Staggers to renegotiate divisions with either Southern  
6       Pacific or Missouri Pacific?

7           A       I would have to say that only with the  
8       Southern Pacific.

9           Q       Have you been approached by the Missouri  
10       Pacific and requested that you renegotiate divisions  
11       with them?

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1 A I can only remember one time that they have  
2 requested it, the adjustment of the divisions.

3 Q Was that recent?

4 A No, that's quite some time ago.

5 Q Prior to passage of Staggers or subsequent?

6 A It must have been about -- let's see, about  
7 three years ago, and it was a very small case.

8 Q Have you renegotiated? As a result of your  
9 discussions with Southern Pacific, have you renegotiated  
10 any of the divisions as between our two companies?

11 A In special cases we have.

12 Q This is what type of traffic?

13 A I would have to say mostly grain.

14 Q Moving under contract?

15 A Some of it moving under contract, other moving  
16 on just regular rates.

17 Q And what have been the reasons for  
18 renegotiating the divisions?

19 A Well, one of the reasons is when you took over  
20 the line or trackage rights from Kansas City to St.  
21 Louis, and others have been in order to help you out, to  
22 get into some rates with the other lines.

23 Q In the years that you have been with Tex Mex,  
24 has Missouri Pacific always solicited for its long haul  
25 all the way to the border?

1           A     Not really, not before the merger. Before the  
2 merger we had pretty good, you know, working relations  
3 with them, and also with the Southern Pacific. But  
4 after the merger it just changed.

5           Q     So you find that they now more often than not  
6 are working for their long haul to the border?

7           A     That is correct.

8           Q     Or to or from the border?

9           A     Right.

10          Q     Do you have anything to add to Mr. Pamos'  
11 comments about the new so-called run-through service  
12 between MoP and --

13          A     No, I think he explained it pretty well.

14          Q     Is it taking it out of Tex Mex's hide in terms  
15 of traffic diversions?

16          A     Well, you know, there's no way right now that  
17 we could compete with that train, and it's getting, you  
18 know, a little -- well, we need to find a way to compete  
19 with them, yes.

20          Q     And what are the benefits to shippers of this  
21 new operation or new service that UP offers? What are  
22 the benefits that shippers see?

23          A     As far as I know, the benefit is the lower  
24 inventory that they have to keep in Mexico. In other  
25 words, everybody's trying to lower their inventory, and

1 if you have that kind of a schedule then you are going  
2 to be able to, you know, perform much better.

3 Q To your knowledge, are they making their -- is  
4 it an advertised schedule?

5 A I understand they are making it.

6 Q And you indicate that there are going to be --  
7 there is going to be a competitive response from Tex  
8 Mex, you hope?

9 A Mr. Ramos is supposed to be working on that,  
10 yes.

11 Q Are the trackage rights, or the proposed  
12 trackage rights to San Antonio, are those one of the  
13 competitive responses that you would see responding to  
14 this MoP-UP threat?

15 A Well, I don't see it that way. I think that,  
16 in other words, we need the trackage rights to connect  
17 with the Katy in order to be able to more properly  
18 compete with the Union Pacific. A two-line pro-rate  
19 would put us in a better position to, you know, be able  
20 to negotiate rates which could compete with the UP  
21 rates.

22 Q What are some other approaches that you can --  
23 the Tex Mex is capable of doing in order to stay  
24 competitive with the new UP-NDM service?

25 A Well, the only approach that I really see is

1 for the SP and connections to get together with the Tex  
2 Mex and give the same kind of service.

3 Q Do you feel that the service, the southbound  
4 service, is better under this new MoP-UP service?

5 A Oh, much better, much better.

6 Q And reliable?

7 A Yes.

8 Q Has Tex Mex ever had scheduled service with  
9 any of its connections?

10 A Yes. We used to, years back, have a very good  
11 schedule with the Southern Pacific to St. Louis.

12 Q What would --

13 A But --

14 Q Excuse me, go ahead.

15 A But business I guess slowed down and the  
16 Southern Pacific doesn't run the trains the way they  
17 used to, and it's hurting.

18 Q What kind of volumes did you have in those  
19 days?

20 A Well, there wasn't -- I would say, let's say  
21 trains of about between 50 and 70 cars in it.

22 Q On a daily basis?

23 A Yes.

24 Q What's the interchange volume today?

25 A It's hard to say on a daily basis, because

1 they don't run the trains on a daily basis. So you  
2 know, they accumulate a certain number of cars and then  
3 they run the trains. We have trains -- I mean, days of  
4 130 or 140, and then it drops down to say 45. So  
5 there's kind of a misleading -- you know, one long  
6 train, one small train, and that's more or less the way  
7 the operation is right now.

8 Q What was the biggest interchange that Tex Mex  
9 has had with the Missouri Pacific in your recent memory,  
10 on a monthly basis or on an annual basis?

11 A Recently?

12 Q Yes.

13 A Our interchange with the Missouri Pacific has  
14 dwindled to almost, I'd say, 13 cars a day.

15 Q But what has it been in years past?

16 A Well, some years back it was so good that Mr.  
17 Ramcs made a new track at Robbstown, which is our main  
18 interchange with the MoPac, for 100 cars. But that's,  
19 you know, when business changed, especially with the  
20 merger. Before the merger, I mean, it wasn't that bad,  
21 but after the merger it really killed us.

22 Q Have you talked to your counterpart or  
23 counterparts at the Union Pacific in an effort to see if  
24 you can work out some kind of an agreement or  
25 understanding as to how additional traffic might be

1 generated that would flow over the Tex Mex?

2 A Well, you know, I contact them every time I  
3 need rates. But you know, with the merger, as I say,  
4 they are using more of their single line than  
5 connections.

6 Q Is there any specific type of traffic, any  
7 specific commodity or customers, that have been impacted  
8 by the UP merger?

9 A Let me hear the question again, please?

10 Q Has there been any specific type of commodity,  
11 like soda ash or grain or anything of this nature, that  
12 has been impacted? That is, that has been taken away  
13 from or diverted from the Tex Mex?

14 A The grain.

15 Q That's the key, the big one?

16 A Most of the grain moving through Laredo is  
17 originating on the UP origins, and if they don't  
18 originate on the UP origins we are non-competitive on a  
19 three-line basis.

20 Q Has the Missouri Pacific cancelled any rates  
21 with Tex Mex since the merger?

22 A No, they haven't cancelled any. At first they  
23 were not giving the rates. Before the merger, you know,  
24 we used to have a kind of an agreement with the Missouri  
25 Pacific whereby the only times they wouldn't give me a



1 route were local stations on the Missouri Pacific. Any  
2 competitive station I would have a route.

3 When the merger came around, then they  
4 cancelled -- well, not cancelled. They wouldn't give me  
5 routes to points on the Missouri Pacific or the Union  
6 Pacific. Lately they have given us routes on grain cut  
7 of the Missouri-Kansas-Nebraska area.

8 Q Give me some examples of areas where, so far  
9 as Union Pacific originations are concerned, where they  
10 wouldn't give you routes?

11 A Well, Chicago. They wouldn't give me a route  
12 on an application between Chicago Laredo, claiming that  
13 Chicago was a local point on their line. Kansas City,  
14 Omaha, those are the points, you know, that they claimed  
15 that they were local on their line and wouldn't give me  
16 a route.

17 Q Do you agree with Mr. Ramos, your boss, that  
18 Nagales and Calexico are not competitive with Eagle Pass  
19 and Laredo?

20 A I don't think they have -- you know, we on the  
21 eastern portion of the Rio Grande haven't got anything  
22 to do with that, what moves there. I would say Presidio  
23 and the west.

24 Q Presidio?

25 A And west.

1 Q So you wouldn't even consider El Paso as being  
2 rail competitive to you?

3 A No. Brownsville, Eagle Pass are the ones.

4 Q Do you consider Presidio competitive or not  
5 competitive?

6 A Noncompetitive.

7 Q All right. So your competition is Eagle Pass  
8 and Brownsville?

9 A Right.

10 Q Is it your opinion that Eagle Pass is Southern  
11 Pacific's favorite gateway?

12 A Yes.

13 Q You've seen these figures that are shown on  
14 Exhibit No. 82, showing the downturn in interchange over  
15 Eagle Pass over the last few years?

16 A Well, I feel that the reason that you haven't  
17 got traffic through Eagle Pass is on account of the  
18 rates, noncompetitive rates with the MoFac, with the UP  
19 to Laredo.

20 Q But whatever, we're not competitive over Eagle  
21 Pass?

22 A (Nods affirmatively.)

23 Q The answer is yes?

24 A Yes.

25 Q At page 14 of your verified statement, Mr.

1 Ramirez, you state that SPSF will have a big advantage,  
2 as they will be able to quote single line rates from  
3 such gateways as New Orleans, Memphis, St. Louis, and  
4 other points to the Mexican crossings. Why is that an  
5 advantage that Southern Pacific doesn't have today?

6 A Well, my belief is this, that if you -- after  
7 the merger, if you more or less use the same policies of  
8 the Union Pacific system, you are going to go single  
9 line, and you're going to have lower single line rates  
10 than joint line rates to Laredo.

11 Q I understand that, except that you understand  
12 that Santa Fe doesn't go to St. Louis, it doesn't go to  
13 New Orleans, it doesn't go to Memphis. Southern Pacific  
14 does today go to all those places. And I guess what I'm  
15 asking is how is it going to be different after the  
16 merger?

17 Don't we solicit for our single line rate  
18 today, or didn't we in 1982, the year of your traffic  
19 diversion study?

20 A Well, I don't think that you are soliciting at  
21 the present time single line, the SP, talking about the  
22 SP. I don't think that you're soliciting single line,  
23 but my belief is that after the merger the policies are  
24 going to change to the way the Union Pacific is  
25 operating.

1 Q In other words, you think that today, if I  
2 understand what you're saying, you think that today for  
3 a movement, say, out of New Orleans headed for a border  
4 crossing, that today Southern Pacific won't be  
5 soliciting or doesn't solicit for movement via Eagle  
6 Pass, but instead solicits for a joint move with the Tex  
7 Mex?

8 A That's my belief.

9 Q Even though we make more revenue, all the  
10 revenue, by taking it to Eagle Pass?

11 A Yes.

12 Q What is the distance, the relative distance,  
13 if you know, between New Orleans and Eagle Pass versus  
14 New Orleans and Corpus Christi?

15 A New Orleans and Eagle Pass against New Orleans  
16 and Corpus Christi?

17 Q Yes.

18 A I would have to say that there must be over  
19 200 miles difference.

20 Q With Eagle Pass being more or less?

21 A More.

22 Q So your testimony would be the same with  
23 respect to, basically with respect to Memphis and St.  
24 Louis as well?

25 A Yes.

1 Q Now, if we can talk about your traffic  
2 diversion study, you worked, if I understand it, with a  
3 sample of 444 waybills?

4 A Yes, sir.

5 Q And those waybills were taken from Tex Mex's  
6 1982 traffic base?

7 A May I explain how I got involved with that  
8 study?

9 Q Sure.

10 A Okay. First, Mr. Ramos, who's got 50 years  
11 experience, Mike Rodriguez, the auditor, who's got 40 or  
12 more, Zaragoza Saliz, who's got six, and myself, who's  
13 got 45, got together and set up the rules. I was  
14 involved in the rules.

15 And then after we set up the rules I was  
16 involved in just applying the rules to the waybills.

17 Q Okay, you were the evaluator?

18 A Right.

19 Q You were the man who determined whether a  
20 movement would be diverted or not?

21 A Right.

22 Q But you diverted them or didn't divert them  
23 based upon the rules that had been set up by you and  
24 these other graybeards?

25 A That's correct.

1 Q I guess that's a pretty good job at the Tex  
2 Mex. Most everybody works over 40 years, huh?

3 A Yes. I guess you get in there, you know, it's  
4 so difficult to get away from it.

5 Q Let's talk about the four rules that you  
6 followed. The first rule, rule number one, was that all  
7 Conasupo traffic could be subject to a 50 percent  
8 diversion.

9 A Right.

10 Q Now, focusing on the word "could," by using  
11 the word "could" as opposed to "would" are you  
12 suggesting that perhaps Conasupo would divert some of  
13 the traffic and they wouldn't divert other traffic? Or  
14 are you saying that all Conasupo traffic automatically  
15 was diverted 50 percent?

16 A No. We feel that it would.

17 Q Not that it's possible, but that it would  
18 divert on a 50 percent basis?

19 A Uh-hmm.

20 Q Okay. What was the basis for your belief?

21 A Well, it's the years of experience and taking  
22 a look at the Union Pacific merger, how it affected the  
23 Conasupo traffic.

24 Q And the experience was that the Union Pacific  
25 had taken a lot of Conasupo traffic away from you?

1 A That's correct.

2 Q 50 percent of your traffic?

3 A Yes.

4 Q And so if we take the other 50 percent, you're  
5 going to be without Conasupo traffic?

6 A Without Conasupo traffic.

7 Q You don't really think that Conasupo is going  
8 to leave Tex Mex totally high and dry, do you?

9 A Well, as Mr. Ramos already stated, if we are  
10 not competitive we are not going to handle the traffic.  
11 It's that simple. We need to have the same rates as our  
12 competitors.

13 Q Well, can't you have the same rates as your  
14 competitors?

15 A Not if the Southern Pacific doesn't come along  
16 and agree to the same rates, which has been very  
17 difficult lately.

18 Q Don't you think, and isn't one of the factors  
19 that was involved in your writing to the board of  
20 directors in 1983 suggesting that the merger would be a  
21 good thing for Tex Mex, don't you think that Southern  
22 Pacific and Santa Fe combined into a new system, working  
23 with Tex Mex, would have to bid competitively to stay  
24 competitive at Laredo?

25 A That is exactly what I am hoping for.

1 Q And if Southern Pacific and Santa Fe as a  
2 merged company choose to ignore the Tex Mex and not to  
3 work with the Tex Mex, that traffic is all going to go  
4 to the Missouri Pacific, isn't it?

5 A It's either going to the Missouri Pacific or  
6 whoever competes on rates with the Missouri Pacific.

7 Q Well, if Conasupo continues in the future  
8 specifying Laredo as the gateway for their products at  
9 least 50 percent of the time, as they did in 1984, then  
10 it's going to be SPSF, the merged company, that's going  
11 to be hurt, isn't it, along with Tex Mex?

12 A The Tex Mex, correct.

13 Q Unless they work with Tex Mex?

14 A Correct.

15 Q Was there any Conasupo traffic in your study  
16 that was not diverted on a 50 percent basis?

17 A No; all of it.

18 Q All of the Conasupo? Any time traffic was  
19 identified as being Conasupo traffic it was diverted 15  
20 percent?

21 A Right.

22 Q How did you know when -- how could you  
23 identify traffic as Conasupo traffic?

24 A You don't show it here on your sample, but the  
25 consignee shows Conasupo.



1 Q Okay, and how did that show?

2 A Which one? In this one?

3 Q In your book. Do you have it there?

4 A No, it doesn't show Conasupo. In other words,  
5 rule one applies only to waybills that had Conasupo as a  
6 consignee.

7 Q All right, so you were actually looking at the  
8 waybills themselves?

9 A Yes, sir.

10 Q And even though it doesn't appear in your  
11 book, you as the evaluator were looking at the waybill  
12 itself?

13 A Every waybill that shows rule one shows  
14 consignee Conasupo.

15 Q Okay, and those were all diverted 50 percent?

16 A Correct.

17 Q And they were diverted 50 percent if they came  
18 to you from the Missouri Pacific? You diverted them 50  
19 percent to the Missouri Pacific?

20 A Yes.

21 Q If they came to you from Southern Pacific,  
22 they were diverted to the new SPSF merged system?

23 A Right.

24 Q Your second rule was: "Local traffic could be  
25 subject to a five percent diversion."

1           A     When I say local traffic, I mean traffic  
2 moving between Laredo and Corpus Christi, no in  
3 between.

4           Q     Not interline forwarded and not interline  
5 received?

6           A     Yes, and the reason that we say that there's a  
7 five percent probability of diversion is that we have  
8 lost a lot of traffic that is already lined up for  
9 Laredo, say in Corpus Christi, and they move it via  
10 Brownsville or Eagle Pass.

11          Q     How do you mean you've lost a lot of traffic?

12          A     We have had cases of, say, scrap iron loaded  
13 on our line in Corpus Christi, which was supposed to  
14 move from Corpus to Laredo Tex Mex and, you know, it  
15 ends up in Brownsville.

16          Q     But that doesn't have anything to do with the  
17 merger, does it?

18          A     No, no. Well, maybe it doesn't, you know, it  
19 doesn't affect the merger that much, yes, being local,  
20 yes.

21          Q     Because if it was MoP that was taking it down  
22 to Brownsville, MoP was there before the merger and MoP  
23 will be there, and UP didn't come into Corpus or  
24 Brownsville or anyplace else.

25          A     Yeah.

1 Q That would be true also with respect to SPSF,  
2 would it not? Santa Fe doesn't come down as far as your  
3 territory, does it?

4 A Right. No, it does not.

5 Q All right. Rule --

6 A Three.

7 Q -- three. Well, let me back up for a second.  
8 Could you look in your book for movements 407 to 419.  
9 Do you have those?

10 A Um-hmm.

11 Q Those are all local moves, correct?

12 A Yes.

13 Q And you could tell that because you've got the  
14 revenue, all the revenue?

15 A Yes.

16 Q On page 2 of that section dealing with those  
17 movements, you will note that under the column "SP  
18 diversion" is an "N", which means no, is that right?

19 A (Nods affirmatively.)

20 Q And that means you did not divert those local  
21 movements?

22 A (Nods affirmatively.)

23 Q What does that mean?

24 A No diversion. In other words, their ours, we  
25 control them, and there's no way that they can be

1 diverted.

2 Q And also on page 3, under the heading "  
3 diversion" there's another "N", meaning no, meaning that  
4 the MoP didn't divert it?

5 A This MP diversion is not shown on the  
6 waybill. It's just when they put out the printout  
7 they -- if it moved MoPac, you know, and there was no  
8 diversion, it should show MoPac no diversion. If it  
9 moved SP and in this local traffic it didn't, you know,  
10 it didn't move SP and it didn't move MoPac, so they put  
11 no diversion on both of them.

12 So they were not really affected, either one.

13 Q Okay. Look at page 4 of that section under  
14 the rule number. You would put the rule number to  
15 indicate whether it was a Conasupo or whether it was a  
16 full 100 percent diversion or whether it was a five  
17 percent diversion if it was local and you put a two  
18 here?

19 A Yes.

20 Q Does that mean that, even though it says no  
21 diversion under SP and no diversion under MoP, that you  
22 have still diverted it five percent on the records?

23 A I'm sorry to say that it would show five  
24 percent subject to the merger, yes. They made a  
25 mistake.

1 Q All right. Rule three, traffic moving under  
2 the SP-Tex Mex railway agreement of 1947 is not subject  
3 to diversion.

4 A Right.

5 Q Could you quickly explain what that agreement  
6 is?

7 A Okay. The 1947 SP-TM agreement gave the right  
8 to the Tex Mex to report any waybill that originated on  
9 the old T&NO, except local stations on the T&NO.  
10 Anything -- a competitive station on the T&NO coming  
11 into Corpus via SP, routed SP, we have the right to  
12 report the waybill.

13 Anything originating beyond the T&NO,  
14 connections SP to Corpus, we have the right to report  
15 the waybill. The only waybills from the T&NO that we  
16 would not report were traffic from local stations on the  
17 T&NO to Corpus Christi.

18 Q So you were in effect acting as sort of a  
19 switching carrier for that part of the revenue? You got  
20 a line haul revenue?

21 A We got -- in other words, on any traffic  
22 moving under this 1947 agreement, we are a revenue  
23 carrier, not a switching carrier.

24 Q Okay. But you would do the switching for your  
25 share of the line haul revenue?

1           A     Right. In other words, we deliver the car in  
2 Corpus Christi to the consignees on our line.

3           Q     So when you would identify a movement to or  
4 from one of these industries, that would automatically  
5 be non-divertable, is that right?

6           A     Non-divertable, right.

7           Q     Because you are going to stay in that route  
8 irrespective of what happens to the merger?

9           A     Right.

10          Q     Rule four: All other traffic would be subject  
11 to a 100 percent diversion. Am I correct that you  
12 diverted all traffic on a 100 percent basis if it was  
13 not Conasupo traffic, if it was not local traffic, if it  
14 was not interline forwarded traffic or interline  
15 received traffic or traffic subject to the 1947  
16 agreement with SP?

17          A     Right.

18          Q     And it was automatically diverted 100  
19 percent?

20          A     Yes, sir.

21          Q     And if it came in on -- if it was southbound  
22 and came in on the Santa Fe -- I mean on the Southern  
23 Pacific, it would be diverted to Southern Pacific or  
24 SPSF. If it came in on MoP and was interchanged to you  
25 at Robbstown or Corpus, you would divert it 100 percent

1 to Missouri Pacific.

2 And if it was northbound being interchanged to  
3 Southern Pacific or MoP, then it would be diverted on a  
4 100 percent basis to either of those carriers?

5 A Right.

6 Q Just to use an example, if you had a load of  
7 soda ash coming to you out of a UP point in 1982, coming  
8 to Katy at Kansas City and from Kansas City down to  
9 Denison and interchanged to the SP, and SP took it to  
10 Corpus Christi, then you would divert that 100 percent  
11 to the SPSF?

12 A Destination Corpus Christi, not beyond  
13 Corpus. In other words --

14 Q Maybe I should explain that. It would have  
15 been going to Mexico.

16 A Oh, going to Mexico.

17 Q Yes.

18 A We would charge 100 percent diversion to the  
19 SP.

20 Q Yes. And if that same movement had come SP --  
21 I mean, UP to Kansas City, MoP to Dallas or MoP to --

22 A Robbstown?

23 Q -- Robbstown, then you would divert it to --

24 A 100 percent to the MoP.

25 Q Why did you not divert the Conasupo traffic on

1 the same 100 percent basis?

2 A Well, we just felt that, you know, there's  
3 only -- and as I say, in the committee, the group, we  
4 felt that 50 percent of the traffic, of the Conasupo  
5 traffic, would be more or less divertable, the other 50  
6 percent wouldn't.

7 Q Was your feeling that -- well, what is the  
8 difference in the character of the traffic or the  
9 shipper that would make you less willing to concede that  
10 that traffic is all going to leave?

11 A We feel that the Conasupo traffic is more  
12 subject to move via Laredo than the other traffic.

13 Q Okay. But you did think that they would  
14 shift, that Conasupo would agree to shift the gateway to  
15 Eagle Pass on at least half of the trips?

16 A Yes.

17 Q And why did you think that?

18 A As I say, I believe that the policies after  
19 the merger are going to more or less be the same as the  
20 Union Pacific, and that you will have lower single line  
21 rates to Eagle Pass than joint line rates to Laredo.

22 Q But do you think that the SPSF is going to  
23 dictate to Conasupo or is it going to be the other way  
24 around? The railroads don't dictate to Conasupo today,  
25 do they?



1           A     Oh, yes. In other words, the rate that you  
2 offer the shipper is going to dictate. My personal  
3 opinion right now is that the rates that are being  
4 offered via Eagle Pass are noncompetitive with the rate  
5 that the UP system is offering via Laredo.

6           Q     Well, isn't it true, though, that the rate  
7 that's being offered is being offered in response to  
8 bids, and if Conasupo isn't putting up for bid any  
9 traffic going through Eagle Pass, as they failed to do  
10 in 1984, Southern Pacific doesn't have an opportunity to  
11 bid on that traffic?

12          A     Well, the way I understand this is that the  
13 shippers -- in other words, the shippers try to get the  
14 rates before they even bid on the Conasupo traffic. In  
15 other words, they ask all the carriers, how much will  
16 you charge me from Kansas City to Laredo, MoPac direct?  
17 And then they will try to join Katy, SP, and Tex Mex to  
18 make an offer.

19                 And I am pretty sure that somebody's also  
20 getting a rate through Eagle Pass, and whoever comes up  
21 with the lowest rate has a chance to handle some  
22 traffic.

23          Q     But doesn't Conasupo say to Continental or  
24 Cargill or whoever the grain company is, don't they say  
25 to them, bid, give me your bid on 10,000 metric tons of

1 grain, Laredo gateway or El Paso gateway, or Nogales  
2 gateway, for delivery over two months? And then  
3 Continental comes to SP and says, can you give us a rate  
4 with Tex Mex over Laredo?

5 Don't the railroads have to respond to what  
6 Conasupo advertises in their bid for?

7 A The way I understand it is this. We don't  
8 respond to Conasupo. We respond to the shipper. The  
9 shipper is the one that's putting in the bids.

10 Q But he is responding to the tender that  
11 Conasupo has put out?

12 A Um-hmm.

13 Q In which they have specified the gateway.

14 A Well, my understanding is that there is also,  
15 you know, tenders through Eagle Pass.

16 Q All right. Well, there must have been one.  
17 They had one percent of the business. They must have  
18 gotten something.

19 Looking at the Exhibit No. 88, the first page,  
20 you will note that I have taken your four pages right  
21 out and tried to put the important information on it.

22 MR. STEPHENSON: Excuse me for just a second,  
23 Your Honor.

24 BY MR. STEPHENSON: (Resuming)

25 Q Looking at your Tex Mex reference number

1 22 --

2 A Yes, sir.

3 Q That's a movement of evaporated milk from a  
4 point in British Columbia to Laredo, and that moved in a  
5 Southern Pacific RBL car. Well, you don't know that  
6 it's an RBL car, but that's subject to check. It is in  
7 any event the car shown in the car register for that  
8 number.

9 And that car moved on a waybill to BN, to East  
10 St. Louis, and from East St. Louis on the Cotton Belt,  
11 which is a subsidiary of SP -- you're aware of that, are  
12 you not?

13 A Yes, sir.

14 Q To Corpus, and there it was interchanged to  
15 Tex Mex. And you have indicated that you think this is  
16 a 50 percent diversion, because this is a Conasupo  
17 movement into Mexico of evaporated milk, correct?

18 A Right.

19 Q This obviously would have been routed by  
20 Conasupo, would it not? Or do you know?

21 A I don't know.

22 Q Does the fact that it moved in a Southern  
23 Pacific specially equipped car mean anything in terms of  
24 the influence of Southern Pacific on the routing?

25 A Not really. It's empty equipment that you

1 find in Canada and, you know, they try to move it to the  
2 Southwest as much as they can.

3 Q So you don't think that our equipment had  
4 anything to do with getting the route from St. Louis  
5 down to Corpus Christi?

6 A I don't think so.

7 Q Okay. The Southern Pacific was the  
8 intermediate carrier in this movement, was it not?

9 A Yes.

10 Q One of the reasons that you have indicated  
11 that you believe that Tex Mex is threatened by the  
12 merger of SP and Santa Fe is because you yourself are a  
13 bridge carrier for a substantial amount of traffic, is  
14 that not correct?

15 A Most of it, yes.

16 Q And you feel that as a bridge carrier you are  
17 without influence over the routing of that traffic?

18 A Yes. I don't believe we have influence if we  
19 don't have competitive rates.

20 Q But competitive rates are within your power,  
21 at least so far as the rate for Corpus Christi to Laredo  
22 is concerned?

23 A Not really, because, in other words, to be  
24 competitive I have to have your concurrence and the  
25 concurrence of the other lines to set up the same rate.

1 as the Union Pacific system has.

2 Q Would you agree with me that in this  
3 particular movement Southern Pacific as the intermediate  
4 or bridge carrier is much less influential on a movement  
5 than the originating carrier or the terminating  
6 carrier?

7 A I believe you have the same influence as we  
8 have, maybe more because you have more solicitors. You  
9 have solicitors in Canada, which we don't have. I  
10 believe that you as, you know, a big line have much more  
11 contact with the shippers than a little line like us.

12 Q On this particular movement, if we had a  
13 substantial amount of influence why didn't the car flow,  
14 or why didn't the move go over Eagle Pass?

15 A In this case, I believe it was, you know, the  
16 orders from Conasupo was via Laredo.

17 Q So how could you have diverted it away from  
18 yourself if it's going to Laredo? How can the movement  
19 possibly be shifted away from the Laredo gateway if the  
20 shipper has ordered that it go via that route?

21 A We say there is a probability of diversion. I  
22 don't say that, you know, it's so. It's subject to  
23 diversion, though.

24 Q If Southern Pacific had substantial influence,  
25 they could have moved this car from East St. Louis down

1 to El Paso on the Tucumcari line. They could have moved  
2 it by way of the Corsicana line to either Brownsville or  
3 Eagle Pass. And by my figures -- and my mileage figures  
4 may differ from yours -- the mileages are all pretty  
5 equal there.

6 And yet, in this particular case Conasupo said  
7 they wanted it to go across Laredo, and that's where it  
8 was routed.

9 A Right.

10 Q If this movement had gone across Eagle Pass,  
11 then the Southern Pacific system would have gotten that  
12 \$233 of revenue, wouldn't they?

13 A Right.

14 Q By the way, what would you say the diverted  
15 route would be? If 50 percent of these cars were  
16 diverted, as you say, what would be the diverted route  
17 over Eagle Pass?

18 A After the merger?

19 Q Yes.

20 A Yes. Well, let's say -- I have to say 50-50  
21 between you and the Union Pacific, because you would be  
22 in a much better position, you know, to compete. Again,  
23 I go back to what I say, the policy that you're going to  
24 have after the merger.

25 If your policy is going to be the same as the

1 Union Pacific, that's the way to go.

2 Q Well, let me make sure I understand what  
3 you're saying. You're saying that 50 percent of this --  
4 are you saying that half of the 50 percent would go to  
5 us and half of the 50 percent would go to?

6 A To the UP.

7 Q To the UP. So we each would get 25 percent.  
8 Or are you saying that we would each get 50 percent and  
9 you would get nothing?

10 A 50 percent for each of you and we would get  
11 nothing.

12 Q Now, the route, if it were to divert to SPSF,  
13 what would be the routed movement? Would it be via El  
14 Pasc -- I mean, via Eagle Pass?

15 A Yes.

16 Q Now, you are aware, are you not -- and if you  
17 look on the map; I think there's a map up there -- that  
18 this movement moves from East St. Louis to Eagle Pass,  
19 that it never moves over any lines of the Santa Fe  
20 Railroad? Do you know that?

21 A That's correct.

22 Q It would all move over former SF lines that  
23 were in existence in 1982 and will still be in existence  
24 after the merger.

25 A Yes.

1 Q So that in coming up with your conclusion  
2 about the divertability of this movement to the SP, you  
3 didn't consider whether or not the movement would move  
4 over a shorter route or a better route, but simply the  
5 fact that you felt that the new SPSF system wouldn't  
6 cooperate with the Tex Mex on establishing competitive  
7 rates?

8 A Correct.

9 Q Okay. If you look at the next movement, the  
10 Tex Mex reference number 55, that is a movement of milk  
11 products again, from Ontario, Canada, to Laredo.

12 A Yes.

13 Q And would you say this is pretty much the same  
14 type of shipment?

15 A The same as the other one, yes, sir.

16 Q All right, let's turn to 29. That's Stockton  
17 to Laredo. In this case, SP served the origin?

18 A Yes.

19 Q And provided an REL specially equipped car for  
20 the shipper. Again, the commodity is milk, and again  
21 it's a Conasupo shipment.

22 A Yes, sir.

23 Q Now, in this particular movement from  
24 Stockton, California, again the routed movement -- well,  
25 let me back up. Let me ask you, is the diverted gateway



1 in this case Eagle Pass or Presidio or El Paso?

2 A I would have to go along with Eagle Pass.

3 Q Okay. If -- well, let me back up. Don't you  
4 think that Southern Pacific would have solicited this  
5 movement to go by way of Eagle Pass in 1982, in view of  
6 the fact if you look at the map it would have avoided  
7 moving all the way down to Corpus Christi and turning it  
8 over, turning the car over to Tex Mex, and then having  
9 Tex Mex run it back to the border at Laredo?

10 It would have saved several hundred miles, it  
11 appears, looking at the map. And in addition, Southern  
12 Pacific would have gotten \$310 of additional revenue by  
13 leaving it at El Paso rather than turning it over to Tex  
14 Mex -- I'm sorry, at Eagle Pass, rather than Corpus  
15 Christi.

16 A I have to say that this was set up for Laredo  
17 by Conasupo.

18 Q It was set up for Laredo?

19 A To go through Laredo, instead of Eagle Pass.

20 Q But you think that nevertheless Southern  
21 Pacific would have wanted to get this car out of its  
22 Eagle Pass gateway back in 1982, when it actually  
23 moved?

24 A I have to say that they may have tried. But  
25 you also have to consider that the charges south of

1 Eagle Pass are a little higher than the charges south of  
2 Laredo. So that might have something to do with it.

3 Q So it would be about what, \$100 more or so to  
4 Monterrey from Eagle Pass?

5 A Around that much.

6 Q If, as SP did in this case, it served the  
7 origin and provided special equipment to the origin for  
8 use in the shipment, if they couldn't get their  
9 preferred haul to Eagle Pass in 1982, what's going to  
10 give them a -- what is going to convince Conasupo in  
11 1985 or '86 when this merger goes through that they  
12 ought to give the haul to them then?

13 A I have to again say that they use single line  
14 rates, if they use the same policies as the Union  
15 Pacific system.

16 Q You don't think that the SP was trying to get  
17 the rate down as best it could so that the shipper would  
18 use Eagle Pass in this particular instance?

19 A I wouldn't have any basis to answer that.

20 Q There definitely would have been an increase  
21 in the cost of handling on SP's part to move it from  
22 Eagle Pass than to Corpus Christi, wouldn't there?

23 A Right, yes.

24 Q And that could be used for a rebate or cutting  
25 back on the rate to Conasupo in the future?

1 A Correct.

2 Q Could you turn to -- oh, back up for just a  
3 second. Again, this route from Stockton to Eagle Pass  
4 is the same route that SP currently uses. It's not a  
5 combined SP-Santa Fe route.

6 A Right.

7 Q Turn to number 39, please. This is a movement  
8 of bulk kaolin from Hephzibah, Georgia, to Laredo. Is  
9 this movement under contract, to your knowledge, or was  
10 it at that time?

11 A I don't believe it was in 19 -- what's the  
12 date?

13 Q 1982.

14 A I don't believe it was.

15 Q Is it now?

16 A I believe so.

17 Q What did you do when you were faced with a  
18 movement, a study movement sheet that reflected a  
19 shipper whose product is moving under an existing  
20 contract? Did you treat that any differently for  
21 purposes of your analysis?

22 A No, sir.

23 Q You would still divert this 100 percent or 50  
24 percent, as the case may be?

25 A Yes, sir.

1 Q And in this case the original route was  
2 Southern to New Orleans, SP to Corpus, and then to Tex  
3 Mex. And you diverted it or your diversion would take  
4 it to Eagle Pass again?

5 A Yes, sir.

6 Q And this is rule number four. This is 100  
7 percent diversion?

8 A 100 percent.

9 Q You would note, looking at the map, that again  
10 this is a movement that would move entirely over  
11 Southern Pacific lines from New Orleans to Eagle Pass?

12 A Correct.

13 Q And if this had moved over that same route of  
14 travel or route of movement in 1982, Southern Pacific  
15 would have been \$550 the richer?

16 A Right.

17 Q And again, this is a movement where Southern  
18 Pacific is not the originating or terminating carrier,  
19 but a bridge carrier.

20 A When you say "richer," you know, you may not  
21 be \$559 richer, because you have to move it from Corpus  
22 all the way to Eagle Pass. I don't know how much --

23 Q Take a look at the map. It just goes through  
24 Houston and down.

25 A . But there must be a difference in mileage

1 between New Orleans and Laredo against New Orleans to  
2 Eagle Pass.

3 Q Well, you may be right. You may be right.  
4 But just looking at the map, it doesn't seem to be too  
5 much, but we'll figure that out later.

6 JUDGE HOPKINS: Off the record a minute.

7 (Discussion off the record.)

8 JUDGE HOPKINS: Let's go on then.

9 BY MR. STEPHENSON: (Resuming)

10 Q Take a look at number 104, please.

11 A Yes, sir.

12 Q This is a movement from Houston to Laredo of  
13 scrap iron. It's moving from an SP origin in a Cotton  
14 Belt gondola.

15 A Yes, sir.

16 Q What is the diverted route? Maybe I should  
17 stop asking that.

18 Did you assume in all these diversions that  
19 they were diversions, at least diversions from Southern  
20 Pacific would move over Eagle Pass?

21 A Right.

22 Q As opposed to Brownsville?

23 A Correct.

24 Q This one again could have moved in the  
25 diverted movement over Eagle Pass in 1982, correct?

1           A     Excuse me. When you said that the diversion  
2 was via Eagle Pass instead of Brownsville, we didn't  
3 take into consideration one or the other. In other  
4 words, like in this case coming out of Houston, the SP  
5 mileage to Houston -- I mean to Brownsville -- would be  
6 shorter than through Eagle Pass.

7           So we just said diversion 100 percent  
8 wherever, you know, the shipper -- or wherever the SF  
9 would give the best rate. That's where we figured that  
10 the car would move.

11          Q     Okay, that was my question. You didn't  
12 specifically identify one gateway as being the diverted  
13 gateway as opposed to the other?

14          A     No, sir.

15          Q     You just assumed it would be one or the  
16 other?

17          A     Yes.

18          Q     In this case, as the origin carrier and the  
19 carrier that provided the equipment to the shipper, SP  
20 would have maximum influence in terms of the routing,  
21 correct, in 1982?

22          A     In this case, I have to state that Laredo was  
23 destined as the port of, you know, entry into Mexico.

24          Q     And how do you know that?

25          A     Because it moved via Laredo. In other words,

1 they could have moved it via Eagle Pass or Brownsville.

2 Q SP could have?

3 A Yes.

4 Q Was SP's influence -- because they served the  
5 shipper and because they have provided the equipment,  
6 they could have or they would have tried to get the  
7 shipper to move it via Brownsville or via Eagle Pass?

8 A Yes.

9 Q But they failed to do it, because the shipper  
10 specified Laredo; is that correct?

11 A Well, in this case the rate to Brownsville,  
12 the rate to Eagle Pass, and the rate to Laredo are the  
13 same. The rate beyond is the one that he is going to  
14 control.

15 Q And so in this case, because the rate beyond  
16 from Laredo is cheaper or less than the rate beyond from  
17 Brownsville or Eagle Pass, the shipper in this instance  
18 selected Laredo as the gateway?

19 A That is my opinion, yes.

20 Q What will happen after the merger to change  
21 that?

22 A As I say again, if your policies are the same  
23 as the Union Pacific, you are going to have lower single  
24 line rates than joint line rates.

25 Q Do you know that the -- let's take a movement,

1 for example, of potash coming out of Wyoming down to  
2 across the border, soda ash. Do you know whether the  
3 UP-MP rate from Alchem, Wyoming, across the border or to  
4 the border is less, is the single line rate less than  
5 the joint line rate they're willing to publish with  
6 you?

7 A If you're talking about the traffic that we're  
8 handling with the SP, the only reason that we're  
9 handling that traffic is that the Tex Mex and the Katy  
10 are making allowances.

11 Q Okay.

12 A We have an allowance contract.

13 Q I'm talking about the Union Pacific system.  
14 Do you have any knowledge of rates where the Union  
15 Pacific says to you, we will enter into a joint rate  
16 with you for soda ash out of Alchem, Wyoming, or grain  
17 out of Nebraska or whatever, where the joint rate is  
18 \$1.50 on a single line basis, but on a joint line basis  
19 it's going to be \$1.75 or something like that?

20 A Well, if I remember correctly, the soda ash  
21 from that point to Laredo, the rate is published. But  
22 it isn't so much the rate that is published as the  
23 allowances that are being made on the contract that  
24 govern the movement.

25 In other words, the published rate, you can



1 throw it away.

2 (Pause.)

3 JUDGE HOPKINS: Back on the record.

4 BY MR. STEPHENSON: (Resuming)

5 Q The next movement, reference 115, that's a  
6 movement of aluminum billets from New Madrid, Missouri,  
7 a local Cotton Belt point, to Laredo.

8 A Yes.

9 Q And that again was in the RBL SF equipment. I  
10 take it that the fact that SP served the origin and  
11 provided the specialized car did not convince you that  
12 SP had enough influence in 1982 to have routed the  
13 traffic all the way to Eagle Pass if it had tried?

14 A I'm pretty sure that they tried, but some of  
15 this traffic, you know, is lined up at a certain point  
16 of entry, and I think this is one of the cases, you  
17 know, just like the other one, where Laredo is set up,  
18 if you have the same rates -- if you have the same  
19 rates, you know, it is going to move that way.

20 Q All right. I might point out that, with  
21 respect to this and some of the others that we have  
22 looked at, this could have been a single line haul,  
23 single line as opposed to a two-line haul. It doesn't  
24 seem to make much difference for border traffic?

25 A No, sir.

1 Q The next one is a movement from Carson,  
2 California, which is in the Los Angeles area, to Laredo,  
3 again in an SP specially equipped car, from an SP  
4 point. And I take it again that the fact that this  
5 movement could have gone Eagle Pass and routed several  
6 hundred miles less is not in your opinion sufficient to  
7 keep it from being diverted?

8 A No, I believe that we have the same rates to  
9 Eagle Pass and Laredo, and Laredo is named as the  
10 crossing and that's the way it's going to be.

11 Q Well now, in this particular case this was in  
12 1982, and SP presumably could have discounted their rate  
13 somewhat, given the shipper half that \$425 in order to  
14 use Eagle Pass, or rebated half that \$425 in order to  
15 collect --

16 A In 1982, I am not sure that we were at that  
17 time issuing allowances, allowance contracts.

18 Q Take a look at that. I made a question mark,  
19 put a question mark by the freight revenue. That is out  
20 of your book, but that looks awfully high, doesn't it?

21 A You mean the 1500? Oh, yes, 15,000.

22 Q Uh-huh.

23 A Unless -- no, there's a mistake. I was going  
24 to say unless it was a multiple shipment waybill. But  
25 from our proportion, you know, where it says Tex Mex

1 revenue, it looks like there's a mistake on the 15,000.  
2 It may be 1595.25. There is an error there in the  
3 revenue.

4 Q The next one, Klamath Falls to Corpus Christi,  
5 Klamath Falls, at an SP point, shipped in an SP car.  
6 Your answer would be the same?

7 A Yes.

8 Q Williams, California, to Laredo, Texas, again  
9 an SP origin. This is a Conasupo move and Conasupo  
10 would have dictated the gateway. What is there about  
11 Eagle Pass that would convince Conasupo that pink beans  
12 ought to move over Eagle Pass?

13 A I would have to say that the rate to Eagle  
14 Pass and Laredo were the same at that time.

15 Q But they certainly were not the same -- the  
16 contribution that SP would make from this movement would  
17 be substantially more as a result of taking it to Eagle  
18 Pass with a much shorter route.

19 A I'm not saying that the contribution to the SP  
20 is less. I'm just saying that the rates are the same.  
21 So Conasupo dictates Laredo as the port of entry to  
22 Mexico.

23 Q Is that really so, that the rate would be the  
24 same even on a bid item like this?

25 A Well, on this beans, a lot of those rates are

1 published, and I don't know if you know or not, but  
2 rates that are published to the crossings are the same.  
3 Eagle Pass, Laredo, and Brownsville generally have the  
4 same published rates from all over the U.S.

5 Q They have the same published rates. No  
6 question, they have equalized the rates between Eagle  
7 Pass and Brownsville and Laredo. The question is, would  
8 this movement be traveling, be moving under the  
9 published rate or would it be moving under some special  
10 contract on the basis of the bid that Conasupo  
11 requested?

12 A I don't remember having had any contracts.  
13 This would be a joint contract, you know, between SP and  
14 Tex Mex, and I don't remember having had any contracts.

15 Q The next movement, Austin, Texas, to Laredo in  
16 an SP car from an SP point, where presumably SP would  
17 have some influence, and they gave up \$414 of the \$920  
18 in order to move that car over Corpus Christi to the Tex  
19 Mex?

20 A Yes, sir.

21 Q And when you look at the map, that would move  
22 directly on SP lines from Austin to Eagle Pass if it  
23 were to be diverted to Eagle Pass.

24 A Again, I have to say this won't, because we  
25 have the same rates, or had at that time the same rates,

1 from Austin to Laredo and to Eagle Pass. But as you  
2 say, if after the merger the policies change, your way  
3 to move the traffic would be through Eagle Pass.

4 Q So if our policy changes, as premised on your  
5 experience with --

6 A The Union Pacific.

7 Q The Union Pacific?

8 A Yes.

9 Q But is that a fair premise, in view of the  
10 fact that Union Pacific doesn't need Tex Mex to get to  
11 Laredo? They have their own haul. In order to get to  
12 Laredo, SP needs you. We don't get to Laredo without  
13 you, and so I wonder if your premise is fair.

14 A Well, I hope, you know, your statement is  
15 correct, because we would like to still be, you know,  
16 handling that traffic or competing with the Union  
17 Pacific system through Laredo.

18 Q But what is your response? If you have  
19 assumed for purposes of your analysis in this traffic  
20 diversion study that you can assume that SP's rate  
21 action afterwards, after the merger, will be the same as  
22 UP's, haven't you made an error in view of the fact that  
23 our situations are not the same?

24 A Well, that is the decision we made, you know,  
25 with the experience that we have, and that I have to go

1 with.

2 Q The next movement, 57. It's a movement, an  
3 empty new tankcar apparently destined for NDM, and it's  
4 coming from a MoP point out of Dallas and routed to SP,  
5 and then Corpus and then Tex Mex.

6 A Yes, sir.

7 Q What would you think that the diverted route  
8 would be in this case? Would it be Brownsville or Eagle  
9 Pass?

10 A From -- I have no idea where Grove Controls  
11 Texas, is it? I have no idea where that point is in the  
12 state of Texas.

13 Q I don't either. But assume that it came to SP  
14 at Dallas. Where would it go, Brownsville or --

15 A Eagle Pass.

16 Q Is NDM the shipper in this case?

17 A No, they're the owners of the equipment.

18 Q Who is the shipper? Who's paying the tariff  
19 on this?

20 A Well, it doesn't say here whether it was  
21 prepaid or collect, but I would have to say that it came  
22 in collect to Laredo.

23 Q And who --

24 A The NDM would have paid the freight charges.

25 Q And NDM would prefer its major gateway at

1 Laredo, would it not?

2 A I would say yes.

3 Q The next movement, 132, a movement of  
4 sunflower bulk from Anamoose, North Dakota, to Laredo.  
5 I think we've answered enough Conasupo ones. Let's go  
6 on. Let's go on again.

7 The next one is a northbound movement, number  
8 223.

9 A Yes, sir.

10 Q That's from Corpus to Melendy, Texas, and it  
11 moved Tex Mex-Corpus-SP. It was tobacco stems.

12 A It says origin Corpus Christi, but I think the  
13 shipment originated in Laredo and it moved to Corpus,  
14 because the tobacco comes out of Mexico.

15 Q Well, where is Melendy, Texas?

16 A I have no idea.

17 Q I think it did originate somewhere on the Tex  
18 Mex because that's a Tex Mex car, right?

19 A Right.

20 Q Your cars wouldn't, or would they, be used for  
21 loading in Mexico?

22 A Yes, they are used in Mexico.

23 Q Do you think this is originated on the --

24 A I think it originated beyond Laredo, imported  
25 through Laredo, moved to Corpus, and then SP to

1 Melendy. Tobacco originates in Mexico. In other words,  
2 it doesn't originate in Corpus.

3 Q Okay. Now, how would this possibly divert to  
4 the SP? I'm at a loss to understand how the new company  
5 is going to get this on the diversion.

6 A Well, the way we figure it is that this could  
7 be diverted before it gets to Laredo to another  
8 crossing, to Eagle Pass.

9 Q You mean diverted in Mexico?

10 A Yes. In other words, I come back to the  
11 rates. If you have a single line rate from Eagle Pass  
12 north and a joint line rate from Laredo --

13 Q But in other words, you're saying that the  
14 shipper in Mexico is going to pay additional money to go  
15 to Eagle Pass?

16 A Yes.

17 Q And do you know where this originated in  
18 Mexico?

19 A Yes, it originates close to Guadelajara,  
20 Tepaic.

21 Q Now, how much are you adding to the shipper's  
22 freight bill in Mexico to get it to Eagle Pass?

23 A I don't have the figures, but there's not that  
24 much difference, really.

25 I think you had some figures there where the



1 difference is what, about three cents a hundred pounds?

2 Q Somewhere around there.

3 A There is a difference between Eagle Pass and  
4 Laredo.

5 Q This is tobacco. What would be closest, corn,  
6 milc, scybeans, sunflower or scy meal?

7 A Take either one.

8 Q Okay. Guadelajara to Eagle Pass -- Three  
9 cents, three cents a hundred.

10 A Yes.

11 Q Is Mr. Ramos going to raise hell with these  
12 people for diverting a Tex Mex car on a northbound haul  
13 over Eagle Pass?

14 A We have no control. Nobody has control over  
15 their equipment when it's in Mexico. There's no way  
16 that he can say, you know, they loaded in SF equipment  
17 and it's got to come via my crossing. They are free  
18 runners in Mexico and they can be loaded wherever it  
19 is.

20 Q I understand they can be, but don't you think  
21 that shippers like to favor the owner of a car?

22 A No, sir.

23 Q They don't care in Mexico?

24 A They don't care.

25 Q So in order to route this to the SPSF or

1 divert it to the SPSF system, you rerouted it in Mexico  
2 first?

3 A It has to.

4 Q The next movement is another northbound  
5 movement, originating where, in Laredo? Or is it in  
6 Mexico?

7 A In Mexico.

8 Q And this is an NDM car?

9 A Yes, sir.

10 Q Does NDM care where their cars --

11 A No, sir, so long as they get out in the U.S.  
12 and earn dollars.

13 Q And the fact that Laredo is NDM's preferred  
14 route wouldn't make any difference?

15 A No, sir.

16 Q If you could go to 440.

17 A Yes.

18 Q That's a movement from Laredo to Elyria,  
19 Ohio. This is in a Tex Mex -- this is a Tex Mex empty  
20 auto rack?

21 A It's not a Tex Mex empty auto rack. It's a  
22 Tex Mex empty 50-footer, and they load the racks to  
23 return them to the plant.

24 Q It's in a boxcar, then?

25 A Yes. The empty racks that accumulate in

1 Mexico are sent back to the plants.

2 Q Is the boxcar itself in assigned service?

3 A No.

4 Q Are the racks returning by the routed  
5 movement?

6 A No, sir.

7 Q They can go back on any route?

8 A That's right.

9 Q What makes you think that this is going to  
10 divert on a northbound basis to Eagle Pass?

11 A If you have lower rates.

12 Q Okay, if you have lower rates.

13 A Yes.

14 Q All right. The next movement, number 8,  
15 Longview, Texas, to Laredo, in a MoP car, MoP origin,  
16 from a MoP car. And in this particular case you  
17 diverted it to the MoP. And I guess I shouldn't be  
18 trying to protect the MoP from diversions, but why would  
19 the -- why wouldn't MoP have tried to get their single  
20 line haul to the border in 1982?

21 A Okay, this was in 1982. Now, all this traffic  
22 is moving MoPac.

23 Q So it's already lost?

24 A It's lost.

25 Q And you say that they weren't attempting to

1 move traffic on a single line basis to the border in  
2 1982?

3 A No, because now the rates have changed. MoPac  
4 has single line rates which are lower than joint line,  
5 and I don't know if you know or not: All industries  
6 within the state of Texas are open to reciprocal  
7 switching. So these industries are on our line and it's  
8 open to reciprocal switching.

9 Q Okay. The next movement is a movement from  
10 Alchem, Wyoming, of soda ash to Laredo. This is going  
11 for export, correct?

12 A Yes, sir.

13 Q And it's originating on the UP. It's moving  
14 in a UP covered hopper. And in 1982 it moved from UP to  
15 Kansas City and Katy thereafter down to SP at Denison,  
16 then to Tex Mex?

17 A Yes.

18 Q You have diverted this to SP, not to Missouri  
19 Pacific, correct?

20 A Correct.

21 Q Do you think that -- or don't you agree that  
22 in a movement such as this, that's moving from a UP  
23 point in a UP covered hopper, that that movement is  
24 going to be diverted from both SP and Tex Mex? Why  
25 would UP possibly route with SP?

1 A I have to agree with you that it should be  
2 diverted to the MoPac and not to the SP.

3 Q It would go MoPac all the way?

4 A Yes. I think we are handling this traffic  
5 right now and I think we're going to lose it.

6 Q Okay. And the same -- the next movement is  
7 the same? In fact, the next sheet is 369 and 376, and I  
8 have two questions about that.

9 A Yes.

10 Q These are also soda ash moves coming out of  
11 Alchem, Wyoming. In connection with the designation of  
12 the equipment, it said in your book "various" under car  
13 number, car type and car number. Does that mean that  
14 there are more than one car traveling under the  
15 waybill?

16 A On one waybill. We call it a multiple  
17 waybill, yes.

18 Q So taking a look at this movement here,  
19 UP-Kansas City, Katy-Denison, SP-Tex Mex, would your  
20 conclusion be the same on this movement? That is, that  
21 both SP and Tex Mex are going to lose this -- I mean,  
22 both SP and Tex Mex are going to lose this movement to  
23 the single line UP?

24 A Yes, sir.

25 MR. STEPHENSON: All right, that's all I

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1 have. Thank you very much.

2 BY MR. STEPHENSON: (Resuming)

3 Q In connection with the Conasupo, is it true  
4 that Conasupo has an in-house customs broker stationed  
5 at Laredo and Brownsville, and I think Nogales?

6 A I can't speak for Brownsville or Nogales. I  
7 can speak for Laredo. They had one, but they just took  
8 away their license or something and it's going back to  
9 the regular, you know, forwarders.

10 JUDGE HOPKINS: Is that it?

11 MR. STEPHENSON: That's it. You should always  
12 resist the kibitzers.

13 JUDGE HOPKINS: You should always have the  
14 answer before you ask the question, right.

15 Redirect.

16 REDIRECT EXAMINATION

17 BY MR. WHITE:

18 Q One question by way of clarification, sir. I  
19 believe you stated that all industries in Texas are open  
20 to reciprocal switching. You mean for intrastate  
21 traffic?

22 A For intrastate traffic.

23 MR. WHITE: Thank you.

24 JUDGE HOPKINS: Is that it, Mr. White?

25 MR. WHITE: That's it.

1           Your Honor, I move the admission of Mr.  
2 Ramirez' verified statement, which appears at pages 12  
3 through 17 of volume 2 of the trackage rights  
4 application, and the document entitled "Texas Mexican's  
5 Responsive Statement to Applicants' Diversion Study,  
6 TM-8."

7           JUDGE HOPKINS: Any objection?

8           MR. STEPHENSON: No objection.

9           I move the admission of Applicants' 88.

10          MR. WHITE: No objection, Your Honor.

11          JUDGE HOPKINS: It will be received into  
12 evidence, as well as the statements.

13                                 (The documents previously  
14                                 marked Exhibit Nos.  
15                                 SFSP-C-88 for identification  
16                                 were received in evidence.)

17          JUDGE HOPKINS: Thank you very much.

18                                 (Witness excused.)

19          MR. WHITE: I want to thank Your Honor for  
20 giving us the indulgence to get Mr. Ramirez off.

21          JUDGE HOPKINS: I understand, you want to get  
22 back.

23                                 Thank you, everybody.

24          VOICES: And we thank the reporter.

25          JUDGE HOPKINS: I thanked her before. I'll



1 thank her again.

2 We'll be in recess until 9:00 o'clock Monday  
3 morning. Have a nice weekend.

4 (Whereupon, at 5:54 p.m., the hearing in the  
5 above-entitled matter was recessed, to reconvene at 9:00  
6 a.m. on Monday, January 14, 1985.)

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