

F.D. 30400, et al. - pages 7217 thru 7275

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BEFORE THE

INTERSTATE COMMERCE COMMISSION

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In the Matter of: :

SANTA FE SOUTHERN PACIFIC CORPORATION : Finance Docket

-- CONTROL -- : 30400 et al.

SOUTHERN PACIFIC TRANSPORTATION :

COMPANY :

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Hearing Room A

12th & Constitution, N.W.

Washington, D.C.

Tuesday, January 15, 1985

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

BEFORE:

JAMES E. HOPKINS,

Administrative Law Judge

1 APPEARANCES:

2 As Heretofore Noted
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C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Paul F. Richardson-resumed				
By Mr. Hynes		7219		
By Mr. Ratner		7225		
By Ms. Reed		7232		
Thomas S. Carter				
By Mr. Auerbach	7245			
By Mr. Moates		7246		
By Ms. Reed		7414		
By Mr. Birney		7419		
Paul D. Johnson				
By Mr. Dreiling	7449			
By Mr. Wilson		7450		
George E. Bardwell				
By Mr. Dreiling	7469			
By Mr. Wilson		7470		

E X H I B I T S

<u>Exhibit No.</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
SFSP-C-89 and 90		7244
SFSP-C-91	7269	7448
SFSP-C-92	7282	7448
SFSP-C-93	7297	7448
SFSP-C-94	7385	7448
SFSP-C-95	7390	7448
SFSP-C-96	7401	7448
SFSP-C-97	7403	7448
SFSP-C-98	7474	7490

P R O C E E D I N G S

1
2 JUDGE HOPKINS: Let's get back on the record.

3 Mr. Hynes.

4 MR. HYNES: Good morning, Your Honor.

5 Whereupon,

6 PAUL F. RICHARDSON,

7 the witness at the time of recess, having been
8 previously duly sworn, resumed the stand, and was
9 examined and testified further as follows:

10 CROSS EXAMINATION - RESUMED

11 BY MR. HYNES:

12 Q I understand that before we recommence cross
13 examination, Mr. Richardson had a correction to a
14 statement he made yesterday that he wanted to read into
15 the record, so it would probably be appropriate to do it
16 now.

17 JUDGE HOPKINS: Go ahead.

18 THE WITNESS: Thank you, Mr. Hynes.

19 In connection with your question on Yang Ming,
20 I want to correct a misstatement I made yesterday. I
21 stated that Yang Ming was a breakbulk operator who also
22 did heavy lift cargoes. I was mistaken.

23 Actually, the characteristics I was
24 attributing to Yang Ming actually apply to Barber Blue
25 Sea, which runs the same group, and I am familiar with

1 Barber Blue Sea, and I forgot that Yang Ming is a
2 totally cellular container ship operator who also runs
3 minilandbridge as well as this service.

4 I apologize for that correction. I realized
5 last night I may have misled you.

6 Q So we should take whatever comments you made
7 yesterday about Yang Ming and apply those to Barber Blue
8 Sea?

9 A Yes.

10 Q I would like to direct your attention, Mr.
11 Richardson, to Page 54 of your verified statement.

12 A Okay.

13 Q On Page 53 and 54, am I correct, this is where
14 you discuss the rail costing methodology which you used
15 in deriving the rail portion of the MLP movement for
16 purposes of comparing MLB versus all water costs? Is
17 that correct?

18 A Correct.

19 Q I would like to direct your attention to the
20 second paragraph on page -- the second full paragraph on
21 Page 54, where you discuss the costs for moving loaded
22 and empty containers by rail, and it states on the fifth
23 line, "It was assumed that 30 percent of empties moved
24 at no cost to account for free empty return provisions
25 in the loading of containers with domestic freight."

1 Am I correct in interpreting that sentence --

2 A I am sorry. In that paragraph? You said the
3 second paragraph.

4 Q The second full paragraph.

5 A Oh, excuse me. Okay. Okay, I have it.

6 Q Am I correct in interpreting that statement to
7 mean that you assessed no charge at all for 30 percent
8 of the empty movements?

9 A Correct.

10 Q In the next sentence you say, "Our empty rates
11 were reduced by 15 percent to account for high volume
12 shipper discounts."

13 Am I correct in interpreting that sentence to
14 mean that for the remaining 70 percent of the empty
15 movements, you costed those at 85 percent of the Plan 3
16 rate?

17 A Yes. We didn't have actual knowledge of
18 contract rates, and our experience indicated that the
19 contract rates were approximately 15 percent lower than
20 what the published rates were. Yes, we made that
21 assumption.

22 Q Okay. Could you turn, please, now to Page 55
23 of your verified statement?

24 I would like to direct your attention to the
25 bottom of the page, the paragraph which goes over onto

1 Page 56, and this is where you explain the differential
2 in cost which you found between the rail movements
3 available from Los Angeles-Long Beach and alternate
4 ports such as Seattle-Tacoma and San Francisco-Oakland.
5 Is that correct?

6 A Yes, sir.

7 Q Now, I would like to direct your attention at
8 this time to the package of work papers which I provided
9 to you yesterday, if you have those in front of you.

10 A I have them.

11 Q And specifically I would like you to take a
12 look at the last page in that packet.

13 A Okay.

14 Q It is the page which is designated PFR000024.

15 A Yes, sir, I have it.

16 Q Is that the work paper which sets forth the
17 calculations that you made to arrive at the figure of
18 \$429 per container which appears at the top of Page 56?

19 A Yes. That is Exhibit 22, and that is a backup
20 work paper to Exhibit 22.

21 Q I would like to direct your attention on that
22 work paper, about halfway down the page you have got
23 some figures calculated for 20 and 40-foot containers.
24 Do you see those figures?

25 A Yes, sir.

1 Q Am I correct on the loaded containers, for
2 example, that you took the quoted price from the Union
3 Pacific railroad for a Houston to Kansas City move and
4 added a Kansas City to San Francisco move, the two
5 figures being 1407 and 1790, to arrive at 3197?

6 A That's correct.

7 Q And then you divided by two, because that is a
8 two-container rate, and you wanted to get per
9 container. Is that right?

10 A Yes.

11 Q And you have a notation there, times 85
12 percent. There was no mention in your verified
13 statement of an adjustment of 15 percent.

14 A That is the 15. We took the rate from James
15 Lawrence at Union Pacific. In doing the calculations
16 which you just correctly stated how we did it, we used
17 85 percent to allow for what we estimated to be the
18 cost, the lower contract rate that would be assessed a
19 volume carrier. That is what it relates to. Does that
20 answer it?

21 Q Let me make sure I understand. So for a
22 loaded move, when you were calculating the rail rate
23 from an alternate port, you took a Plan 3 rate quoted by
24 the Union Pacific Railroad.

25 A Yes.

1 Q Divided it by two, because it was a
2 two-container rate, to arrive at a single container, and
3 then discounted that rate by 15 percent to approximate
4 what you believed a high volume contract rate would look
5 like.

6 Is that a correct characterization?

7 A I believe that's correct.

8 Q And with respect to empty movements, which
9 appear in the column to the left, you took the per
10 flatcar rate quoted by the Union Pacific, divided it by
11 four, and again applied a 15 percent discount to
12 approximate a high volume contract rate?

13 A I think we divided by two.

14 Q It says divided by four on the 20-foot.

15 A I am sorry. Excuse me.

16 Q On the 40-foot, you did divide by two.

17 A Yes. That's correct.

18 Q And the reason why you divide by four is
19 because you can get four on the flat.

20 A Yes.

21 Q So am I correct then in costing the empties
22 you took the Plan 3 circular rate, figured out what one
23 container would be by dividing by two, and then applied
24 a 15 percent discount.

25 A Yes.

1 Q And did you apply that methodology to all of
2 the empties which would be moving out of a port such as
3 Seattle-Tacoma?

4 A Yes.

5 Q Mr. Richardson, are you aware that the
6 Burlington Northern also offers service from
7 Seattle-Tacoma to points such as Houston and New
8 Orleans?

9 A I am sure they do. I am not particularly
10 aware of it, but I wouldn't be surprised.

11 Q Did you contact the Burlington Northern in
12 attempting to figure out what the cost of a rail
13 movement from Seattle would be?

14 A No, I don't believe we did.

15 MR. HYNES: Thank you. I have no further
16 questions, Your Honor.

17 JUDGE HOPKINS: Thank you.

18 Mr. Ratner?

19 BY MR. RATNER:

20 Q Good morning, Mr. Richardson. My name is
21 James Ratner. I am with the United States Department of
22 Justice. I have just a very short list of questions for
23 you.

24 If you could turn to Page 50, please, in the
25 last paragraph you refer to a consortium in the case of

1 European trade.

2 A Yes, sir.

3 Q You also refer to a consortium on Page 36. Do
4 you see that, in the second paragraph, a new consortium
5 was recently entered?

6 A Yes.

7 Q Is that the same consortium?

8 A Yes, sir, it is.

9 Q Does any of the consortium traffic move by
10 minilandbridge?

11 A No, I don't believe so. I'm sure they don't.

12 Q Why is it that they don't use minilandbridge?

13 A Well, you know, these are Europeans.

14 Obviously, you have got Dutch, German, and French, and
15 Swedes in this consortium. They have historically had
16 the direct water service. They are obviously
17 tenaciously hanging in to their all water service, and
18 the minilandbridge growth has been totally from the
19 American lines, not totally, but largely from the
20 American lines.

21 Q I guess what I don't understand is why the
22 consortium isn't interested in obtaining minilandbridge
23 services as well.

24 A Well, I would characterize it as resistance to
25 change.

1 Q Do the carriers that do use the minilandbridge
2 have lower rates than the consortium all water rates?

3 A The rates are the same.

4 Q I think you have partially answered this, but
5 given that your testimony indicates that there are
6 service advantages in many cases to using minilandbridge
7 as well as cost savings, how is it that the consortium
8 has managed to keep 75 percent of the market without
9 offering the service at all?

10 A Well, they used to have 100 percent of the
11 market, all right, so my comment is that they have only
12 lost 25 percent. I might make an opinion that they may
13 lose considerably more.

14 Q On Page 60, in the first full sentence, you
15 indicate that European state-owned national flag lines
16 are using all water for reasons that are other than
17 purely economic. Other than what you have already
18 discussed with me so far, what are some of the other
19 non-economic reasons for why these carriers are using
20 all water?

21 A Well, in the first place, these carriers
22 didn't welcome containerization with open arms. My own
23 personal experience, I sat in conference meetings with
24 these people for a lot of years. This is a
25 characterization. Maybe it is unfair, but it is my

1 personal opinion. They are rather stubborn.

2 They still are having difficulty in costing
3 container moves. Their background and upbringing was in
4 breakbulk business. By contrast, the American lines are
5 much more sophisticated in their costing techniques.

6 They can tell you net profit, net loss on any
7 given load in any given trade lane. That hasn't
8 happened to these other lines. The people have to be
9 retained, and it is a question of whether or not --
10 they are all having difficulty, which goes without
11 saying. That is a matter of public record. And one of
12 the reasons is because their costing techniques are
13 inadequate.

14 Q On Page 58 and 59, the bottom of 58, you see
15 the sentence that begins, "Any ocean carrier that
16 abandons minilandbridge service?" You go on to indicate
17 that if a carrier abandons, it is going to risk losing
18 its shippers.

19 Am I correct in assuming that there are some
20 shippers that value the faster transit time that
21 minilandbridge offers and that is why they are
22 purchasing the service?

23 A Yes. If you quit the minilandbridge service
24 and someone else stays in it, barring some change, the
25 high value customers, which are the more attractive to

1 | them, are going to stay with the minilandbridge route
2 | because time is money, and it is -- you couldn't market
3 | against it if someone stays in it, so they either all
4 | get out or they all stay in. That is an
5 | oversimplification.

6 | Q I understand there is rate equalization of
7 | sorts, but wouldn't the high value shippers be willing
8 | to pay more for the minilandbridge service than they
9 | would pay for an all water route?

10 | A The high value shipper, in my honest opinion,
11 | would be willing to pay more, yes.

12 | Q If you can explain for me, why is it that they
13 | have not been charged a different rate than the all
14 | water rate?

15 | A Well, historically when landbridge service
16 | started, it was started by Sea Train, which is now out
17 | of business, back in the late sixties, I guess. They
18 | started the service as a marketing tool, treated it
19 | purely as incremental revenue.

20 | Had they been a conference member -- they were
21 | non-conference at this time -- some effort may have been
22 | made at that time in that regard, but the fact that they
23 | weren't conference members, there was no contact between
24 | the other carriers. They had nothing to do but just
25 | respond.

1 Q If as a result of the merger the rail rate for
2 the minilandbridge service were to increase, would the
3 price for all shippers go up, or would the price just go
4 up for those shippers that want to use minilandbridge
5 service?

6 A You are asking me judgmentally what I think?

7 Q Yes.

8 A There are several commodities moving
9 minilandbridge which would have to be classified as low
10 value. I think that what would happen if the rates go up
11 is that the carriers would be forced to take -- to price
12 -- they don't want to book them.

13 Q They don't want to --

14 A They don't want to book those loads. The
15 sophisticated lines, and by that I guess I am referring
16 to the American lines, the sophisticated costing lines
17 don't want to book them today. However, it is somewhat
18 illegal to refuse to book these loads. They just don't
19 solicit them as heavy.

20 I think their only alternative, if those rates
21 go up, would be to take those low rated items up so that
22 they don't get booked. I am talking about, you know,
23 chemicals, resins, that sort of thing, and if that
24 prices these people, these manufacturers out of
25 business, well, the chips fall where they may.

1 I don't think that if you look at the
2 profitability of these lines they can afford to handle
3 anything that is below their out-of-pocket costs.

4 Q Do you think they would raise the prices up
5 for the low value commodities just in the minilandbridge
6 service offering, or would they just raise the rate in
7 your opinion for -- in an equalized sense, both using
8 the minilandbridge or all water?

9 A Strategy, I would think, is that they would
10 only raise the rates on the low values, hoping that if
11 they were to continue they would go on the all water
12 service, and consequently they would solicit harder the
13 high value.

14 There would be some attempt to shift the
15 tonnage. I don't think it would be successful, because
16 it would only create added problems for the consortium
17 all water. That is the type of strategy I am sure that
18 the lines would use.

19 Q What would happen to the high value
20 commodities that are currently moving by minilandbridge
21 if the minilandbridge rate goes up?

22 A Well, it depends on the commodity. If that
23 high value commodity is covering fully distributed
24 costs, I don't think anything would happen with that
25 particular rate.

1 Of course, the variation in the rates is
2 tremendous, but I don't see anything -- I think the
3 carriers would definitely be afraid to move on the high
4 rated commodities, because those are the ones that they
5 are making some profit on. So I don't think anything,
6 in my opinion, would happen on the high values, not
7 unless it got very, very substantial.

8 If it got up close to some of these numbers,
9 then they might jointly agree to take the rates up.

10 Q When you say close to some of these numbers --

11 A Well, I meant the differences we show in
12 costs, all water vis-a-vis the other in our Exhibit 29.

13 MR. RATNER: I have no further questions.
14 Thank you very much.

15 JUDGE HOPKINS: Ms. Reed.

16 BY MS. REED:

17 Q Good morning, Mr. Richardson. My name is Mary
18 Reed. I am appearing on behalf of the U.S. Department
19 of Transportation.

20 Just to follow up on a few questions that were
21 asked by Justice, did the ocean carriers set the rates
22 based on the container as a unit, or on the commodity
23 that is contained in the --

24 A On the commodity.

25 Q Now, am I correct that many inbound container

1 ships from the Far East call at Seattle first, then Los
2 Angeles, and then up to Oakland?

3 A On the larger carriers, the larger carriers
4 have usually two strings of deployment. They have a
5 northeast deployment and a southeast deployment on the
6 west coast. And they change these.

7 Some of them might come into Los Angeles
8 first, because it is the biggest consumer market on the
9 west coast, and then go to Seattle and out. But most of
10 them, and we have a chart in here, an exhibit that shows
11 all of them come to Los Angeles direct.

12 Most of the big carriers make Los Angeles
13 their first port of call. I had a discussion yesterday
14 with Mr. Hynes on the APL schedule. I took the trouble,
15 because I was so concerned about that schedule, I called
16 APL on the phone when I got back, and spoke to the vice
17 president of traffic, Mr. Schmidt.

18 And he verified that I was totally correct
19 that they transship the cargo, no matter what their
20 schedule says, they transship and load it directly first
21 port of call into San Pedro, and he said that because
22 they have had questions on that particular schedule,
23 which was an old schedule you are using, by the way --
24 they are publishing new schedules.

25 But he reemphasized that I am exactly

1 correct. It is their prerogative to route the freight
2 the way they want it, and regardless of -- he verified
3 what we checked, that it is a very miniscule amount of
4 inbound traffic from the Far East comes over Seattle
5 going into the Gulf. As a matter of fact, we even have
6 the numbers if you want them.

7 Q But do some ships call at Seattle first? And
8 then drop down to Los Angeles?

9 A Yes. Very few of them call Seattle first and
10 then drop down to Los Angeles. The ones that call
11 Seattle first usually make that string and go back out.
12 They might do Seattle and they might come down to
13 Oakland and out.

14 Q It just goes Seattle to Oakland and back up
15 north?

16 A You see, Oakland is an outbound port, not an
17 inbound port, particularly when you are talking about
18 the American flag carriers. That is where the military
19 goes out of Oakland, so it is a very important outbound
20 port, and of course outbound is pretty hard to come by
21 these days because of the imbalances.

22 Q Do you know where the Seattle -- does Seattle
23 have minilandbridge or landbridge traffic?

24 A Yes, I was going to say the reason people come
25 into Seattle first, Seattle claims to be the closest

1 port to the Far East. At Sea-Land we picked Seattle as
2 a major port, and we used to advertise it as the closest
3 port to the Far East. Seattle takes the position that
4 midwest cargo, Chicago is theirs.

5 Of course, they fight over it. Seattle port
6 and the carriers coming over Seattle are fighting for
7 that midwest market. So minilandbridge cargo coming
8 from the Far East destined for Chicago, a lot of that
9 comes over Seattle, and that is a constant battle
10 between Seattle and Long Beach.

11 They both fight for that traffic. Midwest is
12 both common to them both. Seattle is losing that battle
13 currently because of this big development APL has made
14 in Los Angeles, and they are losing that not because
15 Seattle isn't competitive in the midwest, but because
16 they can force their balances with domestic cargo back
17 into Los Angeles better than Seattle.

18 Q You are talking about the return of the TOFC?

19 A Yes.

20 Q Now, do you know what the capacity at the port
21 of Seattle is for container traffic?

22 A Oh, it is big. I know it is big, because our
23 Sea-Land facility up there is huge. It is big. Now,
24 Sea-Land has moved to Tacoma, so it is even bigger
25 still. It is a lot of capacity.

1 Q So from your prior answers I would take it
2 there is excess capacity at Seattle for TOFC -- or,
3 excuse me, container traffic?

4 A Yes, they have got plenty of space up at
5 Seattle, yes.

6 Q Now, what about the port of Oakland? Do you
7 know what its capacity is for container traffic?

8 A It has a very large capacity.

9 Q Do you know whether the port of Oakland is
10 presently operating at full capacity?

11 A Well, my judgment would be, no, it is not
12 operating at full capacity. It is a busy port. It is,
13 as I said before, a key outbound port. No, the reason I
14 say it is not is because all of the lines are running
15 out with tremendous empty space going back, and yet they
16 are set up in Oakland and places like that to handle a
17 lot more outbound cargo.

18 Q Now, earlier you indicated that the shipper
19 does not, if I understood your first answer correctly,
20 or that the carrier has a prerogative on which route.

21 A Right.

22 Q Does the shipper specify the date that it
23 wants a freight delivered?

24 A What usually happens is, the sales people
25 contact the shipper, or the shipper calls, and he says,

1 well, what kind of service do you give to, you know,
2 Houston, and the carrier says, well, we generally run
3 21, 22 days, whatever he says. The shipper, if he finds
4 that acceptable -- schedules are schedules, but they are
5 not that precise.

6 If they are correct within 10 percent, a
7 shipper is usually pleased. Very few shippers check to
8 see if you get it on the appointed day unless he runs
9 out of inventory, and then all hell breaks loose. But
10 very seldom are you held to those schedules.

11 Q So the shipper in determining when to tender
12 the freight to the carrier takes into account that there
13 may be delays of --

14 A Yes, he is going to go -- there was a survey
15 done in New York on what a shipper looks for, and
16 reliability, he is going to go with the carrier that if
17 he gets in trouble, he can get a quick trace on the
18 thing and find out where he is.

19 A shipper will go along with you. Even if you
20 are five days late if you tell him where that container
21 is, he can get his boss off his back, so he will go with
22 the carrier that is more reliable, that he thinks has
23 the best computerized control matching it through. That
24 is far more important to him. I think sometimes transit
25 times, they sell transit time, but it is overplayed.

1 Q So if a carrier had a route that was, say,
2 five days longer, the shipper may still choose a carrier
3 that provides more consistent and reliable service, even
4 though it is longer?

5 A Yes. If he feels comfortable with that
6 carrier, that is not uncommon.

7 Q And there is one port I failed to mention on
8 capacity, and that is the port of Portland. Is it
9 presently operating at full capacity?

10 A No, it is not. It is like most of the ports.
11 It is soliciting cargo. Portland-Tacoma has gotten into
12 the battle now, because Sea-Land has made a tremendous
13 move from Seattle to Tacoma that has caused all kinds of
14 eruptions in Seattle, because they were the biggest
15 carrier in Seattle.

16 Portland, really, they are not in the hunt
17 with the other two. They are just not set up as well,
18 and it is not -- this is a personal observation. It is
19 not as competitive, inland structures and so forth, as
20 Seattle or Tacoma.

21 Q I take it from the fact that Sea-Land has
22 moved its operations to Portland, however --

23 A No, to Tacoma.

24 Q Excuse me. To Tacoma, that it anticipates
25 building up this port?

1 A Yes. Well, the reason they moved to Tacoma,
2 they wanted more space contiguous to where they were.
3 Seattle didn't choose to want to give them this space.
4 They had committed it to, I don't know, APL or
5 somebody.

6 So it got to be a big hassle, because their
7 moving was a pretty drastic thing for them, a traumatic
8 thing, I should say. So when they moved out, they moved
9 out of the biggest single facility in Seattle. So there
10 is a void to be filled.

11 Q Now, where does the Tacoma-Portland traffic
12 move to on minilandbridge?

13 A Oh, it is the same. Tacoma is competitive,
14 the inland structure, with Seattle. They are
15 contiguous. They are close to one another.

16 Q And that traffic goes primarily to Chicago?
17 Is that correct?

18 A The midwest is very big over that, yes, and
19 New York. I would not want to preclude that. It would
20 go to New York. A lot of that traffic would go to New
21 York as well.

22 Q Now, do you know whether the Burlington
23 Northern has ever bid for container traffic to the Gulf
24 out of Seattle or Portland?

25 A I am not familiar with the negotiations they

1 have had with the railroads. I would not have any
2 occasion to get involved in that. I would suspect they
3 have. I would be surprised if they hadn't. But I don't
4 know of my own knowledge.

5 Q Do you know whether the Union Pacific has ever
6 bid for traffic out of the port of Oakland to the Gulf?

7 A Oh, I am sure they have.

8 Q They have. Do you know in what range their
9 rate quotation was as compared to other carriers?

10 A It was, I believe it was lower than the UP
11 rate.

12 Q Excuse me. I asked you about the Union
13 Pacific's.

14 A The Union Pacific's rate?

15 Q Yes. How did that -- did the ocean carriers
16 -- have they solicited bids out of Oakland to the Gulf
17 from various rail carriers serving Oakland?

18 A Yes, I believe they have. I think that is an
19 ongoing thing with the carriers. I am sure it is.

20 Q And then Union Pacific has bid against the SP
21 and the Santa Fe for that traffic?

22 A Oh, yes.

23 Q And do you know whether their bid was
24 relatively comparable or lower?

25 A I am not sure enough to -- I don't get

1 familiar with that.

2 Q Do the ocean carriers ask for bids from rail
3 carriers for a variety of ports? For example, they
4 would say to the Union Pacific and the Santa Fe and the
5 SP, give me your best bids from Oakland and Los Angeles
6 to the Gulf?

7 A The ocean carrier generally will go to the
8 port where he thinks his ocean cargo is best served.
9 One of the considerations, but only one of the
10 considerations, would be the -- inland rate factors
11 would only be one of the considerations.

12 Obviously, in Far East cargo inbound, it
13 became a very big consideration with Sea-Land and APL.
14 That is the reason why Long Beach has become such a big
15 port, and why APL has made such a tremendous investment
16 at San Pedro, which is Los Angeles. But it is one of
17 the factors. It is not the only factor.

18 Q But the ocean carriers have asked for bids out
19 of the port of Oakland to the Gulf from rail carriers?

20 A Yes.

21 Q Now, you also indicated earlier that
22 minilandbridge and all water rates are equalized. Is
23 that correct?

24 A Yes. The conference rates are the same
25 whether you move it by minilandbridge or all water.

1 Q Now, you have also indicated in your testimony
2 that the costs for handling minilandbridge and all water
3 are different, correct?

4 A Yes.

5 Q Could you tell me which cost structure sets
6 the rate on minilandbridge and all water?

7 A Well, the rates that are set are really
8 historic by commodity. One of the problems in the ocean
9 carrier industry is that many of the rates are not cost
10 based. They are historic rates.

11 And a lot of them have little relationship to
12 the actual cost of moving the freight, and that is a
13 product of the fact that in the Far East, for instance,
14 that you had so many non-conference carriers who would
15 come in and try to get an umbrella under the conference
16 rates, and it might take a ten-cent lower rate.

17 And when there are only about 20 percent
18 non-conference carriers, that was okay, but when you got
19 about 40 percent non-conference carriers, it got
20 intolerable. And that caused Sea-Land a few years ago
21 to get out of the conference and just meet all of those
22 rates.

23 So the rates are forced not by cost. They are
24 forced by competitive rates. Unfortunately, sometimes
25 they are forced by the Russians, who come in and cut the

1 rates 40 percent. But they had no profit motive. They
2 were trying to get hard currency.

3 So there are a lot of irrational reasons that
4 those rates are in there. I don't want to confuse the
5 answer, but there is no rational reason for some of
6 those rates to be as low as they are, which is why some
7 of these profits are so bad.

8 Q If they are based on historic factors, would
9 it be more likely that it would be based on the all
10 water rates, since that was --

11 A Oh, yes. Their historic all water rates were
12 based on weight and cube. Volume, weight, and cube were
13 the considerations in basing them all water. But they
14 were really based -- those rates historically were based
15 on a breakbulk container, breakbulk ship mode rather
16 than a container system.

17 Now, they have been changed. There are
18 changes. There are rates that are changed every single
19 day. If a particular carrier or operator has a rate
20 request, he can take it to the conference, and that
21 particular new rate would probably be based on cost.

22 MS. REED: Thank you. That is all I have.

23 JUDGE HOPKINS: Mr. Baker?

24 MR. BAKER: I have no redirect, Your Honor. I
25 move the admission of Mr. Richardson's verified

1 statement.

2 JUDGE HOPKINS: Any objection?

3 MR. HYNES: I would move at this time the
4 admission of SFSP-C-89 and C-90.

5 MR. RAKER: No objection.

6 JUDGE HOPKINS: The three exhibits will be
7 received in evidence.

8 (The documents referred to,
9 previously marked for
10 identification as Exhibits
11 Number SFSP-C-89 and
12 SFSP-C-90, were received in
13 evidence.)

14 JUDGE HOPKINS: You are excused.

15 (Witness excused.)

16 JUDGE HOPKINS: Your next witness.

17 MR. AUERBACH: The next witness is Thomas S.
18 Carter.

19 MR. MOATES: Your Honor, before we proceed,
20 this might be an appropriate time for applicants to
21 announce that they have just informed KCS that we are
22 waiving witness Burge, B-u-r-g-e.

23 JUDGE HOPKINS: Thank you. Keep up the good
24 work. We might have some more.

25 MR. MOATES: We will try.

1 Whereupon,

2 THOMAS S. CARTER

3 was called as a witness, and having been first duly
4 sworn, took the stand, and was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. AUERBACH:

8 Q Mr. Carter, would you please state your name
9 and business address?

10 A Thomas S. Carter. My address is 114 West 11th
11 Street, Kansas City, Missouri, 64105.

12 Q Are you familiar with that portion of KCS-12
13 which purports to be a verified statement made by you
14 and acknowledged on September 4, 1984?

15 A I am.

16 Q Do you have any corrections to that verified
17 statement that you would like to make?

18 A Yes, there was one correction on Page 35.
19 Under Discontinuance or Abandonment of Lines or
20 Services, in Line 4, strike the word "Fort Worth" and
21 substitute "Greenville." That will constitute the total
22 changes in my verified statement.

23 VOICE: Could that be repeated, please?

24 MR. AUERBACH: Certainly. Page 35. The
25 second paragraph, that has a heading, the fourth line in

1 that paragraph, "Fort Worth" should read "Greenville."

2 BY MR. AUERBACH: (Resuming)

3 Q As so corrected, Mr. Carter, is KCS-12
4 containing your verified statement which you have just
5 identified true and correct to the best of your
6 knowledge and ability?

7 A It is.

8 Q And do you adopt it as your direct testimony
9 here?

10 A I do.

11 MR. AUERBACH: No other questions.

12 JUDGE HOPKINS: Thank you.

13 Mr. Moates, are you handling it?

14 MR. MOATES: Yes. Thank you, Mr. Auerbach.
15 Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. MOATES:

18 Q Good morning. I am Paul Moates. I am one of
19 the attorneys for the primary applicants in the case.

20 A Good morning, Mr. Moates.

21 Q Mr. Carter, for purposes of our discussion
22 today, can we agree that when I refer to the Kansas City
23 Southern or KCS, we are talking about the Louisiana
24 Arkansas Railway as well?

25 A That will be fine.

1 Q If at any point in any of your answers there
2 is reason to differentiate as between those two, please
3 let me know.

4 A I will.

5 Q All right, sir. Now, let me, to establish the
6 framework of your testimony this morning, see if I can
7 establish that the purpose of your testimony in the
8 statement just identified in KCS-12 is really twofold,
9 is it not?

10 That is to say, it deals with policy matters
11 of the Kansas City Southern in this proceeding and it
12 deals with the operating plan, correct?

13 A That's correct.

14 Q And in fact, sir, you are the witness
15 sponsoring the operating plan of the KCS?

16 A That's correct.

17 Q What I would like to do, Mr. Carter, is
18 discuss some policy matters with you first, and then
19 later come to the operating plan.

20 A That is satisfactory.

21 Q Now, sir, with respect to policy matters, I
22 want to be clear. You are, are you not, the president,
23 the chief executive officer, and the chairman of the
24 board of KCS and LEA?

25 A I am.

1 Q Could you very briefly, sir, define for me
2 what your duties are in those positions?

3 A Yes. As chief operating officer, chief
4 executive officer of the KCS systems, which we have
5 defined, I am responsible for the maintenance of the
6 integrity of standards.

7 I am responsible to the stockholders for the
8 total operation of the rail system, responsible for the
9 continued profitability of the corporation, the
10 establishment of policy.

11 I am also responsible to our employees to
12 provide a safe place for them to work. I am responsible
13 to the people of the country to provide a safe,
14 efficient system of transportation.

15 I am responsible for the maintenance of the
16 environmental standards in the area in which we operate,
17 and certainly I have the obligation to my employees to
18 provide them a good place, a safe place to work.

19 Q Okay. Now, sir, just also as a preliminary
20 question, if you have available KCS-6, Volume 1, which
21 is the small volume that says Index and Narratives, if
22 you would just look at --

23 A I have it.

24 Q Look at Pages 47 and 48 of that volume, and
25 confirm for me that you have, in addition to the matters

1 you have already confirmed, that you have signed this
2 application on behalf of KCS and L&A, and that you are
3 generally familiar with the contents of this
4 application.

5 A That's correct.

6 Q Now, let's discuss for a minute, Mr. Carter,
7 the basic position of Kansas City Southern in this
8 case. I think maybe a place to start would be at Page 8
9 of your verified statement.

10 The first thing you tell us there is that KCS
11 opposes the proposed merger. Does that mean, sir, that
12 your primary position, your fundamental position in this
13 case is that the ICC should deny this merger regardless
14 of any conditions that KCS may be seeking?

15 A It is my position that this merger should not
16 be approved by the ICC, and that KCS does in fact oppose
17 the proposed merger.

18 Q Are you aware, Mr. Carter, of the projected
19 revenue impacts that your traffic and cost experts have
20 projected would occur as a result of this merger?

21 A I have general knowledge of the data that has
22 been prepared by our financial people.

23 Q You are aware, are you not, that Mr. Ploth and
24 others have conducted a loss traffic diversion study to
25 determine, if you will, to quantify the projected

1 traffic impacts on KCS of the SFSP merger?

2 A I am aware that such a study was prepared.

3 Q Are you also aware that other studies were
4 conducted to quantify the favorable revenue impacts on
5 KCS of the various conditions that it seeks in this
6 case?

7 A I am aware of that study.

8 Q Do you have a copy of the entirety of Volume
9 KCS-12-1? That is the volume that your testimony
10 appears in.

11 A I do not have it. Perhaps counsel can furnish
12 me one.

13 Q If you would turn, sir --

14 A I have a copy before me now.

15 Q If you would turn to the verified statement
16 that follows yours in this volume, the statement of Mr.
17 Rawert, R-a-w-e-r-t, particularly to Pages 4 and 5 of
18 that statement.

19 A I have it before me.

20 MR. DREILING: Mr. Moates, Pages 4 and 5 have
21 been changed.

22 MR. MOATES: Yes, I know they have.

23 MR. DREILING: I don't believe the copy that
24 Mr. Carter has --

25 MR. MOATES: Well, do you have one that is

1 corrected for him?

2 MR. DRETLING: Yes. What I am handing Mr.
3 Carter, Your Honor, is KCS-18, which is a copy with the
4 additional errata that we filed.

5 BY MR. MCATES: (Resuming)

6 Q All right, Mr. Carter. Do you now have the
7 twice amended figures to Mr. Rawert's statement that are
8 in the latest KCS errata?

9 A I do.

10 Q My questions, sir, are as follows. If you
11 look first at Page 4 of Mr. Rawert's testimony in Table
12 1 as corrected, do you see that your experts projected
13 as a result of this merger the KCS system will suffer
14 gross revenue losses of slightly in excess of \$27
15 million?

16 A I do.

17 Q And that they similarly project that as a
18 result of the various conditions that KCS seeks to have
19 imposed on the transaction, that you would enjoy a gain
20 of slightly under \$91 million in gross revenues?

21 A In gross. That's correct.

22 Q And in terms of the net revenues, the
23 comparable numbers would be about a \$2 million loss in
24 net revenues?

25 A That's correct.

1 Q And about a \$5.8 million gain?

2 A That's correct.

3 Q And so we are not misled at all here, Table 2,
4 I think, shows the same studies restated to put them in
5 the same traffic year and on the same accounting basis.
6 You also have Page 5, Table 2 there?

7 A I do.

8 Q Okay. And does not that table as restated
9 similarly indicate that the net benefits to Kansas City
10 Southern of this transaction, assuming all of its
11 conditions are granted, is positive?

12 A Restate your question. I didn't understand.

13 Q Don't these tables reflect, sir, that the net
14 revenue benefits for the Kansas City Southern system of
15 this transaction, assuming the transaction is approved
16 with all of the KCS conditions, is one that gives you a
17 positive revenue impact?

18 A It would give us a positive revenue of
19 slightly under \$1 million.

20 Q Given the analyses done by your experts with
21 respect to traffic gains, then, Mr. Carter, my question
22 is, why don't you as a first position support this
23 merger with conditions if, as you testify in describing
24 your duties as chairman and chief executive officer, you
25 are responsible for maximizing shareholder return?

1 A The territory served by the combination of
2 these two carriers is the fastest growing in the
3 nation. I think we have got to agree on that. The
4 potential for additional growth in the south, southeast
5 and southwest is really fantastic. I think that there
6 is going to be a tremendous amount of growth if there is
7 free competition for the movement of transportation,
8 traffic, you know, in the transportation corridors.

9 I feel down deep in my heart that it would be
10 wrong to eliminate the competition as proposed certainly
11 without all of the conditions, and I feel that this
12 number is so close to teeter-totter or a break-even
13 number that it would still be in the best interests of
14 the shippers as a whole, and the public, that this
15 merger should not be approved.

16 Q Are you familiar with the pro forma revenue
17 impacts that Witness Graf projects these various revenue
18 changes will have on your system?

19 A I know that Mr. Graf has prepared such a
20 statement.

21 Q Do you know what the statement shows?

22 A I do not.

23 Q Mr. Carter, do you lack confidence in your
24 traffic experts' estimates of the diversion impacts of
25 your conditions?

1 A I think our traffic experts are as good at
2 guessing at what is going to happen as anyone else.

3 Q Are you uncertain whether you actually would
4 enjoy a net revenue gain from your operation of the
5 so-called IRMA condition?

6 A If the merger takes place and if the
7 conditions are granted by the Commission, there would
8 certainly be some gain to KCS with IRMA, that's
9 correct.

10 Q You are confident of that?

11 A I am confident of that.

12 Q What is KCS's system average revenue to
13 variable cost ratio for all of its traffic, do you
14 know?

15 A I don't know.

16 Q Do you have any idea?

17 A I really don't.

18 Q Again, if you look at Table 5 -- excuse me,
19 Table 2 on page 5 of Mr. Rawert which is, as his
20 testimony indicates, the restated results of the studies
21 to put both, in 1983, and to put both on depreciation
22 accounting, do you see the corrected number of
23 \$4,907,966 as the projected net revenue loss from the
24 first study?

25 A I see that figure, yes.

1 Q Accept with me if you will -- and I have a
2 little pocket calculator here if you want to test this.
3 It is simply a division proposition -- that the revenue
4 to variable cost ratio of that loss traffic, that is to
5 say, just simply those expenses against those revenues,
6 is 122 percent.

7 Do you have any idea whether the 122 percent
8 number is at all close to or representative of KCS
9 system traffic?

10 A I don't know.

11 Q Accept with me further, if you would, Mr.
12 Carter, that the same calculation for the recapture and
13 gains traffic studies, the column under that, produces a
14 revenue to variable cost ratio of 107 percent.

15 That being the case -- and I would be glad to
16 have this subject to check on the numbers -- is this
17 really the kind of traffic that KCS aggressively
18 solicits, traffic that produces a revenue to variable
19 cost ratio of 107 percent?

20 A As a common carrier, I am obligated to take
21 any traffic that is tendered, whether it is very
22 profitable or whether it is not so profitable.

23 Q I understand that, sir, but you are not
24 obligated, are you, to propose this IRMA condition in
25 this case and to seek this kind of traffic at this

1 expense level?

2 A I am obligated to do something to eliminate
3 the hurt that this merger would create to the public and
4 the hurt that this merger would create to KCS.

5 Q And it is your testimony that the way to do
6 that is to transport \$91 million in gross revenues
7 additional freight with a revenue to variable cost ratio
8 on the average of 107 percent?

9 A It is certainly true that we would not make as
10 much money on IRMA as we would if we were handling
11 traffic on our own line.

12 Q Have you considered the possibility, Mr.
13 Carter, that if in fact some of the expenses shown in
14 that calculation are indeed understated, that the IRMA
15 traffic might even put you below 100 percent return?

16 A I don't think that the people that made this
17 study missed the estimate that bad. I have got more
18 confidence in their ability, but I cannot testify as to
19 the precision of the numbers. I would suggest that
20 those people will be in the hearing room, and if you
21 have questions, perhaps you could direct those questions
22 to those people.

23 Q We will. Thank you, sir.

24 You might want to hand that back. I don't
25 want you to get loaded with paper up there.

1 I want to turn, Mr. Carter, now if we may to
2 the basis or bases on which KCS opposes the merger.

3 Is it a fair statement, again looking at page
4 8 of your verified statement, that a basis of your
5 opposition to the merger is your belief that this
6 transaction will engender certain anticompetitive
7 effects?

8 A That's part of my belief.

9 Q And also directing your attention in this
10 regard to page 6 of your statement, just turn back a
11 page, in the first full paragraph on that page, which
12 you might want to take just a moment to review. It
13 starts, "KCS would be materially and adversely
14 affected."

15 Do you see that paragraph?

16 A I see it.

17 Q Is it also the position -- strike that.

18 Is it also a basis of your position in
19 opposition that this merger will harm KCS's essential
20 services?

21 A Very definitely. The loss of revenue is going
22 to be harmful to the overall effect of KCS, and in the
23 particular paragraph you are talking about, I am also
24 talking about the cumulative effect of both the Missouri
25 Pacific-Union Pacific merger and of the instant merger.

1 Q Well, sir, with respect to this instant merger
2 which is, after all, the one the Commission is now
3 considering, is it your position that this merger, the
4 effects of this merger on the KCS will be so serious as
5 to jeopardize essential rail transportation services
6 which KCS offers?

7 A It is not going to cause us to go under, but
8 it is certainly going to hurt. It is going to reduce
9 our earnings, can reduce our ability to provide
10 excellent service to the shippers in the territory in
11 which we operate. It will have some major hurt on KCS.

12 Q If I can paraphrase that, in terms of the term
13 I am driving at, is it a fair statement that you do base
14 your position in this case at least in part on an
15 expectation on your part that essential services
16 provided today by KCS will be harmed, eliminated, you
17 choose the word, affected by this merger?

18 A Essential service by KCS will be affected.

19 Q Adversely?

20 A Adversely.

21 Q And that is one of the bases for your
22 opposition?

23 A That is one of the bases of my opposition.

24 MR. MOATES: I would like to give Mr. Carter,
25 and I don't know whether, Your Honor, we have been up

1 until this point marking for identification
2 interrogatories and responses. I think not. So I think
3 I will just ask that he be provided a copy and a copy be
4 given to his counsel.

5 JUDGE HOPKINS: Thank you. We have enough
6 other things in here.

7 MR. MOATES: And maybe one for Your Honor.

8 JUDGE HOPKINS: Thank you.

9 MR. MOATES: I will represent to Your Honor
10 and Mr. Carter and counsel that this is a copy of
11 Applicants' first set of interrogatories and informa-
12 document request to the Kansas City Southern, and
13 attached thereto are two sets of responses we received
14 to that. The first is dated September 5, 1984, signed
15 by Messrs. Calhoun and Baker, the second dated December
16 12, 1984, signed by Mr. Dreiling.

17 BY MR. MOATES: (Resuming)

18 Q Mr. Carter, would you look at the very first
19 page of this exhibit, the first interrogatory? It says
20 one. It is right on the top of the first page.

21 A The first page you handed me was the number
22 8.

23 Q It says eight on the bottom, that's right.
24 There's lots of lawyers' talk in the first seven pages,
25 and we get to it on page 8.

1 In the first paragraph, sir, the first
2 numbered paragraph on that page, would you just review
3 that for a moment?

4 A Interrogatory No. 1 on page 8, you want me to
5 read that?

6 Q Yes.

7 (Pause)

8 A Okay, I read Item 1.

9 Q If you would turn to the first page of Mr.
10 Raker's letter, which I hope is the second stapled
11 document, do you see that?

12 You have it.

13 I want you to look at the first page. It is
14 on Sullivan & Worcester letterhead, September 5.

15 A I have Interrogatory No. 1 of Mr. Raker's
16 letter before me.

17 Q Now, preliminarily, Mr. Carter, let me ask you
18 this question before I go into the answer. I notice
19 that your response to Applicants' second set of
20 interrogatories and informal document production
21 request, you provided a verification that the
22 information was true as stated.

23 I haven't given you this, but do you recall on
24 December 28, a pretty short time ago, two weeks ago,
25 that you verified some additional answers to a second

1 set of interrogatories?

2 I can show you the page.

3 A I do recall that.

4 Q My question is do you recall at any point
5 being asked to verify or to check any comparable set of
6 answers for this first set of interrogatories that were
7 responded to first in early September and again by Mr.
8 Dreiling, supplemented on December 12?

9 A I did not verify either of the first two. I
10 did verify the one in December.

11 Q Now, with that answer as background, and
12 keeping in mind that our Interrogatory No. 1 as you read
13 to yourself asks KCS to specify in detail each of the
14 essential services it claimed would be jeopardized,
15 would you read for the record the response to
16 Interrogatory No. 1 in Mr. Baker's September 5, 1984
17 letter?

18 A Reading from the Sullivan & Worcester letter
19 dated December 5 to Mr. Moates --

20 Q September.

21 A September 5, 1984, "The independent ratemaking
22 authority (IRMA) and trackage rights specified in KCS's
23 responsive case are not based on any assertion that
24 KCS's essential services, as defined by the Commission,
25 will be impaired. Rather, as will be discussed in its

1 September 10 filing and in its opposition case to be
2 filed on November 19, 1984, KCS asserts that without
3 regard to the issue of essential services, the
4 Applicants' proposed merger will result in serious
5 anticompetitive consequence that can only be alleviated
6 in the manner proposed by KCS's responsive applications
7 (KCS-8, Volume 1, pages 11 through 20)."

8 Q Thank you, Mr. Carter.

9 Now, given the fact that this answer to an
10 interrogatory states that KCS, that its request for IRMA
11 trackage rights is "not based on any assertion that
12 KCS's essential services will be impaired," can you tell
13 me what is the position of KCS in this case, or has it
14 changed its position about the impact of the transaction
15 on its essential services?

16 A The position of KCS has not changed. The
17 statement that I made earlier was that if we have losses
18 in revenues, we are going to have to have some losses,
19 some reduction in services, and that was the statement
20 that, I believe, that is the statement that still
21 exists.

22 Q Maybe I read the English language differently,
23 sir, but that says, that Interrogatory answer you just
24 read says that your position is not based on any
25 assertion that KCS's essential services will be

1 impaired.

2 I take it from what you are now telling me
3 that it is based upon an assertion that in some manner
4 they will be impaired perhaps in the long run.

5 A In the long run there will certainly be some
6 effect. I think you can figure that out. If we have
7 loss of business, we are going to have to have some --
8 there will be some negative effect.

9 Q I think I can't figure it out, Mr. Carter, and
10 that's why we asked the interrogatory, and we were
11 rather surprised to get this answer.

12 I want to ask you, since we didn't get the
13 answer the first time, just what essential rail
14 services, specifically, now, that KCS provides today
15 that you maintain will be impaired as a result of this
16 transaction?

17 A All right, I will give you one specific
18 answer, one specific example. It is my belief that
19 after the merger has taken place, if there are no
20 conditions, the Big D connection is going to be lost.

21 Q And you say that is an essential rail service
22 provided by KCS?

23 A It is very essential. We are providing a
24 great service, we are providing competition for a great
25 number of shippers by running traffic from the west

1 coast to the southeast, and from the southeast to the
2 west coast through the Big D connection. It is a great
3 service. I feel that the bulk, if not all of that
4 business will ultimately be lost.

5 Now, that is certainly an essential service.
6 That is one of the things that I had in mind when I made
7 my earlier statement.

8 Q Just so we can close the loop on this, do you
9 still have this thin volume here, KCS-8, Volume 1, the
10 index and narrative to the application?

11 A I have KCS-8.

12 Q We already determined, sir, didn't we, that
13 you had verified this application?

14 A I verified this statement.

15 Q Would you turn to page 14 of this document?

16 A Yes.

17 Q This is in the section captioned "Purpose
18 Sought To Be Accomplished by Proposed Transaction." I
19 direct your attention on page 14 to the second full
20 paragraph on the page.

21 Would you read that statement, please, aloud?

22 A The one that starts with "The purpose?"

23 Q Yes.

24 A Okay, reading from page 14, second full
25 paragraph on KCS-8, "The purpose of the conditions

1 proposed by KCS in this application is to ameliorate the
2 anticompetitive facts of the proposed merger and to
3 protect KCS's ability to continue to provide essential
4 rail transportation service to the shipping public. The
5 conditions would accomplish these goals as follows."

6 Q Would you confirm, sir, that the date shown on
7 the cover of this document you were reading from is July
8 19, 1984?

9 A I do.

10 Q And again, the date of the letter from which
11 you read Mr. Raker's response is dated September 5,
12 1984, isn't it?

13 A It is.

14 Q One last question in this regard, Mr. Carter.
15 Is it your position that the essential
16 services that are referred to at page 14 of the
17 application that you just read refer to KCS's
18 participation in particular services such as the Big D
19 connection with the Santa Fe?

20 A I don't understand your question.

21 Q The reference that is made to KCS's ability to
22 continue to provide essential rail transportation
23 services to the shipping public, when you make that kind
24 of a statement, do you have in mind the totality of
25 service to a shipper in a particular corridor, or do you

1 have in mind KCS's participation in that corridor?

2 A I didn't understand one word.

3 Do I have in mind the what?

4 Q The totality, all of the services available,
5 or do you just have in mind --

6 A Totality, okay.

7 Q Or do you have in mind simply KCS's
8 participation in a particular service?

9 A Today KCS and Santa Fe are working with joint
10 through rates and routes to provide competition with the
11 parallel line of the Southern Pacific. I am concerned
12 that that is going to be lost, and certainly the effect
13 that this would have on KCS would also be bad. The
14 public is going to be the loser, and the KCS is going to
15 be the loser if this goes through without these
16 conditions.

17 Now, that is what I have in the back of my
18 mind when I make this statement.

19 Q Now, let's look back at page 6 again of your
20 verified statement, the paragraph that we had reference
21 to a little while ago where you state that KCS will be
22 materially and adversely affected by the merger.

23 Putting aside for a moment the term essential
24 services which we have discussed now in some detail, you
25 do contend, do you not, Mr. Carter, that KCS's ability

1 to compete and KCS's viability will be, in your words,
2 materially and adversely affected by the merger, isn't
3 that right?

4 A Without the conditions, that is correct.

5 Q Without the conditions.

6 Is it then your position that if the
7 conditions sought by KCS were to be imposed, that KCS
8 would no longer be materially and adversely affected?

9 A I am not going to let you put those words in
10 my mouth. My position is that the merger should not be
11 approved by the ICC. If, however, this Commission
12 agrees that this merger should be approved, then I take
13 the position that these conditions, IRMA and the
14 trackage rights as submitted in this application, should
15 be a part of that order.

16 Q Mr. Carter, didn't you and your company make a
17 similar prediction in the Union Pacific-Missouri Pacific
18 merger proceeding, that that transaction would have a
19 significant adverse effect on KCS?

20 A We did take the position that there would be a
21 loss if that merger was approved. We did not take the
22 position that there should be similar conditions because
23 IRMA was not included in that particular application.

24 Q We will come to the similarity of the
25 conditions in a while, but you have answered my basic

1 question. You did oppose that merger on the grounds
2 that it would have a significant negative effect on the
3 Kansas City Southern Railroad?

4 A We did.

5 Q Didn't in fact the Kansas City Southern
6 Railroad have a significantly better 1983 in financial
7 terms than 1982?

8 A We had -- yes, that's correct.

9 Q I think the figures will show that you had net
10 income of \$25.1 million in 1983 versus \$21.6 million in
11 1982.

12 A Those are approximately correct.

13 Q And -- strike that.

14 Isn't it also true, Mr. Carter, that Kansas
15 City Southern is situated within one of the fastest
16 growing sections of the country, in fact, an area which
17 has many industries that utilized rail services?

18 A That is correct.

19 Q And don't you have a very substantial traffic
20 base of, among other things, coal, grain, petroleum,
21 chemicals and forest products?

22 A That is absolutely correct.

23 MR. MOATES: Your Honor, now I would like to
24 have a counsel's exhibit marked for identification. I
25 believe, if I am not mistaken, the next number may be

1 91.

2 JUDGE HOPKINS: 91.

3 MR. MOATES: This is a seven-page document.
4 The first page has a caption on it, Kansas City Southern
5 Industries, Inc., description of business.

6 JUDGE HOPKINS: It will be marked for
7 identification as SFSP-C-91.

8 (The document referred to
9 was marked Exhibit No.
10 SFSP-C-91 for
11 identification.)

12 BY MR. MOATES: (Resuming)

13 Q Mr. Carter, do you know the source of this
14 document?

15 A I do.

16 Q And is in fact, is this in fact an extract of
17 certain pages from a briefing book prepared by your
18 company for financial analysts?

19 A This is an extract from a briefing book
20 prepared by the Financial Vice President of Kansas City
21 Southern, the parent company of the railway.

22 Q Was Mr. Graf involved in the creation of this
23 document?

24 A He is.

25 Q Have you seen this document prior to your

1 appearance here today?

2 A I have.

3 Q And have you seen the totality of the document
4 from which this extract comes?

5 A I have seen the entire document.

6 Q I should state for the record that in very,
7 very few cases, the second page of the exhibit is an
8 example, a few items had been redacted at KCS counsel's
9 request. We did not object to that. So there are a few
10 blank spots.

11 Now, Mr. Carter, I direct your attention first
12 to the bottom of the first page of this exhibit which
13 again, now, was prepared by Kansas City Southern
14 Industries, is that it?

15 A Industries.

16 Q The holding company?

17 A The holding company.

18 Q At the bottom of the page there is, after a
19 description of your lines, do you see there at the very
20 bottom there is a statement that the major commodities
21 handled include those that I mentioned a minute ago,
22 coal, grain, petroleum, chemicals and forest products?

23 A I see that.

24 Q And that is accurate, is it not?

25 A What?

1 Q That is an accurate statement, is it not?

2 A That is correct.

3 Q All right.

4 Would you turn the page, the first full
5 paragraph on that page indicates, does it not, that coal
6 has grown to be an important commodity for KCS lines
7 with the advent of unit coal train shipments in the
8 mid-1970s from the Powder River. Is that true?

9 A That's true.

10 Q And there is an indication there that the
11 estimated 1983 volumes for your unit coal train
12 shipments was about 13 million tons, is that right?

13 A That's right.

14 Q Do you know how that estimated volume compared
15 with the actual 1983 result?

16 A Of 198--

17 Q Three.

18 A Three. We handled slightly over 12 million
19 tons in 1983.

20 Q Okay.

21 And then the paragraph below that 13 million
22 number you will see a discussion of petroleum and
23 chemicals that originate in the area you serve, and also
24 about halfway down the paragraph, reference to a
25 movement of natural soda ash from the Green Rivert Basin

1 in Wyoming, which originates on the Union Pacific, was
2 delivered to KCS at Kansas City for shipment to Port
3 Arthur for export.

4 Do you see that?

5 A Yes.

6 Q What is Port Arthur, Mr. Carter?

7 A What is Port Arthur? It is the southern
8 terminus of the Kansas City Southern Railway.

9 Q And it is on the Gulf of Mexico?

10 A It is on the Gulf of Mexico.

11 Q And in fact, doesn't Kansas City Southern have
12 a substantial export soda ash facility at Port Arthur?

13 A We do have a soda ash, a facility, bulk
14 handling facility at Port Arthur, Texas that can handle,
15 among other things, soda ash.

16 Q And does.

17 A And does.

18 Q All right.

19 In the bottom paragraph of this page there is
20 again reference to substantial number of KCS car
21 loadings that consist of wood and paper products.

22 Do you see that?

23 A Yes.

24 Q Reference is made to the recent completion of
25 a major paper plant at Mansfield, Louisiana.

1 Is that an exclusive point on the Kansas City
2 Southern?

3 A No, it is not.

4 Q Who else serves it?

5 A The Missouri Pacific serves it, as does KCS.

6 Q With respect to your coal shipments, with
7 respect to the soda ash shipments referred to, and with
8 respect to, as an example, the wood and paper products
9 from -- to and from the plant at Mansfield, Louisiana,
10 do you maintain that any of those volumes of traffic
11 will be adversely impacted by this merger?

12 A As far as unit train coal is concerned, no.
13 As far as the paper is concerned, yes.

14 Q What about the soda ash?

15 A As far as soda ash, no.

16 Q Why do you think there will be adverse effects
17 on this paper traffic if only you and the Missouri
18 Pacific serve it?

19 A I will give you one example. There is a
20 movement of milk carton stock that moves on the reverse
21 Big D presently today that in all probability will be
22 changed, that is moving on the reverse movement of the
23 Big D right now.

24 (Discussion off the record.)

25 MR. AUERBACH: Excuse me, Your Honor. I think

1 in the prior answer that the reporter is referring to,
2 the witness said "in all probability."

3 JUDGE HOPKINS: Restate it completely again.

4 MR. MOATES: Let me ask a question.

5 BY MR. MOATES: (Resuming)

6 Q In giving me that answer, Mr. Carter, were you
7 referring specifically to the Mansfield, Louisiana
8 facility, or were you referring generally to your paper
9 traffic?

10 A I was referring to the Texarkana paper mill.

11 Q Specifically with reference to the plant at
12 Mansfield, Louisiana, would any of the traffic to or
13 from that plant be adversely affected by this
14 transaction?

15 A Not that I can foresee at this time.

16 Q Would you look at the last page of this
17 exhibit? I meant to ask you about this when we
18 discussed the unit coal, so I am going to ask you to put
19 your unit coal hat back on.

20 A Okay. I had the last page before me.

21 Q Does that exhibit, which is a bar graph,
22 actually depict the growth in KCS's participation in
23 unit coal tonnage for the years 1979 through 1983?

24 A It looks okay to me.

25 Q In fact, have you recently commenced

1 participation in a joint line movement with the
2 understanding over Kansas City of other unit coal
3 trains?

4 Did you hear that?

5 A I heard it, but I don't recall the
6 commencement of any unit train coal movement over the
7 Union Pacific. I am not aware of any.

8 Q All right.

9 And also, sir, if you would look at the second
10 page of the bar graph exhibits -- that's the best way I
11 can describe it -- the caption on the page is KCS
12 Operating Revenue.

13 Do you see that?

14 A I have it before me.

15 Q This is a little hard to see, and I am sorry,
16 but I think as you know, since you have seen the
17 original, these were in color, and therefore the
18 shadings don't come out quite right, but I think you can
19 see that the lower part of these graphs were a different
20 color and appeared darker on the Xerox, and they
21 represent unit coal revenue.

22 Do you see that?

23 Are you able to discern the darker shadings?

24 A I can see a difference in color. One is dark
25 grey and one is lighter grey. Okay.

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1 Q I just want to confirm that the growth or the
2 increase, if you will, in the darker shade, which
3 represents operating revenue from unit coal trains, is
4 accurately depicted in this chart, in other words, that
5 it has grown consistently over that period from 1979 to
6 1983.

7 A It would be very difficult for me to say that
8 what I have before me can accurately represent what you
9 are looking for, but there appears to be a trend
10 particularly between '72 and '82. It looks like it is
11 flat from '82 to '83.

12 Q Is that trend consistent with your knowledge
13 and experience on the KCS as your railroad has continued
14 to participate in unit coal service?

15 A The trend has been up.

16 Q And also, the first bar graph exhibit, which
17 is Kansas City Southern Industries Transportation
18 Segment, Operating Revenues and Operating Profit. Again
19 we have to look at the dark and light shading, but
20 acknowledging that fact, do these figures seem to be
21 approximately correct based on your knowledge of the
22 results of the KCS during those years?

23 A Here is what I read off of the graph you are
24 asking about. It appears that there is an increase from
25 '79 to '80, an increase from '80 to '81, and a decrease

1 from '82 as compared to '81, and it looks like it is
2 about even-stein for '83.

3 Q Very slight decrease for '82, wasn't it?

4 A Nevertheless, a decrease from '82 as compared
5 to '81.

6 Q And in 1983, the first full year of the merged
7 Union Pacific-Missouri Pacific system, you have slightly
8 increased again.

9 A I beg your pardon. I do not agree that that
10 merger is complete. As you know, that litigation is
11 still pending in that case, so the merger is not
12 completed.

13 Q I think I said during the first full year of
14 that merged company's operations. It did operate as a
15 merged entity in 1983, did it not?

16 A The case has not been closed is my testimony.

17 Q Mr. Carter, I am not trying to get you to --

18 A I do not agree that the merger is completed.

19 Q I am not trying to get you to undermine any
20 litigation position, I am really not. I am just trying
21 to get you to confirm that in 1983, when the KCS enjoyed
22 the operating profits shown on this graph, that the
23 UP-MP-WP system was at least operated as a merged
24 entity.

25 A That's not my understanding at all. The Union

1 Pacific Railroad is operating as the Union Pacific
2 Railroad. The Missouri Pacific Railroad is operating as
3 the Missouri Pacific Railroad. Each have different sets
4 of officers. They can communicate with each other, of
5 course, but that property has not operated as a merged
6 company, and I tell you, the case is not closed because
7 litigation is still pending on it.

8 Q Wasn't that in fact the style of operation
9 that the Union Pacific proposed to this Commission and
10 which this Commission approved and which KCS opposed?

11 A I did not hear the presentation of the Union
12 Pacific case before this Commission.

13 Q Well, when we talked before about the fact
14 that KCS had opposed the Union Pacific merger, were your
15 answers given to me on the misapprehension that the
16 Union Pacific had proposed to this Commission a physical
17 merger of all of those rail assets?

18 A There is no misapprehension in my answer. The
19 statement that I made is that the company has not been
20 completely merged. The two railroads are being operated
21 separately today, and I think the reason is because the
22 merger case is still pending. Litigation is still
23 pending on the case, and that is my understanding of
24 it.

25 I am not going to let you put any more words

1 in my mouth other than just that.

2 Q While the Union Pacific and Missouri Pacific
3 Railroads may, as you have just testified, still be
4 separate corporate entities, Mr. Carter, isn't it in
5 fact the case that the traffic and sales departments of
6 those railroads were put together when those systems
7 consolidated pursuant to Commission authority?

8 A I understand that there have been some
9 consolidations of the traffic departments.

10 Q Do you consider today that Kansas City
11 Southern is competing against the Union Pacific
12 separately and the Missouri Pacific separately, or do
13 you feel that you are competing against a combined
14 system?

15 A I have correspondence in my file that
16 indicates that we are working with the Missouri Pacific
17 in some cases, and I have correspondence in my files
18 just recently that indicates we are working with the
19 Union Pacific as a separate entity.

20 Q And it is your testimony, then, that -- strike
21 that.

22 One last question.

23 The third page of the exhibit, which is the
24 third page of the narrative text, is captioned
25 "Corporate Growth Strategies."

1 Do you see that?

2 A I do.

3 Q Did you have any input into this portion of
4 the document?

5 A I did not.

6 Q Did you discuss this corporate growth strategy
7 with anyone in KCS Industries?

8 A I did not.

9 Q Does the page I am referring to accurately
10 reflect Kansas City Southern, if you know, Kansas City
11 Southern Industries corporate growth strategies?

12 A Let me read it and I will answer your
13 question.

14 (Pause)

15 These appear to be a great set of goals.

16 Q A great set of goals?

17 A Correct.

18 Q Are they goals that you agree with?

19 A I can't object to the goals that have been
20 established. I am not going to say that they are all
21 going to be accomplished.

22 Q I am particularly interested at this point,
23 Mr. Carter, in the plan for external growth.

24 Do you see that? There are two things stated,
25 line segment acquisitions into new service areas and

1 trackage rights agreements.

2 Do you see that?

3 A Right.

4 Q Does that mean that Kansas City Southern's
5 condition request in this case, which includes line
6 segment acquisitions into new service areas and trackage
7 rights agreements, are a reflection of your corporate
8 growth strategy?

9 A The thing that they were talking about at this
10 time was the fact that KCS made an offer to acquire a
11 portion of the abandoned Rock Island. We did in fact
12 make an offer, and we attempted to acquire that so that
13 we would be able to operate what is known as the Spine
14 of the Rock Island, and that was subsequently turned
15 down. And I think that in all probability, the people
16 that drafted this statement had that in mind.

17 As far as the trackage rights agreements are
18 concerned, of course, I am interested in acquiring
19 trackage rights where I can, where I can operate
20 profitably and do a good service. There is no question
21 about that.

22 MR. MOATES: Your Honor, I would like to have
23 marked another counsel's exhibit, SFSP-C-92 for
24 identification, which will be an extract, specifically,
25 the first eleven pages of the 1983 annual report of

1 Kansas City Southern Industries, Inc.

2 JUDGE HOPKINS: That will be marked for
3 identification.

4 (The document referred to
5 was marked Exhibit No.
6 SFSP-C-92 for
7 identification.)

8 BY MR. MOATES: (Resuming)

9 Q Mr. Catter, as President, CEO and Chairman of
10 Kansas City Southern Railroad, do you have
11 responsibilities to provide input information into the
12 holding company's annual report?

13 A Only the portion that was headed up
14 Transportation Section, that is correct.

15 Q Which is the only section I have copied along
16 with the letter from Messrs. Deramus and Rowland.

17 A I had nothing to do with that, but I did with
18 the Transportation Section.

19 Q Let me ask you first about their letter.
20 You said you had nothing to do with it.

21 Look at page 3 of the report, which is the
22 second page of their letter to shareholders, and for the
23 record, I guess we should state Mr. Deramus is the
24 Chairman of the Board and the CEO of the holding
25 company, and Mr. Rowland is the President and Chief

1 Operating Officer?

2 A That is correct.

3 Q And this is the same Mr. Rowland who will
4 appear in this case, is that right?

5 A That is correct.

6 Q Now, on page 3 of the report, you see the
7 second full paragraph from the bottom of page 3, that is
8 a strange way, but it says our transportation
9 operations, and so on.

10 A I see that.

11 Q Would you read that paragraph into the
12 record?

13 A I will indeed. "Our transportation operations
14 are strategically placed and already participating in
15 the upturn out of the worst recession in recent times.
16 By most standards, the region served by KCS Lines is the
17 most dynamic and has the brightest future of any in the
18 continental United States. Improved service and low
19 cost operations are the key to survival and prosperity
20 in the new environment."

21 Do you agree with that statement?

22 A I don't disagree with it.

23 Q That is politic, Mr. Carter.

24 Now, if we could look at the section that you
25 say you do have input into, the one that starts on page

1 7 with the caption "Transportation," do you see that?

2 A I do.

3 Q You say, by the way, you have input into this
4 section.

5 What does that mean? Do you actually review
6 the draft of this document, do you discuss this portion
7 of the report with holding company personnel? What is
8 the process?

9 A I was interviewed by the people that did the
10 draftsmanship on it, and then after they submitted their
11 draft, I had the chance to look at it.

12 Q And make any appropriate corrections or
13 changes?

14 A I made any numerical changes that needed to be
15 made.

16 Q All right.

17 Now, this is page 7 of the exhibit for
18 reference.

19 Do you see the statement in the second full
20 paragraph "While enjoying certain unique advantages,
21 this railroad competes with other railroads, with trucks
22 and with barge lines for freight customers." Do you see
23 that?

24 A Which paragraph, sir?

25 Q The first paragraph at the top of the page.

1 A Now, read that again, please.

2 Q I won't read it for the record. It is the
3 second sentence.

4 A The second sentence in the first paragraph.
5 Okay.

6 (Pause)

7 Okay, I have read it.

8 Q Would you briefly enumerate for the record,
9 sir, what some of these unique advantages are that KCS
10 enjoyed?

11 A Yes, I will. KCS has a very short line
12 between Kansas City and the Gulf of Mexico. I think
13 that is very unique. We also have the advantage of
14 serving five deepwater ports. I think that is quite
15 unique.

16 Q I don't mean to interrupt, but would you mind
17 naming those five ports?

18 A I will be glad to. New Orleans, Louisiana,
19 Baton Rouge, Louisiana, Lake Charles, Louisiana,
20 Beaumont, Texas, and Port Arthur, Texas. KCS is a good
21 railroad. There is no question about it. We think it
22 is fairly well maintained. We think it is fairly well
23 operated. We are just really proud of our railroad, and
24 we want it to stay that way.

25 We provide a very essential service to a

1 number of shippers in that market, and we don't want
2 anything to happen, we don't want anything to louse it
3 up that would cause it to continue to remain strong and
4 viable.

5 Q Would you say that certain other of those
6 unique advantages might include some of the marketing
7 matters we just discussed a moment ago when we were
8 looking at that analyst's report, such as your
9 participation in export soda ash, such as your
10 participation in certain unit coal train movements?

11 A That is very special. We are very proud of
12 that segment of business.

13 Q Okay.

14 Again looking at page 7 of the report, Mr.
15 Carter, I am going to now go to the second paragraph,
16 the second sentence. This is again talking about unit
17 coal volume. The sentence I am interested in says "This
18 traffic, which escalated gradually and amounted to 12.9
19 million tons in 1983, should continue to move well
20 beyond the year 2000."

21 Does that in fact, that statement about
22 traffic moving beyond the year 2000, does that apply to
23 roughly the 13 million tons that we just looked at?

24 A No. We know that two of the four people that
25 I serve have contracts to buy solid fossil fuel that

1 will last through the year 2000, and that is the source
2 for this statement.

3 Q In the last paragraph on the page, the third
4 sentence, it is a rather interesting statement. "The
5 Kansas City Southern Railway Company hauled more freight
6 by weight and by carload in 1983 and did so for less
7 cost."

8 Do you see that?

9 A I do.

10 Q What is the explanation for that statement?
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1 A I can give you the answer to that. The
2 Southern Pacific has been doing a lot of rate shopping,
3 and consequently we are having to reduce our rates in
4 order to stay competitive in a lot of cases.

5 They are quoting a lot of rates and routes,
6 and also the contract rates had a tendency to be less
7 profitable or less gross than did the situation
8 pre-Staggers.

9 Q I think you lost me on that answer, Mr.
10 Carter, because if I read that sentence it tells me that
11 you hauled more freight and more cars, but you did it
12 for less cost, not at lower rates.

13 In other words, you did better.

14 A We also did it for less revenue. And that's
15 what I thought you were talking about. Perhaps I
16 misspoke. The railroad, of course, the standards for
17 managing the railroad have raised -- and consequently,
18 I'm not having to spend as much for maintenance of way
19 right now as I did in the earlier years -- and
20 consequently, my costs are slightly less.

21 I perhaps misspoke when I said less revenue.

22 Q Okay. If you turn the page -- and I hope the
23 exhibit works this way -- page 8 is an overview of your
24 financials. I think what I was talking about and I
25 think what you were referring to, or the company was

1 referring to in that statement that you just read, is
2 the following.

3 If you look under your total expenses for 1982
4 and your total expenses for 1983, they in fact -- pardon
5 me -- your total revenues, total revenues, your revenues
6 went up from 1982 to 1983, didn't they?

7 A They went up from \$312 million to \$314
8 million.

9 Q But at the same time, your total expenses went
10 down?

11 A They dropped from \$264 million in '82 to \$261
12 million in '83.

13 Q And it's that phenomenon that you're referring
14 to, or the company is referring to in the sentence on
15 page 7, is it not?

16 A Okay, that's correct.

17 Q And it was the second answer you gave me that
18 would apply to that phenomenon?

19 A For cost. Yes, that's correct.

20 Q Would you turn to the last page of the
21 exhibit, page 11?

22 A I have before me page 11.

23 Q I have several questions on this page. First,
24 in the first full paragraph, there is a statement about
25 railroad merger activity, specifically the following:

1 "We expect in 1984 to bring about a definite development
2 in the struggle for control of the Milwaukee Road
3 between the Grand Trunk Western, Soo Line, and C&NW.

4 "Because Kansas City Southern interchanges
5 traffic and operates a joint terminal at Kansas City
6 with the Milwaukee Road, we are keenly interested in the
7 outcome of this contest."

8 First of all, Chicago North Western was the
9 successful bidder, was it not, in the transactions in
10 which the KCS participated to attempt to acquire what is
11 called the Spine Line of the Rock Island?

12 A They were the high bidder. Now, this
13 particular paragraph that you introduced the question on
14 has to do with the Milwaukee Road.

15 Q I know.

16 A Now, is your question with respect to the Rock
17 Island?

18 Q My question is what they call a foundation
19 question, Mr. Carter. The C&NW, as it exists at the
20 time you're making this statement, includes that Spine
21 Line of the Rock Island, doesn't it?

22 A They have a portion of the Spine Line at this
23 time for operation. That's correct.

24 Q The Twin Cities to Kansas City Line?

25 A I don't know all that detail. That's not my

1 understanding.

2 Q All right.

3 Doesn't the Kansas City Southern interchange a
4 substantial amount of grain traffic with the C&NW today
5 at Kansas City?

6 A We are getting some grain traffic at Kansas
7 City and the C&NW. That's correct.

8 Q Are they not one of your most important grain
9 connections?

10 A Recently, I think the Burlington is giving us
11 more grain than the C&NW.

12 Q More, but the CNW is still an important grain
13 shipper?

14 A Yes. Oh, every car is important to me. C&NW
15 gives me grain; that's correct.

16 Q But if the C&NW in fact is ultimately
17 permitted to acquire the Milwaukee Road or what remains
18 of it, won't that somewhat enhance the grain drawing
19 area that KCS will be able to participate in?

20 A I don't think so.

21 Q Why not?

22 A Because the C&NW and the Missouri
23 Pacific/Union Pacific are going to work together very
24 closely, and I feel down deep in my heart that if it's
25 possible for the grain to move inbound on C&NW, if it's

1 possible for it to move to the Gulf of Mexico over
2 segments of the Missouri Pacific, it will be moved that
3 way.

4 Q So you're concerned that the Union Pacific
5 system's influence on C&NW will cause that traffic to
6 move MP rather than KCS?

7 A I have some grave concerns along that specific
8 line; that's correct.

9 Q If that happened, that would not be related to
10 this merger, would it?

11 A To the instant merger? That's correct.

12 Q In the next paragraph on this page, sir, I
13 won't read the whole thing -- I will spare us the
14 reading of it -- but would you quickly scan that
15 paragraph?

16 A I will. I will read the entire paragraph.

17 (Pause.)

18 Okay.

19 Q All right. Now, sir, with respect to Landa --
20 L-a-n-d-a -- Motor Lines which is discussed here, how is
21 Kansas City Southern using this new motor carrier
22 affiliate today? In what manner are you using it?

23 A Primarily for pickup and delivery service from
24 the points where we have our intermodal operation,
25 primarily Dallas, Kansas City, and New Orleans.

1 Q All right.

2 Does Kansas City Southern have any present
3 plans to expand the operations of Landa Motor Lines?

4 A Yes.

5 Q Could you briefly -- let me ask you, are those
6 plans confidential?

7 A No, those plans aren't confidential. I'll
8 tell you. I instructed the lawyers to obtain
9 certificates in the 48 contiguous states for Landa Truck
10 Lines.

11 Q What plans do you have to utilize those
12 certificates?

13 A I'm not going to take a chance on something
14 happening when we could get that certificate, and I
15 don't have any real specifics on it, but we certainly
16 are looking at areas that are within a short trucking
17 distance of these key points such as -- well, there is a
18 movement of lard out of Sherman, Texas for example.
19 That is within 40 or 50 miles of our Dallas operation.

20 We are going after movements, you know, blocks
21 of movements like that.

22 Q Do you have any plans or have you considered
23 the possibility of utilizing Landa Motor Lines' expanded
24 certificate authority in connection with IRMA?

25 A No. I have made no study on that.

1 Q Would't that be a possibility?

2 A It's a very distinct possibility.

3 Q That's not part of the application proposal, I
4 take it?

5 A That's correct.

6 Q There's also a reference in the same
7 paragraph, Mr. Carter, isn't there, to certain operating
8 arrangements with railroads? And you say, in the bottom
9 sentence: "We have recently begun a coordinated service
10 arrangement with the Burlington Northern through Kansas
11 City to handle traffic between the Pacific Northwest and
12 Gulf Coast areas served by our system."

13 Do you see that?

14 A I do.

15 Q What are those operating arrangements? Can
16 you tell us briefly what kind of a train schedule that
17 would be?

18 A Yes. I told the marketing people that I was
19 very impressed with what they had worked out with the
20 Santa Fe on the Big D connection and to contact other
21 carriers, and we singled out the Burlington Northern as
22 being the one we wanted to work with next to try to work
23 out an arrangement very similar to the Big D with other
24 carriers.

25 And that's the one that this has reference

1 to.

2 Q Has that been worked out?

3 A It's in the embryo stage right now. But I
4 began to see a small amount of business moving on it,
5 not anything compared to the Big D connection, but a few
6 cars are beginning to move on that.

7 Q It takes a while, as I understand, to
8 establish that kind of service, doesn't it?

9 A That's correct.

10 Q Is this a service that would involve
11 transcontinental movements from, for example, New
12 Orleans to Seattle?

13 A Again, I am a common carrier, and anything
14 that is tendered, I am going to handle it. That is, if
15 it is legal. And I will take anything, of course, that
16 we can make a profit on.

17 Q I will accept that. I didn't mean to impugn
18 your common carrier motives. I only meant in
19 instituting the service, were you targeting a particular
20 market such as New Orleans/Seattle?

21 A Well, we are targeting, of course, the entire
22 KCS system and going into the territory that the
23 Burlington served, which would be the Pacific
24 Northwest.

25 Q Well, let me draw the analogy to the Big D

1 connections that you have. That involves run-through
2 service, doesn't it?

3 A It would if the volume reaches the state such
4 as the Big D has reached. We do have run-through, as
5 you know, between the Santa Fe and the KCS. But this
6 has not reached that proportion.

7 Now, if it should, the answer is that there
8 would be run-through service, very definitely.

9 Q At this point, with the Burlington at Kansas
10 City, is there some kind of expedited service, expedited
11 handling of this train?

12 A I don't know of any particular expedited
13 handling, but certainly we try to give it very prompt
14 handling. I will say certainly there is no delay and we
15 would make the move just as quickly as the block could
16 get into Kansas City.

17 We would certainly take the transfer. You
18 know, Kansas City is a unique place. You make
19 deliveries rather than haul and pull. And we certainly
20 would make those moves as quickly as possible.

21 Q Last question, sir. In the last paragraph,
22 the sign-off, if you will. You note again that your
23 company is an efficient low-cost carrier and has the
24 shortest route between the Gulf and the Upper Midwest
25 and the New Orleans/Dallas corridor, and then you say:

1 As we move forward in this new deregulated environment,
2 we expect to exploit our special advantages at every
3 opportunity."

4 Are the special advantages referred to here
5 essentially the same as the unique advantages that we
6 had talked about earlier?

7 A Yes.

8 Q Would you give me the same answer?

9 A The same answer.

10 MR. MOATES: Your Honor, I would like more
11 counsel's exhibit marked along this line. It's a
12 three-page reprinted article from the August 30, 1982
13 edition of Railway Age Magazine. I provided a copy of
14 this to counsel yesterday.

15 MR. AUERBACH: Excuse me. Off the record.

16 (Discussion off the record.)

17 JUDGE HOPKINS: It will be marked for
18 identification as SFSP-C-93.

19 (The document referred to
20 was marked Exhibit SFSP-C-93
21 for identification.)

22 BY MR. MOATES: (Resuming)

23 Q Mr. Carter, did you have an opportunity to
24 review this article last night?

25 A I did.

1 Q Okay, good. Do you recall when this article
2 first appeared?

3 A Yes. 1982.

4 Q Were you in fact interviewed by Mr. Malone in
5 conjunction with the preparation of this article?

6 A I was.

7 Q I want to just ask you a few things here.

8 Again, on the first page -- and when I say first page, I
9 mean the first page of text, of course -- the paragraph
10 that begins under the first bullet item which is headed,
11 "Looking Beyond the Boundaries." Do you see that?

12 A Yes.

13 Q It says: "They all agree that their lean
14 little railroad must expand its own reach -- beyond it's
15 current configuration and beyond the rail mode itself.
16 That means acquiring segments of other railroads that
17 would enable KCS to reach markets in the east and
18 north."

19 It goes on from there. I want to ask you
20 first about that statement. Is the -- was, in 1982, the
21 plan to acquire segments of other railroads something
22 that you discussed with Mr. Malone?

23 A I don't recall the details, but it's possible.

24 Q Would those segments be the portions of the
25 Rock Island that we discussed a moment ago?

1 A Looking at the timing, I would say that's
2 probably what was involved.

3 Q Going on: "It means pursuing opportunities
4 that will enable KCS to become a much bigger mover of
5 bulk materials. Underpinning both elements will be
6 further development of the strong industrial base within
7 the carrier's own territory."

8 A Now, the bigger movement into bulk materials
9 includes, does it not, as the article goes on and
10 explains to us, some of the things we discussed; for
11 example, the participation in export soda ash?

12 A That's correct. That's bulk material and it
13 does include soda ash.

14 Q Okay. In the next column over, in the second
15 paragraph under the next bullet heading, the statement
16 is made: "With its current Port Arthur facility, KCS
17 already handles nearly 100 percent of all export soda
18 ash sent through Gulf ports."

19 Is that still a true statement?

20 A Yes.

21 Q And, in fact, and I won't read all of this,
22 but in the next section, right under there, there are
23 some quotations from a Mr. McClain who, for
24 identification, is who, sir?

25 A Mr. McClain is Senior Vice President,

1 Marketing, for KCS Lines.

2 Q Okay. And there are some quotes from him
3 about scda ash, and a statement as follows from Mr.
4 Ploth: "If we put the first most sophisticated facility
5 on the Gulf, there will be no need for another one."

6 Did you, in fact, put the first most
7 sophisticated facility on the Gulf?

8 A It is under construction at this time.

9 Q When is it due to be completed?

10 A In the spring of '85.

11 Q The spring?

12 A The spring.

13 Q Then the next paragraph, again this is
14 reviewing your efforts, as I understand it, to increase
15 your participation in bulk commodity movements,
16 discusses the unit coal trains that we have talked
17 about, and a quote from Mr. McClain at the end of that
18 paragraph: What a base you build when you start
19 handling unit trains of coal. The original business may
20 peak, but it sets the stage for other things."

21 Do you see that?

22 A Not yet. Which column? The second?

23 Q Second column, and it's the last full sentence
24 just at the bottom of that paragraph.

25 A I don't see it.

1 Q Do you see the paragraph on coal that says
2 "Another target for bulk distribution is coal"?

3 A Yes.

4 Q It's the last two sentences in that
5 paragraph.

6 A I'm sorry, I don't find it. Point it out to
7 me, please.

8 Q I think counsel will.

9 (Pause.)

10 A I have it now, thank you.

11 Q Do you agree with that statement?

12 A Would you mind asking me the question again?

13 Q I simply wanted to know whether you agree with
14 Mr. McClain's statement in that regard.

15 A I think it sets the stage. I don't disagree
16 with the statement.

17 Q It sets the stage, doesn't it, Mr. Carter,
18 because it give the railroad essentially a building
19 block or a background of a certain amount of traffic
20 density?

21 A The stage is set.

22 Q And it's a long-term piece of business that
23 you can count on, year in and year out?

24 A As long as you're able to handle it
25 efficiently. That's correct.

1 Q Okay. If you turn the page, in the third
2 column over, at the very top, there's a quote from a Mr.
3 Davis. Can you state who he is?

4 A Yes. Mr. Davis is the Vice President for
5 Sales.

6 Q Okay. At the top of that column, he says as
7 follows: "I never thought I'd see cotton in trailers,
8 and now I can see canned goods, wine, foodstuffs, and
9 some building materials going that way."

10 The question is, first of all, is that
11 statement of Mr. Davis' consistent with your experience?

12 A That's correct.

13 Q Are there other commodities, since this
14 article was written, that KCS has encountered moving in
15 trailers?

16 A Yes.

17 Q Would you name those, please?

18 A Well, I just mentioned one earlie -- milk
19 carton paper stock is one that is moving in trailers on
20 the Big D connection. The items that Mr. Davis is
21 talking about is Big D items.

22 Q Would it be accurate to say, Mr. Carter, that
23 a recent phenomenon involving TOFC/COFC movements has
24 been -- that you have seen on your railroad -- has been
25 the movement of a wider variety of commodities in

1 trailers?

2 A I'm not going to describe it as a phenomenon,
3 but we have seen an increase in intermodal business.

4 Q Not just in terms of volume, but in terms of
5 the diversity or range of commodities handled?

6 A There has been increase in the diversity;
7 yes.

8 Q The next paragraph, under where we were just
9 reading, I think the "he" here probably refers to Mr.
10 Davis. It says: "He also sees KCS as a link in a
11 Northwest Pacific-Gulf of Mexico route, especially for
12 containers.

13 "Steamship costs are high, and we could help
14 knock two or three days off an all-water route," Davis
15 says. "For that, Kansas City would be the rail
16 connecting point" and so on.

17 Is that opportunity something that's included
18 in your efforts within Burlington Northern that we
19 talked about a minute ago to establish an improved or
20 expedited service from the Northwest?

21 A That portion of the statement has to do with
22 Northwest, with Burlington. That portion of the
23 statement with respect to Kansas City would not.

24 Q At the end of the paragraph it says: "A
25 Kansas City/New Orleans pure piggyback train may not be

1 far off."

2 Does that train operate today?

3 A No. Just a portion of it. We are operating
4 one from Sallisaw, Oklahoma to Kansas City right now on
5 an experimental basis, but the entire piggyback train
6 has not been started. We are moving the piggyback cars
7 in regular general commodity trains at this time.

8 Q Okay. Now, sir, the last sentence before the
9 bullet item coming down this column, the discussion
10 about expansion. There is the following statement:
11 "But the best option for expanding without merger
12 remains a KCS-owned line to Chicago. "

13 Do you see that?

14 A I see that.

15 Q Did you discuss the possibility of KCS
16 acquiring a line to Chicago with Mr. Malone?

17 A The date of this article is 1982, and this is
18 obviously stating a quotation from Mr. Davis, so you
19 have to assume that he was looking at the trackage
20 rights that we sought with the Missouri Pacific Lines in
21 all probability.

22 Q We discussed a minute ago, if you will recall,
23 the Chicago North Western's attempt to acquire the
24 Milwaukee Road in competition with the Soo Line and the
25 Grand Trunk.

1 First of all, if the Soo Line were to be the
2 successful party in that litigation, you would then have
3 a direct connection to the Soo Line at Kansas City,
4 wouldn't you?

5 A Yes. You've got to understand that the yard at
6 Kansas City that we operate in is owned 50 percent by
7 the Milwaukee Railroad and 50 percent by KCS. So
8 anything that will come in on the Old Milwaukee Line
9 will come into what we call Kenoche Yard at Kansas
10 City.

11 Q Now, my question -- and I think you said yes,
12 and then you explained it. The answer is, of course,
13 that if the Soo acquired the Milwaukee by definition,
14 you would have that direct connection?

15 A They would come into the yard that I just
16 described. That's correct.

17 Q Isn't it a fact also, Mr. Carter, that if the
18 C&NW acquires the Milwaukee, that because of conditions
19 this Commission has voted to impose, the Soo would reach
20 Kansas City via trackage rights?

21 A I don't know that to be a fact.

22 Q Well, assume with me that it is a fact.
23 Whichever way that transaction goes, you are going to
24 have for the first time a direct new connection to the
25 Soo Line, aren't you?

1 A If the Soo Line gets to Kansas City and if the
2 Soo Line comes in on the Milwaukee Line, they will come
3 into my yard, and I would have a direct connection with
4 the Soo Line if all three of those things take place.

5 Q And that would, for the first time, give you a
6 direct connection through the Soo to grain origins that
7 it serves in such areas as North Dakota, South Dakota,
8 and Minnesota; isn't that right?

9 A That's correct.

10 Q It would also give you a direct connection for
11 paper, wood pulp, and newsprint traffic from Canada?

12 A I doubt that we will see too much paper and
13 wood pulp moving from Canada into our territory, since
14 we have six paper mills on our own line. It doesn't
15 make much sense that that type of movement would take
16 place.

17 Q Isn't it a fact that the Soo Line handles a
18 substantial amount of Canadian potash?

19 A Yes. I understand the Soo Line has some
20 potash.

21 Q There is a need, is there not, in your
22 territory for potash? There are receivers?

23 A Louisiana is a very great agricultural state
24 and potash is a fertilizer, and it could possibly move
25 into that market.

1 Q With that kind of connection then, I take it,
2 would achieve what the next paragraph here makes
3 reference to, something even dearer to the hearts of KCS
4 marketing people, a direct reach into the grain fields
5 of Iowa and perhaps Minnesota.

6 I'm not suggesting Iowa, but if we substituted
7 the Dakotas and perhaps Minnesota for that statement, I
8 take it that the Soo's reaching Kansas City will have
9 those kinds of beneficial effects on KCS.

10 A It would be very beneficial if the Soo Line
11 would come to Kansas City; that's correct.

12 MR. MOATES: Those are all the questions I
13 have on this exhibit, Your Honor.

14 JUDGE HOPKINS: This would be a good time for
15 a recess. We will take 15 minutes.

16 (Recess.)

17 JUDGE HOPKINS: Back on the record.

18 Mr. Moates.

19 MR. MOATES: Thank you, Your Honor.

20 BY MR. MOATES: (Resuming)

21 Q Mr. Carter, I'd like to ask you now briefly to
22 tell us how the KCS position which we have discussed in
23 this case was formulated. And in that discussion, could
24 you tell us what your role was in the formulation of the
25 position?

1 A Yes. When the announcement was made that the
2 Santa Fe and the Southern Pacific were going to merge,
3 it created a good deal of concern. And we immediately
4 started thinking what would happen to KCS and what would
5 happen to the public, so we came up with a number of
6 ideas as to what would be done.

7 Now, first of all, you've got to realize that
8 KCS has a number of joint through rates and routes with
9 the Santa Fe that are in direct competition with the
10 Southern Pacific.

11 We also knew that KCS had a number of joint
12 through rates and routes with Southern Pacific that were
13 in direct competition with the Santa Fe.

14 I think the Santa Fe is probably the second
15 largest receiver and deliverer of cars to KCS and the
16 Southern Pacific is probably number four. So I'm losing
17 two real friendly connections with this merger taking
18 place.

19 So we had to do some thinking. We made a
20 number of studies. We contacted counsel. And keep in
21 mind that our team was still intact, shall I say, from
22 the Missouri Pacific/Union Pacific merger, so we called
23 the same original counsel in.

24 We looked at this merger and we could see
25 quite a few differences. We had to make that analysis

1 first in order to develop our plan.

2 We saw that the southwest, the southern
3 corridor in the southwestern part of the United States
4 was the greater of the gross areas in the country. And
5 here, two major competitors were going to be merged, and
6 there would be a loss of competition to the public and
7 there would be a hurt to KCS.

8 We had to take all of that, to keep that in
9 the background as we were developing our plan. We
10 called counsel in and I would say perhaps a year ago
11 right now, they made an analysis of the thing, and they
12 agreed with us essentially that there was a difference
13 between the instant merger and the one that we had just
14 gone through because this is a parallel merger, whereas
15 the Missouri Pacific/Union Pacific was an end-to-end
16 merger.

17 So we had to take that in the background. We
18 wanted to be sure that we would overcome some of the
19 arrangements. Now, we considered the possibility of
20 trackage rights all the way to the West Coast, but we
21 realized that there would be 3,000 miles of trackage
22 rights, and that's just a little bit too much for KCS to
23 come up with.

24 So we then had -- I then instructed KCS
25 counsel to talk to counsel of the Applicants to see if

1 there was any common ground that we could work out that
2 would eliminate some of the loss of competition and at
3 the same time provide gains for KCS that would offset
4 the potential losses that we would experience.

5 They did go out and have a meeting to try to
6 work out something, but nothing ever came out of that.
7 We then put our thinking hat on and our marketing people
8 especially were the ones that came up with the concept
9 that we later branded as IRMA.

10 IRMA means Independent Rate Making Authority.

11 Q Excuse me. Whose idea was IRMA?

12 A The basic concept was Mike McClain, the Senior
13 Vice President for Marketing. Now, he didn't brand it
14 IRMA. Actually, one of the bright young lawyers came up
15 with the name, but IRMA means Independent Rate Making
16 Authority. And any time we use that term, I am saying
17 Independent Rate Making Authority.

18 May I finish?

19 We then looked at the possibility of trackage
20 rights like I mentioned. We saw that that would not
21 work. Then we could see the idea of coming up with
22 something in the way of some trackage rights and some
23 independent ratemaking authority.

24 About that time we received a copy of the
25 Applicants' operating plan, and we could see that they

1 were going to have through trains coming to Houston,
2 Texas, but it appeared to us from reading the operating
3 plan, that they would just have local service, for
4 example, coming between Houston and Beaumont.

5 So we had to then go after trackage rights
6 between Beaumont, Texas and Houston, Texas and then, of
7 course, on down to Galveston. And then we considered
8 that as long as the IRMA concept was in place and in
9 effect, that the Big D connection probably would not be
10 broken.

11 That being the case, I made the decision that
12 we should seek the trackage rights to go from
13 Greenville, Texas to Ft. Worth, Texas because the
14 efficiency of the Santa Fe route today coming to Dallas
15 is not the best in the world.

16 We think we can cut off 10 and 12 hours by
17 having a connection at Ft. Worth, Texas with the Santa
18 Fe for any business that is left over on that northern
19 segment of the merged line; that is, assuming the merger
20 takes place.

21 Okay. We made the analysis. We had many,
22 many meetings. We tried a number of things, pros and
23 cons. We would test this, we would test that, and
24 finally we squeezed it down to what we feel is the bare
25 bone essentials. We came up with the four short

1 segments of trackage rights. We came up with the IRMA
2 concept that would give the KCS the right to make,
3 publish, set rates and routes for certain commodities
4 from every competitive point that now exists between the
5 Southern Pacific and the Santa Fe.

6 Now, we were very careful in the development
7 of this plan not to try to invent competition, not to
8 place competition in places where it doesn't exist. But
9 we were trying to maintain an arrangement where
10 competition would continue to exist through IRMA at
11 every competitive point presently between Southern
12 Pacific and Santa Fe.

13 I think that pretty well hits the highlights
14 in answer to your question. If I have left out any
15 details, please feel free to ask.

16 Q I can't imagine how you could have, sir.
17 Thank you.

18 I wonder if you would do me a favor, if you
19 could, by stepping to the map over there and, for the
20 benefit of the judge and the staff and the parties, just
21 briefly indicate to us the KCS system over there, where
22 you run.

23 A I would be glad to.

24 At the request of counsel, I am looking at
25 Applicants' exhibit No. 1, which is a large map of the

1 United States. I am going to outline segments of the
2 Kansas City Southern.

3 Our line starts at Kansas City, Missouri, and
4 we come pretty well in a straight line down along the
5 Missouri-Kansas border on the easterly side of that. We
6 cross into Pittsburg, Kansas here.

7 Our line continues southerly down through the
8 edges of the states of Arkansas, Oklahoma, and into the
9 corner of Texas and down to Shreveport, Louisiana which
10 is point here in the northwesterly part of the State of
11 Louisiana.

12 That's the KCS segment. The KCS then
13 continues south from Shreveport, Louisiana down to
14 DeQuincy, at which point the Missouri Pacific uses our
15 line, and then we go and cross into Beaumont, Texas and
16 between Korf and Beaumont, the Southern Pacific also
17 uses KCS line. We go into Beaumont, and then at that
18 point we turn southerly and go into Port Arthur, Texas.

19 Now, Beaumont is on deep water. Now, that is
20 the KCS portion of our line.

21 The L&A portion, which is 100 percent owned by
22 KCS, runs from New Orleans, Louisiana which is also deep
23 water through Baton Rouge, Louisiana, and it continues
24 on up and runs into Shreveport, Louisiana, and just
25 north of Shreveport we go due westerly and run into

1 Farmersville, Texas whereupon we enter trackage rights
2 with the Santa Fe going into Dallas. Actually operate
3 into the Santa Fe Yard at Dallas, Texas.

4 We also have a line that runs northerly from
5 Alexandria, Louisiana and doesn't appear to show on this
6 map. It goes up to a point in Arkansas called Hope. We
7 also have a segment that runs from Shreveport, Louisiana
8 over to Mindon, Louisiana.

9 Q Mr. Carter, I don't think we need to go into
10 all of the different branch lines. I wanted to get the
11 idea of the main lines.

12 Would you confirm from the description you
13 just gave that the western-most lines of the KCS and L&A
14 today go to Beaumont and Dallas? Is that right?

15 A The westerly-most point of our system is
16 Dallas. That's correct.

17 Q Okay. Now, if you would stay there for just a
18 minute, would you briefly now show us the territory and
19 the lines over which KCS proposes for its independent
20 ratemaking authority to operate?

21 MR. AUERBACH: Your Honor, would it help if we
22 move the map over here, if this will be detailed?

23 MR. MOATES: It won't be detailed.

24 JUDGE HOPKINS: It's not very detailed. If
25 you did that, then they would have to move it back

1 again. I think it would be better just to leave it the
2 way it is.

3 THE WITNESS: I will say that map 13-2
4 attached to my operating plan shows the exact area for
5 purposes of the record.

6 That map is part of the operating plan,
7 Exhibit 13, I believe the map is, 13-2. It's a smaller
8 map than this, but of course I will answer your
9 question.

10 The necessary part of IRMA, of course, are the
11 trackage rights. There are four elements of trackage
12 rights. One runs from Beaumont, Texas to Houston,
13 Texas. One segment moves from Houston, Texas to
14 Galveston, Texas. One segment of trackage runs roughly
15 from New Orleans to Lake Charles, Louisiana. And then
16 the other section runs from Greenville, Texas to Ft.
17 Worth, Texas.

18 Now, those are the four essential trackage
19 rights territories that we are seeking as an essential
20 part of IMRA. Then IRMA itself, that is, the
21 Independent Rate Making Authority that we are asking
22 for, will go along the routes of the Southern Pacific
23 basically from Houston, Texas all the way along the
24 Southern Pacific, which is the red line, the southern
25 corridor of the United States, over to roughly the Los

1 Angeles/long Beach territory, and then follows those
2 lines of the Southern Pacific from this territory up to
3 San Francisco-Oakland Bay area.

4 We also have included those segments of the
5 Santa Fe in independent areas, particularly between --
6 oh, I would say actually between Bakersfield and on up
7 through the valley in this particular part of the
8 territory.

9 Now, again, if you refer to my map 13-2, which
10 I prepared and attached to Exhibit 13, those lines are
11 shown. They are shown in a dark green color.

12 Q I think you omitted Phoenix, Mr. Carter.
13 Don't you also propose that the IRMA go to Phoenix,
14 Arizona?

15 A We took both of the segments. That's
16 correct. Both of the segments. I thought when I said
17 that we followed the Southern Pacific line across, it
18 does include both of the segments of the Southern
19 Pacific. That is correct.

20 Does that answer your question?

21 Q Yes, thank you. I think you can resume your
22 seat.

23 A Again, I say if you look at my map 13-2 in the
24 exhibit, it will spell out, in Exhibit 13, it will spell
25 out those exact lines.

1 Q Well, I am looking at map 13-2, Mr. Carter.
2 Doesn't that show that your IMFA proposal and the
3 trackage rights proposals that you have in this case,
4 that the KCS would more than triple its size?

5 A KCS today is about 1,400 miles and there about
6 400 miles of trackage rights and there's 3,000 plus of
7 independent ratemaking authority.

8 Q It would be a fair statement, would it not,
9 Mr. Carter, to say that no comparable experiment has
10 ever occurred in American railroading history?

11 A Well, I will agree with you that IRMA is a
12 novel idea. But I also admit to you that the integrated
13 circuit was a rather novel idea, but it worked pretty
14 good, too.

15 Q Maybe I'm missing something. Is there a
16 correlation between the integrated circuit and your
17 operating over those 3,00 miles?

18 A Yes. They are both novel ideas.

19 Q Apart from the fact that they are novel ideas,
20 it may have been greeted as something other than novel
21 when it was first proposed.

22 A Of course it was. Just as this is.

23 Q Has KCS had any experience with IRMA or an IRA
24 independent ratemaking authority?

25 A No.

1 Q Do you understand the difference between the
2 two concepts?

3 A Well, you're going to have to give me your
4 views of the independent ratemaking authority.

5 Q Are you familiar with the condition request
6 made by the Denver & Rio Grande Western Railroad in the
7 Union Pacific case which was generally referred to as an
8 independent ratemaking authority condition?

9 A I have not read that.

10 Q You are not familiar with that condition? And
11 it played no part in your discussions about IRMA?

12 A It didn't play any part in my discussions of
13 it. I don't recall having read the D&RGW's case.

14 Q You said some bright young lawyer came up with
15 the name. Who actually came up with that name?

16 A Mr. Morris Baker.

17 Q Mr. Baker was your counsel in the Union
18 Pacific case, wasn't he?

19 A He was.

20 Q All right. Look at page 11 of your verified
21 statement, please, Mr. Carter. In the top carryover
22 paragraph on the page, you were talking about your
23 incentive to work with joint line connections through
24 the service territory of the proposed IRMA and trackage
25 rights.

1 You say: "This includes offering a friendly
2 connection to UP/MP/WP at El Paso, Los Angeles, and San
3 Francisco and to Katy at Houston and Ft. Worth."

4 Q Do you see the reference?

5 A Yes.

6 Q Have you discussed Kansas City Southern's
7 position, including its condition request, with any
8 other railroads?

9 A I have.

10 Q Which railroads?

11 A I have discussed it with the Illinois Central
12 Gulf, the Houston Belt & Terminal, New Orleans Port
13 Belt. Those come to mind at this time.

14 Q Now, with respect to those three, were your
15 discussions oriented towards the fact that you require
16 trackage rights over the ICG and the New Orleans Port
17 Belt to implement your Lake Charles to New Orleans
18 request?

19 A That's correct.

20 Q And did those two railroads indicate to you
21 whether they would agree to your operation over the
22 track?

23 A All three of the railroads agreed to
24 permitting KCS to enter into a trackage rights agreement
25 over short segments of their line to reach the trackage

1 rights segments that I need as part of my IRMA Plan.
2 That is correct.

3 Q Have you submitted the proposed trackage
4 rights agreements with those three carriers to the
5 Commission?

6 A I have not.

7 Q Have you achieved in your negotiations or
8 discussions with these carriers an agreed-upon rental
9 price for those trackage rights?

10 A I have agreed -- the discussions -- I have not
11 gotten into negotiations, nor have I started working out
12 any form of an agreement.

13 Q So you have an agreement in principle with
14 these three carriers to use their track, but there's
15 been no discussion in these negotiations about price?

16 A That's correct.

17 Q Are you prepared to pay whatever price is
18 requested by these carriers?

19 A No.

20 Q Have you discussed your participation in this
21 case, your position in this case, including your request
22 for conditions, with the UP/MP?

23 A No.

24 Q Have you had such a discussion with the Katy?
25

1 A Not that I can recall.

2 Q Mr. Carter, does Kansas City Southern propose
3 that if IRMA and the trackage rights that you seek here
4 are imposed, that they be conveyed to any new owner of
5 your property or any merger party with KCS?

6 A What new owner are you talking about?

7 Q No particular owner. Only against the
8 probability -- strike that, possibility that the Kansas
9 City Southern might be acquired by another carrier or
10 might merge with another carrier.

11 A I have given no thought whatsoever to that.

12 Q Well, I ask you to give it some thought now.
13 Is it your proposal to this Commission that the IRMA and
14 the trackage rights be made something that could be
15 conveyed to a new owner?

16 A I will think about it. But my position has
17 always been, I want to stay independent, and
18 consequently I really haven't given any thought to that.

19 Q Have you discussed your position or these
20 conditions with anyone from the Burlington Northern?

21 A I have not.

22 Q The Norfolk Southern?

23 A No, I have not.

24 Q CSX?

25 A No, I have not.

1 Q The Denver and Rio Grande?

2 A No, I have not.

3 Q I want to ask you some questions about the
4 scope of IRMA.

5 A Okay.

6 Q Let's look at -- I am looking for my KCS-8,
7 Volume 1, the thin index and narratives volume.

8 Would you turn to Page 15 of that volume?

9 A Okay. I have Page 15 of KCS-8, Volume 1.

10 Q Okay. Mr. Carter, on this page, this section
11 you see that starts on the preceding page, this is a
12 discussion of the proposed IRMA. You say on Page 15,
13 "KCS would have the right to interline traffic pursuant
14 to joint rates or contracts with connections at any of
15 the common points and with short line railroads at both
16 common points and any other point where the short line
17 has a connection with one of the primary applicants
18 which is competitive with the connection between them,"
19 and so on.

20 At the end of the paragraph you summarize and
21 say, "KCS would have access either directly or via
22 reciprocal switching to all shippers so served by SPSF
23 at any of the common points."

24 I want you to focus on those words, "at any of
25 the common points." That is what I am interested in.

1 Is it the proposal of KCS with respect to this IRMA that
2 the IRMA would apply only at points common between the
3 Southern Pacific and the Santa Fe today?

4 A Our concept is that it would apply to, from,
5 and through any and all common points between the
6 Southern Pacific and the Santa Fe today, plus the fact
7 that we want to be able to connect with some of those
8 short line carriers that would be cut out from
9 competition. That is correct.

10 Q All right. Now, when you say common point, I
11 take it from your proposal that this is a common point,
12 regardless of whether other carriers also serve the
13 point?

14 A Absolutely. Any point where there will be
15 loss of competition, any and all common points between
16 the Santa Fe and the Southern Pacific today is what I
17 have in mind for IRMA.

18 Q So they are not exclusive common points, if
19 you will, that are served only by Southern Pacific and
20 Santa Fe.

21 A That is true. Any and all common points where
22 there will be loss of competition, whether it be one
23 less carrier if the merger is approved, those are the
24 points that I am proposing to extend the IRMA concept
25 to. That is correct.

1 Q Again, the statement on Page 15, "to all
2 shippers so served by SPSF at any of the common points,"
3 what about stations between the common points?

4 A No, I am not trying to create competition
5 where competition doesn't exist. I am really trying to
6 maintain the competition that exists today.

7 Q How did Kansas City Southern make a
8 determination of what a common point was for purposes of
9 the IRMA proposal and the appendices that are attached
10 that show those common points?

11 A We of course had access to your records on
12 discovery, and we determined each of the common points
13 that your records reflected. Now, if there are any that
14 exist today that the records didn't show, I want to
15 include those as well. And they were included in this
16 Volume 13.

17 Q You want it all, right?

18 A I want it all. I want to replace all of it
19 for the benefit of the public and for the benefit of
20 KCS.

21 Q Okay. Fair enough.

22 Now, just to clarify these intermediate
23 station points, you are not seeking, I take it, IRMA
24 rights between a couple of points like, for example,
25 Houston and Tucson. Is that right?

1 I Is Tucson a common point?

2 Q No.

3 A Okay. The answer would be no. Houston is.

4 Q However, if you look at your map that you kept
5 referring us to, 13-2, you will see that your proposed
6 IRMA route proceeds into, through, and out of Tucson.
7 Nonetheless, do I take it from your answer that there
8 would be -- that there is no intention on the part of
9 KCS to seek an IRMA right to quote rates or to make
10 contract rates to shippers at Tucson, correct?

11 A Let me explain it this way. I want to have
12 the right to make a route and a rate to, from, or
13 through any common point that exists today. Now, then,
14 that would give me the right, for example, to move
15 traffic on a KCS rate with another carrier.

16 Say that we would move from Kansas -- from
17 Houston, Texas, which is a common point, to El Paso,
18 Texas, which is another common point, and then perhaps
19 offline that to a third carrier, you know, a third
20 competitive carrier that perhaps could go and serve that
21 point.

22 So it would be possible to get traffic to a
23 non-common point through a third carrier. So in that
24 exception it would be true, but as far as KCS IRMA
25 itself is concerned, and KCS only, we would only go

1 between, to, and from each and every common point that
2 exists today.

3 Q Is Tucson served by any other railroad besides
4 the Southern Pacific?

5 A I don't know. I can check the map.

6 Q Well, there is a lot about this territory you
7 don't know. Isn't that right? It is not your
8 territory.

9 A There is a lot about California that I do not
10 know, and Arizona. That is correct. Now, you are
11 talking about me personally. You are not talking about
12 my staff, because we have sales people all over the
13 country, but me personally, I do not know the geography
14 as well as I should.

15 Q Mr. Carter, would you look for a minute at the
16 KCS-8, Volume 2, which is the volume that actually
17 contains the IRMA agreement as proposed by Kansas City
18 Southern?

19 A I have Volume 2 of KCS-8.

20 Q Exhibit 2.1 in that volume, which is the first
21 exhibit after the map and after the table of contents,
22 is the proposed IRMA agreement.

23 A Okay, I have it before me.

24 Q On the first page, under Purpose, you have
25 again recited the fact that you seek to have this

1 applied to traffic to, from, or between specified
2 points, and so on. Then you say the common points are
3 identified in Exhibit A hereto.

4 Just as a clarification point, I note in
5 Exhibit A, Page 2, under the common points for Texas,
6 there are only four. I also notice that you made a
7 correction to your operating plan in the errata that
8 added a lot, I don't know, 15 or 20 of them.

9 Do you mean to add those points here as well?

10 A Yes, they do need to be added. There was an
11 error in my operating plan, and we attempted to pick
12 that up in the definition of common points between
13 Southern Pacific and Santa Fe in Texas. It is my
14 mistake. I caught it. We corrected the exhibit that I
15 prepared, but somehow or other failed to correct the
16 exhibit attached to the agreement.

17 Q But in any event you do seek to have IRMA
18 apply to those Texas common points?

19 A Yes. Thank you for clearing up that point.
20 We do seek to go between each and every common point
21 that exists to, from, and between.

22 Q All right. If you turn the page of that
23 proposed agreement to Page 3 of 19, little paragraph b
24 at the top, do you see that?

25 A Yes.

1 Q It says, "KCS will fairly compensate SPSF for
2 the use of its services, equipment, and facilities
3 consistent at all times with the primary objective of
4 establishing and perpetuating an arrangement under which
5 KCS will be able to compete effectively against SPSF in
6 the subject markets."

7 The first question is, is that statement true
8 even if SPSF would lose money on the particular movement
9 on which KCS quoted a rate?

10 A I directed my staff to determine from your own
11 records what your costs are, and we agreed to add a
12 little bit of profit to you.

13 Q How much? How much profit?

14 A There will be people in the hearing room that
15 made those analyses, and they will be subject to your
16 examination. They have got reams and reams of paper to
17 answer all of your questions. I do not know the
18 details. I cannot answer your question. But that
19 information will be made available to you.

20 Q Let me ask the question this way, Mr. Carter.
21 Was it your intention and instruction to those people
22 that they should propose a formula that would, if you
23 will, make SPSF whole for its out-of-pocket costs and
24 then give it some kind of a profit?

25 A That was my direct instruction. That is

1 correct.

2 Q And if the formula they proposed or the
3 numbers that they have put into this record don't do
4 that, then obviously by definition it is not the
5 proposal that --

6 A That is correct.

7 Q It was not your intention that SPSF should
8 earn a below market return for handling traffic moving
9 in your account under IRMA, was it?

10 A I was basing that number on your costs. Now,
11 if your costs are correct, then our formula is going to
12 be correct. Not only would it make you whole on your
13 costs, but it would also add a little bit of profit in
14 there for you. And that is the basis on which they go.

15 Q Now, I cannot answer the details to your last
16 question.

17 Q Thank you. Would you look at KCS-8, Volume 1,
18 Page 16?

19 A Sixteen?

20 Q Yes, sir.

21 A I have it.

22 Q The footnote on the page says, "SPSF would
23 receive a per car, per mile fee for handling cars
24 pursuant to the IRMA."

25 Q Do I take it from your last answer to me that

1 you do not know and cannot state now what that fee would
2 be?

3 A That is correct. There are so many variables
4 by weight, by distance, by commodities, by car type and
5 that sort of thing. There will be a witness available
6 to answer each and all of your questions along those
7 lines. I do not have those details.

8 Q Are those fees -- is your proposal one that
9 would contemplate that those fees would be negotiated
10 between the parties or imposed by the ICC?

11 A We want to negotiate it with the applicant,
12 that is, assuming that the Commission goes along with
13 this merger. We would want to negotiate it, but if the
14 applicant refused to deal in good faith, I would expect
15 the Commission to take the matter in hand and authorize
16 the fairness of the formula.

17 Q Who would decide if the applicant had dealt in
18 good faith? You?

19 A That would be very easy to determine. If the
20 negotiations fell completely apart, why, it would be
21 very obvious. Those matters, the Commission is expert
22 in handling situations like that. I have no fears about
23 that.

24 Q You have clarified for me, I think, that you
25 did intend and do intend that whatever this fee ends up

1 being, that it include an acceptable return to SPSF.

2 A There will be profit on top of your cost.
3 That was my instruction to the staff.

4 Q How does your offer of services under IRMA
5 differ from that of a freight forwarder or a motor
6 carrier that secures shipments today and then
7 subcontracts volume movements to a railroad?

8 A I don't know much about the freight forwarding
9 business. I can answer your question with respect to
10 what I am going to do, but I have no way to tell you
11 what a freight forwarder would do, so I can't answer
12 your question.

13 Q Wouldn't most of the traffic moving under the
14 IRMA be deregulated traffic, boxcar, TOFC traffic?

15 A We are going to offer to handle any and all
16 traffic. Once the applicant starts building up their
17 prices, which they would have the right to do under
18 Staggers and under the monopolistic area, once you start
19 building that price up, why then we would come in and
20 quote rates, establish routes that would be very, very
21 competitive with you, every one of those competitive
22 points.

23 Q Are you familiar with the general consist of
24 traffic moving in and out of this IRMA territory today?

25 A I am not. My staff has done some analyses on

1 that.

2 Q Are you at least aware that there is a
3 substantial amount of boxcar traffic and TOFC traffic?

4 A My staff is aware of the details. I am not.

5 Q Couldn't you set up a freight forwarder
6 operation on your own today and participate in this
7 traffic?

8 A I am not familiar with the freight forwarder
9 operation.

10 Q Are you aware of whether other railroads like
11 the Illinois Central Gulf are doing just that?

12 A I am not aware of what the ICG is doing.

13 Q All right. Now, let me ask you a few
14 preliminary questions about the trackage rights
15 proposals.

16 First of all, sir, we have here a copy of the
17 Commission's decision in the Union Pacific/Missouri
18 Pacific control case that we have talked about several
19 times. Page 593 of that decision, which appears at 366
20 ICC, the Commission summarized the conditions you sought
21 in that case.

22 Tell me if this is correct. Do those
23 conditions include trackage rights between New Orleans
24 and DeQuincy, Louisiana, via Lobdell, Louisiana?

25 A That was one of the segments, yes.

1 Q And did you seek trackage rights between
2 Beaumont and Galveston, Texas, via Houston?

3 A Yes.

4 Q And did you seek trackage rights between
5 Dallas and Fort Worth, Texas, with local access?

6 A Yes.

7 Q And in this case you are seeking trackage
8 rights between Dallas and Fort Worth, Texas, too, aren't
9 you?

10 A In this case?

11 Q In this case.

12 A No.

13 Q Greenville, Greenville and Fort Worth?

14 A Greenville is 50 miles northeasterly from
15 Dallas, and the line that I am seeking would go from
16 Greenville, Texas, to Fort Worth, Texas, and it does not
17 include any local rights, and of course it doesn't
18 operate between Dallas and Fort Worth.

19 Q Let me put it this way, Mr. Carter. If you
20 got the trackage rights between Greenville and Fort
21 Worth, you would have a direct and efficient connection
22 to Fort Worth via KCS's own line, wouldn't you?

23 A We would have a direct route between
24 Greenville, Texas, and Fort Worth. That is correct.

25 Q And aren't you seeking trackage rights in this

1 case between Beaumont and Galveston via Houston?

2 A I am indeed.

3 Q And aren't you seeking trackage rights in this
4 case between New Orleans and Lake Charles, Louisiana?

5 A I am indeed.

6 Q Is there some similarity in these requests,
7 Mr. Carter? It sounds familiar to me.

8 A There are some similarities.

9 Q Is the theory that if you didn't succeed the
10 first time, the second time might be the charm?

11 A Maybe the third.

12 Q What merger do you know about?

13 A We sought the same thing in the ICG control
14 case, so that was Number One. Missouri Pacific was
15 Number Two, and this is Number Three.

16 Q Thank you. I didn't know that.

17 Q Is the line between Beaumont and Houston over
18 which you seek trackage rights served exclusively by the
19 Southern Pacific today?

20 A The line that I am seeking between Beaumont
21 and Houston is the Southern Pacific.

22 Q All right. Let me ask it this way. Does
23 anybody else operate over that line?

24 A Amtrak does.

25 Q Does Amtrak haul any freight, Mr. Carter?

1 A Amtrak does not haul any freight.

2 Q So the point I am getting at is that
3 industries on that line today are exclusively served by
4 SP, one railroad, and after the merger they will be
5 served by one railroad, right?

6 A On the short segment between Beaumont and
7 Houston, they will be served by one railroad.

8 Q Would you look at Page 13 of your verified
9 statement?

10 A Yes.

11 Q In paragraph with the number 2 on it, six
12 lines down, you have a sentence that starts, and you
13 were referring here to the Houston-Beaumont rights, you
14 say, "This makes it critical that KCS be able to effect
15 the physical interchange of its IRMA traffic with SPSF
16 at Houston."

17 Do I read that to tell me that the
18 Houston-Beaumont trackage rights here are
19 service-related? In other words, they are required to
20 make the IRMA service competitive in your view?

21 A Absolutely.

22 Q And again with respect to the Lake Charles-New
23 Orleans segment of the Southern Pacific over which you
24 seek trackage rights, that is not a line that is served
25 by anyone else today other than Amtrak, is it?

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1 A That's correct.

2 Q And Santa Fe doesn't even go to New Orleans,
3 does it?

4 A That's correct.

5 Q And again, is the reason that you want that
6 service between -- those rights, rather, between New
7 Orleans and Lake Charles because you want to make your
8 IRMA more service competitive?

9 A I want to be able to pick up the loss in
10 competition that the public is going to have and
11 eliminate the possibilities of their total loss, and in
12 order to do that the traffic has got to be time
13 sensitive to be competitive in the entire movement.

14 Q Are shippers today on the SP line between Lake
15 Charles and New Orleans going to lose competition
16 because of this merger?

17 A Not between that tiny segment, but look at the
18 whole --

19 Q That is what I am asking.

20 A On that segment, no.

21 Q So again your trackage rights in that corridor
22 are predicated on a desire to make your IRMA more
23 service competitive with the merged system. Is that
24 right?

25 A Yes, that's correct.

1 Q Does that mean that all of those trackage
2 rights that I have just referred to are bridge rights
3 only?

4 A That's correct.

5 Q So you do not seek to serve any intermediate
6 stations or any local industries on any of the trackage
7 rights segments the KCS --

8 A Let me qualify that.

9 Q I think you had better.

10 A At Houston, Texas, I will operate between
11 Beaumont, Texas, and Tower 87, at which time I propose
12 to get off of Southern Pacific and go down through the
13 Houston Belt and Terminal, and we will serve Houston,
14 Texas.

15 We will have rights in HB&T, Houston Belt and
16 Terminal. We will also have rights to connect with
17 PTRR, which is the Port Terminal Railroad Association.
18 And then, of course, we will pick up and continue
19 operation between the Basin Yard of HB&T to Tower 86,
20 whereupon we will enter the Southern Pacific line again.

21 And we will go to Texas City junction,
22 whereupon we intend to interchange cars to and from the
23 Texas City terminal, and then that segment of track that
24 the applicants propose to abandon, the eight miles south
25 of the Texas City terminal junction, we intend to buy,

1 and then of course we will cross the causeway, which is
2 owned by Galveston County, and go on into Galves Yard.

3 So, I will have, shall I say, rights at
4 Houston, Texas, which is part of the trackage rights. I
5 will also have rights at Texas City, which is part of
6 it.

7 Q But you do not, if I understand your answer
8 correctly, you do not here seek rights to serve
9 industries at points like Deer Park, Strang?

10 A I do not propose to have local rights at Deer
11 Park. That is correct.

12 Q And that is why, sir, because there would be
13 no change in the competitive posture on that line?

14 A There is no loss of competition at that
15 particular point. That is correct.

16 Q Your answers would be the same with respect to
17 industries on the line between Houston and Beaumont?

18 A I do not propose to have local access on
19 intermediate points between Houston and Beaumont. That
20 is correct.

21 Q For the same reason that in your view there
22 will be no change in the competitive situation?

23 A For the same reason.

24 Q Given the fact that the trackage rights that
25 you have requested and that we have been discussing here

1 are to make the IRMA service competitive with the merged
2 company's operations, would I be correct in assuming
3 that if the Commission does not impose the IRMA, that
4 there is no need for them to impose the trackage rights
5 as well?

6 A I can't answer that question. I don't know
7 what the Commission would do. I know the Commission is
8 going to look at the facts. I feel under Staggers that
9 they are mandated to replace competition, intramodal
10 competition.

11 I know that they are going to look at it, and
12 I have some serious doubts that this merger is going to
13 be approved without conditions if it is approved at
14 all.

15 Q Recognizing that, Mr. Carter, and recognizing
16 that you and I smiled at each other when I asked that
17 last question, nonetheless, let me ask it again a little
18 more seriously.

19 If the IRMA is not imposed by the Commission,
20 and the merger is approved -- I am asking you to assume
21 that, and I understand your position that you don't
22 think it should be, but assuming that those two things
23 happen, would it not then be true that the trackage
24 rights that you seek, the four sets of trackage rights
25 you seek here, which are to make the IRMA service

1 competitive, would no longer be required by KCS for that
2 purpose?

3 A I don't think that, first of all, that that is
4 going to happen, but assume that your question is true.
5 The trackage rights would still have some advantage. It
6 wouldn't solve the whole problem, but there would
7 definitely be some advantage, because there would be a
8 more efficient route, for example, on the segment
9 between Fort Worth and Greenville.

10 We would also be able to make up some of the
11 loss of competition, not all of it but some of it, on
12 trackage rights that would be going into Houston. That
13 is a very strong competitive point.

14 I think there would be very definitely some
15 advantage in that, and then there would be still some
16 efficiencies in having the trackage rights segments
17 between New Orleans and Lake Charles, so I think very
18 definitely there would be some very positive reasons for
19 having trackage rights into effect.

20 I have made that statement. Again, I said I
21 do not agree with your premise, but to answer your
22 specific question, that is my view.

23 Q Now, I recognize, sir, as soon as I look at
24 this map that there would be certain benefits to the
25 KCS, as you say, from having some of those rights, like

1 between Lake Charles and New Orleans and Houston and
2 Beaumont. It looks like a nice rationalization of the
3 KCS system.

4 A That is absolutely correct.

5 Q Sure it is, but I thought we had already
6 agreed that -- you agree with me that there would be no
7 adverse effect on competition in those trackage rights
8 corridors as a result of this merger.

9 A We agreed on intermediate points. We didn't
10 agree on the competitive points. You have the
11 competitive points that are very, very important. Now,
12 don't overlook that.

13 Q Let me ask you this question, Mr. Carter. It
14 is a hypothetical. Okay? I know you oppose the merger,
15 so this is a hypothetical.

16 If Southern Pacific-Santa Fe agreed to
17 maintain levels of service and to maintain routes and
18 rates with KCS via Dallas, would KCS withdraw its four
19 trackage rights requests and shift its IRMA request to
20 Dallas rather than Houston?

21 A We considered that, and we don't think that's
22 in the best interest because reading your operating
23 plan, it appears that you are going to make that SP
24 route your principal route.

25 And I think that in all fairness to the

1 shipping public, that we really ought to go after the
2 IRMA along the southern route, which is the one that you
3 are putting your emphasis on.

4 Q To clarify that last answer so that I
5 understand it clearly, the reason you wouldn't take me
6 up on that hypothetical proposition and the reason, I
7 think, and tell me if I am stating this wrong, the
8 reason that KCS formulated its IRMA the way it did, via
9 Houston rather than Dallas, is because of your
10 assumption that applicants intended to operate via their
11 transcontinental traffic in the Southern Corridor, via
12 Houston as the preferred service route on all traffic.

13 A That was one of the two major considerations.
14 That is correct.

15 Q All right. Would you look at Page 11 of your
16 statement, sir?

17 A Yes.

18 Q The middle paragraph on the page, I think this
19 summarizes what you just told me, doesn't it?

20 (Pause.)

21 A Yes.

22 Q Okay. Is it your understanding, Mr. Carter,
23 that traffic moving between the San Francisco Bay Area
24 on the one hand, not LA but San Francisco-Oakland, and
25 Houston or New Orleans on the other hand, would move via

1 the route through Houston over which you propose to have
2 IRMA made effective?

3 A The traffic would move in exactly the same
4 train over the Southern Pacific route, except between
5 Fresno and Bakersfield, where it could move over either
6 the Southern Pacific, the present Southern Pacific or
7 the present Santa Fe route.

8 That is correct.

9 Q And you do intend, if IRMA is imposed as a
10 condition to this transaction, you do intend to solicit
11 traffic between those points, do you not?

12 A Absolutely.

13 Q Now, if it turned out, sir, that SFSP planned
14 to handle that kind of traffic, that is, Northern
15 California traffic, to Houston or New Orleans via Santa
16 Fe's route, not SP's route, absent the IRMA, wouldn't
17 you expect that a shift in this traffic to the SP route
18 would have a significant effect on our operations?

19 A Again, that decision was based on information
20 that we obtained in discovery and that appeared to us
21 from your operating plan that you were going to handle
22 it that way, and that's the reason that we sought it.

23 If you are going to change your operating
24 plan, then I am going to reserve the right to make my
25 change also, but I based that on your data, not on

1 mine.

2 Q All right. I would like to ask you some
3 questions about the operating details of the IRMA as
4 opposed to the trackage rights.

5 I take it that the IRMA contemplates the
6 merged railroad, the SPSF, would switch your cars to and
7 from industries and connections with common points in
8 urban territories?

9 A Yes.

10 Q It follows that that switching would be done
11 with our engines?

12 A Yes, indeed, it would be.

13 Q Do you have the operating plan up there?

14 A Yes, I do.

15 Q Pages 6 and 7 of the operating plan, which for
16 identification is Volume 4 of KCS-8.

17 A Okay, I have them.

18 Q Pages 6 and 7 of that volume discuss car
19 service at IRMA common points. Is that correct?

20 A Yes.

21 Q You state, and the sentence starts at the very
22 last line on the page, the part I am going to read, "CSC
23 personnel would proceed promptly to locate suitable
24 cars. If, as will often be the case, such cars are in
25 the possession of SPSF, CSC personnel will simply direct

1 locate suitable SPSF cars without access to the
2 confidential SPSF car movement records?

3 A Our people are going to be in the field. I am
4 sure that they are going to know what cars are available
5 at the various points. That sort of thing goes on all
6 the time, every day, on almost every railroad in the
7 United States.

8 For example, if a car is to be loaded at a
9 point that is open to reciprocal switching, you know
10 that the carrier is going to provide it. If it is at a
11 point that is closed to reciprocal, the originating
12 carrier is going to call on the customer on the
13 railroad that serves that particular industry.

14 There won't be any big change. It is going to
15 be a bigger territory. But that sort of practice is done
16 today on every railroad in the United States, every
17 Class 1 railroad.

18 Q . Carter, how many employees does the KCS
19 have today?

20 A About 3,000.

21 Q Three thousand employees to serve the
22 territory you described to us earlier.

23 A I am sorry. I misspoke. I thought you said
24 how many employees does the KCS have today.

25 Q That is what I said.

1 SPSF to place the car at the shipper's location for
2 loading.

3 "If such cars are in the possession of another
4 carrier, CSC personnel will contact that carrier and
5 direct that the cars be delivered to SPSF for
6 placement."

7 Do you see that reference?

8 A Yes.

9 Q Okay. Would these cars to which you are
10 making reference here include only KCS-owned cars?

11 A Let me make something so that the record is
12 clear. CSC means Customer Service Center.

13 Q Thank you. And that is Kansas City
14 Southern's --

15 A That is Kansas City Southern's operations, so
16 CSC that you referred to means Customer Service Center,
17 so there will not be any misunderstanding.

18 No, these will be any and all cars out of the
19 national car fleet -- freight car fleet that would be
20 available.

21 Q When would you propose that such cars pass
22 into KCS's account for car hire purposes?

23 A At the time that they are ordered to be
24 placed.

25 Q And just how do you propose the KCS personnel

1 A Okay. We have 3,000, roughly 3,000 employees
2 today.

3 Q To serve your railroad that runs from Kansas
4 City to the Gulf and to Dallas and Beaumont?

5 A That's correct.

6 Q How many do you plan to put in the extra 3,000
7 miles out there to go around and find available
8 equipment?

9 A We are going to beef up the present traffic
10 offices that we have scattered all over the country and
11 put in seven additional supervisors, and then as the
12 traffic grows, we are going to add whatever people it
13 takes to make the thing work.

14 Q Mr. Carter, I saw in your operating plan, in
15 the exhibit on employment, that you only propose to add
16 those seven people.

17 A Seven people on Day one. That is correct.

18 Q So these seven people are going to cover the
19 3,000 miles out there where you need 3,000 to cover your
20 existing territory?

21 A These seven people are going to cover seven
22 specific competitive points, and they are going to be in
23 addition to the traffic offices that we have at most of
24 those points now. We have staffs already in most of
25 those territories today. And these will be in addition

1 to that.

2 Q How extensive are those staffs that you have
3 out in California and Arizona and New Mexico?

4 A Well, they are not very extensive, but they
5 are good. They are fine people, and they know their
6 territory.

7 Q Do you have any sales offices today in San
8 Francisco?

9 A Yes.

10 Q How many people are in that office?

11 A Probably three or four.

12 Q Do you have one in Phoenix?

13 A No, I don't think so.

14 Q Do you have one in Fresno?

15 A No.

16 Q Bakersfield?

17 A No.

18 Q Do you have one in El Paso, Texas?

19 A No.

20 Q Okay. Coming back again to the car service
21 issue, do you contemplate the Kansas City Southern would
22 have access to assigned SPSF cars for loading under
23 IRMA?

24 A To assigned cars?

25 Q Yes.

1 A Probably not.

2 Q Do you contemplate that you would have access
3 to SPSF cars subject to contractual car service
4 requirements?

5 A Possibly yes, possibly no. It depends on the
6 nature of the contract.

7 Q How are you going to know about the nature of
8 the contract? Do you propose to have access to our
9 contracts?

10 A If it is confidential, we should not have
11 access to it. If it is public, then we would know what
12 was in the contract.

13 Q Suppose we have what I recognize would be a
14 happy situation in the industry today, and that is a
15 time of car shortage. How would the shortage be
16 shared? How do you propose it to be shared in the IRMA
17 territory?

18 A Let me tell you this, that with IRMA, there
19 would be no new cars moving that wouldn't otherwise be
20 moving on the Southern Pacific without IRMA. So the
21 same car supply is available today or will be available
22 under conditions like that if we are there or if we
23 aren't there, so there would be no change, whether there
24 is a shortage or not.

25 Now, you completely overlook the fact that a

1 good bit of this is going to be in intermodal business.
2 We own a segment of trailer trains, just as does SP,
3 just as does Santa Fe. And we have as much access to
4 those cars as the Santa Fe or the Southern Pacific.

5 You also overlook the fact that many, many of
6 the movements are in private cars. And you know that
7 all of those cars are going to be made available to me
8 just as well as they will to you.

9 Q That is all very interesting, Mr. Carter, but
10 the basic question was, what if there is a car shortage
11 of railroad-owned cars?

12 A The same situation would exist in a car
13 shortage if IRMA is there or if it is not there. The
14 customers should, assuming that the Commission stands
15 behind us and gives us equal access, we are going to
16 have the same fair treatment to those shippers after
17 IRMA with KCS there that they would have without IRMA.

18 I agree with you. I would like to see car
19 shortages. I would like to see that much business come
20 back to the rails.

21 Q Let's look again at Page 7 of the operating
22 plan, and assume for the sake of this question that the
23 needed empty that you want isn't immediately available
24 on our railroad.

25 Now, on Page 7 of the plan, it says that you

1 will simply direct SPSF to place the car at the
2 shipper's location for loading. If such cars are in the
3 possession of another carrier, CSC personnel, again, KCS
4 personnel, will contact that carrier and direct that the
5 cars be delivered to SPSF for placement.

6 Do you see that reference, right at the top of
7 the page where we were reading from before?

8 A I have it.

9 Q Is it your judgment, sir, that such orders by
10 your CSC personnel to other carriers would be consistent
11 with the car service rules?

12 A Oh, absolutely, we are going to be consistent
13 with the car service rules.

14 Q Don't the car service rules permit a
15 terminating carrier to decide what to do with empty
16 cars?

17 A In some cases, yes. In some cases, no.

18 Q Let's assume that KCS has an IRMA load in Los
19 Angeles to go to New Orleans, okay? We need a
20 particular car, and we don't have it.

21 A Okay.

22 Q However, you find out because you have got
23 seven people working so hard, one of them finds out that
24 there is such a car on the Union Pacific in Los Angeles,
25 an empty car. Do you think you could prevent the UP

1 from loading that car?

2 A Let me clear up part of your question. We are
3 going to have seven additional people working, seven
4 additional supervisors, and as this thing grows we are
5 going to put whatever people we need in addition to the
6 people that we have.

7 Q How many people do you have in Los Angeles
8 today?

9 A Oh, three or four.

10 Q So you are going to have four or five?

11 A That's correct.

12 Q I stand corrected.

13 A Now, to answer your question, if the car is
14 available on the Union Pacific, of course, we are going
15 to ask them to deliver the car to the Southern Pacific,
16 and we would expect Southern Pacific to handle that
17 thing very promptly so that the shipper would go.

18 Now, if the Union Pacific has the car, and
19 they need the car for a movement, it likewise would not
20 be given to us, but on the other hand, if IRMA wasn't
21 there and you didn't have the car, the customer would be
22 given the identical treatment.

23 I am saying it to you. The customer gets
24 identical treatment with or without IRMA. There would
25 be no change if IRMA is there.

1 Q Another hypothetical involving the UP at Los
2 Angeles. Suppose the UP terminates some loads in Los
3 Angeles on its line that moved in Kansas City Southern
4 equipment, and wants to return that equipment to the
5 Kansas City Southern.

6 Do you propose under IRMA that it could return
7 those cars to KCS's account in Los Angeles, or would it
8 have to return them to the nearest connection with you?

9 A There are many variables that would have to be
10 examined before a decision is made. It would depend on
11 whether there is a shortage of that type of equipment
12 back on KCS or whether there is a surplus. That would
13 be one of the factors that would have to be analyzed,
14 and that is exactly what our Customer Service Center is
15 going to do. They are going to look at all of the
16 variables, and then make the proper decision.

17 Q So the answer is sometimes yes and sometimes
18 no?

19 A The answer will be sometimes yes, sometimes
20 no.

21 Q Assume that KCS has an IRMA load at Oakland
22 but there are no suitable cars available from SPSF or
23 from any California connecting line. Maybe a piece of
24 special equipment is needed, but you have that equipment
25 on your railroad. Would you propose in those

1 circumstances to dispatch the empty from KCS lines?

2 A Yes, indeed.

3 Q How much would you be willing to pay the SPSF
4 for hauling that from Dallas or Oakland?

5 A I am going to ask you to talk to the cost
6 people on the staff who made those studies. We have
7 those rates, and they have the analyses, and they will
8 answer that specific question by class, by commodity, by
9 length of haul, by all of the many, many variables.

10 Q Okay. Suppose now a load moving under the
11 IRMA in KCS equipment terminates in Oakland, and the car
12 is made empty, and you don't have a return load. What
13 do you propose to do with that car?

14 A Again, the Customer Service Center will look
15 at the demands for that car. Now, if the car was needed
16 back on the KCS line, we would ask the merged carrier to
17 bring it back as an empty, and we would pay for that
18 movement.

19 Q And is there any possibility that KCS might
20 want to store some of these cars for any period of time?

21 A It would be entirely possible.

22 Q But you don't know at this point. It is not
23 part of your proposal, I take it, that you do that?

24 A We would certainly -- you know that many, many
25 cars moving on railroads are not owned by that

1 particular carrier, and it is not unusual to see KCS
2 cars on the Santa Fe train or KCS cars in a Southern
3 Pacific train, and it is entirely possible that Southern
4 Pacific, that is, the merged company, would want that
5 car to move some place else, and they would ask us, of
6 course, under the car service rules, and we would agree
7 to that.

8 Q Suppose that SPSF is not fortunate enough to
9 have the need for that car, but you do want to keep it
10 out there on the west coast. During the period that it
11 is stored on SPSF lines waiting for you to get a load,
12 whose car service account would that car be in?

13 A In mine. In KCS's.

1 Q Mr. Carter, do you really propose to have KCS
2 equipment made empty on the west coast under IRMA return
3 to your lines without another load?

4 A It depends. If we need the car back on our
5 line, of course, I would want it, and there is no demand
6 for it, I would want the car to come back. If there is
7 a possibility that there would be one today or tomorrow,
8 you know, a couple of days downstream, I would want it
9 to remain out there so that it could be placed. It
10 depends on the then-current situation.

11 Q Well, cars don't come back from the west coast
12 to Beaumont or Dallas overnight, do they? I mean, it
13 takes a while to get them back.

14 A It would take a while to get back, yes.

15 Q Are you going to divert KCS empties that are
16 returning back home to you in the middle of the trip if
17 suddenly a load becomes available? Are we supposed to
18 tear out trains down every time the KCS decides --

19 A Absolutely not. I am not going to expect you
20 to tear your train down at all. I did not imply that.
21 I did not say that. We are going to put our cars in
22 your through trains. We are not going to ask for any
23 special service. The cars are going to be moving in
24 your train just as it would if it had been a merged line
25 load or empty.

1 Q Would you look at page 23 of your verified
2 statement.

3 A Yes.

4 Q The bottom paragraph.

5 A I have it.

6 Q There you indicate, do you not, that the
7 agency line haul services would consist of our moving
8 cars for your account in our trains in accordance with
9 the routing on the waybill. Ordinarily it would be
10 sufficient for us simply to move the traffic in the next
11 scheduled through train and accord it the same handling
12 priority as our own traffic, and then you say this, "To
13 ensure equitable handling of time sensitive traffic, KCS
14 would also have the right to specify the train in which
15 certain IRMA traffic is to be moved."

16 Are you with me? Do you have my reference?

17 A I have your reference.

18 Q Now, is it your intention that KCS loads would
19 be handled on expedited trains on a space available
20 basis or that you would have the right to bump SPSE
21 traffic off our trains?

22 A Looking at your operating plan, we see some
23 through trains and we see some local trains, and the
24 thing that I want to do is make sure that KCS traffic
25 doesn't move in a local so that it would take, you know,

1 twice as long to get there.

2 As far as the arrangement is concerned, I
3 think that we would expect that car to be moved in the
4 very next through train regardless of what the situation
5 might be.

6 Q So that if the consist of that train was
7 complete and no additional cars could be added without
8 affecting the makeup of that train, you would expect us
9 to bump off some of our traffic and put your car on?

10 A Now, wait a minute. Let's get some operating
11 guidelines established.

12 If you have got that much of a surplus
13 business, you are going to run an extra train, okay?
14 Your people are doing it today. I'm doing it today.
15 Every operating person is going to do it. So you are
16 going to have all that much surplus business, then you
17 are going to run an occasional extra train. You are not
18 going to have cars sit for one particular train and not
19 have anything else.

20 So if there is that much business, you are
21 going to run extra trains.

22 Now, you wouldn't be, of course, expected to
23 run an extra train with a single car. I wouldn't expect
24 you to do that. You will probably add three or four or
25 five cars to each of your through trains. But I do not

1 want anyone to believe that we are going to tolerate
2 under IRMA your running those things in locals. And
3 that is specifically the point I am trying to make
4 here.

5 Q Do you contemplate the KCS will pay more to
6 have UPSF handle your time sensitive traffic in our
7 expedited trains?

8 A No. The formula does not take that into
9 account.

10 Q Who defines time sensitive, KCS?

11 A Anybody can do that. Look at a train that is
12 a through train versus a train that is a local. You
13 don't have to determine that.

14 Q You say time sensitive traffic.

15 Who is going to decide whether the traffic is
16 time sensitive, not the train.

17 A The shipper is the one that would tell the
18 person, the traffic person, you know, this one is hot,
19 and then you will also have, for example, you have
20 lumber that is rolling from the west coast to the
21 southwest, and they will say take your sweet time on
22 that particular one. That would be a nonsensitive car.
23 We would do exactly like the shipper asks. The shipper
24 is the one that determines whether it needs to move
25 quickly or whether it does not need to move quickly.

1 Q Will IRMA traffic only be time sensitive
2 shipments?

3 A No, sir, it is going to be available to every
4 type of commodity, every type of commodity that is
5 legal, of course.

6 Q If we had to run that extra train that you
7 talked about because when we all have surplus we run
8 extra trains, do you propose the XCS would pay us to run
9 the extra train?

10 A We would pay you exactly what your cost is
11 plus a little bit of a profit.

12 Q What is to prevent Kansas City Southern, Mr.
13 Carter, under your proposal here, from designating every
14 IRMA load as time sensitive and therefore taking
15 priority in all of our trains?

16 A You have got to have a little bit of ethics in
17 this business, and I think there is a great deal,
18 myself. Some people don't agree with that, but I think
19 that you have got to establish the fact that there are
20 some of us in the business that do business ethically
21 in the railroad business, and such would be the case
22 here. I would fully expect it to be understood by your
23 people like I have no problems with them today in areas
24 like that.

25 So I don't think you are going to find that

1 situation existing.

2 Q With all due respect, then your answer is you
3 want us to trust you?

4 A What?

5 Q You want us to trust you? That is the
6 answer?

7 A Why, absolutely I expect you to trust me, just
8 as I will trust you.

9 Q If you trusted us, you wouldn't need to have
10 this condition, would you?

11 A I'm not going to answer that question.

12 JUDGE HOPKINS: Do you want an answer to
13 that?

14 MR. MOATES: I think the answer is
15 self-evident, Your Honor.

16 BY MR. MOATES: (Resuming)

17 Q Let's discuss now agencies, services for IRMA
18 traffic. We have adverted to it once or twice, Mr.
19 Carter.

20 The operating plan, as I understand it,
21 indicates that such services will be provided by your
22 CSC, Customer Service Center, in Shreveport, and that
23 the shipping documents would be printed out at the
24 common points, correct?

25 A Yes, sir.

1 Q Okay.

2 Then is it correct to state that then you do
3 not contemplate under the operating plan any Kansas City
4 Southern employees being assigned to the common points?

5 A There will be KCS people assigned to the
6 common points, but as far as doing the yard office work,
7 we would get time slips if we did it. So I am not trying
8 to set a trap for you. I would expect your yard clerk
9 to take the information out of the printer in your own
10 yard office. Otherwise, I think your people, your
11 personnel people would be very upset if I tried to move
12 in and do work that is really and truly Southern Pacific
13 or SPSF's employees' work.

14 Q Well, Mr. Carter, without reading them all
15 off, there are many, many more common points that you
16 seek to have made applicable under your IRMA, looking at
17 Appendix 13.3 to the Operating Plan, for example, many,
18 many more common points than you intend to have
19 employees in the territory, isn't that true?

20 A I intend to have a printer in each of your
21 yard offices at each of these common points. The data
22 would be given to that yard office, but what I am trying
23 to tell you is this, that I respect your labor
24 agreements, and you could not really and truly let our
25 people come into your yard office and do work that

1 belongs to your employees. I would set a trap for you
2 if I did that.

3 Q I understand you are going to have a printer
4 in each of these offices. The printer is not an
5 employee, is it?

6 A A printer is not an employee.

7 Q And the CSC people at Shreveport are going to
8 take a lot of work away from SPSF people, aren't they?

9 A I don't think so. They will be giving those
10 SPSF people instructions at those points. We are not
11 going to have a single one of our CSC people at any one
12 of those yard offices. I can't see a single employee
13 being affected. As a matter of fact, I see some benefit
14 to your employees for the reason that if you start
15 raising prices and you start, you know, driving traffic
16 away from it, your people will be hurt.

17 I think as a benefit to your employees, IRMA
18 is going to protect them rather than harm them.

19 Q Take a look for a minute at Appendix 13-1
20 through 8 to your operating plan. 13-3 is probably the
21 most interesting one. These are all the common points
22 that you have identified to which IRMA is supposed to
23 apply, and on page 13-4, by the way, under Texas, is a
24 thing we referred to earlier. Rather than for points
25 you have added about 20 more, haven't you?

1 A I have added some to 13-4, and I trust you
2 will accept those changes. That was my mistake.

3 Q I haven't counted these, but you would agree
4 with me, wouldn't you, that there are dozens and dozens
5 of points, undoubtedly over 100 points listed there.

6 A Probably.

7 MR. AUERBACH: Your Honor, I have counted the
8 additional points to which Mr. Moates refers. There
9 aren't 20, there are 14.

10 MR. MOATES: That's fine. I will accept that,
11 Mr. Auerbach. I am referring to the totality of the
12 exhibit.

13 Q This one exhibit on California alone shows
14 dozens and dozens of points, doesn't it?

15 A These are dozens and dozens of points that
16 would lose competition if this merger is authorized by
17 this Commission without these conditions.

18 Q I understand that is your position, Mr.
19 Carter, and my point is that to deal with these dozens
20 and dozens of common points, you propose to add seven
21 employees and a bunch of printers, correct?

22 A I am going to have a printer in each of these
23 offices. I am going to have seven additional employees
24 on day one, seven additional supervisors on day one, to
25 go out and start the work. We are going to take our

1 present traffic offices, and I said earlier, and I will
2 say one more time so there won't be any
3 misunderstanding, I will add the employees that we have
4 to to make IRMA work. But I am not going to add people
5 in your yard offices because it would create a problem
6 for your personnel people, and I want to avoid that.

7 Q You want to avoid that problem.

8 Would you consider about what problems your
9 IRMA, as you have described it, might create in our yard
10 offices?

11 A I don't think it is going to create any
12 problems in your yard office.

13 Q Who makes waybills up?

14 A We can print the waybill and send it out on
15 the printer from the customer service center.

16 Q I understand that.

17 Who would be making that waybill up today?
18 You have already testified that these IRMA loads are not
19 incremental traffic, they are our traffic, right? Isn't
20 that right, yes or no?

21 A Well, restate your question.

22 Q Haven't you already told me that the IRMA
23 traffic that you are talking about is not incremental
24 traffic but rather it is traffic that is moved by
25 Southern Pacific and Santa Fe today?

1 A That is correct.

2 Q All right.

3 Now, Southern Pacific or Santa Fe move that
4 traffic under a waybill, don't they?

5 A Under a waybill, that's correct.

6 Q Who makes the waybill today?

7 A In all probability, some yard clerk makes that
8 waybill.

9 Q Some SP or Santa Fe yard clerk.

10 A Yes.

11 Q Who is going to make it under your IRMA if you
12 had the load?

13 A If a yard clerk makes 100 waybills in a day
14 and a waybill is made for me and printed on the
15 customer's service and he only makes 98, you are not
16 going to affect one Santa Fe or one Southern Pacific
17 employee, not one single person.

18 Q That is an interesting point of view.

19 Now, would you answer my question, please?

20 Who is going to make the waybill up if KCS has
21 an IRMA load after this transaction?

22 A We are going to furnish the data, and it is
23 entirely possible that your clerk would make the
24 waybill. The data is going to be furnished from the
25 Customer Service Center for the making of the waybill.

1 It is entirely possible that your clerk would make that
2 waybill.

3 Q That is a change in your plan as proposed in
4 your application, isn't it?

5 A I said that we would have the possibility of
6 making the waybill based on data furnished from Customer
7 Service Center.

8 Q Mr. Carter, how does KCS plan to handle
9 terminating order bill of lading shipments under IRMA?

10 A We are going to expect you, the merged
11 company, to be our agent for that purpose.

12 Q How convenient.

13 Is that in your plan?

14 A Yes.

15 Q Where do I find that?

16 A Give me a few minutes and I will --

17 Q Well, I don't want you to take the time now.

18 Would you find the reference for me over lunch
19 and give it to me after lunch?

20 A Okay.

21 Q All right, page 9 of your operating plan.

22 At the top of the page you are talking about
23 demurrage information.

24 Do you see that?

25 A About the what?

1 Q Demurrage.
2 Maybe I am pronouncing it differently than you
3 do.

4 How would you pronounce that?

5 A Demurrage.

6 Q You are saying that demurrage information
7 about car placements at each common point will initially
8 be furnished by SPSF by telephone to the CSC, the Kansas
9 City Southern people, in other words, within 24 hours of
10 each such placement.

11 Have you done any kind of a study or an
12 analysis to determine how long those kinds of
13 communications would take our people?

14 A I think 24 hours is a very reasonable figure,
15 and it is based on my own personal observation. As far
16 as detailed studies are concerned, I have not made any.

17 Q How much time with the personnel would be
18 involved, I mean, in physically making the calls to your
19 CSC?

20 A An efficient clerk, probably 30 to 45
21 seconds.

22 Q Do you plan to install direct communications
23 at all of those common points of ours with --

24 A I'm going to have 800 numbers from all
25 points --

1 Q For voice communication?

2 A For voice communication.

3 Q Have you studied or analyzed the amount of
4 time that SPSF personnel would require to complete
5 switching lists, arrival notices, constructive placement
6 notices and other notices relating to the transportation
7 of your freight under IRMA?

8 A I have made no studies on that.

9 Q Would you agree that all those things have to
10 be done in the normal course?

11 A Absolutely.

12 Q And you would expect us to do all of them for
13 you?

14 A I would, and I would pay you for that
15 service.

16 Q Wouldn't KCS need claims agents in IRMA
17 territory?

18 A We would expect the merged company to be our
19 claim agent.

20 Q So in the event of litigation with shippers
21 over a disputed charge, you would expect our employees
22 to appear as witnesses to support your claims?

23 A If it is necessary.

24 Q And you would expect our employees to persist
25 in responding to inquiries or investigations by the

1 ICC's Enforcement Branch?

2 A If it was necessary.

3 Q If it turns out, Mr. Carter, that you have
4 underestimated the staffing demands on our railroad due
5 to your IRMA, is KCS willing to hire the needed
6 personnel or to reimburse SPSF for the extra cost of
7 hiring personnel to handle your traffic?

8 A Would you restate that? I am going to pay you
9 for what?

10 Q If it turns out, recognizing you think your
11 study is a good one, but if it turns out that it is not,
12 that you have underestimated the staffing demands on
13 SPSF personnel -- and I am talking in this context about
14 agency services -- is KCS willing to hire on its own the
15 personnel that will be needed to perform those
16 additional services or to reimburse SPSF for extra costs
17 that we might incur to handle those services?

18 A I will do the latter, not the former. I will
19 pay you your cost plus a little bit of profit for
20 whatever you do for me. I am not looking for a free
21 ride. I don't think that your personnel would want me
22 to hire people to go into your office. I think it would
23 create some problems.

24 So I am going to ask the merged company to act
25 as KCS agent, and I have told you and I will say it

1 again, I will pay my way. I am going to pay you your
2 cost plus a little bit of profit, and if it takes
3 additional personnel, we will pay for it, okay?

4 JUDGE HOPKINS: Mr. Moates, I think this might
5 be a good time for a recess.

6 MR. MOATES: This is a good time for me, too,
7 Your Honor.

8 MR. AUERBACH: Your Honor, can we have some
9 estimate of remaining time? We have some witnesses that
10 have to be brought in.

11 MR. MOATES: I estimate I have about one more
12 hour.

13 JUDGE HOPKINS: And then we have the
14 Department of Transportation and the Department of
15 Justice, and the BLEA.

16 We will be in recess until 1:45.

17 (Whereupon, at 12:40 o'clock p.m., the hearing
18 in the above-entitled matter recessed, to reconvene at
19 1:45 o'clock p.m., this same day.)

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AFTERNOON SESSION

(1:45 p.m.)

JUDGE HOPKINS: Back on the record.

Whereupon,

THOMAS S. CARTER,

called as a witness by counsel for Kansas City Southern Railway and, having been previously duly sworn by the Administrative Law Judge, resumed the stand and was further examined and testified as follows:

CROSS EXAMINATION -- Resumed

BY MR. MOATES:

Q Good afternoon, Mr. Carter.

A Good afternoon.

Q Before we broke, sir, I had asked you a question about terminating order bill of lading shipments under IRMA, and I asked you whether in your plan you had made arrangement for such shipments. You said you had, and you contemplated that we would handle that for you as your agent, and you were going to find a reference for me of that.

Have you found a reference?

A Yes.

Will you refer to page 4 in KCS-8, Volume 4, which is the operating plan, Exhibit 13. The last sentence on the page, "From an operational standpoint,

1 KCS will provide rail transportation services to, from
2 and between such common points through a combination of
3 direct service, SPSF agency services," and included in
4 the word "agency services" I expected the merged company
5 to provide that service.

6 The agency service was to be
7 all-encompassing.

8 Q Okay, thank you.

9 I had a detail question, too, sir, that I
10 inadvertently skipped over in my earlier examination. I
11 would like to ask your forbearance while I return to
12 it.

13 Are you familiar with the uniform freight
14 classification rules, generally familiar with them?

15 A Generally.

16 Q Isn't it true that Section 5, or Rule 27,
17 makes it the responsibility of consignees to clean cars
18 before returning them?

19 A To clean the cars? The rule is there. I am
20 not sure that it is enforced as well as it should be.

21 Q I understand that that is a problem, is it
22 not, from time to time, that consignees will return cars
23 uncleaned?

24 A It is a common problem to all railroads.

25 Q Does the Kansas City Southern Railroad have

1 any kind of a penalty to assess shippers who return
2 unclean cars?

3 A We are a party to the penalties rules set up
4 by the AAR, but I don't recall having enforced such a
5 penalty.

6 Q Does the KCS actually do a significant amount
7 of car cleaning itself?

8 A Yes.

9 Q Would you give me any estimate of what
10 percentage of your fleet you have to clean?

11 A I don't have any idea. I am sorry, I cannot
12 give you that estimate.

13 Q Does it vary by car type?

14 A Oh, yes.

15 Q And does it vary by type of traffic, for
16 example, where traffic is terminated -- let me restate
17 this question.

18 Is this a problem, to your knowledge, Mr.
19 Carter, that was more prevalent for the KCS on the
20 railroad-owned equipment as opposed to private
21 equipment?

22 A I don't know that I have any information to
23 answer that question on. I cannot answer it.

24 Q Now, if we can, let's go back to IRMA. I want
25 to talk to you now for a little bit about the

1 performance of TOFC/COFC services under IRMA.

2 First of all, are you aware that under the
3 primary Applicant's operating plan, the merged railroad
4 has plans to make major improvements to SP's present
5 Oakland TOFC facility?

6 A Just generally I was aware that that had been
7 considered.

8 Q KCS, I take it, intends to be a user of that
9 facility?

10 A Absolutely. It is a common point.

11 Q Would KCS in that case be prepared to share in
12 the investment for expanding this facility?

13 A No. KCS agrees to make you whole on your
14 costs, plus some profits. I have no intentions of
15 bearing capital portions of the cost.

16 Q Well, Mr. Carter, if the merged system already
17 has plans to expand this facility because it has been
18 determined by the merged system's experts that a better
19 or larger facility is required to handle traffic from
20 this territory, and you in turn intend to share in this
21 traffic and to use our facilities, why isn't it fair for
22 you to share in the investment?

23 A Because I have agreed to pay your total cost
24 plus a little bit of profit.

25 Q Would your answer be the same with respect to

1 any particular capital improvements that the merged
2 company proposed to make to lines or facilities that the
3 KCS would use under IRMA?

4 A That is correct.

5 Q All right.

6 Do you have the operating plan up there?

7 Say you do, would you look at page 8 of it,
8 please? In the full paragraph on the bottom of the
9 page, the one that starts "As described above," do you
10 see that?

11 A Yes.

12 The second sentence, "KCS shall be responsible
13 for all drayage operations to and from such ramp
14 facilities and will have the right to use SPSF's storage
15 facilities at such ramps to hold trailers and containers
16 incidental to such ramping, deramping and drayage
17 operations."

18 Are you aware that the facilities of
19 Applicants are presently operating at capacity, these
20 types of facilities?

21 A Some may be; some are not.

22 Q I take it then with respect to those that you
23 conceive may be, however many that number is, if
24 additional storage space is required to handle your
25 traffic, would you share in that investment?

1 A I will pay my share of the cost but not of the
2 capital improvement.

3 Q Well, the cost of the capital improvement to
4 create more storage space, is that a cost that you would
5 share?

6 A You are trying to distinguish between capital
7 and expenses. I understand the nature of your
8 question. I am going to pay my full share, pay my way,
9 but I did not proposed to put any capital expenditures.

10 A Now, after this thing is done, if you want to
11 come to me and talk about developing a joint facility, I
12 will certainly talk with you, but under the plan as we
13 proposed, I intend to pay only costs plus a profit to
14 you.

15 Q And again, sir, just so the record is clear,
16 is that on the theory that whatever traffic you may
17 enjoy under IPMA hypothetically is traffic that
18 otherwise would be carried by the merged company? So
19 your theory is you are not expanding the pool of
20 available traffic?

21 A That is correct.

22 Q Let me ask you then hypothetically, you
23 remember this morning we talked about your motor
24 carrier. I think it was called Landa Motor Carrier.

25 A Correct.

1 Q You indicated to me that you had had or were
2 in the process of acquiring expanded certificate
3 authority to the 48 contiguous United States for that
4 carrier. If you were to initiate services with that
5 carrier, for example, into California and thereby to
6 generate additional intermodal traffic, truly
7 incremental traffic, diversions for motor carriers, if
8 you want to put it that way, and that kind of
9 incremental KCS traffic under IRMA required additional
10 facilities on the merged company to handle your traffic,
11 don't you think in those circumstances that you should
12 bear the cost of the capital improvements to handle your
13 traffic?

14 A I am going to pay my full cost, my full share
15 of the cost plus profit to you, and that is all I am
16 proposing.

17 Q Regardless of whether the traffic to which you
18 are -- to which we will be subjected to cost is
19 incremental traffic or existing SF or SP traffic?

20 A Right.

21 Q Are you aware, Mr. Carter, that today in Santa
22 Fe TOFC terminals, all trailer movement information is
23 kept on a computer system on a real time basis?

24 A I was not aware of that.

25 Q If you assume that to be the fact for purposes

1 of this question, how would KCS propose to access those
2 records?

3 A Our people, our supervisors that are actually
4 in the field at these major terminals, would of course
5 have developed that type of information, and they of
6 course will put it into our real time system.

7 Q So you would propose to share confidential
8 Santa Fe movement information on trailers in the Santa
9 Fe-SP system?

10 A The movement will be dictated by the shipper,
11 and that becomes information that the carrier will need
12 in order to handle the movement pursuant to the
13 shipper's requirements.

14 Now, you can consider that confidential if you
15 want. I think it is public information, but that
16 information of course will be given to you because that
17 will determine the route that the movement would be
18 taking.

19 As far as the rates are concerned, I think
20 that probably will remain confidential, but for the
21 movement of the car, that information would be given to
22 you.

23 Q Looking back at page 8 of the operating plan,
24 in the same paragraph that you and I were just
25 discussing, a little farther down it says in a vein

1 similar to that that we discussed this morning with
2 respect to carload traffic, that SPSF shall provide KCS
3 by telephone the information concerning the times of
4 such placement and releases, again, of trailers, within
5 24 hours of occurrence, and shall deliver to the KCS all
6 storage records so maintained at the end of each month.

7 Have you made any kind of an analysis, Mr.
8 Carter, to determine how long SPSF personnel would be
9 involved in this process of conveying this information
10 to your people?

11 A No.

12 Q All right.

13 Are you aware, sir, that at certain points at
14 which you propose to have the IRMA applied, points like
15 Phoenix, Los Angeles and San Francisco, as examples,
16 that many more TOFC loads are terminated than
17 originated?

18 A It is my understanding.

19 Q What do you propose to be the disposition by
20 KCS of empty trailers terminating at those points?

21 A It depends on who owns the trailer. It
22 depends on which of the numerous plans that the cars,
23 that the units can be moved on, depends strictly on what
24 is involved as far as that is concerned, and the very
25 fact that a great deal of that is terminating out there

1 eliminates the dilemma that you tried to establish
2 earlier about the car shortage.

3 Q I was, of course, talking there about trailers
4 and not cars.

5 A There has to be a car for each trailer that
6 goes, at least every pair of trailers, so the two go
7 together, you know.

8 Q I'm quite aware of that, sir.

9 Now, are you aware that at other points in
10 California like Stockton and Modesto and Fresno, that
11 many more TOFC loads are originated than terminated?

12 A That's my understanding.

13 Q And what does KCS plan to do to ensure an
14 adequate supply of trailers at those points?

15 A If there is a surplus of trailers in one
16 location and a shortage at the other, then we will try
17 to move them up there.

18 Q How are you going to do that?

19 A I stated in the plan that we are going to
20 arrange for that transportation.

21 Q KCS will arrange for the motor carrier
22 transportation of those trailers?

23 A Whatever is necessary. We are going to
24 arrange for that.

25 Q So you don't contemplate that Applicants would

1 be required to ramp and deramp these trailers and to
2 move them empty via train service between these points?

3 A The plan, and the sentence that you read
4 earlier is the way that we propose to handle it. It
5 says "KCS shall be responsible for the drayage operation
6 to and from the ramp facilities," and then we would have
7 the right to use the facility.

8 Now, as far as taking the car off of the
9 trailer or placing the car -- the trailer on the car or
10 taking it off, we would expect you to do that as our
11 agent, and we will pay you for that service. But as far
12 as getting the trailer into the yard or getting it from
13 point to point, KCS will arrange to do that.

14 Q By the way, did you make projections as the
15 officer in charge of the operating plan of the number of
16 trailers that would be so repositioned for purposes of
17 the environmental impact analysis?

18 A I did not make that analysis.

19 Q Did anybody make that analysis?

20 A Yes.

21 Q Who did that?

22 A The marketing staff.

23 Q All right.

24 Now, if we could turn to a brief consideration
25 of the Beaumont-Houston-Galveston trackage rights -- and

1 you might want to refer to page 12 of the operating
2 plan -- I am going to refer to a sentence here that I
3 think, Mr. Carter, you will agree repeats itself in each
4 of the trackage rights segments. It is the sentence
5 that constitutes the third full paragraph of page 12:
6 "Actual observation of SP's lines and operations of the
7 proposed joint track indicate that SP's lines have
8 adequate capacity for KCS proposed trains, and that the
9 standard of maintenance is adequate for speeds as shown
10 in KCS's proposed schedule."

11 Do you see that reference?

12 A Yes, I do.

13 Q And that does appear, does it not, in each of
14 your sections on the different trackage rights?

15 A Yes, it appears in each of the four sections.

16 Q Okay.

17 Do I take it, Mr. Carter, that Kansas City
18 Southern based its formulation of its operating plan
19 with respect particularly to this statement about
20 capacity and speeds on maps and timetables and other
21 data furnished by us to you?

22 A That plus the fact that we looked at it. We
23 looked at it. We made an actual observation, and we
24 also based it on information that was furnished under
25 our discovery.

1 Q Okay.

2 Now, when you say you looked at it, did you
3 personally inspect these lines?

4 A I did.

5 Q When did you inspect the Houston -- excuse me,
6 the Beaumont-Galveston line?

7 A In the summer, I would say June or July.

8 Q Okay.

9 Did you prepare any documents as a result of
10 that inspection?

11 A No, I did not.

12 Q How did you inspect the line, by car?

13 A By stationwagon. I drove along the length of
14 it.

15 Q Do you know a Mr. R. L. Evert?

16 A Yes, I do.

17 Q Who is Mr. Evert?

18 A He is on my staff.

19 Q Would you tell us what his position is, as
20 best you can?

21 A I don't know what his title is, but he is a
22 person that did a great deal of work in preparation of
23 this operating plan. He did a lot of the leg work. He
24 is a bright young person in the operating department.

25 MR. MOATES: Your Honor, I would like to have

1 marked as a counsel's exhibit a two-page document
2 produced to Applicants by Kansas City Southern in
3 discovery.

4 JUDGE HOPKINS: It will be marked for
5 identification as SFSP-C-94.

6 (The document referred to
7 was marked Exhibit No.
8 SFSP-C-94 for
9 identification.)

10 BY MR. MOATES: (Resuming)

11 Q Mr. Carter, have you seen these documents
12 before?

13 A Yes.

14 Q Are these not records that Mr. Evert made on
15 April 24 and 25, 1984 of his experience with two
16 Southern Pacific trains moving between Avondale and
17 Houston on the one hand, and Houston and Avondale on the
18 other?

19 A Yes.

20 Q Apart from -- do you know whether, by the way,
21 Mr. Evert actually rode this train or these trains, or
22 whether he simply took observations of its passing?

23 A He did not ride the train. He was in a
24 company vehicle running parallel to the train.

25 Q All right.

1 Did you make any similar records of your
2 inspection of this line?.

3 A I did not.

4 Q Do you know whether anyone besides Mr. Evert
5 has made any comparable analyses of the capacity or the
6 speed on the line?

7 A It is possible. I don't know if one was
8 made.

9 Q Is it then fair to say that your analysis of
10 the materials furnished by Applicants, your personal
11 inspection from which you created no documents, and
12 these two documents created by Mr. Evert, constitute the
13 basis for your opinion that our lines in this trackage
14 rights corridor have adequate capacity for your trains?

15 A It constitutes part of my opinion.

16 Q What constitutes the remainder of it, sir?

17 A The Southern Pacific has to use part of my
18 line to get from Houston to New Orleans, are you aware
19 of that?

20 Q Yes.

21 A That is a fact. On this particular segment,
22 we have the Missouri Pacific, we have Amtrak, we have
23 KCS and we have Southern Pacific, a single line, and it
24 is CTC, properly signalled, and an adequate capacity on
25 that segment that you use for all of those carriers.

1 Now, then, move on either side of it, you have
2 a line where the standards are just as good, single
3 line, signalled, and you add the KCS plus the Amtrak,
4 plus Southern Pacific, and since there is enough
5 capacity on the segment that I own, that I operate, that
6 I supervise, it is certainly logical if you take all the
7 Missouri Pacific off of it, this track is just as good
8 as what I have, and certainly there is enough capacity
9 in there.

10 Do you follow my logic?

11 Q I follow your logic, but let me ask you this
12 question.

13 Just how long is the KCS line between --

14 A Between Beaumont and Korf?

15 Q And Korf, that you are talking about.

16 A It is very short.

17 Q 1.1 mile?

18 A Something like that.

19 Q So you are not telling me that you draw your
20 conclusions about the capacity of the entire SP line
21 from Beaumont to Houston to Galveston based on your
22 experience on that 1.1 mile of track?

23 A That's not what I said.

24 Q That was, excuse me, the remainder of your
25 analysis?

1 A That was the remainder of my analysis, that's
2 correct. That's all, in addition to all of the
3 information that we got from discovery of your records,
4 that is in addition to the study of your operating
5 plan. That is in addition to the trip that Mr. Evert
6 made that you referred to, and in addition to the trip
7 that I made.

8 A As a matter of fact, your operating plan shows
9 12 trains. I am going to add two to it on the track.
10 It is certainly good enough for 14 trains per day.

11 Q Mr. Carter, KCS proposes, does it not, to
12 purchase one half of Santa Fe's ownership in the Houston
13 Belt & Terminal Railroad?

14 A As soon as the certificate is granted to KCS,
15 we propose to offer to buy one half of the ownership of
16 Santa Fe in the Houston Belt & Terminal, in the railroad
17 portion only. I am not going to get into the real
18 estate business because that involves something that is
19 not incident to this case.

20 Q That is why your offer is to buy the interest
21 exclusive of nonrail real estate and passenger related
22 properties?

23 A Yes, sir.

24 MR. MOATES: All right.

25 Your Honor, I would like to have marked as

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counsel's exhibit a one-page handwritten document
produced to Applicants in response to discovery.

0003 0115

1 JUDGE HOPKINS: That will be marked for
2 identification as SFSP-C-95.

3 (The document referred to
4 was marked Exhibit Number
5 SFSP-C-95 for
6 identification.)

7 BY MR. MOATES: (Resuming)

8 Q Have you seen this document before, Mr.
9 Carter?

10 A Yes.

11 Q Whose handwriting is that?

12 A I don't know.

13 Q Does this notation constitute the basis for
14 your offer for Santa Fe's portion of the HB&T?

15 A This notation was used, I think, by the
16 costing staff to establish the price, and I did not have
17 this in mind when I offered -- when I made the offer.

18 Q I'm sorry. Would you repeat the last
19 sentence?

20 A This sheet was used by our costing staff in
21 order to set some costs. I did not have this in the
22 back of my mind when I made the offer. We are going to
23 pay whatever the Commission tells us the value of that
24 one-half of one-eighth -- one-half of one-quarter, which
25 would be one-eighth of the HB&T's value, minus all of

1 the real estate.

2 Q You don't have any intention to negotiate with
3 the Santa Fe over that? You want the Commission to
4 mandate it?

5 A I would certainly want to negotiate with the
6 Santa Fe, but in the event that we cannot strike a fair
7 deal or a deal that is fair to both of us, I would want
8 the Commission to be able to step in and indicate what
9 the fair market price would be.

10 Q You would agree with me, wouldn't you, sir,
11 that even taking your offer on the basis you propose
12 it -- that is, exclusive of real estate -- that one-half
13 of the Santa Fe's interest in the Houston Belt and
14 Terminal is worth a little more than the price of a four
15 bedroom house in the suburbs?

16 A I don't really know what the value is. I have
17 made no study on it.

18 Q Would your opening offer to Santa Fe be
19 \$165,000?

20 A I don't know.

21 Q You wouldn't rule it out?

22 A Pardon?

23 Q Never mind.

24 Have you investigated with the trustee of the
25 Rock Island whether his interest in the Houston Belt and

1 Terminal might be available?

2 A I have not investigated it, but the trustee of
3 the Rock Island called when he found out that this case
4 was going and offered to sell us his interest in the
5 case.

6 Q He's a generous fellow, isn't he?

7 A Yes.

8 Q Did you express any interest in that
9 possibility?

10 A I told him -- I asked him for his telephone
11 number so that when I got the certificate I would be
12 able to contact him.

13 Q Would you propose to acquire both the half
14 interest in Santa Fe's ownership interest in Houston
15 Belt as well as that of the trustee so that you would
16 own more of the Belt than Santa Fe?

17 A No.

18 Q You could purchase -- strike that.

19 Tell me if you feel you can't answer this
20 question, if you think it requires some insight which
21 you don't have, legal or otherwise, but let me try it.
22 If you were going to acquire a stock interest in a
23 corporation, Mr. Carter, don't you take an interest in
24 the undivided property of that corporation?

25 A I really need help from counsel. I'm not

1 qualified to answer that question.

2 Q Have you ever had occasion to observe the SP's
3 operations between Harrisburg and Texas City on the
4 Bayport line?

5 A On the Bayport line? That doesn't ring a
6 bell. Is that part of --

7 Q That's the Texas City line, you might call
8 it.

9 A Oh, the line between Barber's Cut and
10 Galveston?

11 Q Yes.

12 A I have driven alongside that line. I have
13 indeed.

14 Q Do you know how many trains and switch engines
15 the Southern Pacific operates in that territory?

16 A They must not operate very many because they
17 proposed to abandon the line south of Texas City
18 junction. They are going to give it up, so there
19 certainly must not be a big demand for whatever they
20 have south of there. I do not know how many switch
21 engines they have assigned to the area.

22 Q That is the line south of Texas City. Do you
23 have any idea what their operations are between Barber's
24 Cut and Texas City junction?

25 A No, I do not.

1 Q Didn't you consider that to be a relevant
2 inquiry for purposes of your plan?

3 A I didn't understand your question.

4 Q Didn't you consider it relevant to find out
5 what their operations were for purposes of your
6 operating plan?

7 A I drove it myself, and I had the staff drive
8 it, and we feel that there is sufficient -- it's
9 sufficient for us to get one train a day each way in
10 addition to what you have in there. I found the window,
11 when I went through there, that was sufficiently wide to
12 get a train going north, and I drove back along it, and
13 I saw no reason why we could not successfully operate
14 one train a day each way.

15 Q What day of the week did you drive up and
16 down?

17 A It was a weekday. It was not on the weekend.

18 Q As you have just suggested in the last answer,
19 Mr. Carter, you do propose to purchase the line between
20 Texas City and Galveston that the SP proposes to
21 abandon, do you not?

22 A The eight miles that you stated that you were
23 going to abandon I did indeed.

24 Q How much do you propose to pay for that line?

25 A The estimated cost of replacing it, minus

1 depreciation.

2 Q Do you know what that number is?

3 A I do not.

4 Q Again from reading your plan, I believe you
5 indicated that you intend to set out and pick up IRMA
6 traffic for Houston industries and connections at the
7 Houston Belt and Terminal's Basin Yard; isn't that
8 true?

9 A That's true.

10 Q Are you aware that under the applicant's
11 operating plan that most freight service would operate
12 into and out of the Englewood yard rather than Basin?

13 A I am.

14 Q Did you take that into consideration in your
15 proposal to operate to and from Basin?

16 A I did indeed.

17 Q Will your Houston trains make set-outs and
18 pickups at points other than Basin Yard?

19 A No.

20 Q How do you propose that cars be moved between
21 Englewood and Basin Yard for your account?

22 A I propose the Houston Belt and Terminal to
23 make the transfer.

24 Q And you would pay them an appropriate charge?

25 A I would indeed, plus a little profit.