

F.D. 30400, et al. - Pages 7396 thru 7455

1 Q Have you figured the HB&T switch charges which  
2 have a little profit in them into your pro formas?

3 A The cost people have.

4 Q Now I want to ask you about five different  
5 moves within the Houston terminal, hypothetical moves,  
6 and I just wish you would as thoroughly and as briefly  
7 as you feel you can to describe to me how you propose  
8 these sorts of movements would physically be handled.

9 All right, the first one would be a car  
10 originating at an SP industry in Houston destined to a  
11 KCS point or a connection like Kansas City.

12 A The SP would move the car to their assembly  
13 yard, which would probably be Englewood, or it could be  
14 one of the outlying industry yards that they have. It  
15 could be the one at Barber's Cut or any one of several  
16 yards.

17 Then the car would move to the Houston Belt  
18 and Terminal. The Houston Belt and Terminal would put  
19 that car in the pickup track that we would operate  
20 into. We would then pick the car up, depending on  
21 whether it was going southbound to Galveston or whether  
22 it was going eastbound to Beaumont.

23 Q All right. Now, sir, the reverse -- a car  
24 terminating at an SP industry in Houston which  
25 originated at a KCS point or a connecting point to KCS.

1           A       KCS would move the car on trackage rights into  
2 the Basin Yard. It would set that car, plus any other  
3 car going to or from Houston proper, out. That car  
4 would then be handled by HB&T and the delivery made.

5           Q       All right. The third kind of shipment I'd  
6 like you to describe the handling of would be a  
7 westbound IRMA load moving through Houston, say coming  
8 from New Orleans and moving to the west coast.

9           A       That car would be set out on the inbound KCS  
10 train. The HB&T would then take it to the Southern  
11 Pacific yard and we would expect Southern Pacific to  
12 move it in its next through train.

13          Q       All right. Now would there be any -- well,  
14 strike that.

15                 Would you give me the same explanation for the  
16 same kind of car, IRMA car, moving eastbound, just the  
17 reverse movement?

18          A       The car would come in on an SP train into  
19 Houston. It would be set out at that point because your  
20 operating plan appears that you are going to stop all of  
21 your through trains at Houston. The car would be set  
22 out and the car would then be transferred by HB&T from  
23 the SP yard to the Basin Yard and then it would be  
24 picked up by my train that was moving eastbound towards  
25 Beaumont and ultimately into New Orleans.

1 Q And lastly, sir, through KCS traffic moving  
2 from Houston -- excuse me, from Beaumont to Galveston.

3 A That car would remain on the KCS train as it  
4 went through the Basin Yard and then would move on out  
5 on that through train to Galveston.

6 Q Thank you. Can we refer now to your verified  
7 statement at page 18, or, if you have the operating plan  
8 and that is more convenient, I think the same reference  
9 appears at page 50 of the operating plan?

10 A Which do you want?

11 Q Whichever is convenient to you; it is the same  
12 thing.

13 A I have 18.

14 Q I want to draw your attention here to what you  
15 call deletion or discontinuance of the one local freight  
16 train operated six days per week in each direction  
17 handling general traffic between Lake Charles and  
18 Beaumont. Do you see that?

19 A Yes.

20 Q The question is would the New  
21 Orleans-Galveston train that you proposed perform the  
22 local work previously performed by this Lake  
23 Charles-Beaumont local?

24 A There would be no local work on the through  
25 train at all. Now there are other trains that operate

1 in that same territory. The train would make a pickup  
2 at Lake Charles and would make a setout at Beaumont, but  
3 he would do no local work whatsoever. There are other  
4 movements in there today.

5 Q All right. Now with reference to page 20 of  
6 your verified statement, the middle paragraph on that  
7 page, you note that "our proposal is one that would  
8 result in", you say, "a small increase in traffic  
9 density in the New Orleans to Lake Charles segment over  
10 which you are seeking trackage rights."

11 Do you mean that increase in terms of tonnage  
12 or in terms of number of trains?

13 A Both.

14 Q Have you made any kind of a study or analysis  
15 to determine whether the line from Lake Charles to New  
16 Orleans will continue to have sufficient capacity to  
17 handle both SPSF and KCS traffic?

18 A Yes, and if you will refer to my operating  
19 plan I will show it to you. Turn to Appendix 13-23,  
20 please, on Exhibit 13.

21 Q Yes.

22 A Segment 2 is Lockmore to West Bridge Junction,  
23 but that is Lake Charles to New Orleans, okay. That's  
24 the territory that you are interested in.

25 Q Yes.

1           A     According to your operating plan, which is  
2 Exhibit 13, on your page 38, it indicates that the  
3 present SP base gross tons would be 18.5. Now that is  
4 18.5 million gross ton miles per mile. The present SP  
5 freight train dailies, freight trains daily operated in  
6 there, appears to be 7, and I took that from page 38 of  
7 Exhibit 13, as submitted to this Commission.

8           A     And then you propose the base mileage in year  
9 one, the gross ton miles at 21.2. I estimated the  
10 number of trains at 9. I'm adding two trains to it, and  
11 it appears that there would be a total of 11 trains,  
12 plus the Amtrak -- and Amtrak operates six moves per  
13 week. So that would be the total density and I trust  
14 that that answers your question whether a study was  
15 made.

16          Q     So the analysis is that there are 7 trains  
17 operating on that segment today. There would be 11 if  
18 your condition were imposed, plus Amtrak?

19          A     Plus six movements per week of Amtrak, that's  
20 correct.

21          Q     Did you carry that analysis through for any  
22 subsequent years?

23          A     I only made it for year one. I did look at it  
24 for the additional information that you had, but there  
25 were several things missing in the SPSF's operating

1 plan, so I could not complete the analysis for all of  
2 the years. But this is certainly true for year one.

3 Q Are you aware that Mr. Ploth projects that  
4 your recapture and gain of traffic if these conditions  
5 are imposed will not all occur in one year?

6 A That's correct. It's going to go up. That's  
7 correct.

8 Q And when it goes up it will increase density,  
9 won't it?

10 A As it goes up -- I have agreed to operate my  
11 trains using your rules and your regulations, so  
12 whatever your operating people require for tonnage, you  
13 know, for horsepower per train, if we exceed that then  
14 we'll have to add additional trains.

15 MR. MOATES: Your Honor, I would like to have  
16 another two-page counsel's exhibit marked. It is again  
17 a two-page typed document produced to applicants in  
18 discovery.

19 JUDGE HOPKINS: It will be marked for  
20 identification as SFSP-C-96.

21 (The document referred to  
22 was marked Exhibit Number  
23 SFSP-C-96 for  
24 identification.)

25 BY MR. MOATES: (Resuming)

1 Q Mr. Carter, not wanting to extend this  
2 unnecessarily, can you just confirm that this two-page  
3 exhibit is another form filled in by Mr. Evert based on  
4 his apparent observations of Southern Pacific, the  
5 Southern Pacific train moving from Lake Charles to  
6 Avondale on March 29, 1984, and the train from Avondale  
7 to Lake Charles the following day?

8 A Okay.

9 Q And it was used for the same purpose as the  
10 one we discussed previously on the Beaumont?

11 A That's correct.

12 Q Now considering lastly your proposed trackage  
13 rights between Greenville and Ft. Worth, is it your  
14 proposal, sir, to run one train to Ft. Worth and  
15 discontinue one of your existing trains to Dallas; is  
16 that right?

17 A Per day each way.

18 Q Per day each way?

19 A Yes.

20 Q It is fair, I take it, then, to say that KCS  
21 is simply rerouting its Dallas service to Ft. Worth?

22 A Part of the Dallas service, yes.

23 Q How would the remainder of -- so the remainder  
24 of your local traffic at Dallas would continue to move  
25 in your other train?



1 A Yes.

2 MR. MOATES: If I could have one last exhibit  
3 marked, Your Honor, another two-page exhibit. It is the  
4 same kind of document for the Greenville-Hodge line.

5 JUDGE HOPKINS: That will be marked for  
6 identification as SFSP-C-97.

7 (The document referred to  
8 was marked Exhibit Number  
9 SFSP-C-97 for  
10 identification.)

11 BY MR. MOATES: (Resuming)

12 Q Again, Mr. Carter, does this exhibit represent  
13 Mr. Evert's recording of the transit of SP trains  
14 between Greenville and Hodge -- excuse me, an SP train  
15 between Greenville and Hodge on April 17, 1984, and  
16 between Hodge and Greenville on April 18, 1984?

17 A Yes. I want to explain that Hodge is Ft.  
18 Worth, Texas. That's the name of the yard. The answer  
19 to the question is yes.

20 Q Hodge Yard is the yard in Ft. Worth that you  
21 propose to purchase?

22 A Because the applicants say that they don't  
23 need it any more and they are going to shut it down, so  
24 I thought I would go in and keep it open and offer to  
25 buy it or lease it.

1           Q     Let's be clear on this. It is your  
2 understanding that applicants say they have absolutely  
3 no use for the property at Hodge Yard?

4           A     They said they were going to shut the yard  
5 down, and I think that if they're going to shut it down  
6 then there's going to be some surplus tracks there, and  
7 I propose to either buy it or to lease it and operate  
8 it.

9           Q     But you have no knowledge, do you, of any  
10 plans that applicant may have for the use of that yard?

11          A     I saw in your operating plan, when you said  
12 you were going to shut it down, you were going to  
13 discontinue using it. So I decided it would be ideal  
14 for me to go into that yard.

15          Q     We're talking at cross purposes. I take it  
16 you don't have any particular knowledge of whether  
17 applicants have some plan for the property as opposed to  
18 using it as a railroad?

19          A     This is news to me. It certainly wasn't found  
20 in the discovery.

21          Q     I wasn't suggesting it is a fact. I am just  
22 asking you don't know whether --

23          A     I don't know. It was not in your discovery.

24          Q     Again, the document marked SFSP-C-97, taken  
25 with the data furnished to you by applicants -- let me

1 ask you -- and a personal inspection by you of this  
2 line; did you inspect this line?

3 A Yes. I drove alongside it on public roads,  
4 alongside it, from Greenville to Ft. Worth and then  
5 back.

6 Q So you drove along each of these trackage  
7 rights lines; is that right?

8 A As close as I could get, and then if I got too  
9 far away I went up and looked at the quality of the line  
10 and the standards of maintenance and so on.

11 Q Could you tell us what the -- what you propose  
12 to pay for Hodge Yard?

13 A We will base it on a then-current appraisal.

14 Q Current appraisal?

15 A At a then-current appraisal, that is correct.

16 Q You indicate, don't you, at page 37 of the  
17 operating plan where you are discussing operations at  
18 Ft. Worth that SPSF will perform terminal services for  
19 you?

20 A I was proposing that, yes.

21 Q What particular services do you have in mind  
22 there?

23 A I was going to take the train into Hodge Yard  
24 and then, since it is in the switching limits, I would  
25 pay the SP for taking the cars that I would terminate

1 and delivering it, along with their own cars, to the  
2 other carriers and Ft. Worth, Texas, and likewise on the  
3 cars that would come to KCS from the other carrier, to  
4 deliver them to KCS at Hodge Yard.

5 Q What charge would you expect to pay SPSF for  
6 performing those services?

7 A I would pay them their cost plus a little  
8 profit.

9 Q Even though this is a trackage right operation  
10 you still propose the same formula for compensation?

11 A Trackage rights for KCS into Hodge Yard and  
12 then switching or agency service in Ft. Worth, Texas.

13 Q Over the same basis as IRMA, is that right?

14 A Yes.

15 Q Even though your IRMA route is over Houston?

16 A The IRMA route is over Houston, that's  
17 correct.

18 Q Have you made a study, sir, to determine  
19 whether your crews could make a Greenville-Hodge  
20 turnaround in 12 hours or less?

21 A I feel that they can.

22 Q And if they were unable, for whatever reason,  
23 to do so, what arrangements would you make to handle  
24 that train and to handle the crew?

25 A Of course, we're going to follow the hours of

1 service act. We're not going to violate that. What we  
2 would do, we would have to operate the train into a  
3 siding and send a relief crew from Greenville, Texas,  
4 out to pick it up. There would be perhaps an hour's  
5 delay or something like that, but not any more than just  
6 that.

7 Q Do you know whether SPSF would have the  
8 necessary agents and operators at Ft. Worth on duty when  
9 you plan to run your trains?

10 A You have overlooked the fact that I worked for  
11 the Katy for 25 years, lived in Dallas and was in Ft.  
12 Worth frequently. I do know for a fact that they've got  
13 a pretty good operation out of Ft. Worth, Texas. It  
14 would be quite adequate to take care of that. I have  
15 not made a study recently, but I know that territory. I  
16 am a native of that part of the world. I have been  
17 there many, many times, and I feel that they can take  
18 care of it.

19 Q Your answer would apply as well to  
20 intermediate points like Carrollton?

21 A I propose to do nothing at Carrollton. I have  
22 asked for no local rights at Carrollton. We're just  
23 going to whistle as we go by.

24 Q You plan to operate over this line even if it  
25 isn't manned by SPSF personnel?

1           A     All I'm asking for is trackage rights over the  
2 line itself.

3           Q     If it turned out because of your desired time  
4 of operating the line that SPSE was required to call out  
5 agents or operators to be on duty for the sole purpose  
6 of being there when KCS trains operated, would you be  
7 prepared to reimburse applicants for that cost?

8           A     I'm going to make you whole on your cost and I  
9 will pay, in addition to that, a little bit of profit;  
10 that is correct.

11          Q     I guess I should have it down by now. Would  
12 you look at your environmental and energy data, which is  
13 the section 3 to your operating plan, the very back? It  
14 is a short section.

15          A     Yes.

16          Q     Pages 2 to 4, on density for IRMA. I am  
17 wondering with respect to the figures shown for gross  
18 ton miles per year did you include empty cars in those  
19 calculations?

20          A     That is total cars, yes.

21          Q     What kind of an empty return ratio did you use  
22 for that purpose?

23          A     Sixty percent. That is our system average.

24          Q     On page 3, if you look at the chart for the  
25 Avondale -- excuse me, for Houston, Galveston and

1 Greenville-Ft. Worth, do you see those?

2 A Yes.

3 Q I am somewhat simpleminded in my mathematics,  
4 but to get the number of cars per train don't I simply  
5 divide the number of trains per year into the number of  
6 cars?

7 A That's correct.

8 Q Do you then propose, Mr. Carter, to operate  
9 trains between Greenville and Ft. Worth that are only  
10 three to four cars long, and between Houston and  
11 Galveston trains that are only four to five cars?

12 A The estimated number of cars shown in here is  
13 data the marketing people furnished me, and they had  
14 only the present KCS traffic universe and only the  
15 applicants' universe to make their determination. There  
16 will be other carriers involved. Consequently, the  
17 number is going to be greater, but these numbers of  
18 estimated cars per year constitute only the numbers that  
19 could be gleaned from the data available to us.

20 There will be other carriers in there. There  
21 will be other items in there. But the answer to the  
22 question is if you divide 730 into the 3,074, you come  
23 up with a very small number, but that has to do with  
24 business that is applicable only to the present traffic  
25 as we see it today.

1 I have stated earlier in my testimony in an  
2 answer to a question that you had that if IRMA stays in  
3 place it is my belief that the Big D connection will  
4 continue to remain in place. That being the case, it's  
5 going to be a lot more efficient and a lot more handy  
6 for the applicant line to bring those Big D cars to Ft.  
7 Worth, Texas, than it is to bring them to Dallas, Texas,  
8 and, consequently, you've got those cars. You have to  
9 add those to the number of cars that are shown in this  
10 exhibit and I told you where this number came from.

11 Q Let me back up on that answer. You said other  
12 railroads will be in there. What do you mean by that?  
13 You mean there will be traffic that KCS will be handling  
14 in its trains that comes from other railroads besides  
15 applicants?

16 A Absolutely. You have got the Burlington  
17 Northern. You've got the Katy. You've got the Missouri  
18 Pacific. All at Ft. Worth, Texas. And we will  
19 certainly hold ourselves out to be a good competitor,  
20 and we're going to go after traffic from each of those.

21 Q Don't each of those carriers also go to  
22 Dallas?

23 A They do.

24 Q And are you saying, then, that -- let me  
25 rephrase that.



1                   How large do you think these trains would be?  
2           Accounting for that kind of traffic, would they be twice  
3           as big, three times as big?

4           A        I think they'll probably be 30 times as big.

5           Q        Thirty times as big?

6           A        Yes.

7           Q        All right. One last item, Mr. Carter. Do you  
8           still have the little volume, KCS-8, Volume I?

9           A        I will find it. KCS-8, Volume I.

10          Q        Page 24.

11          A        Okay.

12          Q        I think you have averted to this consideration  
13          in some of your previous answers, but I want to ask you  
14          about it explicitly. This is in the section of your  
15          application where you are giving the public interest  
16          justifications in support of your application.

17                   At the top of 24 you say: "Assuming for these  
18          purposes that the Commission will conclude that the  
19          proposed merger offers a desirable opportunity for  
20          rationalization through elimination of plant  
21          redundancies and enhancement of efficiencies, the IFMA  
22          offers a vehicle for preserving needed competition  
23          without the potentially serious drawbacks involved in  
24          trackage rights for unprecedented distances."

25                   Do you follow my reference?

1 A I do.

2 Q What in particular did you have in mind when  
3 you talked about "potentially serious drawbacks  
4 involving trackage rights for unprecedented distances"?

5 A We are showing slightly over 3,000 miles in  
6 the IRMA proposal, and I think that for a railroad my  
7 size is awfully long, and I think there would be many,  
8 many problems that would go with that. The beauty of  
9 IRMA, as far as you are concerned, is that you still  
10 handle the business. You still get your merger, if the  
11 Commission agrees to go along with it. You still will  
12 handle the business and you still are going to make a  
13 profit out of it.

14 The thing that benefits the public is that  
15 there is still competition left. Without IRMA or  
16 without some sort of condition, the public is going to  
17 be the big loser. Likewise, KCS is going to be the big  
18 loser. So what I am doing here is to eliminate the loss  
19 of competition that the public would suffer, eliminating  
20 some of the loss that KCS would suffer if we lose the  
21 two friendly connections.

22 Q I understand your IRMA justification, but I am  
23 focusing now on your statement that one of the things  
24 that is good about IRMA is that it doesn't have the  
25 potentially serious drawbacks involved in long distance

1 trackage rights.

2 Now you say you thought 3,000 miles would be a  
3 lot for your system to operate.

4 A A lot of trackage miles for my system to  
5 operate. I do think that.

6 Q Is there any railroad in this country that has  
7 ever operated anything like that in terms of trackage  
8 rights mileage?

9 A I don't know of any.

10 Q It wouldn't be just your railroad. It would  
11 be any railroad.

12 A I don't know of any.

13 Q What is the longest -- in mileage terms, what  
14 is the longest trackage rights segment the KCS operates  
15 over today?

16 A About 30 miles.

17 Q Would that be the Farmersville to Dallas  
18 section that you operate over the Santa Fe?

19 A I have two that are similar in length.

20 Q And are there any trackage rights segments  
21 larger than that over which a tenant operates on the KCS  
22 today?

23 A That the tenants operate? The Southern  
24 Pacific operates on us at several places. I guess the  
25 longest one is the Missouri Pacific operating from

1 Beaumont to Deritter.

2 Q How long would that be?

3 A Oh, it's between 30 and 40 miles.

4 Q Do you know how long your proposed trackage  
5 rights between Lake Charles and New Orleans are?

6 A Yes.

7 Q 217.9 miles?

8 A How about 212?

9 Q I factored in the ICG and New Orleans.

10 A Okay. I misspoke. I thought you were talking  
11 about SP. Okay.

12 Q I'll accept your 212 and we will add a few  
13 miles on and get about 218.

14 A Okay.

15 MR. MOATES: Thank you very much, sir. You  
16 have been very courteous.

17 JUDGE HOPKINS: Thank you.

18 The Department of Justice. Ms. Reed?

19 BY MS. REED:

20 Q Good afternoon, Mr. Carter. My name is Mary  
21 Reed, and I am with the U.S. Department of  
22 Transportation. I have a few questions I would like to  
23 ask you on behalf of the State of California.

24 A Good afternoon, Ms. Reed.

25 Q On page 9 of your verified statement you

1 indicate that the SP-Santa Fe would be required to  
2 handle KCS traffic on a non-discriminatory basis. Do  
3 you see that in the first full paragraph, the third  
4 sentence?

5 A What paragraph?

6 Q The first full paragraph, the third sentence.

7 A Yes, I have it.

8 Q Now if the KCS is granted its IRMA and its  
9 trackage rights, what can you do to ensure that you will  
10 in fact be provided non-discriminatory service by the  
11 SP-Santa Fe?

12 A Our attorneys have drafted an agreement which  
13 is submitted as an exhibit in its application that would  
14 spell out the IRMA concept, and we would expect to be  
15 able to negotiate that with the applicants, assuming the  
16 Commission grants the merger and grants the condition.

17 Once that agreement is executed, I feel that  
18 it will be operated just exactly like the agreement  
19 says. The only problem that we anticipate is that we  
20 might have a little bit of trouble getting the agreement  
21 signed, at which time I would come back to the  
22 Commission and ask them to intervene and work up an  
23 agreement that is entirely fair to the applicants and  
24 entirely fair to KCS.

25 Once that is done, then I feel that once the

ALDERSON REPORTING COMPANY, INC.

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

0003 0204

1 agreement is signed I feel that it will be honored and  
2 it would be operated just exactly like we propose.

3 Q Does KCS have any proposals which it's  
4 considering as to how it would monitor whether in fact  
5 it was receiving non-discriminatory service?

6 A We don't have any criteria established, but,  
7 you know, it would be very obvious because we would have  
8 supervisors in the field and once it goes there would be  
9 a lot of the top officers out trying to make the thing  
10 work, just like we would on any major problem.

11 But it would be very easy to see because if,  
12 for example, three through trains left and KCS cars were  
13 still sitting in the yard, I would consider that being  
14 discriminatory against us. I don't think that there  
15 would be any real problems that would keep this concept  
16 from operating once that agreement is signed.

17 Q Now in the rest of that sentence you indicate  
18 that the rail traffic would be moving pursuant to rates  
19 made by KCS under IRMA and SPSE would be paid a  
20 contractually-agreed per car mile fee. Now am I correct  
21 that you would first try to negotiate a compensation  
22 amount with the Santa Fe prior to seeking any relief  
23 from the Commission if you could not reach an  
24 agreement?

25 A That is correct. That would be my intention.

1       yes.

2       Q       And if that failed then you would --

3       A       I would want to come back to the Commission  
4       and ask them to intervene in the case and work out  
5       something that would be fair to both of us.

6       Q       Do you have an opinion as to whether the  
7       Denver, Rio Grande's trackage rights and conditions are  
8       compatible with the relief you are seeking here?

9       A       My information on the D&RGW is somewhat  
10       limited, and the only thing I know about it is that they  
11       are using the KCS yard at Kansas City. I have seen some  
12       large trains come in. I've seen some large trains go  
13       out of my own yard. So I know that their trackage  
14       rights must be working and working pretty good.

15       Their schedules are good. I am servicing  
16       them. I am acting as their agent at Kansas City, and it  
17       is working out quite okay. Now as far as that part of  
18       the trackage rights on the Missouri Pacific-Union  
19       Pacific, I have no firsthand knowledge of how that is  
20       getting along.

21       Q       Are you familiar with the trackage rights  
22       request or purchase request that they are seeking in  
23       this proceeding?

24       A       I am not.

25       Q       Are you aware of the trackage rights requested

1 by the Union Pacific in this proceeding?

2 A I know that they are generally seeking  
3 trackage rights somewhat similar to the same territory  
4 we have, but I have no details.

5 Q Now turning to page 8 of your verified  
6 statement, in the fourth paragraph, the second sentence,  
7 you state that "together they would preserve for  
8 shippers a competitive rail alternative between the west  
9 coast, Arizona, New Mexico, Texas and New Orleans and  
10 beyond to and from Southern Freight Association  
11 territory, a competitive rail service which today is  
12 provided by the Big D connection."

13 Am I correct that the trackage rights and IRMA  
14 request is designed to keep open the Big D connection?

15 A It's to keep open competition. We feel that  
16 the applicants will probably change the nature of it  
17 because their operating plan indicates that they are  
18 going to make the SF line the principal east-west line,  
19 so I feel that there will be a change in it. But the  
20 point that I'm trying to make here is that together with  
21 the trackage rights and the IRMA rights that we will  
22 have an arrangement whereby the public won't be without  
23 competition.

24 So some of the Big D cars in all probability  
25 will move over the southern route, that is, over the



1 SP-IRMA route. I think as long as IRMA is in existence  
2 the Big D itself will not be broken. I think that some  
3 cars will still continue to move through Ft. Worth over  
4 the trackage rights that we have. That is my personal  
5 opinion.

6 Q And you could use the IRMA and the trackage  
7 rights as a sort of lever to negotiate joint rates with  
8 the merged system?

9 A Absolutely. That is absolutely right.

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

11 JUDGE HOPKINS: Does RLEA have any questions?

12 MR. BIRNEY: Yes, Your Honor. I will be 20 to  
13 30 minutes.

14 BY MR. BIRNEY:

15 Q Good afternoon, Mr. Carter. Mr. Carter, my  
16 name is Bill Birney. My last name is spelled  
17 B-i-r-n-e-y. I am from the law firm of Highsaw and  
18 Mahoney, and that firm represents the RLEA in these  
19 proceedings.

20 A Good afternoon.

21 Q My questions to you today are addressed to  
22 three areas. The first, of course, is the effect of  
23 this proposed merger and your application on railroad  
24 employees in the event the ICC grants the applications  
25 and also grants the conditions that KCS is requesting

1 and about which you have testified today.

2 Since that is the most lengthy topic about  
3 which I will be asking you questions, I will save that  
4 for the last. There are two other areas, however, I  
5 think we may be able to dispose of fairly quickly. The  
6 first is the effect of the proposed merger on railroad  
7 employees of the applicant railroads, of the SPSF.

8 Are you aware of any study performed by your  
9 organization which shows what effect the merger would  
10 have on the employees of the applicant railroads?

11 A We have made no study as to what would be  
12 involved with the applicants' employees.

13 Q Do you have an opinion as to what the effect  
14 of the merger would be on the employees of the Southern  
15 Pacific and Santa Fe?

16 A I have really not thought it through. I am  
17 really not qualified to answer that question because I  
18 have given it no thought as far as their people are  
19 concerned.

20 Q Now the next topic of questions I have is with  
21 regard to the effect of the proposed merger on your  
22 employees.

23 A Okay.

24 Q Now with regard to the second type of cross  
25 examination I'd like, if you could, for you to give us

1 some information with regard to the extent of the impact  
2 on your KCS employees in the event that the ICC refuses  
3 to grant the conditions that you have requested and as  
4 are set forth in your applications.

5 A Well, I think that if the merger is authorized  
6 by the Commission and KCS receives no relief as sought  
7 that there will be considerable loss of business that  
8 moves over the line. Of course, if the business goes  
9 down, then there would be fewer people used to operate  
10 the trains. There would be fewer people to maintain the  
11 track.

12 I don't think the railroad is going to fold  
13 up, but I do feel that there would be a reduction in  
14 business and consequently there would have to be some  
15 reduction in the number of people. I cannot tell you  
16 exactly how many people would be involved, but I would  
17 say that there probably would be several trains per day  
18 that would be cut off.

19 Q Can you identify what trains would be cut  
20 off?

21 A Yes. I think we would lose a train between  
22 Greenville and Dallas, which is a turnaround on a daily  
23 basis. I think we would lose a train between Greenville  
24 and Shreveport on a daily basis, and I think we would  
25 lose a train between Deramus Yard, which is Shreveport,

1 and Alexandria on a daily basis. And I think we would  
2 lose a train between Alexandria and New Orleans, which  
3 is roughly the Big D operation.

4 I think all of those would be involved. Now I  
5 am talking about a train a day -- one up and then one  
6 down. So really, you know, there would be two  
7 involved.

8 Q And that is six days a week?

9 A Seven days a week. Big D is seven days a  
10 week.

11 Q Are you able to tell us how many crews would  
12 be involved in the loss of those trains?

13 A Seven crews per day.

14 Q And that is for all of the trains together?

15 A That would be all of the trains I just  
16 outlined.

17 Q Approximately how many members are on the  
18 crews of the KCS trains?

19 A Three and four.

20 Q The fourth is the fireman?

21 A Well, the third brakeman in some cases.

22 Q Would you anticipate there would be any  
23 reduction in non-operating employees as a result of an  
24 ICC order which would grant the applicants' request but  
25 deny your conditions?

1           A     Entirely possible that there would be -- maybe  
2 not the first day, but certainly if the traffic density  
3 goes down, you know, then it would take fewer maintenance  
4 of way people to maintain the track. Likewise, if the  
5 number of trains goes down there would be fewer  
6 locomotives necessary to run through the diesel shop.  
7 There would be fewer people that would have to fuel  
8 locomotives.

9           It is possible that there might be even a  
10 clerk or two involved at various places, so you would  
11 have those classes of people that would be involved if  
12 we have major loss of business, such as the Big D,  
13 without any conditions attached.

14           Q     But the effect on non-operating employees  
15 would be substantially less?  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1           A     I think so. I think it would be less on the  
2 non-ops that it would on the T&Es. That is, trainmen  
3 and enginemen.

4           Q     Has KCS performed any studies which would show  
5 what the effect would be?

6           A     Would you repeat that?

7           Q     Have you performed any studies on the effect  
8 on KCS employees?

9           A     No, sir.

10          Q     Now, if I could, I would like to move on to  
11 the effect on KCS employees in the event that the ICC  
12 grants the application of the primary applicants and  
13 also imposes the conditions that KCS is requesting.

14                 Now, I am aware that the materials that you  
15 have submitted are very detailed, and I am also aware  
16 that you have testified at length today, and frankly you  
17 have answered most of the questions that we were  
18 interested in.

19                 However, there are a few matters that I would  
20 first like to clear up from the questions that have been  
21 asked by the primary Applicants.

22                 In response to their questions, you indicated  
23 that you performed a study on the traffic impact arising  
24 out of this merger. Have you performed a similar study  
25 of the labor impact?

1 A Yes.

2 Q I know that your operating plan contains an  
3 exhibit which I believe is identified in KCS Volume IV  
4 at Appendix 13.3. That appears to be a culmination --  
5 or a cumulation -- excuse me -- of numbers.

6 A Would you repeat that number again?

7 Q I'm sorry. That's KCS-8, Volume IV, 13.30.

8 A Okay.

9 Q And there is another pertinent document which  
10 appears just before it at 13.29.

11 A Okay, I have 13.30 before me.

12 Q My question is, do you have any other studies  
13 or documents other than these that appear in the  
14 Appendix which would evaluate the effect of the merger?

15 A This is the report made by the personnel  
16 staff. These are the data that was furnished to me, and  
17 I incorporated it in the operating plan.

18 Q Did you receive any memoranda from your staff  
19 that further explained the data as it appears in this  
20 Appendix?

21 A I think it was handled verbally, but the  
22 personnel staff made the data and prepared the data and  
23 brought it down, and it was incorporated into the plan.  
24 I think that the briefing was verbal.

25 Q Was this study performed by your own personal

1 staff?

2 A Yes, it was.

3 Q Do you know what methods were used in arriving  
4 at these figures?

5 A An analysis was made of the operating plan and  
6 the schedules as proposed, and then they determined the  
7 number of jobs that would have to be added and the  
8 number of jobs that would be deleted.

9 Q Did you personally verify the accuracy of  
10 these figures?

11 A I really didn't. I will say that I'm  
12 responsible for them, but as far as checking individual  
13 numbers, I did not do that.

14 Q You've already testified in response to both  
15 the questions from the primary Applicants and to my  
16 questions that KCS employees would be significantly  
17 impacted. And you voiced the opinion that in the event  
18 that these conditions are granted by the ICC, the Big D  
19 connection would not be affected. Is that correct?

20 A My personal opinion is that if IRMA is in  
21 existence, the Big D will not be destroyed, and I am  
22 afraid that if there are no conditions granted, if the  
23 merger is authorized, then the Big D will be destroyed;  
24 that it will cease to exist.

25 That is my personal opinion.



1           Q     In the event that you are not correct and that  
2 it is necessary for you to operate KCS through the  
3 system of ratemaking authority that you have requested,  
4 are you able to calculate the labor impact of the Big D  
5 connection if it's eliminated?

6           A     Give me some details. I don't understand.

7           Q     You gave me some specific information with  
8 regard to the overall impact in the event that you  
9 weren't to be granted your conditions as you have  
10 requested.

11           A     My question is, can you provide me similar  
12 information with regard to what would happen to your  
13 labor forces in the event you lose the Big D  
14 connection?

15           A     I think I would lose the seven crews with  
16 three or four people per day if we broke the Big D  
17 connection. I think that would take place. I think  
18 there would be ultimately some reduction in non-ops;  
19 that's non-operating people, in the maintenance of way  
20 and maintenance of equipment.

21           A     Certainly, there would be no change in  
22 dispatchers or something like that. But that is about  
23 the extent I can answer your question.

24           Q     You have testified that you have discussed  
25 with certain of the other railroads concerning your

1 application for trackage rights, that is, the ICG, the  
2 Houston Belt, and the NOPB, that you have had those  
3 discussions and that they have at least agreed in  
4 principle to grant you the trackage rights you need in  
5 order to maintain the system.

6 Is that correct?

7 A That is correct.

8 Q Have you engaged in any negotiations with  
9 representatives of labor concerning these trackage  
10 rights?

11 A No, sir; I have not.

12 Q Do you see the need to do so?

13 A No. We are going to use our own people to  
14 operate over those, and we already have an agreement  
15 with those people, you see, so there would be really no  
16 need for us to do that.

17 Q So with each of those railroads that I have  
18 just mentioned, do you already have an agreement with  
19 regard to the operation of your trains over their  
20 tracks?

21 A We have an agreement with our people, and our  
22 people man the trains on trackage rights. We already  
23 have that agreement in place. There are many agreements  
24 in place.

25 Our people operate the trackage rights. All

1 we do is just move their line to move over, so I have  
2 not talked -- I do not propose to use the IC or the  
3 HB&T, those people you know, for the movement of my  
4 trains.

5 Now, as far as the HB&T is concerned on  
6 handling the switch engines, of course, that will be  
7 with their people.

8 Q I understand that. Let's not get into that.

9 Essentially, however, as I understand it, you  
10 already have those trackage rights over those tracks.  
11 And you are presently operating -- you already have --  
12 is that what you're saying?

13 A No. I'm not saying that. I am saying that  
14 once we get it, we will operate over those segments with  
15 KCS train and enginemen, and I have an agreement with  
16 KCS employees today. So I really -- there is nothing to  
17 negotiate. We'll just be creating some new jobs, you  
18 see.

19 But we have an agreement already today, and  
20 we'll just make that operation under existing  
21 agreements. So there is really no need for us to go out  
22 and negotiate a new agreement.

23 Q I'm not asking whether or not you have an  
24 agreement with KCS. My question was directed to whether  
25 or not you have an agreement with the employees of those

1 railroads, ICC and --

2 A I do not.

3 Q And you do not see a need for such an  
4 agreement?

5 A I do not.

6 Q Would you be willing to negotiate such an  
7 agreement with those employees?

8 A No, because I want to use KCS employees on the  
9 trackage rights.

10 Q If we could move to that portion of your  
11 answer that you just gave me with regard to the HB&T, as  
12 I understand it, at the Houston Basin, you are going to  
13 use HB&T employees to switch your trains?

14 A I am going to use the HB&T to act as my  
15 agent. And they will take KCS cars, along with their  
16 own cars, along with cars from the PTRR -- that is Port  
17 Terminal Railroad Association -- take all their cars and  
18 gather them together with their own crew, and take them  
19 over to the SP Yard.

20 Likewise, they will bring the whole block back  
21 to their own yard, but they will be using their crews  
22 and they would merely act as my agent. So they will not  
23 be my employees. They will be HB&T employees, and  
24 consequently any labor relations would be between that  
25 organization and its employees.

1 Q You testified also that there would be an  
2 additional seven supervisory employees that would be  
3 used to assist you in the operation of your IRMA system  
4 in the event it were granted.

5 Are those seven supervisory positions  
6 non-agreement?

7 A They are.

8 Q And they are not members of BRAC?

9 A No.

10 Q You also testified that as traffic grows, that  
11 you would add whatever people you needed for the  
12 operation of IRMA:

13 A That's correct.

14 Q When you testified to that effect, were you  
15 referring simply to supervisory personnel or were you  
16 referring to operating and clerical personnel as well?

17 A I'm thinking of additional supervisors and  
18 additional clerks.

19 Q And additional clerks?

20 A Yes.

21 Q Where would the clerks be stationed?

22 A At strategic points, at points where the  
23 business would be developed.

24 Q On whose property would the clerks be  
25 located?

1           A     It depends on the location. It could be on a  
2 former SP facility. It could be on a former Santa Fe  
3 facility. It could be, you know, in one that was  
4 controlled by an independent.

5           Q     I'm not quite sure I understand what you mean  
6 when you talk about "the former SFSP."

7           A     After the merger.

8           Q     You're talking about the merged railroad?

9           A     Yes.

10          Q     So your employees, KCS employees, clerical  
11 employees, would be working on the merged railroads'  
12 property?

13          A     Right.

14          Q     Approximately how many of these clerical  
15 personnel do you anticipate that you will need?

16          A     It will depend on the amount of business that  
17 we have. I don't have any idea. But the two will have  
18 to be working in relation with each other. If they  
19 can't be my agent, then, of course, I will have my own  
20 people. But I will provide the people to make IRMA  
21 work.

22          Q     You recognize the need to enter into  
23 negotiations for those positions, wouldn't you?

24          A     Sure. I would talk to them. Sure.

25          Q     Talk to whom?

1 A Talk to labor.

2 Q You may have just answered this question, but  
3 you indicated that there would be KCS employees assigned  
4 to common points. And by this, you meant the  
5 supervisory employees and the clerical employees that  
6 you just testified about?

7 Would there be any other KCS employees  
8 assigned to common points on the IRMA system?

9 A No.

10 Q It is your view, as I understand it, that if  
11 the IRMA as you propose it is approved by the  
12 Commission, it is going to in fact result in an increase  
13 in the number of employees on the merged railroad. Is  
14 that correct?

15 A I don't know if it is going to involve an  
16 increase in the number of employees. And I really hate  
17 to take a position because they are good railroad  
18 managers and I respect their ability.

19 And I don't know how they are going to  
20 operate, so I really don't know how to answer the  
21 question.

22 Q Well, at one point, I believe you indicated  
23 that if IRMA was successful, it would result in an  
24 increase in staff on the merged railroad. And as I  
25 understand your testimony, that was due to the increased

1 amount of traffic.

2 Do you stand by that testimony, or are you not  
3 standing by it?

4 A The way I recall the testimony was that if the  
5 merger takes place and no conditions are granted, it's  
6 entirely possible that the cost of transportation  
7 service would go up, and this would be a reduction in  
8 business.

9 And, consequently, some of their people would  
10 be, you know, out of a job if there's considerably less  
11 business. But I think that by having IRMA conditions in  
12 there in the event of the merger, that competition will  
13 remain and the shippers will stay right where they are.  
14 They won't have a tendency to relocate. They won't have  
15 a tendency to move out or to do something else.

16 And what I was trying to say, what I hope I  
17 said was that there should be no change, that we are  
18 going to do that as a benefit to their employees. But  
19 as far as adding additional employees, I don't recall  
20 having said that there would be more of them.

21 Q I believe you would agree that the KCS would  
22 afford preferential hiring rights to employees of the  
23 ATSP-SP-SSW and the SPSP -- excuse me -- SPSF.

24 If you hire employees to perform operations  
25 connected with the conditions that we've been



1 discussing, would you agree to that?

2 A I really don't want to take the position in  
3 that, because I would want those people to follow their  
4 own procedures, their own methods of doing business with  
5 labor.

6 I would not want to touch that one with a  
7 ten-foot pole. All I would ask them to do would be my  
8 agent, and it is up to them to handle their own labor  
9 negotiations. I would prefer not to take a position in  
10 that case.

11 Q Well, my question is not whether or not you  
12 would allow them to handle labor relations, but whether  
13 or not in the event that it was necessary for you to  
14 perform additional services in connection with the  
15 conditions you proposed, that you would be willing to  
16 hire, if necessary, employee from the merged railroads?

17 A Okay. If I have to go out and hire additional  
18 people to take care of my work, you know, the digging of  
19 a business, I would certainly consider any employees  
20 that had been displaced.

21 If that's the question, I would consider  
22 that.

23 Q Would you go so far as to say you would give  
24 them preferential treatment for hiring?

25 A I would give them. That is the position in

1 this business. We take care of our own. We always try  
2 to hire people with railroad experience. They know our  
3 ways. That is our custom.

4 Q I understand that. I think our confusion was  
5 because I inartfully formed the question.

6 Now, you testified that you would give  
7 preference, such preference to employees from the merged  
8 railroad or the railroads that preceded it.

9 My question to you now is, do you envision any  
10 other railroad that could be affected by this merger, or  
11 would you agree to give preferential hiring? I am not  
12 limiting my question now solely to the employees that  
13 might have been displaced or dislocated as a result of  
14 the proposed merger.

15 Would you agree to give preferential hiring to  
16 other employees of other railroads who might have been  
17 displaced, dislocated, or dismissed?

18 A I can't visualize any railroad that would be  
19 so affected, but I will tell you this; that it's our  
20 custom when we need people, to go into the rail industry  
21 and try to find good people, you know, that have the  
22 experience. We will try that under any circumstance.

23 But as far as the effect that this merger  
24 might have on others, I can't visualize any.

25 Q As I understand your operating plan, some of

1 the traffic that you will be performing after the  
2 proposed merger, if your conditions are granted, would  
3 be traffic that was previously handled by employees of  
4 the merged railroads; is that correct?

5 A But it would be handled in the merged  
6 carriers' trains by the merged carriers' employees.  
7 That is, the stuff that is coming as far as Houston,  
8 Texas is concerned.

9 Now, the traffic that would be moving between  
10 Houston and New Orleans or something, would be handled  
11 in KCS trains and would be handled by my employees, KCS  
12 employees.

13 Q I understand that. Now, in addition to  
14 employees of the merged railroads, do you envision that  
15 the KCS will be handling traffic that has been by any  
16 other employees of other railroads other than railroads  
17 of the merged group?

18 A I would not close the door and say that we  
19 wouldn't handle it, but I have given no study to that  
20 point.

21 Q As I understand your proposed operating plan,  
22 the operation of the KCS would require the creation of  
23 or the rearrangement of certain seniority districts; is  
24 that correct?

25 A It will -- I don't intend to rearrange any

1 seniority districts. I will rearrange people from one  
2 district to another. But I am not going to change the  
3 rearrangement of the seniority districts as such. We  
4 would have some new districts, of course,

5 Q Would you recognize your obligation to provide  
6 protection for those individuals who are being  
7 dislocated as a result of that refusal?

8 A We will comply with the agreement in all  
9 circumstances, any changes made.

10 Q So in the event that your plan of operation  
11 would result in a member of one district moving to  
12 another, you would comply with your obligations to  
13 provide any benefits if necessary?

14 A We would comply with the agreement  
15 completely.

16 Q But at this time, you don't see the need to  
17 rearrange seniority districts?

18 A No, I do not. Now, we are going to have some  
19 new districts, you know. The districts will be expanded  
20 into cover additional territory. If that's what you are  
21 calling rearrangement, then of course that would  
22 happen. But as far as rearranging my present districts,  
23 I have no plans whatsoever to rearrange any present  
24 districts.

25 Q That's what I did mean.

1           A     Okay. We will be extending some districts,  
2 but we are not going to rearrange any districts.

3           Q     So it's possible that railroad employees who  
4 are presently in one district would be employed in  
5 another district?

6           A     We are going to create some new jobs and some  
7 of the people where there might be a surplus of  
8 employees, why they're going to go down where they would  
9 get a regular job. Of course we would always do that.

10          Q     Those employees would be primarily operating  
11 employees as I understand it, trainmen and engineers?

12          A     That's correct.

13          Q     Now, Mr. Carter, if I can ask you, please, to  
14 look at the operating plan, I will be able to conclude  
15 my portion of the examination. That is KCS-8, Volume  
16 IV.

17                   I would you like first to turn to page 4. The  
18 very last sentence on that page reads: "From an  
19 operational standpoint, KCS will provide rail  
20 transportation services to, from, and between such  
21 common points through a combination of direct services  
22 and SPSE agency services."

23                   I know you have testified at some length about  
24 this, but could you for the record please clarify what  
25 you mean by direct services?

1           A     Yes. The trackage rights between Beaumont,  
2 Texas and Houston, Texas for example would be an example  
3 of direct service.

4                     The operation of the line between New Orleans  
5 and Lake Charles would be direct service. The operation  
6 between Houston, Texas and Galveston, Texas would be  
7 direct service.

8           Q     I understand that. That's what prompted my  
9 question. I understand that the operation of your  
10 trains over the tracks of other railroads would be a  
11 direct service.

12                    But this particular sentence, though, is under  
13 a section which is entitled "Operation under IRMA," and  
14 my question is, what direct services would you foresee  
15 being performed by the merged railroad employees under  
16 IMRA?

17           A     Trackage rights is a very essential part, a  
18 very essential element of IRMA. And that perhaps has  
19 misled you. The direct portion, of course, are those  
20 where we have trackage rights and areas where we would  
21 have the SPSF agency service would be in points where  
22 KCS would not operate under trackage rights.

23                    It would be in the non-rail trackage rights  
24 territory of the IRMA concept.

25           Q     Could you please turn to page 6?

1 A Yes.

2 Q The first sentence of the very first full  
3 paragraph reads: "Services calling for direct contact  
4 with shippers at the common points would be provided by  
5 KCS through its customer service center, CSC,  
6 supplemented by KCS's personnel to be based at the  
7 principal common points."

8 What do you mean by KCS personnel to be based  
9 in the principal common points?

10 A Well, on day one, I am going to put these new  
11 supervisors out. We are also going to put the people in  
12 those local traffic offices out, and of course there  
13 will be some of us from Kansas City who will be out in  
14 the field that will make this thing work, because I am  
15 dedicated to make IRMA work.

16 Q So those individuals are the individuals to  
17 which you have referred previously?

18 A Yes.

19 Q That is the supervisory personnel now and the  
20 clerks as you anticipate adding them to the KCS labor  
21 force?

22 A That's right, plus the traffic people that are  
23 there, plus the staff that I can move in to make, you  
24 know, to initiate the service.

25 Q Let me ask you two questions. What do you

1 mean by staff and what do you mean by traffic  
2 personnel?

3 A Well, I am going to go. I am part of the  
4 staff.

5 Q You mean by staff, non-agreement staff  
6 members?

7 A Not necessarily. I'm not going to limit it to  
8 that. We want to take what is necessary. If we have to  
9 take people from the traffic department, they will be  
10 agreement and non-agreement. We will do what we have to  
11 to make the thing go.

12 There will be some of both.

13 Q Well, to what extent is the addition of these  
14 people on the KCS system going to impact on present  
15 employees on the merged railroad?

16 A Well, we are going after every carload of  
17 business that we can handle to put it in IRMA, because  
18 we will be a very, very strong competitor. And I cannot  
19 give you the exact number of cars that will be  
20 involved. But there will be a relationship between the  
21 number of cars and the number of people.

22 Q So you anticipate taking over some of the  
23 functions that would be performed under the day one  
24 scenario as you see it by KCS personnel?

25 A There will be some marketing functions that



1 would be done, you know, that we are not presently doing  
2 because IRMA does not exist. But there would be new  
3 functions involved.

4 Q Do you recognize an obligation to negotiate  
5 with regard to those newly-created positions?

6 A On all jobs that are clerical jobs, I will  
7 talk with the organization. I won't, but you know, our  
8 designated people will talk with them.

9 On those that are supervisors, of course,  
10 there will be no discourse on that.

11 Q If you will turn to the next page, the first  
12 full paragraph, the first sentence of that paragraph  
13 reads: "When the cars have been loaded and are ready to  
14 be switched out of the industry, the shipper will so  
15 notify the CSC, using the toll free WATS line and  
16 furnish the shipping order information which will be  
17 entered into KCS's computer for purposes of preparing  
18 the requisite bills of lading, freight bills, and  
19 waybills."

20 Just to clarify the record, who do you expect  
21 to prepare those documents?

22 A Well, it depends on the document. Of course,  
23 all of the men and women in CSC at Shreveport are  
24 organization people today. And it depends on the nature  
25 of the document that is to be prepared.

1 The freight bill, of course, would be  
2 generated by the computer once the data is in it, and  
3 certainly the data would be furnished to the originating  
4 carrier and they will function as our agent.

5 So I cannot tell you what they will do, you  
6 know, who they will designate or delegate to do the  
7 documentation that has to be prepared, you know, in the  
8 IRMA territory.

9 But as far as the customer service center is  
10 concerned, it would be done by one of our clerks.

11 Q My remaining questions are going to be  
12 directed to that portion of the operating statement  
13 which deals with the through runs that you have  
14 described, beginning on page 10 of your operating plan.

15 You have already answered answered many  
16 questions with regard to the  
17 Kansas City-Houston-Galveston run that begins on page  
18 10. According to my notes, your trains will be running  
19 over SP tracks at two locations and the Houston Belt at  
20 one.

21 It is also my understanding that there is to  
22 be a crew change at Beaumont in the event that trains  
23 are to run to Houston and back.

24 My question to you is that, have you  
25 considered the possibility of using PSPF crews on the

1 train with a turnaround from Beaumont to Houston?

2 A Your understanding is not correct. Let me  
3 give you what I propose. I will have a crew that will  
4 operate from New Orleans to Lafayette Yard.

5 Q I'm talking about a run from Kansas City to  
6 Houston-Galveston.

7 A Kansas City to Houston-Galveston. I will have  
8 several crews, KCS crews that presently operate the  
9 train between Kansas City and Beaumont, Texas. There  
10 will be no change in that

11 Q No change. That is already your trackage  
12 rights, and you run trains over that regularly.

13 A That's right. We will take a crew and operate  
14 from Beaumont, Texas over a segment of the Southern  
15 Pacific, starting right at Wall St. Yard and running out  
16 to Tower 87 which is on the Houston Belt & Terminal.

17 That crew will go into the Basin Yard. They  
18 will make a setup and a pickup, and the same crew will  
19 then continue down to Tower 86 and they will go down the  
20 Southern Pacific to a point that is near Texas City  
21 Terminal Junction over a segment of the Southern  
22 Pacific.

23 And I propose to by eight miles of line that  
24 the Applicants have indicated that they are going to  
25 abandon. I will operate then over my long track, down

1 to the north side of the Galveston County Causeway, will  
2 then cross the Causeway which is about two miles long,  
3 enter into Galveston Island. Then I will go back onto  
4 that portion of the eight miles that I will have bought  
5 from the Applicants, run into Galvez Yard, and will tie  
6 the crew up at that point.

7 So it does not go from Beaumont to Houston  
8 like you suggested in the question.

9 Now then, to answer the second part of your  
10 question --

11 Q Well, let me just clarify that if I could. It  
12 may be that I misunderstood. But if I could just have a  
13 moment.

14 Will the crew from Beaumont run only to  
15 Houston, or will it run beyond?

16 A They will run Galveston.

17 Q If you could answer the second question?

18 A The second question. You said, have I  
19 considered the use of an SP crew, and the answer is no.  
20 I am going to use a KCS crew. Actually, two crews. One  
21 going down, and the second one, after he's rested, to  
22 come back.

23 Q So you see no obligation to negotiate with  
24 labor with regard to the use of KCS crews over the  
25 tracks of any of the other railroads involved in this

1 application? That is, over the merged railroad or any  
2 of the other railroads that you might be running over?

3 A I propose to extend the limits of the KCS crew  
4 to encompass that segment of trackage rights that I  
5 expect to receive out of this as a condition to this  
6 merger, between Beaumont, Texas and Galveston, Texas  
7 with an intermediate stop at Houston and one at Texas  
8 City.

9 Q Are you aware that the UTU has been enjoined  
10 from striking the Katy because of a similar dispute?

11 A No, I'm not aware of that.

12 Q You're not aware of that?

13 A No.

14 MR. BIPNEY: I have no further questions.

15 JUDGE HOPKINS: Thank you.

16 Mr. Auerbach.

17 MR. AUERBACH: We have no redirect, Your  
18 Honor.

19 JUDGE HOPKINS: Thank you.

20 MR. AUERBACH: I offer in evidence the  
21 verified statement of Mr. Carter which appears in  
22 KCS-12, which he has identified as having been  
23 acknowledged on September 4, 1984.

24 JUDGE HOPKINS: Any objection?

25 MR. MOATES: No objection.

1 JUDGE HOPKINS: It will be received in  
2 evidence.

3 MR. MOATES: Your Honor, I move SFSP Counsel's  
4 Exhibit with this witness. I believe that they may be  
5 91 through 97.

6 JUDGE HOPKINS: That's right

7 MR. AUERBACH: No objection.

8 JUDGE HOPKINS: They will be received in  
9 evidence.

10 (The documents referred to,  
11 previously marked Exhibits  
12 SFSP-C-91-97 for  
13 identification were received  
14 in evidence.)

15 JUDGE HOPKINS: It's a good time for a  
16 recess. Let's take 15 minutes.

17 (Recess.0

18 JUDGE HOPKINS: Let's get back on the record.  
19 Mr. Dreiling, are you going to call the next  
20 witness?

21 MR. DREILING: Yes, Your Honor. For our next  
22 witness, we call Mr. Paul Johnson.

23 Whereupon,

24 PAUL D. JOHNSON

25 was called as a witness in the above-entitled matter by

1 counsel for KCS Railway Company and, having first been  
2 duly sworn by the Administrative Law Judge, was examined  
3 and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. DREILING:

6 Q Mr. Johnson, would you state your full name  
7 for the record, please?

8 A Paul D. Johnson.

9 Q What is your occupation, Mr. Johnson?

10 A I'm an independent consultant.

11 Q Did you have an occasion to prepare, on behalf  
12 of KCS, and have submitted in this proceeding, a  
13 verified statement in the pleading designated KCS-15?

14 A Yes, I did.

15 Q And was that statement ultimately corrected  
16 with -- were certain corrections made with respect to  
17 that statement in KCS-16?

18 A Yes, it was.

19 Q Now, considering your statement in KCS-15 and  
20 as corrected in KCS-16, does that constitute your full  
21 and complete testimony in this case?

22 A Yes, it does.

23 Q Do you have any additions or corrections to  
24 make to the testimony at this time?

25 A No, I do not.

1 Q Are the facts stated in KCS-15 and as  
2 corrected in KCS-16, true and correct to the best of  
3 your knowledge and belief?

4 A Yes, they are.

5 MR. DREILING: I tender the witness, Your  
6 Honor.

7 JUDGE HOPKINS: Mr. Wilson.

8 CROSS EXAMINATION

9 BY MR. WILSON:

10 Q Good afternoon, Mr. Johnson. My name is  
11 Dennis Wilson with the Applicants.

12 Mr. Johnson, did you participate in any rail  
13 traffic diversion studies during the three years that  
14 you worked for the Southern Railway System?

15 A Yes, I did.

16 Q Could you describe what your role was in those  
17 studies?

18 A To the best of my knowledge, it was one study  
19 where I designed the sampling procedure for the traffic  
20 study. I believe that study dealt with Southern  
21 Railway's conditions in the L&N Monon consolidation.

22 Q Was the extent of your role designing the  
23 sample, drawing the sample?

24 A That was the extent of my role.

25 Q Did you participate in any other studies at



1 the Southern Railway?

2 A I don't recollect any other traffic study at  
3 the Southern Railway.

4 Q Did you participate in a capacity other than a  
5 costing capacity in any rail traffic diversion studies  
6 while you were employed by the Santa Fe?

7 A I do not believe so.

8 Q Did you participate in any rail traffic  
9 diversion studies during the period of time that you  
10 worked for the United States Railway Association?

11 A I believe I did participate while I was at the  
12 United States Railway Association.

13 Q What study was it that you participated in and  
14 what was your role in that study?

15 A As I recall, it was as an advisor on the study  
16 dealing with the traffic that would remain with Penn  
17 Central, had Penn Central not folded into the government  
18 under the 3R Act. It dealt with the valuation case.

19 Q What did you advise the people conducting that  
20 study on?

21 A My memory is rather dim, but it was somewhat  
22 along the lines of the extent to which traffic could be  
23 handled at a viable contribution level.

24 Q So again, your work with that study was in a  
25 costing capacity?

1 A More or less; yes.

2 Q Now, did you participate in any rail traffic  
3 diversion studies in your work for the Trustee of the  
4 Milwaukee Road?

5 A Yes, I did.

6 Q What study did you participate in?

7 A Well, there were several.

8 Q Was there a study of the Milwaukee Road done  
9 by the Milwaukee Road in connection with the acquisition  
10 by the Grand Trunk Corporation?

11 A Yes, there was.

12 Q I have a copy of the exhibit that was  
13 submitted in that case here before me. And the working  
14 group is described as including a Mr. Scheller, Mr. D.  
15 Johnson, and Mr. McKnight, and Mr. Brady and Mr. Metsos,  
16 and Mr. Stephens. But you are not listed in that  
17 working group.

18 Did you -- I guess you worked with these  
19 people on some kind of a collateral assignment; is that  
20 right?

21 A Well, my assignment with Milwaukee Road at  
22 that time was as the Milwaukee representative in the  
23 study to be undertaken for the Commission. And my  
24 responsibility was quite broad-based.

25 Part of that responsibility was coordination

1 and oversight of the traffic study.

2 Q Were you aware of how the traffic study was  
3 structured that was involved in this  
4 Milwaukee Road/Grand Trunk consolidation?

5 A Generally so. Yes.

6 Q For example, were you aware of the fact that  
7 the study procedure used in that case was one in which  
8 only a single diversion route candidate was selected for  
9 almost all of the candidate movements that were studied  
10 in that situation?

11 A I would have to think. You may be essentially  
12 correct, but in that particular study, there was only  
13 really one alternative route that would be feasible.

14 Q Sir, back on page 29 of your testimony, you  
15 summarize your five criticisms of Applicants' rail  
16 traffic diversion study. And I'd like to go through  
17 those with you if I may.

18 Your first criticism is Applicants' use of  
19 weighted miles to measure shippers' routing  
20 preferences. What is your understanding of how DNS  
21 assigns weights to the various line segments in its  
22 network model?

23 A Well, as I recall from the testimony, they  
24 assigned weights on the basis of whether the line were a  
25 main line, and I believe essentially the density on that

1 line, whether it took a weight of one or two.

2 Then, on lines not main lines, they assigned  
3 weights of three or four, depending again upon the  
4 classification of the main line, and I believe the  
5 difference between the three and the four was  
6 essentially the density on that main line.

7 Q Okay. So the weights came essentially from  
8 FRA line designations, based on line density? Is that  
9 your understanding?

10 A I believe that's correct; yes.

11 Q Are you generally familiar with the rail  
12 routes on the Santa Fe System?

13 A Very generally familiar.

14 Q Okay. Aren't Santa Fe's high density lines  
15 generally main lines?

16 A I believe so.

17 Q Don't those high density lines generally have  
18 higher speed limits and greater line capacity than other  
19 lines?

20 A I believe that's generally correct.

21 Q Isn't service on Santa Fe's high density lines  
22 generally more frequent and more reliable than service  
23 on its lower density lines?

24 A I don't know on the Santa Fe.

25 Q Would you expect that to be the case?

1 A Generally so; yes.

2 Q And wouldn't the same concepts that we have  
3 just been discussing with respect to Santa Fe's line be  
4 generally true for the main lines of other railroads in  
5 the country?

6 A I don't think there is a clear answer there,  
7 particularly when you think of some of the railroads in  
8 the East that do have congestion problems and bottleneck  
9 problems.

10 Q Okay. Well, let's except the railways in the  
11 East, and see if I could get your agreement that these  
12 concepts would be generally true for railroads in the  
13 western United States.

14 A It would be generally true. But like most  
15 generalities, there are exceptions to it.

16 Q Sure. And wouldn't you also agree that rail  
17 lines with high density are generally more competitive  
18 for freight traffic than rail lines with light density?

19 A You would have to define "competitive."

20 Q More attractive to shippers.

21 A I wouldn't say that follows. It could.

22 Q Now, sir, in a rail traffic diversion study,  
23 if in that study your goal is to select the route which  
24 the shipper is most likely to choose, aren't you going  
25 to want to select the most competitive rail route that

F.D. 30400, et al. - Pages 7456 thru 7491

1 would involve the merged railroad?

2 A It depends on the objective of the study.

3 Q Right. And I gave you a hypothetical that set  
4 out the objective of the study. The objective of the  
5 study is to select the route which the shipper would be  
6 most likely to choose after the diversion.

7 Given that objective, wouldn't you want to  
8 select the most competitive rail route that would  
9 involve the merging railroad?

10 A You would select the route if that would be  
11 most beneficial to the railroad in question. Whether  
12 that's the most competitive or not will not necessarily  
13 follow.

14 Q Okay. But you wouldn't select a route that  
15 would short haul the merging railroad or a route that  
16 would not be likely to be used by shippers, would you?

17 A That's true.

18 Q Now, at the top of page 12 of your testimony,  
19 you state that you disagree with the weighted miles  
20 because they do not reflect some other factors that are  
21 involved. And that is a valid point, that weighted  
22 miles themselves do not.

23 But I have some questions for you about the  
24 traffic diversion model. Doesn't the traffic diversion  
25 matrix in the model take into account, for example, the

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

industry location at both the origin and the destination  
of the movement?

0003 0243



1 A In the DNS model?

2 Q Yes, in the diversion matrix of the DNS  
3 model.

4 A Would you repeat that, Mr. Wilson?

5 Q Okay.

6 Doesn't the diversion matrix in the DNS model  
7 take into account the industry location at both the  
8 origin and destination end of the movement?

9 A I don't believe so, if I understood your  
10 question correctly.

11 Would you repeat it again?

12 Q Okay.

13 Doesn't the diversion matrix in the DNS model  
14 take into account the industry location at both the  
15 origin and destination end of the movement, and by that  
16 I mean doesn't it take into account who is serving the  
17 shipper at the origin, which railroad is serving the  
18 shipper at origin, and whether the shipper at origin is  
19 closed, open to reciprocal switching, or exclusively  
20 served?

21 Maybe my question was not clear.

22 Okay, now that I have rephrased my question,  
23 can you answer?

24 A Yes, it does take -- it purports to take into  
25 account the status of the industry at origination and

1 termination.

2 Q And doesn't the diversion matrix also take  
3 into account the class of traffic that was involved,  
4 that is, whether the traffic was overhead traffic or  
5 interline received or interline forwarded, either in the  
6 prediversion or in the postdiversion route?

7 A Yes, it does.

8 Q And does the diversion matrix take into  
9 account the type of equipment supplied for the move and  
10 the ownership of the equipment, which railroad owns the  
11 equipment used in the movement?

12 A It recognizes the type within broad categories  
13 and the ownership.

14 Q And does the routing program take into account  
15 difficulties in cooperation by individual railroads over  
16 individual rail routes through the impedance procedure?

17 A You would have to define difficulty in  
18 cooperation.

19 Q The problems in agreeing on joint rates and  
20 routes and through service, through an interchange.

21 A I saw no evidence that it did that.

22 Q But you did see evidence of impedances at  
23 interchanges between railroads?

24 A I saw computed impedances, yes.

25 Q Now, your second criticism is Applicants' use

1 of the 30 percent discount to reflect merger-related  
2 efficiencies.

3 I take it from your testimony that you agreed  
4 that there will be some merger-related efficiencies, but  
5 it is not clear that you think the 30 percent discount  
6 is an appropriate number.

7 But as a foundation, I would like to ask you  
8 what sort of new efficiencies do you see coming from the  
9 SPSF merger?

10 A I would have to refer to the testimony that  
11 the primary Applicants supplied, and I would concur that  
12 many of their nonoperating efficiencies could well be  
13 captured and that many of their operating efficiencies  
14 could be captured. Most of these deal with  
15 consolidation of facilities.

16 There are possibilities for some of the train  
17 operating efficiencies to be captured, some of the  
18 redistribution of empties to be captured, but I suggest  
19 that most of the efficiencies are those of the basic  
20 consolidation of two plants.

21 Q What about service reliability? Do you think  
22 there is a possibility that that would be improved?

23 A There's a possibility that that would be  
24 improved.

25 Q Does that increase a railroad's competitive

1 capabilities?

2 A I believe so, yes.

3 Q Now, would you expect that the efficiencies  
4 that Applicants have testified to would make the SPSF  
5 system more competitive and enable it to influence  
6 shippers to route more traffic over its lines?

7 A I would say yes, it would have those  
8 tendencies.

9 Q And isn't the purpose of the traffic study to  
10 identify that traffic and to specifically identify which  
11 shippers will shift which traffic to the merged systems  
12 lines?

13 A Yes, that is part of the responsibility or the  
14 objective of the study.

15 Q All right.

16 Q Now, don't you think that the 30 percent  
17 discount factor enabled the Applicants to identify all  
18 of the reasonable routes by which SPSF might be able to  
19 attract additional traffic?

20 A It would put a broader sweep on route  
21 possibilities and alternatives. Whether it would  
22 identify all or more than it should, I can't say.

23 Q Well, do you have any examples of where the  
24 diversion route that was chosen by the DNS model in  
25 Applicants' traffic study was not the best candidate

1 diversion route?

2 A Offhand I do not, but that doesn't mean that  
3 the 30 percent discount is involved in my inability to  
4 find one.

5 Q Now, moving on to your comments, in your  
6 fourth criticism on page 29, you criticize the use of  
7 Rule 107 in the SFSP study iteration.

8 My question is, is Rule 107 more or less  
9 restrictive than the exclusion reasons that were used in  
10 the prior study iterations?

11 A I don't understand your question.,

12 Q Is Rule 107 more or less restrictive of  
13 excluding diversions than exclusions rules that were  
14 used in the MP-UP study iteration, for example?

15 A I do not know.

16 Q Did you look at reasons 25, 26 and 27, which  
17 were the reasons for rejecting diversions in the MP-UP  
18 study iteration and the related MP-UP trackage rights  
19 study iterations?

20 A I do not recall looking at those rules in the  
21 MP-UP iteration.

22 Q All right.

23 Now, you criticized the impact of Rule 107 as  
24 it affected traffic moving between California and the  
25 southeast with your table where you show how it did

1 affect that traffic.

2 Did you discover any other traffic flow where  
3 the application of Rule 107 caused nondiversion  
4 judgments that were inappropriate?

5 A Yes, I believe so.

6 Q Okay.

7 Could you tell me what other flow you found?

8 A It seemed to me there was a fair application  
9 of Rule 107 from the northwest to the river junctions.  
10 Those are moves I didn't study in detail but happened to  
11 come across them in sample output.

12 Q Did you study in detail any other specific  
13 traffic flow other than the flow between California and  
14 the southeast that you set forth in your verified  
15 statement?

16 A I certainly looked at other flows. I didn't  
17 study any other flows to the extent that I did as shown  
18 in the table.

19 Q Now, your final criticism on page 29 involves  
20 Applicants' sequencing of the diversion study  
21 iterations.

22 I take it that you would not agree with Union  
23 Pacific's approach that the sequencing problem could be  
24 solved by changing the sequence, and instead, first  
25 testing diversions to SP's trackage rights and then to

1 Rio Grande's trackage rights, and then to Union  
2 Pacific's merger.

3 I take it that instead your criticism is that  
4 the proper method is to test all three of those  
5 phenomena in a single study iteration.

6 Is that your testimony?

7 A Well, to call it proper is not to say that I  
8 endorse the use of this model simultaneously. I would  
9 suggest it would be more proper to do all of the  
10 adjustments simultaneously than sequentially.

11 Q Now, on page 18, when you discuss the  
12 sequencing situation, you refer to the UP consolidation  
13 and related trackage rights.

14 Now, the UP consolidation and those trackage  
15 rights became effective in December 1982, did they not?

16 A The UP consolidation and the trackage rights?

17 Q Yes.

18 A I will accept December. I was thinking  
19 January of '83.

20 Q Now, if UP's consolidation impact was fully in  
21 place at the end of the three-year time frame that you  
22 describe on page 18 and that Applicants testified to,  
23 that would make its impact full, in place by December  
24 1985.

25 In light of that, why wouldn't it be

1 appropriate to consider that those impacts would be  
2 fully in place before the SPSF merger is consummated?

3 A In light of your example of a three-year lag  
4 or more between the granting of the consolidation,  
5 implementation of the UP-MP merger and the granting of  
6 trackage rights, yes, the three year time period may be  
7 adequate.

8 Q Now, Mr. Johnson, you also bring up one  
9 example that you compare relative impedances to relative  
10 traffic volumes. You show impedances at the top of page  
11 11 of your testimony for traffic moving through the  
12 Southern Corridor, comparing the SPT route and the  
13 Kansas City Southern-Santa Fe joint route, which shows  
14 about a 60-40 relationship between the two routes, that  
15 is, about 60 percent of the impedances on the joint line  
16 route and about 40 percent of the total impedance of  
17 those two is on the SP route, and then, later on page  
18 13, you set out the carload statistics between SP and  
19 Santa Fe-KCS, and that shows about a 60-40 relationship  
20 in favor of the Southern Pacific, about 60 percent of  
21 the traffic moving on the Southern Pacific single line  
22 route and only about 40 percent moving on the Santa  
23 Fe-KCS joint line route.

24 MR. DREILING: Your Honor, I am going to  
25 object to Mr. Wilson's testifying as to what shows on



1 page 13. It shows itself, and I am having a hard time  
2 finding the 60-40 split.

3 MR. WILSON: It is about 67 to 32.

4 JUDGE HOPKINS: Why don't you quote it  
5 exactly?

6 BY MR. WILSON: (Resuming)

7 Q Okay, 67 and 32 is the split that is shown on  
8 page 13 for 1982, which is the year in which the  
9 impedances were calculated.

10 Now, my question is don't these statistics  
11 indicate to you that the impedances on this route are  
12 actually doing a fairly good job of reflecting the  
13 relative competitiveness of these two rail routes  
14 vis-a-vis one another?

15 A I think it is apples and oranges. Your  
16 impedances are more or less a switch to determine  
17 whether one route can draw from another. They don't  
18 measure the degree to which one route is better than  
19 another. They measure only that one route is better  
20 than another, and therefore, to compare a continuum of  
21 data from an impedance comparison with traffic volume is  
22 not valid.

23 Q Okay. I didn't think so.

24 Now, at the top of page 3 you state that  
25 Applicants' rail traffic study could not be tested or

1 audited.

2 Did you try to restate Applicants' rail  
3 traffic diversions from Kansas City Southern?

4 A By restate, do you mean adjust your results?

5 Q Right.

6 A We wished to do so but could not feasibly do  
7 so.

8 Q Did you make an effort to obtain the DNS study  
9 tapes and to replicate the operation of the model?

10 A Yes, we did.

11 Q By study tapes, I mean all of the computer  
12 tapes that were involved in the computer program.

13 A I made an initial effort, yes.

14 Q And then later on you decided not to follow  
15 through with that?

16 A When I saw what was involved, I figured it was  
17 best to spend the client's money differently.

18 Q Okay.

19 Did you make an effort to have DNS run the  
20 model for you on restated traffic assumptions to come up  
21 with another answer?

22 A You mean post-September or October of this  
23 year?

24 Q Well, actually at any time. Did you at any  
25 time make an effort to have DNS run the model for you

1 with different assumptions so that you could come up  
2 with a different estimate of the diversion impact on the  
3 KCS?

4 A No, I did not.

5 MR. WILSON: Those are all the questions I  
6 have, Your Honor.

7 JUDGE HOPKINS: Mr. Dreiling?

8 MR. DREILING: Your Honor, I have no  
9 redirect.

10 I offer KCS-15 as corrected with KCS-16.

11 JUDGE HOPKINS: Any objection?

12 MR. WILSON: No objection, Your Honor.

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

15 You are excused.

16 (The Witness was excused.)

17 MR. DREILING: Your Honor, can we go off the  
18 record for a moment?

19 JUDGE HOPKINS: Yes.

20 (Discussion off the record.)

21 Whereupon,

22 GEORGE E. BARDWELL

23 was called as a witness by counsel for<sup>P</sup> Kansas City  
24 Southern Railway and, having been duly sworn by the  
25 Administrative Law Judge, was examined and testified as

1 follows:

2 DIRECT EXAMINATION

3 BY MR. DREILING:

4 Q Dr. Bardwell, would you state your full name  
5 for the record, please?

6 A George Eldred Bardwell.

7 Q Dr. Bardwell, what is the nature of your  
8 employment?

9 A At the University of Denver?

10 Q Yes.

11 A I am Joint Professor of Mathematics and  
12 Statistics.

13 Q Did you have occasion to prepare and submit in  
14 this proceeding on behalf of KCS two verified  
15 statements?

16 A I did.

17 Q And are those verified statements contained in  
18 the pleadings numbered KCS-14 and KCS-12?

19 A They are.

20 Q Dr. Bardwell, we also then included, provided  
21 the Commission in two separate pleadings certain  
22 corrections to your testimony, and those were in KCS-16  
23 and KCS-18.

24 A Yes.

25 Q Now, the statements made in KCS-12 and in

1 KCS-14, as corrected in KCS-15 and 18, do they  
2 constitute your testimony offered on behalf of KCS in  
3 this proceeding today?

4 A They do.

5 Q Do you have any additions or corrections to  
6 make to those statements?

7 A Yes.

8 On page 4, KCS-12, the estimate of Recovery  
9 Gain, Roman numeral I Revenue, should read \$34,177,392  
10 instead of \$34,117,000.

11 MR. DREILING: Your Honor, for the record,  
12 that correction was contained in one of the errata.

13 JUDGE HOPKINS: Thank you.

14 BY MR. DREILING: (Resuming)

15 Q With that correction, do you have any  
16 additional corrections to make?

17 A I do not.

18 Q Are the contents of your testimony set forth  
19 in KCS-12 and KCS-14 true and correct to the best of  
20 your knowledge and belief?

21 A To the best of my knowledge.

22 MR. DREILING: I tender the witness.

23 JUDGE HOPKINS: Thank you.

24 Mr. Wilson?

25 CROSS EXAMINATION

1 BY MR. WILSON:

2 Q Dr. Bardwell, Dennis Wilson, representing  
3 Applicants in this proceeding.

4 A Yes.

5 Q Sir, could you please turn to page 5 of your  
6 verified statement in KCS-12, where you discuss your  
7 involvement in the KCS reroute cost study?

8 A Yes.

9 Q You describe the sample frame for that study  
10 as 10,1209 car movements.

11 Do you know how many of those car movements  
12 were in multiple car shipments?

13 A I do not.

14 Q Do you know whether there was an effort made  
15 in the reroute cost study to identify cars that were in  
16 multiple car shipments?

17 A I do not know.

18 Q Sir, if the reroute cost savings varied on the  
19 basis of whether the cars were in multiple car  
20 shipments, would it not have been a good procedure to  
21 have stratified the population before taking a sample?

22 A Not necessarily. It would depend upon the  
23 internal variance between the car movements and the fact  
24 that in that particular study, a ratio estimate was  
25 being used.

1           The fact that the correlation between the cost  
2 and the revenue was quite high, you do not gain a great  
3 deal by stratifying the sample frame. A ratio estimate  
4 is a very highly efficient estimate, and therefore,  
5 whether or not you have a very high cost movement or  
6 very low cost movement, if the ratio between the revenue  
7 and the cost is fairly constant, if the correlation is  
8 fairly high, stratification does not help you out very  
9 much.

10           Q     That is assuming a relatively constant ratio  
11 between the revenue and the cost?

12           A     Not necessarily. It depends upon the linear  
13 regression between the two, and generally speaking, if  
14 there is a linear relationship between the two, then you  
15 will get the results that I just indicated.

16           Q     Now, you state that the number of cars that  
17 were costed in the study was 30, or around .3 percent.

18                     Did you determine the sample size?

19           A     Yes, I did.

20           Q     Why did you choose a sample size of 30?

21           A     Because the sample size of 30 was a lower  
22 bound on the formulas for which a ratio estimate are  
23 applicable in the case of determining the standard  
24 error. In other words, we know pretty much by theory  
25 that for the formulas for a ratio estimate to apply --

1 and they are approximately -- that a sample of size 30  
2 is pretty much of a lower bound for those formulas to be  
3 approximately true.

4 Since my information prior to design of the  
5 study indicated that the correlation that I was talking  
6 about was quite high, there was no point in suggesting  
7 to KCS that they expend a lot of money in costing these  
8 shipments or these movements if a sample of size 30 was  
9 sufficient for that purpose.

10 Q And so for that reason you picked the lowest  
11 possible sample size that these formulae would normally  
12 apply to?

13 A I did.

14 Q Now, you report in your statement that the  
15 coefficient of variation of the ratios of the new costs  
16 to the old costs on the movement is 3.3 percent.

17 Isn't the coefficient of variation of the cost  
18 estimate itself quite a bit higher than that?

19 A Yes. One would suspect that the coefficient  
20 of variation for the actual number of \$1,996,411, if you  
21 determined that by a simple, unbiased estimate, is in  
22 the neighborhood of about 9.9. On the other hand, if  
23 the actual cost to which that proportion is applied is  
24 used to determine the amount of cost that would be  
25 occasioned under the reroute, the coefficient of



1 variation is in the neighborhood of about 6.6 percent.

2 MR. WILSON: Your Honor, I would like to have  
3 marked now as an exhibit SFSP-C-98, one of Dr.  
4 Bardwell's work papers which is numbered 07892.

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

7 (The document referred to  
8 was marked Exhibit No.  
9 SFSP-C-98 for  
10 identification.)

11 BY MR. WILSON: (Resuming)

12 Q Sir, can you confirm that this is your work  
13 paper of September 5 dealing with the results of the KCS  
14 reroute cost study?

15 A Yes, it is.

16 Q Looking at the third line of the cost study  
17 results -- that is about the seventh or eighth line on  
18 the page, and then over at the third equation in the  
19 line, could you explain for the record what  $C = 0.23993$   
20 indicates? X

21 A Yes, that is the coefficient of variation of  
22 the variable  $Y$ , meaning the coefficient of variation of  
23 the old cost.  $C$  right below that is the coefficient  
24 of variation as determined from the sample for the new  
25 cost.

1 Q Okay.

2 And looking down the page at the figure, well,  
3 the equation just above the line, drawn near the bottom  
4 of the page where there is a  $C = 0.099$ , that is where  
5 you calculated a coefficient of variation of the savings  
6 estimate as 9.9 percent, is it not?

7 A Yes. There are two ways in which that  
8 estimate can be obtained. One is the estimate can be  
9 obtained by taking the difference between the old and  
10 the new cost for a given movement, and then simply using  
11 the multiplier of  $10,000/30$  in order to determine what  
12 that cost happens to be. That estimate would be called  
13 a simple, unbiased estimate and would have a sampling  
14 error in the neighborhood, coefficient of variation in  
15 the neighborhood of 9.9 percent.

On the other hand, if a ratio estimate were  
17 used, then the ratio between the new cost and the old  
18 cost being about 70 percent would have a coefficient of  
19 variation as reported in my statement of 3.3 percent.

20 If one wanted to determine the ratio  
21 between -- the difference between the old cost and the  
22 new cost divided by the old cost, namely, about 30  
23 percent, then the coefficient of variation of that 30  
24 percent would be in the neighborhood of about 6.6  
25 percent.

1 Q Okay.

2 Now, sir, looking a little further up the page  
3 at the line just under where you have the phrase  
4 "estimated savings in rerouted traffic," there is a  
5 figure of \$2,014,619.

6 Is that the cost savings figure that you used  
7 in your calculations?

8 A No. And to tell you the truth, sir, I don't  
9 know why that has a line through it. I haven't looked  
10 at this work paper for some time, so I can't tell you  
11 why that line has been drawn through.

12 Q What is this figure underneath the estimated  
13 saving in rerouted traffic?

14 A Well, I have it here as being \$2,014,000 as  
15 being derived from a simple, unbiased estimate which  
16 would compare to the reported figure of \$1,996,000, and  
17 there is a little difference there of about \$28,000, and  
18 I can't explain why.

19 Q Okay.

20 And you are also not aware of why the cost  
21 savings figures were reduced by about \$28,000 then, are  
22 you?

23 A I am just not sure of that. And in fact, in  
24 reviewing some of the figures before the hearing, I  
25 attempted to look back at some of the work papers where

1 some of these figures were derived, and I have been  
2 unable to find them. So I don't know where they are.

3 Q Sorry to hear that, sir.

4 Well, at any rate, I did notice in some of  
5 your work papers some calculations resulting from your  
6 work in drawing a sample for a 1980 KCS rail traffic  
7 diversion study which involved a couple of different  
8 things. One was a measure of the impact of the Union  
9 Pacific-Missouri Pacific-Western Pacific merger on KCS,  
10 and another purpose of the study was to measure the  
11 impact of the Santa Fe-Southern Pacific merger.

12 Could you describe your involvement in that  
13 1980 study?

14 A Yes, I was.

15 Q Could you describe what your involvement was?

16 A My involvement in the 1980 study was to  
17 design, much as I have done for this particular  
18 assignment, sample designs for traffic studies, and I  
19 just noticed that my work papers, you are quite correct,  
20 that they did include the 1980 work papers, also 1981  
21 work papers, and also some for 1982.

22 I think what I did is just cleared out the  
23 file when Kansas City Southern asked me to supply my  
24 work papers. So those work papers were mixed up  
25 inadvertently.

1 Q It seems as though Kansas City Southern has  
2 been studying the impact of the Santa Fe-Southern  
3 Pacific merger upon it for quite some time, has it not?

4 A I'll take your word for that.

5 Q Well, you are the one who was involved in the  
6 studies, sir.

7 A Yes, but I don't remember oftentimes what  
8 railroads are involved.

9 Q I see.

10 Well, it appears from the work papers that KCS  
11 was measuring its losses to the SPSF merger under two  
12 separate conditions which the work papers list as  
13 Condition 1 and Condition 2, and part of your  
14 involvement was to help Mr. Ploth by telling him he  
15 didn't need to take the separate sample frame to  
16 Condition 1 and Condition 2, that he could measure the  
17 impact of both conditions with the single sample frame.

18 Now, I would like to know what is Condition 1  
19 and what is Condition 2. Do you recall that?

20 A I simply can't recall. I do not recall those  
21 two conditions.

22 I know that at the time -- are you talking  
23 about the current study?

24 A No, sir, I am talking about the 1980 study.

25 MR. BRELLING: Your Honor, in that case, I'm

1 sorry, I should have objected long ago. I don't think  
2 that study or Mr. Bardwell's work on that study is  
3 relevant to this proceeding, particularly not within the  
4 scope of his testimony in this case.

5 JUDGE HOPKINS: Dr. Bardwell has said he can't  
6 remember anyway, so there is no problem on it.

7 You have objected, but it was in the work  
8 papers, and I can see Mr. Wilson asking the question.

9 MR. WILSON: Just curiosity, Your Honor.

10 THE WITNESS: That is my mistake for including  
11 them in there.

12 BY MR. WILSON: (Resuming)

13 Q Were you given the results of any of the KCS's  
14 earlier studies of the impact upon it of the Santa  
15 Fe-Southern Pacific merger for the purpose of  
16 calculating the standard error of those results?

17 A I will have to say I don't recall. I just  
18 simply have not reviewed the work papers for 1980 or  
19 those old studies, and what work papers that were  
20 included in there were just simply perhaps notes that I  
21 had reviewed some time ago, and they were simply  
22 inadvertently put in those work papers, and I will just  
23 have to admit ignorance with regard to that 1980 study  
24 altogether.

25 Q So you can't recall here and now what the

1 results of that 1980 study were?

2 A I cannot.

3 Q Have you subsequent to 1980 but still prior to  
4 the traffic study that is involved here in this case,  
5 been involved with KCS in other studies of impacts of  
6 the SPSF merger on KCS?

7 A There have been a number of sample studies  
8 that I have conducted, and I will just have to admit to  
9 an abysmal ignorance on what kind of traffic was studied  
10 prior to the current engagement, and after being in  
11 these proceedings for perhaps 25 years, I get the Rock  
12 Island and the UP and the MP and a lot of other  
13 railroads mixed up, and I am just sorry about that.

14 Q Okay.

15 Sir, what was the sampling unit for the KCS  
16 opposition traffic diversion study?

17 A The individual car movement, as shown on the  
18 tape record.

19 Q To what extent were individual car  
20 characteristics retained when cars were in multiple car  
21 shipments?

22 A We attempted to reduce that sample unit to the  
23 individual car itself.

24 Q Well, weren't car revenues for cars in a  
25 multiple car shipment, for example, recorded as the

1 average revenue per car for all the cars in that  
2 shipment?

3 A Yes, but that was only for two purposes. One  
4 was for the purpose of setting up the stratification in  
5 which it is not absolutely necessary that an accurate  
6 revenue for that particular car movement be retained, as  
7 long as that car movement is roughly within the strata  
8 to which it has been assigned. Then, the probability  
9 that is assigned to that particular car in its selection  
10 is what I am really concerned about.

11 Q You said two purposes, and I believe you only  
12 listed one.

13 Is there another purpose?

14 A The other purpose is to give me a rough  
15 measure of the sampling variance that is associated with  
16 that particular stratum so that I can determine an  
17 approximate sample size for that particular stratum and  
18 use that in optimally allocated according to Neyman's  
19 formulas between the strata.

20 Q And when KCS got around to actually study  
21 results and decided to divert a car, were the car  
22 revenues on these cars the actual car revenue for the  
23 car or were they the average per car revenue in the  
24 multiple car shipment?

25 A Average per car shipment.



1 Q Okay.

2 And weren't the freight weights for the cars  
3 in the multiple car shipments also average freight  
4 weights?

5 A That is correct.

6 Q Did you study how much revenue per car varied  
7 among the cars in multiple car shipments that were in  
8 the traffic study?

9 A No, I did not.

10 Q Did you study how much --

11 A And it wasn't necessary to do so.

12 Q Okay.

13 Did you study how much weight per car varied  
14 among cars in multiple car shipments?

15 A No, and it was not necessary to do so.

16 Q Do you think that the use of average revenues  
17 instead of actual revenues for these cars could have led  
18 to a less precise estimate?

19 A No, I don't think so, and let me tell you  
20 why.

21 In the design of a sample, you have certain  
22 information that is assigned to a particular car  
23 movement. Now, if one wants to estimate the total  
24 revenue that is shown, let's say, on the QCS report or  
25 on the internal reports of the railroads, then it is

1 that revenue, it happens to be that tonnage, whatever it  
2 might be, that you expand in order to inflate that to  
3 the system total.

4 Now, if you start fooling around with those  
5 average values, then in effect what you do is you are  
6 not able to go ahead and expand the revenue nor the  
7 tonnage back to the original frame from which it comes,  
8 and as a result, it would be appropriate to go ahead and  
9 retain those figures as shown in the magnetic tape  
10 record, and that was the instruction to do so.

11 Q Okay, sir, how were transit moves treated in  
12 the opposition traffic study, as single movements or as  
13 separate movements, one inbound to the transit station  
14 and one outbound from the transit station?

15 A To answer your question specifically, I don't  
16 know except that I do know that the magnetic tape record  
17 itself was furnished to me in terms of individual car  
18 movements.

19 Now, what decision was made by KCS in order to  
20 get that down to a magnetic tape record of individual  
21 car movements, I don't know.

22 Q Do you know what revenues were applied in  
23 connection with the outbound transit movements?

24 A I do not.

25 Q Sir, turning to your verified statement in

1 KCS-14, and to Appendix A to your statement, we have a  
2 question about one of the symbols on the page, and it  
3 has to do with your formula that you have down about  
4 two-thirds of the way on the page, having to do with the  
5 size of sample frame over all strata.

6           Could you explain how the "i" gets into the  
7 summation in here?

8           A     You are quite right, and I did not notice it.  
9 That "i" should be an "h."

10          Q     That "i" should be an "h."

11          A     Is it permissible for me to make a change?

12          JUDGE HOPKINS: Sure. You have made the  
13 change on the record.

14          THE WITNESS: Let me make the change on the  
15 record, and I appreciate your bringing that to my  
16 attention. I had not noticed it.

17                So in the formula for N equals the sum of  
18 N, it should not read  $i=1$  to 4, it should read  $h=1$  to  
19  $h$   
4.

20          BY MR. WILSON: (Resuming)

21          Q     Now Dr. Pardwell, Mr. Ploth's testimony  
22 states that the choices that were available to him in  
23 determining diversion percentages were 0 percent and 100  
24 percent.

25                Did you participate in deciding that those

1 would be the only two choices that Mr. Ploth would  
2 have?

3 A I think that is a longstanding understanding  
4 in traffic studies that I have been associated with over  
5 a long period of time. The decision as to whether or  
6 not a car was to be diverted or not, the decision is to  
7 divert it either 100 percent or to keep it, and  
8 hopefully the traffic is in a position to make that  
9 judgment in somewhat of a realistic manner.

10 Q Right, but you are describing this in a kind  
11 of a third person, and my question is, did you  
12 participate in causing that to be the decision, that the  
13 choice would be zero percent or 100 percent?

14 A Oh, yes, yes.

15 Q Doesn't the availability of only two choices,  
16 the zero and 100, prevent a final evaluator from  
17 expressing his judgment as precisely as if he had, say,  
18 five or six choices available to him?

19 A I disagree with that. What you are attempting  
20 to do with regard to the sample is simulate the  
21 conditions of the merger, and if we take a given car X,  
22 then that sample car reflected to the merged condition  
23 will, under those merged conditions, either be retained  
24 or lost, and it is hard for me to conceive of a half a  
25 car, if that was one of the judgments, going down a

1 track effectively hauling any goods or services.

2 Q Sir, are you aware that in 1967, Dr. W.  
3 Edward Denning recommended that the rail traffic  
4 diversion study evaluator be given at least five or six  
5 choices?

6 A Yes, and I worked with Dr. Denning, too, and  
7 he changed his mind after that point in which it was his  
8 judgment that the better choice would be zero or 100  
9 percent.

10 Q Are you aware that there is also a  
11 recommendation that traffic study evaluators be given  
12 multiple choices in a book entitled "Case Studies in  
13 Sample Design," by Mr. A. C. Rosander? And are you  
14 familiar with that?

15 A First of all, are you familiar with a book  
16 called "Case Studies in Sample Design" by Mr. A. C.  
17 Rosander?

18 A Not under those names, no.

19 Q Okay.

20 A Sir, now if an evaluator is looking at a  
21 particular movement and says to himself, well, some of  
22 that traffic would be diverted to the new, merged  
23 system, but not all of it, how in your view should he  
24 check his sheet? Should he call it a diversion or  
25 should he call it a nondiversion?

1           A       That's a good question, and I think probably  
2 the best way to handle it, let's say you have two cars  
3 in which there is a diversion or a gain, and the  
4 evaluator's estimate is that perhaps 80 percent of  
5 traffic of a like kind represented by those two cars  
6 would be diverted. You obviously cannot take those two  
7 cars and take 80 percent of those two cars. You are  
8 going to get 1.6 cars, and you can't have 1.6 cars after  
9 the merger rolling down the track.

10           Q       That is under your rule you cannot do that.

11           A       That's right.

12           Q       If you had percentage evaluations, then you  
13 could do that.

14           A       But you have a real problem there, and the  
15 problem is that if you do that sort of thing, then you  
16 can take those two cars and from the body of traffic for  
17 which those cars are representative, it makes reasonable  
18 sense to go ahead and use 80 percent of the cars in the  
19 frame from which those two samples came, to say that 80  
20 percent of those cars are going to be diverted, and  
21 therefore, let's say you are going to have maybe 1000  
22 cars in which the diversion is going to take place, and  
23 perhaps you can say, then, that 80 percent of those cars  
24 will be diverted. You can make that kind of an estimate  
25 with regard to the sample frame. 20 percent would be

1 retained, and therefore, you would in effect say 800  
2 real cars are no longer going to be -- are going to be  
3 diverted after the merger, and 200 of these cars are  
4 going to be retained.

5 The difficulty with that is that what do you  
6 do with regard to the sampling error? How good is that  
7 estimate? I think the estimate is not a bad way to do  
8 it. The problem is that you destroy any possibility of  
9 coming up with a realistic figure for how good is the  
10 estimate that you derive.

11 On the other hand, if you force yourself to  
12 make the decision of zero and 100, you come up with a  
13 very realistic statement of the sampling error, and  
14 hopefully you can adjust these two cars in such a way  
15 that you could make a realistic estimate of the total  
16 also.

17 And so --

18 Q You say adjust these two cars in such a way.  
19 How would you adjust them?

20 A Well, one of the ways in which one can do that  
21 is simply to use a probability statement, and simply use  
22 ten random numbers, let's say, and eight of those are  
23 going to represent a diversion and two of those are  
24 going to represent a nondiversion. Pick a random number  
25 from the table, and that car either goes or it doesn't.

1 Q So you would have the evaluator pick a number  
2 out of a hat, and if it came up diversion, he diverts  
3 that movement, and if it comes up nondiversion, he  
4 doesn't.

5 A That's right. That's one way to do it. But I  
6 don't think the estimates are as good. But the sampling  
7 error is.

8 On the other hand, doing it the other way, the  
9 estimate is good but the sampling error is very poor.

10 Q Now, if you do it the way you describe about  
11 picking the number out of the hat, what happens if  
12 the -- say there are five movements and he thinks it is  
13 going to be an 80 percent diversion.

14 What happens if one of the five movements has  
15 quite a bit more revenue on it than the other four but  
16 the four that he picks for diversions, by pulling his  
17 name out of a hat, are the low revenue moves?

18 Now, isn't he introducing distortion into the  
19 study process this way?

20 A On the average, that is going to balance out.  
21 If you had five cars, the choice is easy. What you do  
22 is you would take then 80 percent of the five, which  
23 would represent four cars, and select those four cars at  
24 random. Now, it may well be that you would pick all  
25 four cars that had the low revenue, all four cars that



1 had the high revenue on that particular choice.

2 On the other hand, given another situation  
3 where it might arise as well, the probability is about  
4 equal that you would have cars at the low end or at the  
5 high end, and the expectation would be that the  
6 dissimilarities, the abnormalities would tend to cancel  
7 out in the long run, and the estimate itself in effect  
8 would be unbiased.

9 MR. WILSON: I have no further questions.

10 JUDGE HOPKINS: Anything, Mr. Dreiling?

11 MR. DREILING: I have no redirect, and I offer  
12 Dr. Bardwell's statement in KCS-12 and his statement in  
13 KCS-14.

14 JUDGE HOPKINS: Any objection?

15 They will be received in evidence.

16 MR. WILSON: Your Honor, I offer Exhibit  
17 SFSP-C-98.

18 JUDGE HOPKINS: Any objection?

19 It will be received in evidence..

20 (The document referred to,  
21 previously marked Exhibit  
22 No. SFSP-C-98 for  
23 identification, was received  
24 in evidence.)

25 JUDGE HOPKINS: You are excused, sir.

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

(The Witness was excused.)

JUDGE HOPKINS: We will be in recess until  
9:00 o'clock tomorrow morning.

(Whereupon, at 4:45 o'clock p.m., the hearing  
in the above-entitled matter was recessed, to reconvene  
at 9:00 o'clock a.m., Wednesday, January 16, 1985.)