

F.D. 30400 - 1/18/85 - Pages-7957-8003

BEFORE THE
INTERSTATE COMMERCE COMMISSION

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In the Matter of: :

SANTA FE SOUTHERN PACIFIC CORPORATION : Finance Docket

-- CONTROL -- : 30400 et al.

SOUTHERN PACIFIC TRANSPORTATION :

COMPANY :

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Hearing Room A
12th & Constitution, N.W.
Washington, D.C.
Friday, January 18, 1985

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

BEFORE:

JAMES E. HOPKINS,
Administrative Law Judge

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1 APPEARANCES:

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

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Richard B. Peterson				
By Mr. Levy	7960			
By Mr. Wilson		7961		
W.K. Molan				
By Mr. Levy	7988			
By Mr. Wilson		7988		
Harold J. Cerveny				
By Mr. Levy	7994			
By Mr. Wilson		7995		

E X H I B I T S

<u>Exhibit No.</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
SFSP-C-104	7976	7987
SFSP-C-105	7983	7987
SFSP-C-106	7995	
SFSP-C-107	7999	8003

P R O C E E D I N G S

1
2 JUDGE HOPKINS: Let's get back on the record.
3 Who's the next witness?

4 MR. LEVY: Good morning, Your Honor. Our next
5 witness is Richard B. Peterson.

6 While Mr. Peterson is making his way to the
7 front of the room, I would also like to move the
8 admission of two verified statements of witnesses who
9 will not be cross-examined -- Martin Frankel, the Union
10 Pacific statistical consultant, who has made a verified
11 statement in support of Union Pacific's trackage rights
12 traffic study. No parties requested cross examination
13 of Dr. Frankel.

14 And Richard F. Kauders' verified statement.
15 While applicants apparently have some minor questions
16 for Mr. Kauders, they are going to be handled in some
17 sort of informal arrangement outside the hearing. I
18 think it would be appropriate to have both of those
19 statements admitted into evidence at this point.

20 JUDGE HOPKINS: Any objection?

21 MR. WILSON: No objection to either exhibit,
22 Your Honor.

23 JUDGE HOPKINS: They will be received in
24 evidence.
25 Whereupon,

1 RICHARD B. PETERSON

2 was called as a witness and, having been duly sworn by
3 the Administrative Law Judge, took the stand and was
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. LEVY:

7 Q Good morning, Mr. Peterson. Would you state
8 your name and address for the record, please?

9 A My name is Richard B. Peterson. The address
10 is Union Pacific Railroad, Union Pacific System, Omaha,
11 Nebraska.

12 Q Did you submit a verified statement in support
13 of Union Pacific's trackage rights traffic study in this
14 proceeding?

15 A I did.

16 Q Is that the verified statement that appears in
17 a filing labeled UP/MP-22?

18 A It is.

19 Q Is that statement true and correct to the best
20 of your knowledge and belief?

21 A It is.

22 MR. LEVY: Your Honor, Mr. Peterson is
23 available for cross examination.

24 JUDGE HOPKINS: Mr. Wilson. And, Mr.
25 Peterson, would you please speak up? We run into this

1 problem every day.

2 CROSS EXAMINATION

3 BY MR. WILSON:

4 Q Good morning, Mr. Peterson. My name is Dennis
5 Wilson with the applicants.

6 A Good morning. Nice to see you, Mr. Wilson.

7 Q Mr. Peterson, did you develop the procedures
8 and assumptions used in the Union Pacific trackage
9 rights traffic study?

10 A I developed them, Mr. Wilson, in coordination
11 with Mr. Molan.

12 Q Sir, at the bottom of page 3 of your verified
13 statement you list the seven basic steps in the trackage
14 rights traffic study. Your first step was the selection
15 of a sample of relevant traffic; is that correct?

16 A Yes, that's correct.

17 Q And you were primarily responsible for
18 undertaking this first step; is that right?

19 A Well, Mr. Wilson, I coordinated the overall
20 effort. However, this step is covered in Mr. Frankel's
21 statement -- Dr. Frankel's statement.

22 Q Now on page 7 of your verified statement you
23 describe traffic that would not be affected by the
24 trackage rights. Did you exclude from your study
25 traffic moving between Oregon and the southeast and

1 traffic moving between Oregon and east Texas and central
2 Texas points?

3 MR. LEVY: Why don't we take those one at a
4 time?

5 JUDGE HOPKINS: Why don't we start with one?

6 BY MR. WILSON: (Resuming)

7 Q Did you exclude from your study traffic moving
8 between Oregon and the southeast?

9 A Those were not included. Traffic moving
10 between those states was not included in the relevant
11 sample that was given to Mr. Molan.

12 Q Did you exclude from your study traffic moving
13 between Oregon and central Texas and east Texas points?

14 A Oregon traffic to the west Texas area was
15 included, but, to the best of my recollection, Oregon
16 traffic to east Texas was not included.

17 Q Where is the boundary of west Texas? Where
18 does it divide from the rest of Texas?

19 A I believe we used Ft. Worth, which is where
20 our system breaks -- north-south-east-west line.

21 Q Why do you believe that traffic between Oregon
22 and the southeast and traffic between Oregon and the
23 rest of Texas would not be affected by Union Pacific's
24 trackage rights?

25 A Well, as we state here, Mr. Wilson, in

1 footnote 3, traffic, for example, from Ft. Worth to
2 Portland would continue to move over our current MF
3 route from Ft. Worth to Kansas City, thence UP-Kansas
4 City to Portland even after we are granted the trackage
5 right.

6 That mileage is shorter. Our service would be
7 much, much better. We have control of our own
8 operations on those lines and a large investment in
9 those lines.

10 Q Yes, but you use as your example on page 7
11 only the point of Ft. Worth. Wouldn't traffic from
12 Stockton to Houston be handled much faster over a much
13 shorter route via your new trackage rights route than
14 via Union Pacific System's current route?

15 A A car originating in Stockton destined for
16 Houston would benefit from the trackage rights. Those
17 movements were given to Mr. Molan to evaluate.

18 Q All right, sir. But now a movement from
19 Oregon to points south of Portland that is moving down
20 via Stockton would be also handled more efficiently over
21 your trackage rights route, would it not?

22 A No. That's not correct.

23 Q That is not your view?

24 A That is not my view.

25 Q What about traffic originating from Burlington

1 Northern points in Oregon, say Klamath Falls, and moving
2 to Houston? Wouldn't that traffic be efficiently
3 handled over your trackage rights route?

4 A Well, Mr. Wilson, we considered the fact that
5 there are Southern Pacific and Burlington Northern
6 origins in Oregon as well as our own. As far as
7 Burlington Northern is concerned, the route of movement
8 there again would be not via the trackage rights but
9 either via our routes through the north or Burlington
10 Northern's routes through the north.

11 If it is a Burlington Northern point, we're
12 not going to dissipate them, setting up a new short-haul
13 route with us via Bieber, when they would have their own
14 efficient longer haul routes already in effect through
15 Denver, Kansas City and so forth.

16 Q Speaking of Burlington Northern, doesn't
17 Burlington Northern have routes and rates today with you
18 via Bieber?

19 A We do have routes, but obviously not via the
20 trackage rights, since those don't exist today.

21 Q Right. As an aside, are you aware of how the
22 traffic levels at Bieber have changed since the Union
23 Pacific merger?

24 MR. LEVY: Your Honor, I'm not sure this is
25 within the scope of Mr. Peterson's direct testimony. He

1 is here to talk about the trackage rights traffic
2 study. It seems to me that that is a question more
3 appropriately put in the form of an interrogatory or to
4 a policy witness.

5 If Mr. Peterson knows the answer, I will allow
6 him, but I think we're moving in a direction outside the
7 scope of appropriate cross examination.

8 JUDGE HOPKINS: Let's see if he knows the
9 answer. Do you know the answer?

10 THE WITNESS: Well, I have a personal
11 viewpoint on it. I don't have any exact figures, but
12 what I do know is the traffic volume through that
13 gateway is much less today than, say, it was about ten
14 years ago -- more trains. I know that more trains were
15 operated back at that time than are operated today.

16 BY MR. WILSON: (Resuming)

17 Q Okay, sir. But from Klamath Falls, after you
18 got your trackage rights, wouldn't it be a much more
19 direct route to route Burlington Northern-Bieber, Union
20 Pacific on the trackage rights to Houston, rather than
21 to haul it back north on the BP system to Portland
22 before heading south?

23 A You are saying from Klamath Falls, Oregon, to
24 Houston?

25 Q Sure.

1 A I don't know that -- I can't -- I think
2 considering all factors that I can't see that the
3 southern corridor rights would increase our
4 competitiveness on that business because of all the
5 factors that I mentioned earlier.

6 Q What about traffic moving from Southern
7 Pacific points in southern Oregon? Wouldn't that
8 traffic be handled more efficiently from southern Oregon
9 to Houston or through the New Orleans Gateway via a
10 junction over Stockton, SP/SF-Stockton, than Union
11 Pacific on your trackage rights route?

12 A Well, Mr. Wilson, we did not assume that SP
13 would enter into new short-haul junctions with us and I
14 did not make an analysis of the exact efficiency of that
15 traffic since not having a route precluded us from the
16 business.

17 Q Don't you think that Oregon shippers could
18 insist on Stockton routings for some of their traffic in
19 order to ensure a choice in the routing of those
20 shipments?

21 A The Oregon shippers that are captive to
22 Southern Pacific have not been able in the past, in my
23 view, to force open those sorts of competitive
24 gateways. We saw no reason why that would change and
25 new gateways would be created.

1 Q Well, doesn't Union Pacific often at shipper
2 request publish routes and rates over short-haul
3 junctions?

4 A I am not an expert on that. I suppose it
5 happens; I don't know how often.

6 Q Does Union Pacific publish routes and rates
7 for exclusively-served shippers over short-haul
8 junctions?

9 A I believe we do.

10 Q And isn't one of the reasons why Union Pacific
11 publishes these routes and rates via the short-haul
12 gateways to make sure that they get the traffic and that
13 the traffic doesn't move via another railroad or by
14 truck?

15 MR. LEVY: Your Honor, at this point we really
16 are entering the realm of policy judgments as to why
17 Union Pacific sets a rate or a route and I must object
18 on the grounds that it's outside the scope.

19 JUDGE HOPKINS: Mr. Wilson, what does this
20 have to do with this man's testimony?

21 MR. WILSON: This witness is testifying that
22 the traffic is not relevant to his traffic study and the
23 basis for that is that routes and rates won't be
24 available via Stockton and then the Union Pacific's
25 trackage rights.

1 I am testing the reasonableness of that
2 assumption.

3 JUDGE HOPKINS: I will allow a few more, but I
4 wouldn't go into it too extensively. We will be here
5 forever.

6 THE WITNESS: Would you repeat the question,
7 please?

8 BY MR. WILSON: (Resuming)

9 Q Isn't one of the reasons why Union Pacific
10 publishes rates and routes via short-haul gateways to
11 make sure that it moves the traffic and doesn't lose the
12 traffic to another rail route or to competing trucks?

13 MR. LEVY: As originally posed, that question
14 addressed exclusively-served shippers. Is that the
15 scope of the question now or have you changed the
16 question?

17 MR. WILSON: It does not address
18 exclusively-served shippers.

19 THE WITNESS: Well, Mr. Wilson, I'm not an
20 expert on this. I am not a pricing officer. But from
21 captive points or from locally-served points, which is
22 better terminology, I presume there are cases where
23 there is truck competition and also there may be
24 competition from nearby railroads as well.

25 BY MR. WILSON: (Resuming)

1 Q Well, don't you think those same factors would
2 affect SP/SF's pricing and ratemaking decisions on
3 traffic moving from --

4 A There has been no history of it having an
5 impact up until this point in time, and it would be
6 highly speculative for us to hypothesize that in the
7 future.

8 Q Okay, sir. Now your next step, Mr. Peterson,
9 was to develop with Mr. Molan the trackage rights
10 traffic study assumptions. Could you turn to your list
11 of traffic study assumptions, sir?

12 A Yes, sir.

13 Q Your second assumption on the list is that the
14 UP/MP consolidation is fully implemented. Does this
15 mean that you assume that the traffic impacts of the
16 Union Pacific consolidation will be fully realized
17 before the SP/SF consolidation is consummated?

18 A We assumed -- would you repeat that? You said
19 before the Santa Fe-Southern Pacific merger is
20 consummated?

21 Q Yes.

22 A We assumed in our study that the impact of our
23 merger was already being felt, and we went on to assume
24 that the upgrading of the Western Pacific line from Salt
25 Lake to northern California was completed and that

1 that -- we assumed that in our study.

2 Q Okay, sir. Well, you said that you assumed
3 that the impact was already being felt. Did you assume
4 that it would be felt, that the full impact of the Union
5 Pacific merger will be felt by the time the SP/SF merger
6 occurs?

7 A Well, we assumed it in our study. I can't
8 predict, you know, when your merger, if it will be
9 approved and when, but in our study, which assumed your
10 merger and our trackage rights, we also assumed that
11 yes, our merger was fully implemented, including Western
12 Pacific upgrading.

13 Q Okay. I just wanted to establish that.
14 Now assumption number three starts: "Neither
15 UP/MP nor Southern Pacific-Santa Fe will cancel joint
16 rates or close routes available today." What is the
17 reason why you believe that this is the most realistic
18 portrayal of how Union Pacific and SP/SF will compete
19 for traffic in the post-merger environment?

20 MR. LEVY: I object the question as
21 mischaracterizing the witness' -- mischaracterizing the
22 assumption. Maybe you ought to ask the question again.

23 THE WITNESS: If you would repeat it.

24 JUDGE HOPKINS: Repeat it.

25 BY MR. WILSON: (Resuming)

1 Q The assumption states: "Neither UP/MP nor
2 Southern Pacific-Santa Fe will cancel joint rates or
3 close routes available today."

4 A Yes.

5 Q I assume that the reason you are using that as
6 an assumption is because you believe that is the most
7 realistic portrayal of how UP and how SP/SF will compete
8 after the SP/SF merger. I'm asking you what is the
9 reason why you believe that.

10 MR. LEVY: If you believe it.

11 THE WITNESS: I don't believe what you just
12 indicated, Mr. Wilson, but the reason -- and Mr. Molan
13 may also have some views on this -- but my view here is
14 that I did not want Mr. Molan to be -- we wanted to make
15 an assumption that wouldn't preclude diversion, that
16 wouldn't cut off the opportunities for diversion by
17 hypothesizing route closures.

18 BY MR. WILSON: (Resuming)

19 Q Okay. And why was that?

20 A Because I wanted Mr. Molan to make his own
21 judgments, knowing what he knows about the current
22 environment, post-Staggers Act environment, about the
23 way in which that traffic would move, and not to be
24 constrained by an assumption of a route closure.

25 Q Okay. Now, sir, the last sentence in the

1 assumptions states: "The connecting carriers will agree
2 to establish new routes where they would not be
3 adversely affected." What is meant by the term
4 "adversely affected"?

5 A What we wanted to do here was to create some
6 new joint line routes as a result of the trackage
7 rights. In other words, the fact that let's say we have
8 an origin in Oklahoma on the Burlington Northern, and a
9 route via Avard to Santa Fe to Los Angeles. We may have
10 no route with the Burlington Northern today from
11 Oklahoma via Ft. Worth, thence a route which doesn't
12 exist today to Los Angeles through the southern
13 corridor.

14 We didn't want Mr. Molan and the sales people
15 and other traffic people that he brought into this to
16 not divert that traffic, not consider it for diversion
17 merely because a route does not exist today.

18 In that instance, Mr. Molan and his other
19 experts that he brought in looked at the movement,
20 determined that the BN would be as well off, could be as
21 well off at the Ft. Worth route as they are today at
22 Avard in terms of revenue, but, more importantly, in
23 terms of bottom line contribution.

24 And if that was the case, then the movement
25 was considered for diversion, and I think that I recall

1 that many moves were diverted like that.

2 Q Now if the Burlington Northern origin had been
3 relatively close to Ft. Worth so that if the new route
4 would have given the Burlington Northern less gross
5 revenue, is that what you mean by adversely affected, at
6 that point this assumption comes into play, and then
7 that route is assumed not to be available for
8 diversion?

9 A No, that's not true. What Mr. Molan did in
10 many of these cases, I recall in some specifics, he
11 looked at the point and went to our divisions people,
12 determined the revenue which the BN was getting, the
13 mileage, looked at a potential division and mileage,
14 also the profitability of the overall movement, and then
15 made a judgment.

16 Q Profitability of the overall movement. Is
17 this profitability to Burlington Northern, the
18 connecting line, or profitability to Union Pacific?

19 A Well, you can ask that to Mr. Molan, but I
20 think the level of profitability, you know, could have
21 an impact in his judgment.

22 Q Did the study assume that Union Pacific, after
23 it got the trackage rights, would participate in joint
24 rates and routes via Union Pacific's short haul
25 junctions?

1 A What do you mean by short haul junctions?

2 Q Routes and rates via Ft. Worth, for example,
3 instead of Memphis, if those two choices were
4 available.

5 A You can ask Mr. Molan about some individual
6 movements. We didn't get that specific in these
7 assumptions, but I recall diverted movements with
8 routings through north Texas junctions, through Houston,
9 to KCS-ICG, through Shreveport, et cetera, BN. So I
10 guess the answer is yes.

11 Q In the study did you assume that after Union
12 Pacific got its southern corridor trackage rights from
13 Houston to Los Angeles they had a single route, a single
14 line route there, that it would still agree to
15 competitive rates and service via El Paso on a joint
16 line basis with SP/SF?

17 A I think assumption 3 would apply to us as well
18 as Southern Pacific-Santa Fe.

19 Q Okay, so your answer is yes to the question?

20 A Would you repeat the question?

21 Q Because of assumption 3 you did assume that
22 Union Pacific would still agree to the competitive joint
23 routes and rates with SP/SF via El Paso, even after
24 Union Pacific has a single line route from Houston to
25 Los Angeles, right?

1 A Yes, that is correct.

2 Q Now moving on to assumption 8, Mr. Petersen,
3 where you discuss the fact that TOFC/COFC traffic will
4 not divert to a route for which transit time is in
5 excess of one business day longer. What is your
6 definition of a business day longer transit time for
7 TOFC/COFC traffic?

8 A Well, this was a judgment that was largely
9 made by Mr. Molan and I think you will want to ask him.
10 My understanding of his treatment is that, you know,
11 you're talking about a business day having TOFC traffic
12 available on the street for a business day.

13 Q Okay, sir. I'll ask Mr. Molan.

14 Your assumption 9 deals with the influence of
15 serving rail carriers at origin and at destination, does
16 it not?

17 A Yes.

18 Q Was this implemented in your study through the
19 use of a serving rail carrier matrix?

20 A I believe Mr. Molan developed a matrix as a
21 guide regarding these factors, but ultimately he
22 considered these factors on each group of movements
23 individually.

24 MR. WILSON: Your Honor, I would like at this
25 time to have marked as Exhibit SFSP-C-104 a copy of a

1 work paper from Union Pacific's trackage rights traffic
2 study that we obtained in discovery.

3 JUDGE HOPKINS: It will be marked for
4 identification.

5 (The document referred to
6 was marked Exhibit Number
7 SFSP-C-104 for
8 identification.)

9 BY MR. WILSON: (Resuming)

10 Q Mr. Peterson, was this the matrix used in the
11 traffic study to implement traffic study assumption
12 number 9?

13 A This matrix aided in implementing that
14 assumption.

15 Q Okay, sir. Now this matrix is a 25-cell
16 matrix dealing with the serving carrier at either origin
17 or destination and looking at line 1 in the fifth column
18 does that indicate that when traffic is from a UP local
19 point to an SP/SF closed point that the matrix would
20 indicate a zero percent diversion?

21 MR. LEVY: Your Honor, Mr. Peterson has
22 indicated that Mr. Nolan is the one who developed and
23 used this matrix. Maybe these questions would be better
24 put to him than to this witness.

25 JUDGE HOPKINS: Would they, Mr. Peterson?

1 THE WITNESS: I think they would be better put
2 to Mr. Molan. I consulted with him in developing this,
3 but he is the person that utilized this guide to make
4 the individual judgments.

5 MR. WILSON: Well, Your Honor, if the witness
6 consulted with Mr. Molan I just have a couple of quick
7 questions to understand how the matrix works.

8 JUDGE HOPKINS: Go ahead.

9 BY MR. WILSON: (Resuming)

10 Q Do you recall my question?

11 A Just repeat it quickly.

12 Q Looking in line 1 over at the fifth column,
13 does the zero indicate that where a movement is from a
14 Union Pacific local point and to an SP/SF local point or
15 a point that Union Pacific cannot get to that the matrix
16 would indicate a zero percent diversion?

17 A The matrix doesn't indicate a strict percent
18 diversion. Mr. Molan used this as an input and then
19 considered the factors for that movement, but if you are
20 moving from a UP local point in Texas, let's say via El
21 Paso, SP to SP closed point, that, you know, obviously
22 both carriers already have, are in the line haul routing
23 today.

24 Looking at assumption 3 as well as 9, there
25 would be no other routes available for that traffic at

1 any point further west on the trackage rights and,
2 therefore, unless there were some other factors that Mr.
3 Molan was aware of, you generally would anticipate no
4 diversion.

5 Q So the general rule was Union Pacific could
6 not get a longer haul route to a longer haul junction in
7 that type of traffic, is that right?

8 A If it involved creating a new junction which
9 would short haul, decrease the revenues, decrease the
10 profitability of the SP-Santa Fe, yes.

11 Q Okay, sir. And then looking at the fifth row
12 in the first column I believe you have the reverse
13 situation, a movement from an SP/SF local point to a
14 Union Pacific local point, and again the matrix is
15 indicating that this type of movement would generally be
16 treated as a zero percent diversion; is that right?

17 A This case is very similar to the one I just
18 described, except in the reverse direction.

19 Q Okay, sir. Now turning to assumption number
20 11, what is meant in this assumption by the term
21 "customer relations"?

22 A That's a general term. We have used that
23 consistently in our traffic studies over the years. It
24 is a term that Mr. Molan can describe in more detail,
25 but I believe it means the general relationship which a

1 railroad has with a customer. It can include a variety
2 of factors, what their relationship is. It could be
3 built up in a variety of ways due to switching service
4 and various issues that have come up over the years and
5 how they were handled -- you know, building up a
6 relationship.

7 Q I am interested in the variety of factors that
8 could be included in this term. Besides switching
9 service, what are the other factors that you would
10 include in this term?

11 A I assume it could include the relationship of
12 the local sales representative with the shipper. It
13 could include the overall company headquarters
14 relationship, the way in which a company resolves, say,
15 complaints or problems that develop in service, the way
16 in which claims are handled, the way in which pricing
17 issues are handled.

18 Q Would it also include the reliability of
19 service that is provided for the particular shipper?

20 A I suppose that could be an input to it, but
21 that service issue, we intended that to be treated
22 predominantly, you know, in other assumptions.

23 Q Was this factor applied to effect diversions
24 for certain specific accounts?

25 A I think Mr. Molan can answer that. I believe

1 it was. For certain movements it had more influence
2 than for other movements.

3 Q But you don't know which accounts were
4 diverted at higher rates because of this assumption and
5 which were diverted at lower rates because of this
6 assumption?

7 A No, I haven't analyzed that.

8 Q Now in your experience, sir, don't customer
9 relations change over time?

10 A They can change over a long period of time.

11 Q What are some of the reasons why customer
12 relations would change?

13 A Changes in the factors we discussed earlier.

14 Q And would you agree that the customer
15 relations are largely a factor of the rates and service
16 that a particular railroad can offer to the customer?

17 A I think what's intended here is not to be just
18 a repeat of the obviously very important factors that
19 you mentioned -- service and price -- but to add in,
20 particularly for carload movements, the added dimension
21 of relationships that go beyond just price and service.

22 Q Okay. Well, when a railroad gains the ability
23 to offer new routes and service to a shipper as a result
24 of the merger, is that the kind of thing that can change
25 that railroad's customer relations with its shippers?

1 A I think that's too general a question for me
2 to answer here. I think you could ask Mr. Molan about
3 individual movements and whether or not he would
4 anticipate a changed relationship because of, say, new
5 routes and services as a result of our trackage rights.
6 But I think this assumption here has more to do with, as
7 I mentioned earlier, the relationship, say, at an origin
8 point where you are doing switching.

9 You may be in daily contact with a shipper to
10 resolve complaints with your local sales representative
11 and, you know, sometimes there's better rapport built
12 up, sometimes it isn't. And it is those kinds of
13 factors that really are largely independent of the
14 trackage rights.

15 Q Okay, sir. Could you describe the procedure
16 used in the study to take into account the impact of the
17 SP/SF merger on Union Pacific without the trackage
18 rights before determining the impact of the Union
19 Pacific's trackage rights?

20 A As I understand what Mr. Molan did, and he's
21 really the man that did it, but in making his
22 evaluations he went through the movements
23 group-by-group. If he saw movements that obviously were
24 unaffected by trackage rights he made his judgments, but
25 when he came into movements that had a likelihood of

1 being affected by trackage rights, then he looked at
2 that movement, looked at all the factors, including its
3 initial routing, and made a judgment as to how it would
4 move after your merger with no conditions.

5 Then immediately after that made the next
6 judgment, which was how it would move with your merger
7 and with our trackage rights.

8 Q So in those cases, sir, Mr. Molan was locking
9 at his projected post-SP/SF merger diversion route as
10 his base case when he was deciding whether or not Union
11 Pacific's trackage rights would take the traffic, is
12 that right?

13 MR. LEVY: Your Honor, it's really silly for
14 us to have Mr. Peterson speculating here about what Mr.
15 Mola did. Mr. Molan will be up on the stand in a few
16 minutes. I suggest that these questions about what
17 steps Mr. Molan took are better directed to Mr. Molan.

18 JUDGE HOPKINS: Why can't we direct them to
19 Mr. Molan, Mr. Wilson?

20 MR. WILSON: Okay, Your Honor. It is a
21 procedural step in the study, and Mr. Peterson is the
22 procedural man, but counsel seems concerned about me
23 asking.

24 JUDGE HOPKINS: Well, he seems to think that
25 Mr. Molan can answer all questions, so maybe we ought to

1 wait for Mr. Molan on those.

2 MR. WILSON: Your Honor, I would like to have
3 another Union Pacific traffic study work paper marked as
4 an exhibit at this time. This would be Exhibit
5 SFSP-C-105.

6 JUDGE HOPKINS: It will be marked for
7 identification.

8 (The document referred to
9 was marked Exhibit Number
10 SFSP-C-105 for
11 identification.)

12 BY MR. WILSON: (Resuming)

13 Q Mr. Peterson, is this the map that identified
14 the two lines that you referred to at the bottom of page
15 9 and the top of page 10 of your testimony?

16 A Yes.

17 Q Thank you. That's all I wanted to know about
18 that.

19 At the bottom of page 12 you refer to the
20 highly competitive, fast-moving rail market in which we
21 operate today. In what way is the market fast-moving,
22 sir?

23 A I think the words "fast-moving" there were
24 meant to describe the post-Staggers Act environment that
25 we are in, the ability on deregulated traffic to compete

1 without going through the regulatory process.

2 Q And in what way is the markets in which Union
3 Pacific competes highly competitive? In what ways are
4 the markets in which Union Pacific competes highly
5 competitive?

6 A Many of the markets are highly competitive in
7 terms of service, price, other factors as well.

8 Q Are they competitive with truck service in
9 price as well as rail service in price?

10 A Obviously there is some truck competition, but
11 I think our primary competition for many movements is
12 with other rail carriers.

13 Q Sir, also at the bottom of page 12, in the
14 line just preceding that, you state that you expect the
15 Union Pacific would gain only 65 percent of the
16 projected diversion revenues in the first year. Why
17 would the diversions only be 65 percent instead of the
18 entire amount?

19 A Well, we thought this was a very high
20 percentage to be realized in one year, with two-thirds
21 of the gains within the first year, and then the balance
22 in just one additional year, and we thought this was,
23 that we would realize these gains sooner than our own
24 merger gains, but that they couldn't all be realized
25 within one year because it takes some amount of time to

1 build up a presence in corridors where we're not an
2 established competitor, such as Memphis to Los Angeles.

3 And there is -- there are other changes to be
4 implemented operationally, physically.

5 Q Okay. Well, what are the factors that limit
6 your ability to take 100 percent of the traffic?

7 A Well, as I said, the factors are just the fact
8 that it takes a certain amount of time to implement your
9 new services, to establish sales, sales forces, perhaps
10 in a place such as Phoenix where we don't have an
11 office, to become familiar with some of the markets, to
12 develop certain marketing programs -- that sort of
13 thing.

14 Q Okay. Now, sir, at the bottom of page 13 and
15 carrying on to the top of page 14 of your testimony you
16 refer to your procedure for indexing rail freight
17 revenues backward from 1983 to the study year, 1982.
18 This indexing was fairly general. My question is why
19 were only two indices used instead of more.

20 A By the two indices you mean TOFC and
21 non-TOFC?

22 Q Yes, sir.

23 A We really didn't consider using more. It was
24 not felt necessary because we really have a situation
25 where carload businesses is relatively flat, intermodal

1 growing at a pace near 20 percent, and once we made that
2 primary breakdown, felt breakdowns further than that
3 would not be really worth all the effort it would take
4 to calculate.

5 Q Well, the effect of using two indices was to
6 assume that carload business of grain, chemical and iron
7 and steel traffic, that those rates changed at the same
8 rate between 1982 and 1983, isn't that right?

9 A Well, we looked at -- you know, we considered
10 the flows in moving carload flows over the trackage
11 rights, Exhibit 12 there. You can see the large flows
12 of chemicals, large flows of grain, automotive, other
13 traffic, canned goods, boxcar business, and we had a
14 good cross-section of commodities in the diverted file.

15 And, therefore, when we, you know, when we
16 utilized a factor which included all those commodities
17 we felt we'd come back to the correct index.

18 Q Sir, how was QCS data used to create the
19 separate index for TOFC/COFC traffic?

20 A Commodities 44, 45, and 46 in the QCS reports
21 were utilized to -- for TOFC business.

22 Q And everything else was considered your all
23 other traffic to which your other index was applied; is
24 that right?

25 A The other commodities were used for the

1 carload index, yes.

2 MR. WILSON: Those are all the questions I
3 have, Your Honor. Thank you.

4 JUDGE HOPKINS: Mr. Levy?

5 MR. LEVY: No redirect, Your Honor.

6 JUDGE HOPKINS: You are excused, sir.

7 (The witness was excused.)

8 MR. LEVY: Your Honor, our next witness is Mr.
9 W. K. Nolan, who will testify at this point on the
10 verified statement that he submitted in support of the
11 trackage rights traffic study.

12 Why don't we move the admission of Mr.
13 Peterson's verified statement?

14 JUDGE HOPKINS: Any objection?

15 MR. WILSON: No objection, Your Honor, and I
16 move the admission of Exhibits SFSP-C-104 and
17 SFSP-C-105.

18 JUDGE HOPKINS: Any objection?

19 MR. LEVY: No.

20 JUDGE HOPKINS: They will be received in
21 evidence.

22 (The documents previously
23 marked Exhibit Numbers
24 SFSP-C-104 and SFSP-C-105
25 for identification were

received in evidence.)

Whereupon,

W. K. MOLAN

was called as a witness and, having been first duly sworn by the Administrative Law Judge, took the stand and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEVY:

Q Good morning, Mr. Molan. Would you please state your name and business address for the record?

A W. K. Molan, Union Pacific System, Omaha, Nebraska.

Q Mr. Molan, did you prepare a verified statement that was submitted in support of Union Pacific's trackage rights application in the volume labeled UP/MP-22?

A I did.

Q Is that statement true and correct to the best of your knowledge and belief?

A It is.

MR. LEVY: Your Honor, Mr. Molan is available for cross examination.

JUDGE HOPKINS: Mr. Wilson?

CROSS EXAMINATION

BY MR. WILSON:

ALDERSON REPORTING COMPANY, INC.

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

0002 0032

1 Q Good morning, Mr. Molan. Dennis Wilson. It's
2 nice to see you again.

3 Mr. Molan, Mr. Peterson left to you a question
4 about your application of assumption number 8. Could
5 you turn to the list of assumptions used in the traffic
6 study, sir?

7 A Yes.

8 Q My first question is what is your definition
9 of "business day longer service for TOFC/COFC service"?

10 A Well, I think Dick started to answer that when
11 he said a business day -- a business day, when you're
12 talking about putting product on the street, if the
13 train would arrive at noon it obviously is not on the
14 street that morning. So by the time you get it off the
15 rail car, off the flatcar, get it over to a dock or get
16 it to a customer's dock you basically have lost a day.

17 So if it gets in at 2:00 in the afternoon, you
18 have lost another day. But if your competitor is
19 getting it at 10:00 and you are getting it at noon, you
20 basically are the same. If your competitor is getting
21 it at 3:00 a.m. and you are getting it at 10:00 a.m.,
22 you've lost a half a day.

23 So if you get it in at 4:00 in the afternoon
24 obviously you have lost a total day.

25 Q Okay, sir, thank you.

1 Now in applying assumption number 8 did you
2 assign higher diversion percentages where the difference
3 in route was a faster, more efficient route?

4 A The reason I'm really thinking about that is
5 the over-the-road time is important, but when you really
6 come down to time-sensitive freight it is door-to-door.
7 It's not ramp-to-ramp. Ramp-to-ramp, of course, is a
8 key ingredient, but if you give a noon cutoff at the
9 origin and get there at 5:00 the next morning, or if you
10 give a 6:00 p.m. or 8:00 p.m. cutoff at origin and get
11 there at 6:00 the next morning, you basically have lost
12 a half a day at the origin.

13 So it's door-to-door, rather than
14 ramp-to-ramp. So you have to look at all of them before
15 I can answer that question.

16 Q Yes, sir, but when you do look at all of them,
17 isn't it true that you generally gave your higher
18 diversion percentages to your faster transit time, given
19 comparable origin departure and destination arrival
20 times?

21 A I'm not sure whether you would assign a higher
22 percentage or the same. If you're totally competitive,
23 you're competitive. And two hours, if you both get in
24 before 6:00 in the morning, the fact that one gets in at
25 1:00 a.m. and one gets in at 4:00 a.m., you're the

1 same. Three hours wouldn't make that much difference.

2 Q Okay, sir. Now moving to assumption 11, the
3 customer relations assumption that I discussed with Mr.
4 Peterson, in applying this assumption do you recall
5 applying it to specific customer accounts?

6 A Yes.

7 Q Which accounts were assigned higher diversions
8 as a result of --

9 A Mr. Wilson, that question is totally
10 impossible. You could identify it, however, by going
11 back in our work paper and looking at the codes on the
12 righthand side. There is a code in there for customer
13 relationships you can pick up, but I can't sit here and
14 remember everything I diverted in the study.

15 Q Okay, sir. Now what about accounts that were
16 assigned lower diversions? Were some accounts assigned
17 lower diversions as a result of customer relations?

18 A Yes.

19 Q Can that be identified in your work papers or
20 do you know any of that information here this morning?

21 A Well, I thought about that when you were
22 talking to Mr. Peterson up here. I can't recall in
23 looking at the codes if it would specifically show a bad
24 relationship. I guess if you would see a low percentage
25 from a UP-switched industry and it said relationship, I

1 guess you couldn't make the supposition at that point
2 that that was a bad relationship.

3 I don't recall very many of those, but I don't
4 think beyond the code of just relationship, I don't
5 think we went to define that. I'd have to look at each
6 one individually of those relationship codes.

7 2 Okay, sir. Now in interpreting assumption 11,
8 which factors did you consider to go into the term
9 "customer relations"?

10 A Basically everything Dick or Mr. Peterson told
11 you when he was up here, but there's one real key
12 ingredient in today's market, and that is response
13 time. Either a problem or an opportunity is presented
14 to you by one of your customers, and the early bird gets
15 the worm.

16 The guy who continually drags his feet either
17 on an opportunity or a problem is probably one of the
18 quickest ways to self-destruct in today's market. You
19 have to be responsive in order to build up this
20 relationship. Historic relationships pre-Staggers were
21 much easier quantified than they are today.
22 Relationships tend to fragment very quickly if you are
23 not responsive.

24 2 Do they tend to change much more quickly today
25 than they did before the Staggers Act?

1 A The opportunity for change in both directions
2 is there.

3 Q Now, sir, in your verified statement at page 8
4 you describe your general process for evaluating
5 movements. You appear to state that you consider the
6 origin and destination rail-serving carrier information
7 only where you could not make your decision on the basis
8 of either circuitry, transit time, or shipper relations.

9 Is that a correct statement of your thought
10 process when you were evaluating the movement, sir?

11 A I got lost in what you were talking about
12 there. Would you restate that?

13 Q Yes, sir. You appear to me to state that you
14 considered origin and destination rail-serving carrier
15 information only where you could not make your decision
16 of diversion/non-diversion on the basis of the other
17 factors listed here -- shipper relations, circuitry, and
18 transit time.

19 Now that's what it appears to say, and my
20 question is is that a correct statement of your thought
21 process when you were looking at these movements?

22 A In general terms, yes.

23 MR. WILSON: Those are all the questions I
24 have. Thank you.

25 JUDGE HOPKINS: Anything further?

1 MR. LEVY: No redirect.

2 JUDGE HOPKINS: You might as well stay. Do
3 you want to move the admission of his testimony?

4 MR. LEVY: Yes, I move the admission of Mr.
5 Molan's verified statement.

6 JUDGE HOPKINS: It will be received in
7 evidence.

8 Whereupon,

9 HAROLD J. CERVENY

10 was called as a witness and, having been duly sworn by
11 the Administrative Law Judge, took the stand and was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. LEVY:

15 Q Mr. Molan, is the verified statement of W. K.
16 Molan and Harold J. Cerveney which was submitted in
17 UP/EP-28 true and correct to the best of your knowledge
18 and belief?

19 A (WITNESS MOLAN) It is.

20 Q Mr. Cerveney, would you identify yourself and
21 your business address for the record?

22 A (WITNESS CERVENY) I am Harold J. Cerveney,
23 1416 Dodge Street, Omaha, Union Pacific System.

24 Q And is the verified statement which you
25 submitted in conjunction with Mr. Molan true and correct

1 to the best of your knowledge and belief?

2 A (WITNESS CERVENY) Yes, sir.

3 MR. LEVY: Your Honor, the witnesses are
4 available for cross examination.

5 JUDGE HOPKINS: Mr. Wilson.

6 MR. WILSON: I will try to direct my questions
7 to one or the other of the witnesses.

8 Your Honor, I would like to start out my cross
9 examination by having a page from the Union Pacific work
10 papers marked as Exhibit SFSP-C-106. This is the first
11 page of a long document entitled "Union Pacific Options,
12 Santa Fe-Southern Pacific Merger", which we obtained in
13 discovery.

14 JUDGE HOPKINS: It will be marked for
15 identification.

16 (The document referred to
17 was marked Exhibit Number
18 SFSP-C-106 for
19 identification.)

20 CROSS EXAMINATION

21 BY MR. WILSON:

22 Q Mr. Molan, did you participate in the
23 marketing and sales department study of the impact of
24 the SP/FS merger upon Union Pacific, whose results are
25 reported in this memorandum to Mr. Kenefick?

1 A (WITNESS MOLAN) I don't believe I did.
2 Unless this is the trackage rights study or the
3 restatement, I did not. I don't ever recall seeing this
4 particular memorandum. In fact, I'm trying to read it
5 now to see if I have actually seen it or seen excerpts
6 of it.

7 Q This is the study that was prepared by Union
8 Pacific's marketing and sales department in May of
9 1984. Are you aware of the study that Union Pacific
10 prepared at that time?

11 MR. LEVY: Your Honor, I think Mr. Wilson has
12 mischaracterized the document. This to me seems like a
13 transmittal memorandum, the underlying memorandum not
14 included. It is not a study per se.

15 JUDGE HOPKINS: Well, the memorandum. Why
16 don't we start with the memorandum?

17 MR. WILSON: The actual underlying memorandum
18 is included in the study itself, Your Honor, and I
19 believe the document, or portions of the document, will
20 be introduced in the cross examination of Mr. Benefick
21 and Mr. Craig. I am only interested right now in the
22 study results and in asking each of these gentlemen
23 their participation in the study.

24 JUDGE HOPKINS: Go ahead, as long as you
25 explain to them what it is you are particularly

1 interested in.

2 BY MR. WILSON: (Resuming)

3 Q I gather that you did not participate in this
4 study, Mr. Molan, is that right?

5 A (WITNESS MOLAN) That's right.

6 Q Mr. Cerveny, did you participate in the
7 study?

8 A (WITNESS CERVENY) I participated in providing
9 some numbers probably.

10 Q To what extent are you aware of the study, Mr.
11 Cerveny?

12 A (WITNESS CERVENY) I am not aware of it any
13 more than I know it was done.

14 Q Are you aware of the purpose of the study, Mr.
15 Cerveny?

16 A (WITNESS CERVENY) No, sir.

17 Q Are you aware of the purpose of the study, Mr.
18 Molan?

19 A (WITNESS MOLAN) I'm not aware of the study.

20 JUDGE HOPKINS: So you don't know the
21 purpose.

22 WITNESS MOLAN: Well, yes, sir.

23 BY MR. WILSON: (Resuming)

24 Q This study to Union Pacific's chief executive
25 officer states in the cover memorandum that it found a

1 direct quantifiable impact upon Union Pacific from the
2 SP/SF merger would be \$89 million in 1982 dollars -- \$89
3 million in gross revenues annually compared to the \$89.8
4 million which was projected in applicant's rail traffic
5 diversion study.

6 Mr. Molan, as a marketing officer, sir, don't
7 you think that the closeness of the study results
8 confirms the accuracy of both the applicants' rail study
9 and Union Pacific's internal study to Mr. Kenefick?

10 MR. LEVY: I object to the question. Mr.
11 Molan has already indicated he doesn't know anything
12 about the study, what its assumptions were, what it was
13 intended to address, what its purpose was. Mr. Wilson
14 here is just testifying for the record, using Mr. Molan
15 as a foil.

16 I suggest that it is inappropriate.

17 MR. WILSON: I'd like to know Mr. Molan's
18 opinion as a marketing officer, Your Honor. When you
19 have two marketing studies get such close results, I
20 assume that's a little unusual.

21 JUDGE HOPKINS: Let's assume that a marketing
22 study -- on that basis. Go ahead.

23 BY MR. WILSON: (Resuming)

24 Q Now, Mr. Molan, when you have two marketing
25 studies on the impact of a transaction get results that

1 are so close together, \$89 million and \$89.8 million,
2 does that indicate to you that both studies are doing a
3 pretty good job of measuring the impact of the
4 consolidation?

5 (WITNESS MOLAN) No, not really. At least I
6 can't answer. Number one, I haven't seen it. Two, if
7 you will show me both studies, show me really what went
8 into them, what was the purpose of the two, what
9 methodology was used, then I might be able to give you
10 an intelligent answer.

11 But, you know, it's very easy for me if my
12 boss asked me for a report, if I know one of my
13 contemporaries has already put in a report and I know
14 what his bottom line is, it's very easy for me to come
15 up with a similar type report. I don't know how they
16 were done, so I can't really answer that.

17) Okay, sir.

18 MR. WILSON: Your Honor, I'd like to have
19 another document marked as an exhibit, please. Your
20 Honor, this is a document from the work papers
21 underlying the Union Pacific's traffic loss traffic
22 study that we obtained in discovery.

23 JUDGE HOPKINS: It will be marked for
24 identification as Exhibit SFSP-C-107.

25 (The document referred to

1 was marked Exhibit Number
2 SESP-C-107 for
3 identification.)

4 BY MR. WILSON: (Resuming)

5 Q Mr. Molan, does this memorandum state all of
6 the rule changes which Union Pacific made to applicants'
7 traffic diversion study?

8 A (WITNESS MOLAN) I guess you better ask Mr.
9 Cerveny that because this is the first time I've seen
10 the document. I don't know whether he has seen it or
11 not.

12 Q Okay. So you don't know, is that it?

13 A (WITNESS MOLAN) I just said I have never read
14 it, Mr. Wilson.

15 Q Mr. Cerveny, does this memorandum state all of
16 the rule changes which Union Pacific made to applicants'
17 traffic diversion study?

18 A (WITNESS CERVENY) This is the changes we made
19 to do our restatement of parts of your application, yes,
20 sir.

21 Q Thank you. I just wanted to identify that.

22 Now at the outset of the study you identified
23 some bad data problems that you discuss on page 22 of
24 your testimony. Mr. Molan, do you know what the total
25 gross freight revenues were for all of the United States

1 railroads in 1982?

2 A (WITNESS MOLAN) No.

3 Q Do you have an idea of the range of that
4 figure?

5 A (WITNESS MOLAN) No, not really.

6 Q Mr. Cerveny, do you have an idea?

7 A (WITNESS CERVENY) No, sir.

8 Q Mr. Cerveny, do you know how many carloads on
9 an expanded basis were associated with this \$20 million
10 figure?

11 A (WITNESS CERVENY) Yes, sir. The \$20 million
12 figure which is a portion of the record that we found
13 that had incomplete routing was 6,427 carloads.

14 Q Okay, sir. Now do you know whether this is
15 anything other than a subtotal of the bad data that was
16 reported in Mr. Swain's testimony?

17 A (WITNESS CERVENY) I'm sorry, sir?

18 Q Do you know whether this reference is to
19 anything other than a subtotal of the bad data that Mr.
20 Swain reported in his testimony?

21 A (WITNESS CERVENY) I don't know what that
22 subtotal was in his figures.

23 Q But you do say this is 6,400 cars. Do you
24 know how many carloads were involved in the traffic
25 study on an expanded basis?

1 A (WITNESS CERVENY) I believe I have seen the
2 figure, but I don't recall.

3 Q Would it be in the neighborhood of 18
4 million?

5 A (WITNESS CERVENY) That might have been the
6 number.

7 Q I hope you gentlemen aren't offended if I
8 accord you the same respect that I accorded Mr. Reyff.
9 I have no more questions.

10 JUDGE HOPKINS: Thank you.

11 (The witnesses were excused.)

12 MR. LEVY: Your Honor, I would like to move
13 the admission of Mr. Molan and Mr. Cerveney's joint
14 statement.

15 JUDGE HOPKINS: Any objection? It will be
16 received in evidence.

17 MR. WILSON: Your Honor, I would like to move
18 the admission of Exhibit SFSP-C-106 and SFSP-C-107.

19 JUDGE HOPKINS: Any objection?

20 MR. LEVY: Your Honor, I am not sure that I
21 can acquiesce in the admission of SFSP-C-106. The
22 witnesses weren't familiar with it. We'll acknowledge
23 that it is a paper from the Union Pacific's work papers,
24 but as far as establishing any adequate foundation for
25 its admission, I don't think that's been done today.

1 I would suggest that if Mr. Wilson intends to
2 raise questions about this with Mr. Kenefick or Mr.
3 Craig that its admission be deferred until that time.

4 MR. WILSON: I actually think I agree with
5 counsel on that point. I think probably we should defer
6 a ruling on SFSP --

7 JUDGE HOPKINS: We will hold that on 106
8 pending Mr. Kenefick's testimony.

9 MR. WILSON: I do, however, move the admission
10 of SFSP-C-107.

11 JUDGE HOPKINS: Any objection?

12 MR. LEVY: No.

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

15 (The document previously
16 marked Exhibit Number
17 SFSP-C-107 for
18 identification was received
19 in evidence.)

20 JUDGE HOPKINS: Is that it for today,
21 gentlemen? Thank you.

22 We'll be in recess until 9:00 on Tuesday.

23 (Whereupon, at 10:00 o'clock a.m., the hearing
24 in the above-entitled matter recessed, to reconvene at
25 9:00 o'clock a.m., Tuesday, January 22, 1985.)