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 :

- x

Hearing Room A

12th & Constitution, N.W.

Washington, D.C.

Wednesday, January 23, 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

APPEARANCES AS HERETOFORE NOTED, AND IN ADDITION:

On behalf of Kansas City Southern:

ERIC FISHMAN, Esq.

Sullivan & Worcester

One Post Office Square

Boston, Mass. 02109

C O N T E N T S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Donald A. Shum				
By Mr. Roach	8130			
By Mr. Wilson		8131		
By Mr. Ratner		8187		
By Ms. Reed		8195		
By Mr. Vincent MacKenzie		8205		
By Mr. Roach			8206	
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William J. Holtman				
By Mr. Prettyman	8210			
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By Mr. Vincent MacKenzie		8281		
By Mr. Stephenson				8284
Adolph H. (Bob) Nance				
By Mr. Sanford	8289			
By Mr. Stephenson		8290		

E X H I B I T S

Exhibit No.	IDENTIFIED	RECEIVED
SFSP-C-113	8211	8288
SFSP-C-114	8212	8288
SFSP-C-115	8212	8288
SFSP-C-116	8213	8288

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P R O C E E D I N G S

JUDGE HOPKINS: On the record.

MR. ROACH: UP calls Donald A. Shum.

MR. FISHMAN: Your Honor, I'd like to enter an appearance on behalf of KCS. My name is Eric Fishman from Sullivan and Worcester.

(Witness sworn.)

Whereupon,

DONALD A. SHUM

was called as a witness by counsel for Union Pacific-Missouri Pacific Railroad and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ROACH:

Q What is your name, sir?

A My name is Donald A. Shum.

Q And what is your position?

A I'm Vice President - Intermodal for Union Pacific Railroad and Missouri Pacific Railroad.

Q I have placed before you a 15-page statement with a verification page, dated November 16, 1984. Is that your verified statement in this proceeding?

A Yes, it is.

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

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A Yes, it is.

MR. ROACH: Your Honor, the witness is available for cross-examination.

JUDGE HOPKINS: Thank you.

Mr. Wilson.

CROSS EXAMINATION

BY MR. WILSON:

Q Good morning, Mr. Shum. My name is Dennis Wilson. I'm representing the Applicants in this proceeding.

A Good morning.

Q Sir, on page 3 of your verified statement you discuss the major inroads which motor carriers have made in the various traffic segments that once had moved predominantly by railroads. You then list specific types of traffic to and from California that were lost to motor carrier competition.

You begin your list with outbound shipments of perishables. Sir, has California perishables traffic been lost to trucks to the point where today trucks are the predominant carriers of perishable traffic?

A Yes.

Q Is this true even in the longer haul perishable traffic markets, would you say?

A It depends. The trucks made their major

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inroads against the boxcar, mechanical reefer type traffic under regulation. Since deregulation and the advent of Plan 3 trailer traffic, the railroads have regained a considerable portion of that market and that particular commodity.

Q About what percentage of perishable traffic from California to official territory moves by truck today, would you say?

A I am not certain of the absolute percentage, but the New York area, the East, I would say probably 80 to 90 percent moves rail today, rail TOFC.

Q To official territory in general, would you say that it's more like 50 to 60 percent moves by truck?

A When you say "official," you mean Chicago?

Q Points east of Chicago, Chicago and points east.

A I would say the rails handle almost 80 to 90 percent of that traffic.

Q To Chicago?

A Beyond Chicago.

Q What about perishable traffic from California to the Scutheast? What percentage of that moves by truck today?

A I'm not familiar with that exactly.

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Q Would you say over half of that traffic moves by truck?

A It would be my perception that the rails would have a fairly decent percentage of the long haul market, whether that is to the East or to the Southeast.

Q Are you aware, sir, of Sunkist's present program to shift the preponderance of its business from rail transportation to truck transportation?

A No.

Q Are you aware of any program by San Joaquin Valley perishable shippers to shift their business from rail to truck?

A No.

Q Next you list outbound shipments of California canned goods. About what percentage of canned goods shipments from California to the Midwest moves by truck today?

A I'm not certain of the exact percentage.

Q What range would you estimate?

A I'd say 30, 40 percent.

Q Have motor carriers made major moves into rail transportation in the movement of manufactured goods moving transcontinentally outbound from California?

A I'm not aware that there is an appreciable amount of manufactured goods moving outbound from

California. Most of that commodities are canned goods, wine, perishables, nuts, perishable type commodities.

Q Have motor carriers made major inroads into rail transportation of lumber shipments from northern California?

A No, I don't think so.

Q About what share of transcontinental lumber traffic from northern California do you think motor carriers handle?

A I'm not certain of the exact percentage.

Q Now, turning to shipments into California, you say that motor carriers have made major inroads into inbound shipments of manufactured goods. What are the various commodities that you were referring to by the term "manufactured goods"?

A I would say most any of the manufactured articles that lend themselves to truck: smaller lot shipments, the LTL market, various consumer products.

Q You say manufactured articles that lend themselves to truck. Would that be anything that could be as much as a truckload size shipment of freight?

A Yes, sir.

Q About what percentage of the manufactured goods traffic inbound to California do you feel that trucks have today?

A I would not know exactly the percentage. I would guess 50, 60 percent.

Q Has there been other transcontinental traffic inbound to California where motor carriers have made major inroads into the railroads' share of traffic?

A Not that I'm aware of.

Q Now, sir, in line 8 of page 3 you refer to the railroad response to these inroads by motor carriers, and you use the term "meet the challenge of motor carriers." Does that mean meet the competition from the motor carriers?

A Yes.

Q In competing against motor carriers for traffic moving to and from California, is the target a single trucking company or a group of large trucking companies?

A It is the motor carrier industry as a whole, not any individual motor carrier.

Q Okay. Does Union Pacific target trucking companies that have average length of haul greater than 1,000 miles, for example?

A We don't target specifically in that fashion. We do target the long haul motor carrier traffic, because that is more susceptible to rail competition.

Q Does Union Pacific distinguish its competition

against trucking companies on the basis of whether the trucking companies are regular route common carriers, irregular route common carriers, exempt truckers, or truckers in private fleet?

A No.

Q Has Union Pacific experienced greater level of competition from any one of those groups of trucking companies that I just mentioned?

A I would say that the owner-operator segment has probably been one of the major competitors, as has the long haul over the road motor carrier.

Q What has made the owner-operators a major competitor as distinct from other trucking companies?

A The flexibility of price that they charge, their overhead, the fact that they're in business for themselves, and the type of investment, capital investment, and the margins that are available to them are at their discretion.

Q So do the owner-operators generally charge lower rates than some of the other trucking companies against which Union Pacific competes?

A I would say for the most part, yes.

Q Which types of trucks are the primary competitors for perishables traffic moving from California today?

A I would say owner-operators that have mechanical reefer trailers.

Q Okay. And why are they the primary competitors?

A That has been one of the major segments that they have targeted, is the perishable traffic.

Q Well, I understand that they have targeted that, but why have they been more difficult competitors for Union Pacific than other kinds of --

A In the perishable market?

Q Yes, sir.

A Because of the number of owner-operators in that particular market, and the number of pieces of equipment they have available, and the prices they charge.

Q You would say there are a large number of owner-operators competing for perishable traffic, with quite a bit of equipment available to handle perishable traffic, is that right?

A Well, each owner-operator does not have considerable equipment, but each operator has his own rig and trailer.

Q I understand that, but in the aggregate is it your testimony that there are a large number of owner-operators available competing for perishable

traffic?

A Yes.

Q Which types of trucks are the primary competitors for transcontinental manufactured goods moving inbound to California?

A Most of the major motor carriers, such as Consolidated Freightway, Yellow, Roadway, any of the major motor carriers, as well as the owner-operators, owner-operators returning to the West Coast.

Q Do the major motor carriers that you referred to have average length of haul in excess of 1,000 miles?

A I am not certain as to their average length of haul.

Q In terms of the traffic that you compete against them for primarily, is it generally that type of traffic, around 1,000 miles or greater in distance?

A We compete with motor carriers for any length of haul.

Q Sir, about two-thirds of the way down page 3 you refer to rail marketing plans that involve shipper ownership of trailers in return for lower TOFC freight rates. What type of trucking companies is this plan directed against?

A The Plan 3 type option. This is basically a

program initiated by the Santa Fe wherein they would provide a ramp to ramp price and owners of refrigerated trailers would place the refrigerated trailers on the rail for a ramp to ramp movement, and they would sell the service to the consumer and the railroad would move it from a point, ramp to ramp point, say like from Fresno to Chicago over the rails. And that would be their service option, ramp to ramp.

Q Didn't the shippers request this option so that they could have an additional option to truck service for their perishable traffic?

A The railroads, specifically the Santa Fe, initiated this option so that we could, the rail industry could, recapture truck traffic that was moving on the highway.

Q Okay, sir. Now, what specific types of trucking companies was this program targeted against, referring back to the types of trucking companies we were discussing earlier?

A Well, it was targeted against any owner-operator or any long haul motor carrier that was handling perishables out of California.

Q Now, what about the marketing plan of pricing rail TOFC service on the basis of ramp to ramp rates where the shippers furnished the drayage or arranged for

the drayage on their own? Was this plan directed against specific types of motor carriers?

A Yes.

Q What types of motor carriers was this plan directed against?

A Here again, it's directed against the entire motor carrier industry or the owner-operator segment.

Q Now, on page 3 you also referred to the fact that some motor carriers have been utilizing rail TOFC service themselves. For traffic moving to and from California, how extensive has this practice been?

A Well, as I state in my testimony, Mr. Cena of the Santa Fe stated that the Santa Fe has under contract some 51 motor carriers and he considers them partners in putting traffic on the rails in lieu of over the road. The Union Pacific likewise has in excess of 20 motor carriers who have contractual arrangements with our company to use the rail TOFC option in lieu of the road service.

Q How much of the Union Pacific's TOFC traffic is this motor carrier traffic?

A At this point in time, it represents approximately three percent of our total traffic base and is growing.

Q Now, to compete for this traffic the railroad

actually has to compete against the motor carrier purchaser itself, doesn't it, and convince the motor carrier that it is better to use rail TOFC service than to handle the freight itself?

A Not necessarily. What we have found in the rail industry is that the motor carrier industry as a whole is coming to us and soliciting us to establish a contractual arrangement for this over the road service, as they found it more efficient and economical to utilize the rail TOFC option.

Q But a railroad could only handle this business as long as it could offer lower rates than truck costs and also reasonably as good service as trucks can offer, isn't that right?

A That's right.

Q And if a railroad were to raise its rates above truck costs, then this type of business would leave rail TOFC and return to the trucks, isn't that right?

A Theoretically, yes.

Q Now, sir, at the top of page 4 you refer to the greatly enhanced flexibility of freight consolidators. First, could you explain what it is that freight consolidators do?

A Well, a freight consolidator consists of three

segments: a shipper association which is made up of industrial shippers formed together to receive benefits from their combining their traffic volume; a shipper's agent, which is an entity which solicits individual shippers that put that traffic on the railroad; and a freight forwarder, which is basically an LTL consolidator and is in Part 4 of the ICC Act.

These consolidators basically enter into volume contracts with the railroads, solicit truck traffic from industrial concerns, and utilize the rail services in a ramp to ramp mode. And they provide the pickup at the origin and delivery at destination and furnish the customer with one bill of lading and one price.

Q And who is the customer?

A The customer can be anyone, any manufacturer of goods. He can be a perishable shipper out of California. Anyone that has a trailer load of traffic.

Q And he's the actual party who is trying to ship the product from origin to destination?

A Yes, sir.

Q So the freight consolidators really aggregate the freight of various shippers and work with the railroads and trucks to try to get the lowest rate to move the freight, is that right?

A Aggregate the freight is not necessarily correct. Most of that traffic is full truckload to start with. They don't consolidate small shipments to make -- the primary function is full trailer load lots, but otherwise that is correct.

Q Now, returning to your sentence at the top of page 4, what is the greatly enhanced flexibility that you are referring to in this passage?

A When the rail industry first went into this business providing ramp to ramp, we had a great deal of restrictions: two or more commodities, two trailer shift tenders, the consolidator must own the trailers and the flatcars, and it was called Plan 4. Under the new contractual arrangements we are dealing with, no commodity mix, single trailers, and so they have complete flexibility on the commodity they ship and there is no mixture requirements and no ownership requirements. They can use the railroad trailers, they can have their own trailers, whatever program meets their specific needs.

Q Can freight consolidators compete for and handle any type of commodity today?

A Yes.

Q Do freight consolidators use truck to transport some of the traffic they have?

A Some of the consolidators have their own truck line. Some have local drayage firms that do the drayage at the end or at the beginning of a rail haul. But their use of truck is extremely limited, simply because, like the motor carrier industry, the economics aren't there.

Q Do freight consolidators threaten to use trucks when they negotiate TOFC freight rates with the Union Pacific?

A No, they threaten to use other rail competition.

Q You're not aware of any instance where a freight consolidator has threatened to use truck?

A No.

Q Would you say that a freight consolidator that is using rail TOFC service to and from California today is fully competitive with trucking companies, even for full truckload freight moving across the country?

A They are more than competitive.

Q Now, Mr. Shum, on page 4 you also state that TOFC marketing programs have broadened the availability and attractiveness of TOFC to include private fleet shippers. What kinds of commodities shipped by private shippers have been attractive to rail TOFC competition as a result of the programs you describe in your

testimony?

A The primary market would be the perishable market out of California. These are all private, refrigerator type trailers, and they're used extensively for the perishable shipments that move Plan 3 from California to the East, Midwest and South. Other than that, many consolidators purchase their own equipment, where they may want 45-foot equipment, and the rail industry allows each of them an allowance when they use other than rail trailers. So there is some economic benefit to having your own trailers.

Q Are there any other commodities that rail TOFC service has attracted away from shippers who own their own equipment that you're aware of?

A I didn't understand the question.

Q Are there any other commodities that rail TOFC service has attracted away from shippers who are owning their own equipment?

A Attracted away from shippers?

Q Well, away from private fleet shippers, for example.

A No, as I understand the question.

Q You're really not referring to private fleet shippers here in this sentence, are you? You are more referring to freight consolidators who own their own

trailers. You aren't referring to companies that have their own trucking service, is that right?

A Yes, I am referring to that segment of the consolidator market.

Q On page 4 you also refer to the Commission decision that deregulated perishable traffic and TOFC/COFC traffic. Are you aware that the primary reason for deregulating TOFC traffic was that this traffic was found to be highly competitive with motor carrier service?

A Yes.

Q Would you agree that this traffic is today still highly competitive with motor carrier service?

A I would agree that that is the case, but I would also comment that there is a unique competitiveness between the rail segment, and in my opinion deregulation was instituted to foster inter- and intra- competition.

Q You don't believe that TOFC rates and services should be reregulated by the ICC, do you?

A No, sir.

Q Why not?

A Because it has given us the ability to compete more effectively for all segments of traffic.

Q And this would be to compete against motor

carriers as well as against other railroads who are providing TOFC service?

A That's true.

Q Now, since deregulation how long does it take Union Pacific to respond to a trucking company's rate change on say canned goods traffic moving from northern California to Chicago?

A We don't respond to those kinds of changes, simply because the competition that is more prevalent is the rail segment, and we feel that our rail TOFC rates are below the truck rates today. So we would not necessarily make any adjustment if there was an adjustment in the truck rate.

Q Don't you get weekly or regular reports on what the truck rates are for canned goods traffic from northern California to Chicago, for example?

A Yes, we monitor truck movements and truck rates extensively.

Q How do you do that? Is it on a daily basis?

A No. We do it in a multitude of ways. We have a competitive research section in our marketing and sales department. We have sent teams out on the highway to ascertain at various truck stops what the commodity that's moving and the price and the type of truck and so forth.

And then we use all of the existing data that is available to anyone to monitor what our competition is.

Q Now, you say existing data available to anyone. Is this checking directly with shippers to see what the truck rates are?

A Yes, we do that.

Q Do you have a regular program that does check on --

A Sure. That's part of the function of our sales department.

Q And you described this as an extensive program that Union Pacific has, is that right?

A I would say it's an extensive program that every railroad has.

Q Well, why does Union Pacific have this extensive program to monitor truck rates?

A We not only monitor truck rates, but we monitor competitive rail rates, to understand whether we're competitive and where we're not competitive and to understand the marketplace.

Q Okay, sir. But getting back to my question, which is really focusing on the time of concurrence -- I'll change it. How long does it take the Union Pacific to get a rate concurrence, to put in a new rate for

canned goods traffic from southern California to Chicago?

A Well, we are deregulated. There isn't any concurrence required other than -- if we use the C&NW Railroad to Chicago, we could telephone the C&NW and do it in a matter of minutes.

Q Isn't that the way you normally compete for traffic from northern California to Chicago, by using the C&NW?

A Yes.

Q In fact, don't you use the C&NW for all of your rail TOFC competition out of California that goes over the Chicago gateway?

A That's true.

Q Does the Union Pacific also have a rapid concurrence arrangement with Conrail for traffic moving to and from the Northeast?

A The procedure would be that we would probably wire our connecting railroads, whoever they may be, and ask for concurrence, and the time frame involved would vary with the complexity of the inquiry, to what they had to do internally to affect a concurrence or to understand whether or not they wanted to do that.

Q For rail TOFC freight rate changes, is the time usually within the same business day?

A I would say not always, but I would say it would be within a week or ten days maximum.

Q You say not always, but it is usually within the same business day, isn't it?

A No. I think that's too quick to make a value judgment internal.

Q Okay, sir. And you don't have any direct automatic concurrence arrangement worked out with Conrail on traffic moving to and from the Northeast?

A No, sir.

Q Did the exemption of TOFC/COFC traffic increase the Union Pacific's ability to compete against truck traffic?

A Yes.

Q Now, sir, at the bottom of page 5 of your statement you refer to the fact that large volumes of eastbound perishables, food and wine shipments, and also large volumes of westbound manufactured goods, have been attracted to rail TOFC service. Has Union Pacific's TOFC traffic volumes of eastbound perishables, food and wine shipments increased in recent years?

A No, sir.

Q Has Union Pacific's TOFC traffic volumes of westbound manufactured goods increased?

A Yes.

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Q By about what percentage has this traffic increased, say in the past two years?

A I would say from 10 to 20 percent.

Q Has Union Pacific gained this additional westbound manufactured goods traffic from trucks or from other railroads?

A I would say from both, primarily from the trucking industry, but there is always traffic moving between the railroads.

Q Sir, "Railway News" reported on December 12th, 1984, that Union Pacific is purchasing 250 refrigerated trailers for use in northern California, among other places. Were you aware of that program?

A Yes.

Q Does Union Pacific expect to carry produce in these trailers?

A Yes.

Q Where would this additional produce traffic come from, trucks or other railroads?

A We feel it will primarily come from trucks.

Q And what is the reason why Union Pacific is purchasing the 250 new refrigerated trailers?

A We're purchasing it to be able to handle some perishable traffic.

Q Would some of this perishable traffic perhaps

originate in the San Joaquin Valley?

A Yes, I would think so, yes.

Q Now, sir, you state at the top of page 6 that one of the reasons for the growth of SP and Santa Fe TOFC service has been "aggressive marketing." Has this aggressive marketing included price reductions to meet competition from trucks?

A In what segment of the business, the TOFC?

Q Yes, the rail TOFC business, yes.

A Yes.

Q Has not this aggressive marketing in fact led to low profitability for transcontinental rail TOFC traffic?

A I have no way of knowing what the profitability is on the Southern Pacific or Santa Fe.

Q Well, would you say that the profitability for Union Pacific's rail TOFC traffic moving transcontinentally is lower than for most of the commodities handled by the Union Pacific Railroad?

A I would say generally speaking, TOFC is a high volume, low profit business.

Q And is one of the reasons why it's a low profit business the need to compete against motor carrier freight rates when you are handling rail TOFC freight?

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A I feel that is one segment of the problem. The other is the intense rail competition in TOFC.

Q Now, sir, at the bottom of page 6 you state that TOFC service allows railroads to reach shippers who are exclusively served by trackage of other railroads. Would one example of that type of phenomenon be Union Pacific's rail TOFC service to shippers located in and around Salinas, California?

A No.

Q Doesn't Union Pacific compete for that perishable business originating around Salinas, California, through its ramp at Oakland?

A We endeavor to compete for the perishable traffic out of there, except that we handled, I would say, 200 trailers or less this last year, simply because we are unable to compete out of the Salinas Valley on that type of traffic.

Q So you were only able to handle 200 trailers, but you were able to get some share of that market of the Salinas traffic, right?

A When you look at 200 versus 60,000, it is not necessarily a lion's share.

Q Would you say that the rates and services offered by Union Pacific affected Southern Pacific's rates and service out of Salinas?

A I don't see how it could.

Q Does Union Pacific -- how far is it from Union Pacific's ramp at Oakland to Salinas, California?

A I'm not exactly certain of the distance.

Q Would it be about 110 miles, something like that?

A I think it's in that neighborhood, yes.

Q Are you aware of whether Santa Fe competes by its ramp in Oakland to try to handle perishable traffic originating in the Salinas Valley?

A I would think they would use, possibly use Fresno, rather than --

Q Well, if in fact Santa Fe competes for that traffic via the Oakland ramp, would it also be affecting rates and service of Southern Pacific?

MR. ROACH: I think I'm going to object to that question. He's already said he doesn't agree with the assumption, so I don't see how he can comment.

MR. WILSON: I'm asking a hypothetical.

JUDGE HOPKINS: He's asking a hypothetical now.

THE WITNESS: What was the question?

BY MR. WILSON: (Resuming)

Q If in fact Santa Fe competes for that traffic from the Salinas Valley via its Oakland ramp, would that

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competition from Santa Fe affect the current rates and service Southern Pacific is offering to Salinas Valley shippers?

JUDGE HOPKINS: If you have an opinion.

THE WITNESS: I don't have an opinion.

BY MR. WILSON: (Resuming)

Q Sir, Union Pacific also competes for TOFC traffic originating on the Union Pacific system at Modesto, California, does it not?

A Yes.

Q And the way it competes is through a substituted service arrangement, is that right?

A Yes.

Q Could you describe briefly what that substituted service arrangement is out of Modesto?

A We would have what they call a paper ramp or a ramp where we would drop trailers and then pick it up and dray it back to a railhead where we have a ramp.

Q Under that type of service, Union Pacific is responsible for the transportation to and from Modesto and receives payment for the freight movement to and from Modesto, isn't that right?

A Yes.

Q Now, sir, how far is Fresno, California, from Modesto, do you know?

A I'm not certain of the mileage.

Q Would it be about 90 miles, do you think?

A I would say that, yes.

Q And would Fresno be about 120 miles from Stockton?

A Yes, I think so.

Q Union Pacific does have a rail operating ramp at Stockton, California, does it not?

A Yes.

Q Now, still focusing on Union Pacific's TOFC traffic, for traffic competition moving from points served exclusively by another railroad, can you think of an example where Union Pacific is using TOFC service to compete for traffic moving from points served exclusively by another railroad?

A What you are saying in that instance, take a city such as Oakland or Los Angeles, where the Southern Pacific or Santa Fe or Burlington Northern or Union Pacific serves a customer with an industrial park or exclusively does the switching for that particular customer in boxcar service.

TOFC, just like truck, can move into that particular industry on rubber, back up to the dock, pull the traffic back to a ramp in the city, and move it over the railroad, wherein they could not do that with the

boxcar.

Q Okay. You mentioned Los Angeles. Sir, does Union Pacific compete for traffic originating or terminating at San Diego from its TOFC ramp in Los Angeles?

A No.

Q Are you aware that Santa Fe competes for traffic originating or terminating at San Diego through its Los Angeles TOFC ramp?

A Yes.

Q About how far is it from Los Angeles to San Diego, sir?

A It's over 100 miles.

Q About 120 miles, would you say?

A Yes.

Q In Union Pacific's opposition rail traffic diversion study, Union Pacific assumed that a rail TOFC ramp was competitive with the ramp of another railroad if that other railroad was within 120 miles. Does that seem like a reasonable general assumption to you?

A No, it seems like that would be too far to compete.

Q Did you consult with the people working on the opposition rail traffic diversion study about this assumption?

A No, not specifically.

Q Union Pacific TOFC service from Modesto today competes for and handles perishable shipments that originate at Fresno, California, isn't that right?

A Say that again.

Q Union Pacific's TOFC service from Modesto competes for and handles some perishable traffic that originates actually at Fresno, California, isn't that right?

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

Q Are you aware of where the perishables traffic comes from that is brought to Union Pacific at Modesto, California?

A Well, it can originate in a multitude of places. But you're restricted as to the destination because of the economics of the drayage cost and the ability to serve once you get away from your ramp.

Q Yes, sir. Well, the perishables traffic from Modesto probably comes from the growing area around Modesto, California, isn't that right?

A Yes.

Q And you are not aware specifically of where, but from that general facility, isn't that right?

A Yes. We would not go down 120 miles. It just wouldn't be feasible.

Q Right. Now, the perishables shippers -- would you agree that some of the perishables shippers that you do wind up convincing to ship on the Union Pacific at Modesto also have a choice of instead hauling their perishable traffic down to Fresno and using the service, say, on the Santa Fe today?

A I would say they have that option if the want.

Q So there is some direct competition between Union Pacific TOFC service and Santa Fe TOFC service for this perishable traffic today, isn't that right?

A Not really. There isn't any competition between the Santa Fe and the Union Pacific on perishable traffic, because we are just not able to compete for that traffic.

Q Could you describe the Union Pacific's marketing arrangements to compete for perishable traffic in California?

A Basically, we have endeavored to compete over the last several years, but we have just not been successful.

Q Well, I'm interested in the arrangements that you have. What are the plans you have used to compete?

A Well, we have used -- we have tried to contact various Plan 3 operators and enter into some sort of

arrangement with them similar to the Santa Fe, and have been unsuccessful in doing that.

Q Have you worked with some specific Plan 3 operators on your own?

A Pretty much all of the major Plan 3 operators have been contacted by Union Pacific.

Q You're not aware of any special program or any special Plan 3 type of arrangement?

A No.

Q Looking at your statement five lines from the bottom of page 6, is it correct that the reason you use the term "captive" in quotation marks is that the fact that such traffic really isn't captive, but it is open to competition by other railroads through rail TOFC service?

A As I mentioned before, any industry that is served by a rail that is boxcar captive is not captive insofar as TOFC service is concerned.

Q Okay. Now, sir, when a railroad relies on TOFC service to compete for traffic moving from a point on another railroad, it must rely on trucks to haul the freight from the actual origin over to its TOFC ramp; isn't that right?

A Yes. We use either our own in-house drayage company or a local drayage company to move the rail trailer from the customer's place of business to the rail head.

The customer in some instances uses his own equipment.

Q Have you found that Union Pacific's trucking company has given you an advantage in competing, compared to using other trucking companies?

A No.

Q Now, don't the trucks that handle this traffic

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to and from the TOFC ramp learn the actual origin and destination of the movement and have direct contacts with the shippers or the receivers of the goods?

A In some instances, yes.

Q Well, doesn't this help trucking companies to convert this traffic to direct truck haul movements?

A No. You're not dealing with transcontinental motor carriers in this segment of the business. You are dealing with local drayage companies or in-house motor carriers that specialize in that type operation.

Q Okay, sir. Well, that is one type of competition, but there are other situations, aren't there, where you are dealing with trucking companies that could have line haul service?

A There may be some instances, but it would be highly limited.

Q Now, at the bottom of page 7, you state that: "Deregulation has enabled railroads to offer reduced rates." For TOFC traffic, how pervasive have these rate reductions been?

A Since deregulation -- well, let me start over. When we were regulated, we basically sold three ingredients. We sold price, service, and equipment. And those railroads that provided the best, most consistent service generally had a greater proportion of

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the market share moving TOFC.

But with deregulation, we saw a great deal of carriers who did not have a great deal of market share buy into the traffic. And we saw prices on intermodal options severely curtailed and reduced as a result of deregulation.

And so we saw intense competition between the rail modes to capture traffic under deregulation that they cculdn't capture when the price was the same under regulation.

Q Well, this intense competition was to capture TOFC traffic from whatever source, either other railroads or from motor carriers; isn't that right?

A That's correct.

Q Now, my question -- getting back to it -- is how pervasive have these rate reductions been? Did they affect the entire scope of rail TOFC traffic in the West, would you say?

A Yes. And I would say if you look at, if you go back to my page 6 and your question, those substantial percentages of increases that you talked about for the SP and the Santa Fe were a result of intense competition.

Q In other words, the substantial increases in TOFC carloadings were the results of the substantial

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rate reductions from TOFC traffic; is that right?

A That's correct.

Q Now, about what percentage on a constant dollar basis have rail TOFC rates fallen since TOFC traffic was deregulated in 1981 would you say?

A I could not say in constant dollars.

Q Would you agree that it's been fairly significant?

A Yes.

Q Now, Mr. Shum, what impact has motor carrier deregulation had on TOFC rates would you say?

A I don't think it's had a major effect.

Q Hasn't motor carrier deregulation resulted in a lot of discounting by trucking companies?

A Yes, extensive discounting, but primarily in the LTL segment of their industry.

Q Well, hasn't this discounting in the LTL segment affected rail TOFC freight rates for LTL freight that has to be consolidated by third parties before it is handled by rail rates?

A Well, as I mentioned before, basically third parties do not consolidate the freight. And we do not handle an appreciable amount of the LTL side of the house. So that competition has not affected us.

Q When you say "we," are you referring just to

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Union Pacific?

A No. I am broadening that out to include the rail industry in general. My perception is that it has not.

Q It's your understanding that Santa Fe doesn't handle an appreciable amount of LTL freight moving, say, to and from California? Is that right?

A That's correct. Except for the freight forwarder industry which we all handle.

Q Right. Well, that's what I was talking about, just so we are on the same wavelength.

Now, hasn't the freight forwarder type competition and the rates necessary to move that freight forwarder business been affected by the substantial discounting of truck rates that has followed deregulation? That is really my question.

A The freight forwarder industry as a whole has had a flat trend line for the last decade. They haven't really improved their posture before deregulation. And many of the freight forwarders have formed other divisions, shipper agents or trucking divisions, to more effectively compete with the trucking industry.

But it really hasn't affected the rail competition.

Q You don't think that the trucking company

discounting has affected freight rates for freight forwarder type traffic?

A It certainly has affected the freight forwarder rate structure. It has not affected the rail structure.

Q How has it affected the freight forwarder rate structure?

A In my opinion they must be competitive in the marketplace.

Q So it has caused their rates to fall; is that right?

A That's correct.

Q Now, at the bottom of page 7, you state that rail TOFC rates for long distance movements are significantly below truck rates.

Isn't this rate differential in fact demanded by the marketplace in order for railroads to handle a portion of the TOFC traffic?

A I think that's generally true.

Q In fact, isn't a reason for the rate differential, to some extent, the service advantages that railroads have in terms of transit time or frequency of departures or service reliability in some cases?

A Yes, in some instances.

Q Would you say another reason for the rate difference might be the two handlings that have to occur on the rail TOFC move at the origin and the destination end for the railroad, as opposed to a direct truck handling of the freight door to door?

A That would depend on individual circumstances and where the ultimate destination was in relationship to the rail ramp.

Q Well, from reading your footnote on page 7, I get the impression that when you're comparing rates in your text, you are comparing a ramp-to-ramp rail rate with a door-to-door truck rate. Is that right?

A Not necessarily. For rail TOFC to be competitive it must be competitive on a door-to-door basis, both in price, service, and the options, the various options that may be required by the ultimate consumer.

So while there is some service advantage in certain instances to truck, they certainly have more flexibility in some instances. When you are dealing in the long haul transcontinental market, the truck/rail combination is more than competitive in both service and price.

Q Well, when you are stating, then, that TOFC/COFC rates are significantly below motor carrier

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rates, you are not referring to ramp-to-ramp rates?

A I'm referring not only to ramp-to-ramp rates, but to the total rate as well.

Q Now, sir, at the bottom of page 8, you state that continuing improvements in cost efficiency and service quality have made rail TOFC service the preferred option for increasing numbers of shippers.

You're not saying, are you, that because rail TOFC service is the preferred option, that trucks don't also offer competitive options for rail TOFC shippers?

A I'm not saying that there is an exclusivity, but that the equipment innovations and others are making the TOFC option increasingly viable in the marketplace.

Q Would you say that these equipment innovations in the rail TOFC area have, in part, been generated by the desire to compete for traffic currently handled by trucks?

A That's correct.

Q Now, while we're also talking a little bit about COFC service, I notice your statement doesn't mention that specifically very often, do you consider rail industry profit levels on minilandbridge traffic to be satisfactory?

A Yes.

Q Is Union Pacific's profits on minilandbridge

traffic as great as on other commodities Union Pacific handles?

A Well, the profit level on commodities Union Pacific handles, whether it is within the TOFC option or otherwise, vary greatly. So in my opinion, they meet the criteria that we have established.

Q Well, you say the profit levels vary greatly. COFC traffic is toward the lower end of the spectrum of Union Pacific traffic, isn't that right?

A Not necessarily; no.

Q It depends on the movement? Where would you place it in general, sir?

A Well, speaking of the new innovative type equipment and the productivity gains that are available to you, we handle, for example, American President Lines import traffic minilandbridge to New York by UP-C&NW-Conrail.

We handle, with our new double stack equipment that handles 200 containers in one train from Los Angeles to New York, COFC double stack, and that traffic is a new innovative type rail car. It is fuel-efficient. It's something that the trucks can't do. It provides us a good return on the movement.

Q In discussing freight rates with minilandbridge shippers, did these carriers discuss the

need to keep cost low because of all-water competition?

A Sure.

Q Now, sir, at the middle of page 9, you explain that TOFC/COFC traffic growth leads to further growth. Do you agree that rail TOFC service to shippers improves where a railroad can offer -- well, can increase its TOFC traffic volume and offer more frequent schedules?

A The more volume you have and the frequencies of your train schedules enhances the efficiencies of your terminals and it enhances the efficiencies that allow you to compete more vigorously with truck and other rail competitors, and these efficiencies are translated into dollar savings that allow you to have a greater return and stay in the marketplace at lower rates.

Q Are these efficiencies also translated into improved service for rail TOFC shippers?

A Yes.

Q Wouldn't the SPSF merger result in increased TOFC traffic volumes and more frequent training schedules?

A That's correct.

Q Now, is one of the advantages of more frequent schedules the fact that they would enable a railroad to offer more departure times and so try to match the

flexibility of departure times that trucks can offer for handling this freight?

A That's correctl.

Q Does Union Pacific schedule departure and arrival times on its TOFC trains between major city pairs so as best to compete against truck departure and arrival times in those city pairs?

A No.

Q Don't railroad cutoff and arrival times between major city pairs reflect the influence of truck transit times between those points?

A No, not necessarily. Probably a greater criteria would be the needs of our customers to allow them to bring traffic to the origin rail head for later night departure, and then arrival early morning, late at night or early morning, so that they can have that day's traffic on the street and deliver it.

So it isn't commensurate with any truck service particularly. It is to meet the needs of the customer.

Q You speak of the needs of the customers. Do you monitor the truck service and truck transit times between major city pairs where Union Pacific has TOFC service?

A No, not particularly.

Q Are you aware of what the general truck service is in any of these corridors where Union Pacific has TOFC service?

A Well, I think we're all aware of what can be done at 55 miles an hour; that if you have sleeper cabs and two in a cab, it will make a difference. It will vary, but is not one of our major criterias.

Q So you don't make a special effort to determine when trucks tend to arrive with freight in, say, Los Angeles; is that right?

A It would be extremely difficult, since it would depend on when the truck picked it up at a customer's place. He does not have a set time that he leaves. He leaves when the truck is loaded, and he pulls out and arrives when he arrives.

Q Okay, sir. So you try to match your shippers' needs, and you rely on your shippers to tell you when you should get the freight to Los Angeles; right?

A Yes.

Q And those are the same people who are probably telling the trucks when they should get the freight to Los Angeles; isn't that right?

A Well, predominantly, our shippers are the consolidators of third parties. And so they are the ones that primarily dictate their requirements.

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Q Okay. Have there been instances where your department has suggested to Union Pacific's operating department that a change in TOFC departure or arrival times would enable Union Pacific to compete better against trucks?

A Yes.

Q Tell me about one of those instances.

A Well, when I say yes, we have talked to -- we constantly talk to our operating department about cutoff times and arrival times. But primarily, it is at the request of our consolidators. And they then generally -- they are the ones that we try to accommodate, and they are our front line salesmen with the truck.

So it is a situation that we monitor with the arrival and departure times, cutoff times, of our rail competitors. It would be the prime competitive factor that would make us change our departure times or cutoff times, arrival times.

Q So you arrive on freight consolidators to tell you how you would have to change your departure or arrival times to compete better with trucks; is that right?

A Mostly; yes.

Q But you have in many instances tried to get the operating department to change cutoff and arrival

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times in order to compete better with trucks; right?

A To better serve our consolidators who compete with trucks.

Q Now, returning to your comments on page 9 about factors that improve the quality of TOFC service, is rail TOFC service improved and made more competitive when a railroad can better balance its trailers?

A Yes.

Q Is it also improved when a railroad can eliminate empty car movements?

A Yes.

Q Wouldn't the SPSF merger result in a better balance of TOFC trailers and a reduction in empty car movements?

A From where to where?

Q Systemwide.

A I would feel that with the increased volume and the combined traffic flows, that would be the case; yes.

Q Okay. Is rail TOFC service and rate responsiveness to shippers generally better where a railroad can offer single line service instead of joint line service?

A Yes.

Q Have lower TOFC handling costs in recent years

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generally been translated into lower TOFC freight rates?

A I would generally, yes.

Q Do TOFC rate reductions result in some traffic shifting from motor carriers to rail TOFC service?

A Yes.

Q Now, sir, at the top of page 9, you state that Union Pacific now has implemented programs to balance its loaded rail TOFC trailers. Could you describe these trailer balance programs you refer to?

A Well, we on Union Pacific utilize the international segment in concert with the domestic segment to balance traffic. We were one of the first to institute a landmark agreement between a major steamship line, a major freight forwarder, and a railroad.

In essence, what this involves is handling import traffic in containers into the Midwest, into the New York area, and other places, and then utilizing a freight forwarder's domestic traffic for return in the same containers back to Los Angeles, so that you get the best possible equipment utilization out of that marine move.

And you are not handling trailers westbound and then returning them empty, handling the containers eastbound and returning them empty. You are putting

import freight, handling it east, and then handling that domestic westbound freight in those same containers.

Q Was there also an element of this program that attempted to attract domestic freight movements moving eastbound from California?

A Well, the Santa Fe's efforts were concentrated in the perishable side where they utilized the Plan 3 option, the perishable traffic out of northern California.

And they require a domestic move in concert with their perishable moves, so that they have a round trip even of their perishable trailers.

Q But I was referring to Union Pacific. Has Union Pacific made any kinds of competitive arrangements to try to attract eastbound domestic traffic from California?

A Yes, sir. We are competitive with the Southern Pacific and Santa Fe for the movement of eastbound domestic traffic.

Q Yes, sir. Well, I guess my question was, did your trailer balance program encompass some new pricing activities with regard to eastbound domestic traffic from California?

A Well, each of the three railroads utilize what we term backhaul pricing or incremental pricing, and

generally in any backhaul corridor where you have excess equipment, you price it accordingly to get your trailers back.

Q So to try to get your trailers balanced to and from California, did Union Pacific use some backhaul pricing of its eastbound TOFC movements?

A We were competitive with the Southern Pacific and Santa Fe in those instances.

Q So you did use some --

A Yes.

Q Did this backhaul pricing result in some traffic shifting from motor carriers to Union Pacific to fill these trailers?

A I would think so.

Q Now, at the bottom of page 9 and the top of page 10, you state that: "Railroads have relied increasingly on shippers' agents to market their rail TOFC service."

What is the term "shippers' agents" as you refer to it here?

A It goes back to the three segments I mentioned before: shippers' agents, shippers' association, and freight forwarders.

Q Could you describe what the narrow term of "shippers' agent" is, not as you use it?

A A shipper agent basically is an individual, can be an individual in a telephone booth that calls industrial traffic managers and obtains a trailer to move on a railroad and arranges for the transportation from origin to destination, and provides that customer with one bill of lading and one price.

Q In what way does a freight forwarder function differently from that type of shippers' agent?

A A freight forwarder generally has published tariff items, has a facility, in many instances he consolidates the LTL side of the house, the LTL freight into a trailer over a dock, and he has both LTL consolidations and full trailers to move via the rail.

Q Well, returning to the more general use of the term that you have in your statement, would you agree that shippers' agents are essentially the way that railroads market their TOFC service in competition against trucks?

A Yes.

Q And the actual shipper of the freight, then, has a choice between either using the shipper agent in the rail TOFC service or using a direct truck movement for its freight from door to door; isn't that right?

A Those are two options; yes.

Q Now, on page 10, sir, you state that:

Shippers' agents are adept at playing one railroad off against another."

Would you agree that shippers' agent have a good deal of leverage in dealing with an individual railroad?

A Yes.

Q Would you agree that shippers' agents often get lower rates because of the volume commitments that they can make with railroads?

A Yes.

Q If a shippers' agent had traffic moving between Los Angeles and Chicago and also had traffic moving between Los Angeles and Houston, and after the merger SPSF were to increase TOFC freight rates between Los Angeles and Houston, wouldn't you expect that shippers' agent to shift his Los Angeles to Chicago business to trucks or to UP's TOFC service?

A Not necessarily.

Q Okay. Isn't that a possible response that the shippers' agent would experience, though?

A It's possible.

Q In fact, if Union Pacific learned that SPSF was raising its freight rates between Los Angeles and Houston, wouldn't your salesmen be out there contacting the shippers' agents to try to get their business into

other corridors where the shippers' agents could take traffic away from SPSF?

A We are always -- our sales people are always endeavoring to secure additional traffic. You could have a scenario where, because of Santa Fe SP's ability to raise rates in the L.A.-Houston Corridor, they could subsidize the rates from L.A. to Chicago and be more competitive instead of less.

Q Okay, sir. But now, if that happened, of course, then that would be a benefit to the shippers in the L.A. to Chicago Corridor; right?

A It would be -- yes.

Q Now, getting back to the situation that we were discussing, if the freight rates go up between Los Angeles and Houston for SPSF, wouldn't you at Union Pacific look upon that as a marketing opportunity for you, that you could go out and talk to these shippers' agents and try to get them to shift their business to the Union Pacific's TOFC service, say, between the Bay Area and Chicago or L.A. and Chicago?

A I don't see -- I don't particularly see how that follows, because Santa Fe has market dominance in a corridor, that would allow us to take advantage of them in another competitive corridor.

I don't agree with that.

Q You wouldn't -- well, isn't that the way things work out there in the real world today, when you see a shippers' agent getting unsatisfied with a railraod, for whatever reason, raising rates or service he doesn't like? You look upon that as a marketing opportunity for you, and you go in and you try to get some business for your railroad; isn't that right?

A That's correct.

Q Well, isn't that kind of thing the kind of thing that could happen after the merger also?

A I think that will happen after the merger. The conditions are not going to change in that regard.

Q Okay, sir. Now, at the bottom of page 9 you state that: "Railroads are relying increasingly on shippers' agents."

Would it be fair to describe these shippers' agents as middle men who are really taking part of the profit on rail TOFC service?

A That's correct.

Q Would you agree that railroads would make more profits if they could effectively market their own rail TOFC service and not rely on these middle men at all?

A Not necessarily; no.

Q Why not?

A Well, while they do take a portion of the

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profit, they also provide a valuable service to the rail industry. They have their own sales forces. Many of them have a sophisticated computer system. They have the ability to provide drayage services at both ends at a very low cost.

And so for the railroads to duplicate that effort would require, under their structure of union wages and other deficiencies, not be able to do it as effectively or cost efficiently as third parties.

So they do provide a very valuable asset to the rail industry.

Q Are you aware, sir, of Conrail's program to begin marketing its rail TOFC service directly to shippers and limit its reliance on shippers' agents?

A Not at all.

Q When shippers use their greater buying power to get reduced TOFC rates, do you know whether they pass these lower costs on to the rail shippers of the TOFC freight?

A I don't know what they do.

Q When shippers' agents have to pay higher rail TOFC rates, do you know if they pass higher costs on to the TOFC shippers?

A I do not.

Q In fact, if a shippers' agent had to pay a

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higher rail TOFC rate, but the truck rate stayed the same, wouldn't you suspect that he probably would not pass the rate increase on to the rail TOFC shipper?

A I don't know what he would do. I think it would involve the individual's rate negotiations with that individual customer, where he stood in relationship with the truck rates at any given time, and whether he had the margins to do whatever he wanted to do. It becomes his management decision.

I just don't know what he would do.

Q Okay, sir.

Well, then turning to page 11 in your footnote at the bottom of that page, you state that: "Trucks, in the long run, must charge prices that, on the average, cover the full cost of both directions of the haul."

Sir, since motor carrier deregulation, isn't this true, that a large number of owner-operators have been competing for traffic and charging less than their operating costs in order to move the traffic?

A I have no way of knowing that. We see a lot of the owner-operators continually go out of business, so you have to make that assumption, that they are not astute business people that understand the realities of making a profit.

And if you don't do as I say in the footnote,

eventually you are going to go broke.

Q Is it your belief that a number of owner-operators really don't know their operating costs?

A That's my belief.

Q Is it also your belief that a number of owner-operators do price their service below their actual operating costs?

A That's true.

Q And even though a number of them go out of business because of the ease of entry after motor carrier deregulation, there are always new owner-operators to take their place; isn't that right?

A That has been the pattern in the past. I'm not so certain that will be the pattern in the future.

Q Is it possible, however, that this is just a problem that the rail industry is going to have to live with in competing for rail TOFC traffic?

A That's a possibility.

Q Now, sir, at the middle of page 12, you assert that the merged company could increase the rates considerably without suffering unacceptable traffic losses to motor carriers.

I assume you didn't perform any study or survey on this point, is that right?

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A That's correct.

Q What level of traffic losses to trucks do you think SPSF would find to be unacceptable, as you used that term on page 12?

A It would be my perception, without another rail competitor in that corridor, they would and could raise their rates. To what degree, it would be a management decision on their part. And the amount of truck competitive traffic that they would be willing to forgo would still be their decision.

Q So you don't know how much, if any, truck competitive traffic would be willing to forgo after the merger; is that right?

A That's a Santa Fe decision.

Q Sir, at the bottom of page 13, you give an example of a $70 per trailer rate increase that occurred in July of 1984 on certain transcontinental traffic. Focusing first on your use of the word "certain," why wasn't this increase applied on all transcontinental rail TOFC traffic?

A In this particular instance, I was talking about the domestic segment of the marketplace, and it was applied on all of the domestic segment. I think that in the international side of the house, it wasn't taken in that instance.

In other words, we took the domestic market out.

Q Was this increase you referred to here in your testimony a cost-based increase, a cost recovery increase?

A Not totally; no. We thought that the marketplace would take that increase. Certainly, you always look at your cost in relationship to what your position is, and you try to maximize your opportunities in that regard.

Q You say not totally. Was this essentially a cost recovery increase?

A Yes.

Q Didn't competing truck rates also go up in July 1984?

A I'm not certain.

Q You don't know whether they did or did not, and by how much?

A I don't know.

Q So you don't know what the relative change in the rail TOFC and truck rate prices were after this increase was put in place?

A No, sir; I do not.

Q Now, you state that Union Pacific's TOFC volume increased after the $70 rate increase. Do you

know how much Union Pacific's TOFC volume might have increased if you had not raised your TOFC rates?

A No, I do not.

MR. WILSON: Thank you, sir. Those are all the questions I have.

JUDGE HOPKINS: Mr. Ratner.

BY MR. RATNER:

Q My names is James Ratner. I'm with the United States Department of Justice. I just have a few questions for you.

Could you list for me all of the railroads that you consider the UP competes with for TOFC traffic?

A Well, basically, we compete with the Southern Pacific, the Santa Fe, and the Burlington Northern, the D&RG in the west.

Q That's fine.

If you could, if you know, how much TOFC traffic has the Union Pacific lost to motor carrier over, say, the last four years?

A I do not know.

Q Do you know how much TOFC traffic UP has lost to other railroads over the same period?

A No, I do not.

Q I think you mentioned in response to one of

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Mr. Wilson's questions that TOFC is high volume, low profit traffic for rail. Is TOFC currently earning a profit for UP?

A Yes.

Q On page 4 and 5 of your verified statement, you refer to the fact, I think, that deregulation has contributed to major TOFC rail growth.

What specific aspects of deregulation are you referring to?

A Well, the ability to tailor specific programs for individual customers of the railroad, the ability to establish appropriate prices in a timely fashion, and the freedom that is given us to compete in the marketplace.

Q Is the ability to enter into contract rates and relationships a major factor?

A Yes. It's a major marketing tool.

Q How much TOFC currently moves on a contract arrangement on the UP?

A A very substantial volume.

Q Substantial, meaning --

A I would say in excess of 75 percent.

Q On page 7 -- and I know you've talked about this some with Mr. Wilson, so I'll try to be very brief -- you refer to the fact that you think you would not be

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a viable competitor for TOFC in Fresno-Bakersfield.

How far south do you consider the Union Pacific is a viable competitor for TOFC traffic in California?

A Going where?

Q To any points east that the UP serves.

A Well, right now, we're not a viable competitor in the perishable market out of California at all.

Q Why not?

A Because of the Santa Fe's route structure, their level of price, and the distance we are from the marketplace.

Q You refer to Santa Fe and Southern Pacific having a significant cost advantage. Can you give me a specific, some specific examples of the cost differential that UP faces?

A On which traffic?

Q Well, what you referred to here as the Fresno-Bakersfield, so we can start with that.

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A First of all, as I said before, Union Pacific is unable to compete for the traffic, so we have no traffic base. The Santa Fe at the present time has 50,000 to 60.000 trailers moving in the perishable marketplace. They have the ability to round trip those trailers, and that is part of the rate package that they give to their customers, the ability to generate a round trip.

They do that in several ways. Not all of the traffic comes directly back to the Bay area. Some of it has to come to the major marketplace of Los Angeles, so that with their route structure of having a rail line from Los Angeles up to the Bay area, they have the ability to reposition trailers on rail at a very low cost in comparison to not having that trackage, so they can return their trailers to the vast market, the domestic marketplace of LA or San Francisco, have the route structure to reposition it up, and then have the volume to run unit trains to Chicago.

They also have an added advantage of handling single line service to Chicago, and single line service is a very important ingredient. The other aspect they have is, they have ramps in Fresno and Bakersfield, which places them close to the marketplace so that their drayage costs are less.

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Q You have been saying they and them. Are you referring to Santa Fe and Southern Pacific, or just Santa Fe?

A Just Santa Fe.

Q I didn't mean to interrupt you there.

In terms of Southern Pacific, does Southern Pacific as well have a significant cost advantage over Union Pacific in terms of serving shippers who are in the Fresno-Bakersfield area?

A Yes.

Q Are those costs advantages basically the same as what you just described for Santa Fe?

A Yes.

Q I assume with the exception of the fact that Southern Pacific doesn't have direct service to Chicago.

Q And the Southern Pacific does not handle the volumes of perishable traffic that the Santa Fe does.

Q On Page 7 at the bottom, the last sentence starts, "In the markets in question here, rail, TOFC/COFC rates for long distances hauls are significantly below the generally prevailing motor carrier rates."

Do you see that?

A Yes.

Q What are the generally prevailing motor

carrier rates? I don't mean a specific number, but what do you mean by that when you refer to that?

A Well, the rail TOFC rates generally are lower than the transcontinental truck rates.

Q I understand. How are you measuring transcontinental truck rates?

A We measure it in two fashions. One is ramp to ramp, and the other is door to door when we put our drayage at both ends, and in neither case -- of course, the ramp to ramp is considerably under, but the door to door with drayage at both sides, they are still under the truck rates.

Q If I wanted to go get some information on my own about the generally prevailing motor carrier rates, where would I look?

A You would go to any transcontinental motor carrier and ask them what their rates are, and they would give you rates, and then go to the railroad, and they would give you a rate, and you can make a comparison.

Q When you make the comparison in your testimony here, was that based on information you received from various transcontinental trucking companies?

A And our competitive research department.

Q When you say significantly below the generally

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prevailing motor carrier rates, what does significantly below mean?

A I would say generally maybe in the neighborhood of 20 percent, give or take.

Q You also refer to long distance hauls. What do you mean by long distance?

A I would say in excess of 750 miles.

Q Is it correct that you would consider about 700 to 750 miles is a break even point between where truck costs start to exceed rail costs?

A Not necessarily. It depends on the market corridor and the volume and a lot of other specifics.

Q On Page 8, at the bottom, you refer to some continuing techincal and service innovations. Correct me if I am wrong. I think in response to a question earlier this morning you said that you thought the innovation was due in part to a response from motor carrier competition. Is that right?

A Well, that's part of the answer. The other part is the rail's continuing efforts to improve their productivity and the bottom line and to be more competitive. So, the rail industry in the last several years in the TOFC option has looked at new lightweight aerodynamic fuel efficient equipment, the double stack option, all the various nuances that make your railroad

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more competitive.

Q Is it correct that it is in part a response to truck competition and in part a response to rail competition?

A That's right, and also a response to bottom line -- improving the bottom line of your company.

Q On Page 13, where you are discussing the $70 per trailer increase, you indicate that some of the gain was at the expense of motor carriers. Do you see that?

A That is basically an assumption predicated on the fact that our -- each of the railroads' market share volume increased. Ours did, so we made the assumption that it had to come from the motor carrier industry.

Q On Page 14, you refer to, down near the bottom of the only full paragraph, you refer to what would happen to motor carriers in relation to railroads if there were, for example, an increase in fuel prices. Could you explain a little more fully why there is a difference between what would happen to rail and what would happen to truck in the case of an increase in fuel prices?

A If you take 100 trailers on a normal 50-car TOFC train and the additional fuel that would be required, fuel costs that would be incurred, versus 100 motor carrier rigs moving over the road at five miles a

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gallon, I think the cost differential is substantial.

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

JUDGE HOPKINS: Ms. Reed?

BY MS. REED:

Q Good morning, Mr. Shum. My name is Mary Reed, and I am appearing on behalf of the U.S Department of Transportation. I just have a couple of followup questions to Mr. Ratner's.

You said that 75 percent of TOFC traffic was under contract. Is that correct?

A I said in excess of 75 percent on the Union Pacific is under contract.

Q Do you know what the length of those contracts are?

A They will vary from one to three to five years.

Q Would you say the majority of the contracts are for over one year?

A No, I would say the majority are for probably an annual contract.

Q And that would be at an established or a set rate, one rate?

A The contract, our contracts provide for adjustments on ten days' notice.

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Q Adjustments in rates?

A Adjustments, and that could be either up or down, depending upon the competitive situation.

Q What are the criteria for adjusting the rates up or down? Is it totally at the railroad's discretion?

A Competition. In other words, to remain competitive within the marketplace you may have to take the rates down. In other words, if the Southern Pacific or the Santa Fe would announce a decrease in their rates, we would have to assess that, and if we did meet it, then we would of necessity adjust our contract rates, and in this particular instance where we took the rates up $70, we'd give our contract holders ten days' notice, and then escalate the rates $70.

Q Does the contract also allow you to take into consideration changes in motor carrier rates?

A It is not specifically stated in that fashion.

Q Just any competitive changes?

A Yes.

Q Now, you also indicated to Mr. Ratner that the Santa Fe will take TOFC traffic to Chicago, and that it will bring back the empty trailers to Los Angeles and move them up to the Bay area. Is that correct?

A No.

Q Excuse me.

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A The Santa Fe's rates on the perishables they handle, it is mandated in the rate structure that the perishable shipper will receive a rate predicated upon their moving the perishables to Chicago, as an example. Then they must reload that trailer with domestic freight and move it back to California over the Santa Fe.

The movement back to California may be to Los Angeles or it may be to the Bay area. If it is to Los Angeles, the Santa Fe then offers to move the rail trailers from Los Angeles back to the producing area by rail, and then they would move it empty from Los Angeles up to reposition it for the next load.

Q But the shipper has a choice of loading it back to either Los Angeles or the Bay area?

A Right.

Q Now, on Page 4, in the first full paragraph, you indicate that the growth in TOFC traffic came primarily as a result of deregulation. Could you tell me whether the railroads took traffic that was moving in boxcars and started handling that TOFC traffic?

A I feel a great -- much -- there were diversions from boxcar to TOFC. The railroads themselves did not necessarily do this, but the consolidators who have contracts with the railroads move some of that traffic from boxcar into TOFC service.

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Q Do you know how much of the TOFC traffic came from boxcar service versus coming from motor carrier?

A I do not know.

Q You also indicated earlier that TOFC traffic is high volume, low profit traffic. Would that be true throughout the PACRAIL system?

A PACRAIL being the Union Pacific/Missouri Pacific?

Q Yes, sir.

A Yes, that's true.

Q Now, prior to deregulation, was TOFC traffic a higher profit traffic? You say that it is low profit traffic today. Was it higher prior to deregulation?

A That's hard to say. I don't think we had on the Union Pacific the sophisticated costing systems that we do today. I would say probably not. It might have been because the volumes we were handling at that time were substantially less than we are now. But deregulation did foster some intense competition initially, so I cannot answer your question. I don't know for certain.

Q Now at the top of Page 7, you indicate that this competition between TOFC and COFC service of one railroad and the boxcar and TOFC/COFC service of another railroad continues to be a reality in the marketplace in

California. Does this mean that the Southern Pacific competes for boxcar traffic from the Santa Fe exclusively served point?

A You mean in TOFC service?

Q Yes, sir.

A Yes.

Q Do you know whether or not the Southern Pacific competes for Santa Fe boxcar traffic via their own boxcar all rail service?

A Yes, each of the railroads compete intensely with each other for boxcar and TOFC service.

Q And how would they compete for this traffic, since they don't have direct rail access to the shipper?

A TOFC.

Q Do they compete for this traffic if it is not moving TOFC?

A If it is open to reciprocal switching, they would.

Q Are there any other ways that they can compete for this traffic?

A No.

Q What about team tracks?

A Well, yes, but normally that becomes a higher cost, and unless there was some particular reason for

the customer to do that, it wouldn't make -- it hasn't been done extensively.

Q Team tracks are not used very much today?

A Not if the customer is served with a siding.

Q Now, is the Santa Fe considered to have the fastest TOFC service from the Bay area to Chicago?

A Yes.

Q Do you know what their transit time is?

A Not exactly. It is third morning.

Q The shipper would have to tender to the Santa Fe by a certain time in the afternoon?

A The Santa Fe may have different sailings, different schedules. I am not familiar with what they are. I think they have more than one.

Q What is the transit time of the Union Pacific?

A It is comparable, third morning.

Q Do you know what the transit time of the Southern Pacific is over the Denver Rio Grande?

A Not exactly, but I would visualize it would also be competitive.

Q But you don't know for sure what the transit time is?

A No.

Q Do you know whether the Southern Pacific

handles any TOFC traffic over its southern route to Chicago?

A It is my opinion they do.

Q Do you know how much traffic?

A No.

Q Do you know whether the majority of the traffic they would handle would be over the central corridor versus their southern route?

A I think the majority would -- my perception is that the majority would move over their long haul route.

Q Do you know how the Southern Pacific's transit time over its southern route compares with the Santa Fe's to Chicago?

A I think it would be third morning.

Q Now, in the last sentence in the incomplete paragraph on Page 7, you state that, "Similarly, Union Pacific's central corridor route is too circuitous to compete with Santa Fe and the Southern Pacific for TOFC/COFC traffic in the California, Texas, and beyond corridor."

In your opinion, how much circuity can be tolerated on TOFC traffic before it becomes non-competitive?

A In our traffic studies, we felt that anything in excess of 18 percent was non-competitive.

Q And you agreed with that conclusion?

A (Nods affirmatively.)

Q What was the basis for 18 percent versus some other percentage?

A It was a value judgment, as I understand it.

Q At the top of Page 13, you refer to an example where a $20 increase in TOFC rates resulted in a decrease in traffic. Would that decrease in traffic be both to other railroads and to motor carriers?

A Primarily to other railroads.

Q Have you ever done any studies to determine what happens to traffic when the Union Pacific increases its rates on TOFC?

A When it increases it or decreases it?

Q Increases its rates.

A I am not certain I understand the question. If Union Pacific would increase their rates by themselves and no one would follow?

Q Yes, sir.

A We would lose traffic, and then if we announced a rate increase, which we have done, let's say specifically in the north-south corridor, as of March 1st we are going to try to take a 5 percent increase, if our rail competition follows, we will take that increase. If they do not follow, we would have to

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cancel the rate increase on the Union Pacific probably by the next day after the effective date was announced.

Q Is it generally the case that when the Union Pacific imposes a rate increase, that the other railroads also take a rate increase?

A No, that is not the case.

Q Would you say in most cases that that does not happen?

A We haven't had a great deal of success in getting rate increases effected, so I would say recently that is true.

Q Now, Mr. Wilson recently touched on minilandbridge traffic, and I have a few questions in that area. Does the Union Pacific handle substantial volumes of minilandbridge traffic from Oakland?

A Yes.

Q Where does that traffic go to?

A Minilandbridge traffic usually goes to the east coast, the New York area, Boston.

Q Does it also go to Chicago?

A Yes, but they call it microbridge.

Q Do you handle any minilandbridge traffic out of Los Angeles?

A Yes.

Q And where does that go to?

A To the east coast.

Q Now, do you handle microbridge traffic out of Los Angeles?

A To Chicago.

Q What about out of Portland?

A Yes. We handle both minilandbridge and microbridge traffic.

Q Now, has Union Pacific ever solicited minilandbridge traffic out of Oakland to the Gulf?

A We have endeavored to -- we have made several rate proposals to various steamship lines. We have never gotten any traffic, because we were never price competitive or service competitive.

Q Have you ever solicited any traffic, minilandbridge traffic from the port of Portland to the Gulf?

A No, not that I can remember. Most steamship lines would not use that port. They would use Los Angeles.

Q Do you know whether the Burlington Northern handles any minilandbridge traffic from Seattle to the Gulf?

A Not that I am aware of.

MS. REED: Thank you very much.

JUDGE HOPKINS: Mr. MacKenzie.

BY MR. VINCENT MAC KENZIE:

Q Mr. Shum, I am Vincent MacKenzie, representing the State of California. A few questions on food prices, first of all.

You indicate on Page 14 that motor carriers will suffer a major setback in relation to railroads if there is an increase in fuel prices. Would the converse be true?

A The converse being if the fuel prices decreased?

Q Yes.

A Well, I think it is fair to state that the rail industry has a lower cost for fuel as far as the movement of goods, so if the prices increase, fuel prices increase, the railroads become much more competitive. If the fuel prices decrease, they still retain that advantage of productivity.

Q If the reduction in oil prices that is proposed by the oil experts occurs in the future, who will benefit mostly then by this, the motor carriers or the trucks?

A You mean the motor carriers or the rail industry?

Q I am sorry, the motor carriers or the rail industry. Thank you.

A I would guess the motor carriers would benefit the most.

Q Is that because the fuel prices per ton mile would be reduced greater for trucks than for rail?

A It is my perception that fuel would be a greater percentage of their cost than it would be for rail, so it would stand to reason that they would benefit greater.

Q You answered a question of Mr. Ratner related to where the TOFC competition was in California, and one of the railroads you mentioned was the Burlington Northern. Is that including north-south traffic?

A The question was, what railroads does Union Pacific compete with or against, and I named several in the west. The Burlington Northern is not in California as a major competitor.

Q So their connection in northern California does not provide any competition to you as far as TOFC traffic is concerned?

A No appreciable competition.

MR. VINCENT MAC KENZIE: Thank you.

JUDGE HOPKINS: Is that all? Do you have any, Mr. Roach?

MR. ROACH: Very brief, Your Honor.

REDIRECT EXAMINATION

BY MR. ROACH:

Q Mr. Shum, Mr. Wilson asked you whether truck competition was not a factor in the Commission's decision to deregulate TOFC. Do you recall that?

A Yes, sir.

Q And you said that it was a factor. Is that right?

A Yes.

Q To your knowledge, was the existence of intense rail competition, intramodal competition between railroads, also a factor in the Commission's decision?

A Yes, it was.

Q Do you know which was more important to the Commission?

A No, sir, I do not.

Q On Page 7, at the bottom, you expressed the judgment that rail TOFC/COFC rates for long distance hauls are significantly below the generally prevailing motor carrier rates, and Mr. Wilson asked you whether an element in that is not the service differential between the two modes. Do you recall that?

A Yes, sir.

Q And you said that the service differential is a factor. Is that right?

A Yes.

Q In your judgment, is the cost differential between the two modes the most important factor?

A I would say it is a major factor. I am not certain it is the most important factor.

Q Is there a significant cost differential in your judgment?

A I think there is a difference in the rate between TOFC and motor carrier, yes.

Q And specifically in terms of cost, isn't it the case that the railroads have a lower cost for long haul movements of TOFC traffic compared to the trucks, in your judgment?

MR. WILSON: Objection, Your Honor. That is a leading question.

JUDGE HOPKINS: It is quite leading, Mr. Roach. Why don't you turn it around and ask the question.

BY MR. ROACH: (Resuming)

Q In your judgment, do the railroads have a significant cost advantage in long haul TOFC over the trucks?

MR. WILSON: Objection, Your Honor. I think it is still leading.

JUDGE HOPKINS: I am going to allow it. We can go on forever. Let him answer the question.

Go ahead.

THE WITNESS: Yes, that is true.

MR. ROACH: That is all.

JUDGE HOPKINS: Anything further?

MR. WILSON: Yes, I guess I do have a question or two, since we brought up the ICC decision about deregulating TOFC/COFC traffic.

RECROSS EXAMINATION

BY MR. WILSON:

Q Are you aware that in that decision the ICC said no one has seriously questioned the existence of vigorous competition between TOFC, COFC, and motor carrier service, that the competitive nature of trailer on container movements hardly can be open to question? The first question, were you aware that the ICC made those findings in its decision?

A Yes.

Q Do you agree with those findings?

A Yes.

MR. WILSON: Thank you.

JUDGE HOPKINS: Is that all?

MR. ROACH: That is all.

JUDGE HOPKINS: You are excused, sir.

(Witness excused.)

JUDGE HOPKINS: Do you move the admission of

his testimony?

MR. ROACH: I move the admission of Mr. Shum's revised statement.

JUDGE HOPKINS: Any objection?

MR. WILSON: No objection.

JUDGE HOPKINS: It will be received in evidence.

Let's take a 15-minute recess before we start the Denver and Rio Grande.

(Whereupon, a brief recess was taken.)

JUDGE HOPKINS: Back on the record.

Whereupon,

WILLIAM J. HOLTMAN

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

DIRECT EXAMINATION

BY MR. PRETTYMAN:

Q Mr. Holtman, do you have before you a document entitled Verified Statement of William J. Holtman and marked DRGW-14, Volume 1?

A Yes, sir.

Q Does that statement constitute your testimony in this proceeding?

A Yes, sir.

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

A Yes, sir.

Q Do you have any corrections to make in it?

A No, sir.

MR. PRETTYMAN: The witness is available for cross examination, Your Honor.

JUDGE HOPKINS: Mr. Stephenson, are you going to handle it?

MR. STEPHENSON: Yes, I am, Your Honor.

CROSS EXAMINATION

BY MR. STEPHENSON:

Q Good morning, Mr. Holtman.

Your Honor, at this time I would like to have marked for identification four exhibits. I am not going to be using them all right now, but I thought I might as well have them identified for the record, and then I won't have to stop in between.

The first document is Supplemental Agreement of 20 December 1984 between SP and D&RG. That is SPSP-C-113.

JUDGE HOPKINS: That is right. It will be marked for identification.

(The document referred to was marked for

identification as Exhibit Number SFSP-C-113.)

MR. STEPHENSON: The next document is a graph showing commercial freight carloads interchanged annually. That will be SFSP-C-114.

JUDGE HOPKINS: That will be marked for identification.

(The document referred to was marked for identification as Exhibit Number SFSP-C-114.)

MR. STEPHENSON: The third document is Counsel Exhibit 115, and that is revenue freight interchanged between SP and D&RG at Ogden, 1981 to 1984.

JUDGE HOPKINS: That will be marked for identification.

(The document referred to was marked for identification as Exhibit Number SFSP-C-115.)

MR. STEPHENSON: The fourth document for identification as SFSP-C-116, 1983 D&RG revenue traffic.

JUDGE HOPKINS: That will be marked for identification.

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(The document referred to was marked for identification as Exhibit Number SFSP-C-116.)

BY MR. STEPHENSON: (Resuming)

Q Mr. Holtman, at the time Rio Grande filed its responsive application in this case, you were the chairman and chief executive officer of the company?

A Yes, sir.

Q And that is still your title?

A Yes, sir.

Q Do you have the same responsibilities today that you did then?

A Yes, sir.

Q And what are those responsibilities?

A General management and direction of the company.

Q Would you say that you were the chief policy officer of the company at that time?

A Yes, sir.

Q Can you give us your positions with the Rio Grande over the past ten years?

A For the past ten years I have probably been vice president of administration, executive vice president and general manager, and then president.

Q Were you made chairman at the same time you became president?

A No, about two years later.

Q Did you as the chief policy officer of Rio Grande in 1983 and 1984 make the final decision and recommendation to Rio Grande's board of directors to oppose the Santa Fe-Southern Pacific merger?

A Yes, sir.

Q Were you also the one to recommend to the board the filing of D&RG's responsive application?

A Yes, sir.

Q Has there been any change in Rio Grande's position as a result of its recent acquisition by the Anschutz interests?

A No, sir.

Q What is Rio Grande's most preferred position, that the merger be denied outright or that it be granted with Rio Grande's responsive application also approved?

A Denied outright.

Q Until Rio Grande obtained trackage rights between Pueblo and Kansas City in the UP case, it was basically about an 1,800-mile railroad. Isn't that right?

A Yes.

Q And of that 1,800 miles, approximately half

were main line and half were major branch lines?

A That's correct.

Q And the trackage rights that you gained in the UP case over the MP added about 600 miles to your operations?

A That is correct.

Q Making your combined operation today approximately 2,400 miles?

A Yes.

Q And in the unlikely event that the ICC were to grant your responsive application in this case, you would be acquiring approximately 1,260 miles of right-of-way and outright and 1,206 miles of trackage rights, correct?

MR. PRETTYMAN: I assume, Your Honor, that that unlikely event is not a part of the question. That is, the witness does not have to assume that.

MR. STEPHENSON: I will take that characterization out of the question.

JUDGE HOPKINS: Thank you.

THE WITNESS: Can I say, in the likely event that they do, your answer is correct.

BY MR. STEPHENSON: (Resuming)

Q The figure is correct? It is approximately 2,460 miles of additional operations that you would

get?

A Yes, sir.

Q In view of the vast scope of your responsive application, did any members of Rio Grande's former board of directors express concern to you about whether to proceed with that course or some other course?

A No.

MR. PRETTYMAN: Your Honor, I object, if the witness is supposed to assume that scope.

JUDGE HOPKINS: Why don't we just use scope, Mr. Stephenson, so that we don't have these objections back and forth?

MR. STEPHENSON: All right.

BY MR. STEPHENSON: (Resuming)

Q In view of the fact that your responsive application would have in effect overnight doubled the size of your railroad operations from 2,400 miles to 4,800 miles, did any members of your former board of directors express concern about whether to proceed with the responsive application?

A No, sir.

Q Did any of the board members ask whether there were any alternatives to the purchase and trackage rights proposal?

A I don't remember that there were any direct

questions in that particular session. We discussed all possible alternatives, and the recommendations were these.

Q All right. The all possible alternatives would have included such things as petitions for inclusion?

A I do not think we discussed that one.

Q Did you prior to making a presentation to the board of directors do any independent studies or analyses or has your staff looked at alternatives to help crystalize your thinking for purposes of making a recommendation to the board?

A I would say the operating, the marketing and legal people developed the concepts and those were presented to the board in the fashion that we just described.

Q Now, when you said, as you did a minute or so ago, that all alternatives were discussed with the board of directors, were these alternatives that were based upon a written report or a written set of alternative scenarios prepared by your staff people, or were they simply oral discussions?

A Oral discussions.

Q Had your people, the legal, marketing, and so on, operating people, done any written reports to you or

for you that outlined various alternative scenarios that might be considered?

A No, sir.

Q Did the marketing, legal, and operating people suggest or consider the possibility of a petition for inclusion?

A I am sure they did. I don't remember that it was discussed with me in any great detail.

Q Did you consider requesting independent ratemaking authority over the combined SPSF system?

A If we considered it, it would be rejected immediately, because of the circumstances surrounding this case.

Q Just to make sure the record is clear, the independent ratemaking authority was the proposal that the Rio Grande submitted to the Commission in the UP/MP/WP merger case, was it not?

A That's correct.

Q And it was a proposal that would have permitted Rio Grande to exercise independent pricing initiatives on joint rates with the UP system to and from Western Pacific points in California?

A Yes, sir.

Q In effect, the IRA in the UP case as it was proposed by the Rio Grande would have provided automatic

concurrence on the part of the UP system to maintain joint rates with Rio Grande covering any commodity for which the UP system may maintain a single line rate. Isn't that it?

A I don't know about the any commodity feature. I think it was restricted in the manner that you mentioned, and I think that restricts a certain number of commodities, but I don't remember the details.

Q Under the IRA proposal, Rio Grande could have raised or lowered its end of the joint line rate however it wanted to.

A Within limitations.

Q But it would have to guarantee Western Pacific or the Union Pacific system at least as much revenue as it would be getting on its own single line haul based upon its division in 1980. Is that right?

A Right.

Q The effect of this Rio Grande IRA proposal would have been to prevent the UP system as I understand in your arguments in that case from closing off its participation with Rio Grande in the movement of traffic to or from Western Pacific points either by cancelling joint rates outright or by raising the joint rate to the point where it would not be competitive. Wasn't that the purpose of it?

A Well, that might have been the net effect. The purpose was to ameliorate the anticompetitive results that were proposed in the case.

Q Well, with the IRA in place, the Rio Grande would have been competitive at least ratewise with the UP system, and it would have been up to shippers at that point as to whether they chose to use the single line UP system or a joint line WP/Rio Grande joint rate, joint route?

A Well, again, within the restrictions of the IRA as they pertain to certain points and certain commodities, the Rio Grande had the opportunity under the IRA to make rate quotations that could have at least been competitive within the scope that I just mentioned.

Q And it would have foreclosed, having that ability to quote those rates would have foreclosed the Union Pacific system from closing off the gateway to participation in joint rates with the Rio Grande. Isn't that correct?

A I don't necessarily follow you that far in your statement.

Q Well, the ability of the Rio Grande to be able to quote rates with the Western Pacific would have foreclosed the Union Pacific system from commercially closing their gateway, the Salt Lake interchange with

Rio Grande for the movement of joint line traffic.

A Well, perhaps within those very narrow restrictions that we just talked about.

Q The headings in your brief to the ICC said as follows: "The Rio Grande's request for independent ratemaking authority preserves competitive options for Central Corridor shippers."

You also said, "The West End IRA provides the shipping public competitive rate and route alternatives, and the IRA provides an important competitive offset to long line western carriers' single line pricing capability."

In view of those proclaimed benefits of the D&RGW/IRA concept, you elected nonetheless to go in this case with a responsive application that, in effect, doubled the size of the Rio Grande or that would, if awarded, double the size of the Rio Grande, isn't that correct?

A Yes.

Q Did you consider or did your marketing and operating legal people consider asking the ICC to require as a condition to the merger that SPSF agree to a long-term extension of some form of the present marketing-operating solicitation agreement that existed between Southern Pacific and Rio Grande?

A No, we did not, simply because the SP would no longer be a friendly connection, and the piece of paper that would encompass that agreement would be totally

worthless as far as being enforceable or being a meaningful answer to the competitive needs of the shippers on the west coast.

Q Well, let's discuss that agreement for a second. The agreement was entered into in January of 1983, about a month after the UP merger was consummated, isn't that right?

A Yes, sir.

Q And since that time it has been renegotiated several times.

A Twice.

Q In fact, the most recent renegotiated version is what we have marked as Counsel's Exhibit SFSP-C-113, isn't that correct?

A Yes, sir.

Q Would you agree that basically the purpose of the renegotiations between Rio Grande and SP has been to ensure that the agreement has been fair and profitable to both sides, so that both SP and Rio Grande use their best efforts to make it a success in competing against other railroads and trucks?

A Yes, sir.

Q And generally speaking, the agreement requires SP and Rio Grande to use their best efforts to solicit certain east and westbound traffic for combined Southern

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Pacific-Rio Grande-Cotton Belt routing via the Central Corridor in competition with the Union Pacific system, is that right?

A Generally, right.

Q And the traffic that is subject to the solicitation effort is traffic to or from northern California, Oregon, portions of central California and certain eastern territory.

A Yes, sir.

Q The eastern territory is in fact territory that is reflected in the map attached to Exhibit 113, is that correct?

A That's correct.

Q Would you agree that the territory on the west end at least is larger than the territory that is included as part of the Central Pacific conditions?

A Yes, sir.

Q And that is because the Central Pacific conditions cover substantially similar California territory but do not cover Oregon territory, is that correct?

A Yes, sir.

Q With respect to setting the southernmost boundary on the west end, the lower boundary of the west end solicitation territory, an imaginary line was drawn

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from Salinas on the California coast through Los Banos and then to Chowchilla, is that right?

A Yes, sir.

Q Is it your understanding -- well, let me back up for a minute. Chowchilla is a point that is north of Fresno but south of Merced on SP's San Joaquin Valley line?

A Yes, sir.

Q Is it your understanding that the line that was drawn was a line that was set to reflect SP's indifference from a cost-revenue or contribution standpoint as to whether the traffic went south and up to Kansas City via the Tucumcari route, or north and over the Ogden gateway with the Rio Grande?

A I was not in on the negotiations wherein that line was established, so I don't know what the reasons were.

Q And you are not familiar with any indifference concept that relates to whether the traffic, from a contribution standpoint, would be equally preferable to SP either way?

MR. PRETTYMAN: Asked and answered.

THE WITNESS: No.

BY MR. STEPHENSON: (Resuming)

Q In addition, the solicitation agreement

provides that Rio Grande would bridge westbound empties for Southern Pacific from Kansas City or Herington, Kansas.

A In specific ratios, yes.

Q What?

A In specific ratios to loaded cars.

JUDGE HOPKINS: I'm afraid you'd better speak up a little. It's difficult to hear you.

BY MR. STEPHENSON: (Resuming)

Q Are there any other provisions that are worth mentioning from your side? We have talked about the solicitation and the best efforts to solicit for joint routing and the empty back hauls. What are the other important --

A The other important consideration was the specified amount of money that would change hands on a per car basis toward the UP, reflecting itself in all of the loads that were handled.

Q If I understand what you said, an effort to equalize the contribution that SP would get as between Rio Grande and the Union Pacific?

A No. I think the -- again, I was not in on the initial negotiation. I think that particular number dollarwise per car was established based on an equalization of what the SP proclaimed they would make

on their southern route as opposed to what they felt they were making on the Central Corridor route.

Q Isn't that basically this indifference concept?

A Any time you're talking about money, that doesn't sound like indifference to me.

Q Would you agree on balance that the agreement has worked well for both companies up to this point in time?

A Yes, I would.

Q Would you agree that marketing personnel of both railroads have sincerely tried to make it mutually beneficial to both companies?

A As far as I know they have.

Q Nevertheless, Rio Grande has requested the ICC in this case to double the size of its operations rather than to attempt to work out some kind of an agreement based on the same general concepts?

A That is correct. And again, the reason is that the SP will no longer be a friendly connection at Ogden after and if the merger goes into effect. And in order to properly serve the customers on the west coast and in Oregon, we have to have direct access; and a solicitation agreement would not permit that.

Q Hasn't that basic position been the basic position that Rio Grande has had vis-a-vis Southern

Pacific in at least the last two cases that we have both been involved in, the Tucumcari case and the UP merger? Didn't the -- well, let me break it down. Didn't the Rio Grande in the Tucumcari case tell the Commission that with its new, improved rehabilitated 400 mile shorter route to St. Louis via Kansas City that there was a threat that northern California and Oregon traffic that had previously been moving across the Central Corridor would be moved away from the Central Corridor to SP's long haul route via the Tucumcari line? And wasn't that your reason for being in the Tucumcari case, to attempt to get conditions imposed that would force that traffic over the Central Corridor?

A Yes. And I think it was more than a threat. I think it turned out to be an actuality.

Q You think that the SP is routing traffic from northern California at Oregon over its Tucumcari route?

A I don't know about Oregon. I'm sure they're routing traffic over the Tucumcari line.

Q Do you know whether they're routing any northern California and Oregon traffic over --

A I don't know precisely what they are routing, but the fact that the line is in existence or the traffic moving across that line today indicates they are routing traffic from their California and perhaps Oregon

origins.

Q You are aware that in the Tucumcari case and since that time SP has taken the position throughout that the purpose of its acquisition of the Tucumcari line was to make it competitive out of southern California to the midwestern gateways; isn't that basically the position at least that they have taken?

A I don't know what their position was.

Q In any event, in the Tucumcari case, Rio Grande sought to have the Commission impose the Central Pacific conditions on SP's Cotton Belt subsidiary that was buying the Tucumcari line, so that the Cotton Belt would have to route traffic via Ogden, not via the new 400 mile shorter route, to Kansas City and St. Louis, correct?

A Yes. And that request was denied.

Q And the ICC denied the Rio Grande's request.

A That is right.

Q Do you recall why?

A I do not recall why.

Q Would it refresh your recollection if I told you that the ICC found at pages 383 and 384 of its decision that the Central Corridor was more efficient and possessed certain natural advantages, and I will use quotes around "natural advantages," compared to the

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Southern Corridor for traffic between points in Central Pacific territory on either the east or the west; and that, therefore, the overland route would not lose much traffic to the Tucumcari route?

A Yes, now that you have read it. Of course, the key phrase, I guess, at the conclusion of your reading was what, not much traffic or something to that effect. And I don't know how much traffic was lost to that route. Our contention was that a certain amount would be lost, and I presume it has been.

Q Do you agree that the SP-D&RGW route does possess certain natural advantages over the southern routes for traffic out of Oregon and northern California?

A Yes, sir.

Q In the UP-MP-WP case didn't Rio Grande again take the position that it was going to be isolated in the Central Corridor, that Western Pacific and Missouri Pacific, its eastern and western connections, would be moving traffic to the new UP system, and that SP would, as soon as it finished the rehabilitation of the Tucumcari line, begin to route traffic over the Tucumcari line or, in the alternative, work out some kind of an accommodation with the Union Pacific at Ogden, and therefore divert traffic away from the Rio Grande-SP connection?

A Yes, sir.

Q And that didn't happen, did it?

A I wouldn't say it didn't happen. I am still quite convinced that there was traffic and is traffic that has been diverted across the Tucumcari line, number one. As far as an alignment of SP, I was right except perhaps picked up the wrong railroad, and now they're talking about an alignment with the Santa Fe.

But in the long run, there may still be some accommodation between the Union Pacific and the new Santa Fe-SP system if they do go together.

Q Well, looking at it in the short term to the present from the last time that the Rio Grande was before the Commission in the UP case, despite the creation of the UP system and SP's completion in the last year of the rehabilitation of its Tucumcari line, the interchange of traffic between SP and Rio Grande at Ogden is up substantially, is it not?

A That is correct.

Q Exhibit 114, the graph, and 115, the table of interchange statistics between Southern Pacific and Rio Grande over the last four years, reflect that this year for the full year 1984, according to our records -- and I understand that I gave this to you yesterday, and you don't have -- you didn't have a lot of time to confirm

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these figures. And for the record, you have that opportunity at any point in the future to correct these records.

But according to our records, the interchange by and between our two companies for 1984 was almost 107,000 cars, and that is up from 94,000 cars the year before, 75,000 cars in 1982. So you would agree with me, would you not, that notwithstanding what has gone on in the past several years in terms of mergers and line acquisitions, that in any event, something is happening to keep the traffic between Southern Pacific and Rio Grande moving at a growing rate.

MR. PRETTYMAN: Your Honor, so far as I know, we've had no witness to testify to any of the figures to the graph; but I assume that the witness is simply being asked to assume that the figures are true for present purposes.

MR. STEPHENSON: That's correct.

JUDGE HOPKINS: That's what he has asked.

THE WITNESS: Well, as the graph indicates, since 1982 traffic at that gateway has picked up. That could be caused by a number of reasons, probably not the least of which is the economy.

BY MR. STEPHENSON: (Resuming)

Q I'm sorry. I couldn't hear you.

A Probably not the least of which is the economy of the country.

Q But would you agree with me that 107,000 carloads between our companies is by far the record for our two companies, at least in recent memory?

A This graph indicates that. I have no idea what the record was.

Q Are you aware that at the time of the UP-MP merger proceeding certain data were introduced into the record concerning the relative interchange flows between Southern Pacific and Western Pacific and Rio Grande and UP at the Utah gateways?

A I'm not familiar with that data, no.

Q Are you aware of the ICC's decision wherein they reported that SP interchanged -- and this at page 514, 515 of the decision -- that SP interchanged 70 percent of its Ogden traffic with Union Pacific and only 30 percent with Rio Grande?

A I will accept that.

Q Do you know what the breakdown was in 1984?

A I do not.

Q Have your marketing people indicated to you that there has been a shift in favor of the Rio Grande at the Ogden gateway?

A Yes.

Q Would you be surprised if I told you that as of the first nine months of 1984 it was 68 percent Rio Grande and 32 percent Union Pacific?

A I would believe it.

Q Do you have an opinion as to whether that shift reflects, at least in part, the Southern Pacific-Rio Grande joint solicitation effort?

A It would reflect it in part certainly.

Q Do you think that it also reflects the desire of shippers to maintain Rio Grande as an efficient and effective competitor to the Union Pacific system through the Central Corridor?

A Yes, sir.

Q Would there be any element, to your knowledge, of shipper dissatisfaction with the UP system that accounts for that flip-flop from a 2 to 1 ratio in favor of the UP to a 2 to 1 ratio in favor of the Rio Grande in the period of two years?

A Not to my knowledge.

Q Are there any other reasons that we haven't discussed that would explain this 2 to 1 reversal in the past several years?

A I haven't analyzed it, so I could not say.

Q What has happened to Rio Grande's interchange with the Western Pacific at Salt Lake City?

A It has dropped precipitously.

Q To 10 percent of what it was or 50 percent?

A Perhaps. I don't know what the numbers are.

Q Who would know that -- Mr. Nance?

A The traffic witness.

Q Do you have any idea, can you give us a ballpark estimate as to what the drop has been?

MR. PRETTYMAN: I think he said he had no idea, Your Honor.

JUDGE HOPKINS: You can answer. Do you have any idea?

THE WITNESS: No. I would defer that to the traffic witness.

BY MR. STEPHENSON: (Resuming)

Q Would you agree that one of the major assets of the Rio Grande is its positive attitude or loyalty of its shippers to the Rio Grande as a competitive alternative?

A Yes.

Q Didn't Rio Grande enlist the support of more shippers -- I think it was 131 to be exact -- in the UP merger case than any of the other parties to that action by severalfold?

A Yes, sir.

Q Didn't it take two administrative law judges

working five days in Denver to hear all of the good things that your shipper witnesses had to say about the Rio Grande?

A They appeared in Denver. I don't know how many days they worked.

Q How many shipper sponsors do you have in this case?

A I think it's 600, is it not?

Q Is the support of the 600 shippers rhetoric to make the Rio Grande salesmen happy, or is it, in your opinion, true, sincere belief that Rio Grande has got to be maintained as a viable competitive alternative in the Central Corridor?

A It had better be the latter.

Q As a competitive alternative in the Central Corridor, the Rio Grande shares in traffic with the Union Pacific obviously, is that correct?

A Shares or competes?

Q Shares in traffic -- well, let me back up. With respect to overhead traffic, you consider yourself a competitive alternative to the Union Pacific system, do you not?

A Yes.

Q Between the west coast and Kansas City, for example?

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A Yes, sir.

Q Do you believe that the 600 shippers that support your application give all their business to the Rio Grande?

A No.

Q They probably split some of that business up, give some to you and some to the Union Pacific? Wouldn't you think that that would be a realistic possibility?

A I would say that's a possibility, yes.

Q And they do that to keep you both in line and to make sure that they do have a choice, that they have an option through the Central Corridor.

A I would say that's correct.

Q And they will, as long as they have that choice, continue to use Rio Grande, so that the Union Pacific will not become a monopoly carrier in the Central Corridor; wouldn't you agree?

A As long as we are allowed to remain competitive and do remain competitive, and with the merger as proposed, that opportunity to compete may disappear unless we are granted the conditions that we are asking in full.

Q It goes without saying, doesn't it, that most of the supporters who have -- in the UP case and in this

case -- who have indicated a positive attitude about the Rio Grande have developed this positive attitude not because of single line service provided to them by the Rio Grande, but because of whatever services are provided for them by the Rio Grande as a bridge carrier; wouldn't you agree?

A That's right. And a joint line. And again, that situation could well disappear.

Q Tell us how a bridge carrier such as the Rio Grande develops shipper support, shipper loyalty such as you enjoy today.

A By providing the rate, the equipment, the marketing packages that attract the shipper and put us in a competitive position against, in this case, the Union Pacific.

Q Good service as well?

A Good service.

Q How does your service compare with the UP service, say between Salt Lake and Kansas City?

A How do I say? I say we do better.

Q We have established that the Rio Grande has an efficient route with certain natural advantages for at least a substantial body of traffic in northern California and Oregon. You have competitive service with the only Central Corridor competitor, the Union

Pacific, and you have a large customer base with feelings of loyalty towards the Rio Grande. It seems to me that the only ingredient that is missing from that recipe in order to continue Rio Grande as an effective, viable Central Corridor carrier is a commitment from SPSF or, if you won't accept a commitment from SPSF, an order from the Commission simply requiring that the merged system keep the gateway open, and that the merged system will not deliberately downgrade service to the Rio Grande, and will maintain competitive rates with the Rio Grande.

A Without a merger, I would agree.

Q With a merger. I'm talking about with a merger.

A I'm talking about without a merger. With a merger all of those nice things that you just mentioned disappear totally. The SP would no longer be a friendly connection in the Central Corridor. And I don't care what that piece of paper says on an agreement, a solicitation agreement, it would be totally meaningless because their best opportunity from a corporate viewpoint to move that traffic is without creating or favoring a competitive route through the Central Corridor. They are going to move it through their new Southern Corridor and deprive the customer in northern

California and central California and in Oregon of a route choice that he has today.

Q I understand what you're saying, but I want to pursue it with you. You have said in the past that SP is both a competitor and a friendly connection, and that they have a route, a connection with the Rio Grande over Ogden, and they also have a southern route by way of Tucumcari, correct?

A That's correct. But I would modify it to the extent of stating that they are not putting traffic through the Central Corridor for our benefit. They are putting that traffic through the Central Corridor today for our mutual benefit. It helps them, because Central Corridor, in the cases that we're talking about, is a more efficient route.

Once the merger is in place, that situation may or may not prevail, and the merged corporation would have different motivation as far as moving traffic from central and northern California and Oregon, and that motivation would drive that traffic to the Southern Corridor, and traffic would no longer appear in the Central Corridor, nor would the competitive alternative of a railroad in that corridor.

In this case we are asking that that railroad be Rio Grande by virtue of ownership and trackage rights

or trackage rights only to serve those customers in proper competitive fashion.

Q Why wouldn't the SPSF/D&RGW Central Corridor route be as efficient for the substantial bulk of northern California and Oregon traffic as it is today for the SP?

A It may or may not be as efficient in some cases. The problem is that railroads historically, and so far as I know prospectively, will always go for the long haul, and they would have no reason to give us that traffic at Ogden if they have a viable alternative moving it through the Southern Corridor, from their corporate viewpoint. That situation might be fine for the new merged system, but it deprives the customer, the shipper of his competitive alternative route through the Central Corridor versus the Southern Corridor.

Q I get a sense of deja vu. I have heard this story in the Tucumcari case, and I have heard this story in the UP case. Why, if that is so, if the carriers route their traffic -- if a carrier will route its traffic for its long haul, why does the traffic not only continue to go through the Central Corridor today when SP has rehabilitated its efficient 400 mile shorter Tucumcari route, but has increased through the Central Corridor?

A It's still a competitive route.

Q Well, let me ask you a few questions about your trackage rights to Kansas City. On average, how many trains daily are you running now between Pueblo and Kansas City?

A Merchandise trains, probably two each day each way interspersed with coal trains.

Q And how many coal trains?

A I say interspersed with coal trains. I don't know, maybe three or four a week.

Q Three or four coal trains a week?

A Yes.

Q You are running the trains with MP crews still?

A Yes.

Q That is all trains or just some of the trains?

A It's all trains.

Q These trains that you are running across the Missouri Pacific are bridge rights only, is that right?

A Correct.

Q You don't originate or terminate any traffic on the MP line?

A That is correct, except delivery to and from the SP or the SSW at Herington.

Q Herington, Kansas?

What percentage, if you know -- and you may

not know this -- but what percentage of your westbound cars from Kansas City to your Colorado gateways come to you by way of your trackage rights versus come to you by way of connections -- the Burlington, the MP, the Santa Fe?

A I don't know. Ask the operating and traffic witnesses.

Q Do you know, if we reverse the direction, do you know what percentage of Rio Grande traffic going to Kansas City moves over your trackage rights operation?

A No.

Q Does Rio Grande have any marketing, solicitation or operating agreements with any of your Denver or Pueblo connections such as Burlington Northern, Missouri Pacific? And by marketing solicitation I mean of the same type that you have with the Southern Pacific at the other end for moving traffic to Chicago or down to Texas or whatever.

A No, I think not.

Q You think not; there is some doubt in your mind?

A If they are there, it hasn't been brought to my attention.

Q To your knowledge, did the MP crews or the use of MP crews to run your trains over Rio Grande eliminate

or reduce the Union Pacific system's labor protection -- potential labor protection liability under New York Dock in their merger case?

A I don't know.

Q After the MP-UP merger did UP shift most of MP's former Pueblo to Kansas City traffic off of the trackage rights line up on to the UP line to Denver?

A They shifted it somewhere.

Q It's not there any more?

A It's not there.

Q What percentage of tonnage or wheelage or whatever factor that you are using is Rio Grande's traffic?

A I don't have those percentages. I would suggest you ask our traffic people or operating people perhaps.

Q Would it be a majority, though?

A Yes.

Q Is it true that most of the Rio Grande trackage rights trains move all the way to Kansas City on the MP, or would they -- is it split between the MP and Cotton Belt at Herington?

A Well, it's split, but I don't know how it's split.

Q When your trains arrive in Kansas City, they

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do not, however, go into the MP yards, do they?

A They go into the KCS yard generally.

Q Why is that? What arrangement do you have with the KCS?

A We have a terminal agreement with KCS in that they handle our yarded trains at that point.

Q Why was it with KCS as opposed to MP, for example?

A As I recall, the MP was not too anxious to handle our trains, and we made an agreement with the KCS at the time. I do not remember the details in that regard.

Q Do you have any run-through operations with Kansas City carriers such as the Milwaukee or other Kansas City carriers?

A Ask our operating witness on that. I'm not sure.

Q Do you have any solicitation or marketing agreements with any Kansas City carriers as opposed to we talked earlier about the Colorado gateway carriers? How about the Kansas City carriers?

A Not to my knowledge.

Q Is the Rio Grande a member of the Kansas City Terminal Railway Company now?

A No.

Q No?

A No.

Q Generally speaking, has Rio Grande developed good operating relationships with the Kansas City trunk line carriers?

A East of Kansas City?

Q No. In Kansas City; for example, Milwaukee.

A Yes, generally speaking.

Q And how many of the carriers in Kansas City have supported your responsive application? I know the Milwaukee did. Did any others?

A What's the question again?

Q How many of the Kansas City carriers beside Milwaukee have supported your trackage rights -- well, your responsive application?

A I do not know.

MR. PRETTYMAN: You're talking about this case?

MR. STEPHENSON: Yes. This case.

BY MR. STEPHENSON: (Resuming)

Q Do you know whether any other Kansas City carrier has supported your responsive application?

A I would say you should ask our traffic or operating witness that question.

Q Would you agree that Rio Grande's trackage rights to Kansas City have reduced its vulnerability to

loss of overhead traffic as a result of this merger?

A Who is "its"?

Q The Rio Grande takes the position that they are going to lose overhead traffic as a result of the Santa Fe-Southern Pacific merger, correct?

A Approximately $85 million worth.

Q I understand that that is your figure.

A Yes.

Q And the question is would you agree with me that your new relationship with Kansas City carriers has reduced your vulnerability to the loss of overhead traffic, particularly westbound bridge traffic that you pick up and move from Kansas City to your --

A I would think not. If the Ogden gateway is commercially closed, the overhead traffic will disappear regardless of the Kansas City extension.

Q So you think that the merged system will turn its back on the opportunity to get any traffic moving across the Rio Grande on a westbound basis?

A I would say the opportunity for a competitive route from Kansas City west without a friendly connection or without the ability to move that traffic west of Ogden would cause that traffic to disappear.

Q So basically you're saying that the SPSF system will not work for traffic coming to it at Ogden

and will, in effect, turn its back on that segment of traffic?

A I don't know that they would turn their back, but if the route is not competitive, the traffic will not go that way.

Q Is there an element -- I take it there must be an element -- if you say the route isn't competitive, there's an element of deliberate downgrading of service or deliberate downgrading of maintenance of the route? Is that part of this theory?

A That could be part of it. The other part would be that it would be a joint route with the SP-Santa Fe system at Ogden going west in which they would not have any particular desire to divert traffic from the Kansas City area through the Central Corridor when they have an alternate route over their new system.

Q Well, don't they both have competitive routes for Kansas City to California today that --

A Separately?

Q Yes.

A The merged system is going to create a new set of circumstances.

Q What are the new circumstances?

A Well, there will be a change of traffic flows.

Q What will be the change of flow from Kansas

City to California? It will still go over the Santa Fe line, won't it?

A But not through the Central Corridor, which is the question you were asking.

Q Well, the question I was asking is why, if the Santa Fe or SP would get that traffic after the merger, why wouldn't they get it today if they have the same efficient route and can compete against the Rio Grande Central Corridor route? Why isn't that traffic sitting on the Santa Fe today?

A Well, you made the statement if they had the same efficient route. Our contention is they do not. The Central Corridor route is more efficient in specific cases that we would be talking about here, and that's why the traffic moves that way rather than Santa Fe.

Q Let's move to the last question about the trackage rights. I believe it was your annual report indicated that in 1983, your average length of haul had increased by 50 percent from 325 miles to 485 miles, and the question is, does that come about as a result of the trackage rights?

A I would say largely.

Q Has that figure gone up this year at all?

A I don't know.

Q Mr. Holtman, if you would look at the last exhibit, again, this is subject to correction. It is not -- it has been used only for purposes of questioning the witness, and we invite corrections or clarifications if such are necessary.

Taking a look at the first page of SFSP-C-116, it indicates that in 1983 Rio Grande originated approximately 14 million, almost 15 million tons of coal. Is that correct?

A Yes, sir.

Q How did you do in 1984?

A It is up about 10 percent.

Q And what does the forecast look like for the future?

A A gradual increase; '83-'84 -- skip it.

Q Looking at the combined Table 1 and Table 2 on

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the first page of this exhibit, it would indicate that coal constituted about 59 percent of your total tonnage in 1983, and 43 percent of your total revenue. Correct?

A Yes, sir.

Q The next would be food products, with 8 percent of your tonnage and 11 percent --

MR. PRETTYMAN: No.

MR. STEPHENSON: Do I have that wrong?

MR. PRETTYMAN: You do.

BY MR. STEPHENSON: (Resuming)

Q In terms of percent of tonnage, the leader would be obviously coal with 59 percent. Next in terms of discrete categories would be food products with 8 percent, and that would be 11 percent of your revenue. What does the future look like for food products?

A The projection I suppose is good. It will probably increase gradually. If you are asking me for a percentage increase in '85, I cannot give that to you.

Q Lumber appears to be the next discrete commodity group in terms of tonnage with 6 percent, and 8 percent of the revenue. How does the forecast look for lumber on the Rio Grande?

A We are talking about post-merger, or are you talking about what we project without a merger?

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Q Well, why don't you give me both?

A If you want post-merger, I would suspect without conditions, and allowing Rio Grande to contact the shippers on the west coast and in Oregon directly, the lumber movement would drop practically to zero. If the merger is allowed, I would say we probably have a 4 or 5 percent increase per year.

MR. PRETTYMAN: Excuse me. I think the witness misspoke himself. He said, if the merger is allowed. Do you mean, if our conditions are allowed?

THE WITNESS: I said if the merger is --

MR. PRETTYMAN: With or without conditions?

THE WITNESS: With or without conditions.

MR. PRETTYMAN: Did you say disallowed or allowed? I am sorry.

THE WITNESS: We had better start over.

JUDGE HOPKINS: Why don't you start over again so that you are certain of what is on the record? Go ahead.

THE WITNESS: If the merger does not go through, I would say Rio Grande would have a normal increase in lumber, some 5 or 8 percent annually, but it depends on how things start, the economy and all the rest. If the merger goes through, I would predict that our lumber handled transcontinentally with the Rio

Grande Railroad without Rio Grande conditions could well drop to zero.

BY MR. STEPHENSON: (Resuming)

Q That is part of your theory that the SPSF will commercially close the Ogden gateway, correct?

A That is more than a theory. I think it is going to be a fact, yes.

Q Well, I think the record would indicate that your witnesses said the same thing in the Tucumcari case, and that hasn't come to pass.

JUDGE HOPKINS: Are you testifying?

MR. PRETTYMAN: Is that a question?

MR. STEPHENSON: No, just a matter of clarification.

THE WITNESS: I don't have to agree with it, do I?

BY MR. STEPHENSON: (Resuming)

Q You don't have to agree with it. The transportation equipment is the final one. That is 2 percent, according to our review of your OCS statistics, 2 percent of your total tonnage, and 11 percent of your revenue. Is that correct?

A That's what the numbers state.

Q Is that right?

A I would say so.

Q Is that GM and Ford business?

A Ford business primarily.

Q And you still have the Ford Fast business?

A Yes.

Q And who are your connections with that?

A In Pueblo it is Missouri Pacific. At Ogden it is the Southern Pacific.

Q And that is under five-year Ford Fast contract?

A It is under a contract. I don't know what the termination of the contract is in years.

Q Is Ford one of the supporters of the Rio Grande in this case?

A Yes.

Q Would you agree with me, looking at the second page of Exhibit Number 116, as the interline tonnages, were any of your people able in the short time that you had this last night, to confirm the accuracy of these figures in terms of interline received, interline forwarded, local, and --

A Not to my knowledge.

Q Do they appear approximately correct to you?

A I would accept them pending review.

Q All right. These data would indicate that 84 percent of your tonnage is either interline forwarded,

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interline received, or local traffic, correct? That is the bottom line.

A That is what the figures indicate.

Q Would you agree that that type of traffic is very much resistant to diversion to other railroads?

A Yes. It might be resistant to diversion, but that doesn't mean that under certain circumstances where you lose friendly connections that the traffic would remain eventually.

Q I would like to talk to you next, Mr. Holtman, about the evaluation of SP's lines. To what extent did you get involved in putting the $43 million value on the two Ogden lines sought to be acquired?

A To what extent did I get involved? As little extent as possible. I reviewed the figures, however.

Q The purchase request, as I understand it, includes all of SP's lines from Ogden to Klamath Falls, Oregon. Is that correct? That is not all of them, that is part of them.

A That is part of it.

Q And the balance would be the line from Roseville east to the point at which the Modoc line goes up to Klamath Falls.

A Well, that is not precisely it. That is generally it. There is a spine line over SP tracks from

Ogden to Roseville, and then the line from Klamath Falls to Flanigan or Flanigan to Klamath Falls would be the secondary line that we were talking about purchasing.

However, I would point out that if you are going to have problems with this purchase, or the Commission has problems with a purchase in that it is not ususual, I would have no difficulty accepting our alternate positions pertaining to trackage rights over the entire line.

Q Is this the unveiling of your alternative strategy here?

A No, that is already in the filings.

Q You are seeking in the alternative trackage rights over those lines?

A Yes, sir.

Q With respect to your purchase, since that is the only thing that I have seen, I haven't seen any filing related to trackage rights over what we call the purchase line --

A It is footnoted in one of the documents. In answer to your question, yes, that is the only thing we are talking about in the purchase.

Q Now, the purchase, the purchase price would include, if I understand it, the lines that you just described plus a certain number of locomotives, and as I

understand it that is 129 locomotives?

A That's the approximate number, yes.

Q And those 129 locomotives are part of the $43 million purchase price?

A Yes, sir.

Q And do you also want certain freight cars, boxcars and other --

A Yes, sir.

Q How many of those?

A I don't recall the number. It seems to me it is about 7 percent of the combined SSW-SP fleet.

Q How much?

A I think it is about 7 percent. Those numbers were developed on a proration by our witness, Mr. Whitehurst, and I would suggest if you want the details on that development, which have to do with fair market value, that you direct those questions to him.

Q I am familiar with Mr. Whitehurst's testimony. He never says in his testimony, though, at least I couldn't see it, specifically that the 7 percent of the freight car or locomotive fleet was required, and I am glad that you have clarified that.

Now, as I understand it, in addition, as part of the $43 million purchase of this property and equipment, you would like to have the property and

equipment transferred to you free of any mortgages or encumbrances. Is that right?

A I don't remember reading that, but it sounds like a good suggestion.

Q I take it if it is in your application, that is the position --

A If it is in there, yes.

Q Are you aware that the rail operating property that you are talking about is subject to a long-standing Central Pacific mortgage?

A I am not familiar with the mortgage problems on that segment of line, no.

Q Have you been told that the line is also subject to debt instruments arising out of SP's recent rail and tie program?

A No, I have not been told that.

Q What is your knowledge, if any, about the extent to which these lines are encumbered by mortgages?

A I do not have knowledge of that.

Q Assume with me for purposes of the discussion and my questions that the mortgage and debt instruments attached to the real property are in excess of $100 million. Wouldn't you expect that those creditors would want the new company to pay off a prorata share of the

indebtedness that is currently secured by that property?

A I don't know what the creditors would expect. I wouldn't expect it.

Q If you were the creditor, you wouldn't expect it?

A As a new owner under the terms that we are discussing here. However, I would point out once again that if you are having all this trouble with the purchase, the alternate concerning trackage rights is available.

As far as the Commission is concerned, again, if this is a more usual or accepted method, I don't think we would have any trouble with trackage rights.

Q Well, when we see your refiled trackage rights application, perhaps we can comment on that, but right now I have a question to you on what is currently before the House.

A Okay. Then may I say in specific answer to your question regarding the debt instruments and all the rest that you refer those questions to Witness Whitehurst.

Q Well, let me ask you this as the chief policy officer of the company. Would you, if you were to learn that the property was subject to indebtedness or debt

instruments in excess of $100 million -- let's make it $100 million just to round it off -- would you as the acquirer of that property agree to have the property still act as security for those debt instruments?

A If you are asking whether or not we would accept that, I would say no. The value, $43 million, was based on the fair market value which is represented in the last or most recent sale, and if those debt instruments were out there at that time, they had to be considered in that fair market value analysis, and that is why I ask you to refer those questions to Mr. Whitehurst.

Q Now, did Rio Grande assume that the equipment that is part of its contemplated purchase would be subject to equipment trusts?

A I do not know what the assumption in that regard is or was. I only know that we are talking about fair market value on a prorated basis as far as the track miles that we are talking about, and the equipment.

Q Now, in suggesting the $43 million purchase price or whatever, did you consider that the value of the property that you were seeking to acquire would have a book value substantially in excess of whatever your purchase price is?

A Book value has no application in this case. The Commission has ruled in cases of consolidation and most recently in the Missouri Pacific trackage rights compensation case fair market value is the criteria.

Q I am sorry, but I am not familiar with where the Commission decided this in a purchase setting.

A I don't know about purchase. I am talking about trackage rights, and the trackage right development came from a fair market value.

Q Well, the question was, did you consider the fact that whatever property was contemplated by your purchase request would have a book value that would be in excess of whatever your price, offered price was?

A I did not.

Q As the --

MR. PRETTYMAN: Excuse me. Were you finished with your answer?

THE WITNESS: I was going to reiterate that the number was developed on the basis of fair market value.

BY MR. STEPHENSON: (Resuming)

Q I understand your position, and you tell me, or maybe you can tell me if you know of any instance where the Commission has in a merger setting required an applicant to sell 1,200 miles or more of its property

under that particular formula that you --

A No, I do not, and that is the reason why I mentioned to you earlier that a trackage right settlement would be perfectly satisfactory.

Q Well, I am going to cross examine you on the purchase, because as I said before, that is the only thing that I have seen. What would happen from a corporate accounting standpoint if the ICC forced SPSF to sell this property to the Rio Grande, and this property hypothetically had a book value of $300 million, and the price that was -- the price that we were ordered to pay or that you were ordered to pay was $43 million, what would happen from a corporate accounting standpoint?

A I am not a corporate accountant. I can't tell you.

Q But you have corporate accountants who report to you, and you are the man who reviews --

A We have a financial witness that you might ask that question of.

Q Well, as the chairman, let me try this out on you and see if you are familiar enough with these concepts. SPSF would have to write off the difference, in this case $257 million, as a charge against its earnings in the year of the sale, wouldn't it?

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A I presume so.

Q I would like to talk to you now about the Salt Lake Fill. You are familiar with the Salt Lake Fill?

A Yes.

JUDGE HOPKINS: Excuse me a minute, Mr. Stephenson. How long will you be going?

MR. STEPHENSON: I would say maybe 15, 20 minutes.

JUDGE HOPKINS: I think we ought to take a recess, the luncheon recess. We will be in recess until -- let's make it 1:45.

(Whereupon, at 12:35 p.m., the hearing was recessed, to reconvene at 1:45 p.m. of the same day.)

AFTERNOON SESSION

(1:45 P.M.)

JUDGE HOPKINS: Back on the record.

MR. PRETTYMAN: Your Honor, may I make a brief statement before the cross examination continues?

JUDGE HOPKINS: Go ahead.

MR. PRETTYMAN: The implication seems to have been left from the questions this morning that we are somehow seeking or setting forth an entirely new position in terms of seeking as an alternative trackage rights over the lines we are attempting to purchase.

And I would simply like to point out for the record that in the comments that we filed on June 4, 1984, DRGW-3 at Page 5, Note 4, in the second list of protective conditions we filed July 3, 1984, DRGW-8, Page 2, Note 1, and in the responsive application we filed July 19, 1984, DRGW-10, Page 2, Note 1, in each instance we made clear that we were seeking in the alternative trackage rights over the lines that we were also seeking to purchase.

JUDGE HOPKINS: Thank you.

MR. STEPHENSON: I will also make the point, Your Honor, that I have read all of their operating testimony and all of the entire operating plan, and it is totally, 100 percent devoted to the acquisition of

the lines to Klamath Falls and Roseville, and does not contemplate trackage rights in the slightest, and therefore to the extent that they were at one time contemplating filing trackage rights, it seems to me that it is a little late, and it certainly comes as a surprise to have them raise the subject again four months after they have filed all of their evidence.

MR. PRETTYMAN: Well, Your Honor, I assume this is not the time for oral argument.

JUDGE HOPKINS: It is all in the record. It is all in the record. There is no sense in arguing about it now. We will just waste more time. Let's go on, Mr. Stephenson.

Whereupon,

WILLIAM J. HOLTMAN,

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

CROSS EXAMINATION - RESUMED

BY MR. STEPHENSON:

Q Mr. Holtman, you are aware, are you not, that Southern Pacific has spent around $50 million in the last two years raising the level of its fill through the Great Salt Lake?

A I have heard that number.

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Q And a substantial amount of that time has -- I mean, a substantial amount of that expenditure has been made since September of '83, when the merger of Southern Pacific and Santa Fe was announced, wouldn't you guess?

A Yes.

Q Have you been told by anyone that Southern Pacific has budgeted nearly $15 million for continuing the raising of that fill for this year?

A No, I have not heard that.

Q Are you aware of the fact that the Great Salt Lake is still rising?

A Yes, I am aware of that.

Q Assuming that my figures are correct, the dollar expenditure figures, do they sound like the rational action of people who are about to abandon a route?

A Let me put it this way. Whether or not it is rational I don't know. I don't want to make a judgment on SP management or whoever made those decisions.

When you are faced with consequences of a natural disaster as we were at Thistle a couple of years ago, we elected to move the line in such a fashion that it would not be subject to the same type of disaster again. And that cost us about $40 million.

In the case of the SP, the lake is still

there. They have spent the money. The future life of the causeway probably depends on the change in elevation of that lake.

At the time the decision was made, I would presume that they also took a look at possible alternatives, one of which would have been to discuss trackage rights with John Kenefick of the Union Pacific, and try to make some kind of an arrangement wherein they could go parallel to or on the old WP line between Salt Lake City and Alizon.

Whether or not that was done, I don't know. In any event, I agree the money has been spent. I would further say that that money simply represents the amount of money necessary to protect the asset value of that line. It may somewhere in the accounting process reflect itself in book value, but it did not enhance the value of the line by a single dollar.

We had the same situation again at Thistle. We had to spend the $40 million in order to restore the main line. It was not a matter of increasing the fair market value of that line by spending that amount of money.

Q There is a difference, however, between Thistle and the Salt Lake, isn't there, the fact that you knew that you had a substantial amount of insurance

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that was going to be paying for the relocation of the line, whereas in our case it is all uninsured?

A Well, that certainly did not influence our decision in moving the main line in the fashion that we moved it in order to protect the main line from a future occurrence at the same location.

Q The $40 million that Rio Grande paid was reimbursed how much by insurance, about $30 million?

A Approximately $30 million, that's right.

Q So your loss was $10 million, correct?

A Our loss, as far as the capital expenditure, was $10 million. However, we had the loss of the money that was necessary to detour all of the traffic during the 81-day period.

Q If Rio Grande had owned the Salt Lake Fill in '83 and '84 and '85, and had had a $65 million uninsured expenditure, that would have been a rather substantial blow to your balance sheet, would it not, for those three years?

A That was a substantial blow to anybody's balance sheet.

Q Moving on to labor protection, in the event that the ICC were to grant your purchase application and your trackage rights request out in the west end, you would have to hire a number of new employees, as I

understand it.

A Yes, that information is contained in the operating plan, and I would suggest that you would please ask those questions regarding that to the operating witness.

Q I will ask detailed questions to the specific witnesses, but I would like to ask you several policy questions. If the Rio Grande were to acquire the two Ogden lines and have their own work force, that would necessarily mean that the Southern Pacific employees who work on the line would be out of work. Isn't that correct?

A You say that would necessarily mean it?

Q It would necessarily mean it.

A I don't know that that necessarily follows. But go ahead with your theme.

Q As I understand it, you have made or there has been a statement in Mr. Nance's testimony to the effect that the Rio Grande would consider hiring displaced SPSF employees, correct?

A I will take your word for it.

Q Is the consideration that would be given to hiring displaced SPSF employees in lieu of preferential hiring, or is that another way of saying that they would give preference to SPSF employees for the jobs that are

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available?

A I can't answer that question.

Q Would you think that it is fair that Rio Grande take over the -- to the extent that employees are needed on the new line, that preferential hiring be made of former SPSF employees before you go to the outside and hire outsiders?

MR. PRETTYMAN: I object, Your Honor. I don't understand the question. Fair to whom? I don't understand it.

JUDGE HOPKINS: Go ahead, rephrase it.

BY MR. STEPHENSON: (Resuming)

Q You understand what is preceding this, fair to the Southern Pacific, fair to the Southern Pacific employees.

A I would say that the judgment as to the answer to that question would depend on what the ICC does and what the ICC may mandate and what the labor lawyers or the personnel department would be able to work out with the people that are involved.

Q So you are not willing to make a commitment to the Commission as you sit here that Rio Grande, if they took over the operations over the former SPSF lines, would give preferential hiring or would preferentially hire displaced SPSF employees?

A I would not give such a commitment, no.

Q Assuming that there were more employees on the current SP line than your operating plan contemplates being necessary for the Rio Grande operation, therefore leaving a surplus of employees, assuming that hypothetically you hired 1,300 employees to conduct your operations, and there were 1,400 employees on the line today, so that 100 were displaced, do you have an opinion as to who would be responsible for the New York dock labor protection for the remaining 100 employees who were not absorbed into the Rio Grande work force?

A No.

Q Would you agree that since the 100 employees hypothetically were no longer employed as a result of the granting of your responsive application, that it ought to be Rio Grande that would pay the labor protection for those employees?

A I would not agree to that. You could take that back one step further and ask yourself what happened in the first place that created this imbalance of employees, and the answer would have to be the merger itself.

Q I think we have addressed this subject already today, but I just want to make sure I understand what the Rio Grande position is. On Page 3 of your verified

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statement, right in the middle of the paragraph, the middle of the page, you say that, "If the proposed SFSP merger is approved, the situation will be far worse because our remaining independent connection to the SP will be absorbed by a new competing railroad system which will control Rio Grande's transcontinental route at Ogden. Rio Grande would be unable to function as an independent competitor for transcontinental traffic."

Is it your position that the difference between this merger and the fact that SP today has a competing route via the Southern Corridor, is that the new SPSF system will have a shorter route, a more competitive route with the Central Corridor? Is that basically the thrust of your position?

A I would say they would have a single line route. From some points it may be shorter. I don't necessarily feel that a discussion of the efficiency of the two routes would make too much difference. I think that if that were pushed, I would say the railroad is going to favor its long haul, efficient or no, and the traffic in the Central Corridor would disappear. The shipper would not have his route selection going in because there is no competitive route left for the shipper to choose from.

Q Your answer is no to my question as to whether

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it is the length of the new SPSF combined route?

A I would say on that specific the answer would be no.

Q So it is simply the fact that the new merged company will have a route, a single line route, and will favor its single line haul?

A And will have the market power to enforce that single line haul, yes.

Q And the market power as it relates to the shippers that utilize your line today would be different in what way from the market power that the SP has today?

A Well, the SP would no longer have the motivation to direct any of this business through the Central Corridor. It is going to be a long haul situation, single line with a new corporation. The history of railroading is simply that.

Their best corporate interest, if they look at it that way, is to move that single line, and the more traffic that moves over the single line to them, whether or not it is profitable, it contributes to the maintenance of the long line, but creates diseconomies on the Central Corridor, former Central Corridor. I can say no more than that.

Q If it is simply the fact that they prefer their single line route to working with the Rio Grande

over the Central Corridor, then what is your explanation for the fact that traffic has increased over the Central Corridor with SP that has its single line route via the Southern Corridor and the traffic has not gone by way of the Southern Corridor?

A The SP today does not have the same single line route that it would have with the merged corporation.

Q So it is the route -- that was my initial question. It is the route that makes the difference.

A Not necessarily. It is the market power that makes the difference.

Q Is it the market power and the route?

A Well, I would say yes.

Q Okay. Now, let me focus on the market power. How is the market power of the combined company going to have any difference whatsoever for Oregon traffic? Let's start with Oregon traffic. Santa Fe doesn't serve Oregon at all today. It never has and never will. What is the market power that the merger will bring to Oregon traffic?

A Well, you stated it very well. They don't serve now, but they will under the combined system. Santa Fe will be there in the guise of a Santa Fe-SP system, and that traffic will be steered towards the

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Southern Corridor, and furthermore the shippers in the long run will not have the alternative in the Central Corridor where we have been designated as hopefully a viable competitor.

Q Is it the Santa Fe management that will be taking over and all of a sudden ignoring the fact that Oregon traffic more naturally flows across the Central Corridor?

A It is not Santa Fe management. If I were over there, I would do the same thing.

Q Even though the route from Portland to Kansas City by way of the Southern Corridor might be 500 or 600 miles longer?

A Well, it is not that. The difference is not that number of miles. And again it depends on what type of traffic you are talking about, from what locations, but the total thrust of any railroad, single line, long haul, is to take advantage of that single line, long haul route.

It would be, as far as they are concerned, as far as the corporation is concerned, the new railroad, it would be -- perhaps they would view it as financial folly to try to split the business on two routes.

Q Do you think it has been financial folly for Southern Pacific to split traffic on two routes?

A No, but they are not merged right now with the Santa Fe. The situation is going to change after the merger.

MR. STEPHENSON: That is all. I have no further questions. Thank you.

JUDGE HOPKINS: Department of Justice?

MR. RATNER: We have no questions, Your Honor.

JUDGE HOPKINS: Department of Transportation?

BY MS. REED:

Q Good afternoon, Mr. Holtman. My name is Mary Reed, and I am appearing on behalf of the U.S. Department of Transportation.

A Good afternoon, Mary Reed.

Q The Denver Rio Grande is seeking to purchase various segments of the Southern Pacific's line, or in the alternative to acquire trackage rights. Is that correct?

A Yes, ma'am, and with that acquisition of trackage rights, the trackage rights agreement would have to be properly controlled so that we could not be discriminated against by the owner, SP.

Q Which of these options does the Denver Rio Grande prefer?

A Well, if I am speaking for the Denver and Rio

Grande, why don't you phrase the question which option perhaps I prefer?

Q Which option do you prefer?

A Trackage rights, properly constituted.

JUDGE HOPKINS: Mr. Holtman, may I say something? Are you speaking for the Denver and Rio Grande, or what?

MS. REED: That was my next question.

JUDGE HOPKINS: Oh, I am sorry. I didn't mean to take over for you.

THE WITNESS: Well, if the trackage rights are constituted in the fashion that allows us to control the movement over that line under trackage rights, then I or Rio Grande would prefer that.

BY MS. REED: (Resuming)

Q Would you say that the arrangement that was worked out for the Denver Rio Grande to operate over the Missouri Pacific's line as a condition of the Union Pacific merger would satisfy your concerns?

A Well, not knowing the management of SP well enough to know how they would react to trackage rights, I can't fully answer your question. I would say so far, at least in the case of Missouri Pacific trackage rights, the Union Pacific has been very fair, nondiscriminatory in our operating on their line, and we have had no problems with them.

Q So you're not sure whether similar terms or conditions will be sufficient for the Denver & Rio Grande to say trackage rights are preferable over outright purchase, is that correct?

A I would prefer to have the Commission outline some very specific control provisions which would protect us in any event, and further, protect the competitive issue that is being discussed here in the Central Corridor.

Q Now, you are referring to terms of the trackage rights?

A Yes, ma'am.

Q And aren't those terms set forth in your application?

A No, they are not.

Q Would the Denver & Rio Grande operate from the Utah gateways to the Bay Area if the Commission decided that your trackage rights or purchase requests into

Oregon should not be granted?

A We have not reviewed that happenstance. The entire package was developed on a purchase or trackage right agreement, including the line to Klamath Falls and contact and revenues which are represented by the Oregon shippers, as well as the northern California and central California.

Q So you don't know whether you'll be able to compete over the Central Corridor if you are not granted those rights or purchase?

A No. We would have to review the entire traffic study and develop the situation from there.

Q Now, what about your trackage rights or purchase requests into central California south of the Bay Area?

A What about it?

Q Have you studied whether or not you would be able to compete effectively in the Central Corridor if those rights were not granted?

A No, we have not.

Q Are you aware that the Union Pacific is seeking similar rights that you are requesting in that area?

A No. I'm not familiar with what the Union Pacific is seeking.

Q Would you assume with me that they are seeking to a certain extent overlapping rights with the Denver & Rio Grande into the Central Valley?

A I'd be glad to assume that.

Q Do you have an opinion as to which rights the Commission should grant?

A The Union Pacific against Rio Grande?

Q Yes.

A Do I have an opinion?

Q Yes.

A Yes, I have an opinion. The Rio Grande.

Q Why would the Denver & Rio Grande's rights be preferable over the Union Pacific's rights?

A Well, the Union Pacific is the present major force in the Central Corridor against which we are trying to develop a competitive alternative. To give this to the Union Pacific would be, as I see it, total folly. They have the market power and the reach into the Central Corridor today. We do not. We want to provide competition and keep the Union Pacific honest.

Q Now, if the relief that the Denver & Rio Grande is seeking, either purchase or trackage rights, is not granted in total, would that force the Denver & Rio Grande to abandon any lines?

A We have not presented an essential services

case, but I would say it is fairly obvious over some long period of time that $85 million hit against current revenues, that eventually certain services on the Rio Grande Railroad will suffer in a competitive fashion, and the long-term victims of that situation would be the shippers in Utah and Colorado.

Q But today you have not made any projections that essential services would be eliminated?

A No, ma'am.

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

JUDGE HOPKINS: Mr. MacKenzie.

BY MR. VINCENT MACKENZIE

Q Good afternoon, Mr. Holtman. My name is Vincent MacKenzie, and I represent the state of California.

A Good afternoon.

Q I'd like to ask you a few questions about your testimony and some of the implications.

First of all, did I understand you to respond to Ms. Reed in stating that the Rio Grande has not determined whether any of the conditions or trackage rights that would be granted or could be granted to the UP or the KCS, for example, are compatible with the conditions requested by the Rio Grande?

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A I don't think she was referring about compatibility. I didn't understand it in that fashion.

Q Then I ask you that question.

A Okay. Would you please restate it?

Q Has Rio Grande determined whether or not any of the conditions sought by the other carriers -- specifically, the Kansas City Southern and Union Pacific -- are incompatible with the conditions sought by the Rio Grande?

A We have not made such a study, no.

Q In your testimony on page 3 you refer to a remanding of a case by the court of appeals to the ICC related to your IRA request in the Union Pacific case. Do you recall that?

A Yes, sir.

Q If the Interstate Commerce Commission decides in a reopened record to grant your IRA in the Union Pacific case, what impact, if any, would that have upon your request for conditions in this proceeding?

A None whatsoever.

Q And can you explain that answer?

A Well, the IRA is at best a very weak response to the anticompetitive effect of this particular merger. It would not be helpful in any degree. It might be better than perhaps nothing at this point. But

the traffic that the IRA was originally supposed to protect has probably long since disappeared in the deregulated atmosphere that we live in today, the deregulated environment. And I don't see that it would protect the shippers in any event. It's certainly not a substitute, not even an approximate substitute, for anything that we're asking for today which involves an almost physical presence at the shipper's door.

Q Are your answers in part based on the fact that the IRA relates to Union Pacific territory rather than Southern Pacific-Santa Fe territory?

A Yes.

Q If the Commission decides in its wisdom to grant you IRA rather than trackage rights or acquisition rights in this proceeding, would that provide sufficient protection to you to enable you to compete with the Southern Pacific-Santa Fe?

A I would very seriously question the Commission's wisdom at that point, and the answer is no.

Q If the evidence adduced on this record indicated that for competitive and other reasons the Rio Grande's trackage rights should be extended south of Fresno to Bakersfield, let me ask you what position, if any, would the Rio Grande take on that?

A We would accept that.

Q Would Rio Grande utilize it to its full extent?

A Yes, sir.

MR. VINCENT MACKENZIE: Thank you.

JUDGE HOPKINS: I understand Mr. van Orman has -- do you have a question?

MR. VAN ORMAN: Not of this witness.

JUDGE HOPKINS: Thank you.

Mr. Prettyman, I guess that's all.

MR. STEPHENSON: Your Honor, I have some questions that arose as a result of the Department of Transportation's questions.

JUDGE HOPKINS: I think I will allow -- it would be better probably for him to ask the questions now.

Mr. Stephenson.

BY MR. STEPHENSON. (Resuming)

Q Is it basically then your position that you would -- that the Rio Grande would prefer trackage rights between Ogden and Roseville and Ogden and Klamath Falls rather than the purchase?

A And trackage rights beyond to -- in addition to those trackage rights beyond, yes.

Q So are you, in effect, modifying your application herewith?

A No. The application, as I understand it,

already contains that alternative.

Q Well, Mr. Holtman, I have read your application --

MR. PRETTYMAN: I object to this.

JUDGE HOPKINS: Mr. Stephenson, just a minute. There's no sense in rearguing that point.

MR. STEPHENSON: I understand.

MR. PRETTYMAN: It is a legal question, and it has nothing to do with this witness.

JUDGE HOPKINS: All right. Get to the question, but there's no sense in going on to the same question.

BY MR. STEPHENSON: (Resuming)

Q If Rio Grande went to Oakland and Oregon via trackage rights --

A And beyond.

Q And beyond, what interest would SPSF have in interchanging with you at Ogden or going to Ogden?

A Same interest they have in any event, which post-merger will be zero.

Q And who would SPSF interchange with? Would it be with Rio Grande at Oakland or Rio Grande at Roseville? Where would they interchange with the Rio Grande?

A If we had our conditions?

Q Yes.

A They would not interchange with us. We would be soliciting the traffic from the shippers. The SP would not be interchanging with us. They would be trying to take that same traffic through the Southern Corridor SP-Santa Fe.

Q And you would expect that Southern Pacific over these trackage rights will provide the same level of services that had been requested of the SPSF system for Oregon and northern California, is that correct? In other words, for the trackage rights to Roseville, the trackage rights to Klamath Falls, you would expect that Southern Pacific would, in effect, maintain your trains, do your classifying, run your yards, do everything except run your through freights, is that correct?

A I don't know what I would expect of the Southern Pacific. I'm sure we could fashion a trackage right agreement based on the experience that we have had between Pueblo and Kansas City that would be satisfactory to us and perhaps to them.

Q Between Pueblo and Kansas City is not a full service operation at all. It's bridge rights only.

A It's bridge rights only. There are one or two exceptions.

Q What are the one or two exceptions?

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A Osawatomie, Herington.

Q You simply interchange with other carriers?

A Yes.

Q You don't provide any service to shippers along the line?

A No. That's right.

MR. STEPHENSON: That's all I have.

JUDGE HOPKINS: Mr. Prettyman.

MR. PRETTYMAN: No questions, Your Honor.

JUDGE HOPKINS: Thank you.

You're excused, sir. Thank you very much.

(The witness was excused.)

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

MR. PRETTYMAN: I do, Your Honor. I move the admission of his verified statement.

JUDGE HOPKINS: Any objection?

MR. STEPHENSON: No objection.

JUDGE HOPKINS: It will be received in evidence.

MR. STEPHENSON: I move the admission of 113 through 116.

MR. PRETTYMAN: I have an objection to those, Your Honor. There has been no witness on this stand to support these. These have not been subject to cross

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examination. And further, I would note that the implication when the questions were asked was that somehow Rio Grande had the obligation to come in and correct anything that was wrong here. The burden is not on us, and we object to these exhibits.

MR. STEPHENSON: Your Honor, this is the same type of Counsel's Exhibit that has been introduced in the entire course of this proceeding by counsel. As I stated when I utilized them in cross examining or discussing with the witness the various facts and figures reflected on the documents, that they are certainly subject to modification and correction.

JUDGE HOPKINS: I'm going to allow them because there is no question -- I'm not certain of the truth or falsity of them. They have been put in for the purpose of cross examination of this witness, and for those reasons I will allow them to be received in evidence. They will be received in evidence.

(The documents previously marked Exhibit Nos. SFSP-C-113-116 for identification were received in evidence.)

JUDGE HOPKINS: Who's the next witness? You are leaving, Mr. Prettyman?

MR. PRETTYMAN: I am, Your Honor, with your permission.

MR. SANFORD: Rio Grande's next witness is Mr. A.H. Nance.

Whereupon,

ADOLPH H. (BOB) NANCE

was called as a witness by counsel for the D&RGW Railroad and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SANFORD:

Q Would you state your name for the record, please?

A Adolph H. Bob Nance.

Q What is your employment?

A General manager, D&RGW Railroad.

Q Have you filed a verified statement in this proceeding which is found in D&RGW-14, Volume 2?

A I have.

Q And have you filed or has there been filed on your behalf errata to the operating plan, Exhibit 13, dated November 21, 1984, and additional errata dated January 17, 1985?

A There have been, yes.

Q And are you the witness that is responsible

for the operating plan, the labor exhibits, and the other operating exhibits on behalf of D&RGW?

A I am.

Q And with the changes made by the errata is your statement true and correct to the best of your knowledge and belief?

A It is.

MR. SANFORD: The witness is available for cross examination.

CROSS EXAMINATION

BY MR. STEPHENSON:

Q Mr. Nance, at the top of page 6 of your verified statement you talk about, after having discussed the historical evolution of the Rio Grande from the '20s through the '70s, you say that, "This evolution has resulted in the creation of a railroad with efficient and highly competitive schedules and operations."

And the question is what are you competitive for? What areas are you competitive in? Who are you competitive with?

A Did you say that was in the verified statement, page 6?

Q At the top of page 6 you say that as a result of the evolution that you talked about on page 5 you

have come to be a carrier with schedules and operations that are efficient and highly competitive. Compared to what? What is competitive?

A Competitive is -- and I'm looking at it from a railroad point of view -- competitive is the ability to attract traffic to a railroad line in the face of other railroads operating along the same routes and being able to attract traffic to a particular line. I guess that makes them competitive then with other lines.

Q Are you finished?

A Yes.

Q Do you consider yourself competitive with the Union Pacific between Salt Lake City and Kansas City?

A Because we handle traffic that moves between Salt Lake City and Kansas City and vice versa I would have to consider ourselves competitive in that corridor, yes.

Q Are you competitive with all types of traffic with the Union Pacific?

A We seem to handle all types of traffic, so I guess we could then reason that we are competitive for all types of traffic.

Q Does the Rio Grande compete for movement of traffic from the Bay Area to Chicago, for example?

A It certainly does.

Q How does it do that?

A Very well.

Q In connection with what kind of a joint line -- or joint routes, excuse me?

A We have joint routes, joint rates, and cooperation on the parts of two connecting lines, namely the Southern Pacific Transportation Company and the Burlington Northern.

Q Are you competitive for TOFC traffic between the Bay Area and Chicago with the Southern Pacific and the BN?

A We certainly are in that we operate one train in each direction daily that is primarily TOFC traffic, shipper forwarder type traffic.

Q You also mention at the top of page 6 that Rio Grande has developed innovative marketing techniques that have been fashioned and implemented during this period of evolution of the Rio Grande from a regional carrier to a transcontinental carrier. Specifically, what are you talking about when you're talking about these innovative marketing techniques?

A Mr. Holtman touched on that briefly in his testimony this morning. I'll give you what I feel are marketing techniques, and I think that probably our traffic witnesses Brainard and Thiessen can expand on

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that further if you so desire.

But the marketing techniques that I am addressing are the innovation of the short, fast train, our traffic representatives being aware of customer needs so far as kinds of cars that they needed so that we could participate in the furnishing of those empties to those shippers. Also, our traffic department's knowledge of the needs of our shippers so far as scheduled arrival and departure times, and then the ability of our operating and our traffic representatives to work with their counterparts on our connecting lines and develop schedules and services that were truly competitive and highly used by our customers.

Q Would you consider the SP/D&RGW solicitation agreement to be an innovative marketing technique of the type that you have just described?

A Yes. And one borne of necessity.

Q Borne of necessity perhaps, but it has been successful for both companies as a result?

A I would have to say that it's been successful so far as the attracting of traffic, and from a purely Rio Grande point of view, traffic to Rio Grande's lines, yes.

Q You also mention at the top of page 8 that most importantly, as a result of Rio Grande's evolution

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from a regional carrier to a transcontinental carrier, it's become a customer-oriented railroad. What is a customer-oriented railroad? What services do you provide that become a customer-oriented railroad?

A I touched on some of that in my earlier answer. There are a few things that I eliminated. One is that we were one of the first railroads to recognize the benefits shippers could receive from a total information data system on our railroad. We can provide the shippers with car location-car movement information. We can keep them up to date, and it keeps us up to date so that we can ensure that the movement promised to that customer is actually accomplished on our lines. Then some of the other things that I mentioned in my earlier answer.

Q It perhaps is simplistic to say this, but the reason that you want to be a customer-oriented railroad, to strive to be a customer-oriented railroad at least so far as overhead traffic is concerned -- and that's what we're talking about here -- is so that you can get the shipper to insert the Rio Grande's name in the waybill when he routes his traffic from the west to Kansas City or Kansas City back, or any transcontinental traffic? Isn't that basically what your goal is?

A That's correct. And this is another one of

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those things that is borne of necessity, because in our early days, as I explained in the verified statement earlier, we were not a competitive transcontinental carrier of freight. As we got somewhere else that would put us in that picture, we went up against some pretty heavy fellows in the form of the Union Pacific, who had prior to that had a pretty good lock on the traffic. We had to move pretty fast to keep from getting stepped on in those early days.

One of the ways that we knew we could attract that traffic was to be a customer-oriented railroad, and that involves lots of things. It involves, in addition to those things that I've told you, I think it's a people thing where our sales department has made a great effort to determine what the customer's needs are and then to come back to the operating side of the railroad to express those needs to operating department, and set down and work out joint solutions to those problems, market and then do it. And that's the way we have become a major customer-oriented railroad, and we do pretty well in that Central Corridor.

Q Whenever a customer routes overhead traffic via the Rio Grande, is it fair to say that that customer had an option of using a joint line route with the Rio Grande or a single line route with any number of

carriers, including the UP system, the SP, the Santa Fe and others?

I guess the question is can you think of much overhead traffic that you haul that is not competitive with one or more of the single line carriers?

A No, I can't.

Q So we can assume, I guess, that whenever Rio Grande participates in a movement as an overhead carrier it is because this customer orientation has convinced the shipper that the joint line route with Rio Grande is a competitive alternative that is preferable, at least in that instance, to the single line route of SP or UP or Santa Fe?

A That is as good as the same price or less. I suppose you could put it that way.

Q And it's this shipper attitude that has caused, as you heard earlier, 131 shippers to come testify in your behalf in the UP case and 600 shippers to come testify on your behalf or submit verified statements in this case, is it not?

A Well, we like to think that it's because we're so great and they're trying to help us. When you really analyze it, though, I believe the reason for all those shipper statements is that they might be trying to help us, but it's one for us and two for them. They also

want to preserve those competitive alternatives that the Rio Grande has always offered to them in the past.

Q At pages 6 and 7 of your verified statement you trace various events such as the merger of the CB&Q into the Burlington Northern system and the failure of the Rock Island/MP-UP merger as affecting the Rio Grande over the years.

Isn't what you're describing there a phenomenon that has been going on in the railroad industry for many years, which is caused by mergers and bankruptcies of railroad, new line acquisitions, and that ends up in shifting alliances between railroad connections?

A Yes, sir. There's a couple of comments I would like to make on that, too. And this is also included within our verified statement, within my verified statement. That yes, those things have occurred over this time period. The result has been for larger and larger systems the primary reason for increasing their system size was to, you might say, eliminate competition, and also to be able to exercise the prerogative of a long single line railroad; that is, keep traffic on its lines.

And I would further like to mention in connection with this that we have been involved, usually

in an adversary position to all of them. Our traffic representatives, many who are in this particular case here today, have estimated the impacts of those various things that have occurred in the industry. And it's amazing how closely their predictions have really come to pass in all of these.

Q Are you done?

A I'm through.

Q One of their predictions was that as a result of its acquisition and rehabilitation of the Tucumcari line that the Southern Pacific would stop routing traffic over its Ogden line and would begin routing traffic away from the Central Corridor and to its own long haul via the 400 mile shorter route. You are familiar with that position of your marketing people, are you not?

A Yes. There was something you brought up here with Mr. Holtman this morning on that 400 mile shorter route. I would like to be sure that the record is straight on that. I was a little confused as I sat back there and had to think it through. That 400 miles shorter is a route that is 400 miles shorter by way of the Tucumcari line that it used to be around through the old SSW route up to Corsicana, as I remember. And yes, our traffic representatives did predict that there would

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be a deterioration of traffic moving over the Ogden gateway in that particular case.

And I believe as you cross examine Mr. Brainard, and you want to ask him the specifics of that, he can give you the ballpark figure that he used as his projection, and what he feels really happened in that particular case.

So, yes, we did predict that would happen. Our traffic representatives feel it did happen. And he can give you the exact measure of what that impact was.

Q Well, in terms of it actually happening, you are, I'm sure, familiar with the interchange volumes between Southern Pacific and Rio Grande today. Do those volumes -- 106,000 cars in 1984 compared to 75,000 cars in 1982 -- does that reflect a movement of traffic away from the Ogden gateway and to the Tucumcari route?

A This was another question that went through my mind as Mr. Hoffman was replying today; that you use those numbers as showing an increase at the Ogden gateway. And I don't have all of the numbers here with me, but I think it would be well to look them up. Maybe Mr. Brainard will have those. I don't recall what the total Utah gateway volume was via Ogden, total Rio Grande-UP in prior years.

I do know -- and you used this

characterization earlier -- that the Union Pacific previously had the bulk of the interchange at Ogden. Subsequent to the merger of the Union Pacific-Southern Pacific -- Union Pacific-Missouri Pacific-Western Pacific and as a result of the joint solicitation agreement between Rio Grande and Southern Pacific, the preponderance of the Ogden gateway traffic shifted to Rio Grande.

I heard Mr. Kenefick make a statement here yesterday, I believe it was, that he didn't know what had happened, but he'd sure seen a heck of a drop in the UP interchange at Ogden.

What I'm trying to say, Mr. Stephenson, is I don't know whether there has been a shift of traffic from the Tucumcari line to the Ogden gateway, or whether we are only experiencing an increase in our interchange because of the drastic decrease in the UP interchange. And I don't have that answer, but these are the questions that are in my mind on that particular thing.

Q Your marketing people have not done, to your knowledge, any studies that would indicate the extent to which northern California and Oregon traffic is flowing out over the Tucumcari line to Kansas City and beyond?

A No. The only thing I know -- and this is strictly hearsay -- in the opinion of many of them that

there is a significant volume of traffic moving from Oregon, northern California over the Tucumcari line, and that's all I have. I have seen no studies on that, Mr. Stephenson.

Q There are a number of occasions when Southern Pacific notifies Rio Grande that it has an opportunity for contract rates with shippers over D&RG, and D&RG expressly declines to participate in that traffic. Isn't it because of revenue problems, that there's not enough money to be made?

A I have not myself been involved in any of the contract negotiations or in any of those instances. If there have been, I'm not aware of them, nor do I know the reason for them to happen if they are.

Q Can we get on to talking about your trackage rights into Kansas City, please?

A Sure.

Q As was indicated during Mr. Holtman's cross examination, those trackage rights are bridge rights only, is that correct?

A Yes. And do you have a particular reference for me here that I might use to look at, or do you have it in your hand there?

Q No.

A Is this from my testimony that you are

speaking?

Q Yes. You talk about that you now have trackage rights into Kansas City, and I want to talk to you about your Kansas City trackage rights.

A Okay. There's no particular place in my verified statement or operating plan that you want to talk about?

Q No. Your trackage rights to Kansas City are bridge rights only. That has been covered, I think. You do make interchanges, is that right, along the line?

A We have the right to interchange at places like Geneseo, Herington, Osawatomie. There's one other one -- Lomax. So that we can interchange to the Missouri Pacific at all those points except Herington. We interchange strictly with the Missouri Pacific for the furtherance of that traffic to its ultimate destination on some branch line. At Herington we have the right to interchange with all transportation carriers at Herington, including the SP, of course, SSW.

Q What determines whether a train is routed over Herington and the Cotton Belt into Kansas City or out of Kansas City as opposed to whether it goes on the MP all the way into Kansas City?

A It depends on the way the trains are given to us at Ogden and the amount of traffic that would best be

served by the run-through at Herington, the run-through with the Southern Pacific where they can pick it up at Herington, run it directly through there with just an SP crew change on into Kansas City, and then some of them ultimately end up in St. Louis.

A lot of it depends on the volume of traffic, the types of traffic that are available, and the desires of the Southern Pacific and SSW transportation management people.

Q How many trains a week would you have, for example, of that variety that runs all the way from Ogden through to Herington and then is picked up and taken into Kansas City?

A Well, we get them at Ogden and run them to Herington or Kansas City?

Q Kansas City.

A To Kansas City via Herington?

Q Via Herington, correct.

A I haven't made a count of that. It would seem to me it would run somewhere around a train maybe five days a week. It may be more than that, Mr. Stephenson. I'm just going from recollection of what little time I've had to spend in that control center lately to observe those kinds of things. But I think probably a train a day each way. It may go as high as a train and

a half each day each way via Herington. Some of those trains just don't come to us as a solid block Herington train at Ogden. Some of those trains are made up at our Grand Junction hump yard or filled out at Pueblo, but do interchange back to the SSW at Herington after some services on the Rio Grande.

Q How many trains a day are you operating out of Pueblo that do not go to Herington but go directly to Kansas City or from Kansas City to Pueblo?

A In the manifest train area about two trains each way a day I think would be a good average, and then coal trains, a train and a half to two trains a day eastbound; a train and a half, two trains a day of empties westbound.

Q During the cross examination of Mr. Holtman we talked about the reason that you used the KCS into Kansas City. What is the reason that KCS is used as opposed to the MP to do your work in that terminal?

A Mr. Holtman used the term that the Missouri Pacific objected to our being there. That's only half of it. I was directly involved in trying to get ourselves into Kansas City on those trackage rights and trying to negotiate with the Union Pacific and Missouri Pacific for the right to use their Neff Yard. It's a tremendous yard, and I had no idea that a yard could

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have so many problems as Neff Yard was going to have, especially after we became a tenant there.

And there were all kinds of reasons, all kinds of things they couldn't do, all kinds of reasons they shouldn't do them, and I had some acquaintances on the KCS, and the better acquainted I got with Kansas City and able to evaluate the capability of the Kansas City Southern yard, its close proximity to the Neff Yard, and a few conversations with some KCS people who appeared to be willing to take us as a tenant -- and, of course, this was also at the concurrence of the Milwaukee -- asked them to give me a price per car, which they did, and it was pretty favorable so far as we were concerned in that we felt we were in a yard where we wanted to be, they were not a competitive yard, they would provide the services that we needed, they seemed to be very glad to do it, and of course, the per car price we're paying them certainly provides them with a little additional profit in their yard. And it just was the right place to be, and it's worked very well.

Q Do you have any run-through operations with Kansas City carriers such as KCS or Milwaukee?

A We do. We have one run-through train -- and I would say this is probably three or four days a week -- with the Milwaukee, and it provides a very good service

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route. It avoids a lot of train delay in Kansas City for that traffic.

We also have, of course, the run-through train from the Norfolk Southern; that is primarily handling the Ford traffic. And in addition to that, there are some coal trains that run through to the Missouri Pacific and some to the Milwaukee, and there could be another coal train or two in there. I don't recall right now, Mr. Stephenson.

Q What direction are the Milwaukee trains?

A What direction are they?

Q Yes. The run-through trains.

A They are moving eastward over the trackage rights line into Kansas City, the overall line, and then moving east towards Chicago. Likewise, about three days a week or four they can get together enough traffic that makes up a very nice little block train for us. So it's a traffic flow both ways.

Q Is it run-through power with both railroads?

A It can be. We have run-through agreements with the Milwaukee, and if they want to run the power through, you bet, we can do it, and we have brought some of their power west to Pueblo on occasion.

Q The Norfolk Southern train that you run through, that is a westbound or eastbound?

A We run an eastbound back to them with a mix of auto parts, empties, and other general merchandise type traffic. We run westbound through from them. I believe they do some switching in their yard. The train, though, is powered out of the Norfolk Southern yard and on the old Rock Island segment of the line past the Kenoche and Neff Yards and out onto the line to Osawatomie.

I would also like to mention here -- it's almost been overlooked in our conversations about joint terminal facilities -- that we, in addition to having a joint facility agreement with the Kansas City Southern and Milwaukee in their Kenoche and East Yards, we also have that same kind of an arrangement with the Norfolk Southern in their yard. And I don't remember the name of their Kansas City yard. I should, but I don't right off the top now. But we do have a joint facility agreement with them that is very similar to that that we have with the Kansas City Southern.

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Q What have the trackage rights done to the volumes of traffic that you used to interchange with MP at Pueblo?

A Well, as has been pointed out and I am sure you are aware, the MP interchange at Pueblo literally disappeared very shortly after this merger took place. We are now moving over the trackage right line because of our ability to receive traffic from our connections.

When I say "our connections," it doesn't take very long for you to start claiming them. We have only been there a little over a year, but they are our connections now.

From our connections in Kansas City, we have picked up a volume of traffic that is very comparable, and I haven't made that comparison, numerical comparison, Mr. Stephenson. This is on a gut feeling from what I have been able to observe over the last 30 years with the Rio Grande, that we have just about recovered what we lost to that MP interchange. It may be just a little higher, and it may be just a little lower.

But we're back to Pueblo because we operate the trains in there. It's still a viable point on the Rio Grande.

Q I want to make sure I understand that point.

Your interchange with all Kansas City carriers has brought you up to the point that you were with the MP interchange prior to the merger?

A Yes. And there is another significant point in connection with this particular merger. It's that the Western Pacific interchange at Salt Lake City, also in connection with the UP-MP and WP merger, has done the same thing that the Missouri Pacific interchange at Pueblo has done.

And again, I would like to, just as a side light, say that the Union Pacific argued with me for a couple of days here in this very room that they weren't intending to take that traffic off of our line at Salt Lake City, however that may be. But, because of the joint solicitation agreement and at the urging of the Commission in the issuing of the decision in the UP-MP-WP thing, Rio Grande and Southern Pacific have worked together very well at Ogden.

Most of that traffic, that is, bridge traffic that we receive from our connections at Kansas City or go to those connections at Kansas City also move to or from the Southern Pacific interchange at Ogden.

Q Do you have any feel for whether your combined interchange with Western Pacific and Southern Pacific today is lower than, about the same as, or greater than

your combined interchange with Western Pacific and Southern Pacific the year before the merger?

In other words, is it about the same number of cars, but just coming from different railroads?

A This is strictly an estimate, and I think if you want to get into the specific numbers, I believe Mr. Brainard or Mr. Thiessen may have those. I have seen them somewhere in some of their filings.

But if I remember correctly, we're not yet at the same level we were when Southern Pacific was a friendly connection, Western Pacific was a friendly connection, Missouri Pacific, Burlington Northern, and Rock Island were all friendly connections on the east end.

I don't think we are at that level yet. I think there has been a drop in total traffic. But don't hold me to that. Check that out with one of our traffic guys. I'm sure they have those numbers available.

Q Mr. Veltman told us that the Rio Grande trains running over the trackage rights are running with Missouri Pacific crews. Is there a plan that those some day would be run by Rio Grande crews?

A Since the UP-MP decision, there has been a constant -- there has always been something that's been an uncertainty. First it was what will the trackage

rights rental be? It seems that that may have been solved.

And about the time that was solved or prior to the time that was solved, the Santa Fe Southern Pacific merger was announced, and now we are involved in this thing. And I know you and I, our two railroads have different points of view on the impacts of that merger on the Rio Grande.

At this time, because of those uncertainties, I wouldn't predict one way or the other what's going to happen on that Missouri pacific line, because if our prediction holds true and we lose some 95,000 loads a year, which a good part of that would move over Kansas City, that is sure going to affect that operation out there.

If, on the other hand, we are successful in our attempts to acquire an operating presence in Oregon and California, then it may be decision time as far as the Kansas City line is concerned. But I would hope that some day we would operate our own crews over that line.

Q You mentioned 95,000 loads. 95,000 loads constitutes the number of loads that you are moving in and out of Pueblo via your trackage rights?

A No. That is the diversion that was predicted

by Mr. Thiessen in his opposition traffic study as a result of the -- I'm sorry. I thought I made that clear, Mr. Stephenson. I'm sorry.

Q How many cars do you move in and out -- how many loads do you move in and out of Pueblo today under your trackage rights, or did you in 1984?

A I don't have that number available, I don't believe, Mr. Stephenson. I might be able to give you something as a ballpark number, but not necessarily a true number.

Q Maybe you can look at it over the break.

JUDGE HOPKINS: Why don't we do that?

BY MR. STEPHENSON: (Resuming)

Q Do you have a feel for -- and you may want to look at this over the break also -- I asked Mr. Holtman whether the amount of traffic that the Rio Grande was receiving at its Colorado Gateways was more or less than the traffic that it is receiving at Kansas City via its trackage rights.

Do you understand the question?

A I understand the question. You're talking about do we get more traffic off the combined Burlington Northern-UP interchange at Denver or from the combined interchanges at Kansas City?

Q Yes.

A I would say we're getting more traffic off the combined interchanges at Kansas City.

Q You didn't mention the Santa Fe interchange at Denver or Pueblo. Is that because the Santa Fe interchange is negligible?

A That's because it's very easy to forget. There isn't much of it.

Q Okay. Do you have any unit coal trains with the Santa Fe?

A Yes, we do, that operate out of the Moffat district on our railroad and to them at Pueblo. I believe there's a Coleto Creek and a chemical outfit we still interchange coal trains with at Pueblo.

Q Well, I asked you --

A Celanese.

Q -- your impression of whether you were getting more cars at Kansas City than you were getting at your Colorado Gateway interchanges, and you indicated you thought it was --

A I'd like to modify that, to the extent that I included Herington in my guess as well as Kansas City.

Q I understood your answer that way. What about the reverse direction -- eastbound? Do your trackage rights -- do you move more traffic via your trackage rights to Herington or Kansas City than you interchange

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to your connections at the Colorado Gateways?

A I would say that's correct.

Q So the trackage rights has been a success in terms of attracting volumes of traffic, wouldn't you agree?

A It has been; yes.

Q Do you have any marketing or solicitation or operating agreements with your connections at the Colorado Gateways, Burlington Northern, Santa Fe, or UP?

A Are you talking about something like the joint solicitation agreement?

Q Yes. Something like that, or maybe --

A No. We have -- I don't know whether you would even call them agreements or not. They are agreed-to operating practices between ourselves and the Burlington Northern, for example, where we will try to get Train 101 to you on time if you will try to get Train 64 to us on time. Those kinds of agreements, yes, we have those.

But as far as any cooperative traffic type agreements, there are none, no, that I'm aware of. There may be some, but I'm not aware of them.

Q Do you have any solicitation or marketing agreements with Kansas City railroads?

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A No, none that I'm aware of. I believe we are party to a Ford contract that Norfolk Southern is a party to also, if you want to consider that an agreement.

That's an agreement primarily between ourselves and the shipper.

Q I mentioned to Mr. Holtman the increase between 1983 or '82 and '83 and your average length of haul as a result of the trackage rights went from 325 miles to 484 miles.

Do you know what it is today?

A I don't, Mr. Stephenson. I would imagine it would be very close to what 1984 was.

Q At the other end or the other end of your railroad, Provo. You have indicated at page 4 of your verified statement that you have an interchange at Provo with the Union Pacific, I think you say basically for coal trains.

A That's correct.

Q How much traffic are you running through Provo with the UP?

A That's a sporadic volume, in that that interchange depends upon the volume of export coal that is moving. If we have a month when they are shipping a lot of coal exports from Long Beach, we'll maybe run three or four trains a day in there for a week, and then

there won't be an export train for quite a while.

There is a fairly consistent movement of traffic to the UP there from a mine in Carbon County, Utah to the Nevada Power Company at Moapa, just out of Las Vegas.

Q Is it unusual here that you are dealing here as a connection with a competitor? Isn't UP competing for this, for a single line haul, number one, and also to get the coal from some of their own originations?

A We are dealing with a competitor, but it's not in the sense of some competitive -- not in the sense of most competitive situations, in that there is a coal mine in Carbon County that is very close proximity to that power plant in Nevada.

This is the closest place that the UP can get the coal. And so I don't see that as a competitive issue, no.

Q Okay. Now, the coal moving for export is moving over the Union Pacific south to Los Angeles; correct?

A That's correct.

Q And is this other coal movement that you describe, is that moving on the old Western Pacific in a westerly direction? Or is that also moving on the UP line?

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A It's on the UP line, across the old LA&SL into Los Angeles.

Q No. I'm talking about the second movement that you described.

A The power company coal?

Q Yes.

A No. That also moves over the old LA&SL into Moapa, Las Vegas, Nevada.

Q You may have mentioned this, and I may have forgotten it already. We were talking about the changes in volumes, interchange volumes, at Salt Lake City.

Can you give me a raw number, approximately, as to what the Western Pacific interchange volume was last year -- 10,000 cars, 30,000?

A It wouldn't be that much. I think probably we're talking in the neighborhood of 3,000. But again, Mr. Thiessen or Mr. Brainard can, I think, give you t that exact number.

Q What is the difference between your interchange at Salt Lake with the UP and your interchange at Ogden with the UP? Why would it be one place as opposed to the other?

A Ogden versus Salt Lake City with the UP?

Q Yes.

A Oh, the Ogden interchange with the Union

Pacific has never amounted to anything. The Salt Lake exchange with the Union Pacific, except for some locally originated or terminated traffic, didn't amount to anything either.

The interchange that amounted to something in Salt Lake City was with the Western Pacific. And since the Western Pacific is now Union Pacific, then we've got to consider it all as one interchange.

Q You heard the testimony of Mr. Holtman this morning when I asked about the 70/30 split between the interchange volume SP with UP versus Rio Grande?

A Yes. And that's what I was referring to earlier in my testimony to Mr. Stephenson.

Q Have you heard from any sources on your railroad that the split today is not, as I characterized it earlier, 70/30 in favor of Rio Grande, as opposed to 70/30 in favor of UP as it was several years ago?

A The numbers that I've heard fall into that ballpark of 70/30. It could be 72/28 or something like that. But I'm not sure of the exact percentages.

Q At page 9 of your verified statement, you say that as a result of Rio Grande's trackage rights to Kansas City, your traffic base continues to grow. By that, do you mean primarily bridge traffic?

A Yes.

Q And is that both eastbound and westbound?

A That's eastbound and westbound. The other thing that we are seeing some growth in is the growth of TOFC traffic from Kansas City to Denver which is a local, a point local to the Rio Grande, and not considered bridge.

But, for the most part, that growth is in bridge traffic.

Q And you haul that traffic to Pueblo and then you run it up to Denver from there?

A That's correct.

Q You say that the traffic, the growth in traffic between Kansas City and -- or that your traffic base is increasing and it's both westbound and eastbound. Is that relatively balanced?

A I don't recall the breakdown for loads versus empties, Mr. Stephenson.

Q Actually, what I'm saying is, is it balanced in terms of loads westbound and eastbound? Is the growth in both directions?

A I hesitate to answer because it would be a guess on my part. I don't know, Mr. Stephenson.

Q Can you quantify the growth in terms of '84 versus '83, for example?

A No, but I believe Mr. Thiessen may have those

numbers; either he or Brainard. I think they have looked at that and I have not.

Q You mention in the next paragraph on page 9, "the rapid growth of traffic to and from all of Rio Grande's friendly connections."

Just stopping there, to what extent has the increase that we see in the interchange volume at Ogden between Rio Grande and SP, to what extent does that reflect this growth in your friendly connections at Kansas City?

A As I explained earlier, they are almost a direct correlation because we sure as heck aren't giving the traffic at Salt Lake to the old Western Pacific. The traffic that is moving in bridge is all moving to Southern Pacific.

Q And you solicit for that route from Kansas City -- or to the extent that the Rio Grande has control or some influence on the routing, you try to see to it that it is routed to Southern Pacific at Ogden?

A Yes. There's a very good reason for that, and I am certainly not going to pretend to be a traffic expert in this thing. But Mr. Thiessen and Brainard can fill you in on this also.

One of the reasons that that is true is that subsequent to the UP-MP and WP merger, for all intents

and purposes, the interchange at Salt Lake City has been commercially closed to us. They are interested in the long haul. The way we get joint rates and routes is through the Southern Pacific. The solicitation agreement helps.

And again, I think if you really want to know everything about that, Mr. Thiessen and Brainard can fill you in on it.

Q At page 10 of your verified statement, you say the Rio Grande has emerged as an important carrier of coal and that most of it moves to power plants and other industrial users in the Midwest, Northeast, and Southeast.

Would you agree with Mr. Holtman's testimony that your coal traffic in '84 was up about 10 percent from '83?

A Yes, because I don't have any reason to disagree with him.

Q Am I to understand from the statement I just quotei that most of your coal traffic is eastbound?

A It has been in the past, yes.

Q Can you give me an approximate breakdown, 40 percent or 80-20, 75-25, something like that?

A It is probably very close to a 50-50 split on local consumption versus eastbound traffic, eastbound coal.

Q By local consumption you mean --

A I mean power plants on Rio Grande.

Q Well, perhaps I am looking at the wrong thing. Perhaps the figures that I got out of your QCS are wrong, but that would reflect that you originated 14,627,000 tons of coal in 1983 and received only 27,000 from connections. I guess maybe it is not in conflict. You are saying that most of this or a substantial amount of this, nearly 15 million tons of coal, is consumed on the Rio Grande itself?

A Yes. We have a big power plant at Denver, there is a big power plant at Colorado Springs, some power plants at Salt Lake City that all consume coal that is mined on our line. The balance of it moves offline.

Q And of the balance that moves offline, am I correct in understanding that it is predominantly

eastbound, or is it --

A The regular movement of coal is eastbound. The sporadic movement of coal for export is westbound. And I don't know what percentage of the coal by export would be, Mr. Stephenson.

Q As I understand it, one of the supposed benefits of Rio Grande's responsive application is that it would permit Rio Grande to provide single line service to west coast ports for potential export to the Far East when and if that happens.

A That is correct.

Q Today you are moving, to the extent that there is export coal, you are moving it either via Southern Pacific or Union Pacific, correct?

A That is correct.

Q Now, with respect to your eastbound coal, all of that coal moves through connections, does it not?

A Anything east of our line moves through connections, that's correct.

Q Anything that would be leaving Pueblo on the trackage rights or -- is there any coal consumed on the trackage rights lines?

A There is none. There is some of the coal going to southeastern markets that is interchanged to the Missouri Pacific at Osawatomie. The balance of it

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moves to Kansas City and is delivered to one of the various connections there.

Q Okay, or the Santa Fe, the Santa Fe movement you described earlier, where do you interchange that?

A That interchanges at Pueblo and moves via La Junta and over the Santa Fe branch, Boise City branch I think it is, down into Texas at the Celanese or Coleto Creek.

Q In any event, all of the eastbound traffic that moves Pueblo or Denver is moving by way of at least one other carrier with yourself.

A That is correct.

Q So that to the extent that your trackage rights, your purchase and trackage rights, or your plain trackage rights would permit you to have single line service to west coast ports, the fact is the Rio Grande has successfully marketed its coal, or its shippers have successfully marketed their coal to eastern terminations using at least a two-line haul in every case, wouldn't you agree?

A We have marketed some of that coal. I don't know that with the total volume moving in coal traffic on all railroads whether you would really call us all that successful or not in that we could have, had we been able to be the only carrier involved, probably

market a lot more of that coal east than we have. But where we have had to deal with one or two other railroads in coming up with a marketing plan, has tended to blunt our thrust into that market and has given the single line railroads like the Burlington and the Union Pacific, and in some cases the Santa Fe, a much better advantage in those markets than we have. This is from an operating man's point of view, when I keep wanting to run coal trains and the traffic department tells me we can't do it because they beat uys out on that last bid. So I think we probably could have done better if we had been a single line haul than we have by trying to -- have to negotiate joint rates.

Q But the fact is that over the last ten years, your gross ton miles of coal that the Rio Grande has hauled has gone up rather markedly, wouldn't you agree?

A This goes back to 12975? There has been some increase. I don't know that it has been as great an increase as we may have projected, nor do I know how that rate of increase compares to the rate of increase on, say, Burlington Northern, Union Pacific, Chicago and North Western. I don't know. I don't think we have grown as fast as they have in this overall coal market.

Q But in any event, the shippers of coal on your line who would be presumably shipping coal for export if

that market opens up are the same shippers who have successfully marketed their coal to eastern origins through two-line hauls.

A Yes, to whatever degree you want to call them successful.

Q Now, don't you find that when there is a potential export movement or a potential movement of coal to the west for any reason, that you find that both Southern Pacific and Union Pacific are attentive and interested in moving that traffic?

A Southern Pacific has not been as effective n the movement of coal west as it would like to have been, I know that. Union Pacific works with us through Provo because they are getting, you might say, the 75 percent of the haul on that coal. It is almost as good as if they originated it on their own line. So to that extent they have been very willing to cooperate, yes.

Q The Southern Pacific, is it the lack of cooperation or the lack of ability to reduce the rate to a competitive level to beat out the UP?

A Well, for whatever reason, Mr. Stephenson. I'm not sure.

Q But they don't refuse --

A Oh, they are very cooperative and would like to get in there and get some coal, but they haven't been

able to do it very successfully.

Q With reference to your testimony, when you were talking about the export coal, what are the ports that you had in mind where export coal would be a possibility under your trackage rights?

A Portland is certainly one, and I know that they have not got the export coal facility totally complete yet, but it is very close to being complete. The Port of Oakland, and there is another port that I can't remember the name of in the San Francisco area that is talking about becoming a deep port and would be an ideal place for a coal export. Those are the primary ports that I had in mind.

Q In developing Rio Grande's operating plan, did you take into account any capital improvements that might be necessary to move export coal via these particular points, capital improvements either that Rio Grande as the tenant might have to make, or Southern Pacific, or SPSF, excuse me?

A What kinds of capital improvements are you talking about?

Q Well, heavier rail, offloading facilities, things of that nature.

A I did not allow for anything in the operating plan for those kinds of expenditures because I don't

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know, first of all, whether there would be a need for a facility, an unloading facility, say, at a port. Neither do you. You have not planned any, so evidently there must not be anything out there.

As far as capital expenditures for rail ties, ballast and so forth, I have stated in my operating plan, I believe, in my verified statement, that my opinion of the lines based on an inspection that I was able to make of them, not a very detailed inspection, but at least enough to know that what the grade and alignment chart says is probably right, and evaluating the age, weight, and the rail characteristics as shown in your grade and alignment charts, I don't think you need any capital expenditure to haul coal out there other than those that would be in the normal, planned maintenance expenditures every year.

Q As a general, more or less hypothetical question to cover a point that I wanted to get to, tis might be an appropriate time. Let's assume hypothetically that Rio Grande identified a potential export coal movement, long term, multiunit train movement and successfully bid for the movement of the unit trains to the Port of Stockton, and let's assume also that to accomplish that would have required the upgrading of some couple of miles of tracks into the

port and some other improvements that would be necessitated by the heavy movement of coal.

Would Rio Grande's operating plan or proposal for operating plan -- strike that. Would Rio Grande's proposed trackage rights agreement contemplate that Rio Grande, which would be the beneficiary of that movement of coal, would be the railroad responsible for paying for the capital improvements necessary to effectuate that coal movement?

A To be sure I understand your hypothetical, in generalized terms, that you are talking of Stockton, so I take it that you are talking about improvements only on the trackage rights portion of the line or within a joint terminal facility, is that correct?

Q Yes.

A And it was exclusively for Rio Grande.

Q Exclusively for Rio Grande.

A I think that the trackage rights as proposed would cover that, and that if this was an expenditure made on behalf of Rio Grande for Rio Grande's sole benefit, that we would pay for that, and that that expenditure would become a part of the joint track or joint facility, but not subject to interest rental payments from your grant to Southern Pacific, and in the event of the cancellation of the agreement, that that

property would be retired, so to speak, and Rio Grande would have -- SP first would have the right to purchase, Rio Grande would, in the event you did not want to purchase, would have the claim on the salvage value of the facility. So yes, we would pay for it.

Q Why would you want it to be, to become part of the property of SPSF Railroad?

A Well, it wouldn't make much sense, as I see it, if we are a trackage rights tenant and you have got a piece of track over here, and we build another facility right next to it that connects to it, that it would be excluded from the joint track unless there would be some reason Southern Pacific would want to exclude it from the facility account, and I would have no objection to that. We could set up our own property account. We probably carry it in our books someplace anyway.

JUDGE HOPKINS: Mr. Stephenson, I think we ought to have a recess at this time, fifteen minute recess.

(A brief recess was taken.)

JUDGE HOPKINS: Back on the record.

BY MR. STEPHENSON: (Resuming)

Q Mr. Nance, at the bottom of page 10 and top of page 11 you state that with the consummation of this

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merger, Rio Grande would lose its last friendly independent connection to and from the west and would, with the larger railroad's ability to close gateways and routes, be effectively blocked from further participation in the traffic it now moves transcontinentally.

Didn't the Rio Grande in the UP merger case say basically that with the merger they were going to lose their last friendly connection on the west, namely, the Western Pacific, and hasn't it been true that we have been a friendly connection, a very friendly connection only since that time?

A I don't remember that characterization, Mr. Stephenson, is the reason I am hesitating here. I don't remember whether we said that would be our last friendly connection on the west end or not. I will agree that through the joint solicitation agreement that Rio Grande and Southern Pacific have cooperated since this merger.

Q Did the increase -- well, let me back up.

Do you recall that the Rio Grande position in the UP case was that in the final analysis Southern Pacific couldn't be depended on as a connection because they had their own single line route via the Tucumcari line, and they also had a lot of traffic that they originated and terminated and therefore would be able to

use that traffic to influence the Union Pacific and that they would end up working out some kind of accommodation with the Union Pacific? Don't you recall that being the Rio Grande position in the UP merger case?

MR. SANFORD: Counsel, do you have something you could show the witness to refresh his recollection?

MR. STEPHENSON: I probably do.

JUDGE HOPKINS: Well, do you recollect what he said?

If he doesn't recollect that, then he could handle the whole thing.

Do you recollect?

THE WITNESS: I recollect some general statements like that. I don't recall that it was exactly as Mr. Stephenson characterized it. That's why I am hesitating, sir.

JUDGE HOPKINS: Do you have the exact quotes, Mr. Stephenson?

MR. STEPHENSON: I do, lots of them, not from Mr. Nance, because Mr. Nance was not making these kinds of -- I can leave that for our response.

BY MR. STEPHENSON: (Resuming)

Q In any event, you do recall the gist of that argument was that -- well, I will drop it and address it in our opposition.

Now, you remark that this merger will result in Rio Grande losing your last friendly connection. It comes several pages after you have discussed your increased traffic base in Kansas City, your new coal movements and the extensive shipper support that the Rio Grande has.

Doesn't it occur to you, Mr. Nance, that it would be an irrational railroad that would walk away from an interchange where they participated in the movement of 106,000 cars last year and revenues in the hundreds of millions of dollars in order to -- and in the face of shipper support from 600 shippers who have already said they are going to use that line as a competitive alternative? Wouldn't it be an irrational railroad that would do that?

A Other Rio Grande witnesses in this proceeding have devoted much of their time to developing information that pertains to the question you just asked, Mr. Stephenson. I am aware of what some of those other witnesses said. For example, Mr. Banner, or Dr. Banner, in his statement at page 2 of his verified statement, "It is my conclusion, based primarily on the traffic information made available in the Applicant's own case, that competition would be lessened unacceptably not because the merger would reduce the

number of carriers serving the area, but because it would eliminate route competition in the central corridor. As a result, the intent of the pro-competitive conditions imposed by the Commission in Union Pacific-Missouri Pacific-Western Pacific merger would be nullified."

And I certainly accept that as a statement because of what we have seen in the past where a carrier, regardless of the efficiency of the route over which the traffic is moving, tends to want to move his traffic -- and I believe this is stated by Southern Pacific-Santa Fe witnesses in their testimony -- one of the primary purposes of the merger is to acquire hauls over the long lines of the Southern Pacific-Santa Fe merged system. And I believe that this is a true statement that I have made here, and the basis for my belief in that is the evidence that has been developed by Mr. Banner, Brainard, Carlton and Nelson.

Q So you think the merged carrier would act irrationally and close the gateway where it is earning $150 million, $160 million a year, turn its back on the interchange of 106,000 cars?

MR. SANFORD: Objection, Your Honor. He is mischaracterizing the witness' answer.

JUDGE HOPKINS: He is asking him a question.

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He said they would act irrationally. I am certain this witness can answer that in any way he wants. If he doesn't think it is irrational, he can state it.

THE WITNESS: I don't know whether -- let me start that over again.

I don't think the Southern Pacific and the Santa Fe are known for acting irrationally. I do know, though, that both carriers, especially after they are a combined carrier, will act rationally to the benefit of the merged system, and I don't believe the benefit of the merged system includes sharing traffic with the Rio Grande.

BY MR. STEPHENSON: (Resuming)

Q Even though that traffic, a lot of that traffic originates on the Rio Grande, a lot of that traffic is influenced by the Rio Grande as a result of its trackage rights into Kansas City?

A Without, again, being a traffic witness or an economist, we have already touched on something that I think is very significant, and that is that most of the traffic that is moving over that Ogden interchange comes to us or is terminated by us through other connections at Kansas City, an at Kansas City, both the merged -- both the parties of the new merged carrier also have connections at Kansas City with those very same lines,

and if we cannot receive or interchange traffic through an open gateway at Ogden, then that doesn't leave them much choice but to give that traffic up to the merged carrier or to the Union Pacific at Kansas City. And again, Dr. Banner and some of the other people are much better qualified to talk about that than I am. I am just telling you what I have observed over 30 years of being an operating man, how this business works.

Q At page 11 of your verified statement you indicate that it is your view that soon after the merger is consummated, the SPSF will become an out and out competitor and will close gateways and routes.

Is that your belief?

A Yes, sir.

I wouldn't say that this is my own personal belief. These are the opinions that are held by traffic representatives and the economists who are working for us, and I have certainly adopted their conclusions in my statement, and yes, I do believe that. And again, not only on what I have been able to read and have been told by these people, but also by what I have observed in past instances.

Q And the closure of gateways and routes will be accomplished by what, cancelling joint rates, not maintaining the line?

A Yes, and the Southern Pacific's ability to engage in contract rates with shippers that would route the traffic away from that corridor.

The other thing that has always been an enigma to me is this claimed cooperation, especially here today, about the Ogden gateway and the friendliness of the Southern Pacific, and it seems to me that it took the joint solicitation agreement which was beneficial to the Southern Pacific as well, that it took that kind of an agreement to move traffic to us off the Tucumcari line, and I wonder based on that what kind of an agreement it might take to move that traffic to the Rio Grande when Southern Pacific-Santa Fe have an even more efficient route than the Tucumcari line.

Q Maybe it would move the line up 180 miles to reflect the fact that their route is 180 miles shorter.

A I don't know. That's just a statement on my part.

Q You say that it took the agreement to get Southern Pacific to move its traffic off of the Tucumcari line. You don't have any statistics to show that Southern Pacific was routing northern California or central California traffic over the Tucumcari line, do you?

A No, I don't.

Q At the bottom of page 11 you say the Rio Grande's response to SPSF's prospective closure, according to your theory, of the Ogden gateway routes, is to seek acquisition of the lines that would become surplus or at best local service lines to the merged SPSF system.

If I understand, you are predicting that sooner or later -- and according to you, I guess it is sooner more than later -- SPSF will abandon the Ogden lines.

A I don't know that this contemplates abandonment. It contemplates a serious downgrading of the line from a main line category to a branch line, or a branch line service type line.

Q So you are saying that as a result of this abandonment or prospective abandonment or cessation of main line service, that Rio Grande should be given the right to purchase the lines now rather than wait for when that happens, is that correct?

A We sure wouldn't want to pick it up after it was run down. The other thing, I don't know if it is in this particular area or not, but the selection of those lines to be purchased, I believe they are termed redundant, competitive with and not complementary to is the verbage that was used here, were selected because

they do not appear to interfere with the expressed purpose of the Southern Pacific-Santa Fe merger, and that they won't -- they won't be used as a main line, so we would just as well have them and keep that competitive corridor open.

Q Would it be generally correct that Rio Grande envisions as part of its operating plan that you would operate main line through trains with your own locomotives, cabooses and crews, but that you would have SPSF perform all of your gathering, distribution of cars from and to industries, and that you would contemplate that we would also perform local service, road switcher service, maintenance of the equipment, fueling of the equipment and the like?

A On the trackage rights portion of the line?

Q Yes.

A We are talking about from Klamath Falls west to Portland and Roseville west to Oakland and south to Fresno?

Q Yes.

A Yes, that is correct.

Q Have you given any thought as to what the trackage rights would involve in terms of should the Rio Grande file an amended operating plan for the Klamath Falls or up to Klamath Falls and up to Roseville? Have

you given any thought at this time as to how that operation would be handled?

A I would envision that to be the same general criteria that are used on the trackage rights lines west of Klamath Falls and west of Roseville, with one exception, and I think this is critical to our use of trackage rights on the portion that we are now talking about purchasing, that is, based on our traffic study and the predicted diversion of traffic off that line, that the preponderance of the traffic remaining on that line would be Rio Grande traffic, and because that is the only avenue that we have to serve this competitive corridor, then we would want control, supervision, dispatching and maintenance of the eastern end of the trackage rights. I guess that is the best way to phrase that, the eastern end of the trackage rights, in other words, from Roseville east to Ogden and Klamath Falls east to the point where it joins the UP-SP joint track between Weso and Flanigan.

Q Rio Grande would dispatch that and they would maintain the line, maintain equipment on that line?

A That is correct. And I think this is one of the areas that you have got to say is a must in that type of an operation.

Q Have you had, in view of the fact that I take

it that it was just today that the change of plan of the Rio Grande was publicly announced, have you had an opportunity to do a detailed study in support of your changed proposal?

A No, but because in the -- I believe it is shown here in the operating plan, because of that footnote at the bottom of page 2 of my operating plan which says this line includes -- excuse me. On page 1 of Exhibit 13, "In the alternative, the D&RGW seeks trackage rights over these lines. D&RGW understands understands that certain SP lines" and so forth. You are familiar with that footnote, I am sure, that is shown in the operating plan, that because of that footnote being there and because even if we had continued to seek as our primary objective the purchase of that line, the Commission may not have seen it our way and may have been willing to award trackage rights, and because of that, yes, I have given some consideration to what that trackage rights agreement would look like or how it should be structured. I have not sat down and put it into a document yet, but I have given it some thought. There have been no detailed studies made as to the other elements of it, if you are wondering about how many trains and all of this other stuff, how many trains are there.

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But as far as compensation and so forth, I know of no work that has been done on that.

Q Would you agree with me that in view of your change of plans, that the purchase proposal doesn't make any sense and ought to be stricken at this point?

A No.

MR. SANFORD: Your Honor, I am going to object to the continued characgterization of the change in plans. I think the record will reflect whether or not it was a change in plans.

JUDGE HOPKINS: The alternative was in here, Mr. Stephenson.

MR. STEPHENSON: In a footnote, Your Honor.

JUDGE HOPKINS: Well, all right, whatever you might call it. Let's not go on in this because we will be having arguments. Just indicate what you are particularly talking about without the need of referring to change of plans.

MR. STEPHENSON: All right. The purchase proposal -- need I cross examine you on the elements of the purchase proposal, or perhaps I should get advice from counsel on this -- need I cross examine on the purchase proposal, or has it been basically withdrawn, and am I wasting my time?

MR. SANFORD: It has not been withdrawn. It

is still in, and it is as characterized in the first instance. We have requested purchase with an alternative of trackage rights.

JUDGE HOPKINS: So we will have a long cross examination, is that right?

MR. SANFORD: Unfortunately. It has been there from the beginning.

BY MR. STEPHENSON: (Resuming)

Q At page 18 of your verified statement, Mr. Nance, you state that Rio Grande would become a tenant of SPSF in SPSF's yards at five locations.

You identified those as Oaklands, Roseville, Fresno, Klamath Falls, and Eugene.

Do you see that?

A Yes, sir.

Q Do you have an operating plan there with you also?

A I do have.

Q Would you look at page 27 of the operating plan?

A Yes, sir.

Q There it states that, as you call them, new common points will be established at seven locations, the five that I just mentioned and also San Jose and Portland.

What is the difference between the five terminal locations that I mentioned at page 18 and the new common points at page 27?

A I was trying to determine which ones are new. We have San Jose is new, and that one --

Q Portland.

A Portland? Well, Portland should have been included in page 18. The common points are just the end points of those rates, as I see them, Mr. Stephenson. In other words, the statement on page 27 does not mean to indicate that that should be a joint facility terminal.

Q Okay.

So Portland should have been added to --

A Yes, Portland should have been included in there, and for some reason was inadvertently dropped out.

Q And explain to me again what the new common points means.

A I think if you will look at those, those are the ends of the Rio Grande trackage rights, the western and northernmost and southernmost extensions of the Rio Grande.

Q Okay. All right, on page -- okay. I am with you.

A In fact, I think along those lines, if you look at page 19, I think we did include there Portland in that little analysis of joint facility terminals, which indicates that that really was an oversight in that previous paragraph.

Q Okay.

Okay, now, talking about the six new yard locations, the major yard locations, have you been to each one of those personally for an inspection tour?

A Yes, I have.

Q And when was that?

A I have been to Roseville and Oakland several times over the last fifteen years. However, in this inspection trip which was during the early part of May of 1984, I was at each of those yards for that express purpose.

Q And during the inspection trip, how much time, for example, did you spend at each one of these points?

A Very limited amount of time. In most cases it was just going by the place to get a general description of what the major activities were there.

Q Would I be safe in assuming that with the exception of Roseville and Oakland, that when you saw these places, the other places, Portland, Eugene, Klamath Falls and Fresno briefly in May of '84, that

that was the first time for each of those yards?

A Yes, for that purpose, yes.

Q Have you had any of your employees, any of your operating employees or assistants, go to those same facilities?

A I have not.

Q Now, is it intended that at all six of these major switching classification yards, SPSF would make up and break up Rio Grande trains?

A That is correct.

Q And in addition, SPSF would under your plan inspect, service, repair, maintain Rio Grande trains and locomotives and cabooses?

A Yes, and by maintenance of locomotives, I am talking about the filling station type work, where they fuel them, sand them, not do any of the heavy repair, only make such running repairs as is necessary to move the equipment back to the Rio Grande lines.

Q By Rio Grande lines, just turning it over to Rio Grande crew?

A Yes. If it is in a condition to move to, say, Ogden.

Q And in addition, your operating plan, as I understand it, contemplates that SPSF will perform some of Rio Grande's yard clerical work?

A To the extent that SP-Santa Fe yard would be furnished with the necessary movement information which would detail commodity, car initial and number, destination, route, weight, hazardous material information, with some of the shipper-sensitive information that is normally shown on a waybill excluded from that information. In other words, Southern Pacific-Santa Fe employees in yard offices would keep track of where the car was in the yard, which engine was to switch it, what time it was switched, when it was lined up in a train, what its relative standing in an outbound train is, those kinds of clerical routines only, Mr. Stephenson.

Q And your people, your clerical people would do what? I think I am confused.

A What I visualize is that the clerical forces at that point or at some remote point by use of data processing equipment would compile the waybill, the freight bill, all of the other customer-oriented type activities. That's what our people would do, and they would furnish you with the necessary movement information to ensure the movement of that car.

Q But would your clerical people -- when you say at a remote point, would they be doing the work in Denver, for example, and transmitting it over the wires

to our clerical people?

A If we can -- we have just recently centralized that function in Denver for our system, and as that system proves out and is expandable, I would anticipate that we would be able to do that from Denver. I won't guarantee that we could do that at this time, but we would have it from a point, probably remote point that we would be able to do that.

Q What kind of a system do you use on your railroad, on-line clerical type system?

A We are using fewer and fewer of the clerical type activities.

Q My question is not a very good one. Let me start over.

Do you use TOPS On-Line?

A No, we have our own system. However, our system does talk to your TOPS.

Q What is your system?

A It is an IBM system, and it is one that was designed by Rio Grande personnel for Rio Grande use.

Q So at the outset, you would have your clerical work done by what, one clerical person at each one of these major facilities, major switching and classification yards?

A I think I have shown in my labor impact study

as high as six clerks at some of these major points, Fresno, Stockton, Eugene, Klamath Falls. I believe, if I remember correctly, I think the six that I showed in my labor impact statement. It could be more or less than that, depending upon the extent that we can mechanize it.

Q Now, going on with what SPSF would be expected to do for Rio Grande at the switching and classification yards, I think you indicated that we would be expected to classify your cars or cars into blocks for the Rio Grande?

A Yes. I think we can save a lot of future questions on this if I make -- if I clarify what I intend to have done there.

Based on the responsive application traffic study, it indicates that the traffic that we anticipate moving through these joint facilities and over these joint lines is primarily traffic that is there now moving to Rio Grande at Ogden, but under SP billing on the Southern Pacific lines that we wish to acquire trackage rights over or to own. The work that is to be done in all of these terminals is not really new work to the Southern Pacific in that those cars are already there. Because we do have connection agreements as to blocking, train schedules and so forth in plays, and

they serve the purpose very well, we have not asked for additional blocking. We have not asked for any additional services at those terminals that are not now being provided to those same cars, the only difference being that the cars will become the responsibility of the Rio Grande so far as billing, paying you for the handling of them and those types of things. But the service is required, the services that are now being performed, blocking that is now being performed will be required in the future, and the volumes are about the same.

Q The volumes, what volumes?

A Car volumes, the numbers of cars.

Q So it is your testimony that under your proposal, there would be no increase in the amount of blocking that Southern Pacific or SPSF would have to do for -- in any of its yards as a result of your trackage rights?

A I have been very careful to try to make that as a requirement on my system.

Q And you have done that by simply saying that if SP was going to be making a block for Rio Grande at Klamath Falls of a certain type, then that's all you expect them to do in the future?

A Or at Eugene, or at Portland. For example,

the Portland train, I don't even anticipate the making of a block for Denver or Ogden or anyplace else. I would see that traffic moving into Eugene being there consolidated with the traffic off the Coos Bay Line and off the Siskiyou Line and made up into the same block train arrangement that now comes out of Eugene moving over the Modoc Line to us at Ogden.

Q Did you have as a goal in preparing your operating plan the -- not requiring SPSF to have to make additional blocks in the major classification yards?

A That is correct, yes, sir.

Q And the reason, if I understand it, that you had this goal is you don't want to impose an undue burden on these yards that are having to do classification work, so that you don't want your trackage rights to impose an undue burden on any of the yards that you seek to use?

A Yes, sir, and still meet the demands of what our service is going to require.

Q You would also expect that SPSF would ramp and deramp your TOFC/COFC containers and vans at these classification yards?

A Yes, sir, just as they are doing on traffic that is moved over Rio Grande in TOFC and is now terminated and deramped at Oakland or Roseville or

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Eugene I guess is the other one. Fresno is another one.

Q Is the yard that you expect to use in Portland the Brooklyn yard?

A It is.

Q And how do you propose to handle interchange between Rio Grande, UP and Burlington at Portland?

A The same way that the SP now handles their interchange with UP and BN at Portland.

Q In other words, they would do it for you?

A Yes, and not as a special interchange move. It is just like we do with the Kansas City Southern at Kansas City. Our cars come in there going to the ICG and the MP and whoever, the KCS switches those cars out into the appropriate interchange tracks, and when it comes time to deliver cars to the CNW or the ICG, they take our cars with their cars, no problem, and that's the way I would expect this to work at Portland.

Q And the interchange cut at SPSF haul to the Burlington, for example, it would have a mixture of Rio Grande and SP interchange cars to Burlington? It would not be a block of --

A No.

Q Each?

A No.

Q Does your operating plan contemplate that you would be handling local traffic, for example, in Oakland, let's say between Portland and Eugene?

A Yes.

Q What does it have to do with the merger?

A Excuse me?

Q What does that have to do with the merger? What competitive function or role are you providing for the shipper who is moving traffic between Portland and Eugene? How is his traffic affected by our merger that would require the Rio Grande to come in and handle his local traffic?

A If we had not made a request to handle that local traffic, then we would have been accused of picking off just the long haul stuff, and we will share the short haul with you just the same as we do the long haul.

Q Well, that brings up a question. Why didn't you also seek to serve all of the little branch lines, the little million gross ton -- is there a noise here?

MR. SANFORD: That's an alarm. You have gone on too long.

JUDGE HOPKINS: He was trying to wake up.

(General laughter.)

BY MR. STEPHENSON: (Resuming)

Q Forget about the branch lines.

Does Rio Grande's operating plan contemplate the movement of traffic, say, from Eugene to interchange with the Burlington?

A At Portland?

Q Yes.

A Yes, it does.

Q And you would agree that that doesn't have anything to do with the merger, but you don't want to be accused of skimming the cream?

A That's right. We want to be able to offer a full array of competitive services to those customers that we want to serve up there.

Q At pages 26 and 27 of your operating plan, you discussed 14 gathering and distribution points in California and Oregon, including places like Modesto, Richmond and so on, 14.

Do you see that?

A Yes, sir.

Q The operating plan isn't clear, at least I didn't understand what the difference would be between the gathering and distribution points and the major classification yards with the major switching and classification in terms of the functions they were going to be performing.

Can you fill us in on that?

A Yes, sir. I think probably if we refer to Appendix II, page 1 of 1, that sets out the gathering and distribution points on the trackage rights portion of the line as trackage rights were contemplaced at the time this proposal was written. The large yards, Portland, Eugene, Roseville, Oakland, Fresno, appear to be too large an operation to cover a local type gathering-distribution type service because there you have the full gamut of terminal services, the blocking and all of this other stuff. The gathering and distribution points that are shown on Appendix 1 -- what was that page reference you gave me? 27, was that it?

Q 26.

A These are minor points where it is going to be necessary to set cars out, and all of these gathering-distribution points were selected because those are locations at which the SP-Santa Fe's, [illegible] operating plan and some of the discovery information that I was able to receive from the Southern Pacific indicates that local assignments are at these locations, and that these locals are fanned out to various branch line locations or to points on the main line serving industries between the gathering-distribution point, the home point for that local, and the territories that they

serve.

So if you would look at the gathering-distribution points, except for the major terminals which were discussed earlier at Oakland, Roseville and so on, just as minor points where distribution and switching requirements exist outside of major terminals.

Q Did you personally visit each one of these 14 gathering and distribution points?

A Yes, I have been to every one of those, that's correct.

Q Was this part of your trip in May of '84?

A Yes, sir.

Q How long did that trip take in its entirety?

A I was about three weeks total out there.

Q The gathering and distribution points would do a certain amount of classification work for the Rio Grande operations at each one of these places, would they not?

A I think we could take a point like, well, let's use -- let me pick a good one so that I don't have to back up and do this over a couple of times, Doug. Let's use Salem. No, I would rather use Albany. Let's use Albany.

Let's say that at Albany we had a car come in

off of the local that goes east to Griggs, and that car was destined to a point in Salem or north of Salem towards Canby. When that car came in on that local, it would be some SP traffic in that local and there would be some Rio Grande traffic in that local. Some of the Rio Grande traffic, probably most of it, would go towards Eugene. So they could line up the Eugene and east traffic and set aside the car that goes to Salem, and then the northbound Rio Grande train could pick up the Salem car, take it to Salem, and set it out. So to that extent there would be some blocking.

But as to a detailed blocking plan for hundreds of cars, no, there is not that kind of work necessary. There would also be some classification required as the local crews lined up those cars to move them out of Salem to the branches or wherever they happened to be operating, and that would be strictly up to the old conductor, just like it is now, how he wants to line up his train and do his work for that particular day.

Q Generally speaking, and without reference to any specific location, what are Rio Grande's plans for buying or leasing or constructing trackage to be used for setting out trains or blocks or for storing cars for prospective loading, or just storing cars generally?

A This is one place where the difference between purchase and trackage rights is going to cause me to rethink some things that I haven't given that much consideration to. What I planned on the purchase portion of the line -- and I hate to disagree with my boss, but sometimes I wonder if that isn't still the best option, but on the purchase portion of the lines, I was going to set that traffic out on sidings between Wendel, the empty cars moving to the northwest for loading, set those cars out on the sidings between Wendel and Klamath Falls, which is being done now by Southern Pacific, and use that as my car supply storage points, and then pick them up with our through trains as we see a need for particular cars.

Now, with that, if that should become an all-trackage rights situation, then I may have some problems with finding me some car storage facilities if Klamath Falls cannot accommodate the empties, or Eugene.

It seems to me just in logic that those cars are being stored there now for loading, and it applies the same as it did in the joint terminal. I don't see that it is going to add any additional burden. If it does, then we are going to have to figure something else out.

Q Well, how would you expect -- would you expect under the purchase proposal, would you expect that -- you say you would use the area around Wendel for the staging area or for the car storage area?

A Yes. From Wendel to Klamath Falls there are, without counting them, about 12 or 13 siding locations that are now, or were in May, at least, stuffed full of cars, empty cars, waiting for movement into the loading areas along the Siskiyou and the Valley Line and Coos Bay Line, all those other lines that are served out of Eugene, an this just appeared to me to be the natural storage point for those cars. They are very close to the area where they would be used. With a little care, you could set boxcars in one track and set flatcars on the other track. That was being done to some extent when I was up there.

Q So what is the proposal if you don't have these sidings to use for that purpose?

A Since most of those sidings are being used for storage now, there were some that had no cars in them also, we may be able to lease some of those tracks or to include those tracks within the joint trackage agreement. As I say, I haven't really focused on that, and I wouldn't want to sit here and give you a definite answer that this is the way we ought to do it, and maybe

that wouldn't be the best way.

So if it comes to the point where we need to submit a more definitive trackage rights agreement for those lines than we have sought to acquire, it would take some time, but I am sure that we would come up with a very workable plan.

The other thing, if there is no resolution to that problem, the Commission would allow us to gain trackage rights onto those lines in this area as with the rest of that trackage rights agreement, perhaps a unilateral proposal, that is, from us. We recognize that if that trackage right agreement was to be implemented, that Southern Pacific-Santa Fe people would want to sit down and have some imput into this thing, too. They probably would submit their own proposal, and we could work it out as we usually work out a joint facility agreement, or a joint track agreement.

So again, if you will recognize this as my view of it, my view may not be what your view is. There are some requirements in it we would probably want to stands pretty tough on and we would absolutely insist on, but the rest of it could be negotiated.

Q The discussion that we have had up until this point in time, your testimony reflects really sort of more the long range car storage for getting it into

Oregon, for example.

A Correct.

Q What happens in the gathering and distribution points where we are not talking about bringing a car from 200 miles away, but we are talking about a bunch of cars being in a local area, for example, the Albany area, for distribution to shippers in the Albany area. Where are those cars, the dozen or so cars that are going to be loaded today, not, you know, a week from now, but the cars that are going to be loaded today, where are they going to be placed?

A The same place they are being placed right now, somewhere in the Albany yard waiting for that local to take them out.

Q Where are they going to be placed when they are loaded and ready to go out?

A About the same way they are handling them now. They are lined up for a through train to pick up, and they are picked up by the through train.

Q What if that is not the procedure that Southern Pacific follows today, that they don't wait for the through train but they run them into a local yard and make up a train in the local yard?

A In those areas that we are talking about between Eugene and Portland, I believe that every one of

those stations is operated as I have contemplated it in this operating plan, and the same will apply to those lines west of Roseville and to those lines south of Roseville. I believe what I have put here fairly well reflects the Southern Pacific operation as it exists today.

Q So if there were, let's say, at Albany a cut of ten loads waiting to move out of the area --

A Going south?

Q Yes.

A Okay.

Q You would anticipate that those ten loads would be placed on a track, and the track, in your view, is the same set-out track or holding track that would have been used by the Southern Pacific in any event, and that in your through train will come by and pick up that cut of cars just as though a Southern Pacific train would do it with an equivalent cut of Southern Pacific cars, is that your testimony?

A That is correct.

Q And that is the way you have planned or developed your operating plan, you have simply attempted to mirror what Southern Pacific does?

A That is correct.

Q In terms of the actual service of shippers on

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the line, would there be any shippers who are actually served by the Rio Grande, or would it all be served by an SPSF train crew?

A You and I may have a different interpretation of the word "serve." When I use the word "serve," I am talking about the right for a Rio Grande traffic department representative to go in, solicit a carload of traffic from an industry in Salem, Oregon to move to Kansas City, Missouri.

Q Who would spot the car for that industry?

A The switching or the spotting of the car would be done by Southern Pacific. In other words, I don't see serving as meaning the physical switch engine, that there has to be a switch engine with the Rio Grande paint stripes on it for us to physically serve that customer. That's true in all of the reciprocal switching districts, that is true in any of the joint track areas where one railroad performs a service for another. The railroad that performs the service may not have the bill of lading for that car, so he is not really serving that customer in that instance. All he is doing is switching. He is providing a switching service.

Q So that I am clear about this, there are no points on any of the trackage rights lines where you

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would contemplate your crews providing service to the -- train crews providing service to the shipper?

A There may be one exception to that, and that would be on the steel train going to Pittsburgh. I heard Mr. Davis' answer the other day about using the center siding and the power crossover. That is exactly what I would have suggested also. But anyway, that is the one exception where our train crew may directly serve a customer on the trackage rights line. Perhaps the same would apply on some grain trains if we were able to get them down into the Livingston, Ceres-Keyes area.

Q Under your operating plan, what kind of D&RGW employees would you expect to find at the switching and classification yard?

We have talked about a clerical --

A You are talking about the ones at the major terminal?

Q The big six.

A Okay, the big six. What kinds of people would I expect to find there?

Q Rio Grande people.

A I would expect to find, first of all, some kind of an operations coordinator that would work with your terminal people, whether there would be one or

three. You know, that is something we have not decided. There would be some clerical people. There would probably be somebody who would perform the functions of an agent to tie these clerks together and be sure that the customers' waybills and so forth were prepared. Also in that terminal I would expect to find some Rio Grande train and enginemen on originating or terminating trains. The switching, the car inspection, the mechanical servicing for locomotives and the mechanical inspection would all be done by SP-Santa Fe employees.

Q How about at these gathering and distribution points? What would you expect to be the typical complement of Rio Grande employee there?

A There wouldn't be nearly as many there. It would depend upon the size of the facility, for example, Stockton, Fresno, I believe Modesto, and then at Roseburg, Grants Pass, Eugene -- excuse me, Eugene we have already talked about. I believe those include some clerical help, and again, I will hedge on the number because depending on what our state of mechanization is would also dictate how many people that would be, but at those locations there would be some clerical people. There would also be some line supervision in the form of a trainmaster, I suppose. Those would be the only Rio

Granie people there.

Q We have talked about car supply in one sense, and I would like to cover it in a more detailed way.

Using a plywood shipper out of Medford, Oregon, shipping to Kansas City, for example, how would that shipper get a car, an empty, what kind of an empty would he get, and how would it come to him? Just trace it from the storage space at Wendel, how that car gets to him, how the car order is placed, how the car is spotted, and how the car then leaves to go to Kansas City.

A I will go along with your example if you will leave Wendel out of it. There is a car somewhere on that system, either at Portland, that has just been released from unloading. If you will use that assumption with me, rather than a car from storage, I will tell you how I think it will work.

Q Okay.

Well, since the Wendel idea was your idea in the first place, I want you to use that one first, and then if you want to talk about Portland, go ahead.

A Say I have a car stored at Wendel, or a number of cars stored at Wendel, and there is someone at Medford that wants a carload, wants to ship a car, are we on the same wavelength?

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Q Yes.

A That person at Medford would order this car or advise our clerical type persons, agent type person in that area that he needs a car. He would contact our system car distributor who would keep track of all if the cars in our account from our Denver centralized car distribution center. He would issue through the train dispatching function, issue an order to a train to pick up that car or cars at Wendel, move that car to Eugene, and set it out. At that same time that he did that, he would issue a car movement directive to the terminal superintendent and his people at Eugene directing them on the arrival of that car, to line it up to move in the train line, whatever it is, south to Medford that evening or the next day, depending upon when he got the car loaded.

The terminal facility at Eugene would line that car up, move it down in a Rio Grande train that would move to Roseburg. There would be a change of crews. The conductor would also pass along the message to set the car out at Medford, set it out at Medford. We would also have given your station forces at Medford notification that this car is to go to XYZ lumber company for loading.

Your local would take it out and spot it and

we have a car business.

Q Now, take it to Kansas City.

A Take it to Kansas City?

The customer would -- he already has the car now. The customer would load the car, complete the bill of lading, notify our forces at Roseburg, probably, or Medford, who would in turn input the necessary information through our centralized billing agency in Denver that Car 1235 is ready to move and is going to Kansas City, and it contains a carload of plywood. We would know whether it was under a contract rate or whether it was under a joint rate or just how the car had been rated. The necessary movement document would be compiled by the centralized billing agency, and the necessary accounting records would be started, and simultaneous with that we would issue a car movement directive to the SP agent or trainmaster or conductor at Medford to pick this car up when you are out switching the XYZ lumber company tomorrow, move it back to Medford and line it up to move in the Rio Grande train, the first train, whatever that might be, that afternoon or tomorrow.

At the same time that this was being done, the conductor would have been given the movement document for that car which would accompany the car just as the

waybill does now. It would go into Eugene, Eugene would put it into their yard inventory, line it up through your YATS system or scheduling for our switching, designating the block and the train that it is to go in, would be lined up in the train. When the train was made up, they would call the old Rio Grande crew, and we would start on our way to Kansas City.

Q Now, it gets to Kasnas Cioty, it is an SP car. It is an SP --

A It is an SP ownership?

Q SP ownership.

A You guys loaned us the car, then?

Q Yes, we loaned you the car.

A All right.

Q What happens to it at that point?

A What happens to it at that point? Well, if it is an SP car, we would probably have the SSW in the route somewhere, either to pick it up at Kansas City or to go on over to St. Louis, or it is going to go to -- there won't be any SP markings. It has to be a Santa Fe now, so it may even go to Chicago, who knows? But anyway, through our joint facility at Kansas City, the KCS -- by the way, when the car got to Ogden, the original waybill for the movement of that car would be matched up with that car. The movement document that

you had been moving on would be replaced with the waybill when it got to our line.

So we would move the car across our railroad to whatever train it made out of Grand Junction on into Kansas City, and the waybill is now with it. When it got to Kansas City, we would tell our KCS agent at Kansas City to interchange the car over to the Santa Fe or to the SSW, the ICG or somebody. The waybill would move with it, and the customer would move the car -- the other connecting road would move the car just as they do now, however they move their car.

Q Okay.

Now, you expressed surprise when I said it was an SP car. I take it that that was because under this proposal of yours, this operating plan, the Rio Grande would expect to provide its own cars, its own equipment to shippers on the line who are using --

A That's the reason I was surprised. I didn't know the SP was going to give in that easy and loan us cars just right off the top.

Q So the answer is you are going to provide your own cars?

A We would supply our own cars, and again, if we were short of cars and the SP happened to have some surplus up there, I am sure after this thing is in

operation that we will cooperate with each other then just as we do now. If you have an extra car, you would like to get it out on per diem, then you would let me use it.

Q So if it is a foreign car we want to get rid of, you would use a foreign car?

A You bet you, and I am saying in the event we needed it. I wouldn't say we would use every one of your foreign cars, but we would use it if we needed it and it was available from you.

Q You were here the other day when Mr. Davis of the UP was testifying, were you not?

A I was.

Q You heard him state that under UP's proposal, Car Service 15 would cover the movement of cars, the movement or supply of empty cars to shippers on the trackage rights line, did you not?

A I remember him saying something about an SCO-80, but I don't remember him saying anything about Car Order 15. I remember the conversation.

Q Do you have -- well, if you don't remember, he said that they were going to follow Car Service Rule 15, and you wouldn't be in a position to say whether you also intended to be bound by or follow CSR-15 yourself?

A No.

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Q Have you given it any thought?

A I have not.

JUDGE HOPKINS: Mr. Stephenson, how much longer would your cross examination be, because this appears to be a good time to break.

MR. STEPHENSON: I would say, Your Honor, at least an hour and a half.

JUDGE HOPKINS: Let's see what we can do about cutting some of it down before Friday because otherwise we won't be completed Friday and get on to the shipper witnesses. If it is possible, you cut down your answers, and he can cut down on his questions. Maybe you can get together on that.

Off the record.

(Discussion off the record.)

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

(Whereupon, at 4:55 o'clock p.m., the hearing in the above-entitled matter recessed, to reconvene at 9:00 o'clock a.m., Thursday, January 24, 1985.)

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