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1 the relevance of the inquiry that SFSP presented to him  
2 which you mention here at the bottom of page A-2;  
3 namely, an evaluation of whether the merger will produce  
4 logistics options?

5 A You're talking about the relevance of the  
6 inquiry as opposed to the text of the footnote?

7 Q Yes.

8 A I might not phrase it that way, but the  
9 relevance of the inquiry to whether the merger would  
10 reduce competitive options that now exist for those rail  
11 customers is certainly a relevant inquiry.

12 Q Okay. Would you agree with me, sir, that  
13 evidence of intermodal activity between regions served  
14 by rail is relevant to an analysis of effects on  
15 competition of a rail merger in those regions?

16 A Yes.

17 Q Would you agree with this statement: "The  
18 non-rail modes have demonstrated their ability to  
19 compete with pronounced effectiveness in the  
20 transportation of a broad range of freight over extended  
21 as well as shorter hauls. This is no less true in the  
22 West than elsewhere in the country."

23 A I believe, if I remember correctly, you are  
24 citing the words of Mr. Barber that were quoted this  
25 morning. I think he has dealt quite extensively with

1 that whole subject and is not the subject of my  
2 testimony here.

3 Q Not to mislead you, I am quoting words of  
4 Richard D. Spero in the Union Pacific/Missouri Pacific  
5 merger case.

6 A All right. I think the context of the two  
7 mergers are so strikingly different that while one can  
8 make a general assertion as to the relevance of  
9 intermodal competition, one has to immediately recognize  
10 that there is substantially different inquiry that is  
11 called for, given the different context of these two  
12 mergers.

13 Q I realize that is the position. I realize you  
14 are testifying for Protestant instead of the Applicant  
15 in this case, but the question is simply, the statement  
16 which was made under a heading called "Intermodal  
17 Competition: Preliminary Overview" that you made in the  
18 Union Pacific case as follows:

19 "The non-rail modes have demonstrated their  
20 ability to compete with pronounced effectiveness in the  
21 transportation of a broad range of freight over extended  
22 as well as shorter hauls, and this is no less true in  
23 the West than elsewhere in the country."

24 Now, do you stand by that statement now or has  
25 something changed that causes you to rethink the

1 correctness of that statement?

2 MR. ROACH: I'm going to move to strike the  
3 opening statement about testifying for a Protestant.

4 MR. MOATES: It's a fact.

5 JUDGE HOPKINS: What's wrong with that?

6 MR. ROACH: I think it was clearly an  
7 innuendo and not a fact. And I move to strike.

8 JUDGE HOPKINS: I'll deny the motion to  
9 strike.

10 THE WITNESS: I accept the statement in the  
11 entire context in which it was written, which also  
12 called attention to the fact that while what you have  
13 read is true and remains true, it is also true, as I  
14 said then, and as I would state it now, that there are  
15 certain commodities, certain flows of traffic, for which  
16 rail has demonstrated an inherent advantage.

17 That was also contained in that statement, and  
18 I have no reason to disagree with that portion of it  
19 either.

20 Q I will accept that.

21 Now, at page A-12 of this present statement,  
22 when you are discussing, in the context of the  
23 intermodal screen used by TRS Witness Anderson, the use  
24 of the two-digit STCC level analysis --

25 A Yes.

1           Q     We will come to this in more detail later, but  
2 in general, you do criticize his use of the two-digit  
3 level as opposed to some more detailed or disaggregated  
4 level of analysis; isn't that right?

5           A     Yes.

6           Q     In light of that criticism, Mr. Spero, do you  
7 believe it invalid to analyze available truck  
8 competition in a particular traffic lane by determining,  
9 for example, as a matter of fact, that trucks would haul  
10 chemicals from the Texas Coast to Los Angeles as an  
11 example?

12          A     Would you repeat that question again?

13          Q     Do you think there is any relevance to an  
14 inquiry about competitive options in a traffic lane or  
15 corridor, or whatever term you prefer, to make an  
16 inquiry about available truck competition in the lane  
17 for a particular commodity?

18                 The example I gave you was chemicals from the  
19 Texas Coast to Los Angeles, and to make that analysis at  
20 the two-digit STCC level. Does that tell you anything  
21 useful, in other words, about the availability of truck  
22 competitors for that commodity in that lane?

23          A     It would depend on the context in which one  
24 was looking at it, whether it would tell you anything  
25 useful or not.

1 Q Well, let's suppose the context is an attempt  
2 to determine whether there will be effective intermodal  
3 competition to the SFSP for chemicals between the Texas  
4 Coast and Los Angeles after this merger is consummated.

5 A I don't think that in the context that you  
6 have identified, that an analysis at that level is  
7 sufficient.

8 Q All right. Would that be true if the example  
9 were, say, the Texas Coast to a point like Indianapolis,  
10 Indiana?

11 A I don't know.

12 Q You don't know? Would you think it relevant,  
13 a relevant consideration, if analysis at that two-digit  
14 level for a flow, say, from the Texas Coast to  
15 Indianapolis showed that trucks were hauling chemicals  
16 at the two-digit level in such a corridor, and that the  
17 mileage involved exceeded 1,000 miles?

18 A Would you repeat that again, Mr. Moates?

19 Q If you were making an analysis of available  
20 intermodal options in the lane, let's say Texas Coast to  
21 Indianapolis, and you were attempting to determine  
22 whether there was effective truck competition to  
23 railroads in that lane for commodities at the two-digit  
24 STCC level, would you be interested to find observations  
25 from the data that told you that there were truck

1 movements and that they in fact exceeded 1,000 miles in  
2 length of haul?

3 A I'd want to know much more than that, but I  
4 can't deny that I would be interested.

5 Q That wouldn't be enough information, I take  
6 it, for you to draw any conclusions about the available  
7 effective competitors in that corridor?

8 A It may or may not. I'd say I would see that,  
9 in light of a lot of other information in order to make  
10 that determination.

11 Q What would you say about the validity or the  
12 invalidity of analyzing non-rail shares for a commodity  
13 like lumber from a West Coast point to the Midwest  
14 generally, again at the two-digit STCC level?

15 Have you ever tried to determine available  
16 truck competition for the movement of lumber from a West  
17 Coast point to the Midwest? Do you think observations  
18 of truck activity at the two-digit level would tell you  
19 anything useful?

20 A Same answer.

21 Q Well, would observations of the type I've just  
22 described with lumber, for example, properly permit you  
23 to conclude something like this: "For this  
24 traditionally rail-oriented commodity, it is apparent  
25 the shippers are not without modal alternatives, even

1 when comparatively long distances are involved."

2 A If I had available to me some of the kinds of  
3 additional information which I had in mind in the answer  
4 to your previous questions, yes.

5 Q Mr. Spero, isn't it true that in the Union  
6 Pacific/Missour Pacific case, you personally submitted a  
7 verified statement that did in fact rely upon Reebie  
8 Transearch data at the two-digit STCC level to  
9 demonstrate what you call feasible intermodal  
10 alternatives to shippers in corridors of concern in that  
11 case?

12 A Not exclusively; no.

13 Q What do you mean, not exclusively.

14 A I didn't rely exclusively on the Reebie data  
15 to come to those conclusions.

16 Q What else did you rely on?

17 A Well, for example, one of the points that  
18 you've just raised happens to deal with lumber, and I  
19 recall doing some rather extensive work with data from  
20 the Western Wood Products Association from testimony by  
21 various railroad marketing people as to rate  
22 information, data that was available to me about source  
23 alternatives and the like.

24 Q Is that information you had available prior to  
25 submitting your verified statement which was signed in

1 November of 1980, do you recall?

2 A I believe it was. The dates are a bit elusive  
3 now.

4 Q Do you recall also testifying in that case, in  
5 the same statement, that while the Reebie data, the  
6 Transearch data is of considerable value in analyzing  
7 competitive intermodal alternatives in various  
8 geographic areas, that it what you called certain  
9 inherent weaknesses?

10 A Yes

11 Q And do you recall that you indicated that  
12 those weaknesses were, that they included, notably, the  
13 data's imbalance in the coverage of the various  
14 transport modes?

15 A Yes.

16 Q You pointed out, did you not, that Reebie  
17 indicates that only 45 percent of motor carrier traffic  
18 and just 40 percent of water-borne tonnage is covered by  
19 their data?

20 A At that time; yes.

21 Q To your knowledge, has that changed?

22 A Yes.

23 Q How much has it changed?

24 A I believe they now have a more extensive  
25 coverage of water.

1 Q Do you know how much more?

2 A I don't recall; no.

3 Q You also pointed out that time, did you not,  
4 that about 25 percent of air freight was excluded and  
5 that no pipeline tonnage was included?

6 A I believe that is correct and remains true.

7 Q And you finally concluded, advised the  
8 Commission, did you not, that -- quoting now -- "Given  
9 the relatively full inclusion of rail traffic in the  
10 comparatively sparse coverage of motor and water  
11 carriers, the non-rail shares" -- and this is in Reebie  
12 -- "although typically high, must be viewed as severely  
13 understated."

14 A Especially for those commodities for which  
15 their truck coverage is admittedly on their part  
16 deficient.

17 Q We heard Mr. Barber testify several times this  
18 morning that those commodities, in his view, include  
19 grain. To your knowledge, are other commodities also  
20 under-represented in the Reebie data base?

21 A Yes.

22 Q Can you name, offhand, a few of those  
23 commodities, if you know?

24 A Non-metallic minerals, coal, scrap, and --  
25 well, we can elaborate on grain and say -- well, there

1 are some questions about the entire STCC code 01. But  
2 it's less severe than in the case of grain.

3 Q One other question about the Union  
4 Pacific/Missouri Pacific statement that I have reference  
5 to is this one, if you want to just look at it.

6 Did you have more than one statement in that  
7 case?

8 A Yes.

9 Q Could you identify which one that is? Is that  
10 your initial statement?

11 A There was one statement which was a response  
12 to the Commission's request for supplementary  
13 information.

14 Q I think that's what that is.

15 A Which I believe this is. There was another  
16 statement that had to do with carriers' shares over  
17 various corridors, dealing with the various data tapes  
18 that had been submitted by the various parties in that  
19 proceeding.

20 Q So again, this statement was in response to  
21 what I think sometimes the lawyers call the Commission's  
22 scoping order or its requests for additional information  
23 of the Applicants?

24 A It was part of that submission; yes.

25 Q Part of it.

1                   With respect to that submission, where you  
2 draw certain conclusions about the availability and the  
3 significance of the availability of intermodal  
4 competitors for certain rail traffic, did you examine  
5 rate differences?

6           A       I considered it in certain cases, but not in  
7 great detail; no. It wasn't really necessary in that  
8 context.

9           Q       Let's go to your statement at page A-4. Here  
10 at the top of the page, you are making reference to what  
11 you said I just discussed; namely, your criticism that if  
12 TBS's screens caught traffic at a two-digit commodity  
13 mileage block cell, you say TBS concluded with no  
14 further analysis that options were available.

15                   Do you see that?

16           A       Yes.

17           Q       I take it from what we've just been discussing  
18 that you are familiar with the Reebie Transearch data  
19 base personally, are you not?

20           A       I have some familiarity with it; yes.

21           Q       Are you familiar enough with it to confirm  
22 that it is indeed based on samples?

23           A       Yes.

24           Q       Certainly not based on a 100 percent analysis  
25 of traffic.

1 I will withdraw that last statement. It's  
2 confusing.

3 You agree it is based on samples?

4 A Most of the data sources, but not all of the  
5 data sources upon which it is footed are samples.

6 Q Okay. Are you aware that the vendor, namely,  
7 Reebie, warns users about sampling errors in the data,  
8 particularly at more disaggregated levels?

9 A Not in the sense that you have phrased it as  
10 sampling errors; no.

11 Q You're not aware of that, or you disagree with  
12 it?

13 A I don't believe they used the term "sampling  
14 error.

15 Q What term did they use?

16 A I believe they talk about reliability and the  
17 context in which one must use it. And along with the  
18 warning, adding some phrase which I believe is something  
19 like, after they set out a certain matrix relating to  
20 their hierarchies, and there is a phrase in there, like  
21 "These are not hard and fast rules." Something to that  
22 effect.

23 Q You are not, then, familiar with any warnings  
24 from Reebie that data, if used to measure relative mole  
25 shares at the five-digit STCC level, can sometimes have

1 sampling error in excess of 100 percent?

2 A I don't recall that. But no. But, as I say,  
3 what I do recall is the phraseology that I just referred  
4 to. What I mean, just to elaborate briefly, what I mean  
5 by that is that in using that type of material, one has  
6 to take into account what one is using it for.

7 Q Did you review the verified statement of Mr.  
8 Carl Liba, L-i-b-a, of Reebie Associates in this  
9 proceeding?

10 A Which statement are you referring to?

11 Q The statement that appears in SFSP-18. It  
12 deals with truck diversion. I think you used some of  
13 his data.

14 A The truck diversion study; yes, I have. I am  
15 generally familiar with it.

16 Q Do you recall in Mr. Liba's statement at page  
17 35 that he has displayed there the Reebie guidelines for  
18 reliable application of this data?

19 A Are you referring to his study of flows, or  
20 are you referring to his truck diversion study?

21 Q He has two statements here together, and this  
22 may be actually attached to the flow study. Let me show  
23 it to you.

24 A Just give me a minute.

25 (Pause.)

1 I'm sorry. You have confused me a bit. This  
2 is an appendix to his statement on flows, not his  
3 traffic diversion study.

4 Q I apologize for misidentifying it, but would  
5 you confirm for the record that the page 35 that I've  
6 shown you from SFSP-18 includes the Reebie Associates'  
7 warnings about the use of the Transearch data for  
8 various purposes; the indications, I think as you put it  
9 a moment ago, of its reliability or lack thereof when  
10 employed for certain purposes?

11 A Yes. The page numbers are not on here. I  
12 assume that the right-hand page that you've shown me  
13 that I'm looking at is page 35. That, in fact, is the  
14 page that has the phrase that I thought I was quoting  
15 fairly accurately: "These are not hard and fast  
16 rules."

17 Q Does, in fact, that chart indicate, Mr. Spero,  
18 that Reebie does not suggest using the Transearch data  
19 to measure relative node shares at the five-digit STCC  
20 level?

21 A I think that this page, taken as a whole, does  
22 not suggest that; no.

23 Q The table you and I are looking at is entitled  
24 "Guidelines for Reliable Application of Detailed Data,"  
25 is it not?

1 A That's what it says.

2 Q And with respect to application, there are  
3 four categories. The third is relative shares.

4 A Correct.

5 Q The fifth is specific shares.

6 A That's correct.

7 Q I ask you, under the commodity STCC  
8 designation 5, does it fail to indicate that there is an  
9 X place there which suggests that Reebie recommends that  
10 the data not be used for those purposes at that level?

11 A There is no X there, but again, taken in the  
12 context of the hard and fast rules phrase, and as I go  
13 back to the point again, it depends on what you are using  
14 this for, what you are using the data for, what you are  
15 attempting to draw from it.

16 That, it seems to me, is the key question as  
17 to whether or not it is reliable.

18 Q And indeed, that is what this table addresses,  
19 isn't it, Mr. Spero, and says that with respect to  
20 attempting to use the data to determine relative shares  
21 and specific shares, they do not recommend that it be  
22 used at the five-digit level?

23 A If that was the purpose, if that were the only  
24 purpose of my use of it, that is, to look at the  
25 relative or specific shares in a particular pattern, one

1 particular flow pattern, that warning, as you put it --  
2 and I'm not sure that that's how they would, or Mr. Liba  
3 would phrase it -- might be applicable.

4 But as I repeat, that is not, given the way in  
5 which I have used the data at that five-digit level, I  
6 don't think that the warning is applicable. It is --  
7 the overwhelming demonstration of what these data show  
8 in the context of other evidence that has been supplied  
9 for the record in this proceeding suggests that they are  
10 quite reliable for the purposes that I used them.

11 Q Now, if you look at page A-3, this is where  
12 you are generally discussing Witness Anderson's  
13 methodology. You make reference at the top of the page  
14 to his definition of Group I common points. Do you see  
15 that?

16 A Yes.

17 Q You do agree, don't you, that such points as  
18 he defines them, warrant analysis of competitive effects  
19 as result of a merger?

20 A Common points certainly warrant attention.  
21 Whether I would define them as the way he did or not is  
22 another question.

23 Q The point, though, is that in the case of a  
24 railroad merger, it's certainly one of the first places  
25 you would want to look for effects or points served by

1 the two carriers; isn't that right?

2 A It is a place that one would look; yes.

3 Q Now, you certainly don't contend, do you, that  
4 this merger, the Santa Fe Southern Pacific merger will,  
5 for the first time, create such points on railroads in  
6 the West?

7 A I haven't addressed that issue at all in this  
8 testimony.

9 Q Do you know whether it is a fact that Union  
10 Pacific, for example, has over 3,400 stations on its  
11 lines that are served by no other railroad?

12 A I have never investigated the question.

13 Q You are aware, aren't you, just from your  
14 general experience in the industry, that there are many  
15 thousands of such exclusively served stations on all the  
16 major railroads in the West?

17 A That would not surprise me.

18 Q Are you aware of any empirical evidence that  
19 demonstrates that shippers at such exclusively served  
20 single service points, if we want to call them that, are  
21 charged rail rates than shippers at points served by  
22 more than one railroad?

23 A No, nothing comes to mind.

24 Q In general or in brief, what kinds of factors  
25 constrain those rates at that point? Why aren't those

1 exclusively served shippers paying higher rates?

2 A What I meant was that I have no data to really  
3 respond to the question, Mr. Moates.

4 Q Okay. On page A-6 you make reference to the  
5 TBS utilization of TRAM. Do you see that? In the  
6 middle of the page, you say: "To implement this test,  
7 we will call it the TRAM screen for short, that TBS  
8 identified and sent to TRAM the names of a few shippers  
9 in the traffic cells of concern, the origin and  
10 destination of certain of those shipments, the tonnages  
11 involved, and the five-digit STCC code."

12 Do you see that statement?

13 A I do.

14 Q Are you aware that in fact TBS sent to TRAM  
15 literally hundreds of shipper names for further  
16 analysis?

17 A That's a little unclear in the work papers and  
18 in the testimony that I've seen so far. There was, to  
19 be sure, some indication that a lot of names had been  
20 sent to them, but how many TRAM was actually asked to  
21 focus on or how many TRAM selected to focus on is not  
22 clear.

23 Q Is it your testimony that, or is it your  
24 understanding that TRAM was permitted to decide which of  
25 the shippers TBS sent to it?

1           A     No. It is my testimony that it's not clear.

2           Q     Not clear to you.

3           MR. ROACH: I'd like to ask for a  
4 clarification if you are going to pursue this line. We  
5 had lengthy cross-examination of Mr. Baker about two  
6 different phases of his study, and I would like to be  
7 clear whether you are talking about shippers that were  
8 sent to TRAM in Phase I or in Phase II.

9           BY MR. MOATES: (Resuming)

10          Q     What are you talking about in the middle of  
11 page A-6, Mr. Spero?

12          A     I believe we are talking primarily about the  
13 second phase here.

14          Q     All right. Well, is your answer any different  
15 with this clarification that your counsel has prompted,  
16 this being the second phase of the TRAM analysis?

17                 Are you aware, in that context, that TRAM was  
18 given literally hundreds of shipper names by TBS for  
19 analysis?

20          MR. ROACH: Mr. Moates, the reason I objected  
21 was that the testimony was there were 189 shippers sent  
22 to TRAM in Phase II. And I take exception, Your Honor,  
23 to be being charged with prompting when we're getting an  
24 inaccurate characterization of the facts in the record.

25          MR. MOATES: We're getting a very inaccurate

1 characterization from the witness's testimony that says  
2 the names of a few shippers.

3 Now, he's identified --

4 JUDGE HOPKINS: He says 189, and he says a  
5 few.

6 MR. MOATES: He says a few, and I'm asking  
7 whether 189 is a few.

8 JUDGE HOPKINS: If he said hundreds, too, I  
9 would be more inclined to say hundreds is larger number  
10 than 189.

11 MR. ROACH: The testimony doesn't say a few  
12 shippers. It says a few in the cells of concern.

13 JUDGE HOPKINS: Let's go on.

14 BY MR. MOATES: (Resuming)

15 Q Isn't it true, Mr. Spero, that for particular  
16 cells of concern, as you call them, that TRAM  
17 two to five of the top shippers in each cell for each  
18 commodity, mileage block, and direction?

19 A I think that is a few.

20 Q It's a few in each cell.

21 A That's what the sentence says.

22 Q Page A-7 in footnote 2, you say that "While  
23 relying on TRAM's capacity assessments --

24 A What page are you on?

25 Q A-7, footnote 2.

1 A I'm sorry.

2 Q You say: "Anderson makes occasional reference  
3 to the opinions of SF and SP marketing personnel which  
4 he solicited."

5 Are you inferring or actually stating in that  
6 footnote that it's your understanding that TBS concluded  
7 sufficient logistics options were available at any  
8 point on the basis of such discussions?

9 A From the reading of the written testimony, it  
10 certainly appears that way. And from looking at Mr.  
11 Anderson's work papers, it certainly appears that way,  
12 although I am aware that upon cross-examination, he  
13 indicated that he did not rely on them; that when  
14 something was designated TRAM, it was TRAM and not the  
15 marketing personnel of the railroad.

16 So, given the fact that those pieces of  
17 evidence, if you will, seem somewhat contradictory, I  
18 thought it best to phrase it this way.

19 Q I'd like to ask you some questions about your  
20 general discussion on page 8 of the containerizability  
21 screen.

22 First of all, what is your understanding of  
23 the screen as it was used by TBS?

24 A It was, other than what I have set forward  
25 here, I don't think I could add much more. It seems to

1 me that what Mr. Anderson was attempting to do is the  
2 following. He had, based on the Transearch data,  
3 certain STCC codes for which the Transearch data records  
4 rail traffic but does not record truck traffic.

5 Those STCC codes are generally recognized to  
6 handle a lot, but certainly not all of the TOFC traffic  
7 that carriers submit on the 1 percent waybill sample.  
8 These are STCC codes 44, 45, and 46.

9 Because the Reeble data had no increase for  
10 the non-rail portion of those STCC codes, he was  
11 attempting to create a surrogate for the fact that those  
12 entries showed zero value.

13 Q Is that methodology itself, as opposed to any  
14 dispute you may have about how the methodology was  
15 applied, does that methodology itself -- i.e., the  
16 attempt to create the surrogate -- something that you  
17 dispute or disagree with?

18 A I think one must recognize that for certain  
19 types of TOFC traffic, it's clear that there is -- that  
20 there are non-modal options. But one has to take great  
21 care in generalizing that that is true of all the  
22 traffic in those or any other cells.

23 Q On the basis of your experience in the  
24 industry, what kinds of commodities move under FAK rates  
25 and piggyback movements?

1           A     I really don't have a definitive answer to  
2 that, Mr. Moates. I don't think I've ever seen a very  
3 detailed breakdown of what that is, at least not in any  
4 year that is recent enough to matter.

5           Q     Is it correct to say, Mr. Spero, that the  
6 competitors for rail freight forwarders are such  
7 entities as LFL truckers and United Parcel Service,  
8 operators of that type?

9           A     I really don't know. I haven't looked into  
10 that, Mr. Moates.

11          Q     Do you know whether the Transearch  
12 containerizability approach or methodology compared the  
13 LFL and TL motor carrier traffic moving to and from a  
14 region with the railroad's competitive TOFC traffic?

15                   Wasn't that the purpose of the approach?

16          A     With the modifier "competitive" in there, I  
17 don't think I could agree with that, because I don't  
18 think there was any attempt to distinguish which portion  
19 of the STCC Code 44, 45, and 46 traffic was competitive  
20 or not competitive.

21          Q     Okay. You would have agreed with the  
22 statement if I had taken the word "competitive" out?

23          A     I think so, but I would rather have you repeat  
24 it to make sure.

25          Q     Didn't the Transearch containerizability

1 factor, as used by TBS in the containerizability screen,  
2 compare LTL and TL motor carrier traffic moving to and  
3 from a particular region with the railroad's TOFC  
4 traffic?

5 A Well, let's see. The regions were not the  
6 same. It included private truck, as well as TL and LP.  
7 So I guess I'd have to say no.

8 Q Are you concerned, am I correct in reading  
9 into your discussion of the containerizability screen  
10 that you feel that not all intermodal traffic was  
11 considered?

12 A No. I just -- I was really trying to make  
13 sure that we had acknowledged all of the screens that  
14 Anderson had utilized. I think it's a rather contorted  
15 test, frankly. But since it -- in the traffic flows I  
16 was concerned with, it didn't merit any further  
17 discussion.

18 Q That's good enough for me.

19 All right. On page A-10, please. Here, you  
20 have moved into your discussion of the Central  
21 California study which, by the way, for context, the two  
22 main TBS studies you analyzed are the Central California  
23 study and the Phoenix common point study; isn't that  
24 right?

25 A Well, the -- I have grouped them into those

1 two categories. Actually, what I have called here the  
2 Central California study is -- it represents a look at  
3 five different Anderson studies.

4 Q It includes those common points shown on your  
5 Figure A-1 as well as the San Joaquin market area study?

6 A That's correct; those Group I common points.

7 Q Now, at the top of page A-10, you say that:  
8 "TBS combined truck tonnage from BEAs 178 and 179 for  
9 its San Joaquin analysis."

10 Is that right?

11 A That's what Witness Anderson says in his  
12 statement; yes.

13 Q You were present for his cross-examination,  
14 weren't you?

15 A Yes.

16 Q Did you understand him on cross-examination to  
17 say something different?

18 A Yes. And it, hence, represented again another  
19 conflict in what he did.

20 Q But you chose to ignore that answer in  
21 preparing this critique?

22 A Yes. I erred on the conservative side and  
23 included them both. It isn't that I ignored it. It  
24 wasn't clear.

25 MR. POACH: Can I just note that there is a

1 citation of that transcript page in the footnote on this  
2 page?

3 MR. MOATES: Yes. And it says "compare." He  
4 makes the statement up here, ignoring the very thing he  
5 refers to.

6 MR. ROACH: Excuse me for interrupting.

7 BY MR. MOATES: (Resuming)

8 Q Mr. Spero, you have with you, I take it, the  
9 TBS analysis for Oakdale, California?

10 A Yes.

11 Q That is one of the common points that you --  
12 in BEA 178 you are dealing with here, isn't it?

13 A Yes.

14 Q Do you have SFSP-16 and 17 available? If not,  
15 I have them here for you.

16 A No, I do not.

17 (Pause.)

18 Q Now, Oakdale is in BEA 178, is that right?

19 A Yes.

20 Q Do you know which Transearch truck tons were  
21 used in the Oakdale analysis?

22 A I don't recall now, Mr. Moates.

23 Q Okay. Did you compare the Transearch truck  
24 tons for any focus commodities in chapter 8 with those  
25 in chapter 15, which is the San Joaquin analysis?

1           A     You ran that by a little fast. Just a  
2 second. Is chapter 8 Oakdale?

3           Q     Chapter 8 is Oakdale, and chapter 15 is the  
4 San Joaquin. I'm wondering if you prepared any of the  
5 Transearch truck tons that Mr. Anderson used for any of  
6 the focus commodities in those two chapters?

7           A     I'm sure I must have at one time.

8           Q     I will just one example, because it's  
9 time-consuming. If you could look at chapter 15 at 12  
10 and chapter 8 at 15, I think unfortunately we'll have to  
11 use two volumes.

12          A     Would you repeat that?

13          Q     Chapter 15 at 12.

14          A     At 12?

15          Q     Yes. And chapter 8 at 15.

16          A     Just a second.

17          Q     If you have both exhibits in front of you, I  
18 will try to direct you to just one entry.

19          A     I think I've got it. Go ahead.

20          Q     Let's look just first at 15-12. We're going  
21 to look at STCC Code 20, inbound, at the first mileage  
22 block. Can you follow that?

23                 STCC 20. It would be your fourth entry down.

24          A     The pages are reversed here. Just a second.  
25 That's the one that shows for -- just to make sure we

1 are on the right wavelength -- that for mileage block 1,  
2 the SFSP tons is 38,603?

3 Q That's correct.

4 A Okay.

5 Q It shows the truck load tons as 3,455,491;  
6 correct?

7 A That's correct.

8 Q Okay. And this is the San Joaquin chapter.  
9 Now, if you look at chapter 8, which you have confirmed  
10 is the Oakdale chapter, look under inbound 620, mileage  
11 block 1, and tell me what the truck tons shown there  
12 is.

13 A It seems that even though Oakdale is in EA  
14 179, Witness Anderson has used truck tons for BFA 179.

15 Q It's the same number, 3,455,491, isn't that  
16 right?

17 A That's what I meant; yes.

18

19

20

21

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25

1           Q     You say that shows that BEA 179 tons were used  
2 in the Oakdale study?

3           A     If those are the correct -- well, let me see.

4           Q     I'm trying to suggest, Mr. Spero, that BEA 178  
5 tons were used in both.

6           A     I accept that.

7           Q     All right. On page A-11, you summarize here  
8 on the bottom of A-10 and the top of A-11 here, do you  
9 not, certain of the inbound commodities which Mr.  
10 Anderson himself found not to have logistical options?

11          A     Yes.

12          Q     Isn't it true that the data with respect to  
13 these commodities, farm products, non-metallic minerals,  
14 and chemicals are deficient in the Transearch data  
15 base?

16          A     Deficient in what sense?

17          Q     They are under-represented.

18          A     That wouldn't be true of chemicals.

19          Moreover --

20          Q     You told me a little while ago that that was  
21 true of non-metallic minerals, didn't you?

22          A     Moreover -- I didn't quite finish my answer.  
23 Moreover, even for those commodities where the  
24 Transearch data base might be deficient in terms of  
25 truck tonnage, that wasn't the end of Witness Anderson's

1 analysis process, but -- and there were many commodities  
2 where that was the case -- in which he went on and asked  
3 Mr. Baker to take his look-see.

4 This listing and the inset table on page 11  
5 represents the results of all of those screens and not  
6 just the Transearch screen.

7 Q Is then your testimony that the tonnage that  
8 you're referring to here was not sent by Mr. Anderson to  
9 TRAM?

10 A I don't know whether it was or not, but it  
11 represents the results of all of his screens. That's my  
12 testimony.

13 Q Well, maybe we'll have to look back at those  
14 exhibits after all.

15 Would you get back to 16 first? Look at Mr.  
16 Anderson's verified statement which is the first  
17 document in the volume, at page 41. Have you found that  
18 page?

19 A I think I have the right 41.

20 Q The paragraph just above the heading that says  
21 "summary."

22 A Yes.

23 Q Doesn't that say that TBS, with the assistance  
24 of TRAM, conducted extensive research on logistics  
25 options available to rail customers without sufficient

1 other mode options, primarily for inbound feed grains,  
2 STCC 01, outbound food products, STCC 120, and outbound  
3 chemicals, STCC 23? And this is in the summary of the  
4 San Joaquin study.

5           So doesn't this suggest that in fact Anderson  
6 did send these tons to TRAM for further analysis?

7           A     I thought that's what I said.

8           Q     I thought you said the opposite. If you did  
9 say that, I apologize.

10          A     What I thought my testimony was, and if it was  
11 unclear I would like to restate it, which was that your  
12 initial series of questions on this referred to the  
13 Transearch data and the fact that the commodities such  
14 as farm products and non-metallic minerals are not, for  
15 non-rail nodes, are not reflected in there to the degree  
16 we would like.

17          And I said that my response to that was that  
18 the commodities listed in the inset table here on my  
19 page 4-11 are not limited to what failed Anderson's  
20 intermodal or Transearch screen, but represents the  
21 results of all of his screens, including TRAM.

22          And, notwithstanding the fact that he went  
23 through all of those screens, he himself conceded that  
24 there were no options.

25          Q     Now, I want to ask you a few questions about

1 your figures A-3 and A-7. I think A-3 is opposite page  
2 A-13 and A-7 is opposite page A-30.

3 A Together?

4 Q Yes. These are two summary charts, are they  
5 not? The first one for Central California, and the  
6 second for Phoenix of -- to use your caption -- truck  
7 and rail shares of significant commodities captured by  
8 Anderson's intermodal screen.

9 A Yes.

10 Q I take it your point here, Mr. Spero, is that  
11 analysis at the five-digit STCC level would have  
12 revealed that tonnage in both the Central California and  
13 the Phoenix studies, which was found to have sufficient  
14 options through the intermodal screen, really doesn't  
15 upon closer examination.

16 Is that generally the point?

17 A Yes.

18 Q Now, did you make any attempts to apply any of  
19 Anderson's other screens or to analyze these in any  
20 greater detail, once you have concluded using five-digit  
21 STCC analysis, that they didn't pass the intermodal  
22 screen?

23 A Your question is a little unclear, Mr.  
24 Moates.

25 Q Let me ask it in example form. When you found

1 that these commodities failed the intermodal screen, did  
2 you stop your analysis there? Did you attempt to  
3 determine, for example, whether they might have been  
4 eliminated by one of Anderson's other screens, the local  
5 noncompetitive flow as an example?

6 A Oh, no. I didn't go to his screens. I did  
7 give some of these flows some additional considerations  
8 which I thought pertinent.

9 Specifically, I looked at, in a number of  
10 cases -- not all, but a number of cases -- at the  
11 question of source alternatives. I looked -- again, not  
12 all but in a number of cases -- at the question of  
13 whether if one looked at another mileage block, one  
14 would find a different result, a substantially different  
15 result from the ones that are shown here.

16 I also looked at the question of whether there  
17 was any testimony in this proceeding on the part of  
18 shippers of these commodities at these locations which  
19 might allow us to say that notwithstanding the fact  
20 that there are some rather substantial rail shares here,  
21 looked at in terms of rate and service considerations,  
22 it would be fair to conclude that there is a fairly  
23 close substitute, as Witness Anderson urges us to  
24 conclude.

25 In virtually all of those cases, I was unable

1 to find the kind of data, the kind of evidence, which I  
2 could consider pertinent to respond to that question in  
3 order to undermine the conclusions which I have drawn  
4 here.

5 But I did not, to answer your original  
6 question, I did not pursue the kind of analysis that  
7 Anderson had conducted. No.

8 I think mine was more meaningful.

9 Q Well, we will see.

10 First of all, looking at these figures  
11 together, am I correct that the only -- that only four  
12 commodities at the two-digit level, namely, STCCs 20,  
13 24, 23, and 32, passed the TBS screen but failed at the  
14 five-digit level on your further analysis?

15 A Oh, no, no, no. These are just illustrative.  
16 I took some of -- what I was trying to do here is look  
17 at some of the larger -- if one refers back to my Figure  
18 A-2 facing page A-10, and my Figure A-6 facing A-29, I  
19 was trying to look at some of the more significant cells  
20 where there was, in terms of Santa Fe SP traffic, as  
21 tabulated by Anderson -- if you're asking me did I look  
22 at each and every one of those cells, no.

23 I think that in terms of the ones with the  
24 higher volumes involved, the ones that I looked at,  
25 those were the ones that told me enough.

1           Q     Let me ask it this way. Do you have a list  
2 somewhere of other examples that failed at the  
3 five-light level that you didn't pursue, or did you  
4 simply go through and pick out the ones initially that  
5 you thought were more significant and chose those for  
6 analysis?

7                     What was the process here?

8           A     There's a list on Figure A-9, facing page  
9 A-37, which involves a lot more commodity flows which  
10 would clearly fail the intermodal test.

11          Q     So it's your testimony that these are others  
12 you have identified?

13          A     I certainly wouldn't want to conclude from  
14 that, that that's all there are.

15          Q     Now, as an example of some of the items you  
16 have included in A-3 and A-7, I want to give you, if I  
17 may -- Your Honor, may I give the witness the Handy  
18 Railroad Atlas of the United States?

19                     JUDGE HOPKINS: Go right ahead.

20                     BY MR. MOATES: (Resuming)

21          Q     I ask you to open it to Arizona.

22                     MR. ROACH: No objection.

23                     JUDGE HOPKINS: Thank you.

24                     BY MR. MOATES: (Resuming)

25          Q     Can you find Clarkdale, Arizona on there?

- 1 A Okay. With your help I have found it.
- 2 Q On what railroad is Clarkdale located?
- 3 A It appears to be the Santa Fe.
- 4 Q Is it served by any other railroad?
- 5 A Not according to this map; no.
- 6 Q Now, on moves from Clarkdale to Phoenix, could
- 7 the Southern Pacific participate in the rail movement of
- 8 a commodity between those two points?
- 9 A Probably not.
- 10 Q Is there any doubt about it, Mr. Spero? I
- 11 mean the SP comes up from the south and goes through
- 12 Phoenix, doesn't it?
- 13 A Yes.
- 14 Q Isn't Clarkdale substantially north of
- 15 Phoenix?
- 16 A Yes.
- 17 Q Do you think a rail/truck option from
- 18 Clarkdale to Phoenix would make any sense? Suppose a
- 19 shipper at Clarkdale wanted to move his commodity for
- 20 some reason on a railroad other than Santa Fe.
- 21 Do you think a truck/rail combination from
- 22 that point would be viable?
- 23 A To Phoenix as a destination?
- 24 Q Yes, as the destination.
- 25 A Probably not.

1 Q Do you see Flagstaff on there?

2 A Yes.

3 Q What railroad serves Flagstaff?

4 A It's also the Santa Fe.

5 Q On moves to Phoenix, and I ask you the same  
6 question, could the SF participate from Flagstaff?

7 A No.

8 Q And would a rail/truck combination move to a  
9 destination in Phoenix make any more sense from  
10 Flagstaff than from Clarkdale?

11 A Not to the destination Phoenix; no.

12 Q Weren't you provide work papers showing  
13 five-digit STCC origin and destination SPLC as well as  
14 shipper and tons for all the traffic in the TBS study?

15 And if it helps you specifically, those were  
16 the TBS flow reports.

17 A Yes.

18 Q Using that data, couldn't you identify,  
19 looking now at your Figure A-7 as an example, it is  
20 opposite page A-30, do you see the 113,972 tons of  
21 hydraulic cement that you have as your first entry  
22 there?

23 A Yes.

24 Q Using that TBS flow data, couldn't you  
25 identify the source of that shipment as being the

1 Phoenix Cement Company in Clarkdale moving to a company  
2 called Gilford Gill in Phoenix?

3 A I suppose one could have; yes.

4 Q And if you assume for the sake of my question  
5 that I just correctly described what the work paper will  
6 show you for that tonnage, this is an SF local movement,  
7 isn't it?

8 A It would appear to be; yes.

9 Q And similarly, if the 61,728 tons of clay  
10 aggregates were shown from those work papers to be an  
11 intracompany move by Super Life Builders Company from a  
12 station just outside of Flagstaff called Darling, which  
13 does not show on that map, to Phoenix, that would also  
14 be a Santa Fe local move, wouldn't it?

15 A And if it were, then it should have been  
16 categorized by Witness Anderson in his local category.

17 Q But your criticism here, sir, is that it  
18 shouldn't -- strike that.

19 Isn't it true that this tonnage was already  
20 eliminated by Witness Anderson by using the two-digit  
21 STCC analysis in the intermodal screen?

22 A Yes.

23 Q So he had no reason to do any further  
24 analysis, did he?

25 A But it was improperly -- if his local

1 categorization represents what it says to represent,  
2 then it should have been included there, rather than  
3 here.

4 Q My point is, and I think you confirmed it  
5 earlier, you did not apply these kinds of screens to the  
6 examples in Figures A-3 and A-7, did you?

7 A No, because I took Witness Anderson at his  
8 word, that at these Group I common points, he was  
9 analyzing the consequences of reducing the competitive  
10 logistical options for Santa Fe and SP rail customers.

11 Q One last question in that regard. You are  
12 familiar with the hierarchy of the screening applied by  
13 TBS, aren't you?

14 A Yes.

15 Q Isn't it true that the local noncompetitive  
16 screen was applied after the two-digit intermodal?

17 A I believe Witness Anderson applied it that  
18 way; yes. At least that's what he says.

19 Q Now, if you turn to page A-14 of your verified  
20 statement, I have some questions about the intermodal  
21 screen and your discussion of fresh fruits and vegetable  
22 traffic between California and Chicago.

23 Do you see the reference in the top paragraph  
24 where you say he -- I think Anderson -- did not take  
25 into account the fact that a number of the perishable

1 commodities included in his traffic data are products  
2 that move predominantly via the Applicants in long haul  
3 rail service on a year-round basis and even more so  
4 during peak production seasons?

5 A Yes.

6 Q First of all, doesn't the UP system vigorously  
7 participate in this traffic in conjunction with the  
8 Chicago North Western over Fremont?

9 A It would depend on -- I don't know what the  
10 extent of that competition would be.

11 Q You don't know? What's the basis for your  
12 statement that it moves predominantly via the  
13 Applicants?

14 A What I was referring to here was that the SP  
15 and Santa Fe traffic data assembled by Witness Anderson  
16 includes those commodities that are embraced in that  
17 flow of data, are commodities that move on a year-round  
18 basis, and even more so during peak seasons.

19 Q So your statement is really a tautology in  
20 that sense. You're saying that it's SF and SP traffic  
21 that moves predominantly via SFSP long haul; is that all  
22 you're saying?

23 A No. It's not a tautology, but it does refer  
24 to the Santa Fe and SP traffic data base that Anderson  
25 worked with.

1 Q And then I take it, going back to your earlier  
2 answer, you do not know whether the Union Pacific and  
3 the Chicago North Western, in joint line service over  
4 Fremont, are competitive for this kind of traffic to  
5 Chicago?

6 A Well, for this kind of traffic, it has a  
7 number of different origins within California. So it's  
8 difficult to say.

9 Q Perishable traffic from Central California to  
10 Chicago?

11 A I don't think you can generalize it that way.

12 Q Do they participate in any traffic from  
13 Central California to Chicago, fresh fruit and  
14 vegetable?

15 A I'm sure they do.

16 Q Do you have any idea what proportion of this  
17 traffic moving on the Applicants is TOFC versus  
18 carload?

19 A No, I don't.

20 Q You have in the next sentence what you call an  
21 illustration. You say, as illustrations, more than 80  
22 percent of the California oranges, grapes, and lettuce  
23 delivered to Chicago in 1982 moved by rail (carload and  
24 TOFC.

25 First of all, the source document for that

1 statement, I take it, is the footnote, Department of  
2 Agriculture fresh fruit and vegetable arrivals in  
3 western cities?

4 A Yes.

5 Q Is that document in your work papers, by the  
6 way?

7 A I assume it is. If it's not, we'll certainly  
8 provide it. I think the calculations based on it are.

9 Q Okay. I think I have an extract from it. Not  
10 from your work papers. I'll ask you to identify it.

11 Could we have a counsel's exhibit marked 117?

12 This is a three-page document that is an  
13 extract from the Department of Agriculture report  
14 referenced by Mr. Spero in the footnote we are  
15 discussing.

16 JUDGE HOPKINS: It will be marked for  
17 identification as SFSP-C-117.

18 (The document referred to  
19 was marked Exhibit  
20 SFSP-C-117 for  
21 identification.)

22 BY MR. MOATES: (Resuming)

23 Q Looking at the cover page first for  
24 identification, Mr. Spero, is this the report that you  
25 refer to in the footnote on page A-14?

1           A     No, I don't believe it is, or at least these  
2 extracts are not.

3           Q     You say these extracts are not the same?

4           A     No. I believe that -- I may be wrong about  
5 this, Mr. Moates, but I believe that the Department has  
6 -- I probably should have been more cautious about this  
7 in my footnote. I believe the Department has two  
8 documents with very similar sounding titles. And this is  
9 not -- at least these abstracts here are not the data  
10 base that I relied.

11          Q     Well, the title of this document certainly  
12 seems to be the title of what you cite in the footnote.

13          A     I think there is, either in this document or  
14 later on, or in another document, either later on in  
15 this document or in another document with a very similar  
16 title, there is an array of data which shows on an  
17 origin/destination basis, modal split by commodity.

18                 Neither of the pages which you have handed to  
19 me do that.

20          Q     I will note for the record that I'm not  
21 representing this is the whole report. You will see  
22 that these pages are numbered 8 and 9. I was going to  
23 draw your attention to Table 3B. Doesn't that table  
24 represent arrivals by origins, by month, in 1982 for  
25 rail shipments in various states?

1 Not even rail. Rail on the first page, page  
2 8, and truck on page 9.

3 A Yes, they appear to do so. Yes.

4 Q All right. There's a footnote to Table 3B.  
5 Would you read that, please? Would you read it for the  
6 record?

7 A The footnote reads: "Rail arrivals include  
8 all piggyback vans of reportable commodities which are  
9 grounded in Chicago by the incoming rail carriers. Some  
10 vans are rebilled by other rail carriers or  
11 over-the-road carriers for movement to final  
12 destinations. Because of billing practices since  
13 deregulation of rail movements of fresh fruits and  
14 vegetables, it is not possible to segregate vans moving  
15 through Chicago from those actually terminating in the  
16 metropolitan area. See Table 3C for detail of piggyback  
17 (RT) arrivals."

18 Were you aware of that footnote or that  
19 caution cited by USDA when you used this document?

20 A Well, since I didn't use this table, I can't  
21 say. I was generally aware, however, of the fact that  
22 for not just -- for many commodities moving that are  
23 shown as destinating in Chicago, that they have an  
24 onward movement. That is even clear from Anderson's  
25 data.

1           Q     Can you tell what table from this report you  
2 did use?

3           A     Not having the report with me, I cannot.

4           Q     You don't have your work papers available?

5           A     I do have them here. I don't have them with me  
6 on the stand. I can attempt to look.

7           Q     Well, let's do that at the recess if we can.

8                     Do you have any idea what the U.S. Department  
9 of Agriculture estimates the so-called percentage of  
10 Chicago arrivals to be in terms of rebills?

11          A     No, I do not.

12          Q     If it was as high as, say, 69 percent of all  
13 arrivals, that would have a fairly significant effect on  
14 the conclusion you are drawing here on page A-14,  
15 wouldn't it?

16          A     Which conclusion is that, Mr. Moates?

17          Q     That more than 80 percent of California  
18 oranges, grapes, and lettuce delivered in Chicago in '82  
19 moved by rail.

20          A     No, it would not.

21          Q     It would be irrelevant to your point that this  
22 traffic may have been moving to other destinations,  
23 perhaps even being rebilled for cities like New York or  
24 Boston?

25          A     Yes.

1           Q     You contend that rail is dominant on fresh  
2 fruit and vegetable movements from California to New  
3 York?

4           A     I haven't made any characterizations as to  
5 dominance. All I am suggesting here is that data which  
6 Anderson could have looked at, if he had not resisted  
7 going below the two-digit level, would have shown him  
8 something quite different than what he is attempting to  
9 tell us at the two-digit level.

10          Q     Well, speaking of seeing something quite  
11 different, did you look at any similar tables in the  
12 USDA report for other cities across the Southern  
13 Corridor, cities like Dallas, New Orleans, St. Louis,  
14 San Antonio?

15          A     I don't recall whether we did or not, Mr.  
16 Moates. I remember looking at cities like New York and  
17 Boston and Chicago.

18          Q     Didn't you in fact use the only destination in  
19 that report, Chicago, in which rail arrivals outnumber  
20 trucks?

21          A     Not for that reason, although what it may well  
22 reflect is that for certain large destinations, large  
23 volume destinations such as Chicago, including the fact  
24 that it is a rebilling area in New York and so forth, is  
25 that it represents precisely the kind of situation where

1 we expect rail to have more of an advantage than truck.

2 That is to say, where the volumes are more  
3 significant.

4 Q Didn't you think it significant to make an  
5 investigation of what the comparative rail and truck  
6 terminations of these commodities were in some of the  
7 Southern Corridor cities where your client seeks  
8 trackage rights?

9 A I thought that what was pertinent was to look  
10 at what Witness Anderson's data showed. And my  
11 recollection was that an overwhelming proportion of the  
12 traffic that he was working with, that is to say, the  
13 Santa Fe SP traffic, showed -- well, it wasn't specific  
14 to Chicago. I think it was only the State of Illinois.  
15 And, hence, that seemed to be the relevant place to  
16 look.

17 MR. MOATES: I'd like to have another  
18 counsel's exhibit marked. It's a one-page document  
19 captioned "Fresh fruit and vegetable arrivals, grapes,  
20 lettuce, California origins to selected Southern  
21 Corridor points."

22 JUDGE HOPKINS: That will be marked for  
23 identification as SFSP-C-118.

24 (The document referred to  
25 was marked Exhibit

1 SFSP-C-113 for  
2 identification.)

3 (Discussion off the record.)

4 BY MR. MOATES: (Resuming)

5 Q I will state that this counsel's exhibit was  
6 constructed from the same report for the cities shown.  
7 You can certainly take the figures, subject to  
8 correction.

9 But my point here, Mr. Spero, is, first of  
10 all, Dallas, Los Angeles, New Orleans, San Antonio,  
11 Atlanta, and Columbia, South Carolina are all cities  
12 that have been included in the Union Pacific's Southern  
13 Corridor competitive analysis, aren't they?

14 A I believe that's right.

15 Q And yet, the one city you chose to make your  
16 comparison to for rail versus truck deliveries of these  
17 commodities was Chicago.

18 Did you look at these other cities when you  
19 examined the report referenced on page A-14 of your  
20 statement?

21 A I think I've already answered that; that what  
22 was guiding my analysis here was in response to Witness  
23 Anderson's testimony. And since the overwhelming share  
24 of the data in this particular two-digit category was  
25 shown as California traffic, was shown as terminating in

1 Illinois, that that seemed to be the place to focus an  
2 inquiry to test the validity of a two-digit analysis.

3 Q Does this data show that, to use your words --

4 A What data?

5 Q The data on my counsel's exhibit with respect  
6 to relative rail versus truck terminations of these  
7 fresh fruits at those cities, does that data suggest  
8 that the merger will narrow shipper transport choices?

9 A Well, I don't think you can draw any  
10 conclusions from that data because you have lumped  
11 together three different commodities, aggregated  
12 together.

13 Q Aren't those three commodities that you have  
14 lumped together on page A-10?

15 A Well, that percentage applies to each of them  
16 separately.

17 MR. MOATES: I have no further questions on  
18 this.

19 MR. ROACH: Your Honor, I'm not objecting to  
20 the use of these exhibits to cross-examine Mr. Spero.  
21 But I do want to say for the record that we were not  
22 given advance notice of these and this has happened  
23 before.

24 I've had correspondence with counsel about how  
25 we understand that there is an advance notice rule, and

1 we request that it be complied with, and I do want to  
2 note an objection for the record; that this has  
3 repeatedly happened, and we have not had compliance with  
4 that rule.

5 JUDGE HOPKINS: Mr. Moates.

6 MR. MOATES: I want to respond to that. I  
7 think it is utterly outrageous to suggest that we have  
8 to give notice to the witness that he is going to be  
9 examined about a document that he cites in his own  
10 testimony as supporting one of his statements, when in  
11 fact I couldn't even find it in his work papers.

12 My questions keep appearing here because we  
13 can't find these things. He cites them as references  
14 and I'm not supposed to ask about them without notice?  
15 It is in his statement.

16 JUDGE HOPKINS: Let's attempt in any of those  
17 we can to use the 24-hour rule that we are supposed to  
18 have. If there is a problem, let them know as soon as  
19 you can.

20 MR. ROACH: If we had had notice of this, we  
21 would have brought the full document with us, and he  
22 would have been ready to talk about it.

23 MR. MOATES: I thought the 24-hour rule  
24 applied to documents that --

25 JUDGE HOPKINS: It did. What I'm trying to

1 say is we are trying to move along in this case, and  
2 anything we can do to move it along, let's do.

3 Off the record a minute.

4 (Discussion off the record.)

5 (Recess.)

6 JUDGE HOPKINS: Back on the record.

7 BY MR. MOATES: (Resuming)

8 Q Mr. Spero, on page A-15, you make reference at  
9 the bottom of the page to the largest traffic segment in  
10 the central California studies for which TEAM found  
11 shipper options.

12 You say the main commodity components are wine  
13 and canned goods, both of which move more than 95  
14 percent rail. Do you see that reference?

15 A Yes.

16 Q To your knowledge, are those commodities, wine  
17 and canned goods, captive to rail?

18 A What do you mean by captive, Mr. Moates?

19 Q Are they commodities that are carried  
20 exclusively by rail and are not subject to any  
21 competition from other carriers like trucks?

22 A I think that would depend on what particular  
23 flows one was looking at.

24 Q Aren't these commodities containerizable?

25 A You mean in terms of the Reebie definition?

1           Q     I mean in terms of can't you get them into a  
2 trailer and, in fact, aren't they carried in trailers  
3 today?

4           A     Physically, I would assume that they could be  
5 put into containers or trailers, unless they're moving  
6 in bulk.

7           Q     Do you know whether wine or canned goods, in  
8 fact, move in trailers today?

9           A     I wouldn't be surprised if some did.

10          Q     Page A-17, you discuss your Figure A-4 which  
11 is a depiction of rail market share implications for  
12 truck and TOFC rates on canned goods from Modesto,  
13 California, predicated on the shipper preference model  
14 sponsored by Witness Liba.

15          A     Predicated in part on that; yes.

16          Q     Predicated in part. First of all, the text on  
17 A-17 opposite the figure, you say, reference to truck  
18 and TOFC rate data compiled by Tri-Valley Growers in a  
19 Modesto cooperative highlights a significant pattern for  
20 canned goods traffic to these destinations.

21                   Where did this Tri-Valley Growers data come  
22 from?

23          A     It came from over-the-road truckers and  
24 basically third-party operators who move this traffic  
25 for their members.

1           Q     How did you come to be in possession of the  
2 Tri-Valley Growers' data?

3           A     We were seeking information on rates for such  
4 traffic, and I'm trying to remember exactly how we got  
5 it. I believe that somebody at Union Pacific indicated  
6 to us that such data might be available.

7           Q     Did you have any direct contact with someone  
8 at Tri-Valley about this data?

9           A     No.

10          Q     How do you know how the Tri-Valley data was  
11 compiled? You said a minute ago that it came from  
12 independent truckers.

13          A     I think they indicate in the preface to their  
14 document how they get the data, but I also talked with  
15 the UP marketing representative who calls on Tri-Valley  
16 as an account.

17          Q     Does this Tri-Valley data appear in your work  
18 papers? I certainly was unable to find it.

19          A     I am certain it does.

20          Q     Does not?

21          A     Does.

22          Q     When you complete your appearance, would you  
23 be kind enough to identify it for us in terms of the  
24 production number?

25          A     Certainly.

1           Q     Are the so-called low TOFC rates in column 2  
2 of Figure A-4, are they all SF or SP rates?

3           A     Some of them are. Well, some of them are --  
4 most of them are third party rates. Some of them  
5 represent the subsidiary of SP; yes. Many of them do,  
6 as a matter of fact.

7           Q     Are any of these rates UP rates?

8           A     There are -- the ones I focused on most  
9 intensively are the ones near the top of the table and  
10 my recollection is that there are two or three which are  
11 identified as WPX rates; yes.

12          Q     And are there others in the table that are  
13 also --

14          A     Let me correct that. That is -- what I have  
15 just stated is incorrect. There are probably -- there  
16 are some WPX rates for some destinations further down in  
17 the table, but not at the top of the table. I  
18 misspoke.

19          Q     Do you know whether the rates that are  
20 demonstrated are predicated on a particular volume of  
21 traffic?

22          A     Yes.

23          Q     What volume?

24          A     It may vary from -- on certain destinations --  
25 but my recollection is that it is 44,000 pounds,

1 generally.

2 Q Are any other conditions associated with those  
3 rates that you can recall?

4 A Other than the fact that they are the lowest  
5 rates that Tri-Valley members are using now.

6 Q I mean conditions in order to qualify for the  
7 rate, such as the minimum tonnage.

8 A No. Not that I'm aware of.

9 Q Okay. Now, with respect to the shipper  
10 preference model, isn't it true that the model is  
11 designed to measure changes in market share with changes  
12 in rates and transit time? Isn't that the fundamental  
13 purpose of the model?

14 A Well, I think more properly stated, as I  
15 understand it, the purpose of the model is if there is a  
16 change in rate or service times, it predicts what the  
17 market share would be.

18 Q If there is a change. Therefore, the model  
19 does not measure static market share, does it? It  
20 measures changes; correct?

21 A Well, I'm not sure that that's correct. I  
22 think that what it does is to say that if given a  
23 certain rate and service conditions, it predicts what  
24 the market share would be, and I believe Mr. Liba  
25 characterizes it as a reflection of what the market

1 share would be in what he calls a mature market.

2 Q You have used the model to generate a static  
3 market share, haven't you?

4 A Yes. I have attempted to show what, if you  
5 substitute actual rate data rather than the cost data  
6 that Mr. Liba constructed, I've attempted to show what  
7 the upward pricing potential is on an illustrative  
8 basis, especially for the southern corridor  
9 destinations.

10 Q Did you review Mr. Liba's verified statement  
11 in SFSP-14 that discussed the shipper preference model,  
12 as it was used in this case?

13 A I generally reviewed it; yes.

14 Q Were you aware that he indicates that the  
15 factor of .5 should be applied to market share values  
16 resulting from the model?

17 A In order to do his traffic diversion study,  
18 yes. That's not the purpose that I am using it for  
19 her.

20 Q Well, you partly answered my next question.  
21 You did not, in fact, apply that adjustment factor. You  
22 say you didn't apply it, why?

23 A Because it isn't warranted.

24 Q Why is that?

25 A Because if the model does what it purports to

1 do, it is to predict what a market share would be on a  
2 given rate and service consideration. The .5 adjustment  
3 is outside of the model.

4 Q Is it then your testimony that you felt that  
5 there was no adjustment required for purposes that you  
6 employed the model because you're not interested in that  
7 context, in potential competitive price and service  
8 responses by other competitors?

9 A My testimony is that for the purpose, that the  
10 model is intended to show what the market share would be  
11 at a given level of truck and rail rates and a given  
12 level of service times.

13 That was what I was using the model to show,  
14 and no more.

15 Q You didn't use actual transit times for your  
16 table, did you?

17 A I used the transit time factors that were  
18 incorporated in Mr. Liba's model.

19 Q You did? All right. Well, let's look at a  
20 couple of the examples. Do you have Mr. Liba's  
21 appendix?

22 A No.

23 Q SFSP-1, Liba's appendix, page 23, which is  
24 the page for Jacksonville. We'll have to look at this  
25 together.

1 Is Jacksonville the first destination city in  
2 your table?

3 A Yes, it is.

4 Q A-4. What is the present transit time  
5 difference between rail and truck that Mr. Liba shows  
6 for Jacksonville on page 23 of this exhibit?

7 A It appears to me to be a day and a half.

8 Q It's two days, isn't it? Fourth day?

9 A Fourth day, p.m. and sixth day, a.m.

10 Q That's less than truckload. What about  
11 truckload?

12 A Oh, for truckload; yes, two days.

13 Q Isn't that what we were talking about?

14 A I didn't hear that in your question. I'm  
15 sorry.

16 Q Isn't that what your table deals with, or does  
17 this table deal with LTL traffic?

18 A No. It probably basically relates to TL  
19 traffic.

20 Q So there's a two-day difference; right?

21 A Yes, in Mr. Liba's table here; yes.

22 Q Which you said you used. Look at page 28 for  
23 Boston. Boston, by the way, is another city in your  
24 table A-4, isn't it?

25 A Yes.

1 Q What's the transit time difference shown for  
2 Boston? Is it also two days?

3 A Between --

4 Q Truckload and rail.

5 A It shows a proposed transit time of two days.

6 Q That's going to be the best, right, because  
7 doesn't the exhibit show that today Plan 3 looks like  
8 four days?

9 A Yes. On a proposed basis, two days.

10 Q So on a proposed improved schedule, two days  
11 is the best?

12 A Yes.

13 Q Okay. I can take that back.

14 Does your Figure A-4 at any point use a  
15 two-day service definition?

16 A No.

17 Q For Jacksonville and Boston, for example,  
18 indeed for the entire table, but for the two cities that  
19 we are talking about, your transit time only factors out  
20 to a day slower, doesn't it? One day?

21 A Yes. It was shown equal, that is, the transit  
22 time was the same if it was a half day slower than truck  
23 or if it was a full day slower than truck, which as I  
24 recall in my footnote on page A-18, for example, is  
25 certainly within the parameters that Mr. Liba discussed

1 for the Bay Area Valley to Dallas move.

2 Q Do you have a copy of Mr. Liba's Exhibit 11,  
3 which is the model?

4 A No.

5 Q Would you take that? That is the model, isn't  
6 it?

7 A Yes, it is.

8 Q Doesn't the column entry for the percentage  
9 change in RFR? What is RFR by the way?

10 A It's a change in the rail rate.

11 Q Rail freight revenue. The column for the  
12 percentage change in RFR for minus 20 and plus two days  
13 transit time, what does that give you for a value, a  
14 share value?

15 A Two days faster or two days slower.

16 Q Two days slower. Isn't that what the  
17 schedules we just looked at showed?

18 A I just wanted to clarify your question. It  
19 shows 50 percent

20 Q Okay. Now, just look at Jacksonville in your  
21 table; for one day slower, you show 70 percent; right?

22 A That's right.

23 Q So the revealed preference, if that is the  
24 term we can use, for Jacksonville that you show at 70  
25 percent would really be 25 percent, wouldn't it, based

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on the model for a two-day transit time difference?

2           A     That may be, although again we should recall  
3 here that we were looking only at transit times from  
4 Modesto, from the northern end of the valley here.  
5 Those might be significantly different if one was  
6 looking farther, in the more central or southern end of  
7 the valley.

8           Q     Your table has to do with Modesto, doesn't  
9 it?

10          A     That's only place where we had the rates  
11 from.

12          Q     Are you suggesting that the two-day difference  
13 in transit time that is shown in that exhibit for  
14 Jacksonville would be less from Modesto?

15          A     No. I am saying it might be less from farther  
16 south in the valley.

17          Q     But at least as to your table which deals with  
18 Modesto, you agree with me that the 70 percent that you  
19 show in the Day Slower Column really ought to be more  
20 like 50 percent because it's a full two-day difference  
21 in transit time?

22          A     That is only to correspond with what Mr. Liba  
23 has.

24          Q     I misspoke myself. Excuse me. The 70 percent  
25 would be 25 percent, and for Boston it would be only 2

1 percent.

2 A To correspond with Mr. Liba's table, yes.

3 Q Well, is there something about his table that  
4 you are disagreeing with at this point? You're using  
5 his model for some purposes but not for others?

6 A I don't know. That's really not part of the  
7 model.

8 Q It's not part of the model?

9 A It's an input to it, but not part of the  
10 model.

11 Q And this input in your table is artificial,  
12 isn't it, because the schedules show that one day slower  
13 by truck to Jacksonville is simply not what the reality  
14 is.

15 A Well, it shows it's not what Mr. Liba has.

16 Q Do you know where the schedules in Mr. Liba's  
17 exhibit come from? Don't they come from the SFSP  
18 operating plan?

19 A I presume that they do.

20

21

22

23

24

25

1           Q       Look at your table for a minute. I want to  
2 ask you about the modal splits.

3                    Let's look at Little Rock, Arkansas. I think  
4 that is the split point on the right hand column. It is  
5 about the ninth or tenth city down.

6                    Do you see that?

7           A       Yes.

8           Q       Even under your model, as you have constructed  
9 it in the full day slower category, with the 15 percent  
10 rate differential, that is where the market breaks 50-50  
11 truck and rail, isn't it?

12           A       According to the model, yes.

13           Q       So even the way you have constructed it or  
14 utilized the model, there is a 50-50 modal split when  
15 trucks are charging 15 percent more to Little Rock and  
16 rail is one day slower.

17           A       That is correct.

18           Q       And if you could look down for, say, Fort  
19 Wayne, Indiana, Youngstown, Ohio, Norfolk, Virginia, do  
20 you see any of those cities?

21           A       Which one did you want me to look at?

22           Q       I think they are right together.

23           A       Fort Wayne and Youngstown?

24           Q       Yes.

25           A       Yes.

1           Q     Fort Wayne, Youngstown and Norfolk are right  
2 in a row.

3           A     Yes.

4           Q     The low truck rate as a percent of low TOFC  
5 rate shows those cities right at the 100 percent mark,  
6 right?

7           A     That is correct.

8           Q     Equal rates. And even there where the rates  
9 are equal, and if the transit time of rail equals truck,  
10 your first column, what does your model show?

11          A     Forty show.

12          Q     So it shows that even if the rates were equal,  
13 even if the service is equal, shippers still will route  
14 a majority of the tonnage via truck, isn't that right?

15          A     To destinations such as those that are not in  
16 the southern corridor, yes.

17          Q     By the way, what would happen if SFSP raised  
18 its TOFC rates on canned goods from Modesto after the  
19 merger? Wouldn't this model help tell us what would  
20 happen?

21          A     Well, it may. It may tell us what will  
22 happen, yes.

23          Q     Won't it tell us that SFSP will lose market  
24 share?

25          A     It depends on how much they raise them.

1           Q     I agree, the amount of loss would depend on  
2 how much they raise them, but raising the rate results  
3 under the model in a reduction in share, doesn't it, all  
4 other things being equal?

5           A     No, I don't think you can conclude that.

6           Q     Why not?

7           A     Because if they can raise the rate and still  
8 provide -- recognize that one thing the model does not  
9 comprehend at all is the whole question of volume. It  
10 may well be that for shippers in Modesto who need to  
11 ship in large quantities to the destinations such as  
12 Dallas, they may find that truck never was an option for  
13 them, and in those cases, raising the rates might not  
14 have any effect on volume.

15          Q     I see. So what you are telling me is of  
16 course the model does not address the actual  
17 availability of truck competition. It only assumes that  
18 it is there for purposes of making comparisons?

19          A     No. What I am saying is that there are  
20 certain factors outside of what is considered here that  
21 almost must be addressed.

22          Q     Such as availability?

23          A     Such as volume, large volume block shipments.

24          Q     All right. On page A-22, I want to jump over,  
25 you are talking here in this context, so that you can

1 understand where my questions are coming from, you are  
2 talking about grain, specifically corn, moving into  
3 California. At the top of the page you say "Recent  
4 statistics gathered by the California Department of Food  
5 and Agriculture reveal that in both 1982 and 1983 less  
6 than 1 percent of total corn shipped into the state as a  
7 whole was carried by truck."

8 Do you see that?

9 A Yes.

10 Q Do you know who originates the majority of  
11 corn shipments to the State of California, which  
12 railroad?

13 A No, I don't.

14 Q You don't know whether the Union Pacific  
15 originates more than 80 percent of the corn?

16 A It's possible. I would accept that subject to  
17 check.

18 Q Are you aware that Santa Fe and Southern  
19 Pacific primarily originate wheat and sorghums, not  
20 corn?

21 A You are talking about originations now?

22 Q Originations, yes.

23 A To California?

24 Q Generally.

25 A I would accept that, yes.

1 Q To your knowledge, is corn the dominant feed  
2 grain in the San Joaquin Valley?

3 A I can't respond to that, Mr. Moates. I don't  
4 know.

5 Q Have you ever heard of a shipper named Foster  
6 Farms in Turlock, California?

7 A Yes. I believe that is one of the consignees  
8 that was in the flow reports of Witness Anderson.

9 Q Do you know what railroad serves Foster  
10 Farms?

11 A No. From this data I don't think that was  
immediately identifiable.

13 Q Have you ever heard of a wet corn milling  
14 plant owned by CPC, Incorporated in Stockton,  
15 California?

16 A No.

17 Q You don't know who serves that?

18 A No.

19 Q Have you independently verified that truck  
20 movements of grain south from Stockton as far, say, as  
21 Fresno, are uneconomic, or do you rely on Witness Carson  
22 for that?

23 A The latter.

24 Q Do you have any knowledge of Foster Farms at  
25 Turlock selling feed grains by truck as far south as

1 Tulare or as far southwest as Paso Robles?

2 A No.

3 Q On page A-23, your second footnote relates to  
4 a textual discussion of industrial sand. It says "Rate  
5 data supplied by Union Pacific."

6 Is there any documentation to support that  
7 rate quote?

8 A You mean a tariff?

9 Q A tariff, a letter from JP Traffic  
10 Department?

11 A Yes, it is in my work papers.

12 Q Do you recall whether the basis of that rate  
13 quote was a volume movement? Is that rate that you use  
14 there a single car movement or a volume movement, a  
15 tariff contract?

16 A My recollection is that both were comprehended  
17 in the document I got from the Union Pacific, but to be  
18 quite honest with you, I can't recall.

19 Q Do you know which one you used?

20 A I don't recall, but I don't know that it would  
21 have mattered for the point that I am making here.

22 Q By the way, on the bottom of 23 and the top of  
23 24, you make the point, do you not, that -- well, I'm  
24 sorry, not the bottom of 23. Excuse me. In the last  
25 sentence on 24.

1 A On what?

2 Q 24. You are making the point that if, as Mr.  
3 Anderson, you say, urges elsewhere there are strong  
4 motor carrier presence within a particular BEA, then at  
5 least for some of the traffic that is local, you would  
6 expect that some kind of joint truck-rail option might  
7 exist and could be eliminated by the merger.

8 Is that a fair statement of your point?

9 A Yes.

10 Q To your knowledge, do direct rail service and  
11 rail -- truck-rail transload services have the same  
12 costs on any given movement?

13 A No, I don't have any direct knowledge of  
14 that.

15 Q Do you know of any situation where a  
16 truck-rail transload operation would be a more viable  
17 alternative than a direct truck movement for a current  
18 rail shipper?

19 A Would you state that again?

20 Q Do you know of any situation today where a  
21 truck-rail transloading operation would be a more viable  
22 alternative than a direct truck movement for a current  
23 rail shipper?

24 A I'm sure there must be such situations, yes.

25 Q You are sure there are.

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Can you give me some examples?

A We certainly have such examples, I know we have such examples, Mr. Barber was talking about the North Western proceeding this morning and the truck-rail movements in the midwest of grain. Certainly more viable than an all-truck movement.

Q Now, a few questions on page A-25 in your discussion of the local screen. Is the intent of your criticisms here, Mr. Spero, that traffic in this category could be affected by the merger, could be adversely affected?

A Which criticism are you talking about?

Q Criticism of the local screen on A-24 and A-25.

A A couple of different points are being made here. I think that the fact that if one is to accept Anderson's representations about intra-BFA truck movements, then as I am saying here, it is certainly quite possible that these local flows could in fact be affected by the merger. The point is that whether or not they are is something that Anderson does not address. So it is a little difficult for us to say for certain whether they are or not, but one certainly I would think would want to confront that situation and deal with it explicitly.

1           Q     Well, if a shipper today is served exclusively  
2 by one of the applicant railroads, let's say the  
3 Southern Pacific, he is in the vernacular of shipper  
4 lawyers captive to that railroad.

5                     Is there anything about this merger that is  
6 going to change his competitive rail options?

7           A     I am not sure that we can say for certain  
8 whether the premise of your question is accurate. That  
9 is to say if these are in fact common points as defined  
10 by Mr. Anderson in terms of specific SPLC codes or a  
11 market region where Santa Fe and SP are the primary or  
12 exclusive rail carriers, one could not rule out that the  
13 fact that a particular shipper in that geographical area  
14 is only served by one of them, that the rates, the  
15 service that the shipper receives is not affected by the  
16 possibility that he could divert his traffic via truck  
17 to the other applicant. That is a question which may  
18 apply not to all commodities, necessarily, not to all  
19 destinations necessarily, but the point here is the  
20 question hasn't been explored.

21           Q     Let me ask you this question.

22                     Did you or Mr. Barber explore that question in  
23 the UP merger case with respect to UP or MP local  
24 shippers?

25           A     We didn't really have the same situation

1 here. We were dealing with an end-to-end merger  
2 primarily where that was not likely to be the case.

3 Q Now, you give an example on page A-25 of a  
4 category of traffic which you say doesn't meet his own  
5 single-line criteria. I think your concern here is that  
6 this traffic moves in conjunction with some other  
7 railroad or railroads, is that right?

8 A Yes.

9 Q This is STCC 28123, which you see is  
10 presumably sodium borate, right?

11 A Yes.

12 Q Did you review Anderson's work papers relating  
13 to this traffic?

14 A Yes.

15 Q Don't those papers show that this traffic is  
16 from J.S. Borax in Boron, California?

17 A I believe that's correct, yes.

18 Q Isn't that a Santa Fe local point?

19 A I will assume that it is.

20 Again, you can't tell which carrier from his  
21 data without going through a detailed SPLC --

22 Q Assume for the sake of my question that it is  
23 a Santa Fe local point. By definition, then, Southern  
24 Pacific could not originate the traffic, correct?

25 A We would have to know more about that traffic

1 to say yes without qualification.

2 Q Couldn't originate it directly. I take it you  
3 are thinking about your possibility of trucking this  
4 commodity to the SP?

5 A Yes. Depending upon the form in which it is  
6 shipped.

7 Q Do you know whether the SP, from those work  
8 papers, do you know whether the SP was involved with any  
9 of the movements to New England, New York and New Jersey  
10 that you talk about on page A-25?

11 A I don't believe you can tell that from the  
12 work papers.

13 Q You don't think you can tell that?

14 A There is nothing about the routings in those  
15 work papers.

16 Q You are sure that includes the CTB flow study,  
17 flow paper?

18 A Yes. The CTB flow study, as I recalled it,  
19 shows the origin, destination, name of the shipper, name  
20 of the origin shipper, name of the destination shipper,  
21 the volume of traffic in carloads and tons.

22 Q Let me make this easier, Mr. Spero. If the  
23 facts were to show that this traffic originates at a  
24 local point, Boron, California, on the SP, and moved to  
25 your destinations in New England, New Jersey and New

1 York via Santa Fe all the way to an eastern gateway,  
2 Chicago, Kansas City, were interlined with an eastern  
3 railroad, there is nothing about this merger that is  
4 going to affect that movement, is there?

5 A Well, if that is the case, A, it is not a  
6 single line movement and hence, it has been  
7 miscategorized by Mr. Anderson.

8 Q Isn't it effectively a single line movement  
9 for competitive analysis purposes of this merger?

10 A Well, if it is, then it is not clear to me why  
11 Mr. Anderson has included it in his data base or has  
12 represented it as a competitive screen.

13 Q By the way, are you aware that the shipper,  
14 U.S. Borax, has filed a verified statement supporting  
15 the merger?

16 A Yes. I think I was aware of that.

17 Q So apparently U.S. Borax isn't particularly  
18 concerned about the routing of this traffic?

19 A Not having seen the statement, I can't answer  
20 that, not having the statement before me.

21 Q Just a few quick questions on your Phoenix  
22 common point study.

23 On page A-25 you indicate that while Anderson  
24 in the Central California study acknowledged through the  
25 San Joaquin chapter, if you will, that Santa Fe and

1 Southern Pacific provide competitive logistical options  
2 at BEA locations other than the so-called Group I common  
3 points, he didn't do that in the Phoenix study, right?

4 A Yes.

5 Q Do you know how far apart generally the Santa  
6 Fe and Southern Pacific lines are running through the  
7 San Joaquin Valley?

8 They are fairly close, aren't they?

9 A Yes.

10 Q Do you know how far apart they are in Arizona  
11 once you get away from Phoenix?

12 A Well, I believe they fan out.

13 Q Seventy-five, a hundred miles?

14 A Yes. I haven't measured it.

15 Q Do you know how many of the so-called 2 to 1  
16 points there are in BEA 162, the Phoenix BEA?

17 A Two to one points?

18 Q Yes, points where two railroads today will be  
19 one after the merger.

20 A Oh. In Arizona, no, I don't.

21 Q Do you know how many there were in the San  
22 Joaquin area?

23 A No.

24 Q Well, this is something that could be  
25 checked.

1           If I were to suggest to you that there are  
2 five in BEA 162 and approximately 80 in San Joaquin,  
3 wouldn't that be, that along with the geography of the  
4 lines we have just discussed, wouldn't those facts be  
5 pretty good reasons why the San Joaquin should have been  
6 treated separately?

7           A     I think the question here, Mr. Moates, is that  
8 if one accepts the premise in Anderson's argument about  
9 truck repositioning, the purported feasibility and  
10 flexibility that that offers, if it is not true, which  
11 he applies generally to all BEAs -- if it is not true in  
12 this BEA, he should have told us why it isn't. There is  
13 nothing in his testimony to suggest that the situation  
14 in BEA 162 is any different from any of the others that  
15 he looked at.

16           Q     You make reference on page A-27 to the  
17 verified statement of Mr. Melville of Kennecott Copper  
18 in support of the point you just made.

19                     My question is this: Do you know whether  
20 Kennecott has actually trucked to the Santa Fe, actually  
21 done what Mr. Melville has said is a threat?

22           A     No, I have no direct knowledge of that, no.

23           Q     Do you have any direct knowledge yourself of  
24 any shipper, any customer in BEA 152 who has actually  
25 trucked from the Santa Fe to the Southern Pacific or

1 vice versa?

2 A No, I do not.

3 Q My last couple of questions deals with your  
4 discussions over on pages A-31 and 32 in the TRAM screen  
5 about inbound lumber to Phoenix. It is really just  
6 three simple questions.

7 First, do you know the relative shares for SP  
8 and Santa Fe for Pacific Northwest lumber products  
9 inbound to Phoenix?

10 A No, and I'm not sure that it would matter.

11 Q Which applicant originates large volumes of  
12 lumber in the Pacific Northwest? Doesn't the SP?

13 A Of the two, I would assume that they probably  
14 do originate more, yes.

15 Q Well, Santa Fe doesn't even go to Oregon, does  
16 it?

17 A You asked me about originations.

18 Q Yes.

19 How much competition is there today for  
20 traffic, lumber traffic between the Pacific Northwest  
21 and Phoenix as between SP and Santa Fe?

22 A I think I have already answered that question,  
23 that I don't know, but I would say that I am not sure  
24 that it is even a pertinent inquiry here since both of  
25 them can terminate the traffic regardless of who

1 originates it.

2 MR. MOATES: Thank you. Those are my  
3 questions.

4 JUDGE HOPKINS: Ms. Kooperstein?

5 BY MS. KOOPERSTEIN:

6 Q Good afternoon. My name is Donna Kooperstein,  
7 and I represent the Department of Justice.

8 I have a very few questions left, I think.

9 Could you tell me up to what distance it is  
10 typically cost effective to truck to a rail line?

11 A I think that is a difficult question to answer  
12 in the abstract. Much has to do with the nature of the  
13 commodity that we are talking about. It has to do with  
14 the direction of the drayage, as they call it in the  
15 industry, on the one hand, and the direction of the rail  
16 movement on the other hand. Then it also is affected by  
17 back hauls that are available to that truck operator.  
18 So it is a difficult question to generalize I am  
19 afraid.

20 Q Have you studied the extent to which SF and SP  
21 compete throughout BEA 162?

22 A No. I was really focusing on what Mr.  
23 Anderson, his area of concentration was.

24 Q Then you probably can't answer this question,  
25 but I will see.

1                   Would you please look at page A-28, your  
2 table?

3           A     The inset table?

4           Q     Right.

5           A     Yes.

6           Q     Can you tell me in terms of the tonnage on  
7 A-28, for how much of it it can reasonably be said that  
8 the two railroads compete?

9           A     Again, that is a difficult one to quantify  
10 with certainty. It would depend, one would really have  
11 to break that out in terms of specific commodities and  
12 know a lot more about the origins and so forth and so  
13 on.

14                   The point here was that there is a substantial  
15 quantity of traffic here which in Anderson's framework  
16 remains unexamined, and in order to support the  
17 contentions which he is making, I believe it should have  
18 been examined.

19           Q     Could you turn to page A-33?  
20  
21  
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25

1 A Yes.

2 Q You discussed with Mr. Moates competition for  
3 lumber from the northwest, and I believe you stated that  
4 SF originates very little lumber, if any, from the  
5 northwest; is that correct?

6 A Santa Fe, yes.

7 Q You also stated that you believe there is  
8 termination competition between the two; is that correct?

9 A Yes.

10 Q What do you mean by that?

11 A What I mean by that is since both of them --  
12 since they are the only two rail carriers which serve  
13 Phoenix, that the Santa Fe is in a position to affect  
14 the rates that SP can charge on lumber, even though  
15 those origins don't have to be necessarily SP origins.

16 Q Do you think that competition is very  
17 meaningful given that SP has all of the origins?

18 A It's difficult to say whether it is or not. I  
19 think that is -- it certainly is quite possible that  
20 Santa Fe, given its ability to interline with other  
21 western railroads, will also serve lumber origins, may  
22 well represent or, rather, to use Professor Baumol's  
23 phrase, a tight competitive cap.

24 Q Do you think it's effectiveness as a  
25 competitor with SP depends on its ability to interline

1 with others serving the origin?

2 A With this particular commodity and particular  
3 location, yes, since it doesn't have timber origins of  
4 its own here.

5 Q Could you please turn to page 24? Do you have  
6 it?

7 A Yes.

8 Q On page 24 you again are discussing traffic  
9 excluded by Anderson in central California; is that  
10 correct?

11 A You're talking about the local screen section?

12 Q Right.

13 A Yes.

14 Q Have you studied how much of the traffic  
15 Anderson excluded could have reasonably been trucked to  
16 one of the other lines?

17 A No. I didn't make a specific study of that.

18 MS. KOOPERSTEIN: Thank you. I have no other  
19 questions.

20 JUDGE HOPKIN: Ms. Reed.

21 MS. REED: No questions, Your Honor.

22 MR. ROACH: I move the admission of Mr.  
23 Spero's verified statement.

24 MR. MOATES: No objection.

25 I move the admission of SFSF-117 and 118.

1 JUDGE HOPKINS: Any objection?

2 MR. ROACH: Well, if it's understood, Your  
3 Honor, that we will -- I guess we have said that we will  
4 come back and explain the source of our data, and so I  
5 won't object to the admission of those documents.

6 JUDGE HOPKINS: Your document, your verified  
7 statement and the SFSP Exhibits 117 and 118 will be  
8 received in evidence.

9 (The documents previously  
10 marked Exhibit Nos.  
11 SFSP-C-117 and 118 for  
12 identification were  
13 received in evidence.)

14 JUDGE HOPKINS: You are excused, sir.

15 (The witness was excused.)

16 JUDGE HOPKINS: I'm surprised.

17 (Discussion off the record.)

18 Whereupon,

19 TIMOTHY R. MURPHY

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

23 DIRECT EXAMINATION

24 BY MR. ROACH:

25 Q Mr. Murphy, could you state your name, please?

1 A My name is Timothy R. Murphy.

2 Q What is your position?

3 A I am an assistant vice president at the firm  
4 of Richard J. Barber Associates, Inc.

5 Q Do you have before you a document entitled  
6 "Appendix B to the TBS Los Angeles-Texas Coast Corridor  
7 Studies, Verified Statement of Timothy R. Murphy," in  
8 the document of 18 pages with a verification page, dated  
9 November 20, 1984?

10 A I do.

11 Q Is that your verified statement in this  
12 proceeding?

13 A It is.

14 Q And is that an appendix to Mr. Barber's  
15 verified statement in the Volume UP-MP 26?

16 A That's correct.

17 Q Do you have any corrections you wish to make  
18 in that statement?

19 A I do not.

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

22 A It is.

23 MR. ROACH: The witness is available for cross  
24 examination.

25

CROSS EXAMINATION

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BY MR. MOATES:

Q Good afternoon, Mr. Murphy.

A Good afternoon, Mr. Moates.

Q It's nice to see you today instead of tomorrow.

A Yes.

Q Sir, I'd like to turn you first to page E-3 of your appendix. You say there in I think the fifth or sixth line -- and I'd better put this in context. You are discussing here domestic rail traffic, i.e., non-minilandbridge traffic, in the L.A.-Texas Coast local flow examined by witness Anderson, correct?

A That's correct.

Q And in that context you say that the 170,000 plus tons which he, Anderson, acknowledges to be without options to movement via SFSP are in the westbound flow and account for one-fourth of all domestic traffic carried by Applicants from the Texas Coast to Los Angeles. Furthermore, this traffic, all chemicals, represents almost two-fifths of westbound chemicals rail traffic in the Southern Corridor.

Are you with me there?

A Yes.

Q Okay. You have a citation for that last statement which is to Anderson's Exhibit -- Exhibits 17-26 and 32. I see you don't have that exhibit up

1 there with you, do you?

2 A I don't.

3 Q I'll hand you a copy of Exhibit 17-26.

4 Now, what is the caption on Exhibit 17-26?

5 A This is Mr. Anderson's exhibit, and it is  
6 captioned "Santa Fe and Southern Pacific Rail Merger,  
7 Los Angeles-Texas Coast Local Flow, Modal Transportation  
8 Profile, 1982."

9 Q Okay. Is it your position in this case or  
10 UP's position that the destinations to the Texas Coast  
11 are the -- that they constitute the totality of relevant  
12 destinations in the Southern Corridor?

13 A In my testimony here, Mr. Moates, I've only  
14 considered -- I've only focused upon and analyzed  
15 witness Anderson's presentation of the Texas Coast-L.A.  
16 local flow.

17 Q Okay. So your statement on page B-3 that this  
18 traffic, all chemicals, represents almost two-fifths of  
19 westbound chemicals rail traffic in the Southern  
20 Corridor really isn't technically right, or I guess we  
21 could correct it by reading in the context of the  
22 Southern Corridor that you mean the local flow you have  
23 just described.

24 A Yes. As we mentioned before, this is only in  
25 the context of the non-MLR traffic in this particular

1 flow.

2 Q What are the rail chemical flows in the  
3 Southern Corridor or the Gulf Coast local flow, Mr.  
4 Murphy? Who participates, which railroads?

5 A In the Southern Corridor? The Santa Fe and  
6 the Southern Pacific.

7 Q Does UP participate at all in joint line  
8 service?

9 A If they did, it would be very marginal because  
10 the data overall for all commodities show that SF and SP  
11 have in the high 90s, I think it was, percent of the  
12 traffic in this flow.

13 Q Missouri Pacific does serve Houston and  
14 Beaumont and so forth, does it not?

15 A They serve points in Texas, yes.

16 Q Including chemical industries in the  
17 Houston-Beaumont area?

18 A They serve portions of the chemical industry,  
19 yes.

20 Q Now, again, so that I'm completely clear on  
21 these numbers, am I correct that your statement there on  
22 page B-3 is based 170,000 plus tons as a percentage of  
23 the 451,412 SFSP tons shown on Anderson's Exhibit 17-25?

24 A I believe that's correct.

25 Q I did the math, and I get about a 38 percent

1 number, and that is, I take it, your almost two-fifths?

2 A (Nods in the affirmative.)

3 Q Doesn't that exhibit, by the way -- do you  
4 still have it in front of you?

5 A Yes.

6 Q Doesn't that exhibit also show that other  
7 modes have about 40 percent or, in your terminology,  
8 two-fifths of the total westbound chemicals traffic at  
9 this portion of the Southern Corridor that we're talking  
10 about?

11 A I really haven't considered that because this  
12 is only a two-digit analysis, and I think that needs to  
13 be looked at at a more disaggregate level.

14 Q I understand that position, but the exhibit  
15 does show that other modes have about two-fifths of the  
16 flow at the two-digit level.

17 A This exhibit really shows shares for a whole  
18 bundling of commodities in each of those commodity codes.

19 Q A little farther down in that same paragraph,  
20 Mr. Murphy, you say, "The clear implication of his" --  
21 Anderson's -- "analysis is that a quarter of all  
22 westbound rail movements and an even larger proportion  
23 of the chemicals traffic would be subject to a  
24 postmerger transport monopoly."

25 Do you see that?

1 A I do.

2 Q What does that statement mean? Does it mean  
3 that SFSP would have a 100 percent share of a quarter of  
4 all westbound rail movements? Is that what you're  
5 telling us?

6 A Let's come back to his own characterization of  
7 the tonnage. I refer you to Figure B-1 opposite page  
8 B-2. The tonnages in column E and his legend,  
9 Anderson's legend for that column, is that sufficient  
10 logistics or source options were not found. In other  
11 words, there were no competitive alternatives that he  
12 found for that traffic.

13 Q All right. I'll accept that. Now, are you  
14 prepared to then characterize the tonnage the way Mr.  
15 Anderson did that you just pointed out, or do you want  
16 to continue to characterize it as being subject to a  
17 postmerger transport monopoly, which I suggest to you is  
18 not Mr. Anderson's phraseology.

19 A I think what we're saying here is that it is  
20 rail traffic; it is rail traffic for which competitive  
21 alternatives have not been found. Therefore,  
22 postmerger, if that merger were unconditioned, it would  
23 be subject to the pricing power of the merged entity.

24 Q Is this flow of westbound rail chemicals  
25 traffic in your view a separate relevant market that

1 should be analyzed by the Commission for competitive  
2 effects?

3 A I really haven't considered market definition  
4 in my testimony.

5 Q Mr. Murphy, is it your position now and has it  
6 always been your position before this Commission that a  
7 single railroad's participation in one quarter of a  
8 particular commodity flow means that railroad enjoys a  
9 transport monopoly for the traffic?

10 A Could you run that by me again?

11 Q Sure. I even wrote it down.

12 Is it your position now and has it always been  
13 your position before this Commission that a single  
14 railroad's participation in one quarter of a particular  
15 commodity flow means that that railroad enjoys a  
16 transport monopoly for that traffic?

17 A I don't think we can take specific situations  
18 like that, specific statements outside of a context and  
19 conclude anything from it. I would want to know the  
20 context in which that arose and a fair number of other  
21 facts about the situation.

22 Q Well, then, let's come back to the statement  
23 on page B-3. I don't mean to argue with you here, but  
24 you do say that the quarter of all westbound rail  
25 movements and an even larger percentage of chemicals

1 traffic that you referred me back to Figure B-1 as the  
2 source for would, in your words, be subject to a  
3 postmerger transport monopoly. Obviously, the word  
4 "monopoly" has a certain connotation when as an expert  
5 economist you come forward and characterize the traffic  
6 in that manner. And I'm trying to explore or get from  
7 you your concept of monopoly and how it is that you see  
8 the SFSP's 100 percent share of a quarter of all  
9 westbound rail movements constitutes a monopoly.

10 A I think the significance here is the fact, as  
11 shown in the testimony, my testimony, that for some  
12 major specific chemical commodity flows for which no  
13 competitive alternatives have been found, the  
14 Applicants, in effect, would control the Southern  
15 Corridor all of these rail movements.

16 Q Let me just ask this last question. Is it  
17 your position based on this statement that after the  
18 merger, SFSP would be able to extract monopoly profits  
19 on this one quarter of the westbound rail chemical  
20 traffic that you identified here?

21 A It's my statement that there would be or there  
22 do not appear to be competitive alternatives for these  
23 movements, and hence, the movements would be subject to  
24 the pricing power of the merged entity.

25 Q The answer is yes, it is your prediction that

1 monopoly profits would be extracted from that traffic?

2 A No, I would not say that necessarily.

3 Q All right. On page B-4, in the first full  
4 paragraph, the second sentence, you say, "While Anderson  
5 testified that he considers rates extremely important,  
6 he did not take differences between rail and nonrail  
7 rates into account."

8 Do you see that?

9 A Yes.

10 Q Do you agree that the actual modal shares for  
11 a commodity flow between two areas reflect a wide range  
12 of factors that influence shippers' collective  
13 decisions; in other words, all the factors that you  
14 would care to name to me about what influences a shipper  
15 to route traffic -- rates, service, transit time, loss  
16 in damage, anything.

17 A I think those shares are certainly indicative  
18 of a lot of judgment and decisionmaking on shippers'  
19 parts, yes.

20 Q And those judgments on that decisionmaking  
21 includes evaluations of, among other things, differences  
22 in rates, does it not?

23 A That's correct.

24 Q And you are aware that Mr. Anderson used modal  
25 tonnage by mode in his analysis, of course -- rail

1 tonnage, truck tonnage?

2 A I'm aware that at the two-digit level he did  
3 look at shares by mode.

4 Q Okay. On page B-5, footnote 2, I have several  
5 questions about this footnote. You say there that  
6 "Examination of Anderson's work papers shows that almost  
7 four-fifths of the 24,688 nonrail tons is actually  
8 STCC-371, a commodity group which Anderson admitted  
9 includes not just finished vehicles but auto parts. He  
10 cites this as an example of mismatches in certain groups  
11 that he is aware of."

12 You were talking in this context now about  
13 STCC-37111, which you say shows in his work papers as  
14 assembled passenger cars moving exclusively by rail from  
15 Los Angeles to Houston.

16 Do you know why STCC-37100 is used in the  
17 Transearch data base and the 1977 Census of  
18 Transportation, the broader category, 37100?

19 A First off, I'm not sure you will find 37100 in  
20 the Census of Transportation. Most of the commodities  
21 in the census are shown at the five-digit level.

22 Q I'm using this at five digits, 37100.

23 A In effect, the two zeros don't tell you  
24 anything about the commodity.

25 Q And there's a reason for that, and that's what

1 I'm getting at. Does the census and does Transearch  
2 sometimes insert those kinds of zeros to protect the  
3 confidentiality of particular shippers' movements?

4 A That could be.

5 Q Do you know how many parts producers there are  
6 in the L.A. Basin?

7 A No, I don't.

8 Q There are several, more than one?

9 A I just don't have any basis for saying.

10 Q Do you know how many active assembly plants  
11 there are in the Los Angeles Basin?

12 A No. The point of this particular statement --

13 Q If I may, Mr. Murphy, there is no question  
14 pending.

15 Do you know how many automobile assembly  
16 plants exist in BEA-122 or 1.1?

17 A I do not.

18 Q If it turned out that there were no assembly  
19 plants in a particular end point region, and there's a  
20 large flow of the three-digit commodity that can include  
21 either finished autos or parts, wouldn't you agree that  
22 it's at least possible that the 19,452 tons of motor  
23 carriers, STCC-371, could be finished autos?

24 A Not necessarily. The movements of both parts  
25 and finished automobiles are so complex, and this

1 particular coding structure in 371 is so complex that  
2 it's very difficult to pinpoint with any comfort exactly  
3 what 371 is. It could be anything from trucks, which  
4 are 37112, to chassis, which are 37115, for example.

5 Q Have you ever heard of the General Motors Van  
6 Nuys plant?

7 A I think I have, yes.

8 Q Are you familiar with that facility? Do you  
9 know whether, for example, it has truck-loading  
10 capabilities?

11 A I do not.

12 Q If it turned out that the GM Van Nuys assembly  
13 plant were the only operating open assembly plant in the  
14 L.A. area today, there would in fact be some concern or  
15 problem with disclosing tonnage at that facility in data  
16 bases like Transearch and the Census of Transportation?

17 A I can't answer that because of the way the  
18 government assigns the confidentiality rules is best  
19 known to itself.

20 Q Did you discuss this portion of your testimony  
21 dealing with the automobiles from Los Angeles to Texas  
22 Coast with any UP marketing personnel?

23 A I did not.

24 Q Did you discuss this portion of your testimony  
25 with Mr. Wiseman of General Motors, who you refer to?

1           A       I did not, although I will note that Mr.  
2 Wiseman indicates that General Motors is very dependent  
3 upon rail transportation for movements of finished  
4 automobiles.

5           Q       Are you aware, Mr. Murphy, that long haul  
6 truckers like M&G Convoy are operating in regular  
7 roundtrip and triangular movements between Houston,  
8 Dallas, Oklahoma City and Los Angeles for General Motors  
9 today?

10          A       The fact that there may be some movements by  
11 truck of finished automobiles doesn't surprise me.

12          Q       I take it, since you haven't spoken to the JP  
13 marketing personnel, that you are not aware of the fact  
14 that NP and UP have lost so much of this traffic to  
15 trucks that they are working together today to develop  
16 better interline service over El Paso?

17          A       I'm not able to comment whether that is or is  
18 not the situation.

19          Q       Can you testify, based on your personal  
20 knowledge, if there isn't any motor carrier movement in  
21 finished motor vehicles between Los Angeles and the  
22 Texas Coast, based on your own knowledge?

23          A       That there is none at all?

24          Q       That there is none.

25          A       However small? No, I can't.

1 Q Or however large.

2 A One would think that the larger the flow the  
3 more tendency it would have to show up in the Transearch  
4 data.

5 Q Are you suggesting that SFSP will be able to  
6 extract monopoly profits from General Motors on this  
7 traffic?

8 A What I'm suggesting here is that the evidence  
9 that Anderson put forward does not evidence competitive  
10 alternatives for this movement in this corridor.

11 Q Even if one were to assume for the sake of  
12 argument -- and I do suggest to you the facts don't  
13 support this -- that there were no competitive  
14 alternatives for this traffic, and if it turned out it  
15 was General Motors traffic, do you think the Commission  
16 should be concerned about SFSP's extracting monopoly  
17 profits from General Motors on this particular flow?

18 A I think the Commission should be concerned  
19 about the apparent absence of competitive alternatives  
20 here based on all the evidence that I have seen, and the  
21 fact that we are about to face two rail carriers being  
22 merged into one in this corridor.

23 Q Mr. Murphy, isn't it true that you and others  
24 in your firm have testified on innumerable occasions  
25 that large shippers like General Motors who have

1 national facilities have considerable leverage with the  
2 railroads?

3 A That's true in general or in theory, but if  
4 you are a shipper, however large, wanting to move  
5 something between Los Angeles and Houston by rail, your  
6 options are pretty limited, especially if you are  
7 dealing with one carrier postmerger.

8 Q If after the merger SFSP were to raise Mr.  
9 Wiseman's rates in his assembled passenger cars from Van  
10 Nuys to the Texas Coast by some large amount, what do  
11 you suppose Mr. Wiseman might do?

12 A He might just have to put up with it.

13 Q He might also just take away some of their  
14 traffic in other corridors, mightn't he?

15 A It has to be speculative. Presumably he has  
16 limited ability himself to interfere with his own  
17 distribution operations to try to avoid a pricing  
18 situation over which he has no control or no competitive  
19 alternative.

20 Q Let me ask you a general question. This  
21 doesn't relate to General Motors, just a general  
22 question. If a railroad is involved in every routing  
23 for a particular body of what we call rail-dominated  
24 traffic -- for purposes of this question we will assume  
25 the rail-dominated traffic is traffic in which

1 statistics show us the rail has 90 percent or more.

2 Is it your view that that railroad will be  
3 able to engage in monopoly pricing for that particular  
4 piece of traffic?

5 A I think they will be able to exert a  
6 significant influence over the pricing. If you look at  
7 one of the later exhibits I have in my testimony here in  
8 which I considered this issue, SF or SP had a  
9 significant position in all the traffic in a given  
10 commodity moving say inbound to Los Angeles.

11 Q I think you're probably referring to Figure  
12 B-3 and the statement on page B-7, that in your words,  
13 "It is no protection against monopoly pricing by a  
14 merged SFSP to receivers in Los Angeles to be able to  
15 obtain this commodity," which there I guess is -- what  
16 is that -- glycols?

17 A I think it is glycols. I guess my response to  
18 that would be, Mr. Moates, that give your posit that it  
19 is rail, say, dominated traffic and we have a situation  
20 where one carrier has a significant participation in  
21 every routing, it is not clear to me what constraint  
22 there would be against pricing power on the part of that  
23 one carrier.

24 Q Now I want to discuss with you that portion of  
25 your testimony that deals with source competition. It

1 is the case, is it not, that only in the situation of  
2 the Los Angeles-Texas Gulf -- Texas Coast local flow  
3 that TBS engaged in a source competition analysis?

4 A Mr. Anderson did look at source competition,  
5 albeit in my opinion inadequately, yes.

6 Q I understand that that is the substance of  
7 your testimony here at pages B-7 and beyond. Let me  
8 refer you back for context to the statement you make way  
9 back on page B-2 in your introduction. In the second  
10 paragraph on that page you have a sentence that says,  
11 "Through a series of artificial tests which generate  
12 intermodal and geographic alternatives which often do  
13 not exist in the real world, they, TBS, have tried to  
14 brush aside major competitive problems" and so on. I am  
15 interested in the statement about "intermodal and  
16 geographic alternatives which often do not exist in the  
17 real world."

18 You're not suggesting there, are you, Mr.  
19 Murphy, that source competition is a significant actual  
20 constraint on railroads' pricing flexibility?

21 A Source competition obviously is a competitive  
22 factor, but it's not shown to be operative here.

23 Q Can source competition or geographic  
24 alternatives, as you call it on page B-2, is something  
25 that does exist in the real world, though, right?

1           A       It does in many situations. I was quarreling  
2 with the fact that it appeared to have been found here  
3 when in reality I didn't think it had been.

4           Q       I take it, then, that you would agree with  
5 this quotation: "If the given shipper can't  
6 competitively acquire the raw materials and other inputs  
7 it needs from a variety of sources, as well as sell its  
8 products in an array of alternative locations, the added  
9 transportation services provided at such multiple  
10 origins and destinations afford this shipper even  
11 greater distribution flexibility over and above that  
12 which it already enjoys through the transport  
13 competition provided for its current movements."

14          A       To the extent that that, in effect, says that  
15 geographic competition is operative where it is  
16 operative, I think it is true.

17          Q       I agree it is a lengthy explanation of that.  
18 It comes from the verified statement you submitted in  
19 the Finance Docket 29455, which was the N&W-Illinois  
20 Terminal acquisition.

21          A       Very wordy.

22          Q       But it makes the point.

23                   Referring to your Figure B-3 opposite page  
24 B-7, let me ask you first of all how did you construct  
25 that figure? What is the source of it?

1           A     That is a source that was run from the waybill  
2 data for 1982. That was done for me, in this case by  
3 ALK Associates.

4           Q     By who?

5           A     ALK Associates.

6           Q     Who is that?

7           A     That is a firm based in Princeton who does a  
8 lot of work with --

9           Q     Alain Kornhauser?

10          A     Yes.

11          Q     Did you have any correspondence with ALK about  
12 generating this figure?

13          A     It was a phone order. I, in effect, asked  
14 them to simply take this commodity and take the BEA and  
15 just run everything, and this is what I got back.

16          Q     You say run everything.

17          A     Run everything that was inbound to Los Angeles  
18 from anywhere.

19          Q     In the waybill sample?

20          A     In the waybill sample.

21          Q     Okay. The sample is a two percent sample,  
22 isn't it?

23          A     The sample is stratified now so that there is  
24 different sampling rates. It's a one percent sample for  
25 certain movements. For trainload or multi-car movements

1 there's a higher sampling amount taken, so it is, in  
2 effect, a multi-faceted probability sample.

3 Q What I'm getting at is how many cars in the  
4 sample generated the data shown on your Figure B-3?

5 A You can't tell without going back to the  
6 underlying data base; in fact, going back to the waybill  
7 tape.

8 Q Recognizing we can't do this with mathematical  
9 precision, I try to get a rule of thumb feel for it. If  
10 we took the 139,468 total tons shown here and assigned a  
11 value of approximately 70 tons per car to it, if you  
12 accept my math, you get 1992 cars.

13 Now, if that 1992 cars was sampled, for the  
14 sake of discussion, on a two percent basis, that means  
15 that about 40 cars represented in the sample the basis  
16 for your Figure B-3. Would you accept that with me for  
17 purposes of this discussion something like that? It  
18 could be 40, it could be 50, I suppose, but it is  
19 something in that range?

20 A I don't want to interfere with your line of  
21 questioning, but I do have to observe that it's hard to  
22 say how many cars drove this because of the  
23 multi-faceted nature of the sampling and because of the  
24 efforts that ALK goes through also to make the sample  
25 square up with other data such as the 100 percent report

1 of freight commodity statistics.

2 Q Well, if it is based on 40 or 50 cars, these  
3 are fairly precise allocations of tonnage movement for a  
4 relatively limited number of observations, are they not?

5 A The significant point here, though --

6 Q Would you answer that question, and then you  
7 can tell me the point.

8 A Holding apart for the moment how many cars  
9 involved, because I really have to say that I don't know  
10 how many cars drove this sample, I think the point of  
11 this figure is not the precise allocations as between  
12 West Virginia versus Kentucky versus Texas, but the fact  
13 that the Applicants SF or SP held a significant position  
14 in every routing.

15 Q Well, let's get to that point. Your complaint  
16 is, is it not, that Anderson says there are other  
17 sources that can produce this traffic, and you find when  
18 you go and look at these other sources that Santa Fe or  
19 SP is involved in the routing in every case. That's  
20 your complaint, right?

21 A In effect, his notion of geographic  
22 competition does not evidence any independence, any  
23 independent competitive options separate from the  
24 Applicants.

25 Q Mr. Murphy, is it your position that the

1 factors that constrain real rates in traffic lanes from  
2 Kanawha, West Virginia, Marshall, West Virginia, and  
3 Meade, Kentucky to Los Angeles are identical to those  
4 that constrain the rates on the Texas Coast lanes that  
5 people are talking about?

6 A If you're going to use the word "identical," I  
7 would say no.

8 Q Isn't it possible, in fact probable, that the  
9 levels of inter- and intramodal competition vary on  
10 these lanes?

11 A They could. What these data tell me, however,  
12 at this point is that we have a competitive problem for  
13 which we don't have any solution that I see.

14 Q Let's go a little farther. Did you check to  
15 determine whether other carriers have rates and routes  
16 on this traffic from West Virginia, Kentucky to L.A.?

17 A No, because the point of my analysis was to  
18 examine witness Anderson's analysis of the Texas Coast  
19 local flow, which is what I have done here. And this  
20 table was generated by means of sort of checking out his  
21 geographic competition results.

22 Q Are you familiar with Transcontinental Freight  
23 Bureau Tariff 3001G?

24 A I must say not offhand.

25 Q I would have fallen out of my chair if you had

1 said yes. If that tariff at item 7140 shows -- and I  
2 ask you to accept that it does show this -- numerous  
3 routes and rates from the same three origins via UP-MP  
4 to Los Angeles, wouldn't you agree that that would  
5 suggest a strong, viable competitive check on the SP and  
6 the Santa Fe?

7 A What I see here are actual traffic movements.  
8 No evidence of any one but our Applicant carriers being  
9 used.

10 Q If there is a reason that the shipper is  
11 routing the traffic SP and Santa Fe today instead of UP,  
12 does that mean that he couldn't route it on the UP if he  
13 for some reason found the rates or service on SFSP to be  
14 objectionable.?

15 A I think given the hard data we have here, any  
16 notion of alternative non-SF or SP routings can only be  
17 regarded as speculative.

18 Q Well, Mr. Murphy, you have told me you didn't  
19 make any effort to determine if other carriers can  
20 participate in this traffic. I understand your position  
21 that that's the way the traffic moved, but now, I am  
22 telling you to accept for purposes of my question that  
23 there is a tariff in existence that permits your client  
24 to participate in this traffic, and the shipper could  
25 route on UP today this same traffic.

1           Now, if this is a fact, accept that to be a  
2 fact for my question, wouldn't you agree that there is a  
3 strong check on SFSP pricing and service for the  
4 commodities from these origins?

5           A       In order to conclude that one or way or the  
6 other, I would have to look at comparative rates,  
7 comparative transit times, service factors. The absence  
8 of any non-SFSP movements to my mind suggests that  
9 perhaps these are not the alternatives the paper nature  
10 of that tariff might suggest.

11          Q       Or possibly that these destinations are on  
12 Santa Fe and Southern Pacific, and the shipper prefers  
13 to give the destination carrier a haul?

14          A       We'll really both speculating. The traffic  
15 data show what they show.

16          Q       All right. Pages B-8 and B-9. You mention  
17 that Union Carbide and Dow Chemical ship most of their  
18 tons or the tons at issue here, these commodities,  
19 through the Southern Corridor. Do you maintain here  
20 that the merged SFSP would be able to extract monopoly  
21 profits from those companies, Union Carbide and Dow  
22 Chemical?

23          A       I think I come back to my earlier answer. I  
24 do not see close competitive alternatives for these  
25 flows; thus, postmerger, if that merger is

1 unconditioned, the remaining entity would have  
2 significant pricing power over this traffic.

3 Q You cite these and other shippers' claims.  
4 Mr. Barber and Mr. Spero before you have referred on a  
5 number of occasions to shipper statements, shipper  
6 claims that they have no competitive options. For  
7 example, you mentioned Dow saying, "dismisses the notion  
8 that truck competition offers it an effective  
9 alternative to a united SFSP." That is on page B-10, I  
10 think.

11 The question is did you make an independent  
12 investigation to determine whether that was really the  
13 case? Did you determine whether Dow was correct?

14 A I think given the evidence that I looked at  
15 and the fact of their own statement, there was no need  
16 to.

17 Q What was the evidence besides the statement?

18 A The traffic evidence that I have examined here  
19 in my statement and the statements of shippers, not only  
20 Dow but others in many different commodities moving in  
21 the Southern Corridor, they all same thing. They don't  
22 have an intermodal alternative, and the rates for truck  
23 movements are substantially higher, often double the  
24 rail rates that they are currently paying.

25 Q Well, you know, some of these rates like on

1 page 8-10, you quote El Paso Products Company  
2 complaining that the rates from Texas to the west coast  
3 are approximately 200 percent higher by truck than by  
4 rail.

5 Did you check to see whether those are single  
6 shipment rates versus volume rates, whether they are  
7 contract rates that are lower? Did you make any  
8 independent investigation, in other words, to determine  
9 what the basis of these truck rates cited by the  
10 shippers was?

11 A I think given that the verified statements of  
12 the shippers -- and in many cases the rate comparisons  
13 are quite detailed -- there was no need to.

14 Q So you accepted it.

15 A I accepted the verified testimony of the  
16 shippers.

17 Q Isn't it true that you in other proceedings  
18 have rejected such shipper claims, and that upon  
19 investigation of the facts you have found that  
20 intermodal source competition was much more effective  
21 than alleged by shippers?

22 I have reference here to cases like the  
23 Aluminum Association case, Kaiser Aluminum, New England  
24 Electric -- rate cases where you testified in the market  
25 dominance phases and challenged shipper claims like

1 these.

2 A Those cases you cite, which are different  
3 factual situations, I think are quite different from  
4 what we are faced with here where we have a long haul  
5 corridor, two railroads about to be merged into one.

6 Q So because of that, the shipper claims made in  
7 this case are apparently more reliable than they would  
8 be in these rates cases?

9 A In those particular other situations I  
10 conducted an analysis, as I have conducted an analysis  
11 here, to determine whether or not there were close  
12 competitive alternatives. I found them in those cases.  
13 I have not found them here.

14 Q Would you agree with me that it is true that  
15 there need only be some intermodal capability to haul  
16 traffic in a particular corridor in order for that  
17 shipper whose traffic is being hauled to have leverage  
18 on the railroad? In other words, there would be some  
19 capability and not that all of his traffic would have to  
20 be subject to movement by truck?

21 A I think there has to be a meaningful  
22 capability. If virtually all the traffic is moving by  
23 rail in a particular commodity and a comparison of the  
24 rate information suggests that the truck rates or  
25 whatever type of rates, nonrail rates, that they're

1 significantly higher, a factor of two perhaps or 40  
2 percent, 50 percent higher than the rail rates, that  
3 does not evidence a meaningful, close competitive  
4 alternative.

5 Q Let me ask you whether you agree with this  
6 statement. "While shippers take the position that they  
7 cannot handle all of their traffic by truck, this is a  
8 specious argument. It only requires a realistic threat  
9 of diversion of a portion of their traffic to serve as a  
10 powerful market-based constraint on the pricing actions  
11 of the serving carrier. This is particularly true when  
12 the carrier is already facing extensive intermodal  
13 competition from alternative sources for the commodity  
14 at issue."

15 A That's quite a mouthful. Is that my statement  
16 again?

17 Q Well, I inserted "therefore the complaint" and  
18 stricken "the aluminum" a few times, but that's right.  
19 That's a paraphrase of a statement you made in Aluminum  
20 Association v. ACEY, Docket 37466.

21 A Again, I come back to -- take that situation  
22 because you have raised it a couple of times, the  
23 Aluminum Association case. There are major distinctions  
24 between a case like that and the instant situation. And  
25 the first that comes to mind is that for those

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1 movements, which were transcontinental, there was  
2 extensive intramodal competition, and the Commission so  
3 found, between the BN and the UP, that existed and would  
4 remain. So it's an entirely different --

5 Q I'm not trying to retry the aluminum case with  
6 you. I think the Commission was right. But I'm dealing  
7 with your proposition here that shippers often take the  
8 position, since they can't handle all of their traffic  
9 by truck, it's not a viable alternative or a realistic  
10 threat in dealing with railroads. And you have said  
11 there that it doesn't require that; it only requires a  
12 realistic threat of diversion of a portion of their  
13 traffic to serve as a powerful market-based constraint  
14 on the pricing actions of the railroad.

15 Do you still agree with that statement? Is  
16 that still your position?

17 A I agree with that statement, but I do not see  
18 that operative here.

19 Q Figure B-4 opposite page B-9.

20 Mr. Murphy, would you look at Figure B-4?

21 A I have it.

22 Q That figure purports to show that SFSP  
23 predominate in the rail routings for 251,941 tons of  
24 inbound chemicals to BEA 180, correct?

25 A That's correct.

1           Q     The question here is very simple. Can you  
2 tell me the source of this and how you constructed the  
3 figure?

4           A     That's also very simple. I have -- and it's  
5 in the work papers -- for each of these commodities a  
6 routing profile that is similar to what you see in  
7 Figure B-3 for 28185, also from the waybill, also  
8 obtained from Kornhauser.

9           Q     All right. Isn't it true that chemical  
10 companies, especially big companies, more and more  
11 frequently trade basic chemicals such as glycols rather  
12 than shipping them long distances?

13          A     There is some swapping that goes on in  
14 manufactured goods industries. My experience with  
15 swapping, however, has been that it occurs at the  
16 fringes and does not really account for any significant  
17 share of total movements.

18          Q     Have you had experience with that phenomenon  
19 in the chemical industry?

20          A     I've had experience with it in the aluminum  
21 industry, and I don't see that there is any basic  
22 distinction.

23          Q     You're familiar, are you not, with the  
24 Commission's market dominance guidelines in Ex Parte 320?

25          A     I am.

1           Q     Do you maintain that the SPSF will have market  
2 dominance over any of the carload traffic discussed in  
3 your statement?

4           A     I think the market dominance consideration is  
5 a separate one from what we are faced with here. This  
6 is a merger case. The issue here is to what extent will  
7 there be close competitive alternatives for a whole  
8 variety of traffic moving over the Southern Corridor  
9 postmerger regardless of whether or not a given shipper  
10 chooses to bring a market dominance case.

11          Q     Well, if the railroad is going to be able to  
12 engage in monopoly pricing on a particular bit of  
13 traffic like glycols, I take it you would say that the  
14 railroad is market dominant with respect to that traffic  
15 for that shipment.

16          A     I would think that if you did a thorough  
17 examination and you found, as seems to be the case here,  
18 that there were no close competitive alternatives, that  
19 would tend to lead you to a conclusion of market  
20 dominance, but to actually support such a conclusion,  
21 you'd obviously have to go through a market dominance  
22 proceeding.

23                 I don't think that we can, in effect, with the  
24 admonition from Congress to look to the market to  
25 regulate rail transportation, in a postmerger situation

1 hope that the lack of alternatives that we see here is  
2 resolved through shipper complaints in various market  
3 dominance proceedings.

4 Q Well, we hope that doesn't happen.

5 Do you agree with the statement that the  
6 availability of many motor carrier alternatives for  
7 transportation services between two points can in most  
8 instances be taken for granted?

9 A I think that's generally true, because I think  
10 that's a direct quote from the Commission's market  
11 dominance guidelines. But, again, I do not see that  
12 operative in this particular situation.

13 Q Isn't that a direct quote that you have  
14 characterized as an economically sound position?

15 A It is generally, but again, you have to look  
16 at the specifics of the situation. We are in a long  
17 haul corridor. It is over 1500 miles by highway. There  
18 are few intermediate shipments to pick up. It's a move  
19 from Los Angeles to Houston often of bulks that aren't  
20 really suited to truck transportation, so you can't just  
21 take that general statement and say it necessarily holds  
22 here without exploring to see whether it does. And  
23 here, the exploration suggests just the opposite.

24 Q Just a few questions about mini-landbridge,  
25 not very many.

1           Page B-11, you make reference at the bottom of  
2 the page to data by direction, together with figures on  
3 mini-landbridge imports collected by the Census Bureau  
4 and published by the Port of Oakland. Are those -- are  
5 your calculations based on that data in your work papers?

6           A     They are.

7           Q     Is the data from the Port of Oakland in your  
8 work papers?

9           A     It is. I might mention it is not Port of  
10 Oakland data per se. It is their tabulation of official  
11 census data which has been subsequently confirmed by a  
12 later release from DOT of the same data.

13           MR. MOATES: We would request, Mr. Roach, as  
14 we did with Mr. Spero, that if you can do it, because we  
15 have had a very hard time, that Mr. Murphy's work papers  
16 be separated from those of witness Barber.

17           MR. ROACH: Your Honor, if Mr. Moates has  
18 particular requests, we can comply with them quickly.  
19 And indeed, I might say we have just in the last couple  
20 of hours located the items that he asked for during the  
21 hearing today; that the Department of Agriculture pages  
22 are 100333 through 36. The Tri-Valley Growers is 100356  
23 through 62. And the UP rate information he asked about  
24 is 100415 to 16. And I have the work papers all there.

25           If there's something specific he wants, we'll

1 be glad to direct him to it. I'm a little reluctant to  
2 go through a long exercise of figuring out whether each  
3 page in this notebook is attributable to one of the  
4 three witnesses if that is not going to advance the ball  
5 in the case.

6 JUDGE HOPKINS: If Mr. Moates has some  
7 particular ones, I think he can inform you off the  
8 record.

9 MR. MOATES: Yes. Thank you.

10 BY MR. MOATES: (Resuming)

11 Q At the bottom of page B-14, Mr. Murphy, in the  
12 last sentence, you say, "Witnesses for American  
13 President Lines have testified that there are no  
14 effective inland or all-water transport alternatives to  
15 mini-landbridge service."

16 Do you see that?

17 A Yes, I do.

18 Q Do you agree with that statement?

19 A I do.

20 Q Have you made an independent investigation or  
21 study, or are you relying on the APL witnesses?

22 A I'm relying both on my examination of the data  
23 that I have in my testimony here and on the statements  
24 of the two witnesses indicated.

25 Q Page 15 you indicate that for containerized

1 imports from Asia to Houston-Beaumont, it takes 12 days  
2 for the movement via MLB service over Los Angeles, but  
3 32 days via the circuitous all-water route through the  
4 Panama Canal.

5 Can you name any ocean carrier today currently  
6 advertising a 12-day service between the Far East and  
7 Houston-Beaumont?

8 A Again, I have to refer back in that case to  
9 Mr. Jones' statement, because that's where the 12 days  
10 comes from.

11 Q It comes directly from him. Okay. Would that  
12 be true also with respect to the 32-day all-water  
13 schedule?

14 A That's correct. That comparison, as footnoted  
15 there, is from Mr. Jones' testimony.

16 Q Have you ever heard of a water carrier named  
17 Yang Ming?

18 A I have.

19 Q Do you know what Yang Ming's schedule is from  
20 the Far East to the Houston-Beaumont area?

21 A I do not. I believe, though, that they are  
22 the only carrier remaining that offers all-water service  
23 from the Far East to the Gulf.

24 Q But you don't know their schedule?

25 A I do not know their schedule.

1           Q     One other thing on this point. Have you done  
2 any independent verification of Mr. Jones' estimate that  
3 you recite here, that all-water is 20 percent more  
4 expensive than mini-landbridge?

5           A     I took that from his testimony.

6           Q     Also on that page you make reference in the  
7 sentence after the one I just quoted to the three extra  
8 weeks' worth of costs for expensive containers and their  
9 contents. Do you see that?

10          A     Yes.

11          Q     Is that concern, the concern about the  
12 containers and inventory costs, the primary reason  
13 faster transit time is desirable for this kind of  
14 traffic?

15          A     It's one of the reasons.

16          Q     Is it the primary one?

17          A     Oh, there's so many advantages to MLB it's  
18 hard to isolate just one of them. In this case there's  
19 a lot of high value cargos -- you know, the consumer  
20 goods, the appliances we buy from Japan -- coming in as  
21 one commodity in that trade. So there's a definite  
22 advantage to the shipper and the receiver to not having  
23 that expensive cargo tied up 32 days through the Panama  
24 Canal.

25          Q     Do you know what the daily lease costs for a

1 container are?

2 A I do not. I believe that information is in  
3 either Mr. Richardson's or Mr. Jones' testimony.

4 Q Mr. Murphy, have you ever worked for an ocean  
5 carrier?

6 A I have not.

7 Q Have you ever conducted a study of ocean  
8 carrier pricing?

9 A Not per se. In my many years in  
10 transportation I have worked with all modes, water  
11 included.

12 Q Have you ever done specifically a study of  
13 ocean carrier pricing of container traffic?

14 A No.

15 MR. MOATES: Thank you.

16 JUDGE HOPKINS: Thank you.

17 Did I understand the Department of Justice  
18 doesn't have anything?

19 MR. RATNER: It's hard to believe, Your Honor,  
20 but that's true. No questions.

21 JUDGE HOPKINS: The Department of  
22 Transportation doesn't have any?

23 MS. REED: No questions.

24 MR. RDACH: We move the admission of Mr.  
25 Murphy's verified statement.

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MR. MOATES: No objection. And we thank the Reporter.

JUDGE HOPKINS: We thank the Reporter very much.

We will be in recess until 8:00 tomorrow morning.

(Whereupon, at 5:16 p.m., the hearing was recessed, to be reconvened at 8:00 a.m., the following day, Friday, January 25, 1985.)