F.D. 30400- 1/25/85- PGS.-8672-8729

BEFORE THE

INTERSTATE COMMERCE COMMISSION

- x

In the Matter of: :

SANTA FE SOUTHERN PACIFIC CORPORATION : Finance Docket

-- CONTROL -- : 30400 et al.

SOUTHERN PACIFIC TRANSPORTATION :

COMPANY :

- x

Hearing Room N

12th & Constitution, N.W.

Washington, D.C.

Friday, January 25, 1985

The hearing in the above-entitled matter was convened, pursuant to notice, at 8:00 a.m.

BEFORE:

JAMES E. HOPKINS,

Administrative Law Judge

APPEARANCES AS HERETOFORE NOTED,

AND IN ADDITION:

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P R O C E E D I N G S

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

Mr. Stephenson.

MR. STEPHENSON: Thank you, Your Honor.

Whereupon,

ADOLPH H. NANCE,

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

CROSS EXAMINATION - RESUMED

BY MR. STEPHENSON:

Q Good morning, Mr. Nance.

A Good morning, Mr. Stephenson.

Q Mr. Nance, Wednesday we covered a hypothetical movement of a car out of Oregon, Medford I believe. I'd like to do the same thing today with a hypothetical car for your southern proposed trackage rights in California, and I would like to focus on Oakland and a shipper that Rio Grande will be serving or will be providing service to in the Oakland area.

I take it that the crew that would be providing the car to the Oakland shipper would be the same SPSF crew that would be providing cars to SPSF shippers in the vicinity of this shipper who is using the D&RG, correct?

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A That is correct, and in all likelihood it would be the same shipper that the Southern Pacific serves also.

Q So it would be the same job assignment in terms of the local or the switch crew that would be serving the Rio Grande industry. It wouldn't be a local working only the Rio Grande industries; it would be a local working both the Southern Pacific and the Rio Grande industries on that given day?

A That is correct.

Q And would they be spotting SP cars for loading at the same time that they would be spotting D&RG cars?

A Yes, and my premise there is that the customer would direct which cars he wanted spotted. If he got a Rio Grande car that had some load in it that was a higher priority to him, then that's the car he would probably order spotted. But the Rio Grande would exercise no priority right, so to speak. It would be dependent upon what the customer wanted and the other things that were going on in his industry.

Q Now, would the -- specifically focusing now on Oakland, where would the empty car come from that the SPSF switch crew would be drawing from to supply that Rio Grande shipper?

A It would probably be a car from the empty

inventory. It would probably be located at Oakland.

Q In the Oakland yard?

A In the Oakland yard, on one of the storage tracks, the same as Southern Pacific's cars are now stored there.

Q Has your operating plan identified specific tracks in any of these gathering and distribution areas that would be used for holding Rio Grande cars?

A No, it has not, and the reason for that is that it would probably change and vary from time to time, and that would be strictly as to the convenience and necessity of the terminal superintendent and his people.

Q Now, after this particular Rio Grande car was loaded, it would be pulled away from the industry by the same -- not the same local that day, but perhaps the next day or another SPSF shift would pull the load away, right?

A By a local or an Oakland-assigned switch crew, yes.

Q And again, this would be a crew that would be switching for both SP or SPSF and Rio Grande accounts?

A Yes, the same as in any other joint facility arrangement.

Q Okay. Now, at the conclusion of the shift for

this local or for the switch crew in the Oakland terminal, they would then take the cars they picked up that day and they would separate them. The Rio Grande cars would go into one block and the SPSF cars would go into another block, correct?

A Yes, sir.

Q And the SPSF or the D&RG block would then be set out for movement to Roseville, or what would happen to that?

A The Oakland traffic, the way the operating plan has been designed, would be moved into a train that would originate at Oakland, and that car would move in that train out of Oakland by Roseville over Donner Pass and on over Rio Grande lines to Kansas City or Denver, Chicago -- excuse me -- Pueblo or wherever that car may be going.

Q Okay. You've indicated in your testimony the other day that it was the expectation of Rio Grande that it would be providing local service in Oregon or service to the Portland interchange with UP and Burlington Northern?

A That's correct.

Q Is that also the plan with respect to the California trackage rights? Do you also propose to provide local service, for example, from Oakland to

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Fresno?

A We would. However, my recollection of Mr. Brainard's traffic study is I don't believe that there were any cars that moved in that particular route. You may talk to Mr. Brainard and he can give you the details of his traffic study. But as the traffic study was given to me to develop traffic flows, I remember no movements such as that in that.

The agreement we have proposed and the operation we have proposed would permit that if there was a car to move that way, yes.

Q Okay. Would your solicitation forces be out soliciting local traffic?

A I'm hoping they would, again for the same reasons I gave you the other day. We don't want to appear to be skimming the cream off the top and taking the long haul and leaving you with the local revenue, higher expense local work. We'd be very glad to share that.

Q Would you also contemplate moving traffic between Oakland and Portland, for example, either for termination in Portland or interchange with the UP or Burlington at Portland?

A There was -- again, that would be permitted under the arrangement that we have suggested. And

again, my recollection of the traffic that was developed by Mr. Brainard in his traffic study, there were no such cars. There were some cars that moved Oakland to places like Wendel, Alturas, Susanville, some of those locations on the Modoc Line.

But I recall no cars moving Oakland to Portland, nor Roseville to Portland.

Q Okay. So if there were cars -- and I recognize that there weren't any in your operating plan. But if your solicitation forces were successful in soliciting local traffic or interchange traffic via Portland, then the SPSF switch crew at Oakland would have to separate or classify the D&RG cars at the end of the shift into one block for Roseville, which would probably be the predominant block, and if there were any Fresno or Oregon cars those would be in separate blocks, a northern block and a southern block, correct?

A You either misunderstood me or I misspoke myself about the Roseville block. I told you that that train would run by Roseville. We don't anticipate a Roseville block out of Oakland. If there were a car for Fresno, as you pointed out, that car would have to be set out at Roseville, and it would require being trained on the head end of that particular train.

But again, I don't recall any cars like that.

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My operating plan contemplates the movement of the train by Roseville intact, and the only possibility of a stop at Roseville would be to cut in a helper locomotive. But my operating plan contemplates generally a through movement of that traffic.

I think one of the reasons there are no moves such as the one that you discussed, Fresno or Portland or some of those other moves, is because of the circuity our route would have to those points versus the routes that the Southern Pacific-Santa Fe could provide. And when you start talking about that kind of difference in miles, you are starting to talk about a difference in service and rates and everything else, and in all probability that would never occur.

But Mr. Brainard, again, I think can probably fill you in on why that doesn't occur.

Q If, then, you didn't have the right to have local service, you wouldn't think that that would adversely impact shippers on the line; is that correct?

A You're talking about movements between --

Q Oakland and --

A Points local to those trackage rights lines in California?

Q Local anywhere.

A I wouldn't want to give you an answer like

that right off the top, because I haven't analyzed it in that light. You may speak to Mr. Brainard, who is our traffic expert, and see if he would object to that. From an operating point of view, it would not impact our operating plan.

Q It wouldn't impact the operating plan, but from an operating standpoint would you agree with me that there would be little sense from an operating service standpoint for the Rio Grande to provide local service when SPSF could do it more efficiently by way of more efficient routes?

A The only thing that I see is it would be, again going back to the premise of our case, that it's to provide a competitive alternative, we would be taking that competitive alternative -- excuse me -- alternative away from the shipper. So again, I would not want to, from an operating point of view, say no, this is no good, when there may be some competitive and traffic reasons that it would be important.

From an operating point of view we could handle it. From the traffic point of view, I think you better clarify that with Messrs. Brainard, Thiessen and Banner.

Q Okay. Now, the train that would haul the block of cars picked up by the Oakland terminal switch

crew would move -- that would originate where, in Oakland?

A It would originate in Oakland and terminate at some point on Rio Grande lines east of Ogden.

Q Now, is it contemplated that that train is going to do any work at Roseville at all?

A No, it is not.

Q What about cars from Ozol and Suisun? How are those cars, boxcar traffic for example, how are those cars going to get to Roseville?

A They aren't going to get to Roseville. What I have anticipated there is the Ozol or Suisun-Fairfield switchers, again Southern Pacific crews, doing the work, just as they're doing it now, and to set out, as we went through this thing at Albany and Salem the other day, to set that car in a track at their discretion where it's available for pickup by one train a day operating between Oakland and Ogden.

Q And the assumption that went into the operating plan was that there was such a track available for setting out and sitting until the one train came by each day?

A Yes, sir. And again, I tried to mirror the Southern Pacific operation in this thing. I know that that is generally the way it's done now. And again, I

contemplate no change in the operation as it is now, except for it taking on a Rio Grande characteristic rather than a Southern Pacific characteristic after that car is made available to us for a through train.

Q With respect to a Ozol-Susanville block, what is your understanding of where that block will be put today by Southern Pacific?

A You're talking about the car to be picked up at Ozol or Suisun-Fairfield?

Q You indicated that you wanted your operating plan to mirror that which was currently being done in SP, and I'm asking you, what is your understanding of what is being currently done at SP?

A They are picking those cars up with through trains as it exists today. The Suisun-Fairfield may be a little changed from day to day because the SP operations today change from day to day, where there is a local that runs from Roseville over to the Schellville branch every other day, goes out of Roseville one day and back the next.

On the days that the Schellville local operates eastbound, you would probably move that car from Suisun-Fairfield into Roseville and be blocked at Roseville into the Rio Grande train that is made up or originates at Roseville.

Q Did you do any studies to determine how much time it would take to move traffic, boxcar traffic from Ozol, for example, to Kansas City by way of your proposed operation relative to the SPSF operating plan?

A To the extent that there is a through train schedule from Oakland to Kansas City and that car would be picked up as soon as it was available, and I presume that Southern Pacific would not hide the car on me someplace, but it would be available in good railroading practice as soon as possible for that train to pick up that day, then that study has been made.

But I have not taken a car from Ozol and said, how long is it going to take that car to move to Kansas City? No, I have not done that.

Q Speaking of Ozol, do you have an understanding as to any specific track that is currently being used by Southern Pacific?

A Absolutely not, because again I had a chance to go out there and spend a few days on that property and I talked to some of the people who were involved in the day to day operations. I have no -- I don't have that good a recall. I don't remember all the track designations in the 50 or so places that we stopped to look.

I do know that their operation works pretty

well the way it is. I don't intend to change that. And again, there's an SP train that now operates Oakland to Ogden and goes to the Rio Grande, and I visualize our operation as being that train. So whatever they're doing now is fine in the future. We could just do it the same way.

Q However, there will be more than -- there will be one SPSF train today or post-merger and there will be one Rio Grande train, essentially doing the same things, right?

A Under our proposal I don't think there will be the SPSF train. And the way we visualize the traffic diversion impact, as reported by Mr. Thiessen, I don't think the SPSF train would be there.

Q In other words, you think that you'll take most of the traffic?

A We'll be the only train that uses the route from Roseville east.

Q At page 22 of your verified statement, you state that Rio Grande would need 125 locomotive units to put its operating plan into effect, correct?

A Excuse me, what page was that?

Q Page 22.

A Of the operating plan?

Q Of the verified statement.

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A Oh, excuse me.

Yes, 129 locomotives, not 125.

Q I thought I said 129. But in any event, it's 129 for both the trackage rights and the purchase proposals?

A That's correct.

Q Am I to understand that the 129 locomotives are contemplated as being part of the $43 million purchase price?

A That's my understanding, and Mr. Whitehurst can clarify that calculation and what is contained in it better than I can.

Q In any event, you did not provide any data to Mr. Smith or any of the people putting the financial or cost documents together that would indicate that you intend to purchase 129 locomotives independent of the $43 million?

A I gave Mr. Smith my locomotive requirements and Mr. Smith included however he did it in his pro formas as to locomotive costs. Now, when you talk to Mr. Smith he can explain to you just exactly how he handled that.

I did give this 129-unit number to him and I broke it down by the various classes of locomotives that are shown elsewhere in the operating plan as between

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road power and switch power.

Q Okay. Has Rio Grande purchased any locomotives itself recently?

A Yes. During the last year we have acquired 50 locomotives. We acquired 23 GP-40's that were used locomotives, that we have had fully reconditioned. They are like a new locomotive. And in addition to that, we acquired during 1984 17 new SD-50's, and they were somewhat, I suppose, in anticipation of things to come.

And right at this present time we have 96 locomotive units stored that are road power.

Q How much did you pay for the SD-50's per locomotive unit?

A Generally in the neighborhood of $1.1 million or $1.2 million. I have forgotten the exact number.

Q Each?

A Each.

Q How would you select the 129 units of the SPSF fleet?

A I haven't given that consideration. I suppose it would be a pro-rata. Based on reading Mr. Whitehurst's statement, it would be a pro-rata acquisition of road power, switch power, whatever. But again, talk to Mr. Whitehurst about how he calculated that.

Q Well, he didn't look at what your locomotive needs were going to be for your operating plan, did he?

A I don't know whether he did or not. I think he took a little bit different tack than I did so far as the acquisition of power and how many units were in the total SP fleet and how many this would cover. But again, I am not that acquainted with what Mr. Whitehurst did. I had plenty to do to get this ready.

Q I understand that. But as the chief operating officer of the company, you are not going to let Mr. Whitehurst make the decision as to which of the 129 units from the SPSF fleet are selected, are you? He's not going to be the one to go out and discuss with SPSF which locomotives are going to be available?

A Absolutely not.

Q That would be you, right?

A Myself and our chief mechanical officer would probably try to select as good locomotives as we could out of that SP fleet, yes.

Q Well, that's what I'm getting at.

A I don't want some of those that you have stored at Sacramento, is what I'm saying.

Q That's the question I'm asking you. Do you expect to take the 129 out of the rehabilitated fleet or the new fleet, or do you take some of the old, some of

the new, some of the rebuilt? What is the plan?

A I haven't given that particular item that much thought. All I know is I need 129 locomotives of various types to run that railroad, and Mr. Whitehurst has developed a purchase price which includes equipment.

And again, I will ask you to talk to him about that. He can tell you how many units. There were so many road units and so many switch units that were involved. I don't know his work that well, Mr. Stephenson, so I can't comment further on that.

Q If Rio Grande were to drop its purchase application and file an amended application for trackage rights over the Ogden lines, then these 129 units would not be part of any $43 million purchase price because there would be no purchase price.

A I presume that's right, and that's where my 96 stored units would come into play right now. I've already got a pretty good start on the 129.

Q Well then, you would concede that -- is the operation going to be any different in terms of trackage rights over Ogden, the Ogden lines, under trackage rights, as opposed to purchase?

A I don't see that much difference, no.

Q Then why do you need 129 units with the

purchase application, but not with the trackage rights? Why can't you use your 96 stored units -- let me finish my question. Why can't you use the 96 stored units for the purchase application as well?

A We probably could.

Q So you would agree that the 129 units, at least 33 or 34 of them are unnecessary as part of the application?

A I don't say that they are not necessary as far as the application is concerned. What I have said here is that there are 129 locomotives required to handle the service on the extended lines as we perceive them, either through ownership or trackage rights; and that under the purchase agreement, Mr. Whitehurst has done some calculations on some locomotives and cars that would be included in that.

Under the trackage rights arrangement, I'm going to have to make some provisions other than those locomotives. And I have just told you that we have some spare locomotives right now. So I don't think that my stored locomotives have anything to do with this 129. All I'm trying to illustrate is that it is not beyond our capability to acquire the additional locomotives if that is the way that it has to happen.

Q And that would mean that you would have to put

in the cost of 129 locomotives or whatever it took as part of your financial pro forma?

A You talk to Mr. Smith. He may have already done that.

Q Okay. With respect to freight cars, boxcars and the like, what does the operating plan contemplate in terms of whether or not the Rio Grande can supply its own freight cars?

A Are you talking about under the purchase or the trackage rights?

Q Yes, under the whole responsive application.

A We feel that we have enough cars as we are right now to -- let me start that answer over again.

We have enough cars and know where there are cars available, readily available, to supply the needs of those shippers on the extended lines. And we're going to get into the same discussion here that we did a minute ago about Mr. Whitehurst including some boxcar-type equipment or flatcars or whatever in his estimated purchase price, and I don't know how he did that.

I don't know how many cars he has involved. I can sit here and tell you, though, that I have no concerns at all about having enough equipment available to supply the needs for those shippers.

Q Without having to take any cars from the SPSF system?

A If we have a trackage rights arrangement, we would not be taking cars from the SPSF system, and I say under that condition we still have plenty of cars or cars available to us to meet those shippers' needs.

Q Just so the record is clear, the trackage rights situation you're talking about, total trackage rights from Ogden to Oregon and including the Oregon trackage rights, is that right?

A That's correct.

Q If you had the trackage rights operation, is it your testimony that you do not need any cars to be supplied to you by the SPSF system?

A That is correct.

Q Okay. But if there is a purchase and trackage rights as the operating plan currently contemplates, then you would need a certain amount of cars, is that --

A Would you restate that?

Q If the proposal is purchase plus trackage rights as the operating plan currently contemplates, you then would need cars from SPSF?

A I think you are using the word "need" and we may be misusing that word. I don't know whether we

would need those cars or not. I think Mr. Whitehurst in his calculations determined that a railroad is made up of track, facilities, cars, and locomotives, and included within the price he estimated those facilities, cars, locomotives that should be include.

And again, I don't want to get into his testimony because I'm not that familiar with it. This is the way I recall reading his testimony.

Q Okay. It is you understanding that under Mr. Whitehurst's proposal or the purchase proposal that the $43 million includes a certain amount of equipment, a certain amount of freight cars, locomotives, and track equipment as part of the $43 million?

A That is correct.

Q But you have told us that, notwithstanding the fact that you understand that that is his proposal, that you don't need that as part of your operating plan, that you can supply your own locomotives and your own cars and your own equipment to handle the trackage rights in the event that that's what the Commission orders?

A There are alternative cars available to us, is what I'm saying.

Q The alternative cars available to you would not include -- would not require SPSF to provide those alternatives?

A That's correct, under the trackage rights arrangement.

Q I'd like to talk to you now about labor. At page 21 of your verified statement you say that: "Should Rio Grande's purchase application be granted, Rio Grande would give consideration" -- is your word -- "to hiring SPSF employees displaced by the purchase."

A Yes.

Q Does that constitute a commitment on Rio Grande's part to preferentially hire displaced SPSF employees?

A There is no preferentiality mentioned here, Mr. Stephenson. What it says is that we will consider the hiring of Southern Pacific employees based -- and what is implied is that is based on our need and their qualifications.

Q Would Rio Grande object to a Commission order requiring Rio Grande to give preference to displaced SPSF employees for handling business on your purchased lines?

A I wouldn't solicit such an order, but we can live with it if we got it, and we would comply with that order.

Q Has Rio Grande identified any areas where it could reduce manpower on the purchased lines below that

which SP has today?

A I was unable to get a complete manpower count from the Southern Pacific, partly because I didn't ask for it, I suppose. So I don't know what their total employment is.

I have projected the number of employees I feel we would need to operate that railroad under Rio Grande labor contracts and with Rio Grande supervision. And now that compares to Southern Pacific employment I don't know right now, Mr. Stephenson, whether there would be additional people hired over what you are now using or whether there would be people cut off as a result of this.

Q With respect to the purchased lines only, assuming the Rio Grande would have fewer employees post-merger than SPT does today, would Rio Grande agree to take responsibility for paying New York Dock labor protection -- let me finish my question.

A Excuse me, I'm sorry.

Q To pay New York Dock labor protection to those permanently displaced SPSF employees?

A Absolutely not, because I think we've got to go back to what was the moving force in this thing, and it was the proposed merger of Southern Pacific and Santa Fe. We did not first ask for that line.

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Q Does Rio Grande propose to operate the trackage rights with three-man crews?

A I'd like to, yes.

Q Were those figured into your calculations?

A They were.

Q Does Rio Grande operate with three-man crews on its own line?

A We have the right to, yes.

Q Are you doing it?

A Yes.

Q Where are you doing it?

A Over the entire system.

Q And that's three-man crews for all trains?

A No, sir, not for all trains, because of the requirements of the crew consist agreement, which provides that as long as employees in a protected class are available three-man crews will be used, and to the extent the forces are depleted, the protected employees, we can reduce to the third man.

Q Are you operating any trains with three-man crews?

A Yes, we are.

Q Approximately how many? Percentagewise, how many of your train starts are operated with three-man crews?

A I haven't made a study of it, but I'll give you a horseback guess: probably around three to four percent right now.

Q What about the operations on the Missouri Pacific trackage rights? Of course, you don't have any of your own crews on --

A Those are still Missouri Pacific crews. We have the right to put our own crews on there if and when we decide to do that.

Q Have you had any discussion with any of the brotherhoods about utilizing three-man crews over the purchase and trackage rights lines should the Commission grant your responsive application?

A We have not, because negotiations with the brotherhoods at this time I think is premature. And the reason I believe that we can operate with two-man crews over those lines is because our present labor agreements already provide for it and renegotiation of those agreements would not be required.

Q Would you think that you would be able, because of the current manpower situation at Rio Grande, should you begin operating the purchase and trackage rights operations a year from now, that you could operate with three-man crews throughout the SP system immediately?

A I would hope to be able to.

Q On all trains?

A Yes.

Q What does Rio Grande's operating plan contemplate with respect to operation of caboosless trains?

A We have -- let's see. I'm trying to remember the exact status of that. It seems to me about a week ago we got the Mediation Board permitting us to operate without cabooses on those trains provided for in the agreement. And I don't recall all of the percentages and so forth in that agreement, Mr. Stephenson, but I do know that we have the right now to operate caboosless trains.

Q How many trains are you operating without cabooses?

A We are as of now not operating any, because we're still trying to get the supplier to furnish the rear of train devices that are required. We have not been able to get them.

Q Would you contemplate that most of your operations over purchased trackage rights lines would be with caboosless trains?

A Yes, in accordance with the existing labor agreements.

Q And has that been taken into account in your costing of your services?

A I don't know whether Mr. Smith took that into account in his costing or not. You'll have to talk to him about that. I did tell Mr. Smith that that is the way we plan to do it, and it's also pointed out in the operating plan and in the verified statement at another location here that that is our plan.

Q I'd like to address now the repair shop, SP repair shop at Ogden. You indicated in your verified statement at page 24 that Rio Grande's acquisition of locomotives and maintenance of way equipment could put a strain on the capacity of your existing Burnham repair facilities in Denver, but that this might be overcome by acquiring SP's shops at Ogden. Do you see that?

A Yes.

Q I take it from that statement that Rio Grande does not contemplate that the Ogden shops are part of the $43 million?

A It did not intend to exclude it. This statement is based on whether or not Southern Pacific may have some use for that or there may be some other use for that facility other than what the Rio Grande would use it for. The reason the statement was there, at that time, at the time I wrote that, we weren't sure

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what the status would be of that locomotive shop.

Q I guess I'm not sure that I understand what your answer is. Is the shop contemplated as part of your $43 million purchase?

A Mr. Whitehurst has developed that $43 million price and I don't know all that he took into account on that, Mr. Stephenson. So again, I will have you ask him that question because I don't know the answer.

Q Would you agree to give preferential hiring to the shop employees at the Ogden shops should you take those shops over as part of your operation?

A I guess the same answer that I gave you for any of the other employees on the Southern Pacific lines would apply there.

Q And the same answer would be true also: If the Commission ordered it, you could live with that?

A Yes, sir. The one caveat I would put on that is that it would be under Rio Grande labor agreements.

Q If you felt that the Ogden shops were part of the purchase price, why did you make the statement that you might seek to acquire those shops in the event that there is a demonstrated need?

A I wish I hadn't put that statement in there, Mr. Stephenson.

Q Am I correct that Rio Grande's operating plan

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calls for Roper yard, your existing Salt Lake yard, to make seven more blocks in support of Rio Grande's proposed extended operations?

A No. Well, let's see. Do you have that exhibit number for that yard?

Q I don't.

A Well, let's see if I can find it before I give you an answer right off the top of my head.

Yes, I did show the seven additional blocks, and that is the fine blocking that would be required for the Nevada Shores to Wendel-Alturas that we're not now doing, and that is correct.

Q What does this do to the capacity of your yard at Roper?

A It will use some of the excess that I now have.

Q What is the most cars you've ever put through? What's the maximum number of cars or classification blocks that that yard has been handling in the past?

A I wouldn't want to give you an answer off the top of my head. I know that, because of the way our operation has been streamlined, the load on that yard has decreased steadily over the last 20 years. And with the Western Pacific moving out of there, who were a

tenant of Rio Grande, as you know, for a long time, when they moved out it left us with an awful lot of excess capacity.

So without going back and telling you what I think the record number of cars was, I will just tell you that it was much greater than it is now, and the blocking requirements in the yard are much less than they were when the old WP was in there. So I've got plenty of capacity at Roper. I'm not worried about that.

Q The seven blocks would put you up back where it used to be with the WP being in there?

A I doubt that this would even meet that level of traffic.

Q Did you or any of your people do any capacity studies or string line studies to determine capacity of any of the lines that you seek to operate over?

A Not in this case, no. We know that we've got plenty of capacity.

Q But you haven't done any studies, line capacity studies?

A No. They haven't been required.

Q How did you develop Rio Grande's proposed train schedules?

A I used the present train schedules that are

now in existence between Oakland and Denver, Kansas City, that the SP operates today. There were a couple of areas where I shortened up the running times on the trains across the Southern Pacific because I think we can do better because we have eliminated for some of those trains all of their work.

But that's basically what I have shown in here, and I'm not saying that that's the way it is going to be in the future. This is based on what customer requirements are now. That's what was the basis for the train schedules. It serves the customers' needs now. I feel it will then, and probably even better because we will have better control of the operation ourselves for a longer distance.

Q Did you provide certain input to Mr. Theissen or Mr. Brainard in terms of operating schedules?

A I did, yes, sir.

Q And you provided them your operating schedules for purposes of doing their traffic diversion studies?

A Yes, sir. They came to me when they first started working on this thing and we discussed the kinds of operations that would exist. I told them that the operations as they are today could be duplicated or maybe improved a little bit from place to place, and they used that as the criteria for establishing their

traffic study.

Q In his verified statement Mr. Brainard says that you advised him that D&RG-SP -- the existing SP-D&RG traffic -- let me start over.

That the existing schedules run by SP and Rio Grande are comparable to UP-MP schedules?

A Yes, sir.

Q And that they're comparable as well to Santa Fe schedules?

A Yes, sir.

Q And that they are better than existing SPT schedules by way of its Tucumcari line?

A That's basically what it amounts to, yes.

Q And you indicated -- did you indicate to Mr. Brainard that the post-merger schedules of the Rio Grande would be comparable to the UP-MP schedules?

A Yes, sir, I did.

Q That is important, is it not? That is your principal competitor across the Central Corridor?

A Yes, and I think the word was -- or the correct description of it is that they would be competitive with those schedules. I am looking at competitive from an operating point of view and that they meet the customers' needs of time of departure and time of arrival at the other end of the run.

Q And you would agree that it's not only SPSF that you're competing against, but UP-MP as well?

A I think we have mentioned that several places in our testimony. You bet we compete against those guys.

Q Did any of your proposed schedules contemplate your operating trackage rights over the UP between Alizon and Salt Lake City?

A Would you restate that?

Q Did any of your proposed schedules contemplate Rio Grande trackage rights operations over the UP between Alizon and Salt Lake City?

A They did not.

Q Have you had any discussions with any UP people about moving should your responsive application be granted in whole or in part moving the operation over onto the UP?

A I have had none, no, and I don't know of anyone else who has.

Q Have you, as part of your preparation of the operating plan or for any other reason, have you inspected the Great Salt Lake Fill?

A I have been across the Great Salt Lake Fill. I certainly wouldn't call it an inspection, Mr. Stephenson.

Q When was that?

A In December of 1983.

Q Were you told or have you been told that the Southern Pacific has put about $50 million into that Salt Lake Fill in the last two years?

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A I am aware of that, yes.

Q Are you also aware that they have about $15 million budgeted for the fill for this year?

A I am not aware of that.

Q What is the total Rio Grande maintenance budget? What was it for '84?

A About $55 to $60 million, somewhere around in there.

Q That would be for the 1,800 miles of your own railroad, or would that include the 600 and some miles of trackage rights?

A I am sure that this includes our prorata share of maintenance on the Missouri Pacific Line, but you might ask Mr. Smith when you talk to him about the exact number of that, Mr. Stephenson, but my recollection is that that number is included in this $55 to $60 million.

Q So the 55 to 60 would, you think, include the full 2,400 miles?

A Yes, sir.

Q How long is the Salt Lake Fill?

A About 13 miles.

Q Is it contemplated in Rio Grande's operating plan that any of the Oakland trains, for example, your trains 100 or 1340 would handle any -- this is sort of a followup of that question I asked you earlier that

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either of those trains would handle boxcar manifest traffic to Roseville?

A Not on a regular basis. I am not saying that one of those trains may never stop at Roseville and set out or pick up a car, but on a regular scheduled basis, no.

Q If you could look at Appendix 9, Page 5, is that a typo, or are you there yet?

A Page 5?

Q Page 5 of Appendix 9.

A I am now.

Q Is that a typo that shows an Oakland TOFC block being set out at Roseville?

A It is. It certainly is, Mr. Stephenson. Would you eliminate that for me, please?

Q I will. Does Rio Grande's operating plan contemplate the need for helper locomotives any place on the lines?

A It does. It contemplates the need for helper locomotives eastbound from Roseville to Norden and westbound from Sparks to Norden, from Oak Ridge, up on the trackage rights line from Oak Ridge to Crescent Lake, and from Klamath Falls to -- what is the name of that place at the top of the hill on the Modoc Line?

So, yes, we do anticipate using helper

locomotives at those locations.

Q Now, if we could turn to your trackage rights or proposed trackage rights agreement, and that is in D&RG-14, Volume 1.

A I have it.

Q Section 1 of that agreement defines joint track. Am I correct that that definition of joint track covers everything, the track and everything adjacent to it, including service facilities, yard offices, communication lines?

Or maybe you should tell me what you contemplate being part of the joint track.

A I think that is spelled out in Paragraph B of that Section 1, Mr. Stephenson, where it reads that "In addition to the track signals, interlocking devices, and plants, communication facilities, and other appurtenances and rights-of-way thereto referred to in Subsection A of Section 1 as comprising the joint track," and so on, "any and other tracks and appurtenance thereto and right-of-way therefore between" -- excuse me. That is that son of a gun that gives us the right to detour.

Q Look at -- I think it is --

A I think A covers it better, Mr. Stephenson.

Q The top of Page 4, "the joint track shall

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include all rail lines, terminals, facilities owned and operated by SPSF and its rail subsidiaries," and then it goes on to say, "includes but is not limited to signals, interlocking devices, and plants, communications facilities and other appurtenances used or available for use in the maintenance, operation of the joint track in and incident to the movement of trains, locomotives, or cars thereabong and thereover."

And my question is, I don't understand what you mean by facilities. Do facilities include yard offices?

A Absolutely.

Q And they include repair facilities?

A Absolutely.

Q Do they include service facilities?

A They do.

Q Let me give you an example. There is a yard office, or there is an office building adjacent to the track in Oakland which happens to be the western division headquarters. It is parallel to the SP line that you seek rights over, and it provides the services and enables the operation to be run.

A I am familiar with that.

Q I take it that you would include that as being part of the joint track as a facility within the

contemplation of this agreement.

A Where it is used in connection with the operation of that railroad. I think that is the best way to put it. If it is used in connection with the operation of that railroad directly, it would be included. For example, if we wanted to put an assistant superintendent there, and you had the office space for him in the building, we would like to use it.

Q What if we didn't have office space?

A I will find another place.

Q Okay. You indicated already that you contemplated that it would include repair facilities. What about the Sacramento shops that are adjacent to the tracks that you propose to operate over? Would you include that as part of your -- as facilities which are part of the joint track?

A I know that your Sacramento shop is used for heavy repairs. I don't anticipate any heavy repairs being required by Southern Pacific, so only to a limited degree. If we had to have a set of wheels turned in that shop, we like to be able to have it done.

Q That is the thing that I am uncomfortable with, the sort of ambiguity of all of this.

If there is a conflict between what is in your operating plan in terms of use that might be put to a

shop as opposed to the aggreement itself, what is the Commission supposed to rely on, the all-inclusive language of the agreement or the operating plan that describes what you propose to do and what you propose SPSF to provide for you in terms of services?

A I think Section 27 pretty well spells that out, that this agreement shall be construed liberally so as to secure to each party all the rights, privileges, and benefits herein provided and manifestly intended. This agreement and each and every provision hereof is for the exclusive benefit of the parties, and so forth.

In other words, I think it has got to be interpreted as what facilities are required to be used to accomplish the purpose of our trackage rights.

In other words, to maintain a competitive route over that Central Corridor. And I didn't intend when I wrote this to be able to cover every item, because again, as I told you today, it is a unilateral proposal. It is proposed trackage rights.

I would think that the Commission is probably going to order us to sit down with the Southern Pacific and negotiate a trackage rights agreement that will be more inclusive because it will have inputs from the Southern Pacific.

Certainly there are going to be some areas

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that we are not going to agree on, but those kinds of things we can agree on and spell it out in a formal, final draft of this trackage rights agreement.

So I don't pretend for this to be everything. I didn't try to include the Sacramento locomotive works, and I didn't try to include the Western Division office at Oakland, for a very good reason, because this is not intended to be a specific document.

Q All right. But if I understand you you would, under your proposed agreement, if Rio Grande were to decide, say, five years post-operations that they wanted to have, they wanted to retire some of the wheel truing activities in their own shops in Denver, and wanted to do that in the SPSF shop in Sacramento, that they would have the right under your agreement to come to SPSF at that time and say, now we have decided that we want to use your shop. Isn't that basically what this provision, this agreement contemplates?

A I will say that this agreement contemplates providing the facilities for us to operate an extended line of railroad to the west coast, to Oregon, and that it does not intend to get rid of a lot of our facilities and move them over on the SP and have them do the work for us. It does not intend to do that. And we can draw all kinds of examples like that, I am sure.

If those kinds of things are a problem with Southern Pacific as they consider what should be in this agreement, let them make a proposal about how that should be worded, and if it is reasonable, we will sure go along with it.

Q Let's assume that Southern Pacific or SPSF would say, we don't agree to any of this. We don't agree to providing any services for you. We don't agree to provide any facilities for you. If you are going to operate your trains, you operate them yourself.

Assume that that is the SPSF response. You would ask the Commission then to impose this agreement on the merged company. Isn't that your plan?

A Yes, sir.

Q Would Rio Grande or your operating plan contemplate interchange operations with BN at Klamath Falls?

A Yes, it does. And with the Klamath Northern at Gilchrist junction.

Q And with UP at Sacramento or Stockton?

A We would want the rights to interchange with any carrier that SP now interchanges with.

JUDGE HOPKINS: Do you have many more, Mr. Stephenson?

MR. STEPHENSON: Not too many more, Your

Honor. I indicated an hour and a half, and I think I will be done before then.

JUDGE HOPKINS: Thank you.

BY MR. STEPHENSON: (Resuming)

Q Does Rio Grande have any agreements that are similar to the proposed joint track agreement that it has used as a guide? In other words, do you have any joint facility agreements that contain provisions that have the same definition, for example, of joint track or use of joint track?

A We do have, and I have also looked at some other joint facility agreements in existence between Burlington and Milwaukee, the old Milwaukee. In other words, the language that I have used here is not a language that is strange to the railroad industry. It is commonly used language in a trackage rights agreement.

Q Well --

A In some areas.

Q In some instances that may be. I won't debate that with you. But tell me about the agreement. Tell me all of the agreements that Rio Grande currently has that have a joint track definition and joint track use, Sections 1 and 2, that are similar or the same as this.

A Okay. We have a paired track agreement with

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the Santa Fe between Denver and Pueblo. We have some joint facility agreements with the Burlington.

Q Where would that be?

A In the Denver area. We had a joint terminal agreement with the Western Pacific in Roper. We had a joint facility agreement with the Rock Island in Denver. We still have a joint facility agreement at Pueblo with the Missouri Pacific or Union Pacific.

We have a paired track or joint track agreement between Pueblo and Walsenburg in the name of the Colorado Southern, now Burlington Northern. We have a joint track agreement with the prior Colorado Southern, now Burlington Northern, between Pueblo and Trinidad, Colorado. And those agreements contain a lot of the language that is here.

Q A lot of the language?

A There are some specifics, because this is designed for a specific reason.

Q Can you think of any others that you have?

A I can't think of any others right now, Mr. Stephenson.

Q With respect to the construction of connections, you have indicated in Section 3 the --

A Oh, let me go back to that other one. There was one other proposed agreement that exists that is

very similar to this, and that is the one that is pending before the -- on the Missouri Pacific joint facility line east of Pueblo.

Q And you say that you have reached an agreement with the --

A No, I said a proposed agreement.

Q In other words, this is similar to your proposal?

A Very similar to that, yes.

Q Okay. And has the UP agreed to that?

A We have not even -- well, we have tried to negotiate it early. Since trackage rights rental rates have been prescribed, there has been no meetings or negotiations to settle it, no.

Q Well, prior to the involvement in the trackage rights compensation issues, did you have any understanding that the proposed agreement between yourselves and the Missouri Pacific was essentially agreed to by both parties?

A No, because they were in the same situation that you are in now. We were adversaries in a hearing before this Commission.

Q So in effect the state of that is that both parties have their own idea as to what kind of agreement ought to be agreed to, and there is no agreement at this

time?

A Other than an interim operating agreement.

Q Yes. Section 3 deals with future connections. Would the right of the Rio Grande to request a connection be subject to the right of SPSF as the owner to veto it for operating reasons?

A If it were completely illogical so far as the point where it would be located or destroy the operations, certainly I would think they would have some way of or have the right to say no.

But we are not going to suggest something that is going to hamper your operations and ours as well. I think it is the same thing Mr. Davis told you, that the UP would be willing to sit down and talk to your operating people on the ground about where the switch should be, and whether it should be facing points eastbound or westbound. I have no problems with that.

Q But sitting down and discussing it is a little different than recognizing the principle, I guess, that I am asking you to recognize, and that is that -- isn't it generally the case that the owner has the right to veto changes or improvements suggested by the tenant if there are legitimate operating reasons for doing so?

A If there are good legitimate reasons, he certainly has that right, yes.

Q Under Page or Section 7, Page 11, it deals with maintenance of the joint track. Under your proposal, should SPSF deem it necessary to do so, could it construct additions and betterments to the joint track?

A Certainly.

Q And these additions and betterments could include such things as sidings or holding tracks, storage tracks?

A You are the owner of the property, and if you deem it necessary to have it there, you bet, you can go right ahead and build it. If it was for your exclusive use, we may have to argue about whether we were going to pay interest rental on that particular portion of the new construction.

Q All right. Now, what if SPSF or SPSF's operating people think that the additions and betterments are necessary to accommodate trackage rights operations of the Rio Grande? It could do that also, couldn't it?

A Absolutely.

Q And would the cost of these additions and betterments to facilitate the operation of the Rio Grande be paid by SPSF under your proposal? Or would that be paid by Rio Grande?

A If it was for the joint benefit of the parties, I would say we probably would share in it. If it was strictly for our use, I would say that probably we would pay for it. If it was strictly for your use, you would pay for it.

Q Section 18 of your proposed agreement. Are you there?

A Section 18?

Q Yes.

A Okay.

Q That is Page 19.

A Right.

Q It states that Rio Grande will pay SPSF for the costs including standard additives of train operation, switching, and mechanical services incurred by SPSF. What are standard additives as you have them here?

A That is one section of this trackage rights agreement that I didn't really get involved in. Mr. Smith wrote that particular compensation clause, and I would suggest you talk to him about that and he can tell you what all those additives are.

Q All right. Well, with respect to the cost of train operations, switching, mechanical services incurred by SPSF, you have yourself alluded to the fact

in your testimony that Rio Grande would expect to pay SPSF its costs supporting your trackage rights applications.

A That's correct.

Q And what is your definition of cost? What is included in that? Is that avoidable costs?

A I am not going to get into a definition of avoidable and variable and all of these other things with you. I will tell you basically what I visualize costs are from an operating point of view, and Mr. Smith can clarify this for you from a cost point of view, that they cover the cost of maintaining that track, the facilities that are used in the joint track operation, taxes. Those kinds of costs are what I visualize here.

Q The same kind of costs that you include in your own rate base?

A Certainly, and it is the cost, I guess, that you normally look at in the income statement as operating expenses.

Q How about a profit element?

A Again, Mr. Stephenson, talk to Mr. Smith about that, and he will tell you whether he included the profit in there or not.

Q Well, I am going to ask you what you meant when you used it in your testimony. When you include

costs, do you include a profit element for SPSF for providing services to the Rio Grande?

MR. MAYO: Your Honor, objection. I don't know what testimony we are talking about. Where has he included costs in his testimony?

MR. STEPHENSON: He just told us one minute ago, when I asked him if he had in his testimony the proposal to pay SPSF its costs, and he said yes, and I am following up on that.

JUDGE HOPKINS: What good does it do to have this gentleman go on with this when it is another witness who will clarify as to what they included within costs?

MR. MAYO: This witness is not a cost witness.

MR. STEPHENSON: I am not asking him that. I am asking him what he intended when he put it in his statement.

JUDGE HOPKINS: What difference does that make, really, what he intended, if the cost man is going to be the one that clarifies it and explains fully what it is that is intended? I don't see the need of going on with that.

MR. STEPHENSON: Okay.

BY MR. STEPHENSON: (Resuming)

Q Turn to Page 20, please, of the agreement. There you have indicated at the top of the page that Rio Grande will pay interest rental at the rate of blank per annum payable monthly in advance.

MR. MAYO: Your Honor, objection again.

MR. STEPHENSON: I haven't even asked the question.

JUDGE HOPKINS: Let him ask the question, and then you can object.

BY MR. STEPHENSON: (Resuming)

Q What is the interest rate that Rio Grande proposes to pay?

MR. MAYO: My objection is simply that he says that the witness has indicated. I think the witness has stated that he had nothing to do with the drafting of Section 18.

JUDGE HOPKINS: Now, if he can answer the question, I don't see anything wrong with it, if he knows what the answer is. If he doesn't, then he can just say that.

THE WITNESS: And I don't know what the answer is, Mr. Stephenson. You will have to go to Mr. Smith.

BY MR. STEPHENSON: (Resuming)

Q Do you also not know what that interest rate will be based upon?

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A I don't.

MR. STEPHENSON: That is all I have, Your Honor.

JUDGE HOPKINS: Thank you.

The Department of Justice? Ms. Kooperstein? Ms. Budeira? Both of you?

BY MS. BUDEIRA:

Q Good morning, Mr. Nance. My name is Priscilla Budeira. I represent the United States Department of Justice.

A Good morning.

Q DRGW is seeking both trackage rights and fee ownership of track. Is that right?

A Yes.

Q Why is DRGW seeking to own track in some instances and seeking only trackage rights in others?

A Probably we would like to acquire the line in its entirety, but we limited our purchase request to those lines that appeared to be redundant, and as I think we pointed out, competitive with and not complementary to the new SPSF system and lines that would not interfere with their operations as proposed in their planned merger.

Q I understand that, but why did you make a decision as to those lines that you considered redundant

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to seek ownership of them as opposed to having trackage rights over them?

A I guess because we wanted to have control of the operation over as much of the line as we possibly could, and felt that purchase was the best alternative at the time.

Q What kind of control did you want to have by the ownership that you did not have by having trackage rights?

A In the trackage rights the owner is usually the guy that controls the operation, that supervises the operation, that dispatches the trains, that maintains the track and does all of those things connected with the operation of the railroad.

We wanted to acquire ownership so that we could perform those functions ourselves in the way that we wanted to do it.

Q Have you had past experience with trackage rights?

A We have, yes.

Q Do you find in the experience you have had with trackage rights that you have had trouble with supervision of the operation and the care of the track or any of the other elements that you have just mentioned as leading to your desire to own the tracks

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rather than having trackage rights over them?

A Yes, we feel that if we were running the operation ourselves, there are some things that we could do better. I am not saying that trackage rights are unworkable. They do work.

But where you have control of your own operation, you know, train dispatching, and all of the people are working for you, and you can budget your capital improvements or maintenance dollars where you want them, I think you just do a better job that way than if somebody else is doing it for you.

Q On Page 11 of your testimony --

A My verified statement?

Q Yes, sir. This is the first full paragraph. You state that past experience leads DRGW to believe that certain SPT lines extending west from Ogden to Oregon and California will be competitive with, not complementary to, other transcontinental routes of the merged firm.

What is the past experience that forms the basis of your belief?

A What we have seen happen in the Union Pacific/Western Pacific/Missouri Pacific merger, where within a very short time after merger the Salt Lake WP gateway was closed, or almost closed, it dwindled down

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to nothing, and the same thing happened to Pueblo with the Missouri Pacific interchage.

We have also seen, longer ago than that when the Burlington Northern were neighbors, that there was some ieterioration of that traffic base through the Denver gateway. And those are the past experiences I am talking about.

Q Does the Central Corridor compete with the Southern Corridor for traffic?

A I am not that acquainted with who competes and how and the corridor definitions. I think Mr. Banner and Mr. Brainard can probably give you a lot better information on that than I can.

Q On Page 12, in about the fourth line from the botton of the carryover paragraph, you state that the public will benefit from DRGW's request because competition through the Central Corridor will be not only retained, but in fact will be intensified by Rio Grande's pressence.

When you say intensified, to what are you comparing the post-merger with DRGW conditions, level of competition?

A I can give you a general type answer, not an economic witness type answer to that, and then I would suggest you also get Mr. Banner's testimony on this

also. But we would be at points where traffic is originated and terminated with direct access to customers.

The way it is now, we are only there through the joint solicitation efforts of Southern Pacific and Rio Grande salesmen. The traffic is routed over the Rio Grande instead of going some other way because of what we do. After this merger is completed, we won't have the ability to do that, because we feel that the primary effort will be by Southern Pacific-Santa Fe to route the traffic over their extended line.

And that is what I mean about competition being intensified, that we will be there. I don't know if it will be any more intense than it is today, but in the future we would be there competing with those other two carriers, and again, I think Mr. Banner has done an awful lot of work on this, and he can explain it a lot better than I can.

Q I think I am hearing conflicting things. When you say intensified, do you mean intensified as compared to if there were no DRGW conditions?

A Yes, ma'am.

Q If you can tell me this, I am not sure you can, but what portion of Central Corridor traffic does UP single line have and what percentage does the

SP-DRGW joint line have?

A I don't know. I think Mr. Brainard can probably fill you in on that.

MS. BUDEIRA: Thanks a lot, Mr. Nance.

JUDGE HOPKINS: Ms. Reed?

BY MS. REED:

Q Good morning, Mr. Nance. How are you today?

A Good morning, Ms. Reed.

Q At the top of Page 8 you indicate that in the UP/MP/WP case, the ICC suggested that the SP-DRGW routing would provide a competitive alternative to the UP/MP. In your opinion, has in fact the SPT-DRGW routing been a successful competitive alternative?

A It certainly has.

Q Now, how does the SP-DRGW traffic over the central corridor move into Chicago, by what routing?

A Through our gateway at Denver with the Burlington Northern. That is the predominant. There is some Chicago traffic that moves by way of Kansas City and then via Milwaukee or ICG or one of the other roads that serves Chicago.

Q Is the Burlington Northern routing the fastest Central Corridor routing?

A It is the one that handles the highest priority traffic, yes.

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Q Do you know what the fastest transit time for the Bay area to Chicago traffic would be?

A I believe it's around 70 hours, Ms. Reed. It is 62 hours and 30 minutes from Oakland to Chicago. Excuse me. That is Chicago to Oakland.

Q Westbound?

A It is about the same in the reverse direction.

Q Do you know how that compares to Union Pacific/C&NW routings?

A I don't know. It is comparable, but I don't know the exact time of the UP/CNW service.

Q Do you know what the Santa Fe single line transit times from the Bay area to Chicago would be?

A The Santa Fe -- I didn't find a new schedule that showed from Chicago to Oakland or Oakland to Chicago. The ones they show are their Trains 199 westbound, which is 50 hours and 45 minutes from Chicago to Richmond, and their fastest schedule is Train 991, Barstow to Chicago -- Richmond to Chicago, excuse me, 59 hours.

Q Now, that is present Santa Fe?

A Yes, and I didn't find any schedule in their operating plan that amended that schedule, so I presume that is their plans in the future.

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Q Is the Denver Rio Grande involved in any minilandbridge or microbridge traffic via the Central Corridor?

A We have been involved in some, and I don't know as of today what percentage of that is or whether we even have any of it now or not.

Q But you have been involved?

A We have been involved in that, yes.

Q Was any of that traffic moving to Gulf ports or points in the southeast?

A I don't remember any. It seems that most of it moved toward the northeastern ports, but there may have been a couple of movements into New Orleans. I don't remember for sure, Ms. Reed.

Q Now, does the Denver Rio Grande participate in any SPT-DRGW traffic moving to Texas points from southern California?

A It is a very small amount, less than it was before the joint solicitation agreement. And Mr. Brainard I am sure has some of those numbers for you. He can tell you exactly how much and why.

Q Now, you indicated that your interchange with the former Western Pacific Railroad has declined or dried up since the UP/MP/WP merger. Is that correct?

A That's correct.

Q Did the UP system cancel the joint rates or routings over the Central Corridor route with the DRGW?

A I don't believe they cancelled the joint rates and routes. They first thing they did, though, was to pull all of their operations out of the Roper joint terminal facility, move them to their north yard facility at Salt Lake.

And they have since cancelled the agreement in its entirety, and any traffic that is routed Rio Grande doesn't get very good handling. So in effect they have closed it. About all we see is the stuff that originates and terminates on Rio Grande lines.

Q So the rates have not been changed, but the level of service has declined?

A Yes, and I would suggest again you talk to Mr. Thiessen or Brainard about what that rate structure is now. They work with that much closer than I do.

Q Now, on traffic you receive from the Southern Pacific at Ogden, do you know how much originates at exclusively served Southern Pacific points? And by exclusively served, I mean that other rail carriers do not have access to those points directly or through reciprocal switching.

A No, I have not seen any studies on that. Mr. Thiessen or Brainard may be able to help you on that.

Q Does the Denver Rio Grande move any SP originated traffic under long-term contracts?

A Yes.

Q Do you know how much traffic would be involved under those long-term contracts?

A I don't know what the percentage of the traffic would be. I know there is some of that traffic, but to what extent or percentage, I don't know.

Q What types of commodities would be involved? Do you know?

A Coal is involved. I will just give you the ones that are very apparent, and you may be able to get more detail from Mr. Thiessen on this. I know there is coal involved. Auto parts are involved. And I think there are some other lesser volume shipments also.

Q I am going to take you back to Page 11, in the first full paragraph that the Department of Justice asked you about, where you state that the SPT lines post-merger will be competitive, and not complementary to the SP-Santa Fe's other transcontinental routes. Could you tell me what facts lead you to that conclusion?

A What led me to that conclusion?

Q Yes, sir.

A The review of their operating plan, for one

thing. All of their major claimed efficiencies will occur on the lines between -- well, the Santa Fe lines through Arizona and New Mexico and the combining of the lines through Texas and on into Kansas City, and in that area.

There was no mention in their operating plan of any improvements or any upgrading or any continued expenditures in the areas between Roseville, Klamath Falls, and Ogden, and there were no improved train schedules in that area. In fact, there was an elimination of some trains. They showed a drop in tonnage from those points.

And one of the first things that -- well, I shouldn't say the first thing, but one of the things that I guess led me to believe that way from an operating point of view is a review of their operating plan, and it is shown in their operating plan as Exhibit 13-3.

At the present time, the Southern Pacific, for the movement of traffic to Rio Grande at Ogden makes a number of blocks of traffic, Kansas City, Herington, the Rio Grande short blocks, the Denver, Denver BN block, and as Mr. Stephenson has pointed out in the last couple of days, the preponderance of that traffic now moves to Rio Grande through the Ogden gateway.

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In other words, UP is a lesser part of that interchange than Rio Grande at this time, and when I looked at the merged simulation network and how the traffic flows were working or planned to work, I had seen that at Ogden they divided the Ogden traffic into a block or a designation of 81 UP, 82 UP, North Platte, 82 -- excuse me, that was 83. 82 is UP Denver, and 84 is UP North Platte perishables.

And when I looked at Rio Grande, it only shows Rio Grande Denver. In other words, it looked to me like they had, regardless of what they said about their traffic flows, had completely overlooked any significant traffic flows to Denver. You know, it is a flag to me that something is going to happen.

Q Now, the SP today can offer single line service from points in northern California and Oregon to Chicago, or, excuse me, to Kansas City. Isn't that correct?

A They can, yes.

Q Is it your opinion that the faster transit time from their ability to use the Santa Fe's line will enable them to handle this traffic via the southern route instead of over the Central Corridor route via the Denver Rio Grande?

A That is the opinion of our economic and traffic witnesses, and I certainly concur in what they have found in their studies. I think they're very well prepared to address that and give you some economic and traffic reasons for that.

Q Do you know what the transit times would be for an SPSF move from Portland, Oregon to Kansas City as compared to the existing Central Corridor transit times?

A I don't remember seeing any trains that were originated in Eugene or Portland and moved all the way to Kansas City. There is a new train called -- well, there is one, the EUKCY, which moves from Eugene to Kansas City by way of Barstow, and that has an elapsed time of 106 hours and 30 minutes. I think that is probably a little shorter time than I have allowed for that traffic moving off the Modoc Line to go to Kansas City. I don't recall the exact scheduled time. In fact, there's no through schedule for that traffic that I have shown. This is their one schedule.

Q Have you or anyone else at the Denver Rio

Grande, to your knowledge, done any cost analysis comparing the cost of moving traffic from Oregon and northern California points to Kansas City or Chicago via the southern route of the SP-Santa Fe, as compared to the Central Corridor route?

A I have made none of those, Ms. Reed. I don't know of anyone who has either.

Q At the bottom of page 11 and the top of page 12 you indicate that you are seeking trackage rights -- and correct me if I am misinterpreting this -- but to a certain extent so that the Denver Rio Grande will have a traffic base which will enable it to provide adequate traffic to support the lines to be acquired, is that correct?

A That's correct, because there are no interchanges where we could receive traffic from a noncompetitive railroad postmerger; and we've got to have those trackage rights to get into the areas where the customers are in order to have traffic to support the operations of the lines we propose to buy.

Q Now, if the Denver Rio Grande were awarded trackage rights between Ogden and the Bay Area instead of an outright purchase of the line, would you need to generate as much traffic as you would under a purchase?

A I don't know that that study has been made. I

don't know if there is a minimum amount of traffic that would have to be generated, if that type study has been made. I have not made it, nor do I know of any that have been.

Q If your request to purchase the line between Ogden and the Bay Area were granted, in order to operate that efficiently would you need to also get the trackage rights into Oregon?

A Absolutely. The Oregon traffic tends to balance the traffic flows east of Rio Grande's point at Ogden, so this provides us with the traffic base to consolidate on our line to provide the competitive train schedules -- in order to be competitive, you have to be profitable, too. And this gives us then the traffic base to carry on a profitable operation east of Ogden.

Q And, again, you haven't done any studies to determine how many carloads of traffic you would need to provide, in your opinion, adequate service if you were awarded trackage rights?

A No, nor do I know of any of those studies that have been made.

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

JUDGE HOPKINS: Mr. MacKenzie?

BY MR. VINCENT MACKENZIE:

Q Good morning, Mr. Nance.

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A Good morning, Mr. MacKenzie.

Q I'm Vincent MacKenzie from the State of California. I have a few questions related to the proposed agreement that you discussed with Mr. Stephenson that you would intend to use and request the ICC to impose upon the Applicants in the event that your trackage rights or acquisition rights were granted.

Do you recall that dissertation, conversation?

A Yes, sir.

Q In the event that the ICC did not impose upon the Applicants your proposed agreement, specifically the portions related to the desired local services and equipment, would you still intend to utilize those trackage rights or acquisition rights if told by the ICC to go out and negotiate your agreement and provide your own equipment?

A Yes, sir.

Q You would. Have you determined what alternatives would be available to you in that event as far as equipment and other requirements?

A Yes, sir. We know that there is plenty of equipment available on short notice acquisition. There are cars stored all over the country. In fact, we have some 3,000 cars at the present time stored of our own ownership, and in addition to that, we have some I

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believe it's 3,000 cars that are in assigned service pools to customers that are being served now on those lines. In other words, we're already supplying a lot of that equipment that goes into those services, and in the past we supplied more when there's been a shortage of cars. But as it is now, there's a surplus of cars, and as soon as we get an empty car, they send it back to us.

Q I recall you indicated there was a surplus of cars, but more specifically, I'm concerned about the local services that you would desire the Applicants to perform for you. Have you considered and will you intend to provide your own local services in the event the Commission did not require that of Applicants?

A Yes, we would do that. And again, I would think we've got plenty of locomotives, and they're available through purchase or lease if we needed more.

Q Would your witnesses be able to respond to questions related to the ramifications of providing your own local services in the event the Commission imposed that upon you?

A Are you talking about from a cost basis or traffic basis?

Q Any basis.

A I suppose there would be. I don't know whether Mr. Smith has done any cost studies along those

lines, but I'm sure Mr. Brainard and Thiessen from the traffic point of view, or the economic witnesses can handle it.

Q Would you contemplate utilizing either your trackage rights or acquisition rights, whichever were granted to you, pending the resolution of an agreement between yourself and the Applicants?

A Yes, sir. Probably much the same as we did in that Kansas City case where the Commission said you can't have your merger until you get these things going; and we were able to arrive at an interim agreement while we argue about the final form of the long-term trackage rights agreement.

Q In the agreement that you have arrived at with the help of the ICC with the Union Pacific-Missouri Pacific as to that portion of your trackage rights granted you between Pueblo and Kansas City, do you recall that?

A Yes.

Q Does that agreement provide for you to provide the local services or the Union Pacific?

A On that line there are no local services to be performed because of the nature of the track out there.

Q How about as to equipment requirements?

A We furnish the equipment.

Q The last question I have is have you had an opportunity to consider from the operational standpoint whether there are any conflicts that exist or incompatibilities that exist between your proposed acquisition of trackage rights and the other proposed conditions that -- specifically the Kansas City Southern or Union Pacific have requested?

A I have not evaluated their impact on what our proposal is, no.

Q Do you know if anyone else in the Denver Rio Grande Western has done that?

A No, they have not.

MR. VINCENT MACKENZIE: Thank you.

JUDGE HOPKINS: Mr. van Orman, did you have a question? Do you have several questions?

MR. VAN ORMAN: Several but not many.

JUDGE HOPKINS: I'm not limiting you. If you go on too long I might limit you, but not right now.

BY MR. VAN ORMAN:

Q Mr. Nance, my name is Chandler van Orman, and I am appearing on behalf of the City of San Jose.

A Good morning.

MR. VAN ORMAN: Your Honor, I have distributed a document which I would like marked for identification.

JUDGE HOPKINS: This would be included. We

haven't been receiving interrogatories in evidence because we would be inundated with them normally. There's no reason you can't ask questions about it without the need for identification.

MR. VAN ORMAN: All right, Your Honor. Thank you.

BY MR. VAN ORMAN: (Resuming)

Q Mr. Nance, directing your attention to page 2 of your verified statement, several of the sections of track over which you request trackage rights are identified as Elmhurst, California to San Jose or the Hayward and Milpitas lines.

A Yes, sir.

Q Now, are you aware that SP has two tracks between Elmhurst and San Jose?

A Yes, sir. One is the Mulford line, and the other is the Milpitas-Hayward line, as I have tried to define them.

Q In your inspection of the tracks for the purposes of this proceeding did you inspect both the Milpitas and the Mulford line?

A I went over the Mulford line, yes. I looked at both.

Q All right. With respect to your request for trackage rights between West Oakland and Mulford, do I

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conclude that you are not requesting any trackage rights between Mulford and San Jose?

A Over the Mulford line, that's correct.

Q And your only request for trackage rights between Elmhurst and San Jose relates to the Milpitas line?

A Yes, sir.

Q And your request from San Jose south to Lick covers that section also from San Jose to Sunnyvale.

A That is correct.

Q As a separate section.

A And then I believe there's a place up towards Agnew that is also included from the south end of that Mulford line, from Santa Clara to Agnew.

Q Mr. Nance, on page 26 of your statement when you refer to gathering and distribution points, you identify San Jose as one of those and indicate that service required at that point would be provided for by separate agreement.

Has the Rio Grande entered into any discussion with the Southern Pacific regarding the provision of service to San Jose?

A No, sir, there have been no discussions.

Q Directing your attention to page 27 of your statement --

A The statement or the operating plan? I run out of statement at 24, so it must be the operating plan.

Q I'm sorry. With respect to common point consolidations you indicate that some consolidations would take place at San Jose. Have you made any study to see what effect, if any, the consolidation at San Jose would have upon San Jose itself or the traffic?

A No. And again, the common point as I have used it here -- and I may have misused the interpretation of common point -- but common points you will notice are all of those points at the ends of our trackage rights line. So as far as any consolidations are concerned, I don't know of any.

Q Mr. Nance, with respect to Appendix 1 to Exhibit 13 in your operating plan --

A Yes.

Q Page 1, down by the schematic depiction of San Jose are the lines identified as running north to Sunnyvale and the line, the Hayward line to Niles reversed in that appendix? Doesn't Sunnyvale run northwest and --

A What I intended to show there is north to Sunnyvale would be over the Coast line; south to Lick would be over the Coast line; and the Hayward line to Niles would be served by those locals working out of San

Jose. That was my intention there. I didn't intend to be geographically correct with my directions.

Q Directing your attention to Appendix 12 of your Exhibit 13 -- well, let's do Appendix 10; that comes first. Page 2 of Appendix 10. You indicate over the segment of line designated Martinez-San Jose, the total average density to be 3.47 million tons per mile.

A That is intended to be between Oakland and Martinez, not San Jose and Martinez. What I should have done would be Oakland-San Jose was just to have shown as a question mark or something there, because I don't know what -- because I'm not running my trains down there. They will be included within the Southern Pacific's trains between Oakland and San Jose. I didn't show a gross tonnage figure on that portion of the line.

Q Do you have any estimate as to what that figure might be?

A It would be less than a million tons a year. Right off the top I cannot give that to you. I could probably figure it out if I had some time, but I don't have it available right here. But just a guess, it would be considerably less than a million tons.

Q And all of that would move over the Milpitas line?

A Yes, sir. Between Oakland and San Jose.

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Q Now, that was at the end of year one. Do you know what the figure would be at the end of year two?

A I am using a year three figure of less than a million.

Q Now, is there any reason why any or all of that traffic could not move over the Mulford line as opposed to the Milpitas line?

A Other than we may have got sidetracked on this thing a little bit in the very beginning when we were trying to determine what conditions we should seek. We looked at what was commonly known as the old CP lines, and the CP line happened to be on that Hayward line. And if I had it to do over again, I would ask for Mulford. But rather than being a bait and switch guy, we'll stay with Hayward.

Q So in your opinion, there really isn't any reason why the traffic could not move over Mulford?

A No. In fact, it's a better line than the Hayward line is.

Q Mr. Nance, direct your attention, if you would, to page 2 of your answers to my interrogatories.

A Yes, sir.

Q With respect to the westbound destination traffic in the lefthand column, you indicate the total of 682 cars as moving westbound. I assume that those

cars moved to Western Pacific points?

A Yes, sir, I believe that's right. I did not do the actual work on this exhibit. It came from some traffic people. But that is my impression that that is WP traffic. You may want to ask Mr. Brainard. He may be able to help you on that a little bit more.

Q Well, regardless of the accuracy of the number of cars, your impression is that those cars did move to Western Pacific points?

A Yes, sir. Or from Western Pacific points.

Q Right. And they would have moved over Western Pacific track, or would they?

A To San Jose?

Q Yes.

A I would -- I don't know they came up with that. I think you had better clarify that. If it is significant to you, I think you'd better clarify it with them, because I would just be giving you a guess.

Q Are you aware that Western Pacific does have a track that serves certain portions of San Jose?

A Yes, sir, I am.

Q Now, with respect to paragraph B on that page, you estimate that in the fourth year following consummation that a certain number of eastbound and westbound cars would move over the Milpitas line. Would

that also include traffic to or from Western Pacific points?

A I'm sure that it would, yes. I'm not certain.

Q You don't know what portion of that would be included?

A No.

Q Now, you also indicate that a certain number of eastbound or westbound cars would move over the Sunnyvale line.

A Yes.

Q I assume that -- well, I don't assume. Do you know if those numbers also include traffic moving to or from Western Pacific points?

A I would -- from reading this I would say that it does not, because it doesn't specify.

Q And all the traffic moving over the Sunnyvale line would move over Milpitas as opposed to the Mulford line?

A Yes.

Q Now, you indicate that Rio Grande does not expect any increase in traffic, and I asked if you had any studies which would substantiate that, and you indicate they are all in the document depository. Are there any studies which you can identify for me?

A I can't identify any particular studies for

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you. If you don't want to go to the depository, I think when you ask -- when you have Mr. Brainard here next week, he can probably go into greater detail on that, because he has looked at that very closely.

Q Thank you.

Now, with respect to your request for unrestricted full service trackage rights on these various segments, and also against the background of your statements, your testimony, I understand that Rio Grande does not intend to operate any through trains between Oakland and San Jose.

A That's correct. I met with your city manager there and explained that to him, that it's traffic that is generally there now and will be moving in the same kind of trains that is moving in and out of there now with Southern Pacific crews on them and Southern Pacific operation.

Q And the traffic that would move out would depend on your solicitation and blocking and consolidation by SP for movement out to Oakland?

A That's correct, yes.

Q But if these trackage rights are granted, is it not true that Rio Grande would have the right to run its own trains over the Milpitas line through San Jose, collecting and distributing traffic?

A Yes, sir. If that were the only way we could get down there, we would have the right to do so, yes.

Q And I expect you wouldn't hesitate to do that if the need arose, would you?

A No, sir.

Q Do you think there's enough traffic base between -- not between but in and around San Jose to justify your operations of your own equipment down to and out of San Jose?

A I think there is. And again, we are going back to why are we in this whole thing, and it's to provide that competitive alternative. And if somebody wanted us to -- you know, we have the right to go down there, and we don't have any other way to get there. You can't have all winners. There's bound to be some losers. And if this was one of those areas that right off the top wasn't profitable, we would still bite the bullet and do it, I am sure.

Q But you don't suggest that the consummation of the Santa Fe-Southern Pacific merger would leave the shippers in San Jose without a competitive rail service because the Western Pacific is there?

A That's correct. They need somebody to compete with them, too.

Q Mr. Nance, on page 5 of your answers to m

interrogatories you indicate that -- and this is the first full paragraph -- in combination the lines would carry 38 plus million gross ton miles in the fourth year, with some 400,000 eastbound and 459,000 westbound. Where is the other traffic, the other 32 million tons or whatever it might be, if you know?

A I was trying to see what we're talking about here.

(Pause.)

MR. MAYO: Your Honor, to clarify the record, I think there are two different measures being used in that response. One is gross ton miles, and the other is gross tons per mile.

JUDGE HOPKINS: Do you understand the question? Can you answer?

THE WITNESS: I'm trying to see what this interrogatory says and ask him to reask the question. Then I'll see if I can answer it.

BY MR. VAN ORMAN: (Resuming)

Q Maybe I don't understand the question. Let me reask it.

The 425,000 and 459,000 gross tons is all Rio Grande traffic that you propose to move.

A Yes, sir. This is where I said less than a million tons; if you total the 425,000 and 459,000, you

come up with somthing around 975,000 gross tons. And I was trying to get this doggone gross ton mile thing back in here.

Q It's like apples and oranges. I know.

In your response to Interrogatory No. 5 you indicate Rio Grande will not operate any trains. I assume that to mean you don't propose at this time to --

A That's what we're saying, yes. Don't underline the "will not," because if the situation changes, as we have just discussed, we may do that.

Q I can't hold you to that, can I?

A No, sir.

Q Are you familiar, Mr. Nance, with the proposed construction of the Guadelupe Light Rail system in Santa Clara County?

A I became aware of that when I was in San Jose. That's the first I knew of it.

Q Are you aware that that rail system proposes to cross in some manner the SP track in the vicinity of North First Street in San Jose?

A Yes. And I'm not that familiar with the area, so it's just a fact that I know or something that I know is going to be happen.

Q Has any study been made or any thought been given to the effect, if any, that the increased number

of trains on the Milpitas line might have on the proposed crossing of that light rail system?

A Again, I don't foresee any increased number of trains because of Rio Grande's being there as we have proposed this operating plan. And if there was some reason that we had to go down there, it would be one train each way a day, and probably a very short train at that.

Q You don't know how much of the approximately million tons would originate south of North First Street?

A I don't know, sir.

MR. VAN ORMAN: Thank you, Your Honor. I have nothing further.

JUDGE HOPKINS: Off the record a minute.

(Discussion off the record.)

JUDGE HOPKINS: Let's take a 15-minute recess.)

(Recess.)

JUDGE HOPKINS: Let's get back on the record. Mr. Delaney.

BY MR. DELANEY:

Q Good morning, Mr. Nance. My name is John Delaney. I represent the Railway Labor Executives Association.

Your Honor, I've already distributed to you certain things that I will be dealing with later.

A Is that RLEA-3, 4 and 5?

Q Yes.

Mr. Nance, if I could ask you to limit your comments basically to the Ogden line and the Modoc line. The Ogden line in your operating plan you said runs from Ogden to Weso, Nevada, is that correct?

A I think that's right. Let me take a look.

Q I think that's page 2 and 3.

A Page 2 of the operating plan?

Q This is under the proposed ownership operation.

A Yes. Ogden to Weso, Nevada, yes.

Q And then from Weso to Klamath Falls, Oregon is the Modoc line?

A Yes, sir.

Q How long is that trackage combined, roughly?

A So that I'm not guessing, let me take a look.

(Pause.)

Q You could just give me one number.

A Okay. Ogden to Weso is about 360 miles. I haven't given you the exact number there but approximate. And from Weso to Klamath Falls is about 340 miles.

Q So we're talking roughly around 700 miles?

A Yes.

Q Do you have a home terminal for operating

employees in Ogden?

A No, we do not have.

Q Is the furthest west for something like that, would that be Salt Lake City?

A Salt Lake City, yes.

Q How far is Ogden from Salt Lake City?

A Forty miles.

Q As far as the operating employees are concerned, does Rio Grande have agreements with any unions?

A Yes, sir.

Q Which unions?

A All of the labor organizations that fall under what is commonly referred to as the RLEA for the specific crafts.

Q And as far as the operating employees, that would be who?

A UTU and BLE.

Q As far as you know, these agreements are structured on the 100-mile pay structure?

A They are.

Q And you propose operating along all of the lines in all of your operating plan with your own employees?

A That's correct.

Q Is this a fixed proposal?

A Yes.

Q So it cannot be negotiated?

A With whom?

Q With the RLEA, the people who represent the employees.

A We're willing to negotiate with those organizations represented by the RLEA, which is the same organizations that now hold working contracts with us. Yes, to that extent we're willing to negotiate.

Q So you would be willing to. You're not proposing to establish your own terminals along the combination of the Ogden and the Modoc line, are you? You're proposing to acquire present SPT facilities?

A That's correct. And just to clarify that, my operating plan contemplates using the same home away from home terminal arrangements as are now there with Southern Pacific employees, that the Southern Pacific employees now use as home away from terminals, I should say.

Q Can you explain that a bit?

A Well, Ogden to Carlin, for example, we may have to increase that from Salt Lake to Carlin would be the only change in a crew district that I would contemplate, and then Carlin to Wendell and Wendell to

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Klamath Falls, Klamath Falls to Eugene, Eugene to Portland, Eugene to Roseburg, Roseburg to Ashland, Carlin to Sparks, Sparks to Roseville -- in other words, the same crew districts, the same mileages that exist now.

Q The same ones. So you're not proposing to change the seniority districts?

A Only as it would relate to those seniority districts starting to fall under Rio Grande contracts instead of Southern Pacific contracts would be the only change.

Q In order to operate a through train from Ogden to Klamath Falls, you would have to switch crews, wouldn't you?

A At Carlin, yes, and at Wendell. You said to Klamath Falls?

Q Right.

A Yes, that's correct.

Q In your proposal you're also asking for the ability to service industries?

A Along the lines that we purchase we, of course, would take the responsibility for serving all of the customers, shippers on those lines, on the trackage rights lines. We want the right to serve those industries and to, you might say, contract with Southern

Pacific for that service.

Q And if you don't get your purchase option and you're just granted the trackage rights option, that will apply to those trackage rights as well?

A That is correct.

Q When you are servicing those industries, you are talking about what is called setting out and picking up cars?

A The spotting of the cars to the industry's warehouse or dock or whatever.

Q Spotting. Would Rio Grande employees handle the spotting?

A No. That would be done by Southern Pacific employees on the trackage rights portion of the line.

Q What kind of engine would you be using to spot a car?

A A Southern Pacific engine, I suppose, whatever they use.

Q Wouldn't you be using the engine from the train itself to spot the car?

A You're talking now trackage rights lines?

Q Okay. Trackage rights is fine.

A As pointed out in the operating plan, I would set that car or cars out at the designated gathering distribution points, and from there Southern Pacific

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crews would handle it.

Q And how about for the ownership lines?

A The ownership lines we would do that. We would do the switching. If it was a through train that spotted the cars, probably the way it is being done now is the way it would be done in the future.

Q Who would be doing classification of cars on the trackage rights?

A On the trackage rights line would be under a joint facility agreement by Southern Pacific switch crews at those major terminals specified in the operating plan and verified statement.

Q I'm sorry. You said joint crews?

A Southern Pacific crews in the joint facility terminals specified in the operating plan and in my verified statement.

Q Would you be using your own switch engines at any of these terminals?

A Not on the trackage rights lines, no.

Q They would all be SPT?

A Yes.

Q Now, as far as you're concerned, are actual crew assignments -- and by that I mean the manning issue of the train -- is that separate and distinct from the trackage rights request? Do you see those as two

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different subject matters?

A You're talking about the acquiring of the trackage rights lines or the trackage rights as between Southern Pacific and Rio Grande, and then the conditions upon which -- under which employees work, and the labor agreements between Rio Grande and somebody else?

Q Right.

A I see the interface for the operation over the lines, over the physical property of the railroad as between Rio Grande and SPT or SPSF, and then the use of crews and working conditions and the contractual agreements between the employees on those trains and ourselves as between Rio Grande and the appropriate labor representatives.

Q Has Rio Grande commenced any negotiations for these trackage rights yet with Southern Pacific?

A No, sir.

Q Will you be involved in those negotiations if you do?

A Will I be? I will probably be, yes. I hope so.

Q Now, if the Southern Pacific provided crews to the Rio Grande to perform the trackage rights work, would the cost of those crews be a part of the trackage rights contract?

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A They would be shared by Rio Grande and Southern Pacific on the terms which will have to be agreed to in the future. Those kinds of agreements have not been reached.

Q You indicated that your operating employees are represented by the UTU and the BLE, correct?

A I'm talking of train yard and engine service employees, yes.

Q The operating people. Does Rio Grande participate in the national handling of wage agreements?

A Yes.

Q Do you know whether or not the wage negotiations the Rio Grande participates in also include health and welfare benefits?

A They cover the full scope of the RLEA and the NLRC's negotiations, yes.

Q And your operating employees are covered by the Railroad Retirement Act?

A Absolutely.

Q And this is the type of pension that the operating employees are working for, in a sense?

A Everything that is provided for under the standard railroad retirement, yes.

Q Now, to your knowledge, are the wage rates of the Rio Grande operating employees comparable to the

wage rates of the Southern Pacific operating employees?

A I have not made any, you know, looked at each schedule, but it's my presumption that they're very close because they're both under the national wage agreements.

Q As for Rio Grande's fringe benefits, does Rio Grande provide the GA23000 insurance?

A This is the Travelers health and welfare or health and sickness? Yes.

Q To your knowledge, do you know whether or not Rio Grande costs per operating employee are higher or lower than --

A I say they're probably the same. They're fairly comparable throughout the industry. And there may be some tenth of a cent difference per hour or something that I'm not aware of.

Q Are you aware of any agreements the Rio Grande has with other railroads that provide for combined switching operations?

A Yes. We have some joint facility agreements at Salt Lake City, specifically the small arms plant where we service the industry one year and the Southern Pacific or Union Pacific will service it the next year. They handle our cars; we handle their cars on the years we are doing the work. We have the same kind of

agreement at Denver in the associated railroads. It was originally a five-party agreement. It is now a four-party agreement -- three-party agreement between Rio Grande, BN, Santa Fe for the switching of the Remico spur. And the railroads rotate as being operator of that line every three years.

Q As far as the agreement in Salt Lake City, are you aware of how the crews are assigned under that agreement?

A I know how ours are assigned. They work under the old SUNA yard rules and perform the switching as provided for under that agreement. The same applies on the Remico spur at Denver.

Q So you're familiar with the term "equity ratio?"

A Not really. Tell me what you're talking about.

Q Well, within these agreements is there some provision that the amount of work that an employee from a particular railroad does is compensated as a percentage of the work that he does as opposed to the other people, so that if Rio Grande people do 40 percent of the work, they'll be compensated at 40 percent wages for the entire switching operation?

A The way it works is we pay the crews that are assigned that work for Rio Grande, we pay those crews

their standard daily rate or mileage rate, and then the costs of that operation are prorated as between the railroads based upon the volume of traffic handled by each railroad. And that settlement is between railroads, not between the railroad and the employees.

Q So it is prorated?

A As between railroads, yes.

Q Now, as far as the traffic that Rio Grande is proposing to handle along these lines -- let's say along the Ogden to Modoc line -- the Rio Grande only handles that traffic now on the basis of interchange, is that correct?

A That's correct.

Q With the trackage rights that you are seeking do you intend to be able to handle traffic that is presently handled by Southern Pacific employees?

A That is correct.

Q And that also applies for the ownership proposals?

A Yes, sir.

Q Do you intend to solicit traffic that Southern Pacific is not handling at this time?

A We're going to solicit all the traffic we can get.

Q Has Rio Grande made any kind of a study as to

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approximately how much traffic you believe you will obtain from Southern Pacific that Southern Pacific employees presently handle?

A The traffic study indicates that we will handle a large volume of traffic of those lines, and most, if not all, of that traffic has previously been handled by Southern Pacific.

Q How many employees does Rio Grande believe that it would take to handle all of the work on the Ogden line, or let's say for the combined Ogden and Modoc line?

A My labor exhibits point that out, specify that by location. I have not tried to break it out by Ogden line versus the Modoc line, but it is all shown in my labor exhibit if you want to look at that, or if you want to take the time here today, I can go through and total those up for you by line segments.

Q How many crews would you say it would take to handle a train along a 700-mile route?

A Well, the way I calculated the number of crewmen that we would need was I used -- because I have specified in here that they be working under Rio Grande labor agreements, the mileage minimums and maximums for the various crafts -- I believe it's a 3,800-mile maximum for engineers, for example -- I think the number

of trains I anticipate operating over that particular district, multiply that number of trains by the mileage in the district, and then divided that out by the maximum mileage allowable per man -- this is their own interunion agreements -- and came up with the number of men. That's how I determined the number of men that would be required based upon the mileage minimums and maximums of Rio Grande contracts.

Q Do you know how many crews it would take to handle simply the traffic -- well, that was diverted from the Southern Pacific? Probably the same?

A It would be the same.

Q Now, wouldn't you anticipate that this diversion of traffic from Southern Pacific would mean less work for Southern Pacific employees?

A But it will mean more work for Rio Grande employees.

Q So that it would mean less work for Southern Pacific employees?

A Pardon?

Q So it would mean less work for Southern Pacific employees because now the Rio Grande people are doing the work.

A If our conditions aren't granted, that work won't be there for Southern Pacific either.

Q So you are saying that no matter what happens, they are going to lose the work?

A Yes, sir, on those specific line segments.

Q How about the other line segments?

A I don't know because I haven't studied those.

Q Now, you said that you haven't begun negotiations yet, but would you anticipate that if those negotiations began, that you would talk about who would bear the labor protection costs?

A That is not going to be a decision made by us. It will be made by the Commission.

Q I am going to be getting into some labor

questions. I don't want to repeat anything that Mr. Stephenson asked you, but it is my understanding of your previous testimony that Southern Pacific employees who are displaced, if your proposals are granted, these employees would not receive preferential hiring rights from Rio Grande.

A They would be given consideration in hiring by Rio Grande. When you start using the word "preferential," you start getting into a lot of -- well, somewhere down the road I will have to redefine preferential. All I will say is we are going to give them consideration in the hiring of the people that we need to operate that railroad.

Q So you will give them equal consideration along with any other railroad employee who might apply for the job?

A Well, I am sure that based upon our needs and their qualifications, that if they are acquainted with that particular operation, their qualifications are going to be much better than anybody else's.

Q So that the qualifications you are looking for in an employee you are going to be hiring, you won't be considering who previously employed that employee?

A No, sir.

Q Who is presently designated as the highest

officer with Rio Grande able to handle Section 6 notices?

A Mr. Mike Kanderis, the Director of Personnel.

Q Can you spell his last name for us?

A K-a-n-i-e-r-i-s.

Q But as a result of your assignments with Rio Grande, you are quite familiar with the labor relations aspects of Rio Grande's operations?

A I am familiar with them, and I am not in any way a labor negotiator. I am familiar with the general provisions of the labor contracts, yes, as an operating guy.

Q You are qualified to answer my questions as to labor relations aspects?

A You ask me the question, and I will tell you whether I am qualified on that particular question or not.

Q Do you know how many labor organizations Rio Grande currently deals with?

A I have not counted them. I told you that if we have got pipefitters work, they are represented by piperfitters, and if we have boilermakers work, then they are represented by boilermakers. And expanding on that, all of the organizations that are included within the RLEA are organizations that represent Rio Grande

employees as it pertains to a particular duty.

Q Do you know if any of these unions are represented by more than one general chairman?

A I don't know that, no. I have never thought about it, and I am not aware.

Q As to whatever organizations you can think of, are these crafts and employees represented by the same unions on Rio Grande as are on Southern Pacific, to your knowledge?

A I don't know who holds the locomotive engineers' contract on the Southern Pacific, whether it is BLE, or B of FL&E or the UTU. We have UTU, Switchmen and Trainmen, and BLE, and we also have the Firemen and UTU agreement for firemen.

Q Has Rio Grande reached an agreement in principle with any labor organization as to the type of protections to be imposed or available for employees in the event that the Commission approves your proposals?

A No.

Q Mr. Nance, the term "schedule agreement" is a term of art used in railway labor, is that correct?

A That is correct.

Q And it is comparable to what other industries would call a collective bargaining agreement?

A Correct.

Q Are there also unwritten practices that apply?

A I am sure there are, yes.

Q Did you participate in the analysis of Rio Grande's proposal as to its impact upon Rio Grande employees?

A Its impact on Rio Grande employees? There has been no such study made of impact on Rio Grande employes other than those increases in forces shown for some trainmen and enginemen in year three, and for switch crews at Grand Junction, or excuse me, Salt Lake City, Grand Junction, Pueblo in year three.

Q So the only impact on Rio Grande employees that you anticipate will be additional jobs?

A It will be positive, yes.

Q Has Rio Grande modified in any way any of its proposals since they were filed?

A No. There have been some errata, but they have been just to clean up some typo errors.

Q But nothing of substance?

A Nothing of substance.

Q How many Southern Pacific employees would be affected if the Commission approved all of Rio Grande's proposals?

A I don't know.

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MR. DELANEY: I believe that's all I have for now, Your Honor.

This might be a proper time for me to move into evidence RLEA-H-3, 4, and 5. I put a copy of all of those on your desk.

MR. ROACH: Your Honor, we are going to object to that because this is an incomplete text of our answers to these interrogatories. There are other objections, and the qualifications are not included, and further, we don't see any reason why it has to be admitted as an exhibit. It is already available to the parties.

MR. DELANEY: Your Honor, I heard your remarks earlier about not wanting to admit the interrogatories so that the Commission would not be inundated. However, as far as the Union Pacific and the Kansas City Southern are concerned, these questions were specifically not asked on cross examination so that they could be submitted in this form, so that we would not be taking up time.

There has been no redundancy. If you prefer, we would be willing to submit the complete body of those interrogatories and answers. But the redundancies have been excised.

JUDGE HOPKINS: Do you really object to

anything there? If you want to submit something further, you can either do it that way, the rest of the questions and answers, or do what Mr. Delaney says, let him submit the rest of them if that is what you would want.

MR. ROACH: I would prefer if we could have the whole text, because there are substantive objections at the front that are not in this document.

JUDGE HOPKINS: Well, Mr. Delaney, I will accept these now with a later submission that will include those that have been left out.

MR. DELANEY: That's fine.

MR. MAYO: Why don't we do that with the Rio Grande, too.

JUDGE HOPKINS: Why don't we do it that way?

MR. DELANEY: So they are tentatively --

JUDGE HOPKINS: We have Exhibits 3, 4, and 5 will be received in evidence as supplemented by -- I will give you the exhibit numbers. You can have 6, 7, and 8, and you can particularly submit them at a later date, as soon as possible.

(The documents referred to were marked Exhibits RLEA-H-3, 4, and 5 for identification, and were

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received in evidence.)

MR. DELANEY: That's all the questions I have.

MR. STEPHENSON: Your Honor, may I ask just a half a dozen questions?

JUDGE HOPKINS: I thought you might, Mr. Stephenson. You usually do.

Go ahead.

BY MR. STEPHENSON: (Resuming)

Q Mr. Nance, would you agree that the total transit time reflected in published schedules of rail carrier in the abstract are not the only factor in determining whether a particular TOFC service is competitive or not?

A I would say that the schedule has generally developed that some of these other competitive things have been decided upon, and that is only part of the package.

Q And the other part of the package would be such things as cut-off times?

A Absolutely.

Q And arrival times, and reliability of the TOFC service?

A Yes, sir.

Q Is it true that the proposed D&RG schedules

will not improve on the transit time over the present SPT-D&RG schedules?

A We don't think that the schedule times as such will improve. However, I hope that the performance of the schedules will improve. At the present time, the schedules that are advertised are not being maintained by Southern Pacific for a good part of the time across their line.

Q But you do not propose -- well, let me back up. When you say that, as you have said earlier, that the SP-D&RG-BN service is competitive to Chicago with the UP-C&NW service, what are you saying? Are you taking into account the fact that reliability on the part of the SP-D&RG-BN is sometimes off?

A Yes, the schedules are as advertised, not necessarily being made, but they are close enough that they must be competitive because that traffic is there, and evidently the shippers are happy with it.

Q Whatever difference there is between the proposed SPSF schedule to Chicago from the Bay area by way of its southern corridor and the existing SPSF-D&RG schedule will still exist after the merger, wouldn't you agree?

A Basically, yes.

Q You indicated that, and I may have

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misunderstood you, that one of the things that concerned you about the merger was the fact that schedules from Oregon to Roseville, or Oregon and the Bay area to Ogden were not improved, or did I mischaracterize your testimony?

A You are talking about those that relate to the Rio Grande?

Q Yes,

A Yes, sir, there was no -- there were no additional or improved schedules. There were a couple of them that were slowed down or eliminated, mainly pertaining to UP traffic is the one that has been eliminated.

Q It pertains to UP traffic?

A On the one that was eliminated, yes, but it is a deterioration of service through that Ogden gateway.

Q But it is a deterioration of service to the UP resulting from a decreased volume to the UP?

A That is correct. And then I think there has also been a change in the one train, that is specifically Rio Grande, and that is OACH -- CHOAT, and I think that now is going to have some delay at Roseville and then some servicing at Oakland, and go on to San Jose, which is some additional stuff to the schedule that is not necessary.

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Q And tha reading of the operating plan is what concerns you about the service to Ogden?

A Yes, sir.

Q Would you expect that the merger of the Santa Fe ani SP would have any impact on northern California scheiules above the Bay area or Oregon in view of the fact that Santa Fe does not serve those areas today?

A I don't think I follow the question.

Q Would there be any opportunity to increase schedules from Oregon to the Bay area or from northern California points to Ogden where there has been no ability to combine the routes of Santa Fe and Southern Pacific into a more efficient, faster route?

A No, and I guess that is what bothered me, that there is no -- none of these combining that route into a more efficient, competitive route.

Q Well, maybe I misunderstand you, but how could Southern Pacific and Santa Fe combine a route from Oregon to Ogden that would provide a better service than is existing today in view of the fact that Santa Fe doesn't serve Oregon today?

A When they put on that schedule between Eugene and Kansas City by way of Barstow, they told me that they figured on some traffic going to Kansas City by that route or they wouldn't put the train on there, and

that traffic now, if our joint solicitation agreement is working properly, should be moving over the Modoc Line.

Q If the traffic is taken away from the UP, you would think that it would be going down by way of Barstow, don't you?

A I think probably -- well this gets to be an argument about how much of it is taken away from the UP and how much of it is taken away from the Rio Grande because I don't know, but the UP Ogden gateway is pretty well already dried up.

MR. STEPHENSON: That's all I have.

JUDGE HOPKINS: Mr. Mayo?

MR. MAYO: No redirect, Your Honor.

If this is an appropriate time, I think we would like to have introduced into evidence all the materials that Mr. Nance sponsors. It is his verified statement, the operating plan, the labor exhibit, environmental and energy exhibits, the leasing chart and the two errata.

JUDGE HOPKINS: Any objection?

They will be received in evidence. Thank you.

You are finally excused, sir.

(The witness was excused.)

JUDGE HOPKINS: Mr. Roach?

MR. ROACH: Your Honor, at this time Union Pacific calls Donald C. Orris.

Whereupon,

DONALD C. ORRIS

was called as a witness by counsel for Union Pacific Railroad and, having been duly sworn by the Aiministrative Law Judge, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ROACH:

Q Would you state your name, sir?

A Don Orris.

Q What is your position?

A I am Vice President of Inland Transportation for American President Lines.

Q I have placed before you a ten-page statement with a one-page exhibit and a verification page dated August 9, 1984.

Do you have a copy of that?

A I have a copy, yes.

Q And is that your verified statement in this proceeding?

A Yes, it is.

Q Do you have any corrections you wish to make in it?

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A No, I do not.

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

A It is.

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

JUDGE HOPKINS: Ms. Kooperstein?

CROSS EXAMINATION

BY MS. KOOPERSTEIN:

Q Good morning, Mr. Orris. My name is Donna Kooperstein, and I represent the Department of Justice.

Could you please turn to page 5 of your testimony? On that page you discuss service contracts you have with the Southern Pacific, is that right?

A Yes, I believe so.

Q Why isn't APL using Santa Fe at the present time?

A APL does use Santa Fe servces on a limited amount of boxcar traffic, but as a normal course of our doing business, we tend to put all of our basic business with a single carrier in a particular geographic zone due to the way we operate our trains.

Q Did you put out contracts for bids for the traffic?

A Basically we put out proposals to the rail

carriers requesting their bids, and then we negotiate from their response.

Q Did Santa Fe bid?

A Yes, they did.

Q Did Union Pacific bid?

A Depending on the geographic zone you are in. In the corridor to the south going into the Texas and South Atlantic markets, the ony two carriers that were the Santa Fe and the SP. When you are talking about going to the Northeast, in that case the Santa Fe, the SP and the Union Pacific did all participate.

Q You said to the Northeast, the Santa Fe, the Southern Pacific and the UP all bid?

A Yes.

Q From what ports were those bids?

A That is basically cargoes coming over Oakland, Los Angeles and Seattle, in this case, which is obviously not susceptible to SP and Santa Fe, going to the North Atlantic, New York, Boston, Baltimore, Philadelphia area and to the midwest, Chicago-Ohio Valley area.

Q Could you please look at page 5 of your testimony? If you would focus on the first sentence in the first paragraph where you talk about rates rising for joint water-rail service to the level of all-water

rates, do you see that?

A Yes, I do.

Q Could you explain what you mean there?

A Well, it is basically our perception that if the merger between the applicants is allowed to take place without any conditions based on it, that those rates will tend to rise to the next competitive level, and that would tend to be probably an all-water alternative or a rail alternative through the Northwest or through the Central Corridor.

Q Are you talking here then about the costs that you would have to pay?

A Yes, we are.

Q For the rail transportation?

A Yes.

Q You are not talking about the rates that you charge shippers for all-water versus minilandbridge?

A No. It depends on the market. You have situation where many times those rates would be absorbed by the steamship carrier. There are certain rates on base products wherein the steamship carrier's ability to absorb those rates is suspect and those might be passed on to the trade. Cotton going back to Asia is an example of that, wherein the rates are so low today that the steamship carrier's ability to absorb freight rate

increases is really probably not realistically there.

Q So what would happen in that case, if the rail rates rose?

A Our investigation of that indicates that a number of things could happen. The market could cease to exist in that particular case, Pakistani cotton taken over Asia versus Gulf cotton, you could have a demise of that market to the benefit of the California market in the export cotton business. You could -- the Gulf cotton could either cease to be produced or it might find a European market as an alternative, which is today a lower revenue market for them. There are a number of factors that could happen there.

Q When you say cease to exist, do you mean that there may no longer be shipments from the Gulf to the Far East on cotton?

A That particular commodity is sufficiently fragile in the marketplace, and the inability of the steamship lines to absorb it could cause the market for Gulf cotton moving into the Asian market to terminate, yes.

Q In general, if rail rates rose, would APL increase all of its rates or just the minilandbridge rates?

A Generally, there is little correlation between

the interior rates and the ocean rates, minilandbridge rates, as you say. The two do not necessarily tie together or correlate. In other words, when the railroads go up, the ocean rates do not follow up or adjust. Generally speaking, the ocean rates are adjusted having little to do with what is happening in the interior rates.

Q Do you charge the shippers the same typically for water and minilandbridge service?

A Everywhere those rates are generally exactly the same.

Q Why is that?

A Market competition.

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Q If rates were raised and it would no longer be feasible for shippers in the Gulf to ship out cotton to the Far East, wouldn't that fact inhibit the railroads from raising their rates?

A It could have that kind of a factor, yes. It is a judgment call. If you go back to coal and the export market, where the railroads tried to hold up their margins a number of years ago, two years ago, when it looked like the coal industry was going up, and they failed to sign any long-term contracts.

The net result of that was that the market never really materialized, so if the judgments were made correctly, they might fail to raise their rates in that particular case, yes.

Q Do you think they would still have some ability to raise rates before the market would cease to exist?

A Each case I think is a judgment. That is one particular commodity. Resins is another commodity that is similar to that, but you have -- your import goods are all manufactured goods and whatever, and definitely if they raised rates, the product would continue to move.

Q Do you think that for most products if rates were raised the products would continue to move?

A Speaking of the Gulf market.

Q Right.

A The export markets are very sensitive. The import markets are less sensitive to that type of adjustment. It is always a difficult thing to evaluate, because it is a world market that we are dealing in, and there is always competition coming in from another area.

Q In your view, would certain shippers be willing to pay more for reduced transit time?

A Into the Gulf?

Q Yes.

A I think that varies with the shipper and the instance.

Q What type of shippers might be willing to pay more for reduced transit time?

A Oh, obviously your high value commodities, generally oriented toward the faster transits, and many of your import goods or consumer goods which do tend to be high value, so they are transit sensitive. That is not always true, however. You get people who are bringing in shoes and that type of thing, who are very non-sensitive to transportation, for whatever reason.

Q How do you serve the South Atlantic at present?

A Presently we operate all of our cargo on the

Southern Pacific and thence the Southern Railroad into the South Atlantic.

Q Could you please focus on Page 6, the second paragraph? How have your service and equipment needs to and from the South Atlantic been tied to the Gulf operation?

A The movements into the South Atlantic are historically totally eastbound, whereas the Gulf is historically heavier outbound in terms of cargo balance. So the essence is, we move our containers into the South Atlanic and bring them back in an empty state to the Gulf to go on back to the west coast, so the operations correlate very closely.

Right now we are building equipment to operate a unit train system into Atlanta and back with stops in New Orleans and stops in Houston, so again we have tied the two operations together into a single train operation. So they are very closely tied as far as APL's cargo movements.

Q Did APL ever serve the Gulf by all water?

A I am not sure if they did or not. It would have been prior to my employment with them, if they did. They were in an around-the-world service prior to 1976, and they were not in the around-the-world service, and whether that had a Gulf call in it or not, I do not

know.

Q How does minilandbridge through the Central Corridor compare in terms of rates and transit time to all water?

A You are speaking --

Q If you were to use the Central Corridor, how would that compare?

A To?

Q If you were to use the Central Corridor for minilandbridge between California and the Gulf coast, how would that compare to all water to the Gulf coast?

A Well, in terms of transit time, it would be faster than what is out there today. But the practicality, the hard part of your question is the all water portion of that.

How realistic is an all water service? We really maintain that that is not a realistic alternative. So when you say one versus the other, the one on the one side would be hard to evaluate. We would have to know, to answer your question, I would have to set up some hypotheticals.

Q If Southern Pacific and Santa Fe were to merge and raise their rates about 5 percent, would you switch to, for service to the Gulf, would you switch to the Central Corridor, or would you switch to all water, or

would you maintain minilandbridge over the Southern Corridor?

A The 5 percent change in our rates would not allow a switch to the Central Corridor or an alternative change.

Q Why is that?

A Well, you are talking -- the Central Corridor has a penalty on it of about $400 a 40-foot container, just pure cost. The 5 percent adjustment in our rates would amount to less than $50. So that is an extreme spread there, so that would not cause you to switch to the Central Corridor.

Q Is it feasible to switch to all water?

A Not economically feasible. The problem with the Gulf trade is that it is such a small market. You can't really sail ships in and out of there. I believe both in applicant's testimony and in other testimony here it has been shown that you can actually sail a single ship in there and serve the whole market. That is not a very realistic situation.

So, to say that you are going to put an all water alternative into the Gulf, about the only way you could attack that, and again, it doesn't pay out in economic terms, is to tie that into some kind of a service going onward to the east coast.

If you looked at the economics of the carriers who are serving the east coast, you would see that they have had a great deal of economic problems in doing that on an all water basis, although that is the dominant mode to the east coast.

Q For minilandbridge from the Pacific Northwest ports to the northeast part of the United States, do you use the Southern Corridor at all?

A We use Los Angeles as a gateway, and move via Union Pacific at this point in time to Fremont and then Chicago and on over. We also use Seattle as a gateway with the Union Pacific on through, and on occasions we use Oakland, but we do not go through the Southern Corridor and up, if you will.

Q Do you believe APL would be better served by preserving the existing competition between Santa Fe and Southern Pacific, thereby allowing the merger and giving trackage rights to the UP?

A I think we would be better served by the status quo, keeping the Southern Pacific and Santa Fe in place.

Q Why is that?

A Southern Pacific has represented a strong competitor in the marketplace, and represents four transcontinental competitors, and we believe in the

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overview of things that that would be the best result, that we would continue to maintain that competition. We are very much tied to the idea that competition and the benefits of that come together. It is proven time and time again in my transportation experience.

MS. KOOPERSTEIN: Thank you. I have no further questions.

JUDGE HOPKINS: Ms. Reed?

BY MS. REED:

Q Good morning, Mr. Orris. My name is Mary Reed, and I am appearing on behalf of the U.S. Department of Transportation.

In response to a question from Ms. Kooperstein of the Department of Justice, you indicated that containers out of the Central Corridor have a $400 penalty moving to the Gulf. Is that correct? Did I hear you correctly?

A Yes. What we are basically saying there is, you have 1,000 miles of circuity, and if you costed out the intermodal transportation in the railroad business today, it is about a 40 cent a mile cost, which is where the $400 comes from. You see a similar reflection of that number in the rates that you see in the market today.

Q So that does not reflect a bid quotation that

you have received from, say, the Union Pacific or the SP-DRGW out of Oakland to the Gulf?

A No. It does reflect, though, I believe, rates that are out there by tariff from --

Q Published rates?

A Yes, circular rates.

Q Now, the rates that you have out of Los Angeles or Portland or Oakland on volume container movements, are they generally lower than the tariff rates?

A Generally they are, yes.

Q Now, at Page 4 you have a table showing analysis of containerizable import cargoes. Could you define for me what you mean by containerizable?

A Basically this was prepared by our marketing department, and it excludes such things as bulk rubber, machinery that won't fit in containers, and it is a commodity breakout of those types of products.

Q So it would include commodities that are not presently moving in containers, but that you feel can move in containers? Is that correct?

A It could, yes.

Q Now, you have a multiyear contract with the Southern Pacific. What is the term of that contract?

A Dates?

Q Yes, length.

A That contract actually expired in July of last year. We have been operating under an interim agreement until we conclude the existing contract.

Q How long are the contracts usually?

A Usually a minimum of three years. The present ones have options out to six years.

Q Options of either party to renew it?

A No, there are options on our part only.

Q Would that be the specified rate level or is there some flexibility on behalf of the railroad to increase --

A Generally what they will have is a specified rate level with a specified escalation clause.

Q Other than that, the railroad is not allowed to increase rates beyond that level?

A That's correct.

Q Now, are those contracts terminable at will or on some other notice period?

A No.

Q You also indicated that Union Pacific provided you service from Seattle-Oakland and Los Angeles to midwestern gateways, I believe, like Chicago.

A Right.

Q Can you tell me whether the contract rates for

those movements were the same via all ports to Chicago?

A They are not, but the difference is nominal.

Q It is slight?

A Yes.

Q Are those rates lower or higher than the minilandbridge rates to the Gulf via the Southern Pacific?

A It depends on which rate. It is comparable within a range of $50.

Q Are you at liberty to say what the contract rates are for the movements via the Southern Pacific to the Gulf?

A I don't see a problem with that, no.

Q You can say?

A I think so.

Q What are they from Los Angeles to the Gulf?

A To the Gulf it is roughly $900, $899, to be exact. That is a contract rate absent the unit train operation or whatever else.

Q Absent the unit train?

A Yes. We have other rates on unit trains that are now being under negotiation which are lower than those, but they do require us to provide equipment and those kinds of things.

Q So the 899 is with the --

A That's with Southern Pacific supplying a car, and that goes into the Gulf.

Q Supplying the car?

A They put up the car, the rail car.

Q And under the unit trains you provide all the rail --

A We provide all the rail equipment, and we guarantee certain volumes per train.

Q Now, did you have, under your prior contract with the Southern Pacific, did you ave a similar type of arrangement with a contract rate and then a unit train?

A We did not have a unit train rate under the previous contract, no.

Q Did you have a similar arrangement with the Santa Fe when they were your primary bidder?

A We did not have unit train rates, but yes, we had rates.

Q Are you also at liberty to tell me what the Union Pacific rates are from Oakland, Portland, and Seattle to Chicago?

A It is basically $869. Now, again, you have to be somewhat careful here. That is a minibridge number. It is different if it is a microbridge. It is different if it is -- the rates are much more complex than a single quote like that.

Q Are the microbridge rates higher than minilandbridge?

A Yes, they are.

Q Significantly?

A About $1,000.

Q $1,000 compared to $869?

A Yes.

Q Now, I take it from your previous answers that the Union Pacific has never solicited traffic out of Oakland to the Gulf or southeastern points. Is that correct?

A That would be correct, but you know, when you say that, it is obvious by its circuity that they could not offer a competitive package, so it was just an accepted fact.

Q And they have never solicited bids from Portland to the Gulf or southeastern points?

A No.

Q Could you briefly describe how APL ships coal on the western ports? For example, they first arrive in Los Angeles and then move up to Portland and down to Oakland? Or how do they call at the various ports?

A Okay. The present deployment, which just came into effect like two or three weeks ago, has two services in the trans-Pacific market. One is called our

PNX, and it goes to Seattle, down to Oakland, back to Seattle, and back to Asia.

The other service is our PSX, that calls at Los Angeles, goes to Oakland, and then back to Los Angeles, and then back to Asia.

Three weeks ago we had a deployment wherein we had what we call a tri-service, which called Seattle, then Los Angeles, then Oakland, then back to Seattle and back to Asia, and we had a Cal-service, which called at Oakland -- I'm sorry, called at Los Angeles, then Oakland, and then back to Asia.

So, not to mislead you, but taking you through all of that, the deployments do change.

Q I would imagine that the transit times from the various ports to the inland points would also change based on which port you call at first, correct?

A That is correct. You have a situation where your Gulf and South Atlantic cargoes are always going to tend to come off at Los Angeles because you are bringing ships to Los Angeles to the local market.

The most logical place to take that cargo off is where you have the least amount of inland transportation. The cargoes to the northeast or the midwest can come off at either gateway because there is no penalty at Los Angeles for the Seattle versus

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Oakland, so you have gateway flexibility on those cargoes, so you tend to concentrate your northeast cargoes on your Seattle ships, and you tend to concentrate your Gulf and South Atlantic cargoes on the San Pedro ships.

Q Now, is minilanibridge or microbridge traffic considered to be incremental traffic?

A Minilandbridge and microbrige traffic represent 65 percent of APL's inbound business, so it would hardly be considered incremental.

Q Now, has the Burlington Northern ever made bids out of Seattle to the Gulf on minilandbridge traffic?

A No.

Q At Page 8 you indicate that, "While APL uses trucks for some movements, we have found trucks to be useful only in limited perishable services or in spot movements on relatively short hauls."

I would like you to focus on the words "some movements." Can you quantify that for me, as to how many containers you have had moved by truck to the Gulf?

A Yes, into the Gulf itself there were approximately 18,000 movements. I believe there were 127 truck movements.

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Q Now, did APL engage in minilandbridge service prior to the Commission's granting of an exemption of TOFC and COFC service?

A It did, and that exemption really doesn't -- minilandbridge service continues to be regulated. It is not exempted because it is a connecting carrier service.

Q It is regulated by the FMC? Or your rates are regulated by the FMC?

A Yes. Right. So deregulation per se did not affect the minilandbridge arrangements. Those were always connecting carrier divisional arrangements, is what they were.

Q Now, when a shipper in Asia or Japan books cargo on a ship -- or does it book cargo on a ship, or does it just tender you the traffic and say, I need to get it to Houston?

A No, they book by vessel.

Q And when they book on that vessel, they know, they have a guaranteed or semi-guaranteed arrival date. Is that correct?

A There are per se no guarantees. In other words, there is no penalty or tariff or anything like that. Basically they have -- we have an advertised schedule that says this will be our arrival date.

Q And since they specify the ship, you don't have the option of putting it on another vessel to fill out a load or put it on an earlier ship, or hold it back for a later ship?

A We operate a very complex relay system in Asia where the two services I described to you, they overlap. And if you book on a particular vessel -- let's say you are a Houston shipper and you book on a vessel that is going to Seattle, that cargo will get relayed in Kaoshuing, Taiwan, to a ship going to that destination.

So we do relay cargoes. Booking by vessel is really done to get you space on a ship leaving a port in Hong Kong, Singapore, or wherever, and that is what gets you into the system, but that doesn't say that you are on that particular ship all the way to the west coast.

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Q At the bottom of page 8, you indicate that motor carriers have quoted rates 80 to 90 percent higher than existing rail divisions.

Are those motor carrier quotations based on spot or frequent shipments, or are they based on volume?

A We went out and solicited motor carrier quotes to determine what was the best number we could possibly get based on a hypothetical matched return.

Q Excuse me?

A What I call a hypothetical matched return. In other words, the basis of the quotations we sought from the carriers were that we would give them a load at the other end to come back with, so that it would be a balanced haul, and knowing full well that we couldn't provide that on the cargoes due to time sensitivity and whatever, but we wanted to see just how low we could go for the motor carrier industry.

And we went through eight or nine independent haulers to obtain those quotations, and that was really the basis of the statement.

Q And those were major motor carriers?

A I have a list of them if you would like.

Q I mean they weren't independent operators or smaller firms?

A They are independents. In other words, it's not CF or somebody like that, no, who has a high-cost type contract. These are the low ball carriers in the market.

MR. REED: Thank you very much. That's all I have.

JUDGE HOPKINS: Do you have anything further?

MR. ROACH: Just two brief clarifications.

MR. HYNES: Your Honor, before redirect, I realize that the Applicants have not requested cross, but I'd like to ask a question or two, if I could, to clarify one point that was made during the cross-examination by the Department of Transportation.

MR. ROACH: I think I'm going to object.

JUDGE HOPKINS: Are we going to have this, with all these witnesses now?

MR. HYNES: Oh, no.

JUDGE HOPKINS: This is the one?

MR. HYNES: This is the only one that I contemplate. It's one point; about three or four questions.

JUDGE HOPKINS: He can object afterwards. I will allow you then, but I don't want it on the rest of them like this.

Go ahead.

MR. HYNES: I assure Your Honor that won't happen.

JUDGE HOPKINS: I wondered why you were sitting there.

MR. HYNES: I was ready for the next shipper. But something came to mind.

JUDGE HOPKINS: Go ahead.

BY MR. HYNES:

Q Mr. Orris, my name is Terry Hynes. I'm here on behalf of the primary Applicants. I believe you stated a few moments ago that you don't consider MLB cargo to be incremental insofar as APL is concerned because MLB was, I believe you said, approximately 65 percent of your business.

Is that what you stated?

A That's correct.

Q When you refer to 65 percent, are you referring to all MLB cargo that APL handles?

A I'm referring to all of the cargo that APL handles.

Q But when you said MLB is 65 percent, what you meant was MLB to everywhere, to the East Coast, New York, Chicago?

A Sure.

Q You were not saying that MLB movements between

0813 0134

Los Angeles and the Gulf constituted 65 percent?

A No.

Q Do you know what percentage of your total business MLB movements from Los Angeles to the Gulf would constitute?

A The Gulf again represents about 17,000 units. So it would represent, of our total transPacific haul, I don't know how to equate this both ways. We're going to do about 180,000 FAUs of cacpacity, and we have 17,000 of them in the Gulf.

So it would be 8 or 9 percent of our total business.

Q And isn't APL one of the biggest minilandbridge carriers in the transPacific trade?

MR. ROACH: Your Honor, I have to object. This isn't clarifying anything that I heard on cross-examination.

JUDGE HOPKINS: Just answer that question.

MR. HYNES: That was my last question.

JUDGE HOPKINS: All right. Go ahead.

THE WITNESS: We are one of the major bridge carriers; yes.

MR. HYNES: Thank you, Your Honor, I have nothing further.

MR. ROACH: I have, just to clarify.

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REDIRECT EXAMINATION

BY MR. ROACH:

Q The bids you solicited from truckers were those for high volume movements?

A Yes, they were.

Q And how did you arrive at the $400 differential between the central corridor and southern corridor? How did you calculate that?

A It's based on our own costing expertise relative to rail transportation.

MR. ROACH: Thank you.

JUDGE HOPKINS: Is that all, Mr. Roach.

MR. ROACH: That is all. And I move the admission of Mr. Orris' statement.

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

Call your next witness.

MR. ROACH: Your Honor, as our next witness, UP calls George M. Jones.

Whereupon,

GEORGE M. JONES

was called as a witness in the above-entitled case by counsel for Union Pacific and, having first been duly sworn by the Administrative Law Judge, was examined and testified as follows:

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DIRECT EXAMINATION

BY MR. ROACH:

Q Would you state your name, sir?

A George M. Jones.

Q And what is your position?

A I am an independent consultant in transportation economics.

Q I have placed before you two verified statements. The first is a statement of 31 pages with a verification page dated August 30, 1994.

Is that your first verified statement in that proceeding?

A Yes, it is.

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

A I do. On page 11, line 20 of that statement, the first word should be "northwest" and not "northeast."

Q That is two lines up from the bottom of the page, the third line up from the bottom?

A Yes.

On page 16, line 12, the sixth word should be "diversion" and not "division."

Q I think you have that backwards. It should be "division" and not "diversion."

A It should be "diversion."

Q It is "diversion."

A Oh, I'm sorry. It wasn't corrected on my copy.

Q The word should be "division"?

A Yes.

On Exhibit 2 --

JUDGE HOPKINS: Mr. Roach, which is it, "division" or "diversion," the way it should be?

MR. ROACH: It should be "division." Is that right, Mr. Jones?

THE WITNESS: "Diversion" should be the word.

MR. HYNES: We seem to have a disagreement between counsel and the witness.

THE WITNESS: The cost of "diversion."

BY MR. ROACH: (Resuming)

Q I'm sorry. That's the way it did appear in the statement as follows, so we don't need to correct that.

A That's right.

On Exhibit 2, the figure for MLB, which now reads 553,499, should read 553,622. The total then becomes 770,893.

On Exhibit 5, the number of Gulf should be 553,522. The total then becomes 1,582,932.

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The last total on that page shows now 6,603.235. It should be 6,603,235.

Those are all the corrections on that verified statement.

Q With those corrections, is this statement true and correct to the best of your knowledge and belief?

A Yes, it is.

Q Now, the second statement I have placed before you is a 17-page statement with an appendix and a verification page dated November 14, 1984. Is that your second verified statement in this proceeding?

A Yes, it is.

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

A Yes, I do. The first corrections are on Table 1, which is on page 4. All of these corrections will be in the 1983 column.

On the first line on the far right it now says 71 percent. That figure should be 77 percent.

Under total all-water service, the number now is 414,656. That number should be 343,520.

The next line down, which is natural rubber, the number is now 177,207. The correct number is 172,037.

Under maximum all-water containerizable, the

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figure now is 226,385. It should read 160,369. And the percentage figure which is now 29 becomes 23 percent.

The final number in the 1983 column, maximum total containerizable now is 778,167. It should be 712,151.

On page 3, line 21, which is the fourth line from the bottom, there is a figure of 71 percent. That figure should be 77 percent.

On page 7, line 5, there is the figure now of 141,650. That figure should be 109,419.

On the next line, which now reads tons in the Europe Pacific Coast Trade, the word "MLB" should appear between "Coast" and "Trade."

On the next line down is a figure of 52 percent. That figure should be 67 percent.

On line 11, there is a figure of 42 percent. That figure should be 44.5 percent.

On line 18, there's a figure of 55 percent that should read 47 percent.

On line 22, there's a figure of 43 percent. That should read 50 percent.

The final correction is on page 10, where on line 12 there is a figure of 46,000. That figure should be 40,000.

With those corrections, is this statement true

and correct to the best of your knowledge and belief?

A Yes, it is.

MR. ROACH: The witness is available for cross-examination.

JUDGE HOPKINS: Mr. Hynes, you can start now.

CROSS EXAMINATION

BY MR. HYNES:

Q Good morning, Mr. Jones. My name is Terry Hynes, and I'm here on behalf of the primary Applicants. I'll be referring during cross-examination this morning primarily to your September statement, so unless I state otherwise when I refer you to a page number, I will be referring to the September statement in support of the trackage rights application.

A Okay.

Q First I'd like to explore with you a little bit, though, your definition of a viable transportation option in the context of minilandbridge traffic.

I take that you were a bit distressed that Mr. O'Connell never provided you with a precise definition, at least the way you read his verified statement of what he termed a viable option.

Is that correct?

A That's right. I had some questions because some things are physically possible but don't make

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economic sense.

Q I'd like to ask you a few questions to see if we can figure out what your definition of a viable option constitutes.

Am I correct in reading your testimony that you believe that the important factors that will determine whether or not an option is viable are (1) the ocean carriers cost and (2) the transit time over the optional route?

A Well, transit time, yes. This is pretty clearcut. In terms of cost, there's cost to the shipper and there is cost to the ocean carrier, which in this context is also a shipper.

I would say the cost to the ocean shipper of the rail transportation and the ocean transportation combined, which in effect is the ocean cost and the rail rate charged to the ocean carrier.

Q Okay. And I take it from your remark in response to my question that you believe the transit time element is the more important of the two?

A No.

Q Which? Between the ocean carrier's cost, which is the ocean rate, and the rail division of the rate and the transit time, which of those two do you think is more important?

A It differs by commodity. Some commodities are highly transit time-sensitive. Other commodities are much less transit time-sensitive and are more rate and cost-sensitive.

So I don't think there is an easy answer, or a straightforward answer would not be responsive.

Q When you say some commodities are time-sensitive and some not, I take it you are referring to minilandbridge cargo as opposed to all liner cargo?

A No. I think this applies to liner cargo in general. But in the context of minilandbridge, it's especially important because that's one of the advantages of minilandbridge, its fast transit time.

Q My question to you is, thinking only of minilandbridge cargo, does the sensitivity of transit time differ commodity by commodity when you are considering the minilandbridge commodities?

A Yes, it does.

Q Am I also correct that in your opinion, minilandbridge movement by Los Angeles is currently the most cost effective routing for traffic moving between the Far East and the Gulf?

A Yes.

Q And in your opinion, it also has the best transit time?

A Yes.

Q I believe you testified, if I could direct your attention to page 11 of your September verified statement, I'd like to direct your attention specifically to the first paragraph under the hearing Roman numeral IV.

You state that for other Pacific Coast ports to be competitive alternatives to Los Angeles-Long Beach for MLB carriers, they need to have port-to-port costs and transit times equal to or better than those possible using Los Angeles and Long Beach.

Am I correct, then, sir, that as far as your definition of a viable option is concerned, that an option either through another port or all water, or what have you, can't be considered a viable option unless it can meet or beat Los Angeles, both in terms of cost and in terms of transit time?

A Well, this paragraph is a little ambiguous. When I say port-to-port, I'm talking about the minilandbridge port of origin destination, not necessarily the port of entry or exit.

Q Well, taking that as what I understand, that is what I meant.

Is it your testimony, based on this statement, that an option to a minilandbridge movement to the Gulf

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via Los Angeles is not a viable competitive option unless that option could beat the Los Angeles routing, both in terms of its cost to the ocean carrier and in terms of its transit time?

A Be equal or better; yes.

Q Meet or beat?

A Yes.

Q But it would have to meet or beat Los Angeles routing with respect to both of those factors?

A Yes, recognizing that there might be tradeoffs.

Q Let me direct your attention to the first page of your September verified statement. You state there in the second paragraph, that you were requested by APL to evaluate the options available to a transPacific ocean carrier transporting MLB shipments from Asia to the U.S. Gulf.

I take it, then, that this verified statement is limited to the Asia-Gulf market?

A Yes.

Q And does not study the European trades?

A No, it does not.

Q And you haven't conducted a similar analysis, an analysis similar to the one that is set forth in this statement for the Europe trade, have you?

A I did do an analysis of the Europe trade and it is covered in my second verified statement. But it is not covered in this one.

Q Would you turn to page 2, please? Specifically, I'd like to direct your attention to the fourth line.

You refer there to SP and Santa Fe Los Angeles-Texas routings.

A Yes.

Q Does your analysis in the September verified statement, is it also intended to cover Los Angeles to New Orleans movements as part of your overall study of the Asia-Gulf minilandbridge traffic?

A Yes, it is.

Q Does Santa Fe presently participate, to your knowledge, in movements between Los Angeles and New Orleans?

A In general, or for APL?

Q Well, let's try in general first.

A I don't know. I would assume they do, but only because they do have the service.

Q Are you familiar with the statement in Mr. Orris' testimony that refers to the Santa Fe routing in conjunction with the Kansas City Southern?

A No, I'm not.

Q Let's go more specifically now and refer to APL. Does Santa Fe presently participate in minilandbridge movements for APL?

A My understanding is that the SP is their primary carrier, the carrier with whom they have the contract. This is not to say they might not have random movements on the Santa Fe.

Q Are you aware, sir, that Santa Fe and KCS currently participate in a joint routing to New Orleans?

A Yes.

Q Via Dallas?

A Yes, I am.

Q In your opinion, sir, is that Santa Fe-KCS routing via Dallas to New Orleans a viable competitive alternative to the SP single line service?

A I'm not competent to respond to that. I guess my response -- I will try to be more responsive. I think that if the carrier, such as APL with large volumes of minilandbridge containers, went out for bid and the Santa Fe-KCS combination bid competitively, I would say yes, it is a viable alternative to the SP system.

If they came back with a bid which is much higher, I would say no, they are not.

Q Let me direct your attention to page 3 of your verified statement. Again, this is the September statement. Specifically, I'd like to direct your attention to the table on that page.

The first entry you have there is for an MLB movement via Los Angeles-Long Beach, and you show over in the far right-hand column, a transit time of 12 days.

Can you tell me what carrier you are referring to there?

A This 12-day transit time figure was taken from Mr. O'Connell's verified statement which was submitted in this proceeding. I do have an exhibit which shows advertised transit times.

Q Based on your knowledge of the industry, is there any carrier which currently advertises a transit time of 12 days for MLB cargoes over Los Angeles to the Gulf?

A No. None do.

Q What is the best advertised time?

A I would guess a representative transit time would be about 18 days.

Q Directing your attention to the third entry in that table, you have a routing via San Francisco-Oakland and a transit time of 15 days.

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Was that figure again taken from Mr. O'Connell's testimony?

A Yes, it was.

Q And is the same correct for the Seattle entry for transit time at the bottom of that table?

A Yes, it is.

Q Could you turn to page 4, please? Specifically, I'd like to direct your attention to the last sentence in the first paragraph on that page which states that: "This routing provided shippers with faster transit times and more frequent service at no increase in rates and gave transPacific ocean carriers access to a new market with little or no additional investment or ship operating costs."

My first question to you with respect to that sentence, sir, is it relates to the reference to no increase in rates.

Am I correct that that refers to the fact that MLB cargoes are priced at a level equal to all-water transportation by the ocean carriers?

A Yes, it is.

Q And with respect to the last phrase in the sentence, "little or no additional ship operating costs," am I correct that there are little or no additional ship operating costs for handing an MLP box

because the slot which the box occupies on the transPacific voyage would be moving anyway, whether or not you had the MLB cargo?

A That's right. This assumes that you're not displacing other cargo; that the slot would be empty and the ship would be operating whether the cargo went or not.

Q And jumping ahead to page 8 for a moment, I'd like to direct your attention specifically to the first full paragraph, and the last line in that paragraph. You have an MLB direct cost as low as 659 per TEU.

Am I correct that that figure reflects the lack of any cost for an MLB box, except for the railroad division and the handling costs?

A That's correct. And I think -- I hasten to say that this is a theoretical cost. I don't think any substantial minilandbridge operator can use incremental costing 100 percent.

Q But this number, 659, which is your estimate, is an attempt to place a number on the concept that we were talking about on page 4; is that correct?

A Yes.

Q Can I direct your attention to page 5, please? I'd like to direct your attention specifically to the paragraph immediately under the heading "Existing

Asia-Gulf Services."

You state there that currently, only one water carrier provides regular container ship service into the Gulf, and that carrier is Yant Ming; is that right?

A Yes.

Q Are you aware of the all-water service that Evergreen has just instituted to the Gulf which involves a feeler ship from their round-the-world vessels?

A Yes, I am.

Q Well, that now creates a second option, doesn't it, for someone who would choose an all-water routing?

A Yes. Evergreen was not operating at the time this verified statement was prepared. They have just started. And at that time, the existence of a feeder service calling the Gulf had not been announced.

I understand now they are going to call the Gulf with the feeler. It's still not a direct container ship service. It's a container ship service that they relay at Jamaica to a smaller ship for delivery.

Q But it is a means for delivering a box from, say, Yokohama to Houston in an all-water routing?

A Yes, it is.

Q Do you know if any other round-the-world carriers are contemplating similar feeder services that

0013 0154

would call the Gulf?

A I have heard that U.S. Lines is, but I've not seen any announcements or anything official.

Q Would you turn to page 6, please? I'd like to direct your attention specifically to the last sentence on that page.

You state: "Almost 100 percent of the Gulf-Asia MLB traffic moves over the SP and ATSF systems because of lower rates and faster transit time, as compared to using rail carriers serving the Pacific Northwest ports.

When you refer to lower rates, I take it you are referring to a low rail division of the through rate, rather than a lower rate to the shipper for the movement?

A That's right. Yes.

Q And that is because the MLB rates through all the West Coast port are equalized, as is the all-water. Isn't that correct?

A The reference here is to the circular rates that are published by the rail carriers for service.

Q But my question is, to narrow it down, and I think you answered it -- was that the word "rate" refers to the rail division rather than the rate which the shipper pays the ocean carrier for the overall

movement.

A Yes.

Q When you consider the various possible routings for an MLB movement from Asia inbound to the Gulf, am I correct that a carrier such as APL prefers Los Angeles from a cost standpoint, because that particular routing involves the shortest rail link, and therefore the relatively smaller division which it has to pay to the rail carrier?L

A I think that's true; yes. But I think it should be remembered that the large transPacific container ship operators prefer to call Los Angeles first inbound, because of the large local market of southern California. It's just so happens that it gives them the best access to the Gulf market at the same time, so it fits well.

Q I believe Mr. Orris testified that APL now does provide two services, one of which calls Seattle at the first port of call.

Is that correct?

A That's right. Many operarors do this. They have two services, one for the northwest, and one for California. The California market is much larger.

Q I'd like to discuss transit time with you. I take it your testimony is that applying your definition

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of viable option, that there is not another port on the West Coast that can meet or beat L.A. in terms of transit time; is that correct?

A Yes.

Q What is APL's advertised ocean tranit time, the ocean portion of a MLB movement from, say, Yokohama to Seattle?

A Would you repeat the question, please?

Q Focusing on the ocean portion of an MLB move for the moment, do you know what APL's advertised transit time for the -- for I guess it would be the transit time between Yokohama and, say, Seattle.

A Yes I don't know what their current advertised transit time is. They just changed their schedule and I haven't looked at the new schedule in terms of its transit time.

Q I'd like to show you at this time a document that was previously marked as SFSP-C-89. It's an APL schedule. I ask you if you would agree with me that the schedule indicates for a Yokohama to Seattle movement, a transit time of about eight days?

A Yes.

Q Now, let's look a couple of column over for a Yokohama to San Pedro-L.A. movement. Would you agree with me that the scheduled transit time for the ocean

0013-0154

leg is about 12 days?

A Yes.

Q What about the transit time from -- let me start over. What would be the approximate transit time from, let's say, Yokohama to Oakland-San Francisco for -- take any water carrier, because I understand that APL makes it a secondary port of call. But let's assume a direct service.

A It's a one-day sail. So one day.

Q Not one day from Yokohama to San Francisco?

A No. One day longer than the Los Angeles call. The carriers typically come from Yokohama to Los Angeles. Then they go to San Francisco-Oakland. The added time to get to San Francisco-Oakland is about one day.

Q So under the --

A Plus cargo handling. Say two days.

Q Your answer is that under the current deployment, which is Yokohama-Los Angeles, and then San Francisco, it is one day longer because there's a call at L.A. in between?

A One or two days.

Q The question I'd like you to answer is what do you believe the transit time for the ocean leg would be for a direct movement, if the ship were to go directly

8813-0155

from Yokohama to Oakland-San Francisco?

A It would be approximately the same, possibly half a day or a day less than going to Los Angeles.

Q So based on the transit times that we discussed, at least as far as the water leg of the MLB movement is concerned, the water leg of an MLB movement via Seattle would be faster, in fact, than the water leg via Los Angeles, assuming a direct call. Is that right?

A Yes.

Q So I take it then that the deficiency which you see in an MLB routing via a port such as Seattle has to be in terms of the transit time on the rail leg; is that correct?

A Yes.

Q Do you know what APL's currently advertised rail transit time between Los Angles and the Gulf is for the rail leg of the voyage?

A No, I do not. I think I should say that APL does not advertise a rail transit time. They advertise a port-to-port transit time. You can figure out, I suppose, from the schedule how much of it is ocean. But you don't know how much of it is cargo handling and how much of it is in the rail.

Q But if we look at a schedule such as the one we were looking at before, and you see a departure date

in Yokohama and you see an arrival date in San Pedro-L.A. and then an arrival date down in Houston, we can assume, can we not, that assuming the ship arrives on time at San Pedro-L.A. and that many days had elapsed, that the rest of the schedule time was taken up in loading, unloading, and delivering the cargo by rail. Is that correct?

A Yes.

Q Now, returning to the question of APL's advertised transit time from San Pedro down to Houston, would you agree with me if I told you, based on reading the schedule here, that the transit times are shown are approximately seven days?

A The difference between the total elapsed time and the sailing time is seven days.

Q And that includes the handling at the shoreline and the rail portion of the movement; is that correct?

A And any delivery time at destination; yes.

Q Are you aware, Mr. Jones, that the Burlington Northern Railroad serves the ports of Portland and Seattle?

A I am.

Q Are you also aware that the Burlington Northern is capable of providing single line rail

service between those ports and Houston?

A I am.

Q In preparing your analysis, which is set forth in your September verified statement, did you contact the Burlington Northern and ask them whether or not they could meet or beat a transit time of seven days to the Gulf from either Portland or Seattle?

A I did not.

Q Would you turn to page 7, please? Specifically, I'd like to direct your attention to the paragraph which is entitled "Costs." And I would like you to look at the last two sentences in that paragraph which read: "MLB rail divisions are assumed to be $899 per 40," and I assume that means 40-foot container, "and $564 pr 20-foot container. A container size mix of 60 percent 40's and 40 percent 20's is assumed."

I take it that 60/40 ratio is the ratio that you applied in costing the whole body of APL's traffic; is that correct?

A Well, just traffic in general; not APL's.

Q MLB traffic?

A MLB traffic; yes.

Q Does this 60/40 ratio, to your knowledge, reflect the actual mix of 40 and 20-foot containers that move in the Los Angeles to Gulf Corridor today?

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A I am not certain it reflects the actual mix because I don't think anybody knows the actual mix. Some carriers are very heavy in 40's. APL is heavy in 40's. Sea-Land is heavy in 40's. Some of the foreign flag lines, especially the Japanese, are heavy in 20's. So it's 60 percent 40's, 80 percent 40's, something in that range.

Q Did you contact APL to talk about the ratio with them in preparing your testimony?

A I did.

Q And did they confirm 60/40 as a good ratio t use for costing purposes?

A They felt it was reasonable, taking into account the foreign flag lines that are in the trade.

Q Did you also have a conversation at any time during the preparation of your testimony with Mr. Richardson of Paul Richardson Associates?

A Yes, I did.

Q And did you discuss container mix, this issue of what the appropriate ratio for container mix should be?

A Well, I talked to Mr. Richardson and also to Bill Kelly and his group, and I think they asked me what mix I was going to us, and I told them. And I said wha mix are you going to use, and they told me, and that was

about the extent of it.

Q And the mix that you told them you were going to use was 60/40?

A Yes.

Q I'd like to direct your attention to page 8, please, the first full paragraph on that page. In the first sentence, you make reference to a total cost of about $1,110 per TEU. Do you see that reference?

A Yes, I do.

Q Do you know what the corresponding revenue per TEU would be on the movement that you're talking about there?

A No. As you know, container cargo is rated by commodity, so revenues per container vary over a wide range and they change constantly, depending on the mix in the trade. So I suppose for an individual carrier, they know what their average revenue per box is on a particular trade by direction, but I don't know that for certain.

Q Would you agree with me that MLB cargoes tend to be higher value commodities?

A In the context of the Far East Gulf trade, the inbound trade consists of higher value commodities than the outbound trade. Is that responsive?

Q That's responsive.

Let's talk about the inbound trade. Do you agree with me that at least insofar as the inbound trade is concerned, that the commodities moving in MLB service over Los Angeles tend to be higher value commodities?

A Yes.

Q How about the outbound? Would you characterize the outbound cargoes differently?

A Yes. The Gulf outbound trade, whether it's all-water or container, this is primarily low value commodities.

Q Am I correct that higher value commodities generally tend to carry higher rates than low value liner cargo?

A I think that's a fair generalization.

Q So at least with respect to the higher valued commodities moving in minilandbridge service, those particular movements are probably closer to the high end of the spectrum of the rates which the ocean carriers charge when compared to the rates they charge for other things that they handle; is that correct?

A Yes.

Q I'd like to refer to the next paragraph on page 3. In the first sentence, you state that the Asia-Gulf market, by itself, is not large enough to support direct service by container ship operators.

Prior to the advent of minilandbridge in 1972, was Asia-Gulf trade served directly by water?

A It may have been. This was before the advent of --

Q I'm talking about minilandbridge was invented.

A I understand. I don't remember. It may have been that that Lykes or something like that was operating a service.

Q Prior to the advent of minilandbridge, all-water would have the only way the cargo could have moved; is that correct?

A That's right. I'm not trying to be evasive, but the all-water operators serving the market at that time may have been also serving the Atlantic Coast with the same ships, and I'm not sure that they were doing it as an exlusive Asia-Gulf service. And that is what I'm talking about here.

Q So your reference here about the market not being large enough to support direct service, direct round-trip service similar to the type of service which carriers such as APL have between, let's say, the Far East and Los Angeles, immediate turnaround service, rather than calling on a series of ports?

A Yes; port-to-port shuttle.

Q Is it your opinion, sir, that the Asia-Gulf market is not large enough to support an indirect all-water service as part of a number of ports of call?

A I would have to see the scenario to answer that question. I'd have to know what other ports are going to be included in the vessel's itinerary.

Q Would you turn to page 11, please? I'd like to direct your attention to the bottom of the page, the last paragraph on page 11.

You state in the first sentence of that paragraph that the published rates for small volume MLB container movements are an indication of differentials between ports. Then you go on to postulate a differential between 70 to 76 percent higher for these other Pacific Northwest ports than for Los Angeles-Long Beach.

My question to you, sir, is are the figures, the 70 to 76 percent figures, based on a comparison of published tariff rates for small volume shipments?

A Yes, they are.

Q Do APL's containers that move from Los Angeles to the Gulf over the SP today move under low volume tariff divisions, or do they move under contract rates?

A Contract rates is my understanding.

Q And is it your understanding that contract

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rates are lower than a published low volume tariff rate?

A Yes, it is.

Q By how much?

A Each ocean carrier, of course, has individual contracts. And the rates are different for each. But the ones that I looked at suggest that the high volume contract rates are about 20 percent less than the circular rate.

Q And in negotiating contracts between an ocean carrier and a rail carrier, would you suspect that an ocean carrier that had a lot of cargo moving between L.A. and Houston to tender, would generally have more clout and get a better contract rate than a carrier that only had a smaller number of containers to tender?

A I would think so.

Q Would you turn to the top of page 12? In the carryover paragraph, the last several sentences, you make a cost comparison to Portland vis a vis Los Angeles-Long Beach, and there you say that in your estimation the total cost of the movement over Portland would be about 31 percent higher.

My question is, is that number again based upon the low volume MLB tariff divisions that you're referring to on the bottom of page 11?

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A Yes. I think I should have said this earlier. The rail rates that are used are the circular rates, less 15 percent, which these are the numbers that Mr. O'Connell used, and I see no reason not to use them.

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Q I would like to refer again to APL's service which calls directly at Seattle.

Does APL offer MLB service via those ships?

A They do to the Atlantic coast, yes.

Q So they have facilities in place to handle containers at the Port of Seattle?

A Of course.

Q Do you know whether or not the vessels which currently call Seattle are operating to full capacity? This is APL vessels.

A I don't know that.

Q Do you suspect that they are or are not?

A This time of the year, this is a seasonal low in the shipping business in that trade, so they may not be full.

Q Can you give me a ballpark estimate of what you think the average annual utilization of an APL containership calling on Seattle might be?

A Average annual utilization.

Q On average, how are they doing as far as utilization in their calls at Seattle?

A Eastbound they are doing very well.

Q Very well? Can you quantify that in any way for me?

A Something less than 100 percent and probably

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something more than 80 percent. That is an uninformed, educated estimate.

Q All right.

Could you turn, please, to Exhibit 6?

Do you have that before you?

A Yes, I do.

Q I would like to direct your attention to the figures which you have in Exhibit 6 for the discharge costs, and I note that the all-water discharge cost is $177 and the MLB discharge cost is $135.

Could you explain for me why the discharge costs are higher for an all-water movement?

A Different unions, different unions on the west coast than the Gulf coast.

Q Versus the Gulf coast.

A Yes.

Q Isn't it true though, Mr. Jones, that a cargo moving MLB, or a box moving MLB would actually be handled more times than a box which moved all-water in its total voyage from origin to destination?

A It is discharged from the ship only once in both cases.

Q But it is then handled by -- at the destination port -- let's take an all-water movement to the Gulf. It would be handled, of course, in the Far

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East and then when it arrived in Houston, it would be handled at Houston, placed on a chassis, and it would go off to its final destination, right?

A Yes.

Q Now, in an MLB movement, let's say via Los Angeles, it would be handled at the port facility, correct?

A Yes.

Q It would be placed on a chassis and run over to a rail facility?

A Yes.

Q Again be handled, placed on a flatcar?

A Yes.

Q Be transported by rail to the Gulf, and again be handled from railcar to chassis and then on to final destination, is that right?

A At the Gulf it would be made available to the consignee at the terminal much in the same manner it would be made available at the all-water service berth.

Q But whether or not the consignee or the rail carrier or the ocean carrier is absorbing the cost, there is another handling involved there; somebody has to pay for it, is that correct?

A Yes. It must be transported from the ship to the railhead.

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MR. HYNES: Thank you, Mr. Jones. I have no further questions.

JUDGE HOPKINS: Department of Justice?

MS. KOOPERSTEIN: I just have a few.

BY MS. KOOPERSTEIN:

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

I have just a few questions on your opposition testimony.

Why is all-water the primary mode on the Europe-Pacific Coast trade?

A As compared to the Far East-Gulf trade?

Q Yes.

A Different kinds of commodities, different geography.

Q How do the commodities make a different?

A Well, the kinds of commodities that are ideal for minilandbridge are very time-sensitive, they are very valuable, and they load well in 40-foot containers. The primary commodities -- and these are the kinds of commodities that most on the Gulf-Far East inbound trade. The Europe-Pacific Coast trade consists of relatively dense commodities. There is a lot of beer, wine, alcoholic beverages, Italian marble, things

of that sort which simply do not load well in 40-foot containers. Put them in a 40-foot container, and you waste three-fourths of the cube in the container probably. So steamship companies don't like to put those kinds of commodities in 40-foot containers. Nobody likes to move 40-foot containers in intermodal transportation, for various reasons.

So that is a large part of it. It is a difference in the commodity mix. And I think there are other factors, too. The companies that provide the direct service without going via the Atlantic Coast ports are mostly European flag lines, and there's a lot of flag preference involved in the trade. The German shippers like to put cargo in German ships, and the German ships are going all-water, and the German steamship company is not offering MLB service. Things like that enter in.

Q Do the European flagships prefer to provide all-water service?

A Yes.

Q Why is that?

A Because they consider themselves steamship operators, I think, traditional. It is history.

Q You said the geography also makes a difference between the two trades.

Can you explain that?

A Well, the distance you save going between Europe and California by all-water versus what you would save by going MLB is not as great as the distance you save in the Far East trade by avoiding the circuity around the Panama Canal.

Q Why is all-water more cost competitive with minilandbridge in the Europe-Pacific Coast trade than in the Gulf-Far East trade?

A I think it is because the distance you save by going MLB is not that great.

Q On pages 15 and 16 of your opposition statement --

A Which one?

Q UP-MP-25.

A That is the November statement?

Q Right.

A What page?

Q If you could focus on page 16. Do you have that?

A Yes, I do.

Q You have a discussion there of California-to-Europe minilandbridge via Atlantic Coast ports, is that correct?

A Yes.

Q Does the shipper pay the same rate regardless of which port of entry is used on the Atlantic Coast?

A Yes.

Q If the shippers do pay the same rates, why would some shippers have their cargo go through New York when it is a slower transit time?

A Well, the shipper pays a rate, say, from Rotterdam to Los Angeles, so he doesn't know that this cost differential exists. This is a cost differential to the steamship company, not to the shipper.

Does that answer your question?

Q I think so.

Excuse me. I may be reading this chart wrong.

Is New York a faster transit time or a slower transit time?

A Slower transit time, higher cost.

Q Slower transit. Okay.

So the shipper does not know which way it is being routed, is that correct?

A Well, he might, but typically he gives it to the steamship company. In effect the steamship company says you give it to me in Rotterdam and I will deliver it to you in Los Angeles X days from now, and the steamship company gets it there.

Now, the shipper may for some peculiar reason have a preference and say, hey, can you get it to go through New York for me. He might. And the carrier might say no, I don't go to New York. I will have to go through Houston, or he might say New York is fine.

Q Is Charleston a slower or faster transit time?

A Charleston is a 10 percent longer transit time.

Q Let's start this again.

New York is minus 12 percent. Is that faster or slower than the Gulf?

A It is 12 percent faster.

Q Twelve percent faster.

A I'm sorry, Charleston is 10 percent longer. That's my fault.

Q I guess I am still confused. If the shipper pays the same rate and it can have a faster transit time, why don't they try to get their cargo shipped through New York?

A Well, Houston is the fastest, and about 75 percent of the minilandbridge traffic does go through Houston. Very little of it goes through these other ports. These other ports are little used for minilandbridge. They are only in here because they were

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cited by Mr. O'Connell as alternatives.

Q But is New York a faster time than the Gulf to California for minilandbridge?

A Yes, it is.

Q And is New York used for minilandbridge to the Gulf?

A Very little.

Q And why is that?

A Because the steamship companies don't like to carry it that way because the rail division is so high. They would much rather carry it to Houston and minimize the rail division.

Q New York is used at times, however, is that true?

A At times, yes.

Q And the shippers don't press for more of their cargo to be unloaded at New York than at the Gulf?

A I can't respond to that.

MS. KOOPERSTEIN: Thank you. I have no further questions.

JUDGE HOPKINS: Ms. Reed?

BY MS. REED:

Q Good afternoon, Mr. Jones. My name is Mary Reed, and I am with the U.S. Department of Transportation, and I just have a few questions.

Have you done any comparison of the scheduled transit times of the various ocean carriers in minilandbridge service as compared to their actual, the actual transit times?

A I have for the Gulf-Far East trade.

Q And how did they compare?

A Some lines are pretty good, some are not so good. I think the -- what you might call the premium carriers in the trans-Pacific trade, which are APL, Sea-Land and Maersk, their on-time of arrival rate is in the 90, 95 percent range.

Q Do shippers in planning their transportation needs generally allow for some type of delay in minilandbridge service?

A No.

Q They don't?

A No. The dependability is a very important consideration in ocean shipping. The premium carriers who are the big MLB carriers are very dependable.

Q If a schedule is one day longer but it is dependable, is that considered an equivalent service?

A It is a tradeoff. If you are not dependable, people won't pay any attention to your schedule, and your advertised transit time won't make any difference.

Q But if you -- excuse me, go ahead.

A I was going to say that between the primary carriers, the successful trans-Pacific carriers, they are all equally dependable. There are small differences in transit time because they tend to favor certain markets. So the transit time has a lot of leverage for that reason.

Q But it would depend upon the commodity whether or not a one or two day difference in transit time would be critical to the shipment?

A Yes.

Q Would you turn to your Exhibit 1 of your statement that was filed in support of the trackage rights?

A This was the first verified statement, in August?

Q Yes, sir.

Now, in that exhibit you show shares of traffic by the various ports, or excuse me, by the Atlantic, Gulf and Pacific, imports and exports from 1972 to '83.

What year did minilandbridge start between the West Coast and the East Coast, do you know?

A I don't remember the exact year, but it was the early 1970s, 1972, I believe.

Q Now, this exhibit shows that the Asia trade as

a percentage of weight tons has declined, is that correct?

A The Asia trade?

Q For East and Gulf Coast.

A Well, this table shows the way the total Asia liner trade was split up between the three seaboards in each year. It doesn't say anything about the total size of the Asia trade.

Q As a percentage is has declined going to the Gulf, is that correct?

A What this says is that for both the imports and exports, the Gulf share of U.S. liner trade with Asia has consistently declined.

Q Has the total tonnage remained the same, do you know?

A Total tonnage has increased greatly. It is a very fast growing trade.

Q Now, on page 7 of your statement you assume the MLB rail divisions are $899 per 40-foot and $564 for a 20-foot container.

A Yes.

Q What is the basis for that assumption?

A That is the APL's contract rate.

Q Could you explain for me the difference between the, I believe it is a $564 figure on the

divisions on page 7, with your Exhibit 6 where you show it as $478? Or am I comparing the wrong numbers?

A Well, if you took the two rates, the $899 and the $564 and you adjusted them for a 60 percent-40 percent-20 mix, the weighted average per TEU comes out to $478.

Q So that is the adjusted basis.

A Yes.

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

JUDGE HOPKINS: Mr. Roach?

MR. ROACH: Just two points of clarification.

REDIRECT EXAMINATION

BY MR. ROACH:

Q In your September statement, pages 11 to 12, you discuss relative rates, and Mr. Hynes asked you whether that was based on published small volume tariffs.

Do you recall that?

A Yes.

Q Would you expect the differentials to be approximately the same if you were speaking in terms of high volume negotiated contracts?

A Yes. I had to use the circular rates as the basis for comparison because there are no high volume rates between Portland and Seattle and the Gulf.

Q All right.

And Mr. Hynes asked you about a term, "viable competitive option," which is defined in your testimony as an option that is equal or better in terms of rates and service.

Do you remember that?

A Yes.

Q I want you to put that concept aside and answer this question. Is it your judgment in this testimony that, first, looking at the all-water alternative, that that is a -- is it or is it not your judgment that that is a significantly less viable alternative from an economic and service standpoint than MLP between Los Angeles and Houston?

A Yes, it is.

Q It is a significantly less viable alternative?

A It is a significantly less viable alternative.

Q And would your answer be the same for alternative MLB movements over the Pacific Northwest ports or over San Francisco via the Central Corridor?

A Yes.

MR. ROACH: That's all.

JUDGE HOPKINS: Anything further?

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You are excused, sir.

(The witness was excused.)

MR. ROACH: I move the admission of Mr. Jones' two verified statements.

JUDGE HOPKINS: Any objection?

They will be received in evidence.

We might as well have our recess until 1:30.

(Whereupon, at 12:30 o'clock p.m., the hearing in the above-entitled matter was recessed, to reconvene at 1:30 o'clock p.m., this same day.)

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AFTERNOON SESSION

(1:30 PM.)

JUDGE HOPKINS: Let's get back on the record. Call your next witness.

MR. KALAFUT: Your Honor, my name is Mark Kalafut. I represent Union Pacific and Missouri Pacific, and I would just like to mention that we have a revised witness schedule from the one that was in Mr. Moates' earlier letter.

We have spoken to the Department of Justice and Transportation. This has to do with no new witnesses, only the order of the witnesses. The first witness is Mr. Robert M. Corcoran.

MR. MUNSCH: Your Honor, my name is Richard Munsch, an attorney with the United States Steel Corporation. I would like to enter my appearance at this time for the purposes of Mr. Corcoran's testimony.

Whereupon,

ROBERT M. CORCORAN

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

DIRECT EXAMINATION

BY MR. KALAFUT:

Q Mr. Corcoran, would you please state your name

and business address for the record, please?

A My name is Robert M. Corcoran. I am employed by United States Steel Corporation, at 850 Chatham Two, Pittsburgh, Pennsylvania, 15219.

Q Did you prepare or cause to be prepared a verified statement to be used in this proceeding?

A Yes, I did.

Q I place before you a document, a 13-page document, including verification, dated verification page the 23rd of August, 1984. Is that your verified statement?

A Yes, it is.

Q Do you have any additions or corrections to the statement?

A No.

Q As it reads, is it true and correct to the best of your knowledge?

A Yes, it is.

MR. KALAFUT: Your Honor, I tender the witness for cross examination.

JUDGE HOPKINS: Thank you. Ms. Budeira?

CROSS EXAMINATION

BY MS. BUDEIRA:

Q Good afternoon, Mr. Corcoran. My name is Priscilla Budeira, and I represent the United States

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Department of Justice. Which situation does U.S. Steel think would result in the most competitive system of transportation for it, a denial of the merger application or a granting of the merger application with conditions?

A We would say that a granting of the merger application with the conditions that we have specified in our statement would be acceptable to U.S. Steel as a major shipper in the area affected.

Q Well, which situation does U.S. Steel think would result in the most competitive system of transportation for it, a denial of the merger application or a granting of the merger application with conditions?

A We would say that a granting of the merger application with the conditions that we have specified in our statement would be acceptable to U.S. Steel as a major shipper in the area affected.

Q Well, which would U.S. Steel think would result in the most competitive system of transportation?

A I would say that if the conditions we have asked for are granted, that it would be pretty close either way. It would fairly well maintain the current competitive posture.

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Q I hear you saying it would fairly well maintain the current competitive posture. Does that mean that without the merger there would be more competition than with the merger, with conditions?

A No, I would say it would be about the same either way. The one alternative that would severely handicap us would be a granting of the merger request without the conditions attached that we have asked for.

Q Why do you believe that a granting of the merger application with conditions that you have specified would result in a more competitive system of transportation than a denial of the application?

A All right. We are concerned about four major corridors of traffic. One is from Texas into the state of California. One is from Northern California to Southern California. The third is from Northern California into Arizona. And the fourth is transcontinental traffic terminating on the west coast or in the southwest.

Also indirectly but substantially affected is traffic moving from our plant at Geneva, Utah, to the west coast. Now, under the conditions that we have asked for here, we have essentially looked at this as a tradeoff. The argument has been made that a consolidation of the Santa Fe and Southern Pacific will

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result in significant operating economies.

That may or may not be true. We are not prepared to really evaluate that. We can only look at it from the standpoint of a shipper who in order to remain viable in a very competitive market must have access to competitive transportation services.

Should the merger go through without conditions being attached, the four corridors that I have mentioned will in many respects be isolated on one company with no effective intramodal competition, and really no effective intermodal competition either.

Q Okay. I would like to correct my question to an extent, because you did not say, just to make the record clear, you did not state that it would be a more competitive situation if the merger were granted with conditions than if the merger were denied, and I think I suggested that in my question.

A Oh, all right. I thought I had answered that in a previous question.

Q Yes. I just wanted to make the record clear. You think that it would be just about the same situation as far as competition?

A If all of the conditions we have asked for are in fact attached to the merger, we would consider it an acceptable alternative with comparative equality between

the two alternatives

Q You just stated in your last answer that you don't believe there would be effective intermodal competition.

A That's right.

Q Generally speaking, are truck and water carrier alternative means of transporting any of your raw materials or finished products?

A In certain areas they are. In the areas here at issue, largely they are not. It is a function both of the nature of the product and the distances involved. I think we mentioned in our statement that on traffic moving from Texas into California, you are talking a movement of close to 2,000 miles.

You are talking products that require on the one hand flatbed equipment and on the other hand tank equipment needed for the transportation of hazardous materials. When you get into this area, your basic form of transportation on which you must rely is rail transportation.

The motor carrier rates are higher. There is no effective water competition, since you are dealing with a very circuitous route that must transit the Panama Canal, and under the Jones Act you are required to use American flag vessels with concommitant increase

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in ordinary water costs.

Q For what distances is motor carrier an alternative means of transportation?

A Normally we look at motor carriage being effective competition within 350 miles of the origin plant.

Q For what goods is motor carrier not an effective alternative means of transportation because of the weight of the goods?

A I don't think weight enters into eliminating motor carriage as a competitive mode of transport. With steel and with our chemicals, you are dealing with an essentially dense product or dense products, and motor carriers are able to realize a full truckload consignment when they receive it, so they would not be disqualified on the basis of weight. They would, however, be sigificantly disqualified on the basis of cost.

Q What do you mean by cost?

A The rates charged by the two modes of transportation which we presume reflects their cost of operation.

Q Can you -- you have given on Page 5 of your testimony a chart that reflects how in general rail rates compare with truck rates.

A Yes.

Q Does that chart reflect generallyhow the truck rates compare with rail rates, or are they specific to the products that you have listed there?

A They are specific to the products that we were involved in, and the distances for which these rates apply.

Q Is it true that truck rates for the goods that you transport are always higher than rail rates?

A When you go beyond 350 miles, that is generally true, yes.

Q And when it is not beyond 350 miles?

A Then I would say the truck rates would be competitive.

Q How do rail and water carrier rates generally compare?

A Well, there is no water carrier service that we are aware of, and there hasn't been for some time, so I am really not in a position to comment on what the level of charges would be.

Q Is truck an alternative means of transporting goods that are oversized? In other words, do you have a problem using motor carrier transportation for any goods that you might transport that are oversized?

A Overdimension material is more susceptible to

rail movement, yes. When you get beyond certain parameters, it is almost exclusively rail movement.

Q Which goods would not be susceptible to motor carrier transportation because of that, because they are --

A Because of dimensions?

Q Yes.

A Certain sizes of pipe which is produced at Texas Works, certain sizes of plate which is produced at Texas and at Geneva, Utah, certain sizes of structural materials which are produced at Geneva, Utah.

Q And where are these materials going from Texas? Where is the pipe from Texas going?

A The Texas pipe is what we call a line pipe. It is used for the construction of large diameter pipelines. There are no regular movements as such. For example, we are not delivering a product like to an automotive stamping plant. We are in each case bidding on a pipeline project, and no two pipeline projects follow the same route.

For example, out of Texas we frequently bid on pipe projects being constructed in the southwest. We are currently bidding on one from California to Texas. This line will go through the states of California, New Mexico, Arizona, and Texas. We will bid on that pipe

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from both our Texas Works at Baytown, Texas, and from our Lorain, Ohio, plant in the northeast.

Q Which specific goods that you haven't already discussed cannot move by motor carrier beyond 350 miles?

A I don't say they cannot move. I say the economics of it are such that the cost of moving these products beyond 350 miles by truck is significantly higher than it is by rail.

Q Can you give us some examples of those?

A Sure. At Texas Works we would have plate, steel plate. At Geneva, Utah, we would have hot rolled sheets, structurals, and plate. In Pittsburgh, California, we would have cold rolled sheets, galvanized sheets, and tin plate. And at the three chemical plants in Texas we would have commodities such as polypropylene, pthalic anhydride, alcohol, and various chemicals of that kind.

Q In the instances when U.S. Steel is currently using rail and truck is a viable alternative --

A Is a viable alternative?

Q Yes. U.S. Steel is currently using rail, would U.S. Steel have to incur any changeover costs if it were to switch from rail transportation to motor carrier transportation?

A No, all of our facilities are designed to load

either truck or rail.

Q You discussed hazardous materials a little earlier.

A Yes.

Q Can you use motor carrier at all to transport hazardous materials?

A Oh, yes.

Q For which hazardous materials can you not use truck?

A We can use truck for most any hazardous material.

Q Are there any highway regulations or any other regulations that prohibit the use of motor carrier transportation to carry any hazardous materials that you deal with?

A In some cases, there are. They are basically state regulations, and they relate to the use of certain highways or perhaps certain times of the day.

Q And for what products are those regulations?

A Well, any product that is explosive or inflammable or potentially hazardous from the standpoint of pollution.

Q Does U.S. Steel use motor carrier to transport any hazardous goods?

A Yes.

Q Is motor carrier competitive with rail for the movement of all hazardous goods?

A Up to about 350 miles, yes.

Q In reference to your steel and chemical traffic moving from Houston, Strang, and Pasadena, Texas, what single line route will the UP/MP use to transport that traffic if it is granted the trackage rights from El Paso to California?

A Let me explain it this way. Currently we have two competitive routes from our plant, steel plant at Baytown, Texas. One of the routes is Southern Pacific direct going to destinations in California.

Q Excuse me. I am not asking about Baytown yet. Can we first concentrate on Houston, Strang?

A Sure, those three plants are served by the Port Terminal Railroad Association. Currently the competitive routes from these three plants into California are Southern Pacific direct and Santa Fe direct. These are two intense, aggressive competitors who compete very actively for that business.

Q Yes. If the UP is granted the trackage rights it is seeking from El Paso to California, can you describe the probable route that the UP will take before getting to El Paso from either Houston, Strang, or the Pasadena facilities?

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A I would have to refer to a map, if I may do that, but I think this could be directed probably properly to the operating people of the Union Pacific-Missouri Pacific. I am assuming that the normal operating route would be the route from Houston to El Paso, and it is a fairly direct route right now. Yes, I would assume it would go through Fort Worth and west to El Paso.

Q Have you done any investigation as to the travel time that that would take as compared to the current travel time using either the SF or the SP?

A Oh, yes. The two are comparable, because we use this route now. What we do is, we route it Missouri Pacific, El Paso, Santa Fe. Under the trackage rights that we are asking for here, we are assuming it would move Union Pacific direct over the same trackage.

Q Is there any market besides Los Angeles where U.S. Steel can send its steel and chemical products from Houston, Strang, and Pasadena?

A Yes. As I say, the biggest commercial market is in the Los Angeles County area and in the San Francisco Bay area. These are the two largest continuing markets on the west coast.

However, there is a great deal of business that is not repetitive as to location, and I cited

before pipeline projects. Other projects of that kind are constantly taking place, construction projects, pipeline projects, things of that type that can be destined anywhere in the four-state territory of Texas, New Mexico, Arizona, or California.

Q Besides west coast origins and southwest -- excuse me, destinations, are there other geographic areas where U.S. Steel can ship its steel and chemical products?

A From what origin?

Q From the Houston, Strang, and Pasadena.

A Oh, yes.

Q What are those other markets?

A Well, the other markets can be theoretically anywhere within the continental United States. Predominantly the products are marketed in the southwest.

Q Does the existence of the alternate markets to the southwest and the California markets pose any kind of a restraint on rates that you are charged to transport your goods to the southwest or the west coast?

A No, because we have similar production facilities in other parts of the country. In other words, we would not ship normally Texas plate back into Alabama, because we have a plate mill in Alabama. We

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have a plate mill in Indiana. We have a plate mill in Utah. So that the normal market for the Texas Works product follows the line of the Southern Pacific and the Santa Fe.

Q Assuming just for a moment that the merger application was granted without any conditions, and the Santa Fe-Southern Pacific raised your rates or altered its service in an unsatisfactory manner for the products that moved from Houston, for example, to either California or the southwest states, what would U.S. Steel do?

A We would probably be forced out of the markets, and would have to surrender those quite probably to import competition.

Q What percentage change in rate would cause that to happen?

A That's a very difficult thing to say. Let me address the question this way. We do have experience throughout the country in the rate differentials between facilities that are served by more than one carrier and facilities that are served exclusively by one carrier.

That differential ranges up to 25 percent difference in rates. I would say a 25 percent increase in rates, in published tariff rates from Texas Works to the west coast would probably effectively eliminate our

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competition on the west coast.

Q How would a 5 percent increase in rates affect it?

A Well, you can't really make a statement that, you know, as a general rule, that a percentage will change a market participation, because you are constantly dealing with different market prices. You have to depend or you are affected by the price action of a competitor.

If the price of Japanese plate in the Los Angeles market went down 10 percent, and our rail rate went up 15 percent, we would probably be precluded from the market. There are a number of factors in the equation that you can't quantify and apply that through as a general rule.

Q Do you think that given my assumptions again about the merger application being granted but without conditions, assuming that did occur, and the SPSP did raise your rates 5 percent on the movements from Houston to California --

A And from Pittsburgh, California, to Arizona, which is a critical movement for us also.

Q Fine. Can you give us any idea as to what -- or how U.S. Steel would be affected by a 5 percent increase on those movements?

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A I will have to give essentially the same answer that I gave relating to the plates moving to the west coast before.

There is no question that it would adversely affect our competitive posture in these markets. The precise, exact degree, the precise, exact point at which we would be driven out of the market, it would be very difficult to define.

Q And to make sure I understand something that you said before, am I correct in stating that if that scenario did happen, and the rates were increased 5 percent, that U.S. Steel would not have any alternate destinations to send its products that start at Houston?

A That's correct. Or at Pittsburgh, California. Or at Geneva, Utah.

Q On Page 4 of your testimony, you discussed East Baytown, and you state that its situation is even more precarious than the situation of the Houston, Strang, and Pasadena facilities.

A Yes.

Q Why do you say that the East Baytown facility's situation is even more precarious?

A Because the East Baytown facility is currently only served by two railroads. The other chemical plants

are served by five railroads through the Port Terminal Railroad Association.

Q Can you explain that a little bit more for us?

A Sure. The Union Pacific and the Missouri Pacific are the two railroads that physically serve the plant at East Baytown, Texas. The three chemical plants in the area are served by the Port Terminal Railroad Association, which is a switching line connecting with all railroads that come into the Houston area. That is the essential difference.

Q Did you say that the only railroads that serve East Baytown are the UP and MP?

A No. Are the UP and the Southern Pacific. Those are the two.

MR. KALAFUT: Excuse me. I think the witness may have misspoken himself. It is the Missouri Pacific, is it not?

THE WITNESS: Well, the UP/MP system, the combined system is one of the carriers serving the plant. The other carrier serving East Baytown is the Southern Pacific. There are two railroads.

BY MS. BUDEIRA: (Resuming)

Q What percentage of East Baytown steel is currently transported by the SP?

A Of our rail traffic, approximately 50 percent.

Q How exactly would the East Baytown facility be affected by the merger of the Santa Fe-Southern Pacific?

A It would -- in the short haul area, probably not substantially. There would be some reduction in the number of routes available to us. In the short haul area in Texas rates that are currently applicable by the Missouri Pacific-Santa Fe, there would be a question whether those routes would remain in existence very long.

On the long haul traffic going into California, we would be totally -- California, Arizona, and New Mexico, we would be totally subject to the decisions of the combined Santa Fe-SP management as to what the rate levels were, what the service frequency would be, what the equipment availability would be, and generally what our market posture would be in these areas.

Q Why would the UP or the MP no longer be able to serve the East Baytown facility?

A They would continue to physically serve the facility, but there would be a great many destinations to which they would no longer have effective through routes and joint rates.

Q Are you stating that you believe that if the merger is granted without conditions, that the SP would be unwilling or the SF would be unwilling to interline with the MP?

A There are two ways in which a through route can be essentially cancelled. One is to cancel the route outright. That is, you would no longer agree to -- you would agree to interchange traffic, but the movement or the through rate would be comprised of a combination rate to and from the interchange points between the carriers.

The second way to cancel, to economically cancel a through route is to increase the rate via the joint line movement while concurrently not increasing the rate via the single line, so that you eventually develop a rate differential between the two lines which renders the use of the second line, the joint line, essentially economically no longer viable.

Q If the merger application is approved without conditions, and the SFSP system raised its rates 5 percent to the East Baytown facility, what would U.S. Steel do?

A Well, it would be very difficult for us to complain to the Interstate Commerce Commission, because every railroad in the United States has been defined as

revenue inadequate, and therefore no rate is unreasonable.

We would have really -- we would have to make a decision as to whether we could continue to operate or to sell our product in a given market based on the increased cost of transportation to that market.

Q Are there any alternate markets for the East Baytown products to alternate markets to the California or southwestern states?

A No, we built the plant in Texas to serve this particular market.

Q Could truck take over any of the transportation that is currently being done by rail?

A At a substantial cost it could be, yes.

Q Would it be an economical switch, or would it be an unfeasible alternative?

A In all probability, it would be economically infeasible. I think the rate comparison in our statement shows that carriers, rail carriers in the absence of intramodal competition have latitude to almost double their rates before they reach the level currently charged by the competitive motor carriers.

Q On Page 6, you discuss the movement of sheet and tin plate from Pittsburgh, California, to Phoenix. Can sheet and tin plate moving from Pittsburgh,

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California, to Phoenix be transported in any way besides rail?

A Yes. It can move by truck.

Q What is the maximum distance that the sheet and tin plate can be transported by truck?

A It can be transported physically any distance. Economically, the same rough rule of thumb would apply, that the 350-mile radius generally is the limits of effective competition. The distance from Pittsburgh, California, to Phoenix is 800 miles.

Q U.S. Steel currently has experience transporting its goods over trackage rights between Pittsburgh and Stockton. Is that correct?

A Yes.

Q How does the service provided along the trackage rights track compare to the service you receive along tracks owned by the railroad?

A It is fully competitive.

Q How do the rates, if you can do this, how do the rates that you are charged along trackage rights tracks compare to comparable movements along tracks owned by the railroad transporting the goods?

A Without reviewing the precise rates, some of which are subject to confidentiality provisions of contracts, the rates are comparable to, equal to, or

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lower than the rates charged by the competitive lines operating over their own track.

Q Do SF and SP compete for the movement of any raw materials you use to produce steel or chemicals?

A Yes, the Southern Pacific does, yes.

Q What raw materials does the SP transport?

A Basically, the raw materials of ferromanganese scrap and other additives to the steelmaking process at Geneva, Utah, that come in through west coast ports. They also transport scrap to Baytown, Texas.

Q Does SF or can SF carry any of those?

A The Santa Fe does not currently service any facilities that we use as sources of raw materials.

Q Are you familiar with the proposal of the KCS for an IPMA across the Southern Corridor?

A Yes.

Q Assuming the merger is approved, do you believe that an IPMA arrangement would be an effective restraint on the merged SFSP?

A I really have no opinion on that. We had discussed that with the KCS, and we just felt that our interests in that aspect of this merger proceeding, while of interest to, were not critical to our survival. We felt that the Union Pacific, Missouri Pacific request was essential to our continued abilit

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to stay in business. For that reason, we did not analyze in any depth the IRMA proposal of the KCS.

MS. BUDEIRA: Thank you very much, Mr. Corcoran.

JUDGE HOPKINS: Do you have any questions?

MS. REED: Just a few, Your Honor.

BY MS. REED:

Q My name is Mary Reed, and I am appearing on behalf of the U.S. Department of Transportation.

Would you please turn to Page 4 of your verified statement? You indicate that from Houston, Pasadena, and Strang, Texas, plants that you were able to use the SP-Santa Fe single line service to California or in joint line service with the MP as an originating carrier.

I assume you mean that the MP and the Santa Fe offer you joint line rates. Is that correct?

A Yes.

Q And the MP and Southern Pacific also offer you joint line rates?

A They may have them in existence. I am not aware of their use right now.

Q So you are referring to an MP-Santa Fe move?

A Essentially, we have looked at the competitive routes as being SP direct versus Missouri Pacific-Santa

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Fe.

Q So the Santa Fe cannot originate this traffic directly?

A Oh, yes, they could.

Q How does Santa Fe's single line rates compare with the MP-Santa Fe joint line rates?

A They are essentially competitive. I can't indicate precisely what they are, because a number of them are under contracts, but they are essentially competitive.

Q So the Santa Fe, at least from these facilities, has indicated an interest in handling joint line traffic at a competitive rate level with traffic which it could have otherwise handled via single line service?

A Yes. They have indicated an interest that where they jointly serve a destination with the Southern Pacific, and the Missouri Pacific happens to have equipemnt that is available for loading at one of these origin plants, that they will use that Missouri Pacific equipment in joint line service and become competitive with the single line route.

Q Now, you mentioned shipments of steel pipe to pipeline projects.

A Yes.

Q Are those movements generally by motor carrier?

A No, for the most part those projects are generally rail oriented. You are talking about very sizeable tonnages, and you are talking about very large products.

Q Now, of the movements that you have listed on Page 5 on your table of various chemicals and steel plates, can you tell me what percentage of those movements go by truck versus rail carrier today?

A Those shown on Page 5?

Q Yes, sir.

A It is almost 100 percent by rail.

Q Now, turning to Page 6, you indicated there is sheet and tin plate to customers in the Phoenix, Arizona, area. How much goes by truck as compared to rail?

A Again, it is very predominantly rail movement. A very small percentage moves by truck.

Q Would less than 20 percent --

A Considerably less. Usually only an emergency shipment that is required on extremely short notice by the receiver.

Q Now, you indicated that your domestic steel market, at the bottom of Page 9, has shrunk because of

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import competition.

A Yes.

Q You also face domestic competition from other steel producers?

A Yes, we do.

Q Where would those facilities be located?

A All right. There is a major facility of California Steel Company located in the Los Angeles area.

Q Do you know who they are served by, which rail carrier?

A Yes, they are served by the Los Angeles junction, which connects with the Southern Pacific and the Santa Fe, I believe.

Q Does that also connect with the Union Pacific, do you know?

A I don't know. I don't believe so. I don't believe that the Union Pacific serves the old Kaiser plant, but I am not certain of that.

Q Which other?

A Gillmore Steel Company in Portland, Oregon, Colorado Fuel and Iron Company at Minequor, Colorado, and, of course, we have a number of transcontinental producers who ship to the west coast from eastern origins.

Q So all of those steel producers compete with you in the Los Angeles market?

A Yes.

Q Now, do you face import competition on your chemical traffic?

A Yes.

Q Is that to you a significant competitive factor?

A Oh, yes. The import on the west coast, imports represent a very substantial part of the total steel consumption.

Q I am talking about chemicals.

A I am sorry. I can't hear you.

Q I was referring to your chemical products.

A My what?

Q You have listed some chemicals.

A Oh, chemicals. I am sorry. Yes, we are competitive with import producers on chemicals also.

Q And you feel that imported chemicals are a competitive restraint on your marketing?

A Yes.

Q Now, do you face competition from domestic chemical producers?

A Yes.

Q Where would they be located?

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A Well, you have got a huge petrochemical complex in both California and in Texas, and you know, to try to name all the producers and the products that they do produce would be -- it would take a long time. But we do have active competition from petroleum refineries both on the Gulf and west coast.

Q Where do the petrochemical refiners in California receive their raw materials? Are they local to the state of California?

A Yes, they are produced right there from the producing wells in California.

MS. REED: Thank you very much. That is all I have.

JUDGE HOPKINS: Anything further, Mr. Kalafut?

MR. KALAFUT: No redirect.

JUDGE HOPKINS: You are excused, sir.

(Witness excused.)

JUDGE HOPKINS: Do you move the admission?

MR. KALAFUT: I do.

JUDGE HOPKINS: Any objection?

(No response.)

JUDGE HOPKINS: It will be received in evidence.

Call the next witness, please.

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MR. REMES: The next witness will be Michael J. Smith of Cargill, Incorporated. He will, I guess, first testify as to his statement on behalf of the DRGW, and then on behalf of -- I am sorry, and then be cross examined on behalf of his statement in support of the Union Pacific.

Whereupon,

MICHAEL J. SMITH

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

DIRECT EXAMINATION

BY MS. SULLIVAN:

Q I am Mary Anne Sullivan. I am here representing the Denver Rio Grande Western.

Mr. Smith, would you state your full name and business address for the record, please?

A Michael J. Smith, Cargill, Incorporated, P.O. Box 9300, Minneapolis, Minnesota.

Q And what is your position with Cargill?

A I am the assistant vice president of corporate transportation for Cargill.

Q Did you submit a verified statement in support of the Denver Rio Grande in this proceeding dated July 2, 1984?

A I did.

MS. SULLIVAN: I would like to note for the record that Mr. Smith submitted an identical statement on behalf of the MKT, Statement Number 8 for the MKT. Denver Rio Grande Statement Number 71. And the one I have distributed is in fact from the MKT filing, just because it was making better copies.

JUDGE HOPKINS: Thank you.

BY MS. SULLIVAN: (Resuming)

Q Do you have any corrections to your July 2, 1984, statement?

A I do not.

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

A It is.

MS. SULLIVAN: The witness is available for cross examination.

CROSS EXAMINATION

BY MS. BUDEIRA:

Q Good afternoon, Mr. Smith. My name is Priscilla Budeira. I am with the United States Department of Justice.

Does Cargill have any experience with transporting goods across trackage rights?

A We know our goods move across trackage

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rights.

Q Pardon me?

A We know our goods move across trackage rights.

Q How does the service provided over the trackage rights compare with the service provided when the railroad owns its own tracks?

A For the most part, Cargill is a price buyer of transportation, and to be frank, I don't know.

Q Would you know how the rates compare?

A In this case, no.

JUDGE HOPKINS: Could you please try to speak up a little more?

THE WITNESS: I sure will.

BY MS. BUDEIRA: (Resuming)

Q On Page 23 of your statement, you state that an alternate competitive route to southern California consists of interlining between DRGW and the SP over Ogden. For what origin and destination city pairs is the joint movement of DRGW-SP over Ogden competitive to southern California?

A As you can see, we have a very wide base of products, and I guess I would like to think of it in terms of states, anything from the midwest, let's say Iowa, Nebraska, parts of Kansas, potentially parts of

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Minnesota. I think that is the main thrust of it.

Q To what points in southern California do your products go from the states that you just mentioned?

A Northern and central California, and in some cases up into the Pacific Northwest.

Q Do any of the products go to southern California over the route we are speaking about, over Ogden?

A I am not sure.

Q Do any of your products move between Texas and southern California?

A They do.

Q Just generally, which kinds of products?

A Generally steel, flour, corn syrup -- oh, not Texas. I'm sorry. Flour. Soybean and soybean products. Probably some tankage materials out of Texas packing plants.

Q What transportation options does Cargill have for moving flour between Texas and southern California?

A Straight Santa Fe. Our mill at Wichita has options to move via the SP as well, connections and the SP.

Q Is that Wichita, Kansas?

A Yes.

Q Speaking again about Texas to southern

California movements, is truck an alternative means of transporting flour between Texas and southern Calfornia?

A Truck direct?

Q Yes.

A No.

Q And why is that so? Why is that not so?

A It is too far, and the cost of performing that service is disproportionate to the value of the commodity and the competitive conditions that it is under.

Q What is the maximum distance that flour can be transported via truck?

A I can give you an impression. Maybe 250, 300 miles. It depends on the conditions again, too.

Q On what conditions does it depend?

A It is a bulk material. For the most part Cargill is involved in non- differentiated, non-value added products. Our flour is like someone else, and we are selling a baker, like an ITT Continental, for instance, and in many cases it moves in the bulk form.

Now, it takes a special rig to do this. It is a pressure differential rig. It has to have a certain cubic capacity to it. It is usually wedded to one-way movement.

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The same type of truck may be used to move cement, but it is much smaller, because cement is more dense, has a different transportation characteristic.

Now, is the receiver then a bulk receiver? Does it receive bags? Is there a back haul available? All of these types of things would determine how far that truck could move as against a railway.

Q Do you know whether or not back hauls are generally available for transportation beyond 300 miles?

A They can be, depending on the commodity and the conditions.

Q Do any of your products move between Oklahoma and southern California?

A I don't believe so.

Q Earlier you mentioned that you have products moving from Wichita to southern California. Is that correct?

A Yes.

Q What are your transportation options for that movement?

A Shall we stay with the flour?

Q Yes.

A It depends. Let's say if there is -- into southern California from Wichita, rail to truck transfer

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probably in California somewhere, or rail direct to a customer that can receive a rail direct car. Some can, some can't. Some bakeries are off rail.

Q In the instance where there is a combination of rail and truck, is the truck just a local movement?

A Yes, it is.

Q And which railroads do you use between Wichita and southern California?

A Santa Fe.

Q No other railroad?

A I am not sure.

Q Does the Santa Fe transport any grain to your Denver terminal grain elevator?

A I am going to think some, but probably not much, an impression, again.

Q Does Cargill transport any grain from Denver to Houston and Galveston via the Santa Fe?

A I don't know. I believe they would, though. I can remember a contract about two years ago that I think would have caused that movement.

Q On Page 27 and 28, you discuss corn and soybean movement from Iowa and Minnesota to California, and you state that there are four options. Is that correct?

A On Page 27?

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Q Twenty-seven to 28.

A Okay. You are talking UP direct, Santa Fe direct, SSW/SP direct, and DRGW Ogden SP? Are these the four?

Q Yes.

A Okay.

Q Do you know what percentage moves currently by SSW/SP direct?

A No, I don't.

Q To where does Cargill currently transport grain originating in Elkhart and Liberal?

A Well, there are Santa Fe or SP origins.

Q Is Elkhart an SP origin? Or is it SF?

A It is Santa Fe. I would think that Elkhart -- for the most part it is wheat. It probably goes to the Gulf. Texas Gulf. And Liberal, I am not sure where Liberal goes. Probably the Gulf as well.

Q Well, let's talk about Elkhart. What alternative means of transportation does Cargill have for transporting grain from Elkhart to the Texas Gulf?

A At that distance, straight rail.

Q Are you saying that truck isn't a viable alternative because of the length of the haul?

MR. FLAGG: Your Honor, I am going to object to that as leading. I am sorry to interrupt the

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quietude of the afternoon, but there are limits.

JUDGE HOPKINS: Why are you objecting to it?

MR. FLAGG: The Department of Justice, as I understand it, is conducting cross examination, not direct examination. If they want to supplement the direct statement, we would be happy to have them do so, but this is cross examination.

JUDGE HOPKINS: I am going to allow it. Go ahead.

THE WITNESS: Will you repeat it?

MS. BUDEIRA: Sure.

JUDGE HOPKINS: You woke everybody up.

BY MS. BUDEIRA: (Resuming)

Q Is truck not a viable alternative for moving grain from Elkhart to the Texas Gulf because of the length of the haul?

A I am not going to say for sure that some truck wouldn't move to the Gulf, but most likely it would be a back haul truck that if available could perform the service.

On head haul, I don't think it could.

Q What kind of products would the head haul have been?

A Oh, fertilizers maybe.

Q If the merger is approved without conditions

and the SFSP raises its rates 5 percent, how will Cargill transport its grain from Elkhart to the Gulf?

A Probably in the same manner. However, it depends on what happens to the rest of the marketplace. The problem with a lot of this is that if you change structures, you change -- the marketplace will shift. Someone else will do the business.

There is a potential that Elkhart could no longer enjoy the business, or Elkhart may have to seek some other alternative market. It is a shifting sands, if you would have it, whenever there is a major change in anything.

Q Do you have any experience where -- in which a rail carrier would be sensitive to that fact and therefore the possibility of, for example, Elkhart not being able to have an economical market in the Gulf as being a restraint on the price that the rail charged?

A You are going to have to roll that one by me again.

Q Okay. We were discussing a rise in rates of a certain amount as being the impetus for a shift in markets from the Gulf to another part.

A Yes.

Q And you mentioned that Elkhart might not be able to have the Gulf as a market any more if the rates

rose.

A Depending on what happens for someone else.

Q Right. In your experience, are rail carriers sensitive to a shift in market destinations because of the increase in its rates?

A The rail carriers, as anyone, they work for different masters than the shippers do. They have a different set of people they have to satisfy as far as P&L's are concerned.

Now, the first question I would have to ask myself to answer that question is, is it a buyer's market or a seller's market? Where else would that same carrier go to get the grain to fulfill some demand that might be at the Gulf?

Is it another facility that I might own? Is it a facility that my competitor might own? What would that carrier do in order to achieve the marketplace?

You are talking about a market competition argument. You are into this sort of a discussion. And I know what you are getting to. The only type of competition I think that is really worth its salt in direct competition, and it sorts it out immediately. Either you do it or you don't do it, and the business is gone.

And we are a fan of that. Cargill has been in

that kind of business for years. We have always been in commodities that are excess to the world. We have always been in commodities for the most part that are under stress for buyers' markets. And we face our competitors most every day on direct competition, and direct competition is the one that sorts it out right now.

Q What do you mean by direct competition?

A Either intramodal, two railroads in the same town without a hassle of reciprocal switching, because we can be foreclosed from a market that way, or intermodal option.

Q Intermodal from the same --

A Let's say I am at a river corridor, 50 miles of the river, and I've got a barge running on the river. I've got a truck, a transfer to the river, and the barge goes down to New Orleans versus a straight rail.

However, if I am out of that corridor, I don't have that option at all. At some point or another, that competition won't work for me any more, the further I am from the route.

Q Just to make sure I understand what you are telling us, are you saying that the ability of Cargill to shift its destinations away from an SFSP-served

destination would not be any restraint on the SFSP from raising its rates?

A If I had that option, it could.

Q Pardon me?

A If the option were available, it could.

Q It could?

A Yes, but maybe not.

Q I am sorry?

A Maybe not, because maybe just 100 miles down the road there is another one shipping the same commodity that I am shipping, and let's say it is a buyer's market. We have too much of it. The SP's option may be to go do the other guy's business rather than mine because it maximizes his P&L or its P&L.

Q Are you saying that that kind of competition s not as effective as what you term direct?

A You bet.

Q Does Cargill -- well, Cargill exports grain to Mexico. Isn't that right?

A Yes.

Q From where does the grain that Cargill exports to Mexico originate?

A Mid-central states all the way up to Minnesota, sunflower seeds from Minnesota.

Q What transportation options does Cargill have

in transporting this grain to Mexico?

A Oh, Santa Fe origins, Santa Fe routings, depending on origin, some SP routings, some routings in connection with the Tex Mex, quite a few. There's about 14, I think, river crossings.

Q So water carrier is an alternative?

A I believe there is some of that going on, too, through Brownsville. A lot of this is limited by infrastructure, you know, not only within our areas, but within Mexico itself. You can only just bring in a certain amount at given times. Now, I can't explain when this happens, but there is just so much you can put through a port, and there is so much you can put through a gateway.

Q Are you familiar with the comparison of rail rates to water carrier rates for the movement of grain into Mexico?

A No.

Q What percent would you say of Cargill's grain does it move into Mexico by water carrier?

A I do not know.

Q What is the major gateway that Cargill's grain uses to get into Mexico?

A Again, I don't know. We use them all.

Q You do? Which ones do you use?

A I have seen El Paso and Eagle Pass and Laredo. Those are the major ones I can think of.

Q What determines which gateway Cargill's grain uses to enter Mexico?

A In many cases the destination in Mexico.

Q Can you be more specific?

A No, I can't.

Q From what other countries does grain enter Mexico that competes with Cargill grain?

A I don't know.

Q Are you familiar with Tex Mex's trackage rights requests?

A A little. I mean, I think I have had some discussion, but I have never really entertained --

Q Does that mean that Cargill -- well, does Cargill have a position on Tex Mex's --

A No.

Q Does Cargill believe that both KCS's and UP/MP's conditions should be granted?

A I don't think that it is going to be us who is going to decide. It is going to be the record, and it is going to be the Interstate Commerce Commission. All that we opt for is competition. Max competition, whatever it can be, is the sorter outer of the marketplace.

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Q Which railroad's conditions, that is, the KCS's or the UP/MP's, do you think would provide more competition for Cargill?

A More competition at places where Cargill serves?

Q Yes.

A Again, I would prefer that the record decide that. We are not here to vote one way or another.

Q In reference to Cargill's steel producing plant at Beaumont, is truck or water carrier an alternative for the transport of either inbound or outbound materials?

A It is a very new acquisition for us, relatively speaking, and they are looking at doing some barging in and out of it, I believe. That's an impression.

Q Is truck at all an alternative?

A Oh, I am sure into short haul markets.

Q Do you know currently what percent is moving by water carrier, if any?

A No, I do not.

Q Is truck and water carrier an alternate means of transporting cotton?

A I don't believe it is. I am not really familiar with our cotton business very much, frankly.

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Q On Page 54, you state that Cargill grain facilities in Iowa are concerned about not being able to compate effectively in California because of single line service their competition would have via the merged system.

Would you explain what you mean by this more fully?

A Well, let's just say there is corn grown in Iowa and there is corn grown in Nebraska and there is corn growing in Kansas to some extent. Now, you have got to get the Iowa corn right through that back yard in order to get to California, so in this case you could look at single line systems performing service that could again change the market patterns for Iowa people, for Iowa origins.

Q The other questions I have are for the UP/MP statement.

MS. SULLIVAN: I would like to move at this time for the admission --

JUDGE HOPKINS: Wait a minute. Ms. Reed may have some.

MS. REED: Mr. Smith does.

JUDGE HOPKINS: Are you going to follow them in orier? Or what are you going to do?

MS. BUDEIRA: It is up to the railroads.

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JUDGE HOPKINS: I think it would be better -- why don't we get the other statement up, too, and then we can have everything at one time.

MR. REMES: If that is agreeable with Ms. Reed, it is agreeable with us.

JUDGE HOPKINS: You don't have any problem with that, do you?

MS. REED: Whatever you say.

MR. REMES: Then is it my turn now?

JUDGE HOPKINS: Yes.

MR. REMES: I am pleased to note that although he is not entering an appearance, Mr. Smith is accompanied by his distinguished counsel, Victor Anderson.

DIRECT EXAMINATION

BY MR. REMES:

Q Mr. Smith, you submitted a statement that had been presented to the Commission in UP/MP's verified statements in response to applicant's testimony, UP/MP-26. Do you have any corrections to make at this time in your verified statement?

A I do, on Page 3.

Q Would you tell us what that is?

A Towards the middle, starting at the end of the second paragraph, starting with the word "Thus." I will

read the sentence as it should be.

"Thus, the current cost for Cargill to deliver to its customers in the Phoenix-Tucson area is $3.87 per hundredweight," and I would like to add this, "at the published tariff rate. Contract rail rates are even lower."

Q There is a period after "the published tariff rate?"

A Yes. And then another sentance, "Contract rail rates are even lower."

Q Mr. Smith, with that correction, is this verified statement true and correct to the best of your knowledge and belief?

A It is.

JUDGE HOPKINS: Ms. Budeira, are you ready again?

MS. BUDEIRA: Yes, I am.

CROSS EXAMINATION

BY MS. BUDEIRA:

Q In reference to the movement of corn syrup, and my STCC Code number on this is 20461, if that makes any difference to you --

A It does make a difference to me, but I didn't memorize that.

Q Good. Does Cargill ship or transport corn

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syrup from Memphis or Dayton to California?

A Yes, it does. Maybe not Dayton.

Q Okay. Where in California does it transport corn syrup?

A All over.

Q You have compared the truck and rail rates to Phoenix from Memphis in your statement.

A Yes.

Q Are you able to compare the rates of rail and truck for the transport of corn syrup from Memphis to California?

A The rail rate is a transcontinental rail rate. It is in the same grouping basis. It would be the same, at least to southern California. It might be a little higher to northern California. But the truck rate would be higher.

Q Is that because it is a longer distance?

A A longer distance.

Q Is there any -- again I am discussing the distance beyond which truck is not competitive with rail for the transport of corn syrup. Would you say it is about 250 or 300 miles, as just stated earlier?

A Let's look at conditions. There's two types of customers that one would serve. One would be a truck customer that is not on a railroad at all. The other

one would be a customer that is on a railroad.

In the case of a truck going to a truck customer and, let's say, beyond that 250-mile truck radius that we talked about, I would have to rail it rail car to a transfer point. I would have to take the material out of the rail car. I would have to pump it into a truck and deliver the truck. Truck is the only thing that can deliver it.

Or I could truck it all the way from origin to that point. That point could get out to 800 miles. The bogey will allow it.

Q What does that mean?

A Do you like that? It is a combination of costs, the rail rate plus a transfer cost plus the movement beyond plus whatever interest and rates that everyone else would take into consideration when you are doing that.

MR. REMES: If counsel will indulge me, Mr. Smith, could you spell that word?

THE WITNESS: I think it is b-o-g-e-y.

JUDGE HOPKINS: Sounds like a golf term.

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BY MS. BUDEIRI:

Q Does the availability of a back haul for the transport of corn syrup affect the availability of truck to move corn syrup?

A It's different to find back hauls for bulk commodities than it is to find back hauls for packaged goods. We have a lot of vans running on the highway. They are interchangeable. You can use them for all kinds of things. You can even use a reefer van to haul packaged material.

However, staying with corn syrup, because we'd have to compare each type of product and what it's like, let's just stay with corn syrup and talk about it.

First of all, it weighs like mad. It weighs 11.2 pounds per gallon, very, very heavy, 80 percent solids. The type of truck that moves it is like a thermos bottle on wheels, because we have to load it at 125 degrees; and it can't get much colder than 110, because if it gets colder than 110, you aren't going to pump it anywhere. And it's really a very viscous, thick material, and to deliver it up into somebody's tank that is two floors up is impossible. Anyway, you might imagine the truck is rather specialized.

Now, there are conditions, there are times when you can find these types of two-way moves that

would complement each other, but it's very, very difficult.

MS. BUDEIRI: Thank you very much.

JUDGE HOPKINS: Mr. Smith.

MR. SMITH: Paul Smith, Your Honor.

JUDGE HOPKINS: Did you make your appearance on the record?

MR. SMITH: Paul Smith representing the Department of Transportation.

BY MR. SMITH:

Q Good afternoon, Mr. Smith. I have most of my questions based upon the just-identified statement dated November 16th. And if you would turn to page 2 of that statement, please.

A The small one we're talking about?

Q The small one, yes.

A I don't have the title page.

Q I'd like to discuss for a little bit corn syrup and the customers in Phoenix. Now, do you know whether those customers are yours exclusively or whether you have competitors that might --

A We have competitors.

Q Do you know where those competitors are located?

A Oh, I think I can guess. They're up at

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Keokuk, Iowa, a place called Hubinger; they're at Decatur, Illinois, and probably some of it comes out of Kansas City as well.

Q Do you know how they -- do you know whether your customers presently or any time in the recent past purchased corn syrup from your competitors?

A I'm sure they have.

Q Do you know how that corn syrup is transported to your Phoenix customers?

A They are going through some of the same transfer facilities that we do.

Q Both by rail and by truck?

A Yes.

Q With the same kinds of constraints that you face?

A Yes.

Q Perhaps different rail lines?

A Perhaps Santa Fe in one case and SP in another.

Q Do you know whether your customers at Phoenix use the corn syrup as what you might call an ultimate end product, or whether it's an ingredient or intermediate product that they would use in something else?

A It's always an intermediate product.

Q Do you know whether there are substitutes for

that -- honey, or sugar, or fructose or anything?

A Well, depending. When you're talking about corn syrup, you're talking about two types, a plain vanilla type that we've used for years in making jams and jellies and ice cream, and then you're talking about a type that's a direct replacement for sugar, and this is your high fructose corn syrup. So in that case, if you're talking high fructose anyway, you're into a product that is competitive with liquid sugar.

Q And sugar producers would be where?

A Texas and west Texas, Amstar.

Q Any in California for beet sugar, for example?

A Yes.

Q Would you turn to page 3, please -- your chart there on freight rates and so forth. Do you know in addition to the distances involved here and the rates, do you know the time that it takes to ship in the one case by rail, including the transfers, the local transfers by truck, and if you had to on some emergency basis ship it by truck the entire way?

A No, I don't know the transit time by rail, but for the most part, a rail car will be sent and will serve as a storage facility for a while. Each rail car contains approximately four truckloads, and it sits, and you continually resteam it, you keep it warm, and then

move it out by truck to the local marketplace.

Now, as far as the truck is concerned, I'm trying to think, but the distance is probably about 1500 miles, a couple of days.

Q Would you turn to page 4, please? At the middle of the page you've just described the specialized transportation requirements of corn syrup. At the bottom you note that it's extremely difficult to locate that kind of trucking facilities, I suppose, or truck tankers to meet those requirements.

A Yes.

Q Of course, as you've explained in other pages, those truck types do exist at both the origin and destination points already, is that correct? You've got to get it -- you've got local truck haulage, if you will, of corn syrup in any event.

A We maintain a truck fleet, not necessarily private ownership. But that type of equipment is assigned with our plant, and it serves our 250-mile market, let's say, because that's where it's very, very effective.

Q Two or three hundred miles at both ends?

A Yes. It's also there in case somebody bumps their chin a little bit, because one thing we won't do is close down a customer. That's a no-no. So what you

do is you will truck it all the way then regardless of economics.

Q Have you conducted any studies to inform yourselves, given that you've got some fleet of these trucks at both ends and they have a 250-mile general radius any way that they can be used, what additional capacity would be required to do it the whole way by truck?

A I think you're going to have to roll that one again.

Q Well, you've got trucks at both ends.

A Yes, we do.

Q And they have a 250-mile radius.

A Around each point, yes.

Q That capacity, I take it, is inadequate for you to do the entire truck haul of the corn syrup?

A Again, if you have a rail receiver of truck syrup that can take the rail car direct, that individual has a different sort of a customer that you're trying to serve. I'm trying to think of what you're getting at.

If you rail something beyond the transfer point, then you put it in a truck and you have to move it back, the rail rate from your facility is descending. It is going down. The rail rate plus the truck rate is going up, all right. The distribution

radius around one of those transfer facilities from a straight economic standpoint is egg-shaped, moving away from the facility, the origination of the original facility.

Q You don't use TOFC service to put the specialized containers on the track itself?

A They are too expensive. You can run a truck around maybe 12 or 13 times a month, and if you did TOFC, I think maybe you would get once a week. We have also looked at this, and they're very, very -- they are built to be light, and they're not very strong unless they're up on the fifth wheel of the truck itself. So if you put them on a piggyback and you run them around as they are, I think you would beat them to death in a couple of years, and they're very expensive. So there are two reasons why it says rail to truck.

Q Would you turn to page 5 of your statement, please? There you are discussing soybean meal. Could you give us some examples of the end use of that commodity?

A A feed ingredient.

Q Are there other substitute products that are used as feeds that you compete with?

A Other byproducts from processes like wheat midds, to some extent, like cottonseed real, like

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tankage from a meat processor or rendering plant. All of these things price themselves into feed formulas different ways, however, because they're all of different proteins, different fibers, different everything; and it's a very complex formula to build the feed at a consistent price, a consistent fiber and a consistent --

Q So if we want to call it a balanced diet, you can't just have wholly soybean meal or wholly something else. You have to blend them all in?

A Yes.

Q Who are your primary soybean meal competitors?

A ADM, Archer, Daniels Midland; A.E. Staley out of Decatur, Illinois. I'm trying to think of the guys in Fort Wayne, Indiana. Just a second. I will remember it. Central Soya in Fort Wayne, Indiana.

Q And the also ship to California customers?

A Oh, yes.

Q And other places as well?

A Yes.

Q I assume the question about the transportation constraints and limitations they face would be similar to yours?

A Yes. There is no California capacity.

Q No production in California?

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A No.

Q Would you turn to page 6, please, of your statement? There toward the upper portion of the page you have a short set of figures for origin points and rail and so forth rates. Do you know the distances involved between these various origin points and Fresno?

A In excess of 1800 miles.

Q And the time by truck versus time by rail?

A We don't ship trucks. Again, the trucks is two or three days and the rail, I don't know.

Q Now for your larger statement, if I could ask you to turn to that, please. You may have answered this before, but I want to make sure about the trucking of -- on roughly page 32, beginning with the title "Cargill Facilities Located in Northern California and Eastern Oregon." You are talking about shipping feed, mill, grain and so forth.

For the shipment of grain is the -- is there a feasible trucking radius? Is it 250 miles as a rule of thumb by truck?

A No. A grain elevator is a purchaser of materials.

Q How far do you have to -- can you be located from that grain elevator to truck the grain feasibly?

A Again, in this case I don't think you can