

F.D. 30400 - 1/25/85 - PGS. - 8910 - 8969

1 really draw it to the extent you would like because you
2 would bump into your competitor much sooner than you
3 would with the processing facility. There is more
4 elevators around. And even though maybe as against a
5 rail rate or whatever, you could take a look at those
6 economics. You're going to bump into the next guy
7 pretty quick. It's like hauling coal to Newcastle.

8 Q It's a very localized market?

9 A Yes.

10 MR. SMITH: That's all.

11 JUDGE HOPKINS: Thank you.

12 Any redirect?

13 MS. SULLIVAN: No redirect.

14 MR. REMES: No redirect, Your Honor. I would
15 just like the record to note that when DOT counsel
16 switched to the longer statement, he was switching away
17 from the UP statement to the D&RGW statement.

18 JUDGE HOPKINS: Thank you.

19 MS. SULLIVAN: I would like to move now for
20 the admission of the July 2 statement of Mr. Smith.

21 JUDGE HOPKINS: Any objection? It will be
22 received in evidence.

23 MR. REMES: And I would like to move the
24 introduction of Mr. Smith's verified statement appearing
25 in our responsive evidence from November.

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

3 You're excused, sir.

4 (The witness was excused.)

5 JUDGE HOPKINS: We'll take a 15-minute recess.

6 (Recess.)

7 JUDGE HOPKINS: Let's get back on the record.
8 Let's see if we can move along for the rest of the
9 afternoon here. We have been here a long day.

10 Call the next witness.

11 MR. KALAFUT: The next witness, Your Honor, is
12 John F. Thompson.

13 Whereupon,

14 JOHN M. THOMPSON

15 was called as a witness by counsel and, having been
16 first duly sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. KALAFUT:

19 Q Mr. Thompson, would you please state your name
20 and business address for the record?

21 A My name is John M. Thompson. My business
22 address is Dow Chemical U.S.A., 2020 Dow Center,
23 Midland, Michigan.

24 Q And what is your position, sir?

25 A Senior technical transportation specialist.

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1 Q Did you prepare or cause to prepare a verified
2 statement for use in this proceeding?

3 A I did.

4 Q I have handed you a statement, seven pages
5 including a verification page, verification page dated
6 the 29th of June 1984. Is that your verified statement?

7 A Yes, it is.

8 Q And is it true and correct to the best of your
9 knowledge?

10 A Yes.

11 MR. KALAFUT: I tender the witness for cross
12 examination.

13 JUDGE HOPKINS: Mr. Ratner, we haven't had you
14 lately. Go right ahead.

15 CROSS EXAMINATION

16 BY MR. RATNER:

17 Q Good afternoon. My name is James Ratner. I'm
18 with the United States Department of Justice.

19 In your verified statement you indicate that
20 the shippers that are part of your group are in
21 California and Arizona.

22 A We ship products from California. We also
23 have customers there.

24 Q Do you also ship products from Arizona?

25 A Not from Arizona, no.

1 Q To what destinations, in general, do the
2 products from California go?

3 A From California? Generally, in California or
4 in states in close proximity thereto, generally west of
5 the Rocky Mountains.

6 MR. RATNER: Can I have 30 seconds, please?

7 JUDGE HOPKINS: Surely.

8 (Pause.)

9 JUDGE HOPKINS: Back on the record.

10 BY MR. RATNER: (Resuming)

11 Q You have California plants in Pittsburgh and
12 Fresno, is that right?

13 A That's correct. We have others but --

14 Q Are there any other plants that Southern
15 Pacific and Santa Fe compete for your business in
16 California?

17 A No.

18 Q As to your Fresno plant, for inbound movements
19 which commodities do Santa Fe and Southern Pacific
20 compete for your business?

21 A Inbound commodities would be a plastic
22 material that we receive out of the Gulf Coast.

23 Q Plastic material?

24 A Yes.

25 Q What are the various kinds of plastic material

1 that you receive?

2 A It is -- polyethylene is the product. It's a
3 material that we use in the production of the films that
4 we make at that plant.

5 Q What percentage would you say of the
6 polyethylene moves by rail and what percentage moves by
7 truck?

8 A Virtually all of it moves by rail.

9 Q What's the reason that it moves by rail?

10 A Economics primarily. There's no effective
11 truck competition for it at that distance.

12 Q At what distance is there effective truck
13 competition, if any?

14 A For polyethylene?

15 Q Yes.

16 A Oh, probably in the 200 to 300 to 400 mile
17 range. It depends where you're going, where you're
18 shipping it from.

19 Q Are there any hazard or safety reasons that
20 make it dangerous or impossible to move polyethylene by
21 truck?

22 A No.

23 Q For outbound having to do with the Fresno
24 plant, what materials going outbound do Southern Pacific
25 and Santa Fe compete for for your business?

1 A We have no direct rail outbound from the
2 Fresno plant. We do ship intermodal outbound, and that
3 is through a shipper association.

4 Q Do you know if your shipments outbound use
5 both Santa Fe and Southern Pacific?

6 A I think they have used Santa Fe primarily in
7 the past.

8 Q But you just contract with a shipper agent or
9 third party --

10 A We are a member of a shipper association that
11 contracts with one of the two carriers.

12 Q I see. And the association makes the routing
13 decision and the mode choice?

14 A That's correct.

15 Q Do you designate that you want it go by
16 intermodal rather than by direct traffic?

17 A Yes.

18 Q What is it that you want it to go intermodal?

19 A It's the most economical way of shipping it.
20 It's the plastic film that we ship to our midwest
21 warehouses, the Handi-Wrap type films.

22 Q When you say most economical, could you
23 compare -- is this compared in your verified statement,
24 the truck rate and the rail rate?

25 A No. Those are truck rates on bulk liquid

1 chemicals that move from our Gulf Coast plants to the
2 West Coast.

3 Q Right. If it's possible, could you make a
4 similar comparison for me in terms of the intermodal
5 rate versus the rail rate, if you know?

6 A I don't know the -- of course, it's going to
7 vary by destination, but I don't know the direct
8 relationship between the truck versus the intermodal
9 rate. But I do know that the intermodal rate is
10 considerably cheaper.

11 Q For the movements into -- I guess the
12 polyethylene, if the rail rate raised by 5 or 10
13 percent, what would Dow do in a case like that?

14 A It could significantly affect us in the
15 marketplace. It's a highly competitive product. In
16 some cases -- okay, that is to customers. To our plant
17 it's going to increase the cost of production of making
18 the film, so it could adversely affect us in some
19 markets.

20 Q Understood. Would you have any modal
21 alternatives or any shipment alternatives that you could
22 switch to avoid that rate increase?

23 A No, no. The polyethylene inbound to Fresno has
24 to move pretty much rail at this point.

25 Q Is it possible for you to move the

1 polyethylene to a location not served by Southern
2 Pacific or Santa Fe in order to avoid that rate increase?

3 A It's possible but not at all feasible, because
4 it would have to be transloaded into a truck. And you
5 also have -- with polyethylene you have a contamination
6 potential problem. We have to be very, very careful.
7 Any time you get into some kind of a transloading
8 operation like that you have the possibility of some
9 type of contamination, so it's just not a practical
10 alternative.

11 Q I realize you are dealing with a shipper
12 association, but to the extent that you know, if there
13 is a rate raise in the intermodal rate for the plastic
14 film that's going out of Fresno, would truck or any
15 other modal alternative be available to Dow that you
16 would switch to?

17 A I would have to say that any increase in the
18 rate still probably would not allow direct motor carrier
19 competition.

20 Q Switching now to the Pittsburgh plant, you
21 indicated, I think, in your verified statement that
22 there are some raw materials moving inbound to that
23 plant?

24 A That's right.

25 Q Could you tell me what those raw materials are?

1 A We bring in butydiene, which is a raw material
2 used in the production of latex, and we bring in some
3 products under the general heading of glycols, an
4 organic chemical, and we bring in some caustic soda in
5 bead form. It's a dry commodity that moves in covered
6 hopper cars. And we also bring in a product, it's a
7 nematocide.

8 Q For all of these commodities you have listed
9 for me, is it correct that Southern Pacific and Santa Fe
10 compete for your business in moving those?

11 A That is correct.

12 Q What is the percentage of these commodities
13 that move to you by truck as compared to the percentage
14 moved by rail?

15 A They move almost exclusively rail.

16 Q All of them?

17 A Yes. They come from Gulf Coast origins, from
18 our plants there.

19 Q What's the reason that they move by rail
20 instead of truck?

21 A The cost, of truck. We have our own fleet of
22 rail cars to handle these, and just the volumes that we
23 move of these products does not make them conducive to
24 move by truck. Our entire distribution systems are set
25 up for rail movement.

1 Q Let me ask you a little bit about that. I
2 realize you're telling me it's not economic, but if Dow
3 were to shift a large portion of these movements to
4 truck, leaving aside the rates for a minute, what sort
5 of physical plant costs would you have to incur in order
6 to accommodate the increased volume of traffic?

7 A Well, first of all, we've got the investment
8 in rail cars, and these cars would sit idle. Secondly,
9 you've got the safety aspect that we feel it's much
10 safer to move a 190,000 pound rail car of a hazardous
11 material than four or five trucks over the road,
12 especially for that distance. And our unloading systems
13 and our loading systems are set up to handle the loading
14 and unloading of rail cars versus trucks. We would run
15 into congestion problems and things like that at both
16 ends if we were to have to load the volume of trucks it
17 would take to ship these products.

18 Q Are all of the products that you've listed for
19 me here hazardous materials in some way?

20 A Not all of them. A good share of them are. I
21 would say in excess of 50 percent carry some DOT-type
22 hazardous designation.

23 Q Are they hazardous in a way that restricts
24 their ability to be carried by truck, or do you think
25 it's safer?

1 A Not this group of products. They could be
2 carried by truck.

3 Q Are there regulations or restrictions on how
4 they can move and what roads they can go on?

5 A I honestly don't know the answer to that, if
6 there are any restrictions, if we do have to move it in
7 truck. I'm not aware of any.

8 Q Same question I asked you with regard to the
9 Fresno plant. If the rail rate were to rise 5 or 10
10 percent on the movement of these particular products,
11 would you be able to shift either to other modal
12 alternatives or to somehow shift where you're getting
13 these products from in such a way as to avoid that rate
14 increase?

15 A No, we would not. They are produced at our
16 own facilities. These are what we call IDT-type
17 products, which are interdivisional transfers; so we
18 make them and ship them to another location for use in
19 production of a finished product. So we would not use
20 any alternate sourcing point for them.

21 Q Do you have other production points, if that's
22 the proper term, for these materials such as you could
23 get them into Pittsburgh without having to use Santa
24 Fe-Southern Pacific?

25 A No. Those products are produced almost

1 exclusively at our Gulf Coast plants.

2 Q Do you have any other production facilities
3 such that you could move these products to a different
4 facility and produce there rather than the facility in
5 Pittsburgh in such a way as to avoid the rate increase?

6 A No. In fact, some of these products have
7 actually been transferred from locations in the midwest
8 up in the Michigan area down to Texas and Louisiana in
9 the last decade or so because of lower production costs.

10 Q Let me ask you a general question, not just
11 specific to Pittsburgh and Fresno. But, in general, is
12 it possible for you to, in response to increased rail
13 rates, is it possible for you to adjust your production
14 process in any way so as to redirect the flow of a
15 particular raw material, a finished good to avoid a rate
16 increase?

17 A No.

18 Q You have mentioned styrene rates in your
19 verified statement. I think styrene, if I'm correct and
20 if you know, styrene is a plastic material that comes
21 under STCC code 28211. Does that sound right to you?

22 A It is a raw material used in the production of
23 plastics. I don't know if it falls under the 28211 STCC
24 or not.

25 Q I realize this was for a specific movement,

1 but is the rate differential between truck and rail for
2 styrene representative of the rate differential between
3 most materials that are used to make plastic that are
4 raw materials?

5 A I would say yes. What I tried to do is show
6 three representative groups of products that we ship to
7 the West Coast, so what is in there are the basic
8 differentials, yes. The products that we ship would
9 fall into one of those three groups.

10 Q We've talked a little about hazardous
11 materials. Are there any materials that you move and
12 not restricted to the Pittsburgh and Fresno -- in your
13 experience in Dow in general are there any products that
14 you move that are not capable of being moved by truck
15 because of a safety or hazard problem?

16 A We have products that we as a company do not
17 move via truck. The example that comes to mind is
18 chlorine. We do not truck chlorine.

19 Q Why not?

20 A Just the hazardous nature of it. We feel that
21 the only way to move it is via rail, and it moves
22 exclusively rail.

23 Q Now, I take it that is a company policy and
24 not a government policy.

25 A That's correct. There are chlorine producers,

1 as I understand it, that do, on a limited basis, ship
2 chlorine via motor carrier.

3 Q On page 4 of your verified statement in the
4 first full paragraph you discuss a Missouri
5 Pacific-Union Pacific route, their current route is not
6 practical.

7 A The Kansas City gateway route?

8 Q Yes.

9 A That's correct.

10 Q And correct me if I'm wrong, you indicate that
11 it's longer and currently it provides less consistent
12 transit time.

13 A We have not utilized that route out of the
14 Gulf Coast. We are not in favor of using it because of
15 the circuitous nature and the potential inconsistent
16 service. And what the Union Pacific people have told us
17 it's not cost efficient for them to move up to Kansas
18 City and then down into the L.A. area.

19 Q I understand it doesn't exist now, and this
20 somewhat speculative, but if you could tell me, how much
21 of a rate increase would you have to have on your
22 current service before it would become an economically
23 viable alternative to move over the Central Corridor?

24 A I couldn't even make a guess at that. We
25 haven't looked at that situation. We have another

1 reason for not wanting to use the route up the Kansas
2 City and then down. It's because of the hazardous
3 materials that we move. We will move, as I point out in
4 one of the examples, about 61 percent more miles than
5 the direct route through the Southern Corridor.

6 Q That was the other thing I was going to ask
7 about. So is it correct that there is a problem in the
8 actual increased mileage associated with the risk of
9 moving hazardous materials?

10 A Sure. It ties up our cars longer; you know,
11 the more potential for an incident involving the car,
12 you're going into a major town, Kansas City, that you
13 could avoid. We try to utilize the most direct,
14 efficient routes that we can, and if possible to bypass
15 major towns like Chicago or East St. Louis.

16 Q In the next paragraph you indicate that short
17 hauling Santa Fe or Southern Pacific might result in
18 them not being receptive to providing the same level of
19 rates and service. Could you explain for me why that is?

20 A Well, that is happening today in the rail
21 industry with some of the gateway closings. Naturally,
22 a carrier like Santa Fe-SP would not want to receive a
23 car at Ogden if they could receive it at someplace like
24 El Paso or Sweetwater where they can get half to
25 two-thirds of the line haul revenue versus 20 percent or

1 15 percent.

2 Q On the last page of your verified statement
3 you indicate that you think the absence of intermodal
4 rail competition would be detrimental to your ability to
5 sign contracts. Do you see that?

6 A Yes.

7 Q Could you describe for me exactly why it is
8 that intermodal rail competition facilitates the
9 contract process for you?

10 A Well, today on traffic moving out of our Gulf
11 Coast origins to the West Coast to a point common to the
12 SP-Santa Fe, we have two carriers that compete with each
13 other, so we can go to each of those carriers and, in
14 effect, put traffic up for bid, and the carrier that
15 gives us the best overall offer based on cost, safety,
16 service and what not is the carrier that's going to
17 handle the business. And we have put much of our
18 traffic in that corridor up for bid, probably most of
19 it, head to head between the Santa Fe and the SP.

20 Q Is it correct that assuming there is still
21 some form of competition, rail competition, that exists
22 when these contracts end that you will again try to seek
23 a competitive process for the bidding?

24 A I'm sorry. Could you repeat that?

25 Q Some of these contracts that you have signed

1 now, could you tell me about how long they are in
2 duration?

3 A They range from one to three years.

4 Q Assuming there are rail competitive
5 alternatives on these movements when these contracts
6 end, do you plan to again solicit to as many people as
7 who can bid on it?

8 A Absolutely.

9 Q And try to get a competitive rate that way?

10 A Yes.

11 Q Are you familiar at all with the IRMA proposal
12 by the Kansas City Southern in this case?

13 A Somewhat familiar with it.

14 Q Do you have an opinion as to whether the IRMA
15 proposal will provide satisfactory competition in the
16 event that there is a merger?

17 A We haven't looked into it in any great detail,
18 but on the surface it appears there could be some
19 problems because the KCS is -- it doesn't really have
20 control over the westerly portion of the move. We don't
21 use the KCS to any great extent, so you know, their
22 proposal we really haven't become too involved with.

23 Q Has Dow had any experience moving some of its
24 materials on a trackage rights basis?

25 A Yes, we do have some.

1 Q If you're capable of telling me, I'd like to
2 know if you have any opinion as to whether the service
3 you obtained under a trackage rights arrangement is
4 comparable to the service that you usually obtain by the
5 owning railroad?

6 A We found the service to be competitive. What
7 I'm thinking of immediately is the Rio Grande situation
8 from Kansas City westerly. We have used that with, we
9 feel, comparative service to what we had before.

10 Q In terms of leaving Dow in the best
11 competitive situation, would you prefer if there were no
12 merger or if the merger were allowed with trackage
13 rights granted?

14 A Well, our position is that we are neither
15 supportive or in opposition to the merger, but we simply
16 want the benefit of at least two rail carriers where we
17 presently have that today.

18 MR. RATNER: That's all I have. Thank you
19 very much.

20 JUDGE HOPKINS: Ms. Reed.

21 BY MS. REED:

22 Q Good afternoon, Mr. Thompson. My name is Mary
23 Reed, and I'm with the U.S. Department of
24 Transportation. I have just a few questions.

25 At the bottom of page 3 you indicate that the

1 Freeport, Texas and Plaquemine, Louisiana facility is
2 served exclusively by the Missouri Pacific; is that
3 correct?

4 A Yes.

5 Q And that you route traffic Missouri Pacific-SP
6 or Missouri Pacific-Santa Fe to your plants in
7 California?

8 A Yes.

9 Q Are the rates on those two separate movements
10 equal, do you know?

11 A The rates from Plaquemine as opposed to the
12 rates from Freeport?

13 Q No. From Plaquemine.

14 A You mean via the Santa Fe or via the SP?

15 Q Yes, sir. On the joint line rates.

16 A No, they are not equal. Most of the traffic
17 that we move moves under -- well, that's a very complex
18 situation right now because the Santa Fe and the SP are
19 going through some adjustments in that structure of
20 rates, and some of the products were equal, others were
21 not. There were limited mileage credits on some; there
22 were not on others. It all balances out.

23 I don't know if that answers your question or
24 not, but --

25 Q Your total transportation charges via both

1 joint line routes are the same?

2 A If you're speaking of strictly tariff rates,
3 in some cases the Santa Fe has a rate advantage; in
4 other cases the SP has a rate advantage.

5 Q Does this traffic not move under contract
6 rates?

7 A Some of our traffic does, yes.

8 Q Some of this traffic?

9 A That we're talking about here does, yes.

10 Q Now, would the contract rates be similar, do
11 you know?

12 A Well, hopefully the contract rates are lower
13 than the tariff rates.

14 Q Excuse me. I'm not being clear. The contract
15 rates as far as MP-SP versus MP-Santa Fe, are they
16 equivalent, do you know?

17 A Well, we have contracts with both carriers, so
18 in some cases the SP is better when we put the traffic
19 up for bid. In other cases the SP has been the
20 successful bidder.

21 Q So once you award a contract, you award all
22 your traffic to one carrier or one routing?

23 A We have put it up generally on a
24 movement-by-movement basis. We haven't taken all the
25 traffic out of Plaquemine and Freeport to the West Coast

1 and put it under one master contract. We have several
2 chunks of business, you might say, and we look at those
3 individually.

4 Q Now, does any of this traffic move in TOFC
5 service?

6 A Less than one percent. It's almost
7 exclusively in tank cars and covered hopper cars.

8 Q Now, for any of your traffic either
9 originating in the Gulf or going from your Pittsburgh
10 and Fresno facilities do you truck it to another
11 railroad for a movement in non-TOFC service?

12 A You're speaking of package freight now?

13 Q Either bulk or boxcar traffic, nontrailer
14 traffic.

15 A Well, first of all, none of the bulk traffic
16 is handled that way. It's all direct rail from the
17 plants. As far as the package -- maybe if you could
18 explain a little more.

19 Q Well, let me back up to the bulk commodities.
20 If you cannot truck it to another railroad for a bulk --
21 excuse me. Let me back up. For bulk commodities if you
22 can't truck it to another railroad, do I take it from
23 that that for a railroad to be competitive you need to
24 have direct rail service to your facility or your plant
25 site?

1 A That's correct.

2 Q It doesn't help you any to have a railroad
3 serving the same city if they can't get to your plant;
4 is that correct?

5 A That's correct.

6 Q Now, you mentioned that you had plastic film
7 going from Fresno to plants in the midwest; is that
8 correct?

9 A Yes.

10 Q Do you know whether or not plastic film comes
11 from any other sources to those midwestern plants?

12 A Yes, it does. Our Zip-Loc bags and Handi-Wrap
13 is competitive with all kinds of similar type products
14 from other companies. I don't know the production
15 sources. We also produce it in Bay City, Michigan.

16 Q But there are other producers in other
17 locations that also make --

18 A Oh, yes. It's a highly competitive product.

19 Q Now, at the Pittsburgh plant I take it you
20 make latex or what is --

21 A Latex is one of the products that we make.

22 Q And that goes to -- is that an inter-Dow
23 Chemical move that goes to another processing plant?

24 A No. Latex goes directly to customers. The
25 Pittsburgh plant, the market area for the latex that is

1 produced there is generally west of the Rocky Mountains.

2 Q Do you know whether those receivers of latex
3 also have the option of getting latex from other sources?

4 A They certainly do. It's another highly
5 competitive product.

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

7 JUDGE HOPKINS: Any redirect?

8 MR. KALAFUT: I have no redirect, Your Honor.

9 At this time I move for the admission of Mr.
10 Thompson's statement.

11 JUDGE HOPKINS: Any objection? Hearing none,
12 it will be received in evidence.

13 Call the next witness.

14 MR. KALAFUT: The next witness, Your Honor, is
15 R.C. Matney.

16 Whereupon,

17 R.C. MATNEY

18 was called as a witness by counsel and, having been
19 first duly sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. KALAFUT:

22 Q Mr. Matney, would you please state your name
23 and your business address for the record, please?

24 A My name is R.C. Matney. My business address
25 is 3830 East Southport Road, Indianapolis, Indiana.

1 Q And what is your current position, sir?

2 A I'm the president of the Brae Service
3 Transportation Group.

4 Q Mr. Matney, did you prepare or cause to be
5 prepared a verified statement for use in this proceeding?

6 A I did.

7 Q I have placed before you an 11-page document,
8 including the verification, bearing the date July 16 --
9 or excuse me -- the 30th of August 1984. Is that your
10 verified statement?

11 A Yes, it is.

12 Q Do you have any corrections to it?

13 A No, I do not.

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

16 A Yes, it is.

17 MR. KALAFUT: Your Honor, I tender the witness
18 for cross examination.

19 JUDGE HOPKINS: Mr. Ratner.

20 Ms. Kooperstein.

21 CROSS EXAMINATION

22 BY MS. KOOPERSTEIN:

23 Q Good afternoon, Mr. Matney. My name is Donna
24 Kooperstein, and I represent the Department of Justice.

25 The first question is about your company,

1 Cargo, Inc. Does it provide service in competition with
2 TOFC service that National Piggyback arranges?

3 A Yes, it does.

4 Q What type of commodities does it haul in
5 competition with the TOFC service?

6 A Well, we handle basically four commodity
7 groups, either in cargo or in the piggyback business;
8 that is, the retail business meaning the retail store
9 chains. That accounts for about 25 percent of our total
10 business; appliances account for about 24 percent of our
11 business; food, about 22; paper, 9 percent; and the rest
12 is -- we would categorize it as miscellaneous if it is
13 below the 9 percent level.

14 Q And these percentages are for all your
15 businesses?

16 A Yes.

17 Q What distance is it typically cost effective
18 to truck to a TOFC ramp?

19 A If the move is going to go rail beyond?

20 Q Yes.

21 A As a general rule, a maximum of 350 miles. We
22 try to hold it within about a 200 mile radius. That
23 makes us more cost effective with the pure highway mode.

24 Q For your TOFC movements what distances do you
25 typically haul the commodities, including the rail and

1 truck portion?

2 A We have never broken that down on a computer
3 or traffic basis, but we handle about 350 to 375,000
4 trailers a year, and we handle them to and from all of
5 the rail ramps in the United States; so I can't address
6 the question any more specifically than that.

7 Q Well, is TOFC more cost competitive with truck
8 at long distances or short distances?

9 A Well, I think when you get, as a general rule,
10 beyond 350 miles, the TOFC business will be more cost
11 effective than the pure highway. Now, we have the
12 ability to use our motor carrier cargo or other motor
13 carriers since we are a certificated broker. But the
14 way our traffic is split up, 80, 81.5 percent goes TOFC,
15 and the other percent is our fee or gross margin, and
16 the rest is the short haul motor carrier cost. At this
17 time we don't really broker any traffic on any other
18 motor carriers over the 350-mile radius; so we have
19 found the TOFC to be very cost effective.

20 Q You said 81.5 percent were TOFC, and what was
21 the next category that you mentioned?

22 A 81.5 is what we pay the rail carriers out of
23 \$350 million in gross receipts.

24 Q Do any of the commodities that you move by
25 TOFC service move by all truck as well for movements of

1 equivalent distances?

2 A Are you asking me does the customer also move
3 truckloads between the same points?

4 Q Right.

5 A I don't know that I could answer that with
6 absolute certainty.

7 Q On long haul movements how do the rates for
8 TOFC and truck compare?

9 A Well, as a general rule, on the long haul
10 rates over a thousand miles you're looking at a TOFC
11 cost on a ramp-to-ramp basis of the mid 70-cent range
12 per mile, and then your pickup and delivery added to
13 that is going to be about 8 or 10 cents, which will take
14 it up to the mid 30s, and the total door to door cost
15 and the highway cost, it's been our experience, is up in
16 the mid 90s.

17 Q How do the services compare in terms of
18 transit time?

19 A Well, the rail service is very good: from
20 California to Chicago your third afternoon, or from
21 Chicago to California, your third A.M. delivery. And
22 that's fairly comparable to the motor carrier service
23 unless they're running a two-man team. Then you can be
24 a little better than that.

25 Q What would a little better be?

1 A You probably could deliver second morning in
2 each direction.

3 Q How do these services compare in terms of
4 reliability?

5 A When you talk about liability you're talking
6 about cargo liability?

7 Q Reliability.

8 A Oh, reliability. I would say the traffic
9 transcontinentally in each direction will be better than
10 97 percent of the schedules that I gave you.

11 Q That figure is for the TOFC service?

12 A Yes.

13 Q And what about truck service?

14 A Well, we don't use that much truck service, so
15 I could not give you a true comparison.

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1 Q For what reasons do your shippers select TOFC
2 over all truck?

3 A It is more cost-competitive or more
4 cost-effective.

5 Q Is volume ever a consideration?

6 A Could you be more specific?

7 Q Do customers ever select TOFC because there is
8 not sufficient availability of truck to haul the
9 movements?

10 A Well, I would say in the last three or four
11 years there has been adequate equipment or service
12 available in the marketplace both from a rail and a
13 motor carrier side.

14 Q Do you think that truck is a less viable
15 alternative for some of your shippers using TOFC than
16 for others?

17 A Well, I think if cost is a consideration,
18 yes.

19 Q Is cost more a consideration for some of your
20 shippers than for others?

21 A Absolutely, yes.

22 Q For which ones?

23 A Well, probably commodities that are moving
24 from the point of manufacture to the distribution center
25 where transit time is not as critical as next-day

1 delivery or second-day delivery, then cost is the major
2 consideration.

3 Q Is it a question more of where the movement is
4 going than what type of commodity the movement consists
5 of?

6 A I don't think the destination has anything to
7 do with it.

8 Q Whether it is going to a distribution center
9 as opposed to what type of commodity? Is that more
10 important?

11 A No, I don't think so.

12 Q Do you think that shippers of certain
13 commodities are more concerned with cost than shippers
14 of other commodities?

15 A Well, one of the things that comes to mind is
16 the perishable business that we handle out of
17 California. I think that is a cost-sensitive item,
18 because if the transportation costs go so high you can't
19 sell the product, then I think that is a very
20 transportation-cost-sensitive item.

21 Q Why do you think certain shippers choose truck
22 over TOFC?

23 A Maybe because of a pure demand for service.

24 Q Do you know?

25 A Do I know?

1 Q Are you just guessing? Or do you have any
2 feel for it?

3 A I think you would have to ask each individual
4 shipper that.

5 Q In general, are there still significant
6 volumes of containerized freight moving all truck that
7 could go TOFC?

8 A When you say containerized, are you talking
9 about trailer loads or are you talking about ocean
10 steamship line containers?

11 Q Trailer loads.

12 A There is a lot of traffic out there that could
13 go TOFC certainly.

14 Q Why do you think that traffic isn't going TOFC
15 at present?

16 A Well, two items, cost and service.

17 Q Is it your testimony that over the long haul
18 TOFC is less costly than truck?

19 A Yes, but the differential, we are only talking
20 about roughly ten cents a mile, fifteen cents a mile at
21 the most today.

22 The highway trailer as a general rule is about
23 10 percent larger than the rail trailer in the
24 marketplace, so that you have a very thin margin of cost
25 per cubic foot between the rail mode today and the pure

1 highway mode.

2 Q Do you think that shippers make their
3 decisions based on the interaction of two factors, cost
4 and time?

5 A Absolutely.

6 Q I think you already answered this. Do some of
7 your customers use truck to ship the same commodities
8 for which you arrange TOFC service over the Southern
9 Corridor?

10 A Well, I think I answered that that I didn't
11 know that for sure.

12 Q Do you think that the ability of shippers to
13 use all truck for movements influences the rates that
14 are set by the railroads in the Southern Corridor?

15 A Yes, I do.

16 Q Do you think that the ability of the shippers
17 to use another railroad for the TOFC service, for TOFC
18 service exercises a greater or lesser of the same
19 influence as the availability of truck?

20 A I think that the shippers' ability to use
21 another rail carrier will influence the ability to use
22 TOFC more than the highway mode, because as a general
23 rule the railroads are fairly competitive down to the
24 dollar in each traffic lane, and as a general rule they
25 are cheaper than the highway mode.

1 Q In setting prices for Cargo, Inc., does your
2 company consider TOFC prices?

3 A Yes.

4 Q With regard to the perishables that you
5 arrange TOFC service for the Southern Corridor, would
6 there be any problem obtaining sufficient truck capacity
7 to haul all of those commodities in season?

8 A Well, the traffic that we move in our reefer
9 fleet, if we had to put that on highway, I am sure the
10 customer would use a pure highway carrier instead of
11 piggyback, and it would literally put us out of
12 business.

13 Q Could you explain that a little further, how
14 it would put you out of business?

15 A Well, right now we operate a reefer fleet of
16 about 1,000 trailers hauling out of the San Joaquin
17 Valley and the Imperial Valley, and we use rail as a
18 means of moving that traffic. It is cheaper than motor
19 carrier. We offer a cheaper price to the customer than
20 the motor carrier price.

21 A If we had to put that on highway, we would
22 have no assurance that we would keep any of that
23 business.

24 Q Let me try this question one more time. Just
25 in general, in regard to perishables that are moved by

1 Santa Fe and Southern Pacific over the Southern
2 Corridor, do you think that shippers, your shippers and
3 other shippers of these commodities, would have any
4 problem obtaining sufficient truck capacity in season to
5 haul this if the rail service were priced too high?

6 A Well, at the present time in the TOFC market
7 there are approximately 7,500 reefer trailers. If those
8 were taken out of service, the question is, could the
9 shippers get enough highway trailers to haul the
10 product?

11 Q Yes.

12 A Gosh, I couldn't answer that. I don't know.

13 Q Could any of the commodities that you arrange
14 TOFC service for in the Southern Corridor move by boxcar
15 or refrigerated car?

16 A I think most of it could.

17 Q Could you compare the rates and services to
18 TOFC?

19 A Of boxcar?

20 Q Yes.

21 A We are not in the boxcar business, so I could
22 not make a comparison.

23 Q Do you have any feel for why the shippers
24 select TOFC over boxcar?

25 A Reliability of service and service itself.

1 Q Service in terms of time?

2 A Yes.

3 Q If rail rates in the Southern Corridor were to
4 rise 5 percent, would you expect the customers to switch
5 to all truck, boxcar, or remain with TCFE?

6 A If the rail rates in the Southern Corridor
7 would rise 5 percent, in my opinion we would lose all of
8 the business that we have. As far as addressing what
9 mode it would go to, I couldn't address that.

10 Q So it is your opinion that if rail rates rose
11 5 percent and you raised your rates by the comparable
12 amount, your customers would find alternative means of
13 moving their goods?

14 A That's right.

15 Q In the Southern Corridor, is it feasible to
16 generally truck -- for a shipper to generally truck to
17 either Santa Fe or Southern Pacific for a line haul
18 movement?

19 A We truck in from, say, a 50-mile radius, from
20 Houston to go to Los Angeles? Is that the question?

21 Q If you imagine the two lines of Santa Fe and
22 Southern Pacific running through the Southern Corridor,
23 can a shipper at almost any point truck to either Santa
24 Fe or Southern Pacific? Does it have a choice?

25 A Today?

1 Q For TOFC service.

2 A Today we do have a choice.

3 Q How long has National Piggyback been in
4 business?

5 A Since 1974.

6 Q Have you seen much growth in TOFC during that
7 time?

8 A Well, the first year we started the company I
9 think we handled 3,500 trailers. This year we will
10 handle about 350,000.

11 Q Do you expect to see much growth in the
12 future?

13 A Well, if we maintain rail competition, I think
14 we will be able to maintain our business and grow it.

15 Q Could you please turn to Page 6?

16 On Pages 6 and 7 you have a discussion of rail
17 rates. Do you have that?

18 A Yes.

19 Q Do you think that any other factors could
20 account for the difference in rates between the points
21 served by the two carriers and the points served by one
22 carrier other than the fact that they are served by two
23 or one carrier?

24 A Are you asking me, does the number of rail
25 carriers influence what the rail rate is?

1 Q I believe it is your testimony that it does.
2 Is that true?

3 A Yes, I believe that.

4 Q Do you think there are any other factors that
5 account for these differences that you portray in your
6 chart?

7 A No other major factors.

8 Q Have you had any experience where rail rates
9 have risen and you have lost your customers to other
10 modes?

11 A Yes, I think we have had an experience with
12 the perishables out of California this summer, where the
13 Santa Fe charged us \$125 to reposition our trailer from
14 Los Angeles when it was unloaded, when it was made
15 empty, up into the San Joaquin Valley for the load
16 eastbound.

17 Previous to 1983, that reposition charge was
18 free. Due to the fact that we had to pass that \$125 on
19 to the customer, it has made that business in many cases
20 unprofitable.

21 Q If you think that you would lose most of the
22 customers if the railroads raised their prices 5
23 percent, do you think that that would prevent -- the
24 fact that they would lose your business would prevent
25 the railroads from raising their rates 5 percent?

1 A I think that if they were going to lose the
2 business, it would prevent them from raising the rates.

3 Q Are you still concerned then about a merger
4 between the Santa Fe and Southern Pacific if you think
5 that they would be prevented from raising the rates
6 because they would lose your business?

7 A Well, my concern is that we lose the element
8 of competition in the marketplace of our trading large
9 volumes of traffic with rail carriers.

10 If we have an alternative carrier to take our
11 business to and we have contracts with the railroads
12 that are as large as 45,000 trailers a year guaranteed,
13 if we have a rail carrier to be able to negotiate that
14 large volume of business with, I think the carrier that
15 we presently have that contract with would study our
16 proposal very carefully before they increased our rates
17 substantially.

18 Without an alternate carrier, I think the
19 rates would go up.

20 Q Why would a carrier raise the rates if it
21 thought it would lose all the business to other modes?

22 A I think they might take that risk to see what
23 the traffic truly would bear, and then decide to drop
24 the price back down if they started losing the business,
25 and I don't think we want to take that risk.

1 Q So is it your opinion that you are not totally
2 confident that the carriers wouldn't raise their rates?

3 A Ask me that again.

4 Q It seems to me it is your opinion that the
5 carriers may raise the rates and see what happens?

6 MR. FLAGG: Your Honor, again, I would like to
7 object on the basis that her question is leading. She
8 is putting words in the witness's mouth.

9 JUDGE HOPKINS: Leading? She is cross
10 examining this witness. Go ahead.

11 THE WITNESS: Would you repeat the question?

12 BY MS. KOOPERSTEIN: (Resuming)

13 Q Let me try to rephrase it. I don't exactly
14 recall it.

15 So you do have a concern that the carriers
16 might raise the rates?

17 A I have a very serious concern that the
18 carriers might raise the rates if there is not rail
19 competition in that traffic lane.

20 Q Do you believe UP can provide as effective
21 competition with trackage rights as they two carriers
22 provide now to each other?

23 A Yes, I do.

24 Q If UP's trackage rights were not granted, what
25 would your position on the merger be?

1 A I would be against the merger.

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

4 JUDGE HOPKINS: Ms. Reed?

5 BY MS. REED:

6 Q Good afternoon, Mr. Matney. I have a few
7 questions. My name is Mary Reed. I am with the U.S.
8 Department of Transportation.

9 Prior to the Commission's grant of an
10 exemption of TOFC/COFC traffic from regulation, did
11 railroads have a high market share of TOFC traffic?

12 A I think that since deregulation, they have got
13 a higher market share.

14 Q Did they have a high market share in your
15 opinion prior to deregulation? Or do you know?

16 A I don't know that we had the statistics
17 available at that time to compare it.

18 Q How has deregulation enhanced the ability of
19 rail carriers to increase their market share?

20 A I think it has enhanced them to do some things
21 with the rate structures and principally where the
22 carriers are now making their own rates as an individual
23 carrier, rather than going through a bureau.

24 I think you can look back at what happened to
25 the California rates eastbound, that after deregulation

1 the eastbound rate was dropped down about \$300 per
2 trailer. In addition to that, after deregulation, the
3 rates from Kansas City to the Pacific Northwest,
4 Portland, Seattle, and those cities, those rates were
5 reduced about \$300 per trailer.

6 Q Then why weren't the rail carriers able to
7 reduce the rates on the traffic prior to that time?

8 A Well, I can't answer that question for the
9 rail carriers.

10 Q In any case, the flexibility granted to rail
11 carriers by the exemption enabled them to compete more
12 effectively with motor carriers. Isn't that correct?

13 A My opinion is, the shipper, having the ability
14 to deal one-on-one with a rail carrier and not have to
15 go through the rate bureau process, I think that action
16 brought about some things that individual carriers that
17 had certain needs and back haul traffic lanes that they
18 wanted to fill trailers up.

19 I think the shippers' ability to deal
20 one-on-one with the rail carrier where both parties
21 could benefit from that action had more to do with the
22 rate reductions than any other factor.

23 Q How far is traffic drayed to a rail head in
24 California?

25 A In California?

1 Q Yes, sir.

2 A As a general rule, I would say not more than
3 100 miles.

4 Q Does that mileage figure differ depending on
5 whether it is dry freight or perishables?

6 A No, not really.

7 Q It can arrange higher than 100 miles, however,
8 in some circumstances?

9 A Yes, it can under some circumstances.

10 Q And what would those circumstances be?

11 A Well, if we had reefers at a ramp like
12 Bakersfield, California, and the product was coming off
13 in Fresno, and we didn't have time to reposition them up
14 there by rail or even north of Fresno, we would highway
15 them up there and pick the loads up.

16 Q Now, you indicate on Page 3 that you handled
17 some Union Pacific traffic over the Central Corridor.
18 Could you tell me where in the general area that traffic
19 originates in California?

20 A That traffic originates in the Oakland area
21 and the Los Angeles area and terminates primarily in
22 Kansas City, Omaha, Chicago, and a 200-mile radius of
23 Chicago.

24 Q For traffic that originates in the Bay area,
25 how far down into the Central Valley does your firm

1 truck to a rail head, to the Union Pacific's rail head?

2 A To Oakland?

3 Q To Oakland from the Central Valley. How far
4 down in the Central Valley?

5 A You can't go more than 50 miles south of
6 Oakland, because at that point it is cheaper to put it
7 on a ramp down at Fresno.

8 Q And how far north of Oakland do you dray?

9 A Well, we ramp at some of the ramps north of
10 Oakland, like Stockton, and say as a general rule you
11 are talking 50 miles and 100 miles at the most in
12 California.

13 Q Now, you indicate on Page 3 that in 1983 we
14 shipped approximately 40,000 trailers via Southern
15 Pacific and approximately 36,000 via Santa Fe. Do you
16 know what proportion of that tonnage was dry freight
17 versus perishables for each of those carriers?

18 A In 1983, approximately 10,000 loads of
19 perishables was eastbound on the Santa Fe, and probably
20 2,000 on the SP.

21 Q So the rest of it would have been dry freight?

22 A Yes.

23 Q Now, at the top of Page 4 you indicate that
24 our eastbound traffic through the Southern Corridor
25 consists primarily of imported goods. Does that refer

1 to container traffic, oceangoing?

2 A I am sorry. Would you repeat that?

3 Q You refer at the top of Page 4 to eastbound
4 traffic through the Southern Corridor consisting of
5 imported goods. Are you referring to container traffic
6 from steamship companies?

7 A No, that is primarily imported traffic that is
8 loaded into our dry vans at Los Angeles on the transload
9 type basis that goes to Dallas, Houston, Arkansas, and
10 that area.

11 Q So that would have been a bulk steam
12 oceangoing movement that was then put into trailers?

13 A Yes.

14 Q Do you know whether motor carriers handle that
15 in long haul service strictly over the road?

16 A I am sure there is some traffic that goes over
17 the road.

18 Q In response to a question by the Department of
19 Justice, which I wasn't sure I understood the answer to,
20 but it seemed to me you were indicating that the size of
21 the trailers or the capacity of the trailers on the TOFC
22 move is smaller than on an over-the-road move. Is that
23 correct?

24 A That's correct.

25 Q Could you tell me what the difference is

1 between the capacity of the two types of equipment?

2 A Well, the 40-foot rail trailer has about 3,000
3 cubic feet. The 45-foot rail trailer has a little less
4 than 3,200 cubic feet. The motor carrier highway
5 trailer, a 48-footer, has about 3,600 cubic feet.

6 Q Now, when you were talking about motor carrier
7 rates being higher than rail rates, were you comparing
8 the costs of equivalent types of equipment as far as
9 capacity?

10 A Yes.

11 Q Would the costs per mile be higher or lower
12 for higher capacity equipment moved by motor carrier?

13 A I think you find today that most of the motor
14 carriers that are highway carriers of truckload goods in
15 1984, 50 percent of the equipment produced as 48 feet
16 and over, 30 percent was doubles, 27 to 28-foot.

17 The other 20 percent was 45-footers, and that
18 was primarily for the rail industry. So the highway
19 mode has 48-foot trailers. The rail mode still has
20 45-foot trailers.

21 Q And so a shipper in determining what its costs
22 would be would look at the cost per hundredweight in
23 comparing rail to motor or how much they could fit into
24 a trailer? Isn't that correct?

25 A Well, you normally do it cost per cubic foot

1 if you have got a light, bulky product, and cost per
2 hundred if you have got a dense product.

3 Q Now, on Page 5 you provide some statistics on
4 rail rates eastbound and westbound. Do you know what
5 the motor carrier rates were for those years, average
6 motor carrier rates?

7 A No, we have no way of knowing that.

8 Q Now, you also provide rail rates on Pages 6
9 and 7. Do you know what the motor carrier rates would
10 be between those points?

11 A No, I don't have those.

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1 Q Do you know whether on those movements the
2 rail haul is a head haul or a back haul?

3 A I think on the charts I indicated both
4 directions, and as you can see, some are priced out
5 higher in one direction than the other. And as a
6 general rule, the head haul is more expensive than the
7 back haul. And looking at the one just on page 7 from
8 Chicago to Jacksonville, southbound it's 97 cents a
9 mile; northbound it is 48.

10 Q Do you know whether the railroad costs for
11 handling the traffic in these various corridors are
12 equal?

13 A As far as one rail carrier versus another?

14 Q Well, no. You have provided -- these are the
15 rates, correct?

16 A Yes.

17 Q Do you know whether the railroads' costs per
18 mile, which is how you have broken down the rates --
19 whether those costs per mile are equivalent in these
20 various corridors?

21 A No. I think the rail carrier could answer
22 that for you.

23 Q Now, at the bottom of page 8 and the top of
24 page 9 you say, "The large part of our TOFC business is
25 from motor common carriers who use our services to move

1 their loads via rail." I'm not sure I understand
2 exactly what they are doing. Would you please explain
3 this more fully?

4 A Sure. There are a lot of motor carriers that
5 pick up loads that charge the shipper from door to door,
6 but rather than run it over the highway, those motor
7 carriers give us the trailers, and we move them in rail
8 service. For example, from Chicago to Los Angeles, we
9 turn the trailer at Los Angeles back over to the motor
10 carrier, and they make the delivery direct to the
11 customer.

12 Q And they charge the customer the motor carrier
13 rate?

14 A They charge the customer the motor carrier
15 rate.

16 Q And do you know what proportion of your
17 traffic moves under this kind of arrangement?

18 A No. We have not been compiling the motor
19 carrier traffic. I think we took the figure just for
20 one month for the purpose of this statement and put it
21 in here. But our company, we moved over a million
22 dollars that month for motor carriers in line haul
23 service.

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

25 JUDGE HOPKINS: Any redirect?

1 MR. KALAFUT: No redirect.

2 You're excused, sir.

3 (The witness was excused.)

4 MS. WATKIN: The next witness --

5 JUDGE HOPKINS: Do you move the admission?

6 MR. KALAFUT: We move the admission.

7 JUDGE HOPKINS: Any objection? It will be
8 received in evidence.

9 MS. WATKIN: UP-MP next calls Richard Hemb.

10 Whereupon,

11 RICHARD E. HEMB

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

15 DIRECT EXAMINATION

16 BY MS. WATKIN:

17 Q Mr. Hemb, would you state your name and
18 business address?

19 A Richard E. Hemb, 1540 East Shaw Avenue, Suite
20 120, Fresno, California.

21 Q And what is your position, please?

22 A I'm director of transportation and marketing
23 research for the California Grape and Tree Fruit League.

24 Q Did you submit a verified statement in this
25 proceeding?

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1 A Yes, I did.

2 Q I have placed before you the verified
3 statement dated August 14, 1984. Is that a copy of your
4 statement?

5 A Yes, it is.

6 Q Do you have any corrections or changes in your
7 statement?

8 A No, I do not.

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

11 A Yes, it is.

12 MS. WATKIN: The witness is available for
13 cross examination.

14 JUDGE HOPKINS: Mr. Ratner.

15 CROSS EXAMINATION

16 BY MR. RATNER:

17 Q Mr. Hemb, my name is James Ratner. I'm with
18 the United States Department of Justice. I realize you
19 have been sitting here all day, and I will try to be as
20 brief as I possibly can.

21 Is it correct that the shippers in your group
22 are in California and Arizona?

23 A I have heard that before. Yes, that is
24 correct.

25 Q I'm very glad. Could you describe for me

1 where the movements from your shippers go in the United
2 States?

3 A We are nationwide.

4 Q On page 3 of your verified statement you
5 indicate that in general, the perishables crop has a
6 limited storage life. Could you explain for me a little
7 what the time period exactly is?

8 A Well, in the case of table grapes, you
9 wouldn't want to store for any period longer than two
10 months. Our commodities that we handle -- the fresh
11 table grapes and delicious tree fruits -- are very
12 perishable. They do not store very well. They are
13 different than, just for an example, apples out of
14 Washington. Washington apples are shipped yearround.
15 They are just a better storable fruit.

16 Q Okay. When you say limited storage time, what
17 is the longest, if you can generalize, that it would be
18 safe to store your products?

19 A It would be in the two to three month range.

20 Q Usually are they stored much shorter periods
21 than that?

22 A Much, much shorter, yes.

23 Q On page 4 and 5 you have a list of commodities
24 that move rail, piggyback and truck, of your verified
25 statement.

1 A Yes.

2 Q For the rail commodities is it correct that
3 those are commodities that are moving in refrigerated
4 boxcar?

5 A For the rail it would be refrigerated boxcar,
6 yes.

7 Q And the piggyback is what's known as TOFC
8 service?

9 A TOFC, yes.

10 Q I notice -- could you describe for me what is
11 mixed deciduous?

12 A Instead of a straight load of pears, you might
13 have pears and apples, just a combination of fruit.

14 Q Does it include any fruits that are not
15 otherwise listed? For example, are there fruits in the
16 mixed deciduous which are not listed in the truck
17 category on page of your verified statement?

18 A Yes. What I offered you is just a sample.
19 There are many more fruits that you could look at, but I
20 just wanted to give you a sample of the timing of
21 shipments involved.

22 Q I see. If you could do this for me, can you
23 give me a breakdown in terms of the percentage of the
24 various commodities in terms of how much moves by rail,
25 how much moves by piggyback and how much moves by

1 truck? For example, if we take table grapes, can you
2 give me an idea of how much moves by rail, piggyback and
3 truck?

4 A I cannot break down piggyback and a rail car.
5 I can just give you rail versus motor carrier.

6 Q That would be fine.

7 A For table grapes the total volume shipped by
8 rail is 18 percent. That's for all markets. Now, the
9 problem we have with the merger is some of our major
10 eastern markets, those are very heavy rail markets for
11 table grapes to the New York area, Boston area. Sixty
12 percent, roughly 50 percent of the shipments are shipped
13 by rail.

14 Q Okay. Are there any commodities that do not
15 move substantially in truck?

16 A They do not move substantially in truck?
17 Probably juice grapes. They are shipped, between 90 and
18 95 percent, in rail car.

19 Q Why is that?

20 A Very low-priced commodity. Most of the
21 shipments go to Canadian markets, eastern Canada. They
22 buy in high volume. The transit time is not as
23 essential as some other commodities.

24 Q Is the rail rate considerably lower than the
25 truck rate?

1 A It is, and they could not sell the juice
2 grapes in Canada if they had to pay high motor carrier
3 rates.

4 Q Are juice grapes produced anywhere in the
5 United States besides in California and Arizona?

6 A The vinifera type grapes are grown in
7 California. In eastern Michigan you have the concord
8 grapes.

9 Q For particular demanders juice grapes do those
10 two types of grapes compete with each other?

11 A Well, there is a certain amount of
12 competition, but as far as concord goes, there's only so
13 much volume.

14 Q Okay. Are there any other commodities that
15 your shippers deal with that does not move at least
16 somewhat by truck?

17 A No.

18 Q Now, you mentioned some movements of table
19 grapes that are longer haul movements to New York and
20 Boston which went 60 percent by rail, you said. Is that
21 true for all of the commodities that you have listed
22 here, that in the longer hauls the movement is at least
23 50 percent by rail?

24 A Yes, I believe that would be an accurate
25 statement.

1 Q Are there any commodities where for movements
2 over a thousand miles the movement is over 75 or 80
3 percent by rail?

4 A Well, the Santa Fe has offered a very good
5 service between California and Chicago. Now, if you
6 take a look at all perishables, rail participation in
7 the California to Chicago market might be as high as 30
8 percent.

9 Q Does Southern Pacific compete in any
10 meaningful way in that market?

11 A No. The reason being they have the southern
12 routing. Right now they don't serve Chicago by
13 themselves. They have to rely on a connection.

14 Q Right. On the movements of the commodities
15 or longer hauls, if the rail rate on those commodities
16 moved upward say 5 percent or so, would the shippers of
17 those commodities switch to truck?

18 A Carload or piggyback or rail in general?

19 Q To the extent -- either one.

20 A I think it could severely impact the Plan 3
21 industry, and by Plan 3 I mean piggyback. That is just
22 a separate type of piggyback service. With the merger
23 going through, however, I'm really not afraid of the 5
24 percent increase. I'm thinking of little higher numbers.

25 Q Let's take a higher number. Do you believe if

1 the ability of your shippers to switch to -- let's take
2 the Plan 3, the piggyback. Do you believe that the
3 ability of those people to switch to truck protects them
4 from a substantial rate increase by the merged firm
5 after the merger?

6 A Would you explain that again, please?

7 Q Was I correct in understanding your testimony
8 that a 5 percent rate increase might cause a lot of your
9 shippers who are currently using piggyback to switch to
10 truck?

11 A Yes.

12 Q Given that, why is it not that such a
13 threatened switch in the event of a price increase by
14 the merged firm would constrain the merged firm from
15 even entertaining that price increase?

16 A Well, in this industry it's a reasonable
17 industry. When the harvest is ready to ship, it has to
18 go. You need both types of transportation, because at
19 present neither, one single mode cannot supply adequate
20 equipment to take the entire harvest to market. So
21 right now both types of equipment are needed.

22 Q Okay. I think I understood what you are
23 saying, but let me go at it one more way just to make
24 sure. Is there adequate truck capacity to accommodate
25 all or most of the perishable movements that are

1 currently going in piggyback?

2 A In my opinion absolutely not.

3 Q Is there adequate truck volume to accommodate
4 all of the movements of perishables that are currently
5 moving in straight rail right now?

6 A Straight rail?

7 Q Boxcar.

8 A You may be able to accomplish that. The major
9 commodities that are using exclusively boxcar would be
10 juice grapes, carrots, onions, potatoes -- some of the
11 commodities that I don't personally get directly
12 involved in.

13 Q Is the ability of a truck to get a back haul
14 on movements of perishables a factor in whether they
15 will be able to quote a competitive rate for a
16 perishable move?

17 A Yes.

18 Q For perishables do the trucks that do make the
19 movements have problems getting back hauls?

20 A At certain times of the year.

21 Q Do those times coincide with the seasons when
22 the perishables have to be moved?

23 A In general, yes.

24 Q In the event of a rate increase by rail, is it
25 possible for your shippers to switch their destinations

1 to a point not served by the railroad that is raising
2 the rate, and thereby avoid the rate increase?

3 A Switch the destination?

4 Q Let me give you an example. I realize this is
5 a little complex. If you have shippers in the San
6 Joaquin Valley, for example, that are growing nectarines
7 or something, and they have been moving to Houston, and
8 the rail rate to Houston rises, are they capable of
9 shifting all of their movement to, for example, Kansas
10 City on a different railroad and thus avoid the rate
11 increase?

12 A No, I don't believe that would be a feasible
13 alternative.

14 Q Why not?

15 A Because the produce has to get directly to the
16 consuming market. It would simply be adding
17 transportation at the other end.

18 Q If you could do it for me, and if it's
19 possible to generalize among the perishable commodities,
20 can you give me an idea of the differential between
21 rail, TOFC and truck rates?

22 A During the heavy shipping season, the summer
23 months, your trucks would be size 5,000, perhaps getting
24 up to 5,500. Your TOFC would stay in the range of
25 4,500. That is some extreme ranges.

1 Q And do you know what rail is?

2 A During the low season you're probably never
3 going to see a truck shipment, the rates go lower than
4 2,400, so there is a tremendous variation in the rates
5 involved.

6 Q When you say 5,500 and 4,500, that is per what?

7 A Per unit.

8 Q And a unit is?

9 A One trailer.

10 Q Generally, what are the sizes of the trailers?

11 A For the motor carrier industry they are going
12 more toward the 48-foot trailer. The piggyback
13 trailers, due to the length restriction on flatcars,
14 have to be maintained not to exceed 45 feet.

15 Q Is it difficult for those shippers that are
16 loading by rail right now -- would there be any
17 significant facilities cost that they would have to
18 undertake in order to change their rail into a truck
19 loading facility?

20 A Their boxcar loading?

21 Q Yes.

22 A No. I believe all of our shipper members, if
23 they are served by a railroad, have the capabilities at
24 present to ship rail or motor carrier. It would not
25 require a capital investment on their part.

1 Q Do you have a position as to whether your
2 shippers would be in a better competitive situation if
3 the merger were allowed and trackage rights were
4 granted, as compared with if the merger were simply not
5 allowed?

6 A I think our members would be better off if the
7 merger was allowed to go through, and the trackage
8 rights were granted to the Union Pacific, simply because
9 the Union Pacific is a very financially strong and a
10 very good marketing railroad, as compared to if the
11 Southern Pacific was left as a single entity, they
12 certainly not as strong as the Union Pacific. So we
13 would have an influx of the marketing skills of the
14 Union Pacific, their equipment, which is much better in
15 boxcars than what the Santa Fe and Southern Pacific has
16 at present.

17 Q In your verified statement you express your
18 opinion that piggyback is going to become the major mode
19 of transporting fresh fruit and other perishables for
20 long hauls. Why is that your opinion?

21 A Well, as a matter of fact, some of the
22 statistics that I have offered you today, which show
23 that piggyback has already turned over the 50 percent
24 level for our major eastern markets, very little of that
25 is in rail cars, so the percentages over 50 percent that

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1 I provided you before are piggyback, and they are only
2 going to be increasing in the future.

3 The Plan 3 industry was only born in 1979, so
4 they have only had those few years to grow, and they
5 have already come to capturing over 50 percent on our
6 long haul movements. Any additional growth, of course,
7 will not be seen without rail competition in the San
8 Joaquin Valley. There just will not be the incentive
9 there.

10 Q Am I correct in thinking that you don't
11 believe that motor carrier competition will provide a
12 proper incentive for railroads or a railroad alone to
13 continue to be improved or provide low rates for this
14 type of service?

15 A No, I do not.

16 Q Why is that?

17 A Because the motor carrier industry that serves
18 the produce industry in California is performed through
19 owner-operators. You don't have the major common
20 carriers that a shipper of malt beverages in Milwaukee
21 may use. Here we're using owner-operators. It is dad
22 driving and mom sitting in the passenger seat, or
23 vice-versa. We all know the state of the nation's
24 highway system. It's going to need a lot of repair.
25 It's going to take a tremendous amount of money. The

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1 motor carrier industry has been hit with substantial tax
2 increases recently. They're going to be faced with much
3 heavier tax burdens, in my opinion. We don't feel that
4 they will be returning an adequate profit to keep their
5 level of participation in our industry that they have in
6 the past.

7 MR. RATNER: That's all I have. Thank you
8 very much.

9 JUDGE HOPKINS: Ms. Reed.

10 MS. REED: Just a few questions, Your Honor.

11 BY MS. REED:

12 Q Good afternoon, Mr. Hemb. My name is Mary
13 Reed, and I'm with the U.S. Department of Transportation.

14 Q Could you tell me how far perishables can be
15 trucked to a railhead to be competitive?

16 A How far?

17 Q Yes, sir.

18 A One hundred miles seems to be a magic number,
19 but I wouldn't go any farther than that. I'm very
20 hesitant even at a hundred.

21 Q Do you truck perishables out of the San
22 Joaquin Valley to the Union Pacific today?

23 A No, we don't.

24 Q You were discussing with Mr. Ratner various
25 railroad shares between New York and Boston. Does the

1 rail share vary depending upon the time of year?

2 A No, it really doesn't.

3 Q You also discussed movements of juice grapes
4 to Canada. Do you know who handles that traffic, which
5 carriers?

6 A A lot of it goes by the Southern Pacific
7 through their Southern Corridor junctions at Kansas
8 City. It passes the border at Detroit.

9 Q And goes up to Canada via the Southern Route?

10 A Right.

11 Q And to your knowledge, the Union Pacific does
12 not participate in that traffic?

13 A Not to any great extent. They're simply not
14 serving the shippers; that is, they do not directly
15 switch the plants.

16 Q So that's an all-rail movement, not a TOFC
17 move, is that correct?

18 A That is a heavy rail car, refrigerator rail
19 car movement.

20 Q So that does not go in TOFC equipment.

21 A There are some, yes, but it's a heavy user of
22 rail cars.

23 Q Now, do the members of your league compete
24 with growers of these various commodities in other parts
25 of the United States?

1 A Oh, absolutely. Our major competition within
2 this country would be the peach industry in the
3 southeast; berries, New England, Michigan; pears and
4 apples from the northwest.

5 Q And they would be competing with you to
6 markets in Chicago and New York and Boston, is that
7 correct?

8 A They would be competing nationwide.

9 Q So you would actually be facing competition in
10 the state of California from those sources, is that
11 correct?

12 A We could be. Certainly in the case of the
13 northwest apples and pears we would be facing direct
14 competition within California. I don't think the
15 peaches from the southeast have been too successful in
16 cracking the California markets, but they're directly
17 competing against our major eastern markets.

18 Q Now, also in talking with Mr. Ratner you
19 indicated that the rates during the peak season can vary
20 substantially in comparison to the nonpeak season.

21 A Yes.

22 Q You mentioned, I believe, that the truck rate
23 can go as low as \$2,400 a trailer during nonpeak?

24 A That's the number that I've heard from the
25 motor carrier industry; that no matter how many trailers

1 are moving, the rates will never dip below the \$2,400.

2 Q What would be the rail rate during that
3 nonpeak period?

4 A I couldn't be comfortable and give you an
5 answer to that.

6 Q Would traffic be moving via rail in TOFC
7 service during the nonpeak period?

8 A Certainly.

9 Q You just don't know what the rate would be?

10 A No.

11 Q Now, isn't it correct that motor carriers can
12 handle twin trailers?

13 A Motor carriers can, yes.

14 Q Do they handle perishables in twin trailers to
15 New York, Boston and Chicago, do you know?

16 A Not to any great extent that I'm aware of.

17 MS. REED: That's all I have. Thank you very
18 much.

19 JUDGE HOPKINS: Any redirect?

20 MS. WATKIN: No redirect, Your Honor.

21 JUDGE HOPKINS: You're excused, sir.

22 (The witness was excused.)

23 JUDGE HOPKINS: Move the admission?

24 MS. WATKIN: Move the admission.

25 JUDGE HOPKINS: Any objection? It will be

1 received in evidence.

2 Is that it for today everybody? We'll be in
3 recess until 9:00 Monday morning. Have a nice weekend
4 everybody.

5 (Whereupon, at 4:45 p.m., the hearing was
6 recessed, to be reconvened at 9:00 a.m., Monday, January
7 26, 1985.)
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