

F.D. 30400 - 1/28/85 - Pgs. 8976-9034



BEFORE THE  
INTERSTATE COMMERCE COMMISSION

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In the Matter of: :  
SANTA FE SOUTHERN PACIFIC CORPORATION : Finance Docket  
-- CONTROL -- : 30400 et al.  
SOUTHERN PACIFIC TRANSPORTATION :  
COMPANY :  
----- x

Hearing Room A  
12th & Constitution, N.W.  
Washington, D.C.  
Monday, January 28, 1985

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

BEFORE:  
JAMES E. HOPKINS,  
Administrative Law Judge

0000000000

## 1 APPEARANCES:

2  
3 As heretofore noted, with the following  
4 addition:

5  
6 On behalf of the Southern Pacific Transportation  
7 Company:

8 STUART E. VAUGHN, ESQ.

9 General Attorney

10 Southern Pacific Transportation Company

11 Southern Pacific Building

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C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Abe L. Thiessen				
By Mr. Sanford	8979			
By Mr. Stephenson		8990		
(AFTERNOON SESSION 2:00 p. m. 9127)				
Thomas D. Odwalt				
By Mr. Sanford	9127			
By Mr. Stephenson			9128	
William W. Whitehurst, Jr.				
By Mr. Mayo	9154			
By Mr. Vaughn			9155	

E X H I B I T S

<u>EXHIBIT NO.</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
SFSP-C-119	9031	9125
SFSP-C-120	9031	9125
SFSP-C-121	9032	9125

P R O C E E D I N G S

(9:00 A.M.)

1  
2  
3 JUDGE HOPKINS: Let's get back on the record.

4 Mr. Sanford?

5 MR. SANFORD: Your Honor, we have two  
6 preliminary matters. One, Dr. George Bardwell, a Rio  
7 Grande witness, was cross examined, I believe,  
8 approximately two weeks ago. To keep things orderly, I  
9 would like to move the admission of his statement in  
10 DRGW-C-37, which was entered at that time, identified.

11 JUDGE HOPKINS: Any objection?

12 MR. STEPHENSON: I don't think there is any  
13 objection, Your Honor. I wasn't here, and I am not  
14 familiar with that, but if there is an objection, I will  
15 so advise tomorrow.

16 JUDGE HOPKINS: I will receive it at this  
17 time.

18 MR. SANFORD: Secondly, the next witness is  
19 Mr. Abe L. Thiessen, and due to an administrative  
20 snafco, we have one of his statements with us. He has  
21 two statements in this proceeding. I would like to  
22 proceed and have him identify both statements, and when  
23 the other one arrives -- it is on the way, I am informed  
24 -- we will pass it out, if that is okay.

25 JUDGE HOPKINS: Well, the statements are in --



1 MR. SANFORD: They are in the volumes, yes.  
2 DRGW calls Mr. Abe L. Thiessen.  
3 Whereupon,

4 ABE L. THIESSEN  
5 was called as a witness, and having been first duly  
6 sworn, took the stand, and was examined and testified as  
7 follows:

8 DIRECT EXAMINATION

9 BY MR. SANFORD:

10 Q Sir, would you state your name for the record?

11 A Abe L. Thiessen.

12 Q And who are you employed by?

13 A Denver and Rio Grande Western Railroad.

14 Q In what capacity?

15 A General sales manager.

16 Q Have you filed two verified statements in this  
17 proceeding?

18 A Yes, I have.

19 Q Is the verified statement contained in  
20 DRGW-14, filed September 10, 1984, one of those  
21 statements?

22 A Yes, sir.

23 Q And is the statement filed together with the  
24 traffic study on November 21, 1984, in DRGW-20 also your  
25 statement?

1 A Yes, sir.

2 Q And are you sponsoring that traffic study, Mr.  
3 Thiessen?

4 A Yes, I am.

5 Q And are those two statements in the traffic  
6 study true and correct to the best of your knowledge and  
7 belief?

8 A Yes, they are.

9 MR. SANFORD: The witness is available for  
10 cross examination.

11 JUDGE HOPKINS: Mr. Stephenson?

12 MR. STEPHENSON: Thank you, Your Honor.

13 JUDGE HOPKINS: I hope we can hear better  
14 today. We decided to put the mike in, because I  
15 understood there have been some complaints that people  
16 can't hear the witness. The witnesses are still going  
17 to have to speak up and speak into the mike.

18 Go ahead, Mr. Stephenson.

19 CROSS EXAMINATION

20 BY MR. STEPHENSON:

21 Q Good morning, Mr. Thiessen. I am Doug  
22 Stephenson, representing applicants.

23 A Good morning.

24 Q Let me understand what you are sponsoring here  
25 today. You are sponsoring the opposition traffic



1 diversion study?

2 A That's correct.

3 Q Among other things?

4 A Yes.

5 Q And you have a very short verified statement  
6 that in effect incorporates the traffic diversion study  
7 by reference?

8 A That's correct.

9 Q In addition, you have a verified statement in  
10 D&RGW-14 which addresses the subject of your proposed  
11 extension to the west and the reasons why you believe  
12 that that is necessary.

13 A That's correct.

14 Q In addition, in one of the volumes -- I guess  
15 it's DRGW-14 -- there are some traffic statistics  
16 showing interchange volumes and so on. I take it that  
17 you are also the traffic witness who is sponsoring those  
18 statistics?

19 A Which one are you talking about?

20 Q These are in DRGW-14. They are the last --  
21 they are right after your verified statement showing  
22 various interchange --

23 A Yes, sir, I see what you are talking about.  
24 Yes.

25 Q I am going to address first the verified

1 statement in DRGW relating to the extension of your  
2 service to the west. On Pages 1 and 2 of the verified  
3 statement, you list four factors that make up the rail  
4 marketing process, including pricing rates, service,  
5 equipment supply, and relationships with connections.

6 I am going to ask you about how Rio Grande  
7 itself stands today in each of these categories. First,  
8 with pricing and rates, from a marketing standpoint,  
9 what does Rio Grande do in the pricing and rates area to  
10 be an effective competitor?

11 A Well, under today's conditions, which is  
12 pre-merger, we just more or less join rates except for  
13 rates that are published off of our system itself,  
14 single line rates off of the system, but working with  
15 the SP Railroad, we more or less just join rates with  
16 you people.

17 Q How about contracts? Do you enter into  
18 contract rates?

19 A Yes, we do.

20 Q And allowance contracts?

21 A Yes.

22 Q How many allowance contracts do you have?  
23 Just a ball park estimate.

24 A Joint line or single line?

25 Q Single line.



1           A     Maybe 50. I really don't know. I can't  
2 answer that, Mr. Stephenson.

3           Q     How about short line? Do you have any idea?

4           A     On the refunds?

5           Q     Yes.

6           A     No. I just don't know. I know we have them,  
7 but I don't know how many.

8           Q     What else can Rio Grande or any marketing  
9 department do to effectively market itself with  
10 customers in the pricing and rates area?

11          A     Well, with the friendly connection which we  
12 have today with the SP, we can make our own proposals  
13 and discuss them with the SP Railroad. Beyond that,  
14 equipment placement, that is about all we can do,  
15 provide a competitive gateway for the shippers.

16          Q     How about holding down rate increases that  
17 your competitor, the Union Pacific, publishes? Is there  
18 any effectiveness or anything to be gained for Rio  
19 Grande today by pricing against the parallel UP system  
20 for transcontinental traffic?

21          A     You started off talking about price  
22 increases. I don't know. Would you restate -- I don't  
23 understand what you are trying to say, what your  
24 question is.

25          Q     All right. Does Rio Grande take price action,

1 rate action in competing with the UP system that attract  
2 business to the Rio Grande?

3 A Certainly we do, yes.

4 Q So that is one of the techniques that you can  
5 use in marketing --

6 A Yes, with a friendly connection we can do  
7 those things.

8 Q You can't do that on your own?

9 A Not in competing in the transcontinental  
10 traffic, we can't.

11 Q Do you have to --

12 A You have to have concurrences.

13 Q How about service? That was another one of  
14 your factors. Can Rio Grande provide effective,  
15 reliable, competitive service for traffic?

16 A We can when we have friendly connections.

17 Q And does Rio Grande provide competitive  
18 schedules, for example, the Kansas City and Chicago, by  
19 way of your connections?

20 A From Oakland?

21 Q Oakland, for example.

22 A Yes, we provide competitive service into the  
23 Chicago area from Oakland. That is with the Southern  
24 Pacific Railroad.

25 Q And the Burlington at the other?



1 A The Burlington at the other end.

2 Q Is that TOFC traffic?

3 A Well, it is boxcar traffic, too. It is TOFC  
4 and some boxcar. It is service-sensitive traffic.

5 Q How about automobile traffic that is  
6 service-sensitive? Can you compete on a service basis  
7 for automobile traffic?

8 A Yes, we do. We compete out of Kansas City.

9 Q Another one of the factors that was mentioned  
10 in your statement in which you mentioned a couple of  
11 minutes ago was equipment supply. Rio Grande at one  
12 time had a reputation for providing equipment, including  
13 the specialty equipment Rio Grande cars for off-line  
14 loading. Is that still something Rio Grande does  
15 today?

16 A We have a large equipment supply that is  
17 mainly off line since probably the late seventies. We  
18 have not been able to use that much of the marketing  
19 tools because of the surplus equipment, so we have kept  
20 our equipment mostly off the railroad, just to get per  
21 diem. We have not used it as a means of securing  
22 business.

23 Q You did it one time, but you don't any more.  
24 Is that what you said?

25 A That's correct. Back in the late sixties and

1 early seventies. It was a very good sales tool that we  
2 had.

3 Q Do you not get off-line loading of your cars  
4 any more at all?

5 A We don't solicit it, Mr. Stephenson, no.

6 Q Now, if we could talk about relationships with  
7 connections, the last factor of your marketing process,  
8 let's talk first about Southern Pacific in the west. Do  
9 you know how Southern Pacific's interchange with the Rio  
10 Grande either in terms of tonnage or carload volumes,  
11 how did the '84 compare with '83, to your knowledge?

12 A Eighty-four was up over '83. I don't know  
13 what percentage, but I can tell you that it was up. The  
14 interchange was up.

15 Q To your knowledge, has there ever been a  
16 higher interchange between Rio Grande and Southern  
17 Pacific in 1984?

18 A I think at one time back in the late seventies  
19 it was a higher interchange. Mr. Brainard has these  
20 numbers, these interchange numbers, and he will be able  
21 to talk to you about those things later.

22 Q Okay. Do you know how the interchange with  
23 Southern Pacific this year, 1984, compared with the  
24 heyday of the Western Pacific-Rio Grande interchange?

25 A Once again, Brainard has all these numbers. I



1 would prefer that you talk to him. I am familiar with  
2 them, but I can't give you exact numbers or  
3 percentages. So if you could talk to him about that, I  
4 think you would get better numbers.

5 Q Without asking for any numbers, do you know  
6 whether the interchange volume between SP and Rio Grande  
7 in 1984 was greater than, less than, or about the same  
8 as it was in the peak days of the Western Pacific-Rio  
9 Grande interchange?

10 A I think it would probably be less than the  
11 peak days.

12 Q And your interchange volumes with Western  
13 Pacific or now Union Pacific I understand are down  
14 substantially?

15 —A Yes, that's pretty much gone by the wayside.

16 Q Do you have a feel for whether that is  
17 continuing to go down or has it leveled off?

18 A I think it is continuing on down. It started  
19 down about the first six months after merger. It was  
20 practically all gone at that time, and is continuing on  
21 now. Now, once again, Brainard has those numbers, and  
22 he can give you the exact numbers.

23 Q Let's talk about the Colorado gateway  
24 connections, starting first with the Burlington at  
25 Denver. Is that your largest interchange at your

1 Colorado gateways?

2 A Yes, the Burlington.

3 Q What kind of traffic moves over --

4 A Merchandise traffic. Some coal, but it is  
5 mostly merchandise traffic.

6 Q How is that interchange compared to what it  
7 was in years past? Growing? Decreasing? Staying the  
8 same?

9 A I would say it is probably growing, but I  
10 don't have the exact numbers. It is on the increase  
11 because of the large TOFC volumes that are moving  
12 through.

13 Q And I take it or I understand that the  
14 interchange between Rio Grande and Pueblo has dried up.  
15 Is that correct? Or dried up compared to what it used  
16 to be?

17 A The interchange with Rio Grande at Pueblo?

18 Q Yes.

19 A Like the Missouri Pacific and Santa Fe? The  
20 Missouri Pacific has dried up, yes.

21 Q How about with Santa Fe? Santa Fe was never a  
22 big connection.

23 A No, it has never been a big connection.

24 Q What kind of traffic moves across the Santa Fe  
25 interchange?



1           A     Oh, it is predominantly stuff, commodities  
2 that originate on the railroad. We do very little  
3 overhead business. It is mostly perlites and bulk  
4 material that move across the railroad.

5           Q     How about your interchange with Burlington  
6 Northern at Pueblo? What kind of traffic moves across  
7 that interchange?

8           A     Well, there is very little that moves on that  
9 interchange. There would be some coal, but it is an  
10 interchange that is not very large. It is mostly  
11 materials that would originate on our railroad.

12          Q     Can you confirm Mr. Nance's impression from  
13 the other day that volumes of traffic via your new  
14 trackage rights over the MP have -- are over and above  
15 what your interchange with the MP used to be at Pueblo?

16          A     Yes, they are.

17          Q     Do you have any idea to what extent?

18          A     No, I couldn't tell you what percentage, but I  
19 can tell you that it is over.

20          Q     Is it also true that in terms of those  
21 trackage rights, that Rio Grande's three-year traffic  
22 volume forecast for traffic moving between Pueblo and  
23 Kansas City was met in something like 15 months?

24          A     Well, I think we have forecast 122,800 or  
25 something like that, and we are at that number right

1 now, as of the end of this year, the end of the past  
2 year, so we have met our forecast.

3 Q Well, just to make sure that your answer is  
4 responsive to my question, is it true that your  
5 interchange experience in the first 15 months of  
6 operation over the trackage rights were equal to what  
7 had been forecasted for the first three years of  
8 operation over the trackage rights?

9 A I haven't done any studies about our first 15  
10 months. We are working on an annual basis, from January  
11 through December, so the first 15 months would be up  
12 through March maybe of '83, and I don't know.

13 Q Did you send out a bulletin to all your sales  
14 people with questions and answers dealing with the  
15 proposed D&RG extension of trackage rights?

16 A Can I see what you are talking about? I don't  
17 know whether I did or not, Mr. Stephenson.

18 (Pause.)

19 A Is there any certain part in here you are  
20 talking about? I don't want to read the whole thing.

21 Q Specifically those questions and answers  
22 dealing with D&RG proposed extension west. Is this  
23 something that you sent to your sales people?

24 A I think it is. I would have to look at it.  
25 There are a lot of things that went out with my name on



1 it that I am not familiar with.

2 Q Looking at Pages 3 and 4, the bottom of Page 3  
3 and 4, if you look at the top of Page 4 --

4 A Okay. That is what it says. I certainly  
5 don't remember it.

6 Q Just to complete the record, at the top of  
7 Page 4 of the document I showed Mr. Thiessen, it says,  
8 look what we did on the Kansas City extension, where we  
9 pooled cars for a while, until we could run our own  
10 trains, 418 cars a day now, and met our three-year  
11 forecast in 15 months.

12 This question and answer write-up was sent to  
13 your sales people to give them answers that they might  
14 get from shippers about your proposed trackage rights?

15 A I think it was sent out also as an  
16 informational type thing when they are dealing with  
17 customers. We get a lot of questions about our success  
18 on the Kansas City extension, and this is an informative  
19 tool also.

20 Q What has Rio Grande done in terms of  
21 developing marketing or solicitation agreements with its  
22 Kansas City connections in order to achieve the success  
23 that you were talking about in the paper to your  
24 salesmen?

25 A Well, we don't have any agreements with any of

1 our connections at Kansas City other than we just work  
2 together. Our salesmen in the field have done this for  
3 years and years. We know who each other are, and work  
4 together that way. There are no agreements that I know  
5 of.

6 Q So the secret to your success, if it is a  
7 secret, is that you worked with your connections in  
8 Kansas City to develop cooperative relationships with  
9 them, correct?

10 A Sure, and get the through schedules. That is  
11 how you do business.

12 Q And as a result of that, you have obtained a  
13 substantial amount of westbound traffic coming from the  
14 Kansas City carriers. Isn't that true?

15 A I don't know. What do you call a substantial  
16 amount? I don't know what the numbers are.

17 Q Meeting the three-year forecast in 15 months.  
18 A Well, that is both directions.

19 Q Okay. Would it be --

20 A I can't -- Go ahead. I am sorry.

21 Q Would it be out of balance in one direction or  
22 another?

23 A I don't think it would be with the Ford  
24 contract now we have with the SP. I think that probably  
25 set a balance on the tonnage moving.



1 Q If you can look at the interchange statistics  
2 at the back of Volume 14, I would like to go through  
3 those real quickly with you.

4 A What is Volume 14?

5 Q It is the orange volume.

6 A Okay.

7 Q On the first page of the statistics, it shows  
8 interchanges at a lot of areas, including Kansas City,  
9 and specifically, do you have any idea as to whether the  
10 total cars interchanged -- they are on the righthand  
11 column -- increased from 38,000 in 1983 to some greater  
12 figure in 1984?

13 A I am sure that it has, because the tonnage has  
14 been booming. 1983 was the first year we were out  
15 there, and really the volumes didn't start picking up  
16 until later in the year, so I am sure the '84  
17 interchange will be larger.

18 Q What would be your estimate, 50 percent  
19 larger?

20 A I don't know. I don't have the '84 numbers  
21 here. I would think it would be a lot more than that,  
22 but why don't you talk to Mr. Brainard about it? He has  
23 these numbers.--

24 Q And Mr. Brainard will have these numbers?

25 A I am sure that he does.

1 Q The figures on that same page for Ogden  
2 showing 12,715 cars and 15,304 cars, these are cars that  
3 originated or terminated on the Rio Grande. Is that  
4 correct?

5 A Yes, that's correct.

6 Q And so to the extent that Southern Pacific  
7 participates in that traffic, it does so by virtue of  
8 the fact that it is a friendly connection with you?

9 A That's correct.

10 Q On the overhead column, received, 11,241 cars,  
11 these would go to Southern Pacific principally, would  
12 they not?

13 A Yes, that is the way it appears.

14 Q You don't have much overhead traffic with the  
15 Western Pacific any more, do you?

16 A No, sir, Mr. Stephenson, we don't.

17 Q Okay. That is all I have for that.

18 Do you know what Rio Grande's forecasts are  
19 for 1985 in terms of traffic volumes to or from Kansas  
20 City?

21 A No, I don't have that number.

22 Q In your opinion, have all of the effects of  
23 the UP-MP merger been felt by Rio Grande, or are you  
24 still feeling residual effects?

25 A I would think that it has been pretty much



1 felt by now. There are probably some more coming, but  
2 the gateway has been pretty much reduced.

3 Q When do you think it stopped having an impact  
4 on Rio Grande?

5 A I don't think, like I said earlier, that it  
6 has completely stopped yet, Mr. Stephenson. It is  
7 basically probably the third quarter of last year that  
8 we really started seeing a rapid fall of the tonnage.

9 Q Third quarter of?

10 A I am sorry, '83. I mean '83.

11 Q That is when you started seeing a rapid drop?

12 A Yes.

13 Q On Page 2 of your verified statement in Rio  
14 Grande 14 you mentioned the need for physical access to  
15 shippers in order to be competitive. I take it by that  
16 you mean that a friendly connection can supply or serve  
17 the purpose of physical access to the west.

18 A No, that is not what I mean at all. What I am  
19 saying there is that if post-merger the Santa Fe and the  
20 SP put their merger together, we have to have access to  
21 the west to provide the competition that the customers  
22 are needing out there, and without this direct access,  
23 they are going to have a loss of routes.

24 Q Well, maybe you didn't understand me.  
25 Physical access is either necessary to be accomplished

1 on your own, with your own operating rights, or through  
2 a friendly connection. Is that right?

3 A No, not through a friendly connection at all,  
4 Mr. Stephenson.

5 Q Maybe you can explain to me what you mean at  
6 the top of the first full paragraph on Page 2 when you  
7 say, "It is not possible to market these factors without  
8 an assurance of physical access to and from the shipper  
9 either directly or through a friendly connecting  
10 carrier."

11 Did you say friendly connecting carrier with  
12 some particular meaning?

13 A You have lost me. I can't find anywhere where  
14 I said something about a friendly connecting carrier.

15 Q Look at the top of the first full paragraph on  
16 Page 2.

17 A Well, the assumption we have here is that the  
18 SP will no longer be a friendly connecting carrier  
19 post-merger.

20 Q I understand. I understand that that is your  
21 impression that that is going to be the case  
22 post-merger, but what I am asking you is, today, do you  
23 feel that Rio Grande has physical access to the west  
24 through its friendly connection with the Southern  
25 Pacific?



1           A     Yes, because today we have service and we have  
2 comparable rates and cooperation. Post-merger we are  
3 not looking at that.

4           Q     So physical access is not necessary if you  
5 have a friendly connection?

6           A     Are you talking pre-merger or post-merger?

7           Q     Pre-merger.

8           A     Pre-merger, we are fine.

9           Q     Now, on the same Page 2 you mention the Court  
10 of Appeals decision concerning your IRA proposal on the  
11 UP merger case, and you talk about it providing a  
12 competitive check on SP's effort to subvert our friendly  
13 connection.

14           Q     How would the IRA accomplish this competitive  
15 check?

16           A     Well, in the thing that came down from the  
17 Circuit Court of Appeals, they are saying right in here,  
18 it says, "Moreover, given SP's Southern Corridor, which  
19 is certainly capable of handling transcontinental  
20 traffic, DRGW may need the leverage afforded by an  
21 independent route to the west coast in order to induce  
22 SP participation in the Central Corridor route."

23           Q     I guess what I am asking you from the  
24 standpoint of a traffic man, how does that work, how  
25 does the IRA work to keep a competitive check on

1 Southern Pacific and keep SP from running its traffic  
2 down through --

3 A Well, it would keep a price level down that  
4 would allow us to compete. Probably, you know, on a  
5 scale of zero to ten, these things are like minus two  
6 for competitive reasons, but the way this IRA was  
7 designed -- and I wasn't involved in designing the IRA.  
8 Mr. Brainard was, so if you want to talk to him about it  
9 -- I understand what it is, but I don't know all the  
10 details of it.

11 Q So I guess my question to you when you mention  
12 that the IRA would or might provide a competitive check  
13 on Southern Pacific, your answer is, you don't know  
14 specifically how it would provide a competitive check  
15 on --

16 A I did answer by pricing level. It keeps the  
17 ceiling on the prices, and that is about, you know, the  
18 way the thing was designed. I am not really sure. I  
19 wasn't involved in the UP case.

20 Q Well, tell me what you mean by how it does it  
21 by pricing. That is what I am asking.

22 A Well, if you are coming up with a competitive  
23 point, say, Stockton, California, for instance, which is  
24 a competitive point in California, the SP and the WP,  
25 and the SP were trying to move a car through the south,



1 we could put in a rate with the WP to move it through  
2 the Utah gateways, and then the WP would get onto the  
3 route.

4 Q The Southern Pacific would still have its  
5 southern route?

6 A But maybe not at the same price.

7 Q Do you think it would be a higher priced  
8 route?

9 A Which route?

10 Q Stockton to Kansas City, for instance.

11 A Via Southern Pacific?

12 Q Yes.

13 A Could be. This is what the IRA would be used  
14 for.

15 Q Do you think it would work as a competitive  
16 check.

17 A Not under these conditions, it wouldn't.

18 Q Do you think it is necessary for Rio Grande  
19 today to have an IRA?

20 A No, I don't think an IRA is the competitive  
21 thing that is needed today. It just wouldn't work.

22 Q Why wouldn't it work?

23 A Well, you would have two unfriendly  
24 connections working with you.

25 Q I am talking today, not post-merger.

1           A     Well, today we have a friendly connection  
2 working with us, and through the Southern Pacific  
3 Railroad, and it is not needed today because you people  
4 aren't cooperating with us.

5           Q     If the IRA were in effect with the UP system,  
6 couldn't you draw additional traffic that is originated  
7 or terminated at WP points in California that you are  
8 not participating in today?

9           A     Oh, we could probably do that, but I don't  
10 know how you get service out of them. The WP wouldn't  
11 give you any service. You people would give no service,  
12 so you could have all the rates you want, and if you  
13 don't have service you can commercially close the  
14 gateway.

15          — Q     At Page 2 also you say that after the merger  
16 the self-interest of SPSF will cause it to divert  
17 traffic from D&RG to its single line long haul route.  
18 Why doesn't SP today do this in its self-interest with  
19 its own southern route?

20          A     Well, you do it to certain territories. You  
21 are doing it now to southeast and southwest. We can't  
22 participate in traffic to those territories. You have  
23 closed those gateways to us. So we have the agreed  
24 territory, which we are working closely with, and it is  
25 working well.



1 Q Why wouldn't it be to SP's self-interest to  
2 route traffic to the agreement territory by way of its  
3 Southern Corridor?

4 A Well, today via your long haul you can't  
5 compete with Santa Fe system into the Chicago area, for  
6 instance, on your piggyback traffic, so consequently you  
7 have to use the Central Corridor to compete in that  
8 traffic. Post-merger you won't be competing with the  
9 Santa Fe any more.

10 Q And that is your answer, that the Southern  
11 Pacific in competition with the Santa Fe keeps SP from  
12 moving traffic?

13 A That's correct.

14 Q After the SPSF merger is effected, I take it  
15 from your answer that you would agree that UP then would  
16 provide a competitive check on the ability of the new  
17 SPSF to route traffic by way of its Southern Corridor.

18 A Well, you have gone from four competing routes  
19 to two competing routes, and there is not going to be  
20 any check on the market power you people have out there.  
21 It is going to be a pretty non-competitive situation.

22 Q The answer is that the UP will not provide a  
23 check on SPSF?

24 A Not totally, no.

25 Q But partially?

1           A     Oh, there might be some places where they  
2 will.

3           Q     Focusing again on the statement that the  
4 self-interest of SPSF will cause it to divert traffic to  
5 its new -- or to the combined southern route, do you  
6 think that the merged company, SPSF, will try to divert  
7 all traffic to the southern route, including Oregon  
8 traffic?

9           A     Oh, absolutely. I spent many years in the  
10 field, Mr. Stephenson, and that has been the SP's  
11 marketing effort since I was a salesman, and the Santa  
12 Fe. Both railroads are long haul railroads. The SP in  
13 Oregon for years and years has worked very hard. They  
14 probably are our worst competitor out there, the SP long  
15 haul. And that is not going to change.

16          Q     And the SP was not very successful and never  
17 has been successful, has it?

18          A     Oh, you were successful.

19          Q     What do you mean by successful?

20          A     Well, I know a lot of traffic that moved via  
21 the southern gateways. I can't give you numbers, but I  
22 do know that you were successful at it.

23          Q     Is this pre-SP-Rio Grande agreement days?

24          A     Yes, sir.

25          Q     What would you estimate our market share for



1 traffic going to the official territory, for example,  
2 what do you think that the market share of SPSF long  
3 haul was compared to Ogden?

4 A Was? When?

5 Q Just prior to the institution of the D&RG-SP  
6 solicitation.

7 MR. SANFORD: As a clarification, Your Honor,  
8 I assume you want to make that SP-SSW and not SPSF.

9 MR. STEPHENSON: Yes. I am sorry. Let me  
10 start over.

11 BY MR. STEPHENSON: (Resuming)

12 Q What do you think -- what is your best guess  
13 as to the traffic volume that SP and its Cotton Belt  
14 subsidiary moved to Kansas City-St. Louis official  
15 territory by way of its long haul route from Oregon  
16 versus that which it moved over the Ogden gateway?

17 A Well, I know that the Tucumcari line had an  
18 impact on this, and I can't give you the numbers, but I  
19 know that Mr. Brainard has this information, and if you  
20 talk with him, he can tell you what the difference in  
21 the gateways is.

22 Q Where does the customer figure in all of  
23 this? When you say the SPSF will divert traffic to its  
24 long haul route from the Rio Grande, how would SPSF  
25 cause this to be done if the shippers are routing the

1 traffic and don't want to do it?

2 A You are talking post-merger, and the Rio  
3 Grande does not get their extension?

4 Q Yes.

5 A Well, you are doing it today. It is through  
6 contracts and single line tariffs. It is how business  
7 is done today. You can very easily close a gateway.

8 Q And you think that the 700 or so shippers that  
9 support the Rio Grande in this case because they want a  
10 viable competitive alternative through the Central  
11 Corridor are simply going to turn their business over to  
12 SPSF because they are asked to do that?

13 A They don't have any choice. If they want to  
14 market their product, that is all they can do.

15 Q So is it your opinion that SPSF is going to  
16 close the gateway at Ogden?

17 A Oh, I don't think you can call it a legal  
18 closing of the gateway, but there are many ways you can  
19 close a gateway. We for years have had competitive  
20 rates off the UP in Los Angeles pre-Staggers Act, and  
21 probably got less than 1 percent of that market, and we  
22 worked very hard at it, because they wouldn't cooperate  
23 with us. We had no service, no cooperation, so  
24 consequently we couldn't get involved in it. The same  
25 thing happened with the WP post-merger.



1 Q And you believe that shippers like Ford,  
2 International Paper, and Roseburg Lumber Company, and  
3 Del Monte, and the big shippers that use the Rio Grande  
4 in the Central Corridor route are going to stand for  
5 SPSF to commercially close the Ogden gateway?

6 A If they don't have any choice, there is not  
7 much they can do about it. That is why we are asking  
8 for this extension west to provide some competition.  
9 That is why they are supporting us.

10 Q Do you think that these big shippers are  
11 powerless to resist the SPSF?

12 A Well, with your market power that you will  
13 have out there, I would say yes. They will have to  
14 pretty much do what you want to do.

15 Q Ford and Roseburg and all the rest?

16 A Yes, that is my position.

17 Q Do you agree that large shippers with multiple  
18 plants and facilities on the lines of a given carrier  
19 have increased leverage over that carrier as a result of  
20 the ability to route traffic from a number of different  
21 locations?

22 A They have increased leverage. If they have  
23 reciprocal switching with another carrier, they would  
24 probably have leverage, but if they are local on your  
25 railroad, then they won't have any leverage.

1 Q If you assume the former, that they have  
2 alternative routes, they have alternative routes with  
3 other carriers --

4 A Would I assume that they would have leverage  
5 over the SPSF?

6 Q Yes.

7 A Well, from those points that are reciprocal  
8 they would. From local points they still wouldn't.

9 Q Can they use their leverage from originations  
10 or terminations at one point to exact rate or service  
11 concessions from the railroad at different locations?

12 A Well, I don't think that they can do that.  
13 You can go and look at what the Burlington Northern has  
14 done with their single line routes. They have pretty  
15 well tied that stuff down. They have some pretty large  
16 shippers, and their stuff moves single line, period.  
17 So, making that assumption on what the UP have done, you  
18 guys are going to do the same thing. I don't think  
19 those people are going to have that much of a choice.  
20 They will have from common points, but not from local  
21 points.

22 Q So your answer is that shippers with multiple  
23 locations don't have increased leverage?

24 A They do at reciprocal points.

25 Q Would you agree that Ford -- well, never



1 mind.

2           Would you also agree that the more volume that  
3 a shipper routes over a carrier or has available over a  
4 given carrier, the more leverage that shipper has with  
5 the carrier?

6           A     I think he has more leverage to get the better  
7 price. I don't think that he would necessarily have  
8 more leverage as far as how a car is to be routed.

9           Q     Is one of your fears about the closing or  
10 commercial closing of Ogden the fear or the feeling that  
11 the Ogden route is not an efficient competitive route  
12 with SPSF?

13          A     Once again, are you talking post-merger,  
14 pre-merger?

15          — Q     Post-merger.

16          A     If we don't have the cooperation with the  
17 gateway it won't be, no.

18          Q     Is it today an efficient, competitive route?

19          A     Oh, sure. The market determines that. It is  
20 handling traffic. That's right.

21          Q     Is it in terms of straight level miles, fuel  
22 efficiency, the ability to make schedules, and other  
23 factors that all bear on whether a route is a service  
24 route or not?

25                   Does the SP-D&RG route stack up today with the

1 proposed SPSF routing to the midwest from the coast?

2 A Well, it must, because it is handling a large  
3 volume of traffic, but that once again is pre-merger.

4 Q And you have indicated already that it is  
5 competitive for TOFC traffic and other time-sensitive  
6 traffic?

7 A Yes, it is competitive today.

8 Q To your knowledge, is the UP today using TOFC  
9 service to Oregon to compete with the Southern Pacific  
10 at points not served by the Union Pacific in Oregon?

11 A Are they loading trailers down on the SP  
12 Railroad in Oregon and moving it competitively? Is that  
13 what your question is?

14 Q Yes.

15 A Yes, there is some of that, working through  
16 third parties.

17 Q And Burlington does the same?

18 A I am not sure that the Burlington has TOFC  
19 down there. I know they have some other things going,  
20 but I am not sure they are doing any TOFC. I don't  
21 know.

22 Q How about truck reload, truck rail reload?

23 A Yes, there is some truck reloads going on.

24 Q Both railroads are planning to do that, or are  
25 doing it, right?

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1 A Yes, they are.

2 Q Isn't it also the Rio Grande plan with respect  
3 to those branch lines that are not part of your proposed  
4 operating plan in Oregon that you will attempt to  
5 solicit business off those light density lines using  
6 truck-rail reload programs?

7 A I don't know if that is all part of the plan,  
8 but it would make sense for us to try to do it, yes.

9 Q Isn't that one of the question and answer  
10 suggestions you gave to your sales people?

11 A Well, that is one of the things that went out,  
12 but I am not sure that that is part of our overall  
13 plan. I don't think it was in Mr. Nance's plan.

14 Q At Page 3 of your verified statement you say  
15 that without physical access to markets, service  
16 competition is virtually impossible, and again, when you  
17 say physical access, you mean either directly or through  
18 a friendly connection, as today?

19 A Yes, that's what I'm talking about, as today,  
20 but not post-merger.

21 Q So the Rio Grande position is that it needs  
22 physical access post-merger to the shippers in Oregon  
23 and California so as to better be able to control its  
24 own service levels to the shippers?

25 A Yes, to control their own service levels, to

1 be able to place equipment, and give them competitive  
2 routes.

3 Q And then why does your operating plan leave  
4 almost all facets of the operations to Southern Pacific  
5 to perform for Rio Grande? What control are you going  
6 to have if Southern Pacific blocks your trains,  
7 classifies your trains, inspects your trains, does your  
8 switching, spots your empties, pools the loads, provides  
9 clerical assistance? What is the control, the physical  
10 access that you have here that guarantees the service to  
11 the customers?

12 A Well, that is what you are talking, is local  
13 service. You are not talking road service. That is  
14 under a contract arrangement whereby they will be our  
15 agent there. This is not uncommon in the industry.

16 Q Wouldn't you agree that the road service that  
17 is proposed is really the tip of the iceberg in terms of  
18 your proposed operations, and most of the work, the  
19 gathering and distribution work is going to be done  
20 under your proposal by SPSF, and you will simply go  
21 along with your road trains from one major  
22 classification area to another, and allow and request  
23 SPSF to do the rest of the work for you?

24 A You mean the rest of the work? You are  
25 talking about the local work again?



1 Q Yes, and the classification, the making up of  
2 those trains that are going to be --

3 A I think you should have talked to Mr. Nance  
4 about this. I think you did. I didn't hear all of his  
5 testimony here, but I think you did discuss this with  
6 him, and we are satisfied with the way the thing is set  
7 up, and it will work, if this is done by the Commission,  
8 so you should talk to him about the operating plan.

9 Q I talked about the details, and now I want to  
10 get from you why it is that you think that that kind of  
11 an operation provides this control over service that you  
12 think is necessary to provide service for your shippers  
13 when SPSF -- you will have to rely on SPSF to do most of  
14 your basic railroad work for you.

15 A Well, that is not most of the basic railroad  
16 work. You are talking about switching cars in and out  
17 and this is just no more than reciprocal. You do this  
18 on reciprocal switching points today. It is still  
19 physical access, and I don't see any different than what  
20 we are doing in a lot of areas today. It is no big  
21 chore.

22

23

24

25

1 Q At page 4 of your verified statement, you talk  
2 about the use of equipment as a marketing tool, and I  
3 take it from your prior answer that equipment, although  
4 it was a Rio Grande practice in past days to place their  
5 equipment for off-line loading, that that is not  
6 something that is done to any great extent anymore?

7 A You're saying off-line?

8 Q Yes.

9 A Yes, that's correct.

10 Q The final point that I would like to talk to  
11 you about in this verified statement is at page 5. It  
12 relates to your discussion about your Kansas City  
13 connections and friendly relationships.

14 Your point is, I think, that the  
15 newly-emerging D&RG route between Kansas City in  
16 connection with Milwaukee or other Kansas City carriers  
17 will be lost after merger because SPSF will no longer  
18 cooperate in moving the traffic from Ogden to the  
19 Coast?

20 A No. What I'm talking about here, and I  
21 haven't read the exact sentence that you're reading  
22 here, but the post-merger -- and this is based on our  
23 getting physical access -- this will improve our  
24 relationships with our Kansas City connections. This  
25 will allow us to compete on the West Coast for traffic



1 which they will be competing with you for in your long  
2 haul.

3 Q Well, let me read the sentence to you and ask  
4 you specifically what you have in mind. It's the bottom  
5 paragraph, and its the third sentence: "By providing  
6 each other with a friendly connection at Kansas City,  
7 Rio Grande and its connecting carriers are able to  
8 compete effectively with Santa Fe for transcontinental  
9 traffic."

10 Aren't there other carriers in that market?  
11 Isn't Southern Pacific in that market also? Isn't Union  
12 Pacific in that market?

13 You focus on Santa Fe, and I'm asking you,  
14 aren't there other carriers in that market?

15 A I'm focusing on Santa Fe here. What we're  
16 talking about is the western extension, and if we get  
17 the western extension then we'll be able to work with  
18 these Kansas City connections, who will be competing  
19 with the SPSF on their own haul.

20 The SP, originating a car in Oakland, will  
21 take it direct to Chicago with an interchange with  
22 Milwaukee at Kansas City. They'll be competing with you  
23 for the same traffic.

24 Q Well, the Santa Fe competes today with you  
25 for that traffic to Kansas City; correct?

1 A They also compete with you.

2 Q And to the extent that they are losing the  
3 traffic today, why are they going to gain the traffic  
4 today that -- or after merger -- that they have not  
5 gotten up to this point in time?

6 A I don't agree that they are losing it today.  
7 We have an interchange with those connections off of  
8 your system today that is moving traffic.

9 Q Well, you are worried -- let's hypoethetically  
10 -- you are worried about the Milwaukee, the traffic  
11 coming to you at Kansas City from the Milwaukee that is  
12 moving to the West Coast by way of the  
13 Milwaukee-Rio Grande-SP route; correct?

14 A Well, today we're concerned about it, because  
15 we're afraid we might lose it through an unfriendly  
16 connection on the West Coast, post-merger. Today it's  
17 moving fine. There's no problem, because the SP are  
18 friendly.

19 Post-merger, they're not going to be working  
20 that traffic with us or with Milwaukee, unless it's an  
21 origin on their railroad that you can't do anything else  
22 with.

23 Q So your point is, I think, if I understand  
24 you, that SPSF will not want the haul between Ollen and  
25 the Coast because it will be competing against its long



1 haul route from the Coast to Kansas City?

2 A That's post-merger; yes.

3 Q Now that Rio Grande has its trackage rights  
4 between Pueblo and Kansas City, do you continue to  
5 participate in joint movements between traffic moving  
6 over the Rio Grande to Kansas City with connections at  
7 Pueblo and Denver?

8 A Where is this traffic originating? Is it  
9 California traffic?

10 Q Let's talk about California traffic.

11 A Yes. We continue to do that today.

12 Q Even though that joint line participation with  
13 the BN, for example, between Denver and Kansas City is  
14 competing with your route between Pueblo and Kansas  
15 City?

16 A Well, the traffic that's moving in the BN  
17 route is primarily TOFC traffic.

18 Q You're not saying that no traffic that moves  
19 between you and the BN over Denver is going to Kansas  
20 City, are you?

21 A Would you restate that? I'm sorry; I didn't  
22 understand.

23 Q Are you saying that no traffic interchange  
24 between the Burlington Northern and Rio Grande at Denver  
25 goes to Kansas City?

1           A     I think I got lost somewhere here, Mr.  
2 Stephenson.

3           Q     Is the traffic moving between the Burlington  
4 Northern and Rio Grande at Denver, that is, to, from, or  
5 via Kansas City?

6           A     I don't know. I don't think so. I just don't  
7 know. We pretty much maximize our haul on all the  
8 traffic we could. So I just don't know. I couldn't  
9 answer that question.

10          Q     Have you shut down rates with Burlington  
11 Northern at Denver or with Santa Fe at Pueblo or with  
12 the MP at Pueblo for traffic moving between the Colorado  
13 Gateways and Kansas City joint rates?

14          A     No.

15          Q     You continue to work with your connections for  
16 that business; correct?

17          A     Not to the Kansas City Gateway we don't. We  
18 work our Kansas City long haul as much as we can.

19          Q     You work the long haul?

20          A     You bet. That's why we got it.

21          Q     But you take the business if it comes to you  
22 at Pueblo or Denver, too, don't you?

23          A     If it comes to us there, yes. But if it's  
24 going off our system, we do all we can to extend our  
25 haul on it. That's why we went to Kansas City.



1 Q But you don't close down rates. You haven't  
2 commercially closed gateways in order to force that  
3 traffic on to your new long haul between Pueblo and  
4 Kansas City, or have you?

5 A No. We haven't done anything. It's been our  
6 policy to not do that.

7 Q Getting on now to the traffic diversion  
8 study.

9 A To better things?

10 Q When was the traffic diversion study started?  
11 When I talk about the traffic diversion study, I will in  
12 all cases be referring to the opposition study, as  
13 opposed to the marketing study sponsored by Mr.  
14 Brainari.

15 — A Okay. When you say when did it start, do you  
16 mean conceptually?

17 Q Conceptually.

18 A Probably some time after the first of the  
19 year, 1984.

20 Q When did you actually start doing your  
21 evaluations?

22 A Well, it had to be around some time the middle  
23 of June, first of July. It was after the witness  
24 program was finished. I would think it would be  
25 probably the middle of June, early July.

1 Q And it was completed when?

2 A Late August, early September. Somewhere in  
3 there.

4 Q Who developed the methodology that was  
5 followed by you?

6 A You mean after Dr. Bardwell gave us the  
7 samplings?

8 Q Yes.

9 A Yes. I developed the -- I was responsible for  
10 the whole thing.

11 Q Did anybody work with you in developing the  
12 methodology?

13 A Well, I had a staff working with me, but I was  
14 the one that directed it.

15 Q There were two studies done, one for 1982 and  
16 one for 1983; correct?

17 A That's correct.

18 Q Were the -- aside from the different data  
19 bases used in the two studies, were the methodologies  
20 followed in those two studies the same?

21 A Pretty much the same.

22 Q Can you think of any differences in the  
23 methodology?

24 A Not right now I can't, no.

25 Q As far as you can recall, the same assumptions



1 were used for both?

2 A Yes. You know, when we did this '82 study,  
3 you know, it was really a bad time to try to do  
4 something because of the traffic patterns being  
5 changed. You know, the SP extension and the Kansas City  
6 to St. Louis, our extension, the UP/WP merger. So '82  
7 was really a bad year to try to make one of these  
8 studies because the patterns changed so much.

9 Even in early '83 we had a lot of change in  
10 patterns. The SP agreement came on, and so it was not  
11 an easy study to do.

12 Q Did you do the two studies simultaneously, or  
13 did you finish the '82 and then do the '83?

14 A I finished the '82 and went to the '83.

15 Q Did you assume in both that the UP/MP merger  
16 was in place?

17 A Yes, we did.

18 Q Did you assume that -- did you assume anything  
19 with respect to Rio Grande's IRA proposal?

20 A No.

21 Q What did you assume insofar as trackage rights  
22 were concerned for the Rio Grande between Pueblo and  
23 Kansas City and the Cotton Belt between the Kansas City  
24 and St. Louis?

25 A Those assumptions are in my statement, that

1 this was an assumption that we had.

2 Q They were in effect?

3 A Yes, that's in my statement.

4 Q And this is for '82 also?

5 A And '83; yes.

6 Q You assumed that SP's Tucumcari line was fully  
7 rehabilitated?

8 A Yes. It's not a part of the statement, but  
9 it's an assumption, and I knew it was there.

10 Q I'm asking you about some things that are in  
11 your statement and others that are not mentioned.

12 A I know.

13 Q You assumed that the CP conditions would not  
14 be in effect?

15 A CP conditions would not be in effect.

16 Q And that was based upon what?

17 A CP conditions, a part of the SP, UP and SP  
18 System.

19 Q You also said that the joint SP D&RG  
20 solicitation agreement would not be in effect?

21 A That's correct.

22 Q How were your transit time schedule  
23 assumptions developed, or what kind of assumptions did  
24 you use in terms of transit time as between SP/D&RG, for  
25 example, the SPSF transit time schedules, the UP



1 schedules and so on?

2 A Are you talking about California origins  
3 again?

4 Q Any traffic that would be influenced by  
5 competitive schedules.

6 A Well, for instance, on the traffic that's  
7 coming from Oakland to Denver, my assumption was that  
8 the SP would no longer have run-through schedules with  
9 us. The traffic moving in those trains are now Chicago  
10 tonnage.

11 And without the Chicago tonnage, that traffic  
12 just falls down badly and the service just won't be  
13 there. You might have a paper schedule, but if there's  
14 no traffic on it, it's not going to mean anything.

15 — So the assumption of going to Denver was  
16 that. Going to Chicago was based on your own people's  
17 testimony here that you were going to be running single  
18 line systems into Chicago.

19 Q I didn't hear that.

20 A You would have a single line route by the new  
21 SPSF system from Oakland to Chicago. That was made clear  
22 by Mr. Edwards.

23 Q Isn't it true that SP today publishes  
24 schedules from the Bay Area and Los Angeles to Kansas  
25 City and beyond that do not include the Rio Grande?

1 A Well, I don't know that. I can't answer  
2 that. I just don't know if you do or not.

3 Q So, specifically, with respect to the  
4 run-through train, I'm not sure I understood your  
5 answer. You assume that there would be no run-through  
6 trains between SP, D&RG, Burlington Northern to  
7 Chicago?

8 A That's correct.

9 Q Did you assume any run-through trains as part  
10 of the post-merger between SPSF and Rio Grande?

11 A Well, after listening to the testimony here  
12 and your Applicant's case, I couldn't assume that there  
13 would be any schedules.

14 Q Well, you didn't do this traffic study until  
15 -- or you did this traffic study before you heard that  
16 testimony?

17 A Yes.

18 Q So what did you assume?

19 A Making the assumption, based on my experience  
20 in the field, that these things just don't happen. Once  
21 you put a long line system together, it's all over for  
22 the interchange.

23 I've had a lot of experience competing with  
24 the SP long haul systems.

25 Q I guess what I'm asking you, you did not



1 assume that there would be any run-through?

2 A I did not assume any run-through schedules.

3 Q Did you, for traffic that was moving in 1983  
4 for example, between Oakland and Kansas City, what did  
5 you assume the combined SPSF/Rio Grande schedule would  
6 be over Ogden?

7 A Post-merger?

8 Q Post-merger.

9 A There wouldn't be any.

10 Q No schedule?

11 A No, sir. There's no reason for you to have a  
12 schedule.

13 Q So if you looked at a particular study  
14 movement sheet, you would simply assume that if it was  
15 expedited traffic, it would automatically divert to the  
16 new system because there would be no schedule to handle  
17 expedited traffic between SPSF and Rio Grande over  
18 Ogden?

19 A To where?

20 Q To Kansas City.

21 A There would be no schedule. That is the  
22 assumption that I had.

23 Q What did you assume with respect to schedules  
24 for non-expedited traffic, boxcar traffic, lumber  
25 traffic, and so on, just general freight manifest

1 traffic?

2 A I assumed there would be non-cooperation at  
3 the Ogden Gateway, and consequently the traffic would  
4 not move that way.

5 Q By non-cooperation, you mean what?

6 A That the SP would not cooperate in running any  
7 kind of a decent schedule. You know, boxcar traffic  
8 does require a certain amount of service, and it just  
9 wouldn't be there. That was the assumption that I  
10 made. The service would all be long haul.

11 Q What assumptions did you make in terms of the  
12 existence of joint rates between SPSF and D&RG  
13 post-merger?

14 A The assumption I made is that there wouldn't  
15 be any, as part of non-cooperation.

16 Q And I take it that you assumed that there  
17 would be no joint rates, so you would have no assumption  
18 at all regarding what level the rates would be?

19 A Well, when you assume that the gateway is  
20 going to be closed, you just have to make an assumption  
21 that you're not going to be competitive, regardless of  
22 what level.

23 Q Did you make any assumption with respect to  
24 the interchange between Rio Grande and Cotton Belt at  
25 Herington, Kansas?



1           A     No, I didn't. It would be gone. No traffic.  
2 There would be no reason for it.

3           Q     Did you make any assumptions regarding  
4 cooperative relationships or increased traffic levels at  
5 Kansas City as a result of your new relationships with  
6 Kansas City carriers?

7           A     Well, the assumption I made on this was that  
8 the SPSF would be merged, the Rio Grande would not get  
9 its conditions, and consequently our new connections  
10 would be forced to work with you at Kansas City or  
11 wherever.

12          Q     Did you make any assumptions as to whether  
13 circuitry would influence a particular movement to divert  
14 away from the Rio Grande/SPSF routing to the new merged  
15 system?

16          A     The assumptions that I used on that, and I  
17 tried to stay within the 25 percent that you people used  
18 within your own traffic study, the circuitry did not  
19 exceed 25 percent, then I probably wouldn't divert it.  
20 But there was circuitry involved, and I had reasons for  
21 doing it.

22          Q     Let me make sure I understand. In an SP/D&RG  
23 move in 1983 that moved over a circuitous SP/Rio Grande  
24 joint route, you would not divert that to the SP system  
25 unless it was 25 percent?

1 A Would you restate that?

2 Q Okay. If you were looking at a circuitous  
3 1983 movement or a movement, an 1983 movement that went  
4 by way of a circuitous Cotton Belt-D&RG-SP route or an  
5 SP/D&RG route, what assumption did you make as to  
6 whether that circuitry of that route would cause it to  
7 divert to the SPSF system?

8 A I don't recall seeing anything like that, Mr.  
9 Stephenson. If you have a specific, I could address it,  
10 but I don't recall seeing anything with that kind of  
11 circuitry, not that moved our system.

12 Q Let me turn it around. Maybe that's the  
13 better way to approach it.

14 Did you have any assumption with respect to  
15 the circuitry that an SPSF route would have to have  
16 before you would not divert to the SPSF system? In  
17 other words, you used this 25 percent. You mentioned  
18 the 25 percent figure.

19 Did you assume that if the SPSF route was 25  
20 percent circuitous, that it could still take traffic  
21 from the Rio Grande?

22 A Yes. That's about what I figured.

23 Q But with respect to the circuitry, did you have  
24 any automatic cutoffs, and by that I mean, for example,  
25 the SPSF traffic diversion study and the UP traffic



1 diversion study absolutely cut off the possibility of a  
2 diversion if the movement was 18 percent circuitous or  
3 more?

4 Are you familiar with that?

5 A I've heard those things about the study, yes.

6 Q Did you have any similar kind of automatic  
7 cutoff points where a diversion could not be diverted or  
8 a movement could not be diverted?

9 A No, I didn't. I used more or less my own  
10 experience in dealing with the Southern Pacific Railroad  
11 and how they would handle traffic on the long haul. So  
12 I really didn't have a flat cutoff. I don't recall  
13 seeing anything that was really like that.

14 Q Did you read SPSF's operating plan before  
15 doing the study?

16 A I read a lot of things, Mr. Stephenson.

17 Q Well, specifically, I'm asking if you read the  
18 operating plan.

19 A Yes, I did.

20 Q And did you accept the -- I take it from your  
21 previous answers that you did not accept the proposed  
22 train schedules that were in that operating plan so far  
23 as they related to schedules across the Ogden Gateway?

24 A That's correct.

25 Q Were there any other parts of the SPSF

1 operating plan that you rejected, that you can recall?

2 A Not that I can recall. I was just concerned  
3 about the schedules.

4 Q Did your computer people or the people  
5 assisting you in putting the study together  
6 systematically organize the movements that were  
7 presented to you for evaluation, by shipper for example,  
8 or by point-to-point flow or commodity, or anything like  
9 that?

10 A No. It's just that they were numbered.  
11 That's the only sequence that we had, and those numbers  
12 are shown on the samples.

13 Q So just one, two, three, four, five.

14 A Just one, two, three, four, five. The old  
15 hard way.

16 Q Were those numbers, to your knowledge,  
17 organized so that you got, so that all of the Ford  
18 movements came from, number one, No. 250, and all the  
19 Roseburg Lumber came from 250 to 300? We're talking  
20 hypothetical.

21 A No, they weren't that way at all. I would get  
22 a Ford, and I'd get A Roseburg, and I'd get a Del  
23 Monte. No, there wasn't any organization like that.

24 Q Looking at each one of these movements, whose  
25 shoes were you standing in when you were looking at the



1 divertibility of the movement? Were you looking at  
2 movement from the standpoint of the traffic manager of  
3 whoever routed the traffic in the study year, or were  
4 you looking at it from your perspective as the sales  
5 manager of Rio Grande or some other perspective?

6 A I used my own perspective as a salesman and  
7 knowing how these things happen

8 Q Did you look at and analyze the movements as  
9 they were routed in 1982 or 1983 or whatever the year  
10 was, or did you give yourself the option of substituting  
11 facts with respect to a given movement?

12 A What do you mean by substituting facts? I  
13 don't understand the question.

14 Q When you looked at a study movement sheet of a  
15 particular movement, did you accept the facts that were  
16 there in 1983, for example, and evaluate it on the basis  
17 of those facts, or did you give yourself the option to  
18 substitute something else in -- and let me give you an  
19 example.

20 Let's say you looked at a movement in 1983  
21 that -- where the particular rate for that commodity was  
22 canceled after this movement was shipped. And you knew  
23 that in 1984 as you were doing the study, that that rate  
24 had been canceled, and therefore there was no  
25 possibility of it being diverted or no possibility of it

1 being held by either Rio Grande or the new SPSF system.

2           What did you do when you came to a situation  
3 like that? Did you substitute your knowledge of what  
4 has happened since then for the fact that that movement  
5 was flowing in 1983?

6           A     No. I just assumed that that car moved in  
7 1983, and we handled it then, and that we would handle  
8 it in the future. So that is the assumption that I  
9 used.

10          Q     How about if the plant had closed since the  
11 movement had moved so that there was no -- there were  
12 going to be no movements of that kind in the future?

13          A     Well, the plant wasn't closed in '83; the car  
14 wouldn't have moved.

15          Q     So basically what I'm hearing is that you  
16 accepted the facts as they were on the study movement  
17 sheet or the waybill and didn't try to substitute your  
18 own --

19          A     I didn't project myself into 1984, though I  
20 did operate through 1983 conditions on certain  
21 movements.

22          Q     Certain or all of them?

23          A     Certain movements. Well, I guess I could say  
24 all of them.

25          Q     All right. Now, let's go on to the fun part,



1 your study movement sheets.

2 MR. STEPHENSON: Your Honor, at this time I'd  
3 like to have identified three counsel exhibits, and I  
4 have been told that we are now on SFSP-C-119.

5 JUDGE HOPKINS: That's right.

6 MR. STEPHENSON: So they will be 119, 120, and  
7 121.

8 Your Honor, the first exhibit I'd like to have  
9 marked for identification as SFSP-C-119 is the  
10 documented entitled "Selected Movements from D&RG  
11 Opposition Traffic Diversion Study."

12 JUDGE HOPKINS: That will be marked for  
13 identification.

14 (The document referred to  
15 was marked Exhibit  
16 SFSP-C-119 for  
17 identification.)

18 MR. STEPHENSON: The next counsel's exhibit  
19 would be SFSP-C-120, and that would be Comparative Rail  
20 Mileages by Selected Routes to Kansas City.

21 JUDGE HOPKINS: That will be marked for  
22 identification.

23 (The document referred to  
24 was marked Exhibit  
25 SFSP-C-120 for

1 identification.

2 MR. STEPHENSON: The next document is  
3 Comparative Rail Mileages by Selected Routes to Chicago,  
4 and I'd like to have that identified as SFSP-C-121.

5 JUDGE HOPKINS: That will be marked for  
6 identification.

7 (The document referred to  
8 was marked Exhibit  
9 SFSP-C-121 for  
10 identification.)

11 MR. STEPHENSON: The two schedules are like a  
12 lot of the counsel's exhibits introduced in this case,  
13 subject to correction or supplementing by Rio Grande if  
14 they are shown to have mathematical problems or errors.

15 JUDGE HOPKINS: Thank you.

16 BY MR. STEPHENSON: (Resuming)

17 Q Mr. Thiesse, turning to the book of study  
18 movement sheets, I'd like to just walk through one of  
19 these, just to familiarize everyone with what has been  
20 done here.

21 The pagination which I will be referring to  
22 throughout my cross-examination will refer to the  
23 pagination on the bottom right-hand corner.

24 For the record, the top document, or the  
25 document on page 1 is a sheet that I have prepared or



1 have had prepared, which has taken certain information  
2 from the Rio Grande traffic diversion study movement  
3 sheets and has summarized it here in a form that is more  
4 readily understandable by me.

5 Page 1-A is the Rio Grande computer printout  
6 that goes along with page 1. Those two documents cover  
7 this particular movement. I'd like to talk to you, Mr.  
8 Thiessen, first about your document at page 1-A, and  
9 just walk through that quickly.

10 In the left-hand corner, AB Date is abstract  
11 date; is that correct?

12 A That's correct.

13 Q And abstract number would be 171? What is the  
14 abstract and the abstract date, if you know?

15 A It says here the abstract date on this --

16 Q What is an abstract --

17 A Oh, an abstract, it's the settlement sheets  
18 that we get between carriers, and the date is the date o  
19 settlement. It's the day it comes in.

20 Q Okay. And the WB date is the waybill date of  
21 January 26, '83? Is that correct?

22 A That's correct.

23 Q And the way number is next to that. On that  
24 same horizontal column, initial number refers to the car  
25 number?

1 A That's correct.

2 Q And type means the type of car?

3 A That's correct.

4 Q And the F119 would reflect some kind of a  
5 flatcar?

6 A Probably.

7 Q The shipper would be shown on the left-hand  
8 side of the page, and it would be Dana Corporation in  
9 this case?

10 A That's correct.

11 Q With a movement from Ontario, Canada and the  
12 serving road at Ontario would be the Canadian National;  
13 is that correct?

14 A That's correct.

15 Q The receiver in this case would be Ford Motor  
16 Company at Milpitas, California?

17 A That's correct.

18 Q And the serving road at Milpitas would be the  
19 Western Pacific?

20 A That's correct.

21 Q Moving down the page, just about in the middle  
22 of the display, total revenue 6,419, would be the total  
23 revenue for the entire shipment?

24 A Yes, that's right.

25 Q Rio Grande's revenue is shown to the right of



F.D. 30400 - 1/28/85 - PGS. - 9035-9094

1 that at \$1,213.

2 A That's correct.

3 Q And below the total revenue, we see \$775,  
4 \$332, \$924, and \$1,001. These are the revenues that  
5 would have been or were received by the Canadian  
6 National, the Grand Trunk, the Norfolk & Western, and  
7 the Missouri Pacific?

8 A That's correct.

9 Q And to the right of those revenue information  
10 would be shown where the particular carriers received or  
11 delivered the car at interchange?

12 A Junction on and off, that's right.

13 Q The reference to Conn From on the left-hand  
14 column would mean the connection from Missouri Pacific  
15 is where the Rio Grande got the haul; is that correct?

16 A That's correct.

17 Q And in this particular case, the junction was  
18 Pueblo?

19 A That's correct.

20 Q And junction off, also in the left-hand  
21 column, means that the reference to SALAC is Salt Lake  
22 City, and that is a connection to the Western Pacific?

23 A That's correct.

24 Q And the Western Pacific's revenue would be  
25 shown to the right as \$2,174; correct?



1 A That's correct.

2 Q Moving over to the right-hand column in the  
3 middle of the page, new route information indicates that  
4 the new origin road is the Canadian National. That's  
5 the same as in the original route; correct?

6 A That's correct.

7 Q And the next is Grand Trunk/Western. That is  
8 the same, and the Grand Trunk then delivered the car at  
9 Chicago and it is your opinion that at Chicago this  
10 movement would have been moved or would have been  
11 diverted by the SPSF system at Chicago and would have  
12 moved all the way from Chicago to Milpitas, California,  
13 which is in the Bay Area?

14 A That's correct.

15 Q Now, this route has six carriers in it. Did  
16 you notice that?

17 A The prediversion route?

18 Q The prediversion route.

19 A Yes. Okay.

20 Q Would you consider it a typical Ford route?

21 A Well, I can't call it a typical Ford route.  
22 It's a route. I don't know if it's typical or not.

23 Q Well, Ford frequently has routes that have  
24 three, four, and more carriers in it, do they not?

25 A Some have routes with two carriers in it,

1 too.

2 Q By the way, this particular traffic from -- to  
3 the Ford Plant at Milpitas is now gone, is it not?

4 A Now what?

5 Q Now gone.

6 A Well, not really. This traffic is now under  
7 contract with the Rio Grande and the SP. It's now  
8 moving to Benecia, California. That contract is signed  
9 July or August of 1983.

10 Q And this particular movement to Milpitas,  
11 however, is gone.

12 A The Milpitas plant is closed, but the movement  
13 is still there.

14 Q And what was this? Auto parts?

15 A Well, it's STCC number is transportation  
16 equipment. I would gather from the car number that it  
17 is probably auto parts, yes. I don't know; I would have  
18 to check.

19 Q Would you agree that today, Santa Fe has the  
20 premiere service route between Chicago and the Bay Area  
21 in terms of transit time?

22 A Yes. They are the ones that set the standards  
23 for service.

24 Q In reading the operating plan, would you agree  
25 with me that the proposed schedules between Chicago and



1 the Bay Area for SPSF, post-merger, are no different  
2 than the existing Santa Fe schedules between Chicago and  
3 the Bay Area?

4 A I'll take your word for it.

5 Q And that would be true for Kansas City as  
6 well?

7 A Correct.

8 Q What is the merger going to do to improve  
9 service on this particular route?

10 A It's not going to improve service on it. The  
11 new merger is going to eliminate the service west of  
12 Ogden.

13 Q And you believe that if SPSF permits service  
14 to deteriorate over Ogden so that there can be no  
15 further routing of traffic via the Rio Grande and the  
16 Central Corridor, that nevertheless Ford will reward  
17 SPSF with this movement and others that it reflects?

18 A That's correct. You'll be able to use your  
19 market power in the Bay Area to control this traffic.  
20 That's the way the assumptions are made.

21 Q In this particular case, the Western Pacific  
22 and the Missouri Pacific both were participants in the  
23 route; were they not?

24 A Yes. On this particular movement, yes.

25 Q And on the diverted route that you have

1 proposed or projected, both the Missouri Pacific and the  
2 Western Pacific would be cut out of the route, as well  
3 as the Rio Grande?

4 A That's right. They already have been.

5 Q Let me move over to page 2-A one more time.

6 If one were to want to determine how much --

7 A Are you going to another sample?

8 Q I just want to turn to 2-A. I'm sorry, 1-A,  
9 the computer printout supporting this particular  
10 diversion.

11 At the top of the page, we show sample IM-83.  
12 That means intermediate traffic or bridge traffic moving  
13 in '83?

14 A Yes, sir.

15 Q And the sample number is just the number of  
16 the particular movement?

17 A Yes.

18 Q The expansion factor, 44.1660 is the expansion  
19 factor that Dr. Bariwell gave to your people to  
20 determine how many cars this represents?

21 A That's correct.

22 Q And so if one were to want to figure out how  
23 this particular movement, how much money was represented  
24 by this particular diversion, one would multiply the  
25 revenue of any given carrier and movement by the



1 expansion factor, and would come up with the loss.

2 A Less whatever refunds and contract  
3 arrangements might be involved in the movement.

4 Q Do you know whether your people did that?

5 A They took the refunds; yes. They ran these  
6 all by the contract department, and that's all been  
7 adjusted.

8 Q Now, in this particular case, under your  
9 proposed diverted route, the UP System would lose not  
10 only the traffic of the Western Pacific at destination,  
11 \$2,174, but in addition, UP would lose \$1,001.

12 A That's correct. They have already lost it.

13 Q And that would result in a total, if my  
14 figures, if my calculations are correct, of \$140,000  
15 loss to the UP System, in addition to the \$53,000 loss  
16 to --

17 A That's the way these things work, Mr.  
18 Stephenson.

19 Q And you think that Ford, which is a supporter  
20 of the Rio Grande in this case, is it not?

21 A Yes, they are. And they are also a supporter  
22 of yours.

23 Q But they are supporting the Rio Grande because  
24 Mr. Haupt, the transportation traffic manager at Ford,  
25 says that -- and I quote his verified statement in your

1 application: "In order to assure continued economic and  
2 service competition in the Central Corridor, Ford  
3 supports the D&RG in its effort to obtain trackage  
4 rights and/or acquisition rights to the SP Line from  
5 Ogden to the West Coast. Ford also supports the need to  
6 maintain effective competition in the Central Corridor."

7 Do you think that with these attitudes that  
8 Mr. Haupt has for competitive alternative in the Central  
9 Corridor, that he is going to gladly suffer SP closing  
10 down the gateway at Ogden, and then turning around and  
11 giving this traffic to us and cutting out the Rio Grande  
12 and the UP System as well?

13 A I think what Mr. Haupt knows on this statement  
14 that he made is that he's going to lose a competitive  
15 gateway unless the Rio Grande gets their extension west,  
16 and that's why his support statement is there.

17 He knows what's going to happen if we don't  
18 win the extension. He will no longer have a competitive  
19 route through the Central Corridor.

20 Q Do you think that Mr. Haupt would divert this  
21 traffic to the SP System after they close down the  
22 gateway on him?

23 A I'm sure that he would. He'd have to.

24 Q He could use the UP System single line, all  
25 the way into --



1 A Well, he didn't, though.

2 Q He used two carriers in this particular route  
3 that are part of the UP System, didn't he? The WP and  
4 the Missouri Pacific?

5 Let me finish -- may I finish the question?

6 A I'm sorry.

7 Q He used two Union Pacific carriers in this  
8 original route, did he not?

9 A Yes, he did.

10 Q And he didn't use the Southern Pacific or the  
11 Santa Fe in this particular route.

12 A But he's using them now. And this movement is  
13 being an SP movement now today.

14 Q But you're looking at this sheet. You told me  
15 earlier you looked at the sheet that was in front of you  
16 and didn't take into consideration the changes that  
17 occurred subsequent to the date of movement.

18 A No, I didn't say that. I said I didn't take  
19 into consideration things that had happened in 1984. I  
20 said there were certain conditions in 1983 that I used,  
21 and this is one of them.

22 Q In this particular movement, Missouri Pacific  
23 and Western Pacific were included in the route, and  
24 Southern Pacific and Santa Fe were not even participants  
25 in this route; isn't that correct?

1           A     They are in this sample, but in the new world  
2 they are now handling this traffic, and it's the same  
3 movement.

4           Q     In this movement that you looked at?

5           A     They did not handle it; no.  
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1 Q If you could look at page 2, please, this is a  
2 movement of transportation machinery from Ford Motor  
3 Company in Romeo, Michigan to Mojave Transport in  
4 Stockton, is that correct?

5 A That is correct.

6 Q And in this particular case, the Santa Fe was  
7 shorthauled, was it not, from Chicago to Pueblo?

8 A Why would you call that a short haul. They  
9 handled the car going to the SP or to an SP point in  
10 Stockton. So I would not consider that, the Santa Fe  
11 being shorthauled.

12 Q Santa Fe serves Stockton, does it not?

13 A Yes.

14 Q It could have taken this movement all the way  
15 from Chicago to Stockton in 1983, had Mr. Haupt wanted  
16 Santa Fe to have this route on a single line basis.

17 A Oh, a lot of things would happen. This could  
18 have come SP all the way, too.

19 Q But you have routed this movement all the way  
20 on SPSF from Chicago to the origination, even though the  
21 route of movement is the same route of movement over the  
22 Santa Fe that existed in 1983.

23 A This is what you put big mergers together for,  
24 Mr. Stephenson, is to extend your haul in all this  
25 traffic that you can get, and in my judgment you are

1 going to use your power to get this traffic as you will  
2 a lot of other traffic that is moving.

3 Q Did you notice that in this particular case  
4 the destination road shown on your sheet on page 2A is  
5 the Southern Pacific?

6 A Destination route on this movement is the  
7 Western Pacific. The switching carrier is the SP.

8 Q Well, excuse me, but look on page 2A. If I  
9 read your printout, it says Mojave Transport, serving  
10 road is Southern Pacific.

11 A That's the switching carrier. That's who  
12 serves the plant.

13 Q And they could have, as the serving road in  
14 switching the plant, they could have gotten and probably  
15 wanted their long haul into the plant, don't you think?

16 A I'm sure they did.

17 Q And in this particular case in 1983, the  
18 movement that you analyzed, the Western Pacific got th  
19 long haul in from Salt Lake City, Southern Pacific  
20 didn't even get its long haul from Ogden, did it?

21 A No, but I bet the next time it moved, the SP  
22 got their haul.

23 Q But looking at this particular movement, can  
24 you see anything on this movement sheet that would  
25 indicate that Southern Pacific has a lot of influence



1 with Ford when they were shorthauled at termination?  
2 They diin't even get a haul even though they served the  
3 plant.

4 A Well, they maybe didn't have the influence on  
5 this particular move, but postmerger, which is what we  
6 are looking at, and three years postmerger down the  
7 road, they will certainly have the influence to force  
8 this traffic to what they want.

9 Q And did you agree with me that Santa Fe was  
10 short hauled in this route?

11 A I don't think we agreed to that.

12 Q If they had handled the route all the way from  
13 Chicago, as you have predicted that they will, if they  
14 had done that in 1983, they would have gotten, in  
15 addition to the revenue of \$1540, they would have also  
16 gotten the D&RG revenue of \$1152, plus a substantial  
17 chunk of the \$1668 of the WP, would they not?

18 A That 's correct, and they are going to get it  
19 postmerger.

20 Q You do not consider that a short haul?

21 A No. We solicit traffic that way on a  
22 premerger basis.

23 Q If you can turn to Item No. 3, or page 3, this  
24 is a movement of transportation equipment from Ford  
25 Motor Company, St. Paul, Minnesota, to Convoy Company in

1 Tigard, Oregon, correct?

2 A That is correct.

3 Q Tigard is served by the Southern Pacific?

4 A That is correct.

5 Q Will you accept my representation, subject to  
6 check, that this new route that you have -- well, let me  
7 back up. The original route was Milwaukee, Kansas City,  
8 MP, Pueblo, Rio Grande, Ogden, SP, correct?

9 A That is correct.

10 Q And you have concluded that after the merger  
11 this movement will go to Kansas City on the Milwaukee,  
12 and thereafter, SPSF will take the Missouri Pacific and  
13 the Rio Grande out of the route.

14 A That is correct.

15 Q And they will haul it all the way to Tigard.

16 A That is correct.

17 Q Would you accept my representation that the  
18 new SPSF route adds 303 miles to the present route?

19 A I accept that.

20 Q And I will ask you to accept another  
21 representation subject to check. The diverted route via  
22 SPSF is 737 miles more circuitous than the Union Pacific  
23 from Kansas City to Tigard.

24 Will you accept that?

25 A I will accept it subject to check.



1 Q Assuming that it is 737 miles more circuitous,  
2 how long could SPSF continue to serve Tigard, Oregon  
3 with a disability which according to my calculations  
4 works out to a 39 percent circuitry disability compared  
5 with the UP system? How long could SPSF continue to  
6 offer competitive service to Tigard with that kind of a  
7 competitive disadvantage?

8 A Well, you are doing it today. You are  
9 competing with the Union Pacific. I don't see any  
10 reason why when you shorten mileage with the new SPSF  
11 system, that you won't do this, and this will all be  
12 part of a major Ford package that you guys will probably  
13 put together. It is running under a contract today and  
14 competing, and I feel very sure that this will be a  
15 changed contract postmerger.

16 Q Doesn't it make a difference that the  
17 competition today is with the Rio Grande over the 300  
18 mile shorter route, SP-Rio Grande?

19 In other words, the competition that is going  
20 on today for traffic to Tigard is competition with an  
21 'SP-D&RG route that is 300 miles less circuitous than the  
22 diverted route that you have projected will be  
23 followed.

24 A Well, 304 miles is about 10 percent of the  
25 total through movement. That's not very much circuitry

1 when your system in the past has gone far beyond that  
2 kind of percentage in handling traffic that was on  
3 common movements. This traffic will disappear to the  
4 market power that you guys will have out there.

5 Q And we will bring Ford to its knees with our  
6 market power despite the fact that the UP system has a  
7 direct route from Kansas City that is 39 percent less  
8 circuitous than the SPSF?

9 A The UP system didn't handle this movement, so  
10 I am assuming that they won't handle it in the future.

11 Q Let's turn to page 4, please. This is a  
12 shipper association movement from Rail Services, Inc. in  
13 Corwith, Illinois to Sweetheart Cup. That may be an  
14 abbreviation for Sweetheart Cupcake, in Sparks, Nevada.

15 A Sweetheart Cup Company.

16 Q This originated on the Santa Fe, moved Santa  
17 Fe from Chicago to Pueblo, Rio Grande to Ogden, and  
18 Southern Pacific thereafter, correct?

19 A That is correct.

20 Q And you are predicting that postmerger this  
21 movement will go all the way from Chicago to destination  
22 in Sparks, Nevada on the single line SPSE, correct?

23 A That is correct.

24 Q Did you consider the fact in evaluating this  
25 movement that there are no rates in place via your



1 diverted route?

2 A I was assuming that there would be rates in  
3 place postmerger.

4 Q The location of Sparks is east of Roseville by  
5 about 100 miles, isn't that correct?

6 A That is correct.

7 Q So this movement would come from Chicago down  
8 via the Southern Corridor, up the San Joaquin Valley to  
9 Sacramento, back to Roseville, and then back 100 miles  
10 into Nevada?

11 A That is correct. But this is also very  
12 service-sensitive traffic, Mr. Stephenson, and the  
13 assumption is that we will not have service west of  
14 Ogden. So if we can't serve this traffic, we are going  
15 to lose it, and if you guys can't provide the service  
16 into the Sparks area, you will simply lose it to the  
17 Union Pacific Railroad.

18 Q Well, if it is service-sensitive traffic,  
19 would your addition of 340 miles to the existing route  
20 by way of Santa Fe, Rio Grande and SP help that time  
21 sensitivity? In other words, doesn't your addition of  
22 340 miles to the route add a disability to the service  
23 sensitivity of this movement?

24 A Well, it is like I stated, this is a very  
25 service-sensitive movement. We can't compete on this

1 traffic because we won't have the service west of  
2 Ogden. We understand that and know that. So my  
3 position is if you guys can't compete for it, then the  
4 UP won't handle it, and they are on this market very  
5 vigorously. This is a very service-competitive market,  
6 that Sparks-Reno area, and if you can't compete in it,  
7 you just simply lose it.

8 Q Would you agree that the UP direct route  
9 between Kansas City and Sparks would be more direct than  
10 even the combined SP-Rio Grande route?

11 A Well, that would be more direct, but I can't  
12 see you people trying to get out of this business when  
13 it is there for you to get. I just don't see that  
14 happening.

15 Q Is this a low revenue, low margin business?

16 A I didn't know that when I did the study. We  
17 didn't have revenues on our study, so I had no idea.  
18 All I knew was that it was a movement.

19 Q Would you agree with me that it is low margin  
20 traffic?

21 A Well, any of this TOFC business is low margin  
22 traffic. There's a lot of other things like the FAK box  
23 car traffic that you guys are competing for now. The SP  
24 system to the Reno-Sparks area, you are taking that long  
25 haul, so you are hauling box car traffic in there, and



1 these battery movements, you are going to handle this  
2 that way.

3 Q So if you are adding 340 miles to a route,  
4 what does that do to our ability to compete with the UP  
5 direct route in terms of pricing?

6 A I didn't consider the Union Pacific in this  
7 movement. This was an SPSF move, and that's the only  
8 consideration I gave it.

9 Q Well, that brings up a question. Did you ever  
10 consider the existence of the UP system as being an  
11 alternative, diversion alternative to the SPSF?

12 A Yes, I did, in the Denver market, but like I  
13 told you earlier on this move, you can't compete, then  
14 the Union Pacific will get this business. I said that  
15 earlier. So that's a consideration, yes.

16 Q Well, basically this movement today went over  
17 Ogden between the Rio Grande and the SP because there is  
18 good present service, would you agree?

19 A That is correct, premerger.

20 Q Premerger. And you have diverted it because  
21 you said that there will be no schedules, no service via  
22 the Ogden gateway for time-sensitive traffic, is that  
23 correct?

24 A That is correct.

25 Q And that was your assumption notwithstanding

1 the fact that the operating plan may have contained  
2 schedules that were superior to what you contemplate  
3 them being.

4 A Operating schedules operate only when you have  
5 tonnage on them, and we can't see any tonnage moving on  
6 these schedules.

7 Q Would you turn to page 5, please?

8 This is a movement of lumber from Caffal  
9 Brothers in Canby, Oregon to Chicago Lumber in Omaha  
10 that moved Southern Pacific, Ogden, Rio Grande, Denver,  
11 Burlington Northern in 1983, and you have diverted this  
12 movement to SPSF via Kansas City, is that correct?

13 A That is correct.

14 Q In so doing, you have reduced the haul of the  
15 Burlington Northern considerably, have you not?

16 A That is correct.

17 Q Caffal Brothers, by the way, the shipper in  
18 this case, is a supporter of the Rio Grande, is it not?

19 A That is correct.

20 Q And they support you because, to quote Mr.  
21 Walton, whose statement is in your application, "We  
22 believe a competitive Central Corridor rail system is  
23 crucial. The D&RG has long been an important  
24 intermediate hauler to our markets through Ogden."

25 Do you think that Mr. Walton would accept your



1 diversion of his traffic away from the Central Corridor  
2 to the SPSF system?

3 A I can give you an opinion on it, but I think  
4 you should call Mr. Walton and cross examine him. He  
5 will tell you what he thinks.

6 Q Do you have any reason to believe that the  
7 Burlington Northern has problems with the Caffal  
8 Brothers that would result in them being shortouted  
9 as --

10 A I don't know if they have problems with them  
11 or not. But the assumption I made on this was that the  
12 SPSF would make an arrangement with the Burlington  
13 Northern to equalize whatever losses they might have or  
14 to share whatever divisions we might have.

15 Q The division, subject to check, the division  
16 that Burlington Northern would get under the old route  
17 was \$1250, and under the new route it is only \$435, the  
18 difference of \$850, which yields a loss to the  
19 Burlington of \$61,000.

20 Is that something that you think the Caffal  
21 Brothers will want to do as a result of our merger?

22 A Where are you getting the numbers?

23 Q Subject to check, you know that --

24 A Oh, I see. I'm sorry. I see where you are at  
25 now.

1 Q Did you take into account also in this  
2 particular movement that the route from, the diverted  
3 route is more circuitous than the route that you have  
4 diverted the traffic from?

5 A No, I didn't consider the circuitry important  
6 in this case because it is not in your best interest to  
7 move these cars to take this long haul. We have in the  
8 past, and we will do it in the future.

9 Q Would your answer be the same if you knew that  
10 the circuitry was 28 percent?

11 A From Canby, Oregon it is 28 percent?

12 It would still be the same, yes.

13 Q Your answer would be the same?

14 A Yes. That is subject to check.

15 -- Q Yes, obviously.

16 In a case like this where the movement from  
17 Oregon into Nebraska, do you think that SPSF can ignore  
18 the fact that Burlington Northern and Union Pacific are  
19 nearby competitors competing for this traffic?

20 A Did I consider that?

21 Q Yes.

22 A Well, I don't know how the Burlington Northern  
23 could compete for this traffic. It is a local point out  
24 of Oregon City on the SP Railroad, and there is no way  
25 that they could compete for it other than truck.



1 Q Are they doing that today?

2 A To some extent, but it is not a big factor out  
3 there yet.

4 Q They have interchanges with Southern Pacific,  
5 do they not?

6 A They don't have any routes, though -- rates, I  
7 should say.

8 Q Haven't the SP and Rio Grande entered into an  
9 open routing agreement that precludes them from closing  
10 routes on one another?

11 A The SP and the Rio Grande have done that?

12 Q I'm sorry, the SP and the Burlington  
13 Northern.

14 A I don't know. I can't answer that. I don't  
15 know.

16 JUDGE HOPKINS: Mr. Stephenson, before you go  
17 to the next one, I think we need to recess.

18 (A brief recess was taken.)

19 JUDGE HOPKINS: Back on the record.

20 MR. STEPHENSON: (Resuming)

21 Q Mr. Thiessen, continuing to look at No. 5,  
22 Caffal Brothers movement, is Mr. Walton of Caffal  
23 Brothers considered to be a fair person when it comes to  
24 routing traffic?

25 A Well, he likes competitive routes, yes, so he

1 would be considered fair.

2 Q Would he in your opinion, did he give the  
3 Burlington Northern its long haul from Denver to Omaha  
4 in this case by virtue of the fact that they were the  
5 terminating carrier?

6 A I wouldn't know. I would assume that that's  
7 true. I can't put myself in his place.

8 Q And in any event, that route, your diverted  
9 route, would be shortened considerably, would it not?

10 A Well, it would be shortened, but I am sure the  
11 SPSF and the BN could get together. Maybe that junction  
12 won't be the one that you make, but that's one that I  
13 thought was the most likely.

14 Q But in any event, under that junction, the  
15 revenue to the Burlington system would change from \$1250  
16 to \$435?

17 A That's under present tariff conditions. I  
18 don't know what it would be under contract conditions.

19 Q Assuming, if you will, subject to check, that  
20 the diverted routes you have postulated here is 2803  
21 miles versus 2184 miles in the original route, that  
22 would be a difference of 619 miles and 28 percent  
23 circuitry.

24 If you assume with me that those are in fact  
25 the correct numbers, would you agree that SPSF would be



1 under a competitive disability in terms of setting  
2 competitive rates between Canby and Omaha if it were to  
3 use its long haul route?

4 A No, I wouldn't because the traffic flows are  
5 going to be directed this direction, and consequently,  
6 this will offset any mileage differentials you would  
7 have.

8 Q If you turn to No. 6, that is a movement of  
9 grain product from Crete Mills, in Crete, Nebraska to  
10 Kellogg Company in San Leandro, which is local SP point  
11 in the Bay Area, is it not?

12 A Yes.

13 Q And Kellogg Company is one of the supporters  
14 of the Rio Grande in this case, is it not?

15 A That is correct.

16 Q Mr. Norbert Nyberg of Kellogg, did you help  
17 solicit his statement in support of the Rio Grande?

18 A No, I don't recall that. I was involved with  
19 a lot of people during this period of time.

20 Q Now, in this particular case, the movement  
21 went, in the original route, Burlington Northern,  
22 Denver, Rio Grande, Ogden, SP. And you have diverted it  
23 to Burlington, Kansas City, SP, is that correct?

24 A That is correct.

25 Q Would you agree with me that, again, in this

1 move as in the one we just looked at, the Burlington  
2 Northern has been given in the diverted route a shorter  
3 route than they had in the original route?

4 A Yes, that's correct, it is a shorter route,  
5 but once again, under a contract, the divisions won't  
6 make that much difference.

7 Q Well, if I understand it, you say this is  
8 under contract?

9 A No, I said under a new merged system this will  
10 be under a contract where the divisions will be  
11 adjusted.

12 Q So you are assuming in every case where there  
13 is a division, where one of the connecting carriers is  
14 shorthauled, that SP will somehow make it up to this  
15 carrier by way of a joint contract between them?

16 A That is correct. This has been your past  
17 practices, and I am assuming it will continue in the  
18 future.

19 Q Give me some examples of the past practices.

20 A Well, I can talk to you about Crete Mills  
21 right here. I used to work in Kansas City, and I know  
22 for a fact that the SP went after a lot of this traffic  
23 long haul and were successful in some cases, and that's  
24 not that long ago.

25 Q But how does that relate to the point that we



1 are talking about, about adjusting the division between  
2 SPSF and Burlington Northern? What makes you think that  
3 SPSF is going to adjust the division to give Burlington  
4 Northern a greater division in this movement?

5 A Well, my assumption would be that if you  
6 wanted this business -- and you surely will -- that you  
7 will have to do something to accommodate the Burlington  
8 Northern. This is not an uncommon practice in the  
9 industry today.

10 Q The Burlington Northern certainly would not be  
11 very pleased about the diversion that is reflected in  
12 your study.

13 A I don't know if they would or not.

14 Q Well, they provided a covered hopper car to be  
15 utilized in this shipment, and they were the originating  
16 carrier, were they not?

17 A A covered hopper car would also be on per diem  
18 mileage.

19 Q But you would expect that the Burlington  
20 Northern would want and expect its long haul as a result  
21 of providing that car to the shipper, would you not?

22 A Well, that can be a yes or no answer. It  
23 depends on the arrangements they can make to get the car  
24 into California. If you have no service via the Ogden  
25 route, then you are going to have to do something else.

1 Q Well, would you agree with me that the origin  
2 carrier gains competitive control over routings because  
3 of the leverage that equipment brings?

4 A To some extent, yes, I would agree to that.

5 Q And in this particular case, at least in the  
6 movement that was studied, Burlington Northern got its  
7 maximum haul as a result of serving the plant, providing  
8 equipment and whatever other factors were involved?

9 A No, that's not true. This car could have  
10 moved BN through some Texas junction.

11 Q To San Leandro?

12 A Sure.

13 Q Or running down from Crete, Nebraska down to  
14 Texas?

15 A Sure, they come out through Kansas City.

16 Q Would that be a competitive --

17 A I am sure it would. They handle traffic that  
18 way today.

19 Q How many miles would that add to the route?

20 A I didn't check it.

21 Q Give me the exact route that this could go,  
22 from Crete, Nebraska via Texas routing with the BN to  
23 San Leandro, California.

24 A Okay, the car could move BN through Kansas  
25 City, down on the Frisco to Amarillo and out on the



1 SPSF.

2 Q Why didn't you divert it that way?

3 A Because I felt that the Kansas City junction  
4 was more practical. I could have diverted it to a lot  
5 of other junctions, but I chose Kansas City.

6 Q It is theoretically possible, wouldn't you  
7 agree, to divert it to any particular junction, but was  
8 it your objection to find any objection, or was your  
9 objective to determine what would happen to this move  
10 after the SPSF merger was put together?

11 A I did this based on my own knowledge of how  
12 the SP works, and they maximize their haul whenever  
13 possible, and that is the reason I did this. I felt  
14 that they would hold the line and take a Kansas City  
15 connection.

16 Q And you think that Mr. Nyberg of Kellogg who  
17 supports your merger is going to permit that to happen?

18 A Well, Mr. Nyberg supported our merger because  
19 he wants to see competition, and if we don't run this  
20 thing west, then he will do what you want to do.

21 Q Would you turn to page 7, please? This is a  
22 movement of food products from Granex Corporation in San  
23 Francisco to Stephan Chemical in Millsdale, Illinois,  
24 correct?

25 A That is correct.

1 Q It was originated on the WP and the RNX to the  
2 WP means that it is open to reciprocal switching, is  
3 that correct?

4 A That is correct.

5 Q In the original route of movement, this car  
6 went Western Pacific to Salt Lake, and thence to Rio  
7 Grande, and then to Denver, Burlington Northern,  
8 Centralia, and then ICG, correct?

9 A That is correct.

10 Q Would you confirm for me that Granex also  
11 supports the Rio Grande in this proceeding?

12 A Yes they support competition.

13 Q And would you also agree that Granex and D&RG  
14 have allowance contracts over the Rio Grande?

15 A We have an allowance contract, you say?

16 Q With Granex?

17 A Yes, that's correct.

18 Q In this particular movement, you have  
19 projected that the diversion will be to SPSF at Kansas  
20 City, and thence to ICG, right?

21 A That is correct.

22 Q So in this particular case, under the diverted  
23 route that you have predicted, not only the Western  
24 Pacific but the -- or not only the Rio Grande but the  
25 Western Pacific and the Burlington Northern would also



1 be eliminated from the routing.

2 A That is correct.

3 Q In his verified statement No. 176, Mr.  
4 Forrester, the traffic coordinator for Granex, had this  
5 to say: "We have enjoyed excellent reliability, on-time  
6 performance and working relationship with the D&RGW.  
7 They have provided a superior service on a competitive  
8 basis with other roads as our experience.?"

9 Absent this merger, that service, I take it,  
10 would continue the service that Mr. Granex is referring  
11 to.

12 A You mean if the merger is denied by the SPSF?

13 Q Yes.

14 A I would assume so because I would have to go  
15 back to competing with the Santa Fe again.

16 Q And you don't have any -- the Rio Grande  
17 doesn't plan if the SPSF merger is granted, to simply  
18 fold up your tent and walk away. You're going to try to  
19 continue to provide the same service to Mr. -- or to  
20 Granex that you provide today that got his support?

21 A You mean if the merger goes through and we  
22 don't get the access west? We will try to get along.  
23 You are talking a \$85 million hit, which is what we are  
24 looking at. It is going to be difficult down the road.

25 Q If you look at No. 8, please, this is a

1 movement of food product from Krause Milling in St. Jo,  
2 Missouri, to Carnation Company in Oakland. This  
3 particular car moved MP, Pueblo, Rio Grande, Salt Lake,  
4 WP, and you have diverted it to SPSF all the way, is  
5 that correct?

6 A That is correct.

7 Q This particular car moved in a Rio Grande  
8 covered hopper, did it not?

9 A Yes, that is correct.

10 Q And would you assume that when the Rio Grande  
11 provided this car to Krause Milling for loading, that  
12 your local people expected a line haul movement as a  
13 result of providing that car?

14 A No. It is like we talk about earlier, Mr.  
15 Stephenson, the assumption was that I would doubt very  
16 much even if the Rio Grande car was in there. Our  
17 people I am talking about. These cars are out in open  
18 pools to earn per diem. We don't monitor them like we  
19 used to.

20 Q So you don't think that your people -- is it  
21 your explanation to us that when your car is used on a  
22 movement such as this, you don't expect a line haul?

23 A No, we keep them out in open service. We have  
24 done this for the last three or four years, just to get  
25 cars out working.



1 Q Could you answer my question? Your company  
2 does not expect a line haul movement when they provide a  
3 covered hopper to a shipper such as Krause Milling?

4 A Not under today's conditions, we don't, no.

5 Q And that was true in '83 as well?

6 A Yes, sir.

7 Q Is that true for all equipment of the Rio  
8 Grande, all of Rio Grande equipment that is provided to  
9 shippers off line -- let me finish the question -- you  
10 do not expect a line haul as a result of providing that  
11 equipment for load?

12 A I would qualify that with the exception of  
13 coal cars. You know, Mr. Odwalt was talking about  
14 that. I don't know how the coal equipment is handled,  
15 but I am saying under present conditions, with the  
16 surplus of equipment the way it is, that we let these  
17 cars just run free.

18 Q In your verified statement that we referred to  
19 earlier, you indicated that, and I quote you, "a third  
20 marketing" -- and this is age 4 -- "a third marketing  
21 factor is compatibility and availability of equipment  
22 for shippers. The key element of equipment marketing is  
23 the origin road's ability to supply adequate cars  
24 suitable for load." And you go on to page 5, "The  
25 origin carrier gains competitive control over routings

1 because of the leverage of equipment per diems."

2 Now, are you saying, what you said in here in  
3 your statement that the need to supply equipment  
4 directly to shippers is only important if it is shippers  
5 on the SP lines but it is not important if it is  
6 shippers elsewhere, is that correct?

7 A That assumption was made, or that statement  
8 was made with the assumption that we would have access,  
9 physical access to the west coast shippers, and using  
10 that as a marketing tool is what any railroad does.  
11 They use their own equipment to get business. But this  
12 is an origin case, and it is based on the fact that if  
13 we get our application west and are physically serving  
14 those people out there, we have to have equipment or we  
15 wouldn't get any business. That is the marketing tool.

16 Q And you say in that statement -- and I will  
17 paraphrase you -- that one of the problems that you  
18 foresee with the merger is that you won't be permitted  
19 to spot your equipment for loading after the SPSF merger  
20 is put together, isn't that basically it?

21 A And we don't get conditions?

22 Q That is correct.

23 A Well, what reason would you people have to use  
24 our equipment?

25 Q Well, let me ask you, is that one of the



1 problems? Is that one of the reasons that you foresee,  
2 and is the basis for your need for this, as you say,  
3 physical access to the west coast the fact that the SPSF  
4 system will not spot your cars for loading?

5 A Well, that's only one minor part of it. The  
6 major part is providing competitive routes for shippers  
7 out there. That's the main thrust of it. And that's  
8 just one of the things that we have to have to provide  
9 this competitive alternative.

10 Q Can you distinguish for us why it would be  
11 important to Rio Grande to be able to provide cars for  
12 loading in west coast points today with this friendly  
13 connection SP, and how that would gain you business  
14 moving over the Rio Grande, but it doesn't assist you in  
15 getting a line haul such as this one from Krause  
16 Milling?

17 Why can your car get you a line haul, or do  
18 you expect your car to get you a line haul if it is  
19 spotted by SP to a shipper today, but you don't expect  
20 the line haul from the shipper in St. Jo, Missouri?

21 A Maybe we are not communicating. The reason  
22 that I made that statement was based on the fact that we  
23 would be physically serving these west coast shippers  
24 through our application, and to do that we need  
25 equipment, and the equipment is what I am talking about

1 there. It is a marketing tool that we have. If you  
2 don't have equipment there, you can't get business. But  
3 if you have got the equipment off your railroad and say  
4 it is out on the Conrail somewhere, that's altogether  
5 different.

6 Q May I quote you to the Southern Pacific today,  
7 to our car supply people, that you don't care if the Rio  
8 Grande gets a line haul as a result of supplying of Rio  
9 Grande equipment, that as far as you are concerned, it  
10 doesn't make any difference in terms of whether a D&RG  
11 car that is in California today is spotted for loading  
12 with one of our shippers?

13 A I think you could quote me on that because we  
14 have cars in there on free assignments right now, or  
15 were. I am not sure that they are still there, but they  
16 were there.

17 Q In addition to Krause Milling being a sponsor  
18 of your application in this case, Carnation Company, the  
19 receiver in this case, was also a supporter, were they  
20 not?

21 A Yes.

22 Q And in this particular case, neither Southern  
23 Pacific nor Santa Fe were in the original routed  
24 movement, were they?

25 A That is correct. We are still on No. 8, Mr.



1 Stephenson?

2 JUDGE HOPKINS: Mr. Stephenson, he asked you  
3 whether you were still on No. 8.

4 BY MR. STEPHENSON: (Resuming)

5 Q Yes, I'm sorry. I'm still on No. 8.

6 In this particular case, No. 8, the Missouri  
7 Pacific served the origin, did it not?

8 A They are one of the serving carriers at the  
9 origin, yes.

10 Q And your diverted route would also cut the  
11 Missouri Pacific out of the route, notwithstanding the  
12 fact that they are the carrier that switches the plant.

13 A That is correct.

14 Q Would you turn to No. 9, please?

15 — Again, Carnation Company, the receiver in this  
16 case, is a supporter of the Rio Grande, is that right?

17 A Yes, that is correct.

18 Q And this is a movement of tin plate from  
19 Midwest Steel in Portage, Indiana to Carnation at River  
20 Bank, California, right?

21 A That is correct.

22 Q And you have the original route, Conrail to  
23 Streator, Santa Fe, Pueblo, Rio Grande, Western Pacific,  
24 and Santa Fe got it back at Stockton.

25 A That is correct.

1 Q And in 1982, when this movement, when this  
2 shipment moved, the Santa Fe had the capability of  
3 providing single line service all the way from Streator  
4 to Stockton and could have done so if requested by the  
5 shipper, isn't that right?

6 A That's correct, but it didn't move that way in  
7 1982. But I feel that in postmerger it will move via  
8 Santa Fe-SP long haul because of your ability to market  
9 your very large railroad.

10 Q The Santa Fe had a preeminent route in 1982  
11 and yet was unable to convince the shipper to route the  
12 traffic single line by way of Santa Fe from origin --  
13 from Streator to destination?

14 A That is correct. It would probably move that  
15 way.

16 Q What has changed in terms of the proposed  
17 operations between Streator and Stockton that would  
18 give -- that would make the shipper want to use a single  
19 line service in postmerger days that was rejected in  
20 1982?

21 A Your merger.

22 Q Just the merger itself?

23 A Well, sure. You will have the long lines  
24 system serving all these markets. My goodness, that's  
25 what you put it together for.



1 Q Well, looking at this move -- and I presume  
2 that that's what you were doing when you made the  
3 analysis -- there is nothing different today about this  
4 movement or postmerger that didn't exist in 1982, is  
5 there?

6 A Well, postmerger, three years postmerger,  
7 which my assumption was, the cooperation would not be  
8 west of Ogden. Your total marketing effort is going to  
9 be long haul. You will have an \$85 million gateway cut  
10 there that you want to move, and you are going to do  
11 it.

12 Q In this particular case you have, in addition  
13 to cutting out the Rio Grande, also cut the Western  
14 Pacific out of the route, isn't that true?

15 A That is correct.

16 Q Would you turn to page 10, please?

17 This is a movement of transportation equipment  
18 from Ford Motor Company in Milpitas to Ford Motor  
19 Company, St. Paul, and this was in a Rio Grande equipped  
20 box car.

21 Is it your testimony that the presence of the  
22 Rio Grande equipped box car makes no difference in terms  
23 of whether the shipper, Ford Motor Company, routed this  
24 traffic over the Rio Grande?

25 A I don't think the box car had anything to do

1 with this movement. The fact is that this particular  
2 movement was under contract, and that is why it moved  
3 this way, and this contract has now been turned into an  
4 SP contract.

5 Q SP-D&RG contract?

6 A I'm sorry, SP-D&RG.

7 Q Let's go through that contract, the history of  
8 it.

9 If I recall, the traffic moved Missouri  
10 Pacific, Rio Grande, Southern Pacific some years ago,  
11 and then it changed to Missouri Pacific, Rio Grande, the  
12 WP a while back, and now it has flipflopped back to  
13 Missouri Pacific, Rio Grande, SP, or am I wrong?

14 A I don't know about the further back. I know  
15 that it came from a D&RG-WP contract to a D&RG-SP  
16 contract in 1983, yes. I don't know about prior to  
17 that. I don't know.

18 Q Do you know that at some point in time the  
19 Union Pacific also handled some of that business in  
20 competition with the WP -- I mean, the Rio Grande?

21 A No, I don't know.

22 Q As a participant in that contract, does Rio  
23 Grande provide equipment into the pool for Ford?

24 A Yes, we do.

25 Q So this equipment that we see reflected here



1 is part of the pool equipment that you provided?

2 A It's a farrunning pool. It is not tied down.

3 Q And do you know why Mr. Haupt in this case  
4 selected a three-carrier haul from Milpitas to Kansas  
5 City?

6 A Sure, because it was part of the contract.  
7 That's a contracted route.

8 Q Why did he ask to have the contract let for  
9 three carriers being in the haul?

10 A I don't know.

11 Q Do you have any guesses or surmise?

12 A I wasn't involved with it, and so that was  
13 prior to my arrival in Denver. I just don't know.

14 Q Have you had any conversations with Mr. Haupt  
15 that would give you any inkling as to why he would  
16 change from a three-carrier movement to a single-carrier  
17 movement post SPSF merger?

18 A Well, if you go with the assumption that we  
19 are, that the service route is going to be closed, and  
20 that the SP are going to give him a one-line,  
21 single-line rate, and that is the assumption, that's why  
22 he is supporting us in this program is to keep a  
23 competitive gateway open.

24 Q So again, this is another one of the  
25 diversions that is based upon the assumption that the

1 gateway will be closed for service reasons.

2 A Service reasons, that's correct, and lack of  
3 cooperation.

4 Q If you would turn to page 11, please, this is  
5 a movement of food products from Trenton Foods in  
6 Trenton, Missouri, to Carnation Company in East  
7 Stockton, California.

8 Again, this is a car, this is a movement that  
9 moved in a Rio Grande insulated box car, correct?

10 A That is correct.

11 Q And the original route was C&NW, Kansas City,  
12 Rio Grande, Ogden, SP, Stockton, STE. Thue Rio Grande  
13 in this case got its long haul from Kansas City to  
14 Ogden, did it not?

15 A Yes, we did.

16 Q Do you think that it got the long haul because  
17 it provided special equipment to the shipper?

18 A I wouldn't think that we did for the same  
19 reason that we talked about before.

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1 Q And in this particular case, from Kansas City,  
2 both SP and Santa Fe could have provided single line  
3 service from Kansas City to Stockton in the year of  
4 movement, could they not?

5 A They could have, but the car didn't move that  
6 way. We are saying it will move that way post-merger.

7 Q But to do that, the shipper, of course, would  
8 have to assume that there is going to be no competitive  
9 cooperation, no competitive service over the Ogden  
10 gateway?

11 A That is why he is supporting us.

12 Q Going back to the Trenton Foods, this shipper  
13 has an option of going, assuming that he wants to go  
14 single line service from Kansas City to Stockton, as you  
15 have predicted, he has another choice, and that is to go  
16 by way of the UP system long haul, doesn't he?

17 A Well, you know, there is no bearing on this.  
18 What we are addressing here is your SPSF merger. It has  
19 nothing to do with he would rather lose his car to UP or  
20 to you guys. It doesn't make any difference. It is a  
21 lost car.

22 Q Is the answer, yes, it could go long haul?

23 A Oh, sure, it could go a lot of different  
24 ways.

25 Q And you think that this shipper who supports

1 having Rio Grande as a competitive option in the Central  
2 Corridor will, if SPSF commercially closes that gateway,  
3 throw his business to SPSF rather than giving it to the  
4 MP?

5 A That's right.

6 Q Turn to Page 12, please. By the way, how many  
7 Ford Motor Company movements were in your study?

8 A I don't know.

9 Q Several hundred, wasn't it?

10 A Several hundred? I don't know.

11 Q Whatever the figure was, did you divert every  
12 one of the Ford movements?

13 A I don't know. I would have to go back and  
14 look.

15 Q Do you recall any that you didn't divert?

16 A I would say that we probably diverted the  
17 majority of them.

18 Q Would you say in answer to a more general  
19 question that you diverted most of the movements in the  
20 study irrespective of whether it was Ford or Roseburg or  
21 whatever?

22 A No, I don't think that's correct. I know I  
23 held traffic going into the Colorado points that was  
24 non-competitive -- I'm sorry, I mean that was  
25 non-service-sensitive. So I didn't have a prejudgment



1 on this. I just took them one at a time, and what they  
2 are I don't know.

3 Q But you have no recollection as to whether it  
4 was 60 percent diversions or 80 percent?

5 A I didn't run a study on it then.

6 Q Movement Number 12 is a movement of  
7 transportation equipment, auto parts, I take it, from  
8 Dana Corporation in Fort Wayne, Indiana, to the Ford  
9 Motor Company in Milpitas.

10 A That's correct.

11 Q Is this the traffic that you say is now going  
12 to Benecia, or is this traffic that -- is this traffic  
13 still moving or is this going on forever?

14 A The Ford traffic is still moving. It is just  
15 under a different STCC number. It is set up autos  
16 rather than parts, but it is now under an SP-Rio Grande  
17 contract.

18 Q In 1982, the year of movement of this car, did  
19 all Ford traffic, whether it was set up autos or auto  
20 parts, move under the same contract?

21 A Well, some of this Ford contract was Tigard,  
22 which was SP, and some was Milpitas, which was WP, so I  
23 can't say that it was all under the same contract. I  
24 don't know. I can't answer.

25 Q How about in the Bay area?

1           A     In the Bay area, I would say it was all under  
2 contract, yes.

3           Q     And it was routed the same way, WP, D&RG, MP,  
4 irrespective of whether it is eastbound or westbound?

5           A     I just don't know. I can remember seeing some  
6 SP traffic come out, but I just can't answer that. I  
7 don't know.

8           Q     Your answer would be the same with respect to  
9 this movement, I take it, that with respect to the fact  
10 that Rio Grande equipment was in the movement had no  
11 bearing on whether the traffic was routed over Rio  
12 Grande in the year of movement?

13          A     We participated in that equipment pool, and  
14 these cars were free runners. They would go any  
15 direction.

16          Q     They were at the mercy of the shipper?

17          A     That's correct.

18          Q     And you would not have participated in that  
19 business but for your providing the equipment. Isn't  
20 that correct?

21          A     Yes, equipment and service.

22          Q     In this particular movement, Number 12, you  
23 had diverted it to SPSE long haul from Kansas City to  
24 Milpitas, correct?

25          A     SP don't serve Milpitas except on an



1 agreement. This contract is now D&RG-SP contract, and  
2 it is now going to Benecia, so that is the reason for  
3 the diversion.

4 Q So the fact that this traffic, this auto parts  
5 traffic is going to Benecia is the reason that you  
6 diverted it?

7 A Yes. It will be an SPSF long haul  
8 post-merger.

9 Q So this is another one of the instances where  
10 you changed the facts on the way bill that you studied?

11 A That is what we said earlier, yes.

12 Q The next movement, Number 13, is a movement of  
13 mental products, tin plate, I believe, from Midwest  
14 Steel to Portage, Indiana, moving to Continental Can in  
15 Pittsburgh, California. This again was moved in a D&RG  
16 insulated boxcar. Is that correct?

17 A Yes, that's correct.

18 Q And those types of cars are particular  
19 favorites of shippers who are shipping tin plate, are  
20 they not?

21 A Yes, and there are certainly a lot of them out  
22 there available.

23 Q So from that last answer I take it that you  
24 don't believe that your providing this equipment had  
25 anything to do with the fact that the Rio Grande was

1 included in the haul in this case?

2 A I don't think this particular car created the  
3 movement, no.

4 Q The fact that this car -- the fact that the  
5 Rio Grande was included in this movement is not in your  
6 opinion a reflection of the fact that the Rio Grande car  
7 was being used by the shipper?

8 A We have been through this before. These cars  
9 are out in a free-running pool, and they are assigned to  
10 different railroads throughout the country, and they can  
11 use them in any way they want to use them. We are just  
12 trying to keep the cars moving and get per diem out of  
13 them. Post-merger, the chances are, this car won't even  
14 move from this point. It will be an SPSF or Santa Fe  
15 car.

16 Q Is this car in a pool?

17 A I don't know if this one is or not. I am sure  
18 that it must be. We have all of them off that we can  
19 get off.

20 Q Would it be Continental Can's pool or Midwest  
21 Steel's pool?

22 A It is probably in a pool or an assignment  
23 somewhere on the Conrail system. We don't assign them  
24 to shippers. They are assigned to a railroad for their  
25 use.



1 Q When you put a car in an assigned pool, you  
2 expect to participate to the extent of your equipment  
3 participation in the movements of the shipper in that  
4 pool. Isn't that correct?

5 A No, I didn't say this was assigned to the  
6 shipper's pool. I said it was assigned to a railroad  
7 pool, and the railroads have free use of these cars.  
8 What we are looking for is the per diem on it. The  
9 surplus of equipment in the marketplace today is huge,  
10 and everybody is trying to get their cars out working,  
11 including your own railroad.

12 Q Would you agree with me that the route of  
13 movement in this car from Chicago, Chicago to the  
14 Northwestern to Fremont to UP, is a usual route up to  
15 that point, isn't it? The UP-C&NW route out of Chicago  
16 is a very common route?

17 A Well, it's a common route. We interchange  
18 traffic with the UP at Denver also.

19 Q It is not a usual thing to see, however, a  
20 movement C&NW, UP, Denver, D&RG, is it?

21 A No, I don't think it is unusual.

22 Q Well, wouldn't it have been just as easy for  
23 this shipper to move this car UP all the way and avoid  
24 an interchange with the Rio Grande at Denver and taken  
25 it all the way to -- have the UP take it all the way to

1 Ogden rather than interchange it with the Rio Grande?

2 A If you make that assumption, he could have  
3 moved it in any direction. He didn't have to move it  
4 over the Rio Grande, but it moved that way in 1983, and  
5 that is what I had to look at.

6 Q And you didn't assume -- well, what did you  
7 assume as to why it was routed from JP, which has a  
8 parallel competitive service, why did the UP -- or why  
9 did the shipper have the UP give it to you at Denver to  
10 haul to Ogden when the UP could have done it itself?

11 A I don't know what the shipper was thinking.  
12 My assumption on this movement was that post-merger it  
13 would move SPSF long haul.

14 Q That was your assumption when you looked at  
15 this, that it would go SPSF long haul?

16 A That's correct.

17 Q Well, if that's the assumption that you bring  
18 to the study in terms of looking at any given movement  
19 sheet, doesn't that necessarily mean that most of the  
20 movements are going to divert to the SPSF? Is that your  
21 assumption?

22 A Well, if you look at the assumptions we made  
23 on the study, you will see that we are planning on  
24 having no service and no cooperation west of Ogden.  
25 Once that is in place, then other things fall in line.



1 The history of the SP and the Santa Fe both are long  
2 haul. They are not going to work over Ogden. It is not  
3 in their best interests. That is why we have so many  
4 shippers' support. They know what is going to happen  
5 also.

6 Q In this particular case, the route of movement  
7 that you have predicted, SPSF Chicago all the way, was  
8 available to Midwest Steel or Continental, whoever  
9 routed this traffic in the year of movement. Isn't that  
10 true?

11 A Yes, it was also available in several other  
12 routes, but it didn't move that way.

13 Q It could have gone single line. Can you think  
14 of any route where it could have gone single line haul  
15 from Chicago to Pittsburgh, California, by way of one  
16 carrier?

17 A What difference does this make? We are just  
18 addressing our particular movement here and the damage,  
19 or what is going to happen with the SPSF, and you know,  
20 everything else doesn't really make any difference. It  
21 could have moved a lot of different ways.

22 Q But you are predicting that this shipper is  
23 going to select this route when that route was available  
24 to him in 1983.

25 A Yes, that's my assumption.

1 Q Continental Can is a supporter of the Rio  
2 Grande, is it not?

3 A I don't know. I would have to look. I can't  
4 remember all the names.

5 Q Who would have routed that movement between  
6 Midwest Steel and Continental Can?

7 A I can give you a guess.

8 Q What is your guess?

9 A Probably Midwest Steel.

10 Q In your opinion, does the -- or in your  
11 experience, do the shipper and receiver have  
12 communication as to whether one wants a particular route  
13 or another?

14 A Oh, they can communicate on this, but it is  
15 not always the fact.

16 Q The next movement on Page 14, another tin  
17 plate movement, this on from U.S. Steel in Gary,  
18 Indiana, to Del Monte at Pittsburgh, California, and you  
19 have again routed this single line from the Chicago area  
20 on SPSF.

21 A That's correct.

22 Q And that same route that it will be moving  
23 under -- moving over in an SPSF system was available in  
24 1982, the year of movement. Isn't that correct?

25 A That's correct, but once again, it wasn't



1 used.

2 Q Del Monte in this case is a supporter of your  
3 application, is it not?

4 A I don't think so.

5 Q Do you know a Mr. Robert Corcoran?

6 A Of U.S. Steel?

7 Q Of Del Monte.

8 A He is of U.S. Steel.

9 Q Oh, I am sorry, U.S. Steel.

10 A Yes, he is a supporter.

11 Q Is he a supporter?

12 A Yes, sir.

13 Q And Mr. Corcoran -- well, never mind. This  
14 again was in a D&RG insulated boxcar, and I take it your  
15 answer would be the same?

16 A Yes, sir.

17 Q It had no effect on the routing of this  
18 particular move in 1982?

19 A That's correct.

20 Q Insulated boxcars is considered special  
21 equipment, is it not?

22 A It used to be.

23 Q Page 15, movement of food products from Hunt  
24 Wesson Foods in Oakdale to Hunt Wesson Foods, Shakopee,  
25 Minnesota. And this was again in a Pio Grande insulated

1 boxcar, and your answer would be the same.

2 A Well, in this particular case, I think that  
3 this is under contract to Wesson, so yes, the answer  
4 would be the same.

5 Q What did you consider or how did you evaluate  
6 a movement that was currently moving under contract?

7 A The assumption I made is that the contracts  
8 were cancelled, and that post-merger the SPSF would use  
9 their market power to convert all this traffic to their  
10 long haul. You are going to have a large gathering  
11 system out there.

12 Q Would it be a combination of this market power  
13 plus the running down the service over the Ogden route?

14 A That's correct.

15 Q Hunt Wesson is a supporter of yours as well,  
16 are they not?

17 A Yes, that's correct, they are.

18 Q And in this particular case Rio Grande got its  
19 long haul to Kansas City over trackage rights?

20 A That's correct.

21 Q Does that suggest to you that Hunt Wesson  
22 Foods was trying to do a good turn for the Rio Grande?

23 A Well, they are giving us business, and they  
24 are using a competitive service route, but they also  
25 know that post-merger this is not going to be available



1 to them, and they are going to have to go with the  
2 SPSF. That is why we have a support statement.

3 Q This particular movement came from a location  
4 in California that is served by both SP and Santa Fe.  
5 Would you agree that the Santa Fe route between Oakdale  
6 and Kansas City is the preeminent service route between  
7 California and Kansas City today?

8 A What does that have to do with this study?  
9 The study we are looking at here was an SP-D&RG  
10 movement, and it is an SPSF merger, and so we are trying  
11 to evaluate this particular movement. I didn't make all  
12 those other assumptions.

13 Q The route of movement that was available to  
14 the shipper in '83 is the same route of movement that  
15 you have selected for your diverted route whenever the  
16 merger occurs. Isn't that right?

17 A That's correct, but it didn't move this way in  
18 '83.

19 Q Page 16, movement of food products, Heinz in  
20 Tracy to Heinz in Iowa City. This was in an D&RG  
21 insulated boxcar, and it is your testimony that the Rio  
22 Grande boxcars did not influence the routing of this  
23 movement.

24 A Yes, I said that earlier, but I could say also  
25 that post-merger that car probably won't be out there.

1 Q What if a car got out there as a result of  
2 being unloaded at some facility? What is your  
3 expectation?

4 A It would come home empty very quickly.

5 Q Was that one of your assumptions, that no cars  
6 in D&RG equipment that ended up on the SPSF system would  
7 be loaded and would be returned empty?

8 A It has been my experience that this happens.  
9 In past years when we were working across the SP system,  
10 if we had empty cars out there, they would quickly  
11 return them so that they would have no chance to make a  
12 sales pitch with the use of equipment, so the only time  
13 people really want to use Rio Grande equipment is during  
14 car shortage times.

15 Q To reask the question, was it an assumption of  
16 your study that SPSF would not permit the loading of Rio  
17 Grande equipment on by shippers at SPSF points?

18 A That's what I said. It would come home very  
19 quickly empty.

20 Q Turn to Page 17, please. This is a movement  
21 of food products, Tri-Valley Growers in San Jose to  
22 Tri-Valley Growers, Hanover, Pennsylvania, that moved SP  
23 Ogden, Rio Grande Herington, Cotton Belt St. Louis and  
24 thence to eastern connections.

25 And you have predicted that SPSF will haul

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1 this all the way from origin to St. Louis in single line  
2 movement, correct?

3 A That's correct.

4 Q Tri-Valley Growers is another one of your  
5 supporters?

6 A I think that they are. I will take your word  
7 for it that they are.

8 Q Mr. Ross, Mr. Charles Ross of Tri-Valley, in  
9 Statement Number 621, says, "We have found over the  
10 years that the Rio Grande provides aggressive  
11 competition, good service, and has been helpful in  
12 supplying specialized cars for the loading of our canned  
13 products which at times in the past have been in short  
14 supply."

15 — And the fact that this car or the fact that  
16 this movement was in a Rio Grande insulated boxcar does  
17 not in your opinion mean that or suggest that that is  
18 the reason why it routed over the Rio Grande in 1983?

19 A That is my position. He is also speaking of  
20 past years, which goes back into the early seventies,  
21 when car supply was very critical, and we participated  
22 very heavily in the pools at that time.

23 We are dealing in '83 and '82, and the car  
24 surplus is huge. Nobody pays much attention to your  
25 specialty equipment except the on-line carriers.

1 Q Don't the statements of many, many of your  
2 supporters in this case refer to the gratitude of the  
3 shippers for the past practices of the Rio Grande in  
4 providing equipment in times of shortage?

5 A That's correct.

6 Q So that loyalty that was generated by your  
7 doing that back whenever it was in the sixties or  
8 seventies is loyalty they still have for you. Isn't  
9 that correct?

10 A Well, we treat them like customers.

11 Q And they still have that loyalty?

12 A Yes, sir, they do. That is why we have 646 of  
13 them.

14 Q And you don't think that those loyal shippers  
15 are going to go down without a fight, do you, in terms  
16 of letting service over the Rio Grande deteriorate?

17 A Well, they might not have any choice. If we  
18 don't win the access west it will commercially be closed  
19 to them and the choice will be gone.

20 Q Next movement, Page 18, C&H Sugar in Crockett,  
21 California, to E.J. Brach and Sons in Chicago. It moved  
22 in a D&RG covered hopper. Rio Grande got its long haul  
23 from Ogden to Kansas City. I take it your answer would  
24 be the same, that this equipment did not influence the  
25 routing over the Rio Grande in the year of movement. Is



1 that correct?

2 A That's correct.

3 Q You have volume allowance contracts with  
4 Brach?

5 A With Brach?

6 Q With Brach. Or Brach.

7 A That's Brach Candy. I don't know. I don't  
8 think so. I don't know. We have got a lot of  
9 contracts. I don't know.

10 Q Would allowance contracts tend to keep the  
11 traffic on the Rio Grande, in your opinion?

12 A Pre-merger or post-merger?

13 Q Both.

14 A Well, the contract pre-merger, when you've got  
15 a friendly western connection, will help you, but  
16 post-merger, when we are assuming we won't have a  
17 friendly connection, the contracts are all cancelled,  
18 and if you can't participate, you can't participate.

19 Q Would you say that the route of movement in  
20 the diverted route, SPSF Kansas City, is better or about  
21 the same as the route that you have diverted from?

22 A What do you mean, better than?

23 Q Is the diverted route, the single line SPSF to  
24 Kansas City, a better, more efficient, faster route than  
25 the existing SP-D&RG route?

1           A     I think that is yet to be proven. I don't  
2 know.

3           Q     What is your opinion? I am asking.

4           A     Well, I would say that the market will tell  
5 which route is the best. If there is traffic on them,  
6 the market will determine that.

7           Q     So what did you assume as far as the  
8 competitiveness of these two routes, for example, in  
9 analyzing this particular movement, or did you even take  
10 that into consideration?

11          A     I have said before post-merger there will be  
12 no service. The only service that these people have  
13 will be what you provide them over Kansas City.

14          Q     You think the ICC will permit the SP to  
15 commercially close Ogden as a gateway?

16          A     I don't have any opinion on that. I don't  
17 know. I am not an attorney.

18          Q     The movement at Page 19, please. This is a  
19 movement of paper products, International Paper in  
20 Texarkana, Texas, to International Paper in Turlock,  
21 California. Is that right?

22          A     That's correct.

23          Q     And International Paper is a firm supporter of  
24 the Rio Grande, right?

25          A     They firmly support competition.



1 Q You know Mr. Fred Zito, don't you?

2 A Yes.

3 Q And he has submitted a verified statement  
4 supporting the Rio Grande in this case, did he not?

5 A That's correct.

6 Q Mr. Zito said, International Paper shipped  
7 over 1,500 cars via D&RG in 1983. Routing from  
8 southwestern and southeastern mills via the Rio Grande  
9 to central and northern California is at all seasons  
10 direct and efficient route. Our experience with the Rio  
11 Grande has been excellent."

12 Fifteen hundred cars, is it your opinion that  
13 SPSF will capture this 1,500 cars by way of a single  
14 line movement and Mr. Zito will soon forget the Rio  
15 Grande?

16 A That is our opinion. Unless we get physical  
17 access west, it is going to happen. He knows it. That  
18 is why he is supporting us.

19 Q And this particular movement on 19 moved in a  
20 Missouri Pacific-equipped boxcar, did it not?

21 A I don't know if that is an equipped car or  
22 not.

23 Q An A car?

24 A Does A mean equipped?

25 Q Yes, it is. Accept my representation that it

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1 is an equipped boxcar, and it moved from a point, an  
2 origin on the Missouri Pacific. Is that correct?

3 A And also on the KCS.

4 Q Also on the KCS, and it moved to a point on  
5 the Tidewater Southern, which is a subsidiary of the UP,  
6 isn't it?

7 A That is the reciprocal point on the Tidewater  
8 Southern, yes.

9 Q And you have predicted that the Missouri  
10 Pacific, which Mr. Zito put in the route in the first  
11 instance, and which served his plant and provided him  
12 with an equipped boxcar, is going to be lifted from the  
13 route altogether and instead the KCS is going to  
14 substitute in for the Missouri Pacific.

15 A That's correct.

16 Q And the KCS, which wasn't even in the original  
17 route, is going to bring the car to Dallas, and that car  
18 is now going to go KCS Dallas SPSF, correct?

19 A That is my diverted route. And my reason for  
20 doing this was the feeling that the SPSF would not work  
21 with the Union Pacific on this particular movement.  
22 They would work with the KCS for confidentiality  
23 reasons.

24 But I know for a fact that your people have  
25 already made two passes at this traffic, and it will go

1 with the merger.

2 Q So even though -- you are looking at this from  
3 the perspective of, I think you said earlier, the  
4 traffic manager of the Rio Grande. Did you consider  
5 whether Mr. Zito would route it the same way post-merger  
6 himself?

7 A Traffic manager of the Rio Grande?

8 Q You told us earlier that when you look at the  
9 study movement sheets, not just this one, but a of  
10 them, you look at them from the perspective of the  
11 traffic manager of the Rio Grande.

12 A I see. You are saying from my perspective.  
13 Okay. I misunderstood you.

14 Q And the question is, do you think that Mr.  
15 Zito would look at it the same way and would stand for a  
16 route that totally blanked the Missouri Pacific, which  
17 had provided an equipped boxcar and had served the  
18 shipper, and therefore was -- and was being blanked  
19 altogether from the route?

20 A I am sure that Mr. Zito, believing in  
21 competition as he does, will divide his traffic, but  
22 probably post-merger, if you people have your thing in  
23 place, that won't be a Missouri Pacific car. There will  
24 be another car on there.

25 You are going to use your huge marketing power



1 and ability to gather traffic to handle this traffic,  
2 and that is going to be gone to the Rio Grande.

3 Q So in addition to assuming that contracts  
4 would be eliminated and the Ogden gateway closed, you  
5 also assumed that the shipper would use a different  
6 route, different origin carrier, and different piece of  
7 equipment than that which was on the original route?

8 A My assumption which I made earlier was that  
9 the SPSF would use your market power to turn this  
10 traffic to your long haul. You have already been down  
11 there a couple of times making a pass at it, so it is  
12 going to happen.

13 Q In this particular case, Mr. Thiessen, the  
14 Missouri Pacific, the Western Pacific, the Tidewater  
15 Southern, three of the four carriers involved in the  
16 route are on UP -- components of the UP system, and the  
17 Southern Pacific and the Santa Fe are not even in the  
18 original route.

19 Would you agree with me that it is far more  
20 likely that given the fact that the Missouri Pacific  
21 serves the origin, the Tidewater Southern serves the  
22 destination, and the Missouri Pacific provided an  
23 equipped boxcar, that this car would go on the UP system  
24 if it is going to be diverted from you and not to the  
25 SPSF system?

1           A     Well, it depends on how good a bidder you  
2 are. If you really want this traffic, which I know your  
3 people do, they are going to go in and bid very  
4 vigorously for it, and with your short line mileage  
5 getting in from the Arkansas point to Turlock with the  
6 KCS working with it, you will handle this traffic.

7           Q     Do you know what the difference is between the  
8 UP mileage and the SPSF mileage?

9           A     No.

10          Q     Would you answer my question? Do you think  
11 that it is far more likely that the car that you  
12 evaluated, that is, Missouri Pacific origin, the  
13 Tidewater Southern destination, the Missouri Pacific  
14 equipped boxcar, and three of the four carriers in the  
15 route being Union Pacific components, that it is far  
16 more likely that if this traffic is diverted from the  
17 Rio Grande, it is going to be diverted to the UP rather  
18 than the SPSF?

19          A     That is not the assumption I made when I made  
20 this study.

21          Q     The next movement, International Paper,  
22 Camden, Arkansas, to San Jose, this one also moved in a  
23 Missouri Pacific car, did it not?

24          A     That's correct.

25          Q     And the original route was Missouri Pacific



1 Kansas City, D&RG Salt Lake WP. Correct?

2 A That's correct.

3 Q Neither SP nor Southern Pacific were in the  
4 original route, correct?

5 A That's correct.

6 Q And you have diverted it to the SPSF system.  
7 Is that right?

8 A You serve the plant just like the MP does.

9 Q I beg your pardon?

10 A You serve the industry there just as the  
11 Missouri Pacific does.

12 Q You diverted it to single line SPSF despite  
13 the fact that they did not participate in the original  
14 route?

15 A That's right.

16 Q And despite the fact that the Missouri Pacific  
17 car was used in this shipment, and despite the fact that  
18 the originating carrier in this movement was the  
19 Missouri Pacific.

20 A That's correct, figuring that the SPSF would  
21 put their own equipment in there and get their own line  
22 haul.

23 Q So you assume that wherever they could, the  
24 SPSF system will spot their own equipment rather than  
25 spot the equipment that was reflected on the movement

1 that you studied?

2 A Well, that's the assumption I made, because  
3 there is no reason for you to use Missouri Pacific  
4 equipment.

5 Q In this particular case, do you think the  
6 International Paper will, because of our merger, stop  
7 accepting Missouri Pacific's equipment at this plant?

8 A No, that is not the assumption that I made.  
9 It is just that the SPSF moves will be SP or in some  
10 equipment other than MP.

11 Q Did you study this particular movement?

12 A I studied every movement.

13 Q The next move, Number 21, is a movement,  
14 National Lead from Dunphy, Nevada, to Monahans, Texas,  
15 that moved Western Pacific Salt Lake, Rio Grande Pueblo,  
16 Santa Fe Snyder, the RS&P Railroad to Roscoe, and  
17 Missouri Pacific after that, correct?

18 A That's correct.

19 Q This was processed barite?

20 A I don't know whether it's crude or processed.

21 Q It was in a WP equipped boxcar. Would that  
22 indicate that it was processed?

23 A Probably processed barite, yes.

24 Q That is a higher rated commodity than bulk, is  
25 it not?



1 A I am sure that it is.

2 Q And more attractive from a railroad  
3 standpoint. Wouldn't you agree?

4 A Yes.

5 Q In terms of revenues?

6 A Yes.

7 Q In this particular case, the origin is served  
8 by both SP and WP, right?

9 A That's correct.

10 Q And in this particular case, WP provided an  
11 equipped boxcar and got the movement from origin to Salt  
12 Lake, right?

13 A That's correct.

14 Q And would you expect that the reason that WP  
15 rather than SP got this movement was because it provided  
16 the equipped boxcar to National Lead?

17 A I would have to assume that, yes.

18 Q Can you explain this RSP route? That is an  
19 unusual route, is it not?

20 A Over to Roscoe? No, that is not really an  
21 unusual route. The RS&P Railroad has a connection with  
22 the Santa Fe.

23 Q It is like a 20-mile railroad?

24 A I have never been on it, so I don't know.

25 Q The RSP is a dead railroad, now, isn't it?

1 Didn't they fold last year?

2 A I think I've heard that, but that was in '84.  
3 This study was made on '82 traffic. So it didn't  
4 presume to go into '84.

5 Q So when is it that you just accepted what was  
6 on the way bill, and when is it that you would inject  
7 your own views as to what might happen in the future?

8 A I told you earlier that I didn't go into what  
9 conditions were in '84. If a plant was closed in '84,  
10 that was not involved, but if a contract or some traffic  
11 conditions changed during the year that I was studying,  
12 then that is what I used as.

13 Q Is the RSP a necessary component in this  
14 route?

15 A I assume so, since it was there.

16 Q Would you agree with me that if this movement  
17 were moving today in a WP car, that Union Pacific would  
18 try real hard to get that movement all the way single  
19 line to destination?

20 A You are talking about pre-merger?

21 Q I am talking about today, if that car moved  
22 today in a WP equipped boxcar from a point served by the  
23 WP to a point served by the MP, that the UP would try  
24 very hard to solicit that traffic?

25 A Mr. Stephenson, this study was done on an '83



1 movement, and the assumption that I made was that the  
2 SPSF would be merged, and that the Rio Grande would be  
3 denied access to the west coast, so consequently this  
4 car will be diverted to an SPSF meter system. You are  
5 doing it now under contract. You are hauling cars back  
6 through Roseville and into the south, the SP yard, and  
7 it will happen again.

8 Q The movements that are being hauled back to --  
9 and just to explain that, you are saying that the  
10 movements are moving back from Nevada to Roseville and  
11 then down the San Joaquin Valley to Colton, and then out  
12 to Texas points. Those are contract rates, single line  
13 service, correct?

14 A That's my understanding. We were asked to  
15 participate in them, and we couldn't see any sense in  
16 it.

17 Q Because the revenue was not high enough?

18 A That was one of the considerations.

19 Q This movement would not afford single line  
20 service to SP, would it? I mean, to SPSF?

21 A I don't know what you mean by afford.

22 Q It would not give SP single line service from  
23 origin to destination.

24 A Oh, no. But your traffic flows are going that  
25 way, and they will have a shortened Santa Fe system, so

1 you will do well by it. Once your traffic flows are  
2 established and they are moving west and then south,  
3 you are not going to run an occasional car to Salt Lake  
4 or Ogden.

5 Q Have you heard that Southern Pacific is  
6 cancelling those routes as of next week?

7 A No, I hadn't heard that at all, but it would  
8 not have made any difference in this study anyway. It  
9 was an '83 study, an '83 movement.

10 Q It is a very circuitous route that you have  
11 chosen here, is it not?

12 A Well, I don't know how circuitous it is. I  
13 know that there is circuitry in it, but it is well  
14 within, I am sure, the 25 percent.

15 Q And the WP-UP-Missouri Pacific single line  
16 route would be a much more direct route, would it not?

17 A It probably would be, but that wouldn't make  
18 any difference to you people when you are going after  
19 this traffic. You are not worried about the UP's  
20 mileage. You are concerned only about your own and how  
21 you are going to get this business.

22 Q In this particular case, you have conceded  
23 already that this particular movement went by way of the  
24 WP because the WP provided an equipped boxcar to the  
25 shipper, and it is your testimony, I take it, that after



1 this merger, the equipped WP boxcar will go by way of an  
2 SPSF movement, despite the fact that the WP would expect  
3 the movement to go by its own haul.

4 A I didn't testify that the WP car would move  
5 via the SP. I said that you would probably place your  
6 own equipment in there, I know you would, to protect  
7 these hauls.

8 Q So in looking at this particular movement, you  
9 substituted in your mind an SP-equipped boxcar for the  
10 WP boxcar that was actually provided?

11 A I know that that is what is going to happen.

12 Q So that is what you did?

13 A Yes, sir.

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1 Q Take a look at No. 22 and indicate whether you  
2 did the same thing for the covered hopper that was  
3 involved in that move. Did you substitute, in your  
4 mind, a Southern Pacific or an SPSF covered hopper for  
5 the WP?

6 A Yes, that's correct.

7 Q In the movement in 1983 from Dunphy to  
8 Clinton, Oklahoma, you note that Santa Fe is one of the  
9 serving roads, is that right, at destination?

10 A That's correct.

11 Q And Santa Fe didn't get a haul to destination  
12 in 1983, did they?

13 A Not on this particular movement they didn't.

14 Q And SP, which originated or had the  
15 possibility of originating this movement, also didn't  
16 originate because the WP originated the load instead?

17 A On the study they did, but my assumptions were  
18 that you people would take this market; with your  
19 shortened haul to Clinton, Oklahoma, could probably go  
20 after it and do very well in getting it.

21 Q Turn to 23, please. This is a movement of  
22 food products, Heinz to Heinz, Stockton to Muscatine,  
23 Iowa. It moved originally  
24 WP-Salt Lake-Rio Grande-Pueblo-MP-Kansas City-Milwaukee.  
25 And you have diverted it to SPSF-Kansas City-Milwaukee;



1 correct?

2 A That's correct.

3 Q In this case, SP serves the origin, physically  
4 serves the shipper at Stockton; isn't that correct?

5 A That's correct.

6 Q And it's open to reciprocal switching?

7 A That's correct.

8 Q And in this movement, the SP was short  
9 hauled. It was given only a reciprocal switch from the  
10 Heinz Company; isn't that correct?

11 A That's correct.

12 Q And instead of getting a line haul, instead of  
13 SP getting a line haul from the carrier that it served,  
14 Western Pacific got the line haul to Salt Lake City;  
15 correct?

16 A That's correct.

17 Q And you would expect that the reason that WP  
18 got the line haul was because they supplied an equipped  
19 boxcar to the Heinz people?

20 A Yes, that's my assumption.

21 Q And I take it that you, for this movement,  
22 simply assumed that after the SPSF merger, rather than  
23 this movement being handled by WP equipment, that SPSF  
24 would substitute its own equipment in place of the WP  
25 equipment that was in this movement?

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1           A     That's my assumption; yes. You go after the  
2 long haul.

3           Q     Does the fact that SP got short hauled in this  
4 case and that Santa Fe wasn't even in the original route  
5 say anything about the influence that SP or the new  
6 company will have with the H. J. Heinz Company?

7           A     Well, I think the SPSF -- well, to start with,  
8 let me start over. The SP did not get short haul on  
9 this. You got a switch movement on the car. And the WP  
10 car probably controlled the route to Salt Lake City.  
11 Post-merger, you will dominate this area with your  
12 service and gathering availability, and you'll divert  
13 this traffic away from us.

14          Q     You think we will dominate the UP in  
15 Stockton?

16          A     I think that the UP are a small player out  
17 there.

18          Q     That's nice to hear. It's nice to hear that  
19 we'll do it. But when you say we didn't get  
20 short-hauled but we got a reciprocal switch, that's even  
21 worse than a short haul, isn't it?

22          A     That's worse. That's right.

23          Q     Page 24, please. This is a movement of food  
24 products from Pacific Coast producers, another Rio  
25 Grande supporter, from Lodi, California to Stokely Van



1 Camp in Lawrence, Kansas that moved CCT-Stockton-Western  
2 Pacific-Salt Lake-Rio Grande-Pueblo-Santa Fe. And you  
3 have moved it, you have diverted it to  
4 CCT-Stockton-SPSF; am I right?

5 A That's correct.

6 Q CCT, just for the record, is a small railroad,  
7 owned one-third, one-third, one-third by Santa Fe, SP,  
8 and UP; isn't that correct?

9 A That's my understanding.

10 Q And CCT is open to reciprocal, so that all  
11 three of those, the three owning carriers have a shot at  
12 any traffic coming off CCT?

13 A That's my understanding; yes.

14 Q And in this particular case, the original  
15 route, CCT-Stockton-WP-Salt Lake, was in effect -- well,  
16 let me ask you, in your opinion, did this route reflect  
17 the fact that WP provided the equipped boxcar to Pacific  
18 Coast producers for a loading?

19 A That's correct.

20 Q And I assume that you took the position in  
21 your evaluation of this movement, that after merger SP  
22 and Santa Fe would substitute their own equipment for  
23 the WP equipment. Isn't that correct?

24 A That is correct.

25 Q It is true, is it not, that had Santa Fe

1 provided the car in 1983 instead of WP, it could have  
2 gotten a single line haul all the way from the CCT to  
3 Lawrence, Kansas, could it not?

4 A But it didn't. It could, but it didn't. The  
5 car moved this way.

6 Q And it moved this way because of the WP  
7 equipment?

8 A That's my assumption.

9 Q Movement number 25. This is of primary metal  
10 products from Alcoa to Riverdale, Iowa. No, from Alcoa  
11 in Riverdale, Iowa to Metal Box Can Company in Watson,  
12 California. Watson is down in Los Angeles, is it not?

13 A I think it is. I'm not sure. I think it is.

14 Q Well, I will represent to you that it is. And  
15 this went in a Burlington Northern equipped boxcar, is  
16 that correct?

17 A That's correct.

18 Q And it went -- do you know where this  
19 originating railroad, ORINW, is that a BN short line, do  
20 you know?

21 A I know what it is, but I can't think of it  
22 now. I have seen it before. I don't think it's a BN  
23 short line; no.

24 Q But in any event, on your page 25-A, it shows  
25 BN as being the originating long haul carrier, I



1 suppose?

2 A That's correct.

3 Q And BN got its long haul to Denver?

4 A Yes, sir.

5 Q And would you expect that it got its long haul  
6 to Denver because it provided the equipped boxcar that  
7 was used in this case, in this route, or in this  
8 movement?

9 A Yes, that's probably true.

10 Q And you again assumed that the merged carrier,  
11 SPSF, would instead provide its own equipment and  
12 therefore influence the routing by way of Kansas City to  
13 SPSF?

14 A That's my assumptions.

15 Q Alcoa, the shipper in this case, has allowance  
16 contracts with the Rio Grande, does it not, volume  
17 discount allowance contracts?

18 A I don't know if they do or not.

19 Q If they did, would that have any influence on  
20 your routing decision?

21 A Because all contracts are cancellable, Mr.  
22 Stephenson, so my assumption would be if we did have a  
23 contract with them, that because of service and lack of  
24 cooperation west of us, that this traffic would be  
25 diverted and a new contract issued, if that's the way

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1 the SPSF wanted to do it.

2 Q In this particular case, the BN haul under the  
3 diverted route was reduced from Riverdale, Iowa to --  
4 from Riverdale, Iowa-Denver to Riverdale, Iowa-Kansas  
5 City.

6 A That's correct.

7 Q And you would, accepting my representation  
8 that that cuts the BN revenue directly in half, would  
9 that make any change in your decision as to whether this  
10 would --

11 A No, sir, it wouldn't, because we felt, or I  
12 felt that the SPSF power, market power would control  
13 this traffic.

14 Q Even more so than the Burlington Northern?

15 A Yes, sir.

16 Q The next movement is one that is number 26,  
17 Renwood Coal in Emlyn, Kentucky to Dow Corning in  
18 Springfield, Oregon.

19 Dow Corning, by the way, is one of your  
20 supporters, is it not?

21 A I believe they are.

22 Q In fact, didn't they mention this specific  
23 type of movement as part of their verified statement?

24 A They could have. I don't recall.

25 Q Do you recall that they were having rate



1 problems with movement of coal from Kentucky to  
2 Springfield, Oregon and the got the Rio Grande to work  
3 with them on a joint line rate?

4 A No, I didn't know about that.

5 Q And this one was a movement that had  
6 originally routed L&N-East St. Louis-Cotton Belt-Kansas  
7 City-Rio Grande-Ogden-SP. That, by the way, is the  
8 preferred solicitation route under the existing  
9 SP-Rio Grande agreement, is it not?

10 A Out of Kentucky it would be; yes.

11 Q And you have changed that to L&N-East St.  
12 Louis-SPSF all the way.

13 A Yes. The assumption was that the  
14 SP-Rio Grande agreement would be canceled. That's in my  
15 statement.

16 Q Did you take into account any mileage factors  
17 or additional mileage that the diverted route would add  
18 to the movement?

19 A Well, I looked at it, but there wasn't enough  
20 to be concerned about.

21 Q What was it?

22 A I don't have it here.

23 Q About 300 miles, roughly?

24 A I didn't think it was that far. It doesn't  
25 make any difference. Your traffic flows are directed in

1 that direction anyway. So it will offset your costs in  
2 the expanded system.

3 Q Could you turn to 27, please? This is a  
4 movement of lumber from Roseburg Lumber at Riddle,  
5 Oregon to Georgia Pacific in Rohrerstown, Pennsylvania  
6 that previously moved SP-Ogden-Rio  
7 Grande-Herington-Cotton Belt-East St. Louis-Conrail.

8 That, again, is the preferred routing under  
9 the solicitation agreement, is it not?

10 A Yes. Pre-merger, that's the preferred route.

11 Q And would you agree that Roseburg Lumber  
12 Company is one of the top shippers for both Southern  
13 Pacific and Rio Grande out of the Pacific Northwest?

14 A We value them highly.

15 Q We both value them highly. We both speak  
16 highly of them, don't we?

17 A Yes, we do.

18 Q Roseburg supports the SPSF merger, does it  
19 not?

20 A I believe that they have a statement there. I  
21 don't recall.

22 Q Do you recall that Roseburg took the position  
23 that while they supported the merger, they wanted the  
24 ICC to impose conditions that would preserve the Ogden  
25 Gateway as a viable alternative?



1           A     They are, and they're a very competitive  
2 company.

3           Q     Does Roseburg use the Union Pacific routing  
4 through the central corridor as well as the Rio Grande?

5           A     They have in the past. I'm not sure that  
6 they're doing it presently.

7           Q     Do you have a volume contract with Roseburg?

8           A     We have a joint contract with the  
9 SP-Rio Grande.

10          Q     You have suggested by this diversion that goes  
11 from Riddle, Oregon -- well, let me back up. The  
12 original route of movement over the central corridor has  
13 been changed and your diverted route to  
14 SPSF-Chicago-Conrail.

15                     Can you explain why you not only diverted it  
16 to the SPSF System, but changed the gateway from East  
17 St. Louis to Chicago?

18          A     Okay. There are two factors that I considered  
19 in this, and I am working on my experience in the  
20 northwest, Mr. Stephenson.

21                     The Conrail mileage rates from Chicago to  
22 destination are cheaper over Chicago than they are over  
23 St. Louis, and then looking at the fact that the Santa  
24 Fe service is much better through Chicago on Conrail,  
25 that's the reason I diverted the car that way.

1 Q Is this traffic high rated, low rated, high  
2 margin, low margin traffic?

3 A It's just average traffic. It's good traffic,  
4 good revenue traffic.

5 Q Is it traffic that is sensitive to a carrier's  
6 costs?

7 A What do you mean, sensitive to your costs?

8 Q In terms of rate actions that a carrier might  
9 utilize in competition with the Burlington Northern or  
10 the UP System, is there a lot of margin in the lumber  
11 traffic that permits rail carriers to give big allowance  
12 contracts or to cut rates in order to keep the  
13 business?

14 A Well, the traffic is not all that profitable  
15 but it moves in volumes which makes it very attractive.  
16 I don't know of any large refund contracts out there.  
17 You know, I don't think we're involved in any of them.  
18 But I do know that this traffic is very good traffic,  
19 and we actively go after it.

20 Q Did you consider the fact that your diverted  
21 route aids -- what would you guess, 300 miles to this  
22 movement?

23 A Over Chicago.

24 Q Yes.

25 A It would be about 300 miles. But, you know,

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1 that is immaterial here. The traffic flows in that  
2 direction, and in the past you have done so, even when  
3 you had to go through Houston to get up to St. Louis.  
4 It was traffic that you people very vigorously  
5 solicited.

6 I don't see where you are going to change your  
7 habits.

8 Q So you don't think that the additional  
9 mileage, additional cost of handling fuel, and so on for  
10 this type of traffic would have any impact on the  
11 ability to SPSF to compete from a rate standpoint with  
12 Union Pacific or Burlington Northern?

13 A Well, from this particular area, I don't think  
14 you're competing with the Burlington Northern and Union  
15 Pacific. But your past practices indicate that that's  
16 not a concern of yours, so you have done it this way  
17 before, for years, and it's not going to change.

18 Q And you are stating that Burlington Northern  
19 and UP truck/rail reload programs are not effective as  
20 far down as Riddle?

21 A I think there's some of it moving down there,  
22 but not in the volumes that Roseburg ships. I don't  
23 think it's factor with them.

24 Q Do you know that?

25 A Well, I've talked to them.

1 Q And you know that they are not considering  
2 using rail/truck reload programs on an experimental  
3 basis?

4 A Oh, I think they've tried it in the past.  
5 They are using some TOFC out of that area, and it's  
6 going up to either Eugene or Portland.

7 JUDGE HOPKINS: Mr. Stephenson, before you  
8 start another one, how much longer do you think you'd be  
9 with this witness?

10 MR. STEPHENSON: I think I can finish by 1:00  
11 o'clock, Your Honor.

12 JUDGE HOPKINS: Well, all right, if you can  
13 finish by one. Is the Department of Justice here?

14 MR. SANFORD: The Department of Justice  
15 informed us they were not going to cross-examine this  
16 witness.

17 JUDGE HOPKINS: So you'd be finished with him  
18 by one? All right, then. If you will, we will go on  
19 until one.

20 MR. STEPHENSON: I will try to go faster than  
21 that. I think I will.

22 JUDGE HOPKINS: Thank you.

23 BY MR. STEPHENSON: (Resuming)

24 Q The next movement, number 28, is a movement  
25 from Hurt Wesson in Oakland to Nobel Sysco in Denver;



1 correct?

2 A That's right.

3 Q And both Hunt Wesson and Nobel Sysco are  
4 supporters of yours, are they not?

5 A Yes, they are.

6 Q Do you know Mr. Bossert for Nobel Sysco?

7 A I've talked to him. I can't say that I know  
8 him.

9 Q He wrote in his verified statement on your  
10 behalf: "The Rio Grande has proven to be a reliable and  
11 dependable carrier. The Rio Grande has also been  
12 instrumental in setting up a TOFC program from  
13 California to Denver, Colorado. Nobel has used this  
14 service extensively."

15 Would you agree with that statement?

16 A Yes, sir; I would.

17 Q And this is just such a move, is it not?

18 A Well, pre-merger, this is a very good move for  
19 us. But, postmerger, which is what we are talking about  
20 here, this business would disappear. There's no way we  
21 can service it without service cooperation west of us.

22 Q And the assumption you brought to the traffic  
23 diversion study is that there's no way that this traffic  
24 can survive because there will be no cooperation with  
25 the merged system in terms of providing effective

1 competitive service over the D&RG-SPSF route?

2 A That's correct. Our assumption was that the  
3 SPSF will not keep us in the Chicago market to protect a  
4 few thousand Denver trailers. If you break this market  
5 down, it's about 4,000 trailers a year, comes out to  
6 about 12 loads a day, and I don't think that you people  
7 are going to run short fast train to protect 12 loads a  
8 day.

9 Q This particular movement was diverted not to  
10 the SPSF System, but to the UP System. Is that right?

11 A That's correct. That's who we are going to  
12 lose it to. And you will lose it to them also.

13 Q And the reason that you are going to lose it  
14 to the UP System, if I understand you, is that from  
15 Oakland to Denver, there is only one competitor today  
16 besides SP-D&RG, and that is the UP single line system?

17 A That's correct.

18 Q And even after SPSF merger, the SPSF System  
19 will -- while it will be competitive in some markets,  
20 will not, in your opinion, be competitive between  
21 Oakland and Denver. Is that right?

22 A That's my opinion; yes

23 Q And the reason for that is it is too  
24 circuitous between Oakland and Denver for the SPSF  
25 System to effectively compete with the UP System?



1           A     You mean coming from Oakland around the horn,  
2 and back into Denver?

3           Q     Yes.

4           A     You made a couple of passes at them on that,  
5 but I would think it would be too circuitous. I don't  
6 think you compete with the UP.

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1 Q And it's your position that notwithstanding  
2 the fact that SPSF would, because of its lack of a  
3 competitive route between Oakland and Denver and their  
4 inability to successfully compete for this traffic, they  
5 would let it go entirely rather than take half a loaf  
6 with the Rio Grande and continue competing for the  
7 traffic?

8 A You're talking about competing in the Chicago  
9 market or just in the Denver market?

10 Q Denver market. I'm looking at this movement  
11 here.

12 A Well, just the Denver market, there's no  
13 reason for you to -- there's no enough traffic there to  
14 support scheduled fast trains.

15 Q So it is your position that we will not  
16 compete, even though there's no chance of us getting  
17 this traffic on a single basis?

18 A Absolutely. There's no traffic there to set  
19 schedules with.

20 Q Well, there's plenty of traffic today,  
21 obviously.

22 A Yes, but it's all Chicago traffic, or most of  
23 it is. That's what moves these trains.

24 Q And you have assumed that all of the Chicago  
25 traffic is going to be diverted because SP is not going



1 to work with you on the Chicago traffic?

2 A That's right. You won't have to compete with  
3 the Santa Fe anymore.

4 Q And we will give all that business up to the  
5 UP?

6 A That's correct. That's who we compete with  
7 today.

8 Q Turn to page 29, please. This is a movement,  
9 also TOFC from National Piggyback in Oakland to Crown  
10 Container in Denver. National Piggyback is a supporter  
11 of your merger, is it not, under the name BRAE Surface  
12 Transportation?

13 A Yes, they are.

14 Q And they are using this service today, are  
15 they not?

16 A Yes, sir.

17 Q And you expect that you have diverted this to  
18 the UP System for the same reasons as we discussed in  
19 the previous movement?

20 A That's right, Mr. Stephenson.

21 Q And would I be correct that the next movement,  
22 Stanislaus Food Products to Bg Specialties, Oakland to  
23 Denver, would be the same? If I asked you the same  
24 questions, I would get the same answers?

25 A You'd get the same answers.

1 Q And this is so, even though Marjorie Ball, the  
2 traffic manager of Stanislaus Foods, is a very laudatory  
3 supporter of the Rio Grande?

4 A That's right. She's also a very nice lady.

5 Q Would I be correct in assuming that your  
6 answers to the next one on 31, a movement from McKesson  
7 to United Vintners, would be basically the same?

8 A Yes, Mr. Stephenson.

9 Q Look at your page 31-A.

10 A I have it.

11 Q What is the origination on that? I can't tell  
12 if it's Fremont or Fresno.

13 A It's Fresno.

14 Q And both McKesson Liquor and United Vintners,  
15 through its owner, Heublein, are supporters of the Rio  
16 Grande, are they not?

17 A That's correct.

18 Q And the answer would be the same as to No. 32,  
19 a movement Itofca to Itofca, Sparks, Nevada to Denver,  
20 Colorado?

21 A That's correct.

22 Q SPSF will turn its back on this traffic and  
23 the UP System will be the beneficiary?

24 A That's correct. They will benefit by it.

25 MR. STEPHENSON: That's all I have. Thank you



1 very much.

2 JUDGE HOPKINS: Any redirect?

3 MR. SANFORD: No redirect, Your Honor. I move  
4 the admission of the traffic study and Mr. Thiessen's  
5 statement.

6 JUDGE HOPKINS: Any objection?

7 MR. STEPHENSON: No.

8 JUDGE HOPKINS: They will be received in  
9 evidence.

10 MR. STEPHENSON: I move the admission of  
11 SFSP-119, 120, and 121.

12 MR. SANFORD: We have no objection to 119, but  
13 120 and 121 were never used.

14 MR. STEPHENSON: They were not used  
15 specifically, Your Honor. I referred to mileages on a  
16 number of occasions that came from them. They were  
17 available for the witness' use.

18 JUDGE HOPKINS: I'm going to allow them. They  
19 will be received in evidence.

20 (The documents referred to,  
21 previously marked Exhibits  
22 SFSP-C-119, 120, and 121 for  
23 identification, were  
24 received in evidence.)

25 JUDGE HOPKINS: Off the record a minute.

1

(Discussion off the record.)

2

JUDGE HOPKINS: We'll be in recess until 2:00

3

o'clock.

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(Whereupon, at 12:45 o'clock p.m. the hearing

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was recessed, to reconvene at 2:00 o'clock p.m., this

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same day.)

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## AFTERNOON SESSION

(2:00 P.M.)

1 JUDGE HOPKINS: Back on the record.

2 Mr. Sanford.

3 MR. SANFORD: Rio Grande calls Mr. T. D.

4 Odwalt.

5 Whereupon,

## THOMAS D. ODWALT

6 was called as a witness in the above-entitled matter by  
7 counsel for Rio Grande Railroad and, having first been  
8 duly sworn by the Administrative Law Judge, was examined  
9 and testified as follows:  
10  
11  
12

## DIRECT EXAMINATION

13 BY MR. SANFORD:

14 Q Sir, would you state your name for the  
15 record?  
16

17 A Thomas D. Odwalt.

18 Q And your present employment?

19 A I'm Assistant Vice President, Fuels Traffic,  
20 for the Rio Grande Railroad in Denver.

21 Q And have you submitted a verified statement in  
22 this proceeding which was filed in DRGW-14, Volume 2?

23 A I have.

24 Q And is that statement true and correct to the  
25 best of your knowledge and belief?

1 A It is.

2 MR. SANFORD: The witness is available for  
3 cross-examination.

4 CROSS EXAMINATION

5 BY MR. STEPHENSON:

6 Q Good afternoon. I am Doug Stephenson for the  
7 Applicants.

8 As AVP, Fuel Traffic, for Rio Grande, you are  
9 the man in charge of coal marketing on the property?

10 A That's correct.

11 Q How long have you been in the coal group or  
12 the fuels group at Rio Grande?

13 A Since September '78.

14 Q What was Rio Grande's coal tonnage in 1978  
15 when you came into the group?

16 A I can't answer your question.

17 Q Do you have any idea what your total tonnage  
18 was in 1984?

19 A A little in excess of 16 millions tons, I  
20 believe.

21 Q 16 million tons?

22 A 16 million tons.

23 Q And that was up from '83?

24 A Slightly, yes.

25 Q And what does the forecast look like for '85?



1 A We will do close to 17 million, I believe.

2 Q Can you describe the growth in coal marketing  
3 or coal originations in Rio Grande, say for the last 15  
4 years, or do you know?

5 A I believe in '68, which is the first available  
6 record that I have, we did somewhere in the neighborhood  
7 of 7 million tons.

8 Q Do you know what the 16 million figure was in  
9 '84 in terms of percent of tonnage hauled by Rio  
10 Grande?

11 A I'm not sure I understand your question.

12 Q You just testified that in 1964 -- I'm sorry,  
13 1984 -- your coal originations amounted to about 16  
14 millions tons; is that right?

15 A Correct.

16 Q What percentage of the total tonnage moved on  
17 the Rio Grande in 1984 as reflected by the coal  
18 tonnage? Is it 50 percent?

19 A You're talking about what percentage of coal  
20 as relates to all tonnage?

21 Q Yes.

22 A It's about 50 -- I believe coal is about 50  
23 percent, 58 percent of our net tonnage.

24 Q And how much of the revenue, do you know?

25 A About 43 percent of our revenue.

1 Q What percent of the coal originations on the  
2 Rio Grande are for local consumptions; that is, simply  
3 involve local hauls.

4 A Local destinations?

5 Q Yes.

6 A I would say around 45 percent.

7 Q Is that growing, decreasing? How does that  
8 compare to several years ago?

9 A It's holding fairly steady.

10 Q Of the Rio Grande coal going off-line, and by  
11 that I mean east of the Colorado Gateways or west of the  
12 Utah Gateways, approximately how much of it is going  
13 east and how much of it is going west percentagewise?

14 A I believe somewhere around 41 percent will  
15 move east and 13-14 percent will move west.

16 Q And the balance is local?

17 A Local.

18 Q What are your principal off-line coal  
19 movements?

20 A By customer? We ship coal to Central Power &  
21 Light at Coleta Creek, Celanese Corporation, Mississippi  
22 Power, Iowa Electric Light & Power.

23 Q Can you identify those by location?

24 A Okay. Central Power & Light would be Coleta  
25 Creek. Celanese would be Kings Mill, Texas.



1 Mississippi Power would be Danue, Mississippi. Iowa  
2 Electric Light & Power would be Crandic, Iowa.

3 We have shipped to Union Electric. Well, we  
4 shipped to Iowa, Illinois Power at Federal, Illinois.  
5 We've shipped to Union Electric at Labadie, Missouri.  
6 We've shipped to -- we have some small movements into  
7 California. We have one to Kaiser Cement at  
8 Permanente. We have shipped to Lone Star Cement at  
9 Davenport.

10 Q Davenport, Iowa?

11 A Davenport, California. We've shipped to  
12 Genstar at -- I think that's Genstar Cement & Line at  
13 Grey Rocks. We have some assigned business that goes to  
14 Public Service Company in Colorado to one of their  
15 plants at Valmont.

16 I think I have covered the major ones that I  
17 can think of.

18 Q Do the same shippers who route traffic or  
19 direct traffic to the east also direct traffic to the  
20 west?

21 A I cannot think of any. The traffic would not  
22 be controlled generally by the shipper; it's by the  
23 receiver.

24 Q Is that true in every case?

25 A Not in every case, but the majority of the

1 cases the receiver, or the person responsible for paying  
2 the freight would be responsible for routing.

3 Q Does Rio Grande work with its full shippers on  
4 line to attempt to make them competitive in existing  
5 markets or in new markets?

6 A Yes. You're talking about working with the  
7 mines per se?

8 Q Yes.

9 A Well, generally, while we tried to cooperate  
10 with the mines -- I mean negotiation of rates is  
11 generally done -- and this is on coal -- is generally  
12 done, as I mentioned, by the person paying the freight.  
13 This is generally the receiver.

14 Q Who do you consider the customer?

15 A Well, I guess I would consider both the  
16 customer, but I think it's -- I would like to refer to  
17 the mine and to the utility or the receiver. I think of  
18 prime importance insofar as rate negotiations again is  
19 the person paying the freight.

20 Q Do you find that coal originated on the Rio  
21 Grande is in competition with coal originating on the  
22 lines of other railroads such as the UP or Burlington?

23 A Certainly.

24 Q Do you get involved in the competitive process  
25 in terms of attempting to help market the coal that

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1 originates on the Rio Grande as opposed to -- help  
2 market the coal originating on the Rio Grande in  
3 competition with coal originating on the UP, for  
4 example?

5 A I'm not sure I understand your question.

6 Q Do you get -- does the Rio Grande Railroad  
7 work with shippers -- and by shippers I mean the mine  
8 owners -- to attempt to -- and I know you've told us tht  
9 the principal -- maybe not the principal customer, but  
10 most of your rate negotiations are done with the  
11 receivers, the users of the coal.

12 But are there occasions when you work with the  
13 mine owners to attempt to put together the rate packet  
14 that will make their coal competitive with coal from --  
15 originating on the UP, for example?

16 A Up until just recently, no. Recently, we did  
17 work very closely with one of the mines in trying to  
18 develop a delivered package. We did this, I think, with  
19 the concurrence of the receiver who paid the freight,  
20 but they allowed the two of us to work together and we  
21 did try to do this.

22 Q Explain how the marketing -- I know this is a  
23 complex subject, but explain how the marketing of export  
24 coal is handled. Why is Rio Grande's coal exported in a  
25 given instance, rather than UP coal?

1           A     Today, I think it's just the quality of the  
2 coal. The only coal that we're exporting today is net  
3 coal, and as far as I know, I think there is UP coal  
4 being exported today. Our coal today is strictly  
5 metallurgical coal.

6           Q     Who is the customer that has that coal, that  
7 metallurgical coal exported through the Port of Los  
8 Angeles?

9           A     The ultimate customer?

10          Q     Yes.

11          A     Today it's Pohang Steel, I believe, in Korea.

12          Q     Who puts the package together?

13          A     We had two packages that were put together  
14 basically by the mines.

15          Q     And you worked with the mines in developing a  
16 transportation package?

17          A     We attempted to; yes.

18          Q     And the UP would do the same with its mines,  
19 presumably?

20          A     I would assume they would.

21          Q     What does the future look like in terms of Rio  
22 Grande's participation in the export of coal to the  
23 Pacific Rim countries?

24          A     I think right today, it is pretty bleak.

25          Q     Is there any silver lining in that cloud in



1 the far distant future?

2 A I don't see any foreseeable increase in export  
3 coal off the Rio Grande possibly before 1990 or so. I  
4 think there will continue to be a little export coal,  
5 but not the volumes that we saw back in 1981-82.

6 Q How about other coal supplied to the west?  
7 Are there any prospects for new power plants coming on  
8 line in Arizona or Nevada that might utilize Rio Grande  
9 coal?

10 A The possibility of using Rio Grande coal?  
11 There's two projects for the late '80s, early '90s, one  
12 which is the Sierra Pacific Valmy 2; that's the  
13 original, the initial coal that will come out of the  
14 Hanna Basin for that power plant. And the other is the  
15 White Pine project of the Los Angeles Department of  
16 Water & Power.

17 Q Are those sure things or just on the drawing  
18 board for possible --

19 A I think Valmy 2 is pretty sure. Los Angeles  
20 Department of Water & Power and the White Pine project,  
21 I think, is a pretty good "go" project.

22 Q Can you tell us what Rio Grande's involvement  
23 would be in those, in the movement of coal, if any, in  
24 those projects? Should they be consummated?

25 A What our involvement would be?

1 Q Yes.

2 A You mean in moving tonnage or in --

3 Q Yes.

4 A I think Valmy 2 is somewhere in the

5 neighborhood of oh, five to seven hundred thousand

6 tons. The White Pine project, I believe, is somewhere

7 in the neighborhood of 2 million tons annually.

8 Q And would it be -- would Rio Grande coal  
9 necessarily be the coal that would be utilized, or is  
10 there just as good a chance that coal originating on the  
11 UP or even BN might --

12 A I don't foresee the BN. I can foresee the  
13 Union Pacific coal. I can see coal coming off the Utah  
14 Railway.

15 Q If in 1990 the export coal business improves,  
16 what ports would you expect the export coal to go out  
17 of?

18 A Based on today's parameters, large volumes  
19 would probably move via LA/Long Beach, although I do  
20 think there is a distinct possibility that there are  
21 instances where small vessels, smaller shipments, can  
22 move via Bay Area ports such as Stockton or Richmond.

23 We have moved little coal in the past year via  
24 Richmond, and are presently looking for some other small  
25 volume shipments.



1 Q Are the facilities in place at Stockton and  
2 Richmond which would permit this to be -- permit them to  
3 be viable ports for the export of coal?

4 A We have in the past, as I mentioned, moved  
5 coal by both ports.

6 Q Are the facilities geared to a low volume --

7 A Low volumes. That's correct.

8 Q And by low volume, you mean what?

9 A Small vessels.

10 Q Do you anticipate that in the future, large  
11 volumes might utilize the ports of Richmond or Stockton  
12 for export of high volume --

13 A These ports would have to be retrofitted to  
14 handle the larger shippers, the Panamex size ships in  
15 the large volumes.

16 Q Politically, is that in the cards?

17 A It's very costly. I wouldn't touch that with  
18 a ten-foot pole.

19 Q What about in the event that the Commission  
20 should award your access to the West Coast? Are you  
21 familiar with the Southern Pacific lines that would be  
22 involved in the movement of coal to Stockton?

23 A Yes.

24 Q What's the extent of your knowledge?

25 A I'm not sure where you're coming from. We

1 would -- under our application, we have asked to buy the  
2 Southern Pacific as far as Roseville and trackage rights  
3 beyond, which I understand would give us direct access  
4 into Stockton and Richmond, into the ports at both of  
5 those places.

6 Q The question goes a little beyond that. Are  
7 you familiar with the physical condition of the lines  
8 that would lead into the Port of Stockton or lead into  
9 the Port of Richmond?

10 A I have not seen them; no.

11 Q So you can't say one way or another whether  
12 the capital improvements would be required to the SP  
13 facilities in order to accommodate those movements on a  
14 large-scale basis?

15 A No. All I can say is that we have handled  
16 coal into both points in the past.

17 Q And those have been relatively low volume?

18 A Low volumes.

19 Q Am I correct that all Rio Grande coal tonnage  
20 that has moved to eastern points has moved in connection  
21 with other carriers? In other words, you don't  
22 terminate any coal off line to the east of the Colorado  
23 Gateways, do you?

24 A The only coal -- we have terminated some in  
25 Kansas City over our trackage rights. Naturally,



1 anything that moves other than that would be on our  
2 line. No. If it moves in connection with the BN/UP,  
3 the Santa Fe, the Missouri Pacific, would terminate on  
4 those lines.

5 Now, we have moved some coal into Kansas City  
6 and we were the inbound road haul carrier, not the  
7 switching carrier, but the inbound road haul carrier, a  
8 very small amount.

9 Q So you would agree with me, wouldn't you, that  
10 the necessity of working with connections in the  
11 movement of coal traffic and the negotiation of coal  
12 contracts, while it may be inconvenient and something  
13 you'd rather not do, is not an obstacle to effective  
14 marketing of coal from your property.

15 A It's necessary for us to work if it's an  
16 off-line point with connecting carriers. I don't  
17 necessarily consider it an inconvenience either.  
18 Sometimes it is very friendly.

19 Q What coal movements does Rio Grande -- not  
20 carload coal movements, but unit train coal movements --  
21 has Rio Grande had in connection with the Union Pacific  
22 System? And I'm talking now about the west.

23 A Moving west?

24 Q Yes.

25 A The only -- none moving west. We have moved

1 trainloads of export coal. I do not classify those as  
2 unit trains.

3 Q Okay. Well, maybe it's my definition that's  
4 not very good, because I was hoping to include  
5 trainloads of export coal.

6 A Yes. The bulk of the export traffic that we  
7 have moved has moved via the Union Pacific in trainload  
8 quantities.

9 Q Am I correct that most of that traffic that is  
10 moved off your line to a connection with the Union  
11 Pacific is traffic that the Union Pacific has probably  
12 tried to get in the first instance on a single line  
13 basis from origins on its own --

14 A No, no. This is traffic that was offered by  
15 mines on our line.

16 Q In every instance?

17 A There is export coal that I'm aware of that  
18 originates on the Union Pacific Railroad or on the Utah  
19 Railway. If it's offered by our mine, the only way it's  
20 going to move is D&RGW and then hence, a connection.  
21 But we don't have an exclusive on that coal that moves  
22 via the West Coast ports.

23 Q I understand that. But do you know whether or  
24 not, in these movements that you've described for  
25 export, that would go out of Los Angeles, whether Union



1 Pacific in the first instance has bid on or tried to get  
2 that coal instead of the mines on your own property?

3 A I wouldn't have any idea.

4 Q Does the fact that Union Pacific is a  
5 competitor for you in the movement of some coal create  
6 any problems in terms of working with them cooperatively  
7 in joint line movements of coal?

8 A I don't believe so.

9 Q Tell me how you conducted your coal study.  
10 What assumptions were you told to make?

11 A It was based on 1983 westbound coal only. And  
12 the only assumption -- I was to look at it from the  
13 standpoint of the Rio Grande purchasing certain portions  
14 of the Southern Pacific west of Ogden and trackage  
15 rights beyond.

16 Q And you say that the year was 1983?

17 A That is correct.

18 Q And what was the data base? All the coal  
19 movements that originated on the Rio Grande and went  
20 west?

21 A Westbound. One hundred percent westbound.

22 Q You also looked at the U.S. Steel train  
23 movement? Is that correct?

24 A You're talking about the steel train?

25 Q Yes.

1 A I discussed this with Mr. Brainard.

2 Q Who had the ultimate decision as to whether  
3 the steel train would be divertible to the D&RG trackage  
4 rights or purchase trackage rights?

5 A It was a joint decision between Mr. Brainard  
6 and myself.

7 Q And what about the oil shipment from Salt Lake  
8 to Standard Oil?

9 A Likewise.

10 Q Would I be correct that the coal decision was  
11 your exclusive province and you had a shared  
12 responsibility for the steel?

13 A That's correct.

14 Q Were any of the assumptions different,  
15 depending on whether you were looking at coal, steel, or  
16 oil?

17 A My assumption was based on the extension of  
18 the railroad west from Ogden on a purchased trackage  
19 rights combination.

20 Q Page 2 of your verified statement, in the  
21 Oregon section, you mention that no diversion would  
22 occur of coal shipments to eastern Oregon. Why is  
23 that?

24 A Because this is an area served by, primarily,  
25 I believe, by the Union Pacific. The only routes that



1 would be available into that area would be via Salt Lake  
2 City or Ogden; thence, Union Pacific and connections.

3 Q All right. Did you assume that they had to be  
4 existing routes or did you assume routes could be  
5 implemented?

6 A I went on the basis of existing routes. I  
7 couldn't see that. If they were implemented routes, I  
8 think that in most cases, knowing the destinations, it  
9 would necessitate a backhaul into those areas. I  
10 couldn't see how that would be feasible, but I went  
11 based on existing routes.

12 Q The backhaul -- you didn't think that it would  
13 be feasible because the backhaul would necessarily  
14 involve additional mileage which would make it  
15 non-competitive?

16 A It would be circuitous, I believe, yes.

17 Q Did you have any particular circuitry  
18 percentage in mind?

19 A I did not; no, sir.

20 Q A backhaul of 2 percent obviously would not be  
21 -- would be insubstantial, whereas a backhaul of 30-40  
22 percent might be substantial.

23 A It could be, but I didn't consider it.

24 Q In the same paragraph, you talk about  
25 diversions to points north of Portland. What specific

1 points to you have in mind there?

2 A There were several. I can't recall all of  
3 them. There were several points on Union Pacific with  
4 the BN north of Portland which received small  
5 shipments. A couple that come to mind are Kent Tacoma,  
6 where we could extend our haul to Portland via purchased  
7 trackage rights, and then connections beyond via either  
8 the UP or BN.

9 Q Did you get involved in such detail as what  
10 train crews would be involved in interchanging the Rio  
11 Grande trains in the event, for example, that you went  
12 through Portland and interchanged with the UP?

13 A No, sir; I did not.

14 Q Let me give you a couple of examples of  
15 movements through this particular Portland corridor, and  
16 ask you to give me your opinion as to whether it would  
17 be divertible or not to the extended Rio Grande system.

18 How about coal from Inland Creek, coal at  
19 Helper, Utah to the U.S. Navy Submarine Base at Bangor,  
20 Washington, which as I understand it, presently moves  
21 Rio Grande-UP-BN via Portland? Could you cut out the UP  
22 in that instance?

23 A I think we would have an opportunity to  
24 eliminate the Union Pacific.

25 Q Did you in your study?



1 A I believe I did; yes.

2 Q What were your thought processes involved  
3 there?

4 A I thought we could do -- well, let me back  
5 up. We would have a through line haul today via  
6 D&RG-Union Pacific-BN, as an example. I thought, using  
7 your same philosophy, of eliminating carrier going long  
8 haul, that we would have a better opportunity to market  
9 ourselves and to perhaps benefit the customer through  
10 possibly a cheaper rate.

11 Q Did you divert those movements of that type on  
12 100 percent basis, or did you divert them on a percentage  
13 basis?

14 A 100 percent.

15 Q If there were ever -- if you ever thought that  
16 a movement was potentially divertible, then it was  
17 divertible 100 percent? Was that the procedure that you  
18 followed?

19 A Going north of Portland, I believe I diverted  
20 100 percent of the business that moved in 1983 to the  
21 D&RG long haul.

22 Q Were there areas where you didn't divert 100  
23 percent?

24 A As long as there was an applicable route in  
25 1983 or today, I believe I looked at everything 100

1 percent divertible.

2 Q The question was, did you divert anything in  
3 your study less than 100 percent?

4 A Going north of Portland?

5 Q Yes.

6 A I believe everything was diverted 100  
7 percent.

8 Q Tell me where you would depart from 100  
9 percent diversion in other areas with respect to coal  
10 diversions.

11 A I diverted some business off the Utah Railway  
12 to the Union Pacific, not necessarily because of the SP  
13 Santa Fe merger, but because of the Union Pacific merger  
14 with the Western Pacific.

15 I diverted some export business away from the  
16 Southern Pacific to the Union Pacific.

17 Q And that was on a less than 100 percent  
18 basis?

19 A The export business that I diverted, I  
20 diverted 100 percent to the Union Pacific. The business  
21 that moved to present WP destinations or UP destinations  
22 that were formerly WP, coming off the Utah, I diverted  
23 100 percent of that to the Union Pacific.

24 Q Okay. Maybe I haven't been listening, but I  
25 haven't heard any of -- and I think you said it, but I



1 diin't catch it -- the diversions of less than 100  
2 percent. What were they again?

3 A I diverted all of the export business that  
4 moved via the Southern Pacific to the Union Pacific.  
5 That was 100 percent. I'm sorry. I diverted the  
6 business that moved to former WP points, now UP, moving  
7 off the Utah Railway, 100 percent to the Union Pacific.

8 Q I still haven't heard any movement that was  
9 not diverted 100 percent. Maybe you and I aren't  
10 communicating. But I thought I asked, were there  
11 movements that you diverted on a less than 100 percent  
12 basis.

13 A I don't believe there were.

14 Q In the entire study?

15 A I'm talking about business that I could handle  
16 today.

17 Q So if you looked at a movement -- well, let me  
18 back up. Did you divert every single movement that you  
19 looked at in your study?

20 A To Rio Grande long haul?

21 Q Yes.

22 A No. Maybe you and I aren't communicating.  
23 But if I had the opportunity, if I felt that I could  
24 extend my haul over the purchased trackage rights  
25 section of the Southern Pacific, I diverted that

1 business 100 percent.

2 If it business moving -- there was some  
3 business moving into Nevada then I diverted away from  
4 the D&RGW because of the old WP destination. I don't  
5 think there was any that I diverted, if this is your  
6 question, that I left 50 percent Southern Pacific and 50  
7 percent Rio Grande; because remember, my study was made  
8 on the extension of the railroad west from Ogden.

9 There was only way for it to move, and that  
10 would be Ogden-D&RGW. I did not consider the Southern  
11 Pacific being in place west of Ogden. Maybe that will  
12 answer it. I hope it does.

13 Q Well, it does, in part. Did you, in diverting  
14 traffic away from the Rio Grande to the UP, divert that  
15 traffic on 100 percent basis, to the extent that you  
16 thought it was divertible to the UP as a result of the  
17 UP merger? Did you divert all of it or just some of  
18 it?

19 A All of it.

20 Q You assumed that if it was going to go at all,  
21 that all of it was going to go?

22 A That is correct.

23 Q And am I correct that to the extent that you  
24 thought the traffic to be diverted to the Rio Grande  
25 system could be diverted, that was all diverted 100



1 percent?

2 A That's correct.

3 Q You didn't find movements to points in Oregon  
4 or points in Washington or points in California where  
5 you said I think that some shipper will divide his  
6 business and give some of it to -- continue to give some  
7 of it to one route and the other half to another route?

8 A There was only one route. When I made my  
9 study, it was based on the D&RG extending, buying the  
10 railroad west of Ogden, so there was no Southern  
11 Pacific. There was no way for it to go, other than  
12 D&RGW.

13 The Southern Pacific in my study was not in  
14 place. There was only way for it to go, and that was  
15 D&RGW. So what I was doing was extending my haul.

16 The only business that I said that I did  
17 divert away from the Grand was some business that had  
18 moved off the Utah Railway to old WP destinations which  
19 are now UP.

20 Q And that was done simply to reflect the  
21 reality of what has happened since 1983; is that right?

22 A The route today would be Utah-Provo-Union  
23 Pacific Railroad, a two-line haul as opposed to a  
24 potential three-line haul.

25 Q And that traffic has moved off Rio Grande?

1 A No. It moved off the Utah Railway.

2 Q Okay. Let me give you a couple more examples  
3 of movements north of Portland. How about coal from  
4 Price River at Castle Gate, Utah to the U.S. Government  
5 at Newport, Washington which currently moves  
6 Rio Grande-UP-BN versus Spokane?

7 A I think I diverted that again to  
8 D&RG-Portland-BN.

9 Q And what were your reasoning processes  
10 involved in that?

11 A The same as previously mentioned; that I felt  
12 we could do a better job of marketing with a two-line  
13 haul as opposed to a three-line haul.

14 Q Now, how about another movement, coal from  
15 Soldier Creek at Banning, Utah to Kent, Washington which  
16 currently moves D&RG-UP-BN via Portland?

17 A The same.

18 Q And the last one, coal from Southern Utah Fuel  
19 in Salina, Utah to Rockwell International in Richland,  
20 Washington, currently moving Rio Grande-UP?

21 A I believe that is probably a local UP point.  
22 If it is, I would not divert it.

23

24

25



1 Q At the bottom of Page 2, you mentioned in this  
2 last paragraph 41 carloads, 54 carloads, and 46 carloads  
3 would all be diverted, and the question is, and I think  
4 I understand, but I want to make sure I do, these all  
5 represent 100 percent of the movements in your data base  
6 that you looked at. These are not sample movements.

7 A No, 100 percent.

8 Q So to these areas, this 500 or so cars would  
9 have been all the cars that moved in 1983?

10 A Into those particular areas.

11 Q And the same would be true on Page 3 when you  
12 talk northern California and Nevada about these 4,266  
13 cars? That is 100 percent of the traffic in your data  
14 base?

15 A Yes, correct.

16 Q I think you mentioned this a few minutes ago  
17 in response to another question. You indicated that you  
18 diverted the traffic that is currently moving SP -- wait  
19 a minute. It is currently moving Rio Grande SP by way  
20 of Ogden and Roseville, and then down to Los Angeles, to  
21 southern California.

22 What was your thought process that led to that  
23 diversion?

24 A Circuitry. I believe the mileage from Provo to  
25 Los Angeles is about 750 miles. The mileage from Provo

1 to Los Angeles via Ogden is something in excess, I  
2 believe, of 1,200 miles. I felt that that business, we  
3 would not push for that business if we extended our  
4 railroad into northern California via D&RG California  
5 junctions and the connection beyond, that the customer  
6 would be better served by having the business move over  
7 Provo and then Union Pacific.

8 Q Why is that traffic moving today, or why did  
9 that traffic move when it did? I recognize that it is  
10 circuitous.

11 A Why did it move over Ogden?

12 Q Sure.

13 A Because the owner of the mine is on the board  
14 of directors or was on the board of directors of the  
15 Southern Pacific Railroad, and the Southern Pacific was  
16 very anxious to get into the coal business, and I  
17 believe he influenced it 100 percent.

18 Q And I take it from what you say that you think  
19 it was a practice run, and that Southern Pacific was not  
20 making any money off of it?

21 A I didn't say that. I have my own opinions.

22 Q Do you think they were making any money off of  
23 it?

24 A I haven't the slightest idea.

25 Q Is that traffic still moving, or is that --



1 A No, sir, it is not moving today.

2 Q What was the total figure that resulted from  
3 your portion of the market study in terms of dollars  
4 attributable to the coal, oil, and steel?

5 A You would have to ask, I believe, Mr. Brainard  
6 or Mr. Smith that question. I don't know.

7 Q Did anybody tell you it was around \$18  
8 million?

9 A No, sir.

10 MR. STEPHENSON: Okay. That is all I have.

11 MR. SANFORD: No redirect.

12 JUDGE HOPKINS: You are excused, sir.

13 (Witness excused.)

14 MR. SANFORD: I move the admission of Mr.  
15 Odwalt's verified statement.

16 JUDGE HOPKINS: Any objection?

17 MR. STEPHENSON: No objection.

18 JUDGE HOPKINS: It will be received in  
19 evidence.

20 Call the next witness, please.

21 MR. VAUGHN: Your Honor, at this time may I  
22 make an appearance in the proceedings, please?

23 My name is Stuart Vaughn. I am representing  
24 applicant Southern Pacific Transportation Company. The  
25 business address is 1 Market Plaza, San Francisco,

1 California, 94105.

2 JUDGE HOPKINS: Thank you.

3 Whereupon,

4 WILLIAM W. WHITEHURST, JR.,

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

8 DIRECT EXAMINATION

9 BY MR. MAYO:

10 Q Mr. Whitehurst, would you state your name,  
11 professional affiliation, and address for the record,  
12 please?

13 A My name is William W. Whitehurst, Jr. I am  
14 president of the firm of L.E. Peabody and Associates,  
15 Inc. Our business address is 8200 Professional Place,  
16 Landover, Maryland.

17 Q Do you have before you the verified statement  
18 of William W. Whitehurst, Jr., which appears in the  
19 document labeled DRGW Number 14?

20 A Yes, I do.

21 Q Was that verified statement prepared by you or  
22 under your direction and supervision?

23 A Yes, it was.

24 Q Are there any corrections or additions you  
25 would like to make to your statement?



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1 A No.

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

4 A Yes, it is.

5 MR. MAYO: Your Honor, the witness is  
6 available for cross examination.

7 CROSS EXAMINATION

8 BY MR. VAUGHN:

9 Q Good afternoon, Mr. Whitehurst. My name is  
10 Stuart Vaughn. I am representing applicants.

11 A Good afternoon, Mr. Vaughn.

12 Q One of the primary assignments you had in this  
13 study was to determine the purchase price for certain  
14 lines that are involved in this proceeding. Is that  
15 correct?

16 A That is correct, purchase and/or trackage  
17 rights.

18 Q The lines that are subject to purchase are set  
19 forth in your Exhibit WW-4, Page 1. Is that correct?

20 A Exhibit WW-4 sets forth the lines that are  
21 subject to purchase or, in the alternative, trackage  
22 rights, and the rest of the exhibit sets forth the lines  
23 that are subject to trackage rights.

24 Q Where on Page 1 of that exhibit does it set  
25 forth, explain trackage rights? I see purchase lines.

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1 I don't see any explanation as to trackage rights.

2 A As I understand the DRGW's proposal, they were  
3 asking for purchase or in the alternative trackage  
4 rights. I was asked, as I described in the beginning of  
5 my verified statement, to set out a methodology for  
6 either purchase or trackage rights.

7 What I have shown on this exhibit is the  
8 purchase price, and as I explained in my verified  
9 statement, there is also a methodology for -- my  
10 verified statement also sets out a methodology for  
11 trackage rights.

12 And in fact if you look at the top of Column 6  
13 on Page 1, it shows the value which I used for purchase  
14 on Page 1. On Pages 2, 3, and 4 I show the value at the  
15 top of the page, \$2,036 per million gross ton miles,  
16 which would be used for trackage rights.

17 So that if in the alternative DRGW were not  
18 awarded purchase but were awarded trackage rights, the  
19 value that would apply to the lines on Page 1 would be  
20 determined by applying the value of \$2,036 in lieu of  
21 the value of \$3,428 to each of the gross ton mile  
22 figures shown on Page 1.

23 Q But that value is not set forth on Page 1, is  
24 it?

25 A No. I can give it to you. It is about \$25

1 million.

2 Q I am not requesting that at this time. The  
3 purchase you came out with, the purchase price that you  
4 estimated was set forth at the bottom of that page, and  
5 it is \$43,175,963. Is that correct?

6 A That is correct.

7 Q At Page 11 of your verified statement, you  
8 stated that the Commission has determined that the  
9 values to be used for assignment of purchase prices and  
10 for the computation of rental rates should be the  
11 current fair market value rather than book value or  
12 replacement value.

13 And for that determination, you have cited the  
14 UP-MP-WP decision at Page 589. You included that page  
15 of the Commission's decision in your Exhibit WWW-1.  
16 Would you please now refer to that page of the exhibit  
17 and point to the language on Page 589 of the  
18 Commission's decision which discusses valuing the  
19 purchase price for the forced sale of rail property?

20 A In Finance Docket 30000, none of the parties  
21 was requesting purchase rights. The language that is on  
22 my Exhibit WWW-1 at Page -- which is a copy of Pages 589  
23 and 590 of the ICC's October, 1982, decision, does not  
24 mention purchase, because purchase was not requested.

25 What I am suggesting at Page 11 of my verified



1 statement is, the same methodology may be used because  
2 in both cases you have to have the purchase price before  
3 you can get to the trackage rights. The trackage rights  
4 is obtained by applying an interest rental rate to a  
5 constructed purchase price.

6 Q Is there any place in the decision, MP-UP-WP  
7 decision, where the Commission discusses the purchase of  
8 any line?

9 A Not that I know of, other than they set a  
10 value for the lines.

11 Q And you have already stated, I believe, there  
12 were no rail carriers in that proceeding which requested  
13 a purchase?

14 A Not to the best of my knowledge.

15 Q The Commission's decision in the UP-MP-WP case  
16 speaks several times in terms of a landlord and tenant  
17 rail carriage. In fact, that is probably mentioned on  
18 Page 589. If there was a sale as DERGW proposes in this  
19 case, there wouldn't be any landlord-tenant relationship  
20 on purchased lines, would there?

21 A No, because the DERGW would own those lines,  
22 would have bought the lines.

23 Q They would be the sole operator on those  
24 lines?

25 A That is my understanding, yes. I think in

1 fact I refer to that in my verified statement. I can  
2 give you a reference on that if you would like. If you  
3 look at Page 5, at the top of the page, the first  
4 paragraph says, "The conditions for which the Commission  
5 imposed" -- I am sorry. Let me start that again.

6 "The conditions which the Commission imposed  
7 in FD30000 were for trackage rights under which  
8 competitive railroads were granted the right to operate  
9 over specified rail lines of the merged system."

10 "In that situation, the competitive railroads  
11 are tenants and the merged system is the landlord. For  
12 those DRGW conditions in this proceeding where DRGW  
13 seeks transfer of ownership, DRGW as competitor will be  
14 the buyer and the merged system will be the seller."

15 Q So there will be no tenant-landlord  
16 relationship whatsoever on the lines that Rio Grande  
17 seeks to purchase if that purchase is granted?

18 A That's correct.

19 Q Are you aware of any merger cases in which the  
20 Commission required the applicants to sell a substantial  
21 portion of their rail lines as a condition to the  
22 merger?

23 A Would you please repeat the question?

24 Q Are you aware of any merger cases in which the  
25 Commission required the applicants to sell the



1 substantial portion of their rail lines as a condition  
2 to their combination or merger?

3 A That would depend on how you consider the rail  
4 consolidation proceedings that took place in the  
5 northeast United States. If you were to label that as a  
6 merger, there were substantial sales. If you do not  
7 label that as a merger, then I do not have an example.

8 Q Would you like to put a label on it?

9 A Well, it was definitely the taking of some  
10 properties.

11 Q As you were preparing your study, did you  
12 research that particular question?

13 A Did I research the question of whether the  
14 consolidation in the east was considered a merger or  
15 not? Is that your question?

16 Q Well, the general question of whether the  
17 Commission had required applicants to sell a substantial  
18 portion of their rail lines as part of the merger  
19 process.

20 A No, I did not research that question.

21 Q Have you ever testified before the Commission  
22 or a court as to the value that should be placed on the  
23 purchase price for a forced sale of rail property?

24 A Yes.

25 Q What case or cases?

1           A     I submitted several pieces of evidence on  
2 behalf of the government parties in the proceeding  
3 before the special court dealing with the value of  
4 properties which became Conrail.

5           Q     Were those for trackage rights or for the sale  
6 of property?

7           A     It was the acquisition of properties by  
8 Conrail from the bankrupt estates, the Pennsylvania  
9 Central Railroad, the Erie Lackawanna, the Central  
10 Railroad of New Jersey, Reading Company, Lehigh Valley,  
11 Ann Arbor.

12          Q     How did you determine the suggested purchase  
13 price in that case?

14          A     My assignment in those proceedings did not  
15 involve the direct determination of the purchase price.

16          Q     Has the Peabody firm or anybody connected with  
17 the Peabody firm testified before the Commission or  
18 court as to the value that should be placed on a forced  
19 sale of rail property?

20          A     Now, here I presume you are throughout  
21 distinguishing a sale as opposed to the acquisition of  
22 rights over the property. Am I correct?

23          Q     That's correct.

24          A     Let me ask you a question if I may to  
25 clarify. In the Tucumcari case, under what terms did SP



1 acquire those lines? Was that a forced sale, or not?

2 Q No, that was not a forced sale.

3 A Let me ask you another question. For purposes  
4 of your example here, would you consider a case where a  
5 line was abandoned for rail service and you were talking  
6 about net liquidation value, would you consider that to  
7 be a forced sale?

8 Q Yes.

9 A I think in that case there would have been  
10 members of our firm who would have testified, but I  
11 don't have an active list for you.

12 Q Do you remember what values they used?

13 A Well, my recollection is that in cases like  
14 that, the value is the use -- is the value for non-rail  
15 use, net liquidation value, net of cost removal and so  
16 forth.

17 Q Well, net liquidation value would assume cost  
18 of removal, wouldn't it?

19 A Right. Net liquidation value means it is net  
20 of, yes.

21 Q Based upon the methodology which you have  
22 adopted for valuing the proposed purchase lines, is it  
23 true that that value would be sensitive to how the  
24 density of those lines compared to the system average  
25 density of the company?

1           A     Once I had established the value of the rail  
2 lines of Southern Pacific as a whole, including the  
3 Cotton Belt, I apportioned that value based on gross  
4 tons operated over each line segment, so if the gross  
5 tons over a given line segment changed, its  
6 proportionate share of the total value would change.

7           Q     And that assumes that there is the same level  
8 of profitability for all segments of the system?

9           A     I think I addressed that in my verified  
10 statement, at Pages 29, 30, and 31, and I indicated that  
11 -- I say at the bottom of Page 29 and the top of Page  
12 30, I say, "It is true, of course, that reliance on  
13 gross ton miles will not exactly measure the relative  
14 earnings power of the several SPT lines, since all tons  
15 and all ton miles are not equally profitable.

16                     "Nevertheless, reliance on gross ton miles is  
17 certainly a better indicator of the lines' current value  
18 than their historical costs. Moreover, any distortion  
19 that may result is reduced when it is remembered that  
20 gross ton miles are not being used to estimate fair  
21 market value, but merely to apportion values already  
22 established through the purchase price method."

23                     So I recognize there that all tons and ton  
24 miles don't generate the same level of profits.

25           Q     Would it be your assumption that a higher



1 density line is more likely to be more profitable than a  
2 lower density line?

3 A That is certainly the mechanics of the way I  
4 approach this, assign a higher value to a higher density  
5 line than a lower density line.

6 Q During the course of your study, did you  
7 evaluate what the density of both the lines that D&RGW  
8 desires to purchase and the lines that D&RGW desires to  
9 have trackage rights over compared to the SP system  
10 average?

11 A I think that those numbers -- yes, I did, and  
12 those numbers can be seen by comparing the density per  
13 route mile which appears in Exhibit WW-4 for each of  
14 the lines subject to purchase of trackage rights with  
15 the densities shown on Exhibit WW-3, where I show  
16 average gross ton miles per route mile.

17 Q The densities that you show in WW-4 are  
18 post-merger densities.

19 A They are the densities for Year 4 or the SFSP  
20 normal year as shown in SFSP's March, 1984, application.

21 Q Now, during the course of your study, did you  
22 evaluate what the densities were of those lines in the  
23 base year 1982?

24 A That information would appear also in the  
25 March, 1984, application.

1 Q Okay. Do you remember communicating with Mr.  
2 Nance of the Rio Grande in a letter dated May 30, 1984,  
3 in which you discussed what the densities of the  
4 purchase and trackage rights lines were compared to the  
5 system average?

6 A I was certainly attempting to obtain  
7 information about that period of time, so if you have a  
8 copy of the letter to show me, that might refresh my  
9 memory.

10 Q I am showing you a letter dated May 30, 1984,  
11 from you to Mr. Nance of the Rio Grande, particularly  
12 Page 2 of that letter.

13 A Okay, this certainly looks like my signature.  
14 It certainly looks like the letter which I sent to him,  
15 where I was attempting to obtain information on tonnage  
16 and to check out tonnage figures to see that we had  
17 appropriate tonnage figures to use.

18 Q On Page 2 of that letter, you indicated that  
19 748 miles of main line subject to the purchase had a  
20 density above the 1982 system average. Is that  
21 correct?

22 A Well, I would have to have it in front of me  
23 to answer your question. I have, on Page 2, a table  
24 which showed for main line and branch lines in the  
25 purchase category and the trackage rights category those



1 that had densities above system average and below system  
2 average.

3 Q And insofar as the main line for purchase and  
4 the line for trackage rights in both instances a  
5 clear majority of the lines have a density above the  
6 1982 system average?

7 Would you like to take a look at it?

8 A Out of a total of 2,304.5 miles, which is  
9 shown there, 1,299 or 56 percent of the lines have a  
10 density above -- actually the route miles had a density  
11 above the system average in calendar year 1982, and  
12 1,005.5 or -- well, as you would expect, 44 percent had  
13 a density below the system average.

14 Q That is for 1982?

15 A Calendar year 1982.

16 Q Looking at main lines, this is the same 56  
17 percent, or is it higher?

18 A I would think for the main lines it is  
19 probably higher because the branch lines are going to be  
20 almost by definition of the term below that overall  
21 average. Would you like me to compute that?

22 Q Sixty-five, 70 percent?

23 A Hang on. I will do it very quickly, and can  
24 give you a number.

25 (Pause.)

1           A     Sixty-five percent above and 35 percent  
2 below.

3           Q     In determining the purchase price and as set  
4 forth on Page 1 of Exhibit WWW-4, the densities that you  
5 used for the purchase lines were densities that  
6 presumably would occur in 1989 or 1990.

7                     Is that correct?

8           A     They would occur in what is referred to in the  
9 SFSP's March, 1984, application as the normal year or  
10 the fourth year post-merger.

11          Q     And the reason you didn't use 1982 base year  
12 densities?

13          A     Because it is the level of traffic that will  
14 be handled after the merger, and that is consistent with  
15 my understanding of the level of traffic that was taken  
16 into account by the Commission in its August, 1984,  
17 decision in Finance Docket 300000, so 16, 18, and 25,  
18 when they were evaluating the level of traffic over the  
19 Pueblo, Kansas City line.

20          Q     If you had used 1982 densities, would you have  
21 expected to come up with a higher value?

22          A     I would need to make the computation to answer  
23 your question, because we are also dependent on what the  
24 total tonnage over the former Southern Pacific was in  
25 1982 compared to the normal year.



1           If you will look at Exhibit WW-3, you will  
2 see that as a consequence of the merger from the base  
3 year to the normal year there is a substantial shift of  
4 traffic from Southern Pacific and Cotton Belt lines to  
5 Santa Fe, and the amount of value assigned to a given  
6 line segment is a function of both the actual tonnage on  
7 that line segment and the total tonnage you use as a  
8 divisor to get a value for gross ton miles.

9           Q     In estimating the value for Southern Pacific,  
10 you stated at Page 9 that the highest fair market value  
11 that should be assigned to the lines is the value  
12 implied by the price negotiated by Southern Pacific and  
13 Santa Fe in their combination agreement. Is that a fair  
14 characterization of your statement?

15           A     This is in the full paragraph starting  
16 approximately in the middle of the page? Yes.

17           Q     In making that estimation of the value of  
18 Southern Pacific, you used in part the stock price of  
19 Santa Fe-Southern Pacific. Is that correct?

20           A     That is correct.

21           Q     However, you did not use the SPSP pro forma  
22 price per share of \$28.74.

23           A     No, I did not. I think I referred to that at  
24 Pages 13 through 16 of my verified statement.

25           Q     But if the value implied by the price

1 negotiated by Southern Pacific and Santa Fe is to be  
2 used, then shouldn't you use the pro forma stock price  
3 as part of that negotiated price?

4 A No, I would say that price is what the people  
5 who were putting the deal estimated the market value of  
6 the deal at. I think the price at which the market  
7 actually valued the deal would be appropriate.

8 Q But that so-called market price is subject to  
9 many extraneous events unrelated to the actual  
10 combination of those two companies.

11 A Well, I picked, as I think I say in my  
12 verified statement, I picked the price as of the close  
13 of business, the first day of trading, which would  
14 insulate it from stuff that happened after that. As I  
15 think I also point out, that price is higher than the  
16 average price has been since then.

17 The price that was used in the UP-MP  
18 combination, which was used by the Commission in pricing  
19 the UP-MP for purposes of trackage rights, was, I  
20 believe, the publicly traded price as of January 4,  
21 1980, which was --

22 Q There was an actual purchase of stock in that  
23 case, wasn't there?

24 A That merger was treated as a purchase, as I  
25 understand it, from their S14 registration statement.



1 Q Here we had an exchange of stock.

2 A You had a pooling of interests, if I  
3 understood your S14 registration statement, but from the  
4 point of view of Southern Pacific and from the point of  
5 view of the Southern Pacific stockholder, the price that  
6 I have shown is the price he could actually get for his  
7 stock. He couldn't actually get the pro forma price.

8 Q That is the price that the two companies have  
9 agreed upon, is it not, when they were looking at each  
10 other?

11 A That was the price that was set for purposes  
12 of -- well, let me back up on that. I think I would  
13 want to refer to the S14 registration statement, which  
14 you may have there, and we may have a copy here, for  
15 that matter, to see the role that the pro forma price  
16 played. There was an exchange ratio.

17 Each share, as I point out on the verified  
18 statement, at Pages 13 through 16, each share of  
19 Southern Pacific stock was accorded an exchange of 1.543  
20 for each share of SP-Santa Fe stock. So the Santa Fe  
21 stock was accorded an exchange ratio.

22 So what that stock was worth to the Southern  
23 Pacific stockholder was the number of shares he had  
24 times 1.543 times whatever the market would pay him for  
25 it. SFSP did not guarantee to pay him \$28.74.

1 Q But the \$28.74 is part of the price negotiated  
2 by Southern Pacific and Santa Fe in the combination  
3 agreement?

4 A Well, as I said, in order to address  
5 specifically what the 28.74 was, I would want to refer  
6 in some detail to how it is used in the S14 registration  
7 statement.

8 Q If the \$28.74 per share figure was used, the  
9 stockholder equity that you computed would increase. Is  
10 that correct?

11 A I used the stock price as of the close of  
12 business on the first day of trading, which was \$26 and  
13 three-eighths or, 26.375; 26.375 is obviously lower than  
14 \$28.74. However, the 26.375 when converted gives you a  
15 price higher than the price, and I have an excerpt from  
16 the S14 registration here -- unfortunately I don't have  
17 the whole thing in my book here -- of either September  
18 23rd, '83, October 3rd, '83, and November 8, '83, which  
19 were referred to in the stuff that was -- the materials  
20 that were put out to the stockholders.

21 Q Do you know what the current price of SFSP  
22 is?

23 A The current -- I haven't checked it in the  
24 last few weeks. I have a table that carries it through  
25 the dates before I had to close out for filing my



1 verified statement on Page 15, and obviously that same  
2 table could be extended to show prices since then.

3 I think, however, that the price that was  
4 chosen by the UP-MP -- I mean, by the ICC in reviewing  
5 the UP-MP, was the price as of the date of  
6 consolidation.

7 Q But that was set up as a different  
8 transaction.

9 A Well, yes. My understanding is that you could  
10 -- I don't see that as a big impediment to valuing the  
11 SFSP.

12 Q As part of your determination of the market  
13 value of the Southern Pacific liabilities, you use a  
14 present value of those liabilities rather than the gross  
15 amount of the liabilities. Would you explain why you  
16 did that?

17 A Because in assuming the liabilities of the  
18 Southern Pacific, that's what the SFSP would have to  
19 pay to retire.

20 Q Now, as part of that determination, in making  
21 the present value determination, you used a discount  
22 factor. Is that correct?

23 A That is correct.

24 Q Could you explain the importance of the  
25 discount factor just in general terms?

1           A     Well, the discount factor shows what you would  
2 have to pay in present dollars to account for the value  
3 of debt that would come due some time in the future, and  
4 also for the flow of interest payment which you will be  
5 making some time in the future.

6           Q     Would there be a significant difference in  
7 your calculation of what the present value of the  
8 significant sum such as the SP liabilities if you were  
9 to use a 20 percent discount factor versus a 10 percent  
10 discount factor?

11          A     Well, 20 percent discount factor would give a  
12 lower present value than a 10 percent discount factor.  
13 Now, the most recent data that I had available as of the  
14 time I filed my verified statement was the ICC's cost of  
15 capital determination for 1982. Their cost of capital  
16 determination for 1983 did not come out until, I think,  
17 in November or maybe the beginning of December some  
18 time.

19                   I took a rough check when the 1983 cost of  
20 capital determination came out to see what -- the 1982  
21 data obviously was the most recent I had available, but  
22 the date of valuation that I applied was September,  
23 1983, so I took a rough cut to see what the impact would  
24 be of using the 1983 debt components of the ICC's cost  
25 of capital determination, and it changed the overall



1 answer by about 1.5 percent, if I recall correctly.

2 Q Is there a cumulative effect that is greater  
3 than just simply the spread between discount if you use  
4 separate discount factors, again using a 20 percent and  
5 10 percent example for determining present values?

6 A I am sorry, I don't understand your question.

7 Q It is not just merely a 10 percent difference  
8 between the discount factor, but since you are trying to  
9 calculate values for subsequent years, isn't there a  
10 cumulative effect if there is a difference?

11 A Oh, in other words -- I think I understand  
12 what your question is. You are saying, if I have got  
13 debt that is not due for five years, and I discount it  
14 back by a 20 percent factor, I shrink it down more than  
15 if it is debt that is due in five years at a 10 percent  
16 factor, and if it goes out seven years instead of five,  
17 the numbers get smaller. The further in the future the  
18 debt is, the smaller its present value is, because of  
19 the longer number of interest periods.

20 Q As you have already mentioned, you used the  
21 1982 cost of debt, current debt calculated by the  
22 Commission for your discount factor. Is that correct?

23 A Yes. I think I refer to that. As a matter of  
24 fact, I do refer to it at the bottom of Page 19 and the  
25 top of Page 20 with the footnote at the bottom of Page

1 20.

2 Q Do you remember what the debt was for the  
3 bonds, notes, and debentures in 1982?

4 A I think I have that provided. It appears at  
5 Page 4, Note 3 of the ICC's decision in Ex Parte 436,  
6 and I think I have a copy of that particular page, which  
7 I included as part of my work papers.

8 Okay, the debt cost of bonds, notes, and  
9 debentures was 13.79 percent. For equipment trust  
10 certificates it was 13.55 percent. And for conditional  
11 sales agreement, it was 14.51 percent. That is the  
12 overall for the railroads, the Class 1 railroads  
13 included in the AAR sample.

14 If I recall correctly, the cost of debt for  
15 Southern Pacific was higher than the overall average.

16 Q Have you testified in any of the cost of  
17 capital cases, beginning with Ex Parte 393?

18 A I have testified in 393, and -- well, I was  
19 going to say 347. There is stuff going on in that that  
20 bears on investment.

21 Q Who did you represent in the Ex Parte 393  
22 proceeding?

23 A That was American Paper Institute.

24 Q At that time did you take the position that a  
25 current cost of debt is inappropriate and that an



1 imbedded debt level should be used?

2 A I don't have my verified statement here from  
3 that proceeding. If you have got it and can refer it to  
4 me --

5 Q Do you have any recollection?

6 A No, I really don't, but you know, if you have  
7 a copy, we can look, and it will say whatever it says.

8 Q You are aware that many of the representatives  
9 of shippers argue that the current cost of debt was  
10 inappropriate, and that the imbedded debt level should  
11 be used?

12 A That's right. In some of the early cost of  
13 capital proceedings the imbedded debt level was used,  
14 and then there was both an imbedded debt showing and a  
15 current debt showing, and then the ICC went to a current  
16 debt basis.

17 Q Is it your opinion that the current cost of  
18 debt should be used?

19 MR. MAYO: I am sorry. With respect to his  
20 testimony here, or in the cost of capital cases?

21 MR. VAUGHN: In the cost of capital cases.

22 THE WITNESS: Well, the cost of capital cases  
23 have a substantial impact on the setting of rates. What  
24 we are looking at here is a determination of value. In  
25 terms of setting the rates, if you are trying to figure

1 what the railroad's costs are, the debt that they have  
2 got out there presently is what their costs are.

3 If you are talking about buying a railroad,  
4 the question is what your costs would be to retire that  
5 debt. And the cost to retire that debt is the cost of  
6 what you would have to do now.

7 Q Well, if one assumes that they are not going  
8 to retire the debt tomorrow, but in fact assume that  
9 debt, that debt is not costing them the current cost of  
10 debt. Is that correct?

11 A Well, they can, when they are assuming it,  
12 they can retire it. If the current cost of debt is  
13 higher than the imbedded debt rate, and the stuff is due  
14 in the future, they can retire it for less than its face  
15 value. That is why bonds sell at a discount when they  
16 have got a 4 percent coupon and the rates are higher  
17 than 4 percent.

18 Q Do you know what either the rail industry  
19 specifically or Southern Pacific's imbedded debt level  
20 is at the present time?

21 A I think it sometimes appears in this AAR  
22 statement of railroad facts. I will see if I can find  
23 it. I also think that the rate shown in here is --  
24 well, I thought it was in here but at the moment I am  
25 not finding it. So I guess my answer is going to be,



1 no. I don't know offhand what the imbedded debt rate  
2 is.

3 Q As part of the transaction with the merger of  
4 Southern Pacific Transportation Company and Santa Fe, is  
5 it your understanding that --

6 A That is a readily calculable number, by the  
7 way. Excuse me. I didn't mean to interrupt your  
8 question.

9 Q That the debt will not be repaid  
10 immediately?

11 A I am sorry. Would you give me that question  
12 again, please?

13 Q As part of the merger of Southern Pacific and  
14 Santa Fe, is it your understanding that the outstanding  
15 debt of Southern Pacific is not going to be retired upon  
16 consummation of that merger?

17 A I don't recall whether the S14 registration  
18 statement spoke to that one way or the other.

19 Q So you have no knowledge --

20 A What I would suggest that I could do or one  
21 could do is see what is said in there. But I don't  
22 recall anything in there about whether that was going to  
23 be retired or not.

24 Q Assuming that in fact they are not going to  
25 retire that outstanding debt the day of or the day after

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1 consummation of the merger, wouldn't it be more  
2 appropriate for a discount factor to use the imbedded  
3 debt level?

4 A No, I would think that one should use the  
5 current cost of debt, and I would suggest to you that  
6 that is consistent with what the UP-VP did in their  
7 merger in terms of valuing the debt, and that that was a  
8 figure that was utilized by the ICC both in their, I  
9 think, in their principal determination of October,  
10 1982, but for sure in their August, 1984, determination  
11 of debt. That was the present value of the debt.

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1 Q If the current cost of debt is to be used as a  
2 discount factor, wouldn't it be more appropriate to use  
3 the 1983 debt figure for a 1983 transaction?

4 A Actually, the most appropriate might be to use  
5 the SP's actual cost of debt in 1983. But I would agree  
6 with you that '83 is closer to the time period we are  
7 looking at than '82.

8 However, as I suggested in my verified  
9 statement, or said, '82 is what I had. I didn't have  
10 '83 at that time.

11 Q I understand. The Commission's decision had  
12 not come out.

13 Since this transaction was consummated at the  
14 end of the year, would you consider that perhaps even  
15 1984 cost of debt would be appropriate?

16 A Well, the information that I had showed the  
17 composition of SP liabilities as of September 30, 1983.  
18 It didn't give me a December 31 or December 27, 1983  
19 structure of liabilities.

20 As a matter of fact, I think, if I recall  
21 correctly, since they would have included not only the  
22 rail but the other components of the SP, the 1983 R-1  
23 annual report wouldn't do it for you because it wouldn't  
24 give you all of the components of the debt for the  
25 entire entity. It's in business segments.

1 Q We've already gone through the percentages for  
2 the various categories in 1982 cost of debt. Do you  
3 have the comparable categories and figures for 1983 cost  
4 of debt?

5 A Yes. I think I may.

6 (Pause.)

7 All right. This was the ICC's Ex Parte 452  
8 proceeding, railroad cost of capital 1983, served  
9 October 31, 1984, and at page 2, note 5, the following  
10 components of debt are shown: bonds, notes and  
11 debentures, 11.72 percent; equipment trust certificates,  
12 11.26 percent; conditional sales agreements, 11.72  
13 percent.

14 As I have, I believe, indicated earlier, I  
15 took a rough cut at the impact of this thing, these  
16 changes, and it had about a 1-1/2 percent -- it changed  
17 the valuation of the SFSP by about 1-1/2 percent.

18 I would also like to point out while we are on  
19 that, that these debts, at least with regard to the  
20 bonds, are pegged effectively at the average for the  
21 year, and as of October 1, which would be the point  
22 closest to September 30, 1983, the bonds had an average  
23 rate higher, had 11.97 percent which is higher than the  
24 overall average of 11.72.

25 Furthermore, the Southern Pacific's rate was



1 12.70 which is higher than the 11.97, which means that  
2 if I were to use the Southern Pacific's rate instead of  
3 the '83 average, that the change would have been less  
4 than the 1.5 percent that I referred to earlier.

5 Q Did you check what the Santa Fe's current cost  
6 of debt is?

7 A Yes. That's also in the same statement. It  
8 was also higher in October than it was for the year as  
9 an average. And if you take the Santa Fe and the  
10 Southern Pacific together, without weighting, just a  
11 simple average, you are going to come out almost right  
12 on the average in October.

13 Q Would you please describe the scope of the  
14 trackage rights which were granted to the Rio Grande in  
15 the UP/MMP/WP merger case?

16 A Well, the word "scope," distance-wise, it was  
17 from Pueblo to Kansas City. In terms of -- it was  
18 basically overhead, except for the right to serve  
19 several intermediate points. I think Herington was one  
20 and Osawatomie was another.

21 Q Did they have the right to serve those points  
22 or merely to interchange traffic with other rail  
23 carriers at those points?

24 A I don't recall offhand. I would have to check  
25 the decision to see.

1 Q Okay. At page 572 of the Commission's  
2 decision, the rights are characterized, that the Rio  
3 Grande has the right to interchange traffic with SSW at  
4 Herington, Kansas, and a limited right of interchange  
5 with MP at Geneseo, Gypsum, Lomax, and Osawatomie,  
6 Kansas.

7 A If that's what it says, that's what it says.

8 Q So, given the right to interchange traffic is  
9 different than --

10 A The right to serve local traffic.

11 Q Would you agree there was approximately 619  
12 miles, give or take a mile or two?

13 A That sounds like about the right number.

14 Q Similarly, could you please describe the scope  
15 of the trackage rights which were granted to SSW in the  
16 UP/MP/MP merger proceeding?

17 A The rights granted to the Southern Pacific and  
18 Cotton Belt, Kansas City to St. Louis. I don't know the  
19 mileage there offhand.

20 Q Again, they had a right to interchange traffic  
21 at certain selected points, but not to serve customers.  
22 Is that correct?

23 A I would want to check the decision to be sure,  
24 but that sounds right.

25 Q Do you have the August 20, 1984 Commission



1 decision in docket 30,000?

2 A Not here. Say that again? I'm sorry. August  
3 20? Yes, I do; I have it in front of me.

4 Q Referring to pages 16 through 18 --

5 A Okay.

6 Q Do you see a description of the scope of the  
7 trackage rights in that decision on those pages?

8 A Yes. You can point me to a specific sentence  
9 that answers the questions, and I'll be happy to read it  
10 in.

11 Q As soon as I find the decision, if you will  
12 hold on a minute, please. At page 18 of that decision,  
13 in the second full paragraph, it talks about the Cotton  
14 Belt seeking to interchange traffic at six points in  
15 Missouri.

16 A Yes. Sedalia, Pacific, Valley Park, Marshall,  
17 Pleasant Hill, and Labadie.

18 Q Later in that decision, the Commission denies  
19 Cotton Belt the right to serve Labadie. So they were  
20 able to interchange traffic at five different points.  
21 Again, that is different than being able to serve  
22 customers; is that correct?

23 A Interchange does not give you the right to  
24 necessarily -- to customers.

25 Q Now, could you please describe the scope of

1 the trackage rights that the Denver & Rio Grande seeks  
2 to acquire in this proceeding?

3 A In terms of miles, those mileages are shown,  
4 among other places, in my exhibit WWW-4 for route  
5 miles. The terms are described in DRGW's application,  
6 in their filings, and they are seeking, with regard to  
7 the lines from Ogden west to Roseville, purchase or, in  
8 the alternative, trackage rights.

9 Also, for the lines from Flanigan to Klamath  
10 Falls, purchase or, in the alternative, trackage  
11 rights. They are seeking for other lines extending  
12 generally --

13 JUDGE HOPKINS: Excuse me, Mr. Vaughn. Is it  
14 necessary for this gentlemen to indicate the parameters  
15 of the trackage rights? Everything is in the record.

16 MR. VAUGHN: Not the description of the lines  
17 themselves.

18 BY MR. VAUGHN: (Resuming)

19 Q These are not bridge service rights?

20 A These are for full local service; yes.

21 Q They want to be able to serve customers; they  
22 want to be able to locate customers on the line and be  
23 able to serve those customers. Is that correct?

24 A That's my understanding.

25 Q So, given those differences --



1           A     Now, wait a minute. With regard to the  
2 trackage rights line, I'd have to see as whether they  
3 wanted to also be able to locate new customers on the  
4 line.

5           Q     Assuming that they are seeking that scope,  
6 then, wouldn't you say that the trackage rights that  
7 were granted to the Rio Grande and the Cotton Belt and  
8 UP/MP/WP, the trackage rights sought by D&RGW in this  
9 merger proceeding are not comparable?

10          A     No, I wouldn't say they are not comparable. I  
11 would say that one is more extensive than the other.

12          Q     Significantly more extensive?

13          A     Well, that's going to depend on how much local  
14 traffic there is out there on the line. If there's no  
15 local traffic, then it isn't going to make any  
16 difference, obviously. If there is some local traffic,  
17 it will make a difference.

18                I haven't made a study of the extent of local  
19 traffic on these lines.

20          Q     Did you discuss that with D&RGW or with any  
21 personnel there?

22          A     I would imagine that it's addressed in the  
23 verified statements.

24          Q     I'm sorry. Did you discuss that with anybody  
25 at the Rio Grande?

1           A       Not in any detail. I understood that they  
2 wanted local rights. And the purchase price I  
3 determined relates to all rates on the rail lines, all  
4 rail-related rights on the rail lines.

5           Q       Are you aware of any ICC decisions which make  
6 a distinction, for purposes of evaluating trackage  
7 rights compensation, between bridge rights and the full  
8 service rights sought by D&RGW in this proceeding?

9           A       None come to mind offhand. I imagine there  
10 are some that deal just with bridge rights and some that  
11 deal with local service rights.

12          Q       Did you do any research on this point when you  
13 were doing the evaluation of trackage rights  
14 compensation?

15          A       Well, in my evaluation, I was looking at  
16 trying to establish what was paid for the Southern  
17 Pacific, for the railroad, and the railroad included  
18 local traffic as well as overhead traffic.

19                 And since my understanding was that D&RGW  
20 wanted local rights as well as overhead rights, I made  
21 no deduction to back out a value for not having -- or  
22 reduce it for not having local rights.

23          Q       If the Commission were to grant Rio Grande  
24 bridge rights between all of the trackage rights origins  
25 and destinations named in your exhibit WWW-4, pages 2



1 through 4 of that exhibit, instead of the full service  
2 trackage rights requested in this case, would you advise  
3 Rio Grande that the rental value shown in that exhibit  
4 would be the same?

5 A I would advise Rio Grande that the rental  
6 value that I had constructed related to the value of the  
7 Southern Pacific Railroad and the railroad services,  
8 including the Cotton Belt, that the railroad provided;  
9 and that those services included local rights.

10 And I think, then, DRGW would have to consider  
11 whether that was an appropriate price when they did not  
12 include local.

13 Q Well, weren't you doing the computation that  
14 was based on what you believe the Commission did in the  
15 docket 30,000 case for evaluating trackage rights?

16 A I certainly used that as a major benchmark.

17 Q Is there anything in that exhibit, WW-4,  
18 pages 2 through 4, that show any additional dollars for  
19 the full service rights that DRGW are seeking?

20 A WW-4 shows values for full service rights.  
21 If something less than full service rights were -- and I  
22 was looking at what the railroad was worth, and so that  
23 included the full services that the railroad provides.

24 Q How did you modify the Commission's decision  
25 in docket 30,000 to arrive at your computation?

1 A I'm sorry?

2 Q How did you modify the Commission's approach  
3 in docket 30,000 to arrive at your calculation in  
4 Exhibit WWW-4?

5 A Well, as I said, I used the Commission's  
6 decision as a major benchmark for value. And in this  
7 situation, you are looking for value which included  
8 local rights and I made no adjustment to take out the  
9 lack of local rights.

10 Q Where in the Commission's docket 30,000  
11 decision is there an adjustment for whether there are  
12 local rights or bridge rights?

13 A Well, the Commission's decision gets to the  
14 value of individual lines. And I don't know the extent  
15 of local traffic versus overhead traffic on those  
16 lines.

17 The significance of that in the 30,000  
18 decision with regard to Pueblo, Kansas City, and with  
19 regard to Kansas City-St. Louis will depend on the  
20 extent of local traffic versus overhead traffic on those  
21 particular lines.

22 Q In making their evaluation, did the Commission  
23 eliminate local traffic or eliminate overhead traffic in  
24 valuing the line?

25 A I believe that they used both local and



1 overhead traffic in getting the value of the lines.  
2 Well, wait a minute. I don't think I can speak to that  
3 for Kansas City-St. Louis because I don't think any  
4 information -- or whatever's been submitted was  
5 submitted after the August 20 or August 30, 1984  
6 decision.

7 So I can only speak to what was in that  
8 decision with regard to Pueblo-Kansas City. Maybe I  
9 should refer to that. I think they did include local  
10 traffic and overhead traffic.

11 If you'll hang on a second.

12 (Pause.)

13 I recall that there was some question as to  
14 the estimate of traffic on the line and that is  
15 addressed at pages 8 and 9.

16 Q That's Missouri Pacific traffic; is that  
17 correct?

18 A That's right.

19 Q And there's no distinction between local and  
20 overhead? It's just MP traffic on that line?

21 A That's correct.

22 Q So that the approach that the Commission has  
23 taken in this case and the approach that you are taking  
24 are similar. The Commission did not back out any values  
25 for the bridge rights versus the full service rights?

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1           A     They valued -- well, I don't recall that DRGW  
2 asked for local rights on those lines. They valued --  
3 they, the Commission, valued those lines in terms of  
4 their value to the seller or to the landlord.

5           Q     Taking into account all of the traffic that  
6 was moving on the line?

7           A     Well, taking into account the traffic that  
8 would move on the line post-merger and after accounting  
9 for traffic the DRGW could divert.

10          Q     Do the Rio Grande and Southern Pacific have  
11 any trackage rights agreements in effect right now, to  
12 your knowledge?

13          A     I don't know the answer to that question. So,  
14 to my knowledge, no.

15          Q     Did you ask that question of any Rio Grande  
16 personnel when you were doing the study?

17          A     We had several discussions about approach at  
18 various times along the line, and it was -- no such  
19 trackage rights were brought to my attention. I am  
20 aware that there are some trackage rights affecting the  
21 lines that are subject to the purchase and/or trackage  
22 rights conditions.

23          Q     Aside from the Rio Grande trackage rights over  
24 the Missouri Pacific between Pueblo and Kansas City,  
25 does the Rio Grande and any other rail carrier have a



1 trackage rights agreement in effect now?

2 A Well, I'm not sure what the status of the  
3 property is between Pueblo and a point somewhat east of  
4 Pueblo where Santa Fe lines get used, whether that's  
5 reflected in the trackage rights agreement between DRGW  
6 and Santa Fe, or whether -- I think it's the case, but  
7 I'm not sure that DRGW operates via utilizing MP's  
8 trackage rights over Santa Fe.

9 Q So you're not sure? You are not sure if there  
10 is one or not?

11 A Well, I mentioned this one situation.

12 Q Do you know what the terms are?

13 A I guess in that case, the safest thing to say  
14 is I'm not sure, but I think that in that case, DRGW  
15 operates as part of MP's trackage rights over Santa Fe.

16 Q At page 6 of your statement, you state that  
17 you have shown the actual rate of return figure  
18 determined in accordance with the ICC's finance docket  
19 30,000 decision for application to SPT lines where DRGW  
20 conditions consist of trackage rights.

21 Is that a fair characterization of the  
22 statement on page 6?

23 A The top of page 6: "I also show actual rate  
24 of return figures, determined in accordance with the  
25 ICC's finance docket 30,000 decisions for application to

1 SPT Lines where DRGW conditions consist of trackage  
2 rights."

3 That's what it says.

4 Q For the Pueblo to Kansas City segment, how did  
5 the Commission compute Missouri Pacific's pretax return  
6 on investment?

7 A Using the effective tax rate.

8 Q They used the base year, did they not?

9 A Yes. They used 1979.

10 Q One year?

11 A That's correct.

12 Q In making the calculation for Southern Pacific  
13 Transportation Company, did you use one year?

14 A No, I used a five-year average and the values  
15 entering into that are shown at my Exhibit WW-6. For  
16 both 1932 and 1983, the Southern Pacific had a negative  
17 rate of return before taxes which would have translated  
18 into how much would you like to pay me to operate over  
19 you railroad?

20 And I thought in that situation, it would be  
21 more appropriate to use a five-year average to smooth  
22 out the negative years.

23 Q With the use of simply 1982 as the base year  
24 for this merger proceeding; is that correct?

25 A This merger proceeding? Well, in terms of the



1 base year data which SP and Santa Fe filed, they were to  
2 use '82 data. I think the Protestants or the  
3 responsive applications were supposed to use '83, partly  
4 because I guess '83 data wasn't available to SP and  
5 Southern Pacific in time for their March application,  
6 March 1984 application.

7 The deal was actually put together in 1983.

8 Q You may have alluded to this before, but  
9 assuming 1982 is the base year for the data, what would  
10 be the effect of using SPT's rate of return for 1982 in  
11 your formula?

12 A That is a negative rate of return. It would  
13 translate to how much do you want to pay the DRGW?

14 JUDGE HOPKINS: Excuse me a minute, Mr.  
15 Vaughn. Do you have many more?

16 MR. VAUGHN: Twenty or 25 minutes.

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

18 (Recess.)

19 JUDGE HOPKINS: Back on the record.

20 Mr. Vaughn.

21 BY MR. VAUGHN: (Resuming)

22 Q At page 34 of your statement, you include a  
23 quote from the Commission's finance docket 30,000  
24 decision concerning the need for the landlord's actual  
25 rate of return to be used.

1 A Yes.

2 Q In the UP/MP/WP case, who is the landlord rail  
3 carrier for D&RGW?

4 A The actual rate of return of the MP was used.

5 Q The MP being the landlord; is that correct?

6 A Yes.

7 Q And it's the same for the Cotton Belt-SSW  
8 between Kansas City and St. Louis?

9 A Yes.

10 Q And as you understand it, in that transaction,  
11 the Missouri Pacific retained its corporate existence;  
12 is that correct?

13 A I'd have to check the S-14. I think that's  
14 right, but I'd have to check that to be sure.

15 Q Now, in this transaction, Southern Pacific  
16 Santa Fe merger, Southern Pacific will not be the  
17 landlord following the merger; is that correct?

18 A Well, the DRGW will be operating over the  
19 lines of the Southern Pacific.

20 Q They'll be operating over the lines of the  
21 Southern Pacific Santa Fe Railway Company; is that  
22 correct?

23 A If the merger is approved and if the  
24 conditions are approved, if the conditions are  
25 established as a condition of the merger.



1 Q So the landlord would be Southern Pacific Santa  
2 Fe.

3 A Post-merger, yes.

4 Q So in getting the landlord's actual rate of  
5 return, shouldn't we be looking at what the expected  
6 rate of return of SPSF for a normal year would be to  
7 make that determination?

8 A Well, you refer to the docket 30,000 decision,  
9 and what the Commission used was the MoPac's actual rate  
10 of return, pre-merger, in 1979, not post-merger.

11 Furthermore, the post-merger rate of return is  
12 -- I think it's probably something stronger than  
13 conjectural, but it is a projection. It is not an  
14 actual.

15 Q But to have the landlord and tenant competing  
16 on an equal basis, you would not have the tenant locking  
17 at what the landlord's rate of return was seven years  
18 ago, would you?

19 A Well, in the UP/MP decision, the Commission  
20 used the MoPac's 1979 rate of return, and we are now in  
21 1984. It also is my understanding that the rate of  
22 return, when set, stays the rate of return that gets  
23 used for existing plant.

24 Q Would you think that the reason perhaps the  
25 Commission used the MoPac is simply because they were

1 going to continue to be the landlord, both pre- and  
2 post-merger?

3 A No, I wouldn't think that. They could have  
4 used a post-merger rate of return for the MoPac, had  
5 they wanted to. As a matter of fact, it would be easier  
6 to do it for the MoPac than the SP if, as you say, the  
7 MoPac is separate.

8 Q How many freight cars are to be included as  
9 part of the \$43 million purchase price?

10 A The \$43 million purchase price includes a pro  
11 rata share, pro rata on a dollar basis share of the  
12 rolling stock of the Southern Pacific.

13 Q Did you break that down into X number of  
14 boxcars?

15 A I did not make a breakdown either by type of  
16 equipment or by number of units of each type of  
17 equipment, other than it is in there in terms of dollar  
18 value. I assume that the DRGW and the SP, if the merger  
19 is approved and the conditions are approved, would work  
20 out the specifics.

21 The guideline is there. It is a dollar  
22 measure rather than a number of units measure.

23 Q So at this point in time, you do not know what  
24 kind of equipment would be included?

25 A No. I know that Mr. Nance made an estimate of



1 how many locomotives he would need, but I have made no  
2 estimate of specific types of equipment or numbers of  
3 units. There's a pot of money there that buys  
4 equipment, and the specifics of what equipment it buys  
5 would be for the parties to work out.

6 Q Are all types of equipment -- for example,  
7 boxcars, covered hopper cars, gondolas -- costs the  
8 same?

9 A No. They have different costs and they have  
10 different value, depreciated values.

11 Q So, based on the kind of equipment that would  
12 be needed or included if that was granted by the  
13 Commission, your costs would vary.

14 A I'm sorry, say that again?

15 Q Well, because these different types of  
16 equipment do not have the same costs and the same price,  
17 then until you determine what kind of equipment would be  
18 included in this, you can't really determine what value  
19 should be placed on that equipment?

20 A No. I disagree with you. I know how much the  
21 value is. What's not in there is the number of units it  
22 buys.

23 Q Pardon?

24 A The value is there. The number of units that  
25 it buys is not specified. It might buy, you know, 200

1 locomotives, or it might buy 400 something-else's, or it  
2 might buy some mix.

3 Q How would it be selected? How would this  
4 equipment be selected?

5 A I was not asked to address that in my study,  
6 and I didn't. I established a value. The value that I  
7 developed for the purchased lines included equipment. I  
8 was not asked to specify.

9 Q Do you know who would select the equipment?

10 A No, I do not. I would hope it would be done  
11 jointly by Southern Pacific and DRGW.

12 Q Is it correct that the Denver & Rio Grande  
13 contemplated the inclusion of 129 SPSF locomotives as  
14 part of the purchase price?

15 A I would want to refer to Mr. Nance's statement  
16 to be sure. I recall that he said that he would need  
17 129 additional locomotives to run the service. I don't  
18 recall whether he specified types of locomotives and  
19 that type of thing.

20 Q You don't know whether those were all road  
21 locomotives or some switching locomotives or a  
22 combination?

23 A I'm referring to Mr. Nance's statement.  
24 What's the 129? The details as to what constitutes the  
25 129 is whatever detail there is in his statement.



1 Q Do you know how those locomotives would be  
2 selected?

3 A No, I do not.

4 Q Do you know who would do that selection?

5 A You asked me that question a minute ago. No,  
6 I said hopefully --

7 Q This is for locomotives.

8 A Oh, I'm sorry. No.

9 Q Do you know if that equipment is subject to  
10 equipment trusts or conditional sale agreements or  
11 leverage leases or any other kind of financing?

12 A Well, there are equipment trusts and  
13 conditional sales agreements -- Southern Pacific has  
14 equipment trusts and conditional sales agreements as  
15 part of their inventory of debt.

16 And when I valued the Southern Pacific, I  
17 included the debt on equipment. But I don't know  
18 specifically what items of debt apply to what pieces of  
19 equipment. But I have my purchase price, or the value  
20 of the railroad includes reimbursement for that.

21 Q Did you discuss with Rio Grande or its outside  
22 counsel whether the property was encumbered?

23 A Did I discuss with them whether it as  
24 encumbered or not? Well, since -- I guess the answer is  
25 somewhat the same as we just went through with equipment.

1           Since we valued the debt, we valued the debt  
2 on both the equipment and the fixed plant.

3           Q    Are you generally familiar with provisions of  
4 equipment trusts and conditional sale agreements?

5           A    Generally.

6           Q    Do they normally have call provisions?

7           A    I don't know offhand. I'd have to look at a  
8 specific one to answer the question.

9           Q    Aren't most of those agreements prohibiting  
10 acceleration of the payment?

11          A    I don't know the answer to that question.

12          Q    Assuming that they did, how would you expect  
13 SPSF to remove -- let's back up for a second. I assume  
14 that the purchase price for the equipment -- both the  
15 cars and the locomotives that are to be acquired free,  
16 without encumbrance.

17          A    Clear of encumbrances with regard to rolling  
18 stock and on a quit claim basis with regard to  
19 property.

20          Q    Assuming that the equipment is subject to  
21 equipment trust or conditional sale agreements, how  
22 would you propose SPSF would remove those encumbrances?

23          A    Pay them off.

24          Q    At what cost?

25          A    Well, as I said, I have the present value of



1 the debt there.

2 Q Assuming that those financing arrangements do  
3 not have call provisions which permit the acceleration  
4 of payment, how would SPSF remove that encumbrance?

5 A Well, either by the parties choosing other  
6 units or by paying them as they came due.

7 Q Do you know if the Rio Grande is willing to  
8 assume those liabilities?

9 A The Rio Grande -- the price which I have  
10 developed, as I described in my verified statement, pays  
11 for the liabilities already, so the DRGW should not be  
12 asked to pay for them twice.

13 Q The purchase lines, again, are to be acquired  
14 free and clear of all encumbrances; is that correct?

15 A Yes.

16 Q Are you aware that there is an outstanding  
17 mortgage on those lines?

18 A On the specific lines?

19 Q Yes.

20 A I know that there were mortgages in the  
21 inventory of Southern Pacific's debt, and I did not  
22 distinguish between mortgages on individual lines. By  
23 happenstance, I think that there was some mortgage  
24 covering the Central Pacific Lines that came due in  
25 84, I believe.

1 Q Are you aware that there is approximately \$85  
2 million in mortgage outstanding on the Central Pacific  
3 Lines?

4 A That would include these lines and other  
5 lines, other Central Pacific lines?

6 Q It would include these lines.

7 A And other lines as well?

8 Q Lines subject to the trackage rights.

9 A Other lines that are not subject to the  
10 trackage rights?

11 Q About 30 percent more.

12 A Well, I have not seen debt instruments on  
13 these specific lines. But again, I valued the debt that  
14 was there as of September 30, 1983, and did not take  
15 into account actions that Southern Pacific has taken  
16 since that time.

17 Q Were you aware that Southern Pacific has  
18 engaged in a rail program in which they acquired a \$135  
19 million credit line?

20 A I knew that Southern Pacific was attempting to  
21 obtain financing in the spring of 1983. I don't know  
22 the specifics of the financing which they obtained.

23 Q Are you aware that the collateral for the \$135  
24 million include the lines that D&RGW desires to  
25 purchase?



1 A Well, if you've got something you can show me,  
2 I can look at it.

3 Q Are you aware of that now?

4 A No, I'm not aware of it now. And of the --  
5 for the value that I developed, it was there in '83 as  
6 of it was purchased.

7 Q Assuming for now that those numbers are  
8 correct, that would mean that there is approximately  
9 \$220 million outstanding on those lines. Would that  
10 give you an indication of a value that the trustee for  
11 that mortgage has placed on those lines?

12 MR. MAYO: Your Honor, I object to that  
13 question. I don't know what the \$220 million in  
14 reference to those lines means.

15 JUDGE HOPKINS: Are you stating it's just the  
16 lines on the trackage rights, or the purchase, or  
17 others?

18 MR. VAUGHN: It's the CP Lines I'm discussing,  
19 which Rio Grande seeks to acquire slightly more than 50  
20 percent of the CP Lines, and when you add in their  
21 trackage rights, that's about 75 percent of those  
22 lines.

23 JUDGE HOPKINS: Go ahead.

24 THE WITNESS: Well, I'm sorry. First of all,  
25 I'm not quite sure where you get the 220. Would you add

1 85 and 135?

2 BY MR. VAUGHN: (Resuming)

3 Q I don't know what the terms of these lendings  
4 are. Well, you've already indicated they cover lines in  
5 addition to those that we're seeking to purchase, and  
6 also lines in addition to those that we're seeking  
7 trackage rights, "we" being DRGW in this case.

8 I don't know whether -- well, I would presume  
9 -- I don't presume -- they may also be covered by the  
10 general financial structure of the Southern Pacific.

11 Q Assume they are limited solely to what is  
12 referred to as the CP Lines, of which more than 50  
13 percent are what D&RGW seeks to acquire, more than 75  
14 percent trackage rights and acquisition lines.

15 Would that give you an idea of what the  
16 trustee, what value the trustee has placed on those  
17 lines?

18 A I don't think I'm in a position to make a  
19 judgment from the information you have given me. The  
20 value that was placed on the merger, when prorated, of  
21 those lines, doesn't come up to be anywhere that kind of  
22 a number.

23 Q Did you perform a study to determine the book  
24 value of the lines, subject to Rio Grande's purchase  
25 proposal?



1           A     As a part of our discovery request, we  
2 requested ledger values for lines west of Ogden and  
3 north of Fresno. We obtained that information on more  
4 or less a line segment basis.

5           But as I indicate in my verified statement, I  
6 think I indicated in my verified statement --

7           Q     I just asked you if you performed the study.  
8 That's all I'm asking right now.

9           A     Well, I'm not sure what you would characterize  
10 as a study. In response to discovery requests, we  
11 received information as to the historical book value of  
12 SP lines west of Ogden and north of Fresno.

13          Q     Do you recall what the book value of the lines  
14 subject to the purchase were?

15          A     No, I don't offhand. It would be in the SP's  
16 responses.

17          Q     Assume, for purposes of the question, that the  
18 book value was approximately \$183 million.

19          A     The book value or what? Excuse me.

20          Q     Of the lines the D&RGW seeks to purchase.

21          A     The purchase -- the lines they seek to  
22 purchase -- okay, but not including the --

23          Q     We are not including the trackage rights.

24          A     Okay.

25          Q     And SPSF is forced to sell those lines to the

1 Rio Grande for \$43 million. Would the sale of those  
2 lines require reporting the book loss?

3 A Yes. I would think that if, in fact, their  
4 book value is higher than that, as the purchase price  
5 for the railroad as a whole, and for Southern Pacific as  
6 an entity as a whole was less than its book value, so  
7 the value of those lines would be less than the book  
8 value.

9 In the S-14 registration statement, it points  
10 out that the present price of the stock is below its  
11 book value, or was as of the date of the registration  
12 statement.

13 Q Given the assumption of the \$183 million book  
14 investment that I gave you, wouldn't in fact SPSF be  
15 required to report \$140 million book loss?

16 A That's 183 minus 43, for 140. How that would  
17 be handled on the books precisely, I'm not sure. I  
18 would want to refer to a CPA firm for that. But there's  
19 definitely a write-down. The value, as purchased, is  
20 less than the book value for the system as a whole.

21 Q Do you know if that loss would be ultimately  
22 charged to retained earnings?

23 A Let's see. SP would recognize a cash inflow  
24 of \$43 million, and they would have a credit against  
25 income or an income tax shelter of whatever the



1 difference is, which I presume they could carry forward  
2 or carry back.

3 Q Wouldn't there be a reduction in retained  
4 earnings that would ultimately reduce the stockholder's  
5 equity in the company?

6 A Well, the book value of the stockholders'  
7 equity is already, or was in excess of its market value,  
8 what it sold for. So I think that is just reflecting  
9 the market value.

10 Q But there would be a reduction in the  
11 stockholder equity?

12 A You would be bringing the book value of the  
13 stock down towards what the purchase price of it was.

14 Q Would you assume that that reduction in the  
15 book value would affect the credit rating of the company  
16 to have \$140 million write-down?

17 A Well, that depends on the way the financial  
18 community already evaluates the Southern Pacific. Both  
19 Morgan Stanley and Salomon Brothers said that after  
20 accounting for debt and considering just the railroad  
21 itself, without its non-rail income, it had a negative  
22 value.

23 Q So that would have no effect on the credit  
24 rating?

25 A Well, what I'm saying is, to the extent -- it

1 depends on the extent to which the rest of the  
2 investment community has recognized that fact.

3 Q Did you perform a study to determine the  
4 replacement cost of the lines, subject to DRGW purchase  
5 proposal?

6 A I think the Commission, in its 30,000  
7 decision, said that both reproduction cost and  
8 historical book value weren't the basis you should use  
9 for measuring. And so I did not perform any  
10 replacement.

11 JUDGE HOPKINS: One at a time, please.

12 BY MR. VAUGHN: (Resuming)

13 Q Did the --

14 JUDGE HOPKINS: Don't go on after you finish  
15 your answer.

16 THE WITNESS: Excuse me.

17 BY MR. VAUGHN: (Resuming)

18 Q Did the Rio Grande or its outside counsel  
19 request that you perform such a study on the replacement  
20 cost?

21 A No, they did not.

22 Q Did you suggest to Rio Grande or the outside  
23 counsel that such a study be performed?

24 A I discussed with them the basis for valuation  
25 contained in the 30,000 decisions, and I suggested that



1 that did not indicate that a reproduction cost approach  
2 was relevant, and that was the same thoughts that they  
3 had.

4 Q Did you perform a study to determine the net  
5 liquidation value of the lines subject to the Rio  
6 Grande's purchase proposal?

7 A Given that the SFSP bought the SP as an entity  
8 and did not, either in the registration statement or in  
9 the statements made by Sica or Miller in response to  
10 depositions, do any liquidation approach, I did not do  
11 that.

12 Q Did the Rio Grande or outside counsel request  
13 that such a study be performed of the net liquidation  
14 value?

15 A No, they did not.

16 Q Did you suggest to the Rio Grande or the  
17 outside counsel that such a study be performed?

18 A I discussed with them the fact that the SP was  
19 acquired as an operating entity, and that there were no  
20 lines shown as to be sold as part of the merger. I'm  
21 trying to recall offhand whether we requested in our  
22 discovery request any liquidation value studies that the  
23 SP had made. I don't recall offhand whether we did or  
24 not.

25 But there was some discussion of it, but my

1 recollection is that we didn't get any liquidation value  
2 stuff in response to discovery requests, and we took  
3 into account the fact that SP itself was not talking  
4 about eliminating any lines.

5 Q You did not suggest that a study be done; is  
6 that correct?

7 A Well, maybe I wasn't saying it very clearly.  
8 Let me try it again. We discussed liquidation value.

9 JUDGE HOPKINS: Did you suggest any study?  
10 That's the question.

11 THE WITNESS: No. I did not specifically  
12 request a study.

13 JUDGE HOPKINS: Thank you.

14 BY MR. VAUGHN: (Resuming)

15 Q Who set the parameters of the study that you  
16 performed?

17 A I know what the word "parameters" means, but  
18 I'm not sure which parameters you're talking about  
19 here. I'm just trying to give you a shorter answer if  
20 you can be specific, or I can just try and give you a  
21 general answer.

22 Q Who suggested what method you should study for  
23 the value of the lines to be purchased and the lines  
24 subject to trackage rights?

25 A Well, I developed that method, taking into



1 account, among other things, the approach the Commission  
2 followed in its 30,000 decisions.

3 Q With no input from Rio Grande or its outside  
4 counsel?

5 A Oh, I talked about it with Rio Grande,  
6 certainly. Yes. And here is the way I think maybe we  
7 ought to go at it, those kinds of discussions.

8 Q With whom?

9 A That would have included primarily DRGW  
10 counsel.

11 Q During those discussions, did you set a  
12 maximum cost that Rio Grande could afford to pay for the  
13 purchase of the lines?

14 A No, I did not.

15 Q Was there any suggestion that they could  
16 afford \$100 million or \$200 million or any other  
17 number?

18 A The only thing I recall on those lines was if  
19 the purchase price came up too high -- and "too high"  
20 was not defined to me -- that they might need to go for  
21 trackage rights as their principal approach throughout  
22 the system, rather than purchase with trackage rights as  
23 a backup.

24 But "too high" was not defined to me.

25 Q Did you have any feeling for what that "too

1 high" was?

2 A No. It was neither defined nor -- you know,  
3 it can't be more than this type number; no.

4 Q But the general concept was discussed?

5 A The concept was discussed, that if the  
6 purchase price came out too high -- as I say, too high,  
7 undefined -- that they might have to go with the  
8 trackage rights throughout.

9 Q Are you aware that Southern Pacific has spent  
10 approximately \$15 million in the last two years on the  
11 Salt Lake Fill?

12 A I heard that discussed in cross-examination of  
13 Mr. Holtman.

14 Q Do you have any reason to dispute those  
15 figures?

16 A I have no knowledge of those figures, one way  
17 or another.

18 Q Are you aware that there is to be  
19 approximately \$15 million in 1985 on the Salt Lake Fill  
20 project?

21 A Again, I heard that mentioned in the  
22 cross-examination of Mr. Holtman, and also I understood  
23 in my discussions with Mr. Smith who did the costing,  
24 that he picked up in his costing the SP's 1984, I guess  
25 it was, maintenance budget.



1           So if that was being spent in '84, it would  
2 have been in those numbers.

3           Q     Looking from a seller's standpoint, would you  
4 think it would be reasonable for them to sell a property  
5 for \$43 million, over 1,000 miles of line, when it had  
6 spent \$65 million in the last three years on one segment  
7 of that line?

8           A     As I understood my task in this assignment, it  
9 was to determine the value for involuntary sale or  
10 trackage rights, as opposed to voluntary. In other  
11 words, as a condition of the merger, and the value I  
12 established was in that context.

13           Now, while the maintenance was going on, the  
14 SP was earning revenues on traffic carried across that  
15 line.

16           Q     I'm asking you to adopt the seller's viewpoint  
17 and I'm looking at a question of fairness. Would you  
18 assume that it is fair for a company to sell, be forced  
19 to sell 1,00 miles of track for \$43 million, when they  
20 have spent \$65 million on one part of that segment so  
21 that the entire line can keep running?

22           A     Well, first of all, I don't think the Southern  
23 Pacific is forced to sell the line. They don't have to  
24 go through with the merger. The DRGW's condition only  
25 becomes operative if the merger is approved and if the

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1 ICC approves the condition.

2 Furthermore, as I said, they are, to the  
3 extent that those maintenance expenses were expense,  
4 they have been accounted for in the operating expenses.

5 Q Are all those expenses operating expenses?

6 A I say to the extent that they were operating  
7 expenses. I don't know what the mix of operating  
8 expense versus capital was.

9 Q If you are raising the roadbed by three feet,  
10 would you expect that they would be charging that to an  
11 operating expense or capital?

12 A I would think they would be doing some of  
13 each. But I would agree with you that it would be a  
14 non-insignificant capital component in there.

15 Q There would be a significant capital  
16 component?

17 A I would think so.

18 Q Now, back to the question again, on a fairness  
19 basis, is it fair to a seller to be required to sell  
20 over 1,000 miles of line for \$43 million when they have  
21 made significant capital improvement to their line?

22 A My answer to you is that is a decision that  
23 ultimately the Southern Pacific is going to have to  
24 make, if the merger is approved with this condition.  
25 They are going to have to value this in the context of

1 what the merger as a whole is worth to them.

2 And if it isn't worth it, they won't do it,  
3 and if it is worth it, they will do it.

4 Q I'm not asking you to take Southern Pacific's  
5 viewpoint. I'm looking for your opinion.

6 A You just asked me to take the seller's  
7 viewpoint, sir. And I presume that is them.

8 Q From a seller's viewpoint, not necessarily  
9 Southern Pacific or Santa Fe or anyone else. From a  
10 seller's viewpoint, is that reasonable?

11 A From a seller's viewpoint, if I have a merger  
12 application in and that merger is made contingent upon  
13 this condition, then I'm going to have to decide whether  
14 the merger as a whole is worth it or not.

15 This is not a voluntary trackage rights  
16 situation. It is involuntary and it has a condition  
17 hinged to it.

18 MR. VAUGHN: I have no further questions.

19 JUDGE HOPKINS: Mr. Mayo.

20 MR. MAYO: No questions.

21 JUDGE HOPKINS: Thank you.

22 MR. MAYO: Your Honor, I move into evidence  
23 Mr. Whitehurst's statement.

24 JUDGE HOPKINS: Any objection? It will be  
25 received in evidence.



1 You are excused, sir.

2 (Witness excused.)

3 JUDGE HOPKINS: Off the record.

4 (Discussion off the record.)

5 JUDGE HOPKINS: We'll be in recess until 9:00  
6 o'clock tomorrow morning.

7 (Whereupon, at 4:40 o'clock p.m. the hearing  
8 recessed, to reconvene at 9:00 o'clock a.m., the  
9 following morning, Tuesday, January 29, 1985.)

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