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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>RECROSS</u>
Thomas J. Fitzgerald				
By Mr. Kevin MacKenzie		1081		
By Mr. Miller		1094		
By Mr. White		1109		
By Mr. Vincent MacKenzie		1116		
By Ms. Reed		1126		
By Mr. Wilson			1131	
Jack P. Edwards				
By Mr. Smith	1135			
By Mr. Kharasch		1136		
By Mr. White		1274		
By Mr. Dreiling		1289		

E X H I B I T S

<u>Exhibit No.</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
SFSP-C-4	1132	
Ex. Nos. SPSF-C2,3, and 4		1134
MKT-C-17	1136	
MKT-C-18	1206	
MKT-C-19	1219	
Texas Mexican Railway Exhibit No. TM-C-1	1280	
KCS-C-10	1290	

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.  
 Tuesday, October 9, 1984

The hearing in the above-entitled matter was  
 convened, pursuant to notice, at 9:30 a.m.

BEFORE :

JAMES E. HOPKINS,  
 Administrative Law Judge

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P R O C E E D I N G S

1  
2 JUDGE HOPKINS: I call the hearing to order.

3 Mr. Wilson?

4 MR. WILSON: Your Honor, I have two  
5 preliminary matters. They involve our order, scheduling  
6 of our consultants. Because of some scheduling  
7 problems, we would like to change Mr. Heuer's order in  
8 the witness list to follow Mr. Rhodes. Mr. Heuer was  
9 listed as number 11 and he will now be number 13. He's  
10 moving down in the order by two places.

11 JUDGE HOPKINS: Thank you.

12 MR. WILSON: We'd also like to change Mr.  
13 Stark's order in the witness list. He was listed as  
14 number 22. We'd like to move him up to follow Mr. Bargo,  
15 which will place him number 18 in our order of  
16 witnesses.

17 JUDGE HOPKINS: Thank you. Let's hope we get  
18 to them some time soon.

19 MR. WILSON: Hopefully this week, Your Honor.

20 JUDGE HOPKINS: I hope so.

21 Who is going to start?

22 MR. KEVIN MACKENZIE: Your Honor, Kevin  
23 Mackenzie for the Denver & Rio Grande.

24 Whereupon,

25 THOMAS J. FITZGERALD,

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

4 CROSS EXAMINATION

5 BY MR. KEVIN MacKENZIE:

6 Q Mr. Fitzgerald, on Friday I believe you  
7 testified that the ability to offer single line service  
8 is absolutely a key advantage for a railroad; is that  
9 correct?

10 A It's certainly a major advantage, Mr.  
11 MacKenzie, yes, sir.

12 Q You also testified on Friday that after the  
13 proposed Santa Fe-Southern Pacific merger, there are  
14 competing carriers that will have a more difficult time  
15 because of traffic diversions following the merger; is  
16 that correct?

17 A I testified that there would be traffic  
18 diversions, and to the extent that those come from  
19 affected railroads, presumably, the railroads would have  
20 to make some changes to compensate for those losses.

21 Q And to the extent they were not able to make  
22 such changes, they would have a more difficult time in  
23 your view?

24 A Presumably.

25 Q Is the Rio Grande one of the railroads that

1 would be affected by the traffic diversions that you  
2 project?

3 A Yes.

4 Q Now, following the proposed merger the Rio  
5 Grande will have to depend on either the UP or the SFSP  
6 to carry transcontinental traffic to and from the West  
7 Coast, would it not?

8 A Or the Burlington, I suppose.

9 Q The Burlington as well?

10 A I would say so.

11 Q But primarily the UP and the SFSP?

12 A Well, I suppose.

13 Q Now, the UP and the SFSP have their own single  
14 line service for transcontinental traffic to and from  
15 the West Coast, do they not?

16 A That's true.

17 Q So that that would make the UP and the SFSP  
18 unfriendly connections for the Rio Grande?

19 A Well, I can't speak for the Union Pacific. It  
20 certainly wouldn't make the Southern Pacific and Santa  
21 Fe unfriendly, as I understand you to use the term.  
22 We're going to continue to work with the Rio Grande  
23 where that's the most efficient way to try to move the  
24 traffic.

25 Q And in your view, will there be considerable

1 traffic for which it will be most efficient to move it  
2 via the Rio Grande?

3 A Yes, I think so.

4 Q Now, Mr. Fitzgerald, on Friday you also  
5 testified about the problem of equipment shortage when  
6 there was a surge in wheat sales to the Soviet Union,  
7 did you not?

8 A Yes.

9 Q When did that problem occur?

10 A Well, the first time it occurred was in 1972.  
11 It occurred from time to time thereafter. There is a  
12 surge right now.

13 Q Is there a problem right now with equipment  
14 shortages?

15 A There are some spot shortages, but it's  
16 decidedly less a problem than it has been in the past,  
17 and the reason is that the ports are much more efficient  
18 than they have been. And what had happened in the prior  
19 decade is that trainloads of grain would get backed up  
20 in the pipeline waiting to get to the port and get  
21 unloaded.

22 As the ports have improved their efficiency,  
23 the trains are able to get in, unload, and turn around,  
24 and that has tended to certainly minimize the problems  
25 of what we call car shortages.



1 Q So that the problem you were discussing was  
2 really a problem with the ports?

3 A Well, the whole logistical system is  
4 interdependent, Mr. MacKenzie. If the ports can't  
5 perform and get the ships loaded or get the grain into  
6 storage, then it sits in the rail cars, and that in turn  
7 impacts utilization of the equipment.

8 Q What are the U.S. origin and destination  
9 points generally for those wheat movements?

10 A Well, the bread basket of the country, I  
11 guess, beginning up north, extends into Montana and  
12 North Dakota, comes down to South Dakota and Nebraska,  
13 Kansas, Oklahoma, Texas. Of course, it also goes up  
14 into Canada.

15 Q What would the destination points be?

16 A For export?

17 Q Yes.

18 A Gulf Coast and West Coast ports, primarily.  
19 For example, Canadian wheat very frequently will move to  
20 Vancouver.

21 Q To your knowledge, did any significant  
22 quantities of this wheat moving for export to the Soviet  
23 Union move by truck?

24 A I don't know, but I assume it did.

25 Q You assume it did?

1 A Yes.

2 Q But you have no knowledge whether it did or  
3 not?

4 A No.

5 Q Mr. Fitzgerald, is it your testimony that  
6 competition for transcontinental traffic will be  
7 enhanced if more carriers are able to offer single line  
8 service?

9 A Yes, I think competition will be enhanced by a  
10 balancing of the relative strengths of the  
11 transcontinental carriers.

12 Q What do you mean by a balancing of the  
13 relative strengths?

14 A Well, at this point we've got two very large  
15 railroads with multiple gateways, multiple ports, and  
16 we've got two medium-sized carriers that are not in  
17 terribly good healthy financially. And by putting those  
18 two together to perform -- or to create a third major  
19 viable carrier in the West, I think will serve to  
20 increase rail competition and enable that carrier  
21 thereby created to also compete more effectively with  
22 trucks.

23 Q Would competition be further enhanced if there  
24 were more than three single service carriers in the  
25 West?

1           A     My feeling is that the economics of the  
2 situation suggest that there can only be three. There  
3 are only three in the East.

4           Q     If there are only three single service systems  
5 in the West, there will be shippers, will there not, who  
6 have only one of those systems available to them?

7           A     Yes, that's right, as there are now.

8           Q     There are also now shippers who have two  
9 systems available to them who will only have one after  
10 the merger, is that not right?

11          A     There are some.

12          Q     Mr. Fitzgerald, let me direct your attention  
13 to page 11 of your verified statement, where you say  
14 that the proposed merger will have the characteristics  
15 of both an end to end and a regional merger. Do you see  
16 that?

17          A     Yes.

18          Q     What do you mean by a regional merger?

19          A     Well, I mean that in some measure the Santa Fe  
20 and Southern Pacific routes are somewhat intertwined in  
21 some regions.

22          Q     In other words, that they serve essentially  
23 the same territory in those regions?

24          A     Some of the same points.

25          Q     Now, with respect to California, how far do

1 the regional characteristics of the merger extend?

2 A Well, both of the carriers have a presence in  
3 California. Santa Fe's is somewhat more limited than  
4 Southern Pacific's, but both of us reach the Los Angeles  
5 Basin and the Bay area and have a line through the San  
6 Joaquin Valley.

7 Q And what you describe as a regional merger is  
8 sometimes also described as a parallel merger, I take  
9 it?

10 A Well, I wouldn't use those terms, because I  
11 think they tend to be inflammatory.

12 Q But other people use those terms?

13 A Others do.

14 Q To refer to the same sort of merger?

15 A Well, I don't know what they're referring to.

16 Q Mr. Fitzgerald, let me direct your attention  
17 to pages 12 and 13 of your verified statement.

18 A Yes, sir.

19 Q You base the testimony that appears on those  
20 pages on your personal experience?

21 A I base it on my personal experience and also I  
22 reviewed some of the work that A.T. Kearney has done,  
23 and of course these subjects are dealt with in much  
24 greater length in the verified statements of Mr. Kloss  
25 and his associates.

1 Q Would you specify more precisely what work you  
2 reviewed by A.T. Kearney?

3 A I read Mr. Kloss' statement, I read the  
4 statements of his associates, and I've generally been  
5 aware of their work as it has gone on.

6 Q Is there anything else on which you based your  
7 testimony on pages 12 to 13?

8 A Well, as I told you, I'm personally aware of a  
9 number of the situations that are dealt with in those  
10 statements.

11 Q Let me direct your attention to page 13 of  
12 your verified statement, where you discuss Oregon lumber  
13 shipments.

14 A Yes.

15 Q Following the proposed merger, you would  
16 expect to handle those lumber shipments to the Midwest  
17 over a single line system?

18 A Not necessarily.

19 Q Is that not what you suggest here?

20 A Well, I suggest that what we're really looking  
21 at is single line service between places like Oregon and  
22 Texas, Oregon and New Mexico, Oregon and Arizona. When  
23 you start to look at Oregon to the Midwest, a number of  
24 different options, including routing over your line.  
25 And I don't know that we would necessarily want to

1 change those patterns.

2 Q Do you not suggest here, Mr. Fitzgerald, that  
3 the shipments between Oregon and the Midwest will be  
4 affected by your merger?

5 A I don't know what you would think I would  
6 suggest. I would certainly take a close look at what we  
7 could do to the Midwest, but I'm not at all certain that  
8 there would be a major diversion of that traffic away  
9 from the Rio Grande.

10 Q Why did you use the term "Midwest" in this  
11 portion of --

12 A As I said, I think we would take a look at  
13 it. You have to understand that I am not an expert on  
14 Southern Pacific traffic. I am generally aware of the  
15 fact that they currently use the Rio Grande and I  
16 suspect that there are probably some good reasons for  
17 them wanting to continue the Rio Grande after the  
18 merger. That is something we're going to have to sit  
19 down and look at.

20 Q Now, Mr. Fitzgerald, let me direct your  
21 attention to page 10 of your verified statement, where  
22 you say that motor carriers are competitive for long  
23 haul inter-regional traffic.

24 A Yes.

25 Q Do you base that statement on your personal

1 experience?

2 A Yes.

3 Q Did you make any studies in preparing that  
4 statement?

5 A No, it's just my general knowledge of the  
6 marketplace, business that we have handled in the past  
7 that is not available to us any more because of the  
8 incrcads of trucking competition.

9 Q Did you rely on studies by anyone else for  
10 that particular statement?

11 A No. I have read Mr. Forest Faker's testimony  
12 and I generally agree with it, but the basis for my  
13 statement is my personal knowledge.

14 Q Are there any exceptions to that statement?

15 A What statement?

16 Q The statement that motor carriers are  
17 competitive for long haul inter-regional traffic.

18 A No. You'd be amazed at some of the places you  
19 find motor carriers getting involved, even with bulk  
20 commodities, with liquid bulk commodities. Competition  
21 is very pervasive.

22 Q In that statement, what do you mean by the  
23 term "competitive" when you said that motor carriers are  
24 competitive for long haul inter-regional traffic?

25 A I meant that they are able to offer price and

1 service combinations that are attractive to the  
2 shippers, which in fact have caused diversions to that  
3 mode.

4 Q When you are talking about inter-regional  
5 traffic, what distances generally are involved?

6 A When I'm talking about? I'm sorry?

7 Q Inter-regional traffic.

8 A It can be as far as coast to coast.

9 Q And on the low end?

10 A Well, to still be inter-regional?

11 Q That's correct.

12 A Just kind of seat of the pants point of view  
13 would be a 500-mile range. I suppose less than that it  
14 starts to get to be within a region. I'm aware of Mr.  
15 Reyff's work on markets and the way he has put together  
16 the BEA's for purposes of this case, but that's not the  
17 particular reference that I have here. I'm just calling  
18 it long haul versus short haul, if you will.

19 Q Now, let me direct your attention to page 11  
20 of your verified statement, Mr. Fitzgerald. It's true,  
21 is it not, that motor carriers carry a much greater  
22 percentage of traffic in the short haul movements than  
23 in long haul movements?

24 A Yes. They are totally dominant in the short  
25 haul market.



1 Q So that motor carriers would be much more  
2 competitive for short haul traffic than for long haul  
3 traffic?

4 A Well, they're virtually the hands-down winner  
5 in the short haul market.

6 Q Are there not some commodities for which they  
7 are not competitive for long haul movements?

8 A I don't know of any. As I testified in  
9 response to some of Mr. Kharasch's questioning, some  
10 commodities, generally long haul bulk commodities, tend  
11 to move more by rail. But I certainly think that trucks  
12 are competitive even in those markets.

13 Q Now let me direct your attention to page 9 of  
14 your verified statement, the paragraph beginning at the  
15 bottom of the page where you indicate that motor  
16 carriers are price competitive. Again, you base this  
17 statement that motor carriers are price competitive on  
18 your personal experience?

19 A Yes, sir.

20 Q Are you relying on any other studies?

21 A No. The evidence of the marketplace has been  
22 enough for me.

23 Q Are motor carriers price competitive for long  
24 haul movements?

25 A They certainly are.

1 Q Long haul movements of bulk commodities?

2 A They can be.

3 Q Now, when you say they can be price  
4 competitive for long haul movements of bulk commodities,  
5 do you mean that the prices they offer are lower than  
6 prices offered by railroads?

7 A Well, you have to understand that when you are  
8 dealing with trucks and bulk commodities, the only time  
9 that the trucks are going to become a real factor is  
10 where they are able to balance their movements, and  
11 increasingly, even with bulk commodities, they are able  
12 to do that.

13 We never thought that we would see potash  
14 being trucked out of Carlsbad in the volumes that it's  
15 being trucked out now. The reason that the trucks are  
16 able to do that is that they're bringing grain into the  
17 Carlsbad area.

18 So my answer to you is that if trucks can  
19 achieve a balance -- that is to say, remain loaded in  
20 both directions -- they can compete on a price basis  
21 with railroads, even handling bulk commodities.

22 Q But if they are not able to achieve the  
23 balance that you have described, they're not able to  
24 compete on a price basis?

25 A They are certainly less competitive.

1 Q Mr. Fitzgerald, do you believe that the SFSP's  
2 combined service over the southern corridor will be  
3 better than what the Southern Pacific is currently able  
4 to offer?

5 A Yes.

6 MR. KEVIN MacKENZIE: Thank you, Mr.  
7 Fitzgerald.

8 JUDGE HOPKINS: Who will be next?

9 CROSS EXAMINATION

10 BY MR. CHARLES MILLER:

11 Q My name is Charles Miller. I represent Union  
12 Pacific.

13 A Good morning, Mr. Miller.

14 Q My questions are solely related to the  
15 document called joint route and rate policy statement,  
16 which I think has been given the designation SFSP-C-2.  
17 Do you by any chance have a copy of that before you?

18 A Yes.

19 Q Am I correct on the designation?

20 A C-2, yes.

21 Q Mr. Fitzgerald, this document was referred to  
22 by Mr. Schmidt when he appeared on the opening day of  
23 the hearing, but he asked that questions concerning it  
24 be directed to you.

25 A Lucky me.

1 Q I just have a few questions I'd like to ask  
2 you about the document. Were you involved in the  
3 development of this policy statement?

4 A Yes, I was.

5 Q Was this a statement that was developed within  
6 the last week or two?

7 A The statement was, but the germ goes back, the  
8 germ of it goes back to my verified statement, where I  
9 referred to it on page 15, at which I say: "In bringing  
10 these improvements to the marketplace, our traffic  
11 policies will continue, as they have in the past, to  
12 emphasize service competition, responsive pricing, open  
13 routing consistent with sound business economics,  
14 appropriate equipment supply, and in general customer  
15 services which will attempt to make it easy to do  
16 business with the Santa Fe-Southern Pacific system."

17 That, of course, was written back in February  
18 or early March.

19 Q Was this policy statement meant to be an  
20 elaboration or a refinement of that rather general  
21 statement you just made?

22 A Yes, sir.

23 Q I just want to ask a few questions about the  
24 statement, so that we can get a better feel for  
25 precisely what you meant by it. First, you state -- or

1 the policy statement says in the first sentence what it  
2 plans to do with respect to joint routes and rates upon  
3 consummation of the merger of Southern Pacific and Santa  
4 Fe.

5 A Yes.

6 Q So the first question is, does this statement  
7 speak or is it intended to speak at all to what either  
8 company's policy will be between now and the time of  
9 consummation of the combination?

10 A No.

11 Q So that any policy concerning maintenance or  
12 cancellation of joint routes and rates between now and  
13 then is not covered by this document?

14 A That's right. I'm perfectly happy to answer  
15 any questions that you'd like to address to me with  
16 respect to the Santa Fe's routing and rate policies  
17 between now and the date of the merger, and I'm sure Mr.  
18 Edwards would be happy to respond from the standpoint of  
19 the Southern Pacific.

20 But of course, we have no joint endeavors that  
21 are ongoing at this time in this regard.

22 Q After consummation, this policy statement  
23 suggests the policy of the joint company will be to  
24 maintain efficient through routes and service via  
25 existing gateways. My question to you is, have you,

1 internally or in your planning efforts, developed any  
2 more precise definition as to what you mean by efficient  
3 or efficiency that you would apply in administering this  
4 policy?

5 A Well, the word "efficient" is a word that I  
6 added to this policy, so maybe I can define it with  
7 respect to an example of a case where I think that it's  
8 inefficient or may be inefficient.

9 We maintain joint routes with the Illinois  
10 Central Gulf at Chicago and we have a parallel line,  
11 that runs parallel to theirs, between Chicago and  
12 Joliet, Illinois, which is 37 or 38 miles southwest of  
13 the city. We are currently having a discussion with  
14 Illinois Central as to whether it's economic to maintain  
15 Joliet as an interchange point.

16 I don't know what the final answer to that  
17 will be. At this point there's a minimal amount of  
18 traffic that's interchanged at Joliet, and the only  
19 purpose for putting the word "efficient" in there when I  
20 did it was to suggest that there may be some places at  
21 which the volumes of traffic are going to be such that  
22 it may not be an economic step to keep an interchange  
23 open.

24 So certainly, with respect to any of the  
25 principal interchanges which either of the companies has

1 today with any of its connecting railroads, I can't  
2 envision that any of these would be abandoned.

3 Q You stress the volume of traffic that might  
4 cause you to conclude that an interchange was not  
5 efficient. Do you have any notion as to what would be a  
6 minimum volume level that would pass, say, the threshold  
7 of efficiency?

8 A No, and I don't think you can come up with a  
9 general rule. I'll tell you why not. For example, we  
10 had to run a train, a special, out to a junction point  
11 simply to meet with a connecting railroad. The distance  
12 and the difficulty of that operation would cause the  
13 number to be higher than it might be where, for example,  
14 as is the case at El Paso with your railroad, we're  
15 already running trains through that junction, and if the  
16 Union Pacific comes to that point we're already there,  
17 and obviously the number necessary to justify an  
18 economic operation in that situation would be a good  
19 deal less than if you had to go out into the country  
20 especially for the junction.

21 Q Now, is there any concept of relativity here  
22 in the definition of "efficiency"? I mean by that, do  
23 you compare the efficiency of the joint route with the  
24 efficiency of your new routes under your combined  
25 system, for example?

1           Is that going to bear on your decision as to  
2 whether to maintain a joint route?

3           A     No. We're going to keep the gateways open  
4 regardless.

5           Q     Which means you will maintain a joint route?

6           A     We will have a joint route.

7           Q     I was going to ask you specifically about the  
8 El Paso interchange between Union Pacific, or Missouri  
9 Pacific really, and the Southern Pacific, and the  
10 Sweetwater interchange between Missouri Pacific and  
11 Santa Fe.

12           Have you made any decisions that you can  
13 advise the Commission on now as to the maintenance of  
14 those gateways or joint routes after the consummation of  
15 the combination?

16           A     We would intend to maintain both.

17           Q     You testified in your verified statement at  
18 page 11 about the improved route efficiency that you  
19 anticipated post-merger for the combined system's  
20 southern route, and that was the predicate of my prior  
21 question. Just to make it clear, what I was asking you  
22 was whether the fact that you anticipate a more  
23 efficient operation of your own would bear on your  
24 decision whether to maintain the joint routes with the  
25 Missouri Pacific?



1 A No.

2 Q Let me then take you to the next point in the  
3 policy statement, which is joint rates.

4 A Yes.

5 Q There you said post-merger decisions would be  
6 made on a case by case basis, and you set forth two  
7 standards that would be applied in making those case by  
8 case decisions. The first is the relative costs and  
9 service capabilities of the respective routes, and so  
10 that brings me back to the question I asked you just a  
11 moment ago about relativity.

12 Q Could you explain what you mean by that factor  
13 and how it would bear upon your decision whether to  
14 maintain joint rates and the level of joint rates?

15 A There are many movements in which a joint a  
16 route is going to be the most efficient rail route that  
17 can be put together to handle a transportation  
18 movement. In those cases, we are going to want to work  
19 the joint route and we're going to want to work with our  
20 connection to put together a joint rate, to maintain a  
21 joint rate, if you will.

22 Q That is going to be in those cases that I  
23 premised, and there are, as I say, a great number of  
24 them, the low-cost route. And we're going to want to  
25 work that in those cases.

1           There are, on the other hand, going to be  
2 cases where, with the single line efficiency that we  
3 will have post-merger, the joint route is not going to  
4 be the most efficient way to get there. In those cases  
5 we're going to continue to keep the gateway open, we're  
6 going to work with our connections to at least offer a  
7 competitive alternative, provided that the connection is  
8 willing to work with us, and let the shipper decide how  
9 to route the movement, just as we do now.

10           I hope that's responsive.

11           Q     Well, I'm sure you're being responsive. Let  
12 me just pursue it a bit.

13           With reference to the two gateways that I  
14 mentioned before, the Sweetwater and the El Paso  
15 gateways for Missouri Pacific traffic -- and that's  
16 obviously our main interest here -- in relation to what  
17 will be a single system route or routes that you will  
18 have across the California-Texas corridor, you have  
19 indicated, as I pointed out earlier, that you -- that  
20 is, your company -- feels that this will be an area you  
21 could achieve efficiencies yourself through merger?

22           A     Yes.

23           Q     And I presume that in fact that's one of the  
24 major areas where you have pointed out efficiencies, and  
25 I assume that you are going to feel, whatever we may

1 contend, you will feel that that is an area where your  
2 combined route is likely to be more efficient than the  
3 joint route. Do you think that is true?

4 A I think from some points that is true. I  
5 think it's going to depend on whose track the industry  
6 is located and things of that nature.

7 Q Well, on anything west of El Paso or  
8 Sweetwater the industry in question would have to be  
9 located on either SP or Santa Fe track. It would not be  
10 Missouri Pacific track there.

11 A No, that's right, unless you are speaking of  
12 into California.

13 Q No. Well, I understand that.

14 You said that you would work with the  
15 connection to maintain a competitive gateway if the  
16 connection was willing to work with you.

17 A Yes.

18 Q Did you mean by that that you would maintain a  
19 competitive rate or price for shippers?

20 A Certainly we'd try.

21 Q And that would mean -- when I say  
22 "competitive," I want to stress that I mean the same  
23 rate or price as is offered on your single system  
24 route.

25 A Mr. Miller, if I were going to commit to fix

1 prices I wouldn't commit to doing it in Hearing Room A.

2 Q That's why I'm asking the question, so that  
3 you can state unilaterally on the record what your  
4 policy is.

5 A Well, I'm not committing to fix prices.

6 Q Well, are you committing one way or the other  
7 to make contract rates on a joint route basis with your  
8 connections? I'm speaking now of Missouri Pacific and  
9 El Paso and Sweetwater, where you have made contract  
10 rates on a single system basis with your customers.

11 A Assuming that we are able to achieve our  
12 minimum revenue requirements, absolutely.

13 Q That's a qualified response.

14 A Well, you need to tell me more about, you  
15 know, the specific movement you have in mind. It's a  
16 yes, provided we can do so and achieve a reasonable  
17 return.

18 Q Who will define "reasonable return"?

19 A I would hope that the traffic departments of  
20 the merged system would have something to do with it.  
21 The marketplace, of course, has a good deal to do with  
22 it on a case by case basis.

23 Q In other words, sometimes shippers demand that  
24 you make joint routes and they bring their influence to  
25 bear upon you and it can cause you to make a rate on a

1 joint route basis that is equivalent to your single  
2 system rate?

3 A Shippers have a lot of influence, but that  
4 really wasn't the reference I had. It's a question of  
5 do you want to participate in the movement at all, and  
6 if you do you need to find the most efficient way of  
7 making or putting together a package for a shipper and  
8 then hopefully you might get some business.

9 You don't have the luxury of saying, I have  
10 two or three or four alternatives and this is the only  
11 one I'm going to offer to you, Mr. Shipper, because the  
12 shipper is liable to take his business elsewhere,  
13 because if you have three or four that you can offer him  
14 he has another half a dozen in his pocket.

15 Q Well, you can offer, in today's regime you can  
16 offer a shipper a transportation service contract where  
17 you are able to move his goods from origin to  
18 destination, and you can say to the shipper: If you  
19 ship with us, I'm prepared to offer you a rate that is  
20 lower than the published joint rate that exists for an  
21 alternative route.

22 A Yes, you can do that.

23 Q And if he says, well, let me see if the  
24 alternative route is going to match that rate, in that  
25 situation you as a participant in the alternative route

1 would have some say as to whether the joint route could  
2 match your single system rate, could you not?

3 A Sure.

4 Q In that situation, my question to you was to  
5 what extent you were committing to us one way or the  
6 other as to what your policy would be on meeting those  
7 single system rates in that kind of situation.

8 A Okay. I can't tell you that I'm going to meet  
9 them in every situation. There may be cases where we  
10 not only meet them, but we beat them.

11 Q On a joint route basis?

12 A Yes.

13 Q You wouldn't expect those to be typical  
14 cases?

15 A I think it's going to depend on the true  
16 efficiency of the transportation move.

17 Q And you don't anticipate that your principal  
18 efficiencies to be derived from the combination of your  
19 two railroads will be in the area of the California-  
20 Texas corridor? Don't your studies show that?

21 A I don't know in terms of quantitative basis on  
22 the studies. I certainly think that's a principal  
23 area.

24 Q I won't tax you on something that you are not  
25 sponsoring.

1           The second factor in the joint statement  
2 relating to rates is called transportation needs of our  
3 shippers. Does that add anything more to what you said  
4 before or have you encompassed that?

5           A     I think I have covered it.

6           Q     A more detailed question. Could you tell me  
7 what the Roscoe, Snyder & Pacific Railroad is for the  
8 record? This is a preliminary question. The question  
9 will be about the Sweetwater interchange.

10          A     I have the recollection that it's a now  
11 defunct Texas short line, but I hope you won't hold me  
12 to that if it's still around.

13          Q     You think it might be a short line that  
14 connects the Missouri Pacific line with the Santa Fe  
15 line in the Sweetwater area?

16          A     Could be. Is it around still?

17          Q     I'm not sure it is. That was one of my  
18 questions. I notice that the interchange had  
19 precipitously dropped in the last year.

20          A     My impression is that it went bankrupt about a  
21 year ago.

22          Q     I was looking at the data for the interchange  
23 between Santa Fe and Missouri Pacific at Sweetwater and  
24 I noticed that over the years a substantial number of  
25 cars had been interchanged via this Roscoe, Snyder &

1 Pacific Railroad. It seemed to me those also  
2 represented interchanges between Santa Fe and Missouri  
3 Pacific; is that correct?

4 A Yes, I think that's right.

5 Q That's all I was trying to get at.

6 A Right.

7 Q There is today a substantial interchange of  
8 cars between the Missouri Pacific and Santa Fe at  
9 Sweetwater, is that true?

10 A Yes; less than in prior years, as you know.

11 Q You're ahead of me, as usual. The question I  
12 was going to ask you is, that interchange has declined  
13 over the years, has it not?

14 A In recent years.

15 Q Do you have any explanation as to the decline,  
16 or do you have any feeling as to why the interchange has  
17 gone down?

18 A Yes, I think I do. Eastbound -- well, let me  
19 begin with a general statement. It's gone down as a  
20 result of the Union Pacific-Missouri Pacific merger. I  
21 would have to think that's the principal cause. More  
22 specifically, eastbound, since the merger the Santa Fe  
23 has established its big connection with the Kansas City  
24 Southern such as to avoid the Union Pacific at  
25 Sweetwater; and westbound, the Union Pacific-Missouri



1 Pacific has begun to work wherever possible its single  
2 line service. And that has declined Sweetwater to  
3 decline, for that reason.

4 Q Over the years, the Missouri Pacific has  
5 always given Santa Fe more cars in interchange than it  
6 has received from Santa Fe at that interchange, is that  
7 true?

8 A It's predominantly a westbound corridor, yes.

9 Q And that continues to be the case today, does  
10 it not?

11 A Yes.

12 Q Have you made any estimates as to what the  
13 likely -- what happened to the interchange at Sweetwater  
14 after your merger was consummated?

15 A I have not, but I assume that it is dealt with  
16 in the traffic diversion studies.

17 Q I can always check what the diversion study  
18 says. I was really asking from a traffic marketing  
19 point of view whether you have any estimates, either  
20 numerical or judgmental, as to what is likely to  
21 happen?

22 A No.

23 Q And if I were to ask this question about the  
24 El Paso interchange, would you refer me to Mr. Edwards  
25 as to the nature of that interchange up to now?

1           A     Yes. I don't know what the traffic volumes  
2 are.

3           Q     I think that covers it. Let me just check my  
4 notes to see.

5                     (Pause.)

6           Q     I think that covers it. Thank you.

7           A     Thank you.

8           JUDGE HOPKINS: Who will be next? Mr. White?

9                     CROSS EXAMINATION

10                    BY MR. WHITE:

11           Q     Good morning, Mr. Fitzgerald. My name is  
12 Charles White. I represent the Texas Mexican Railway.

13           A     Good morning.

14           Q     First of all, I'd like to ask you if you are  
15 familiar with the Texas Mexican Railway.

16           A     Yes, I am.

17           Q     Do you consider it a competitor of Santa Fe  
18 for Mexican-U.S. traffic?

19           A     No.

20           Q     Do you consider it a competitor of Southern  
21 Pacific for Mexican-U.S. traffic?

22           A     No.

23           Q     You testified last week that you were aware of  
24 what Conasupa is. Do you recall that, sir?

25           A     Yes.

1 Q Can you refresh my recollection of your  
2 understanding of Conasupa?

3 A It is kind of the USDA of Mexico, kind of its  
4 grain purchasing arm. It's an agency of the government,  
5 as I understand it.

6 Q And they publish tenders for purchase of grain  
7 and grain transportation among the U.S. roads, don't  
8 they?

9 A That's right.

10 Q And Tex-Mex competes with Santa Fe and  
11 Southern Pacific making transportation offers to move  
12 that grain, doesn't it?

13 A Well, the reason I answered your question the  
14 way I did is that my understanding is that Conasupa  
15 specifies the port of entry --

16 Q Exactly.

17 A -- through which the grain must move. And  
18 since neither Santa Fe nor Southern Pacific serves  
19 Laredo, which is the port of entry which Tex-Mex does  
20 serve, I have trouble understanding how the railroads  
21 compete. And that was the reason for my answer.

22 Q I see. If Conasupa specifies Laredo --

23 A There are only two ways it can get there, the  
24 Union Pacific or the Tex-Mex.

25 Q And if it did specify Laredo, that would be

1 competitive to your Mexican border crossings, would it  
2 not?

3 A Well, we have other border crossings, but if  
4 Conasupa specifies Laredo then we have to get it to  
5 Laredo. And since we don't go to Laredo, we have only  
6 two ways to get it there: the Union Pacific or  
7 Tex-Mex. And the same is true of the Southern Pacific.

8 Q You don't -- Santa Fe does not connect with  
9 Tex-Mex?

10 A Not directly, no.

11 Q It will if the Santa Fe-Southern Pacific  
12 merger takes place, won't it?

13 A Yes.

14 Q Can you take a moment, sir, and just describe  
15 for us what the principal commodities are moving between  
16 the United States and Mexico on the Santa Fe?

17 A Very simply, it is grains of various kinds,  
18 whole grains.

19 Q Are there any other secondary commodities of  
20 any significance moving on the Santa Fe in and out of  
21 Mexico?

22 A I don't think so.

23 Q And the preponderance of traffic is moving  
24 into Mexico, isn't it?

25 A Yes.

1 Q Which are the Santa Fe gateways moving into  
2 Mexico?

3 A El Paso and Presidio, Texas. It's Juarez on  
4 the Mexican side and Ojanaga.

5 Q And you testified in your verified statement  
6 that one of the benefits of the transaction is that you  
7 will have access to other Mexican border points served  
8 by the Southern Pacific. Which of those did you have in  
9 mind, sir?

10 A Well, Eagle Pass, Nogales, and of course  
11 Laredo in conjunction with the Tex-Mex.

12 Q And Brownsville also?

13 A Yes, Matamoras.

14 Q Are there any other Mexican border points, to  
15 your knowledge, of any significance?

16 A Well, I guess there's Calexico over in Baja.  
17 Mexicali I really don't know anything about. I don't  
18 know anything about it, though.

19 Q Is it correct to say, sir, that should this  
20 transaction be approved by the Commission, Santa  
21 Fe-Southern Pacific will control long haul routes to all  
22 of the Mexican crossing points, with the exception of  
23 Laredo?

24 MR. WILSON: Objection, or at least  
25 clarification. What do you mean by "control long haul

1 routes," counsel?

2 BY MR. WHITE: (Resuming)

3 Q You will enjoy single system long haul routes  
4 to all of the Mexican crossing points with the exception  
5 of Iaredo?

6 A Yes.

7 Q You recall, sir, the first day of your  
8 cross-examination Mr. Kharasch discussed with you  
9 various terms about joint line movements, run-through  
10 trains, et cetera. Can you engage in joint movements  
11 with the Ferrocarriles Nacionales de Mexico, the  
12 national railway of Mexico?

13 A I don't know.

14 Q Do you know what the term "border settlement"  
15 means?

16 A No.

17 Q That is, as a marketing or traffic chief  
18 executive, have you engaged in planning single-sum  
19 payment movements into Mexico?

20 A I don't know. I have not and I don't know  
21 what they are.

22

23

24

25

1 Q Do you know, sir, if traffic moved, let's say  
2 hypothetically, from Los Angeles over your gateway at El  
3 Paso to Chihuahua, Mexico, whether the U.S. shipper  
4 would pay a single sum for that through movement?

5 A I don't know.

6 Q Sir, on Page 6 of your testimony, you talk  
7 about balkanization of the U.S. rail system, and the  
8 current policy to encourage independency of action.  
9 Whose policy is that to encourage independency of  
10 action?

11 A I perceive it to be the intent of Congress.

12 Q Is it the intent of Santa Fe to encourage  
13 single line service to the Mexican crossing points?

14 A Where that is the most efficient.

15 Q You indicated just a while ago with Mr.  
16 Miller's cross examination that your policy statement  
17 will allow you flexibility to encourage joint rates with  
18 connections if it is efficient. Do you include the  
19 national railway of Mexico as a connection that will  
20 encourage joint rates?

21 A I did not have any particular reference to the  
22 national railways of Mexico when I said that, but  
23 obviously we are interested in doing whatever we need to  
24 do to try to get equipment utilization up to Mexico, and  
25 that is, however we can do that, we want to do it.

1 Q Do you have any runthrough trains into  
2 Mexico?

3 A Into Mexico?

4 Q Into Mexico.

5 A I doubt it, but I don't know. You might check  
6 with Jim Fitzgerald.

7 Q Do you have any contracts to serve receivers  
8 in Mexico?

9 A Again, I don't know.

10 Q You testified in your verified statement that  
11 you are interested in serving the growing international  
12 economies. Do you include Mexico as one of those  
13 growing international economies?

14 A Yes.

15 Q Is your traffic with Mexico growing?

16 A Mr. White, I don't know. It seems to me it  
17 probably is.

18 Q You indicated also, sir, that you see trucks  
19 and water as an increasingly important competitive mode,  
20 modes. Is trucking of grain into Mexico an effective  
21 competitive force with Santa Fe?

22 A I wouldn't think so.

23 Q You would not think so?

24 A No.

25 Q And your principal movement concerning Mexico



1 is grain. I think you testified to that earlier.

2 A Yes, I would think that maybe barge might very  
3 well be competitive into Veracruz though.

4 Q But as far as Santa Fe is concerned, on its  
5 principal movement to Mexico, grain, trucking is not a  
6 competitive force?

7 A I would think that trucking is not a major  
8 player in that market.

9 MR. WHITE: Thank you, sir. That is all I  
10 have.

11 JUDGE HOPKINS: Thank you.

12 Who is next? Any other questions? Mr.  
13 MacKenzie?

14 BY MR. VINCENT MAC KENZIE:

15 Q Mr. Fitzgerald, the Santa Fe presently  
16 competes and has competed with the Southern Pacific in  
17 broad areas throughout California. Is that not  
18 correct?

19 A Again, I would prefer to say that we are part  
20 of the competitive fabric which includes other modes and  
21 other railroads and so on.

22 Q Do you agree with Mr. Cena when he indicated  
23 to me that Santa Fe prides itself on being able to  
24 penetrate into Southern Pacific captive territory  
25 primarily with their TOFC and COFC service?

1 A We have had some success.

2 Q Could you indicate for the record the  
3 particular important points where you do compete with  
4 the Southern Pacific in California?

5 A On just a straight railroad basis or including  
6 truck?

7 Q Let's include both, and if you would specify  
8 what the competition is.

9 A Well, I think the principal points at which  
10 there is a traffic base that both railroads are involved  
11 in attempting to secure are the LA Basin and the Bay  
12 area, and I think of a secondary nature a couple of  
13 points in the San Joaquin Valley, but principally  
14 Fresno. And in terms of piggyback service, we have had  
15 some luck going up north of Sacramento and some luck  
16 going over towards Salinas for perishable movements.

17 Q Haven't you been able to penetrate even into  
18 the Eureka area from Richmond with your TOFC services?

19 A Well, we had a lumber movement from that area  
20 for a while when that Northwestern Pacific was out of  
21 service, but it has pretty well dried up here. That was  
22 true for the summer of '83, but it really hasn't done  
23 much this year, Mr. MacKenzie.

24 Q Don't you also operate TOFC services out of  
25 Richmond in the Salinas Valley area at specific Salinas

1 points?

2 A Yes, but you must understand that those are  
3 independent operators. We just handle the line haul.

4 Q And out of Barstow, do you not penetrate into  
5 the El Centro area?

6 A I am not really as familiar with that one. I  
7 know that we do have some movements that come to us  
8 there. But from where, I am not sure.

9 Q Now, postmerger, Mr. Fitzgerald, how do you  
10 visualize this competition in California occurring? At  
11 what specific points?

12 A Well, of course, the Union Pacific reaches the  
13 two principal traffic solicitation areas of the LA Basin  
14 and the Bay area, but beyond that, most of it we have  
15 been talking about here in the last few minutes is  
16 already very much truck-oriented freight, and that  
17 competition is going to be around for as long as any of  
18 us are, I am sure.

19 Q Is it true that motor carriers are subject to  
20 the same equipment shortages that are caused by seasonal  
21 and cyclical peaks as rail carriers?

22 A I hope so.

23 Q Would you agree that there are some  
24 commodities, such as coal, grain, automobiles, copper,  
25 potash, petrochemicals, farm machinery, that are better

1 suited to rail than motor carriers for their  
2 transportation needs?

3 A I would like those maybe one at a time.

4 Q How about coal?

5 A Coal tends to move by rail. It is moving long  
6 distances and high volumes, generally unit trains. I  
7 don't know that we get any to California, of course.

8 Q How about grain?

9 A Grain, if it is, you know, in large lots will  
10 tend to move by rail unless there is some water around,  
11 and then it is going to move by water.

12 Q How about automobiles?

13 A Automobiles, we have had as an industry some  
14 pretty good luck in trying to get some of that business  
15 back from the highways. As you know, that was almost  
16 all highway ten or fifteen years ago, and we have gone  
17 in with these multilevel cars and generally speaking now  
18 if it is moving a long distance and we are able to get  
19 together a network so the equipment doesn't all return  
20 empty, we have had some fairly good luck in being able  
21 to put together packages that have been attractive to  
22 the automobile companies.

23 Q How about copper?

24 A Well, copper ore tends to move by rail, but it  
25 tends to move fairly short distances. Outbound copper

1 can either move highway or piggyback or rail, and does.

2 Q Potash?

3 A Potash is, of course, a subject I responded  
4 about earlier. The biggest problem with potash is that  
5 most of it is coming from Canada or Israel these days,  
6 but insofar as domestic potash is concerned coming out  
7 of Carlsbad it used to move almost exclusively by rail.  
8 Now there have been some major inroads made by truckers  
9 that are bringing feed west and taking potash east.

10 Q Have they done it on a comparable rate basis  
11 to rail?

12 A Yes.

13 Q We are speaking of relatively minor volumes of  
14 potash?

15 A I don't think so. I am afraid not.

16 Q How about petrochemicals?

17 A Petrochemicals really is going to depend, I  
18 think, on the corridor. They may move pipeline, barge,  
19 rail, in some measure highway.

20 Q Would your general rule of 500 miles apply to  
21 petrochemical movements? That is, for those movements  
22 of more than 500 miles, you generally expect that for  
23 all the package of reasons that rail movements are  
24 better suited to handle that shipment?

25 A It depends, I think, on the volume as well,

1 but certainly, you know, if it is a high volume  
2 movement, you are going to wind up with a pipeline. If  
3 it is a low volume movement, you are going to wind up  
4 with a truck, and if there is water available, you are  
5 going to wind up with it moving water, and if none of  
6 those satisfy it, then it is apt to move rail.

7 Q The one you left out was a moderate volume of  
8 those goods --

9 A Without any effective water competition.

10 Q -- will move by rail?

11 A Yes.

12 Q And presently do move by rail?

13 A Yes.

14 Q In response to Mr. Miller's questioning on  
15 shipper choices, let me ask you a couple of questions,  
16 and he was, of course, primarily interested in joint or  
17 interline movements with the consolidated carrier  
18 postmerger?

19 A Yes, sir.

20 Q You indicated, my notes say, the shipper will  
21 decide which route to use. Is that correct?

22 A Yes.

23 Q In Northern California, assuming we have a  
24 Northern California shipper or, let's say, the average  
25 Northern California shipper, if there is such a thing,

1 doesn't your response to Mr. Miller assume comparable  
2 rates are available to that shipper, assuming car  
3 availability and efficiency of services present,  
4 including transit time?

5 A Mr. MacKenzie, I am not really sure that I  
6 understand the question.

7 Q I am sorry. Let me rephrase it. Whether the  
8 shipper or not is successful in getting the carrier to  
9 haul the route that the shipper prefers primarily  
10 depends in the shipper's eyes upon a comparable rate  
11 between a single line rail movement and a joint line  
12 rail movement, correct?

13 A Well, I have testified earlier, and I really  
14 believe this, that what a shipper does is to evaluate  
15 the ten or a dozen variables that go into what it takes  
16 him to get his goods to market or to his distribution  
17 point, or whatever, and that as he stacks them all up,  
18 he weights the variables either more or less heavily  
19 dependent on what it is he is trying to accomplish,  
20 things like speed, reliability, equipment availability,  
21 and so on. Price, of course, is certainly one of  
22 those.

23 If what you are saying to me is, freeze all  
24 the variables except price and say, okay, those are  
25 givens, and they are the same, which is the shipper

1 going to prefer, the answer is, he is going to prefer  
2 the low cost.

3 My real world experience suggests you can't  
4 freeze those other variables very long except for just  
5 kind of test tube purposes.

6 Q Well, could I freeze just two of those  
7 variables? That was the purport of my question.

8 A Go ahead. You are the doctor.

9 Q The two frozen variables are, assume available  
10 car supply and assume relatively efficient service,  
11 including reliable transit time. Given that, will not  
12 the shipper go for the carrier who is going to offer him  
13 the most reasonable rate?

14 A I don't mean to be flip, but whose salesman  
15 bought the shipper lunch most recently, that is really  
16 the kind of decisionmaking mechanism that sometimes  
17 shippers have. There is really no way to say 100  
18 percent that the low-cost guy is going to get the  
19 business. Certainly a reasonable man would say, yes,  
20 that is the way it ought to work, but it doesn't always  
21 happen that way.

22 Q I just have a final question relating to your  
23 testimony on Page 13, on one of the perceived benefits  
24 or anticipations, as you put it, for the postmerger  
25 environment.



1           You responded to counsel for Rio Grande  
2 relating to Oregon shipments to the southwest and  
3 midwest. Let me ask you, I wasn't sure whether or not  
4 those answers applied to the Northern California  
5 portion. Let me ask you about the Northern California  
6 portion.

7           A     Sure, they do.

8           Q     For Northern California shippers, which  
9 midwestern points will better position those shippers  
10 unless the central corridor is used?

11          A     Which midwestern points would --

12          Q     Yes. Let me rephrase it slightly. You  
13 indicate here that, as I could paraphrase it, your Santa  
14 Fe's route structure, and this is relating to lumber, of  
15 course, in Northern California will better position  
16 those shippers to compete in the southwest and the  
17 midwest.

18               How will Northern California shippers be able  
19 to compete, let's say, in the Chicago area if the  
20 southern route is used rather than the central  
21 corridor?

22          A     Well, we would have single line service from  
23 Northern California to Chicago linking the two systems  
24 together with Southern Pacific, old Southern Pacific,  
25 providing the origin points, and Santa Fe providing the

1 line through Barstow to Chicago. Whether actual  
2 shipments are going to move that way again is going to  
3 be dependent upon whether or not the central corridor  
4 might be more efficient.

5 As I look at the map, I can't sit here and  
6 tell you that I know the answer as to what the most  
7 efficient way of moving lumber to the Chicago market  
8 would be out of Northern California, but I do know that  
9 we would have a second viable option which we don't have  
10 now, which is Southern Pacific and Santa Fe direct.

11 The other option is one that is already there,  
12 which is Southern Pacific-Rio Grande.

13 Q As far as transit time, and you may not know  
14 this specifically, and you may refer it to another  
15 witness, but for a Northern California lumber shipment  
16 to Chicago, will the transit time postmerger using the  
17 Santa Fe's southern corridor be faster or equivalent to  
18 the transit time that you assumed or your people assumed  
19 over the central corridor at Chicago?

20 A I don't know. That, of course, is not as  
21 time-sensitive as some other traffic, but I think if you  
22 ask either Jim Fitzgerald or Ray Champion, they might be  
23 able to help you.

24 Q Thank you very much.

25 A It is good seeing you, sir.

1 JUDGE HOPKINS: Do we have another  
2 questioner?

3 BY MS. REED:

4 Q Mr. Fitzgerald, my name is Mary Reed, and I am  
5 appearing on behalf of the U.S. Department of  
6 Transportation. And with your permission, I just have a  
7 few questions I would like to ask on our behalf.

8 A Good morning.

9 Q Were you discussing with Mr. MacKenzie the  
10 movement of TOFC traffic out of California and generally  
11 how far it can be trucked? Are there any benchmarks as  
12 far as mileage of trucking to a rail head?

13 A The benchmark is really one of economics. And  
14 the way we market our services, Ms. Reed, is to offer a  
15 rate for the railroad portion of a truck-rail-truck  
16 move. What we quote on is from the time it gets in the  
17 piggyback yard until the time it goes out. So what I am  
18 about to tell you on this is really somebody else's end  
19 of the business, but generally speaking it ceases to  
20 become economic at, oh, 100 miles, but that is going to  
21 depend on the length of the rail haul as well.

22 It is probably more of a constant plus a  
23 percentage when you really look at it, but in a  
24 transcontinental piggyback service, 100 miles would  
25 probably be about all you could do and stay in the ball

1 park competitively.

2 Q And if it were a shorter rail haul, you would  
3 have less --

4 A It would be less, yes.

5 Q And that would be generally true for all  
6 commodities moving in TOFC service?

7 A Well, I think so.

8 Q Do you know what kinds of commodities  
9 generally move in TOFC service?

10 A I have a pretty good idea.

11 Q Could you list those, please?

12 A In terms of vans, plain old vans, just about  
13 anything that is paletizable, containerizable, wine,  
14 canned goods, general manufactured goods, everything  
15 from paper to paper products.

16 Then we have some specialized equipment like  
17 insulated trailers, and that is wine and canned goods  
18 primarily during the wintertime, and we have  
19 refrigerated trailers that handle perishable goods,  
20 whether fresh vegetables or frozen foods, and then there  
21 are flatbeds that handle coiled steel and products of  
22 that nature.

23 Q Last week you mentioned that Southern Pacific  
24 had cancelled their joint rates with you for about a  
25 year and a half. Is that correct?

1 A Yes.

2 Q During that time, was the Santa Fe able to  
3 compete for traffic which it had formerly moved in a  
4 joint line SP-Santa Fe move?

5 A Some.

6 Q Did you suffer loss of traffic because of the  
7 cancellation?

8 A Yes.

9 Q Do you know how much traffic you lost?

10 A No, but it was considerable.

11 Q I have a few questions I would like to ask on  
12 behalf of the Kansas Department of Transportation,  
13 because they were unable to be here today.

14 On Page 10 of your verified statement, you  
15 mentioned the unrealized marketing potential for rail in  
16 interregional markets down at the bottom of the page.  
17 How would the SP-Santa Fe try to capture this traffic?

18 A We are going to take a much closer look at  
19 what we can do about putting together effective railroad  
20 marketing programs to reach our shorter haul corridors  
21 which are very much truck-dominated at this point, and a  
22 couple of them that come to mind are California from San  
23 Francisco down to Los Angeles and San Diego, the  
24 Houston-Dallas market, the Houston-New Orleans market,  
25 the Chicago-Kansas City market.

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1           We think there are possibly some niches that  
2 we can slide into that railroads have long since been  
3 displaced from.

4           Q     Now, several of the corridors you mentioned  
5 the Santa Fe now serves today. Isn't that correct?

6           A     Yes, at least parts of them.

7           Q     What will the merger enable you to do that you  
8 would not have been able to do today?

9           A     It should bring together the critical mix of  
10 traffic volumes which are currently being dissipated  
11 among the carriers.

12          Q     Do you know whether the Southern Pacific line  
13 is an effective competitor for grain traffic to the  
14 Gulf?

15          A     I would not regard them as such.

16          Q     Do you know whether anything will be done  
17 postmerger by the Santa Fe SP to make Southern Pacific  
18 more competitive for this traffic?

19          A     Well, I certainly do. I think that Southern  
20 Pacific, with its Tucumcari line, does serve some grain  
21 origin territory, and Santa Fe's route to the Gulf is  
22 much more direct. And by putting together the ability  
23 to serve some additional origins with the ability to  
24 movement in a straight line fashion ought to improve the  
25 ability of customers located on the Tucumcari line to

1 compete.

2 Q Will the merged company have less interest in  
3 the Chicago-Los Angeles route because of Southern  
4 Pacific's California to Houston route, do you know?

5 A No, I can't imagine that. That is really our  
6 principal corridor, and I think it always will be.

7 Q With respect to the Santa Fe's ability to  
8 serve St. Louis and Memphis and New Orleans after the  
9 merger, would you explain how the merged system will  
10 compete for traffic from the east or south that is  
11 currently not moving on either the Santa Fe or Southern  
12 Pacific?

13 A Well, by being able to serve all four  
14 principal transcontinental gateways, five if you count  
15 Kansas City, so we have Chicago, Kansas City, St. Louis,  
16 Memphis and New Orleans, the merged system will be  
17 available to interline rail freight with the three  
18 principal eastern systems at any of the river crossings,  
19 and with the extent of market coverage that the merged  
20 system will have throughout the west, I think we are  
21 going to be able to put together effective service  
22 packages at competitive prices and begin to participate  
23 in traffic that we are not now handling.

24 MS. REED: Thank you very much, sir. That is  
25 all I have.



1 JUDGE HOPKINS: Thank you.

2 No more? Mr. Wilson?

3 MR. WILSON: Yes, I have a little bit of  
4 redirect, Your Honor.

5 REIRECT EXAMINATION

6 BY MR. WILSON:

7 Q Mr. Fitzgerald, during Mr. Kharasch's cross  
8 examination, I had marked as an exhibit SFSP-C-3, which  
9 was a letter from you to Mr. Steiniger dated October  
10 2nd, 1984. Do you have a copy of that letter, sir?

11 A Let me check.

12 (Pause.)

13 Q I would like to ask you, was this letter  
14 prepared under your direction?

15 A Yes, in fact, I wrote most of it.

16 Q Does it state Santa Fe's current position with  
17 regard to reopening routes that were closed to the MKT?

18 A Yes, it contains an offer to the MKT to  
19 reestablish both routes and reciprocal switching that  
20 have been suspended over a period of years, really.

21 Q Okay. Now, I would also like you to refer to  
22 MKT-C-10, which was a letter from Mr. Steiniger to you  
23 dated August 14, 1984. Do you have that?

24 A Yes, I do.

25 Q That letter refers to yet another letter on

1 the first sentence. Do you see that reference, sir?

2 A Yes.

3 MR. WILSON: I would like that letter to be  
4 marked at this time, Your Honor, as Exhibit SFSP-C-4.

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

7 (The document referred to  
8 was marked for  
9 identification as Exhibit  
10 Number SFSP-C-4.)

11 BY MR. WILSON: (Resuming)

12 Q Mr. Fitzgerald, did you prepare that letter?

13 A No, but it was prepared in my shop by Mr.  
14 Grygiel.

15 Q Could you describe that letter briefly for the  
16 record?

17 A Well, Mr. Wilson, this letter which has been  
18 marked NKT-C-10 is part of some ongoing correspondence  
19 which Mr. Steiniger and I have been having, and this is  
20 -- the SFSP-C-4 was the immediately preceding letter to  
21 his. He had written me on July the 13th concerning five  
22 specific movements on which he had asked to have routing  
23 restored.

24 As you know, in answer to Mr. Kharasch's cross  
25 examination, I indicated that on July the 11th, we had

1 closed some routes in order to try to reestablish some  
2 sanity in the whole situation with the western  
3 railroads. And Mr. Steiniger asked to have five routes  
4 restored, and this was my reply to him.

5 Q What is the effect of the reply, sir?

6 A The reply is to the effect that we agreed to  
7 restore routing on four of the five, and the one that we  
8 did not restore routing on was the one which is numbered  
9 there as four, and that is an example of some of the  
10 most inefficient routing I have ever seen in my life.  
11 It is a scandal.

12 Q One other question. During Mr. Kharasch's  
13 cross examination, you were asked if it would not be  
14 better for the railroad to have single line routes to  
15 Gulf ports rather than reaching them by interline rail  
16 service. You replied to the effect that if you can't  
17 reach a port, you can't participate in the traffic.  
18 Could you explain what you meant by that statement?

19 A Well, all I meant was that if you don't reach  
20 the port, you can't either originate or terminate the  
21 traffic. Of course, you can participate in it through a  
22 connection, but you can't participate in it yourself  
23 directly at the port.

24 MR. WILSON: Thank you. That is all the  
25 questions I have.

1 JUDGE HOPKINS: Any further questions?

2 You are excused, sir.

3 (Witness excused.)

4 MR. WILSON: Your Honor, I would like to move  
5 the admission of SFSP-C-2, SFSP-C-3, and SFSP-C-4 as  
6 well as the verified statement of Mr. Fitzgerald.

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

9 (The documents referred to,  
10 previously marked for  
11 identification as Exhibits  
12 Number SFSP-C-2, 3, and 4,  
13 were received in  
14 evidence.)

15 JUDGE HOPKINS: I think this might be a wise  
16 time, before we put the next witness on the stand, to  
17 take a 15-minute recess.

18 (Whereupon, a brief recess was taken.)

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

20 MR. SMITH: We would like to call as our next  
21 witness Mr. Jack Edwards, please.

22 Whereupon,

23 JACK P. EDWARDS

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

1 follows:

2 DIRECT EXAMINATION

3 BY MR. SMITH:

4 Q Mr. Edwards, would you please state your name  
5 and address for the record?

6 A Jack P. Edwards, One Market Plaza, San  
7 Francisco.

8 Q And I have distributed to you and to the  
9 counsel table in the back and Your Honor and the  
10 Commission staff a copy of a document, the verified  
11 statement of Jack P. Edwards, and I ask if you can  
12 identify that as your testimony in this proceeding.

13 A Yes, it is.

14 Q Do you have any changes or corrections at this  
15 time to make to your statement?

16 A Yes, I do.

17 Q Would you please state those for the record?

18 A Page 5, second paragraph, middle of the second  
19 paragraph that starts, "As a consequence." The word  
20 "efficient" should be deleted from that sentence. The  
21 word "and" should be deleted, and replaced with the word  
22 "at," and then to follow the proper tense the word "are"  
23 should be deleted and the word "is" substituted.

24 So, it should read, "As a consequence, joint  
25 line service at competitive rates often is not available

1 to many customers on the separate rail systems."

2 Q With that change, is this, your testimony, is  
3 this testimony true and correct to the best of your  
4 knowledge?

5 A Yes, it is.

6 MR. SMITH: The witness is then tendered for  
7 cross examination.

8 JUDGE HOPKINS: Thank you.

9 Mr. Kharasch?

10 CROSS EXAMINATION

11 BY MR. KHARASCH:

12 Q Mr. Edwards, in December, 1983, did you give  
13 an affidavit in connection with litigation over the  
14 merger of the two parent companies of the applicant  
15 railroads into the SFSP?

16 A Yes, I did.

17 MR. KHARASCH: Your Honor, may we have marked  
18 as the exhibit next in order -- I have it as MKT-C-17.

19 JUDGE HOPKINS: It will be marked for  
20 identification.

21 (The document referred to  
22 was marked for  
23 identification as Exhibit  
24 Number MKT-C-17.)

25 BY MR. KHARASCH: (Resuming)

1 Q Is this an affidavit you gave at that time?

2 A Yes, it is.

3 Q Let's look first at Page 6 of the affidavit.  
4 In the paragraph marked 6, on December 9, 1983, was it  
5 true that "SPT has also implemented the new joint rate  
6 flexibility under the Staggers Act through route  
7 simplification?" That is, SPT has restricted the  
8 application of through routes and rate tariffs that  
9 apply on certain traffic moving between designated  
10 territories?"

11 A That is what I stated. That is true.

12 Q Let's look at Page 13 of Exhibit MKT-C-17.  
13 Was it true that "APSF voiced the loudest objections to  
14 SPT's route closures and opposed SPT's tariff  
15 publications before the ICC?"

16 A They were one of many, one of several, I  
17 should say, that voiced loud objections to it.

18 Q And did they voice the loudest objection?

19 A I don't know how you measure loudest. Those  
20 are my words, so I should be able to defend them. They  
21 were certainly loud.

22 Q And the next sentence, "Moreover, the SPT  
23 closed routes with ATSF even after the combination  
24 between Santa Fe and Southern Pacific Company had been  
25 announced."

1 Was that a true statement, December 9, 1983?

2 A I believe it was, yes.

3 Q When did you first learn of the proposed  
4 merger between the Southern Pacific and the Santa Fe?

5 A It was Monday or Tuesday of the week it was  
6 announced. I was back east on a trip, and I got a phone  
7 call.

8 Q That would be in October, 1983?

9 A Yes, it was. It was the middle of October.

10 Q Let's look at Page 11 of MKT-C-17. And let's  
11 address our attention to the paragraph numbered 14 in  
12 your affidavit. Was it true then that SPT will not  
13 cease in the future to be a strong competitor of ATSF?

14 A Excuse me? Was it true then?

15 Q Yes.

16 A Yes.

17 Q Is it true today?

18 A Yes.

19 Q You are a strong competitor of ATSF?

20 A Among many others. That's correct.

21 Q And where are you strongly competing with ATSF  
22 today? In what traffic flows?

23 A Well, it is very hard to restrict where we  
24 just compete with them. As I stated, we compete with  
25 many others.



1 Q For the purpose of my question, if you would  
2 address yourself to the places that you are now a strong  
3 competitor of ATSF.

4 A That is what I was going on to say. I was  
5 trying to think of a specific spot where we might  
6 compete. Do you mean solely with them.

7 Q No, where you are today a strong competitor of  
8 them.

9 A We compete with the Santa Fe as we compete  
10 with others just about everywhere. There are pockets  
11 that we do not compete with them on. For example, in  
12 the northwest is an area that we do not compete with  
13 them on, but if you were to say intermodal traffic, for  
14 example, we compete with them in a number of corridors,  
15 for example, LA to Chicago or across the southern tier.

16 If you wanted to talk about automobile parts,  
17 setup parts in vehicles we also compete with them. I  
18 guess my answer is, we compete with them to just about  
19 everywhere, as we also compete with many others.

20 Q Now, focusing your answer, please, on your  
21 competition with ATSF, please list for us the principal  
22 corridors where you compete with ATSF today.

23 A Well, the principal corridor would be Los  
24 Angeles to Kansas City and on to Chicago, and the second  
25 one might be Los Angeles across the southern part of the

1 United States to the Texas area.

2 Q Any others you would like to add to that?

3 A Those are the principal ones.

4 Q What do you include in the Texas area in your  
5 last answer?

6 A Well, on the eastbound, we would be addressing  
7 primarily intermodal traffic. On the westbound, we  
8 would address ourselves to some automobile traffic, some  
9 chemical traffic, petrochemical traffic. Those would be  
10 the two primary commodities.

11 Q And the places in Texas you are talking  
12 about?

13 A Well, of course, on the intermodal traffic we  
14 are talking about really most of the major consuming  
15 areas. As Mr. Fitzgerald testified, it is a function of  
16 how far you can drive where the economics of a drive are  
17 away from a ramp, and they can range, of course, between  
18 probably 50 and 150 miles or so, so that covers a very  
19 wide range away from the ramp. So you have a very large  
20 geographical area there.

21 So, it would be, as I stated, 50 to 150 miles  
22 away from ramps on intermodal.

23 Q Today is SPT a competitor of Santa Fe in the  
24 corridor between Kansas City and Houston?

25 A An effective competitor?

1 Q Why don't you answer first whether they are a  
2 competitor, and then we will see what kind of  
3 competitor.

4 A We try to compete with them, yes. But  
5 effectively we don't.

6 Q Does the SPT today move any traffic on SBT  
7 system lines between Kansas City and Houston?

8 MR. SMITH: Excuse me. Are you talking about  
9 single line?

10 MR. KHARASCH: Yes.

11 THE WITNESS: Very little.

12 BY MR. KHARASCH: (Resuming)

13 Q Do you move any?

14 A Yes.

15 Q In 1983 did you move any?

16 A Yes.

17 Q In order to move any traffic single system you  
18 moved it in the Kansas City-Houston corridor, you moved  
19 it either Kansas City to St. Louis and then down to  
20 Houston or you moved in Kansas City west to El Paso and  
21 then down to Houston. Is that correct?

22 A That's correct.

23 Q Did you move your single system traffic in  
24 that corridor on both of those routes?

25 A Via St. Louis, yes. Via El Paso, I am not

1 sure.

2 Q Would you call the SPT's route from Kansas  
3 City to Houston via St. Louis an efficient route?

4 A An efficient route? Yes, we would.

5 Q Why is it efficient, sir?

6 A You would like my definition of efficient?

7 Q Please.

8 A Okay. When we sit down, when we sat down and  
9 developed our routing policy, one of the factors in it  
10 was the term efficiency, and within that are a lot of  
11 variables. It will range from transit time, transit  
12 reliability, number of interchanges, the cost, the  
13 minimum revenue requirements to our company, and what  
14 the customer wants, and those plus some other factors  
15 are blended together and stirred together, and we come  
16 up with an efficient route.

17 The efficiency of that route, of course,  
18 changes over time. It is not fixed forever, because the  
19 amount of volume and density of that line also changes  
20 over time, depending on whether customers are using that  
21 route or not.

22 So, it is not a fixed for all time route. So,  
23 to answer your specific question, we do consider that an  
24 efficient route.

25 Q In your judgment of efficiency, do you include

1 the question whether you make more money carrying it  
2 over East St. Louis between Kansas City and Houston than  
3 you would -- than the money you would make if you gave  
4 it off to a joint line, sir?

5 A No, no, we don't. It is just, as I said, the  
6 cost, the transit time, the reliability, the  
7 interchange, what the customer wants, what route gets  
8 the traffic, what routes get the traffic. Those are the  
9 primary criteria that we use in establishing our routes.

10 Q Is revenue enhancement to the SPT a factor in  
11 determining whether a route is efficient?

12 A As I have already stated, I listed the  
13 criteria. I don't know what you mean by revenue  
14 enhancement.

15 Q Was the term revenue enhancement used within  
16 the Southern Pacific in developing its routing program?

17 A Yes. Most definitely. Would you like me to  
18 go on?

19 Q I am satisfied that you say, yes, you used the  
20 term. Then I will ask my question. Did revenue  
21 enhancement refer to the profitability or the degree of  
22 contribution that a rate would make to the Southern  
23 Pacific?

24 A No, not to a rate. Revenue enhancement  
25 related to a group that was responsible for reviewing

1 different elements within our company, and ascertaining  
2 whether we could increase revenue and contribution to  
3 profit to our company.

4 Q That was the assignment of that group, to  
5 increase revenue and contribution to profit?

6 A No, sir. The assignment of that group was  
7 threefold. One was to review the routes that the  
8 company participated in. Number Two, to review the  
9 branch lines that our company served.

10 And Number Three was to review the fact --  
11 Number Three dealt with commodity surcharges and if they  
12 were applicable and should we be applying them. So the  
13 concept of revenue enhancement dealt specifically with  
14 the very narrow focus. That is, where could we add  
15 revenue and profit to our organization? It was a small  
16 study group.

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1 Q Let's continue for a moment with MKT-C-17 and  
2 then we will look into the activities of that group.  
3 Let's look at page 11 of MKT-C-17.

4 Let's look at the sentence talking about "the  
5 aggressive sales and marketing programs that SPT has put  
6 in place to increase market share and profitability will  
7 be strengthened and emphasized within SPT in the years  
8 ahead."

9 Have you continued to strengthen and emphasize  
10 your aggressive sales and marketing programs?

11 A Yes, we have.

12 Q It's true today then?

13 A Most definitely.

14 Q Your next sentence says: "SPT will remain  
15 competitive in rates, service, and equipment supply."

16 Let's stop there. Was that true at the time  
17 you stated it in December 1983?

18 A We were sure trying, so the answer is yes.

19 Q And today, has SPT remained competitive, first  
20 in rates?

21 A Most definitely.

22 Q With whom have you remained competitive?

23 A Every competitor out there.

24 Q Railroad?

25 A As I stated, every competitor out there.

1 Q And have you remained competitive in service?

2 A We have tried.

3 Q Have you succeeded?

4 A In many, many cases, no.

5 Q And where have you not been able to remain  
6 competitive in service?

7 A Well, I guess you could pick just about any  
8 major corridor that we go over. I know I, for myself,  
9 as the chief commercial officer of our company, has not  
10 been satisfied with our ability to maintain train  
11 schedules, for example; that the consistency of our  
12 service has not been there.

13 We have not had the resources, the financial  
14 resources to maintain consistency in our train  
15 schedule. So we may make it one day and not make it the  
16 next.

17 Q So the lack of competition in service refers  
18 to the fact that you -- the reliability of your schedule  
19 is in question?

20 A Well, you asked me were we trying to remain  
21 competitive in service? The answer is yes, we are  
22 trying, and sometimes we're not able to do that.

23 Q Where you've not been able to do it in  
24 service, it has to do with your unreliability of train  
25 schedules?



1 A That would be one illustration.

2 Q Well, give any other illustrations of your not  
3 remaining competitive in service.

4 A Well, there are some corridors where, for  
5 example, let's say we are going to try to put together a  
6 transcontinental package from one point to another, and  
7 there are some corridors where, let's say, we are  
8 interlining in St. Louis with Conrail, for example.

9 By the time we put our package together and  
10 the Conrail package together to get to our customers, to  
11 our receiver's customers dock, you add the two together,  
12 and it's not competitive with the truck, for example.

13 So that would be another type of illustration  
14 where we continue to work with our interline connections  
15 at the major gateways to try to smooth out a terminal  
16 inefficiency that might be there, so we can reduce the  
17 transit time between one customer's dock and another  
18 customer's dock.

19 Q Is it your testimony that you have experienced  
20 difficulties in doing that, so that you are not today  
21 competitive in service when you have to interline with  
22 Conrail?

23 A No, that's not my testimony. I used Conrail  
24 as an illustration where we are working together to try  
25 to reduce the transit time.

1 Q Please focus on the question. Other than the  
2 unreliability of service, where are you have  
3 difficulties in remaining competitive? Is it in the  
4 interchanges with Conrail? You have mentioned that.

5 What else besides interchanges with Conrail?

6 A Well, besides service, I've also mentioned the  
7 transit time, the transit reliability. I've already  
8 stated there are some corridors -- we are just not as  
9 fast over a specific corridor.

10 So there are three reasons right there.

11 Q Right.

12 Now, in contrast, you have remained  
13 competitive in rates.

14 A We have tried; yes.

15 Q Now, how about equipment supply? Have you  
16 remained competitive in equipment supply?

17 A For the most part, yes. There are some  
18 glaring exceptions where we have not had the resources  
19 to repair all of our equipment.

20 Q Tell us the type of equipment that you're  
21 suffering in remaining competitive in equipment supply.

22 A Well, I was going on to that. For example, we  
23 have a lot of boxcars that are sitting around not  
24 repaired, and we have put forth a repair program to  
25 repair these in an orderly manner based on our budgetary

1 situation.

2 So there are some selected examples of just  
3 ordinary insulated boxcars where we might be deficient  
4 from time to time. There are times that we are short  
5 flatcars for our intermodal shipments. There are times  
6 that we have been short -- well, our forecast on  
7 additional multi-level equipment has caused us -- we  
8 were short there; we didn't have sufficient equipment.  
9 We corrected that problem. We are out purchasing  
10 additional equipment.

11 Q Is there generally in the railroad industry a  
12 shortage of boxcars today?

13 A Generally, no.

14 Q We're still on page 11, sir, of MKT-C-17. Has  
15 SPT positioned itself to take full advantage of the  
16 upturn in the economy?

17 A I believe we have; yes.

18 Q Is it true today that SPT is not about to  
19 "wither on the vine," as you say on page 11?

20 A We are trying not to wither on the vine during  
21 the period that the stock is held in trust. We are  
22 remaining a competitive, viable entity in the  
23 marketplace.

24 Q Let's look back to page 5 of MKT-C-17. The  
25 first sentence on the page which reads: "One of the

1 reasons underlying UP's acquisition of WP was its desire  
2 to retain control of traffic and not have to depend on  
3 SPT for the interchange of traffic at Ogden."

4 Do you see that sentence?

5 A Yes, sir.

6 Q What did you mean by retaining control of  
7 traffic?

8 A Well, the UP did not have access to large  
9 customer bases on the West Coast within the Bay Area and  
10 then some of the industrial areas. I know that for a  
11 fact because I was located on a couple of those railroad  
12 lines as a customer, and UP's desire was to have, I  
13 guess, field position would be the term I can think of  
14 off the top, but to have direct access to that customer  
15 base.

16 So either to retain control, to funnel, to  
17 direct, to work with, might be another way to phrase  
18 that -- to have access to.

19 Q You used the word "control," and then in your  
20 answer you used the words "funnel" and "direct."

21 Did the acquisition of the WP by UP give it  
22 the power to control, funnel, and direct traffic when it  
23 acquired the UP's rail network?

24 A No. I don't think it gave it the power to  
25 control traffic. I do not. Control means, to me

1 anyway, that the customer has no choice. I know in the  
2 customers in this area very well, and I can assure you  
3 they had at least one to two thousand trucking companies  
4 available to deal with, not to mention ocean carriers  
5 and several railroads.

6 Q Let's look at the railroad-to-railroad  
7 competition. Did the UP's acquisition of the WP  
8 intensify rail-to-rail competition in the Bay Area?

9 A No.

10 Q Did it intensify competition in the area where  
11 the WP served generally?

12 A No.

13 Q What new power did the UP get when it acquired  
14 the WP that enabled it to retain control of traffic?

15 A It gave it a single line route from the Bay  
16 Area, that whole group of customers that served the  
17 Upper Valley there, gave them single line service.

18 It provided them the ability to be a low-cost  
19 producer, to not only solicit additional business, but  
20 to allow those customers the opportunity through those  
21 two factors to expand in new markets they hadn't been in  
22 before. And they did that.

23 Q Was that a benefit to the customers?

24 A It gave them an additional option. Strictly  
25 speaking --

1 Q You didn't answer my question.

2 A I consider that yes. You are speaking rail  
3 now. Right?

4 Q Yes.

5 Is it generally in the railroad business a  
6 benefit to a customer to have two railroads competing  
7 for its traffic?

8 A No.

9 Q In traffic from the Bay Area to Chicago, is it  
10 a benefit to the customer to have two railroads carrying  
11 its traffic?

12 A No.

13 Q The UP service is now good from the Bay Area  
14 to Chicago?

15 A It's not as good as truck.

16 Q Let's talk about rail traffic for the moment.  
17 Is it good rail service from the Bay Area to Chicago?

18 A Yes, it is.

19 Q And does the SP offer service from the Bay  
20 Area to Chicago?

21 A Yes, we do, in conjunction with the D&RGW and  
22 the BN eastbound.

23 Q And is your service as good?

24 A It's comparable. Not as good. It is  
25 comparable.

1 Q If you would help us out, please, how can you  
2 be comparable if you are not as good?

3 A Well, that's part of what we try to sell.  
4 When you are in talking to a customer, you say -- I mean  
5 obviously, we're going to tell them that our service is  
6 comparable. And if you sit down and look at the  
7 specific number of hours that it takes, schedule-wise,  
8 you compare schedules, then you compare reliability, you  
9 have two different issues there when you are talking to  
10 a customer.

11 You can say my schedule is the same, and he  
12 pulls out another charts and says, well, by the way, Mr.  
13 Edwards, that's interesting information, but the real  
14 world is that you take four or five hours longer, a day  
15 longer, by the time you interline with two or three  
16 railroads, to get here.

17 So comparable is a term that means we are  
18 close to.

19 Q How about Los Angeles, when you are looking at  
20 Los Angeles to Chicago service? Who's in that market  
21 today in railroads?

22 A Well, there's the UP, the Santa Fe, and then  
23 there is us, and we interline, eastbound now, we  
24 interline -- generally, we interline with the Milwaukee  
25 in getting to Chicago.

1 Q Where do you interline with them?

2 A Kansas City.

3 Q That's three railroads in that market.

4 A Well, yes; two railroads and a joint.

5 Q Now, of those services, is the UP's service  
6 good?

7 A It's okay; yes.

8 Q Is the Santa Fe's service comparable with the  
9 UP?

10 A No. The Santa Fe's service is excellent.

11 Q So it's better than the UP?

12 A Yes, sir.

13 Q And the Southern Pacific service?

14 A We are in between.

15 Q What's the matter with the UP service?

16 A Well, I guess the UP service does not have as  
17 efficient a means of getting there. I don't know how  
18 they run their railroad, how many interchanges they have  
19 to go through. I'm not familiar with their route.

20 Q Now, in your testimony a few moments ago, you  
21 said that, if I understood you, that it is not a benefit  
22 to a shipper to have several railroads serving a  
23 shipper.

24 Is that right?

25 A I think you asked the question -- that's what



1 I said. I said it's not an additional benefit to have  
2 two railroads for moving their goods; that's correct.

3 Q It's not. So, if the Southern Pacific service  
4 from Los Angeles to Chicago were not available, that  
5 would not harm shippers, would it?

6 A I personally believe they could replace that  
7 service in about an hour and a half with trucks.

8 Q Or could they replace it by another railroad?

9 A That would be one of their options, yes.

10 Q And could they?

11 A I don't understand.

12 Q Could this customer from Los Angeles, shipping  
13 into Chicago, replace the Southern Pacific's service  
14 very readily by another railroad's service?

15 A They have that option today.

16 Q Then if there were no Southern Pacific  
17 service, they could use that other option, couldn't  
18 they?

19 A That and the UP and the trucks. That's  
20 correct.

21 Q Do you see any public need to preserve the  
22 Southern Pacific's service from Los Angeles to Chicago?

23 A Well, yes, in the respect that it's another  
24 option for our customers to choose from. It's another  
25 transportation option.

1           So I would say yes, in the public need, if the  
2 public need ascertains that we need another option and  
3 if that particular option has sufficient velocity and  
4 density to be a low-cost competitive option.

5           Otherwise, there is no need for it.

6           Q     And how about from the Bay Area to Chicago?  
7 Do you see a public need for the Southern Pacific  
8 service?

9           A     As I said, there are plenty of other options  
10 available today.

11          Q     Yes. And is there a need for the existence of  
12 the Southern Pacific option, public need?

13          A     Well, I'd like to hope so, since I spend my  
14 life selling -- you know, the last couple of years,  
15 selling rail transportation. But when you get down to  
16 it, the Southern Pacific could not be involved in that  
17 move tomorrow, and that customers that originate traffic  
18 would find another option to move their traffic.

19          Q     In your work, do you find that customers  
20 generally like to have more than one rail option to  
21 ship?

22          A     No.

23          Q     They don't?

24          A     Not necessarily; no.

25          Q     Let's look at page 12 of MKT-C-17. In the

1 paragraph numbered 16, you're talking about your sales  
2 and marketing forces. And the last sentence says, I  
3 gather, that your sales and marketing people should be  
4 taking business away from ATSF, not handing it to them.

5 A Yes, sir; that's what I said.

6 Q Is that going on today? You are trying to  
7 take business away from ATSF?

8 A We are competing vigorously with them.

9 Q All right. Now, in the places that you are  
10 competing vigorously with the ATSF, do you think there  
11 is a public need by the shippers for the Southern  
12 Pacific service?

13 A I guess I'd have to ask you what do you mean  
14 by public need?

15 Q Let's examine several aspects of it. First,  
16 is the Southern Pacific service necessary in order to  
17 provide a benefit to the shippers?

18 A That would be part of public need?

19 Q Let's try that.

20 A Is it necessary? Do they need it or do they  
21 want it? I'm just trying to understand.

22 Q Let's start with want. Do shippers want a  
23 Southern Pacific service in the areas where you are  
24 competing vigorously with the Santa Fe?

25 A The shippers would want a whole lot of

1 things. They would want 25 truck docks to be on an  
2 interstate and have a barge dock next to them, plus ten  
3 railroads serving their plants.

4 That's what they would want.

5 Q Do they want -- that's my question -- a  
6 Southern Pacific rail service, in addition to the Santa  
7 Fe rail service?

8 A I've already testified that customers -- what  
9 customers would like in their mix of transportation  
10 carrier services on the outbound or inbound is just that  
11 -- a mix. They would like at least one single line  
12 carrier rail transportation that has the ability to  
13 serve all the major markets and the major gateways and  
14 Gulf ports probably, depending on what commodity they're  
15 moving.

16 They would like to have access to a whole raft  
17 of truck opportunities, and most traffic people today --  
18 in fact, I can't think of any company in the United  
19 States where their traffic people are not directed to  
20 have available to them on call options, rail versus  
21 truck options, available to them on a moment's notice.

22 Q Now, you're talking about rail versus truck.  
23 Let's try to focus ourselves for the moment at rail  
24 versus rail.

25 A Okay.

1           Q     The questions I'm asking you have to do with  
2     -- to determine whether, in your opinion, whether  
3     shippers need the Southern Pacific service in addition  
4     to the Santa Fe service in the areas where you are  
5     competing.

6           A     Shippers need one efficient single line  
7     railroad that will service the markets and gateways, the  
8     major markets and gateways of this nation. They need  
9     that as a part of their inventory, and it's very  
10    difficult for me to separate just rail when rail is,  
11    generally speaking, a small percent of many of our  
12    shippers' mix or bag of inventory that they use to move  
13    their goods.

14           Let me give you an illustration. If rail is  
15    only 5 percent of their outbound or 2 percent of their  
16    inbound, they really only need one rail system.

7  
17           Q     Let us suppose that we are dealing in a market  
18    where, for a particular commodity, rail is 90 percent of  
19    the traffic.

20           Are there any such markets where you compete  
21    with the Santa Fe?

22           A     Where rail is 90 percent? I can't think of  
23    any.

24           Q     Do you know what the rail share of grain to  
25    the Gulf is from terminal elevators?

1 A What terminal elevators?

2 Q Kansas terminal elevators.

3 A No, I don't.

4 Q Assume it will appear later, and it does  
5 appear already in the record -- assume that the rail  
6 share from Kansas terminal elevators to Gulf ports and  
7 Mexico is over 90 percent. Do such shippers need  
8 competitive rail service?

9 A This is your assumption. Okay. If it's 90  
10 percent, then I would say yes, they would.

11 Q All right. At what point in rail share of  
12 market do you think shippers don't need competitive rail  
13 service?

14 A I don't have the slightest idea.

15 Q Somewhere below 90 percent?

16 A Okay. Somewhere below.

17 Q At 5 percent you don't need rail competition?

18 A I don't believe so; no.

19 Q What business have you taken away from the  
20 Santa Fe in 1983 or 1984?

21 A Well, we've been competitive with them just  
22 about across the board, commodity-wise.

23 Q Please give us an example, if you can, of  
24 business that you have taken away from the Santa Fe from  
25 December 9, 1983 to date.

1 A Well, we have certainly taken away or outbid  
2 them on some intermodal business.

3 Q What market?

4 A That would be flowing across the southern part  
5 of the United States.

6 Q Give the origins and destinations, please.

7 A Los Angeles to Houston.

8 Q And when you said you outbid them, you mean  
9 published a tariff rate lower than they did?

10 A No. We did not.

11 Q How did you outbid them?

12 A Through the contractual process.

13 Q And did that result, in the Los Angeles-Houston  
14 market, in the Southern Pacific getting business that  
15 used to be carried by the Santa Fe?

16 A That was your question. And the answer is  
17 yes.

18 Q Now, on page 12 of MKT-C-17, you talked about  
19 SPT's contract rate program in the last paragraph  
20 numbered 18. Do you see that?

21 A Yes, I do.

22 Q Is this outbidding of Santa Fe an example of  
23 your contract rate program?

24 A No. It's just one of many -- it's just an  
25 illustration.

1 Q Looking at the last sentence on page 13 of  
2 MKT-17, you said: "SPT will also seek to initiate new  
3 contracts for business which currently moves by truck or  
4 on competing railroads, including Santa Fe."

5 A Right.

6 Q So is this example of your outbidding Santa Fe  
7 for Los Angeles to Houston traffic an example of your  
8 initiating new contract for business that moved on the  
9 Santa Fe?

10 A Yes. The answer is yes. I thought you meant  
11 was that the only type of contract that we had. That's  
12 why I answered no.

13 No, that would be an illustration of that.  
14 That is correct.

15 Q Who do you deal with in bidding for  
16 transportation, Los Angeles to Houston?

17 A Customer.

18 Q The customer is a shipper or a carrier  
19 itself?

20 A It can be either or both.

21 Q In the case of your outbidding the Santa Fe,  
22 which was it?

23 A It was the -- it was another carrier.

24 Q A motor carrier?

25 A Ocean carrier.



1 Q An ocean carrier. I see.

2 And what you're talking about, then, is  
3 movement of COFC traffic?

4 A Yes, sir.

5 Q I see. And you outbid the Santa Fe for the  
6 COFC traffic and you got it? You got the bid?

7 A Well, that's correct. And we also competed --  
8 we also bid against the ocean carrier, too, at the same  
9 time.

10 Q And at least in the case of this traffic,  
11 there appeared to be vigorous price competition in the  
12 market.

13 A I don't recall whether there was a vigorous  
14 price competition. No.

15 Q You just made a contract and you bid lower.  
16 Is that not price competition?

17 A It's price competition. Vigorous? I can't  
18 characterize it that way.

19 Q It was the price that enabled you to outbid,  
20 not the service?

21 A No. I was going on to point out --

22 Q Please tell us.

23 A If you look at the map from Los Angeles to  
24 Houston, we have a pretty efficient railroad. And we  
25 put together a package that included equipment, transit

1 time, and price.

2 And three of those elements together were very  
3 attractive to the customer, and we were literally able  
4 to outbid the ocean carrier and the Santa Fe.

5 Q And this traffic had previously been carried  
6 by the Santa Fe?

7 A No.

8 Q Oh, I thought you were giving me an example of  
9 business you took away from the Santa Fe.

10 A No. I thought you said where we bid against  
11 the Santa Fe.

12 Q It started with this. Is this Los Angeles to  
13 Houston traffic in which you outbid the Santa Fe,  
14 business that is taken away from them in the sense that  
15 you each wanted it?

16 A That's correct.

17 Q Now, do you have any examples where you took  
18 business away from the Santa Fe in the sense of  
19 attracting to the SPT traffic that formerly moved on the  
20 Santa Fe?

21 A I would use a similar type of illustration on  
22 the moves, the large volumes of intermodal moves that  
23 move from Los Angeles to Chicago, that particular  
24 corridor there.

25 There are many, many contracts that come up

1 from time to time over that corridor where each one of  
2 our companies, among others, participate in bidding for  
3 volumes of the business. So it's kind of a rolling  
4 situation, if you will.

5 We have bid against the Santa Fe since  
6 December 1983, I believe your original question was, and  
7 have in some isolated instances been able to offer  
8 packages that were attractive to our customers and  
9 secured some business.

10 Q Do you think that competition between the  
11 Santa Fe and the Southern Pacific was beneficial to the  
12 shippers?

13 A I think that shippers -- not necessarily I  
14 don't. As I said already, the shippers have a choice to  
15 use the railroad or trucks between Los Angeles and  
16 Chicago.

17 Q And in this case, you succeeded in attracting  
18 the traffic to the Southern Pacific by offering this  
19 package that was attractive?

20 A That's correct.

21 Q And your package was apparently more  
22 attractive than the Santa Fe package?

23 A It must have been, because they selected our  
24 company.

25 Q Do you know whether or not the following

1 statement is true? "Concurrent with SP's entry into  
2 Kansas City, it published TOFC rates west to California  
3 and Arizona that 'significantly undercut' then-existing  
4 rates."

5 MR. SMITH: Your Honor, could I just ask for  
6 the record that counsel identify what he is quoting  
7 from?

8 MR. KHARASCH: Sure. KCS-C-1, page 0031.

9 MR. SMITH: That's the document that was  
10 furnished to the Board of Directors of Santa Fe.

11 JUDGE HOPKINS: Thank you.

12 BY MR. KHARASCH: (Resuming)

13 Q Is that a true statement?

14 A Would you please read that again?

15 Q Yes.

16 "Concurrent with SP's entry into Kansas City  
17 it published TOFC rates west to California and Arizona  
18 that 'significantly undercut' then-existing rates."

19 A Concurrent into entering into Kansas City. I  
20 don't know when that time was, but it must have been  
21 before I arrived on the scene.

22 So I'd have to answer I don't know whether we  
23 took action like that or not.

24 Q Let's go back to page 12 of MNT-C-17 where you  
25 describe your contract rate program. The second

1 sentence of the paragraph numbered 18 on page 12, where  
2 you say: "A sizable number of existing contracts  
3 contain either fixed terms, extending for several years,  
4 or automatic renewal provisions."

5 A Right.

6 Q What do you mean by a sizable number in terms  
7 of percentage of your contracts?

8 A As you know, we have entered into -- we, the  
9 Southern Pacific, has entered into almost right around  
10 2,000 contracts, which is a lot of contracts. So we've  
11 been very aggressive in that area.

12 What I'm referring to here is the absolute  
13 amount, meaning it could be 10 percent of that number,  
14 so a sizable number would be like 200.

15 Q So now, do you 200 of your existing contracts  
16 contain fixed terms extending for several years?

17 A No, they do not. It says "or automatic  
18 renewal." Most of our contracts are one year or less.

19 Q Do any of them extend for more than one?

20 A A handful do.

21 Q And by handful, you mean how many?

22 A Ten.

23 Q Ten contracts contain fixed terms extending  
24 for several years. How about automatic renewal  
25 provisions?

1           A     That would be the remainder. Let's say, if we  
2 had 200 roughly, that that would be 190.

3           Q     What is an automatic renewal provision?  
4 Explain that.

5           A     It's a condition by which both parties, when  
6 they originally negotiate the contract, they will sit  
7 down and then negotiate a number of elements. That  
8 might be service, that might be transit time; price  
9 certainly is included, volume is discussed. And a lot  
10 of the wording dealing with liability within that  
11 contract is agreed upon.

12           A     And rather than sit down and go through that  
13 whole process all over again, we have an agreement that  
14 says, lock. rather than do it all over, we agree to the  
15 following format. It's kind of a pro forma, if you  
16 will, within that contract. And when it comes time to  
17 renew it again, we sit down and talk about really just  
18 one or two elements.

19           A     But for the most part, every other element is  
20 agreed upon.

21           Q     Mr. Edwards, please focus on the question.  
22 Explain what the automatic renewal provision is. What  
23 is the provision of the contract that leads to automatic  
24 renewal? What does it say?

25           A     Both parties agreeing to extend the contract.

1 Q Automatically?

2 A That's correct. Now, let me --

3 Q Is it determine the contract?

4 A Let me be more specific. Ninety days before  
5 the contract is to expire, we give notice. During that  
6 90-day period, there can be discussion between the two  
7 parties.

8 If both parties agree at the end of 90 days  
9 that this is the format and structure we want to  
10 continue with, we will automatically renew that contract  
11 without sitting down and formulating, negotiating,  
12 discussing, and going through all the different bullet  
13 points that I mentioned before.

14 Q Is there language in the contract that says  
15 this contract automatically renews next year unless  
16 denounced by either party?

17 A I don't recall. I could find out for you, but  
18 I just don't recall.

19 Q Well, in looking at the next sentence of what  
20 you say here, you say it ensures -- this automatic  
21 renewal provisions "ensures that SPT will be able to  
22 retain current traffic moving under contract."

23 How does the provision in the contract, the  
24 language in the contract, ensure that SPT will be able  
25 to retain the traffic?

1           A     Well, I've just stated that I don't recall the  
2 precise language. And it does require that both parties  
3 agree. In other words, one party cannot agree without  
4 the other party agreeing.

5           Q     And how does that ensure that the you will  
6 retain the traffic?

7           A     If both parties agree to the contract, then  
8 the contract will be automatically renewed or rolled  
9 over. And so you have an ongoing continuation of the  
10 contract.

11           It is very important for our customers. Many  
12 of our customers want an automatic renewal or a rollover  
13 provision.

14           Q     Do you have any contracts with your customers  
15 which cover freight of the customer from more than one  
16 origin or going to more than one destination?

17           A     Any at all? We must.

18           Q     Let's say a customer has three plants. Do you  
19 have contracts that cover the three<sup>e</sup> plants in one  
20 contract?

21           A     We must. I already said we must. I can't  
22 think of an example off the top, but we probably do.

23           Q     Would that be the type of contract also that  
24 would automatically renew?

25           A     It would fall that category. It could fall



1 within that category; that's correct.

2 Q Do you have any contracts with customers that  
3 produce chemicals that -- let's stop there. Do you have  
4 any contracts with customers producing chemicals?

5 A Yes, sir; we do.

6 Q Do you have contracts for inbound freight?

7 A Yes, we do.

8 Q Do you have contracts for outbound freight?

9 A Yes, we do.

10 Q Do you have contracts that cover both the  
11 inbound and the outbound freight together?

12 A I can't think of any. We may, but I can't  
13 think of any, mostly because our contracts, generally  
14 speaking, are very specific with regard to the commodity  
15 that is being moved. And generally speaking, the  
16 inbound and outbound commodities into a chemical plant  
17 are different.

18 Q Do you have contracts with chemical shippers  
19 that cover more than one of the shipper's plant  
20 origins?

21 A You just asked me that, and I said that I  
22 can't think of any, but we may.

23 Q In your contracts, you name a rate by  
24 agreement with the shipper; yes?

25 A That is a type of contract.

1 Q Don't most of your contracts name a rate?

2 A No. We have different types of contracts.

3 Q You may have different types, which we will  
4 get to, so that you can define it for the record. But  
5 do most of your contracts name the rate the shipper will  
6 be charged?

7 A Not necessarily; no. It's about half of them  
8 that do.

9 Q Let's look at those half that name a rate the  
10 shipper will be charged. In such contracts, is there a  
11 provision as to the percentage of the shipper's rail  
12 traffic that will be given to the SFT?

13 A In some of them, yes.

14 Q Are there also minimum volumes in some  
15 contracts?

16 A Yes, there are, in some.

17 Q Now, you say you have contracts that do not  
18 name rates. What do those contract deal with?

19 A Well, they fall into several categories. One,  
20 there are allowance type contracts. Then there may be a  
21 contract where we guarantee service and our equipment.  
22 We don't have too many of those.

23 So, generally speaking, we have rate and we  
24 have allowance type contracts.

25 Q Let's look at allowance type contract. Is not

1 an allowance type contract a contract where the SP says  
2 that they will give the shipper some money back on the  
3 rates the shipper would otherwise pay?

4 A An allowance contract is one that is  
5 negotiated between both parties where we will discount  
6 the rate in consideration for something the customer is  
7 going to give us.

8 Q That is, the business?

9 A You've got it; the business.

10 Q So in the more general sense, both your  
11 contracts that name rates and your allowance contracts  
12 are contract that have to do with the amount of money  
13 the shipper is going to pay net for his rail  
14 transportation. Yes?

15 A Provided that he moves that commodity under  
16 the terms of the contract.

17 Q And those contracts that do not either name a  
18 rate or name the amount of money to be refunded from a  
19 rate would be service guarantee or equipment guarantee  
20 contracts, and those are minor in number, I gather?

21 A Yes, sir; they are.

22 Q Mr. Edwards, let me pass up a copy of MKT-C-6  
23 which has already been marked and identified. Let's  
24 look at page 1.

25 A Would that be page 1 in the upper righthand

1 corner?

2 Q In the upper righthand corner, page 1 of 33.  
3 Do you see that?

4 A Yes.

5 Q Before we look at page 1, let's look over on  
6 page 2. Whose signature is that?

7 A G. E. Farcsich.

8 Q And also on that page, we see things like NJH  
9 and DAS. Do you see those initials? Can you inform us  
10 who those people are?

11 A I don't see them on my copy here.

12 Q Lower lefthand on page 2.

13 A Oh, the initials. No, I can't. I'm sure I  
14 know who they are, but I -- well, I don't know who they  
15 are.

16 Q All right. Let's turn back to page 1,  
17 please. First, the document appears to be addressed to  
18 Mr. R. D. Krebs. What was he at that time?

19 A President of the Southern Pacific  
20 Transportation Company.

21 Q Underneath the year 1983, I see what looks to  
22 me like a DKM. Who is that?

23 A DKM? That's Mr. McNear.

24 Q Does the Southern Pacific have a practice of  
25 people stamping their initials on a document when they

1 have received it?

2 A Their secretaries do; yes. And very often  
3 when you are done with it, you may stamp it yourself if  
4 that's your practice.

5 Q My question is, is it your practice in your  
6 railroad?

7 A Geez, I'm not sure what all our practices  
8 are. I get confused some days myself.

9 Yes. The practice is we do stamp it when it  
10 passes through that particular office.

11 Q Now, in the first sentence, the report to Mr.  
12 Krebs says that the revenue enhancement cost reduction  
13 organization accomplished the following during the month  
14 of December -- and then we see on December 28th routes  
15 for lumber from Oregon and California to SP/SSW  
16 destinations were limited to SI direct or via Ogder.

17 Do you see that?

18 A Yes, sir.

19 Q When you limit routes for lumber from SP  
20 Oregon and California origins to SP direct, does that  
21 mean that if the shipper wishes to use rail  
22 transportation from those origins, he must follow the  
23 routes that are specified by the SP's publication?

24 A The answer is, if he wants to use rail from  
25 these origins, he has two options. He can either use

1 the SP direct route or he can go through Ogden and  
2 interline with another railroad and continue routing his  
3 traffic to the final destination.

4 So he can either interline with the UP or the  
5 D&RGW for lumber only.

6 Q There is reference in the second paragraph  
7 with that little dot with the circle in front of it --  
8 it says the first Steering Committee meeting was held on  
9 December 17th.

10 What's the Steering Committee, sir?

11 A Well, the Steering Committee was -- well,  
12 first of all, I explained earlier about the revenue  
13 enhancement group being set up in late 1982 and the  
14 responsibilities of that group.

15 The Steering Committee was made up of  
16 principals from the different functions within our  
17 organization. For example, we had people from the  
18 transportation group there, from the maintenance group,  
19 from the marketing group, from the sales group, I  
20 believe from the accounting group, and they consisted of  
21 a Steering Committee whose responsibility was to sit  
22 down and review the recommendations of the revenue  
23 enhancement group and to ascertain whether we should  
24 take different types of actions or not, and the  
25 implications of those actions, and to coordinate those

1 actions.

2           Primarily, their job was to review the branch  
3 line. We felt that the branch line aspect was a very  
4 sensitive thing, and that's what their primary function  
5 was.

6           Q     That's their primary function?

7           A     Right.

8           Q     The branch lines?

9           A     Well, now --

10          Q     Who are the members of the Steering Committee  
11 that we're talking about?

12          A     Okay. There were the -- Bob Sharp, who would  
13 be the Vice President of Marketing; Joe Neal, who would  
14 be the V.P. of Sales; Bill Lacey, who would be VPC; Mr.  
15 Johnson, who was our Controller, I believe was on it. I  
16 just don't recall for sure. I was added to it after I  
17 arrived. And that's about it.

18          I think we did have legal counsel attend the  
19 meeting.

20          Q     Who's chairman of the committee?

21          A     Generally speaking, the meeting was ran by a  
22 member of the revenue enhancement group.

23          Q     Is there a nominal chairman?

24          A     I don't remember there being an assigned  
25 chairman.

1 Q Did Mr. McNear attend the Steering Committee  
2 meeting?

3 A Not after I arrived, he didn't. And I don't  
4 know about before I arrived.

5 Q All right.

6 Now, let's see what the Steering Committee  
7 agreed to, as reported on January 7th. The first thing  
8 they agreed to was a general strategy concerning route  
9 closings.

10 A For lumber.

11 Q Oh, that's only for lumber?

12 A That's what it says.

13 Q Where does it say it's only for lumber?

14 A Well, bullet point one deals specifically with  
15 what the action was on lumber.

16 Q Right. And now when we go down to the second  
17 paragraph where they say the first Steering Committee  
18 meeting was held on December 17, it says they agreed on  
19 a general strategy concerning route closing.

20 Do you see any language that restricts that to  
21 lumber?

22 A No, I don't see any language that restricts  
23 that. But I will tell you that when I arrived on  
24 January 10th, which was just three days after this, that  
25 the general strategy concerning route closings was not



1 established.

2 Q I see.

3 The second thing the Steering Committee did  
4 requires some interpretation from you, sir. They agreed  
5 to placing no restrictions on allowance contracts vis a  
6 vis route closings.

7 Could you explain that?

8 A Well, I guess what it means to me is that on  
9 all of our contracts dealing with allowances, there was  
10 no consideration made with respect to route. In other  
11 words, there was no specified route within that  
12 allowance contract at this time.

13 That's the way I read that.

14 Q Well, you're saying if you close the route,  
15 your allowance contract still would apply -- or not?

16 A When we negotiated an allowance contract, the  
17 route closings did not apply. That's the way I read  
18 that.

19 Q Now, number three, the Steering Committee  
20 appeared to agree to the concept of core, secondary, and  
21 lighter density routes. What is this concept, sir?

22 A That's in relationship to the second function  
23 of the group dealing with branch lines. We were trying  
24 to formulate a means to analyze all of our branch  
25 lines. So one way, of course, was to segment them into

1 the various densities across them. So we came up with  
2 this definition -- core, secondary, and lighter density.

3 Q Now, number four, the Steering Committee agreed  
4 to a plan to resolve the Llano Branch.

5 A Llano.

6 Q L-l-a-n-o.

7 A That's the specific branch line, is the next  
8 one. So those were specific action items that were  
9 before the Steering Committee with reference to those  
10 branch lines.

11 Those were branch line issues.

12 Q Number four, they resolved the -- they had a  
13 plan to resolve the Llano Branch, and they agreed to the  
14 abandonment of the Don Luis Branch. Correct?

15 A Yes, sir.

16 Q Let's go down to the next circle. Additional  
17 questions on the NWP were answered from Mr. McNear.  
18 What's the NWP?

19 A Northwestern Pacific Railroad.

20 Q Is it owned by the Southern Pacific?

21 A Yes, sir. Well, is it, or was it?

22 Q Is it, or was it? All right; is it?

23 A We just sold off parts of it. I'm not trying  
24 to be evasive. So yes, it is. Parts of it are still  
25 owned.

1 Q It is a lumber origin railroad?

2 A Yes, lumber origin that stretches from, on the  
3 West Coast of California, from Eureka down through --  
4 well, mostly Eureka, down toward the Bay Area through  
5 Ukiah.

6 Q Let's continue with the accomplishments in  
7 December. Going down to the bottom of the page, we see  
8 the accomplishment that intra-Texas route restrictions  
9 were submitted to appropriate tariff agencies.

10 Now, those are not just lumber, are they,  
11 sir?

12 A No. Those would have been, I believe, general  
13 commodities. That's correct.

14 Q The next sentence says: "This action is  
15 expected to increase revenue by \$1.4 million."

16 Let's stop right there. How does a route  
17 restriction increase revenue for the SP?

18 A It would be -- I assume for this meeting, that  
19 some kind of discussion or analysis or review was done  
20 over the way traffic was routed before the change in  
21 route, and there was an estimation that if everything  
22 worked perfectly and all the traffic moved under the new  
23 route, that the change -- you know, given that fact,  
24 that the customers did nothing, that the competition did  
25 nothing, that the world stood still, that the addition

1 in revenue would be, under the new routing arrangement,  
2 would be an additional \$1.4 million.

3 Q And the reason it would increase revenue is  
4 that the traffic would move a longer distance over the  
5 SP?

6 A Not necessarily; no.

7 Q Would it increase revenue because the SP was  
8 increasing rates?

9 A No. That wouldn't have a factor either.

10 Q Well, explain then how a route restriction  
11 would increase revenue. Remember, we're not yet looking  
12 at the question of contribution, but increase of  
13 revenue.

14 A Right. Now, specifically, we're talking about  
15 intra-Texas. The reason I said no on the longer route,  
16 I said not necessarily. Now, obviously, that could be  
17 part of it. But it depends on those commodities that  
18 are moving over your railroad, the amount of revenue you  
19 get for those commodities.

20 For example, you could be short hauled or  
21 moving some -- I don't know -- automobile parts, for  
22 example. And because they are now moving over your  
23 railroad a longer distance, then you would get  
24 additional revenue because of a change in mix; or,  
25 because they moved a different route that they didn't

1 move over at all on your railroad, then you would have  
2 additional revenue once again because of a change in  
3 commodity mix.

4 So you may have been not moving any of that  
5 traffic at all and maybe some longer haul -- it could be  
6 a lot of different things. It could be a mix of  
7 commodities.

8 Q And how would a route restriction operate to  
9 increase revenue if you had not previously been carrying  
10 the traffic at all?

11 A Excuse me?

12 Q How would a route restriction operate to  
13 increase revenue, if previous to the route restriction,  
14 you had not been moving the traffic at all?

15 A Well, this would be traffic that is moving  
16 over -- it had been moving over a different route.

17 Q How does the restriction operate to compel the  
18 traffic to move on your route, or is that what had  
19 happened?

20 A Well, the situation is that our routing  
21 program, once again within Texas, dealt with the  
22 creation or the maintenance of what we viewed as the  
23 most efficient routes that our customers wanted.

24 Q Sir, I really think we can move a little  
25 faster, Mr. Edwards. I'm asking you simply to explain

1 how a route restriction would increase revenue at this  
2 time. That is the segment of the question we are on,  
3 not the purpose of the program or anything else.

4 Explain how route restrictions would increase  
5 revenue. Now, you said one example of increasing  
6 revenue might be that the route restriction gave you a  
7 longer haul. Are we agreed on that? Yes?

8 A Yes.

9 Q The second example you gave is that the route  
10 restriction might give you some traffic that you had not  
11 carried before.

12 Please explain how that would happen.

13 A That's what I was attempting to do, and I was  
14 prefacing it with some remarks that I thought were  
15 appropriate.

16 For example, there may be ten railroads in  
17 Texas where traffic has moved across the state from --  
18 and routed in a very up, back, forward situation. In  
19 fact, the case is, we can probably find examples at  
20 least where four or five railroads have been  
21 interlined.

22 What our routing policy stated is that if it  
23 was an SP origin and an SP destination, that traffic  
24 would over our railroad on a single line basis. We  
25 thought that was the most efficient route that was

1 available to our customers, and that's what we said.

2 Now, to back up to your question, if each one  
3 of those little segments were moved, say, from El Paso  
4 up to here and down to here, and over here, and we had a  
5 single line, that's how our revenue would have been  
6 enhanced.

7 Q And that would be because your route  
8 restrictions did not permit the traffic to move the way  
9 it had been moving before; is that correct?

10 A That's correct.

11 Q Okay. Now, let's look at the second half of  
12 the sentence. You said: "It's expected to increase  
13 revenue by \$1.4 million with added contribution of  
14 \$225,000."

15 Explain "contribution," sir.

16 A That's a gross profit type of number for fixed  
17 expenses. It covers variable expenses.

18 MR. KHARASCH: Could we be off the record a  
19 minute?

20 JUDGE HOPKINS: Sure.

21 (Discussion off the record.)

22 BY MR. KHARASCH: (Resuming)

23 Q Let's go to page 2 of MKT-C-6. Let's look at  
24 the part about planned January accomplishments. The  
25 first planned January accomplishment is to restrict

1 routes for Oregon and California lumber to southeast,  
2 northeast, and midwest.

3 Is that a similar restriction as you just  
4 explained, the restriction of routes to SP routes?

5 A The answer is yes and no. Those particular  
6 regions, as you know, are on the other side of the river  
7 and our general routing program was applied -- well, the  
8 general routing policy of our company at that time kind  
9 of structured itself on east of the river and west of  
10 the river.

11 Q Excuse me. I'm having a little trouble.

12 A You said southeast, northeast, and midwest;  
13 correct?

14 Q Right. Oh, you mean midwest, east of the  
15 river. Right?

16 A Yes.

17 Q And when you're talking about restrictions,  
18 then you are restricting to gateways; is that right?

19 A Well, that would be the differentiation. We  
20 are talking gateway there; in the other, we are talking  
21 about specific points.

22 Q I see.

23 And here, you estimated a \$1.7 million gain in  
24 revenue, and \$875,000 more contribution, the same  
25 meaning as the terms had in the previous discussion?



1 A That's correct.

2 Q Let's look at the second planned January  
3 accomplishment. "Routes for all commodities moving west  
4 of El Paso will be restricted."

5 Explain what traffic flows are included in the  
6 term "all commodities moving west of El Paso."

7 A That would have been traffic from the  
8 northwest, from the Bay Area, and from Los Angeles back  
9 and forth between those points, eastbound and  
10 westbound.

11 MR. KHARASCH: Could I have that last answer  
12 read? I'm not sure I understood it.

13 THE REPORTER: "A. That would have been  
14 traffic from the northwest, from the Bay Area, and from  
15 Los Angeles back and forth between those points,  
16 eastbound and westbound."

17 BY MR. KHARASCH: (Resuming)

18 Q I'm not quite understanding you, Mr. Edwards.  
19 Doesn't traffic move from the northwest, the Bay Area,  
20 and Los Angeles, north and south?

21 A No. I thought you were talking about from  
22 what regions west of El Paso. I thought you were  
23 talking about the commodity flows -- the question was  
24 what commodity flows are you talking about?

25 I'm talking about flows, for example, traffic

1 from the northwest that is routed -- I'm talking about  
2 lumber, for example. That's part of our general  
3 commodities that is routed, as I stated already, either  
4 SP direct or SP Ogden. So they would have two choices  
5 in moving that way.

6 So I'm trying to describe the flow, not the  
7 northwest to Los Angeles. I thought you asked me the  
8 commodity flow.

9 Q Now, how were the routes for all commodities  
10 moving west of El Paso restricted?

11 A Well, remember, this page deals with planned  
12 accomplishments, and --

13 Q Planned accomplishments. I suggest we get  
14 onto the brilliant fruit of these planned  
15 accomplishments after lunch.

16 JUDGE HOPKINS: I think that's a good idea.

17 We will be in recess until -- let's make it  
18 1:35.

19 (Whereupon, at 12:30 o'clock p.m. the hearing  
20 was recessed, to reconvene at 1:35 o'clock p.m., this  
21 same day.)  
22  
23  
24  
25

FD30400 - Pages 1189 thru 1248

AFTERNOON SESSION

(1:30 P.M.)

JUDGE HOPKINS: Back on the record.

Mr. Kharasch?

Whereupon,

JACK P. EDWARDS,

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

CROSS EXAMINATION - RESUMED

BY MR. KHARASCH:

Q Let's turn to Page 5 of MKT-C-6, sir, describing certain accomplishments of the program we have been discussing. Would you explain the column headings across the top beginning with Estimated IC and so on?

A Yes. This exhibit is Page 3 of the document written on January 14th dealing with the revenue enhancement program status. This exhibit does not reflect the actual accomplishments but the planned or anticipated accomplishments if nothing else happens, if it comes to fruition without any action by any of our customers or any of the other railroads.

The heading's action would be the action proposed, and there are six proposed actions. The

1       secnd would be an effective date that we might want to  
2       consider taking that action. The third deals with -- it  
3       says Estimated IC. I am not too sure what --

4           Q     Carloads?

5           A     Yes, carloads. It should probably read CI  
6       rather than IC. Carloads affected by that routing  
7       action. The next would be estimated revenue in millions  
8       of dollars, and the third would be the estimated long  
9       range variable cost of that action.

10          Q     All right. Now, the revenue is the increased  
11       revenue from the action. Is that right?

12          A     Yes, sir, the anticipated revenue, estimated.

13          Q     Right, and you said on effective date. These  
14       were proposed effective dates. The first two, I  
15       believe, were actually effective by the date of this  
16       letter. Is that right?

17          A     The first one was, yes, the 12/28/82. The  
18       secnd one, the intra-Texas, the effective date was  
19       1/14, which happens to be the same date as this letter.  
20       That's correct.

21          Q     And then the little "e's" on Item 3 through 6  
22       mean estimated effective date, I assume.

23          A     That's correct.

24          Q     And the difference between estimated revenue  
25       and estimated long-range variable cost would be

1 estimated increased contribution to the SP. Is that  
2 correct?

3 A That's correct.

4 Q What does Item 5, All CC, mean?

5 A Well, I believe that refers to our general  
6 commodities on the west end, so it would be the western  
7 part of the United States, our general commodity group.

8 Let's turn over, please, to Page 6. It is  
9 headed SF Routing Action. This appears to be a draft of  
10 something to be given to customers. Is that correct?

11 A It was. Yes, sir. It is a draft of a  
12 document trying to depict the actions that we are in the  
13 middle of taking to give to our sales people and our  
14 marketing people to be used for, as far as I can  
15 recollect -- there is no date on this, but it must have  
16 been just prior to the 14th for internal use.

17 Q Now, look at the bottom half of the page of  
18 the text, beginning with the sentence, "The following  
19 explains the alternative routes for three situations."  
20 Do you see that? And then there is a colon, and there  
21 is a 1, 2, 3.

22 A Yes, I do.

23 Q All right. Number 1 says, "If the origin and  
24 destination are SP closed station, then routes are  
25 restricted."

1 Now, a closed station means what, sir?

2 A Exclusively served by the Southern Pacific.

3 Q And if both points are exclusively served by  
4 the Southern Pacific, then routes would be restricted  
5 under this program.

6 A To either SP direct or SP via Ogden.

7 Q Now let's go down to Number 2. If either the  
8 origin or destination is SP closed, and the other end is  
9 SF open, then the routes are also restricted. Is that  
10 right?

11 A SP direct or SP via Ogden. Right.

12 Q Now, what does SF open mean there?

13 A Where there would be more than one railroad  
14 serving that industry.

15 Q Now let's go to Number 3. "If both origin and  
16 destination are SP open or open to the SP." Let's stop  
17 there. What is the distinction between SF open or open  
18 to SP?

19 A Well, where some other railroad would actually  
20 switch the plant, but we would have reciprocal switching  
21 agreement with them to allow us also to serve that  
22 plant, not physically serve the plant, but to move  
23 traffic into that plant. They of course would provide  
24 the switch, and we would pay them for it.

25 Q Right, so if both origin and destination are

1 open, then the shipper may use SP or any other railroad  
2 or railroads. Is that right?

3 A Yes, sir.

4 Q But at the end it says in the last sentence  
5 under Point 3, "If the shipper chooses SP, the only  
6 routes available are SP direct or SP via Ogden." Is  
7 that right?

8 A That's right, if he chooses us.

9 Q And this is the program as it stood for March  
10 14, 1983?

11 A Yes, this was supposed to summarize the  
12 actions we had taken up to that date.

13 Q All right. Let's turn over to Page 7 and push  
14 along here. Does Page 7 at the top correctly describe  
15 what was accomplished by the program during the month of  
16 January, 1983?

17 A Bullet Point 1, yes. Bullet Point 2, yes. Of  
18 course, the others, Bullet Point 3 is an estimate, so  
19 there is no actual versus an estimate on this at this  
20 time.

21 Q Let's turn over to Page 8, MKT-C-6, and we  
22 have our planned February accomplishments, the first of  
23 which is planned for February that interterritorial  
24 route restrictions between the west coast and the  
25 southeast, northeast, and midwest will be submitted for



1 publication.

2 Was that accomplishment accomplished?

3 A During the month of February? I don't  
4 recall. I know it was done in the spring. I don't  
5 remember the precise date. It was done in the spring  
6 some time.

7 Q Look at the last one, the last bullet, as you  
8 call it, just above the signature of somebody named Jack  
9 P. Edwards. It says a major presentation and brief book  
10 on the revenue enhancement cost reduction program,  
11 revenue enhancement cost reduction effort will be  
12 prepared and presented.

13 Was such a presentation and brief book  
14 prepared?

15 A I do not recall a brief book being prepared.  
16 There were a number of presentations. I don't know  
17 whether you call them major presentations. I know that  
18 Mr. Krebs, who this letter was addressed to, wanted to  
19 review a summary of our actions, how they were  
20 progressing, and what we could expect as a result of  
21 them.

22 Q Let's turn over to Page 9, please. Have you  
23 explained previously who Mr. Chapman was? And if not,  
24 would you, please?

25 A Mr. Chapman was at this point working -- he is

1 a member of the marketing group working within the  
2 marketing group and working with the revenue enhancement  
3 group.

4 Q And is the first paragraph an accurate summary  
5 of what you have done thus far by May 27th?

6 A Yes, it is.

7 Q Does the second paragraph accurately explain  
8 what you expect to do effective June 1 restricting TC  
9 general tariff routes to major gateways to your direct  
10 routes?

11 A Yes, the word "restrict" is in quotation  
12 marks.

13 Q What does it mean in quotation marks?

14 A It was intended to be a means of describing,  
15 one way of describing the action. We of course do not  
16 call it that. We thought we were simplifying a very  
17 vast network of routes out there, thousands of routes,  
18 most of which were not being used by anyone.

19 Q But Mr. Chapman seems to feel the word  
20 "restriction" is appropriate.

21 A But yet he puts it in quotes to draw attention  
22 to it.

23 Q Is it not accurate that by your publications  
24 you prevented any routes being used except as allowed in  
25 your publications?

1           A     You are talking about the general routing  
2 tariff publication?

3           Q     I am talking about the publication effective  
4 June 1 to restrict TC general tariff.

5           A     The general routing tariff.

6           Q     Yes.

7           A     That is what you are referring to?

8           Q     Yes.

9           A     If you are referring to that specific  
10 publication where a very modest amount of our traffic  
11 moves across, most of it, as you know, is moved under a  
12 specifically rated tariff or through contracts.  
13 Nevertheless, on the small amount of traffic that is  
14 influenced by our general routing tariff, that is  
15 correct.

16          Q     Let's go up one. Was not the effect of the  
17 general tariff route publications prior to May 27, 1983,  
18 to require use of Southern Pacific/Cotton Belt where you  
19 served origin and destination in Mountain Pacific and  
20 between Mountain Pacific and Southwest, including East  
21 St. Louis, Memphis, and State of Kansas and Southwest?  
22 Was that not restricted to your lines?

23          A     As it pertains to the traffic moved under a  
24 general routing tariff, the answer is yes. But only  
25 that traffic.

1 Q Now, let's look over on Page 10, which is Page  
2 2 of this memo, and in the second new paragraph, which  
3 is the third paragraph on the page beginning, "Thus, to  
4 achieve our goal."

5 Do you see that?

6 A Yes, sir, I do.

7 Q All right. The second sentence says, or that  
8 sentence says, "Thus, to achieve our goal, we need to  
9 amend the Mountain Pacific and TC publications by  
10 deleting the note. This will make our route  
11 cancellations absolute."

12 Let's stop there in the sentence. What does  
13 he mean by making your route cancellations absolute?

14 A Well, I don't know for sure. I think what you  
15 would have to do is go back and read the previous three  
16 paragraphs, excuse me, the previous four paragraphs  
17 dealing with actions that we took, then actions that the  
18 other railroads took to counter the actions that we took  
19 dealing with switch and the ability to access industry,  
20 and what we had going at this point was a point  
21 counterpoint type of an establishment of a routing  
22 program at this point in time.

23 Q Again in that paragraph we are looking at it  
24 says "Conceivably," which I suppose means "Conceivably,  
25 ATSF or UP System or others could substantially increase

1 the competitive switch charge at common stations."

2 Is he talking about the charges that those  
3 carriers would charge for switching to industries that  
4 they serve at common stations?

5 A That's correct, yes.

6 Q And is it correct that these fellows could  
7 substantially increase their switching charges at those  
8 stations?

9 A That is correct also.

10 Q And you could today? A railroad generally  
11 today can increase its switch charges if it feels like  
12 it?

13 A You asked me substantially. I don't know the  
14 answer to that about substantially.

15 Q Let's turn to Page 11 of MKT-C-6. This date  
16 is September 28, 1983. And there is a note in September  
17 that "Revenue enhancement cost reduction is accelerating  
18 some tariff actions that affect both routing and  
19 switching that need to be in place before boxcar  
20 deregulation."

21 Can you tell us why these actions needed to be  
22 in place before boxcar deregulation?

23 A Well, as we understood it at the time, boxcar  
24 deregulation, of course, was moved back several dates.  
25 It finally ended up, I think, around the first of the

1 year. But at that time, we were concerned about the  
2 fact that all the tariffs that were in place at the time  
3 of boxcar deregulation would be frozen in place for all  
4 time, and we and other railroads for that fact were all  
5 moving about trying to clean up the tariffs and simplify  
6 the tariffs so that once they were fixed in time they  
7 would be easy to use after that point in time, easier to  
8 use. That is my understanding of what happened.

9 Q As I read Page 11 of 33, it also seems that  
10 the SP expected to make some money by doing this.

11 A You are referring to what?

12 Q The comment that in the second paragraph the  
13 connecting carrier route restrictions will effectively  
14 eliminate intermediate railroads, and at the end of that  
15 paragraph it says the impact of this change is small,  
16 and then it goes on to say, based on 1982 traffic  
17 levels, 600 carloads would be effective, netting  
18 increased revenue of \$800,000.

19 Is that one reason that you were doing it?

20 A That was one of many reasons that I indicated  
21 earlier that we had a revenue enhancement group. Any  
22 time the revenue enhancement group would write a letter,  
23 being that was their focal point or responsible --  
24 specific area of responsibility, they of course  
25 indicated what they thought the estimated impact on

1 revenue might be, not what the actual was.

2 Our general routing policy, all the actions we  
3 took, all the actions we took only affected over 1  
4 percent of our traffic. So you can see it was not a  
5 heavy duty campaign to affect a large percent of the  
6 traffic that moved on our railroad.

7 Q Turn to Page 13, please. What is this  
8 telegram?

9 MR. SMITH: Your Honor, I want to interject  
10 something here by way of objection. This is a 33-page  
11 document. It involves events that took place in '83. I  
12 am not sure I understand going page by page through this  
13 what the relevance to the current proceeding is. We are  
14 trying to determine, I suppose, what the routing policy  
15 of the new merged system would be. I am not sure how  
16 this is relevant to that issue at all, or how it would  
17 add anything to the record.

18 JUDGE HOPKINS: Mr. Kharasch?

19 MR. KHARASCH: What it adds to -- Do you want  
20 me to restate the relevance? I did that two days ago.

21 JUDGE HOPKINS: I would like you to restate  
22 the relevance.

23 MR. KHARASCH: All right, sir. The relevance  
24 of the route closing policy of this applicant and the  
25 other applicant is that it demonstrates the actions they

1 have taken and can take in the future if they merge  
2 affecting the competitive position of other railroads  
3 and shippers on other railroads. That is one.

4 Two, it affects directly the diversion  
5 estimates which are coming up in this case in great  
6 volume where they describe what the effect of the merger  
7 would be on other people, and three, it illustrates, it  
8 bears very heavily on the public interest and the effect  
9 on railroad prices and railroad efficiency and the  
10 public interest generally if these applicants are  
11 permitted to merge.

12 JUDGE HOPKINS: I understand all of that, but  
13 is it necessary to go through each of these pages to  
14 point out all of this rather than have certain examples  
15 and use that as a basis? We have got this in the record  
16 anyway.

17 MR. KHARASCH: In other words, it is okay if  
18 it is speeded up?

19 JUDGE HOPKINS: It is okay if it is speeded  
20 up, because I can generally see the relevance. I have  
21 no objection to that. But I don't see the necessity of  
22 going through each of these pages down to Page 33.

23 BY MR. KHARASCH: (Resuming)

24 Q All right. There is one page that looks quite  
25 detailed, but there is some necessity to discuss with



1 this witness in detail. Pages 15 through 20 of Exhibit  
2 MKT-C-6, Mr. Edwards, is this a correct summary as of  
3 March, 1983, of the overall routing policy, policy as to  
4 routing restrictions that the SP adopted?

5 A Pages 15 through 20?

6 Q Yes.

7 A This is a draft of -- a draft summary of the  
8 actions that we have taken, and since it is a draft, I  
9 have not read it and established whether every word is  
10 verbatim, what we did do or didn't do. I am not sure we  
11 even used this draft.

12 Q In the interest of speed, we will take some  
13 later summaries which seem to be --

14 A Generally speaking I think it is correct, and  
15 it reflects what we did.

16 JUDGE HOPKINS: Good. That helps us.

17 BY MR. KHARASCH: (Resuming)

18 Q Page 19, sir. I now must go to a subject  
19 which is quite important for a later point in the  
20 hearing. And that deals with your short line  
21 connections, which are mentioned throughout here.  
22 First, would you indicate from Page 19 which of the  
23 short lines are short line railroads that connect only  
24 to the SP system, including the SSW in that?

25 A I don't know.

1 Q Do you know that there are short line  
2 railroads that connect only to the SP?

3 A Yes, certainly. I just don't know which ones  
4 exclusively connect with the SP.

5 Q I see. Do you know which the SP owns?

6 A Of the ones on the left? Exclusively, I don't  
7 think we own any of them.

8 Q In general, in your route cancelling policy,  
9 did you accept the short line railroads that connected  
10 with you?

11 A Generally?

12 Q Yes.

13 A Not to be evasive, but at what point in time?

14 The reason I ask the question is, our policy  
15 was an evolving policy that started in late '82 and has  
16 worked its way to the present, and I knew when you  
17 mentioned earlier that it is very difficult to pick one  
18 point in time and say that was policy, because it was  
19 not the policy for all time.

20 In fact, the record shows clearly that we have  
21 moved from a January overall policy, we have moved  
22 through a year and a half of refining that as we go  
23 along to the current routing policy that we have  
24 today.

25 And I am not talking about the joint policy of

1 the SPSF. I am talking about the current policy of the  
2 Southern Pacific Transportation Company. So it is very  
3 difficult to pick one point in time and say that is the  
4 policy, because the policy is one that evolved. And it  
5 went forward, it went backwards, and it refined itself  
6 as we listened to our customers and what they want.

7 Q And did you also listen to the other railroads  
8 that were taking retaliatory action against you?

9 A Well, sir, I think the record will show that  
10 we initiated the reciprocal switching actions in late  
11 1983, and in fact initiated discussions with the other  
12 railroads on that very subject, and we did that at the  
13 request of our customers, not the other railroads.

14 Q Now, the question I started off asking you is,  
15 I observe on Page 16 the memo was talking about, for  
16 example, in numbered Paragraph 3, eastbound movements  
17 from SF points and short line connections, and it seemed  
18 to me generally in the policy that the short line  
19 connections were carried along with the SF as having  
20 routings available.

21 A Paragraph 2 or 3?

22 Q Three.

23 A On eastbound. Okay.

24 Q What I am saying is, doesn't that indicate  
25 that if you had a little railroad that, say, was eight

1 miles long and connected with the SP, you would allow  
2 traffic to move off that little railroad and via SP to  
3 the gateways, in this case St. Louis, Number 3?

4 A Well, the way I read Paragraph 3, it says, and  
5 short line connections to points in Kentucky and  
6 Virginia. So it would be off our system, east of our  
7 system.

8 Q But the origin of the movement is points on  
9 the SP and on these little short line railroads  
10 connecting with you.

11 A That's correct, but as you remember from our  
12 policy, we established gateways, and it is reflected  
13 right here in the East St. Louis gateway.

14 Q Now, I will zip along a little here. Page 21  
15 of 33 and following, Pages 22, 23, 24, were there  
16 regular reports from Mr. Chapman as to what had been  
17 done to date affecting routings?

18 A Not regular. They were as required.

19 Q And here he is on May 12, and this is not a  
20 draft, is it, but a summary of actions taken?

21 A That's correct. Yes, sir.

22 Q And when we get over to Page 25, that would  
23 cover 26, 27, 28, 29, 30, 31, we are getting the June  
24 13th route advisory from Mr. Chapman. Is that  
25 correct?

1 A That's correct.

2 Q And that is not a draft, but the actual  
3 report, right?

4 A That is correct.

5 Q Now, let's take an example, as the Judge  
6 suggested, and let's look at a particular commodity  
7 movement that was affected by these actions.

8 May we have marked, Your Honor, as the MKT-C  
9 exhibit next in order, which will be 18, a two-page  
10 document?

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

13 (The document referred to  
14 was marked for  
15 identification as Exhibit  
16 number MKT-C-18.)

17 BY MR. KHARASCH: (Resuming)

18 Q As of April 5, 1983, Mr. Edwards, is it  
19 correct that the Southern Pacific had taken routing  
20 action for lumber shipments from Canada to the Texas  
21 designations that prevented the lumber from moving  
22 Kansas City to Dennison on the MKT and then Dennison to  
23 Texas destinations on the Southern Pacific, and instead  
24 required that the lumber move on the Southern Pacific  
25 lines from Kansas City east to St. Louis and then back

1 from St. Louis west back to Texas?

2 A We did not, as a result of our general routing  
3 action. No, we did not. We did on a very specific move  
4 dealing with some customers, SP customers in Texas, but  
5 it had nothing to do with the general routing policy and  
6 the actions taken by us at the Southern Pacific.

7 Q In this specific routing policy, then, in  
8 April, did you require lumber to move from Kansas City  
9 eastbound to St. Louis and then west down to Dallas-Fort  
10 Worth-Houston?

11 A This was not, to answer your question, this  
12 was not a specific routing policy. It was a specific  
13 routing action dealing with, as we have available to us  
14 all the correspondence dealing back through all of 1982  
15 on this very issue, well prior to all of our general  
16 routing action that was taken.

17 Nevertheless, this action was a result of the  
18 CN forcing a Kansas City gateway to SP customers in  
19 Texas. We worked with them on that. There was no  
20 revenue. There was not adequate revenue nor profits of  
21 any sort over that particular gateway.

22 We worked with the CN and the MKI to review  
23 the divisions and try to convince both parties that if  
24 perhaps we could revise the divisions or adjust the  
25 divisions so we could all make out, we would maintain

1 this particular gateway, this particular route. There  
2 was not acceptance or give or participation by the  
3 MKT.

4 We had also solicited a St. Louis gateway at  
5 the same time. Our interest here, our only interests  
6 here were the Southern Pacific customers located in  
7 Texas. At the same time we knew if we were forced to  
8 move traffic over our route where we could not sustain  
9 that route because of lack of profit, the customers  
10 would not benefit with the lumber originating in  
11 Canada.

12 Q Do you think you can answer my question, sir,  
13 which is, did you take a tariff action that required the  
14 traffic to move over --

15 A I stated it was not part of my general routing  
16 tariff action.

17 Q Did you take a tariff action? Are those words  
18 clear to you? A tariff action that required this lumber  
19 to move from Kansas City to St. Louis eastbound and then  
20 eastbound on your -- westbound on your lines down to  
21 Dallas, Fort Worth, and Houston? Did you take a tariff  
22 action?

23 A Yes, we did.

24 Q Thank you. Please take a look, Mr. Edwards,  
25 at Exhibit MKT-C-5, which purports to be a tracing of

1 the SP lines Kansas City and south. It is taken  
2 directly from that map that is in front of you at the  
3 witness table.

4 A Right.

5 Q Is it correct that between Kansas City and  
6 Houston, the SP-SSW does not have a very direct route?

7 A That's true.

8 Q Is it correct that -- I don't suppose you  
9 carry mileages in your head. An exhibit in this case  
10 shows that the SP system route, Kansas City to Houston,  
11 would be 1,104 miles by that roundabout route. I will  
12 ask you to accept that subject to check.

13 A Okay.

14 Q And the route, if you make a note, 1,104 via  
15 the SP, Kansas City to Houston, 832 miles via the MKT  
16 direct, and 750.7 miles via route MKT to Dennison,  
17 Texas, then SP to Houston. Do you have those three  
18 mileages in mind?

19 Would you say that the SP SSW route is  
20 circuitous?

21 A I would say that it has more mileage.

22 Q Is that what one means by circuitous?

23 A That would be part of the definition, yes.

24 Q Would you say that to carry traffic from  
25 Kansas City to Houston by carrying it around via St.



1 Louis and then eastward and then westward back to  
2 Houston is efficient?

3 A It could be very, very efficient, yes.

4 Q It could be efficient?

5 A Oh, definitely.

6 Q If you were designing a traffic study and a  
7 study of the effects of the merger, would you include in  
8 that traffic study the fact that a route that is 1,100  
9 miles long compared to another route that is 750 miles  
10 long, the longer route could be more efficient?

11 A One of the factors dealing with efficiency is  
12 the mileage. There are many others. There is the  
13 cost. There is transit time. There is interchange.  
14 There is consistency in that transit time. There is --  
15 I mentioned the cost. Another one is what does the  
16 customer want. There are a whole lot of factors there.  
17 There are other examples. I just don't use mileage.  
18 No. Efficiency is what we are after.

19 Q Now, my question addresses your attention, Mr.  
20 Edwards, to the situation where you are going to make a  
21 traffic study which will attempt to study the potential  
22 effects of a railroad merger. In that traffic study, if  
23 you found this 750-mile route and this 1,100-mile route,  
24 would you want the traffic study to reflect the fact  
25 that the 1,100-mile route could be more efficient?

1           A     You are asking me a hypothetical question  
2 about traffic studies. I have never done a traffic  
3 study, and I am not familiar with how mechanically  
4 traffic studies are done. I have tried to answer your  
5 question about efficiency. You know, what do we mean by  
6 efficient. I have tried to focus on that. That I can  
7 relate to. I can't relate to the other very well.

8           Q     Well, suppose it is the rail diversion study  
9 which is referred to at Page 7 of your verified  
10 statement in this case. You referred to a rail  
11 diversion study.

12          A     Correct.

13          Q     Now, in that rail diversion study, which would  
14 be a study reflecting the real world correctly, should  
15 that study reflect the fact that the railroad such as  
16 the SP might efficiently carry traffic over an  
17 1,100-mile route instead of inefficiently carrying over  
18 a 750-mile route?

19               MR. SMITH: I object, Your Honor. This  
20 witness is not our traffic diversion study witness. Mr.  
21 Kharasch is asking him, should the traffic diversion  
22 study do this or that? We have very many witnesses on  
23 that, and this is not one of them.

24               JUDGE HOPKINS: I don't think he is going into  
25 a long dissertation on what should or should not be in a

1 diversion study. I think it is a proper question. Go  
2 ahead.

3 THE WITNESS: As I have tried to answer, the  
4 efficiency of the route is not simply based on mileage.  
5 The time. For example, to answer your question, the  
6 time from Kansas City to Houston via St. Louis and the  
7 Southern Pacific could be dictated by the customer. It  
8 could be their preferred route, or in essence it could  
9 even be faster, a faster time, because they are not on  
10 interchange with another railroad.

11 BY MR. KHARASCH: (Resuming)

12 Q Now, that is the fact in the real world.

13 A Yes, sir, it is.

14 Q So theoretically one might divert traffic  
15 according to you by a route which is longer, to this  
16 degree longer.

17 A Well, if it meets all the criterias of  
18 efficiency that I tried to point out in answering your  
19 question, and if that particular route would secure  
20 business.

21 Q Look, please, at Page 2 of Exhibit MKT-C-18.  
22 This is Mr. Sharp's letter to Mr. Steiriger. In  
23 Paragraph 4 he says, "Our Kansas City routing, although  
24 slightly more circuitous than your route." Let's stop  
25 there. Is slightly more circuitous 750 miles versus

1 1,100 miles? Would you call that slightly more  
2 circuitous? Do you agree with Mr. Sharp?

3 A I think you are reading this wrong. The route  
4 is not via Kansas City. The traffic comes to St. Louis  
5 from Canada, and then down to Houston, not to Kansas  
6 City over to St. Louis and down. We were forced by the  
7 CN to maintain a Kansas City route, okay? So we are not  
8 routing the traffic via Kansas City. That route goes  
9 either straight to Kansas City or straight to St. Louis,  
10 not via Kansas City.

11 Q All right. Now, we are talking about the  
12 traffic that comes straight to Kansas City.

13 A No, you are missing my point, sir. The  
14 traffic that comes to Kansas City does not go to East  
15 St. Louis. That is the traffic that we tried to work  
16 with the MKT on in getting to our Texas customers.

17 Q Let's be clear so that the record will be  
18 clear. Here is some traffic. Where is it originating?

19 A Canada.

20 Q And it enters the United States where?

21 A I don't have access to all the specific  
22 routing here, but we were CN and GTW, I believe, down to  
23 Kansas City. That routing was forced on us. That is  
24 correct.

25 Q And so the traffic arrives at Kansas City via

1 the Milwaukee presumably?

2 A I think I said the GTW.

3 Q The GTW doesn't get to Kansas City.

4 A Well, then, I don't recall.

5 Q And is he not here talking about traffic which  
6 has arrived at Kansas City and what is going to happen  
7 to it after it gets through Kansas City?

8 A No, he is not. He is talking about the fact  
9 that we tried to establish a direct line from Canada  
10 straight through to Kansas City, straight through on the  
11 MKT down to our customers. That didn't work because of  
12 the divisions argument.

13 Q Now we are looking at Paragraph 4, where he  
14 refers to our Kansas City routing, although slightly  
15 more circuitous.

16 A That's correct.

17 Q Now, to understand that, let's turn back to  
18 Page 1 of MKT-C-18, and let's look at the third  
19 paragraph of Mr. Steiniger's letter to Mr. Sharp. It  
20 says, "It is difficult to understand that position in  
21 view of the fact that SP would increase considerably its  
22 mileage by moving this lumber beyond Kansas City over  
23 your trackage rights with the Missouri Pacific to St.  
24 Louis, thence south to Texas destinations."

25 A Exactly. That is what we didn't want to do.

1 That is why we established a St. Louis alternative.

2 Q Yes. We are not talking about that. We are  
3 talking now about traffic that arrived at Kansas City,  
4 and is not Mr. Steiniger saying, how come you can't  
5 carry it via Dennison-Dallas interchange?

6 A I will go over this one more time. We had two  
7 different -- we had our lumber traffic from Canada  
8 coming to two different gateways. One was Kansas City,  
9 and the other we managed to establish with St. Louis,  
10 not St. Louis via Kansas City, but directly down to.  
11 Once again, all we want to do is get it to our poor  
12 shippers down here in Texas.

13 Q So you have some traffic that arrives in St.  
14 Louis that moves to Houston. It could be all the way on  
15 SSW.

16 A It could be. We worked on the former. We  
17 worked with the Katy. We worked with the CM, and all  
18 the other intervening railroads to work out the  
19 divisions. Primarily our divisions argument was with  
20 the Katy. We tried to adjust the divisions to reflect  
21 that we would make some money, the Katy would make some  
22 money.

23 It didn't work out. We established a route  
24 via St. Louis that would accomplish what we wanted to  
25 do. That was to get the lumber to our customer. We did

1 not want to go St. Louis -- excuse me, Kansas City over  
2 to St. Louis and down. That is what we didn't want to  
3 do.

4 Q But that -- I think you told us this morning  
5 that does occur.

6 A There are times that that occurs. That is  
7 correct. It doesn't get a lot of traffic, but there are  
8 times that that occurs.

9 Q Now, looking at your verified statement on  
10 Page 5, did you read your verified statement in the form  
11 it was in at the time you signed the verified  
12 statement?

13 A I am sorry. I was just finding my statement.  
14 Excuse me?

15 Q Did you read your verified statement in the  
16 form it then was in at the time you signed the verified  
17 statement?

18 A The whole thing? Yes.

19 Q You did?

20 A You are asking me, did I read the thing at the  
21 time I signed it? Yes, I did read the statement at the  
22 time I signed it.

23 Q And were you asked by anybody to provide any  
24 errata to your statement at the time your applicants  
25 here supplied their list of errata? And did you supply

1 it?

2 A Yes, I was asked to supply the errata, as you  
3 say, and I discovered the changes that were made to this  
4 document flying from Dallas to Washington, D.C., several  
5 weeks ago. I brought them immediately to the attention  
6 of our legal counsel.

7 Unfortunately, I guess, that was the same day  
8 that the errata had been submitted, and there was a  
9 little huddle as to what should we do about it, and it  
10 was too late to add the errata at that time, and so  
11 anyway I brought it to the attention of this proceedings  
12 when I got on the stand.

13 Q Do you think that the attempt of a railroad to  
14 maximize its own long haul may lead to a longer route  
15 than the shortest possible route through joint line  
16 service?

17 A I think that a dedication to that policy only  
18 will lead to you losing a lot of business.

19 Q Did the SP lose a lot of business as a result  
20 of the policy, lose a lot of business in 1983 -- let's  
21 give it a year -- as a result of the policy we have just  
22 been examining in MKT-C-6?

23 A It is very difficult to define how much  
24 business we lost as a result of our routing policy. I  
25 mean, you would have to go in and actually ask each



1 customer, thousands of customers that we have, did you  
2 give us less business because of the routing policies  
3 that we implemented.

4 I don't know if we lost more. I don't know if  
5 we lost business or not. I don't know how much we may  
6 have lost, if we did. I do know that we had hoped, as  
7 you had pointed out, to have some increases in revenue.  
8 You know, the bottom line is, we may have lost three  
9 times that number because of our routing policy.

10 Q Do you consider efficient single line service  
11 a benefit to a rail shipper?

12 A Yes, I do.

13 Q Your revenue enhancement program calculated  
14 the anticipated increases in revenues and increases in  
15 variable cost for each routing move that was going to be  
16 made. Is that correct?

17 A That's correct, yes.

18 Q And if that routing move showed that you would  
19 lose revenue, I assume it was not taken.

20 A No, those numbers are net numbers. Now, as we  
21 have described earlier, our routing moves went against  
22 the general routing tariff from one region to another  
23 region. There were no exceptions. We didn't say all  
24 general commodities except kiwi fruit, for example, so  
25 if it did have a negative impact on it, we also took

1 those.

2 Those are net adds and pluses or  
3 subtractions.

4 MR. KHARASCH: May we have marked, Your Honor,  
5 for the exhibit next in the MKT-C list MKT-C-19, a  
6 five-page exhibit?

7 JUDGE HOPKINS: That will be marked for  
8 identification.

9 (The document referred to  
10 was marked for  
11 identification as Exhibit  
12 Number MKT-C-19.)

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1 BY MR. KHAPASCH: (Resuming)

2 Q Who is Mr. Ellebracht, please?

3 A He is a member of the marketing group, and his  
4 responsibility within the marketing services group is to  
5 review -- his current responsibilities are to review  
6 routing policies, practices, interline agreements,  
7 interline negotiations.

8 Q Who is Mr. Heinrich?

9 A Mr. Heinrich is an assistant vice president  
10 within the marketing group, located in Houston. He has  
11 responsibility for contact with our customers there,  
12 pricing responsibility, but within the marketing  
13 function, coordinates what activities are going on there  
14 with our group managers in San Francisco.

15 Q And who is Mr. Evans R. Hughes, Jr.?

16 A Mr. Hughes is an assistant vice president  
17 responsible for product management within the marketing  
18 group. All the different group managers report to him.

19 Q Is it a bad thing for a railroad to frustrate  
20 another railroad's initiatives in attempting to increase  
21 rates?

22 A You are referring to what?

23 Q I am referring to the statement that I just  
24 made to you. Is it a bad thing for a railroad to  
25 frustrate another railroad's initiatives in attempting

1 to increase rates?

2 A I think railroads, through -- my experience  
3 with railroads is that they do a lot of things to  
4 frustrate each other, whether it is in interline  
5 connections or terminal operations or on pricing, joint  
6 rates, joint routes, so I guess that is one of many  
7 things that they do to frustrate each other.

8 Q Yes.

9 Now, please answer my question.

10 Is it a bad thing for one railroad to  
11 frustrate another railroad's attempts to increase  
12 rates?

13 A I don't know. I don't know what you mean by  
14 bad thing. I don't know whether it is bad or not.

15 Q Has the Southern Pacific made numerous  
16 initiatives attempting to increase rates?

17 A Not to my knowledge.

18 Q Has the SP made any initiatives attempting to  
19 increase rates?

20 A Certainly.

21 Q Has the SP made any initiative attempting to  
22 increase rates where the SP is competing with the MKT?

23 A Competing with or in conjunction with?

24 Q Well, let's take it in two parts.

25 Has the SP made any initiative attempting to

1 increase rates where the SP is competing with the MKT?

2 A I don't know of any.

3 Q Has the SP taken initiatives attempting to  
4 increase rates where it has a joint line service with  
5 the --

6 A I believe that's true.

7 Q Has the SP made numerous initiatives to  
8 increase joint line rates?

9 A I just don't know.

10 Q Is it bad -- and in this sense, I want you to  
11 answer any sense of bad, bad, illegal, not in accordance  
12 with good public policy or whatever you think -- is it  
13 bad for a railroad to endeavor to entice shippers or  
14 receivers situated at another railroad's stations to  
15 originate or terminate traffic at the first railroad's  
16 stations?

17 MR. SMITH: I object, Your Honor.

18 JUDGE HOPKINS: He is giving him leeway to  
19 make any definition he wants as to bad.

20 Let him go ahead.

21 THE WITNESS: That is competition.

22 BY MR. KHARASCH: (Resuming)

23 Q And offering reduced rates to a shipper or  
24 allowances to a shipper is okay, is it?

25 A It's competition.

1 Q Let's turn to page 3 of Exhibit MKT-C-19.

2 Who is Mr. Kottke, K-o-t-t-k-e?

3 A Mr. Kottke is our group manager for grains.

4 He reports to Mr. Hughes.

5 Q Would you read this very brief memo on page 3  
6 about grain and state if you agree with it?

7 A "Please refer to your April 16" --

8 Q No, I don't want you to read it out loud. I  
9 want you to read it to yourself and state whether you  
10 agree with it.

11 JUDGE HOPKINS: The record is big enough.  
12 Don't add to it.

13 THE WITNESS: I read it and I agree.

14 BY MR. KHAFASCH: (Resuming)

15 Q Fine.

16 Have you ever investigated, Mr. Edwards, the  
17 speed of the interchange of grain trains between the SP  
18 and the MKT at Dennison, Texas?

19 A The speed?

20 Q Yes.

21 A No, I have not.

22 Q How fast the trains move?

23 A No, I have not.

24 Q How long it takes to handle them?

25 A No.

1 Q Is it correct that today the MKT and the  
2 Southern Pacific have been working closely to get grain  
3 traffic to Mexico on a joint route?

4 A Absolutely, absolutely.

5 Q And corn from the midwest to Houston?

6 A That's true, too, yes.

7 Q Are you familiar with the results of the UP --  
8 the Commission's decision in the UP-MP merger case?

9 A No.

10 Q I was about to ask you if you knew anything  
11 about the northern rights that were accorded to the MKT  
12 in that case, trackage rights?

13 A No.

14 Q You do not?

15 A No, I don't.

16 Q Let's turn over to page 4.

17 Who is Mr. Abreu, A-b-r-e-u?

18 A Mr. Abreu is a group manager responsible for  
19 chemicals and energy, also reporting to Mr. Hughes.

20 Q The first question as to this letter, would  
21 you agree that the MKT gives the SP a noncircuitous  
22 route from the Gulf to the west north central U.S.  
23 through Kansas City?

24 A Would you please repeat the question?

25 Would I agree that we would use --

1 THE REPORTER: Question: "The first question  
2 as to this letter, would you agree that the MKT gives  
3 the SP a noncircuitous route from the Gulf to the west  
4 north central U.S. through Kansas City?"

5 THE WITNESS: The MKT, if you are talking  
6 about direct in terms of as the crow flies, if you go  
7 from Houston to Kansas City, we have, you are talking  
8 about traffic that would originate on our railroad?

9 BY MR. KPARASCH: (Resuming)

10 Q Yes.

11 A I would say we have a couple of choices in how  
12 to get to Kansas City.

13 Q If you would just concentrate on my question,  
14 I didn't say is the MKT the only noncircuitous route. I  
15 asked you to state whether you agreed that the MKT does  
16 offerlycu a noncircuitous route to Kansas City.

17 A I would agree with that, not a more efficient  
18 route, but noncircuitous, yes.

19 Q And do you think the SP's route to go up to  
20 St. Louis and then west to Kansas City is more  
21 efficient?

22 A I have already stated earlier to that.

23 Q Please read to yourself the first paragraph of  
24 page 4 of this memo to Mr. Ellebracht, and when you have  
25 read it, tell me what's the matter with the agreement



1 with Bulk Logistics?

2 A This memo that you are referring to, to answer  
3 your question and put it in proper context, was a survey  
4 of our group managers dealing with should we or should  
5 we not open up discussions and enter into a contractual  
6 arrangement, interline agreement with the MKT. All it  
7 was was their perceptions, their input, and in fact, the  
8 action taken by our company was to initiate discussions  
9 with the MKT both on a reciprocal switching and routing  
10 matrix arrangement.

11 So these are only simply opinions of the  
12 writer and certainly do not reflect the policy or  
13 opinions of our company.

14 Q Oh, so you think there is nothing wrong with  
15 the MKT entering into an agreement with Bulk Logistics?

16 A I think that is competition.

17 Q And that agreement, do you see how that  
18 agreement could be considered by your traffic man, Mr.  
19 Abreu, to be targeted at your chemical traffic?

20 A I'm not familiar with the third party  
21 agreement with Bulk Logistics. I don't know who they  
22 are, what they do, and how they do it, so his perception  
23 is that it is targeted at our customers.

24 Q Let's turn over to page 5.

25 Who is Mr. Mettra, M-e-t-t-r-a?

1           A     Mr. Mettra is our group manager for forest  
2 products.

3           Q     In traffic man's lingo, what does a reference  
4 to "our preferred" mean?

5           A     Are you referring to something on this piece  
6 of paper?

7           Q     I'm asking you generally. The words are used  
8 on this piece of paper.

9           A     Well, in traffic man's slang, "our preferred"  
10 would be that route that, that movement, that commodity,  
11 whatever we are addressing ourselves to, which would be  
12 our first choice, one of many choices, but our first  
13 choice.

14          Q     Let's look at the next to the last paragraph  
15 on page 5, sir, and I direct your attention to the last  
16 two sentences of the next to the last paragraph. "Since  
17 SSW has been granted trackage rights, we have instructed  
18 cancellation of MKT-SSW/SP routing in favor of KC-SSW/SP  
19 routing."

20                     Let's stop there.

21           Q     What does KC-SSW/SP routing mean?

22           A     That would be Kansas City, Cotton Belt, SP  
23 routing.

24           Q     And this apparently is talking about routing  
25 to Texas points?

1           A       This particular document, written in February  
2       23, 1983 -- I mention that because it has nothing to do  
3       with these other documents that were all written in  
4       1984, in April and May, so this was written a year and a  
5       half earlier -- deals with movement that we already  
6       covered, and that is traffic moving in part that we  
7       covered, traffic moving lumber only, specifically lumber  
8       only, to Texas points.

9           Q       Now, let's look at the last paragraph.

10                  In the next to the last paragraph, Mr. Mettra  
11       advises that there has been a cancellation of the MKT  
12       routing, and now we have a KC-SSW routing, right? Then  
13       he says "As such, see no reason to offer allowance from  
14       BCOI or CNWB origins." Then he seems to repeat that  
15       again in the last paragraph. He says "In view of the  
16       above, do not feel it necessary to offer an allowance  
17       contract on traffic that can only move via our preferred  
18       to our destinations."

19           A       That's the author's opinion.

20           Q       Yes.

21                  Now, given that that is his opinion, what does  
22       he mean about traffic that can only move via our  
23       preferred to our destinations? Does that mean traffic  
24       that is allowed by tariff only to move via the route  
25       that the SP prefers to the SP's closed destination?

1           A       As we went over this before, this specific  
2 routing action was not part of our general tariff  
3 routing action that was taken.

4                   Number two, this specific action, as I stated  
5 before, dealt with a specific item within the tariff  
6 dealing with lumber moving from Canada to our points on  
7 the SP. We attempted to work out division arrangements  
8 along the way. We weren't able to do that. We were  
9 still interested in moving the traffic. We didn't want  
10 to chase the traffic off. So we developed an  
11 alternative route.

12                   Now, you are asking --

13           Q       If you listen to what I asked you, the  
14 question is what does the sentence mean when it is  
15 referring to traffic that can only move via our  
16 preferred to our destination?

17           A       His opinion -- I am interpreting his opinion  
18 here -- is when we were bidding on that piece of  
19 business over a specific route, there must have been a  
20 rate associated with that bid. His opinion is that via  
21 that route that we have, that we cannot afford, the  
22 economics do not allow us to offer an allowance.

23                   As you remember, this was very marginal  
24 business to begin with. So I assume that is his  
25 opinion. I am not sure, but I feel that must be it.

1 Q Where in here is there any reference to your  
2 study of costs on this movement? Do you see that on  
3 this page?

4 It looks to me, and I put it to you that  
5 that's that he is saying, that it is not necessary to  
6 offer allowances if you control the traffic.

7 A I don't think he is saying that at all. That  
8 is your summary, not mine.

9 Q He is using the words "it is not necessary to  
10 offer an allowance," is he not?

11 MR. SMITH: Objection, Your Honor. He is  
12 arguing with the witness. The document --

13 JUDGE HOPKINS: Mr. Kharasch, I think he has  
14 already indicated what his opinion is, and I'm certain  
15 you have a different opinion, and why don't we let it go  
16 at that. The record will show whatever the opinion is.

17 BY MR. KHARASCH: (Resuming)

18 Q On page 7 of your statement, Mr. Edwards, you  
19 are talking about the advantages of price flexibility.

20 I'm sorry, on page 7 you are not talking about  
21 price flexibility, you are talking about the estimated  
22 annual revenue gains of \$221 million rail to rail, yes?

23 A Yes, sir.

24 Q Do you see that?

25 A I do.

1 Q Who conveyed to you this understanding of the  
2 results of the rail diversion study?

3 A A member of my staff who worked in the merger  
4 group.

5 Q Who was that?

6 A Ked Posanko, K. E. Bosanko. His job was to  
7 coordinate and participate in -- on the study, and to  
8 review it and keep me informed periodically as time went  
9 on.

10 Q Did he explain to you the basis and the  
11 assumptions of the merger study -- of the diversion  
12 study?

13 A Of the diversion study?

14 I do not remember him discussing the basis of  
15 it, no. At one time or another I think we talked about  
16 some of the assumptions. I don't recall right now.

17 Q Do you know whether there is any allowance in  
18 the diversion study for the effect of increased prices  
19 for rail transportation?

20 A Well, it states we did not assume -- one of  
21 the assumptions was that we did not assume any change in  
22 relative rate levels. My understanding is that is  
23 exactly what it means.

24 Q Do you know where Midlothian, Texas is?

25 A Yes, sir, very well.

1 Q Is that a crossing point of an SP line and a  
2 Santa Fe line?

3 A They are both there.

4 Q Why would a shipper like Mazda Motors want to  
5 locate at Midlothian, at a place that could be served by  
6 two railroads?

7 A Well, it just so happens that old Mazda could  
8 have located anywhere they wanted to in that part of  
9 Texas, in central Texas. They chose that particular  
10 place because it was a free trade zone. A free trade  
11 zone could have been established anywhere. They chose  
12 it precisely, not because the railroads were there, but  
13 because it was a free trade zone.

14 Q Oh, you think that Mazda's location had  
15 nothing to do with the fact that they would get two  
16 railroads' service?

17 A No, I don't. It happens that the Mid-Texas  
18 Group that developed the package there, as I already  
19 said, created the free trade zone there.

20 Q When the Mid-Texas Group created the free  
21 trade zone, did they locate their free trade zone where  
22 it would have two railroads' service?

23 A Actually, their free trade zone only has  
24 access by one railroad.

25 Q Is it located so that it can have service by

1 two?

2 A Oh, yes, it could, right.

3 Q At page 5 of your statement, you are talking  
4 about service-related benefits of the proposed merger  
5 by providing new single-system routes. That seems to  
6 you to be a benefit to shippers, to provide new  
7 single-system routes?

8 A Well, the answer is having a single-system  
9 route is a benefit to the shipper, yes.

10 Q Is having a new single-system route a benefit  
11 for a shipper?

12 A It certainly gives them another alternative,  
13 yes.

14 Q Is that a benefit, to have another  
15 alternative?

16 A I there's already one single-system route  
17 established and that is part of their mix of carrier  
18 choices, that's probably all they need.

19 Q I see. So to the extent that the SPSP merger  
20 would provide new single-system routes where there are  
21 already single system routes by the BN or the UP or  
22 other carriers, they are not, the new, merged system  
23 routes, are not needed to provide --

24 A No, you didn't listen to my answer. My answer  
25 deals with the fact that the customers that are



1 originated or terminated with the Southern Pacific or  
2 the Santa Fe are the ones that are going to benefit by a  
3 single-system route. The fact that you are creating a  
4 new one -- and you asked me about creating a new one --  
5 the customers that I have already stated that are there  
6 will benefit immensely by that fact. They will have  
7 access to new markets. They will be able to move their  
8 products into their current markets and hold onto the  
9 market shares that they are trying to do right now, and  
10 at a low cost form of transportation. So there is a  
11 tremendous benefit to those customers.

12 Q Now, let's look at those customers that are  
13 now served by the UP and the BN.

14 Are there customers that you serve that are  
15 also served by the UP and the BN?

16 A Yes.

17 Q Those customers do not need new single system  
18 routes from the SPSP?

19 A You asked me that earlier and I said that if  
20 they have one single-system route that is an efficient  
21 single-system route that reaches all the markets in the  
22 United States and all the ports in the United States and  
23 all the gateways in the United States, and that gives  
24 them one form of transportation to move product in and  
25 out of their facility, at the same time they need truck

1 docks, they need barges, ocean, but if they have one  
2 already and it does reach all the points that I just  
3 stated, really, that accomplishes that element or that  
4 ingredient from a traffic man's perspective.

5 Q Do you know any railroad that reaches  
6 everywhere?

7 A No. I know a few that would like to, but no,  
8 I do not know anybody.

9 Q So when one looks at shippers' needs, you have  
10 to look at point-to-point traffic flows, don't you?

11 A Yes, we do.

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1 Q Now, do you think shippers on other railroads  
2 than the Southern Pacific need the benefits of single  
3 system routes?

4 A Well, if you're talking about the two that you  
5 just mentioned, they seem to reach, the BN and the UP,  
6 they seem to already reach just about everywhere.

7 Q Let's look at someone that may be as efficient  
8 as the BN or the UP, but might be a little smaller. Do  
9 you think a shipper located at a point served only by  
10 the MKT system needs single system routes to get to  
11 market?

12 A Absolutely not.

13 Q No one located on the MKT system needs a  
14 single system route?

15 A You said to get to market.

16 Q To get to market.

17 A They do not. In effect, they don't. They  
18 effectively get to market today in conjunction with the  
19 SP.

20 Q Let us look at shippers on the MKT's routes.  
21 Would they benefit from having a single system route to  
22 market from their origins to their destinations?

23 A I don't see how. If they have an efficient  
24 joint line route available to them that satisfies the  
25 movement of their goods to markets, then they have an

1 effective package.

2 Q They have an efficient joint line route  
3 available to them today, and let's say they were offered  
4 a more efficient single line, single system route to  
5 market. Would that benefit them?

6 A What do you mean by "more efficient"?

7 Q You don't have to fool around on this stuff,  
8 Mr. Edwards. Aren't you trying to say that only your  
9 single line service is any good and you don't want to  
10 admit that single line services by another railroad  
11 would help them, would help a shipper?

12 JUDGE HOPKINS: Is that a question?

13 MR. KHARASCH: Yes.

14 THE WITNESS: I've already testified that that  
15 is not the way I am looking at it.

16 BY MR. KHARASCH: (Resuming)

17 Q Let's look at your statement over on page 9.

18 (Pause.)

19 Q Let's turn to page 7 of your statement, sir.  
20 You are talking about diversions. You say: "To the  
21 extent estimated diversions from competing rail carriers  
22 and modes are driven by improved service or equipment  
23 supply, they clearly qualify as public benefits of the  
24 merger." Do you see that, middle paragraph at the end?

25 A Yes, I see it.

1 Q The sense of that, I gather, is that if a  
2 shipper chooses a service, it illustrates that there is  
3 something beneficial to that service and he is choosing  
4 it because it is better for him; is that right?

5 A Better in what sense? The reason I ask that  
6 question is because I spent 13 years being a shipper, so  
7 I know how they think. So I need to know, better in  
8 respect to what?

9 Q Well, it may be better in terms of the service  
10 may be more reliable or faster, may it not?

11 A That could be, yes, sir. That could be one of  
12 the ingredients.

13 Q And the rate, if one might be as vulgar as to  
14 talk about it, the price might be lower?

15 A That may or may not have anything to do with  
16 it at all.

17 Q And then this question of the equipment  
18 supply. You mentioned that. That's another thing that  
19 a shipper would think about.

20 And you referred to this as a package, haven't  
21 you?

22 A Yes, sir.

23 Q And it's that package that is presented. Now,  
24 is the sense of your statement here that someone  
25 presenting -- if someone presents a better

1 transportation package, you know that's a public benefit  
2 because the shipper has indicated by his purchasing  
3 option that he prefers it, the package?

4 A Let me go over this so that I understand it.  
5 If we put together all these ingredients, we walk up to  
6 our customer and we say: Look, here's one of your  
7 options; here is a presentation, if you will, on a  
8 specific move, a specific piece of your business. And  
9 he accepts that. If he accepts that, then that  
10 satisfies, that meets his criteria in the selection  
11 process?

12 Q Right.

13 A Well, the answer would be, for that specific  
14 point in time for that specific move, it must, if the  
15 gentleman accepts it, it must meet most of his  
16 requirements. As you know, he will make compromises and  
17 tradeoffs, and it may not satisfy all his requirements.  
18 But it would satisfy at least enough of them to choose  
19 that particular package.

20 Q All right. But now we're talking on page 7 at  
21 the bottom of the first new paragraph, where you are  
22 indicating what in your mind qualifies as a public  
23 benefit.

24 A Right.

25 Q The public benefit of the merger, I think you

1 are saying here -- and correct me if I am wrong -- is  
2 that you might be able to present, as a merged line, to  
3 the shipper something he would prefer to buy, the  
4 package that he would prefer to buy. Does that indicate  
5 that that is a public benefit?

6 A I believe so, yes.

7 Q In that sense, a public benefit is signaled by  
8 the fact that the shipper has chosen some new service  
9 which he prefers. The public benefit -- perhaps I'll  
10 use the word "measured" -- the public benefit is  
11 measured by the fact that there is a diversion of cargo  
12 from the old route to the new route, the new carrier?

13 A The customer made the selection.

14 Q Yes.

15 A He perceived a benefit.

16 Q And in that he perceived a benefit, you think  
17 it's a public benefit?

18 A Yes, I do.

19 Q Would you agree with this statement: "I feel  
20 that this gain to the railroad should be looked at as a  
21 measure of the benefit to the shipping public from  
22 competitive service. If we cannot give good competitive  
23 service, there would be no gain."

24 MR. SMITH: Could I ask counsel to identify  
25 what he's reading from?

1 MR. KHARASCH: You can, but I think this is  
2 simple enough that he doesn't need to know that.

3 JUDGE HOPKINS: I don't think we need to  
4 know. He can answer that question if he agrees or  
5 doesn't agree.

6 THE WITNESS: Would you please read it again?

7 BY MR. KHARASCH: (Resuming)

8 Q I'm going to substitute the name of the  
9 railroad: "I feel that this gain to the SFSP should be  
10 looked at as a measure of the benefit to the shipping  
11 public from competitive service. If we cannot give good  
12 competitive service, there would be no gain."

13 So far, would you agree that that is the same  
14 thought that you were expressing?

15 A Yes, I do.

16 Q Let me continue: "Only if we compete with  
17 other providers of service and obtain some patronage by  
18 fair competition will there be a gain, and the gain  
19 measures the public benefit." Yes?

20 A Yes.

21 Q You agree?

22 A Yes.

23 Q The identification is pages 34 and 35 of Mr.  
24 Dimmerman's statement in MKT-20, volume four, part one.

25 JUDGE HOPKINS: Thank you.



1                   This might be a good time for a recess.  
2 Before you leave, how much more are you going to have?

3                   MR. KHARASCH: Not too long for me; within 20  
4 minutes.

5                   JUDGE HOPKINS: Thank you. We'll take a  
6 15-minute recess.

7                   (Recess.)

8                   JUDGE HOPKINS: Let's get back on the record.  
9 Mr. Kharasch.

10                   BY MR. KHARASCH: (Resuming)

11                   Q     Page 6 of your statement, Mr. Edwards, you are  
12 listing some new single line services to be provided by  
13 the SFSE, the first of which is grain, grain shippers.  
14 Is it a benefit to shippers to have this new single line  
15 grain service?

16                   A     I think the statement reads "grain originating  
17 on the Santa Fe." I don't think it states grain  
18 shippers in general. I think it relates specifically to  
19 those grain shippers that have elevators or terminal  
20 elevators on the Santa Fe line. So the answer to your  
21 question for those specific shippers, the answer is  
22 yes.

23                   Q     For those specific shippers on the Santa Fe  
24 line, new single line service is an advantage?

25                   A     No. You asked me whether they benefit. I

1 don't know whether it is an advantage or not.

2 Q Is it a benefit?

3 A I would think it would be, yes. That's what  
4 we say, it will be a benefit.

5 Q Would it be a benefit to shippers located on  
6 SP lines who ship grain to have new single line service  
7 opened by the SFSP merger?

8 A To where?

9 Q Oh, to Presidio, Texas, for example.

10 A Presidio. I'm trying to visualize how that  
11 might move.

12 Q Does the Santa Fe serve Presidio, Texas?

13 A Yes, it does.

14 Q Is that a border crossing to Mexico?

15 A Yes, it is. I'm trying to think of the SF  
16 grain shippers that you made reference to.

17 As we've already discussed, the routing,  
18 gateway selection, is done by the customer. The main  
19 border crossing point that is preferred by Conasupa  
20 appears to be Laredo.

21 Q Does grain cross into Texas at Presidio?

22 A I think so. I would assume that it does.

23 Q If it does, is it a benefit to SP shippers to  
24 have new single line service to Presidio via the SFSP  
25 system?

1           A     I'm sure there are some SP grain shippers  
2     someplace on this map that would benefit from that  
3     service.

4           Q     And is that a public benefit as you use the  
5     term "public benefit"?

6           A     If it allows them -- a public benefit? It's a  
7     benefit to them, yes.

8           Q     And on page 7 of your verified statement, you  
9     tell us what qualifies as a public benefit of the  
10    merger: "diversions from competing rail carriers and  
11    modes that are driven by improved service or equipment  
12    supply." Do you see that testimony?

13          A     I stated that they qualify as public benefits,  
14    that's correct.

15          Q     And so I'm asking you further, now, what else  
16    qualifies as public benefits in addition to the items  
17    you list on page 6? Does service for SP shippers, that  
18    is new single line service, qualify as a public  
19    benefit?

20          A     Well, I don't know whether specifically the  
21    illustration that you asked me about, the SP grain, that  
22    precise movement would qualify as a public benefit. Did  
23    you ask me what qualifies as a public benefit? That is  
24    a fact, that we are going to have a low-cost, efficient  
25    mode of transportation for our customers.

1           Q     Now, on page 6 you seem to list eight  
2 different traffic flows, each of which has the words  
3 "single line service" or "new single line service" or  
4 "added single line service" in the paragraph. Do you  
5 see that?

6           A     Yes.

7           Q     And I'm asking you, is new single line service  
8 the touchstone for you of public benefit?

9           A     I don't know if that's the touchstone. What  
10 the statement says is that for our customers -- for  
11 example, let's take point number two -- that canned  
12 goods and wine originating on the Southern Pacific will  
13 have single line service to the Chicago market and  
14 gateways on a single line basis that we do not have  
15 today.

16          Q     Yes, we both see that that's what your  
17 statement says they have. And the significance of that  
18 is that it is a public benefit?

19          A     It will allow us to provide a low-cost package  
20 transportation alternative to that customer. That makes  
21 it a public benefit.

22          Q     Now, on page 8 of your statement, I direct  
23 your attention to the third sentence in the last  
24 paragraph, which begins "When coupled with." Do you see  
25 that sentence?

1 A Yes, sir.

2 Q And in that sentence, you refer to the added  
3 revenues anticipated as a result of traffic diversions.  
4 Let's analyze the sentence and see if you can tell us  
5 what the results of these added revenues to the SFSP as  
6 a result of traffic diversions is.

7 Do the traffic diversions result in a more  
8 efficient system?

9 A The traffic diversions? No, the merged  
10 company will result in a more efficient system. The  
11 traffic diversions is a study reflecting that.

12 Q Now, how about the added revenues anticipated  
13 as a result of traffic diversions? Do they result in  
14 more efficient service by the merged system?

15 A The additional revenues derived from the  
16 traffic diversion studies reflect what traffic will be  
17 diverted away from the other railroads. I don't  
18 understand. Does that make it a more efficient system?

19 Q That's what I'm asking you: Does having added  
20 revenues --

21 A No, that does not make us more efficient, not  
22 necessarily, no.

23 Q Is density of traffic on a line a factor in  
24 affecting cost of service on a line?

25 A Yes.

1 Q If the density of traffic on a line increases,  
2 does the average cost go down, other things being  
3 equal?

4 A The variable cost?

5 Q Yes.

6 A Oh, I don't know whether the variable cost  
7 goes down, but you're certainly spreading it over more  
8 fixed.

9 Q Your fixed costs get spread over a larger  
10 volume of traffic when you get more traffic?

11 A When you get more traffic, assuming that you  
12 don't have also incremental fixed elements that have to  
13 be added. There's going to be -- there are points where  
14 you have to add more power, more switch engines, road  
15 engines, additional equipment. Those fixed, and as you  
16 bump up you have to make those decisions. So there are  
17 increments that would reflect additional fixed  
18 expenses.

19 Q As you add traffic to a line, then, you do  
20 have some additional cost. But is not the effect of  
21 adding traffic to a line, getting increased density, to  
22 enable you to spread the cost of maintaining the line,  
23 for example, over a greater volume of traffic?

24 A Well, the answer is yes, assuming that you  
25 don't have to maintain the line more as the density goes

1 up. I wouldn't assume that to be the case, but I would  
2 assume the more use the more maintenance.

3 Q So in general, does increased density on a  
4 line tend to lower the costs on the line?

5 A Well, I tried to answer that in two steps.  
6 It's the, can you add one more car onto the train and  
7 what is the cost of that additional car? You know, what  
8 is the incremental cost? As density goes up, I've  
9 already stated that the fixed will vary over some small  
10 segment, and you'll have to look at increments in the  
11 fixed as you increase the density.

12 The variable costs will or will not increase  
13 depending on whether you have to add more power, more  
14 crew, to that particular train. And you know, if you  
15 just add one more car to that train, then your  
16 incremental costs are certainly not as much as they are  
17 spread over the fixed portion of that train and your  
18 unit cost would drop by that amount incrementally.

19 Q Let's return to our task of analyzing the  
20 effects of added revenues to the SFSP. We have been  
21 exploring whether added revenues, which are going to  
22 come from traffic diversions according to your  
23 statement, whether they will result in a more efficient  
24 system.

25 And are you answering me that, in general

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1 because of increased density on the system, it will  
2 become more efficient? Or are you answering that the  
3 added revenues don't have any effect on efficiency?

4 A The added revenues deal with the fact that we  
5 are offering a single line service and we will have a  
6 lower cost base to attract business with.

7 Q You will have a lower cost base as a result of  
8 the added revenues, yes?

9 A Well, I'm not trying to play games here. I  
10 mean, it's a function of, we will have more volume on  
11 our railroad, we will attract more volume to our  
12 railroad, because we are going to be offering a single  
13 line service on a competitive basis, and we will be a  
14 lower cost producer.

15 Q Right, and my question to you specifically is,  
16 do the added revenues anticipated as a result of traffic  
17 diversions result in a more efficient railroad? It's  
18 your statement we're looking at.

19 A My statement says: "Coupled with the above,  
20 that will give us the financial strength to be a more  
21 competitive rail system."

22 Q Look, Mr. Edwards. We will get to the  
23 financial strength in just one moment.

24 Looking first, you have named a number of  
25 factors: non-operating administrative savings, right?

1 And then you named the factor of added revenues. And  
2 then you said, the result is. And I'm asking you, do  
3 the added revenues as one of the input parts there  
4 result as an output in a more efficient merged rail  
5 system?

6 A It is one of the inputs that creates the  
7 output, yes.

8 Q So added revenues yield in part a more  
9 efficient system?

10 A One of the ingredients, yes.

11 Q Is that the result of this density factor that  
12 we have been talking about?

13 A Not entirely. That's why I've tried to --

14 Q I didn't say entirely. Is it one of the  
15 factors?

16 A Density is one of the factors.

17 Q Added revenues is one of the factors that make  
18 your merged rail system financially stronger?

19 A Yes.

20 Q And added revenues would make your merged rail  
21 system more competitive; is that true or not?

22 A That's true.

23 Q Now let's look at the other side of the coin.  
24 These revenues anticipated as a result of traffic  
25 diversions come in major part from other railroads, do

1 they not?

2 A That's correct.

3 Q All right. Let's look at the railroads from  
4 whom the added revenues from traffic diversions are  
5 obtained. Is the result for the railroad from whom you  
6 take that diversion to make that railroad less  
7 efficient?

8 A No, I wouldn't agree with that.

9 Q Is the result for that railroad from whom you  
10 take the traffic to make that railroad less financially  
11 strong?

12 A I wouldn't agree with that, either.

13 Q And is the result for that railroad to make  
14 that railroad from whom you take that traffic less  
15 competitive?

16 A No, I wouldn't agree with that.

17 Q Please explain first how it is that, if adding  
18 revenues to you makes you more efficient, taking  
19 revenues from another railroad does not make it less  
20 efficient?

21 A I would assume that the other railroad that is  
22 losing traffic, if you will, would do something about  
23 it, that they will take a look at their fixed costs,  
24 their variable costs, how they run their railroad, and  
25 they would make the appropriate adjustments.

1 I would also assume that the other railroad  
2 would try to go out and solicit or gain more business,  
3 and not just sit there idly by and let somebody take  
4 business away from them.

5 Q Suppose the other railroad is faced with the  
6 fact that it's the destination for some of its traffic  
7 that has been taken away? How can it get traffic when  
8 it can't get to its destination?

9 A I can't think of an example like that.

10 Q Oh, I see. Now let's look at the question of  
11 whether taking traffic away as a result of diversions  
12 makes another railroad financially weaker. Why doesn't  
13 it make the railroad financially weaker to lose revenue  
14 if it makes you financially stronger to gain revenue?

15 A Well, of course, financially weaker -- are you  
16 referring to the bottom line?

17 Q I'm referring to what you -- it's your words,  
18 financially stronger if you get more revenue.

19 A Okay. Well then, with reference to the bottom  
20 line, I've already stated that I would assume that the  
21 railroad that had been impacted by this revenue would  
22 make the necessary adjustments, whether they be  
23 adjustments in their fixed expenses, adjustments in  
24 their variable expenses, so that it would correlate with  
25 the amount of traffic that they had moving over their

1 railroad.

2 Q I see. But is railroading not a business of  
3 high fixed costs, sir?

4 A There are increments to that fixed cost that  
5 you can certainly prude, increments of fixed cost in any  
6 kind of industry I can think of, including the  
7 railroad.

8 Q Let's look at the third factor. Please  
9 explain why, if added revenue is going to make the SFSF  
10 more competitive, loss of revenue is not going to make  
11 other railroads less competitive?

12 A I tied, when I answered that earlier, I tied  
13 the additional revenue to the single -- to the  
14 additional traffic, because we were offering a  
15 competitive service that would take it away from some of  
16 the other railroads.

17 Because we get additional traffic from the  
18 other railroads, I fail to see how you correlate back to  
19 that particular point. I am just confused on that.

20 Q No, I am asking you, Mister Witness. You have  
21 said that added revenue from diversions will make your  
22 railroad more competitive. I'm asking you, in light of  
23 that testimony, why isn't it true -- permit me to ask  
24 the question -- why isn't it true that loss of traffic  
25 will make the person from whom you take the revenue less

1 competitive?

2 A My point is, I don't see the correlation at  
3 all because you lose. That would be like to say,  
4 because the SP lost revenue last year, we weren't  
5 competitive. You know, because we lost a piece of  
6 business, that we were not able to go out and be  
7 competitive on other pieces of business.

8 I mean, the real world is we lose and gain  
9 business every day, and we go out and continue to  
10 compete. We do not stop competing just because we lose  
11 a piece of business. We keep on competing to either  
12 replace that or get additional pieces of business.

13 Q Did the Southern Pacific lose revenues as a  
14 result of the BN-Frisco merger?

15 A I don't know. I wasn't around.

16 Q Did it lose revenues as a result of the Union  
17 Pacific-Missouri Pacific merger?

18 A Their beating our brains out in the  
19 marketplace today.

20 Q And as a result of losing those revenues, did  
21 the SP become more efficient because it lost revenue?

22 A We became more competitive.

23 Q I'm not asking you that. I'm asking, did you  
24 become more efficient?

25 A What do you mean by "efficient"?

1 Q The same thing that you mean, Mister Witness,  
2 by "efficient" in your statement on page 8.

3 A The answer is, we became more efficient as a  
4 railroad not just because of the mergers, but also  
5 because of fierce truck competition that we face today.  
6 Those collectively have forced our company and every  
7 other transportation company to be a lot more  
8 efficient.

9 Q Did the SP become financially stronger because  
10 of the UP-MP merger?

11 A We've already testified that we have not  
12 become financially stronger.

13 Q Would the SP be financially stronger if it had  
14 not been for the UP-MP merger?

15 A I don't know.

16 Q You don't know?

17 A No, sir.

18 Q Have you examined at all, Mr. Edwards, the  
19 effects of the so-called megamergers that are talked  
20 about in the testimony of Mr. McNear and other  
21 witnesses?

22 A You mean like to study or analyze, or just  
23 from a day to day working experience?

24 Q In any respect, have you analyzed, studied, or  
25 from day to day working experience studied the effects

1 of these megamergers?

2 A Well, of course, from the day to day  
3 perspective, we are either impacted or not impacted as a  
4 result of these large rail systems.

5 Q You are impacted?

6 A Or not impacted, that's correct.

7 Q One or the other, all right.

8 Have you studied to see whether one or the  
9 other happened to you as a result of these mergers?

10 A No, we have not.

11 Q We generally have not or you personally have  
12 not?

13 A Well, no one in my staff to my knowledge has.

14 Q No one on your staff, which means the SPT  
15 traffic and marketing department, has studied the  
16 effects of these mergers?

17 A I said to my knowledge.

18 Q Were you aware of the negotiations between the  
19 Santa Fe and the Southern Pacific that led to an  
20 agreement on reciprocal switching?

21 A Yes.

22 Q Did you hear the testimony of Mr. Fitzgerald?

23 A Yes, I did.

24 Q Do you agree with Mr. Fitzgerald that in order  
25 for two railroads to accomplish a joint line service,



1 there must be an agreement as to physical switching,  
2 there must be an agreement as to the cost of switching,  
3 there must be an agreement as to routes, there must be  
4 an agreement as to divisions, and an agreement as to  
5 rates?

6 A No.

7 Q You don't agree?

8 A No. You asked me, do you need to tie the two  
9 together? You do not. In fact, today, every day, we  
10 enter into tens and twenties of joint routes and joint  
11 rates with other carriers.

12 Q Right, and if those are -- in that case, you  
13 agree on routes and rates, two parts of the factors that  
14 I have described?

15 A Under a contractual arrangement, yes.

16 Q And when you agree on a rate, do you not have  
17 to agree or have in place an agreement as to the  
18 division of rates between the two participating  
19 railroads?

20 A When we agree on a rate for a specific move?

21 Q A joint line move. Do you not either have to  
22 agree on a division --

23 A Or have in place a division.

24 Q -- or have in place an existing agreement  
25 generally as to divisions?

1 A That's correct.

2 Q So in your daily agreement on joint rates, you  
3 have to either make new agreements on divisions or have  
4 in place an agreement on divisions?

5 A That's correct.

6 Q And when you agree on a joint line rate, do  
7 you not have to agree or have previously agreed on the  
8 routing that will be permitted?

9 A That's correct. We either have to agree or  
10 have it previously been established.

11 Q Now, is it correct that the routing agreement  
12 that is entered into by the Southern Pacific and the  
13 Santa Fe was dependent, first, on an agreement as to  
14 switching?

15 A I think Mr. Fitzgerald indicated they were  
16 tied together.

17 Q Yes, but now I'm asking you specifically,  
18 because it's important to get your own knowledge of  
19 that.

20 A Okay.

21 Q Would you like to look at the exhibit? It is  
22 MKT-C-9. Let's look at that together. I will pass you  
23 an MKT-C-9 and I will look at one. Let's look at page  
24 12 of MKT-C-9, where the SP's letter to the Santa Fe  
25 says in the second paragraph:

1            "This agreement on routing is contingent upon  
2 the execution, implementation, and continuation of a  
3 reciprocal switching contract."

4            A     Right.

5            Q     Now, is that your understanding of the way the  
6 arrangement was?

7            A     That's correct.

8            Q     Tell me your understanding of what "long and  
9 short haul junctions" means in the context of this  
10 agreement.

11           A     We established a routing matrix dealing with  
12 origins and destinations on the Southern Pacific and the  
13 Santa Fe, and we had an agreement within that routing  
14 matrix. For each cell in the matrix, there is indicated  
15 a gateway or an interchange point, and usually there is  
16 at least one or two interchange points that are  
17 applicable to the routing between general regions of the  
18 country.

19                    So for example, if you were going from  
20 southern California to Kansas, you had a Colton and  
21 Kansas City gateway, for example, alternative. So each  
22 railroad could decide whether they were going to take  
23 the long haul or the short haul on that particular  
24 route.

25                    Then there was a corresponding gateway at

1 which the traffic would be traded, exchanged, and then  
2 moved over. And I think we discussed the routing matrix  
3 earlier.

4 Q You and I have not, but Mr. Fitzgerald and I  
5 have.

6 A "We" collectively, yes.

7 Q Was it your understanding of the routing  
8 matrix that either of -- that if there are two junctions  
9 shown, either one may be selected by the shipper?

10 A That's correct.

11 Q Now, in connection with joint rates applicable  
12 over these joint routes, what are the division  
13 arrangements between the Santa Fe and the Southern  
14 Pacific?

15 A Whatever was established years ago.

16 Q Whatever was established years ago?

17 A Well, whenever the divisions were established,  
18 that's what the divisions are. There was no discussion  
19 of divisions with respect to this agreement.

20 Q You are just going, on this traffic that is  
21 affected by this agreement, by the long-ago-established  
22 division sheets that have existed?

23 A My statement is -- that's true, and my  
24 statement is I don't know when those divisions were  
25 established. My statement is that there was no

1 discussion of divisions correlated to this particular  
2 contract.

3 Q Now, would you please look at pages 9, 10 and  
4 11 of MKT-C-9, please?

5 A Right.

6 Q Who is Mr. Roland?

7 A Mr. Roland is a gentleman within the marketing  
8 department that worked for Mr. Ellebract.

9 Q Now, when you were establishing, or when you  
10 were working on this routing matrix in the spring of  
11 this year, it appears from Mr. Roland's memo that there  
12 are substantial instances where there are a difference  
13 between single line and joint line rates. Did this come  
14 to your attention?

15 A Yes, it did.

16 Q For example, let's look at grain products on  
17 page 10 of 21. The single line rate appeared to be less  
18 than the joint line rate. What has happened since the  
19 June 1, 1984, agreement between the Santa Fe and the  
20 Southern Pacific to the level of rates on grain  
21 products?

22 A Nothing that I know of. We have not made any  
23 changes that I know of. This was -- this document to  
24 Ellebract from Mr. Roland was in response to an inquiry  
25 from Mr. Grygiel to Mr. Sharp, and Mr. Roland set about

1 preparing a response. It was brought to my attention  
2 and we terminated it within about a minute and a half.  
3 We have no intention to do anything with rates.

4 Q I see. Now, let's look at the way rates are  
5 published. When you have a joint line rate, it is  
6 published in a tariff unless it is an exempt from tariff  
7 publication movement, don't you?

8 A Or a contract.

9 Q Yes, or a contract. Published in a tariff.

10 A Or a circular, that's right.

11 Q Sir?

12 A Or a circular, that's correct.

13 Q For example, energy and chemicals is listed on  
14 this list. How would the tariff look for joint line  
15 movements between the SP and the Santa Fe today  
16 publishing rates on energy and chemicals, Gulf Coast to  
17 Los Angeles?

18 A The general routing tariff?

19 Q Not the routing tariff.

20 A The general rate tariff, excuse me.

21 Q Yes.

22 A It should look the same as it did when this  
23 document was put together.

24 Q You're telling me that you think -- first,  
25 tell me, do you know -- do you know what the rates are

1 on energy and chemicals -- this seems to be chemical  
2 intermediates -- from the Gulf Coast to Los Angeles?

3 A No, I wouldn't know what the rates are.

4 Q Are you telling me that -- do you know whether  
5 there is one rate in the applicable publication which is  
6 the same rate whether the joint line movement is --  
7 strike the question. It's not going to be clear at  
8 all.

9 Consider the rate tariff for chemical  
10 intermediates, Gulf Coast to Los Angeles. Does that  
11 rate tariff have two different rates for a joint line  
12 Santa Fe-SP movement or do they have the same rate?

13 A You mean single line rate SP versus joint line  
14 rate with Santa Fe?

15 Q Let's consider first the situation where the  
16 SP is going to move it from origin and then it's going  
17 to move joint line with the Santa Fe. And let's assume  
18 it is a commonly served origin and it's also possible  
19 for the Santa Fe to move it from origin.

20 A Okay.

21 Q That's possible under your routing matrix, is  
22 it not?

23 A That's correct.

24 Q Those two joint line rates, will they be the  
25 same or different in the publication, or do you know?

1           A     I don't know. I don't know. I would assume  
2 the single line would be lower than the joint line.

3           Q     And how about on lumber? Is the single line  
4 lower than the joint line?

5           A     Yes, it is.

6           Q     So let's take your assumption, which you  
7 stated I think was an assumption, on chemical  
8 intermediates. A shipper's shipping chemical  
9 intermediates and he has a choice of paying \$100 single  
10 line on the SP or \$120 joint line SP-SF, is that a  
11 possibility today?

12          A     Yes, okay.

13          Q     It is a possibility?

14          A     Well, I'm just going with your assumption.

15          Q     Okay, that's the assumption. But I thought  
16 you told me that you believed the single line rate is  
17 lower.

18          A     Yes, I do believe that.

19          Q     So let's go with what you believe. It is the  
20 situation where the shipper is offered the lower single  
21 line rate and the higher joint line rate?

22          A     Both options, that's correct.

23          Q     Which will he choose?

24          A     Well, strictly on rate, if you're just going  
25 to base it -- if that shipper is going to base his



1 decision strictly on rate and not consider anything  
2 else, just limit it strictly to rate, then he'd choose  
3 the \$100, if it is strictly a rate issue. There are  
4 other factors that he has to consider that may override  
5 the rate issue.

6 Q So he might find the joint line so attractive  
7 he would pay more for joint line service?

8 A He might.

9 Q I thought you told us generally that single  
10 line service was better than joint line service?

11 A That's exactly right.

12 Q So it would be quite unusual for a shipper to  
13 choose to pay more via joint line, wouldn't it?

14 A Oh, I don't know about that. We move a lot of  
15 traffic from the Bay Area to Chicago and it takes us  
16 three railroads to get there, and we compete with a  
17 single line service today, Santa Fe, and the UP.

18 Q Do you charge a higher rate or a lower rate?

19 A We charge the same rate.

20 Q The same rate.

21 Would it be astonishing for us to find, if we  
22 went over the commodities listed on pages 10 and 11 of  
23 MKI-C-9, that the single line and joint line rates have  
24 now become equal?

25 A That would surprise me.

1           Q     Let's look on page 11, for example. We have  
2 black strap molasses, where the rates seem to be quite a  
3 bit different in single and joint line. Do you think  
4 those rates remain today quite a bit different?

5           A     I don't have the slightest idea.  
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1 Q What's the use of a route if the rate over  
2 that route is so much higher that traffic has to pay a  
3 penalty to move over it?

4 A Well, as I indicated before, these rates that  
5 you are referring to correlate with the general routing  
6 tariff. You have a general rate tariff and a general  
7 routing tariff. I tried to indicate that a very small  
8 percent of at least our business, and I assume other  
9 railroads' business, travel against this type of a  
10 tariff situation. The real world dictates that we go  
11 out and either move it against the specifically rated  
12 tariff or on a contractual basis. Those are the real  
13 rates.

14 Q Now, the routing tariff or the routing matrix  
15 agreement that was reached between the two railroads  
16 applies to the specifically rated items as well as the  
17 general tariff items, is that not right?

18 A I am not sure about that. It was definitely  
19 against the general tariff items. The specific tariff  
20 items are specific tariff actions that have routes  
21 within them, and the commodity and the rate. So I don't  
22 know the answer to your question.

23 Q Let's look over on page 13, which is the  
24 second page of the letter from Mr. Sharp, and the SF,  
25 and he states in the first paragraph, "There is no

1 agreement as to the level of rates. However, at the  
2 request of either party, SP and ATSF will enter into  
3 meaningful discussion about the establishment of  
4 competitive joint rates consistent with this  
5 agreement."

6 Do you see that?

7 A Yes, sir.

8 Q Was that the good faith understanding between  
9 the parties?

10 A I don't know what you mean by good faith  
11 understanding. Our standard policy with any railroad in  
12 the United States is that we will at any time enter into  
13 meaningful discussion about the establishment of  
14 competitive joint rates, especially if it is going to  
15 get us some business.

16 Q And have there been meaningful discussions  
17 with the Santa Fe about the establishment of competitive  
18 joint rates since June 1984?

19 A We have at any one time probably between 500  
20 and 1000 flows under review in our shop. I don't have  
21 the slightest idea of whether any of those deal with the  
22 Santa Fe or not, and that turns over about every two  
23 weeks. So we have another thousand in our shops. So we  
24 are out hustling for business. So I don't know whether  
25 we have talked to the Santa Fe or not. I'm talking

1 about going after business collectively on a joint line  
2 basis. I just don't know.

3 Q Is, in your shop, the Santa Fe, in any way  
4 blackballed or excluded from discussion about  
5 establishing joint rates?

6 A We are vigorously competing with the Santa  
7 Fe. We are trying to get business, bring it on our  
8 railroad. We are working with every railroad, including  
9 yours, as best as we can in establishing competitive  
10 joint line routes and rates to get business, not to  
11 chase it off.

12 Q And that would mean, I assume, that since you  
13 work with every railroad, that you do not blackball the  
14 Santa Fe and you will enter into meaningful discussions  
15 with them about competitive rates?

16 A If it is to secure some additional traffic on  
17 a joint line basis. Like I said, we work with every  
18 railroad.

19 Q You are having real trouble answering my  
20 question?

21 Is there anything in your current working  
22 policy that excludes the Santa Fe from meaningful  
23 discussions about establishing joint line rates?

24 A No, we have no policy blackballing any  
25 specific railroad.

1 Q Thank you.

2 Now, on page 2 of the letter which is page 13  
3 of MKT-C-19, does competitive joint rates there mean  
4 joint rates competitive with single line rates?

5 A Absolutely not.

6 Q So that letter should be read, what Mr. Sharp  
7 meant was we will talk about establishing competitive  
8 joint rates but not joint rates competitive with single  
9 line rates.

10 A The way the letter should be read is that we  
11 will discuss, we will enter into meaningful discussion  
12 with the Santa Fe on establishment of competitive joint  
13 rates in trying to secure additional business. We don't  
14 know what that rate might be, that competitive joint  
15 rate might be. We don't have the slightest idea what  
16 that competitive joint rate might be.

17 Q All right. But my specific question to you is  
18 is it possible that the discussion will be on the basis  
19 of establishing a joint line rate that is competitive  
20 with the single line rate of one of the parties?

21 A I don't think so.

22 Q Suppose that -- let's look at page 11 of  
23 MKT-C-6, and that will help our supposition, MKT-C-9,  
24 page 11, and we are looking at the black strap mclasses  
25 rate that is talked about there, Hereford, Texas to

1 Houston, Santa Fe, is \$1.25 a hundredweight, and the  
2 joint line rate is \$2.26, almost twice.

3 That looks like a big difference, doesn't it?

4 A Sure does.

5 Q Now, in order -- let's assume, excuse me, that  
6 Hereford, Texas, is a Santa Fe origin, okay, because of  
7 the previous sentence. Hereford, Texas is a Santa Fe  
8 origin. If the Southern Pacific wishes to participate in  
9 a Hereford, Texas to Houston rate that comes down to a  
10 level near the Santa Fe single line rate, the SP must  
11 get the agreement of the Santa Fe to lower the joint  
12 rate, is that correct?

13 A That is correct, and/or to contract for the  
14 business.

15 Q And if you contract for the business, you need  
16 not get the Santa Fe's agreement to anything?

17 A If it's a joint line proposal, we would have  
18 to get their agreement as to their participation in that  
19 proposal.

20 Q So if it is joint line, one way or another,  
21 you have to get the Santa Fe to agree with you.

22 A We are talking about a contract?

23 Q A contract or on a tariff publication.

24 A That is correct, yes. Either way we need the  
25 Santa Fe's concurrence.

1 Q And if you don't get the Santa Fe's  
2 concurrence with you, the whole routing matrix doesn't  
3 do you much good if you can't get a rate that's  
4 competitive to move the traffic.

5 A I don't agree with that at all.

6 Q Well, how does the routing matrix do you any  
7 good if you can't get the Santa Fe to agree with you on  
8 a competitive rate?

9 A The routing matrix deals with the routing  
10 agreement, and the switching agreement deals with having  
11 the ability, having the option to provide additional  
12 alternatives to our customers, and as we have discussed,  
13 we can either have -- let's say we have a Santa Fe open  
14 and an SP open on the other end. So now we can go --  
15 you know, we have a lot of different options. We could  
16 go SP direct. We can go Santa Fe direct. And we have  
17 two interchanges in between where we can go any  
18 combination of those four.

19 When we go in to make a presentation to a  
20 customer, if he requires, we will give him a rate on  
21 every one of those alternatives, or if he only wants a  
22 rate on half of them, we would give him a rate on half  
23 of them.

24 Q Now let's suppose it is a movement where a  
25 joint line movement is required if the SP is to



1 participate.

2 A Okay.

3 Q We will take the example, point A to point B  
4 is served only by the Santa Fe today. B to C is served  
5 by the Santa Fe and the SP, both. That is one of the  
6 examples that would be covered by your routing and  
7 switching agreement, is it not?

8 A I'd better write that down.

9 Q Just draw a line. Call the top of it A. That  
10 will be the origin. B is an intermediate point, and C  
11 is the destination.

12 A C is the destination. Okay.

13 Q All right.

14 And from A to B we have the Santa Fe operating  
15 only.

16 A Got it.

17 Q And from B to C you have both the Santa Fe and  
18 Southern Pacific options.

19 Now, in order for the Southern Pacific to  
20 participate in the movement from A to C, you have to get  
21 the Santa Fe to agree on a joint rate with you, don't  
22 you?

23 A No. The answer is no, we do not. We can go  
24 ahead and move the traffic. We don't need to get them  
25 to participate in a rate. The route is there. They can

1 use the route.

2 Q We understand about the route.

3 What can you publish without the Santa Fe  
4 agreement to the rate?

5 A I can publish a contractual agreement. I can  
6 publish --

7 Q Did we not just agree in the previous  
8 examination that when you are making a contract for a  
9 joint line move you need the participation of the other  
10 party?

11 A Yes, as you do in any type of joint line rate,  
12 you need the participation of the other party. We  
13 agreed to that.

14 Q Okay.

15 MR. KHARASCH: That's all I have, Your Honor.

16 JUDGE HOPKINS: Thank you, sir.

17 Who is next?

18 MR. WHITE: I am, Your Honor.

19 BY MR. WHITE:

20 Q Good afternoon, Mr. Edwards. My name is  
21 Charles White. I represent the Texas Mexican Railway.

22 First of all, I would like to ask, sir, during  
23 your tenure with the California Cannery and Growers, if  
24 you ever filed a position paper or comment in a railroad  
25 merger case.

1 A Not to my knowledge, no.

2 Q Did the association file it while you were  
3 there?

4 A Generally speaking, we took, from a public  
5 standpoint, we took a neutral position with respect to  
6 filing documents.

7 Q Sir, do you in your view compete with Texas  
8 Mexican Railway?

9 A Do we compete with them?

10 Q Yes.

11 A No, sir. We connect with them. They are a  
12 friendly connection. It's how we get to our major -- to  
13 your major grain gateway.

14 Q Is it appropriate to say that Southern Pacific  
15 enjoys long haul to the vast majority of the Mexican  
16 border crossing points?

17 A Long haul?

18 Q Yes, sir.

19 A No, I wouldn't agree with that.

20 Q What railway serves more Mexican border  
21 crossing points than the Southern Pacific?

22 A I'm sorry, I misunderstood your question.

23 You said long haul, and I was just looking at  
24 the map here, and knowing where our grain comes from and  
25 how it actually gets to those points, we really don't

1 have a very long haul.

2 Q Let me rephrase the question.

3 Do you serve more Mexican border crossing  
4 points than any other railroad in the United States?

5 A I think the answer is yes.

6 Q Can you, just from your knowledge, tell me  
7 what the product and commodity flows are that you handle  
8 to the Mexican gateways?

9 A Well, generally speaking, where we move grain  
10 and the other commodity that moves to a modest amount is  
11 automobile parts.

12 Q Does anything flow to Southern Pacific from  
13 Mexico?

14 A We do have some automobile parts from  
15 Volkswagen, moving north, a very modest amount, but  
16 there are some.

17 Q Is your traffic to and from Mexico growing?

18 A No, I can't say that it is. It really jumps  
19 up and down, based, of course, on the grain consumption  
20 purchases.

21 Q In your testimony, sir, you indicated that one  
22 of the benefits of the transaction will be that you will  
23 be able to serve more Mexican border crossing points.

24 Can you tell me which ones they are?

25 A Yes. The additional one that we will be able

1 to serve, of course, would be the Presidio would be the  
2 major one that Santa Fe currently serves today. We both  
3 serve El Paso, and we have Nogales and Brownsville, and  
4 then of course, we interline with your client to get to  
5 Laredo.

6 Q And you have Eagle Pass also?

7 A Yes. And Eagle Pass.

8 Q Sir, did you hear me discuss joint line rates  
9 with Mr. Fitzgerald this morning?

10 A Yes, I did.

11 Q To your knowledge, sir, does Southern Pacific  
12 make joint line rates with the National Railway of  
13 Mexico?

14 A No, we do not.

15 Q Do you have runthrough trains with National  
16 Railway of Mexico?

17 A No, sir, we do not.

18 Q No contracts with Mexican shippers I take it?

19 A No, not that I know of, no.

20 Q Is it accurate to say that your marketing  
21 effort with respect to Mexican traffic principally is  
22 one to make sure that the traffic --

23 A Time out. I want to go to your last  
24 question.

25 When you said contracts with Mexican shippers,

1 I am just now thinking about General Motors, for  
2 example, has a plant in Mexico near Monterrey, that we  
3 ship a lot of automobile parts for, and I quite frankly  
4 don't know whether we contract with General Motors in  
5 Mexico or General Motors in Detroit, but we might  
6 contract with the General Motors people there in  
7 Mexico.

8 Q Sir, does the term border settlement mean  
9 anything to you?

10 A No.

11 Q On page 5 of your testimony you indicate that  
12 today Santa Fe and Southern Pacific and other western  
13 railroads attempt to maximize their own long haul  
14 wherever possible.

15 Does that include an attempt to maximize your  
16 long haul to the Mexican border points?

17 A Well, back to the question about dealing with,  
18 get to the Mexican border points.

19 We try to move grain and our automobile parts  
20 to the Mexican border points, either those selected by  
21 the customer -- in this case, let's say it's Laredo by  
22 Canasupa -- by the combination of routes that will allow  
23 us to secure the business and move it there.

24 So, for example, if we were bidding on some  
25 grain traffic, most of our grain moves via the Katy on

1 our railroad and in your railroad. That's an efficient  
2 way that we get to Mexico and participate in that grain  
3 traffic, and it is an efficient means to compete against  
4 the Union Pacific who has a single line service there.

5 Q If you were routing grain to Mexico, let's say  
6 that reached you at San Antonio, would you prefer to  
7 route it SP to Eagle Pass or SP/Corpus Christi-Tex Mex  
8 to Laredo?

9 A Assuming the customer would give us the  
10 choice?

11 Q Yes, sir.

12 A Well, if you were just trying to look -- and I  
13 am looking at a map here -- the shortest distance to a  
14 Texas gateway, if you just look at mileage, would be San  
15 Antonio to Eagle Pass. I am sure if you were looking  
16 at -- if you were caught up in maximizing your revenue,  
17 you would go the other way, I would think.

18 Q Let's assume the receiver is in Monterrey.

19 Would the answer be any different, sir?

20 A I think if the receiver was in Monterrey, he  
21 probably would insist on Laredo. In other words, we  
22 have conducted ourselves to be indifferent to the Laredo  
23 and Eagle Pass gateways. If the customer dictates one  
24 or the other, we work with the connecting railroads to  
25 get the grain to that gateway.

1 Q Sir, I would like to hand you a document I have  
2 identified as TB-C-1, which was produced by your counsel  
3 in response to interrogatories.

4 JUDGE HOPKINS: It will be marked for  
5 identification.

6 (The document referred to  
7 was marked Texas Mexican  
8 Railway Exhibit No. TM-C-1  
9 for identification.)

10 BY MR. WHITE: (Returning)

11 Q Would you take a moment to read that, sir?

12 MR. SMITH: I would like to, while he is  
13 reading it, express my surprise. I thought we had an  
14 understanding that we would receive notice of documents  
15 for which cross examination was to be proffered. We  
16 have not received any notice of this.

17 JUDGE HOPKINS: You get into the question of  
18 whether we were talking about long documents or short  
19 documents. This appears to be a short document. I  
20 don't think this is what we were really talking about.

21 MR. KHARASCH: I hope you're not indicating  
22 that mine were long.

23 JUDGE HOPKINS: I'm not going to define a long  
24 or a short.

25 THE WITNESS: Yes, sir.



1 BY MR. WHITE: (Resuming)

2 Q Have you had a chance to skim over that?

3 A Yes.

4 Q First of all, can you tell me who Mr. Y. Sethi  
5 is?

6 A Yes. Mr. Sethi was -- oh, boy. Mr. Sethi was  
7 with us in October of '82. He was responsible for -- I  
8 believe his responsibility was pricing.

9 Q And I believe, sir, you told us earlier this  
10 afternoon that Mr. Heinrich was assistant vice president?

11 A That is correct. And I believe at this point  
12 in time Mr. Heinrich reported to Mr. Sethi.

13 Q Sir, would you turn to page 2 of the document,  
14 TM-C-1?

15 I am going to ask you questions concerning the  
16 first full paragraph. I would like to read the first  
17 sentence so other counsel can hear it.

18 "Given the fact that SP serves more Mexican  
19 ports of entry than any other U.S. carrier, and having  
20 in mind SP's already vast influences in Mexico, I am  
21 concerned that from a pricing standpoint any arrangement  
22 to accommodate Mr. A. F. Ramos can only work against us  
23 and impede SP's ability to influence tonnage to move via  
24 our preferred crossings."

25 First of all, sir, do you know who Mr. A. F.

1 Ramos is?

2 A Yes, I do.

3 Q He's the President of Tex Mex?

4 A Yes, sir.

5 Q I believe earlier today you told us your  
6 definition of preferred crossings was that it was your  
7 first choice.

8 Do I remember that properly?

9 A That is correct.

10 Q And I believe you just testified that you were  
11 to be neutral between Eagle Pass and Laredo, if I  
12 remember that testimony properly?

13 A Yes, sir, that's correct.

14 Q Are you now stating, sir, that Southern  
15 Pacific is neutral with respect to the Laredo and Eagle  
16 Pass gateways?

17 A If I may answer that, this policy or this  
18 statement certainly does not reflect the policy or  
19 statements or the position of the current administration  
20 that is responsible for the marketing and sales effort  
21 of the Southern Pacific Transportation Company. When I  
22 came on board in January of '83, just after this was  
23 written, I reviewed this policy. I found it quite  
24 frankly repulsive, and we have conducted ourselves to  
25 the contrary of this in the ensuing time. We have tried

1 to work very carefully and productively with the Tex  
2 Mex, and on the other side, the Katy, in sourcing corn  
3 and other grains into Mexico. Otherwise we wouldn't  
4 even participate in this business at all. The tenders  
5 are offered over a specific gateway. If we don't work  
6 with you and if we don't work with the Katy, we are  
7 just -- we just act really as an overhead carrier, a  
8 bridge carrier in this move. If we don't work with you,  
9 we don't get the business.

10 So we have everything to be gained by working  
11 with the source and the terminating carrier.

12 Q Sir, in your verified statement, page 6, you  
13 indicate that one of the -- well, the first principal  
14 benefit will be that you will be able to reach  
15 additional Mexican border crossings for Santa Fe  
16 originated grain.

17 A Right.

18 Q Won't that give you the ability to hit a  
19 Mexican border crossing and entirely eliminate any joint  
20 movement with Tex Mex?

21 A This reference is to Santa Fe customers.  
22 Santa Fe customers will have the ability to move single  
23 line to a few gateways. That's absolutely correct. Not  
24 all the gateways.

25 Once again, we don't, as you well know, sir,

1 Mr. White, we don't choose the gateways. The gateways  
2 are dictated to us by the purchaser. In this case it is  
3 Conasurc.

4 Q Is that true with respect to General Motors?  
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1 A I don't know the answer to that.

2 Q Is it true of any traffic other than Conasupo  
3 traffic?

4 A I honestly don't know. I would think that we  
5 would have -- I don't know how the Mexicans work. I  
6 guess I would think we would have some freedom in  
7 establishing gateways. I don't know.

8 Q Sir, if you look at the bottom of page 2 under  
9 the category of potential high risks, the first entry  
10 says under high risk, that rates could be established by  
11 the Tex Mex from or two Laredo, where we could not even  
12 afford to include Eagle Pass, Texas.

13 If Tex Mex established rates that you could  
14 not afford to meet, would that rate-setting be in the  
15 shipper's best interest?

16 A I'm sorry; I don't understand that question.  
17 Say that again?

18 Q If Tex Mex established a rate that you could  
19 not afford to --

20 A Participate in?

21 Q In other words, so that it would influence the  
22 traffic to Laredo, as opposed to Eagle Pass. That's how  
23 I read the statement.

24 A Okay.

25 Q Would that rate setting not be in the

1 shipper's best interest if he got a better deal from Tex  
2 Mex than you could meet?

3 A I am assuming that -- we are assuming that the  
4 gateway is not selected by the customer?

5 Q Yes, sir. Not selected by Conasupo.

6 A Not by Conasupo, by some other movement?

7 Q Yes.

8 A If you're asking what our position is -- and  
9 once again, I'm just trying to understand the question,  
10 we are more than willing to participate with you in  
11 establishing competitive rates on business moving both  
12 ways across the border.

13 Q I'm asking, in terms of the high risk --

14 A I don't know why this author -- I mean I've  
15 never seen this document, I don't know what this  
16 gentleman had in mind, why he even calls it high risk.  
17 All I know is, I said I found the whole thing repulsive  
18 and changed it.

19 Q Let me pick up at this point, then. Have you  
20 communicated that sense of repulsiveness to your  
21 colleagues at Tex Mex?

22 A I just saw Mr. Ramos in August of this year.

23 Q And what did you discuss with him, sir?

24 A It was a friendly social type of a  
25 conversation and one of hey, we're working together;

1 let's keep up the good work.

2 Q Did you say that you were offended by your  
3 former policy?

4 A No, sir; I did not. I just figured that  
5 actions, our actions in '83 and through '84 will speak a  
6 lot louder than that statement.

7 Q What actions can you tell us about that speak  
8 loud and clear?

9 A The ones I'm specifically referring to are the  
10 cooperation that we have had in moving grain across the  
11 Mexican gateways, across specifically the Laredo  
12 gateway.

13 Q Was that Conasupo grain that was identified to  
14 move to Laredo in any event?

15 A Well, it could have moved on the Union  
16 Pacific. It didn't have to move -- the three of us  
17 didn't have to move this grain. It could have easily  
18 gone over on the UP if we didn't work together.

19 Q Sir, would you cast your attention to number  
20 two at the bottom of page 2, where it says, under high  
21 risk, it says: "No control in maintaining routes in  
22 accordance with our normal routing practices. As noted  
23 in the past, Tex Mex is very liberal in their routing  
24 policy."

25 Q What normal routing practices does that refer

1 to, if you know?

2 A I honestly don't have -- it says on our normal  
3 -- I don't have the slightest idea what Mr. Heinrich had  
4 in mind here.

5 Q Is it true, sir, that if the transaction is  
6 approved, Santa Fe/Southern Pacific will increase back  
7 to page 2, the already vast influence that SP has in  
8 Mexico?

9 A Well, I didn't know we had a vast influence.  
10 That is obviously Mr. Heinrich's opinion.

11 Q Mr. Heinrich is your expert in Houston, is he  
12 not, sir?

13 A He is not our expert in grain. He's our  
14 pricing man in Houston. Most of his activities concern  
15 themselves with petrochemical and chemical moves, not in  
16 the grain market.

17 He certainly has some knowledge of the grain  
18 market and some knowledge of the area, but the majority  
19 of his time, if you will, has been in the area that I  
20 indicated.

21 I just don't know why he was asked for an  
22 opinion or why this was written or what stimulated it.

23 Q You can't deny though, can you, sir, that if  
24 this transaction is approved by the Commission, that  
25 Santa Fe/Southern Pacific will have direct access to



1 every single Mexican gateway, with the exception of  
2 Laredo and to the exclusion of all the other railroads  
3 serving the territory?

4 A Well, I have to break that down in parts, so  
5 that I can answer the parts. The first part I agree  
6 with.

7 Q What other gateways into Mexico, other than  
8 Laredo, do you find yourself in a competitive situation  
9 with respect to other U.S. railroads?

10 A The merged system.

11 Q Say that again?

12 A The merged system.

13 Q Yes.

14 A You're absolutely right. Laredo would be the  
15 exception.

16 MR. WHITE: Thank you, sir. That's all I  
17 have.

18 JUDGE HOPKINS: Who is next? Mr. Dreiling.

19 BY MR. DREILING:

20 Q Mr. Edwards, I am Bob Dreiling. I represent  
21 the KCS Lines.

22 MR. DREILING: First, Your Honor, I would like  
23 to have a document marked for identification as  
24 KCS-C-10.

25 JUDGE HOPKINS: It will be marked for

1 identification.

2 (The document referred to  
3 was marked Exhibit KCS-C-10  
4 for identification.)

5 BY MR. KHABASCH: (Resuming)

6 Q Mr. Edwards, I have now handed you what has  
7 been marked for identification as KCS-C-10 and ask if  
8 you can identify the document.

9 A This document is a letter that was sent to  
10 approximately 600 customers of ours in July; in fact,  
11 July 20, 1984, in response to inquiries by our customers  
12 with respect to the Union Pacific position in the merger  
13 and, more specifically, in response to an agreement that  
14 we had with the Union Pacific system over El Paso.

15 Q Okay.

16 Have you completed your answer?

17 A Yes, sir.

18 Q I would like to go into some portions of  
19 this. The second paragraph --

20 A First page?

21 Q First page; yes. You say: "As you know,  
22 Union Pacific already has created a megarailroad system  
23 with awesome market power through its merger with  
24 Missouri Pacific and Western Pacific."

25 I wonder if we could have you state for the

1 record your definition of the term "market power" as you  
2 use it in that sentence.

3 A Well, now that I sit here in these hearings,  
4 you know, I kind of wish I didn't use certain words.

5 JUDGE HOPKINS: Everybody thinks that.

6 THE WITNESS: That's right.

7 Once again, I'll give the definition. But to  
8 put this in perspective, it was a letter written to our  
9 customers. There's a certain amount of hype in this  
10 letter. There's just no doubt about it.

11 I read this thing in preparation for this  
12 cross, and I said oh, why did we say this, you know,  
13 because there's a certain amount of hype.

14 BY MR. DREILING: (Resuming)

15 Q Well, I will give you the opportunity to  
16 explain yourself.

17 A What we were talking -- well, what we were  
18 specifically referring to then, if you take a map of the  
19 Union Pacific system, which I just happen to have one  
20 here, you can see by looking at a map that they cover,  
21 at least on the other side of Mississippi, about every  
22 port, every major market, every gateway, I already said  
23 every market that there is.

24 In fact, they have us encircled. You can see  
25 that even as of this time, their system is all in red.

1 You know, they don't have the distinction between the WP  
2 and the MP. It's just one continuous red line.

3 So one of the things we face when we get up in  
4 the morning, in selling rail transportation, one of our  
5 competitors is this encirclement that we have. So what  
6 I mean by awesome market power is best described by just  
7 looking at this network coverage that they have of the  
8 ports, the gateways and the marketplace today.

9 So that's what I mean by that.

10 Q Now, if the SP and the Santa Fe were allowed  
11 to merge, let's take the ports to start. Which of the  
12 Louisiana Gulf ports would the UP serve that a combined  
13 SP/Santa Fe would not serve?

14 A Which of the Gulf ports?

15 Q Louisiana Gulf ports.

16 Q On the surface, it looks like it is  
17 comparable. In other words, we have Galveston, Houston,  
18 Corpus Christi, and New Orleans.

19 Q Okay.

20 You carried over into Texas for me. And the  
21 next question was going to be for Texas.

22 A I thought you said Gulf ports.

23 Q Let's take Gulf ports. You would say there is  
24 comparable coverage? There would be comparable  
25 coverage?

1 A Between us and the Union Pacific?

2 Q Yes, if we were to assume your merger with the  
3 Santa Fe.

4 A That's correct.

5 Q Let's take the West Coast ports. Of course,  
6 you presently now already serve the Port of Los Angeles;  
7 correct?

8 A Correct.

9 Q As does the Santa Fe, and as does the UP.

10 A That's correct.

11 Q You also serve the Ports of San Francisco  
12 and --

13 A Oakland. Right.

14 Q As does the UP.

15 A That's correct.

16 Q You serve the Port of Portland, Oregon, do you  
17 not?

18 A Right.

19 Q As does the UP.

20 A And the BN.

21 Q Now, what ports on the West Coast, after  
22 merger, would the UP serve that a combined SP/Santa Fe  
23 not serve?

24 A Seattle, Tacoma.

25 Q Now, let's consider gateways, Mississippi

1 gateways. What Mississippi gateways does the UP serve?

2 A The UP?

3 Q es.

4 A All four of them. New Orleans, Memphis, St.  
5 Louis, and Chicago.

6 Q Okay.

7 And the UP gets to Chicago via the Missouri  
8 Pacific up through St. Louis. Is that correct?

9 A Yes, it does.

10 Q And if we were to assume this merger, how many  
11 would the SP/Santa Fe get to?

12 A After the merger, all of them.

13 Q Does the Santa Fe serve San Diego,  
14 California?

15 A Yes, it does currently.

16 Q Is that a major port?

17 A No, it's not.

18 Q Does the UP serve San Diego?

19 A No, it does not.

20 Q Going to the next paragraph, there you  
21 describe a certain concern you have, you said: "After  
22 the UP merger was effected, we at the SP acted to  
23 protect our own economic interests and yet still  
24 preserve significant rail competition for our valued  
25 customers."

1 I take it from that sentence that you consider  
2 competition between railroads for your valued customers  
3 to be important.

4 A That's correct. I remember that this letter,  
5 this specific letter was in response, as I stated at the  
6 beginning, to our merger and the UP involvement in our  
7 merger, some statements they had made about our merger,  
8 and some specific statements about the El Paso Gateway.

9 So this letter was not written to cover all  
10 forms of transportation competition, just specifically  
11 the UP.

12 Q You're telling me that all 600 customers were  
13 concerned about the competition between the SP and the  
14 UP over the El Paso Gateway?

15 A I imagine quite a few of them got it and didn'  
16 even read the letter. But we have a mailing list, and  
17 we used the mailing list that generally hit the top  
18 however many customers we sent to.

19 Q Predominantly, they were concerned about the  
20 competition existing between the SP and the UP for  
21 traffic, rail traffic moving over the El Paso Gateway?

22 A We had a number of chemical customers that  
23 were confused. They were not aware, had not been made  
24 aware of our reciprocal switching and routing matrix  
25 agreement with the UP. And, in fact, that was done in

1 late 1983, I believe, effective January 1st of this year.

2 I would sit around and bring it up in a  
3 meeting, and they would say jeez, I never heard of  
4 this. So we explained it to them. And the purpose of  
5 this was to clarify that.

6 Q My question is, did they express concern over  
7 the state of competition between the SP and the UP on  
8 their traffic moving through the El Paso Gateway?

9 A No, they did not.

10 Q But you were concerned about preserving that  
11 rail competition, were you not?

12 A Absolutely.

13 Q In what fashion were you fearful that the UP  
14 would use its resources to force the SP into the status  
15 of a UP gathering service?

16 A Where do I say that?

17 Q Same paragraph, the very next sentence.

18 A We were fearful that if the UP took route  
19 closing action, they would restrict our involvement in  
20 routes by using their power, if you will, their ability  
21 to do so.

22 They would restrict us to solicit traffic,  
23 terminate traffic, not participate necessarily in the  
24 line haul on that traffic.

25 Q So I take it, then, your response in response



1 to that fear that the UP would close routes, is that you  
2 proceeded to start a route simplification program which  
3 actually resulted in your closing of routes?

4 A No, no. We started the route simplification  
5 program well in advance of that. Our response to that  
6 was -- remember, this was written in July of '84 -- our  
7 response was to sit down and negotiate a reciprocal  
8 switching. Well, our response was to negotiate a  
9 bilateral agreement with the Union Pacific dealing with  
10 reciprocal switching and routing.

11 The route action had already been taken by the  
12 Southern Pacific and by the Missouri Pacific at this  
13 time.

14 Q I think the sentence reads: "because we  
15 feared that UP would use its resources to force the SP  
16 into the status of --

17 A I'm sorry. You're right. The UP had not  
18 taken. The MP had taken routing action at that time.  
19 The UP, the older UP system, had not. They had talked  
20 about. They had signaled that they were going to. What  
21 we were trying to do is negotiate in anticipation of  
22 that.

23 Q Well, let's look at your route simplification  
24 program. Is that part and parcel, or is it any  
25 relationship to the revenue enhancement program you

1 discussed with Mr. Kharasch this morning?

2 A Our route simplification? Yes. It grew out  
3 of the revenue enhancement group.

4 Q So rather than something that was principally  
5 a respose to the UP, it was really part of an overall  
6 program that the SF was embarking on; is that correct?

7 A Yes, it was. It became -- it had its embryo  
8 or its crigin within this one specific staff group. It  
9 grew out of that and became a policy, a bigger issue.  
10 That's correct.

11 Q So that when you say it was in response to the  
12 MoP's route closing, you're not entirely -- it wasn't  
13 entirely responsive. It had to have a more general  
14 application, did it not?

15 A Just to keep this paragraph in perspective, it  
16 says we acted to protect our own economic interest. We  
17 implemented the route simplification. And the answer is  
18 yes to your question. But I was just going to add on,  
19 we also anticipated further action, and that's why we  
20 went to the reciprocal switching and routing.

21 Q Now, I'm interested in the way you describe  
22 your route simplification program. You say, but  
23 provided that if you, in talking to your SF customer at  
24 this point in time, wished to use SP, then your traffic  
25 would tend to be routed over SF preferred routes.

1 I guess my question is, in what fashion would  
2 the traffic tend to be routed over the SP preferred  
3 routes?

4 A The policy, the general routing policy was  
5 that if it was an SP origin to an SP direct -- excuse me  
6 -- an SP termination, it would go over the most direct  
7 route. If it was an origin or just a termination SP --  
8 and I'm talking about, say, from Los Angeles to, say,  
9 Texas, it would still over the SP direct route.

10 There was also an origin -- excuse me -- there  
11 was also an alternative through Ogden, if that was an  
12 applicable alternative to use, for example for traffic  
13 coming from the Pacific Northwest or from the Bay Area.  
14 That was another route that they could choose from.

15 Q In reality, to cut you short, what you're  
16 talking about here is, you are not talking about the  
17 shipper choosing, tending to choose your preferred  
18 route. Or you're not talking about your simply routing  
19 it when you received the bill of lading or the shipping  
20 order from your shipper; you're talking about actually  
21 restricting the application of given rates to your  
22 preferred routes.

23 A Given rates?

24 Q Given rates, commodity rates on given  
25 movements. Restricted the application. Generally, the

1 way you apply rates to routes is you have your rate  
2 applying to a given commodity that applies to given  
3 routes.

4 Do you understand what I'm saying?

5 A Well, I understand that very well. I also  
6 stated that this only affected about 1 percent of our  
7 traffic.

8 Q Okay. And what I'm asking -- my question to  
9 you, as I said, to cut it short -- when you talk about  
10 the traffic tending to be routed by the SP preferred  
11 routes, you're talking about the SP having taken tariff  
12 action to make the rates that apply to that traffic  
13 apply only to certain restricted preferred routes of the  
14 SP?

15 A I guess when we amended it -- to answer your  
16 question, when we amended the tariff, where we dropped  
17 out certain routes, there was already a rate in that  
18 tariff. So I don't remember us changing one single  
19 rate.

20 What we did do is, we made that rate apply to  
21 fewer routes. Maybe that is --

22 Q I think we're saying the same thing.

23 A Okay.

24 Q Now, in the next paragraph, the beginning of  
25 the next paragraph, you say: "Union Pacific responded

1 to this program by threatening to cancel its reciprocal  
2 switching agreements with SP, thereby eliminating the  
3 possibility of competitive alternatives for many rail  
4 users."

5           Would it be fair to say that by that sentence,  
6 you are again acknowledging that your rail users,  
7 particularly those wishing to use the SP, but located on  
8 the UP, relying upon reciprocal switching arrangements,  
9 did depend upon you as a competitive alternative to the  
10 UP?

11           A     That's what we say in this sentence.

12           Q     Now, let's go to the discussion on the next  
13 page with respect to the El Paso Gateway. There, you  
14 had indicated that the UP wanted to go ahead and enter  
15 into -- they proposed that they enter into a switching  
16 contract with the UP.

17           A     Right.

18           Q     But you were concerned about the UP's market  
19 power, so you wanted a little bit more, and therefore  
20 you suggested entering into a joint routing agreement.

21           A     Well, I think they introduced that subject.  
22 We both introduced that subject. That's correct.

23           Q     This says, however, "because we considered it  
24 likely that UP would one day use its market power to  
25 eliminate SP from joint line competition."

1           A     But remember -- you're absolutely right, but  
2     the routing conversations include another matrix. So  
3     there is give and take in that matrix as we establish  
4     gateways.

5           Q     I guess what I'm really interested in is the  
6     beginning sentence on the first complete paragraph on  
7     page 2, the first three sentences.

8                     It says, "What do these agreements provide"?  
9     And we're talking about the routing agreements, Mr.  
10    Edwards. It says, "Just this. In addition to single  
11    line service by either carrier between competitive  
12    points, there will also be at least one joint line  
13    route. Thus, competition is preserved."

14           A     And I notice you put an explanation point at  
15    the end of that sentence. Now, apparently, from that  
16    fact, I would judge that you felt rail competition  
17    between you and the UP, the SP and the UP, was very  
18    important.

19           A     We perceived that we thought our customers may  
20    think it's very important.

21           Q     Now, in particular, "we agreed with the Union  
22    Pacific that SP would act as an overhead carrier via the  
23    El Paso Gateway." Is that correct?

24           A     Right.

25           Q     So apparently it was your feeling and the UP's

1 feeling that there was a need to preserve competition,  
2 rail competition, on traffic which could be handled by  
3 either the SP or the UP via the El Paso Gateway.

4 A The use of the El Paso Gateway is strictly  
5 optional where we volunteer to serve as an overhead  
6 carrier. We have every self-interest, if you will, to  
7 participate in traffic that originates off UP-MP  
8 points.

9 As you know, they serve a large part of the  
10 world. If we don't participate in them on a joint line  
11 with a competitive rate, we may or may not participate  
12 in that business.

13 Q Let me ask you something. On the joint line  
14 routing agreement that you speak of in this letter, is  
15 it required that -- or does the application of the  
16 agreement -- is it confined to situations where you  
17 could have two single line hauls between two competing  
18 points, two competitive points, and by the nature of the  
19 agreement you are saying we will also keep open at least  
20 one joint line route?

21 A I think the answer is yes. I'm hesitating  
22 because I want to be positive about it. Yes. You have  
23 Point A and Point B. You have a single line haul  
24 between those two points. The routing matrix says that  
25 we can also --

1 Q And they are competitive points.

2 A Okay. And they are competitive points.

3 The question is, does a routing matrix also  
4 have provision for a joint line route between those two  
5 points? I think the answer is yes.

6 Q Okay. I guess I asked that question because  
7 you said you would like to keep open the El Paso Gateway  
8 to be able to haul traffic originating on the UP at  
9 points you don't serve. And yet the joint routing  
10 agreement would not apply to those points, would it?

11 A Yes, it does. That's what we say in here.  
12 That's correct. It does.

13 Q I thought it applied to competitive points.

14 A I thought you meant by competitive points --  
15 well, maybe I didn't understand what you meant by  
16 competitive points. I was assuming you meant points  
17 that are served by both the UP and the SP.

18 Q Well, maybe I don't know what you meant by  
19 competitive points. I'm using the term you used in the  
20 second sentence of the letter.

21 A Okay. I think our reference there is more  
22 geographic in coverage between competitive areas,  
23 competitive markets.

24 Q You had a discussion with Mr. Kharasch this  
25 morning in which you indicated that in 1983, I believe,



1 the SP did handle certain traffic between Houston and  
2 Kansas City via St. Louis. Is that correct?

3 A Mr. Kharasch asked me about traffic moving the  
4 other direction, between Kansas City and Houston. Not  
5 to be picky, but we have different traffic flowing  
6 different ways.

7 Q Let me ask you, in 1983 was there any traffic  
8 which the SP handled between Kansas City and Houston  
9 that moved via St. Louis on a single line haul?

10 A I testified earlier today that I believe there  
11 just must be. I just can't say there isn't any.

12 Q What about traffic moving between Houston and  
13 Kansas City on the basis of single line?

14 A And the traffic, after it hits Kansas City,  
15 would be going --

16 Q No. I'm talking about traffic that would be  
17 moving between Houston and Kansas City via St. Louis.

18 A Oh, via St. Louis. I guess I was asking from  
19 beyond. Is the traffic moving to Chicago, is it going  
20 to the Pacific Northwest? What I'm trying to do is, if  
21 there's an efficient interchange there with another  
22 railroad, that we have an agreement that takes that  
23 traffic up into a market that we need to get to.

24 A lot of your questions about routing --

25 Q Mr. Edwards, I don't know, and I guess I'm

1 trying to find out whether you know. If not, we will  
2 have to find out. And that is, I'm just asking whether  
3 you know, of your own knowledge, whether there was any  
4 traffic which the SP handled between Houston and Kansas  
5 City via St. Louis.

6 A I'm saying there must be, but I don't know for  
7 sure.

8 Q So my next line of questions was, could you  
9 describe the commodities and the type of traffic, and  
10 you would not be able to answer any of those questions?

11 A No, I wouldn't

12 Q The SP has an interchange with KCS at  
13 Shreveport, Louisiana, does it not?

14 A Yes, it does.

15 Q And in the past, it has interlined traffic  
16 moving both northbound and eastbound between Houston and  
17 Kansas City, has it not?

18 A I think it still does.

19 Q That route would be considerably less  
20 circuitous than the SP single line route via St. Louis  
21 between Houston and Kansas City, would it not?

22 A Shreveport to --

23 Q Houston to Shreveport to Kansas City. The SP  
24 route from Houston to Shreveport, the KCS route from  
25 Shreveport to Kansas City.

1 A Less circuitous? I would agree with that.

2 Q Would you agree that it is a more efficient  
3 route?

4 A I don't know how efficient the KCS railroad is  
5 over that particular route. So I wouldn't know how to  
6 compare the two.

7 I have stated earlier that it's going to  
8 depend on the requirements of the customer whether it's  
9 an efficient route. There are so many factors in  
10 there.

11 Q That's interesting. But let me ask you this.  
12 Have you made any comparison of transit times on  
13 movements over the SF single line route via St. Louis,  
14 versus the SP interline with the KCS via Shreveport?

15 A No, I haven't. And if your transit time was  
16 twice as good, it could be irrelevant because -- let me  
17 give you an example. I mean, as I stated earlier, the  
18 transit time is one of the factors in defining  
19 efficient.

20 You asked me how did they compare with  
21 efficiency?

22 Q Let's go through this.

23 JUDGE HOPKINS: Do we have to go through it  
24 again?

25 MR. BREILING: I don't think we need to go all

1 of them, Your Honor. I'm just trying to find out --

2 JUDGE HOPKINS: Because I think Mr. Kharasch  
3 took him over this quite extensively. I am not  
4 forestalling short questions, but at the same time, I  
5 don't see the necessity of what we define as efficient.

6 This man has his ideas as to what is  
7 efficient.

8 MR. DREILING: What I was trying to do, Your  
9 Honor, here is describe or compare two specific routes,  
10 and we've already dealt with mileage and he's agreed  
11 that the KCS route is less circuitous.

12 JUDGE HOPKINS: He will come out with  
13 something else, though, before you are through as to  
14 what he means by efficient.

15 MR. KHARASCH: He means carry it by the SP.

16 JUDGE HOPKINS: I don't think you are going to  
17 gain anything. If you want to -- I would prefer not,  
18 though, at this time of night.

19 MR. DREILING: Okay.

20 BY MR. DREILING: (Resuming)

21 Q I'd like to change the subject.

22 JUDGE HOPKINS: Excuse me. How much -- how  
23 many more questions do you have?

24 MR. DREILING: Oh, I have about maybe ten  
25 minutes or so.

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1 JUDGE HOPKINS: And then how many more would  
2 there be? We have a lot tomorrow.

3 MR. DREILING: I would be perfectly happy to  
4 cut right here, break right here.

5 JUDGE HOPKINS: I think it might be wise. I  
6 think at the same time, I think it's about time for us  
7 to get back into the 9:00 o'clock, at least start at  
8 9:00 o'clock tomorrow morning. We will see how it  
9 goes.

10 I would like to get moving along. I'm not  
11 saying we haven't been moving along, but I think it  
12 would be wise for us to start again at 9:00 o'clock  
13 tomorrow morning.

14 MR. MOATES: Can we go off the record?

15 JUDGE HOPKINS: Off the record.

16 (Discussion off the record.)

17 JUDGE HOPKINS: We will be in recess until  
18 9:00 o'clock tomorrow morning.

19 (Whereupon, at 4:55 o'clock p.m. the hearing  
20 in the above-entitled matter was recessed, to reconvene  
21 at 9:00 o'clock a.m., the following morning, Wednesday,  
22 October 10, 1984.)  
23  
24  
25