

FD 30400 - Pages 2259 thru 2317

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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
10th & Constitution, N.W.
Washington, D.C.
Tuesday, October 16, 1984

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

BEFORE:
JAMES E. HOPKINS,
Administrative Law Judge

00050000

1 APPEARANCES:

2

3

As heretofore noted, with the following addition:

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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>
1					
2					
3	Mark S. Barg				
4	By Mr. Hynes	2261			
5	By Mr. Dreiling		2262		
	By Ms. Mahon		2299		
6	By Mr. Ratner		2329		
	By Mr. Hynes			2335	
7	By Ms. Mahon				2338
	By Mr. Dreiling				2338
8					
9	James E. Stark				
	By Mr. Vragel	2344			
10	By Mr. Craig		2349		
	By Mr. Solander		2361		
11	By Mr. Atkins		2366		
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12	By Mr. Vragel			2374	
13	Neal D. Owen				
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18	By Mr. Atkins		2500		
	By Ms. Reed		2521		
19	By Mr. Solander		2525		
	By Mr. Stephenson			2532	
20	By Mr. Craig				2536

E X H I B I T S

	<u>Exhibit No.</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
23			
24	UP/MP-C-1	2436	2470
25	UP/MP-C-2	2445	2470
	UP/MP-C-3	2446	2470
	UP/MP-C-4	2454	2470
	UP/MP-C-5	2455	2470
	UP/MP-C-6	2461	2470

P R O C E E D I N G S

1 JUDGE HOPKINS: Let's come to order.

2 Who will call the next witness?

3 MR. HYNES: The applicants call Mr. Mark Barg.

4 Whereupon,

5 MARK S. BARG

6 was called as a witness, and having been first duly
7 sworn, took the stand, was examined, and testified as
8 follows:
9

D I R E C T E X A M I N A T I O N

10 BY MR. HYNES:

11 Q Would you state your name and address for the
12 record, please?

13 A My name is Mark S. Barg. I work with A.I.
14 Kearney, and our offices are at 222 South Riverside
15 Plaza in Chicago.

16 Q Mr. Barg, did you prepare a verified statement
17 of 28 pages with a verification for submission in this
18 proceeding?

19 A I did.

20 Q Is that the statement that you have before
21 you?

22 A Yes.

23 Q Do you have any corrections or changes to make
24 to that verified statement?
25

1 A I have two changes for clarity and
2 correction. The first, on Page 20, second line of the
3 paragraph in the middle of the page, the number 1039
4 petrochemical cars should be changed to the number 9.

5 Second change for clarity is at Table 6 on
6 Page 21. In the title of the table, Types of Santa Fe
7 or Southern Pacific Movements, we should insert the word
8 "Petrochemical" before "Movements."

9 And in the source at the foot of the table,
10 ICC way bill sample, we should add the year 1982.

11 Q With those corrections and changes, is this
12 verified statement true and accurate to the best of your
13 knowledge and belief?

14 A Yes, it is.

15 MR. HYNES: Your Honor, the witness is
16 available for cross examination.

17 JUDGE HOPKINS: Who is going to start?

18 CROSS EXAMINATION

19 BY MR. DREILING:

20 Q Mr. Berg, my name is Bob Dreiling, and I am
21 the attorney representing the Kansas City Southern
22 Lines.

23 A Good morning.

24 Q If I could refer you to Page 1 of your
25 verified statement, the last sentence in the paragraph,

1 the last sentence on the page, going to your experience
2 in distribution, rail distribution, has your experience
3 included bulk transfer facilities, the use of bulk
4 transfer facilities?

5 A Most of my experience involving rail has been
6 in assessing line haul service and opportunity, and not
7 -- as opposed to, rather, alternative modal choices and
8 alternative carriers on behalf of shippers. I have not
9 specifically evaluated bulk terminal transfer
10 operations, although when an industry -- as a purchaser
11 of these materials, we did have an issue surrounding
12 some bulk terminal transfer capability.

13 Q Are you at all familiar with Conrail's Flex
14 Flow program?

15 A I am not.

16 Q What about CSX's TFS program?

17 A I have not studied that program.

18 Q Do you understand at all -- have any
19 understanding at all of how bulk transfer operations
20 work?

21 A I have a general understanding of how the
22 operations work.

23 Q Could you explain for the record your general
24 understanding of how they work?

25 A Essentially bulk commodities are brought into

1 the transfer point for short term storage and
2 redistribution in bulk.

3 Q Do you know what mode would bring them into
4 the facility?

5 A It could be a combination of modes, it could
6 be intercoastal tanker, barge, it could be pipeline, in
7 some cases perhaps rail.

8 Q And if we were to consider the rail inbound
9 movement, rail being used for the inbound movement, what
10 mode would generally move the commodity away from the
11 bulk facility?

12 A It depends on the location of the bulk
13 facility and the facilities in the markets it is
14 intended to reach. To transfer point for export, it
15 could very well be oceangoing vessel. It could be
16 intercoastal tanker, again, if it is a material being
17 moved for further processing and manufacturing
18 operations. So there would be the possibility of a
19 variety of modes.

20 Q Considering petrochemicals specifically, if we
21 were to consider a rail inbound movement to the bulk
22 transfer facility, would it be possible in your
23 experience that the outbound movement could be by motor
24 carrier?

25 A Yes, it would be possible.

1 Q Going to Page 3 of your verified statement --
2 strike that.

3 You indicate in your verified statement that
4 you had interviewed given shippers. How many shippers
5 did you interview?

6 A In the petrochemicals area, I interviewed two
7 corporations. I believe there were a total of three
8 different people.

9 Q Now, at the outset, had you proposed to the SF
10 and the Santa Fe that more petrochemical shippers be
11 interviewed?

12 A No, I did not make a proposal of that nature.
13 I believe Mr. Kloss's testimony last week suggested that
14 one early approach would be to, if you will, take a
15 survey of a larger number of shippers; as a result of
16 that survey, develop some information.

17 That was subsequently modified to, and I
18 believe a stronger approach to conduct independent
19 analysis, first, develop some tentative conclusions or
20 hypotheses, and use a selected number of interviews as a
21 validation process to maintain objectivity, because, as
22 you know, opinion surveys can be weak in the sense that
23 not all of the issues are developed or analyzed, and
24 instead reflect a popularity of issues. It may not be
25 entirely appropriate ones.

1 Q So I take it a fair characterization of your
2 purpose of conducting the interviews with the two
3 corporations was simply to validate your independent
4 analysis?

5 A Essentially, yes.

6 Q Did you consider that talking to only two
7 shippers was a fair or representative sample of the
8 opinions of all petrochemical shippers?

9 A Well, that was only a part of the validation
10 process, the interview with the shipper. There were
11 other sources of information that helped --

12 MR. DREILING: Your Honor, I would like him to
13 answer my question. My question was, did he consider
14 the interview of only two corporations to be a
15 representative sample of the opinions of all
16 petrochemical shippers?

17 MR. HYNES: Your Honor, I believe the answer
18 Mr. Barq was in the process of giving was responsive to
19 that question.

20 JUDGE HOIKINS: No, it wasn't exactly
21 responsive. We run into this all the way along. Let's
22 try and first be responsive. If you need to explain
23 your -- what you are saying, you can explain it
24 afterwards.

25 THE WITNESS: I thought that after the two

1 interviews, that the discussions, based on the
2 discussions we had, that the benefits that I had
3 developed through analysis were generally supported by
4 the views of the shipper.

5 I coupled that with other information in the
6 form of shipper statements in support of the merger that
7 had at that time been filed, which I took to be a
8 comparable statement of shipper viewpoint. Those in
9 combination I felt assured me that the objective
10 analysis had yielded appropriate results.

11 Q Would you go to Page 4 of your verified
12 statement? The middle paragraph, starting with
13 "Reductions in operating costs." You indicate that the
14 reduction in operating costs will improve the ability of
15 the Santa Fe Southern Pacific to make pricing
16 adjustments and avoid price increases.

17 Let me ask you this. Would it be a fair
18 statement to say that in order to guarantee that the
19 benefits to the SP Santa Fe of the reduction in their
20 operating costs be passed on to the benefit of their
21 shippers in lower freight charges that competition be
22 present?

23 A I think the reasonable business decision
24 concept which has been discussed earlier is an adequate
25 assumption to provide for me the assurance that I

1 require in terms of the benefit being passed on to the
2 SPSF shippers, that being that the incentive on the part
3 of the management of the SPSF to provide total service
4 to their shippers to maintain or perhaps enhance their
5 position in terms of what they provide their shippers.

6 Q My question is, wouldn't you consider that a
7 competitor being present in the market, ready to provide
8 alternative service to that shipper, would be a
9 necessary factor to impel or induce the SP Santa Fe to
10 carry out that incentive of providing better service at
11 a lower cost?

12 A I think the presence of competition aids in
13 stimulating that, and I see competition resplendent in
14 this market, particularly intermodal competition with
15 motor carriers, barges, pipelines, and other railroads.

16 Q Did you make a specific study or evaluation of
17 competition in the petrochemical market?

18 A I took the position or the viewpoint of the
19 shipper in looking at this proposed merger, and the
20 nature of competition in that concept is how effectively
21 can the shipper who is originating this traffic compete
22 in his markets with his products.

23 I did not specifically evaluate the elements
24 of competition within the railroad segment of carrier
25 service.

1 Q Mr. Bargo, if we are talking about competition
2 that would serve as an inducement to the SP Santa Fe to
3 pass through the benefits of their cost reduction, their
4 service efficiencies, their operational efficiencies, we
5 are not talking about competition between the consumers
6 of the transportation service, are we? We are talking
7 about competition between the providers of
8 transportation services.

9 A Well, you are talking about benefits to the
10 shipper. I think your original question said, to assure
11 benefits to the shipper. There are several levels of
12 competition in this area.

13 Q Excuse me. I think my question was, did you
14 make an individual analysis of competition, rail
15 competition or transportation competition within the
16 petrochemical market?

17 A I did evaluate and analyze competition,
18 intermodal competition within this market.

19 Q Turn to Page 6 of your verified statement. In
20 the first paragraph, you describe the organic chemicals
21 as combustible and moderately or highly toxic. Does
22 that mean that there is any danger, hazard in their
23 transportation?

24 A There is a concern for transportation of some
25 of these commodities, yes. Safety inherent in modal

1 choice and transportation is important to the shipper.

2 Q In your analysis, did you make any judgment as
3 to whether the shippers, whether it would be to the
4 shipper's benefit to select one mode for handling
5 hazardous petrochemicals over another?

6 A During the course of the analysis, it became
7 obvious that the shipper wished to reserve judgment,
8 depending on the individual shipment, and would make a
9 modal choice, and sometimes a route choice given the
10 circumstances of a particular shipment.

11 Q Was there any general observation on your part
12 as to a choice of mode?

13 A The modal utilization and mode choice is
14 reflected in the statement and one of the tables we
15 could refer to if you like.

16 Q Yes, please.

17 A Table 4 on Page 15 identifies transportation
18 modes of some of the key petrochemical commodities by
19 commodity group. This table clearly demonstrates to me
20 the intense competition across commodity lines and
21 within commodity lines, particularly between rail and
22 truck.

23 The other modes comprise barge, pipeline, et
24 cetera. The primary safety consideration most
25 frequently falls between rail and truck movements, and

1 the choice is made sometimes, modal choice is sometimes
2 made on the issue of safety.

3 Q The shippers see a problem with using the
4 barge lines to carry hazardous or particularly toxic
5 materials, do they not?

6 A I did not investigate that specific issue in
7 depth. For some chemicals, I don't believe it to be an
8 issue. For others, it may be.

9 Q Now, looking at Table 4 on Page 15, I note
10 your source is the U.S. Department of Commerce, Bureau
11 of Census for Transportation, 1977.

12 A Correct.

13 Q If I were to look at that source, would I be
14 able to break down the commodity groups and the mode
15 choices to representative mileage blocks over a distance
16 factor?

17 A Unfortunately, not in this source.

18 Q Would I be able to break them down by state to
19 state pairs, origin and destination pairs?

20 A I think the best you could do would be
21 destination regions at the aggregate level reported that
22 I used.

23 Q Were you able to determine in looking at that
24 source, make a judgment as to how many of these millions
25 of tons moved over short distance versus how many moved

1 over longer distances?

2 A I could only -- I could not specifically
3 answer that, but there were some indications inherent in
4 the ton mile figures for the same modes. That suggests
5 to me that on a ton mile basis, competition between --
6 intermodal competition between rail and truck is intense.

7 On a ton mile basis, however, rail does
8 increase its share of total ton miles somewhat. That
9 suggests that for some, probably, and almost certainly
10 not all long haul moves, rail may be somewhat more
11 frequently used.

12 Q On the hazardous or toxic petrochemicals, what
13 would be the backhaul potential for trucks on the longer
14 hauls?

15 A Well, obviously, it is outside the scope of
16 the analysis I did, and I have not taken a look at truck
17 backhaul opportunity. I would, however, suggest that
18 they must have alternative ways of operating,
19 particularly in the deregulated environment, to achieve
20 such high penetration in handling those commodities.

21 In fact, its penetration appears to be strong
22 in almost all of the seven or so commodity groups
23 identified here.

24 Q Let's stay on Page 15, since we are here. The
25 bottom of the page, the paragraph at the bottom of the

1 page.

2 You state that, "Chemical companies provide a
3 service to their customers by allowing them to utilize
4 shippers' cars for storage."

5 Would you explain how they do that?

6 A Yes. One thing that is unique about this
7 petrochemical movement from the producer or the shipper
8 to his customer is that while the total tonnages are
9 very large, the individual shipment sizes are not
10 typically large.

11 That is to say, the preponderant majority of
12 sales by the petrochemical producer to his customer are
13 in truckload or carload single vehicle shipments. One
14 of the reasons for that is that the purchaser of these
15 petrochemicals typically is not a giant processing
16 plant, but a relatively small consumption plant that may
17 make, for example, extruded rotocast or thermo for
18 plastic elements.

19 The manufacturing process of the purchaser of
20 these types of petrochemicals is such that he today
21 tends to feed his manufacturing line right out of the
22 car or the hopper storage that he has on site from
23 truckload deliveries.

24 They would typically wish to avoid carrying
25 the inventory of larger supplies of raw materials, and

1 as such they often use, when, for example, they have a
2 rail car shipment, they use a carload of product as
3 inbound raw material storage feeding their manufacturing
4 line.

5 Q What determines the amount of time that car is
6 tied up in storage?

7 A In this instance, particular instance, the
8 amount of time the car is tied up can at times be a
9 function of the rate at which the consumer of the
10 product is emptying and consuming again.

11 Q In a shipment like this, and let's assume for
12 a moment that it is FOB delivery shipment, would the
13 ultimate purchaser of the truckload lot coming out of
14 the tank car pay, receive title to the commodity at the
15 time the rail car was set for storage purposes, or would
16 he receive title and make payment of it at the time the
17 truck delivered the commodity to his plant?

18 A In both instances, my understanding, which is
19 also supported by interviews and other researchers, that
20 title passes on constructive placement of equipment or
21 spotting of the car as well as on delivery by the truck.

22 Q As well as? You mean both?

23 A Yes. On delivery.

24 Q Did you make any analysis or evaluation as to
25 which happens more often than the other?

1 A I think Table 4 suggests they happen nearly
2 equally. Rail utilization and truck utilization on a
3 tonnage basis -- and you are talking about consuming
4 tons -- are almost equal.

5 Q No, I am asking you, have you made any
6 analysis, study, determination of the percentage of
7 instances in which title passes at the time the tank car
8 is constructed in place versus title passing at the time
9 a truck delivers the commodity from the tank car to the
10 ultimate purchaser?

11 A I am sorry. The truck delivers the
12 commodity?

13 JUDGE HOPKINS: That is why I have had
14 difficulty with your question.

15 THE WITNESS: I thought you were talking about
16 an alternative mode.

17 BY MR. DREILING: (Resuming)

18 Q I apologize. I am taking you back to the
19 process you described of using the tank car for storage,
20 in which the tank car, the commodity comes in in bulk,
21 as you have described it, and then it is kind of -- is
22 dispersed out to various alternate purchasers in tank
23 truck movements.

24 A That is not what I was describing, no. I was
25 describing the manufacturing plant, say, a plastics

1 manufacturer who purchases a truckload or a tank car or
2 a covered hopper car of raw material which he has
3 spotted at his plant site and literally consumes the raw
4 material out of the car.

5 Now, you ask -- I want to clarify something
6 also, as long as we are doing this. You asked how long
7 the equipment is tied up in the turnaround. I responded
8 in that instance that it can be tied up, a portion of
9 the turnaround time is tied up in depleting the
10 inventory in that piece of equipment.

11 Another major element obviously of how long
12 the equipment itself is tied up is how long it takes to
13 transit to the shipper, and how many interchanges it has
14 to go through, or switches, or whatever, as well as how
15 long it takes to get it back to the shipper, remembering
16 that the shipper is the one who typically owns the
17 equipment.

18 Q In your study and your evaluation, did you
19 discover a process whereby a tank car was placed at
20 destination, and then the commodity was dispersed out of
21 the tank car through individual motor carrier handlings
22 to ultimate purchasers?

23 A Your question was, did I study that?

24 Q In your analysis, did you discover any such
25 process?

1 A I did not analyze the extent to which that
2 process is used. I became aware of that as a process,
3 as well as aware of the fact that it would not -- my
4 understanding is, would not account for a significant
5 percentage of the total tonnage moved.

6 Q By not significant --

7 A I can't dimension it, because I didn't analyze
8 it that way.

9 Q I guess --

10 A You asked if I became aware of it. I wanted
11 to respond to your question. I did not analyze it.

12 Q Did you as well become aware of the use of
13 bulk transfer facilities in which the tank car is
14 delivered to a bulk transfer facility and the commodity
15 is dispersed out to ultimate purchasers in trucks
16 through the bulk transfer facility?

17 A I think I responded to that in one of the
18 early questions. Yes, I did become aware of that.

19 Q Okay. In that instance, did you determine
20 when title passed to the ultimate purchaser?

21 A I did not determine that.

22 Q Let me ask you this. If we were to assume
23 that evidence ultimately showed that title passed at the
24 time the truck delivered the commodity to the ultimate
25 purchaser -- strike that.

1 Turn to Table 2 on Page 10. In Table 2, you
2 describe a number of petrochemical companies. I would
3 just ask you, did you interview any of these companies
4 in the course of your analysis?

5 A I think I stated earlier, I interviewed two
6 out of the 155 petrochemical companies.

7 Q My question is, did you interview any of these
8 companies?

9 A The specifically named ones?

10 Q Yes.

11 A I did not.

12 Q I note that the tons for duPont, for Exxon,
13 and for Union Carbide, the footnote says that they are
14 Kearney estimates. Why was it necessary for Kearney to
15 make an estimate of their tonnage?

16 A The tonnages reported in this table from the
17 remaining producers, as you can see, were reported by
18 the Petrochemical Worldwide Directory. DuPont, Exxon,
19 and Union Carbide do not report through that service.

20 That service, as my notes indicate below, in
21 the following paragraph, the directory identifies
22 chemical plants that account for about 70 to 75 percent
23 of the production.

24 I therefore, to provide a balanced picture,
25 needed to estimate the tonnages produced by these three

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1 manufacturers, and I did not through using Standard and
2 Poor's reported revenue figures, relationships between
3 revenue and petrochemical tonnages, and balancing
4 certain factors to assure that the total market was
5 appropriately accounted for.

6 That's the reason why they had to be
7 estimated.

8 Q Would you turn to Table 5 on Page 17? There
9 your source is the 1977 Census of Transportation again.

10 A Correct.

11 Q If I were to look at that source for each one
12 of these regions, would I be able to determine origin,
13 the origins of the various shipments into these
14 regions?

15 A I don't believe that you could from that
16 source.

17 Q Would I be able to determine how much of the
18 tonnage were basic, intermediate, or synthetic
19 petrochemical products?

20 A You could come close to that. The STCC
21 breakdowns are not exact, but they are very comparable.

22 Q They go beyond the two-digit STCC code?

23 A Yes.

24 Q How many digits do they provide you?

25 A I am trying to recall, but I think -- I know

1 -- I believe I was able to take it down at least to
2 three.

3 Q Do you believe three digits would be
4 sufficient to show a difference between basic,
5 intermediate, and synthetic product?

6 A It is very difficult. In some instances,
7 yes. Some groupings would allow that. Others would
8 not. And in other areas I have had to go down to five
9 digits.

10 Q Did you make any judgment or valuation as to
11 how much of each -- strike that.

12 In the course of your study, did you make that
13 sort of a breakdown for each one of these regions as to
14 how much was basic commodity, how much was intermediate,
15 and how much was synthetic?

16 A No, I did not.

17 Q Now, with regard to the 32,971 -- I am sorry,
18 32,971,000 tons going to the Pacific region, if we would
19 look to the 1977 --

20 A I beg your pardon. I am reflecting further on
21 your earlier question. You are asking if in the course
22 of the study I took a breakdown in lower product levels
23 to determine origin, destination, at the three to five
24 digit level.

25 Let me explain to you what was done, and see

1 if this gets where you are going. All of these
2 shipments carried by the SP or the SE were analyzed at
3 the appropriate level to identify them as
4 petrochemicals. In some instances it had to go to the
5 five digit level. In some instances it went to a three
6 digit level.

7 For those shipments, therefore, everything was
8 broken down to the appropriate level to assure that
9 there were in fact petrochemical shipments.

10 Secondly, those shipments were analyzed
11 origin-destination BEA's. Okay? But as a group, the
12 distinction was lost at that point. Once petrochemicals
13 had been properly identified, then the BEA to BEA
14 analysis was not conducted by specific commodity within
15 petrochemical.

16 Is that a proper response?

17 Q I think so. It raises a question in my mind.
18 With respect to the figures shown in Table 5, the
19 tonnages shown for each one of the regions, did you make
20 a breakdown between basic, intermediate, and synthetic
21 commodities?

22 A Not for the purposes of this. In fact, the
23 footnote says that these tonnages, as well as the title,
24 are all STCC 28's. That includes, as you know,
25 nonpetrochemical products as well, and that is why the

1 footnote suggests that, no, they haven't been
2 differentiated, and in fact there are other chemical
3 compounds in here.

4 Q Now, referring to the 32,971,000 tons going to
5 the Pacific region, would the 1977 Census of
6 Transportation, your source there, provide us
7 information that would allow us to break that down by
8 mode between rail, motor carrier, and water carrier?

9 A Yes, it would. I think Table 4 essentially is
10 -- it does that, but it does it not for all STCC 28, but
11 for specific groups within petrochemicals. Your
12 question is, could that be sorted also by destination of
13 consuming region, and the answer is yes.

14 Q When I look at Table 4, I ask you whether it
15 can provide me state to state pairings, and as I recall
16 your answer was not state to state but region.

17 A Yes.

18 Q Page 19, the center paragraph, you make the
19 statement there that, "Petrochemical shippers have been
20 increasing their demands for improved transit time
21 performance."

22 Could you tell me the source of your
23 information, the basis for that statement?

24 A That comes from a number of sources, first of
25 all, my own experience in 16 years or so of working in

1 the distribution industry; secondly, in discussions with
2 the two shippers that I talked about; thirdly, from
3 discussions with other members of the Kearney staff
4 whose experience extends beyond my own.

5 Also, despite the 16 years I have, and it
6 seems generally consistent that particularly as we have
7 all been reading about the need for just-in-time
8 inventory, and particularly in this industry, where I
9 describe that the consumer of the product does not want
10 to hold inventory for longer than he wants, he wants a
11 truck to arrive just in time.

12 Q And if I were to ask you -- in the very next
13 sentence you refer to sophisticated -- that the shippers
14 have developed sophisticated means for monitoring
15 transportation time performance. Your answer would be
16 virtually the same, wouldn't it?

17 A Yes, in point of fact, it would be virtually
18 the same. I could even dimension some of that in terms
19 of dollars that individual companies have spent on
20 systems to try to monitor and control this.

21 Q Are these Kearney clients?

22 A Not necessarily, no. I am involved in
23 Distribution Systems Journal, which relates to some of
24 the systems needs of shippers, and it is part of that
25 effort, too, that we have identified the needs for

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this.

Q By the way, you keep mentioning the two shippers you did interview. Who are they?

A I should go back earlier, the statement Mr. Kloss made and my interpretation of it.

Mr. Kloss indicated that when we did conduct our interviews, the interviews were considered to be confidential between Kearney and the company and the individual. Mr. Kloss also said that as individuals, we had used some individual approaches to the entire study.

One of the approaches I used was to assure the confidentiality of that discussion before I ever met with the shipper involved, so unless it is absolutely necessary to bring that out, I would prefer to respect the confidentiality.

MR. DEBELLING: Your Honor, I think the record should show at least who the petrochemical shipper was. We have a listing here now of the, I believe, ten largest petrochemical shippers, and Mr. Barg indicated it was none of them. I can respect the confidentiality with regard to particular information he may have received.

JUDGE HOPKINS: You are not asking that anyway.

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1 MR. DREILING: I am asking for the name of the
2 people he talked to.

3 JUDGE HOPKINS: Mr. Hynes, would you like to
4 say something? It doesn't appear to me that this is the
5 type of material that is completely confidential. All
6 he is asking is the name of the shippers.

7 MR. HYNES: Do you have an objection to giving
8 the name? We have already discussed with counsel means
9 for protecting the confidentiality of the substance of
10 the notes themselves.

11 THE WITNESS: Union Oil of California and
12 Mobil.

13 BY MR. DREILING: (Resuming)

14 Q If you turn to Page 20, you refer to the fact
15 that each of the separate railroads, the SP and the
16 Santa Fe, must participate in a substantial amount of
17 interline rail service, typically resulting in poor
18 overall service and longer transit time performance.

19 Have you in the course of your study made any
20 specific analysis of the impact on transit times
21 premerger versus postmerger?

22 A I analyzed the shipment flows, including all
23 shipments involving interline premerger. I had that
24 information reviewed by the operating departments of the
25 railroads, and in particular the changes in operations

1 that are being planned through some of the work by Mr.
2 Neal Owen, who will testify later.

3 That group made a determination on the
4 interline and transit time savings that would be
5 reflected in the operations postmerger. The results of
6 that information are put together on Page 23 in Table
7 7.

8 Q I am familiar with the table. I guess what I
9 am asking is, did you specifically look at any
10 particular movements and routings, train schedules, the
11 impact upon transit time of interchange operations to
12 make any judgments?

13 A I did not specifically do any of those
14 analyses. Those were conducted in a separate task, the
15 result of which will be presented later.

16 Q Let's take, for example, the example you give
17 at Page 20. You describe there a movement, what looks
18 like a multiple line movement from Long View, Texas, to
19 Kingsport, Tennessee. It originates on the Santa Fe at
20 Long View, Texas. Is that correct?

21 A Correct.

22 Q And then it is interchanged by the Santa Fe to
23 the Union Pacific at Long View, Texas. Is that
24 correct?

25 A Correct.

1 Q And then the UP moves it to the Memphis
2 gateway for destination to Kingsport, Tennessee. Is
3 that correct?

4 A Correct.

5 Q And do you know who handles it beyond Memphis,
6 Tennessee?

7 A I do not. I am sure that information could be
8 obtained.

9 Q Now, in reality, the movement, the handling by
10 the Santa Fe at Long View, Texas, is basically a
11 terminal operation, and it is not a line haul
12 operation. Would that be fair to say?

13 A I don't believe that the cars, the shipments
14 themselves, originate at the terminal. They originate
15 on the SF line, and are brought into that terminal and
16 interchanged at the terminal, so I don't believe it is
17 correct to say that they originate at the terminal.
18 There is a handling.

19 Q You say they originate on the SF line?

20 A I am sorry, the SF.

21 Q The Santa Fe line?

22 A Yes.

23 Q Where do they originate on the Santa Fe line?

24 A I would have to -- in preparing this
25 statement, I was looking at the results of the DNS study

1 that identified this movement. I used it by way of
2 example. I would have to go back and go into the detail
3 of that study to find out the answer to your specific
4 question.

5 Q Well, did you look at the way bill covering
6 that study?

7 A I did not look at the way bill, as I stated.
8 I looked at the result of the study that identified this
9 difference where an interchange would be saved.

10 Q But you can't tell us where the car -- you are
11 telling us now that nine petrochemical cars do not
12 originate at Long View, Texas?

13 A No, no, no. Your question to me, or at least
14 my understanding of it, was that they originated at the
15 terminal operated by the Santa Fe. It was essentially a
16 terminal handling.

17 Q Well, you know what a reciprocal switching
18 movement is, do you not?

19 A Yes.

20 Q Now, if this were an industry on the Santa Fe
21 at Long View open to reciprocal switching, and that
22 industry chose to use the UP for the outbound line haul
23 movement, the handling by the Santa Fe from the industry
24 to the Union Pacific would be a reciprocal switch
25 movement, would it not?

1 A Yes.

2 Q And would be what we would consider a terminal
3 type operation, as distinguished from a line haul
4 operation?

5 A Yes.

6 Q And so the interchange you are talking about
7 there is in reality the type of interchange that is
8 affected by a switching carrier to a line haul carrier
9 in the course of reciprocal switching. Is that
10 correct?

11 A That's correct.

12 Q Do you know -- would you, in your analysis
13 here, of the benefit to the shippers through eliminating
14 interchanges, because of the new single line
15 capabilities of the SP Santa Fe, did you take into
16 account interchanges between reciprocal switching
17 carriers and the SP Santa Fe at origin?

18 A You are asking that in identifying the
19 benefits. I assume you mean identified in Table 7 of
20 those shipments, which of those involve reciprocal
21 switching as opposed to line haul interchange.

22 Q Right.

23 A I will come back first to what I stated
24 earlier on how the benefits here were developed and my
25 understanding of that. The benefits were developed

1 through the operating departments of the railroads, in
2 establishing the new schedules, routes, et cetera, and
3 the information on the savings, on elimination of
4 interchanges, was developed there, and I didn't
5 participate in that. I used that information to extend
6 to these segments of business.

7 My understanding is that it is an elimination
8 of the true interchange, but I think your question would
9 be better directed to Neal Owen when he provides that
10 information in later testimony.

11 Q You yourself, do you have any judgment as to
12 whether -- strike that.

13 Did you make any judgment or analysis as to
14 the transit time on the movement via the MP to
15 Kingsport, Tennessee, versus the transit time postmerger
16 via the SPSF system?

17 A As I indicated earlier, the movements that I
18 studied are movements that today are handled by either
19 the SP or the SF or originate on the SP or SF. I did
20 not analyze any other rail carriers' movements, routes,
21 schedules, costs, et cetera.

22 Q Mr. Barg, in picking this example, did you
23 even look at a railroad map?

24 A Are you referring to the example --

25 Q That you have on Page 20. I take it from that

1 example, isn't it true that you are trying to convince
2 the Commission that the elimination of the interchange
3 renders the postmerger movement, single line movement by
4 the SP Santa Fe to the Mississippi gateway more
5 efficient, and therefore more beneficial to the
6 shipper?

7 A I think, as I have stated in that paragraph, I
8 used an example that was developed from the results of
9 the DNS study. If you have more detailed questions
10 relating to how that was developed, you might --

11 Q My question to you, Mr. Barg, is, was your
12 purpose in giving this example to attempt to illustrate
13 how the elimination of an interchange can be beneficial
14 to a shipper through more efficient operations?

15 A That was the general purpose of the example,
16 yes.

17 Q And my question is, did you therefore
18 determine the impact upon transit time of the
19 elimination of this interchange?

20 A I did not.

21 Q And did you determine -- strike that.

22 So would you be able to tell the Commission
23 whether a postmerger movement via the SPSF from Long
24 View, Texas, to Kingsport, Tennessee, could be moved
25 more expeditiously than a movement involving the UP to

1 Memphis destination carrier to Kingsport?

2 A I think I will come back and say the direct
3 response to that would be that I did not analyze, I did
4 not duplicate the work that was being done by the
5 operating departments or the DNS study, and your
6 question would be better answered by the people who did
7 that work.

8 I used the output of that study.

9 Q I think your testimony in the last sentence of
10 that paragraph, which says, "Under the merger, DNS
11 identifies the elimination of one of the two current
12 interchange, thereby saving shipper transit time and
13 expense."

14 Isn't that what you said?

15 A Yes, I said they had been identified through
16 the DNS study. My understanding is, you asked if I had
17 done the analysis.

18 Q Mr. Bero, this is your testimony, isn't it?

19 A Yes, it is. I accept the results of that
20 analysis.

21 Q You have selected this example to tell the
22 Commission that this is a situation where you would save
23 transit time through the elimination of interchange, did
24 you not?

25 A That is correct.

1 Q Can you tell us whether it is going to save
2 transit time on this particular movement?

3 A I can't quantify the amount of transit time
4 that it would save. I would have to go -- the
5 information I have is that it saves a day of transit
6 time.

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1 Q The DNS study tells you or Mr. Owen tells
2 you?

3 A No, this was one of the outputs of the DNS
4 study. I could find a few hundreds or other examples,
5 but it would take some time to develop that.

6 Q I was interested in this example because --
7 did the DNS study advise you what route the SPSF will
8 use in going to Kingsport, Tennessee?

9 A I honestly don't recall the detail that I
10 reviewed when I selected the example.

11 Q Do you know which gateway would have been
12 used?

13 A I believe Memphis is stated.

14 MR. DREILING: Your Honor, I'm going to move
15 to strike the last sentence of the first complete
16 paragraph on page 20, for the reason that I don't think
17 this witness has given any independent personal basis
18 for the statement made.

19 MR. HYNES: I object, Your Honor. The witness
20 has already explained that he relied upon the output of
21 the DNS traffic study. That particular movement was
22 diverted by the DNS traffic study, the Santa Fe routed
23 movement via the Memphis gateway.

24 JUDGE HOPKINS: I'm going to deny the motion
25 to strike.

1 BY MR. DREILING: (Resuming)

2 Q Would you turn to page 21, please. Table 6
3 describes movements handled prior to the merger.

4 A Correct.

5 Q Requiring interline handling. The first
6 sentence of the first complete paragraph under the table
7 says: "The vast majority of interline movements are
8 composed of product calls to the market east of the
9 Mississippi River."

10 The SPT does not presently operate east of the
11 Mississippi River, does it?

12 A That's correct.

13 Q With one exception, and that is when it goes
14 to East St. Louis. But it doesn't operate east of the
15 Memphis gateway?

16 A That's right.

17 Q Nor the New Orleans gateway. And after the
18 merger, the SPSF combined systems will not operate east
19 of the Memphis or New Orleans gateway, will they?

20 A No, that's correct.

21 Q Now, down at the bottom of this thing, this
22 paragraph, you say: "Thus, for example, a shipper on
23 the Santa Fe line in Texas may have difficulty in
24 marketing his products in the Northeast or Southeast
25 U.S. markets because his inventory financing and railcar

1 leasing costs are higher to serve that market and his
2 delivery lead times are longer than those of his
3 competitors who have direct access to the market with
4 more efficient service."

5 If we were to take traffic going into the
6 Southeast U.S. markets and consider it moving over
7 either the Memphis or the New Orleans gateway, which of
8 the SP's and Santa Fe's competitors have direct access
9 from west of the Mississippi River to those markets?

10 A There are a number of railroads with which the
11 SP interchanges at Memphis and New Orleans and operates
12 east. Was that your question, operating east?

13 Q I'm asking you, how many of the SP and Santa
14 Fe's competitors can have direct access to the
15 southeastern United States east of the Mississippi River
16 from points west of the Mississippi River?

17 A I would have to review the rail maps of the
18 competitors to answer your question.

19 Q But you do believe they do have competitors
20 who have direct access?

21 A By direct access I am talking, for example,
22 this example identifies the Santa Fe shipper whose
23 gateway is not at Memphis nor at New Orleans.
24 Therefore, he must probably interchange today with the
25 SP, who can then access the gateway and interline to one

1 of the eastern carriers. That's the point of the
2 paragraph.

3 Q Are you familiar with the run-through train
4 operations?

5 A Yes.

6 Q Now, run-through interchange operation is a
7 fairly efficient operation, is it not?

8 A I think it depends on the point of view that
9 you take. Efficiency for the train itself, I would say
10 as a train it would be. Efficiency in terms of all
11 operation over the line, it may or may not be, on
12 balance.

13 Q Well, referring specifically to interchanges
14 at this point in time, I take it it's your general
15 opinion that an interchange is a bad thing because it
16 increases transit time and it's good to be avoided if it
17 can?

18 A The point I'm trying to make on behalf of
19 current shippers who are using the Santa Fe and the SP
20 is that to reach a gateway interchange as two separate
21 operations, there is an additional interchange which
22 could be avoided. That's as far as the point is that I
23 am making.

24 Q So in that instance, I take it, though, you
25 are saying that interchange is a bad thing because it

1 increases transit time?

2 A Well, I think you're extending it to a broad
3 generalization. I'm referring to a specific set of
4 circumstances for the shippers. For these shippers,
5 yes.

6 Q Well, let's take that last sentence and the
7 paragraph under table 6. You said: "A shipper on the
8 Santa Fe line in Texas may have difficulty in marketing
9 his product in the Northeast or Southeast U.S. markets
10 because his inventory financing and railcar leasing
11 costs are higher to serve that market."

12 And I think earlier in your testimony you
13 indicated that that is because of the transit time.

14 A Correct.

15 Q "And his delivery lead times are longer than
16 those of his competitors who have direct access to the
17 market with more efficient service." I take it you are
18 saying that the people with direct access have less
19 transit time, experience less transit time, than the
20 Santa Fe does?

21 A Correct.

22 Q And that's because of the interchange?

23 A Correct.

24 Q And I'm asking you whether or not a
25 run-through interchange operation as you understand it

1 wouldn't cut down on the time expended in the
2 interchange and thereby reduce the transit time?

3 A It would have that impact.

4 Q So that, to the extent the Santa Fe may have a
5 connection with the carrier to the New Orleans gateway
6 on a run-through interchange operation, it would not
7 have that transit time problem?

8 A That's correct.

9 MR. DREILING: Your Honor, I have no further
10 questions.

11 JUDGE HOPKINS: Who's going to be next?

12 MR. LEARY: Your Honor, the Rio Grande waives
13 its time.

14 JUDGE HOPKINS: Thank you. That's very nice.

15 MS. MAHON: I'm next, Your Honor.

16 CROSS EXAMINATION

17 BY MS. MAHON:

18 Q I'm Kathleen Mahon representing the MKT.

19 Are you aware that there is a Southern Pacific
20 line of railroad in Texas that we have referred to in
21 this proceeding as the Bayport line, running from
22 Houston through Bayport to Texas City?

23 A I am not aware of that.

24 Q Do you know whether there is a large
25 concentration of chemical industries in that area?

1 A Which areas?

2 Q In the area running in Houston through Bayport
3 to Texas City.

4 A There is significant petrochemical production
5 in that area, yes.

6 Q If you know, is there a substantial amount of
7 petrochemical traffic moving by rail from exclusive
8 Southern Pacific origins to destinations not now served
9 by the Southern Pacific that will, according to your
10 testimony, benefit from the new single line service
11 offered by the merged system?

12 A Can I understand that a piece at a time,
13 please?

14 Q Is there a substantial amount of petrochemical
15 traffic moving by rail from origins exclusively served
16 by the SP now to destinations not now served by the SP?

17 A I can identify movements that originate on the
18 SP as part of my analysis. I did not examine each point
19 or determine whether or not it had alternate service, so
20 I cannot answer that second part of your question.

21 Q So you cannot say whether or not petrochemical
22 shippers that are exclusively served by the SP, as
23 opposed to other petrochemical shippers, will derive
24 substantial benefits from the merger or not?

25 A I can say, I think, that in looking at SP-SP

1 moves of all petrochemicals -- I'm trying to recall now
2 the percent of the total moves that involved. I believe
3 it was something less than one percent. I can't recall
4 the specific figure, and that's about the extent to
5 which I could dimension it. I couldn't locate it for
6 you specifically without further analysis.

7 Q But as between movements that are going from
8 an exclusive SP origin now to a destination that would
9 be on the merged system, can you say --

10 A I can't segregate that out. Neither can I say
11 that the less than one percent, or whatever the real
12 figure is, how much of that has alternate service
13 available. I can't differentiate that further in my
14 analysis.

15 Q Do you know anything about the Southern
16 Pacific's present route closing policies?

17 A My understanding from earlier testimony is
18 that there will be no closings. I further understand
19 that non-active branches or spurs where there are no
20 shipments originating may be considered for
21 abandonment. But that's the extent of it.

22 But specifically and continuously, my
23 understanding is that there will be no closings.

24 Q For the purposes of my next question, will you
25 make two assumptions with me. Assume first that the

1 Southern Pacific's present routing policy is that
2 traffic moving from an exclusive SP origin to a
3 destination served by the SP must move by the SP only.
4 And secondly, assume that the SFSP after the merger
5 adopts the same routing policy, that is, requiring all
6 traffic movements on an exclusive Southern Pacific
7 origin to any Southern Pacific or Santa Fe destination
8 to move via the new merged system only.

9 MR. HYNES: Could you repeat the second
10 assumption?

11 BY MS. MAHON: (Resuming)

12 Q Secondly, assume that the SFSP after the
13 merger adopts the same routing policy as under the first
14 assumption, that is, requiring all traffic moving from
15 an exclusive SP origin to either an SF or SP destination
16 to move solely via the merged system.

17 On those two assumptions, is not the new
18 single line service being provided from those exclusive
19 SP origins to all destinations on the merged carrier a
20 monopoly service so far as rail traffic is concerned?

21 A I'm afraid that I can't accept the
22 assumptions, in the first place. They're not credible
23 to me.

24 Q For purposes of my question, it's a
25 hypothetical question. If those two assumptions are

1 true.

2 A No, I would say that if those two assumptions
3 are true -- and I have a great deal of difficulty
4 accepting either and certainly both.

5 Q I understand that, Mr. Barg. I'm not asking
6 you to accept --

7 A But should both hypothetical assumptions be
8 true, there would not be a monopoly for the freight
9 because, as we pointed out earlier, the alternative mode
10 competition is very strong.

11 Q But listen to my question, Mr. Barg. I asked
12 whether it is true that there would be no rail
13 competition for traffic between those two points.

14 A Under those -- let me think this through. So
15 the origin is no other rail carrier other than SP or SF,
16 the destination is the same, and the routing is over the
17 new integrated line, and the policy being that as a
18 condition for handling that freight it must be fully
19 handled by the merged system?

20 Q That is correct.

21 A By definition of the monopoly, assuming that
22 there are no reasonable alternatives available for the
23 shipper?

24 Q Yes, we're talking solely about rail service.

25 A Now you're saying no rail alternative, and

1 this makes me further assume, then, that there is no
2 availability of truck service, barge or pipeline.

3 Q Yes, we're not talking about other modes of
4 competition. I am only asking you whether in that case
5 there would be any rail competition for traffic between
6 those points.

7 MR. HYNES: Excuse me. You are also asking
8 him to adopt the third assumption, which is that there
9 is no barge, truck, or pipeline or other --

10 MS. MAHON: My question from the beginning had
11 solely to do with rail competition.

12 JUDGE HOPKINS: But you didn't state
13 previously that there wasn't any truck, barge or
14 anything else.

15 MR. HYNES: There's a distinction between a
16 question that relates to rail competition --

17 JUDGE HOPKINS: Are you saying there is no
18 truck, barge or any other competition as a result of
19 only having one rail?

20 MS. MAHON: Not as a result of it. My
21 question is is it not true under those two assumptions
22 that there would be no rail competition for traffic
23 between those two points, no rail competition?

24 MR. HYNES: You have asked him to assume
25 that.

1 THE WITNESS: Yes. You are in fact asking me
2 to assume that it further excludes all alternative
3 modes. A monopoly implies that the shipper would have
4 no choice. A shipper would certainly have adequate
5 choice.

6 I might suggest that there might not be any
7 rail service there, because the shipper won't
8 necessarily allow that circumstance to exist. I would
9 think that the traffic would go to truck or pipeline or
10 barge or intercoastal tanker or one of the other
11 alternative modes very quickly should that condition
12 exist.

13 BY MS. MASCH: (Resuming)

14 Q If there were only one rail line serving?

15 A If the shipper were placed -- I'm talking
16 about from the point of view of the shipper. If the
17 shipper were placed under those conditions -- one, first
18 condition being that SF holds as a condition of handling
19 the freight that it must move exclusively through SP
20 origin to destination; and secondly, after the merger
21 the merged operations adopt the same policy. Those are
22 two assumptions, okay.

23 My response to you, if those two assumptions
24 were in fact to occur, unlikely as they are, the shipper
25 would most likely move over to another mode of

1 transportation or certainly diminish significantly his
2 dependence on that one remaining rail carrier.

3 To come up with a scenario that you are trying
4 to describe, I must further then assume the unrealistic
5 point that there is no truck, there is no pipeline,
6 there is no barge, there is no intracoastal tanker
7 service available to the shipper.

8 Q But would he have any alternative rail
9 choice?

10 MR. HYNES: I believe that's one of the
11 assumptions, so it is reduced to a tautology.

12 MS. MASON: Will you allow the witness to
13 answer the tautology?

14 THE WITNESS: I would have to say under that
15 set of circumstances the shipper would not have another
16 choice in rail.

17 BY MS. MASON: (Resuming)

18 Q Is it a benefit to a shipper to have new
19 single line service?

20 A It is a benefit to the shippers to improve on
21 the circumstance that they now face by reducing delays
22 through interlining. So single line service, to the
23 extent it reduces interlining, improves on his current
24 moves and improves his transit time performance, is a
25 benefit that I have identified.

1 Q Is it a benefit to a petrochemical shipper to
2 have additional competitive single line service?

3 A It on balance may not always be. To the
4 extent that -- and here is where things get complicated
5 when we talk about shipper benefits, because there are a
6 lot of things that need to go into that formula. But to
7 the extent that a consolidation of operations permits
8 the elimination of unnecessary interlines and improves
9 transit time, it's a benefit.

10 To the extent that those flows are then
11 further divided by overstructuring the service, then
12 some of the benefits lost through the operations
13 consolidations could be reduced.

14 Q Could I refer you to your work papers. This
15 appears to be a report from the marketing people at the
16 Santa Fe that sets forth the improvements that it sees
17 in rail consolidation for its shippers' competitive
18 positions. That is on your work paper number 00393.

19 And then on page 21, or work paper number
20 00416, it indicates that: "The petrochemical industry
21 based on the Gulf Coast will benefit from the merger,"
22 and it then gives a number of different benefits. Under
23 small (a) it says, for example, that "route extensions
24 will provide single line service to New Orleans and
25 Memphis gateways and will permit shippers to receive the

1 advantages of new competition with the MP to
2 Southeast."

3 And again, in paragraph (b) it says that,
4 "Access to the St. Louis gateway via SP's routes will
5 permit shippers to receive the advantages of more
6 competition with the MP on movements from Santa Fe
7 origins to these regions."

8 Do you agree with that assessment of the
9 marketing department that additional single line service
10 to shippers who already have service from the MP will be
11 a benefit to them?

12 A These points (a) and (b), to respond to your
13 question, must also consider the major dash point they
14 are under, which is "Current Santa Fe-served points."
15 So if I add that in and say that I am considering
16 shippers who are served by Santa Fe in this area who
17 wish to move to the Southeast, Santa Fe not having
18 access currently to the New Orleans and Memphis
19 gateways, shippers are somewhat, to go through those
20 gateways, requiring extra interchange.

21 To the extent that -- and I do believe -- that
22 these extensions will under the merged companies provide
23 single line service to those gateways, it will in fact
24 be a benefit to the SP-served plants in the area.
25 Similar logic for the point (b), but it must come within

1 the understanding that in this docket we're discussing
2 the Santa Fe-served plants in this area.

3 Q May I point out, where it does say "Santa
4 Fe-served plants," it also indicates that several are
5 open to the MP.

6 A Yes.

7 Q That implies to me that there is already
8 single line service by the MP.

9 A Yes.

10 Q For that traffic which is already -- which
11 already has single line service.

12 A That's correct.

13 Q Is there a benefit to the shipper in having
14 additional single line service from the Santa
15 Fe-Southern Pacific?

16 A In this particular instance, the benefit is
17 that it offers the shipper an alternative to the MP to
18 those gateways.

19 Q So that additional single line service is a
20 benefit to the shipper?

21 A For these shippers, under these circumstances,
22 yes.

23 Q Is additional single line service, say to a
24 shipper on the Bayport line, also a benefit to those
25 shippers?

1 A Additional single line service to the same
2 shippers?

3 Q No. Now I have another example, the Bayport
4 line that I talked about earlier, which is solely served
5 by the Southern Pacific, and which will presumably
6 benefit from new single line service under the merger,
7 according to your testimony.

8 Will those shippers benefit -- would those
9 shippers benefit by additional single line service from
10 another carrier?

11 A To the extent that that carrier can offer
12 essentially the same services, because as I recall --
13 and I could be wrong -- there are some switching
14 carriers that come into play down in that area. If the
15 new single line service could do that, it is possible
16 that a similar benefit could occur.

17 Q Is the probability of the benefit to such a
18 shipper just the same as the probability of the benefit
19 to the shippers that are discussed in your work paper,
20 416?

21 A No, I don't consider it -- well, let me stop
22 for a moment and let me think about that. The instance
23 in the work paper 416, we are talking about a Santa
24 Fe-served plant that has single line access to Memphis
25 and New Orleans over the MP and must interchange with

1 the SP to achieve that by going through the Santa Fe.

2 Q I'm sorry? Would you repeat that?

3 A I am saying that the shipper has a choice here
4 of either, if he wishes to use the New Orleans and
5 Memphis gateway, to ship via the MP or originate on the
6 Santa Fe and interline with the SP to the gateway. I'm
7 saying that the improvement here would allow him to
8 originate on the merged system with direct access to the
9 gateway.

10 Q Correct, and that is a benefit?

11 A That is a benefit.

12 The second scenario, you are saying the
13 shipper currently has SP, can originate on the SP and
14 move his freight, and single line service will be
15 provided on the merger to allow that to happen with
16 improved handlings, et cetera. Would it not be a
17 similar benefit if in fact he could have the same
18 alternate choice?

19 Q From two carriers.

20 A From two carriers. The benefits would be
21 similar, yes.

22 Q The benefits would be similar.

23 A This is a hypothetical circumstance at this
24 point.

25 Q Yes. But you know as much about the second

1 situation that I have just hypothesized as about this
2 first situation with the MP. Those are similar
3 situations and would have similar benefits.

4 A I'm not sure that they're entirely similar, in
5 that today these shippers have that choice of two
6 carriers.

7 Q In which situation?

8 A In work paper 416. Today they have the choice
9 of the two carriers. One of the carriers will become
10 more efficient.

11 Q They have a choice between single line service
12 and joint line service.

13 A That's right.

14 Q My question was directed to additional single
15 line service.

16 A To really answer that question effectively, we
17 would have to examine the nature of the operations that
18 are proposed and how that would -- what the nature of
19 the service offering would be to that other shipper in
20 this other area.

21 I can't state here that they are identical
22 circumstances. I don't know them to be identical
23 circumstances. I don't know enough of the details about
24 that.

25 Q But they seem to you to be similar

1 circumstances? I thought we had already established
2 that.

3 A Well, we established that they appear to be
4 similar, but I can't tell you with any definition that
5 there would be identical benefits because I don't know
6 the specific circumstances in this hypothetical that
7 you're raising.

8 Q Do you agree that so far as petrochemical
9 traffic is concerned it is a benefit to a shipper to
10 have two railroads competing for its traffic?

11 A I can't generalize and come to that
12 conclusion. Let me explain why. To the extent that a
13 shipper, particularly in this market where his customer
14 is very time sensitive, is dependent on that first
15 carrier through his ability to consolidate and
16 effectively schedule his freight to provide the
17 predictability and reliability and assurance of delivery
18 required in this marketplace, that the ability -- my
19 second statement is that the ability to provide that
20 could be diminished to the extent that the freight is
21 diverted among a number of different flows.

22 So a number of the improvements here are aimed
23 at improving predictability, reliability, and on-time
24 performance. Those benefits could be subject to loss
25 with the introduction of additional division of

1 freight.

2 Q Do you think that generally it's the view of
3 petrochemical shippers that it's a benefit to the
4 shipper to have two railroads competing for its
5 traffic?

6 A We're talking about the overall benefits to
7 the petrochemical shipper and his customers.

8 Q What the petrochemical shipper himself --
9 whether the petrochemical shipper himself believes that
10 it would be a benefit to him to have two railroads
11 competing for his traffic.

12 A Okay. I believe that the petrochemical
13 shipper himself, as with most shippers who are
14 attempting to serve their markets, measure the relative
15 performance of their alternative modal choices -- truck,
16 rail, oil pipeline, barge -- among a number of different
17 service parameters and come to an overall viewpoint.

18 They do not look in isolation at a single
19 element and within that single element one or two
20 choices. They're more concerned about the overall
21 service performance, predictability, reliability, other
22 services offered, responses in emergencies, safety and
23 security of the movement, and other matters that allow
24 them not only to make comparisons among carriers within
25 a mode, but the primary modal choice itself.

1 So I do not believe that a responsible shipper
2 would in isolation come necessarily to that conclusion.

3 Q But generally, if you asked any particular
4 petrochemical shipper whether he would like to have two
5 railroads competing for his traffic, what do you think
6 the answer would be?

7 A I think the answer would most likely be it
8 depends on what services you're offering, what schedules
9 they're offering, how predictable and reliable they are,
10 how they handle my claims, what is the safety record,
11 how good is the equipment, do I have contamination
12 problems with them, and the total aspects of service.

13 He will not make that response in isolation.

14 Q Are you familiar with an organization known as
15 the Chemical Manufacturers Association?

16 A Yes, I am.

17 Q Would you accept its proposition that its
18 member companies produce more than 90 percent of the
19 chemicals manufactured in this country?

20 MR. HYNES: Excuse me. Could you identify for
21 the witness what it is you are reading this proposition
22 from?

23 MS. MASON: It is from the Chemical
24 Manufacturers' filing of October 1 in this proceeding.

25 BY MS. MASON: (Resuming)

1 Q Would you accept that statement?

2 A I would accept that statement.

3 Q Let me give you a copy of this to look at.

4 JUDGE HOPKINS: Is this being presented?

5 MS. MASON: It's already in the record in this
6 proceeding, so this is just for convenience.

7 BY MS. MASON: (Resuming)

8 Q On page 4 of the Chemical Association's
9 filing, it indicates that:

10 "Rail to rail competition is essential,
11 particularly for bulk chemical products, because barge
12 and truck transportation are not feasible alternatives.
13 Further, rail to rail competition will provide
14 substantial benefits not only to chemical shippers, but
15 also to railroads and ultimately to the consuming
16 public.

17 "Specifically, the benefits that will
18 naturally flow from intramodal competition are," and
19 then it gives a number of examples. Number four is:
20 "It will result in service choices and competitive
21 rates."

22 Do you agree with the Chemical Manufacturers'
23 position that rail service is essential -- excuse me --
24 that rail to rail competition is essential for chemical
25 shippers?

1 A It's been my experience in working many years
2 in the area of evaluating modal choice and carrier
3 selection and service, particularly in any industry,
4 also in this industry, when you look at the
5 decisionmaking there can be five to 15 different things
6 that go into all of the elements of service.

7 I'm responding to your question, but I need to
8 give you a little background. The very first one
9 typically is predictability and reliability of service,
10 and there are others that flow.

11 What I have determined through experience is,
12 as each of these is satisfied, the next one lower in the
13 priority list then emerges as being important. I would
14 characterize this statement, rail to rail competition is
15 essential, particularly in bulk chemical products, as
16 being the sort of statement that I would typically hear
17 after all of the other foregoing and higher priority
18 requirements have been met.

19 In isolation, when it gets down to that level,
20 then you see a statement like this and then you say,
21 yes, I would agree with that, but providing that all of
22 the things that need to go before that to become
23 important or essential as the next improvement is -- in
24 fact emerges as an important item. Do I understand what
25 I'm trying to say?

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1 Q Not precisely. Doesn't rail to rail
2 competition provide the opportunity for the shipper to
3 exercise all those choices that you have enumerated?

4 A Not at all, certainly not. He can exercise
5 that choice of using truck or barge or pipeline
6 independent of any rail service whatsoever. He can make
7 those choices relative to his order size, shipment size,
8 and delivery transit time requirements independent of
9 whether or not there is rail to rail competition.

10 Q Is your answer, then, that you disagree with
11 the Chemical Manufacturers Association statement?

12 A My answer is I don't believe that statement
13 truly characterizes the relative need of that to the
14 shipper.

15 Q Would you say that -- or are you saying that
16 you know more about what the shippers think about the
17 necessity for rail to rail competition than the Chemical
18 Manufacturers Association does?

19 A No. They are not putting forth here
20 everything they know or understand or believe. They're
21 only putting forth one statement in a long sequence of
22 issues. And all I am saying is, unless they surface the
23 other issues that are important -- modal choices, for
24 example -- that this in isolation distorts the true
25 picture of what they are trying to achieve for their

1 shippers.

2 Q Do you agree with their statement at Appendix
3 A, the first page of Appendix A, that "A large portion
4 of bulk chemical traffic as a practical matter must be
5 transported by rail"?

6 A I have the page. Where are you?

7 Q I'm sorry, it's after the second heading.

8 A I would be better able to agree with that if I
9 understood what they meant by "as a practical matter."
10 I don't understand what makes it practical to --

11 Q Perhaps the subsequent sentences would shed
12 some light on it: "Barge transportation is generally
13 unavailable, since seldom are both the chemical plants
14 and receivers located on or near a waterway."

15 A I thought they just said that the vast
16 majority of it is done in the Gulf Coast area. Here it
17 is on their very first page: "The largest concentration
18 of chemical facilities in the United States is in the
19 Louisiana and Texas Gulf Coast area."

20 Q I think we have to agree that it depends on
21 where the shipper is shipping to, isn't that correct,
22 and whether there are large facilities available?

23 A I understand what you're saying. Unless I
24 know the assumptions and the conditions behind these
25 statements or have an opportunity to discuss them with

1 them, I can't react to conclusory statements unless I
2 understand what went into their thinking to develop the
3 conclusions.

4 I'm not arguing with the statement itself, but
5 I need to understand --

6 Q You agree with the statement that --

7 A I'm not saying I agree with it. I'm saying I
8 understand the statement, but I don't understand how it
9 was derived.

10 Q So you cannot say whether or not you agree
11 with it?

12 A I cannot say whether or not I agree with it.

13 Q Do you know that the Texaco Chemical Company
14 filed a statement in support of the merger in this
15 proceeding?

16 A I'm aware that such a statement was filed.

17 Q Did you review that statement?

18 A No, I haven't seen it nor read it.

19 Q And you did not interview Texaco Chemical
20 Company?

21 A That I did not.

22 Q Are you aware that Texaco Chemical Company
23 filed other comments in this proceeding about September
24 28th?

25 A I'm not aware of that.

1 Q Just for the record, let me show you a copy of
2 Texaco Chemical Company's comments filed September
3 24th. Do you agree with their statement on page 2
4 indicating that "This competitive environment will be
5 dangerously eroded unless this SF and SP merger is
6 approved with conditions that ensure that the five
7 railroads will have an opportunity to compete for
8 shippers' traffic"?

9 A I'm on page 2. Which of these points?

10 Q The first paragraph, I'm sorry.

11 A No, I don't agree with that.

12 Q You have testified that truck transportation
13 generally is utilized for smaller deliveries to customer
14 plants and distribution terminals, have you not?

15 A Yes, for those types of moves truck may be
16 used more frequently than other modes.

17 Q Is truck competitive with rail for long haul
18 movements?

19 A For some long haul movements, yes. I think
20 again we need to understand the nature of the
21 marketplace. That manufacturer who is buying his
22 product from the shipper has a particular need for a
23 certain quantity of product. A truckload of product may
24 represent to him one, two, or three weeks' worth of
25 inventory, whereas a carload may represent to him two

1 months' worth of inventory.

2 Since it is invoiced to him on delivery, he
3 may in fact -- and the data suggests -- often choose
4 truck over rail, even regardless of the mileage, because
5 he doesn't want to finance the inventory.

6 Q Is there less of a safety risk when hazardous
7 chemicals are transported in one rail tankcar as opposed
8 to three or four tank trucks, which would be the
9 equipment?

10 A I think that my opinion and that of the people
11 I have talked to in industry in that issue is somewhat
12 divided. It's difficult to predict and generalize. On
13 the one hand, a single movement by a railcar of that
14 type, where safety is a concern, there are fewer
15 movements than with a multiple truck movement.

16 On the other hand, the truck movement can be
17 more closely controlled, tracked and routed, and
18 typically over a shorter transit time. So the two
19 balance off somewhere, and the individual shipper for a
20 specific move must make the determination for himself.

21 Q I think you testified that shipments from
22 plants directly to major customers are generally in
23 privately owned or leased rail equipment; is that
24 correct?

25 A That's correct.

1 Q You've testified that petrochemical shippers
2 could save, I think it was, approximately \$383,000
3 annually from savings in equipment costs as a result of
4 the merger?

5 A Potentially, yes.

6 Q Do some shippers have heavy investments in
7 tankcars?

8 A Some shippers have significant commitments to
9 tankcars in the form of leases or owned equipment, more
10 recently heavily in leasing of equipment as opposed to
11 ownership.

12 Q Is it a benefit to a shipper with a heavy
13 investment in rail tankcars to have additional single
14 line rail service available to him?

15 A I think a greater benefit would be the --
16 might very well be the ability to reduce his investment
17 in that equipment. Having additional options and
18 dividing the traffic, inherent in that is that he has a
19 given volume that he's moving from A to B, and how well
20 he can keep a continuous flow of product going without
21 having to delay it through interchanging, et cetera.
22 And the more efficient the service offered to him,
23 particularly in terms of time, the less he needs to
24 invest in his fleet to support that transit time,
25 turn-around time.

1 Q For a shipper with a heavy investment in rail
2 tankcars, a shift from rail to truck would result in
3 idle assets, wouldn't it?

4 A Not necessarily, no. Some for a short period
5 of time, perhaps. But when you consider, let's say, a
6 fleet of a thousand leased cars, not all of those cars
7 were leased at the same time over the same lease term or
8 under the same lease terms, which is to say in every
9 year or every period of time I'm sure in a fleet size
10 that large there are options coming up.

11 So I would assume that the shipper is
12 continuously given the opportunity to release the
13 equipment and not release it. Furthermore, since these
14 opportunities are continuous, there is immediate
15 opportunity for reduction.

16 Secondly, as I have indicated, the
17 petrochemical capacity is increasing, so the
18 requirements for more and more equipment is increasing,
19 another opportunity for the shipper to avoid leasing
20 additional equipment as his needs increase.

21 The third opportunity he has is to divert that
22 equipment to some of his other operating plants and not
23 use it in this service. We must remember that we are
24 not talking about totally reducing his fleet needs to
25 zero. We're talking about reducing it a certain

1 percentage. So he doesn't have to wait for all five or
2 six years of the longest remaining lease term to come up
3 before he can obtain that advantage.

4 Q I was thinking more in terms of the
5 possibility of the shippers shifting from rail to
6 truck.

7 A Okay. It does not necessarily idle equipment,
8 was your question, and that was my response. He can
9 find ways to release the equipment or otherwise use it.

10 Q If he is shipping by truck and no longer has
11 the necessity for using the railcars, wouldn't that
12 result in idle assets?

13 A I think I explained. Maybe I didn't
14 communicate well. Not necessarily; perhaps somewhat in
15 the short term. He has the ways that I explained, three
16 or four or five or six ways that he can dispose of those
17 assets or otherwise use them. That's the point I was
18 trying to make.

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1 Q Would you look at pages 25 and 26 of your
2 testimony?

3 A Yes.

4 Q There you discuss B. F. Energy Company as an
5 example of shippers obtaining new marketing
6 opportunities as a result of single line service from
7 the merger.

8 A Correct.

9 Q You've indicated that B. F.'s customer on the
10 Southern Pacific line in Eldon, Texas will not purchase
11 a certain product from B. F.'s Bakersfield, California
12 origin on the Santa Fe because "the required interchange
13 results in added time that makes B. F. unable to compete
14 for this business."

15 Is that correct?

16 A That's correct. These are, I should say --
17 this particular example is taken from this particular
18 shipper's statement which has been submitted, and so you
19 will find the support for this in his verified
20 statement.

21 Q Did you read his verified statement?

22 A Yes.

23 Q Do you want to take another look at it?

24 Now, you said, I believe, that -- I'm sorry.
25 It's in your testimony, shipper's statement No. 24.

1 MR. HYNES: May I approach the witness and
2 read along with him?

3 JUDGE HOPKINS: Sure.

4 THE WITNESS: Now I'm a little confused.

5 BY MS. MAHON: (Resuming)

6 Q You testified that the required interchange
7 results in added time that makes P. F. unable to compete
8 for this business. Is that correct?

9 A Yes.

10 Q What did the shipper say was the problem
11 here?

12 A The shipper said, on page 3 of his statement:
13 "We are currently unable to supply that market because
14 all traffic originating on Santa Fe in Bakersfield to
15 destinations served by the Southern Pacific must be
16 interchanged to the Southern Pacific at Bakersfield
17 subject to an interchange switch charge. That makes us
18 noncompetitive in this instance."

19 He further states that eliminating the switch,
20 the economies of the merger would effect the combination
21 systems, eliminating the switch, and providing his
22 company with additional marketing opportunities, which
23 he further states would benefit other petroleum shippers
24 in a similar manner.

25 Q But because it would eliminate the switch

1 charge?

2 A No. The interchange also.

3 Q Lock at --

4 A He does refer to a switch charge; yes.

5 Q He says "The economies which the merger
6 would effect in a combination of the two rail systems
7 would eliminate the switch charge between Santa Fe and
8 Southern Pacific. This would provide my company with
9 additional marketing opportunities."

10 A Yes, but if you read a few sentences further,
11 he says: "Another substantial benefit would be the
12 reduction in transit with the shortening of routes and
13 the elimination of interchanges."

14 He is not considering that in isolation.

15 Q That is a new paragraph, Mr. Barg.

16 A That's correct.

17 Q The example you're talking about is in the
18 previous paragraph where he is discussing the benefit
19 that he will get from that new single line service. And
20 does he not say that he will be noncompetitive, not
21 because of added time, as you state in your testimony,
22 but because of the switching charge?

23 A The use of the word "that" in his language
24 appears to refer to the switch charge.

25 Q Could not the Santa Fe and the Southern

1 Pacific cooperate today to offer a competitive rate if
2 they so chose?

3 A I don't know that their rate is
4 noncompetitive.

5 MS. MAHON: I have no further questions.

6 JUDGE HOPKINS: Thank you. This would be a
7 good time for a recess. We'll take 15 minutes.

8 (Recess.)

9 JUDGE HOPKINS: Back on the record.
10 Who is questioning next? Mr. Ratner.

11 BY MR. RATNER:

12 Q Mr. Barg, I am James Ratner. I am with the
13 United States Department of Justice, although I should
14 probably point out that my office isn't in the basement,
15 in case you are confused about that.

16 If you could turn to Table 7 of your testimony
17 on page 3, rather on page 23, do you have that?

18 A Yes.

19 Q How are the carloads that are affected -- how
20 are they determined?

21 A I first had the 1 percent waybill --
22 essentially off the 1 percent waybill sample. The 1
23 percent waybill sample then sorted into petrochemical
24 movements that involve either the SP or the SF, those
25 movements and flows, origin BEA to destination BEA, and

1 in the area served, the accumulation of those BEAs in
2 each area and the flows.

3 So the specific carloads are identified in the
4 computer analysis.

5 Q One of the reasons I'm having trouble with
6 that figure as compared with the figure on Table 6 on
7 page 21, you have a figure of SFSP interline of 5,400.

8 A That's right.

9 Q And this is a much larger number.

10 A That's right.

11 Q So some of this is coming from diversion from
12 other rail?

13 A No. Let me explain. SFSP interline on Table
14 6 are those movements where the two carriers interline
15 only with each other. Other carrier interline could
16 also include SFSP interline, as well as a third, fourth,
17 fifth carrier for the total move.

18 Q For all these carloads that are currently
19 moving by rail, why aren't they currently moving by
20 truck?

21 A Talking about the decisions inherent in the
22 number of shippers selecting rail for 11,000 carload
23 shipments, I am sure there are different sets of reasons
24 for each individual shipment.

25 I couldn't begin to take a look at the

1 totality of that and give you an idea of all of the
2 reasoning that went into shipper selection of rail
3 versus truck for those.

4 Q To the extent that a shipper chooses rail over
5 truck, what are the attributes of rail that would make
6 him choose rail?

7 A I think the shipper would consider, first,
8 order size, delivery lead time requirements, security
9 and safety in transit, predictability and reliability of
10 the service, the extent to which any one mode or carrier
11 fits his total distribution requirements, and a host of
12 other factors that would go into the decision.

13 Q Maybe I didn't understand your answer. Are
14 you saying that in certain cases, all of those
15 attributes are characteristic of rail, and that's why a
16 shipper would pick rail?

17 A For certain shipments, some of those
18 characteristics are more favorable to rail than to
19 truck.

20 Q So for these particular shippers reflecting
21 11,540 carloads, you don't know whether they may already
22 have an opportunity via another mode or a different form
23 of service to reduce their transit time significantly by
24 even up to two days, and therefore obtain the benefits
25 that you're talking about without the merger?

1 A We do know that they can assume, I think, with
2 high level of confidence, that they always have a truck
3 option or generally have a truck option. They may or
4 may not have pipeline or barge options or other modes.

5 Q Would you turn to page 9 of your testimony,
6 Table No. 1?

7 A Yes.

8 Q If you know, can you indicate for me which of
9 these chemicals are regularly transported by the
10 Southern Pacific and the Santa Fe?

11 A Not at this level of detail; no.

12 Q If you know, can you indicate for me which of
13 these chemicals are regularly transported by motor
14 carrier for distances over 500 miles?

15 A Not at that level of detail; no.

16 Q If you know, can you indicate for me which of
17 these chemicals have weight or safety conditions
18 associated with them that make over-the-highway
19 transportation unfeasible?

20 A I think, if I see where you're coming from, I
21 think we could better relate to a different table than
22 this particular one, because you're talking about a
23 commodity product level down at the
24 butadiene-ethylene-glycol level.

25 We do have information that would allow me to

1 answer a little more clearly, I think, in a different
2 table here where we are just -- we have organized the
3 shipments differently.

4 That would be Table 4 on page 15.

5 Q I see Table 4, but unfortunately, Mr. Barq, I
6 relate better to Table No. 1.

7 Is it my understanding, then, you cannot tell
8 me for propylene, how much propylene travels motor
9 carrier over 500 miles?

10 A My source of information on mode usage is
11 essentially the Census of Transportation. The Census of
12 Transportation reports to STCC level. Many of these
13 items here are below the STCC level reported.

14 Q I asked you if you could tell me that for
15 propylene.

16 A I'm trying to recall whether or not propylene
17 is reported down to that level. It may be. The
18 information may be available and inherent in some of the
19 other analysis.

20 Q You don't know right now?

21 A At this point in time, I'd have to go back and
22 dig that out.

23 Q Page 28 of your testimony, you refer to the
24 full competitive benefits of being served by two
25 carriers with extended market access.

1 A Yes.

2 Q Did you evaluate in any way the possible
3 anticompetitive harms of this merger in terms of
4 logistics, cost and service benefits which might
5 interfere with either those full competitive benefits or
6 other benefits that shippers might receive from the
7 merger?

8 A As I stated earlier in my testimony, I
9 examined the benefit side for a specific set of
10 shipments and shippers currently utilizing the services
11 of the Santa Fe and the SP.

12 I therefore did not do an analysis beyond that
13 scope.

14 Q Did you evaluate in any way whether any of the
15 benefits that you discuss in your testimony could be
16 achieved by methods other than through merger of the
17 Southern Pacific and Santa Fe Railroads?

18 A I didn't analyze that specifically, although
19 the complexity in achieving that through other means
20 almost staggers the imagination. What I mean by that
21 is, in just looking at the operating changes and
22 improvements that are going to come about through the
23 merger of these railroads, as will be presented later by
24 other witnesses, I can't envision in the real world a
25 set of circumstances where negotiations can occur to

1 that extent where you are literally talking about
2 hundreds of cooperations, where they can be effectively
3 implemented and more specifically, on an ongoing basis,
4 managed by two independent companies.

5 And I can't think of an instance in
6 railroading where two companies have so achieved that
7 level of complexity. I hope maybe --

8 Q Are you testifying as an operating expert?

9 A No, I am not. The operating experts are to
10 follow.

11 Q So you're not testifying as an operating
12 expert and you have no analysis of any other method by
13 which any of these benefits could be achieved?

14 A That is correct.

15 Q Thank you.

16 MR. RATNER: I don't have anything else, Your
17 Honor.

18 JUDGE HOPKINS: Mr. Hynes.

19 MR. HYNES: Just one or two questions on
20 redirect.

21 REDIRECT EXAMINATION

22 BY MR. HYNES:

23 Q Mr. Barg, I would like to recall your
24 attention to a discussion that you had with counsel for
25 the Katy. It was during the period in which you were

1 being cross-examined with respect to the work paper,
2 pages 416 through 418 that was handed up to you.

3 A Yes.

4 Q Do you recall at that time, sir, a question
5 was put to you as to whether or not, in the presence of
6 one single line service between two points -- the
7 question put to you, I believe, was whether or not a
8 second single line service between those two points
9 necessarily created additional benefits for the shippers
10 that were using the transportation service between those
11 two points.

12 Do you remember that?

13 A Yes, I remember that question.

14 Q Specifically, I would like to ask you, Mr.
15 Barq, assuming that a merger between two carriers
16 creates a single line service between two points, and
17 another carrier seeks to create a second single line
18 service, not over its own lines, but by trackage rights
19 over the merged system, does the creation of your second
20 single line service between those two points, in your
21 opinion, necessarily result in greater net benefits to
22 the shippers than the one single line service created by
23 the merger alone?

24 A In that set of circumstances, I would say it
25 does not necessarily result in greater benefit to the

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1 shipper; in fact, might result in lower benefit.

2 I recall the conversation now. We were
3 attempting to compare the situation where two lines
4 separately existed providing service, and one of those
5 lines was inefficient by having extra interchanging.
6 The elimination of that with a single line service would
7 provide two separate lines, both having direct access.

8 The second circumstance you were discussing is
9 not similar in the sense that both services would
10 operate over the same track, which, to me, can diminish
11 benefit to those shippers who had achieved single line
12 service in the event that there is additional congestion
13 or scheduling problems or interference or line
14 difficulties or other things that would cause both
15 operating on the same line not apt to the total
16 efficiency of two separate single line services.

17 Q I have one more question. I would like to
18 direct your attention to a series of questions relating
19 to longer haul movements of petrochemicals.

20 Isn't it fact, sir, that most long haul
21 petrochemical movements fall into the category of
22 movements of the finished goods or synthetic materials
23 to the ultimate consumer?

24 A That's correct.

25 Q Do those movements of finished petrochemical

1 products move primarily in multiple car shipments or
2 single car shipments?

3 A Those are primarily single car shipments or
4 single truck shipments.

5 MR. HYNES: Thank you. I have no further
6 questions.

7 JUDGE HOPKINS: Any further questions?

8 MS. MAHON: Just one, Your Honor.

9 RECROSS EXAMINATION

10 BY MS. MAHON:

11 Q Mr. Barg, have you done any study on the topic
12 of congestion caused by the grant of trackage rights
13 over the lines of another railroad?

14 A I have not, but I'm sure the Operating
15 Department has looked at some of those issues. And I
16 would think that they would be better able to respond to
17 any questions in that area that you might have.

18 MS. MAHON: Thank you.

19 JUDGE HOPKINS: Mr. Dreiling.

20 BY MR. DREILING:

21 Q Mr. Barg, going to the question of congestion
22 you see, occasioned by trackage rights given to one
23 carrier's track, if you were to assume, as an
24 alternative arrangement, a right given a carrier to make
25 rates applicable to traffic moving over the first

1 carrier's track but with the first carrier handling the
2 rate making carrier's traffic on an agency basis, having
3 control of the trains, carrying them in the same trains,
4 it handles its own traffic, would you see the same type
5 of diminishment in benefits to the shipper?

6 A Not the same type, but a different type
7 potentially. That's why these things need to be
8 analyzed with all the parameters. I think that the
9 shipper would have to consider the totality of his
10 shipments and the way in which he would want to
11 strategically select carriers and the extent to which he
12 feels that he may want to use one or another carrier for
13 different movements or combined movements.

14 Q I'm not certain I understand the latter part
15 of your answer. I guess my further question would be --
16 the first part of your answer said not in the same way.

17 A Not necessarily; that's correct.

18 Q What would be the other way in which there
19 would be a diminishment of the efficiencies that you can
20 achieve through single line operations?

21 A No. My response is that the efficiencies may
22 be comparable, but other problems may arise that I can't
23 anticipate without further analysis of the --

24 Q What are those other problems?

25 A Perhaps it would be a little helpful if you

1 could further dimension what you have in mind in the
2 role of the second carrier beyond those particular
3 movements.

4 Q Are you at all familiar with any of the
5 conditions sought by Respondents in this case as being
6 conditions to be applied to the merger?

7 A I haven't read them or analyzed them or
8 reviewed them.

9 Q If we were to assume a situation in which the
10 KCS, as a condition to this merger, were granted the
11 right to make rates to, from, and between given points
12 which will be served in common by the SP and the Santa
13 Fe for its account with the SP and the Santa Fe to
14 carry the traffic of the KCS in its trains, its
15 regularly scheduled trains, over its system.

16 And I will give you an example. Let's take,
17 for example, a five-car cut of TOFC flatcar originating
18 in Oakland, California, ramped at the SPSF's TOFC
19 facility in Oakland, moving to a point in the southeast
20 United States.

21 The ratemaking authority grant would allow KCS
22 to make a rate applicable to the movement of TOFC
23 equipment over the full extent of the SPSF's line
24 between Oakland and Houston, Oakland, California and
25 Houston, Texas, with an interchange with the KCS at

1 Houston for furtherance into the southeast.

2 Now, would the fact that KCS had that right
3 and the cars were delivered -- the SPSF picked up the
4 cars at the industry -- strike that.

5 In this case, it would be at the TOFC
6 facility. The trailers are loaded at the TOFC facility
7 by SPSF personnel, and the cars were placed in an SPSF
8 train in Oakland and moved into the SPSF train, the very
9 same train that the SPSF would move those cars in if
10 they were in their account to Houston.

11 Would that have an impact on interfering with
12 the efficiencies of the train operation to the Southern
13 Pacific and Santa Fe Railway Company?

14 MR. HYNES: Your Honor, I'm going to object to
15 that question on two grounds. First, while Mr. Bagg has
16 testified that he's not familiar with any of the
17 conditions in this case, and second, it seems to me that
18 this rather lengthy hypothetical about specific
19 shipments has gone somewhat beyond the scope of the
20 redirect.

21 JUDGE HOPKINS: I think it fits within the
22 parameters of the original question on redirect. I
23 wouldn't go much farther. I don't know whether he
24 understands what you said.

25 MR. DREILING: I'm not certain. He asked for

1 a further definition. I can break it down into little
2 parts.

3 JUDGE HOPKINS: Let's see if he understands it
4 first. If we can get an answer without having to go
5 through five or six more questions, I would prefer it.

6 THE WITNESS: I'm afraid I don't understand
7 it, and I think you're in an area that involves detailed
8 operations analysis of a scenario that I didn't examine
9 and I could not respond. I don't feel comfortable or
10 competent in responding to your question.

11 BY MR. DREILING: (Resuming)

12 Q One further question. You think, then, it
13 would be more detailed than your analysis of the
14 trackage rights situation that you gave in response to
15 SPSF -- Santa Fe's counsel on redirect?

16 A I think I indicated earlier, even in
17 addressing or responding to that question, that it would
18 require detailed study, that I would have to be able to
19 do that before I could competently respond.

20 JUDGE HOPKINS: Is that all? You're excused,
21 sir.

22 (Witness excused.)

23 MR. HYNES: Your Honor, I move the admission
24 of Mr. Barg's testimony at this time.

25 JUDGE HOPKINS: Any objection? It will be

1 received in evidence.

2 Call your next witness.

3 MR. VRAGEL: If Your Honor please, my name is
4 Kurt E. Vragel, Jr. I appear on behalf of the
5 Applicants. I am employed by Santa Fe Industries, Inc.
6 My business address is 224 South Michigan Avenue,
7 Chicago, Illinois 60604.

8 I call to the witness stand Mr. James T.
9 Stark. And, for the record, let me note that Mr.
10 Stark's qualifications are stated in Volume SFSP-12.

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1 Whereupon,

2 JAMES E. STARK

3 was called as a witness, and having been first duly
4 sworn, took the stand, was examined, and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. VRAGEI:

8 Q Please state your name and your business
9 address and the name of your employer for the record.

10 A My name is James E. Stark. I am employed by
11 Reimer Associates, a California corporation. I am an
12 associate with that firm. Our address is 1633 Old Bay
13 Shore Highway, Burlingame, California, 94010.

14 Q Now, Mr. Stark, are you familiar with a blue
15 covered volume entitled SFSP-4, Replacement Volume,
16 Volume II, Environmental and Energy Data, Exhibits 4 and
17 5?

18 A I am.

19 Q Mr. Stark, for the record, would you briefly
20 describe your responsibility with respect to that
21 document?

22 A The applicant railroads requested our firm to
23 prepare an environmental exhibit to be included with the
24 merger application, and in response to that request, I
25 was selected by our firm to act as project manager for

1 this effort.

2 We contacted the Interstate Commerce
3 Commission staff and sought their guidelines on the
4 information and scope of work. We assembled a team of
5 consultants. We specified data to be gathered, and
6 reviewed the materials submitted, found it acceptable,
7 gave it to the applicant railroads, and they submitted
8 it to the Commission.

9 Q And the results of your study are incorporated
10 in the blue covered volume to which you just referred?

11 A That is correct.

12 Q I understand there are several corrections to
13 be made to this volume. Can we begin by turning to Page
14 43?

15 A On Page 43, the second line at the top of the
16 page, the figure 18.2 should read 25.1. And Footnote
17 Number 1 at the bottom of the page, source, should read
18 DNS Associates, and eliminate Beebie Association,
19 Greenwich, Connecticut, in Footnote 1.

20 Q Would you turn to Page 57 of that volume and
21 indicate the corrections to be made there?

22 A On Page 57, Table 11, the first line across in
23 the table, Warm Springs, San Jose, should be modified as
24 follows. In the second column, titled Distance to 65
25 LDM Contour in Feet, subheading After Merger, the first

1 entry, 52, should read 244. That is, 244.

2 In the third column, first line, under
3 Incremental Increase in LDN, the figure 4.5 should read
4 13.7, and in the last column entitled Percent of
5 Operations, Day/Night, the figure 100/0 should read
6 83/17.

7 In addition, we should add a footnote to the
8 phrase Warm Springs, San Jose, in that first line. We
9 would call that correction. In addition, we should add
10 a footnote to the figure 23 in the first line, Warm
11 Springs, San Jose, and that footnote should read "Number
12 4: Based on existing day/night split of 100/0."

13 Q Calling your attention to Page 58, the second
14 and third sentences on that page, perhaps it would be
15 easier if you would read those sentences as they are to
16 be corrected. Page 58.

17 A The second sentence, Page 58, "Significant
18 increases will occur between Newark and Tracy, Martinez
19 and Tracy, California, Dallas and Wylie, Texas,"
20 eliminate the word "and," Mcbest to Phoenix, Arizona,
21 and Warm Springs to San Jose, California."

22 The following sentence should read, "The IDN
23 along these tracks will increase by 5.2 dB, 11.5 dB, 5.4
24 dB," eliminate "and," "6.9 dB, and 13.7 dB
25 respectively."

1 That is the end of the corrections.

2 Q Okay. Turning to Page 61.

3 A On Page 61, under the first heading, Warm
4 Springs, Fremont to San Jose, California, the number 10
5 in the fourth line down should read 45.

6 Q Now, Mr. Stark, would you briefly explain the
7 significance of the changes that were made on Pages 57
8 and 58 and 61?

9 A The changes indicate an increase in the noise
10 environment along the Warm Springs to San Jose link of
11 the SP line. The increase in noise is due to not an
12 increase in the number of trains per day, but a shifting
13 in the split of the trains per day between daytime hours
14 and nighttime hours.

15 Q Now, Mr. Stark, turning your attention to Page
16 E3, Figure E1, would you indicate on the scale shown
17 there what the results of this change will mean for
18 those people who are at the 65 LDN Contour?

19 A Page E3 contains an exhibit of typical sound
20 levels measured in the environment in industry and
21 equates them to common sources of noise that we are all
22 familiar with.

23 We see at the 60 decibel level speech and data
24 processing center department store, vacuum cleaner, and
25 65 is some place above that and below the 70 level

1 decibel. There is not a particular equation between 65
2 decibels and these entries, but it is roughly of, say,
3 equivalent to the vacuum cleaner ten feet entry.

4 Q Mr. Stark, one last correction. Turning to
5 Page A22, and this concerns the Fresno-North California
6 new connection --

7 A Yes.

8 Q -- do you have any information to add to the
9 recrd pertaining to this connection?

10 A The city of Fresno has provided me within the
11 last I guess it was two days ago, with a copy of a city
12 counsel resclution and a staff memorandum reporting that
13 the city council had reconciled the city's objections to
14 the proposed new connection in the North Fresno area.

15 The city had previously had concerns about the
16 location of the connecting line through a planned
17 community, and the railroad and the city of Fresno
18 negotiated a realignment which seems to be satisfactory
19 to all concerned.

20 Q That completes our corrections.

21 As corrected, Mr. Stark, is the SFSP-4
22 replacement volume, Exhibits 4 and 5, true and correct
23 to the best of your knowledge and belief?

24 A It is.

25 Q And do you adopt that as your testimony?

1 A I do.

2 MR. VRAGEL: With that, I ask that the
3 replacement volume be admitted for the record, and I
4 tender the witness for cross examination.

5 JUDGE HOPKINS: Who is going to be the first
6 questioner? Mr. Craig?

7 MR. CRAIG: I believe I am first.

8 CROSS EXAMINATION

9 BY MR. CRAIG:

10 Q Mr. Stark, my name is Peter Craig. I
11 represent Amtrak in this proceeding. While we are on
12 Page A22 and A23, does this diagram on Page A23
13 represent the compromise that it is agreeable to the
14 Fresno authorities?

15 A It does.

16 Q What is the maximum train speed that can be
17 accomplished on this S curve?

18 A I can't tell you what the maximum train speed
19 is on the curve.

20 Q In the preparation of this revised volume, Mr.
21 Stark, did you have assistance from other than your
22 various associates in the preparation of this work?

23 To wit, was this reviewed and were suggestions
24 made by the applicant railroads themselves?

25 A I presented questions at various occasions to

1 applicants and to other supporting consultant firms that
2 they had retained.

3 Q In order to obtain information?

4 A Yes, I interviewed for information.

5 Q But was the text of the statement reviewed and
6 suggestions offered by the railroad applicants?

7 A When we completed our document, we submitted
8 it to the applicant. If there was a factual question,
9 we pointed it out to them and asked them to confirm it.
10 So, to that extent, they reviewed it.

11 Q And did they review and question some of your
12 conclusions?

13 A I think they asked us to explain a lot of
14 them.

15 Q But this ends up you are satisfied as being
16 your product?

17 A Yes.

18 Q Now, conversely, did you have any input into
19 the preparation of the applicant's operating plan?

20 A No.

21 Q You just took it as a given?

22 A The operating plan we accepted.

23 Q And if you perceived any environmental or
24 other problems in connection with the operating plan,
25 did you draw this to the applicant's attention, say that

1 there might be a historic site disturbed with this track
2 relocation and suggest you look at something else?

3 A When we found the potential for a concern such
4 as you identify with an historic site, we included it in
5 our documentation, and the applicant was notified of it
6 when we presented them with the results of our work.

7 Q Were any changes made in the operating plan as
8 a result of these determinations by you?

9 A No changes to the operating plan that I am
10 aware of.

11 Q I take it that the underlining that we see in
12 this document just reflects additions to the document,
13 and not intended as emphasis. Is that correct?

14 A Yes. That is generally correct. I believe
15 there are a couple of occasions when we had underlining
16 for emphasis.

17 Q And the asterisk represents material removed
18 from the earlier draft of the statement?

19 A In general. There was an initial submittal,
20 and there was an addendum, and there was a third
21 generation of work which we referred to as errata, and
22 when we combined these documents into a single document,
23 there were occasions of paraphrasing or redundancy, and
24 if a word came out or a phrase came out or a sentence
25 came out, we would put in a parentheses with an asterisk

1 to indicate that there had been some change, something
2 deleted.

3 Q I take it, Mr. Stark, that you are familiar
4 with the Commission's regulation in Title 49 of the Code
5 of Federal Regulations relating to the preparation of
6 environmental statements such as this one. I refer
7 specifically to Section 1105.7.

8 A Yes.

9 Q To refresh your recollection, 1105.7(c)(2)
10 asks the following two questions. Will existing
11 regional or local transportation systems or patterns be
12 substantially affected? If so, describe the effects.
13 Now, where in your statement will I find the answer to
14 those questions?

15 A We have a response to that particular --
16 first, let me clarify one point before I respond to
17 that. We were provided with an outline and format by
18 the Interstate Commerce Commission staff that closely
19 parallels the guidelines you are reading from. I would
20 say it paraphrases it by and large.

21 Returning to your question, the section where
22 we responded to the transportation issues was 3.5.

23 Q Which is on Page 41?

24 A That's correct.

25 Q So let's turn to Page 41. 3.5 seems to be one

1 paragraph long. Is that the extent of your answer to
2 that question?

3 A That was the extent of our answer to the
4 format and guideline that was provided us by the
5 Commission staff.

6 Q Well, let me just paraphrase the question and
7 the regulations as it relates to my client, and ask you
8 this directly. Will existing rail passenger
9 transportation systems be affected?

10 A Are you asking me the question?

11 Q Yes.

12 A We raised the same question, and we put it to
13 the applicants and to their operating plan
14 representatives, and the conclusion was that there was
15 not going to be an impact on rail passenger service.
16 From all that we read and reviewed, we concurred with
17 that.

18 Q The second question is as follows in the
19 regulations. Will traffic, passengers, or freight be
20 diverted to other transportation modes or systems? I
21 don't find an answer to that question in your
22 statement.

23 A The diversion of freight is mentioned, I
24 think, explicitly and implicitly throughout our
25 document. As far as the diversion of passengers, that

1 was not an issue from our perspective.

2 Q Well, let me ask you the question. Apparently
3 the regulations consider it an issue. Will passengers
4 be diverted to other transportation modes or systems?

5 A We do not anticipate any change in rail
6 passenger service.

7 Q Well, in answering this question or in not
8 answering this question, did you consult at all with
9 Amtrak or Amtrak's marketing people to obtain any input
10 from Amtrak?

11 A We had no reason to make any investigations
12 into passenger service.

13 Q Well, could you answer my question?

14 A No.

15 Q Thank you.

16 Are you familiar, Mr. Stark, with the two
17 round trip trains operated in the San Joaquin Valley by
18 Amtrak over the Santa Fe and SP?

19 A I am aware of the service, yes.

20 Q And are you aware that that train operates
21 twice daily in each direction between Bakersfield and
22 Oakland via Fresno and Stockton?

23 A Yes.

24 Q And that it operates over the Santa Fe from
25 Bakersfield to a point west of Stockton?

1 A Yes.

2 Q And thereafter into Oakland on the Southern
3 Pacific?

4 A Yes.

5 Q In your statement, you discuss at length the
6 abandonments and new construction in connection with San
7 Joaquin Valley services of the Santa Fe and the Southern
8 Pacific, and I notice on Page 21 you state that, "All
9 abandonments result from a redundancy in facilities
10 between the two applicant railroads within the area of
11 the abandonment."

12 Do you recall that statement?

13 A Yes.

14 Q What is redundant about the passenger
15 facilities of the two railroads at Fresno?

16 A I am sorry. I don't understand.

17 Q What redundancy in facilities between the two
18 applicant railroads exists at Fresno, looking at it from
19 the rail passenger service standpoint?

20 A Mr. Craig, we didn't evaluate the abandonment
21 in Fresno or any other location from the rail passenger
22 standpoint.

23 Q Well, are you aware, sir, that the segment to
24 be abandoned at Fresno was the track that is presently
25 being used by the Amtrak trains?

1 A I am.

2 Q And are you aware that upon the abandonment,
3 the Fresno passenger station would not be served under
4 the pattern that you have assumed in your presentation,
5 which is the routing of all freight and passenger trains
6 via the Southern Pacific?

7 A I understand -- I understand that Amtrak has
8 an arrangement with Santa Fe for passenger service over
9 their line in Fresno, and that there's an Amtrak station
10 in Fresno. And I also understand that there is an
11 abandonment of a portion of that length in Fresno.

12 The issue of Amtrak service in downtown Fresno
13 is a matter that we consider to be one of negotiation
14 between Amtrak and Santa Fe and not of an environmental
15 consequence from our perspective

16 Q You are a former urban planner, are you not?

17 A That's true.

18 Q Have you evaluated the alternative site that
19 should be used for a rail passenger station at Fresno on
20 approval of that abandonment?

21 A No. Our assignment here was to evaluate the
22 consequences of the merger and we did not find any
23 passenger station or passenger service as being --
24 having a significant relationship or opportunity to be
25 environmentally affected by the proposed merger.

1 Q Are you aware, sir, that 100,000 passengers a
2 year use that station at Fresno that is to be
3 abandoned?

4 A I don't know what the numbers are.

5 Q And you have not looked at alternate locations
6 in terms of how many of those passengers might be
7 retained at other sites?

8 A The key issue for us in that regard was a
9 question of whether or not passenger service was going
10 to continue to serve the Fresno metropolitan area. And
11 the answer to that is yes. Passenger service will not
12 be discontinued to Fresno.

13 Santa Fe and Amtrak may have to work out some
14 arrangement in regard to the passenger depot, but the
15 fact of the matter is that you can still go to downtown
16 Fresno and get on Amtrak train and head to southern
17 California or northern California, or whatever direction
18 you care to go.

19 There may be some arrangement to keep the
20 station where it is, which is something we didn't
21 investigate. There may be a relocation of the station.
22 But the station will still remain in Fresno and it's a
23 highly localized issue that was not part of our
24 investigation.

25 Q Did you consult with the Fresno authorities

1 about appropriate locations for a new Fresno passenger
2 station?

3 A No. Once again, sir, we did not identify this
4 as an environmental issue that was part of the merger
5 action. Arrangements regarding future passenger
6 stations in Fresno would be a future project.

7 Q Did you estimate what the cost would be to the
8 Applicants of a substitute passenger station?

9 A No.

10 Q Would you turn to page 24 of your statement?
11 If I read this map correctly, looking at the inset in
12 the upper righthand corner, upon implementation of the
13 consolidation of parallel facilities in the San Joaquin
14 Valley, there will be 100 percent reduction of gross
15 tons per mile between Stockton and Antioch.

16 I gather this means that all traffic would be
17 routed around via Lathrop and Tracy to Port Chicago,
18 rather than moving directly from Stockton to Port
19 Chicago.

20 Do I read that correctly, Mr. Stark?

21 A That's my interpretation.

22 Q What happens to the passenger train operating
23 from Stockton to Richmond to Oakland? Does it also go
24 via Lathrop, Tracy, and Port Chicago to get to
25 Richmond?

1 A The passenger service remains the same.

2 Q Well, then there would not be a 100 percent
3 reduction in gross tons between Stockton and Antioch,
4 would there?

5 A The gross tons we're referring to is freight.

6 Q Is that true throughout your statement?

7 A Yes.

8 Correction. Gross tons we're referring to as
9 freight and associated rail equipment, not passengers
10 and associated passenger equipment.

11 Q You are including in gross tons the
12 locomotives, cars, and contents of freight trains, but
13 not passenger trains?

14 A That's true.

15 Q And is your conclusion that the operating plan
16 will not adversely impact continued rail operations of
17 that passenger service from Stockton to Antioch and
18 beyond?

19 A Not from any of -- would you restate the
20 question, please?

21 MR. CRAIG: Could the reporter reread the
22 question?

23 THE REPORTER: "Q. And is your conclusion
24 that the operating plan will not adversely impact
25 continued rail operations of that passenger service from

1 Stockton to Antioch and beyond?"

2 THE WITNESS: We accepted the conclusion that
3 passenger service will continue as it presently exists

4 BY MR. CRAIG: (Resuming)

5 Q At current expense levels of Amtrak?

6 A We didn't investigate Amtrak cost.

7 Q But you realize cost is an element in the
8 viability of operations?

9 A Our assignment related to environmental
10 matters, and we didn't investigate any costs.

11 Q Did you inquire with Amtrak about the cost,
12 the effect on Amtrak's costs of freight rerouting?

13 A No, sir.

14 Q Just for the record, Mr. Stark, I believe in
15 page 63 at the top, the second line, the number 16
16 should be changed to 20 to coincide with the rest of
17 your statement.

18 Would you accept that correction? Page A25,
19 you say 20; and at page B9 you say 20. And here you
20 appear to have omitted the four passenger trains. Do
21 you want to compare what you state on page A25 and B9 to
22 verify that?

23 A A25?

24 Q A25, the fourth line under noise issues, you
25 say approximately 20 freight and passenger operations a

1 day to zero.

2 A Are we on A25, top of the page? Ch, under
3 noise issues. All right.

4 Q Underlined there is approximately 20 passenger
5 freight and operations a day.

6 A To zero; yes.

7 Q And on page B9, the third line from the top,
8 you say 20 trains per day, including passenger trains.

9 A Yes, 20 trains per day.

10 Q Turning back to page 63, second line, should
11 we correct 16 on line 2 to read 20?

12 A Yes, either that or insert freight trains; 20
13 trains total.

14 MR. CRAIG: Thank you very much.

15 JUDGE HOPKINS: Any other questions?

16 MR. SOLANDER: Your Honor, I think I have a
17 few.

18 BY MR. SOLANDER:

19 Q Mr. Stark, my name is O. J. Solander, and I
20 represent the State of California Department of
21 Transportation. Our department is cooperating with the
22 California Public Utilities Commission in investigating
23 this proposed merger.

24 I have a couple of questions relating to -- I
25 have some questions relating to the proposed sidings in

1 California on the Lathrop to Martinez line.

2 In your replacement Volume SFSP-4, could you
3 turn to page A89? Have you found the Brentwood siding?

4 A Yes.

5 Q Now, as I read this diagram, the siding will
6 not be crossed by any streets or highways; is that
7 correct?

8 A I read it that way, yes.

9 Q However, at either the north or the south end
10 of the siding, there are some either country roads or
11 streets identified Lone Tree Way, I believe, on the
12 north, and Dainty Avenue on the south. Do you see
13 those?

14 A I have Lone Tree. And I'm sorry -- the second
15 was?

16 Q Dainty Avenue in Brentwood.

17 A Yes. Are you saying -- I have those
18 identified. Are you saying --

19 Q They are current crossings, are they not, of
20 the main line?

21 A Yes.

22 Q In preparing your report, did you investigate
23 the traffic counts, vehicular traffic counts at those
24 sidings?

25 A At the grade crossings?

1 Q Yes.

2 A No, we did not. We did not.

3 Q Okay. Would your answer be the same for the
4 streets or highways on Figure A92 at the Herdlyn
5 siding?

6 A Yes. I can tell you, Mr. Solander, as a point
7 of information, that in the 26,000 miles of system to be
8 controlled by the Applicant railroads, there's tens of
9 thousands of grade crossings, and we do not investigate
10 any specifically in terms of ADT, average daily
11 traffic.

12 Q So that's your answer for the Tracy siding on
13 Figure A96 also?

14 A That's true.

15 Q I take it, then, that you didn't consider
16 whether or not there would be any delays to motor
17 vehicular traffic as a result of the construction of
18 these proposed sidings?

19 A No. We consider the delay.

20 Q You did consider delay?

21 A Yes.

22 Q Did you find any delay in connection with any
23 one of these three sidings?

24 A Oh, I beg your pardon. We considered delay in
25 terms of rail links which, in this case -- I have to

1 identify this more specifically, but we have a set of
2 criteria from the environmental guidelines that directed
3 us to consider delay for those links of rail line where
4 we would have an increase in traffic of eight trains or
5 more per day, or an increase in gross ton miles of 100
6 percent.

7 Q Are you talking about motor vehicle delay or
8 freight train?

9 A Delay at crossings.

10 Q And did you investigate the crossings in the
11 area of these three proposed sidings with that in mind?

12 A The investigations, the crossings we
13 investigated are presented in our section titled Safety,
14 and they are specifically identified in a table on page
15 79, Table 16, Delay Time Analysis.

16 Q Can you tell me whether or not the crossings
17 are located in this table?

18 A Between Martinez and Tracy and Tracy-Lathrop,
19 we have the crossings you have identified.

20 Q Which crossings are those?

21 A Brentwood, I believe you mentioned. Tracy and
22 -- was the third Herdlyn?

23 Q Yes.

24 A I'm identifying sidings. You referred to the
25 Lone Train Lane and what was the name of the street --

1 Dinky?

2 Q Dainty.

3 A Yes. Those crossings are in the links
4 identified in this table.

5 Q And can you tell me what delay has been
6 assigned to these crossings?

7 A On the Martinez to Tracy link which would
8 include the Tracy siding at Prentwood, we have a change
9 in maximum delay of 19.9 minutes.

10 Q How about for the siding at Herdlyn?

11 A That would be included also in the same link,
12 I believe.

13 Q So the 19.9 includes the roads at both of
14 those sidings? How about for the siding at Tracy?

15 A Yes.

16 Q That's included also?

17 A Yes.

18 Q Did you investigate the possibility that in
19 the town of Tracy, there would have to be any grade
20 separation in connection with the construction of the
21 siding in Tracy? That's referring to Figure A96.

22 A No. We did not investigate any grade
23 separations. Um --

24 MR. SOLANDER: That's all I have.

25 JUDGE HOPKINS: Who will be next?

1 BY MR. ATKINS:

2 Q My name is Nelson Atkins. I represent the
3 City of Compton which is located in southern
4 California.

5 Did your study -- well, first of all, are all
6 of the results of your study contained within this blue
7 volume, Environmental and Energy Data, Exhibits 4 and 5,
8 Volume 2?

9 A Yes.

10 Q Are you aware of the San Pedro Branch and the
11 Wilmington Branch of the Southern Pacific Railroad that
12 runs through the City of Compton?

13 A Yes.

14 Q Did your study involve the environmental
15 impacts at all on the merger as it affects the lines,
16 those two lines, as they run through the City of
17 Compton?

18 A To this extent; that in reviewing the proposed
19 changes to operations for the merged system, we employed
20 the threshold I mentioned earlier. The thresholds allow
21 us to focus on links of rail line where we believed that
22 there would be a potential impact.

23 The two lines that you have referred to did
24 not show an increase in traffic resulting from the
25 merger that came up to the thresholds that we employed.

1 Q Now, when you referred to an increase in
2 traffic, are you saying that there would be no increase
3 in traffic, or if there was an increase, it would not
4 have any effect?

5 A I am saying that the increases in traffic on
6 those lines did not equate to 100 percent increase in
7 tonnage as a result of the proposed merger or an
8 increase of eight trains per day, as a result of the
9 proposed merger.

10 Q So the increase in trains per day as a result
11 of the merger would be eight, is that correct? Is that
12 what you're saying?

13 A No, sir. The eight trains per day is a
14 threshold or a criteria we used in determining which
15 links of rail line would have a potential for
16 environmental impacts.

17 The lines that you have described did not meet
18 that criterion. They did not have eight train per day
19 increase in traffic projected as a result of the
20 merger. They did not have 100 percent increase in
21 tonnage projected as a result of the merger.

22 Q Could you tell me what the increase of traffic
23 on those two lines is projected to be?

24 A I can tell you that it's less than eight
25 trains a day and it's less than a 50 percent increase in

1 the gross ton miles as a result of the merger.

2 Q Can you give me a specific number?

3 A There are numbers available. I don't have it
4 with me.

5 Q And where are those numbers contained? Where
6 would I be able to locate those numbers?

7 A We can provide them. I can provide them.

8 Q Would you do that?

9 A Certainly.

10 Q Did you do any study in regard to those
11 particular segments of that line to determine whether or
12 not there would be an impact in regard to traffic which
13 crossed the tracks at grade?

14 A No, sir. If they didn't meet the criteria I
15 identified earlier, then there was not an analysis
16 performed. They were considered to not have a potential
17 for significant environmental impacts as a result of the
18 proposed action.

19 Q Okay. So you are saying, then, that because
20 that particular segment there did not reach the
21 criteria, you did very little, if any, studies at all
22 regarding the environmental impact of the merger; is
23 that correct?

24 A No. I'm saying that in regard to those
25 particular lines, we did not conduct an investigation

1 beyond determining that the traffic that will result
2 from the merger on those lines does not meet our
3 criterion. That is, does not have a potential in that
4 area for an environmental impact under the several
5 topics that we investigated.

6 Q So therefore, you did not studies.

7 A No studies is broad. We did no studies in
8 relation to those two lines.

9 Q That's what I mean. In relation to those two
10 lines as they intersect in Compton.

11 So there is nothing in your materials here or
12 anywhere else in your work that shows the study or that
13 was studied as a result of --

14 A In regard to Compton, no, that's correct.

15 Q Did you do any studies in your evaluation of
16 this project in regard to the effect of the intermodal
17 transfer facilities that were being built in the
18 Southern California area?

19 A We did not.

20 Q Did you find it -- well, let me withdraw
21 that. As a result of this area not meeting your
22 criteria, I assume you did not meet with or converse
23 with any of the officials from the City of Compton or
24 personnel from the City of Compton regarding the effect
25 of the merger on their facilities.

1 A Yes, I understand. I want to clarify or add a
2 piece of information. You said in regard to my
3 criterion. These criteria were provided us in the
4 environmental guidelines supplied by the ICC's Section,
5 of Energy and Environment Staff.

6 The answer to your question regarding
7 contacting officials in Compton, the answer is no, we
8 did not.

9 Q Were you ever in contact with any of the
10 representatives of the Southern California Association
11 of Governments in your study?

12 JUDGE HOPKINS: You are talking about just as
13 to Compton, or any time?

14 MR. ATKINS: I will say at any time at this
15 point.

16 THE WITNESS: I believe we made a contact with
17 SCAG, but I have to tell you I don't recall the details
18 of it.

19 BY MR. ATKINS: (Resuming)

20 Q It's not contained in your report?

21 A No.

22 Q Did your analysis of the environmental impact
23 consider the types of freight that was going to be
24 hauled on these lines?

25 A We only discussed it and evaluated it in terms

1 of -- with one exception, we only discussed it and
2 evaluated it in terms of gross tonnage in the -- well,
3 let me see if I'm answering this correctly.

4 Are you asking me if -- we made our evaluation
5 in terms of trains per day in gross ton miles. That's
6 the best answer I can give you.

7 Q But not in the quality of the type of freight
8 that would be hauled on these lines?

9 A No.

10 MR. ATKINS: I have no further questions.

11 JUDGE HOPKINS: Mr. van Orman.

12 MR. VAN ORMAN: Your Honor, I'd like to make
13 an appearance at this time. My name is Chandler L. van
14 Orman, and my address is 1729 H Street, N.W.,
15 Washington, D.C. 20006.

16 Mr. Robert Oswald is representing the City of
17 San Jose in this proceeding, and he is unavoidably
18 absent, and asked me if I would stand in in his place
19 instead, and ask a few questions.

20 BY MR VAN ORMAN:

21 Q Mr. Stark, in response to a question from Mr.
22 Craig, you indicated that your assignment in this
23 proceeding was to evaluate the consequences of the
24 merger. I assume we can qualify that by the
25 environmental consequences of the merger.

1 A That's true.

2 Q Did you evaluate the environmental
3 consequences of this merger on the City of San Jose?

4 A We had one line that met the criteria I have
5 described earlier in San Jose, and we did look at the
6 environmental consequences along that line.

7 Q And that of the Warm Springs to San Jose
8 line?

9 A That's correct.

10 Q And the environmental consequences that you
11 discovered would be an increase in the noise levels.

12 A That's correct.

13 Q Other than that, I assume then that no other
14 study of any other kind was made with respect to the
15 impact of this merger on San Jose.

16 A We looked. In regard to the Warm Springs
17 line, we considered under all of the environmental
18 topics in our analysis which goes beyond noise.

19 Q But because the threshold criteria would not
20 be met, no further study was done?

21 A No, sir. The threshold on the Warm Springs
22 line was met, and so we conducted the full analysis for
23 that section of line where the threshold was met.

24 Q But excluding that one line, no other studies
25 have been done because your threshold --

1 A No other links in San Jose were studied, other
2 than the Warm Springs line.

3 Q Are you familiar with the trackage rights
4 requests made by other railroads in this proceeding?

5 A I am aware of one. Or let me -- excuse me.
6 Let me make sure I understand your question.

7 The one I was referring to, I am aware, I
8 believe, of the Applicants making a trackage rights
9 request. I'm aware that there are other applications
10 involved in the proceeding, but I don't have any
11 specific knowledge of those.

12 Q Your threshold criteria involved an increase
13 in the number of trains or an increase in traffic
14 density; is that correct?

15 A Yes.

16 Q If approval of this application resulted in a
17 grant of trackage rights to railroads, to other
18 railroads which resulted in an increase in traffic
19 through the City of San Jose, could that then impact
20 negatively upon the environment of San Jose?

21 A This is a hypothetical situation. Let me
22 see. You're asking if another railroad puts more trains
23 on the track, can it have an impact?

24 Q That's right.

25 A Yes.

1 Q But as I understand it, no consideration is
2 given to the trackage rights requests of other railroads
3 in this proceeding, other than Applicants.

4 A The project, if you will, for us to examine
5 was the proposed merger. And if another railroad
6 submitted a project of their own, i.e., a trackage
7 rights application, then they would have an obligation
8 to submit their environmental analysis of what the
9 impact of their trains would be on that link.

10 Q Are you familiar with the Guadalupe corridor
11 light rail system proposed in Santa Clara County?

12 A I'm aware of the proposal.

13 Q And was any consideration given in your
14 consideration of San Jose to that proposal?

15 A Consideration was given to the extent that we
16 were aware of it, and it's a proposal and it is not an
17 existing facility, and it was not part of the merger in
18 any sense.

19 MR. VAN ORMAN: Your Honor, I have nothing
20 further.

21 JUDGE HOPKINS: Mr. Vragel.

22 MR. VRAGEL: I have one very brief redirect
23 question.

24 REDIRECT EXAMINATION

25 BY MR. VRAGEL:

1 Q Mr. Stark, to clarify the type of study you
2 did, is it not true that you did study every line
3 segment, but that your report contains only those line
4 segments, or contains a description only of those line
5 segments in which the thresholds were met, i.e., the
6 eight trains per day or 50 percent to 100 percent
7 increase in gross tonnage?

8 A Let me state it this way. We had 26,000 miles
9 of the system to deal with, and to get this in a form
10 and a size and so forth that would have some meaning,
11 and that we wouldn't spend a lot of time investigating
12 rail links where there was no potential for consequence,
13 we used the threshold approach to eliminate areas where
14 there is not going to be a significant increase in
15 traffic that would presuppose a potential for
16 environmental impacts. And I want to underline
17 "potential."

18 MR. VRAGEL: I have no further questions.

19 JUDGE HOPKINS: Anything further?

20 You are excused, sir.

21 (Witness excused.)

22 MR. VRAGEL: I ask the admission of Volume
23 SFSP-4, replacement volumes Exhibits 4 and 5.

24 JUDGE HOPKINS: Any objection? They will be
25 received into evidence.

1 Off the record a minute.

2 (Discussion off the record.)

3 JUDGE HOPKINS: We'll be in recess until

4 1:20.

5 (Recess.)

6 JUDGE HOPKINS: Back on the record.

7 MR. STEPHENSON: Your Honor, Applicants would
8 like to call Mr. Neal Owen to the stand.

9 Whereupon,

10 NEAL D. OWEN

11 was called as a witness by counsel for Applicants and,
12 having first been duly sworn by the Administrative Law
13 Judge, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. STEPHENSON:

16 Q Mr. Owen, you have before you a document
17 entitled "Verified Statement of Neal Owen." You also
18 have in front of you the document entitled "SFSP for
19 Railroad Merger Application, Volume 5, Operating Plan,
20 Exhibits 13 and 14."

21 Has that verified statement and that operating
22 plan been prepared by you and under your direction and
23 supervision?

24 A Yes, they have.

25 Q And are they true and correct, to the best of

1 your knowledge?

2 A Yes, they are.

3 Q With the exception of the errata that have
4 been previously filed with the Commission, are there any
5 other errata that you have to place into the record?

6 A No, there are not.

7 MR. STEPHENSON: Your Honor, the witness is
8 tendered for cross-examination.

9 JUDGE HOPKINS: Who will be first.

10 CROSS EXAMINATION

11 BY MR. SANFORD:

12 Q Mr. Owen, my name is Kendall Sanford, and I
13 represent the Denver & Rio Grande Western Railroad
14 Company.

15 Would you turn to page 2 of your verified
16 statement? It says there that you began initial studies
17 in 1980. Could you briefly describe what those studies
18 entailed?

19 A We did some studies in 1980 that were
20 preliminary to the first announced merger of Santa Fe
21 and Southern Pacific. They consisted of studies that
22 were preliminary to an operating plan that would have
23 been filed in that case, had the case come to
24 conclusion.

25 Q Did you develop a preliminary operating plan?

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1 A Yes.

2 Q At that time in 1980?

3 A We had developed the operating plan to the
4 point where numerous options were available for
5 management, and we had presented in a couple of cases
6 some of these options. There was no operating plan in
7 total prepared at that time that could be called a
8 single preliminary operating plan.

9 Q Were the options that were presented to
10 management -- and I take it that would be the SP?

11 A They were presented to both managements at
12 that time.

13 Q Were the options that you presented to
14 management capable of implementation short of merger?

15 A No. I would say they were not.

16 Q None of them?

17 A Certainly the great bulk of them were not.
18 There may have been isolated cases that may have been
19 implementable, short of merger, but they were very, very
20 minute and isolated.

21 Q Would you happen to know if any train
22 schedules were recommended that were implemented by
23 either company?

24 A I don't know.

25 Q Now, you also on page 2, I believe, refer to

1 -- at the top of the page -- to preparing operating
2 plans on behalf of Southern Pacific in the Tucumcari
3 UP/MP/WP and Norfolk Southern proceedings. Is that
4 correct?

5 A Yes.

6 Q Focusing on the Tucumcari decision, you
7 developed the operating plan for SPT at that time?

8 A That is correct.

9 Q Now, when you develop an operating plan for
10 SPT, say, in that transaction, do you follow through
11 post-approval to aid in the implementation, to see what
12 is implemented and what is not?

13 A That will vary from case to case. I would say
14 that normally we do not, but we have on occasions.

15 Q Did you in that case?

16 A Not any direct follow-through, no.

17 Q In the course of your development of this
18 operating plan, you had occasion, of course, to review
19 the operating schedules of SPT; correct?

20 A Yes.

21 Q Had your recommendations in that prior
22 operating plan been implemented?

23 A With regard to the Tucumcari line, I would say
24 that there is an amazing similarity between the
25 operating plan and the actual operation that is

1 currently in place in the Tucumcari line. That, of
2 course, has to take into consideration significant
3 changes that have occurred since the 1977 data base that
4 was used in the Tucumcari acquisition versus the
5 six-year later data base that we are using right now.

6 There is a terrific change in traffic mix, as
7 an example.

8 Q But in the similarity, I assume you are
9 speaking of the operating schedules, the train blocks
10 and so forth that you had proposed in Tucumcari.

11 A There are different parallels there, that's
12 correct. The total density, at least between Kansas
13 City and El Paso, is very close now to what it was
14 projected to be in that 1977 data base operating plan.

15 Q And the schedules, although not being
16 identical, would be approximately the same that you had
17 anticipated?

18 A No, I can't say that directly, and I have not
19 made any schedule-by-schedule comparison. As I stated
20 before, one of the big variances with the six years that
21 have intervened has been the character of the traffic
22 that is transported on the line, and today there is a
23 significant additional amount of time-sensitive traffic
24 on the line than was projected in 1977 plans.

25 Q Were the basic transit times that you

1 anticipated achieved?

2 MR. STEPHENSON: Objection. The question was
3 asked and answered, Your Honor.

4 JUDGE HOPKINS: Not in that way.

5 MR. SANFORD: That was transit time that I
6 just asked.

7 THE WITNESS: Would you define what you mean
8 by transit time?

9 BY MR. SANFORD: (Resuming)

10 Q When you developed schedules, you obviously
11 anticipated some transit times. If I recall that
12 proceeding, the Southern Pacific, a part justification
13 for the acquisition of Tucumcari line was to regain
14 traffic they had lost to trucks by the improvement of
15 operating performance over a rehabilitated Tucumcari
16 line.

17 And you had projected certain schedules which
18 assumed improvements in the Southern Pacific's transit
19 times on time-sensitive traffic.

20 What I am asking is, were those transit times
21 achieved once rehabilitation occurred?

22 A Rehabilitation is just now being concluded and
23 as I stated, I have not made a schedule-by-schedule
24 comparison, because today's schedules in many cases at
25 least constitute a different type of traffic and a

1 different train symbol with different objectives than
2 were formulated in the 1977 -- the six-year-old study.

3 As a general judgment, in my observation,
4 again without the ability to make this
5 schedule-by-schedule comparison, my answer would have to
6 be yes. They have certainly approached, if not actually
7 been achieved or exceeded, as an example, the
8 St. Louis-Los Angeles running time.

9 Since the implementation of trackage rights
10 over the Missouri Pacific that was projected in the 1977
11 base operating plan has been achieved, to the best of my
12 knowledge.

13 Q But you would agree, would you not, that
14 traffic patterns are somewhat dynamic and, of course,
15 operating conditions change from time to time, so
16 variations do occur from a point in time operating plan;
17 isn't that correct?

18 A Yes.

19 Q So when you say, on page 2, near the bottom of
20 the page, that you devoted full time to developing a
21 sensible, workable, operating plan that will be helpful
22 not only for purposes of the ICC proceeding, but also
23 for real world purposes, i.e., as a guide for actual
24 implementation of merged operations, you were referring
25 to that dynamic character, and you would not anticipate

1 that precisely everything that you project occurs; isn't
2 that correct?

3 A I think that's a fair statement; yes.

4 Q Now, turning to page 3 of your statement,
5 under Development of Operating Plan, you state a number
6 of policy objectives that were imparted to your
7 operating team by witnesses Lacy and Fitzgerald.

8 The first of those states, and I quote: "To
9 establish routes that would maximize service improvement
10 through the combined use of line segments of both
11 railroads."

12 Should I take that to mean that that objective
13 was to rationalize the two systems' route structures to
14 maximize their hauls?

15 A No. I wouldn't equate that objective with
16 those words at all.

17 Q Okay. Well, how would you equate that
18 objective?

19 A I would equate -- maybe I misunderstood your
20 question, but let me state it in my words anyway. I
21 would equate service improvements to the combined use of
22 line segments on both railroads in a manner that would
23 take advantage of the shorter routes, take advantage of
24 the free capacity for faster or at least more reliable
25 schedules that one railroad may possess over another

1 railroad in areas in which they could be used
2 interchangeably, to take advantage of the ability to
3 consolidate at yards, and handle traffic in a single
4 facility instead of two facilities, as many cities
5 currently have.

6 All of the elements that would go into service
7 improvements that would provide, if possible, an
8 improved service for the customers, either in terms of
9 additional reliability or in as many cases as possible,
10 in terms of lesser transit time.

11 Q Those service improvements occur on the
12 combined system; correct?

13 A Yes.

14 Q And they could basically be described, as they
15 have been throughout the course of this testimony, under
16 the generic term single line service?

17 A I think that's an element in it, but I can't
18 quite equate the term single line service in with a lot
19 of the operating characteristics. There is a
20 relationship there, so I guess I will agree with your
21 statement.

22 Q Basically, when you are working to combine two
23 systems, as I understand it, the service improvements
24 relate to a great degree -- and now I'm not talking
25 about the results, but the improvements that you put in

1 -- to internal rerouting and the elimination of
2 interchange.

3 Is that a fair statement?

4 A Yes.

5 Q In your experience -- and you've had a lot of
6 experience in railroad operations, all things being
7 equal, doesn't a railroad generally prefer its long
8 haul?

9 MR. STEPHENSON: Objection, Your Honor. This
10 is really in the nature of traffic testimony. It's been
11 covered ad nauseum with the policy and traffic
12 witnesses, and this witness is not sponsoring traffic
13 solicitation policy. He is here to sponsor the
14 operating plan.

15 JUDGE HOPKINS: What's the relationship to his
16 testimony?

17 MR. SANFORD: Your Honor, when he incorporates
18 service improvements throughout which lead to single
19 line service, those improvements. And then he takes the
20 traffic that the traffic department gives him and puts
21 that in trains. Now, he could short haul himself, or he
22 could send it long haul.

23 JUDGE HOPKINS: I'll allow you to go ahead
24 with this, but let's generally keep to what he's
25 testifying on.

1 MR. SANFORD: Okay.

2 JUDGE HOPKINS: Thank you.

3 THE WITNESS: I have to disagree a little bit
4 with your hypothesis. From the terms of an operating
5 plan and from the perspective of the operating
6 department, they take the traffic that is provided to
7 them through the marketing efforts of the railroad
8 company and the gateways that are associated with the
9 flow of that traffic, and they handle that traffic from
10 its origin to its gateway or gateway to its destination,
11 or whatever the situation may be, in the most efficient
12 manner they possibly can.

13 They normally will not determine the gateways
14 of that traffic, and they're handling the traffic in
15 whichever manner it is routed on the waybill when it is
16 tendered for the operating department to handle the
17 car.

18 BY MR. SANFORD: (Resuming)

19 Q Turning to your plan itself and with no
20 specific reference, could you briefly -- as I understand
21 it, the basic operating plan -- and I'm summarizing here
22 to move along -- was developed on the basis of a time
23 period, within 1983, you developed the base case.

24 Could you describe how you developed that?

25 A We took the loaded traffic from revenue data

1 bases from the Santa Fe and Southern Pacific for three
2 months -- August, September, and October 1983 -- which
3 reflected several items that were enumerated in the
4 plan, and we added to that from the operating data bases
5 on the two railroads the MT movements that also occurred
6 in the like period.

7 We simulated, through our simulation model,
8 the actual operation of the Santa Fe and the Southern
9 Pacific roads, independently, as they currently operated
10 during that period.

11 We then took the two individual data bases,
12 flowed the interchange traffic from the Southern Pacific
13 data base out to encompass its Santa Fe origin or
14 destination, and combined the non-common traffic from
15 the Santa Fe and formed a single data base that gave us
16 the merged data base before divergence.

17 We then made the necessary changes in the
18 individual operating plans, both their blocking
19 strategies and train operating strategies, that were in
20 accord with the policy that Mr. Lacy and Mr. Fitzgerald
21 provided to us. That, in effect, took the base traffic,
22 the traffic as it was in those three months, flowed it
23 over the combined lines of a new system, and termed the
24 results of that the internal reroute effort.

25 Those would be the results following internal

1 reroutes. We then took the new traffic, as provided by
2 the rail diversion study, and subsequently additional
3 traffic as provided by the truck diversion study, added
4 it to the base traffic, and made further changes in the
5 schedules, in the blocking plans, and in a few cases in
6 the routing to accommodate those changes that were
7 brought about by the diversion studies.

8 Q But at the first step when you did the base
9 case which you called the internal reroute, you had
10 developed at that point, I assume, a base case of train
11 schedules combining the two systems' blocking patterns
12 and all that goes into an operating plan, absent the
13 diversion study and absent the truck diversion study.

14 Is that right?

15 A Yes.

16 Q So the simulation model itself could route
17 traffic.

18 A No. The simulation model, as we used the
19 model, keeps track of the traffic routings that are made
20 by the analysts that are operating the model and
21 providing the input to the model.

22 The analyst is using the gateways in this
23 case, the origin and destination, as are contained in
24 the data base. So the analyst has a choice of routing a
25 Bay area to Los Angeles car via one route or another,

1 but it does not have the capability, nor does the model
2 have the capability to change the origin of the Bay area
3 or the destination of Los Angeles.

4 Q Well, the input then would be
5 origin/destination; is that correct?

6 A That is correct.

7 Q And then the analyst -- and I assume this
8 analyst is in your shop, is that correct?

9 A We have a team of analysts working under my
10 direction. They included people from the Santa Fe, from
11 the Southern Pacific, and from Rook, Allen.

12 Q Okay. So the analyst then selects a routing,
13 and that goes into the model. He's got
14 origin/destination. He decides how he's going to route
15 it internal to the system.

16 A The first step is the analyst looks how the
17 traffic is gathering through the gathering service over
18 the interchange of receipt. They block the traffic in
19 accordance with the patterns of the gathering service,
20 and where traffic is accumulating for various
21 destinations or mid-point destinations for further
22 switching.

23 Q Once the blocking pattern is established, then
24 the blocks are assigned to trains, and then the analyst
25 will route the trains on the network as it accomplishes

1 the various objectives. And in some cases, you will
2 find areas that cause another turn. You have the
3 ability to go back and improve your blocking plan
4 through some discoveries.

5 When you begin to change some of your train
6 operations, you discover there can be improvements made
7 in the blocking plan, and you will do the cycle over
8 again. But the blocking plan starts first, and the
9 routing of the trains follows.

10 Q Now, can you -- I assume you gave operating
11 input to DNS; is that correct?

12 A Yes. We provided them with some input.

13 Q Could you tell me what that was?

14 A The basic input we provided DNS would be
15 changed junctions or changed -- or where significant
16 changes occurred in the use of routes. That was our
17 basic input, only where there were changes occurring in
18 the -- significant change in the use of a route or a new
19 junction or, in the case of a closed junction, which
20 there were really no closed junctions, we would have
21 provided them with a closed junction.

22 Q At which stage of the proceeding of your
23 process did you give this information? In other words,
24 what data base were you working off of at the time you
25 gave operating information to DNS?

1 A We were working with the merged internal
2 rercute data base, if I recall correctly.

3 Q So DNS never received from you for input to
4 their study the final operating plan?

5 A The final operating plan was produced as a
6 result of their study.

7 Q I am just trying to get this clarified in
8 sequence as to how it happened.

9 A Okay. So you gave the basic data to DNS and
10 then they gave what back to you?

11 A They provided us with their traffic that was
12 diverted from their study, both the volume and the
13 origin/destination of the flows before diversion, and
14 with the volume and the origin/destination of the flows
15 after diversion.

16 Q They gave you input in the format of origin/
17 destination; is that correct?

18 A Yes.

19 Q And junction points? Would they give you
20 junction points?

21 A The origin/destination on SP/Santa Fe system,
22 so that would include junction points if it were going
23 offline at Ogden.

24 Q I think you're familiar with the fact that
25 there is traffic that moves today SP Ogden DEGW or UI,

1 Kansas City, and may come back to the SP there or SSW.
2 So you would get two sets of origins and destinations on
3 a route like that?

4 A In that example, yes. We would get an origin
5 of somewhere in California, Oregon, with a destination
6 of Ogden. We'd have another origin of Kansas City with
7 a destination of St. Louis and its proper connector at
8 St. Louis.

9 Q Did you participate at all in the development
10 of the assumptions for the DNS study?

11 A No, I did not, other than I have stated on
12 providing them the gateway data that was assumed in the
13 operating plan and the route data.

14 Q Now, just to clear up one point. Mr. Rhodes
15 of A. T. Kearney last week, I guess, testified that you
16 gave an operating briefing to the Kearney people in
17 preparation for their performing their study.

18 Q Could you tell us when that briefing was
19 given?

20 A I don't recall the date. I believe it was
21 some time just before the end of 1983, but I could be
22 corrected on research, but I did give such a briefing.

23 Q And what data was that based upon?

24 A This was based on some of the preliminary
25 conclusions of the merged base data and some of the

1 changes that were in prospect at that time.

2 Q Did you ever update that data to A. T.
3 Kearney?

4 A No.

5 Q So they never had the benefit of your final
6 operating plan?

7 A Again, the final operating plan was following
8 the results of the DNS study, so that basically is
9 correct.

10 Q Do you recall what operating assumptions you
11 gave them?

12 A I can recall two or three. Our preliminary
13 studies had demonstrated that most cases where there was
14 an interchange occurring between the Santa Fe and
15 Southern Pacific, car movements would save close to a
16 day.

17 An example, as I recall I specifically gave
18 them, is a car coming out of Oregon that may have been
19 destined to a Santa Fe destination somewhere in Texas
20 that was interchanged at Stockton or Bakersfield. That
21 car would no longer have to go through the interchange
22 at Stockton or Bakersfield, and would move on a through
23 train, and the interchange basically would consume 18 to
24 24 hours time under normal circumstances.

25 I extended that; that many of the other

1 interchanges with other railroads that were involved in
2 a yard-to-yard interchange would follow a similar
3 pattern, although as I recall, I cautioned that where
4 there were run-through interchanges that now occurred in
5 the so-called run-through mode, the 18 to 20 hours would
6 not apply.

7 Beyond that, I alluded, I believe, and gave a
8 few examples of the reliability improvements that would
9 occur through somewhat better schedules and certainly
10 more consistent operation by use of routes
11 interchangeably for their best operating purpose.

12 I will try to restate that. That's a little
13 more clear. The ability of certain routes to perform
14 under time-sensitive or manifest schedules on the roads
15 individually varied quite a bit.

16 Through the combined route structure -- and
17 I've given a couple of examples in the operating plan --
18 we could use the capacity to permit a more consistent
19 movement of the various types of freight by routing
20 certain types on one line and other types on the other.

21 Q Turning to your network simulation or
22 simulation network model itself, could you, in layman's
23 terms, explain to me what a node represents?

24 A A node, of which we had about 750 as I recall,
25 can represent any number of things. The basic concept

1 behind a node is where the freight gathers or where the
2 freight is distributed from. So that in its simplest
3 terms, perhaps if you have a branch line that branches
4 off the main line, and you have a crew that goes out and
5 gathers up all the traffic on that branch line, we could
6 represent that branch line by a single node.

7 The several stations on that branch line would
8 be aggregated into a single node of origin or a single
9 node of destination.

10 It extends further than that as we go into
11 special purpose nodes. So we will go in and we will
12 take an interchange, a major interchange, and make a
13 node out of it. So that the Denver Rio Grande at Ogden,
14 the interchange becomes a node, and we can even break it
15 down finer in that one. Operating data that we should,
16 or we might gain some advantage by so doing. And when
17 the data quality permits -- and in the case of the Rio
18 Grande at Ogden, we would read at least from the loaded
19 waybills eastern destinations or eastern origins, and we
20 would represent that in our network by DRGW Denver node,
21 to indicate that it would be in a block out of
22 Roseville, but wouldn't be destined for Ogden or Salt
23 Lake City or even Grand Junction, but it would go Denver
24 and beyond. So we further broke it down.

25 And, similarly, we can break commodities

1 down. If we want to take out a preference commodity
2 such as autos or auto parts, we will assign a traffic
3 flow to a basic node and we will reassign it to a special
4 node that is created for the purpose of recognizing TOFC
5 or auto parts or perishable or whatever -- coal.

6 Q So part of -- sometimes, when I look at the
7 schematic diagrams of a simulation network -- you must
8 have a good ophthalmologist, that's all I can say.

9 A node may represent a significant block of
10 traffic. But since you anticipated my question, I'd
11 like to look at the node at Ogden which seems to be on
12 Exhibit 13-3.

13 A For the merged network, yes.

14 Q Right. And now I have to refer to some notes,
15 because I had a hard time reading these. Ogden itself,
16 I think, is node 80. Is that right?

17 A Yes.

18 Q And DRGW generically is node 88.

19 Q Yes.

20 Q And DRGW Denver is node 90.

21 A Yes.

22 Q Now, node 81 which is Union Pacific is divided
23 down to node 82, UP Denver; node 83, UP North Platte;
24 and node 84 is UP North Platte perishable.

25 My question is, isn't there a significant

1 block of traffic that could be DRGW Pueblo, DRGW
2 Harrington, and DRGW Kansas City?

3 A With regard to the DRGW Harrington traffic,
4 that basically represents the operation that was formed
5 as a result of the DRGW SP agreement.

6 Q Right.

7 A And we pick that train up again at Harrington
8 with the Harrington origin on the Cotton Belt Southern
9 Pacific system and conversely, of course, in the western
10 flow of direction.

11 Your question is basically true. There could
12 be a significant block of traffic that is destined to
13 each of those points. The data that we are using
14 truncates a post-Ogden route so we have only the
15 information that Ogden DRGW is an offpoint in that case
16 for the system.

17 And then we also have the information of the
18 ultimate destination of that car, whether it be New York
19 or Georgia or wherever. So with that data quality, or
20 the deficiency in the data quality, in a situation as
21 you describe, we would have a difficult time in
22 portraying accurately that Denver traffic which was
23 Denver, that which was Pueblo, that which was
24 Harrington, that which was Kansas City, but they could
25 all include flows to Chic, as an example.

1 We recognize this as a deficiency in our data
2 from time to time. In each individual study that we've
3 done using the model, we have looked at whether or not
4 that made any difference in whatever purpose we were
5 using that for.

6 If, for example, we knew that Roseville was
7 indeed making three separate blocks out of the traffic
8 that we determined is DRGW Denver traffic, we would
9 carry that fact, along with our operating plan
10 preparation, outside the model. And if we were to show
11 a difference in workload on Roseville as a result of
12 some change in that, we would also have that fact in
13 mind in portraying that change in workload.

14 Q You are aware that Roseville does prepare
15 blocks for DRGW Pueblo, DRGW Harrington, and DRGW Kansas
16 City.

17 A Yes.

18 Q Yet you don't have the nodes. Is the data on
19 the UP superior, and that's why you got it all broken
20 down?

21 A No, the data is the same. The decision for
22 splitting North Platte and Denver was more clearcut as
23 to accurately portray those by the state of
24 destination.

25 Q Now, turning to another matter, you've worked

1 with the Southern Pacific with respect to operating
2 plans a fair number of times, and had occasion to review
3 that material. I think we established that earlier.

4 When you develop service improvements and the
5 are implemented, the carrier does follow through on
6 those service improvements; correct?

7 A Yes.

8 Q And they attempt to sell that service; is that
9 correct?

10 A Yes.

11 MR. SANFORD: Mr. Owen, I have no further
12 questions.

13 JUDGE HOPKINS: Mr. Dreiling.

14 BY MR. DREILING:

15 Q My Owen, my name is Bob Dreiling. I represent
16 the Kansas City Southern Lines.

17 I think I understand who made the decisions on
18 the routing of the train schedules, and those are going
19 to be my first two questions.

20 I take it you're telling us the analysts, in
21 the course of working the program or simulating the runs
22 through, there is a trial and error factor based upon
23 the results, and they made the ultimate determination as
24 to train schedules and routings that show up in the
25 final package?

1 A No. The analysts made the preliminary
2 determination. The ultimate determination was really
3 made by the managements of the two railroads. That's
4 where the ultimate determination was.

5 Q Were you involved in discussions with the
6 management of the two railroads regarding the ultimate
7 determinations on train schedules and routings?

8 A Yes.

9 Q Who represented both railroads or each
10 railroad in those discussions?

11 A Well, there were several discussions that
12 occurred, and most regularly occurred with Mr. Lacy and
13 Mr. Fitzgerald. They did occur, however, from time to
14 time on at least two occasions and possibly more, with
15 Mr. Cena and Mr. McNear.

16 Q Did they make any changes to the proposed
17 operating plan insofar as train schedules are
18 concerned?

19 A I can't recall. By "they," are you referring
20 to whom?

21 Q Mr. Lacy and Mr. Fitzgerald; and, when they
22 were involved, Mr. Cena and Mr. McNear.

23 A With regard to the time scheduling of trains,
24 I can't recall any changes that they personally made.
25 They made numerous changes and made numerous decisions

1 with regard to the options that were available as to
2 where to switch cars or what facilities to use and which
3 lines to use.

4 Q Okay.

5 I take it from what you say, then, that these
6 were kind of ongoing meetings? That is, you didn't
7 complete a proposed operating plan and then submit it to
8 them, but you would go back to them from time to time
9 while you were in the process of developing proposed
10 operating plan?

11 A That's correct.

12 Q In your discussions with them on both setting
13 up the use of your program and making the ultimate
14 determination of train schedules, did you consider
15 existing interchanges with other railroads?

16 A Yes.

17 Q Did you consider the impact of your proposed
18 operations on those interchange operations?

19 A Yes.

20 Q And did you endeavor to continue those
21 existing interchange operations?

22 A Absolutely, where it was practical to do so.

23 Q And specifically, was there a discussion of
24 the Santa Fe's existing interchange with the KCS at
25 Dallas, Texas?

1 A Yes. I was involved in a series of
2 discussions.

3 Q Are you familiar with the nature of that
4 interchange operation?

5 A Yes.

6 Q What is that?

7 A That basically is a set of run-through trains
8 that originate in California or terminate in California
9 and are given to the KCS or the L&A at Santa Fe's East
10 Dallas Yard.

11 Q In the course of your discussions with Messrs.
12 Lacy and Fitzgerald and Mr. Cena and Mr. McNear, did you
13 attempt to find ways to continue the run-through train
14 operation at Dallas with the KCS?

15 A I'm not sure whether the specific operation of
16 that set of trains was addressed individually with
17 either of those gentlemen. So I can't answer. I don't
18 know the answer to the question.

19 Q Can you tell us whether or not the final
20 operating plan provides for train operations that will
21 allow the continued run-through interchange?

22 A I think I will describe the operation as
23 envisioned for those two trains in the operating plan.

24 Q If you could.

25 A In the eastward direction out of California,

1 the schedule of the train is maintained intact.
2 Presently, the symbol of the train, 975, begins in the
3 Bay area, operates to Barstow, where it lays over for a
4 period of time and waits for a connection coming from
5 Los Angeles. And the symbol 975 then continues over the
6 Santa Fe to Dallas, where it is turned over to the I&A.

7 The operating plan changes the origin of the
8 symbol to Los Angeles, simply because the majority of
9 the traffic is coming out of Los Angeles. And the train
10 that would operate from the Bay area to Barstow to
11 provide that connection is carrying traffic for Pine
12 Bluff-Memphis, and was given a symbol to convey the fact
13 that it was a Bay area Pine Bluff train, so it's the
14 BAPBT.

15 Q BAPBT?

16 A That's right; the Bay Area Pine Bluff, and T
17 for TOFC.

18 Q And could you show me in the operating plan
19 where the symbol, the train symbol 975 shows that it's
20 operating between L.A. and Dallas?

21 A I don't believe that's in the yellow volume.
22 I think you'd have to go to the simulation printout,
23 since there was no change in the service on 975, only a
24 change -- there's no change in the schedule, no change
25 in the connections.

1 We did not include that as a changed service
2 because there was none, but in the simulation printout,
3 975 will show as operating from Los Angeles at the same
4 time as its connection operates from Los Angeles today,
5 and the BAPBT operates from the Bay area at the time as
6 975 operates today. They make the same connection at
7 Barstow, and adhere to the same schedule, Barstow to
8 Dallas.

9 Q Okay. Let me get this straight. The BAPBT
10 leaves Oakland at 2:00 o'clock in the morning, whereas
11 975 heretofore has left Oakland at 2:00 o'clock in the
12 morning.

13 A Yes.

14 Q Arrives Barstow at 1800 hours on the first day
15 and departs Barstow at 1930. Now, are you telling me
16 that it then picks up the 975 cars -- are you telling me
17 that traffic that used to operate on 975 between Oakland
18 and Barstow will now be handled in the BAPBT train?

19 A The L&A traffic that used to operate on 975 is
20 handled as far as Barstow on the BAPBT train. It
21 remains at Barstow for the Los Angeles connection, as it
22 currently does.

23 When 975 comes in from Los Angeles, the
24 traffic is added to 975 at that point. So what has
25 occurred in those two trains, there has been a

1 transposing of the symbol only, but there has been
2 absolutely no change in the present schedule.

3 And since the operating plan is portraying
4 changes, that particular item is not in the operating
5 plan.

6 Q The L.A. connection, 975, comes out of I.A.
7 and comes through Barstow and departs Barstow at the
8 1930 -- or let's see what the time is.

9 A It departs Barstow, on the present schedule,
10 on 975.

11 Q That would be at 12:01 on day two; is that
12 correct?

13 A Yes, that's correct.

14 Q Okay. Now, what about westbound?

15 A The westbound -- the current offset to that
16 train is 579. And in the period of the operating plan,
17 it was operating with approximately 37 loads a day,
18 according to our data, as a run-through operation on
19 those days that KCS brought it in as a run-through
20 operation.

21 For the post-traffic study operating plan,
22 that 37 loads a day as an average day had dropped to
23 about 15, and we were faced with the situation of having
24 a former run-through train that only had 15 loads on it
25 on an average day.

1 In formulating the operating plan, we
2 recognized that this was a valuable connection at the
3 current time, and we wanted to take those reasonable
4 efforts that we could to preserve that connection.

5 We did find ourselves with an imbalance of
6 trains and crews, therefore, at Dallas. And we operated
7 the train as a run-through in that effort to preserve
8 the run-through operation to the main line where the
9 blocks it contained could be passed to multiple trains.
10 There would be an option in order to preserve at least
11 the service that currently exists on that train, even
12 though the size of the train had dwindled to only 15
13 cars a day.

14 The normal procedure would have been to
15 operate it to Brownwood and pass the blocks at
16 Brownwood. By the time it left Brownwood, it had
17 something like just seven or eight cars, seven or eight
18 loads on an average day as a through block.

19 And we still found ourselves with an imbalance
20 of crews over that line and we operated a train to
21 Clovis, where the imbalance ended with this remaining
22 handful of cars.

23 The thought in mind, then, when it arrived at
24 Clovis, it would have the full benefit of numerous Santa
25 Fe mainline trains to pick up the Los Angeles block that

1 remained on the train, and that's what the operating
2 plan portrays.

3 Q Okay. During what period did you observe the
4 15 loads per day via Dallas and the seven to eight loads
5 per day out of Brownwood?

6 A That is the result of applying the traffic
7 study from DNS to our operating data base.

8 Q Could you turn to page 5 of your verified
9 statement -- of the operating plan -- I'm sorry.

10 Actually, page 4 is where I am initially
11 interested. You indicate your use of the waybill
12 records to develop the base cases for both companies.

13 A Yes.

14 Q Did you rely simply upon the computer tapes,
15 the record file of the computer tapes, or did you go to
16 the waybills themselves?

17 A No. We relied on the computer file of the
18 waybills.

19 Q Did you observe any problems with regard to
20 the contents of the computer records?

21 A No. They mesh very well with the actual car
22 loadings for the period that we were studying. I
23 observed no problems whatsoever.

24 Q Did you find any instances where there may
25 have been multiple cars on one waybill and you couldn't

1 identify the total number of cars?

2 A No. Our format that we received the data from
3 provided for that, so if there were multiple cars on a
4 waybill, that was included in our data that we received

5 Q Did you run into any instances where there
6 were multiple waybills covering each container on a car,
7 plus the car itself?

8 A In the data requests, and as the data was
9 furnished to us from both railroads, we specified that
10 we wanted, in the case of TOFC and COFC, that we wanted
11 the underlying rail car. And that was the record we
12 were to use, and so we were using underlying rail cars
13 in terms of TOFC carloads.

14 Q Then I note that you went to the -- for actual
15 empty movements, you took those from each road's
16 operating movement records. Was there any reason why
17 you chose to use the two different sources; that is, the
18 waybill record file for the loads and the operating
19 movement records for the empties?

20 A The diversion studies are normally conducted
21 on the revenue waybill files, and we just proceeded with
22 the policy of consistency on data bases for this type of
23 study in the past, so we have made every effort to make
24 sure that our data sources were the same.

25 We have used operating records for loads in

1 the past also, but for different purposes, not for this
2 purpose. So we carried forward what we've done in the
3 past.

4 Q Would you consider that the railroads'
5 operating movement records were less reliable than the
6 waybill file?

7 A No. I think each has its own advantages and
8 disadvantages, but in terms of its overall reliability,
9 I find them equally reliable.

10 Q Now, on page 5, at the top of page 5, you
11 indicated that where tear weights were missing or
12 defective, you entered a default value of 35 tons per
13 car.

14 Did the information that was provided you in
15 the waybill records and the movement records identify
16 the car by car initial, owner's initial and car type?

17 A We had some aggregated data in the case of
18 loads, but the car type was in there. And in the case
19 of the waybill file, the revenue waybill file, tear
20 weights were normally specified.

21 In the case of the empty waybill file, I
22 believe both of them -- and I know that at least one of
23 those was matched against the UMLER file on a car number
24 basis before we received it, and the actual tear was
25 inserted in the file.

1 We conduct a check of tear weights to see how
2 many cars were actually resorting to the default value.
3 It was in the magnitude of -- it was under 2 percent; I
4 believe it was under 1 percent that we were resorting to
5 the default value.

6 Q This was going to be my question. That is,
7 why could you not have resorted to the UMLER file for
8 the actual tear weights?

9 A In the case of the empties, as I said, we
10 did. In the case of the loads, we were receiving
11 aggregated data.

12 Q Down toward the bottom of page 5, under your
13 merged simulation discussion, you indicate that loaded
14 interchange flows between SPT and ATSF were taken only
15 from the SPT data base, with the point of interchange
16 being eliminated as an origin or destination within the
17 merged railroad.

18 Q Can you explain why you chose to use the SPT's
19 data base rather than the Santa Fe's?

20 A We basically looked at the two data bases and
21 their contents and what they were provided to us. The
22 work was being performed in San Francisco, and on the SF
23 computer it was primarily a convenience after we
24 determined that they pretty well matched each other and
25 there were no major gaps between the two data bases.

1 Q Did you at all find that the SPT traffic tapes
2 were more reliable than the Santa Fe's?

3 A No. Again, I think they were equally
4 reliable.

5 Q Were these tapes, the printouts you used, were
6 they specially constituted printouts, or were they just
7 a printout containing all the information with respect
8 to all traffic?

9 Let me rephrase it for you, Mr. Owen. Were
10 they printouts which contained only information which
11 you requested, or were they the standard printouts which
12 the railroads would prepare if you asked for the traffic
13 data printout?

14 A I'm not sure that I understand your question.
15 Are you asking about only the traffic tapes that were
16 provided to us?

17 Q Yes. The tapes that were the basis for your
18 base cases.

19 A Okay. We had no printouts. They were
20 strictly given to us in tape form. What we did with
21 those tapes was enter them into our process and start
22 our process right from that tape, identifying those
23 records in the tape, record by record, that would not
24 match our process which involves noding each of those
25 records.

1 We have a record count on the tape, say
2 500,000 records, and we put it through our process on
3 the basis of station numbers and the other
4 characteristics come out of the interchange that I was
5 describing before.

6 And we assigned an origin node and a
7 destination node to each and every one of those 500,000
8 records. Any records that are contained in that tape
9 that do not node in accordance with the instructions
10 dump out, if you will, into a no-hit list. We then go
11 over that no-hit list line by line and attempt to
12 determine why that record was defective.

13 And after we cover the no-hit list, we have
14 something like 99.88 or 99.90 percent of the records
15 node properly. The remaining one-tenth of 1 percent of
16 the records we set aside and don't use.

17 MR. DREILING: I have no further questions.

18 JUDGE HOPKINS: Thank you. Who is next?

19 MR. ROPER: Your Honor, I am Michael Roper. I
20 have not previously examined any witnesses, but I
21 believe my appearance was entered.

22 BY MR. ROPER:

23 Q Mr. Owen, when were the final details of the
24 operating plan made or arrived at?

25 A Well, I think they were arrived at a few at a

1 time, if you will, over the entire period that the
2 operating plan was under preparation.

3 Q When was it in final form?

4 A In late February or early March. I don't
5 recall the exact date.

6 Q Of '84?

7 A Yes.

8 Q Looking at page 3 of your testimony, your
9 verified statement, you list the policy objectives that
10 were given to you by Mr. Lacy and Mr. Fitzgerald.

11 Q Did you have any input into development of
12 these objectives?

13 A We participated as they were developed. So in
14 that sense, yes. But the objectives, as formulated,
15 were the objectives of their respective judgment and the
16 judgment of their management.

17 Q And so these objectives were given to you to
18 apply to the operating plan?

19 A Yes.

20 Q I believe the second policy objective
21 discusses the consolidation of redundant facilities. Do
22 you see that?

23 A Yes.

24 Q Would you define how you used the term
25 "redundant facilities"?

1 A Part of the studies that were involved in the
2 development of the operating plan was to identify at
3 common points or at affected points -- which would be a
4 surviving, if you will, facility -- where the main
5 action would occur insofar as operations were concerned,
6 at the locations concerned, and then determine what, if
7 any, use was appropriate for the surviving or the
8 remaining facility that was not involved in the
9 operating plan.

10 So whether it be yard facilities or whether it
11 be lines or what have you, we identified those
12 facilities that would be used and we identified as a
13 team, the use that the other facilities would be best
14 put.

15 As I recall, we did identify two facilities
16 that were redundant in the truest sense of the word, and
17 I believe that they are included in the testimony of
18 other witnesses that are true surplus. One is El Paso
19 and one, as I recall, in the Santa Fe Yard, and one is
20 the Broadway Yard of SP at Fort Worth.

21 Q Would the lines that are scheduled for
22 abandonment also be considered to be redundant
23 facilities?

24 A Certainly. Those line segments that are left
25 are redundant.

1 Q I believe the third objective is to maximize
2 the use of well-maintained, high capacity routes and
3 thus avoid the need for extensive rehabilitation.

4 Could you give us your definition of what the
5 well-maintained high capacity route is?

6 A I alluded to that, I think, a little bit
7 earlier, Mr. Roper, in an example that I will follow
8 through on now, and that is the Sunset route and the use
9 of the Santa Fe east-west mainline across Arizona and
10 New Mexico.

11 The east-west mainline of the Santa Fe is
12 double track CTC or TCS on the Santa Fe and reverse
13 signaled in many portions of it. And while the Sunset
14 route of Southern Pacific is centralized traffic
15 control, it is single track virtually in its entirety,
16 at least from the top of the hill at Beaumont,
17 California.

18 The Sunset route right now is essentially at
19 or exceeding capacity, at least in terms of the ability
20 of its trains to meet their time commitments and their
21 market commitments. We recognize this. We recognize
22 that one of the vital benefits of the corporation after
23 merger would be the consistency of service and the
24 ability of those trains to meet those time commitments.

25 By combining and intermixing the use of those

1 two routes, we have developed a plan that has
2 accomplished just that, in my opinion. We have cut back
3 on the incidence of use of the Sunset route between El
4 Paso and Los Angeles to the point that the several
5 piggyback trains that are left on that route will have
6 the opportunity to consistently meet their schedules.

7 We have lightened the use of that route just
8 enough that we'll be able to meet the schedule
9 commitments of those piggyback trains, and indeed we put
10 some piggyback trains down there that don't currently
11 operate as a result of the diversion studies.

12 In the case of the Santa Fe route, there is
13 double track. There is much higher capacity to handle
14 the mix of trains that mix the manifest trains and the
15 piggyback trains, especially in those areas that are
16 reverse signaled. And they were well able to
17 accommodate those trains.

18 By putting those trains on the Santa Fe double
19 track line, they in turn will also have a more
20 consistent operation.

21 Q All right. Would you say that -- well, first
22 off, how do you determine the capacity of a line?

23 A Now, that is a multi-step question in some
24 cases. Certainly, the operation of a line that is going
25 on at any given time is one step in the determination of

1 the capacity of a line.

2 You know what that line is handling. You know
3 in what fashion it is handling the traffic, whether it
4 is reliable, whether it is inconsistent.

5 We have numerous tools to determine whether or
6 not lines have the capability of accepting increased
7 traffic. One of the prime tools, of course, is the
8 judgment of the experienced operating officers in this
9 case, as well as myself.

10 I have had experience in judging on the
11 surface capacities of lines. If there is a question as
12 to the judgment, we also have tools available to us that
13 will simulate, through the use of a computer, the line
14 capacity of any given line.

15 Certainly, that can be done manually, if
16 necessary, even without the use of a computer. And we
17 have used both systems in the past when the occasions
18 have arisen. So it's a multiple answer to the
19 question.

20 Q Are you saying that there is some sort of
21 judgmental factor and then some sort of mathematical
22 approach as to how you determine -- there are formulas
23 you use to determine capacity of a line?

24 A No. There are certainly no straight
25 mathematical formulas because capacity has the dimension

1 of time that is involved, and that dimension is becoming
2 more and more important in recent years as the amount of
3 time-sensitive freight on the railroads is increased.

4 If you will refer to one of the exhibits in
5 the operating plan, I think you will note that it's
6 stated in terms of loaded car miles, that TCFC/COFC
7 accounts for over 50 percent of Santa Fe's traffic and
8 over 30 percent of SP's traffic.

9 This type of traffic, as well as perishable
10 traffic and automobile traffic, has this all-important
11 dimension of absolute time added to the normal
12 definition of capacity. So it's not a mathematical
13 approach. It has to be a judgmental approach and taking
14 in all dimensions.

15 Q How would you characterize the present state
16 of the Cotton Belt's line, known as the Tucumcari line?

17 A I characterize it, following the completion of
18 the final stage of the rehabilitation, as in good state,
19 in excellent state.

20 Q Also, as part of that objective in No. 3, was
21 the avoidance of the need for extensive rehabilitation.
22 Can you identify some routes which will not have to be
23 rehabilitated as a result of the operating plan?

24 A In that context, no, I can't. The context in
25 which this was placed referred also to putting traffic

1 over lines that are currently lighter density that would
2 then have to be rehabilitated to handle the heavier
3 density.

4 The example I have in mind there is the
5 Alpine-San Angelo line of Santa Fe which, while it might
6 be a little shorter for some traffic to move into North
7 Texas as opposed to moving down through San Antonio,
8 it's a line that would require extensive rehabilitation
9 to accommodate additional traffic, and that is the
10 context in which that is mainly taken in regard to the
11 operating plan.

12 Q So that line would not have to be
13 rehabilitated as a result of the use of well-maintained,
14 high capacity routes?

15 A It's a line that there's an option that
16 exists. And with the option we chose, it avoided that
17 rehabilitation.

18 Q Do you have any other examples where you'd be
19 able to avoid extensive rehabilitation?

20 A Not offhand, no.

21 Q I believe the last objective was to avoid
22 abandonments where rail service is currently being
23 provided to shippers; is that correct?

24 A Yes.

25 Q Would you look at page 45 of the operating

1 plan, please? I believe it says down at the bottom that
2 the abandonments shown involve line segments without
3 active shippers.

4 Do you see that?

5 A That's correct. And I am sure you are aware,
6 of course, that these line segments had been modified in
7 an errata filed with the Commission.

8 Q Is it your testimony, then, that the remaining
9 lines that are up for abandonment do not have any active
10 shippers on them?

11 A These lines, as modified? That's my
12 understanding, yes.

13 Q Is it also your testimony that these
14 abandonments are made possible because of the merger?

15 A Yes.

16 Q How was the determination made whether a line
17 was to be abandoned?

18 A It was made outside the context of the
19 operating plan initially. And I didn't participate
20 actively in that discussion. So I'm not in a position
21 to answer you directly.

22 Q I presume Mr. Lacy and Mr. Fitzgerald will be
23 able to answer those questions?

24 MR. STEPHENSON: Or we have some witnesses who
25 are sponsoring the abandonments. I think the questions

1 are more appropriately directed to them, Messrs.
2 Anderson and Sonefeld.

3 BY MR. ROPER: (Resuming)

4 Q Do you know whether or not other line segments
5 were considered for abandonment, but were rejected for
6 one reason or another?

7 A From time to time, the discussions involve
8 certainly some other line segments that were at least
9 thrown in as ideas, but in accordance with the policy
10 that Mr. Lacy and Mr. Fitzgerald developed, these were
11 the only line segments that met the requirements of that
12 policy.

13 Q Now, what was the policy, as you understood
14 it, from those two gentlemen?

15 A The policy was not to abandon line segments
16 that have active shippers.

17 Q I believe in Exhibit 13, the operating plan,
18 you indicate that the Cotton Belt line between Topeka
19 and Harrington will experience a major downgrading. Is
20 that correct?

21 A Yes.

22 Q If you look at page 38 of the operating plan,
23 as I read this exhibit, it shows that 10 trains daily
24 move between Hutchison and Harrington and 12 trains
25 daily move between Topeka and Harrington.

1 Is that your understanding?

2 A Yes.

3 Q Does that mean that there are five and six
4 trains respectively moving in each direction daily?

5 A This is stated in the typical number of daily
6 trains. It's going to vary on a day-to-day basis,
7 depending on the particular traffic on that day.

8 Q How many trains a day will move over the line
9 segment after the merger?

10 A I believe that's contained in the second part
11 of the operating plan. My recollection is that it will
12 be -- well, I'll look it up to be sure.

13 (Pause.)

14 We're projecting tonnage on Exhibit 13-18,
15 which does not state precisely the number of trains, but
16 if you will note on page 5 of 6, which is page 78, we
17 project a decrease of between 85 and 98 percent of the
18 current tonnage.

19 What's left on the line between Hutchinson and
20 Harrington is represented by a local to serve the
21 shippers on that line. What's left on the line between
22 Harrington and Topeka is represented by a local to serve
23 the shippers on that line, and also the Rio Grande
24 run-through operation that comes back at Harrington in
25 each direction, each day.

1 Q And that line segment from Hutchison to Topeka
2 will have excess capacity after the merger, will it
3 not?

4 A In the context of being able to handle more
5 than the one to three trains, yes, they can handle more
6 than one to three trains.

7 Q Are you familiar with how local operations are
8 performed on the segment from Topeka to Hutchinson and
9 Hutchinson to Liberal?

10 A I don't have direct enough knowledge that I
11 can converse with them right now. I have that material
12 in my backup data.

13 Q Do you know what the frequency of service is
14 to the local points on those segments?

15 A Not without referring to the backup material.

16 Q Do you know what the frequency of service will
17 be to those points after the merger?

18 A The intent of the operating plan is to provide
19 sufficient frequency to meet the needs of the shippers.

20 Q It would be on an as-needed basis, then?

21 A The local that was established to operate
22 across there was established on a regular basis.

23 Q A regular basis. And what is that regular
24 basis

25 A I believe it's tri-weekly in each direction,

1 so that shippers would get daily service. I'd have to
2 confirm that again by looking at the printouts.

3 Q Also referring to Exhibit 13-18, which I think
4 is just what we were looking at, are you familiar with
5 the SP's branch line from Spotford, Texas to Eagle Pass,
6 Texas?

7 A I have not inspected it personally, but I am
8 familiar with the line and its general operation; yes.

9 Q Do you know why that segment was not included
10 on the density charts that are in your operating plan?

11 A There was no change projected in the density
12 operating over the line.

13 Q Do you know where the density is on that line
14 at present?

15 A Again, I can look it up in our data because
16 the line is included within the simulation, but I don't
17 know it offhand.

18 Q Is your testimony that there will not be any
19 change in the density after the merger? Is that
20 correct?

21 A That's correct.

22 Q Do you know how many trains a day presently
23 operate between Eagle Pass and Spotford?

24 A It varies with the movement of import/export
25 traffic to and from Mexico. The basic operation will be

1 either a tri-weekly train or a daily train in each
2 direction.

3 Occasionally, during the heavy export
4 movements, the frequency has been more than one a day.

5 Q And how often does that occur, would you say?

6 A I don't have a good history to say how often.
7 I have observed it, however.

8 Q If you look at page 78 of the operating plan,
9 you see the segment between Spctford and San Antonio,
10 right across from the number 78?

11 A Yes.

12 Q Now, as I read this, the operating plan
13 project a reduction of 12.6 percent after the merger.
14 Is that correct?

15 A In terms of tonnage, yes. My recollection is
16 that there will actually be an increase in the number of
17 trains operating on that line due to a higher percentage
18 of TOFC traffic.

19 Q And how many trains would that mean moving
20 over that segment after the merger?

21 A I believe there was an increase of one train
22 on the line each day, which would result in a typical
23 day having about 16 trains on it.

24 Q Also looking at Exhibit 13-18 on page 78, you
25 see the segment Strang to Galveston?

1 A Yes.

2 Q And I believe that the operating plan shows
3 that by the fourth year after merger, there will be no
4 tonnage moving from Strang to Galveston. Is that
5 correct?

6 A It's stating there will be no through tonnage
7 moving from Strang to Galveston. There is a significant
8 amount of local traffic from Strang down to Texas City
9 Junction, and that will continue.

10 Q Do you know what those figure are?

11 A In terms of tonnage, I don't believe that
12 there are even records kept, because it's the heavy
13 amount of industry that is down in there, and they are
14 represented by road switcher movements, moving from the
15 yard at Strang to the Bayport loop and the various
16 industries on that line, of which there are a
17 significant number.

18 Q Is what you're telling me that Exhibit 13-18
19 only shows tonnage that is involved in through movements
20 and does not reflect any local traffic?

21 A Exhibit 13-18 was prepared on the basis of a
22 given link on our network for each segment that is
23 described. So we basically selected a single link of --
24 several links, for instance, between San Antonio and
25 Spotford, to use that example, where that probably

1 consisted of two or three or four links. You could
2 check on that number.

3 So for the purpose of tonnage comparisons, we
4 selected one of those links. Now, to the extent that
5 local trains with local traffic traverse that link, y ,
6 local tonnage is in there.

7 To the extent that we have local trains
8 working within a link and not traversing it, that
9 tonnage is not.

10 Q Look at page 94 of the operating plan,
11 please. You see the last entry there, "Terminal to
12 Strang and Local Servicing Area, Strang to Galveston"?

13 A Yes.

14 Q Doesn't that indicate that local freight
15 service will be discontinued, Strang to Galveston?

16 A That is the one train that currently serves
17 Galveston on the Southern Pacific. And again, that is a
18 local freight that traverses the link. In that
19 particular case, we have a link between Strang and Texas
20 City and a link between Texas City and Galveston.

21 This particular local train represents one of
22 the ones I've just described. It is a train handling
23 local traffic -- if your definition of Galveston is
24 local traffic -- that traverses the link. And the
25 tonnage that is handled on that train will no longer

1 operate on the line.

2 You refer to the abandonment page, as
3 amended. That line is proposed for abandonment over a
4 segment between Texas City Junction and the causeway
5 bridge, and again within the limits of Galveston
6 itself.

7 Q Look at page 90 of your operating plan,
8 please. Again, I don't see any entry there for Denison,
9 Texas. Can you tell me why?

10 It's right above -- do you see where Sherman
11 is?

12 A Yes.

13 Q Why is Denison not shown

14 A The intent of Sherman was to provide all the
15 traffic that was destined to either Denison or Sherman.
16 Denison is a link in our network. It just extends
17 beyond Sherman and is not represented on the schematic,
18 but the tonnage between Sherman and Plano represents
19 both the Sherman tonnage and the Denison tonnage.

20 Q Isn't Denison one of the primary interchange
21 points between the SP and the MKT?

22 A Yes.

23 Q What will happen to that interchange after the
24 merger?

25 A There is a modest decrease, as I recall. I

1 can't give you the magnitude without going into my
2 papers, but I did follow that in the course of the
3 operating plan after we received the diversion study and
4 the decrease was on the magnitude, I believe, of about
5 10 percent, 15 percent.

6 The rest of it stays intact. And the service
7 that's planned to and from Denison stays intact without
8 change.

9 Q Do you know how much traffic the SP handles
10 today at Denison?

11 A I can lock it up. I can't quote you the
12 number offhand. It's less than a train a day in each
13 direction, but the service provided between
14 Denison-Dallas and Denison-Sherman is one train a day in
15 each direction, and that train handles the MKT
16 interchange at Denison as well as the BN and the other
17 interchanges at Sherman.

18 Q I think you may have answered this, but on
19 page 38, I believe it shows annual tons between Plano
20 and Sherman would be 3 million tons. Is that right?

21 A Yes.

22 Q Gross tons.

23 A Yes.

24 Q I assume that does include the tonnage to and
25 from Denison?

1 A Yes, it does.

2 Q And then on page 79, I believe you show a
3 decrease of 16.6 percent in the segment Plano to Sherman
4 at Year 4 after the merger.

5 A Yes. Three million at present, 2-1/2 million
6 following full implementaticn.

7 Q And again, that would reflect the reduction of
8 the interchange at Denison with MKT?

9 A It also reflects changes in reductions in
10 interchange at Sherman with EN and the other connections
11 at Sherman.

12 Q How did you determine that there would be a
13 16.6 percent decrease in traffic?

14 A When we received the results of the traffic
15 diversion study, we subtracted from our data base the
16 traffic, the former route of the traffic and its
17 gateway, and we added to the data base the new traffic
18 with its new gateway. And that was simply the result of
19 applying the traffic diversion study to the data base.

20 Q Then am I to understand that when you got the
21 study back from DNS, it showed all of the routes that
22 were involved in the diversion of MKT traffic?

23 A They provided us with a tape that documents
24 that all of the diverted traffic, all the traffic that
25 was in their sampling that was diverted. It gave it to

1 us in two ways. It gave us the route before diversion.
2 That's the origin and destination on the SPSF system.

3 And it gave us the route, if you will, the
4 origin and destination on the SPSF system following
5 diversion.

6 So if we had a car, in your case, that was a
7 Houston to Denison car, as an example, then it was
8 interchanged with the MKT, that following the diversion
9 study became Houston to Chicago car and was on the SPSF
10 system the entire distance from Houston to Chicago, we
11 subtracted one car from Houston to Denison and we added
12 one car from Houston to Chicago.

13 Q So at least in part, the figures you have
14 shown as overall percentage change on these various
15 segments are dependent on the accuracy of the DNS study
16 as to rail diversions; is that correct?

17 A They represented the results of the DNS
18 study.

19 I might add to that, of course, we were
20 referring only to the line to Denison at this point in
21 time, because if we were referring to other lines that
22 may have been affected by the internal reroutes, the
23 change portrayed in this plan is going to be a
24 combination of the change of internal reroutes plus the
25 diversion study.

1 MR. ROPER: Your Honor, I believe that's all I
2 have.

3 JUDGE HOPKINS: Who will be next?

4 MR. REMES: Your Honor, my name is David Remes
5 and I'm counsel for Union Pacific.

6 BY MR. REMES:

7 Q Good afternoon, Mr. Cwen.

8 A Good afternoon, Mr. Remes.

9 Q On page 107 of the operating plan, it states
10 that: "Starting in Year 3, all freight traffic will be
11 rerouted away from ATSF's line between Stockton and Fort
12 Chicago, and Amtrak will be the sole user of this line."

13 Do you see that?

14 A Yes

15 Q Did you in fact make this assumption in your
16 operating plan?

17 A The assumption that went into that in the
18 operating plan was twofold: Firstly, SPSF freight
19 traffic currently moving over the Stockton-Port Chicago
20 line or the Delta line would subsequently operate over
21 the Moccoco Subdivision after the Moccoco was
22 rehabilitated.

23 The second part of that assumption was that
24 the current Sacramento Northern operation, which
25 operates from Stockton as far as the Pittsburgh steel

1 plant on that line, would also route via the
2 SP-Mocccc Subdivision based on a negotiation that we
3 would assume would occur between SPSF and the Union
4 Pacific.

5 The reasoning behind that was that letting the
6 steel train operate on that route all by itself under
7 the terms of -- as I would understand the terms -- of
8 the Sacramento Northern contract, would probably -- and
9 I did not conduct a study to ascertain the extent -- but
10 probably increase the Union Pacific's cost of operating
11 that steel train significantly.

12 We therefore assumed that Union Pacific would
13 want to renegotiate the operation of the steel train and
14 use the route that SP operated the steel train on when
15 SP had the portion of that steel train business.

16 Q Before proceeding to explore your assumptions
17 about what UP may or may not be willing to do, I just
18 wanted to direct your attention to page 44 of the
19 operating plan where it states that the ATSF main line
20 between Stockton and Richmond is slated for a major
21 downgrading.

22 I'd like to ask you what exactly is meant by
23 that statement.

24 A When we're talking downgrade or upgrade in the
25 context of the operating plan, we're talking about the

1 extent of use to which that particular line or facility
2 is put.

3 So, where today we have 14 trains, Santa Fe
4 freight trains over a day over that line, there will be
5 none. And therefore, there's a major effect on that
6 line.

7 Q So downgrading does not refer to a diminution
8 in maintenance expenditures, for example?

9 A Not necessarily.

10 Q But possibly?

11 A The circumstances would have to be met at the
12 time. In this particular case, there was no financial
13 benefit included in the operating plan for a lessening
14 of the operating maintenance expenses across that line.

15 Q But you would not testify that major
16 downgrading refers only to a diminution in the number of
17 movements over the line? It might well include other
18 reductions such as reductions in maintenance
19 expenditures, operating expenditures?

20 A Well, as a generic statement, what you're
21 saying is true in regards to this specific line, and
22 that's the precise reason that this note appears on page
23 107.

24 This particular line is the subject of some --
25 I won' say unusual circumstances, but circumstances that

1 don't fit in a general category.

2 Q May I ask, just as a point of information --

3 MR. STEPHENSON: Your Honor, I would like the
4 witness to be able to complete his answer -- and he
5 didn't complete his answer -- before Mr. Remes cuts him
6 off.

7 MR. REMES: There was no intention to
8 interrupt. I thought I heard a period.

9 JUDGE HOPKINS: Had you finished?
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1 THE WITNESS: I was in the process of
2 finishing. The particular line has some unusual
3 circumstances that surround it. Namely, they are the
4 Amtrak operation over it, and namely there is the
5 trackage rights agreement for Sacramento Northern that
6 the operating plan in no way intends to abrogate if UP
7 is not willing to abrogate that agreement.

8 BY MR. REMES: (Resuming)

9 Q May I ask as a point of information why the
10 downgrading is slated to begin in Year 3?

11 A It will take that long, in accordance with the
12 plan, to complete the upgrading of the Mococo line.
13 That is the upgraded ties rail ballast in the
14 centralized traffic control system.

15 MR. REMES: At this time, I would like to mark
16 for identification UP/MP-C-1, which is the agreement
17 dated November 1st, 1973, between the Atchison, Topeka,
18 and Santa Fe Railway Company and Sacramento Northern
19 Railway, to which I believe you have referred, Mr.
20 Owen.

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

23 (The document referred to
24 was marked for
25 identification as Exhibit

1 Number UP/MP-C-1.)

2 BY MR. REMES: (Resuming)

3 Q Just turning to Page 19, Paragraph 25 of this
4 agreement, Mr. Owen, I call your attention to the
5 language providing that the agreement will be effective
6 for a term of 99 years from its date, and thereafter
7 until terminated according to the provisions of the
8 contract.

9 As far as you are aware, are the rights
10 granted under this trackage rights agreement still in
11 effect?

12 A As far as I am aware, yes.

13 Q Has either party to your knowledge given
14 notice to terminate these rights?

15 A Not to my knowledge.

16 Q Then your operating plan is premised on an
17 agreement between the parties to this agreement to
18 terminate the trackage rights agreement for the line
19 running from Stockton to Pittsburgh in order to
20 implement the operating plan's proposed downgrading of
21 the line from Stockton to Pittsburgh?

22 A I tried to state the assumption that went into
23 the operating plan. It was that such an agreement would
24 be reached, and that it would be beneficial to Union
25 Pacific. If that assumption was wrong, obviously this

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1 agreement, as it is presented, remains in force, and as
2 I also stated, there was really no intent by the
3 operating plan to abrogate this agreement.

4 Q And there would be no downgrading or rerouting
5 of "off rate traffic" as stated in the operating plan if
6 this agreement remained in effect?

7 A All the SPSF freight traffic would be
8 rerouted.

9 Q But service would be maintained for the
10 Sacramento Northern at its current level?

11 MR. STEPHENSON: Your Honor, I will object. I
12 think that really is the subject of the terms of this
13 agreement. If the terms of the agreement so provide,
14 then they so provide. But I don't think that this
15 witness ought to be asked to decide the legal effect of
16 this.

17 JUDGE HOPKINS: If you are basing it on the
18 legal decision as to whether that would be, he wouldn't
19 know.

20 MR. REMES: My question, Your Honor, is
21 directed to the stated intention of the operating plan
22 to engage in a major downgrading of this line.

23 JUDGE HOPKINS: That is perfectly all right on
24 that basis.

25 MR. REMES: And my question is, if the

1 intention, of the assumption of the operating plan is to
2 adhere to the terms of the agreement, and if -- I shall
3 posit for purposes of the question the agreement
4 provides that the service provided to the Sacramento
5 Northern shall not be reduced during the terms of the
6 agreement. The assumption of downgrading or diminution
7 of service or maintenance expenditures and the like
8 would not be an operative assumption. Is that correct?

9 MR. STEPHENSON: Your Honor, I am not
10 objecting to the question, but as stated by counsel, I
11 have no objection to the witness answering, but I will
12 take issue with his characterization of what the
13 agreement provides.

14 JUDGE HOPKINS: All right, but he is positing
15 a certain statement. Go ahead. Can you answer?

16 THE WITNESS: The downgrading as used in the
17 operating plan as I stated was in the context of the use
18 to which that particular line or facility was put, and
19 by SPSF, and if that use changed significantly and was
20 lessened significantly, that is the context in which we
21 use the term "downgrading."

22 Now, as to the intent of the operating plan,
23 it is the intent of the operating plan to maintain a
24 route for Sacramento Northern, access between Stockton
25 and the Pittsburgh steel plant, and the physical

1 treatment of that line would certainly be subject to the
2 terms of the agreement.

3 BY MR. REMES: (Resuming)

4 Q Fine. I will move on to my next set of
5 questions.

6 JUDGE HOPKINS: It might be a good idea for a
7 recess at this time. We will take a 15-minute recess.

8 (Whereupon, a brief recess was taken.)

9 JUDGE HOPKINS: Back on the record.

10 Go ahead.

11 BY MR. REMES: (Resuming)

12 Q Mr. Owen, as part of this proceeding, the
13 applicants have petitioned the Commission with respect
14 to their proposed acquisition control over the Central
15 California Traction Company. Do you happen to have
16 SFSP-6 in front of you or nearby the related
17 applications volume?

18 A Yes, I have it.

19 Q The petition is Number 3. At Page 3, the
20 petition says that the purpose of the proposed exempt
21 transaction is "to make CCT part of the new SP and SF
22 rail system," enabling SPSF "to coordinate CCT's
23 operations with those of ATSF and SPT under common
24 management."

25 Does your operating plan assume that CCT will

1 be "part of the new SP and SF rail system" for purposes
2 of operations?

3 A In the preparation of the operating plan,
4 among other things, we did look at the CCT operation
5 between Stockton and Sacramento, and determined that in
6 effect at the present time there was very little through
7 operation of trains, and that CCT was operating a
8 Stockton area switching service, and then a switching
9 service at the north end of the line.

10 So, the operating plan as it is stated in the
11 yellow volume contemplates no change in the operation of
12 the Central California Traction from the way it
13 currently exists, and the diversion, traffic diversion
14 study predicted very little change in the traffic that
15 was given to or received from the Central California
16 Traction.

17 Q Does your operating plan contemplated that the
18 status quo will be maintained with respect to
19 maintenance, interchange locations, service particular
20 shippers along the line?

21 A That is correct. The status quo will be
22 maintained.

23 Q Suppose hypothetically that SFSP desired
24 following the merger to downgrade the line or change
25 routing or rates or abandon CCT altogether. Is it your

1 assumption that SFSP, if their control application is
2 granted, will be able to make these decisions regardless
3 of objections by UP/MP?

4 A I can't really answer that question. I am not
5 in a position to have the appropriate knowledge to
6 answer the question.

7 Q Does your operating plan assume that SFSP will
8 not make these decisions if their application is
9 granted?

10 A There is no assumption one way or the other in
11 that regard built into the operating plan.

12 Q Didn't you say that your assumption was that
13 the status quo would be preserved?

14 A In line with one of the guidelines that we
15 were handed down where lines are involved that currently
16 have active shippers, the operating plan followed those
17 guidelines, and we assumed that looking at the
18 particular operation of CCT now and looking at the
19 volumes that were present and that would be present in
20 the future on CCT, that service would continue status
21 quo, that there would be no reason for any change in
22 service.

23 Q Okay. Can you tell me what diversions from
24 CCT DNS reported?

25 A No, I can't.

1 Q Do you know whether they reported any?

2 A I do not know if there were any or not. The
3 volumes of interchange at Sacramento and Stockton are
4 base cases or very, very small, and following the
5 application of the DNS tape there were very, very slight
6 changes, a few tons here or there, and they didn't even
7 round out to whole cars in most cases, if not all
8 cases.

9 I could look it up to see if there were any
10 that routed out to a whole car.

11 Q Turning to another application in the volume
12 of related applications, the application for joint use
13 of UP/MP's Los Angeles terminal facilities, it is
14 numbered 5 in the volume of related applications. Are
15 you familiar with this application?

16 A Yes.

17 Q Were you involved in the preparation of the
18 application or consideration of whether it was a good
19 idea?

20 A I was involved in the consideration of whether
21 it was a good idea. I think, as you can see by the
22 verified statement, Mr. E.P. Anderson is sponsoring that
23 particular segment of the related applications.

24 Q Does your operating plan assume that these
25 requested rights have been granted?

1 A Yes.

2 Q How did this assumption affect the assumed
3 operations?

4 A There was really no effect on the assumed
5 operations, because the operation that is contemplated
6 over that section of Union Pacific trackage is an
7 operation that represents a movement within the Los
8 Angeles terminal.

9 We have no component of the operating plan
10 that puts any regular train movements over that line.
11 The prime intent, as is stated, is to use those rights
12 in addition to what they are currently being used for.

13 Q Just to ask you a question that I will get
14 back to in a little more detail later, does the
15 operating plan's assumptions with respect to this
16 application for joint use of UP's terminal facilities in
17 Los Angeles depend in any way upon the switch of
18 interchange from the IA area -- from the Hobart and
19 Taylor yards to the Colton or West Colton interchange
20 that is mentioned elsewhere in the application?

21 A I am not exactly sure what the question is.
22 Could you repeat it?

23 Q Well, to repeat the question, and I apologize
24 for its circuitous character, if there were no shift in
25 interchange, would it affect the operational feasibility

1 of the requested trackage rights over UP's Los Angeles
2 terminal facilities?

3 A I believe not. It would not affect the
4 operational feasibility at all.

5 MR. REMES: All right. For purposes of my
6 next set of questions, I would like to mark for
7 identification UP/MP-C-2 and UP/MP-C-3. UP/MP-C-2 is a
8 map of the Los Angeles area from just about the SP
9 Taylor yard to just below the SF Hobart yard, prepared
10 by UP/MP. And UP/MP-C-3 is a blowup of a portion of
11 that area from the Ninth Street Junction to Hobart yard,
12 also prepared by UP/MP.

13 I have for purposes of illustration had these
14 maps done large and small. And with Your Honor's
15 indulgence, I will move them up here, because it is kind
16 of an arcane area we are discussing. I will distribute
17 reduced copies. This is the blowup of the larger area.
18 This is UP/MP-C-2.

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 UP/MP-C-2.)

25 MR. REMES: And this is UP/MP-C-3.

1 JUDGE HOPKINS: It will be marked for
2 identification.

3 (The document referred to
4 was marked for
5 identification as Exhibit
6 Number UP/MP-C-3.)

7 MR. REMES: We are tendering the larger
8 versions as our exhibit, unless Your Honor finds it
9 unweildy.

10 JUDGE HOPKINS: You are what?

11 I find it unweildy. We will go with the
12 reduced ones.

13 BY MR. REMES: (Resuming)

14 Q Mr. Owen, do these maps appear to accurately
15 portray the facilities of the SFSP and UP/MP and the
16 areas they covered?

17 A Yes.

18 Q Does SF or SP currently enjoy trackage rights
19 over UP's lines between SF's Hobart yard and SP's Los
20 Angeles transportation center?

21 A Yes.

22 Q Now, in their verified statement, Messrs.
23 Pottorff and Lynch state that they are describing or
24 providing the cost of "engineering projects necessary to
25 implement the SPSF operating plan." That is at Page 1

1 of their verified statement.

2 And you say at Page 100 of the operating plan
3 that there are "numerous physical changes that will have
4 to be made to existing lines, yards, and other
5 facilities in order to permit the integrated rail
6 operations contemplated by the operating plan," and that
7 Messrs. Pottorff and Lynch described the details of the
8 specific projects in their joint verified statement.

9 Messrs. Pottorff and Lynch project the cost of
10 the connection at State Street, east bank. That is, the
11 east bank of the Los Angeles River, and State Street is
12 just to the south of the Los Angeles transportation
13 center. Is that correct, Mr. Owen?

14 A Yes. And -- okay, yes. That is correct.

15 Q They project the cost of that connection at
16 about \$1.9 million. They also project the cost of the
17 connection at Hobart. The Hobart yard is down here on
18 Downey Road at the head of the San Pedro Branch. Is
19 that correct, Mr. Owen?

20 A Yes.

21 Q Also at about \$1.9 million. Is the purpose of
22 these connections to implement the requested trackage
23 rights over UP/MP's line from Hobart Tower to Ninth
24 Street?

25 A That is the purpose of the connection at

1 Hobart Tower. The other connection is for other
2 purposes.

3 Q The other purpose being to connect the UP/MP
4 line to the Los Angeles transportation center?

5 A No, the other purpose being to connect the
6 State Street line to the UP/MP line that would take
7 trains as far as Ninth Street Junction and across to
8 Redondo Junction going to and from the Los Angeles
9 Harbor.

10 Q Does the State Street line connect to the Los
11 Angeles transportation center?

12 A It does in one quadrant. The proposed
13 connection is in the other quadrant.

14 Q The proposed connection then would or would
15 not facilitate movements from the Los Angeles
16 transportation center to UP's lines.

17 A From the Los Angeles transportation center
18 proper, the State Street connection would not readily
19 facilitate those movements.

20 Q Why do you qualify that with "proper" and
21 "readily?"

22 A I am not totally acquainted with all the track
23 layout in the area. It may be conceivable that there
24 will be movements in or out of the Los Angeles
25 transportation center that may benefit by that

1 connection, but the prime purpose of the connector is
2 to put through trains, give the through train operation
3 the potential to use the State Street line, operate
4 around the new quadrant connection onto the UP line on
5 the basis of the current trackage rights as far as Ninth
6 Street, then diverge at Ninth Street crossing the river
7 to Redondo Junction, continuing on, then, to Los Angeles
8 Harbor or to J yard itself on Southern Pacific.

9 Q Can you clarify, sir, where the line crosses
10 the Los Angeles River and which line it was you were
11 referring to?

12 A Southern Pacific has two lines coming from a
13 point out here to the east at El Monti. Southern
14 Pacific has an Alhambra line that lies north of their
15 State Street line.

16 Q Perhaps you might want to look at the other --
17 no, that is all right.

18 A The Los Angeles River is in between the red
19 line and the green line.

20 Q That is the east bank and the west bank?

21 A Right, UP being the red line on the east bank
22 and the Santa Fe being the green line on the west bank.
23 The purpose of the proposed connection is to come west
24 on the State Street line, operate south on Union Pacific
25 the existing trackage rights, cross the river, turn

1 right at Ninth Street Junction, cross the river on the
2 existing trackage rights past Redondo Junction, where
3 SPSF trains would get back on their own line to access
4 either J yard or the Los Angeles harbor.

5 Q And this crossover takes place below Ninth
6 Street, this crossover at the Los Angeles River?

7 A At Ninth Street Junction, and the Union
8 Pacific has a name for the other end of that. I think
9 it is Soto Junction or something like that. It forms a
10 Y where the Union Pacific crosses the Los Angeles River
11 at the point of that Y, then crosses the Santa Fe at
12 Redondo Junction, and goes into an industrial area in
13 the area of Redondo Junction.

14 At that point, the Southern Pacific main track
15 picks up and the Southern Pacific connects either their
16 Wilmington branch or their San Pedro branch and their J
17 yard facility.

18 Q So it is your testimony, Mr. Owen, that the
19 primary purpose of the connection at State Street is to
20 facilitate a crossover from Union Pacific -- is to
21 facilitate a connection to UP's lines that would then be
22 used for a crossover of the Los Angeles River below the
23 Ninth Street Junction?

24 A That is correct, yes.

25 Q And an ancillary value of the connection would

1 be to connect the Los Angeles terminal center with UP's
2 lines.

3 A I am not sure whether there is a residual
4 value or not, but there may well be.

5 Q Are UP's lines otherwise connected with the
6 Los Angeles transportation center?

7 A Yes, the Southern Pacific currently operates
8 from the point just south of Taylor yard its trains to
9 and from Los Angeles transportation center on UP
10 trackage rights that currently exist.

11 As an example, a train operating from Taylor
12 yard out either the State Street line or the Alhambra
13 line will use Union Pacific trackage by the Los Angeles
14 transportation center in the case of one or to the Los
15 Angeles transportation center in the case of the
16 other.

17 Transfer movements between Taylor yard and Los
18 Angeles transportation center can occur. They can occur
19 also on Southern Pacific trackage on the other side, but
20 they also can occur on UP trackage.

21 Q Now, Mr. Owen, would the connection from the
22 State Street line to the Union Pacific line on the east
23 bank serve any real function if the requested trackage
24 rights below Ninth Street were not granted?

25 A Yes, they would serve a function.

1 Q What function would that be?

2 A Conveying a means of getting trains from the
3 State Street line to J yard or Los Angeles harbor under
4 the terms of existing Southern Pacific trackage.

5 Q It is your understanding that under existing
6 Southern Pacific trackage rights below Ninth Street
7 traffic could be moved across the Los Angeles River
8 starting on the east bank, on UP's lines?

9 A Correct. When you say below Ninth Street, at
10 Ninth Street, the UP has a junction. One leg of the
11 junction goes across the river and goes to Redondo
12 Tower. The other leg of the junction operates to the UP
13 East Los Angeles yard.

14 SP currently has trackage rights on the Los
15 Angeles -- has full trackage rights, according to my
16 understanding, on the junction leg that goes across the
17 river. They currently have limited trackage rights on
18 the segment that goes towards East Los Angeles yard for
19 the purpose of interchange.

20 Q So primarily the connection that is -- the
21 connection that is of value for purposes of the
22 requested trackage rights is the first connection
23 described by Messrs. Pottorff and Lynch.

24 A Yes, that's right.

25 Q What would be your exact route for traffic

1 from Hobart to the Los Angeles transportation center?
2 Can you describe that for us, please?

3 A The purpose of the connection was primarily to
4 balance the piggyback supply of flat cars between the
5 two intermodal facilities that will be in the downtown
6 Los Angeles area, so the Hobart yard route -- here is
7 the Union Pacific San Pedro branch, and the route out of
8 Hobart yard would be on the new connection that will
9 enter under this leg of the Y at the point here marked
10 Downey Road.

11 Q The left leg of the Hobart Y?

12 A That is correct. Then enter the UP main track
13 west of this point marked Downey Road, operate on the UP
14 main track to the existing trackage rights at what is
15 called Soto Street Junction. Soto Street Junction is
16 the actual point where the track splits to either go
17 across the river to Redondo or to East Los Angeles.

18 Q And then specifically how do the cars out of
19 the SFSP, cars get into the Los Angeles transportation
20 center?

21 A They would continue north on the UP trackage,
22 right into the Los Angeles transportation center, and
23 they would be taken in in the connection that exists in
24 this leg of the Y as I recall it on the Alhambra.

25 Q The Alhambra Y? How would you designate the

1 Y?

2 A It is right here.

3 Q At Pasadena Junction?

4 A Yes.

5 Q Okay. And then they back down into the Los
6 Angeles transportation center?

7 A Possibly, yes. I am sure there would be a
8 number of movements at the option of the yard master.

9 Q At the option of the yard master. Now, I
10 think -- well, you may want to stay there.

11 At this time I would like to mark for
12 identification UP/MP-C-4 and 5. UP/MP-C-4 is a
13 December, 1983, memorandum from J.L. Fields to B.M.
14 Champion of SF, Work P. OP00470 through OP00472. I hope
15 that I have the designation of the work paper correct.

16 The other exhibit, UP/MP-C-5, is a memorandum
17 of February 17, 1984, from Q.W. Torpin to H.G. Webb,
18 attention A.K. Pottorff, WWFF, which appears to be work
19 paper DEPO0281.

20 JUDGE HOPKINS: This will be marked for
21 identification as C-4.

22 (The document referred to
23 was marked for
24 identification as Exhibit
25 Number UP/MP-C-4.)

1 MR. REMES: And this is 5.

2 JUDGE HOPKINS: It will be marked for
3 identification as UP/MP-C-5.

4 (The document referred to
5 was marked for
6 identification as Exhibit
7 Number UP/MP-C-5.)

8 MR. REMES: The December 19th memorandum is
9 UP/MP-C-4, and the February 17th memorandum is
10 UP/MP-C-5.

11 BY MR. REMES: (Resuming)

12 Q Now, turning first to Page 3 of UP/MP-C-4,
13 Paragraph 6, it states that, "The State Street line
14 could be bridged over the Los Angeles River." That is a
15 quote, and "Another alternative is to use the Union
16 Pacific tracks from Mission to Hobart Tower."

17 Turning to UP/MP-C-5, the February 17th
18 memorandum, Mr. Torpin tells Mr. Webb that "It would be
19 possible to cross the Los Angeles River on a bridge at
20 the Mission Tower. The estimated cost of the bridge
21 would be \$1.2 million."

22 In your opinion, Mr. Owen, is this a
23 reasonable estimate of the cost?

24 A I really have no idea. I have no opinion.

25 Q Well, sir, in light of the fact that the

1 requested trackage rights at least for the connection
2 that will primarily facilitate the trackage rights
3 request -- let me start that sentence again.

4 In light of the fact that the cost of the
5 proposed connection which will primarily benefit the
6 requested trackage rights for the Los Angeles terminal
7 facilities will entail costs of over \$1.9 million, why
8 doesn't your operating plan provide for carrying your
9 movements from Hobart to the Los Angeles transportation
10 center by bridge over the Los Angeles River at Mission
11 Tower which Mr. Torpin estimated would cost \$1.2
12 million?

13 A I think to answer that question accurately I
14 would have to see comparison prints of the two plans to
15 see if each would accomplish the purposes that are
16 contemplated by the plan.

17 A little further complication in the bridge
18 option in that it would be necessary therefore for any
19 transfer movements there to use the Santa Fe Main
20 between Hobart, across Redondo, and toward Mission,
21 which is also a fairly high volume Amtrak passenger
22 main, and there could conceivably be some interference
23 with the passenger traffic.

24 Q The logistics of the operation, however, would
25 be the use of the SF line from Hobart up the west bank

1 and then across this hypothesized bridge at Mission
2 Tower to the Los Angeles transportation center.

3 A Correct. That is what I would read from this
4 document, and the location of the crossing and what
5 connections it would provide and not provide would
6 certainly be crucial as to any opinion that I could
7 formulate, and without more details, I can't formulate
8 that.

9 Q May I ask why your operating plan simply
10 assumes the trackage rights that had been requested by
11 the applicants, rather than considering an alternative
12 of bridge construction across the Los Angeles River?

13 A That is the assumption that was built into the
14 operating plan, and the one that was engineered for the
15 operating plan. I can't speak as to why the
16 alternative, if indeed it is an alternative, was not
17 included.

18 MR. STEPHENSON: Your Honor, may I interject
19 at this point? I don't want to interfere with counsel's
20 cross examination, and I will quiet down in a second,
21 but I would like to point out that these are not Mr.
22 Owen's work papers.

23 And the witnesses, Messrs. Pottorff and Lynch,
24 who are going to be testifying as to all of the physical
25 connections and the engineering, the reasons why certain

1 connections were put where they were, and so on, are
2 going to be testifying tomorrow afternoon probably or
3 the following day, and I think that the questions are
4 more appropriately addressed to them since it seems to
5 be, from looking at these papers, it seems to be that
6 they reflect a difference of opinion between engineers
7 as to how to best --

8 MR. REMES: Your Honor, I only have one or two
9 more questions along this line.

10 JUDGE HOPKINS: Thank you.

11 BY MR. REMES: (Resuming)

12 Q I just want to pin down that the assumption
13 then that your operating plan should follow is the
14 requested trackage rights does not originate with you,
15 but with the applicants?

16 A That is correct. The need for a method of
17 efficiently moving MP, TOFC, and COFC cars between LA
18 Hobart and LA transportation center was recognized and
19 formulated in the operating plan. The manner of
20 carrying out the engineering that satisfied that need --
21 the method in which that need was to be satisfied was
22 done as an engineering exercise and a side of the
23 operating plan.

24 Q It was policy input from the company. I take
25 it then.

1 A I don't know.

2 Q But it wasn't an assumption that originated
3 with you that this way is more efficient than building a
4 bridge? You have testified that you don't have the
5 basis for making that judgment.

6 A That is correct. That assumption did not
7 originate with me.

8 Q But your testimony is also that from a
9 logistical standpoint, it is not essential that the
10 connection be made through the Hobart Y but could be
11 made through a bridge to Mission Tower?

12 A It is possible. I think, as I mentioned
13 before, the Amtrak involvement with the alternate route
14 is one of the many elements to keep in mind, so that
15 something more than just --

16 JUDGE HOPKINS: Mr. Owen, excuse me. I think
17 you had better get back here, because the reporter can't
18 hear you.

19 BY MR. REMES: (Resuming)

20 Q Can I ask one further question? Can you tell
21 me precisely who it was that instructed you in
22 developing your operating plan to assume the movements
23 from the Hobart yard to the Los Angeles transportation
24 center as a result of the request of trackage rights
25 rather than some other alternative?

1 A There was no instruction per se passed. The
2 print of the proposed connection and the requirement for
3 the requested trackage rights were furnished to us as
4 the method of implementing the requirement that the
5 operating plan spelled out.

6 MR. REMES: May I have an assurance from
7 counsel that this is a question that Mr. Pottorff or Mr.
8 Lynch will be competent to answer?

9 MR. STEPHENSON: Based upon just sitting here
10 today, I think that they are going to be able to answer
11 it, but I have not talked to them about it.

12 JUDGE HOPKINS: We know definitely that this
13 gentleman can't answer.

14 MR. REMES: I think we have plumbed the
15 depths, Your Honor.

16 MR. STEPHENSON: I think that Mr. Phil
17 Anderson, who supports the trackage rights and who will
18 be a witness later on in the week, also may be able to
19 shed some light on that.

20 JUDGE HOPKINS: Thank you.

21 MR. REMES: Okay. I will move on to my next
22 subject.

23 At this time I wish to mark for identification
24 UP/MP-C-6. This is a letter from Michael A. Smith to
25 Arvin E. Roach II responding to UP/MP discovery

1 requests. It is dated May 31st, 1984.

2 JUDGE HOFKINS: It will be marked for
3 identification as UP/MP-C-6.

4 (The document referred to
5 was marked for
6 identification as Exhibit
7 Number UP/MP-C-6.)

8 BY MR. REMES: (Resuming)

9 Q Now, Mr. Smith states at Page 18 of this
10 letter in response to Number 11 by Mr. Roach that "The
11 operating plan assumes UP interchange with SPSF for
12 line/line cars," that is, "line/line cars," "would take
13 place at Colton (most likely the major portion on
14 runthrough trains to and from West Colton)."

15 At Page 53 of the operating plan, you state
16 that "It is planned that interchange with the Union
17 Pacific will take place at Colton instead of at Taylor
18 and Hobart yards."

19 And Mr. E.P. Anderson states at Page 2 of his
20 verified statement in support of the Los Angeles
21 terminal facilities application that "After merger,
22 SPSF's operating plan provides all interchange between
23 UP and SPSF will occur at SPT's West Colton yard."

24 The same reference to West Colton as the new
25 interchange appears at Page 69 of the addendum to the

1 environmental energy data. Now, between these
2 alternating references to the Colton yard and the West
3 Colton yard we are somewhat confused. The West Colton
4 yard is about three to four miles from the Colton yard.
5 Is that correct, Mr. Owen?

6 A It depends on which point in West Colton you
7 are talking about. That is approximately correct,
8 yes.

9 Q Well, where does the operating plan
10 contemplate that interchange with UP/MP now made at the
11 Taylor and Hobart yards will take place after the
12 merger, at Colton or West Colton?

13 A I think the response to your interrogatory is
14 the proper answer, that the present interchange occurs
15 at Colton, and we would anticipate that the future
16 interchange would occur at Colton, but it would
17 certainly -- we would certainly hope that the volumes
18 would be sufficient that an arrangement could be reached
19 between UP and SPSF that a runthrough train to and from
20 West Colton would affect the bulk of that interchange,
21 and from time to time I understand that discussions have
22 taken place already with just SF in that regard.

23 Q The theory then is that Colton would be the
24 primary place to which the interchange that now takes
25 place at Hobart and Taylor would be switched with the

1 overflow which you anticipate to be substantial to a new
2 interchange at West Colton if UP agreed with SPSF to
3 have such an interchange, indeed, if they agreed to
4 switch the interchange to Colton in the first place?

5 A The background behind the change that is
6 sought to benefit the flow of cars that were involved in
7 this line to line interchange between Union Pacific and
8 Santa Fe SP. The yard at West Colton following merger,
9 it will be SPSF's primary Los Angeles Basin serving
10 yard. Transfer movements, hauler movements to virtually
11 all of the Los Angeles Basin's subyards will originate
12 and terminate at West Colton.

13 In an effort to improve the flow of these
14 cars, which now pass -- most of them pass through the
15 interchange at Los Angeles, although a significant
16 number currently pass through the interchange at
17 Colton. In an effort to improve the flow of those cars,
18 we assumed that UP would conclude negotiations which
19 from time to time have occurred to actually have the
20 interchange take place at West Colton, which is the site
21 of the classification yard.

22 If that were unsuccessful, we would propose
23 that the interchange take place at Colton, where it
24 currently does.

25 Q And your assumption would be that Union

1 Pacific would need to concur in that in order for the
2 interchange to be switched from the Hobart and Taylor
3 yards?

4 A To Colton. That is correct. And with the
5 thought in mind, of course, that it would be to the
6 mutual benefit of both carriers to improve the flow of
7 those loaded cars.

8 Q So either way the concurrence of UP is
9 assumed?

10 A That is my understanding, yes.

11 Q Did you study the operating feasibility of a
12 shift from Hobart and Taylor yards to Colton, West
13 Colton, either of them and both of them?

14 A Yes, we reviewed the volumes. We reviewed the
15 history of the volumes that were involved in those
16 interchanges.

17 Q Can you describe what your conclusions were
18 with respect to what those volumes would be, how they
19 would move?

20 A The volume on the operating plan design day,
21 which is going to be about 20 percent heavier than a
22 mathematically average day, shows that about 88 cars
23 will be handled in interchange between SPSE and UP and
24 about 77 between UP and SPSE. They would be somewhat
25 less than that on an average day, 72 and 63

1 respectively.

2 Q Are there work papers supporting these
3 conclusions?

4 A The numbers were developed that I have just
5 cited in response to the interrogatory. The papers that
6 support those conclusions are the simulation printouts
7 of the volumes involved, both in the base cases and in
8 the postmerger case.

9 Q Can you describe the UP runthrough trains in
10 and out of West Colton and where they come from?

11 A It was anticipated that the runthrough of the
12 long haul east line to line interchange would probably
13 originate at Yermo, but that was an assumption that was
14 made for the purpose of the plan, and it would certainly
15 be a detail that would have to be worked out in
16 negotiation that would implement this assumption.

17 Q What blocks would you anticipate?

18 A We would anticipate making at West Colton
19 basically the same blocks that were made for UP in our
20 base study period. That is a Yermo and beyond block,
21 and a local block for other than Yermo.

22 Q On Mr. Smith's letter to Mr. Roach, at Page
23 18, the statement appears that "Line/line cars would be
24 interchanged at Colton (most likely the major portion on
25 runthrough trains to and from West Colton)."

1 What does this statement mean? That is to
2 say, what are line/line cars?

3 A The definition for this purpose of line to
4 line interchange is where the way bill is actually
5 exchanged, and each railroad gets a portion of the road
6 haul movement of the car, the way bill freight charges,
7 as opposed to a reciprocal switch where the car is
8 interchanged on a switch charge basis for local
9 industries that will occasionally or that does occur in
10 terminals where industries are open to reciprocal
11 switch.

12 Q Is that the meaning of the reference to
13 "line/switch interchange for Los Angeles" at Page 19 of
14 Mr. Smith's letter?

15 A That's correct. Those few cars that are
16 involved coming into LA on UP road haul or leaving LA
17 proper on UP road haul that move to and from the
18 industries that are in the Los Angeles reciprocal
19 switching area, we would anticipate they would continue
20 to be interchanged by basically the same method they are
21 now.

22 Q Mr. Smith's letter also refers to "through
23 train movements at Colton/West Colton, including the
24 potential UP interchange train." What is meant by the
25 reference to "the potential UP interchange train?"

1 A That is the hope that was carried through the
2 operating plan, that if the volume continued at
3 approximately the same rate as was currently, that the
4 bulk of those 70 or 80 cars in each direction would be
5 on this train, probably originating and terminating at
6 Yermo that I described before.

7 Q A hope you accept cannot be unilaterally
8 realized by SFSP, but must be realized through the
9 concurrence of Union Pacific?

10 A Correct, and then we assumed, of course, for
11 the purpose of the plan, that Union Pacific would concur
12 since they have from time to time discussed exactly such
13 an operation. If that assumption is invalid, we would
14 have to look at that portion of the plan again.

15 Q If the interchange is to be at West Colton,
16 would UP/MP require trackage rights over SFSP to
17 accomplish the interchange?

18 A Yes, it is my understanding they would.

19 Q Do you know whether SFSP would grant such
20 rights?

21 A I can't speak in that manner for SFSP, but the
22 operating plan as it is stated certainly indicates that
23 they would be willing to enter into negotiations.

24 Q My final questions concern the DNS study. Is
25 the routing and gateway information that you provided to

1 DNS included in your work papers?

2 A I don't know, but I do not believe so. I
3 believe that was done on a telephone conversation or
4 more than one telephone conversation, basically
5 reviewing the system as it was and as it would change
6 under the use of lines and gateways.

7 Q Any notes made of these telephone
8 conversations?

9 A Not that I can recall.

10 Q Is there any documentary basis for the routing
11 and gateway information, or was it purely orally
12 conveyed?

13 A From our end, it was orally conveyed.

14 Q But you must have had it in written form.

15 A I believe we were looking at the system map
16 and systematically looking at each line and conveying
17 those lines to the DNS people as to a change in status.

18 Q Can you recall exactly what you told the DNS
19 people?

20 A I can recall portions of it. We informed them
21 of the connection, if you will, and the capability to
22 operate between the lines at Vaughn as an example, and
23 indeed we recounted each and every major proposed
24 connection to them that would permit them to enter that
25 particular data into their model, so that their model

1 would be aware of physical connections between the two
2 railroads that did not currently exist.

3 We also conveyed the basic thrust behind the
4 use of the Sunset routes and the Tucumcari route as
5 opposed to the Santa Fe main line, and the basic concept
6 of the routing of Northern California traffic via
7 Barstow and Southern California traffic to and from West
8 Colton, those basic concepts were all conveyed.

9 Q In your view, I take it, the most efficient
10 routes according to the DNS model were the same routes
11 used in your operating plan?

12 Let me rephrase that. Did you consider or
13 discuss with DNS whether the most efficient routes
14 according to the DNS model were the same routes used in
15 your operating plan?

16 A As I understood the functioning of the DNS
17 model, their model categorized routes into certain
18 categories, primary, main, et cetera, and they discussed
19 with us what was currently contained in their model as
20 to the categorizing of the routes of the two railroads.

21 We conveyed to them where that category of
22 routes should change due to some action that would occur
23 that was planned for the operating plan.

24 Q Did you consider or discuss with DNS whether
25 the traffic flow projections resulting from the DNS

1 study were consistent with your operating plan?

2 A Once DNS furnished to us the changes in
3 traffic, we reviewed the operating effect upon the
4 operating plan and which routes were affected by the
5 changes. We concurred that they were reasonable. We
6 had a limited amount of dialogue between us at the
7 time. I can't say that we engaged in any major formal
8 discussion. Much of this was occurring on the telephone
9 between Boston and San Francisco.

10 Q Are you aware of any divergences between your
11 operating plan and the system as it would operate under
12 the diversions projected by the DNS study?

13 A I am aware of none.

14 MR. REMES: We have no further questions, Your
15 Honor. At this time we would like to move into evidence
16 all of the exhibits that we have marked for
17 identification.

18 MR. STEPHENSON: No objection.

19 JUDGE HOPKINS: Hearing no objection, they
20 will be received in evidence.

21 (The documents referred to,
22 previously marked for
23 identification as Exhibits
24 Number UP/MP-C-1 through 6,
25 were received in evidence.)

1 MR. REMES: I will remove the large maps.

2 JUDGE HOPKINS: Thank you. It is a little big
3 for our exhibits.

4 Mr. Craig?

5 BY MR. CRAIG:

6 Q Mr. Owen, my name is Peter Craig, representing
7 Amtrak in this proceeding. First, a few preliminary
8 questions based upon the operating plan itself to make
9 sure I understand it.

10 I wanted to focus on the Stockton to Antioch
11 segment as an example. Turning first to Page 22 -- do
12 you have that in front of you?

13 A Yes.

14 Q This purports to show the Santa Fe base
15 tonnage density and number of through trains for various
16 segments, including next to last in the righthand
17 column, Stockton, Antioch, 15 daily trains, 13.6 million
18 gross tons.

19 Now, am I to understand that this represents
20 only Santa Fe freight operations?

21 A That is correct. We footnoted on the previous
22 page that the gross tonnage figures displayed in this
23 plan are freight only, including locomotives and
24 cabooses, and do not include Amtrak, other passenger
25 trains, or work train movements. And I might add to

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1 that they do not include the tonnage of tenant railroads
2 on any of these tracks.

3 Q So that in this case the Sacramento Railroad's
4 daily trains and tonnage is also omitted?

5 A That's correct.

6 Q What is the tonnage and daily train operations
7 of the Sacramento Railroad between Stockton and
8 Antioch?

9 A I don't have any precise knowledge of that.
10 They basically operate four, five, or six trains a week
11 in each direction between Stockton and Pittsburgh, and
12 those trains, the prime purpose of those trains, as I
13 understand it, is to convey the unit train of steel to
14 and from the U.S. Steel works at Pittsburgh, but they
15 also do the Sacramento Northern local work in the Port
16 Chicago-Pittsburgh area.

17 Q And Pittsburgh is immediately west of
18 Antioch?

19 A Yes.

20 Q Now, turning next to Page 25, which is a map
21 or diagram, you show in the lefthand side of that
22 diagram Antioch and Stockton and the figure 13.6 in the
23 middle. That is the same 13.6 million tons as reflected
24 on Page 22?

25 A Yes. This is just a stick diagram that is a

1 schematic of the table on Pages 21 and 2.

2 Q And again omits Amtrak operations and the
3 Sacramento Railroad?

4 A Yes.

5 Q Now, turning to Page 91, Projected Tonnage
6 Density in Year 4, is this a stick diagram of the
7 combined Santa Fe and Southern Pacific systems?

8 A That is correct.

9 Q And the figure between Antioch and Stockton
10 now becomes zero?

11 A That is correct. There would be no SPSF
12 freight tonnage over the lines in Year 4.

13 Q But there would be Sacramento Railroad and
14 Amtrak tonnage?

15 A It is problematical, depending on the results
16 of any negotiations that may or may not occur in the
17 interim.

18 Q Do you know the rail mileage from Stockton via
19 Lathrop to Tracy back to the point west of Antioch, Mr.
20 Owen?

21 A I could look it up. I have an approximate
22 idea, but I would best refer to the timetables.

23 Q I would appreciate knowing the mileage from
24 the segment Stockton via Antioch to the junction with
25 the SP versus the mileage Stockton, Lathrop, Tracy, to

1 get onto the SP.

2 In other words, what additional mileage would
3 be added to the Amtrak operation in order to get from
4 Stockton to Richmond, really from Stockton to Martinez,
5 which is the next stop on the train.

6 A If you will bear with me, it will take about a
7 minute and a half to research everything here.

8 (Pause.)

9 A Current mileage between Stockton and Martinez
10 is just a little over 49 miles. If you operate Stockton
11 to Martinez via Lathrop and Tracy, it would be a little
12 over 67 miles.

13 Q Have you made any study as to what time that
14 was added to the transit time of passenger train
15 operations in the San Joaquin Valley?

16 A No, I have made no such study.

17 Q Is it my understanding from cross examination
18 by counsel for the Union Pacific that you contemplated
19 that the Sacramento Railroad would likewise from your
20 point of view route its traffic from Stockton via
21 Lathrop to Tracy to Pittsburgh?

22 A That was the assumption that went into the
23 operating plan, and resulted therefore in the item on
24 Page 107 that calls that fact to the attention under the
25 passenger service plan. It did represent a change in

1 Amtrak's present operation, and therefore should be
2 pointed out in the plan.

3 Q But you assumed in your operating plan that
4 Amtrak would want to continue to use the direct route
5 from Stockton to Martinez. Is that the proper
6 pronunciation?

7 A Yes. We pointed out the change in status of
8 the use of the Delta line across there to provide plenty
9 of time for the topic to be negotiated if Amtrak so
10 desired. The operating plan was worked out either way.
11 The operating plan will work and will function if Amtrak
12 stays on the Delta line.

13 We also reviewed the use of the Mococo line if
14 Amtrak were to use the Mococo line, and found that
15 Amtrak could use the Mococo line and operate as a
16 preference schedule without interference to the freight
17 train schedules for SPSF.

18 Q And you assumed in either case, you assumed
19 that if there are any operations by Amtrak over the
20 Stockton, Martinez line or Stock, Antioch line, that
21 Union Pacific or -- correct that -- Southern Pacific
22 Santa Fe would continue to maintain that line with its
23 existing utility of service?

24 MR. STEPHENSON: Objection, Your Honor. This
25 witness does not cover maintenance of any line in his

1 testimony.

2 JUDGE HOPKINS: He has already stated he
3 hasn't -- he doesn't have anything to do with that
4 aspect.

5 BY MR. CRAIG: (Resuming)

6 Q What do you mean on Page 44, Mr. Owen, that
7 the Stockton to Richmond line of the Santa Fe is slated
8 for a "major downgrading?"

9 A That is the same explanation I provided Mr.
10 Remes, I believe, before, in that the term "downgrade"
11 is used as a relationship to the use that would result
12 after the merger compared to the use that is currently
13 in effect on a particular line or facility, and that
14 line which currently has more than a dozen freight
15 trains a day on it each way will have no SPSF freight
16 trains on it.

17 Q And you don't mean to imply any reduction of
18 maintenance expenditures by this statement?

19 A There is nothing implied one way or another in
20 that statement with regard to maintenance expenses.

21 Q Now, why would Amtrak, as you suggest on Page
22 107, want to acquire the line of right?

23 A We are aware that Amtrak has acquired a couple
24 of lines outright where they found themselves the sole
25 user, and that is basically the reason for including

1 that option among the options in this plan.

2 Q Do you put a price tag to this line?

3 A I don't myself, no.

4 Q Turning to your verified statement, Mr. Owen,
5 I notice that you had spent a number of years with
6 Amtrak in the past.

7 A Yes, that's correct.

8 Q From 1973 until '74, when you went to the U.S.
9 Railway Association as manager of train operations, what
10 were your duties with the U.S. Railway Association?
11 What did this mean, manager of train operations?

12 A The U.S. Railway Association, as you probably
13 know, was studying the operations and the solution to
14 the financial plight that confronted several bankrupt
15 eastern and northeastern railroads. The manager, train
16 operations position surveyed the operations as they
17 currently exist on the Penn Central and the other
18 railroads that were involved, and began to plan the
19 train operations that a surviving company or whatever
20 entity should survive should come out of the structure
21 that was previously existing, began to plan the train
22 operation that would be in effect for the surviving
23 railroad or railroads that would come out of the
24 northeastern situation.

25 Q So you were working on the development of the

1 final system plan that was submitted and approved?

2 A The preliminary system plan. Yes, and the
3 beginnings of the final system plan. I returned to
4 Amtrak before the final system plan was published.

5 Q Now, in your position with Amtrak from 1975 to
6 1978, as regional vice president, west, did you have
7 general responsibility for services throughout
8 California?

9 A Yes.

10 Q Are you familiar with the two daily round
11 trips in the San Joaquin Valley?

12 A Yes.

13 Q Have you traveled on those trains?

14 A Yes. Three or four times since I left
15 Amtrak.

16 Q Now, who owns the passenger station at
17 Fresno?

18 A My recollection is, that is owned by Santa
19 Fe.

20 Q Do I correctly interpret your operating plan
21 as involving abandonment of the facility?

22 A Yes, the operating plan provides that the rail
23 line that accesses the passenger station in Fresno from
24 the north will be abandoned, so there would be no
25 through operation possible between Fig Garden and

1 Hammond on the Santa Fe line. The plan doesn't
2 contemplate that the station itself would be abandoned.

3 Q Well, what would you do, operate the trains up
4 to the station and back the trains back?

5 A The plan, and again, this is an item pointed
6 out in the plan intentionally, because it does represent
7 a change in Amtrak's operation, the plan assumes that
8 the four Amtrak trains would operate on the new
9 connection north of Fresno, and on to the new Southern
10 Pacific ridership, right-of-way, the ownership, and on
11 the SPSF double track line, and make a station stop in
12 Fresno, and then continue towards Bakersfield through
13 the trackage rearrangement at Calwa, and the Fresno
14 station stop, the site would be located somewhere on the
15 SF line, and the relocation of that again would be
16 subject to negotiation in the terms of the contract that
17 Amtrak has with Southern Pacific and with Santa Fe.

18 Q Would the station be comparable to the present
19 Fresno passenger station?

20 A The station would meet the terms of the
21 contracts that exist between Amtrak and the railroads.

22 Q I am not asking you for a contract
23 interpretation. I am asking you what you are proposing
24 to the Commission. Would the station be comparable to
25 what is presently provided to the Fresno passengers?

1 MR. STEPHENSON: Your Honor, I object. I
2 think that is as far as the witness can go.

3 MR. CRAIG: If the witness is unwilling to
4 answer, he can so state.

5 JUDGE HOPKINS: Go ahead.

6 MR. STEPHENSON: The witness referred to a
7 contract between both companies and Amtrak, and implicit
8 in that answer is the notion that whatever rights Amtrak
9 has to a new station will be a matter of negotiation
10 pursuant to the terms of the contract. I don't know how
11 far you can go beyond that.

12 JUDGE HOPKINS: If he can answer, if it is
13 comparable, I will let him.

14 THE WITNESS: There is a specific provision in
15 the contract that relates to items just such as this,
16 ancillary facilities, and I don't recall the exact
17 terminology that the contract states in that clause, but
18 I do know that it is covered specifically in the
19 contract, and the interpretation of the contract would
20 be the subject of the negotiation at the time.

21 Q Let me assume under the contract the
22 applicants take the position that they have no
23 obligation to replace the passenger station at Fresno.
24 Are the applicants willing to pay for a new station
25 comparable to the present Fresno station?

1 A I would have to state again, and this is my
2 opinion, and the assumption that the plan was based on,
3 that the applicants are prepared to meet the obligations
4 that they have under the terms of the contract.

5 Amtrak has relocated stations throughout the
6 country from time to time for various reasons, and to my
7 knowledge every one of those where negotiations were
8 present, the negotiations have been successful and
9 mutually satisfactory to both parties.

10 And there is no reason to believe that
11 especially in view of the advantages to be gained in
12 this particular relocation, that the negotiation that is
13 contemplated here would not be successful. There is
14 every reason to believe that it would be a successful
15 negotiation.

16 Q I don't think that was responsive to my
17 question, in all due respect.

18 MR. STEPHENSON: Your Honor, he doesn't like
19 the answer that he is getting.

20 JUDGE HOPKINS: I think, Mr. Craig, he has
21 answered it the only way he can. I don't know what more
22 you can get out of this witness.

23 BY MR. CRAIG: (Resuming)

24 Q I interpret your answer, Mr. Owen, to say that
25 absent or not a duty under the agreement the applicant

1 is unwilling to pay for the station relocation at
2 Fresno. Is that correct?

3 A No.

4 Q Then what is the applicant's position?

5 A The agreements do cover these situations, and
6 there is some obligation of some sort under that
7 agreement, and I think that is to be determined mutually
8 between the parties in the negotiation that is
9 contemplated.

10 Q Are you aware that there is some disagreement
11 between counsel for the applicants and counsel for the
12 Amtrak as to what those agreements mean?

13 A Yes, that has been --

14 Q Do you think it is in the public interest for
15 that uncertainty to be resolved in future negotiations
16 and litigation, or should it be resolved now?

17 A As I stated, in my experience with Amtrak and
18 the knowledge I have had of Amtrak in the intervening
19 six and a half years, that where situations like this do
20 exist, and where situations have come up, that the
21 negotiations have always been successful. They may not
22 have been easy, but they have been successful, and the
23 public has not been inconvenienced.

24 Q But as of now, you are unwilling to represent
25 to the Commission that the applicants will pay for

1 replacement of the passenger station at Fresno
2 comparable to the facilities now there?

3 A I cannot make that commitment on behalf of the
4 management of SPSF.

5 Q Page 3, in terms of the guiding policy
6 objectives, were these ones that were given to you, Mr.
7 Owen, or were these ones that you developed?

8 A Of the operating plan, or the verified
9 statement?

10 Q Page 3 of the verified statement, you outline
11 five policy objectives which guided the preparation of
12 the operating plan.

13 A I believe I testified earlier that we were
14 present as these objectives were formulated, but the
15 objectives as such were finalized and given to us then
16 by Mr. Lacy and Mr. Fitzgerald, and represent the
17 objectives of the respective railroad managements.

18 Q And the first one is to establish routes that
19 would maximize service improvements. Do you mean they
20 are freight service improvements and not passenger
21 service improvements?

22 A That is the basic thrust of the policy
23 objective. The passenger aspect is covered under the
24 ICC regulations in the passenger part of the operating
25 plan.

1 Q And in your second point, where you talk about
2 redundant facilities, you are speaking about facilities
3 that are redundant for freight operations, not
4 facilities that are redundant for passenger operations?

5 A Again, that is the basic intent behind it,
6 because we are obliged to address the passenger issue as
7 a separate issue, and we have so done that.

8 Q And in the fifth point, you took pains not to
9 abandon rail segments where rail service is currently
10 being provided to shippers, but it was all right to
11 abandon lines where service is presently being provided
12 to passengers? Is that correct?

13 A In the case of Fresno, that abandonment was
14 perceived to be strongly in the public interest. It
15 facilitated the service capabilities of the merged
16 railroad, and it was the judgment of the team that did
17 the operating plan that there would be no adverse impact
18 on Amtrak, that the ultimate operation provided for
19 Amtrak and the negotiation that would take place with
20 regard to the station would be successful, and the net
21 result for Amtrak, they would be no worse off than they
22 are now. There would be no adverse effect. So in that
23 decision Amtrak was very definitely a consideration.

24 Q Do you realize the cost to Amtrak could be an
25 adverse effect, increased cost?

1 A It is not clear whether there would or would
2 not be increased costs to Amtrak in any of the operating
3 plan. The costs again are a matter of the compensation
4 agreements between Amtrak and the two railroads.

5 Q Are you able to represent on behalf of the
6 applicants that as a result of implementation of the
7 operating plan, there will be no added costs on the
8 Amtrak operations in the San Joaquin Valley?

9 A No, I can't make that representation. I think
10 the cost reimbursement will be in accordance with the
11 contracts.

12 Q Where is the passenger service addressed in
13 your statement?

14 A We describe in each individual railroad
15 section in Part 1 the existing service, and then we
16 describe the conclusions of the plan for the merged
17 railroad. I believe that was on Page 107, yes, Page
18 107, Section 7.

19 Q So this is the sum and substance of the
20 analysis of the impact of passenger service of the
21 operating plan, what appears on this one page. Is that
22 correct?

23 A That represents the conclusions of the study
24 team that did the operating plan.

25 MR. CRAIG: Thank you.

1 JUDGE HOPKINS: Thank you.

2 Who will be next?

3 BY MR. VAN ORMAN:

4 Q Mr. Cwen, my name is Chandler van Orman. I
5 represent the city of San Jose.

6 A Yes, sir.

7 Q Directing your attention to Exhibit 13-18, as
8 I read these figures, I understand them to be cumulative
9 in terms of the net change at the end of the first,
10 second, and third years?

11 A Yes, that is correct.

12 Q And that the tonnage projected at the end of
13 Year 4 represents the total tonnage that would be moving
14 over, for example, the Newark to San Jose line or the
15 San Jose to Watsonville line?

16 A That is correct during Year 4.

17 Q How far in the future are these figures
18 projected, or do they end at the fourth year?

19 A They end at the fourth year, and they
20 represent the -- as I stated before, the effect of the
21 internal reroutes of traffic and the results of traffic
22 diversion analysis.

23 Q Do you know if the figures with respect to San
24 Jose represent the traffic that moves through the city
25 or around the city or both?

1 A Southern Pacific has two main routes to the
2 north of San Jose as I am sure you are aware, and the
3 single main route south of San Jose. The routes north
4 of the city historically have been used as main routes
5 interchangeably, so that on a given day, a train may
6 operate on the line through Mulford, and on the
7 following day the train would operate on a line through
8 Warm Springs, and there has been a great deal of
9 flexibility in the operation of trains on those two
10 routes north of San Jose.

11 The tonnage that you are looking at in Exhibit
12 13-18, as I stated before, represents the through
13 tonnage that is moving over an entire link, which is, in
14 the case of virtually all lines, is by far the great
15 bulk of the tonnage, but it does not represent any
16 tonnage that is moving just within the link.

17 Q So this tonnage could move over the Warm
18 Springs line or over the Mulford line or the lines that
19 go through the center of the city, or the line that goes
20 around the city?

21 A Not necessarily. One of the big elements in
22 the past, and is about to become an element again in the
23 choice of which route north of San Jose that is used is
24 the United Motor venture there at Fremont, the old GM
25 plant, and when service is to be provided by any through

1 train to or from the Warm Springs facility, it
2 necessitates use of the line through Warm Springs, and
3 use of the line through Mulford for that purpose is not
4 a practical alternative.

5 Conversely, if the train is scheduled to work
6 on the Mulford line for some purpose, use of the Warm
7 Springs route is not a practical alternative, so even
8 though there is an alternate for some trains, many of
9 the trains do not have an alternative, and must use one
10 line or the other.

11 Q Do these figures take into account the
12 anticipated reopening of the old GM facility?

13 A The figures that you are looking at on 13-18
14 take into account the relocation of an automobile
15 unloading facility that is currently in the Oakland,
16 West Oakland Harbor area on Southern Pacific.

17 It will be displaced as the result of a
18 doubling of size of the intermodal capacity for the
19 TOFC/COFC business there. For the purpose of the plan,
20 that facility was to be located at Warm Springs, and to
21 that degree, where that tonnage is moving to and from
22 Warm Springs and the trains that carry that tonnage have
23 to therefore use the Warm Springs line, that is
24 reflected.

25 There is no projection of rail tonnage that

1 may develop as a result of strictly the United Motor
2 Company venture down there. That would be in addition.

3 Q But you are aware that it is planned to open
4 some time in 1985 and begin shipping then?

5 A Yes, I am.

6 Q So any traffic that results from the opening
7 of that facility would be in addition to the net change
8 you reflect in this exhibit?

9 A Any traffic that would move in the southerly
10 direction or come from the southerly direction. Any
11 traffic, of course, coming from the other direction
12 would not be involved.

13 Q That is right. Do these figures take into
14 account, Mr. Owen, any increase in traffic that might
15 result from a grant of trackage rights to other
16 railroads in this proceeding?

17 A No, these are strictly the SPSF freight
18 tonnage figures.

19 Q So that if the Commission were to grant
20 trackage rights to any other railroad, and those
21 trackage rights were exercised, and resulted in an
22 increase in traffic, that traffic would be in addition
23 to the projections in your statement?

24 A Yes, that's right.

25 Q Are you aware of the plans for the Guadalupe

1 corridor light rail system?

2 A Yes, I am aware of the existence of the
3 project. I don't have any detailed familiarity with the
4 plans, however.

5 Q But none of your estimates or studies with
6 respect to the change in traffic took into account any
7 effect, if any, that that system might have when it is
8 up and operational?

9 A No, since it is not an existing system, the
10 plans were based on the existing operation only.

11 MR. VAN ORMAN: Thank you. I have nothing
12 further.

13 JUDGE HOPKINS: Next?

14 BY MR. DELANEY:

15 Q Good afternoon. My name is John Delaney. I
16 represent the Railway Labor Executives Association, and
17 I have a few questions. If you could turn to Page 3 of
18 your verified statement, we have been talking about
19 these policy objectives. If you could look at Policy
20 Objective Number 1, could you explain to me what is
21 meant by the phrase "through the combined use of line
22 segments of both railroads?"

23 A In certain areas, mileage could be shortened,
24 service schedules could be improved, both of the above,
25 and other positive events could occur by taking a flow

1 of traffic that currently is one railroad or the other
2 and using segments of both existing railroads to move
3 that car or cars from its origin to destination, so that
4 we didn't want to be constrained because if it was
5 formerly Santa Fe traffic, to move it on Santa Fe
6 lines. We wanted full flexibility to weave the traffic
7 in and among the lines of the new corporation.

8 Q In formulating this plan, did you consider any
9 abandonments and then later reject them from the final
10 operating plan?

11 A There were several ideas tossed about as to
12 which lines could be abandoned and which ones -- they
13 were varied and they were discussed from time to time.
14 The policy after and partly as a result of those
15 discussions, Policy Objective Number 5 was developed.
16 There was to be a policy objective not to abandon line
17 segments where rail service is currently being
18 provided.

19 Q How would you describe these proposed
20 abandonments? Were they, the majority, were they on the
21 Southern Pacific line, or were they on the Atchison,
22 Topeka, Santa Fe?

23 A No, they were just as the final list shows in
24 my recollection. They were pretty well balanced between
25 the two railroads.

1 Q Is your relationship with the applicants an
2 ongoing one, so that as the plan develops through
3 practice, new abandonments will be considered?

4 A Each railroad has its -- and has had for some
5 time, and I believe Mr. Fitzgerald and Mr. Lacy
6 addressed this in their statement. It is more of a
7 policy thing than something to do directly with the
8 operating plan.

9 They have an ongoing program that looks at
10 line segments on their individual railroads. In my
11 experience, I have occasional contact with the railroads
12 when I am not engaged in a project like this for them.
13 When I am not in contact with them, I am off on some
14 other project, and don't have a continuing
15 relationship.

16 Q So you will have a continuing relationship?

17 A In those cases, I do not have a continuing
18 relationship.

19 Q Moving on to Policy Objective Number 2, what
20 Southern Pacific facilities were or are regarded as
21 redundant?

22 A I think as I stated earlier the one facility
23 that is identified as being truly redundant therefore
24 available for relief is the Southern Pacific Broadway
25 yard at Fort Worth. The operating plan envisions a use

1 for all other Southern Pacific facilities other than the
2 Fort Worth or the line segments that were cited for
3 abandonment were otherwise identified in the plan
4 through the merger period, even though it may be a
5 different use than is currently employed today.

6 Q Were any Santa Fe facilities regarded as
7 redundant?

8 A The same general answer applies, and there is
9 one specific Santa Fe facility that was identified as
10 truly redundant. As I believe I stated before, it is
11 the El Paso yard.

12 Q With regard to Policy Objective Number 3, you
13 had a number of questions in this area. Could you
14 explain to me, what does rehabilitating a route entail?

15 A Rehabilitation would involve putting capital
16 money into a route to give it the ability to handle
17 trains in an improved manner from what it is at
18 present. In other words, in this context,
19 rehabilitation could be something like that as proposed
20 for the Lathrop, Martinez line, whether it be rail,
21 ties, ballast, and centralized traffic control system
22 proposed that permits faster speeds, more flexible train
23 operations. In other cases, rehabilitation would just
24 encompass portions of what is contemplated for the
25 Martinez line.

1 Q So that basically it is just improving the
2 physical nature of the line, the track?

3 A Yes, that is generally it. The capability of
4 the line to handle the traffic efficiently and
5 expeditiously.

6 Q Did the operating plan achieve any efficiency
7 as a result of not having to extremely rehabilitate any
8 routes?

9 MR. STEPHENSON: I am not sure I understand
10 the question.

11 THE WITNESS: I don't understand the
12 question.

13 BY MR. DELANEY: (Resuming)

14 Q Would it help if I repeated it? What I am
15 looking for is just whether or not your plan succeeded
16 in saving money because some routes did not have to be
17 rehabilitated.

18 A I think there are several examples pointed
19 out. As a matter of fact, the Tucumcari line is
20 probably a pretty good example. I gave one before on
21 the Santa Fe line between Alpine Junction up through San
22 Angelo, where it was a potential route that was not used
23 as an actual active route simply because of the capital
24 investment that would be necessary in order to make it
25 an active route.

1 But I think certainly the Tucumcari line is
2 another example, to expand on that, where even though
3 the railroad is in good physical condition now as a
4 result of the SP recent rehabilitation, under the SPSF
5 concept, there will be an avoidance of a centralized
6 traffic control system for that route. It is a real
7 saving that is projected.

8 The traffic on the Tucumcari route, as I
9 stated before, the character of the traffic has changed
10 significantly since the Tucumcari plan was put
11 together. There is a much greater percentage of TOFC
12 trains, and the tonnage on that line is at the
13 projections tonnage that were contained in the 1977
14 study.

15 To permit further growth on that line for
16 Southern Pacific standing alone, CTC would be a
17 necessity for that line between Harrington and El Paso.
18 It has reached its capacity in terms of being able to
19 handle the traffic on a timely basis. There is a good
20 example of capital avoidance and a large savings.

21 Q Earlier there was talk about tracks that did
22 not have to be rehabilitated as a result of this plan.
23 Can you give me an estimate of how many track segments
24 did not have to be rehabilitated?

25 A No, I can't provide that.

1 Q In regard to Policy Objective 4, what did you
2 mean when you used the terms "parallel lines?"

3 A This again, I will refer to the prime example
4 is the use of the Sunset route and the Santa Fe main
5 line. As one of the objectives, we did not want to
6 displace and cause a major impact on labor when the
7 other objectives could be met, substantially met without
8 causing an impact on labor.

9 So that in transferring train movements from
10 the Sunset line to the Santa Fe double track, even
11 though minor advantages may have been present in one or
12 two instances of being able to move, say, one more train
13 up there, there was no major reason to do so and
14 displace more labor.

15 We transferred enough trains from the Sunset
16 route to be able to and only enough to be able to permit
17 the Sunset route to function as a high speed, dependable
18 TOFC line, and handle other traffic that has to go on
19 that route.

20 But even though there may have been an
21 opportunity and some slight advantage to meet one of the
22 other objectives, that was offset by the policy
23 objective outlined in Number 4. The advantage was not
24 sufficiently great to warrant the displacement and the
25 impact on the labor forces. So we would leave a train

1 or two on a line like that.

2 Q Are there any other examples of when it was
3 impossible to balance in this manner, to balance the
4 impact on labor and its compatibility with other
5 objectives of the railroads?

6 A I think there are certainly other examples.
7 The use of the Tucumcari route itself, which continues
8 on to the previous example. We wanted to continue to
9 utilize the Tucumcari route from Hutchinson down to
10 Vaughn and continue it to El Paso, and at the same time
11 we wanted to free up the capacity of the Santa Fe line
12 which across those stretches has a significant amount of
13 single traffic to handle the higher speed more time
14 sensitive trains, so there was an intentional effort
15 made to keep the transfer of traffic pretty much in line
16 with existing loads, so that the same number of people
17 that are employed at Pratt or Dalhart, as examples,
18 would continue to be employed, and we wouldn't be forced
19 into a wholesale transfer in or out of those
20 locations.

21 Q Moving to your operating plan --

22 JUDGE HOPKINS: Do you have many more
23 questions?

24 MR. DELANEY: If I could ask this question, it
25 might save us some time.