

F.D. 30400 - 10/29/84 - Pgs. 4055 - 4113

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BEFORE THE
INTERSTATE COMMERCE COMMISSION

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

Hearing Room A
12th & Constitution, N.W.
Washington, D.C.
Monday, October 29, 1984

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

BEFORE:

JAMES E. ROYNS,
Administrative Law Judge

ATTORNEYS AS APPEARERS

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C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Dr. David L. Anderson				
By Mr. Moates	4059			
By Mr. Roach		4061		

E X H I B I T S

<u>Exhibit No.</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
Mkt-C-6	4057	4057
UP/MPC-14	4104	
UP/MP-C-15	4135	
UP/MP-C-16	4161	
UP/MP-C-17 and 18	4176	
SFSP-C-8	4179	
UP/MP-C-19	4188	
UP/MP-C-20/	4207	
UP/MP-C-21/	4221	
UP/MP-C-22	4229	
UP/MP-C-23,24, and 25	4240	
UP/MP-C-26,27 and 28	4268	
UP/MP-C-29 thru 34	4300	

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P R O C E E D I N G S

JUDGE WOLKINS: Let's go back on the record.

Preliminary matters now?

MR. FLAGG: Your Honor, two brief ones. A week ago Friday during cross-examination of witness Swain in relation to the rail traffic diversion study, counsel for the MKT asked a series of questions. Last Tuesday counsel for MKT indicated that in order to expedite these proceedings that he would be satisfied if Applicants filed their responses to those questions as a late-filed exhibit, which was then identified as SFSP-C-6.

Today we filing SFSP-C-6 and ask that it be admitted into the record.

JUDGE WOLKINS: Any objection?

MR. GREENBERG: Your Honor, just let me inquire -- this is Ed Greenberg for the MKT -- whether there would be any right for further cross-examination in response or in regard to these particular answers. I don't know.

JUDGE WOLKINS: That wasn't my understanding. Had you discussed it with Mr. Kharasch at all?

MR. FLAGG: Our understanding was that Mr. Kharasch asked the questions and realized, in agreeing to accept written responses, that his ability to follow

1 up would be waived. Mr. Beyff will be here in another
2 capacity, and if there are some follow-up questions that
3 he can answer I'm sure he'd be willing to do so when he
4 appears as a witness later this week.

5 JUDGE HOPKINS: I see no reason not to receive
6 them in evidence at this time. Mr. Greenberg?

7 MR. GREENBERG: No objection, Your Honor.

8 JUDGE HOPKINS: They will be received in
9 evidence.

10 (The document referred to
11 was marked Exhibit No.
12 WPT-C-6 for identification
13 and received in evidence.)

14 JUDGE HOPKINS: Any other preliminary
15 matters?

16 MR. FIASC: One other matter, Your Honor.
17 Consultants from the Union Pacific have been in contact
18 with DNS Assessments, consultants for the Applicants in
19 the preparation of the rail traffic diversion study. As
20 a result of these discussions in the last week, DNS is
21 going to produce to Union Pacific three tapes which
22 contain information about intermediate steps within the
23 first three iterations of the base case adjustment.

24 As I understand it, Union Pacific is the only
25 carrier that has requested these tapes, but we wanted to

1 put this on the record so that if any other carrier
2 wants these tapes or wants to call Mr. Swain directly to
3 ask what the tapes contain exactly, they will be free to
4 do so.

5 JUDGE HOPKINS: Thank you.

6 Any other preliminary matters?

7 MR. NELSON: One other thing, Your Honor. You
8 will recall that Rio Grande was taken by surprise and
9 unable to cross-examine Mr. Chaspion on Friday. I have
10 arranged with Mr. Mayo to hold a deposition of Mr.
11 Chaspion, which we will then put into the record. We
12 haven't scheduled it at the time. Once it's done, we
13 will move it as Mr. Chaspion's testimony.

14 JUDGE HOPKINS: Thank you.

15 Any other preliminary matters?

16 (No response.)

17 JUDGE HOPKINS: Let's call the next witness,
18 then.

19 MR. ROAF'S: Your Honor, Applicants call as
20 their next witness Dr. David Anderson.

21 (Witness sworn.)

22 Whereupon,

23 DR. DAVID L. ANDERSON

24 was called as a witness by counsel Applicants and,
25 having been first duly sworn, was examined and testified

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1 as follows:

2 DIRECT EXAMINATION

3 BY MR. SCATES:

4 Q Sir, would you please state your full name and
5 business address for the record.

6 A Yes. I am David I. Anderson. Business
7 address is Temple, Barker & Slcane, 33 Hayden Ave.,
8 Lexington, Massachusetts.

9 Q Dr. Anderson, have you caused to be prepared
10 for submission in this case a verified statement
11 consisting of 45 pages, followed by 23 appendices which
12 appear at volumes SFSP-16 and SFSP-17?

13 A That's correct.

14 Q Have you previously furnished through
15 Applicants' filing on September 20, 1984, certain
16 corrections or errata to that statement?

17 A That's correct.

18 Q Do you have any additional corrections to your
19 statement to make at this time?

20 A Yes. I have two -- actually, three
21 corrections. On page 3 of the verified statement, the
22 first full paragraph, which begins "Overall, TDS found
23 that of the 52 million." I would like to change the "52
24 million" to "approximately 54 million."

25 Q All right, Dr. Anderson, can you briefly

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explain for the record the reasons for that change?

A In some recent verification work by TBS, we found some additional SPLCs that were inadvertently left out of the initial filing. Since these were jointly served SF-SP points, we felt we had to include them. These amount to approximately 2.6 million combined SF-SP tons.

These are generally in existing study regions that we have already examined in our analysis, generally near Houston and Los Angeles. There are only three points, I believe, that were not previously studied. We did discover in initial analyses that 1.5 million tons were non-competitive flows. These are flows for which no SF or SP competitive rates or routes exist at the present time.

The remaining 1.1 million tons may for the most part have sufficient logistics alternatives, if we went ahead and followed our further applications up the logistics screening process that we did in the remainder of the report. I can't directly state as to whether that 1.1 million tons has sufficient options at the present time, but feel that, because of our experience in having worked with this information for the last year, that these final tons that are not found with options really probably will not materially affect the

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1 findings of the study.

2 Q Earlier in your answer you used the term
3 "SPIC." Just so the record is clear, could you state
4 what that is?

5 A SPIC is the standard point location code.

6 Q You said there were two other corrections, I
7 believe?

8 A Yes, that's correct. On page 21 of the
9 verified statement, the first complete sentence, instead
10 of f-o-u-r, it should be f-c-r, "for outbound flows."

11 And on page Roman I-4, which is Table 1-1, the
12 line that starts off "Hutchison, Kansas," and then lists
13 three railroads, MP, NN, and OKT. The OKT does not
14 presently go to Hutchison and we would like to remove
15 that from the table.

16 Q With these additional corrections, then, Dr.
17 Anderson, is your statement true and correct to the best
18 of your knowledge, information and belief?

19 A Yes.

20 MR. MCATEE: Dr. Anderson is available.

21 JUDGE BOKKINS: Thank you.

22 Who's going to start?

23 MR. ROACH: I will start, Your Honor.

24 CROSS EXAMINATION

25 BY MR. ROACH:

1 Q Good morning, sir. My name is Arvid Beach,
2 representing the Union Pacific.

3 Let me just say at the outset that you have
4 submitted here a lengthy and complicated study, and we
5 have done our utmost to arrive at focused questions and
6 to shorten the question period for you. I hope you will
7 work with me to concentrate on the specific questions I
8 asked you, and we'll try to move along as quickly as we
9 can.

10 Let me begin, if I may, by reviewing some of
11 the basic steps and terminology of your study, so that
12 you and I will understand each other and people
13 reviewing this record will understand it.

14 Am I right that you first picked out a number
15 of study locations to look at -- that is, areas where
16 the Santa Fe and the Southern Pacific systems' merger
17 might create a competitive issue? Is that a fair
18 statement, that your first step was to pick out some
19 study locations from the entire system?

20 A Yes, that's correct.

21 Q Indeed, you say at page 2 of your verified
22 statement that, "points" -- you refer to "points and
23 areas in the Santa Fe-Southern Pacific service region
24 where competitive conditions may change after the
25 proposed merger." Is that correct?

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1 A That's correct.

2 Q Now, those we can refer to, can we, as study
3 locations, the areas you decided to look at?

4 A That terminology is acceptable.

5 Q Okay. And as I right that they in turn fall
6 into four categories: first group, one common points;
7 second group, two common points; third, market areas;
8 and fourth, local flows?

9 A That's correct.

10 Q Okay. And a Group 1 common point, is that a
11 location where both Santa Fe and Southern Pacific and
12 only those two railroads serve a particular locality?

13 A Group one common point is a location, as you
14 are calling them, where both railroads serve the common
15 point, and also reciprocal switching presently exists
16 between the carriers.

17 Q Okay. So that the shippers are actually able
18 to receive service to their door in the account of both
19 railroads, is that right?

20 A There may be exceptions. Certain industries
21 may be excepted from reciprocal switching.

22 Q And did you attempt to just include the
23 tonnage that was open to reciprocal switching?

24 A No, we included all the tonnage in the common
25 points that it is possible for shippers to presently

1 petition the ICC to become open to reciprocal switching,
2 and so we felt that it was important in this study to
3 look at all tonnage in the common points that could
4 possibly be affected now or in the future.

5 Q Okay, fine. Now, am I correct that the Group
6 I common points are listed in your table of appendices
7 as, in California there is Bakersfield, Fresno,
8 Oakdale --

9 A Excuse me. Could you tell me what table
10 you're referring to?

11 Q I am just looking at the table of contents in
12 volume two of your study, the table of appendices.

13 So in California we have Bakersfield, Fresno,
14 Oakdale, Richmond, Santa Anna, and Visalia, is that
15 right, in the State of California?

16 A That's correct.

17 Q And these are all locations along the general
18 line from San Francisco to Los Angeles where these two
19 railroads are essentially parallel, isn't that right?
20 And these are locations where the two railroads actually
21 meet and serve shippers in common, sometimes through
22 reciprocal switching?

23 A These are locations that are generally along
24 the corridor, some of them a little more east than
25 others, but you are basically correct.

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1 Q And then in Arizona you've got Phoenix as the
2 one common point, the one Group I common point in that
3 state, correct?

4 A That's correct.

5 Q And the one Group I common point in New Mexico
6 is Deming, correct?

7 A That's correct.

8 Q Finally, there are three listed in Texas:
9 Alpine, Caldwell, and Wharton, is that right?

10 A That's right, there are three Group I common
11 points in Texas.

12 Q I'm sorry, there are four. There is Eagle
13 Lake as well. I overlooked it. You should be careful
14 about agreeing with me, I guess.

15 So that exhausts the list of Group I common
16 points?

17 A Yes.

18 Q And if we can just put aside the ones in Texas
19 for a moment, isn't it correct that, again, these common
20 points are basically strayed along a geographical area
21 where the two railroads run in parallel, first from San
22 Francisco down to Los Angeles and then from Los Angeles
23 out to El Paso in Texas?

24 A Well, I wouldn't generally agree with that
25 statement. There are groupings of these common points,

1 Group I common points, around various large cities, like
2 Houston, for example, and they are all strung out along
3 the lines between cities in the service region.

4 Q Okay. Well, you do agree with me that the two
5 roads are parallel between Los Angeles and San Francisco
6 and between Los Angeles and El Paso, right?

7 A I agree with you that the two roads run
8 between those cities.

9 Q Essentially, they both get from one end to the
10 other end, and they pass through some common points in
11 the process, isn't that right?

12 A That's correct.

13 Q All right. Let's talk for a moment about
14 Group II common points. Am I correct that those are
15 locations where the merger will reduce the number of
16 railroads serving the location from three to two, with
17 the one exception of Houston, where it's four to three?

18 A Yes, that's correct.

19 Q Okay. And then, just to make clear what those
20 are, you've got those listed here in the appendices
21 also, and they are: Stockton, California; secondly, the
22 San Francisco-Oakland area in California; third, the Los
23 Angeles area, which you list as including L.A. harbor,
24 Long Beach, Anaheim, Colton, San Bernardino; fourth,
25 Houston; and finally, El Paso; is that right?

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1 A That's correct.

2 Q So you've got five Group II common points. In
3 four of them the railroads go from three to two; and one
4 of them, Houston, it's a special case?

5 A Correct.

6 Q Okay. Now, the third kind of study location
7 is the market area, and am I correct that your basic
8 idea there is that these are agricultural regions where
9 both of the railroads are parallel and shippers tend to
10 truck to both railroads from throughout the region?

11 A Again, those are areas, as you stated, that
12 are agricultural areas. The railroads both serve these
13 areas, not always parallel, in the regions.

14 Q Not exactly geometrically parallel, but they
15 are running --

16 A The lines run through the regions.

17 Q And there are two of those, correct?
18 Southwest Kansas and the San Joaquin Valley of
19 California?

20 A That's correct.

21 Q Okay. And then the final, the fourth kind of
22 study location, is what you call local flows. And as I
23 understand it, those are places where both the questions
24 again are, as I'm calling it, parallel. They run along
25 the same route. But in this case most of the traffic is

1 between the end points instead of coming from the region
2 itself to one of the two questions, is that right?

3 A That's basically correct.

4 Q And those two are Los Angeles to San Francisco
5 and Los Angeles to what you call the Texas coast, is
6 that right?

7 A That's correct, the Texas coast being the
8 Houston-Beaumont area.

9 Q The Houston and Beaumont areas, is that right?

10 A That's correct.

11 Q Now, the first part of your study process for
12 filtering traffic or finding, as you say in your work
13 papers, from time to time finding defenses for
14 particular traffic, is what I'm going to call in my
15 questioning the 50 percent test. As I understand it, in
16 all four types of these study locations you have a test
17 that says that if more than half of the total tonnage is
18 moving by some other mode -- I'm sorry, by some other
19 carrier than Santa Fe and Southern Pacific -- then you
20 conclude that the merger creates no competitive
21 problems.

22 Q Is that correct in a nutshell about the 50
23 percent concept?

24 A I wouldn't summarize it quite as briefly as
25 you have. When you're looking at specific logistics

1 options for any shippers or receivers at the various
2 common points, flows, and market regions, one of the
3 ways in which you can evaluate whether or not sufficient
4 options will exist in the future are to look at other
5 mode shipment capabilities for those particular shippers
6 and receivers.

7 And our analysis really did quite a detailed
8 look by commodity, by mileage block, inbound versus
9 outbound, in order to determine whether or not
10 sufficient other mode capability did exist for a number
11 of common point shippers, local flow shippers, in our
12 study area.

13 So I would more generally describe our
14 analysis as being a bit more sophisticated than I think
15 you are trying to describe it.

16 Q Okay. I promise you we will go back and go
17 through in detail exactly how it worked in each
18 instance. But I just want to establish at this stage
19 that for each of these four kinds of study locations --
20 the Group I common point, Group II common point, market
21 region, local flow -- you applied a 50 percent concept
22 to commodity categories and said that, this category is
23 taken care of, no competitive problem, if more than half
24 the tonnage is moving some other way than SF and SP?

25 A There are exceptions to us having used that

1 rule. We, for example, did not use it directly in the
2 southwest Kansas analysis.

3 Q Okay. Is that the only exception you can
4 think of?

5 A Yes, at the present time that's the only one I
6 can think of. As we get into it, there may be more that
7 appear.

8 Q Okay. I'm generally not going to talk about
9 southwest Kansas. Mr. Greenberg will handle that
10 later. But let me just take a few more minutes on the
11 50 percent concept.

12 The -- at the Group I common points, the other
13 carrier that you were looking at when you applied the 50
14 percent test was virtually always trucks, isn't that
15 right, since all the Group I common points except
16 Richmond, I believe, are landlocked and don't have
17 access to water?

18 A The motor carrier was a primary source of
19 other mode competition at many of these locations,
20 that's correct.

21 Q Well, I'm talking about Group I common points
22 now. You didn't look at anything but trucks at Group I
23 common points, did you, except for the water at
24 Richmond?

25 A Well, just to clarify that entirely, of

1 course, we wouldn't look at other rail moving in and out
2 of the Group I common points, either, because there are
3 no other railroads there.

4 Q Sure.

5 A And we did look at truck as the primary option
6 for shippers at those common points.

7 Q Okay. Well, not to belabor the point, but if
8 I'm at Fresno or Bakersfield truck is the only other
9 option, isn't that right? It's not just the primary
10 other option; it's the only other option?

11 A To the extent that there are a variety of
12 shipper options that are available that are not just
13 other modal and that we looked at in our study, truck is
14 a primary option for a number of those points.
15 Pipelines also, for example, might provide an option
16 under some circumstances, and there are many, many other
17 ways you can look at logistics options.

18 I guess what troubles me is just not
19 characterizing it as a simple rail versus truck issue.

20 Q Well, let me put it this way: If I go through
21 your appendices and look at the tables -- let's turn to
22 exhibit, just for an example, Exhibit 11-15. This is
23 the Group I common point of Santa Ana, and you've got
24 some data set forth here by two-digit STCC code and by
25 four different mileage blocks for inbound traffic and

1 for outbound traffic; is that right?

2 A That's correct.

3 Q And the data we're looking at on the top line
4 is railroad tons, is that; and on the rest of the lines is
5 truck tons, isn't that right?

6 A That's correct.

7 Q And there is nothing in here about airplanes
8 or pipelines or anything else, right?

9 A Yes, that's correct in this instance.

10 Q And I would find the same result in all the
11 Group I common points, wouldn't I, except Richmond,
12 where you've got some information about ports?

13 A That's correct.

14 Q Now, just following through again on the 50
15 percent test. At the Group II common points, where
16 we've got another railroad in the picture, when you
17 apply the 50 percent test you also included the other
18 railroad's tonnage on the other side of the scales,
19 isn't that right?

20 A That's right. The other railroad would have
21 been a competitor for this traffic.

22 Q And also water. For example, at Houston
23 there's a lot of traffic that moves by water, isn't
24 there?

25 A I don't quite understand what you mean.

1 Q Well, didn't you include water transport at
2 the Group II common points in your analysis?

3 A As an option in some of the Group II common
4 points, water intercoastal movements to the West Coast
5 would have been an option, that's correct.

6 Q Okay. And now, finally, for the market areas
7 and the local flows, again now we're dealing with just
8 Santa Fe and SP as the two railroads, so your 50 percent
9 test won't have any railroad tonnage on the other side
10 of the scale, correct?

11 A In the Group I common point? I missed the
12 first part of the question.

13 Q I'm sorry. I'm now going to the market areas
14 and the local flows.

15 A Uh-hmm.

16 Q That's right, that there is no other railroad
17 tonnage being compared to the SFSF tonnage?

18 A To the best of my knowledge, that's the case.

19 Q Okay. And in the case of the market areas,
20 for example the San Joaquin Valley, you don't have any
21 water either, isn't that right? You're talking about an
22 inland area?

23 A There is very little, if any, water
24 competition for movements in and out of the San Joaquin
25 Valley, that's correct.

1 Q But you do look at water for the local flows,
2 L.A.-San Francisco, L.A.-Texas coast?

3 A That's correct.

4 Q Okay. Now, isn't it true that the 15 percent
5 test that we've just sort of taken a panoramic view of
6 disposed of the vast majority of the tonnage that you
7 looked at in the study?

8 A Our looking at other mode options for shippers
9 in and out of those common points did reveal that in
10 most cases the other mode test from our perspective
11 provided sufficient logistics options for those
12 shippers.

13 Q Okay. I think I'll interpret that as a yes
14 answer and go to my next question, which is, if the
15 tonnage in your analysis, which was a 1982 base year
16 analysis, was disposed of by this 50 percent test, are
17 right that you did not then do any further study? You
18 didn't go interview the shipper or look at the shipper's
19 particular logistics situation?

20 A If I may make one comment first, we really
21 didn't dispose of tonnage. I just don't like the use of
22 that term. We certainly did look beyond the first set
23 of screens. We did look at a number of other possible
24 options shippers might have as logistics options for
25 their movements.

1 Q Well, my question was, if a particular tonnage
2 cell was filtered out by the 50 percent test, isn't it
3 true that you did not then do anything else to
4 investigate the logistics alternatives of those
5 shippers? You didn't go interview them or investigate
6 their factual situations?

7 A I think it's somewhat of a simplification of
8 our analysis, but you are correct on the fact that we
9 did not interview those particular shippers. We may
10 have interviewed corrects, motor carriers that were
11 capable of also hauling that traffic, even though we
12 specifically didn't apply it to looking at that
13 particular set of movements.

14 Q Well, let me just take as an example here
15 Exhibit 12-18, which is the summary chart for the Azalea
16 Group I common point. You have a summary chart like
17 this at the end of each of the common point chapters,
18 isn't that right?

19 A That's correct.

20 Q And what it tells us is the conclusion you
21 came to for each one of these traffic cells by two-digit
22 STCC code and mileage block, isn't that right?

23 A That's correct.

24 Q Okay. And legend number one here says:
25 "Indicates that Santa Fe-SP tons were less than other

1 modal tons and that sufficient intermodal alternatives
2 existed." Now, when I read that it sounds to me like
3 there are two conclusions in that statement, that
4 tons -- that tons the Santa Fe and SP are carrying are
5 less tons than someone else is carrying; and we have
6 reached the conclusion sufficient other intermodal
7 options existed.

8 But my question is, isn't it the case that
9 once you found out the tonnage was less than the other
10 carrier's tonnage, that was the end of the analysis for
11 those things?

12 You focused -- you spent a lot of time
13 focusing on the retaining cells and using your analyses
14 of highways and truck availability and so forth to see
15 whether there were alternatives in those other cells,
16 but you didn't do any further analysis in the cells with
17 ones in them.

18 A That's basically correct. But again, I think
19 it oversimplifies our methodology. When we started out
20 to do this analysis, our major task was to look at
21 whether or not shippers had sufficient other modal
22 options, and one of the tests that we used to do this
23 was the existence of substantial volumes of other mode
24 tonnage moving in or out of that particular point flow
25 by mileage block, by commodity.

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1 So again, I guess I just don't like to hear
2 the fact that that's all we did. It certainly doesn't
3 represent the substantial amount of work that went into
4 looking at those alternatives.

5 Q As long as we agree on the facts. I guess we
6 will always disagree on the characterizations, but I
7 think we agree on the facts.

8 Let me turn you to page 1-11 for a moment, and
9 this is part of your a little bit more detailed
10 discussion of methodology. There is a sentence at the
11 top of the page that says --

12 A Excuse me, counsel. It's a large study.

13 Q Okay. There's a sentence at the top of the
14 page that says: "In general, when tonnage by other
15 modes exceeded combined Santa Fe and SP rail tonnage for
16 a given mileage block and commodity, sufficient
17 alternative transportation capability was assumed to
18 exist for Santa Fe and SP customers in the region."

19 Again my question is about the phrase "in
20 general." Isn't it really the case that in every case
21 where you found the 50 percent test was passed or you
22 applied it statistically in this study, that was the end
23 of the analysis for that traffic cell?

24 A To the best of my knowledge, that's correct.

25 Q Okay. Now, putting aside for the moment the

1 Los Angeles-Texas coast local flow, as I right that in
2 all other cases you applied the 50 percent test at the
3 two-digit STCC code level?

4 A The initial screen, the intermodal screen, was
5 applied at the two-digit STCC level. That does not mean
6 we did not analyze options at a greater level of detail
7 for other cells.

8 Q But you also, except in the L.A.-Texas coast
9 instance, you also didn't go back and take apart the
10 remaining cells at the five-digit level and apply the 50
11 percent test again, did you?

12 A In those cells that failed, we did not use
13 what you are calling the 50 percent rule, what I call
14 other mode options, to look at those cells at a more
15 detailed STCC code level. However, when we analyzed
16 those cells, in most of the additional screens we were
17 working with commodity codes at the five-digit level.

18 For example, a local non-competitive analysis
19 was done at the five-digit level, for example our TRM
20 analysis where we looked at whether or not sufficient
21 other mode, in this case motor carrier, capability was
22 available. That was done at the five-digit level.

23 Q In the case of Los Angeles to the Texas coast,
24 that local flow, isn't it true that you did take a
25 second step and disaggregate the two-digit commodity

1 cells into five digits and run another 50 percent screen
2 across the board?

3 A There were a number of commodities that
4 initially were found not to have sufficient options
5 using the first screen. We went back on the way to
6 doing an analysis of source competition, which required
7 it be done at the five-digit level. We did disaggregate
8 the commodities and we did look at whether or not any of
9 the five-digit commodities in fact did pass the first
10 screen.

11 However, I will say that since we already had
12 shown that at the two-digit level we had clearly not had
13 enough other mode options, we didn't expect to find much
14 of anything at the five-digit level, given that the
15 tons, other mode tons, were substantially less than the
16 ATSF-SP rail tons in that movement.

17 Q Well, you did filter out several more at the
18 five-digit level, didn't you?

19 A I believe it was something on the order of 10
20 or 20,000 tons.

21 Q In that case of I.A. to the Texas coast or in
22 any of the other cases, I take it you never went back
23 and disaggregated the two-digit cells that you had
24 screened out to see if any of the five-digit cells were
25 rail dominant?

1 A We had made a decision up front to use a
2 certain methodology. We had examined whether to do that
3 analysis at the four or five-digit level. We had
4 determined for a number of reasons, the major one being
5 extreme sampling variability at the four or five-digit
6 level for the types of flow data we were using out of
7 the Reelie data base, where you could have sampling
8 errors as much as 100 or 200 percent on these flows,
9 this would be too inaccurate to do our analysis entirely
10 at the five-digit level.

11 We did look at that option up front. We had
12 to decide at that point for the first screen that we
13 used that we would do it at the two-digit level, because
14 of the extreme variability that existed at the four and
15 five-digit level.

16 And -- I'm sorry to make this a speech, but we
17 also checked very carefully at the three-digit STCC
18 level as to whether or not there existed -- first we
19 looked at the groupings of commodities at the
20 three-digit level and found that for the most part 80 or
21 more percent of the STCC codes actually grouped into two
22 or three three-digit STCCs at that level.

23 We then looked at, in our study region, rail
24 versus truck tonnage at the three-digit level, to see if
25 that grouped in the same basic categories, and we found

1 that they did. We also -- and this piece of information
2 is in the work papers -- we also looked at movements out
3 of the NMTDB data base of equipment type in and out of
4 our regions.

5 This equipment type was looked at by commodity
6 and we satisfied ourselves by looking at that
7 information that the correct types of equipment were
8 moving in and out by mileage block, by type of
9 commodity, that corresponded for the most part to
10 movements at that level of analysis.

11 We then decided to do our first screen at the
12 two-digit level. But I am satisfied that if we did our
13 analysis, let's say at the three-digit level, that it
14 would not materially affect our results.

15 Q Are these three-digit studies in your work
16 papers?

17 A Three-digit studies are -- it's knowledge that
18 I have. I don't believe that all parts -- I'll have to
19 check and see if they're in there. I don't know exactly
20 what was filed in the work papers with respect to that
21 piece.

22 Q Well, your answer sounded like it was part of
23 the study, and I've spent a lot of time living with your
24 work papers and I just don't recall seeing them. So I
25 would request that we have copies of that work product

1 if we can.

2 A You have to realize, there are a number of
3 layers that go on in any analysis like this. There are
4 intermediate papers that are generated, some of which
5 are discarded because once you discover what you're
6 interested in discovering you don't keep them. There
7 are lots of stages in this process in terms of the type
8 of information that's available.

9 Q Okay, but you'd have no problem about
10 producing this three-digit analysis so we can take a
11 look at it?

12 A To the best of my knowledge, I don't have any
13 problem with it.

14 Q Assuming your counsel agrees?

15 A I will just make one final parenthetical
16 note. I'm not trying to insist that all is beauty and
17 light in the STCC code differentiations. There
18 certainly are mismatches in certain commodity groups
19 that we are aware of and that exist, for example, in the
20 three-digit STCC-371, where you have both auto parts and
21 finished vehicles.

22 So there's not perfection there. But I
23 believe those particular cases are outweighed by the
24 complementary matching that goes on in many other
25 places.

1 Q We will look later at 371, I assure you.

2 Let me go back to what you said about the
3 statistical problems at the five-digit level. I
4 understood you to say that there are problems about the
5 dependability of the Peebie truck data at five digits.
6 Is that what you were saying?

7 A That's basically correct. It's because of the
8 way in which the data is constructed. It's based on the
9 1977 Census of Transportation, and the sampling errors
10 that are inherent in that Census of Transportation from
11 a statistical perspective do carry forward into any
12 derivation of that particular data base.

13 Q Well, let me ask you the question this way.
14 You could have gone ahead and used the data at the
15 five-digit level and you would have come up with some
16 number of cells in which rail tonnage exceeded truck
17 tonnage. And if what you're saying about statistical
18 problems is correct, some of those results, some of
19 those indicators would not be dependable; presumably,
20 others would. Is that right?

21 A That's basically correct; again, but one
22 doesn't know which are good and which are bad. So it's
23 extremely difficult to use the data under those
24 circumstances.

25 Q Okay. Did you decide on some rational

1 analytical basis, by consulting a statistician or
2 otherwise, that the benefit in terms of analyzing
3 competitive effects going to five digits was outweighed
4 by the fact that you would have to deal with these false
5 indicators in your analytical process to get to your
6 result?

7 A Mr. Roach, just by reading the Census of
8 Transportation appendix, that lists in great detail the
9 errors that may be associated with using the information
10 at a very disaggregate, detailed level such as are
11 available in the Beebe data base, convinced me that I
12 didn't want to take the risk.

13 When you're talking about sampling errors that
14 might range from eight to 32 percent at the national
15 level for a five-digit commodity and when you think of
16 how that multiplies itself up when you're talking about
17 a set of BEA flows, you may be talking about error rates
18 that are substantially in excess of 100 percent in many
19 of those particular flows. And frankly, I find that to
20 be unacceptable on face value.

21 Q Well, I think what we're talking about here is
22 finding cells where there is rail tonnage and there's no
23 truck tonnage, and a good example is what you
24 suggested. That is, assembled autos.

25 If you look at Mr. Barber's testimony in favor

1 of the Union Pacific trackage rights, he has put in an
2 appendix of five-digit data, and you will find in every
3 single BBA pair that all the rail traffic is going --
4 all the 37111 traffic, the assembled autos, is going by
5 rail.

6 MR. MOATES: Your Honor, I object. I've let
7 this go on for the last two or three questions. Mr.
8 Roach is doing a wonderful job of testifying. Earlier
9 there was a problem if Dr. Anderson would characterize
10 the answers, but we're not just characterizing our
11 questions; we're actually testifying. I think we better
12 get back to the question and answer format.

13 JUDGE HOPKINS: We are doing that, Mr. Roach.

14 MR. ROACH: I apologize. I'm just trying to
15 lead us to a question, and I'll try to do it in shortcut
16 fashion.

17 BY MR. ROACH: (Resuming)

18 Q Are you saying that the statistical problems
19 would be that there would be a false indicator of zero
20 in any of these cells, or are you saying that there
21 would be too many or too few truck tons, but there would
22 be truck tons?

23 A When you look at the standard error that's
24 associated with a particular flow in these types of data
25 bases, it could be a positive or negative error. So it

1 could be much higher, it could be much lower, and you
2 have no way of knowing which it might be in any
3 particular situation.

4 Q Well, my question was is it going to be zero
5 because of sampling error? And the reason I had a
6 predicate was that it looks to me -- and let's assume
7 hypothetically that I'm correct on my facts -- that that
8 never happened in this particular instance that I happen
9 to know about. I'm just trying to figure out what
10 you're saying about statistical error.

11 A I'm not sure I quite understand the question.
12 Maybe if there are certain instances -- and I believe
13 Mr. Liba has testified to this -- where truck tonnage
14 might exist, where it doesn't, and vice versa. There
15 are also places in Mr. Liba's data base, such as STCC
16 code 14, where he does not have any domestic tonnage.
17 So there are zeroes in calls for STCCs 14 and 40, as an
18 example, that would also be zeroes in his data base.

19 I don't quite understand what you're asking as
20 a question. There are a number of reasons why it could
21 be zero. Is that your question?

22 Q My question is whether you know of any reason
23 in terms of the statistical validity of the Beebie data
24 that there would ever be a false reading of zero, that
25 there should be positive truck tons when Beebie tells

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1 you there is no truck tons?

2 A There are sampling errors that are inherent in
3 that data base, that information. As I have already
4 indicated, you can't tell exactly where that is going to
5 happen because you are disaggregating flows down to very
6 detailed levels, either geographically or by commodity.
7 And I cannot tell you where you might run into problems,
8 only that you are going to run into problems down there,
9 and you can never be sure what type of error may be
10 inherent in that particular problem, whether it's
11 positive or negative.

12 Q Let me try one more time and then I promise I
13 will abandon this line.

14 A I'm trying to answer your question.

15 Q If I'm taking a political poll, there is a
16 sampling error. I may be wrong by plus 5 or minus 5
17 percent or whatever it is. But it's pretty unlikely
18 that I'm going to find 100 percent for Mondale and zero
19 percent for Reagan.

20 I'm simply asking you, if you went and looked
21 at the Pacific cells where the truck tonnage was zero, do
22 you know sitting here, other than speculating, whether
23 there is any appreciable risk that you would be misled
24 by that process and that there would in fact be
25 significant truck tonnage in those cells?

1 A I think I've already testified to it. Let's
2 take an example. You have a 100-ton movement with a 100
3 percent sampling error; you could have a zero in that
4 cell. I'm not quite sure --

5 Q That's theoretically possible. I'm asking
6 about your knowledge about the Reebie data base.

7 A My knowledge of the Reebie data base indicates
8 that at the five-digit level there are substantial
9 amounts of data that may be either missing or it may be
10 there when it perhaps shouldn't be there. And as I said
11 to you earlier, Mr. Liza has already testified to
12 this.

13 Q Okay. Now, just to finish covering the 50
14 percent test concept, we've looked at some of your
15 tables and I just want to establish that what you did in
16 the common points and the market areas was to divide the
17 traffic up into mileage blocks and there were four
18 mileage blocks; is that correct?

19 A That's correct.

20 Q And you call them one, two, three and four,
21 and they were zero to 200 miles, 201 to 500, 501 to
22 1,000, and more than 1,000, correct?

23 A That's correct.

24 Q And you also disaggregated into inbound and
25 outbound, right?

1 A That's correct.

2 Q Again, for the common points and the market
3 areas. And then for the local flows, you had
4 direction. By definition, you were dealing with a flow
5 between two points, and you had an origin and
6 destination, so you didn't need a mileage block and you
7 were just looking at two-digit flows, is that right?

8 A We still looked at inbound and outbound flows
9 by two-digit level, that's correct.

10 Q Looked at both, two directions?

11 A That's correct.

12 Q Okay. Now, just to complete the 50 percent
13 test overview, isn't it true that for the common points,
14 the Group I common points and the Group II common
15 points, what you did was to compare the Santa Fe and SP
16 rail tonnage at the SMC, S-F-L-C, which you referred to
17 earlier? That is, the actual location where the two
18 railroads jointly serve or reciprocally switch?

19 A It could be a collection of SMCs. It could
20 just not be one. Do we understand that?

21 Q I do. And you would compare that rail tonnage
22 with the rail tonnage for the entire surrounding BEA?

23 A That's correct.

24 Q Can you just tell us, what is a BEA, briefly?

25 A BEAs are basically metropolitan centers that

1 are surrounded by an economic hinterland, sometimes
2 defined by commuting distance. But they're primarily an
3 economic region that has a metropolitan center somewhere
4 in the region itself.

5 Q And they're defined by number of counties,
6 isn't that generally how it's done, a collection of
7 counties?

8 A That's correct.

9 Q For example, the BEA 162, which is the Phoenix
10 BEA, is most of the counties in the state of Arizona,
11 isn't that right?

12 A It has a lot of counties that are in the state
13 of Arizona, that's correct.

14 Q And what you would do for your Phoenix Group I
15 common point study would be to put on one side of the
16 scale the rail tons at the Phoenix SPIC or SPICs, the
17 local reciprocal switching zone in Phoenix, and then put
18 on the other side of the scale all the truck tons in the
19 whole Phoenix BEA, which means virtually the entire
20 state of Arizona; isn't that right?

21 A That's correct. Now, you're simplifying and I
22 accept it, but I just want to have it on the record
23 that, of course, this was all done by mileage block, by
24 commodity, inbound versus outbound. It wasn't a single
25 comparison of all rail tons moving out of the BEA or

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1 into the BEA into the common points versus truck PEA
2 tonnage.

3 Q I'm trying to cover all the pieces. It's a
4 complicated puzzle.

5 A I accept that.

6 Q Okay. Now, we're going to go back to all this
7 in some more specifics, but I want to turn to the other
8 filters or defenses or whatever you call them and just
9 cover them briefly.

10 A We call them logistics options. Excuse me.

11 Q Logistics options. Well, I'll show you some
12 work papers where they're called defenses, if you want
13 to look at them. But let's move along.

14 One standard you had was that you filtered out
15 any call showing less than 600 tons, and this applied to
16 all four of your study locations, is that right?

17 A Yes. We did not do a systematic analysis of
18 all tonnage less than 600 in most points. We did,
19 however, look and see if -- well, we looked at two
20 things. We looked at whether or not those were all
21 small shippers. We had a couple of questions that came
22 in, were these only small shippers, and the answer was
23 absolutely not.

24 And secondly, we did look and see if there
25 were sufficient truck tons for many of these cells in

1 some of the larger points that would be able to offset
2 any kinds of competitive problems that might arise in
3 the post-merger environment and found that in fact for
4 many of those 600-ton cells there were options that
5 existed as well. It represented about 21,000 tons
6 totally.

7 Q Okay. And do you know what percentage of the
8 cells that covered?

9 A I'm not sure what percentage of the cells it
10 covered. It's approximately a tenth of a percent of the
11 tonnage, however.

12 Q Sometimes you report by number of cells and
13 sometimes you report by tonnage. I'm just wondering if
14 you looked at how many cells were filtered out by the
15 600-ton test.

16 A We have the information. I don't remember the
17 number offhand.

18 Q Did you ever look at how much tonnage there
19 was, rail tonnage, in the entire BPA for these cells
20 that were under 600?

21 A In our common point studies, we didn't. The
22 only place we would look at -- I'm sorry, I should have
23 answered the question directly. We primarily looked at
24 -- start again.

25 We looked at only the Santa Fe-Southern

1 Pacific tonnage at these common points.

2 Q Okay. Now, another standard you apply to the
3 cells in all four of the different kinds of study
4 locations was the notion of local non-competitive
5 routes, is that right?

6 A That's correct.

7 Q And what you did there, if I understand you
8 correctly, is you filtered out the traffic that
9 originated and terminated both at an exclusive point on
10 one of the two merging carriers?

11 A That's right. Historical experience,
12 geographical orientation of certain lines, would have it
13 so that the other carrier did not participate in those
14 routes.

15 Q Okay, and the concept there was that there's
16 no competition for that traffic now, before the merger;
17 is that right?

18 A That's correct.

19 Q Okay. And then you also had a
20 containerizability step which -- let me see if I can
21 explain that and see if you agree with me. You had
22 two-digit STCC codes, 44, 45 and 46, which, because of
23 the way the reporting is done, only contain rail
24 tonnage. They are TOFC and COFC, is that right?

25 A They are a variety of other shipments besides

1 TOFC and COFC: freight forwarders, shipper
2 associations. TOFC, and COFC, are all in there.

3 Q And the point is that they're used exclusively
4 by railroads for reporting?

5 A That's correct.

6 Q And so you couldn't apply your 50 percent test
7 to those cells because there was by definition no truck
8 tonnage to look at, right?

9 A Direct comparability was a problem since we
10 were unable, since the truckers do not use those STCC
11 codes in general.

12 Q Okay. Now let's see if I understand what you
13 did to come up with a 50 percent test for those cells.
14 As I understand it, you had in hand a study that had
15 been done some years earlier of the percentage of
16 traffic in other two-digit STCC codes that was
17 susceptible to being containerized, is that right?

18 A No, that's incorrect. We didn't have the
19 study in our work. It was done for us by Beebie
20 Associates.

21 Q Okay. But if I found a list of percentage
22 factors and two-digit STCC codes in your work papers,
23 those would be containerizability factors?

24 A I'm not sure what you're referring to. I
25 can't answer the question.

1 Q Well, did Beebie give you containerizability
2 factors for the various two-digit SIC codes other than
3 44 through 46?

4 A We may have had them for some of the region,
5 but I want to be sure that you realize that the data
6 base was constructed for us by Beebie. We didn't
7 construct the containerizable data base ourselves.

8 Q Okay. I'm really not concerned about that.
9 But the way it was done was to go and apply these
10 percentage factors to the other two-digit SIC codes --
11 no, I'm already off the track, I can see by your shaking
12 your head. Can you set me straight?

13 A Beebie did its analysis on containerizability
14 at the four-digit level.

15 Q Okay. With that correction, the process was
16 to go back and look at the rail tonnage -- I'm sorry,
17 look at the truck tonnage in the other two-digit SIC
18 codes and apply these containerizability factors -- I
19 just said two-digit; the four-digit SIC codes -- apply
20 the containerizability factors, add up all the results,
21 and come up with a grand total of containerizable
22 tonnage in the SIC codes other than 44 through 46, is
23 that right?

24 A That's correct. The purpose was to develop a
25 containerizable data base that had the same

1 characteristics -- mileage blocks, commodities, inbound
2 versus outbound from the BIA -- as the other information
3 we were using.

4 Q And then if that total figure was greater for
5 the particular mileage block than the figure in 44, 45,
6 and 46, that took care of 44, '5 and '6, is that right?

7 A That was another logistics option that we
8 looked at, that's correct.

9 Q Was it ever less? Was the rail number you had
10 in 44 through '6 ever less than the containerizability
11 number you came up with through this technique?

12 A There may have been a few cases where that
13 happened. I can't cite them off the top of my head.

14 Q Okay. I would like if we could have a report
15 on that from counsel, because there is no indication in
16 the report that that ever happened.

17 Q Tell me what the theory is as to why you
18 regard that technique, that sort of fictional creation
19 of a containerized truck here, as dispositive of whether
20 there are logistic options for the rail traffic in SIC
21 codes 44 through 46.

22 A The comparison of a containerizable truck ton
23 to a containerizable rail ton, which is the primary
24 traffic moving in SICs 44, 45 and 46, was the basis for
25 our analysis. We literally tried to discover, compare

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1 and develop a consistent data base of containerizability
2 across the modes to do this analysis.

3 Q Well, I guess what I'm asking you is, why
4 didn't you just look at the tonnage in '44, '5 and '6 and
5 say, that's containerizable, it's already in
6 containers?

7 A That's correct.

8 Q So there's competition with trucks, because
9 trucks can carry containers. Why did you have to see
10 whether there was even more tons moving in trucks that
11 could theoretically move by rail?

12 A Because the whole point of our analysis is to
13 look for logistics options, and there are many, many
14 different types of commodities that are moving in
15 containers. The containerizable percentage varies by
16 STCC code group. If you can put one type of commodity
17 in a van, you can put many other types of commodities in
18 that van also.

19 So the important factor to look at is the
20 equipment type, and that's the key characteristic of the
21 transportation characteristics that we were looking for
22 here, that they were able to go in a van trailer.

23 Q I confess I don't understand how that answers
24 the question. My question was why wasn't the only issue
25 for the rail tonnage in '44 through '46 whether those tons

1 could move by truck, as opposed to whether there were
2 other tons theoretically out there in the trucks that
3 could be containerized and moved by rail?

4 A We were trying to be precise in our analysis.
5 I'm afraid I don't quite understand what your question
6 is.

7 Q Well, I can understand, even if I don't agree
8 with it, the notion that if 51 percent of the tonnage in
9 STCC code 20, which is food products, is going by truck
10 and 49 percent is going by rail, you can argue that
11 there is a truck alternative. But what I don't
12 understand is why that's relevant to STCCs 44 through
13 46.

14 A Because TOFC substitutes on the line haul in
15 many cases for a direct truck operation. You put a van
16 on a flatcar instead of having a van on the highway.

17 Q Okay, but the trucks that are carrying those
18 other theoretically containerizable tons are not
19 actually hauling containers necessarily, are they? You
20 don't know how they're hauling the tonnage today.

21 A There aren't that many containers, if any, in
22 domestic operations. The operations are in van trailers
23 that are put on the highway at either end of the TOFC
24 trip to move it to or from its final destination. It's
25 the same trailers, basically, in both operations.

1 C Okay. Let me pass to another topic. In the
2 Los Angeles to Texas coast flow, as I understand it, you
3 had a further systematic statistical filter that you
4 applied, which was source competition, is that right?

5 A That's correct.
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1 Q And tell me if I'm correct. If I understand
2 it, what you did was to look at the -- after you had
3 gotten done filtering out your two-digits by the 50
4 percent test and after you filtered out some five-digits
5 by the 50 percent test, you had some five digits left
6 over.

7 And, for example, a number of them were going
8 westbound from the Texas coast to Los Angeles, from
9 Houston and Beaumont BEAs to the Los Angeles BEA.

10 And what you did was to take the five-digit
11 STCC code and look at how much was coming into Los
12 Angeles by rail over Santa Fe and SP, how many tons, and
13 then compare that to the grand total coming into L.A.
14 from the whole world by anything in that same five-digit
15 STCC code. And if the Santa Fe SP from Texas was less
16 than 50 percent, that took care of that traffic.

17 Is that right?

18 A Again, it's a simplistic characterization of
19 the work. I think it's important again to point out
20 that in looking at logistics options, what we are doing
21 here is trying to determine whether or not substantial
22 amounts of traffic are either moving by another mode in
23 that particular mileage block for a particular commodity
24 or, in this case, substantial volumes of tonnage are
25 moving into a particular location, in this case a BEA,

1 and when that occurs, that indicates that the shipper or
2 receiver of that traffic, in cases where that volume of
3 other mode or other source tonnage exceeds the existing
4 source, does provide him with a set of competitive tools
5 to use to help him in the post-merger environment, if
6 any threats arise as to the abuse, potential abuse of
7 market power by the railroads and --

8 I'll let it go at that.

9 Q Well, you say I'm being simplistic, and I can
10 understand if what you're saying is you have reasons
11 that support what you did.

12 A But I'm not being simplistic in saying that
13 you used a mathematical screening test and you applied
14 it in every single case, and you made no exceptions from
15 it either way. You didn't decide that even though the
16 traffic would be filtered out, further analysis
17 indicated there was a competitive problem, for example.

18 Isn't that right?

19 A I think it's also important to understand that
20 this is an extremely conservative test that we employed
21 in many markets, and we've heard testimony in this
22 courtroom before about truck having to only be in a
23 market, let's say, for 5 percent of its total tonnage of
24 flow, for 5 percent of its total tonnage to be
25 competitive, or maybe 10 or 25 percent.

1 I don't know what the numbers are, but I do
2 know that if we set a standard that says that it has to
3 be at least 50 percent, that's a pretty conservative
4 standard to evaluate whether or not sufficient options
5 might exist for a shipper in these types of flow.

6 Q Okay. I'm really just trying to establish
7 what you did, and I said at the outset, you know, that
8 we're going to get bogged down if we spend -- I will
9 have questions about your reasons. But I'm really not
10 trying to debate you at this point.

11 A I'll try to control myself.

12 MR. MONTES: I must note for the record again,
13 I'm trying to keep quiet because I want this to move,
14 but some of Mr. Boach's questions are twice as long in
15 the transcript as the witness's answers. And he gives a
16 long characterization, and the witness tries to follow
17 it, and then when the witness tries to be a little more
18 precise or explain why --

19 JUDGE HOPKINS: I think it's working both
20 ways. I don't think it's one way or the other here.

21 MR. MONTES: More direct questions might
22 help.

23 JUDGE HOPKINS: But it's a rather difficult
24 subject, and it's a problem, and trying sometimes to
25 come to completely direct questions. And there's no

1 reason to be on the defensive about your study either,
2 really.

3 I think you're being quite defensive, and I
4 don't think we need to be.

5 THE WITNESS: Okay.

6 BY MR. BOACH: (Resuming)

7 Q To finish the panoramic overview, sir, the
8 last filter step, as I understand it from looking at
9 your summary tables and so forth, is the so-called TRAM
10 step. And that is, if I'm right, where the traffic had
11 fallen through the other screens we have discussed, and
12 then you looked at the particular circumstances of
13 particular shippers.

14 Is that right?

15 A The TRAM screen was one of our other screens
16 in the analysis. That's correct.

17 Q Okay. And it was sequentially the last one
18 wasn't it? You didn't start with a whole potful of
19 shippers and send them over to TRAM to look at. You
20 sent TRAM the ones that fell through the other screens.

21 A That's basically correct.

22 Q Now, can you just tell me briefly what the
23 respective roles of -- well, let me start.

24 What is TRAM and what was your relationship
25 with TRAM?

1 A TRAM is a company that is operated by Mr.
2 Forrest Baker, and we used TRAM to do specific analyses
3 that related to the motor carrier industry for use in
4 this merger hearing.

5 Q Is TRAM more than Mr. Baker?

6 A I believe Mr. Baker has other employees. I'm
7 not familiar with the number or who they are.

8 MR. ROACH: Your Honor, if I may mark as
9 Exhibit UP/MF-C-14, four pages selected from Mr.
10 Anderson's work papers.

11 JUDGE HOEKINS: That will be marked for
12 identification.

13 (The document referred to
14 was marked Exhibit UP/MFC-14
15 for identification.)

16 BY MR. ROACH: (Resuming)

17 Q Now, do you have this in front of you, sir?

18 A Yes.

19 Q Do you know whose handwriting this is?

20 A Yes. I believe it's Mr. Zisman's handwriting,
21 Mr. Nolan A. Zisman of the Southern Pacific Railroad.

22 Q Is he a gentleman that you worked with at the
23 railroad in the TRAM portion of the analysis?

24 A Mr. Zisman served as a study coordinator for
25 us from the SP.

1 Q Is it fair to say that when you came up with a
2 cell that had dropped through the other screens, that
3 you would send it along to Mr. Zisman and ask him for
4 suggestions as to competitive options?

5 A No, that's not true.

6 Q Did you send it to somebody at the railroad?

7 A We communicated directly with Mr. Baker on any
8 particular cells that we thought Mr. Baker could provide
9 us with some information on about competitive logistics
10 options.

11 Q My question is about the role of the railroad
12 in this overall process that I'm calling the TRAM step,
13 for shorthand purposes.

14 How did the railroad fit into that? Did they
15 provide suggestions as to logistic alternatives?

16 A They paid the bills, basically. They didn't
17 provide suggestions in terms of logistics alternatives,
18 although, in general, although we did talk to some of
19 their marketing managers about certain issues. Those
20 would be in the work papers as well.

21 Q Well, look at the second page here. It says:
22 "Unless AT&T marketing people come up with a good story
23 line, we must concede."

24 Doesn't that suggest that the railroad people
25 were trying to find explanations for competitive

1 options?

2 A There are cases where one could ask the
3 railroad if there is something that they know about, and
4 perhaps the flow is local non-competitive. Some other
5 special situation that might exist, that perhaps would
6 not be known by a member of the study team, the TBS
7 study team.

8 And it was, I think, fair to ask them if they
9 had any suggestions in those areas, and when they came
10 up with suggestions, we would check them out as to
11 whether or not the option might be feasible. In many
12 cases, local non-competitive had to be checked at almost
13 the station level, almost with a field agent, because of
14 the difficulty in determining whether or not certain
15 industries might or might not be open to alternative
16 routes and routes.

17 Q Well, what I'm getting at here, I think it's
18 fair to say that there's a sense in these work papers
19 that Forrest Baker is a last hope.

20 It says on page 1, "FB trucks or bust." And
21 I'm trying to figure out, did the traffic only go to
22 Forrest Baker if the railroad had to throw in the towel
23 and couldn't find an alternative?

24 A Well, the judge has asked me not to be
25 defensive about the study.

1 (Laughter.)

2 A Do you want a full explanation of what Mr.
3 Baker did? I tried to shorten it up when you first
4 asked about Mr. Baker. He had a lot of different roles
5 in this study, and I was just trying to be responsive to
6 the judge.

7 I'm glad to explain it now if --

8 JUDGE HOPKINS: Go ahead.

9 THE WITNESS: Thank you.

10 Mr. Baker engaged in a variety of analyses for
11 TPS in this study, starting literally from the first
12 days in which we began the analysis. One of the key
13 factors we were looking for in our evaluation of shipper
14 options was the whole question of whether or not entry
15 into many of the regions and flows that we're dealing
16 with here by the motor carrier was feasible.

17 Could carriers move many of the loads that
18 were currently being moved by rail? This would support
19 our contentions that have been expressed earlier in this
20 case by both Dr. Baumol and Dr. MacAvoy on the
21 contestability of the rail markets in our analyses.

22 So Mr. Baker did a number of studies. Mr.
23 Baker was far from being, shall we say, the least ditch
24 attempt on our evaluations of logistics options of
25 shippers. He contributed heavily to all aspects of our

1 study.

2 BY MR. ROACH: (Resuming)

3 Q Okay. While putting aside the other aspects
4 and just focusing on the traffic that fell through the
5 other screens and had to go through this last TEAM step,
6 I simply wanted to know whether it went to Mr. Baker
7 only after the railroad had said that they couldn't come
8 up with an alternative.

9 A No. Absolutely not.

10 Q I didn't mean to cut you off.

11 A I just wanted to add one quick sentence; that
12 often a number of options were looked at. Mr. Baker was
13 sent information on a number of flows that we found
14 other options for eventually, but he was not given a
15 selected list of only those that perhaps the railroad
16 said no go.

17 Q Okay.

18 A Again focusing on or talking about these cells
19 that reached the TEAM stage, you had another process
20 where you arrived at what you called "focused
21 customers."

22 Q Is that right?

23 A That's correct.

24 Q And that was a process where you would, I
25 think you say at some point, either in your report or

1 your work papers, that you had a top-down phase and a
2 bottom-up phase. And the top-down was looking at the
3 regional economy and the bottom-up was looking at big
4 shippers.

5 And all that led to a list of companies;
6 right?

7 A That's correct.

8 Q And you tried to match those up with two-digit
9 STCC codes; correct?

10 A That's not really correct.

11 Again, do you want a whole explanation of the
12 process?

13 Q If you can just tell me how the cell that
14 reached the TRAM stage got linked up with the focused
15 customer or more than one.

16 Q Right. Well, I think I can do that fairly
17 simply. We did look at the economics of the various
18 common point regions. From that we developed, using the
19 economic information service -- ESI -- data, lists of
20 possible rail shippers and receivers by common point.

21 We then compared that list of possible SISI
22 shippers at these common points with actual railroad
23 waybill data, 100 percent waybill data for 1982. Those
24 shippers that matched up in those cases, plus others as
25 you mentioned that came up from the bottom in terms of

1 large rail shippers, were the ones that became our basic
2 focused shippers.

3 So there is a bit more to it, but I didn't
4 want to go on and on.

5 Q Okay. Is that the process summarized at page
6 7 of your verified statement, the first paragraph?

7 A That's one summarization of it. There are
8 also much better ones in the other chapters.

9 Q More detailed?

10 A That's correct.

11 Q Now, is it correct that you basically had two
12 of these focused customers per two-digit STCC code?

13 A In our final analysis, that's correct.

14 Q And when a call would drop through the other
15 screens and go off to the TRM scrutiny, did it go in
16 the form of two focused customers to take a look at?

17 A There were actually two phases to that.
18 Because of the need to expediate the work, we did send
19 TRM an initial list of top five shippers for these
20 common points, mileage blocks, et cetera, as a starting
21 point.

22 That was later refined so that there may be
23 some instances where actual focused shippers that were
24 looked at never really became focused shippers because
25 the list was modified during the process.

1 Q Okay. At pages 1-20 and 1-21, focusing really
2 on the last paragraph on 1-20 and the first paragraph on
3 1-21, you talk about this process of selecting two top
4 shippers and receivers for each focused commodity.

5 And then you talk about evaluating significant
6 individual cases and so forth. And in reading this, I
7 confess I got the impression that this was done right
8 down the line in all the two-digit STCC codes. And then
9 after further study, I think I figured out that that is
10 not the case.

11 Can you set me straight? Did the focused
12 customers get specifically analyzed only when the cell
13 dropped down through the other screens, or did they get
14 studied, come what may?

15 A As I indicated, there were two lists sent to
16 Mr. Baker, the first list -- and Mr. Baker completed the
17 analysis on the first list. There may have been
18 shippers in there that subsequently were screened out by
19 the intermodal test that were studied.

20 But generally, the shippers studied were ones
21 that did in fact not make it past the first set of
22 logistics options screens.

23 Q Did he send you back any shippers that he
24 couldn't find options for that later got screened out at
25 some other level?

1 A Well, Mr. Baker was -- I should be a little
2 clearer here. Mr. Baker was, in the first phase of his
3 analysis, really looking to determine whether or not the
4 facilities of the top shippers in these common points
5 actually could take rail or truck movements on the
6 inbound or outbound leg of their various operations.

7 So it was a confirmation analysis done for us,
8 so we were able to say yes, we did evaluate whether
9 these particular cells had options available, and we can
10 testify to the fact that the shippers who make up the
11 top two people in many of those cells do, in fact, use
12 rail and truck traffic.

13 It's not something that we just, as you said
14 earlier, just applied this screen and forgot all about
15 it. There was extensive prechecking to go on, to make
16 sure that this screen was not going to be applied
17 incorrectly. It was not going to be applied where there
18 may not be the ability to handle truck traffic, let's
19 say.

20 Q He was going to see whether they used trucks?
21 Is that what you're saying?

22 A He was going to evaluate their use of all
23 transportation.

24 Q Okay. But focusing on trucks, what did he
25 do? Did he go out and work and see whether they had a

1 truck parked there?

2 A That's correct. He did an analysis of the
3 logistics movements in and out of the facility. I don't
4 want to be long-winded, but again the simplistic
5 characterizations of the work are not correct.

6 Q Well, did he go interview the shippers?

7 A No, he did not interview the shippers.

8 Q So what did he do?

9 A He observed the operations of the facility.

10 Q You mean he stood on the street and looked at
11 it?

12 A He observed the operation of the facility.
13 That's what I said.

14 MR. MCATEE: Your Honor, I will note that Mr.
15 Payer is the next witness. So I think it's okay for
16 some basic testimony from Dr. Anderson as to what he
17 understood Mr. Baker to have done.

18 Mr. Baker will be another witness this week.

19 MR. ROACH: I will save the details for Mr.
20 Baker.

21 BY MR. ROACH: (Resuming)

22 Q Do you know what percentage of the cells that
23 didn't get down to the TRAF level ultimately were looked
24 at by Mr. Baker in this fashion to see whether they had
25 trucks coming in and out of their plants?

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1 A I don't know it offhand. I think the question
2 is a better one for Mr. Parker, since he did the
3 analysis.

4 Q He was looking at pretty much the biggest two
5 companies in the particular commodity cell, wasn't he?

6 A That's not correct; no. He was looking at
7 often the largest shipper and another representative
8 shipper. That representative shipper generally tried to
9 choose one that was in a different line of business so
10 that we would have some diversity within our
11 evaluations.

12 Q Now, at page 2 of your study --

13 A Are you talking about the verified statement?

14 A The verified statement. Sorry.

15 In the fourth line of the second paragraph,
16 there is a statement that the analysis was
17 industry-specific, and that turns up again on page 4 at
18 the beginning of the first full paragraph there, and
19 then on page 10 in the last bullet there is a statement
20 about industry and shipper-specific.

21 A That's correct.

22 Q Just one more time. I want to pin this down.
23 For all the cells that didn't make it to the 75% level
24 stage, that got filtered out at 50 percent, or source
25 competition for 18-Texas, or 500 tons, or captive

1 non-competitive, you did not, did you, go study
2 individual shippers or individual industries?

3 A I have already answered that question. I will
4 summarize it briefly again.

5 In the initial part of the study, we gave Mr.
6 Baker a list of the five top shippers in these common
7 points. Mr. Baker investigated whether or not those
8 shippers could handle multimode operations at the
9 facilities.

10 We did that to check to make sure that this
11 initial screen that we were going to apply in fact had
12 reality. In other words, the people did actually use
13 rail and truck out there at these common points. We
14 weren't going to come in here and try and tell the
15 Commission that this was -- well, just because there is
16 more truck tons than rail, then you should assume that
17 there are no problems.

18 We did investigate whether or not that was
19 true. Mr. Baker did that. He will testify to that.

20 Q Okay. Whether or not the shipper could
21 physically use a truck?

22 A Mr. Baker will testify to that.

23 Q Well, is that your understanding of what that
24 first level of Mr. Baker's scrutiny was about -- whether
25 a truck could accommodate that shipment?

1 A Again, I've already explained that Mr. Baker
2 evaluated the logistic options of those shippers and
3 what they were using, what kinds of rail truck, you
4 know, what was the inbound versus outbound. It's much
5 more complex than just whether a truck was parked in the
6 yard.

7 Q Okay. Then, ultimately, as I understand it
8 from page 3 of your verified statement, you had about 3
9 million tons that came through the filters down to the
10 TEAM stage of the analysis.

11 Now your corrected number is approximately 54
12 million; correct?

13 A Yes, that's correct. I'm not exactly sure.
14 You put in another phrase there. I'm not exactly sure
15 what the meaning of that phrase was.

16 Q Well, I'm trying to make sure that this 3
17 million figure here on page 3, which turns up again on
18 page 4 of your verified statement after corrections, is
19 the tonnage that reached the TEAM analysis stage.
20 That's the tonnage that Mr. Baker gave more in-depth
21 study to?

22 A Yes. Again, I will add that, of course, he
23 did many other evaluations of other tonnage that
24 wouldn't be included in that 3 million as well, other
25 shippers that actually passed the first screen and all,

1 so it's not the only tonnage.

2 It is basically the tonnage that worked its
3 way down through our various logistics options screens.
4 That's correct.

5 Q Okay.

6 On page 2 of your verified statement, if I can
7 find it, you say what I believe is the conclusion of
8 your study. You say that -- and this is in the last
9 full paragraph on the page, quoting the last part of
10 that first sentence -- "The potential harm to regional
11 economies and to Santa Fe-SP rail customers' logistics
12 options in the Santa Fe-SP study regions, as a result of
13 the proposed merger, will be minimal."

14 Is that the bottom line in this study? Is
15 that the conclusion?

16 A That's correct.

17 Q Let me ask you first -- let me ask you some
18 questions about that conclusion at a general level,
19 before we go back into the mechanics for another pass.

20 Do you agree with me that all shippers who are
21 today commonly served by Santa Fe and SP will lose one
22 rail option after this merger?

23 A By "commonly served," do you mean being
24 commonly served by switching railroad or by reciprocal
25 switching, or which are you specifically referring to?

1 Q I include both. Both trains can drive up to
2 the dock or they're in reciprocal switching zones.

3 A If the facility is not currently using rail,
4 I'm not sure that they're really losing any logistics
5 options, but basically your answer is correct.

6 Q Okay.

7 And your conclusion is that the loss of that
8 option is minimal; that the option itself is a minimal
9 option. Is that a fair characterization of your
10 conclusion here?

11 A No, it's absolutely not. Our conclusion on
12 that subject was that there are many options the shipper
13 has in the market place. The study goes through them in
14 great detail.

15 We said that the impact on specific tonnage in
16 the region, specific Santa Fe tonnage would be minimal,
17 and that's what that basic sentence says.

18 Q Well, the sentence says that the potential
19 harm to regional economies and to rail customers'
20 logistics options will be minimal.

21 A That's right.

22 Q I'm focusing on that phrase about the harm to
23 their options, and I'm asking you if a shipper has two
24 railroads today and would have one after this merger, do
25 you think that's a minimal effect on his options?

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1 A That's what our statement says. As has been
2 indicated in previous testimony, the existence of a
3 large number of competitors in the market and the
4 disappearance of one competitor may not have much of an
5 impact.

6 That's been testified to a number of times by
7 Dr. MacAvoy and Dr. Paulol.

8 C Okay.

9 Now, how about shippers that are locating new
10 facilities in the various study locations in your
11 study? Don't they, after this merger, lose forever the
12 option of pitting Santa Fe against Southern Pacific for
13 the best industrial development deal that they can get
14 from those two railroads?

15 A We didn't study that particular aspect of a
16 real estate transaction as it relates to this analysis.

17 C Well, how about signing contracts in that
18 circumstance? I'm trying to decide whether to open up a
19 plant. Today I can talk to two different railroads in
20 Bakersfield; after the merger there will be one.

21 Is that a minimal loss of options, in your
22 opinion?

23 A The amount and volume of other mode options
24 available in these regions, as our study amply
25 testifies, we don't consider -- it's clear I have to

1 agree with you, of course. You are losing one rail
2 option, and perhaps for certain parts of certain
3 logistics channel, but the shipper itself may not be
4 losing total logistics options. It may just be one
5 small aspect of his business might use rail.

6 He is not without options. He is not losing a
7 huge amount of ability to compete in the marketplace
8 perhaps as a result. So you should be very careful not
9 to say it's black and white in terms of the options that
10 are available to shippers and how the merger may affect
11 them.

12 Q Well, it's quite different to say he's not
13 suffering a huge reduction in options, as you just did,
14 than to say, as you do on page 2, that the potential harm
15 to his options will be minimal.

16 A And I'm trying to catalog here exactly what
17 options would be lost that you in total consider
18 minimal. Now, we're talking about new sites for
19 plants, and I want you to tell me whether you consider
20 the loss of the option to be minimal.

21 A Under the conditions that someone siting the
22 plant would need rail traffic for 100 percent of the
23 inbound and outbound traffic, which is very very rare
24 nowadays, perhaps that would be true. He would lose a
25 total option.

1 But remember the existence of other modes,
2 such as the truck, does provide substantial competition
3 for the great majority of the flows that are moving in
4 and out of this region.

5 Q Well, what you just said is that a shipper who
6 has no other option will totally lose his options, and
7 that might be significant.

8 A No. Again --

9 Q My question is, are the options that will be
10 lost here minimal? Is it a minimal loss of options that
11 shippers throughout all these regions have talked about
12 will no longer be able, after this merger, to bargain
13 with two different railroads about rail contracts and
14 plant locations?

15 A Absolutely -- well, they aren't going to be
16 able to -- if your question is are they going to be able
17 to bargain with the Santa Fe and Southern Pacific
18 separately, of course they're not going to be able to.
19 I can't deny that.

20 Q And that loss of options is minimal, in your
21 opinion.

22 A That's correct, given the substantial amount
23 of other mode options available.

24 Q Okay. At page 23 of your verified statement,
25 in the last full sentence on the page, you are talking

1 here about Fresno, and you say that you want to note or
2 it should be noted that rail tonnage originating in
3 Fresno is well within range of competing rail carrier
4 intermodal ramps located in nearby regions.

5 Do you see that sentence?

6 A Yes.

7 Q Okay.

8 Now, isn't it true that after this merger,
9 shippers or shipper agents or consolidators who use
10 Santa Fe and SP competitive ramps at Fresno, at
11 Bakersfield, at Phoenix, at other locations, will lose
12 the option of sending their trailers to two different
13 railroads' TOFC facilities?

14 A We studied those, that tonnage that comprised
15 those particular shippers that you were indicating might
16 lose their options in our analysis, and that is recited
17 all through our analysis as to whether or not they have
18 sufficient options.

19 I think it shows in our study that we have
20 determined that they do, for the most part.

21 Q Well, what I have trouble understanding -- and
22 I would appreciate your explaining to me -- is how the
23 presence of the UP ramp in Los Angeles, which is a fair
24 number of miles from Fresno, I think you'll agree, is a
25 sufficient logistics option for purposes of the study,

1 while the loss of two competitive TOFC ramps right down
2 the street from each other is minimal, in your opinion.

3 A That sentence, as it's stated here, said that
4 there are ramps that are located in nearby regions that
5 could provide competitive options to these carriers.

6 I, at the present time, don't know exactly
7 which those are. If you would like -- and I think it's
8 explained in various parts of the study here which ones
9 these are in the Fresno chapter -- we could look at
10 that.

11 Q Sure. Let's look at Chapter 7. You start out
12 with a discussion of nearby railroads and nearby
13 transfer facilities. And I see here on page 7-3 that
14 you say at the very bottom: "Intermodal service is
15 available on MP in Stockton, San Jose, and Milpitas, and
16 on UP in Los Angeles. Right?"

17 A That's correct.

18 Q And you say, "See Exhibit 7-7," which is a
19 map; correct?

20 A That's correct.

21 Q Ok.

22 Now, Fresno is sort of in the middle of this
23 map, right? It's in the middle of the San Joaquin
24 Valley.

25 A Yes.

1 Q And down at the bottom of the map is Los
2 Angeles where you've got a big black circle for the UP
3 intermodal facility, correct?

4 A Uh-huh.

5 Q And up at the top, around the San Francisco
6 area, there's a WP circle at Stockton and some other WP
7 circles up further north, and another one at Oakland.

8 A There's an MET at Modesto.

9 Q An MET at Modesto, which you didn't mention in
10 the text but it's on the map. And those are all TCFC
11 ramps that are some number of miles away from Fresno;
12 correct?

13 A That's correct.

14 Q The closest one looks like the MET one at
15 Modesto. Is that fair?

16 A That's correct.

17 Q Do you have any idea how far that is?

18 A Offhand, I don't know the mileage.

19 Q Okay, but it's a lot farther than the distance
20 between the Santa Fe and the SF ramps in Fresno;
21 correct?

22 A Uh-huh. The purpose of our study was not to
23 say there are going to be lots of alternative ramps
24 around; its purpose is to say that when you look at the
25 logistics options for a shipper in a particular location

1 such as Fresno, and you look at the amount of volume of
2 truck tonnage moving in and out of that region, that
3 provides sufficient control, sufficient pricing control
4 perhaps over the remaining carriers in that area after
5 the -- after the merger.

6 Q Well, you made a point at page 23 of your
7 verified statement of the fact that intermodal ramps are
8 nearby. I think you said nearby. Well within range.

9 A Uh-huh.

10 Q And we have looked at the map and they are
11 within some kind of range. I don't know how many
12 miles.

13 A I may add that we didn't use those intermodal
14 ramps to screen out any tonnage or anything. It's a
15 description of where those ramps are. In some cases,
16 you can dray 100 miles, and sometimes in the east you
17 may dray all the way to Chicago on TOFC.

18 This has not been used to say that intermodal
19 options exist. It is only a description of the
20 facilities that are nearby. We're trying to show where
21 other ramps are.

22 So it was not used in our analysis to screen
23 out any tons.

24 Q I understand -- and right now I am not
25 directing my fire at the screeners. I am speaking with

1 you at the level of principles about loss of options,
2 and what I am trying to clarify is how it is you can
3 consider the loss of two next-door competing TOFC ramps
4 to shippers in the Fresno area to be a minimal loss of
5 options and yet point the finger to a ramp many miles
6 down the highway as a sufficient logistic option.

7 A I don't think I said that. I'll have to go
8 back to the actual -- would you remind what page? That
9 was page 7? Page 23 of the verified --

10 Q Maybe you can clarify it.

11 A I didn't say it was sufficient logistics
12 options here, and as I have already stated we didn't use
13 that analysis to screen out one ton in any of these
14 common point analyses. So it's a statement. It says
15 that they're within range of competing ramps. That
16 certainly as a shipper in that point, I can raise that
17 issue to the railroads and say well, I could dray to
18 that other ramp if you don't cooperate with me and keep
19 my service and prices in line with what I consider to be
20 competitive options for this particular region that
21 we're dealing with.

22 It's certainly an option and shippers do it
23 all the time.

24 Q Well, I'm getting confused now. Is it or
25 isn't a sufficient logistics option?

1 A I didn't say -- I stated very clearly that it
2 was not used to remove any tons from our analysis. It
3 is certainly in the range of options that shippers use
4 every day in dealing with carriers. When the carriers
5 come in and ask for some change perhaps in the way in
6 which the business has been conducted in the past, it is
7 one of a possible range of options they have.

8 Q When you say it was not used to filter out
9 traffic, is that another way of saying you did not
10 consider it a sufficient logistic option?

11 A Absolutely not. We used certain screens to
12 filter out and certain other ones we didn't. We could
13 have gone much further in our analysis in certain places
14 of looking at other options for shippers. We stopped
15 where we did, because we felt that we had proved that
16 the impacts were minimal from the perspective of the
17 amount of work that had been done already.

18 Q Okay, then. I don't want to belabor the
19 point, but let me repeat the question.

20 Since the fact that you didn't use it for a
21 screening device does not tell me one way or the other
22 whether it's a sufficient option -- you just said
23 that -- I want to know is it a sufficient logistic
24 option?

25 A We could sit here for days and describe the

1 various options that all these shippers have. It's a
2 very, very broad list. What we indicated here was that
3 for certain shippers, there may be certain shippers that
4 have high-value commodities that can afford a long dray,
5 even down to someplace like Los Angeles, and the price
6 of the transportation service doesn't affect that.

7 So they are -- it is an option for those
8 shippers.

9 Q It depends on the value of the commodity;
10 right?

11 A It depends on lots of factors. I give you one
12 specific example of where the cost of draying a long
13 distance may not make a big difference in this
14 particular shipper's concern over transportation
15 pricing.

16 Q It also depends on where he wants to send the
17 traffic, doesn't it? You can't get it to El Paso over
18 the Western Pacific.

19 A We studied that in our analysis. I don't know
20 what the purpose of the question is.

21 Q I'm asking you, isn't it true that these
22 shippers don't have any kind of option because of the
23 nearby or non-nearby UP/WP ramps if they want to ship to
24 Texas?

25 A I never said they didn't have options. That

1 was your statement. They have certainly the option of
2 using truck, and there's a substantial amount of truck
3 flowing in that corridor.

4 Q No TOFC option. Do you agree? I mean do you
5 think it could be routed over the central corridor?

6 A I don't know if any traffic is routed over the
7 central corridor. I don't think that that's probably an
8 excellent way of getting the freight there. Certainly,
9 some people might do it.

10 Q Well, in fact, you defined the
11 Los Angeles/Texas corridor by looking at the degree of
12 circuitry of central corridor movements, didn't you?

13 A That was one of the procedures that we used to
14 define the Texas Coast-L.A. local flow.

15 Q And you've left out some PFAs that you thought
16 could be reached over the central corridor in a way that
17 wasn't so circuitous as to rule it out. Isn't that
18 true?

19 A Well, if the circuitry test was what you'd call
20 a necessary but not sufficient condition for doing that,
21 the sufficient condition was the actual flow
22 concentration in that corridor and the two PFAs on the
23 Texas Coast end and the one on the Los Angeles end,
24 between them inbound versus outbound, terminated
25 approximately 95 to 100 percent of the total -- pardon

1 me, originated approximately 95 to 100 percent of the
2 traffic moving in that corridor.

3 So that was the major reason why we chose that
4 corridor to define that. That's the way we defined that
5 corridor. I'm sorry.

6 Q Okay. Going back to options again, let's
7 focus for a moment on shippers that are moving goods
8 from Missouri Pacific locations in Texas to UP locations
9 in the Los Angeles area.

10 Isn't it true that --

11 A I'm sorry. Could you repeat the first part of
12 that question again, please?

13 Q I want to focus on shippers that are located
14 on the Missouri Pacific in Texas, say, in Southwest
15 Texas.

16 A Uh-huh.

17 Q Who are shipping to points on the Union
18 Pacific in the Los Angeles area, so the origin and
19 destination, neither of those are on the Santa Fe or the
20 Southern Pacific.

21 Isn't it true that their rail options, their
22 practical rail options today.

23 A I didn't understand one point -- why their
24 origins and destinations are not on the Southern
25 Pacific.

1 Q Because I just posited that their origin is on
2 the MoP and their destination is on the UP, just by
3 hypothesis.

4 A In the Los Angeles area?

5 Q Yes. UP has local points in the I.A. area.

6 Isn't it the case that their practical rail
7 options today are to bridge the traffic over either the
8 Southern Pacific or the Santa Fe?

9 A That's correct. Either Sweetwater or El Paso
10 Gateways.

11 Q Right.

12 And isn't it the case that after the merger,
13 they will lose one option?

14 A We have analyzed that type of traffic in our
15 local flow analysis and the results are again presented
16 here. In terms of their losing options, it's hard to
17 know. In the generic sense, there's many, many
18 different types of shippers that are included in this
19 analysis, their dependency on rail.

20 They may find that truck is their primary mode
21 and rail is a very minor part for their operations. So
22 the shipper may not think that they are losing any
23 options as part of this whole process. It all depends
24 on the perception of the receiver or shipper of goods
25 whether their options change, not whether I determine

1 that for them.

2 Q Whatever the shipper thinks, your study
3 concludes that that loss of options is minimal; isn't
4 that right?

5 A This is going back over some old ground
6 again. We were -- the impact on logistics options of
7 the merger we deemed to be minimal, and this is based on
8 an extremely broad study, looking at many, many
9 different types of traffic, many, many different types
10 of shippers and receivers; that's correct.

11 For that particular shipper, I can't state
12 categorically whether they would be better or worse
13 off.

14 Q Well, your answer raises a point that has
15 intrigued me about this study. There's a fair amount of
16 it that's devoted to sort of broadening the context,
17 looking at the surrounding economy, looking at all the
18 tons carried by Santa Fe and Southern Pacific in the
19 whole United States, rather than focusing down on these
20 areas where you started, where you thought there were
21 competitive problems.

22 A What do you mean "focusing on the total
23 tonnage carried by the SPSF in the total United
24 States"?

25 Q What I mean is that in your report, you start

1 by saying that we looked at -- now, it's 54 million
2 tons, and that that was only about a third of the total,
3 because you thought the rest wasn't even --

4 A I think that's the only place in that whole
5 report, Mr. Roach, where we cite the 184 million tons.
6 I'm not obsessed by that number, if that's what you are
7 concerned with.

8 We did think we focused on those particular
9 tons that would be most affected by the merger. That
10 was the purpose of the analysis.

11 Q Okay. Be that as it may, what I am concerned
12 about is -- and I don't want to go too long on this --
13 but I think the conclusion of your study is very
14 important for us to discuss. And the conclusion, we
15 agreed, is the statement on page 2 that the loss of
16 options will be minimal.

17 Now, we've gone through a number of options,
18 and I think we've agreed that the options we've talked
19 about will be lost, and we've agreed that your study
20 considers each of those options to be a minimal option.

21 I'm just trying to find out the whole list,
22 the whole catalog of options that you in total consider
23 minimal.

24 A I think you are miscategorizing what our
25 analysis was intended to do. We were looking at

1 logistics options. At no place in the study do I say
2 that, you know, you can categorically state that this is
3 a minimal option. We're trying to find out whether
4 sufficient other options exist so that the shipper is
5 able to bargain effectively with the railroad in the
6 post-merger environment.

7 It's not that the shippers are all going to
8 pick up and move to truck in this time period; it's only
9 whether sufficient other options exist; whether the
10 markets, however, defined in these regions, are broad
11 enough to include many, many other competitors, and
12 those competitors are able to provide service and are
13 able to serve these various shippers.

14 That was the intent of our analysis, and each
15 one of those individual cases in which we have deemed
16 cells have been gone over in a great deal of detail
17 here, and the end result of that is our conclusion that,
18 overall, we don't think that the basic options for many
19 of the shippers are going to change.

20 The one you cited in Fresno, for example, I
21 indicated there are a number of shippers there that may
22 not be affected at all and may drag a lot further. A
23 number of other shippers who can still use the motor
24 carrier as an effective competitive weapon against the
25 railroads in their attempt to perhaps alter price and

1 service options after the merger.

2 I mean that's what logistics options are.

3 JUDGE HOPKINS: I think this might be a good
4 time to take a recess. Let's take a 15-minute recess.

5 (Recess.)

6 JUDGE HOPKINS: Back on the record.

7 Mr. Roach.

8 MR. ROACH: May I ask the reporter to mark as
9 Exhibit UP/MP-C-15, three other pages from Mr.
10 Anderson's work papers.

11 JUDGE HOPKINS: It will be marked for
12 identification.

13 (The document referred to
14 was marked Exhibit
15 UP/MP-C-15 for
16 identification.)

17 BY MR. ROACH: (Resuming)

18 Q Do you have that exhibit, sir?

19 A Yes.

20 Q The first two pages here appear to be a letter
21 from Mr. Bennicke of your firm to Mr. Baker, talking
22 about the Kansas study.

23 I'm not going to ask you details about Kansas,
24 but I want to ask you about a concept. In the first
25 paragraph here, Mr. Bennicke is asking the question, how

1 and further will a farmer travel to an optional
2 elevator for each percent decrease in rail rates?

3 Do you recognize that there are shippers
4 located off rail lines who truck their goods to
5 railheads?

6 A Yes, there are.

7 Q And is that sort of shipper located in
8 California and Arizona, as well as in Kansas?

9 A That's true. As a matter of fact, someone
10 perhaps that's using the Fresno ramp could truck it as
11 much as 100 miles into that ramp.

12 Q And those shippers in California or Arizona or
13 New Mexico today have, before the merger, the option of
14 trucking to either the nearest Santa Fe railhead or the
15 nearest Southern Pacific railhead; isn't that right?

16 A Or the nearest UP railhead.

17 Q Sure. But they've got two options, and
18 they'll have one of those two options after the merger.
19 They may have some other options both before and after,
20 but they're going to lose one of their options by this
21 merger.

22 Q Isn't that right?

23 A That's not necessarily correct. If they're
24 not using the option at the present time and they never
25 intend to use it, they would not lose any options.

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Q Do you regard, then, the loss of this particular option as minimal? The loss of the option of an off-line shipper to truck to either of the two merging carriers?

A Again, it wasn't our position to evaluate the minimal nature of any of these options. We didn't say that just because a particular service changed or didn't change as a result of the merger, whether the impact of that was minimal.

C Well, one more time. On page 2 of your verified statement, you say that the potential harm to Santa Fe SP rail customers' logistics options will be minimal.

Let me finish the question. If it's meaningful to talk about harm to options being minimal, haven't you got to be able to tell me whether the loss of a particular option is or is not minimal?

A That may be correct if you're talking about an individual shipper. We're talking about whole distribution channels here and the number of people that use them. That was the purpose of our study.

Q Right. And you've presented a study that makes a broad sweeping conclusion, and I'm asking you broad questions about categories of options, and I'm asking you now about the option of off-line shippers

1 trucking to these two railroads.

2 You consider that option which will be lost to
3 be minimal?

4 A We didn't study whether or not that option for
5 a specific shipper, the loss of that, may be minimal.
6 It's as simple as that.

7 Q Okay. How about a shipper who is located on
8 one of the two lines and has the option of trucking to
9 the other line? Is your answer any different for that
10 situation?

11 A I don't quite understand the question. What
12 type of shipper might this be?

13 Q Any kind of shipper. It could be a canned
14 goods canner who doesn't like the rate he's getting from
15 SP, even though SP has a rail siding right at his
16 factory. And he says, okay, I'm going to put my canned
17 goods in a truck and send it five miles to the nearest
18 Santa Fe railhead.

19 He won't have that option after the merger,
20 will he?

21 A He may have plenty of other options. That
22 particular option may be, as you say, lessened as a
23 result of it. It's impossible to say overall, because
24 he may have enough truck tonnage moving in and out of
25 that facility, so the railroad is not about to alter the

1 service structure of the particular distribution channel
2 that involves railroads in or out of that facility.

3 It's not a general question that I can answer
4 in a general way.

5 Q The third page of this exhibit has a reference
6 at the bottom to Santa Fe tariffs offering trucking
7 allowances to non-Santa Fe points. Are you familiar
8 with that kind of tariff?

9 A I'm only generally familiar with that type of
10 tariff.

11 Q Isn't the purpose of that kind of tariff
12 precisely to offer the kind of option we were just
13 talking about, to let somebody on another railroad feel
14 the competition of Santa Fe?

15 A I believe in this particular situation, it
16 refers to grain moving and I also believe that the use
17 of truck in a distribution channel is one way in which
18 railroads are becoming more competitive in competing
19 directly with trucks.

20 So I am not quite sure what your question is.

21 Q My question is, isn't that kind of tariff one
22 way that Santa Fe and SP compete with each other as
23 railroads?

24 A It's one way in which Santa Fe and SP
25 compete. It's also the way in which they compete with

1 trucks and any other option that may be out there.

2 Q And that railroad-to-railroad competitive
3 option will be lost after this merger, right?

4 A You can't make general statements in all
5 situations for all shippers. I'm -- I don't understand
6 what you are trying to ask.

7 Q Let me ask about page 15 of your verified
8 statement. You say at the bottom of that page, that
9 there's a bullet point that says the merger would not
10 create any precedence for single line rail service in
11 the United States, and then you say that there are 67
12 cities and towns that already have single carrier rail
13 service.

14 A This is a selection of those. These were
15 selected towns that had rail service, single service.

16 Q Are there any major cities or towns that have
17 single carrier rail service as a result of a merger that
18 was recently approved by the ICC under the current
19 standards for competitive impact?

20 A I don't know exactly what your question is.
21 Do I know of any towns that are?

22 Q Yeah. Are any of these 67, for example?

23 A I don't know exactly. I'd have to check.
24 It's not something I keep in the back of my head.

25 Q Well, you're not suggesting that these are

1 precedents in the sense that the ICC should allow more
2 single carrier towns because they've already allowed
3 67.

4 A No more than the ICC should have a precedent
5 on the fact there are already single service corridors
6 in the West that the UP participates in.

7 Q Let me ask you about page 7. At the bottom,
8 you say that your various screens were developed based
9 on the ICC market dominance guidelines. Is your theory
10 that the loss of competitive options is minimal, as long
11 as the result is not market dominance?

12 A No. The purpose of looking at the screens was
13 a convenient collection of them. They had been used
14 before the Commission before. I didn't -- there were no
15 presumptions on my part about the relationship to the
16 market dominance guidelines.

17 It was just that there were accepted screens
18 for evaluating logistics options. They fit into our
19 study guideline, and they were also something the
20 Commission was familiar with. So we decided that using
21 them in that manner would be appropriate.

22 Q I think what I heard you say is that this is
23 not a market dominance study, and you didn't set out to
24 decide --

25 A That's right. The screens were there. I just

1 cited where the screens were located. That's all.

2 Q Did you study any specific ICC decisions for
3 your guidance on what ought to be your criterion for a
4 minimal loss of options?

5 A If you're asking whether I'm familiar with the
6 Commission's rulings on past cases and all, I certainly
7 have read some of those. That's correct.

8 Now, whether that directly -- there's many,
9 many points in there that might refer to how the
10 Commission views various aspects of a rail merger, and
11 that all certainly went into my thought process in
12 developing our methodology here.

13 Q Well, I'm talking about market dominance
14 decisions, not merger decisions. I thought you said
15 here that your screens were based on the market
16 dominance decisions.

17 A I also indicated to you that I just extracted
18 those from that particular place where they were used;
19 in this case, in market dominance cases, and I didn't go
20 any further into the cases to look at it.

21 The screens -- I had determined there were the
22 types of screens that I wanted to use independently. It
23 happens also that the Commission had used those screens
24 in some of its proceedings, but I won't say it's a
25 coincidence, but I just used the list that they had

1 prepared for another set of hearings.

2 Q Well, let me ask you very pointedly, are you
3 contending that the standard that should be applied here
4 for whether this merger will be anti-competitive is
5 whether it will create market dominance as defined by
6 the ICC?

7 A I already answered that question. I said I
8 only borrowed the screens, a snapshot of the middle of
9 the page, if you prefer, and used that. I did not use
10 any other aspects of the rulings that related to market
11 dominance.

12 Q Well, I have trouble following that. Did you
13 borrow the screens wholesale so that those are your
14 standards here?

15 A I think you are again misinterpreting what I'm
16 saying. If there's a textbook -- let's take an
17 example. If there's a textbook that has a list of items
18 that one should do to evaluate something in a particular
19 market or a particular industry, and I adopt that, that
20 doesn't mean I adopt all the rest of what that
21 particular author might have said about that industry.
22 I just adopt those as a methodology, a piece of what I
23 do here.

24 And that's all I indicated to you that I did.
25 My own independent research showed they were important

1 screens. I realized they were part of the market
2 dominance guidelines, and I used them out of there
3 because they were familiar to the Commission in the way
4 they were presented.

5 I was trying to make life easier for
6 understanding why I chose those.

7 Q Let me ask you about terminology. There are
8 some different terms that you use to characterize
9 options. For example, on page 21, in the seventh line
10 on the page, you talk about viable options. And just to
11 jump around a little, on page 11 in the second line of
12 the last paragraph, you talk about alternative
13 transportation options.

14 And back on page 3 --

15 A Are you going to ask a question that refers to
16 all three pages simultaneously? It's going to be a
17 little difficult for me to flip back and forth to more
18 than two, unless you want to use my other hand as well.

19 Q Well, I'll stop at three. On page 3, you use
20 the term "sufficient logistic options" in your sentence
21 there at the beginning of the paragraph, starting
22 "Overall."

23 And I think I am accurate in saying that
24 throughout this study, these different terms appear. Do
25 they all mean the same thing?

1 A No.

2 Q Okay. What's the difference between a viable
3 option, an alternative option, and a sufficient option?

4 A Let's start with viable, because that's the
5 page you raised first.

6 In this situation, a viable option might mean
7 an option that the facility was actually able to use.
8 And they had truck capability. If they didn't have
9 truck capability, then perhaps truck might not be a
10 viable option unless they were able to build that
11 capability.

12 So viability here refers to the ability of a
13 particular distribution channel to use truck. It really
14 refers to the distribution channel, not the facility. I
15 really misspoke at that point.

16 Q So it's a physical concept? There's a
17 physical capacity to back a truck up and unload it?

18 A I indicated I misspoke.

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1 It really refers to the ability of trucks to
2 operate in a certain lane, and not necessarily the
3 ability of a shipper to load or unload trucks. We
4 didn't always get in and study every shipper, as you
5 realize, in this study, so we can't attest as to whether
6 every shipper has the option of loading every type of
7 mode.

8 Q So it is a little short of physical option.
9 It is sort of a notion that there are trucks in the
10 atmosphere.

11 A Well, it is the viability that the motor
12 carrier is a competitor for that particular -- let's go
13 back to our study methodology for the cell for that
14 particular mileage block, for that particular commodity,
15 inbound or outbound. That in this case the truck would
16 be a viable option in that particular channel is what we
17 are expressing here.

18 Q Okay. How about alternative on Page 11? The
19 vast majority of the tonnage had alternative
20 transportation options.

21 A It is not on Page 11. Isn't it on Page 21?

22 Q Viable is on 21. Then alternative was on 11,
23 in the last paragraph, line 2.

24 A I am sorry. I am just not able to find -- on
25 Page 11?

1 Q The last full paragraph starts, "Our
2 analysis," second line, last word.

3 A Uh-huh. Alternative here refers to any
4 possible collection of distribution options that might
5 have existed for that movement. That would include that
6 the movement might be local flow as well, that they
7 really didn't have any options for that particular
8 movement.

9 Q So one of the alternative options is no option
10 at all?

11 A Well, I wouldn't say it is no options at all.
12 That particular screen indicated that for that mileage
13 block, that right now the shipper does not have a choice
14 on SFSP because of rates and routes, and the merger is
15 not going to affect that. That is all that one means.

16 Q Okay. Then we get to sufficient logistics
17 options on page 3, and that is used in a pretty
18 important summary sentence in your report, isn't it?

19 A That's correct.

20 Q What does that word mean?

21 A That means, to the best of our belief, that
22 the shippers and receivers in the study region that we
23 analyzed did have sufficient options in the sense that
24 there were other mode or any of the other variety of
25 screens that we used that could effectively prevent the

1 abuse of market power by the railroads in the
2 post-merger environment.

3 Q Could prevent the abuse of market power? That
4 is your standard?

5 A That's right.

6 Q Let me ask you to look at Page 1-10.

7 A Remember, we were only analyzing logistics
8 options here. We weren't analyzing anything about the
9 abuse of market power by the railroad in the post-merger
10 environment. 1-10?

11 Q Yes. The first sentence says, in the second
12 line it talks about sufficient logistic options, and
13 then I want to focus you on the parenthetical which says
14 "Defined as the ability to move commodities inbound to
15 or outbound from their facilities via alternative
16 distribution channels."

17 Is that an accurate definition of sufficient
18 logistic options?

19 A That's correct.

20 Q What does that tell us about market power?
21 What does whether there is a physical ability to move
22 commodities tell us about market power?

23 A Well, I didn't -- it's the availability in a
24 particular distribution channel of the fact that other
25 shippers are using in some cases alternative modes of

1 this shipper is using an alternative mode, that he is
2 going to be able to better bargain with the railroads in
3 the post-merger environment.

4 Obviously, if there were no possible other
5 options in some of these situations, the shipper might
6 have a more difficult time. We identified certain
7 commodities where that could be the case. We are open
8 and honest about which shippers we felt perhaps didn't
9 have logistics options, and they are spread all through
10 this document.

11 Q Let me ask you finally to turn to Page 4 of
12 your verified statement, where the second bullet point
13 defines the word "competitive logistics options," and it
14 says, "Distribution channels where no one mode or other
15 part of the infrastructure dominates most or all
16 channels into or out of a facility, and therefore
17 effectively limits customer market power relative to
18 providers of transportation and related distribution
19 services."

20 Is that an accurate definition of competitive
21 logistic options?

22 A Well, looking at one word, I would probably
23 change "limits" to "enhances." But other than that, I
24 think it is.

25 Q But you are saying the focus is on the market

1 power of the customer relative to the transportation
2 companies he's dealing with?

3 A Yes. All I'm saying is, if you have a lot of
4 alternative distribution channels that you can use to
5 move in and out of your facility, it certainly places
6 you in a better position relative to any carriers that
7 are part of those distribution channels.

8 Q Where did this test come from, this test of
9 what effectively limits customer market power? Is that
10 from the market dominance guidelines?

11 A I don't see any test there. I see a
12 definition.

13 Q Why are you defining the term? Isn't that
14 what the study is about?

15 A That's correct, and there are a number of
16 tests that relate to the ability of a shipper or
17 receiver in the service region to have competitive
18 logistics options, and all this does is defines that
19 particular aspect of the analysis. It doesn't say
20 anything about the customer's market power. It says --
21 I'm sorry, it does, but it doesn't say anything more
22 than more options means more market power for the
23 shipper.

24 Q Well, tell me if I am wrong. I read this as
25 saying that you will find competitive logistics options

1 unless the customer is shut out of market power, unless
2 he is a victim of the market power of the railroads and
3 has no countervailing market power of his own.

4 A I don't think that's what it says. I think
5 it's a definition that says, if you have more
6 distribution channels in and out of your facility, you
7 are going to be better off in negotiating with any of
8 the carriers that are in those particular channels.

9 I think that's all it says.

10 Q Well, why isn't your focus in this study on
11 the degree of rail market power? Isn't that the
12 appropriate question for the Commission?

13 A The purpose of the study was not to look at
14 rail market power. It was to look at shipper logistics
15 options.

16 Q Can't you have an increase in rail market
17 power and still not have elimination of shipper market
18 power?

19 A You are asking a very broad question, and I
20 would say that you can't answer without looking at some
21 specific shippers in these cases. It is very hard to
22 know. You can say that a shipper who doesn't use rail
23 in a place that has a number of railroads go from two to
24 one. You could say that he loses a logistics option.
25 But he may say, I don't even know if the railroad serves

1 the town. I am a high tech producer. I ship everything
2 by air freight. Now, to him the existence of the
3 railroad is pretty irrelevant.

4 Q Well, let's look at a specific shipper. Turn
5 to Page 15-12 in your second volume. This is part of
6 the San Joaquin Valley study. And as I understand it,
7 what you are doing here is addressing a situation with
8 respect to inbound farm products in the mileage block of
9 more than 1,000 miles.

10 A You are starting at the bottom of the page?

11 Q I am sorry. The last paragraph, and going on
12 to the next page. That is what that is about, right?

13 A That's correct.

14 Q Okay. Then flip through for a moment over to
15 Exhibit 15-13. The second page of that exhibit shows
16 85,000 tons of inbound farm products coming by rail and
17 zero tons by truck. Correct?

18 A That's correct. I should also point out that
19 the Seabie data base does not contain truck movements
20 for many of these commodities. As I mentioned earlier,
21 on 01, grain is one of the commodities for which there
22 was no truck tonnage generally available in the data
23 base, with the exception of some import-export. I am
24 not 100 percent sure. Mr. Pibe is coming up again. You
25 can actually find out what is going on, but it is not

1 systematically sampled. The numbers that appear in C1
2 here are likely to be perishables rather than grain
3 products, perhaps.

4 Q Well, that's fine. And Mr. Greenberg or
5 someone else can question you about long distance truck
6 movements of grain, but I just want to talk about this
7 paragraph at the bottom of 15-12, and just wanted to
8 understand how we got here.

9 We got here because you had a cell that was on
10 the numbers that you looked at rail dominant, right?

11 A That's correct.

12 Q And so you looked for other options?

13 A That's correct.

14 Q And your other option here was that the
15 customers -- are you saying in the last sentence of the
16 paragraph that customers could move their operation to
17 Turlock?

18 A This paragraph you are citing here discusses a
19 conversation that one of my staff members had with the
20 Santa Fe marketing people. It was not used to in this
21 case here determine a sufficient logistics option for
22 this particular shipper. It is merely a discussion of
23 the situation as it stands. As you turn back to, it
24 would be Exhibit --

25 Q 15-147

1 A That's correct. This is one that we did find
2 our case studies with TEAM actually discovered shipper
3 options were available in that particular case.

4 Q Well, is it some other option that the one you
5 disclose here at Page 15-13?

6 A I told you it wasn't the option we used. It
7 was a discussion of what the shipper's situation was,
8 and that was analyzed as it is indicated in Exhibit
9 15-4 -- 14, I am sorry, that in fact we found movements
10 of -- we used the TEAM people to do the screening for
11 that particular call, so I assure they found sufficient
12 inbound, if it is inbound, sufficient inbound truck
13 capacity moving grain into that region, and that led us
14 to believe that that shipper did have sufficient options
15 in the post-merger environment.

16 Q So you deny that this discussion in the text
17 is meant to explain the number 5 that appears in the
18 exhibit?

19 A Isn't that what I told you? The number 5 in
20 the exhibit is very specific, sir. It says, "indicates
21 that according to case studies performed by TEAM." Over
22 here it says, "according to ATSF marketing personnel."
23 It couldn't be any clearer from reading the two. I
24 don't quite understand. This is just a parenthetical
25 discussion of what was going on.

1 Q It could be a great deal clearer to me. Did
2 TRAM not talk to Santa Fe and SF marketing personnel?

3 A It could have been one of the people at TFS
4 that talked to TRAM. I mean, talked to the ATSF
5 marketing personnel.

6 Q Are you saying that if there is a 5 in any of
7 these tables, it means truck is an option because TRAM
8 said so, and it doesn't mean any of these other kind of
9 options you talk about in your narrative?

10 A That's what it says in the table.

11 Q It doesn't say truck. I had the impression
12 from reading this study that TRAM was your umbrella
13 explanation for all kinds of alternative last ditch
14 options. Is that wrong?

15 A No, that's not the case. They were
16 specifically asked, and this can be testified to in much
17 more detail by Mr. Baker than myself, they were
18 specifically asked to look for motor carrier capacity in
19 those particular areas for those particular cells where
20 the tonnage had not -- there had either been truck
21 tonnage in the data base, and this is a nice example of
22 where the data base just -- there may be truck movements
23 in there already, and we just don't know about them, or
24 that he was able to find in this case inbound motor
25 carriers willing and able to haul those commodities. It

1 is not a catch-all by any stretch of the imagination.

2 Q Well, let me just say for the record to
3 counsel that we carefully went through the work papers
4 to try to find any substantiation for this movement, and
5 the only thing we found were work papers talking about
6 moving the facility, and if there is anything that
7 supports a truck option, we would request that it be
8 called to our attention.

9 MR. MOATES: We will make that inquiry, but I
10 think the witness's testimony clearly indicates that
11 Number 5 on Exhibit 15-14 stands for what it indicates
12 in the coding. TRAM essentially screened that, so if
13 there is a work paper that supports that, we will look
14 for it as well, but it seems to me the record is
15 clear.

16 MR. ROACH: Okay. That is fine.

17 BY MR. ROACH: (Passing)

18 Q Is moving the facility to Turlock a
19 competitive logistics option?

20 A In the methodology that I discussed in my
21 Appendix 1, I believe, Appendix A1, I indicated that in
22 extremis, someone might move a facility if it was
23 dealing with an uncooperative carrier. Matter of fact,
24 it happens in some situations. If you have a leased
25 facility, and you aren't getting what you want from the

1 carrier, you can perhaps move it to another location
2 where you could find a better assortment of logistics
3 options.

4 Q Well, what I am trying to get you to tell me
5 is, how in extremis does a shipper have to be before he
6 loses competitive logistic options as you define that
7 term in this study?

8 A Let me clarify one point. Are you asking
9 whether or not this particular discussion here was used
10 to exclude the tonnage, this discussion right on Page 12
11 and 13?

12 Q No, no, I am not asking that. I am asking you
13 if the experts sponsoring this study and the guy who
14 defined competitive logistics option, you think that
15 that is a competitive logistics option?

16 A Absolutely. We didn't use it, and I explained
17 that in great detail, but you have to represent a whole
18 spectrum of options that a shipper could look at. I am
19 not going to misstate the fact that some shippers right
20 in extremis move a facility. It is an option. It is
21 not one we ever use any place in this study to eliminate
22 a ton or do anything else.

23 Q It is a competitive logistics option.

24 A Might be better off in a new location. Might
25 get a lot better rates, and might be more competitive in

1 a number of his end markets.

2 Q Turn to Page 3-13. Now, this one, the last
3 paragraph on the page, going over to the next page,
4 talks about inbound STCC-14, which is non-metallic
5 minerals, and if you look at Exhibit 3-16, mileage
6 block -- well, I guess it is all the mileage blocks
7 together you are talking about -- you have got 40 score
8 thousand tons coming in by rail, and then zero tons in
9 Block 4 by truck.

10 A That's not correct, by the way. We don't know
11 for sure it is zero tons. That is another one of those
12 situations where the Feehie data base does not have
13 domestic truck tonnage for this commodity.

14 Q Well, it has got some in Block 2.

15 A That is import-export traffic.

16 Q I see. So once again, we have put it in
17 perspective, and we go back to the text, and you say
18 that, in the last sentence there on the page, that Santa
19 Fe-SP marketing personnel stated that this material can
20 be bagged and moved via UP TOFC to Los Angeles, and then
21 trucked to Bakersfield 112 miles.

22 Just focusing on that option, is that a
23 competitive logistics option?

24 A I don't know in this particular case. I
25 didn't study it directly. I assume that the people who

1 spoke to it felt that it was the situation. It again
2 was not used to screen out any tonnage. It was merely a
3 statement. We tried to express in a number of places
4 here what options might be for these shippers, to give
5 people a flavor of the activities going on and the types
6 of situations that might arise. So it wouldn't just be
7 a study were you had a bunch of screens and there was no
8 real look at the real world situation.

9 Q Well, you wrote this narrative with the
10 purpose of talking about realistic options, didn't you?
11 The sand could have been moved in wheel barrows, too,
12 and you didn't talk about that.

13 A No, I didn't.

14 Q So you regard that as a realistic option?

15 A My conversations or actually my staff's
16 conversations with the personnel indicated that that may
17 have been a feasible option. Again, it was only
18 mentioned. Nothing was done with it other than the
19 fact that we mentioned the existence of that option.

20 Q Did anybody think about the cost, the relative
21 cost of that option?

22 A I assume that was something that the marketing
23 personnel discussed. Given that their job is to attract
24 traffic to the railroad, they should know something
25 about that.

1 Q This is your study. Did you look at the cost
2 of that option?

3 A This particular option? No. That statement
4 is taken at its face value. We didn't look at any cost
5 of doing that, and again, I reiterate, we did not use
6 this particular option to do anything with it other than
7 mention that you can bag sand. It is one possible
8 option in the range. It might be just perhaps a couple
9 of notches up from extremes. I don't know.

10 Q Well, let's take an option you did use to
11 screen out lots of traffic. Let's take the 50 percent
12 test. Did you look at the cost of shipping by truck
13 versus shipping by rail?

14 A When you evaluate logistics options, that is
15 one of the factors you look at. The way in which we did
16 our analysis, the comparison of the revealed preference
17 of shippers in certain distribution channels in terms of
18 the way they use rail and truck rates are one of the
19 factors that are explicitly included in the net results
20 you see in all these pages here.

21 Shippers consider rates. They consider
22 inventory holding costs, pickup and delivery costs, loss
23 and damage, a whole number of factors. That all gets
24 revealed when the shipper actually uses one possible
25 logistics option in his distribution channels, and all

1 the numbers you have in this report are all reflective
2 of the fact that rates are an important aspect of this
3 whole analysis. We certainly didn't ignore them.

4 MR. ROACH: Let me ask to have marked, please,
5 as the next exhibit UP/MP-C-16.

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

8 (The document referred to
9 was marked for
10 identification as Exhibit
11 Number UP/MP-C-16.)

12 BY MR. ROACH: (Resuming)

13 Q Just to telegraph by punch before you get
14 bogged down in all these papers, we have gone through
15 your work papers, and we have tried to find any
16 references to cost or rates, and we found these, and I
17 want to ask you just to look at a couple of them, and
18 then tell me what happened in this study. Somewhere
19 along the middle there is a page number CDA268. These
20 are in the number order of your work papers stampers,
21 but I am going to show you some in what I think are
22 roughly chronological order.

23 MR. HOPKINS: What was the number, Mr. Roach?

24 MR. ROACH: 268, in the lower right.

25 BY MR. ROACH: (Resuming)

1 Q This looks to me like somebody's notes. It
2 says at the bottom that there is a meeting Monday, on
3 November 29, so I assume that is before November 29, and
4 it says up at the top Item 3, Competitive Costing on
5 Study Flows.

6 Do you know what that is all about? Were you
7 going to do costing at some point here?

8 A Well, I think if you look a little farther to
9 the north of that, counsel, you will see that I think
10 that says Beebie up above there -- The Verox is fairly
11 terrible -- and you have to remember that Beebie
12 Associates did a number of analyses in this study that
13 had no connection at all with ours.

14 They certainly provided us with our data
15 base. Competitive costing on study flows I believe may
16 refer to the diversion analysis, and you can ask Mr.
17 Ribe when he gets on the stand if that's in fact the
18 case.

19 Q Let me ask you, does Beebie have the capacity
20 to estimate the relative cost of shipping by rail versus
21 truck in particular corridors, particular commodities?

22 A I don't think I'm the best person to answer
23 that question. I am aware that they have cost models
24 that allow you to look at that, but that is about as far
25 as I know.

1 Q Okay. Take a look at the last page, 809. Is
2 this a typed page that you recognize? I mean, were you
3 the author?

4 A No, I'm not. To be honest with you, it is the
5 first time I have ever seen this page.

6 Q Well, let me then just ask you, without making
7 any assumptions about who did it or where it came from,
8 next to the heading on the left, Vulnerabilities, there
9 is a series of entries. Under Issues it says
10 "Transaction will reduce number of competing carriers in
11 certain markets and impact shippers, connecting roads,
12 communities."

13 Then in the next column over it says "Study
14 Objectives: Show that there will still be no market
15 dominance due to effective truck competition TOFC as a
16 viable alternative."

17 And then we get to what I am interested in.
18 It says under Resources "SP and Santa Fe traffic
19 histories plus Transearch and MTPB and modal cost
20 model."

21 My question is, were you going to try to deal
22 with these vulnerabilities by analyzing relative modal
23 costs?

24 A As I indicated to you, I didn't prepare this
25 page, and this is the first time I have seen this page.

1 And this is not part -- was not and is not part of our
2 study plan to follow the paths that were laid out here.
3 My study plan is laid out in detail in Chapter I of our
4 report, and I don't think it bears much resemblance to
5 what is here.

6 Q What is the answer to my question? Was there
7 any point where you were going to do a study of relative
8 costs?

9 A I answered the question, I thought, when you
10 first asked it. I have worked in transportation for a
11 number of years, and am certainly aware of the impact
12 that rates have on the ability of shippers to use
13 various logistics channels, and that was one of the
14 factors that was uppermost in my mind.

15 Now, whether I actually had to do a detailed
16 study or use something like the Reelie data base as the
17 revealed preference of the wide spectrum of factors that
18 affects shipper logistic actions, I had to make that
19 determination, and I did very early on, was to use the
20 methodology that has been cited in this report to do our
21 analysis.

22 Q Now, let's turn to Page 247. Let me just ask
23 you one other question about 809. How did that get in
24 your work papers, if it doesn't represent a step in the
25 preparation of your study?

1 A As Mr. Riba has testified, there are certain
2 Transearch tons that appear randomly, and I think this
3 is an example of a piece of work paper that appeared
4 randomly. I frankly don't know the answer to it.

5 Q Let's look at some more random work papers,
6 247. Is this schedule your schedule?

7 A I believe this was a schedule that was
8 developed early in the study. It is perhaps not totally
9 reflective of where we ended up. I have to look it over
10 a little bit to see what is actually here.

11 Q Well, what I am interested in is the entry
12 under Step 2, Peebie cost model, unit costs, target date
13 December 5 through 23. You filed this testimony in
14 March, right?

15 A That's correct.

16 Q Did you have a target date of December 5
17 through 23 to get unit costs from Peebie?

18 A I don't believe we ever asked nor received any
19 large volume of costs from Peebie. We may have received
20 one or two for some specific analysis during that
21 period, but you have to remember that as a consultant, I
22 do lots of studies, and Peebie is one of the people we
23 use for a variety of studies, and I remember getting
24 some costs during that period, only one or two,
25 perhaps. We did not have -- If you are asking whether

1 we had a major study planned of truck versus rail costs
2 in all these corridors, and did we execute it, the
3 answer is no.

4 Q Okay. Well, to cut this short, let me just
5 ask you to look at 253. Is that your handwriting?

6 A No. Just so you will understand, there are
7 cases where I have people take notes for me at meetings,
8 and I ask them to be included in the working papers, so
9 there would be writing in other hands in here. As I
10 indicated to you, there are also some random ones, and I
11 don't know how they get in.

12 Q Is this Mr. Rennie's writing?

13 A I frankly don't know.

14 Q Do you know whose writing it is?

15 A No. I thought I just answered that.

16 Q Does Item 3 on this page in any way refresh
17 your recollection as to the nature of your plans to look
18 at costs? It looks to me like it says cost data, F.A.
19 Beelie Associates will use 30 1983 cost levels for rail
20 and truck competitive evaluations.

21 A I think this refers, and remember that there
22 was a number of studies going on simultaneously in this
23 merger. One of them is the diversion study. I think
24 this refers to a meeting that was held. We had lots of
25 steering committee meetings where we discussed work

1 going on at Beebie, work going on at TIS, work going on
2 at TRAM, and I think this note merely refers to the fact
3 that a decision was made to use this cost level for rail
4 and truck competitive evaluations in the diversion study
5 analysis, as has already been testified on.

6 Q How about, instead of cost, how about rates?
7 Did you as part of this study look at relative truck and
8 rail rates?

9 A As I have indicated, the general answer to
10 that question is no. As I have indicated, I do believe
11 that rates are extremely important, and they are part of
12 our overall methodology. I have already explained how
13 they were incorporated into our evaluations by looking
14 at the revealed preferences of shippers in the various
15 distribution channels.

16 Q Let's talk for a minute about that. Suppose
17 that in one of your two-digit STCC mileage block cells
18 the data you have reports a 50-50 split of tons between
19 truck and rail. What does that tell you about truck
20 rates and rail rates?

21 A It tells me that truck is very competitive
22 with railroads. It doesn't tell me specifically about
23 individual rates for individual shippers. As I have
24 already stated, there are a number of factors that go
25 into looking at logistics options. Rates are one of

1 them. If I saw a market that had, or in this case a
2 flow -- I didn't mean to use the word "market" -- a flow
3 or a cell where we had a 50-50 split between rail and
4 truck, I would have to conclude that the trucks were
5 certainly pretty competitive in that environment.

6 Q So it doesn't tell you anything about rates.
7 It tells you that you think they are competitive?

8 A I did not say that. We all know that rates
9 are a very important aspect of shipper choice. It
10 certainly tells me that rates must be competitive in
11 order for that situation to exist.

12 Q Well, it tells you, doesn't it, that the truck
13 rate is at a level where shippers of that many tons are
14 buying the truck service. Isn't that all it tells you?

15 A I don't think that is all it tells me in this
16 particular situation. You are abstracting, taking a
17 piece of the channel and saying, let's just look at
18 one-half the channel. I don't look at one-half the
19 channel.

20 Q My study looks at all options in the channel,
21 and it is a comparative evaluation I am interested in.
22 Certainly you could say what you have said, and I won't
23 disagree with it, but I don't think that correctly
24 characterized how this was used in our cell analysis.

25 Q I asked you for a comparison, and I think you

1 said you couldn't tell me what the comparative rates of
2 truck and rail are just from the fact that there is a
3 50-50 split of tonnage, right?

4 A A very complex issue in any distribution
5 channel are the intertwining of all the factors that go
6 into it. You are asking me to generically state that
7 rates are a key factor in all these corridors, and I
8 will just say to you that that is impossible to state.

9 Q It is entirely possible, isn't it, that the
10 truck rate is on average higher than the rail rate, but
11 that the truck is offering a service that people are
12 willing to pay more for?

13 A I wouldn't conclude that.

14 Q I didn't ask you to conclude it. I asked if
15 it was possible.

16 A There are situations, absolutely there are
17 situations where because of service reasons and all
18 truck rates may be higher. Total delivered cost of the
19 product obviously to the shipper-receiver is going to be
20 lower than if he used a channel that involved a rail
21 option, and that's why the shipper takes the choice in
22 the way he does.

23 Just looking at truck and rail rates in
24 isolation doesn't tell me much about what is going on in
25 a distribution channel. Again, there are all these

1 other factors, inventory, costs, and what have you, that
2 go into making up that decision.

3 Q Well, let me ask you this. Assume again that
4 the split is 50-50. Does that tell you anything about
5 the elasticities between truck and rail? That is to
6 say, does it tell you what the change in rail volumes
7 would be if rail rates were increased 1 percent?

8 A We didn't study elasticities directly in this
9 analysis other than to look in some of the appendices at
10 prior work that was done, but it does not tell me
11 directly what the elasticity might be. It could vary
12 widely by distribution channel across the service
13 region.

14 Q So you could have a cell where the split is
15 50-50, but the railroads could increase their rates and
16 they would not lose enough traffic for it to be a net
17 losing proposition for them at those rates?

18 A Is that a hypothetical question?

19 Q Yes, it is.

20 A Is there a situation where rails can raise
21 their rates and keep revenues the same? The elasticity
22 would equal --

23 Q Increased revenue, increased profit.

24 A Is it possible that there are elasticities in
25 the world that are greater than one? Is that what you

1 are saying?

2 Q I think it is less than one, actually. That
3 is what I am asking you.

4 A If I increase my rates.

5 Q By 1 percent, you are going to lose less than
6 1 percent of your traffic.

7 A I am sorry. I got things reversed. Is it
8 possible there are elasticities like that?

9 Q Yes.

10 A It is possible there are inelastic markets in
11 the real world. It is possible that relative to certain
12 of these flows you would have inelastic situations.
13 That is right.

14 Q And what we are specifically talking about is
15 where the cell is split 50-50 in tons between truck and
16 rail. That can be rail inelastic, can't it?

17 A Your hypothetical case, we can set up any
18 hypothetical here. I really don't see what you're
19 driving at. If you are saying is it possible to have an
20 inelastic demand in a certain cell where the split is
21 already 50-50 for a certain shipper, then certainly any
22 of those hypotheticals are true.

23 Q I can't tell you whether that is the real
24 world or whether that occurred in any one of our cells
25 in our analysis. We didn't study the relative

1 elasticities.

2 Q Very good. Let's turn to the definition of
3 study areas for a few minutes. On Page 5 of your
4 verified statement, you talk in the paragraph starting
5 first about what we were discussing earlier, the
6 situations where the merger will reduce the number of
7 railroads from two to one, and also situations where it
8 would be three to two.

9 And on Page 6, you say at the fourth line from
10 the bottom of the page, you are discussing Group II
11 common points that you chose, selected locations where
12 there are currently three rail carriers, and the merger
13 will reduce it to two. What was your criterion for
14 selecting?

15 A I believe that we actually studied all the
16 significant Group II points that were in the study
17 region. There may, and I will just have to check the
18 table, there may have been a couple of small points that
19 we chose not to study. If you refer to Table I-1 on
20 Page I-4, there were a few small points that we chose
21 not to study independently. However, the number of the
22 flows for those points were included in our Houston-IA
23 analysis.

24 Q Are you saying Bay City and Navasota are the
25 two that would have gone from three to two?

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1 A Navasota is one of them. That's correct. So
2 is Bay City.

3 Q Okay. Do you know of any others that aren't
4 on this table?

5 A Other than the ones I mentioned in my
6 introduction this morning, my errata.

7 Q McGregor, Texas, is listed here, after you
8 corrected the testimony, is shown as having no other
9 railroad besides Santa Fe and SP. Is that the only
10 instance you know of where you did not study a Group I
11 common point?

12 A As I indicated in my corrections this morning,
13 there were other SPICs that fall within some of the
14 study regions, or which the study region didn't also
15 include, also Group I common points, and there were some
16 other SPICs that were in the study.

17 Q In your Group II analysis, you included the
18 other railroad's tonnage on the other side of the scales
19 when you applied the 50 percent test, right? You
20 considered that a competitive alternative?

21 A Other rail tonnage?

22 Q Yes.

23 A That's correct.

24 Q So is it fair to say that the principal area
25 of concern here is the Group I common points, that you

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1 paid more attention to those and were more concerned
2 about the competitive effect of those?

3 A I don't think that's fair to say that. If you
4 look at the Group II analyses, you will see that in
5 places like the Texas coast, LA, we would look in detail
6 at westbound or eastbound flows in a direction, in this
7 case, towards Los Angeles or from Los Angeles that were
8 looked at in more detail.

9 So it wasn't just the Group IIs were studied
10 in less detail. We certainly looked at cases. The same
11 thing goes for San Francisco-LA, where we looked at
12 certain flow patterns in much more detail than we looked
13 at other aspects of the move, and the reason we didn't
14 look at flow patterns perhaps in all directions was that
15 there were other rail options fanning out to the east
16 and the north of points like Houston, for example, but
17 we did study the corridors where perhaps options might
18 change as a result of the merger for those Group II
19 common points.

20 Q How exactly did you go about finding the
21 common points? I assume you are not a walking
22 encyclopedia of SPICs in the west.

23 A What we did was, we started with the AAR,
24 Association of American Railroads, rail service profile
25 tape. From that we identified what were common points,

1 a common point here being defined as any location --
2 read that to be SPIC -- that had the two railroads
3 providing service to that location.

4 They may not have connection at that point or
5 reciprocal switching, but they were both in that
6 particular SPIC. That was our first level of analysis.
7 We then looked in the open and prepaid to determine
8 situations where competitive switching arrangements --
9 pardon me, reciprocal switching arrangements were in
10 force.

11 And then we also looked at various tariffs,
12 circulars of the railroads to determine routes and
13 routes that were open these various circumstances. From
14 that we were able to derive a list of common points,
15 Group I, Group II common points.

16 Q How did it happen that you discovered these
17 new ones?

18 A It is a very difficult process, a very complex
19 process, and there is often disagreement as to whether
20 points are open and closed and in some cases the
21 official guide is incorrect. It just is a process that
22 has taken us a very long time to determine in certain
23 situations where we may or may not have captured all the
24 points. We feel very confident now that we have
25 discovered any final lurking little SPICs out there that

1 for a variety of reasons may have been inalterably
2 missed in the past.

3 Q All right. Let me ask you about lurking
4 SPLCs, and ask to have marked Exhibits UP/MP-C-17 and
5 18.

6 JUDGE HOPKINS: They will be marked for
7 identification.

8 (The documents referred to
9 were marked for
10 identification as Exhibits
11 Number UP/MP-C-17 and
12 UP/MP-C-18.)

13 BY MR. ROACH: (Resuming)

14 Q Could you enlighten me as to what Exhibit 17
15 is, the longer document?

16 A I believe this is an early working document
17 that we used to identify which stations or SPLCs may
18 have been open and closed from the Santa Fe-Southern
19 Pacific service region.

20 Q Okay. Let me ask you to turn to Page 861 of
21 that, going by your work paper page. It is a little
22 difficult to read, but toward the middle of the page
23 there are a series of entries that say Antioch. Do you
24 see those?

25 A Yes, I do.

1 Q And it looks like it says Santa Fe-SP, and
2 then someone has written Antioch-Martinez zone joint
3 track, and then there is another entry that sort of
4 curves off from there that looks like closed, and then
5 on Exhibit 18, which looks to me like a preliminary list
6 of your study locations or your common points, I mean,
7 you have got Antioch-Martinez up there. What happened
8 to Antioch-Martinez in this study?

9 A Antioch-Martinez is one of those points that
10 we initially identified as not being open. We have
11 since, through further investigation, discovered that
12 that was the incorrect interpretation, and we this
13 morning in my corrections to my testimony, part of the
14 2.6 million tons was in fact inbound and outbound
15 traffic from a number of SPICs in the Antioch-Martinez
16 area.

17 Q I thought you said this morning that most of
18 the new tonnage was from around Houston and Los
19 Angeles. Is that right?

20 A I may have mispoke. Many of the
21 investigations were going on up to the last minute in
22 some of these areas, and knowing the exact final number
23 has been a very difficult situation. I may not be
24 totally, shall we say, up to speed on all -- where
25 exactly all the tons might be located at a certain

1 point, but I don't think it materially affects my
2 statement this morning. I think a lot of tons were
3 around IA and Houston, and this is an area -- I didn't
4 say all tons were there.

5 Q Did anyone tell you that Union Pacific is
6 seeking trackage rights in this particular area, the
7 Antioch-Martinez joint switching area?

8 A I personally am not totally aware of all areas
9 where they are asking for trackage rights. I can't
10 answer the question.

11 Q Do you have any plan right now to study the
12 Antioch-Martinez traffic and file any kind of
13 supplemental testimony?

14 A My statement of the morning basically stands
15 in terms of I felt that the impact on the results of the
16 study would be minimal. I work under direction of
17 counsel, so I can't really say personally what might
18 take place here.

19 Q I am simply asking whether an effort is under
20 way to look at that tonnage.

21 A Well, we are certainly identifying, making
22 sure we have identified all the correct tons. Is the
23 question, are we running it through all our various
24 screens?

25 Q That's the question.

1 A I did mention also this morning that we had in
2 the process of doing this one of the ways of determining
3 open versus closed is to actually identify local
4 noncompetitive movements or just noncompetitive
5 movements in the system, and so we did discover in the
6 process of a very detailed examination of what points we
7 might have missed that some of the flows and some of the
8 SPLCs might be closed, and that's where I came to my
9 number this morning of the 1.5 million that I felt were
10 noncompetitive flows out of the 2.6.

11 MR. MCATES: Your Honor, I wonder if at this
12 time it might be appropriate for us to hand out a
13 counsel's exhibit that summarizes the 2.6 million tons
14 that Dr. Anderson has talked about. I have held it to
15 see if it would be a matter that counsel wanted to
16 explore.

17 JUDGE HOPKINS: It might be helpful to us
18 exploring.

19 MR. MCATES: It is an exhibit that was put
20 together over the last evening. We haven't had a chance
21 to mark it, so I will ask your indulgence of putting on
22 the number. I think it is SFSP-C-7.

23 JUDGE HOPKINS: It will be marked for
24 identification as SFSP-C-7.

25 (The document referred to

1 was marked for
2 identification as Exhibit
3 Number SFSP-C-8.)

4 BY MR. ROACH: (Resuming)

5 Q Just looking at this quickly, you've got about
6 900 new tons in the San Francisco area, right?

7 A That's correct. You will have to bear with
8 me. This is a brand new exhibit, so I will be a little
9 slow perhaps in answering.

10 Q Well, it is all I am going to ask, so you
11 don't have to spend too much time.

12 A Thank you.

13 Q However, I have another question about UP
14 Exhibit 17. Is there any magic formula in these
15 annotations here that tells you whether a particular
16 point is a Group I common point, that is to say, this
17 thing says SF closed, ATSE, SP closed, ATSE closed,
18 ATSE, SP open. There are a whole lot of different
19 entries here. Do you know which ones mean Group I
20 common point?

21 A I personally didn't prepare this. So I would
22 not want to go out on a limb and say for sure that
23 certain points would be open. The simplest answer would
24 be if it said SFSP open, that might be a common point.
25 There may be other factors that need also to be

1 determined, but I think the shorthand answer to your
2 question is that some of those points might be open
3 points.

4 Q Now, you said something this morning about how
5 you meant to include areas that were within reciprocal
6 switching limits but were closed today but subject to
7 petition. Does that mean that some of those things that
8 are in here that say closed are candidates for being
9 Group I common points?

10 A No, the industries within open reciprocal
11 switching areas who might be closed via tariff or
12 circular, their tonnage was included in the analysis.
13 It does not include points necessarily that were
14 presently -- that no reciprocal switching existed at.

15 Q Okay. Finally, on the last page, and on a lot
16 of other pages, there is a notation, "Not in OPSI."
17 What does that mean?

18 A I don't know for sure.

19 MR. SCOTIS: I hate to interrupt again,
20 counsel. I apologize. But just before we get too far
21 away from it in the transcript, cocounsel tells me I
22 used a number that was previously used, and I
23 apologize. Apparently this should be SFSP-C-8.

24 JUDGE HOPKINS: Other than having two 7s, I
25 think I should have checked.

1 BY MR. BO. CH: (Resuming)

2 Q Sir, are you aware that SF and SI have joint
3 local service over a line through the Tehachapess
4 Mountains?

5 A If you are asking if I have direct knowledge
6 of that operation, the answer is no.

7 Q Well, have you heard that there is a joint
8 service area of many miles in the Tehachapess where both
9 railroads can serve all shippers?

10 A I may have heard of it once. It is not
11 something -- maybe it is just the way you are saying
12 it. I understand what you are saying, that they have
13 joint service, and I understand what the meaning of it
14 is. I am not familiar with every joint service point in
15 the service region. That is probably the best way of
16 answering it.

17 I had not heard of that one previously.

18 Q Did the issue ever arise as to whether you
19 should study that line as a Group I common point?

20 A There were a number of joint service regions
21 that were included in the analysis by the fact that they
22 were part of other study regions. Sometimes this may
23 have been a conscious decision. Other times it may
24 not. I frankly can't answer your question directly on
25 that particular service region. We would have to check

1 on it.

2 Q Okay. I would appreciate it if you would.
3 Would your answer be the same if I asked you about the
4 Oil City branch, which is jointly operated and switched
5 in alternative years by SP and Santa Fe?

6 A I am aware there are a number of situations
7 like that in various parts of the service region, and I
8 don't know the locations on the maps and exactly what
9 SP/PC they fit into. I can't really answer the question
10 directly.

11 Q Okay. Did you make any decision that you know
12 of of whether to include the tonnage of the Sierra
13 Railroad, which terminates in Oakdale in your study
14 again?

15 A Again, I am not familiar with exactly whether
16 or not that particular carrier road's data was included
17 or the reasons why it was or wasn't right now. We can
18 check on it.

19 Q Let me ask you a general question about the
20 Group II common points where the railroads dropped from
21 three to two. Isn't it a greater cause for concern if
22 the situation is like the situation in El Paso, where
23 Santa Fe and SP are the only railroads that go in one
24 direction, and the third railroad serves from the
25 opposite direction?

1 A I have to admit, counsel, your question was
2 confusing. I am not sure what you are asking me. Is El
3 Paso a different situation? It was studied differently
4 in the report, and that was made quite clear, that it
5 was a different situation. It was treated more like a
6 Group I than it was like a Group II, and we certainly
7 recognized those types of situations.

8 Q Okay, fine. And was the reason the peculiar
9 geographical situation there at El Paso?

10 A That's right. The MP only provides service
11 going eastbound out of El Paso.

12 Q Okay. Let me ask a question about Table I-1
13 that we were looking at a minute ago on Page I-4.

14 A Excuse me. Can you give me just a minute to
15 clean up some of the exhibits that are collecting up
16 here?

17 Q All right.

18 My question is, isn't Modesto the same kind of
19 situation? Isn't that a situation where the only
20 alternative facing the shippers at Modesto after the
21 merger will be to get their traffic to the UP system
22 over the local MFT line and thence to the Tidewater
23 Southern, which is part of the UP system?

24 A There are currently via short line carriers
25 three railroads that serve Modesto. I am not quite sure

1 of the question you are asking.

2 Q I am trying to see if you see an analogy
3 between El Paso and Modesto, and the analogy I am
4 suggesting --

5 A There are no short line railroads to my
6 knowledge in El Paso, so I don't particularly see an
7 analogy.

8 Q Let me suggest an analogy and see if you agree
9 with it. In terms of line haul carriers, the situation
10 in El Paso is, you've got two line haul carriers
11 westbound and one eastbound, and the two that are
12 westbound are going to merge, and in Modesto you've got
13 two line haul carriers southbound, and if you want to go
14 north, you can use the Union Pacific, but if you want to
15 go south, you can't use the Union Pacific.

16 Now, isn't that a situation where there is
17 cause for special concern for anybody who is trying to
18 ship traffic south from Modesto after this merger? They
19 can't ship to Texas over the MFT, can they?

20 A No, they can't ship to Texas over the MFT.

21 Q I am sorry. It was a compound question.

22 A Compound wasn't the word for it, counselor.

23 Q Is it a cause for concern?

24 A Remember again the purpose of our study is to
25 look at logistics options in and out of these areas, and

1 shippers may have plenty of logistics options regardless
2 of the fact that the configuration of the rail system
3 changes. I am not an expert on the impact on every
4 shipper of that change in configuration. All I know is
5 that in general there are lots of options at all these
6 points that we have studied.

7 Q Put in Modesto, you did not study the
8 options. You didn't do a study for Modesto. Isn't that
9 right?

10 A We did not study Modesto as a separate area.
11 The only thing -- we did study lots of traffic that may
12 have originated or terminated at Modesto that started at
13 other common points. I mean, that is not to say we
14 didn't study Modesto. There are lots of flows in our
15 analysis that could terminate or originate and go to a
16 common point.

17 There are lots of them in California, and I
18 would just ask your indulgence for a moment to let me
19 determine what region Modesto is in. I don't want to
20 mispeak and tell you that we didn't study it. It could
21 easily be in a region we did extensive analyses on. I
22 am just not exactly sure where Modesto is, and what FEA
23 it is located in.

24 I could do either one of two things, either
25 get back to you or have a minute now to analyze that.

1 Q Well, why don't you get back to me?

2 JUDGE HOPKINS: Well, this is a good time for
3 the luncheon recess. You can come back to him right
4 after lunch.

5 We will be in recess until 1:30.

6 (Whereupon, at 12:30 p.m., the hearing was
7 recessed, to reconvene at 1:30 p.m. of the same day.)

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AFTERNOON SESSION

(1:30 PM.)

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2
3 JUDGE HOPKINS: Let's get back on the record.
4 Mr. Roach.

5 MR. ROACH: Your Honor, thank you.

6 May I ask to have marked as Exhibit UP/MP-C-19
7 a five-page letter from Mr. Anderson's work papers to
8 Mr. Michael Smith?

9 MR. MOATES: Mr. Roach, while that is being
10 handed out, the witness did check over the lunch hour on
11 several things that you asked. Would this be a
12 convenient time for him to give the answers?

13 JUDGE HOPKINS: This will be marked for
14 identification.

15 (The document referred to
16 was marked for
17 identification as Exhibit
18 number UP/MP-C-19.

19 Whereupon,

20 DAVID L. ANDERSON,

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

24 THE WITNESS: With reference to Modesto,
25 Modesto is located in Stanislaus County, which is in our

1 San Joaquin study region as shown on Exhibit XV-1. With
2 respect to the Sierra Railroad in Stanislaus and
3 Calaveras Counties, that is also in our San Joaquin
4 study region.

5 With respect to the joint trackage through the
6 Tahachapees, which runs between Mojave and Packersfield,
7 all those points are in Currier County, and that is also
8 shown in Exhibit XV-1 as being included in the San
9 Joaquin study area, which was analyzed in as much detail
10 as we would a Group I common point. So there was a very
11 detailed analysis done of the shipper options that
12 related to the traffic reflected in those three
13 questions.

14 CROSS EXAMINATION - RESUMED

15 BY MR. ROACH:

16 Q Okay. Is the Sierra Railroad tonnage not
17 included as part of Oakdale?

18 A I didn't know that was the question. Was that
19 the question?

20 Q I think so. It is a short line that
21 terminates at Oakdale. The question was whether its
22 tonnage is included in your Oakdale rail tonnage.

23 A It is in the San Joaquin tonnage, and that was
24 our basic answer.

25 Q So the answer is no?

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1 A To my knowledge. It is not in the Oakland,
2 and nodding of heads, it seems to be consensus opinion
3 here.

4 Q Okay. Were there other points you wanted to
5 clarify?

6 A Those are the only three so far.

7 Q I want to ask you about your selection of
8 local flows. You ended up choosing to look at San
9 Francisco to Los Angeles and Los Angeles to the Texas
10 coast as your two local flows. Is that correct?

11 A Those were two of the local flows that we
12 looked at. That's correct.

13 Q Yes. They are the only two, right?

14 A There were -- we did look at other local flows
15 in the analysis. For example, some of the traffic from
16 Dallas-Fort Worth to and from LA would have been looked
17 at in the study of Los Angeles. Similarly, Kansas
18 City-San Francisco traffic would have fallen into the
19 realm of the analysis of the Group II common point San
20 Francisco traffic.

21 Q So, there were -- we did look at other flows.
22 We did look at that traffic. I am sorry.

23 Q Well, it is quite a different matter, isn't
24 it, to look at Dallas-LA traffic as part of an
25 examination of all traffic inbound to Los Angeles as

1 opposed to looking at that specific point to point
2 flow? Aren't those two quite different propositions?

3 A Yes, that's true.

4 Q Okay, and is it correct as it indicates here
5 on Page 260 of your letter, Exhibit 19 --

6 A Is this Page 2 of the letter, sir?

7 Q Yes. That as of November 23, 1983, you had
8 identified Dallas-Los Angeles as a flow that you were
9 going to look at?

10 A That's correct.

11 Q Okay. and my question is, why did you end up
12 not including a chapter on Dallas to Los Angeles?

13 A We did do some analysis on Dallas-Los Angeles,
14 and we turned that over to counsel before filing the
15 application.

16 Q And then what happened?

17 A Well, as you have already pointed out, it
18 wasn't filed as part of the application.

19 Q Was it turned over on an equivalent basis to
20 all the other chapters?

21 A We turned over draft work to them.

22 Q Did you ever look at Los Angeles to New
23 Orleans?

24 A No. No. I should clarify here and say the
25 corridors that were looked at, rather than have you go

1 through and drag it out of me --

2 Q Okay. Please do. Please do.

3 A -- were the ones in the scoping order issued
4 by the Commission that was issued very late in what was
5 our study period, and we could only do some preliminary
6 evaluations of those corridors, and that, of course, was
7 not completed by the time we filed our testimony.

8 Q But Dallas-Los Angeles is in a different
9 category, right? You started work on that back in
10 November?

11 A No, we didn't start work in November. As I
12 indicated, we started work when we received -- just
13 before, around the same time as we received the scoping
14 order in detail. Now, I will emphasize again that a lot
15 of those flows were studied as part of other chapters
16 already, and this was a more detailed analysis that
17 would look at it as a local flow, as we did in the
18 Houston -- I'm sorry, the Texas coast Los Angeles flow.

19 Q Well, did the work on Dallas-Los Angeles start
20 any later than the work on Los Angeles to Texas coast?

21 A Yes. I think it started -- the reason I am
22 hesitating is, we also began the Houston-Los Angeles --
23 I am sorry, the Texas coast-Los Angeles flow somewhat
24 late in the study, just because of the sequential nature
25 of how things were done, so I was just trying to figure

1 out which came first here. But they were, I believe,
2 started, the Houston-LA was started before then.

3 Q Okay, but they were both in a position to be
4 submitted to counsel when, in February?

5 A No. We weren't in a position to submit
6 anything to counsel until after really the filing took
7 place. It was too much work to do. We were trying to
8 prepare a final document.

9 Q Well, you must have submitted it before the
10 filing took place as part of the filing in the case of
11 the Los Angeles-Texas coast. I am just trying to see
12 the timing.

13 A I am sorry. I thought you meant the other
14 local flows. No, certainly the Texas coast-Los Angeles
15 flow was completed before the filing.

16 Q What I am trying to get a grip on is, what was
17 the sequence of events with respect to Dallas-Los
18 Angeles? Did that go to counsel before the filing of
19 the application?

20 A I don't believe so.

21 Q Was that because a decision was made at some
22 point before the filing about whether or not to include
23 it?

24 A I am not privy to that from the part of the
25 counsel. I know from our perspective the analysis

1 wasn't done. I mean, there is no way we could have
2 submitted anything. We hadn't completed our studies.

3 Q Why was it that Los Angeles-Texas coast got
4 completed in time and Dallas-Los Angeles did not?

5 A I have already pointed out to you that when
6 the scoping order came out, it was felt that perhaps we
7 might look at these in more detail. Unfortunately, they
8 weren't ready for the filing.

9 The scoping order, as I indicated, came out
10 fairly late in the whole process. If I remember it
11 right, it may have been only a couple of weeks at best
12 before we had set a timetable for filing as a group, and
13 my study, of course, is only one part of a much broader
14 set of work that the railroad was getting ready to do.

15 Q Maybe the light is beginning to dawn here.
16 Are you saying that the Los Angeles to Texas coast study
17 was done because of the scoping order?

18 A No, no, I didn't say that. You had asked me
19 about the Dallas-Los Angeles, and that was one of the
20 three that were listed in the scoping order. I don't
21 remember whether Houston-Los Angeles was listed there.
22 Houston-Los Angeles -- I keep saying Houston. I
23 apologize. It is Texas coast-Los Angeles.

24 That was started well before we had any
25 indication that the Commission might be interested in

1 competitive options for certain other corridors in the
2 scoping order.

3 Q Okay. Before the scoping order came out, you
4 had four flows listed here as candidates. Had you made
5 a decision before the scoping order came out that you
6 were only going to do Los Angeles-Texas coast out of
7 those four?

8 A No. As the documents here that we have filed
9 indicates, we also studied San Francisco to IA in the
10 analysis.

11 Q Right.

12 A And we were aware of the fact that we were
13 studying a lot of tonnage that might move in these
14 corridors in our ongoing analyses of Group II points as
15 well. In addition, I believe that some of this traffic
16 such as San Francisco-Kansas City was under study by
17 Bechtel Associates, and we had discussions about what
18 they were analyzing in certain areas and what they were
19 doing, how things were going to mesh together, so there
20 were a number of related activities going on with
21 respect to analyzing those options and those flows.

22 Q Did you consider doing a study of flows from
23 Northern California to Texas?

24 A Again, I think that we covered those in our
25 analysis of the Group II common points. I don't

1 remember us considering directly whether to do a
2 separate analysis. There are lots of options,
3 obviously, one can look at, and in studying the factors,
4 we were trying to arrange our study areas to correspond
5 to those which we felt could possibly be affected by the
6 merger, and so some were lower priorities than others, I
7 guess.

8 Q Do you know how the traffic moving between
9 California and eastern points through the southern
10 corridor tends to break down in terms of destinations
11 between the Houston area, the Dallas area, the New
12 Orleans area? Do you know which of those flows are more
13 or less significant than the others?

14 A When we decided to study in detail the Los
15 Angeles-Texas coast flow, we determined that that by far
16 was the densest flow of traffic in that corridor.
17 That's correct. It's approximately, as I remember the
18 numbers, four times the flow to Dallas-Fort Worth, and
19 obviously a lot more to New Orleans as well, but again,
20 remember, the Santa Fe doesn't get to New Orleans.

21 Q Let me turn to the San Joaquin Valley market
22 area. Am I right that basically your definition of
23 that --

24 A Excuse me. Are we through with this document
25 for the moment? Can I put this away?

1 Q Yes. Basically, your definition of the San
2 Joaquin Valley market area is BEAs 178, which is
3 Fresno-Bakersfield BEA, and 179, which is
4 Stockton-Modesto?

5 A As it says on Page XV-1, with the exception of
6 Alpine County, all counties in those two BEAs were
7 included in our market region definition. That's
8 correct.

9 Q Okay. Isn't it also true that you excluded
10 rail tonnage at the common points within those two BEAs
11 that you had already looked at in your Group I common
12 point studies and those BEAs are Oakdale, Visalia,
13 Fresno, and Bakersfield, as I understand it?

14 A I am hazy on that point, counselor. I don't
15 remember whether we did. I think we might have, but we
16 can get back to you on whether we did.

17 Q Okay. I would appreciate it if you would. If
18 you could also get back to me on whether you excluded
19 the Group II common point of Stockton from the San
20 Joaquin Valley rail figures.

21 A The only thing I am confused is about Alpine
22 County I don't believe encompasses all those areas. It
23 does say we included all counties. So your exclusion
24 list is getting larger. I don't think we excluded all
25 those, but we will check and make sure.

1 Q Okay. I'd appreciate that. I will say that
2 our understanding from looking at your work papers is
3 that that was what was done, that the rail tonnage was
4 carved up, if you will, into different pieces, some of
5 it you looked at as Group I common points, and the rest
6 of it in the residual called the San Joaquin Valley.

7 A But you have to remember that the work done in
8 the San Joaquin market regions was as in-depth as done
9 in any Group I common point, so I don't think anybody is
10 being short-changed by the analysis quality here.

11 Q Well, that leads me to the next question, I
12 guess, which is, do you know what truck tonnage was used
13 to apply the 50 percent test? Isn't it in fact the case
14 that you used the same truck tonnage each time you used
15 the same tons for Visalia and then again for Fresno and
16 again for Bakersfield, and finally for the San Joaquin
17 Valley?

18 A Let me answer two ways. The straightforward
19 answer is no. Absolutely no. But let me also mention
20 that in the San Joaquin we were more conservative in
21 that we only used truck tonnage from the ~~178~~ 178 in our
22 screens analysis. We didn't use tonnage from 179 to do
23 these screens. So right off the top we were more
24 conservative in our analysis.

25 Secondly, with respect to your question about

1 whether we ever double counted or double used a truck
2 ton, the answer is absolutely, positively never. There
3 is -- we have checked and cross-checked. We have
4 substantial audits that were done on this particular
5 issue. It is one that we are absolutely convinced that
6 we did not double count.

7 Q Now, let me put to you --

8 A We could have used --

9 Q Let me put to you the evidence on the other
10 side.

11 A Maybe we ought to have a little bit more
12 explanation, because I think we might save ourselves all
13 some time. Certainly some of these common points fall
14 within the same BEAs that we all know. We can look at
15 the maps and see that that happens. When we use tonnage
16 at one particular ton point to -- in our initial screen,
17 our initial NMO screen, that tonnage was never used
18 again.

19 It was subtracted from whatever conglomerate
20 of tonnage we were looking at, whether it was the BEA
21 total or containerizable tons or whatever. So, it was
22 always subtracted, and then the screens at the next
23 area -- let's say we did Visalia and another area case
24 along that was in the same BEA.

25 The Visalia tons were excluded from any

1 analysis. The truck tons were excluded from any
2 analysis that was done on any further common points.

3 Q The Visalia truck tons were excluded?

4 A I am using an example. I am not exactly sure,
5 but I think Visalia is in this area. I think it's in
6 the same BEA. If that were the case, then once we used
7 a set of truck tons to screen the traffic at a point in
8 Visalia for the amount of tonnage moving in and out of a
9 cell by commodity, those basic initial screens, that
10 tonnage was never "used again."

11 In other words, we didn't double count the
12 tons. We didn't say, well, you have got all these tons
13 in this BEA and we will use it five times, the same
14 tons. We just didn't.

15 Q Well, I thought your explanation for why in
16 the case of the common points you would use the truck
17 tonnage from the entire BEA, part of your explanation
18 was that that was the only data you had on trucks, was
19 by BEA.

20 A That's absolutely correct.

21 Q Let me ask you --

22 A I subtracted. I'll tell you how I excluded
23 it. I subtracted it. Once I used it to analyze tons in
24 Visalia, and if I used 1,000 truck tons in STCC-20
25 outbound from silage block zero to 20, I subtracted

1 that from the EPA tonnage before I did anything else. I
2 didn't want to double count tons. I don't want to be
3 accused of using information twice.

4 Q Okay. Let's look at a couple of exhibits
5 here. Exhibit 12-15.

6 A We are not involved in San Joaquin any more?
7 We are moving to another chapter?

8 Q I am going to Exhibit 12-15.

9 A Okay, sorry.

10 Q That's okay. Which is Visalia. You mentioned
11 Visalia.

12 A That's correct.

13 Q And under STCC-20, you have got in Block 4
14 99,750 truck tons.

15 A May I anticipate your question, counselor?

16 Q Sure.

17 A I think you are going to ask me if in fact the
18 numbers in the two chapters may be the same.

19 Q Right.

20 A Absolutely they may be. That doesn't mean we
21 double count.

22 Q Okay. Well, let's get it in front of us, and
23 then you can explain. Exhibit 1-15 in the other volume,
24 Bakersfield outbound, STCC-20, Block 4, 99,750.

25 A Excuse me. I am just trying to get the

1 exhibit here. Are we on Exhibits 3-15 simultaneously
2 with 12-15 here?

3 Q Right.

4 A And what are we looking at again, please?

5 Q STCC-20, Mileage Block 4, truck tons, 99,750

6 A This is STCC-20 outbound, counselor?

7 Q Yes.

8 A 99,750. Yes, there it is again. That is the
9 total BEA tons. That is absolutely correct.

10 Q Okay, so tell me how you avoided double
11 counting.

12 A Well, I have an adding machine, and I
13 subtracted out those tons before I did it. Just because
14 it appears in the table here doesn't mean I double
15 counted them. We kept track, kept records on tapes off
16 a calculator when we used these tons.

17 When we were going through doing this
18 analysis, it was done very carefully.

19 Q Well, let's look at exhibits --

20 A I don't want counsel to get confused by the
21 fact that just because the same number is there meant we
22 double counted. That is to be not -- all that says is
23 that that is the total BEA truck tons. The real
24 question is, if I have 99,000 tons, do the summation of
25 these tons, each of these individual cell blocks add up

1 to more, and I'm telling you right now that if you went
2 through and did all of the analysis, and I will save you
3 the trouble, that we checked it, and this is not the
4 case. We never used a truck ton more than once.

5 Q Okay. Let's take it step by step. Look at
6 Exhibit 3-18. Under STCC-20 outbound, Mileage Block 4,
7 your explanation there is that the truck tons were
8 greater than the rail tons, right?

9 A Um-hm. That's correct.

10 Q And that is the same explanation over in
11 Exhibit 12-18 for outbound STCC-20 mileage?

12 A Right. Remember, our rule, counselor, is, and
13 it is your characterization of it, it is a 50 percent
14 rule. So if you add those two up, in my mind, you have
15 got 6,000 tons on rail in that block on the outbound
16 Visalia and you've got 16,000 on the outbound
17 Bakersfield. That is still substantially less than the
18 99,000 that are there, and I would also say that if any
19 more were included, you would get the same results.

20 In other words, if you added more areas, and I
21 am not exactly sure again of all the ones that are
22 included in this particular BEA, but we have gone back,
23 we have checked very carefully, to say that those tons
24 have not been used twice.

25 Q Okay. Well, just to finish the loop here,

1 take a look at Exhibit 7-15, which is Fresno. Once
2 again, outhound STCC-20, Mileage Block 4. This time
3 you've got the 99,750 tons.

4 A That's right, counselor, and we did not use it
5 to kill off the -- I'm sorry. I slipped into the
6 verracular there.

7 Q Didn't use it as a defense?

8 (Laughter.)

9 A You have to allow us some levity. This was a
10 long study.

11 Q Right. You looked at your Table 7-18, and
12 what you did there was, you said you couldn't find any
13 competitive logistic option.

14 A That's right. So we didn't use those tons to
15 do anything. We say we admitted that there weren't
16 enough tons, and we were honest about it, and that's
17 about all there is to it. We didn't use any of the tons
18 there. You've done a good job of getting me to explain
19 how this analysis was done.

20 Q Why didn't the 99,000 tons get all
21 extinguished in Fresno so that they weren't available to
22 explain away the mileage blocks at Viralia and
23 Bakersfield? You admitted here that you couldn't find
24 any logistic option for STCC-20 commodities at Fresno.

25 A Well, all I will say is, I think we erred on

1 the side of conservatism, because you look at the volume
2 of tons we let slide through the screens. It was 141
3 versus, if I remember right, some 6,000 and 12,000 or
4 something like that, much smaller tonnages. I think
5 that is being conservative, in fact.

6 Q Well, is this a game about which cell slides
7 through a screen, or is the issue are there enough
8 trucks in this area to give complete competitive
9 logistic options to people who are today at these three
10 points using railroads to ship goods in STCC-20 over
11 1,000 miles?

12 A That is an interesting question from the
13 perspective of the fact that we already indicated in
14 that particular chapter that we didn't feel for that
15 mileage block that there were. To me, I am not sure
16 what the question is at these other points.

17 Q The question is, why don't you have a 6 in the
18 columns for Visalia and Bakersfield? If they don't have
19 options at Fresno, they can't have options at the other
20 two places. It is the same trucks.

21 A I disagree. What do you mean? Sure it's the
22 same trucks. All I am saying here is that we were
23 conservative in the sense we didn't say in all
24 situations that if you didn't have enough tonnage, we
25 didn't use it as a screen. If we had 300,000 tons in a

1 particular cell of rail traffic and there were 299,000
2 tons of truck traffic, we said we didn't think there
3 were adequate logistics options.

4 Now, that's a pretty powerful conclusion, I
5 think. I mean, we for one ton, for 49 percent, where in
6 fact that truck's share in a particular flow may have
7 been 49 percent of the flow, which some of my colleagues
8 at perhaps the Department of Justice might look at
9 somewhat askance, we said we don't have logistics
10 options for this.

11 Nobody is playing any games with you,
12 counselor. I am trying to be as honest as I can in
13 showing you how the analysis was done, and the fact that
14 there was a lot of tonnage there, and we said, well,
15 there may be parts of that area where they don't have
16 sufficient tonnage, but we took the smallest two and
17 said perhaps they do have options, but the largest one
18 we admitted there may not be options. I can't get any
19 more honest than that.

20 Q Your theory is, is it not, that the trucks can
21 reposition themselves anywhere in the BEA?

22 A As stated, that is a fair approximation of
23 what we were looking at, yes. Most types of equipment
24 can reposition their operations to various parts of the
25 BEAs that we were studying.

1 Q Okay. Just explain to me briefly --

2 A Just one more sentence to explain a simple
3 point, that there may be situations where we might have
4 a private fleet, and it has got a locked backhaul, it
5 has to haul back company goods, and wouldn't be
6 available for repositioning, so there are examples I can
7 give you where you possibly couldn't reposition a truck,
8 but for the most part carriers can move their vehicles
9 all over the place to pick up loads.

10 Q That is the assumption of this study, is that
11 they can? That is why you look at the truck tons in the
12 entire BEA, and assume that they are relevant for
13 competition at the common point?

14 A I would say it was more than an assumption,
15 because there is statistical evidence presented in here
16 that that's the way it does happen in reality, and Mr.
17 Baker, who is going to testify a little later, will be
18 able to talk more about the ubiquity of trucks in these
19 BEAs.

20 MR. BOACH: Okay. Let me ask to have marked
21 as Exhibit UP/MP-C-20 a one-page work paper.

22 JUDGE MCKINNI: It will be marked for
23 identification.

24 (The document referred to
25 was marked for

1 identification as Exhibit
2 Number UP/MP-C-20.)

3 BY MR. ROACH: (Resuming)

4 Q Does this work paper accurately state the
5 total Santa Fe and SP rail tonnage at the Group I common
6 points and in the market areas?

7 A I have no idea, counselor. I would have to go
8 do a lot of checking on whether all the numbers were
9 correct. What actually represents it, counsel, is what
10 is in these documents as corrected.

11 Q Okay. Assuming hypothetically with me that
12 this work paper which is in your work papers is
13 accurate --

14 A I am sorry, I can't. I haven't checked it.

15 Q Well, I am asking you to assume it
16 hypothetically. That's all.

17 A If you don't want to talk specific numbers,
18 then I will be glad to. If you want to maybe talk about
19 some specific number on here and say whether that makes
20 some sense --

21 JUDGE HOPKINS: He is saying, assume it
22 hypothetically, and that is the way you can answer.

23 THE WITNESS: Thank you.

24 BY MR. ROACH: (Resuming)

25 Q I am just asking you, sir, assuming that the

1 person on your staff who totaled up these numbers got it
2 right, isn't it the case that the total tonnage shown
3 for the four Group I common points that are within the
4 San Joaquin Valley BEAs, Bakersfield, Fresno, Cakdale,
5 and Visalia, is about two million tons, and the total
6 tonnage for the rest of the valley is about three and a
7 half million?

8 A I will accept your calculation, since we are
9 in the hypothetical mode.

10 Q Okay. And you are not sure whether those are
11 additive or the Group Is are a subset of the valley. Is
12 that your testimony from before?

13 A I indicated to you that I wasn't sure which
14 ones were exactly in the valley. That's correct.

15 Q Okay. Well, that's what I need to get
16 clarified. And I just thought, you know, you can look
17 at this, and this is our concern about dividing up the
18 tonnage and comparing it with truck tons.

19 A Maybe we could explore it a bit. I don't know
20 quite what you mean about dividing up the tons. Certain
21 places met criteria for being called common points, and
22 we studied them as common points. Certain other ones
23 met criteria as market areas, and they were studied that
24 way. You wouldn't want me to violate my methodological
25 process, would you?

1 Q I would like you to tell me whether the tons
2 got considered twice or only once. We really can't
3 pursue the issue, but I just wanted you to have this to
4 focus the inquiry.

5 A Are we going to do anything with it right now?

6 Q No. Let me ask you to look at Page 6 of your
7 verified statement. Now, I want to focus on the
8 definition of market region. Once again, the idea of
9 the San Joaquin Valley market area was that you were
10 looking at the part of these two FEAs that you hadn't
11 already looked at as Group I common points. Isn't that
12 right? That's the conceptual idea.

13 A Conceptually, yes. As I say, I am not 100
14 percent sure of where all the tonnage fits in in all
15 possible locations. But I will accept it from that
16 perspective.

17 Q And you say here that you refer to Santa Fe
18 and Southern Pacific as the major competitive rail
19 alternatives, right?

20 A That's correct.

21 Q Okay. Tell me how those two railroads compete
22 in the San Joaquin Valley excluding the common points.

23 A As the definition of market region indicates,
24 these are regions where there is substantial pretrucking
25 of commodities to the railroads. In Kansas, it is a

1 question of moving grain to country houses, and to the
2 extent that perishables and fresh fruit and vegetables
3 move, which are the primary products produced in the --
4 at least part of the products produced in the San
5 Joaquin, to the extent that they move to railroads, they
6 would move over the road initially from the farms in
7 farm trucks or trailers to the rail heads.

8 Q Okay. Tell me how you can reconcile that
9 concept, that the railroads can compete for traffic that
10 isn't located at the common points with the concept that
11 you should compare only the rail traffic at the Group I
12 common points with the trucks for the entire surrounding
13 BEA. Why shouldn't you look at the rail traffic in the
14 whole BEA and compare it with the truck traffic in the
15 whole BEA?

16 A It would have violated one of our basic study
17 precepts, and that is that we looked at places where,
18 and I am referring now to, let's take a Group I common
19 point such as Phoenix, which is smack in the middle of a
20 very large BEA.

21 The rest of the rail traffic does not
22 originate or terminate at points that are currently open
23 to reciprocal switching or, let's say, competitive
24 between the Santa Fe and Southern Pacific, and as a
25 result it is incorrect to include them in this

1 process.

2 On the other hand, in our methodology, we
3 recognized that there were regions like Kansas and the
4 San Joaquin where there is a substantial amount of
5 pretrucking from farms, the only way they can get there.
6 There are very few large farms. Very few large farms
7 are in fact served by truck -- I mean by rail. Excuse
8 me.

9 And they have to truck the produce or the
10 grain to the rail lines.

11 Q Well, let me see if I can restate the
12 question. Aren't you assuming by focusing down on the
13 common point that that is the only place where there is
14 any potential rail market power, and so all the trucks
15 in the whole surrounding several counties that make up
16 the BEA can exercise countervailing competitive power at
17 that single common point? Aren't you assuming that's
18 the only place where we have to be worried about market
19 power?

20 A Say I ask a clarifying question first?

21 Q Yes.

22 A Are you referring to San Joaquin, or are you
23 referring to the general nature of our study? You keep
24 going back and forth, and you are confusing me. I am
25 sorry.

1 Q Well, I hope I am, because what I think I see
2 is a contradiction in the logic between your approach to
3 the San Joaquin Valley and your approach to these common
4 points. At the common points you used the truck traffic
5 for the whole FEA to nullify the rail traffic at the
6 little common point. Then you turn around --

7 A Many of them weren't little, by the way.

8 Q The big common point. Then you acknowledge
9 that there is competition at other places and use the
10 same truck traffic to nullify that competition.

11 A I thought we had already established that we
12 didn't double count the truck traffic, and you stated to
13 me earlier -- you asked me on the first part of the San
14 Joaquin, well, let's include it in the San Joaquin study
15 area, and I said it looks like it is most of the
16 counties in those two FEAs. So it is a pretty broad
17 area.

18 We agreed with that, but we don't use the same
19 tonnage again and again. I don't know how else I can
20 show it to you. You could go through numerous examples,
21 but we have obviously done those audits on this
22 information. I am not sure I can explain it any
23 better. We didn't double count.

24 Q Let's forget about double counting the
25 trucks. My question is, why do you only look at the

1 rail tonnage at the common point? Why don't you look at
2 the rail tonnage in the whole BBA and compare that with
3 the trucks in the whole BBA?

4 Let me just explain the question, because you
5 want to know why I keep jumping back and forth from the
6 San Joaquin Valley to the common points. What I am
7 saying is, in the San Joaquin Valley, you have conceded,
8 as we just saw in your testimony, that the railroads
9 compete at places other than common points. That is
10 your definition of the San Joaquin Valley. It is
11 non-common points. Why isn't that just as true in
12 Arizona? Why don't you need all those trucks in Arizona
13 to deal with rail market power throughout the state
14 instead of just at the common point in Phoenix?

15 A. I have already answered this question, and I
16 have answered it to the best of my ability. I said the
17 purpose of this study was to look at places where the
18 competitive impacts may change in the post-merger
19 environment at points where, and we assiduously looked
20 for all possible locations, as you see by our list here,
21 places where that might occur.

22 We tried to bring in not just little tiny
23 SPICs all over the place, but we went out and studied
24 very large regions, like southwest Kansas and the San
25 Joaquin. I frankly don't know what you're driving at.

1 especially with respect to the issue of including
2 non-rail tonnage that has nothing to do with what we are
3 analyzing. We are not analyzing logistics options of
4 every shipper on the BEA. We are analyzing those common
5 points, and that is the traffic we used. I can't get
6 any more specific.

7 Q Let me tell you what I am driving at. Let's
8 assume hypothetically, and this hypothesis is based on a
9 shipper statement that has been filed, but I will assume
10 it as a hypothetical for you, that there is a copper
11 company located outside Phoenix in Arizona, on the lines
12 of one of these two merging railroads.

13 And it says that it benefits from competition
14 by being able to truck its copper to Phoenix to the
15 other railroad when the railroad that serves it directly
16 tries to charge excessive rates. Haven't you
17 disregarded that concern, and haven't you used all the
18 trucks in the whole state to explain away the problem at
19 Phoenix while disregarding everything elsewhere in the
20 state?

21 A I would appreciate it if I had one question at
22 a time. You are asking very complex questions, and I
23 want to be responsive to them. Let's start with the
24 example you give of the truck in Phoenix. Certainly
25 there are locations, and we admitted them all through

1 here, and that specific example I am not quite sure how
2 exactly it fits into our particular analysis.

3 I do know that if you trucked it to Phoenix
4 and put it on the railroad, that its tonnage would be
5 included, obviously, in that situation, but we have
6 admitted that there are places where it may not be
7 optimal for shippers under changes in the configuration
8 of the rail system after the merger.

9 That is not an issue, and we can go through
10 hundreds of examples perhaps if you have them of that,
11 and we have provided some here as well. There are going
12 to be cases where their actions are not going to be
13 perhaps improved as a result of the merger. Some people
14 will get single line service, and some may not benefit,
15 and we have admitted that there are situations like
16 that.

17 I do remember your second question, and maybe
18 you want to restate it. In terms of using the total
19 truck tonnage, we were very careful in deciding to do
20 that, primarily because we discovered in our analyses
21 that trucks could actually relocate into these common
22 points from hundreds of miles away, and why shouldn't
23 they be a competitive option for shippers and receivers
24 in those common points?

25 That is what market entry is all about. That

1 is what it means to have potential entry in markets.

2 Q Okay. Let me ask you a question or two about
3 Exhibit C-1. This is a table -- maybe the way I should
4 ask it is, can you tell me what this table is supposed
5 to be conveying to the reader?

6 A There is an explanation of it in the text, and
7 in short it is just one way of looking at the absolute
8 volume of truck tonnage moving in or out of a particular
9 common point market area, local flow relative to the
10 same volume, the same types of rail tonnage.

11 It is based on our cell analysis that looks at
12 these movements in and out of our study locations by
13 mileage block, commodity, and direction.

14 Q In the column captioned Rail Greater Than
15 Truck, have you included cells where rail is 100 percent
16 of the traffic?

17 A There are cases where this table does have
18 both -- this table contains cells that have both rail
19 and truck traffic, so we have excluded cells that would
20 have only rail traffic. It was a comparison of rail and
21 truck tonnage.

22 Q Did you ever do the table with the 100 percent
23 rail cells added into this column, rail greater than
24 truck?

25 A We felt that that was incorrect in many cases

1 because of the problems in the Teebie data base with
2 STCC-14 and 1 and 40 that represented cases where truck
3 was "greater than rail." I mean, we do know what the
4 numbers are. I am not sure how -- I am not sure what
5 purpose they serve, because they are troubled by the
6 fact that some truck tons just aren't included. It is a
7 meaningless kind of statistic to say we don't know, just
8 as we went back to this morning with our discussion of
9 sampling. We don't know which ones are really missing
10 or not. So why should I give the Commission testimony
11 that may not be true?

12 Q You don't know which ones are missing, so why
13 should you consider any of them rail dominated? Is that
14 what you are saying?

15 A We have admitted all through the study where
16 we found those situations. We are not trying to hide
17 anything here. It is a matter of a judgment on the part
18 of an analyst. I am the analyst, and I decide that
19 because of the statistical problems there, just as I
20 mentioned with the 9-digit, that I think we mentioned in
21 the text, if I am not incorrect.

22 But let me get back to you on that. I don't
23 want to take this Court's time in looking for that
24 reference. I can look it up and provide it to you.

25 Q Let me ask you, are there problems with

1 Reebie's data about food products, STCC-01 for trucks?

2 A STCC-01 is farm products.

3 Q Farm products. I am sorry.

4 A And, yes, there is an absence of trucking
5 activity for many of the nonperishable commodities.
6 These would be commodities like any of your grains,
7 corn, wheat, sorghums, soybeans.

8 Q On Page 1-23 of your appendix, you say in the
9 first paragraph that, and here you are talking, I think,
10 about the common points, that you have reviewed FHWA
11 studies and concluded that existing highway capacity was
12 sufficient to accommodate any increased motor carrier
13 activity that might result from shippers diverting rail
14 traffic to the highways.

15 Was that in terms of the increased tonnage
16 that would result from the common point?

17 A That was only a generic statement that had no
18 reference to any specific tonnage in this study. We
19 weren't -- we did not make any estimations of traffic
20 that would be diverted.

21 Q Well, I am asking you, did you figure out
22 whether the highway capacity was sufficient to handle
23 all the rail traffic in the BEA, or just all the rail
24 traffic at the common point?

25 A I don't remember the exact way in which we

1 approached that. If that is important to you, why, we
2 can look at it. I consider it to be basically a
3 parenthetical comment. It was not used as a screen. It
4 was not -- I know we did a fairly extensive study of
5 it.

6 Q Did you ever ask Beebie to do a computer
7 compilation for you of the rail tonnage for the entire
8 BEA compared to the truck tonnage?

9 A We were using 100 percent traffic tapes from
10 the Southern Pacific and the Santa Fe for a rail
11 analysis of common points, and didn't use any Beebie
12 rail data for our analysis of the Group I common
13 points.

14 Q Well, the question was, did you ever ask
15 Beebie to do a computer run comparing rail BEA tons with
16 truck BEA tons?

17 A There were situations where we used Beebie
18 rail tons -- the Kansas market area is an example of
19 that -- in order to avoid substantial disclosure of
20 rail -- confidential rail information in the analysis,
21 but that was, I believe, the only situation where we
22 used expanded Beebie 1 percent way bill information in
23 our analysis. The rest of the time, for the rail data
24 we relied on that as provided us by the applicants.

25

1 Q I'm still not sure I got an answer. What
2 we've been debating it made sense to attempt to compare
3 the rail traffic at the common point with the trucks in
4 the entire FFA.

5 A That wasn't the question you asked me. But I
6 will answer.

7 Q As I say, we have been debating that, and I am
8 asking you whether in the process of doing this study,
9 you looked at the other alternative. You asked them to
10 run the numbers, BKA to BFA.

11 A As I said earlier, I see no purpose in doing
12 that. The point of this study was to look at the impact
13 of competitive points. Much of the BFA traffic in some
14 of these locations that were not in the competitive --
15 in the stations that were open to reciprocal switching,
16 were not considered to be competitive.

17 It is simply not traffic that would have its
18 options altered as a result of the merger.

19 MR. ROACH: Your Honor, let me ask to have
20 marked as Exhibit 21, a two-page exhibit from the work
21 papers. I'm sorry. We have our letter prefixes mixed
22 up here. Just one moment.

23 JUDGE HOPKINS: It will be marked for
24 identification.

25 (The document referred to

1 was marked Exhibit
2 UP/MP-C-21 for
3 identification.)

4 BY MR. ROACH: (Resuming)

5 Q Mr. Anderson, this looks like to me a
6 compilation for the Phoenix BEA of rail traffic and
7 truck traffic, inbound and on the other side outbound.
8 And I got it from your work papers.

9 Is that what it is, and do you know why it was
10 put together?

11 A I've already indicated that I didn't use the
12 information, and I've already indicated to you where I
13 requested the information from Beebie from the Kansas
14 study area.

15 I can't for sure say what this was used for in
16 our analysis. I do know that, obviously, when you're
17 dealing with the Beebie rail data which is based on a
18 1 percent sample nationwide of rail movements, that it
19 certainly is more accurate evidence to present to the
20 Commission to use 100 percent rail waybill information
21 from the Applicants as the basis for our testimony.

22 So as far as what this was used for, we used
23 lots of the Beebie data all through this study. I can't
24 say specifically what this was used for, but I hope I've
25 clarified what we did at Phoenix.

1 Q Did you ever ask the Applicants for rail
2 traffic on a 100 percent basis for the entire PFA?

3 A In cases where the common points correspond to
4 that such as the San Joaquin, I suspect that we had to.
5 We had to have all that traffic. And when I say I
6 "suspect," I'm not exactly sure that the San Joaquin
7 covered all possible points in those two PFAs.

8 My basic feeling is that it did. I don't
9 think I'm going to be incorrect on that statement. So
10 in that case, we would have asked them for that
11 traffic.

12 Q Let me ask you about page 114, the outbound
13 STCC 26, which is paper and pulp.

14 A Excuse me, counsel. I don't know where you
15 are.

16 Q I'm on this exhibit we've just been looking
17 at. Page CIP-114.

18 A I'm sorry, there are lots of pages rolling
19 around here.

20 Q Outbound STCC-26 is paper and pulp, as I
21 understand it.

22 A Are we going to be hypothetical, counsel,
23 because I never used this information in the study.

24 Q No, it's not a hypothetical. It's a question
25 about your study. In Exhibit 9-15 of your study --

1 A Excuse me. I'm coming apart at the seams up
2 here. 9-15?

3 Q Right.

4 You've got, after the corrections that you
5 filed, you have got some data for outbound STCC 26 from
6 Fresno.

7 A IX-15 is Phoenix.

8 Q Phoenix; I'm sorry. And --

9 A Outbound STCC?

10 Q 26. You added that in your correction
11 filing. And what your correction filing showed was a
12 grand total of 190 tons of rail and 55,186 tons of truck
13 at the Phoenix common point.

14 A This is outbound paper products?

15 Q Right.

16 A That's right.

17 Q And Beebie's data shows right on the money --
18 I guess it is right on the money for truck -- 604 plus
19 54582 is 55186 and then 224,700 tons of rail carload
20 traffic outbound from the State, from that part of the
21 State included in EPA 1627.

22 A You realize, counselor, that that tonnage here
23 on this table in my revised Exhibit IV-15, represents
24 only the rail tonnage outbound from the common points.

25 Q Yes, I realize that. And my question to you

1 is, is there anywhere in this study that we can find out
2 whether the shippers of that traffic, the rail shippers
3 outside the Phoenix common point, have lost any
4 competitive options as a result of this merger?

5 A Well, the first point I'd like to raise is
6 that the tonnage that's represented here is an estimate
7 based on the Beebie data base and I can't really address
8 whether or not it is the rail tonnage.

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1 That state happens to be Arizona. It is
2 served by only two railroads. The applicants in this
3 case, maybe they do haul that and maybe they don't.
4 That is an estimated number. It could be incorrect.

5 I don't know if the right number is 191 cr, as
6 is stated there, 224,700. They are numbers we didn't
7 use. I am not -- I have no knowledge. They were
8 developed from the procedure of multiplying up another
9 totally different data base than the one we used. I
10 can't answer the question. I don't have any
11 information.

12 Q Do you have a whole lot more confidence in the
13 Reelie truck figures than the Beebie rail figures?

14 A We have already been through this morning my
15 dissertation on the 5-digit level, and why we chose to
16 aggregate it in the analysis. I would let that
17 testimony stand and say if you have any further
18 questions that Mr. Eiba is going to be back on, and he
19 is a much more qualified expert than I am to deal with
20 the question of that data.

21 I told you what my corrections were to the
22 information and how I used it, and that was my
23 explanation of using it at the two-digit level.

24 Q Yes, sir. And what we are looking at here is
25 Beebie truck figures -- the two-digit level and Beebie

1 rail figures at the two-digit level, and my question
2 was, do you have any greater confidence in the truck
3 figures than in the rail figures? You just got done
4 telling me the rail figures might be totally wrong.

5 A I told you -- the only reason I am hesitating
6 is that you are asking me to talk about a figure that I
7 never used, had no hand in preparing, this 224,000 tons
8 here, and I didn't study it, to be honest with you. I
9 didn't study what Beebie's rail -- what the veracity of
10 Beebie's rail data was in the Phoenix BEA because I
11 didn't use it.

12 I certainly looked at the truck from that
13 perspective, and that was because I had to use the
14 information, but I didn't look at the railroads, and I
15 can't really answer you specifically on that particular
16 flow, outbound flow, with any knowledge. I am not
17 trying to be difficult about it, I am trying to be
18 honest.

19 Q Well, okay, but aside from this detour we have
20 taken about the validity of the data, the answer to my
21 original question is, you didn't study the competitive
22 options of shippers outside the Phoenix common point in
23 Arizona. Isn't that right?

24 A To the extent that people shipped from other
25 common points traffic that originated or terminated at

1 those other points, sure, we studied it.

2 Q And otherwise you didn't?

3 A Did we study specific flows that originated
4 there and went into Phoenix? Yes. If that was in the
5 Phoenix data base, certainly we studied it. I am not
6 saying these people are unimportant out there. That
7 wasn't the point of the study at all. We studied lots
8 of other pieces of traffic. I can't tell you which ones
9 right now. There were thousands of shippers involved in
10 this whole process, but certainly their tonnage, parts
11 of their tonnage are included in various parts of our
12 studies.

13 Q Right, but the first thing you told me this
14 morning was that you picked your study locations by the
15 criterion of looking at the places where there might be
16 competitive impacts, and I am asking you to face up to
17 it and tell me whether you considered that the rest of
18 Arizona was not a place where there might be a
19 competitive impact.

20 A I never stated that in the testimony. We
21 talked about a hierarchy of locations that we studied in
22 this situation. They were felt to be the most important
23 ones. They were places where railroads, the applicant
24 railroads in this case competed head to head. We
25 included all sorts of COFC traffic.

1 We included all sorts of grain traffic, where
2 you would move truck as the initial part of the option.
3 I don't understand your question. There are lots of
4 flows in and out of regions that aren't -- that meet
5 your definition of not studied areas that we studied.

6 I mean, any flow in and out of Phoenix, any
7 relocation that might take place, you know, for a
8 shipment outbound into the hinterlands, wherever, by
9 rail from Phoenix we studied. Any shipment from IA that
10 went into that part of Arizona was studied.

11 I think we have done as much as we can to
12 address it without saying we have to study every ton out
13 there, even if it isn't affected by this merger, but it
14 looks nice because we are super-complete. We had a
15 different methodology which was explained in quite a lot
16 of detail.

17 MR. ROACH: Let me ask to have marked as
18 Exhibit UP/MP-C-22 a one-page work paper.

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-22.)

25 BY MR. ROACH: (Resubmit)

1 Q Now, we talked a little bit earlier about the
2 direction of a particular movement as a factor, and I
3 just want to ask you again at the common points you did
4 not differentiate, did you, between traffic moving
5 northeast, south, or west? You simply looked at mileage
6 blocks. Isn't that right?

7 A No, that is not 100 percent true. In local
8 flows that also involved common points, we would look at
9 some directionality in those movements.

10 Q I am talking about the Group I common points.

11 A Some of that traffic may have been included in
12 some local flows as well. But generally -- I see what
13 you're driving at. Did we look at all possible flows by
14 direction going out of the common points? The answer is
15 no. We aggregated our flows by mileage block for this
16 analysis, and the basic assumption was that the truck,
17 if it was able to go 1,000 miles in one direction, was
18 probably able to do it in the other direction, unless
19 they were in LA perhaps, and there they may only go a
20 couple of miles before they run into the ocean.

21 A But basically, if it was able to move 500,
22 1,000, whatever the number of miles were in one
23 direction, a truck was a flexible enough unit of
24 transportation that it would be able to also be
25 competitive on another movement in another direction.

1 Q Are there places that trucks go that railroads
2 don't have feasible routes to get to?

3 A I would guess there are a number of those
4 points in the United States.

5 Q Well, let's say we are dealing with a mileage
6 block of more than 1,000 miles from Fresno. As you go
7 around the compass, and excluding the Pacific Ocean,
8 don't you pass over a lot of locations where it would be
9 very circuitous to get there by rail and pretty direct
10 to get there by truck?

11 A Again, our analysis in the mileage block area
12 was conservative. We basically used a 1,000 mile
13 mileage block as being highway mileage, so if it was
14 more circuitous by rail, so what?

15 Q Well, the so what is that you may have a lot
16 of truck tonnage that is there because that is the only
17 mode that is reasonable to go to where the trucks are
18 going, and what I am trying to get at is, did you think
19 about whether the truck tonnage was moving to places
20 that the rail tonnage was moving to?

21 A Absolutely. We looked at those issues in our
22 analysis. That is one of the reasons you find in our
23 work papers all the big printouts of the NHTBD data
24 base, which indicates the movements of product by truck
25 based on sampling work done by TRAV. We were concerned

1 with the answer to that question.

2 Q Okay. And how does your handling of the MTRD
3 data answer that question?

4 A It gives you an origin-destination for
5 movements, and you can compare that to the
6 origin-destination for the railroad flow, so you can see
7 whether or not this is realistic from the perspective of
8 a truck to move it in. It is certainly something that
9 is of great concern to us. It is one of those, as we
10 used the TRAM data to make sure shippers could handle
11 truck, we also made sure that the flows -- truck could
12 move in that particular direction that was the same
13 direction perhaps as the rail flow.

14 Q There is a statement on this exhibit at the
15 middle of the page that suggested to me at least that
16 you considered at one point looking at point-to-point
17 flows for your 50 percent test.

18 A It says in the middle of the page cutoff for
19 modal competition will be as follows for each BEA-BEA
20 two digit STCC flow, including those involving common
21 points. Is that -- am I right? Is that an indication
22 that at one time you were considering narrowing down and
23 looking at particular directional flows from the common
24 points?

25 A This is notes that someone may have taken at a

1 meeting. It is not in my handwriting. I don't know
2 exactly who took the notes for me. It appears to me to
3 be just shorthand, and at no time to my knowledge did we
4 ever -- I might have dreamed one night that I might have
5 looked at flows, but the reality of life is that that
6 isn't a distribution channel.

7 We are not interested in individual flows as
8 much as we are interested in the overall collection of
9 options available in a particular channel.

10 Q I am sorry to hear that you dream about
11 flows.

12 A Yes, I do a lot, especially in this study.

13 (General laughter.)

14 Q Let me ask you to turn to appendix page I-A-1
15 and direct your attention more particularly to the last
16 paragraph on -- the last bullet point on that page and
17 the first bullet point on the next page.

18 You are talking here about factors affecting
19 the freight flow process, and some of the items that you
20 talk about are transfer facilities, equipment, a
21 distribution channel, which you define as the
22 combination of modes, facilities, and equipment
23 necessary for a shipment, and then there is the word
24 "costs" after that. I take that to be saying
25 distribution channel costs.

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1 A Right.

2 Q Transit times, reliability, flexibility,
3 capacity, and over or the next page product value,
4 market needs, inventor costs, customer service needs,
5 specialized packaging, in transit services, and other
6 services.

7 My question is, is there any way in which your
8 50 percent test takes account of any of these factors?

9 A I don't think you want to confuse the 50
10 percent test with the basic methodology of the overall
11 study. Separating them just for a second for discussion
12 purposes, when you look at the factors that affect
13 choice of a logistics channel or distribution channel by
14 a shipper or receiver, you have gone through the entire
15 list of factors that may enter into their mind at any
16 one time in this process.

17 And when they are doing that, they then make a
18 decision. They go out and ship a certain amount by rail
19 or truck, and that rail or truck movement is one aspect
20 of a logistics channel movement. Other parts of the
21 channel might include a warehouse where you offload
22 goods and store them for a while, et cetera, and do
23 other things with them.

24 Now, that particular aspect of a logistics
25 channel is the foundation for our overall study. The

1 Beebie data base in our minds is the revealed preference
2 of shippers in using various channels, and that is the
3 basis for what we do. And that is why we listed this
4 information here. The 50 percent test is a different
5 test defined for a different reason. It is a screen in
6 the process to say what is a possible level of movements
7 by other modes that would make one -- in a particular
8 channel that would make one conclude that sufficient
9 options exist, and I can argue it might be 5 percent in
10 one market, 10 in another, 25 in another.

11 Again, we were conservative. We said it had
12 to be at least 50 percent, that other modes had to haul
13 at least 50 percent in that mileage block commodity in
14 or outbound from a region, in order to have sufficient
15 options available, and I will defer to later cross
16 examination of Mr. Baker, who can explain to you what he
17 feels are the minimum requirements for truck competition
18 to exist in certain channels.

19 In many cases, they are low.

20 Q All these factors you talk about here go into
21 a shipper's choice between rail and truck, don't they?

22 A No. Some of them do. It is more his choice
23 of logistics channel. I didn't mean to be too pedantic
24 on the question, but they affect his choice of rail
25 versus truck as well, but it is really the setting up of

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1 a channel within which he is moving his goods to market
2 or receiving inbound material from vendors or whatever
3 he is doing.

4 Q Okay. But if we are focusing just on the
5 choice between rail and truck along with rates, these
6 other service factors explain or help to explain the
7 shipper's decision. Isn't that right?

8 A They are an aspect of the overall decision
9 process certainly.

10 Q And the shipper may be using trucks today
11 because of any number of these particular items, might
12 he not?

13 A The shipper may be also using rail for just
14 the same collection of items.

15 Q Yes. Because you have special equipment needs
16 or specialized in transit services that only a rail
17 carrier can provide. Isn't that right? Just to take a
18 couple of examples?

19 A It was not the definitive purpose of this
20 study to show that all ^{the} shippers are able to uniquely
21 substitute rail versus truck for any possible movement
22 in the study regions. The purpose again was to look at
23 the various channels open to them and whether or not
24 other shippers perhaps in the region had a whole
25 different technology for moving the same type of

1 products, that once that technology had been expressed
2 in the marketplace, that the other shipper, perhaps the
3 shipper who now used rail, would be able to use that
4 lever against the railroad in a post-merger environment
5 if he felt there were going to be any problems with his
6 being able to maintain his rates and service.

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1 Q Well, I guess at the expense of beating a dead
2 horse, what I'm having trouble getting a grip on here is
3 why you felt you could dispose of all this traffic with
4 your 50 percent test at the same time as you admitted to
5 me this morning that market shares don't tell you
6 anything about elasticity, and you're admitting to me
7 this afternoon that they don't tell you anything about
8 service.

9 A You misinterpret what I'm trying to say. The
10 primary reason that we look to the alternative -- in
11 this case, intermodal analysis -- is to see whether that
12 shipper and other shippers are using the channel today,
13 in this case one that involves perhaps truck, to move
14 their goods. This provides all shippers at a point with
15 increased power, shall we say, in dealing with any
16 carrier.

17 I mean there's lots of options out there, and
18 people are using lots of options. And in my book, if
19 you have 50 percent of a distribution channel being
20 taken up with a whole other mode's traffic, that's a lot
21 of options. That's a pretty powerful weapon, if I were
22 a shipper or receiver in this area, to have at my
23 disposal to use to beat back any attempts to change my
24 rate or service in any post-merger environment.

25 Q Let me make one last stab at this and ask you

1 to look at page 11 of your verified statement, the last
2 sentence of the carryover paragraph, and it reads as
3 follows: "If firms in the same BFA ship or receive more
4 of the same commodity" --

5 A Excuse me. I've lost you.

6 Q I'm sorry. Page 11 of your verified
7 statement, the last sentence of the carryover paragraph,
8 starting seven lines down on the page.

9 A Okay. The carryover paragraph. I'm sorry.

10 Q "If firms in the same BFA ship or receive more
11 of the same commodity over the same distance by modes
12 other than rail, this is convincing evidence that the
13 non-rail alternative is a close substitute for rail."

14 Now, my question to you is: if you don't know
15 anything about elasticities, and you don't know anything
16 about particular service needs of particular shippers,
17 how can you make that statement?

18 A Because the concentration of tonnage in any
19 distribution channel represents choices that are being
20 made by shippers in their use of modes as part of their
21 basic logistics channel.

22 Q That I agree with. What I don't agree with is
23 that those choices prove close substitutability. That's
24 what you're claiming.

25 JUDGE HOPKINS: Is that a question, or are you

1 just stating your view?

2 MR. ROACH: I'm getting carried away, and I
3 withdraw the comment.

4 JUDGE HOPKINS: Thank you.

5 MR. ROACH: Let me ask to have marked, to
6 speed things up, three exhibits: UP/MP-C-23, 24 and
7 25.

8 JUDGE HOPKINS: They will be marked for
9 identification.

10 (The documents referred to
11 were marked Exhibit Nos.
12 UP/MP-C-23, 24 and 25 for
13 identification.)

14 MR. ROACH: Your Honor, would this be a
15 convenient time for a five-minute break?

16 JUDGE HOPKINS: I'd rather go until 3:00.

17 MR. ROACH: Okay. That's fine.

18 JUDGE HOPKINS: Off the record.

19 (Discussion off the record.)

20 MR. ROACH: Your Honor, if I may, I'd like to
21 put aside 23, 24 and 25, and I'll come back to them
22 tomorrow. I asked for a break because I had a marked
23 copy, and I can't put my hands on it. But I'll get back
24 to those exhibits tomorrow.

25 BY MR. ROACH: (Resuming)

1 Q On Exhibit 23, sir, that's the one-page work
2 paper number 71, you're talking here, as I understand
3 it, about handling of STCC code 49, which is hazardous
4 materials, is that right?

5 A That's correct.

6 Q And can you explain to me what you did and why
7 you did it with the rail tonnage in STCC-49?

8 A Since -- I'm not a hundred percent sure on the
9 question. I think it's when we were combining the two
10 traffic tapes, I believe that the Southern Pacific
11 traffic tape had converted the 49 STCC codes back to
12 their original STCCs, and I also believe that the Santa
13 Fe at least gave us a conversion program to do it.

14 So we were able to disaggregate this
15 particular commodity -- in this case, the STCC-49, for
16 which there is no reported truck tonnage, although the
17 truck tonnage certainly exists -- put it back in its
18 right location and compare it to those particular tons
19 that were in its original designation.

20 Q So the tonnage figures that you report do not
21 include separate data on STCC-49, isn't that right?

22 A To the best of my knowledge they shouldn't.

23 Q Do you know whether the rail tonnage that in
24 fact moves in STCC-49 is amenable to movement by truck?

25 A I am unaware of any situations where it might

1 not be. There could be some exceptions. We did check
2 some regulations.

3 Q So you're aware of situations where it's
4 amenable to movement by truck?

5 A As I say, our checking did not show any that
6 it wasn't. I may be incorrect. There certainly could
7 be. But it's one of those places that just like the
8 SPIC codes, it's a little bit slippery as to what might
9 or might not be able to happen in terms of state
10 regulations and all these types of things.

11 Q You wouldn't disagree with a shipper that said
12 his particular commodity has to move by rail?

13 A If I knew differently, I might.

14 Q Well, how about if he had sworn to the
15 statement?

16 A All I would ask, counselor, is that you tell
17 us the citation, and maybe we could get back to you on
18 it. I don't want to try and answer something off the
19 top of my head on something like that.

20 Q Let me ask you to look at pages 30 and 31 of
21 your verified statement. Here you are discussing at the
22 bottom of page 30 the one instance in which you went
23 down to the five-digit STCC code level to apply your 50
24 percent test.

25 And you say, "TBS analyzed these flows" --

1 this was the Los Angeles to Texas coast flow -- "TES
2 analyzed these flows at the more detailed level because
3 a large portion of the commodities were chemicals, which
4 required in-depth analyses to product end markets and
5 transportation needs in order to ascertain customer rail
6 transportation options."

7 Are those reasons in any way unique to
8 chemicals in terms of the virtues of looking at
9 five-digit STCC codes?

10 A No. That really isn't what that says either.
11 That's a place we did the analysis. You could do the
12 same analyses other places. I've already explained why
13 we didn't.

14 Q And in point of fact, you didn't limit it to
15 chemicals in this particular case, did you? Once you
16 decided to apply a five-digit second screen to your
17 L.A.-Texas flow, you applied it to all the remaining
18 two-digit STCC codes that hadn't been knocked out by the
19 first screening.

20 A That's correct.

21 Q And the suggestion in this sentence or the
22 suggestion that I find may be in the sentence, that you
23 did some sort of substantive analysis of transportation
24 needs, that isn't really the case, is it? You just
25 applied the 50 percent test again, this time at the

1 five-digit STCC code level?

2 A No. I think the sentence may not be totally
3 clear, but I also think you might have misinterpreted.
4 I said earlier that we used the five-digit data in order
5 to disaggregate because we wanted to do detailed source
6 competition analysis, and on the way to the source
7 competition we did look at some of the relationships
8 between the five-digit commodities for rail and truck
9 tonnage.

10 But that doesn't mean to negate the fact that
11 it says here it requires in-depth analysis of end
12 markets. That refers to the source competition type
13 analysis that would really help one understand detailed
14 requirements of movements in that corridor.

15 Q To be specific, you did not in this study ever
16 take a two-digit or five-digit commodity cell and
17 analyze its particular needs and conclude that even
18 though half the traffic was going by truck, there were
19 not competitive logistic alternatives, did you?

20 A That's kind of a convoluted question. If I
21 could just restate it and see if I got it right. You're
22 asking did we ever look at more detailed logistics
23 requirements of certain shippers, and the answer is,
24 going back to this morning, Mr. Baker in his studies
25 looked at that quite extensively in terms of their

1 inbound-outbound transportation requirements, types of
2 vehicles that go in and out of the facility, et cetera.

3 And so we certainly did not ignore the issue
4 of what a logistics channel requires from the point of
5 view of major shippers at these common points that we
6 were analyzing, and that was an important first step in
7 the study.

8 Q Right. The question was convoluted. What I
9 was trying to ask you was when you had a two-digit cell
10 that got filtered out by the 50 percent test because
11 more than half of the tonnage was going by truck, did
12 you ever analyze the particular logistic requirements of
13 the rail shippers and conclude despite the 50 percent
14 finding that those rail shippers did not have
15 competitive trucking alternatives?

16 A Again, I don't think -- that doesn't get to
17 the point of our study. In the real world --

18 JUDGE HOPKINS: Why don't you answer the
19 question?

20 THE WITNESS: Well, I was just going to say I
21 was going to try to answer the question.

22 JUDGE HOPKINS: Well, why don't you answer the
23 questions first, and then if you have to explain them,
24 explain them. But this has been a combined method here,
25 that both sides have been asking convoluted questions.

1 and we're getting convoluted answers.

2 THE WITNESS: If you could repeat the
3 question, please.

4 BY EB. KOACH: (Recurring)

5 Q Yes, I'm asking you -- it's hard to ask it in
6 ten words -- but I'm asking you about cells that get
7 filtered out by your 50 percent test. There are a whole
8 lot of those. If we look at these summary charts, we
9 find rows after rows of ones, which mean other mode tons
10 greater than rail tons. And that was your statement
11 this morning.

12 I just want to pin down -- you talk about
13 detailed analysis of logistic options. I want to pin
14 down whether you ever went back and looked at a single
15 one of those cells to see whether the rail shippers did
16 not have logistic options, couldn't use trucks even
17 though some other guy in that two-digit STCC code was
18 using a truck for some other kind of commodity in some
19 other five-digit subcode.

20 A The answer was we generally did not. The only
21 thing I was trying to explain earlier was that we did a
22 lot of this analysis a priori to determine whether or
23 not that was the case, before we started this, not
24 after. So that's why I had a hard time answering your
25 question. We did the logistics analysis before we did

1 the screening, and I explained that this morning.

2 Q Okay. Now, just turning to pages 19 and 20 of
3 your verified statement for a moment, page 19 has a
4 table on it which shows the results that you came to at
5 the group 1 common points for inbound traffic, is that
6 right?

7 A That's correct.

8 Q And it shows in the column "Tons not found to
9 have sufficient logistic options as percent of total
10 Santa Fe-SP tons," a bottom-line figure of 30 percent,
11 correct?

12 A That's correct.

13 Q Now, that figure represents the result after
14 you went through and compared the common point rail tons
15 with the BBA truck tons and filtered out a lot of cells
16 and then had some left over, and this is what was left
17 over, is that right?

18 A There's a footnote that explains it. I'm
19 trying to keep things short here.

20 Q You have the other screens, the 600-ton screen
21 and the local noncompetitive screen and the
22 containerizability we talked about this morning, right?

23 A That's correct.

24 Q So these 30 percent of the tons fell through
25 four screens, and that's the conclusion, right, for

1 these common points?

2 A That's what the table states.

3 Q And -- okay. I just want to make sure I
4 understand what I'm reading. Why did you define the Los
5 Angeles-Texas coast flow in terms of the Houston and
6 Beaumont BEAs at one end and the Los Angeles BFA at the
7 other end?

8 A I answered the question earlier. We were
9 looking for particular flows. In this case they were
10 local flows between points that were open to both
11 carriers, Santa Fe and the Southern Pacific, and we were
12 studying them as a change, studying them to look at
13 possible change in competitive conditions in the
14 post-war environment.

15 Q Do you include movements that terminated on
16 another railroad?

17 A There were interline movements in the data.
18 In other words, it was representative of any movements
19 that to my knowledge went through the corridor, that
20 involved the Santa Fe or the Southern Pacific -- and/or
21 the Southern Pacific.

22 Q And did you tell Mr. O'Connell, who did your
23 mini-land bridge study, to use the same definition of
24 Texas coast?

25 A I'm not a hundred percent sure on that. I

1 assume that's the case. All I have to do is ask a staff
2 member. But I assure that we did the construction of
3 that data base a little bit differently, and it just
4 didn't stick in my head that we used the same
5 origin-destination. I don't see any reason why we
6 wouldn't.

7 Q Okay. On page 35 of your verified statement
8 you've got some numbers for the -- in the first
9 paragraph on that page -- for the tons moving by Santa
10 Fe and SP between Los Angeles and the Texas coast, and
11 you compared that with the total tonnage moving into the
12 Texas coast region, on the one hand, and the total
13 tonnage moving into Los Angeles, at the other end.

14 How do you define those concepts of all the
15 tonnage? Is that everything, water movements coming
16 into the ports along the Gulf and so forth?

17 A It's the tonnage that's coming -- it's as
18 clearly defined as I can right there, but it's total
19 freight tons moving into the BEAs. And the Peetic data
20 base is obviously the source of the information, so that
21 would include both domestic flows as well as the
22 domestic portion of any import-export activity.

23 Q Okay. And there's no notion here of
24 directionality? You're not just talking about other
25 modes moving traffic between Texas and Los Angeles?

1 A I'm not quite clear on your question. I think
2 it's referring to, if I can try to answer it, it's
3 referring to what's moving into Los Angeles westbound.
4 Seven hundred and four thousand tons were compared to
5 the total of 242 million tons that moved into L.A.
6 That's the total amount of volume that moved into that
7 BEA that surrounds the Los Angeles area.

8 JUDGE HOPKINS: This might be a good time for
9 a recess. We'll take 15 minutes.

10 (Recess.)

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1 JUDGE HOPKINS: Back on the record. Mr.
2 Roach.

3 BY MR. ROACH: (Resuming)

4 Q Sir, let me ask you to look at Exhibit
5 XVII-29. And am I correct that this portrays the
6 results of your Los Angeles to Texas Coast source
7 competition analysis that we discussed this morning?

8 A Yes, that's correct.

9 Q And at this stage of the analysis, you're
10 essentially talking about commodities that failed the 50
11 percent test, both at the two-digit level and then
12 disaggregated at the five-digit level. Isn't that
13 right?

14 A Yes.

15 Q So on their face, they appear to be
16 rail-dominant, moving between Los Angeles and the Texas
17 Coast?

18 A I was just going to add, you're right that
19 railroads do move a lot of the product in that channel
20 and dominant in the sense that the tons exceed, as best
21 we can measure them, the rail -- the truck tonnage.

22 Q And what is the reasoning process that leads
23 you to conclude that, say, looking at the westbound
24 commodities, on the second couple of pages here, that if
25 the total inbound from all different locations to Los

1 Angeles had that five-digit SIC code level, that if
2 less than half of that total is rail traffic moving over
3 these two merging carriers from the Texas Coast in
4 particular, that there is source competition for the
5 particular movements traveling over Santa Fe and SP by
6 rail from the Texas Coast?

7 A What we're saying is that, as in the case of
8 the intermodal competition, that this -- that source
9 competition -- meaning the acquisition of product from
10 another location -- it could be very close by -- may be
11 one way in which the shipper can threaten carriers in a
12 post-merger environment to prevent abuse of market
13 power.

14 They basically say I'll get my requirement,
15 I'll get my product somewhere else if you go ahead and
16 raise your rates.

17 Q Are all of the products classified in a
18 particular five-digit SIC code homogeneous and
19 interchangeable in that fashion?

20 A There are certain exceptions to the case where
21 you might find that. The five digits, the lowest level
22 of disaggregation in the data which we possessed in our
23 analysis, it would have been perhaps nicer if we had had
24 really detailed source information at the seven-digit
25 level.

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1 Unfortunately, this is the most disaggregate
2 level that we had to work with.

3 Q And I take it that if I had ordered a load of
4 organic acids or salts, STCC code 28126, that I needed
5 to run my factory in some way, I couldn't necessarily
6 turn around and use somebody else's load for the same
7 purpose.

8 There are a lot of different things that are
9 organic acids and salts, aren't there?

10 A That's correct. We're not talking about
11 direct substitution of product here. It's the basic
12 threat of the ability to move in by transportation modes
13 into the region, similar types of products for the use
14 of these industries.

15 We're not saying you have to have the ability
16 to substitute directly in all cases, not individual
17 shipper level. It's just the aggregate threat.

18 I agree with you that there are differences in
19 lots of commodities, but the fact is, we're looking at
20 the transportation more than we're looking at the
21 particular commodity in our analysis.

22 Q Well, at this stage, you're looking at source
23 competition, right -- which depends on the ability to
24 get a fully adequate substitute through a route not
25 occupied by these existing railroads.

1 Isn't that the theory?

2 A That's correct.

3 Q And the step I'm taking with you now is, did
4 you or did you not know whether the receivers were
5 buying the particular product they were buying from
6 Texas because that's where they had to get it?

7 A I am sure there are some examples of that in
8 here, and there are just as many examples of situations
9 where you'd be able to source the product from a variety
10 of locations.

11 Q Okay.

12 Now, then the second step is how much would it
13 cost the receiver to buy it from some other source. Do
14 you have any information about that in your study?

15 A Well, let's take the example of someone who
16 perhaps is buying under contract and moving a particular
17 product by rail into Los Angeles. He has a long-term
18 contract. He may be able to get it cheaper buying it
19 locally, but he's tied to a long-term contract from a
20 particular supplier in another region, so he could
21 actually reduce his cost perhaps if he were able to
22 move.

23 There are all sorts of different ways you can
24 look at the question. I don't know exactly what you are
25 referring to.

1 Q Well, there's lots and lots of possibilities
2 in this world, but what I'm asking is what is your
3 evidence that there is viable source competition here,
4 and the particular question is how do you know whether
5 these receivers can get substitutable products at
6 competitive costs?

7 A Our analysis was done at the five-digit
8 level. Albeit that level of aggregation may not be
9 perfect in all circumstances, my statement earlier said
10 that we believe that it's the existence of the threat.
11 In many cases it could be railroad --excuse me -- I did
12 mean to say railroad.

13 Railroad marketing people may not know that
14 these suppliers are unable to get the exact same product
15 somewhere else, but they can point to, let's say, the
16 Peelle data base and say look at all this truck tonnage
17 coming in here that serves as a competitive weapon in
18 the hands of the supplier to look at this.

19 Q You could have asked one of these receivers,
20 couldn't you?

21 A We could have done shipper-specific surveys,
22 sure.

23 Q And you didn't. Isn't that right?

24 A We didn't do shipper-specific surveys in the
25 source competition area, no. That's correct.

1 Q Okay.

2 Let me turn to page 34 of your verified
3 statement. Still talking about Los Angeles to Texas
4 Coast. You've got a statement at the end of the first
5 paragraph there about the possibility of coastal barges
6 being used. And my question is, what is the comparative
7 cost of shipping by coastal barge from the Gulf to Los
8 Angeles compared to shipping by rail?

9 A It would depend on many factors, such as the
10 shipment size and what have you. In some situations,
11 the coastal barge is competitive, and perhaps in others
12 it isn't.

13 Q It's not to go through the Panama Canal;
14 right?

15 A Yes. To my knowledge, there are movements
16 actually occurring now making that process an option.
17 There were certain people that we talked to in the
18 industry who said that the parcel tanker or coastal
19 barge, whichever one you're referring to, was in fact a
20 competitive threat in the market place.

21 Q Is there a different result, depending on the
22 volume of the shipment, the particular shipment, as far
23 as the unit cost?

24 A I'm not an expert on the cost of moving by
25 parcel tanker. I wouldn't want to guess at what factors

1 may influence the process. It could be a contract
2 movement that had many, many other aspects to it. You
3 may not have a direct relationship between volume and
4 cost in certain circumstances.

5 Q Well, did an expert on costs write this
6 sentence or give you the information that went into this
7 sentence? You say that these are competitive logistic
8 options.

9 A I'm sorry. My procler is not being able to
10 locate the sentence.

11 Q I'm sorry. It's the last sentence in the
12 first paragraph. "In addition, ocean-going parcel
13 tankers," -- I skipped over your parenthetical there,
14 "or coastal barges are competitive logistics options
15 that could also be used to move the products."

16 A Uh-huh. Yes. I believe we had some
17 discussions with people in the industry. I don't want
18 to guess at what exactly they were. If you're
19 interested in what was said there, I can just ask a
20 staff member and we can get you that information.

21 Q Well, yes. I didn't see anything in the work
22 papers about cost. And if you have that, we'd like to
23 know about it.

24 A Well, the sentence does say "competitive
25 logistics options." Now, is the question you just asked

1 me whether or not this was felt to be a competitive
2 logistics option, so that was the sense in which I was
3 answering it. Cost is an aspect of it.

4 Q Well, isn't cost an essential aspect? Don't
5 you have to know whether it's cost competitive before
6 you know whether it's a competitive logistic option?

7 A We went through this a couple of times before,
8 but just because -- just looking at the rail and truck
9 light rate may not be the only factor one has to look at
10 in deciding -- in this case, the water and the -- rail
11 and the water rate, I'm sorry, is not the only factor
12 you have to look at to determine whether or not it's a
13 competitive option.

14 It's certainly an important part of it, but
15 it's not the only factor.

16 Q Are you certain that you did look at costs in
17 making this determination?

18 A I didn't say that. Two questions ago, you
19 asked me if I felt there were competitive logistics
20 options at least from what I heard, and I said to you
21 yes, we did look at the whole question of it being a
22 competitive option.

23 I can answer that question in more detail if
24 you'd like, once I can consult with a staff member on
25 the question. Cost was certainly part of any discussion

1 we would have had.

2 Q Well, how about in the preceding sentence,
3 where you say TPA* found that an additional 12 percent
4 of the tons could be accommodated using trucks. Was
5 that a finding about physical capacity or about
6 cost-competitive trucking alternatives?

7 A Motor carriers were asked if they were willing
8 and able to handle the movements. Mr. Baker can testify
9 in such more detail about the exact process that he went
10 through to get that information.

11 I would feel more comfortable if you were to
12 save that question for him and discuss the issue with
13 him. He is prepared to talk about it.

14 Q Do you know whether the motor carriers were
15 asked about their rates? Was that something you made
16 sure was done as part of this study?

17 A When you're determining a logistics critic,
18 you're certainly concerned with factors such as rates
19 and transit times. Now they exactly enter into every
20 conversation of the thousands that Mr. Baker made,
21 you'll have to ask him directly. There may be cases
22 where he did, and some that he didn't. I can't answer
23 for sure.

24 Certainly, Mr. Baker and I had many
25 conversations about how those different interviews would

1 be accomplished.

2 Q And in all these conversations, was cost a
3 theme? Did you say we'd better find out what the rates
4 are for these trucks? I'm not being facetious.

5 A It's not a question of facetious. I thought I
6 just answered the question. I said yes, we did. We
7 certainly are interested in determining what the
8 logistics options are, and one aspect of logistics
9 options is cost.

10 You would also have asked them about a number
11 of other factors, perhaps his ability to make the
12 movement, whether he had the equipment, whether he was
13 balanced on that lane, all sorts of factors that might
14 go into deciding upon whether or not it was competitive
15 option.

16 You're trying to isolate on one small point
17 and say that's the all-important thing. I'm saying we
18 did look at it in a broader spectrum.

19 Q Well, what I'm saying is that there must be 30
20 or 40 or 50 places in this study where you say that IRAM
21 found existing or potential motor carrier capacity. And
22 you never say at competitive rates, never once to my
23 knowledge in the study.

24 And I'm trying to get you to tell me not just
25 that yes, you looked at rates as one of the numerous

1 factors in this world that counts, but did you
2 specifically determine whether or not the truck or, in
3 this case, water or whatever logistic alternative that
4 you're asking the shippers to rely on would be
5 cost-competitive?

6 A At the expense of being too repetitive here,
7 that was an important part of the process which we asked
8 Mr. Baker to go through, was to determine whether or
9 not, for a variety of these individual shippers, whether
10 the truck could be a competitive option.

11 Truckers were asked questions about their
12 ability to provide service at the prevailing market
13 rates. I mean, what more can I say?

14 Q Prevailing market rates for truck
15 transportation?

16 A We're talking about distribution channels
17 here.

18 Q Okay. Suppose Mr. Baker came back to you and
19 said, I've talked to the truckers and they say that they
20 are eager to carry this traffic, and they'll carry it at
21 50 percent above the rail rate in unlimited volumes.
22 And they'll do a bang-up job. They'll carry it twice as
23 fast, and they'll deliver it door to door.

24 Did you say, well, considering all the
25 factors, the rate is higher, the service is better,

1 that's a competitive logistic alternative?

2 A I really believe -- no, I don't consider that
3 to be an alternative. It's one we did not look at at
4 this study. We didn't just go out and fish for capacity
5 and say hey, it's any price, no problem with -- just
6 tell me if you're going to serve this lane.

7 This was a very definitive methodology that
8 was gone through in discussing these issues with
9 truckers, and I really would prefer you'd talk about
10 that part of it with Mr. Baker. I've already stated he
11 had my instructions that we were looking for competitive
12 logistics options in the channel.

13 We discussed what the term "competitive
14 logistics option" meant. It was cost, it was all sorts
15 of factors that went into determining that, and he had
16 those instructions. And that's -- based on those
17 instructions, he came back to me with answers.

18 There are plenty of places -- you just cited
19 the 12 percent -- plenty of places where we couldn't
20 find that. It isn't as if -- what if you had just said
21 was true, we would have 100 percent hits all over the
22 place, because certainly trucks would have come into the
23 market at 50 percent higher rates.

24 The study is self-evident that we didn't do
25 that.

1 Q Well, I don't know whether it's at all clear
2 that trucks aren't already charging 50 percent higher
3 rates, because you never say anything in here about
4 rates. Is there anything in your study about truck
5 rates? Have I missed something?

6 A Our analysis, as I've said earlier, covers
7 truck rates in the revealed preference aspect of looking
8 at individual knowledge blocks. We specifically looked
9 for situations when we used TRAM that would be
10 competitive in terms of the prevailing rates in that
11 particular logistics channel.

12 And we didn't file all the evidence in here.
13 It was filed in the backup work papers.

14 Q Okay.

15 Let me ask a very specific question which I
16 don't think I've asked before. Did somebody, either you
17 or Mr. Baker or somebody else, sit down at some moment
18 in time and compare the rail rate with the truck rate
19 for these movements that you subjected to the TRAM
20 analysis?

21 Did you have the rail rate in hand as well as
22 the truck rate?

23 A I can't answer specifically on exactly how Mr.
24 Baker did his analysis. Mr. Baker, from our -- the
25 amount of information we've provided to Mr. Baker and

1 his knowledge of the marketplace, and the motor
2 carriers' knowledge of the prevailing rates in that
3 marketplace that they were facing, that was all part of
4 a process I didn't participate in.

5 I didn't participate in the discussions with
6 the truckers about whether or not you could be
7 competitive in this particular corridor. I'm being
8 honest with you. I gave my instructions to Mr. Baker,
9 and he was charged to find rates -- pardon me -- he was
10 charged to find options that were competitive.

11 There were standards to which he would have to
12 meet.

13 Q Did you ask Santa Fe and Southern Pacific to
14 tell you what the rate was for these movements that got
15 subjected to the TPAL scrutiny, the rail rate?

16 A I'm not aware of whether or not we actually
17 had rate information or the rates, the waybill rates,
18 that we received from the two Applicants. Again, the
19 study design was that that discussion would be held
20 between Mr. Baker and the various participants in the
21 marketplace.

22 I assure that if a particular carrier did not
23 understand what the competitive rates were in the
24 marketplace, that Mr. Baker found some way else to make
25 that information available.

1 Carriers know what's going on out there. They
2 know how much people are paying for these movements.
3 They compete in that marketplace, and that was a source
4 of our knowledge when we were developing information on
5 competitive options.

6 Q Do you think that the truckers that he
7 interviewed knew what the rail rates were for these
8 movements? Is that what you're saying?

9 A I didn't say that directly. I said they knew
10 what the costs were in the logistics channel, what it
11 cost to get it there, because they spend their days
12 marketing motor carrier services. How much do I have to
13 charge to get your business? And they know what the
14 prevailing rates are, in many cases, for rail and other
15 motor carriers, and water and what have you.

16 That's the way they do business. That's the
17 motor carrier industry.

18 Q Okay.

19 Turning back to page 33 of your verified
20 statement, you've got a table summarizing your local
21 flow analysis. And again, just bear with me, if you
22 think I'm missing the obvious. But as I right that what
23 this table says is that for the Westbound Texas to Los
24 Angeles movement, after you went through the 50 percent
25 screen at the two-digit level and the 50 percent screen

1 at the five-digit level and the source competition
2 screen, you were left with 27 percent of the tonnage
3 without competitive logistic alternatives?

4 A You didn't quite catch all the screens, but
5 I'll let it go. There are other screens involved.
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1 Q Back on page 29, I have the question on the
2 last paragraph for El Paso. Your finding is that you
3 cannot find competitive logistic options for inbound
4 lumber and wood products, inbound petroleum products
5 from Los Angeles, and outbound non-metallic minerals. Am
6 I right about that?

7 A It says "sufficient," but I'll accept the rest
8 of the statement.

9 Q Okay. At page 24 -- I'm sorry, let me skip
10 over that. We've really discussed it, so I'll go to my
11 next question.

12 MR. ROACH: Let me ask to have marked as
13 Exhibit UP/MP-C-26, 27, and 28, three verified
14 statements submitted by shippers in support of Union
15 Pacific's trackage rights. I'm trying to cut through a
16 good deal here, Your Honor, and I think I say, if not
17 finish today, finish early.

18 26 is Dow, 27 is California Grape and Tree
19 Fruit, and 28 is National Piggyback.

20 JUDGE HOPKINS: Would you state which is
21 which, so I can mark them?

22 MR. ROACH: Yes, Your Honor. Dow is 26,
23 California Grape and Tree Fruit League is 27, and
24 National Piggyback is 28.

25 JUDGE HOPKINS: Thank you. They will be

1 marked for identification.

2 (The documents referred to
3 were marked Exhibit No.
4 UP/MP-C-26, 27 and 28 for
5 identification.)

6 BY MR. BOACH: (Resuming)

7 Q Okay. Mr. Anderson, I want to ask you first
8 about Pittsburg, California. The statement submitted
9 by Mr. Thompson of Dow talks on page 2 about a plant
10 that Dow has at Pittsburg that is switched by Santa Fe
11 with access by SF provided by a terminal switching
12 agreement.

13 A Is you know where Pittsburg, California is?
14 I'm not sure.

15 Q Let me tell you what I found here in my rough
16 and ready research. In Exhibit 17, UP-17 from this
17 morning, this list of stations on page CDA-861, just
18 below the entries for Antioch that we were talking about
19 this morning there are some entries for Pittsburg,
20 which says "covered by Antioch-Bartlett zone."

21 A And then I notice that the exhibit your
22 counsel introduced, Santa Fe-SF 8, has the six-digit
23 SPIC 876119, Pittsburg, on the list of SPIC's that
24 you've added to the San Francisco Bay Area.

25 Does it look to you from that information that

1 Pittsburgh was overlooked the first time around, but has
2 now been put back in the last -- well, just before your
3 testimony here?

4 A Yes, that looks like it's correct.

5 Q Okay. You do not intend, apparently, to treat
6 Pittsburgh as a Group I common point, but rather you're
7 going to add it into this general San Francisco Bay Area
8 Group II common point, is that correct?

9 A That's what the SISP-C-2 says at the present
10 time.

11 Q So for example, in doing your analysis on that
12 Group II common point, if there is chemical traffic
13 moving over the western Pacific, you're going to count
14 that into the 50 percent scales on the other side and
15 you may find that chemicals get filtered out by the 50
16 percent test, isn't that right?

17 A That would be hypothetically correct. Since
18 we haven't done the analysis, I can't answer directly on
19 it, and I'm not even sure even that what it says here in
20 the table is absolutely final. That means in terms of
21 where the SISP will ultimately end up for analysis
22 purposes, there are two stages of identification and
23 choice of analysis.

24 Q I'm sorry, I didn't understand that about two
25 stages.

1 A Well, you first locate the SPIC and then you
2 decide, given the information you have on it, what's the
3 most appropriate analysis procedure. And I see here
4 that, you know, we've indicated that it is in the San
5 Francisco Bay Area, and under those circumstances
6 hypothetically it would be analyzed as part of Group
7 II.

8 I say hypothetically because we have not made
9 any determination on this yet, so I'm a little hesitant
10 to answer your questions with certainty.

11 Q Well, if a location was served by only these
12 two railroads --

13 A Which two railroads, please?

14 Q Santa Fe and Southern Pacific.

15 -- I thought that the rule in this study was
16 that you treated it as a Group I common point, unless
17 you decided that it was so insignificant that it was
18 representatively covered by other Group I common
19 points.

20 A I'm not totally aware of all the stories
21 behind every one of these SPIC's. I apologize for
22 that. We can get back to you with a specific answer. I
23 cannot answer because I'm not sure exactly what this
24 SPIC is. I haven't heard the explanation of the service
25 to that SPIC, whether it's a jointly served line,

1 whether it's coming in by short line, or whatever it
2 is.

3 From our indication here, we see that
4 apparently there's a third railroad serving that SPLC.
5 I can't answer definitely whether that's the case. The
6 important column is the identification of the SPLC, I
7 think, as being something we need to evaluate.

8 Q Okay. Well, would it make a significant
9 difference to your analysis whether or not the
10 Sacramento Northern serves these shippers in Pittsburgh,
11 California?

12 A I don't remember any instances of us trying to
13 substitute a short line railroad for a long haul.

14 Q Well, the Sacramento Northern, I think it
15 hooks up to the WP. But my point is, it doesn't go to
16 Texas, which is where this chemical traffic is moving to
17 and from. And I'm trying to get a sense of whether you
18 would regard that as eliminating the competitive
19 problem.

20 A I would like to respond to counsel on these
21 questions, but we haven't really looked at it in enough
22 detail to know what's going on there, and I'm just a
23 little hesitant to answer definitively that we know
24 what's occurring here. I mean, I can read the statement
25 to you, but I haven't done any independent

1 investigations that would say one way or the other what
2 options might be available here. I'm sorry.

3 MR. MOATES: Mr. Roach, I'm not sure that the
4 witness would know what the affiliation of the
5 Sacramento Northern is. That might help with his
6 answer.

7 MR. ROACH: Well, I told him it hooks up with
8 the WP. I'm sorry. When I said it hooks up, it is a
9 subsidiary of and connects to the WP. Forgive me.

10 BY MR. ROACH: (Resuming)

11 Q At the bottom of the second page here, Mr.
12 Thompson says that: "Low's facility at Fresno relies
13 heavily on rail shipments of polyethylene received from
14 Dow production facilities on the Gulf Coast." And he
15 says: "Maintenance of competitive rail service at these
16 two plant locations" -- speaking there of both
17 Pittsburgh and Fresno -- "is essential to their
18 continued viability."

19 Now, I just want to look for a moment with you
20 at Fresno in the chemical STCC, STCC number 28.

21 A Excuse me. You'll have to tell me where you
22 are. It's chapter VII, is it?

23 Q Ocean VII.

24 A Exhibit?

25 Q Exhibit VII-15.

1 A Inbound?

2 Q Inbound chemical traffic, STCC point 6. And
3 if I've got it right, that's a cell -- whatever the
4 mileage block, that's a cell that you would have
5 filtered out at the 50 percent level, because you've got
6 more truck tons than rail tons in all four mileage
7 blocks, right?

8 A That's correct.

9 Q Okay. Is there anything in your study that
10 tells me whether Mr. Thompson is right or wrong in his
11 statement that maintenance of competitive rail service
12 to this plant is essential to its continued viability?

13 A What we were trying to show in our study --
14 and it of course includes what Mr. Thompson perhaps is
15 concerned about -- is that there are sufficient options
16 available, because of the substantial amount of motor
17 carrier activity going on in the chemicals area that in
18 this case terminates in Fresno.

19 It doesn't say that he personally has options
20 tomorrow to switch over to truck, only that many, many
21 other competitors are already using truck in perhaps the
22 same mileage block, and that gives him substantial
23 marketing -- excuse me, market power over the railroad
24 if the railroad thinks it might want to change its
25 service or rate conditions after the merger.

1 Q Well, you don't know, sitting here, whether
2 Mr. Thompson has worked with these two questions and
3 gotten them to compete with each other and give him a
4 rail price that's very attractive compared to the truck
5 price, do you?

6 A I don't know if we specifically looked at Mr.
7 Thompson's facility here, nor do I know the conditions
8 of his dealings with those particular carriers. That's
9 not the purpose of our study.

10 Q Let me ask you to look at page 5 of this
11 statement. It's unnumbered, but it's the next to the
12 last page of the text.

13 A Does it have a table on it?

14 Q It has a table of rates on it. And Mr.
15 Thompson is saying here that for him it's going to cost
16 a whole lot more to ship by tank truck than by tankcar.
17 Does anything in your study take account of this rate
18 data?

19 A No. I can't attest to what this rate data
20 means, whether it refers to a single trailer load
21 shipment done just once or it refers to a long-term
22 contractual relationship he might have with a motor
23 carrier. There's no way I can determine whether these
24 numbers make sense from the point of view of a logistics
25 channel.

1 Q Well, he says that the rates are those
2 currently utilized to move Dow traffic and should be
3 reflective of carrier costs.

4 A Which Dow traffic? He doesn't say it's
5 single, multi-car, or any of the aspects of what we're
6 talking about here. I can't judge, because when you
7 look at a particular plant and its inbound-outbound
8 distribution, it is likely to have some truck coming in,
9 some rail.

10 The truck may be feeding certain types of
11 chemicals into the line, the rail might be feeding
12 perhaps some others, and they may be in totally
13 different channels, moving in and out of the same
14 facility. As a matter of fact, my own visitations to
15 many of these common points in California and my actual
16 looking at the various facilities indicated that there
17 was substantial amounts of both inbound and outbound
18 truck from all of the key shippers that were identified
19 as being important ones in our study.

20 It's there, it exists, and these could be
21 certain parts of a multi-channel operation in and out of
22 that operation. I may also add that I have had staff
23 look at some of the information that's been presented by
24 certain shippers as to the non-competitiveness of truck,
25 and that has shown -- and Mr. Baker can talk about this

1 more specifically -- has shown that there are movements
2 going on today of truck in these corridors for these
3 particular chemicals; and that some of the prices cited
4 here, we just can't verify that those are the real
5 prices. The prices we found are substantially lower in
6 many cases for the truck operation.

7 Q Well, when you wrote the study did you look at
8 rail and truck rates for chemicals into Fresno?

9 A Only if we needed to look at the multiple
10 screens that would involve the use of the TRAM
11 operation. So in this case here, we looked at the fact
12 that in total there are over one million tons of
13 chemicals in all mileage blocks moving into Fresno and
14 the Santa Fe-Southern Pacific moves 64,000 of those
15 tons.

16 I might believe in my own mind that there was
17 a lot of competition for chemical traffic inbound to
18 Fresno, or I might conclude there isn't much because the
19 railroad isn't hauling a whole lot, etc.

20 Q Right. Or you might -- well, let me not argue
21 with you.

22 You said that the truck chemicals are coming
23 into Fresno. That isn't quite right, is it? These are
24 truck movements in the entire multi-county BPA.

25 A I used Fresno. It happens to be the full

1 component of the REA. I did misspeak a little on that,
2 you're right. But it's certainly within 100 miles of --
3 the REA itself is within 100 or 200 miles of Fresno, in
4 terms of the amount of area that's covered by a truck.

5 Q Well, as a consultant on shipper options, I
6 assume that you offer your services to shippers also,
7 don't you?

8 A That's correct.

9 Q Would you advise Mr. Thompson that he's wrong
10 to feel that he needs trackage rights to Fresno to
11 preserve an important competitive option?

12 A I haven't studied Mr. Thompson's facility in
13 any great detail. I will say that over the last ten
14 years when I've been involved in distribution studies
15 there have been many cases where I have been presented
16 with problems like this where the facility didn't think
17 it had any options and we have developed entirely new
18 distribution channels for them.

19 That is fairly common. That's my business as
20 a logistics consultant. But I can't attest to whether
21 or not this is the reality that Mr. Thompson faces.

22 Q Let us turn to Exhibit 27, Mr. Herb's
23 statement on behalf of the California Grape and Tree
24 Fruit League. And I want to call your attention first
25 to a statement on page 9, where Mr. Herb says in the

1 middle of the second paragraph:

2 "Our members and eventually the consuming
3 public have benefited in the past from competition
4 between these two railroads. Shippers in Bakersfield,
5 Fresno, and surrounding communities in California, and
6 even Phoenix, Arizona, can use either carrier, and many
7 growers in the Central Valley of California who are
8 served locally by one carrier are close enough to the
9 other to make trucking to the other line economically
10 feasible if rates or service are unsatisfactory."

11 Have you been aware that there were such
12 truck-rail TOFC moves by carriers via Fresno and
13 Bakersfield in the perishables market?

14 A We dealt with that extensively in our Fresno
15 chapter.

16 Q Okay. Why would a shipper who was served by
17 one of the lines engage in that sort of truck move to
18 the other line, including the necessary cost of
19 transferring it from the truck to the other railroad?

20 A Perhaps for the same reason he'd use an
21 all-truck operation. It's one of his logistics
22 channels. There are some reasons why he felt it
23 necessary that he had to do that. It may be that, as it
24 says here, that rates or service are unsatisfactory. It
25 can be for a multitude of other reasons as well --

1 faster delivery.

2 Q Doesn't the very fact that that takes place
3 tell you loud and clear that trucks are not a fully
4 substitutable competitive alternative at all times?

5 A I don't see where that sentence says that at
6 all. It relates specifically to the fact that he's
7 speaking about, well, I could talk to another rail
8 line. He doesn't say anything about the motor carrier
9 and since he doesn't say anything about it I can't
10 conclude what his feelings are on the motor carrier.

11 I do know that there is very extensive
12 competition for this traffic by the motor carrier
13 industry in those markets, and our study bears that out
14 again and again. If you look at the total tonnage, in
15 some cases in our study regions it's 100 or 200 times
16 the rail traffic, truck versus rail.

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1 Q Well, am I correct in hearing you as saying
2 that you do not agree with Professor Baumol's theory
3 that the trucks are so thoroughly competitive that
4 railroads can never have unsatisfactory rates and
5 service in this way?

6 A There are examples, and there will always be
7 examples of minute situations where you have market
8 imperfections that a certain shipper may not be able to
9 get satisfactory rates because of the type of service he
10 wants or something. That is going to continue forever in
11 the transportation industry. I don't see that that is
12 relevant to this particular issue here.

13 Q Well, how about the last sentence in the
14 paragraph where he says a shipper's ability to turn to a
15 competing railroad helps to keep the local railroad's
16 rates at a reasonable level? Do you disagree with that
17 statement?

18 A No, not at all. There is plenty of railroad
19 competition in many parts of the SPSF service region.

20 Q How much is there going to be of Bakersfield
21 and Fresno for TUPC traffic after the merger?

22 A Our study has shown that there is a lot of
23 truck activity moving out in those same transportation
24 characteristics. That would seem to indicate from our
25 perspective there is going to be lots of competition.

1 Q Over the next three pages -- I am not asking
2 you to read it all -- Mr. Webb talks about the fact that
3 perishable movements are highly seasonal, and tend to
4 peak in the months in the middle of the year. Does your
5 study take any account of seasonal demand for
6 refrigerated equipment?

7 A We don't specifically look at seasonality
8 issues in our analysis.

9 Q Do you think there is any function for rail to
10 rail competition at times of seasonal equipment
11 shortages in keeping rates under control for these
12 shippers?

13 A It is just as important to have refrigerated
14 motor carrier competition, I would suspect.

15 Q Let me ask you about the bottom of the sixth
16 page. I am sorry these aren't numbered. There is a
17 page that -- the last line starts, "The reduction in
18 transit time," and just above that Mr. Webb says in the
19 preceding paragraph there, "More recently, the railroads
20 have provided aggressive competition for the truckers by
21 developing the piggyback service, refrigerated trailers
22 transported on flat cars (BPC).

23 "Exclusive perishables unit trains made up
24 only of piggyback cars with runthrough train service
25 avoid the need to switch cars or to take the train into

1 the yard."

2 And this is the sentence I particularly want
3 you to focus on. "With such expedited service, the
4 railroads have been able to cut the transcontinental
5 transit time for piggyback service to four or five days,
6 comparable to and gaining on the transit time for
7 trucks."

8 And my question is, have you looked at the
9 dynamic dimension of this market? Have you considered
10 whether rail is overtaking and will pull out in front of
11 trucks in terms of service quality?

12 A I am not sure of the actual context of the
13 question. Certainly we have considered the fact that
14 these two are head to head competitors in the market,
15 these two being railroads and truck, and that as a
16 matter of fact, given that this is saying a truck is the
17 major competitor in the market, I would think that even
18 in the post-merger environment, if the shippers here are
19 saying that the trucks are the primary competitor, then
20 certainly the railroads can't turn around and do all
21 sorts of things that are going to jeopardize this
22 position.

23 They fought for so many years relative to the
24 motor carrier by raising rates and cutting service. It
25 would go exactly against the grain of what they have

1 been trying to do over the last ten years.

2 Q Well, it is a little hard to reconcile what
3 you just said with Mr. Hersh's statement, is it not?

4 A I am just saying --

5 Q Let me finish. That he has use one railroad
6 to control abuses by the other. Isn't that pretty hard
7 to reconcile with the notion that trucks are fully
8 adequate to discipline the railroads?

9 MR. MCATERS: Excuse me, Dr. Anderson.

10 Your Honor, I am going to object to that
11 questioning. He is asking this witness rather it is
12 difficult to reconcile the shipper witness statement
13 with his testimony. It is frankly bordering on the
14 argumentative. This witness is going to be available
15 for cross examination at the appropriate phase, and we
16 might test that proposition ourselves.

17 MR. BOACH: Well, I don't want to cross
18 examine Mr. Hersh.

19 JUDGE HOPKINS: I will sustain the objection.

20 BY MR. BOACH: (Resuming)

21 Q Okay. Let me ask you one other question about
22 Mr. Hersh's statement. On the next to last page, he says
23 at the beginning of the first full paragraph, "While
24 transcontinental highway carriers basically represented
25 in the perishables industry by the owner-operator have

1 long been the mainstay of hauling produce commodities
2 across the nation, they are not a fully interchangeable
3 and adequate substitute for or alternative to rail
4 carriers."

5 Now, I think that you should be able to tell
6 me whether you disagree with that statement. Is that a
7 statement that you do not agree with?

8 A In the context of certain distribution
9 channels, this particular shipper perceives that that is
10 the case. I have to agree with his perception of that
11 set of markets.

12 Q Okay. Turning to Exhibit 28, my last shipper
13 statement, this statement by Mr. Matney talks about TOFC
14 from the perspective of national piggyback services, and
15 let me just ask you first, isn't it the case that the
16 way that your study dealt with TOFC was by the
17 containerization exercise that we talked about this
18 morning that you concluded that there was so much
19 traffic going in trucks that it was containerizable,
20 that you didn't need to worry about the rail TOFC
21 traffic reported in STCC codes 44, 45, and 46?

22 A What we did in our analysis is, we looked at
23 the transportation options for TOFC/CUFC shippers, and
24 one of the major options was the availability of the van
25 trailer and moving over the highway, and we wanted to

1 estimate how many tons were involved with that, and that
2 was where that particular screen came from, but it was a
3 little more complex than you have stated it to be.

4 Q Well, you have got tables in each one of your
5 appendices showing the total containerizable truck tons
6 and comparing them with the total rail tons in those
7 three STCC codes, 44, 5, and 6, and in every case
8 concluding that the theoretically containerizable truck
9 traffic exceeds the rail traffic. Isn't that right?

10 A I haven't checked every table myself in recent
11 weeks to make sure that's the case. I will take your
12 word for it.

13 Q Well, if it had not been the case, you would
14 have had to subject a cell in one of those STCC codes to
15 further analysis, right?

16 A That's correct.

17 Q And do you have any recollection of having to
18 cope with a TOFC cell at the TEAM level?

19 A There may have been one or two situations. I
20 am not exactly sure of that. I seem to remember there
21 was one, but I would have to check with staff on it.

22 Q Well, okay. Let me focus on substance here.
23 Did you study the question of whether competition
24 between Santa Fe and Southern Pacific for TOFC movements
25 between California and Houston, Dallas and New Orleans,

1 whether that competition was a major factor in keeping
2 rates and service attractive for shippers of TOFC
3 traffic?

4 A Our studies certainly addressed options for
5 those shippers. If some of those options -- in the
6 great majority of cases they were motor carrier oriented
7 options. In some cases perhaps they might be other rail
8 options across the central corridor, especially some
9 cases as far east as New Orleans or even Dallas in some
10 circumstances.

11 So, there is a number. I am not quite sure
12 what your question was.

13 Q Well, my question was, did you study the
14 nature of that competition between the two railroads for
15 TOFC in those corridors specifically? Did you do a
16 study about that? Or did you filter out that traffic
17 through your 50 percent test and not do a special study
18 of TOFC?

19 A We studied a great number of TOFC moves, and
20 looked at logistics options for a great number of those
21 shippers. I would stand on what I have already
22 presented in the great detailed cell analysis of many of
23 those movements.

24 Q Well, is truck a fully cost competitive and
25 service competitive alternative to rail in those

1 corridors for TOFC?

2 A I am not an expert on rail versus truck
3 pricing in that particular marketplace. I can't answer
4 that question directly.

5 Q On Page 4, Mr. Matney -- I am sorry, it is
6 Page 5 at the very top -- says that the satisfactory
7 rates and service improvements in those three corridors
8 are no doubt due to the strong competition between the
9 two carriers. What I was really getting at is, do you
10 have any basis in fact for confirming or disconfirming
11 that statement?

12 A I would just add that strong competition
13 between the two carriers, and one of those carriers
14 could be a motor carrier as well, there could be a
15 substantial and there is a substantial amount of motor
16 carrier haulage of the same basic transportation unit,
17 i.e., the van trailer in those corridors that makes up
18 the vast majority of TOFC traffic, and I think that as
19 we all know, TOFC is the most competitive of all rail
20 traffic with the over-the-road van trailer.

21 Q Well, I think it is clear Mr. Matney's opinion
22 at least is that it is the competition between Santa Fe
23 and Southern Pacific that is responsible for, as he puts
24 it, constant incremental improvements in service by both
25 railroads, and extremely competitive pricing.

1 And my question to you is, do you have any
2 factual basis as distinguished from speculation for
3 saying that he is wrong about that?

4 MR. MOATIS: I am going to object again, Your
5 Honor, on the same basis as the last statement. Mr.
6 Roach is reading this witness's statement in the record,
7 then asking Dr. Anderson to agree or disagree. If you
8 disagree, tell me why. I just think that that is an
9 inappropriate way to cross examine this witness on this
10 statement.

11 MR. BOACH: If I may respond, Mr. Anderson has
12 presented a study that purports to say that there are
13 minimal competitive problems from this merger, and we
14 have a sworn statement here from a man who ships 10,000
15 trailers by railroad who says that there are competitive
16 problems. I am not even asking to debate the man. I am
17 asking him what his study tells us about this issue.

18 JUDGE VORIKINS: Well, why don't you ask him
19 that question?

20 MR. BOACH: Okay.

21 BY MR. BOACH: (Resuming)

22 Q Is there anything in your study that deals
23 with the question of whether the rate and service
24 improvements between these two railroads for TCF in
25 these corridors resulted from intramodal competition?

1 A I have already indicated to you, and I am
2 sorry to say it sounds like you just restated the
3 question as it was asked the first time, I have already
4 indicated to you we did not study detailed rate and
5 service information for this particular shipper. We
6 certainly looked at it for corridors.

7 We certainly looked at the whole question of
8 what options were available for corridors that this
9 shipper might use, and our determination was, as it was
10 a little while ago, that there was a significant volume
11 of van over-the-road truck moving in that marketplace
12 right now, and that was a very strong competitive option
13 that was available to this shipper if he felt in fact
14 that he wasn't getting the right kind of service that he
15 needed after the merger. He can go to the highway. A
16 lot of them have.

17 Q He says lower down on Page 5, below the
18 tables, he says that he has been able to secure very
19 favorable competitive contract rates from these two
20 railroads.

21 Did you investigate competition for TOFC
22 contracts for volume shipments?

23 A We didn't specifically do an analysis of what
24 the impact would be of various contracts. We assume
25 that that is all inherent in the revealed preference of

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1 shippers in using these various channels, and certainly
2 there are lots of contracts out there that the railroads
3 have signed.

4 There are lots of contract motor carriers that
5 have very definitive relationships with certain shippers
6 that operate in many of the same corridors. It is all
7 expressed in the choice that these people have made in
8 their modes for these particular corridors.

9 Q Can trucks offer volume contracts that are
10 comparable in terms of volume and rates to what
11 railroads can offer for TOPC?

12 A I would defer that question to Mr. Baker. He
13 is the expert. I will indicate that contract carriers
14 can. As just a point of fact on the ability of motor
15 carriers to contract, it is not quite as free as it is
16 in the rail industry, I believe, but I would rather have
17 you address that question to Mr. Baker, because he is
18 our motor carrier expert.

19 Q You say that national piggyback could send it
20 over the road. Isn't it in fact the case that national
21 piggyback would be out of business if this traffic had
22 to go on trucks? Their job is to send it by railroad,
23 isn't it? Isn't that right?

24 A If in the long run that proved to be the
25 least -- less economical way of doing business from the

1 point of view of the shipper and the receiver -- then
2 that may be the end result of this process. Again, our
3 analysis focused on how the shipper and receiver would
4 perceive options. This particular person is a
5 forwarder. He organizes loads and operations for
6 shippers and receivers.

7 The important point is, in the long run, the
8 logistics options that are necessary to run a business,
9 that business being the movement of goods, and he is one
10 person that certainly gets involved in that movement of
11 goods. He is in fact part of my logistics channel. He
12 is a facilitator in that channel.

13 Q Well, if truck is a perfectly competitive
14 substitute here, how do you explain the existence of a
15 special sector of freight forwarders that specialize in
16 sending trailers over railroad flat cars?

17 A There are many shippers who choose to buy
18 intermediary services outside and not have those done
19 inside their company if they feel it saves them money,
20 so the intermediary can exist in this type of a
21 marketplace.

22 Q At pages 6 and 7, Mr. Matney presents some
23 data on rates, and he says that the average cost per
24 round trip for rail TOFC is appreciably higher where
25 there is only one rail carrier in the corridor than

1 where there are two competing rail carriers.

2 Do you have any information in your study on
3 that issue?

4 A As part of this analysis, we did look at other
5 single service corridors in the west. One of them you
6 are familiar with. It is Salt Lake to Los Angeles, and
7 the other one is Minneapolis to Seattle. Those are both
8 "single service rail corridors," and the information we
9 generated from that was that there wasn't, to our
10 knowledge, there wasn't any appreciable difference in
11 rates in those corridors relative to dual service as to
12 comparable lengths in other parts of the United States.

13 Now, it is not the be all and end all of the
14 final study that one could perform on that, but it
15 does -- it is the same type of evidence that I think is
16 being presented here, that he says it is more expensive,
17 and our research indicates that in many cases it is not
18 more expensive.

19 Q I take it you did that research after you
20 filed your study?

21 A Well, it may not have been a working paper. I
22 am not so sure -- I can't think of any place that it
23 fits in perfectly in this particular analysis here. It
24 was something we had done because we were interested in
25 what the experience was with single service rail

1 corridors that are operating today -- single rail
2 service corridors, excuse me -- operating today in the
3 western part of the United States, and that showed to
4 our satisfaction that there isn't an appreciable
5 difference in rail rates in those corridors versus
6 corridors where you may have two, three, or more
7 competitors, rail competitors.

8 Q What was your corridor there, Salt Lake to
9 where?

10 A Los Angeles.

11 Q Isn't that really part of a longer
12 transcontinental movement that is fully competitive with
13 the Santa Fe movement from Los Angeles to Chicago?

14 A It is part of another corridor. That wasn't
15 my point. My point was, it is a single service corridor
16 in the west. The case for the Santa Fe to Houston. It
17 is part of another corridor that goes up to Chicago from
18 LA. That same type of operation.

19 Q Well, my question is, isn't it true that the
20 vast majority of the traffic that passes through Salt
21 Lake City doesn't originate or terminate there, but is
22 part of a transcontinental competitive TOFC corridor?

23 A There is not -- there is certainly business
24 that terminates there. It certainly is a
25 transcontinental corridor, as is the northern corridor.

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1 and as is the southern corridor. You can say the same
2 thing about any point, any intermediate point in any one
3 of the corridors. I don't think there is that much of a
4 difference, except for the point that you brought up
5 about volume. I would agree that volume is going to
6 differ at different locations.

7 Q Well, on the issue of corridors, Mr. Matney
8 says at the bottom of Page 7 that the central corridor
9 routes cannot compete with southern corridor routes on
10 shipments moving between California and the New Orleans,
11 Dallas, and Houston gateways.

12 Is that a correct statement?

13 MR. BOATES: I object, Your Honor. There are
14 other experts who have testified in this case about
15 that, and I can say that not all of our experts do agree
16 with that. I think again we are taking selected
17 statements out of shipper witnesses, verified
18 statements, and using them for an inappropriate
19 purpose.

20 JUDGE HOPKINS: Mr. Boach, are we trying to
21 get his statement completely in the record prior to the
22 time he appears on the stand?

23 MR. BOACH: I am finished with Mr. Matney,
24 Judge.

25 BY MR. BOACH: (Resubined)

1 Q Let me ask you about Page 17-18 of your
2 study. You are discussing mini land bridge here, and
3 you say that this section is a summary of Mr.
4 O'Connell's testimony. Just to cut through it, should I
5 save my questions about the basis for these various
6 statements for Mr. O'Connell, or should I direct them to
7 Mr. Anderson? I will take an answer from counsel.

8 MR. MOATES: I would expect that Mr. Anderson
9 could give you general answers about the general
10 description he has in his statement, but certainly Mr.
11 O'Connell is the expert witness to deal with mini land
12 bridge traffic from the Texas coast to California. If
13 there is a particular statement appearing on this page,
14 I would think you could test the witness's knowledge
15 about it.

16 JUDGE HOPKINS: And you won't object?

17 MR. MOATES: I won't object, assuming it
18 doesn't go beyond his expertise, and I think he will
19 tell us that.

20 JUDGE HOPKINS: Go ahead, Mr. Boach.

21 BY MR. BOACH: (Resuming)

22 Q Okay. I will take a shot. The last word on
23 the page, all water, over to the next page, service, is
24 a particularly attractive alternative because coast
25 carriers can keep their rates at a competitive level and

1 increase their profit margins. Just stopping there,
2 what is the factual basis for that statement?

3 A Well, it is very straightforward. When you
4 engage in mini land bridge service, you have to give up
5 a portion of your rate because the rates are basically
6 equalized to the overland carrier, so you are going to
7 take a hit right off the top if you get that traffic
8 over to a railroad in Los Angeles.

9 Obviously, you would be able to make more
10 money if you haul it the full distance yourself,
11 assuming their cost structures allow it.

12 Q For whom is this an attractive alternative?
13 For the shipper?

14 A An attractive alternative for the ocean
15 carrier. That's what the statement says.

16 Q Are the ocean carrier rates more than the mini
17 land bridge rates?

18 A I believe they are basically equalized, but
19 again, Mr. O'Connell is the expert on that.

20 Q Okay. Going forward to Page 22 in this same
21 section, you talk a little bit at the bottom of the page
22 about import tonnage and ultimately you conclude, you
23 say you cannot conclude that this volume in and of
24 itself offers sufficient shipper options.

25 I am asking you about this one, because it

1 gives another opportunity to find out what the
2 sufficient option is. What facts led you to conclude
3 that this time there was not a sufficient competitive
4 logistic option?

5 A It was mostly a matter in this case of time in
6 finishing our analysis. It was not that we didn't feel
7 that foreign source, foreign material sources were not
8 an option. We have an extremely free trade economy in
9 the United States, and it is very easy to bring goods
10 in, especially with today's dollar being so high
11 relative to foreign currencies.

12 So that as a matter of fact, I think I am
13 being fairly conservative here in not including this
14 particular option, especially considering the ability of
15 foreign producers to sell goods so much more cheaply
16 than many domestic ones nowadays, such as steel and
17 other factors.

18 Q So actually you didn't rule this option out.
19 You just didn't have time to rule it in or out.

20 A That's correct. We did investigate the
21 development and the coming on line of new chemical
22 facilities in Mexico and Canada as they related to
23 possible entry into this market. If you read the trade
24 literature on that, it specifically stated that these
25 facilities are designed to sell to the U.S. market.

1 That is a lot of their purpose for being, is
2 to sell to the U.S. market. And pretty convincing
3 evidence that other people believe that they can move
4 into this marketplace with product that substitutes for
5 domestically produced product.

6 Q Now, going on in the sentence that carries
7 over to the next page, you say you also found 12,000
8 tons of ethylene alcohol exported from Los Angeles.
9 This amount is slightly greater than the amount received
10 from the Texas coast, and indicates that there is
11 sufficient product available in the Los Angeles area
12 beyond the needs of local consumers to allow producers
13 or distributors to export to other locations.

14 Do I understand this correctly as saying to
15 the Texas producer who is currently sending his ethanol
16 by rail to California that you can find somewhere else
17 to export to?

18 A There are many, many options one can look at.
19 I would take this statement at face value, and just
20 indicating that there certainly is the commodity
21 ethylene alcohol in this case exported from Los Angeles,
22 and if in fact someone needed it locally, one may be
23 able to purchase it there.

24 That was the only intent of that sentence. It
25 is part of source competition. You realize we didn't

1 use that to screen out any tons. It was a statement of
2 what was going on.

3 Q Okay. I am entering the last phase here, and
4 I think I can finish today. I want to turn to Page 182
5 of your study, and what I would like to do is to offer
6 for marking as exhibits a few articles from the
7 literature that Mr. Anderson talks about.

8 A Mr. Roach, were these the articles that you
9 indicated to us you would be asking about at 5:00
10 o'clock last Friday evening?

11 Q No. I am going to restrict myself, I hope, to
12 the articles that you cite here. I think I can achieve
13 my purpose with your articles alone.

14 A Okay.

15 Q And I am trying to cut this down. I had a
16 whole day for you on literature, but I have sensed that
17 no one has the patience for that, so I will try to
18 telescope it way down. 29 is an article by Mr.
19 Winston. These are all cited on Page 123 of the
20 references following Page 1211.

21 And Number 30 is the 1977 article by Mr. Cum.
22 And Number 31 is a short excerpt from a book by
23 Friedlaender and Spady. And 32 is Mr. McCinnis. And 33
24 is Dr. Levin. And finally, 34 is Mr. Roth. We have got
25 a whole library where that came from.

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A So have I, Mr. Roach.

Q I am sure you do.

JUDGE HOEKINS: They will be marked for identification as stated by you. I am not going through each one now to restate it.

(The documents referred to were marked for identification as Exhibits Number UP/MP-C-29 through 34 inclusive.)

MR. ROACH: Thank you, Your Honor.

BY MR. ROACH: (Resuming)

Q Let me ask you some preliminaries while these are still being passed out. At Page 1A2 you say that your first step in this study was to perform an extensive review of primary research. Is that correct?

A Yes. I have done this many times in the past. I have done it many times in the past.

Q And did you rely on the primary research in designing your serology?

A The purpose of looking at the primary research was to find out what kinds of information was available out there, whether any of the work that existed would in fact be useful in this analysis.

My basic conclusion was, given I filed the

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1 verified statement that goes in a slightly different
2 direction than most of the historical work, that much of
3 the information presented here really was too old to be
4 of extensive use in this study. In other words, it was
5 pre-motor carrier and rail deregulation, and was based
6 on information that was often generated on data that
7 existed in the early 1970's.

8 Q Do you regard the methodology of your study as
9 consistent with the professional research literature in
10 terms of the general factors it considers in determining
11 intermodal competitiveness and substitutability?

12 A One of the major, I think, ways in which we
13 tried to make this study a reflection of what was
14 actually going on out in the real world was the use of
15 people like Mr. Baker to evaluate potential entry into
16 many of these markets.

17 The reason I state that is because much of the
18 existing literature deals with, well, what is going on
19 today, not even today, what is going on ten years ago in
20 many cases, in these particular markets. So, in that
21 sense we tried to look at this from a new perspective.

22 Q Would you agree with me that a central
23 explanatory factor if not the central explanatory factor
24 in the research for what explains intermodal competition
25 and substitution is modal rates?

1 A From the perspective of looking just at rail
2 versus truck, that may be true. Our study was on
3 logistics channels and just looking at relative rail
4 versus truck rates. It is not going to necessarily tell
5 you how a shipper moves his goods.

6 Q But indeed isn't it the case that the purpose
7 of much of this literature that you marshal here, and a
8 lot of other literature in this field is to try to
9 estimate the elasticities of rail and truck for
10 particular commodities?

11 A In the past, a lot of the research has been
12 focused on measuring elasticities in certain markets.
13 They are in most cases nowhere near as disaggregate as
14 the markets, and I really misused the word. I didn't
15 mean to use the word "market." These are not markets,
16 but in the distribution channels that we have been
17 dealing with here, these are much more disaggregate in
18 many cases than what much of the research has been able
19 to evaluate historically.

20 Q Mr. Gou's work Exhibit 30, is a well-known
21 study about elasticities. Isn't that right?

22 A The one entitled Derived Demand for Freight
23 Transportation and Intermodal Substitutabilities in
24 Canada?

25 Q Yes.

1 A That is correct.

2 Q And what he found at the top of Page 65 in the
3 first line in the table there was elasticities that were
4 very substantially below one in the Canadian markets
5 that he was studying. Isn't that correct?

6 A I will only point out to you two things about
7 Page 65. One is that the last available piece of data
8 is apparently 1974, which makes the analysis ten years
9 old, and thus the decisionmaking evaluation that was
10 going on here relative to the shipper community based
11 not only in prederegulation but pre-1975 recession,
12 even.

13 And that secondly this is, of course, for
14 Canada, and I am not exactly sure how Canadian
15 transportation may in fact be relevant to, given they
16 have a much different competitive structure up there and
17 have for many years, how that may be relevant in the
18 United States.

19 Q And Exhibit 31, the Friedlaender and Spady --

20 A Are we through with the exhibit?

21 Q Yes. I believe I am through with that
22 exhibit.

23 A Thank you.

24 Q The Friedlaender and Spady book on Page 55
25 reports own price elasticities for rail in the West that

1 are also quite significantly below one, minus .548 for
2 durable manufacturers, minus .4864 for nondurable
3 manufacturers, a higher figure, minus .8373 for
4 petroleum and related, and minus .3707 for mineral,
5 chemical, and other. Isn't that right?

6 A That's correct based on the 1972 data upon
7 which this analysis was done. It does show that those
8 are in fact -- to my best estimation they reflect the
9 elasticities as calculated.

10 Q Okay. Is there any reason that you couldn't
11 have tried to measure elasticities in your study of the
12 traffic involved?

13 A Obviously, that is something as a professional
14 economist I think a lot about in making decisions on
15 designing methodologies. My determination was that it
16 would be an extremely difficult task to completely
17 measure elasticities in all these various cells that I
18 was tasked with evaluating.

19 And even if I did it, I am not convinced that
20 it would have substantially altered our basic evaluation
21 of shipper logistics options in many cases. We are not
22 arguing in my mind about relative elasticities. Where
23 we are arguing in the real world of threats and
24 counterthreats that are carried on continuously between
25 shippers and carriers relative to what rates and what

1 services are available.

2 And the fact that elasticities are in this
3 case inelastic or more elastic is certainly relevant,
4 but it is not necessarily the final piece of information
5 someone would need, or -- I will put it even more
6 strongly -- the critical piece of information someone
7 might need to make a decision on what is going on in
8 this marketplace.

9 Now, one final point, and that is that Dr.
10 MacIvory has already testified as to what our analysis of
11 the elasticities are in these market places, and I would
12 let that record stand in terms of our evaluation.

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1 Q Well, you didn't do any analysis of
2 elasticities, isn't that correct?

3 A I thought I just said that I didn't. I hope I
4 didn't bore you with the description of why we didn't.

5 Q No. I fear I may have misunderstood your
6 statement about our analysis of elasticities. You're
7 not saying that TBS was involved in any analysis of
8 elasticities.

9 A I'll refer to the corporate merger team that's
10 been involved in this analysis.

11 Q Okay.

12 Would you also agree with me that the
13 professional research that looks at transit time and
14 transit time reliability as important explanatory
15 factors in explaining the choice between truck and
16 rail? And I cite to you as an example Mr. McCinnis's
17 article, Exhibit 32, which again is an article you
18 cited.

19 A Are we done with Ms. Freidlaender and Spady
20 for the moment?

21 Q I think so.

22 A The reason I ask is that they also talk about
23 those issues in here, certainly.

24 Q That's why I said I think so. You can find
25 this in a lot of these, but isn't Mr. McCinnis's pretty

1 good example of an in-depth study of transit time and the
2 separate issue of transit time reliability as
3 explanatory variables in modal choice?

4 A If you're asking me whether I am in the next
5 minute going to evaluate the sample space that he used
6 to do this, the answer is I am not. My general reading
7 of the article was that the basic procedures he used are
8 correct. I have not evaluated whether I can go as far
9 as you did in your testimony as to the excellence of
10 this article.

11 Q Well, I didn't mean --

12 A I didn't mean it facetiously either. I just
13 can't say for sure. I haven't studied the sample frame
14 enough to know whether I --

15 Q Actually, I wasn't looking for a judgment
16 about the excellence of the article. I was simply
17 asking you whether those factors of transit time and
18 transit time reliability are important factors that you
19 find when you go to the professional research literature
20 as explanatory variables in explaining the choice
21 between rail and truck.

22 A That's absolutely correct. That's why we also
23 included that type of analysis in our work.

24 Q Well, where is it in your study?

25 A As I've already stated a number of times, it's

1 implicit in the way in which the decisions are made in
2 this process. We are looking at channels here where a
3 great variety of movements are taking place in the
4 system, and the decisions that are finally made to move
5 goods by one mode or another are certainly affected by
6 that, so we again -- this is just the revealed
7 preference of the people using the transportation
8 systems that we used as the weight of evidence in our
9 side of the case.

10 In addition, Mr. Baker did look at those
11 questions when he evaluated certain channels for us.
12 They were discussing the availability of motor carrier
13 capacity. Certainly, those types of issues we talked
14 about earlier were incorporated into my direction to Mr.
15 Baker to evaluate what was a competitive option in a
16 certain corridor.

17 Q When you say the revealed preference, are you
18 again talking about the split between rail tons and
19 truck tons in a particular traffic cell?

20 A I'm talking about what consumers of
21 transportation services ultimately did in any particular
22 mileage block commodity movement, inbound or outbound,
23 from a common point in the study.

24 Q Okay. And if we find that half of them sent
25 their traffic by rail and half of them sent it by truck,

1 what does that tell us about transit time and transit
2 time reliability?

3 A If, in fact, transit time is important in a
4 particular set of shipments and we find -- let's take a
5 hypothetical, that rail is 90 percent of a particular --
6 I'm sorry, I mean to say truck -- truck was 90 percent
7 of a particular mileage block that we looked at, I might
8 conclude, at least hypothetically, that transit time
9 would perhaps be important there.

10 We find lots of situations where that was, in
11 fact, the situation. As I indicated earlier, there are
12 places where you have hundreds of trucks, hundreds of
13 times greater than rail in many of these movements. It
14 certainly might indicate to me transit time being
15 important.

16 Q And people will pay more to send it by truck
17 because it gets there faster and it also gets there more
18 reliably; right?

19 A Less loss and damage might be part of it.

20 Q And some people are sending by rail because
21 they don't care as much about that sort of thing;
22 right?

23 A Again, it may be part of the same distribution
24 channel. There are certain shipments that are
25 expediated because of needs at certain plants. If

1 you're just shipping to stock, for example, you may use
2 rail. Transit time may not be as critical, but you can
3 have the same commodity moving into the same facility by
4 truck and rail, depending on what in fact the
5 requirements of that facility are and the requirements
6 of the receiver or the shipper.

7 Q Well, let me put you a hypothetical. Suppose
8 that the people who care about getting the freight there
9 fast and reliably are paying 200 percent more to send it
10 by truck, and the people who don't care are paying 20
11 percent less to send it by rail, and suppose there are
12 two railroads, and suppose they merge and raise their
13 rates 10 percent because now the rail users have nowhere
14 else to go for rail competition, is it an answer to
15 those shippers to say you can send it by truck for 20
16 percent more?

17 A If you're asking are there possibly shippers
18 who might be affected by this merger, we identified 3
19 million tons of traffic that could eventually be
20 identified. Some of them could be exactly your
21 hypothetical case. We don't deny that that may exist.

22 Q But you never searched for tons on the basis
23 of time sensitivity, did you?

24 A Our data bases did not allow us to evaluate
25 such factors as time sensitivity.

1 Q Okay. The next question: Isn't it true
2 that -- I seem to have skipped a factor. Yeah. Isn't
3 it true that shipment weight is another major factor
4 that is considered in this professional literature in
5 explaining the choice between modes?

6 A Maybe we should clarify that point. There are
7 a lot of factors you've been reading off to me in the
8 last few minutes. Each of them could be important in
9 any particular situation. You know, there's no one --
10 there are lists that have been made up, and even in my
11 study here, I indicated that there were significant
12 factors in general.

13 But that's all I was saying. In each
14 individual channel, there may be substantially different
15 reasons as to why someone uses rail versus truck.
16 Shipment weight could be important one time and not in
17 another.

18 Q In fact, on page 1-8-4 of your testimony, at
19 the middle of the page, you're talking here about
20 several of these articles, and you say these analysts
21 note that even though high levels of rail and truck
22 traffic exist for selected weight and distance
23 categories, individual shippers will not necessarily
24 shift traffic to other modes in response to price,
25 service quality, or other carrier-oriented changes.

1 Thus, an equal share of rail and truck traffic
2 in particular, weight-distance shipment categories is
3 not necessarily indicative of a high level of
4 substitutability between logistics changes.

5 That says that weight is a significant
6 explanatory factor, doesn't it?

7 A I don't think I want to go through my
8 explanation again. I will merely say that in certain
9 situations, weight can be important.

10 Q Did you try to set up weight-distance shipment
11 categories for your study?

12 A Again, the data base we were working with --
13 in this case, the Peebie data -- did not allow us to
14 differentiate it that way. We tried to differentiate it
15 as best as possible with our mileage blocks, our inbound
16 versus outbound commodity distinctions, as detailed as
17 we could get to look at shipper options.

18 The information, frankly, was just not
19 available to us to allow us to look at some of those
20 other factors.

21 Q Well, couldn't you have gone to the railroads
22 and said give me ten customers who ship in particularly
23 large weight shipments and I'll go interview them and
24 find out whether trucks are an adequate substitute?

25 A It wasn't part of our analysis to interview

1 shippers. We were trying to determine aggregate options
2 in a channel. We did look -- we did extensive analysis
3 of their facilities, as has been stated previously,
4 using Mr. Baker.

5 Q Well, isn't it the case that if a shipper
6 ships in very large weight shipments, the cost of rail,
7 everything else equal, tends to be lower because the
8 logistics of rail are able to accommodate those larger
9 shipments in a way that a single truck cannot?

10 A Well, those types of examples exist. I can
11 cite you many just the opposite. I've been working with
12 a client recently where he started out by telling me the
13 only possible way he could move was by rail, and we have
14 totally altered that process for him, so now he can use
15 a much more flexible and smaller shipment size truck and
16 actually save a lot of money.

17 So we can argue about this a lot, but I can
18 state that my experience has been that it is certainly
19 possible for shippers who believe absolutely and will
20 swear up and down to you the first time you meet them
21 that there is no way I can survive without these
22 railroads, that there are options for those shippers out
23 there. And in some cases, those options end up saving
24 them a lot of money.

25 Q A final factor that you see in these studies

1 is the value of the commodity. Isn't that correct?

2 A That's another one of the very long list of
3 factors. We could easily double it this afternoon if
4 time and patience permitted. That's another factor in
5 the list.

6 Q Patience?

7 A That's not a factor in th list.

8 Q You say on page 1-A-7 at line 10, "Although
9 shipment size and product value were also determinants
10 of mode choice, lack of available data prevented further
11 disaggregation of the analysis by these shipment
12 characteristics. However, these factors were
13 qualitatively incorporated in an analysis of the data."

14 How did you qualitatively incorporate the
15 factors of shipment size and product value?

16 A Again, the whole decision process that we have
17 been using all along in terms of revealed preference,
18 all those considerations obviously go into, in varying
19 degrees, the shipper's or receiver's decision to use a
20 particular type of mode and get expressed in the final
21 information that's generated in the data bases such as
22 the Reebie data base that tell us what moved in a
23 particular mileage block for these shipments.

24 And that information is all -- that's what we
25 mean by qualitatively incorporated. It is implicit in

1 the revealed information that the data bases have for
2 us.

3 JUDGE HOPKINS: Off the record for a minute.

4 (Discussion off the record.)

5 JUDGE HOPKINS: Go ahead.

6 BY MR. POACH: (Resuming)

7 Q Well, forgive me if I don't fully understand
8 your last answer. But is it true that you did not
9 directly study shipment size or product value in this
10 report?

11 A I stand on what I said there. You know, if it
12 was unclear, I apologize. Lack of available data
13 prevented further disaggregation of the analysis by the
14 shipments characteristics.

15 Q What's unclear is the word "incorporated." I
16 don't understand how you incorporated those factors in
17 your study, and I don't understand it after asking you
18 once, to tell you the truth.

19 You keep talking about revealed preference and
20 all I know about what that means is that these blocks
21 showing so many tons going by truck and so many tons
22 going by rail.

23 A That's correct. In terms of how shipment size
24 is incorporated, obviously these blocks are made up of
25 lots of different shipment sizes, some by truck, some by

1 rail. And I gave you an example of how a very large
2 rail shipment could all of a sudden become a bunch of
3 truck shipments and actually save someone money.

4 I thought I was fairly clear on my answer. We
5 believe that there is substantial possibility of that,
6 and certainly there's lots of railroad marketing people
7 who would attest to that happening every day in the
8 marketplace.

9 Trucks have been extremely competitive, taking
10 business away from railroads.

11 Q A little higher on the page, you say:
12 "Distance was found to be the single most important
13 factor in rail/truck modal choice decisions."

14 My first question about that is, who is the
15 object of that sentence? Were you the one that found
16 that distance was the important factor?

17 A Since this is the appendix and it is the
18 section that is on TBS study methodology, it is a
19 reflection of the previous research and findings section
20 that went before it. Distance was cited often in the
21 works as being very important.

22 Thus, I did take some aspects of these works
23 at face value and say, well, I should look at things by
24 distance, since lots of my professional colleagues have
25 consistently indicated that as important.

1 Q Isn't it, in fact, abundantly clear if you
2 read this literature that rates are the most important
3 factor?

4 A I think there's a lot of disagreement on that
5 subject. I don't think we want to delve too much into
6 it today. I stand with what I said here. Distance is
7 reflective of rates. Certainly, there are many other
8 factors.

9 This is, in some sense, a surrogate for
10 looking at the rate issue. I am not trying to duck it
11 by any stretch of the imagination. I am just at a loss
12 to be able to do this incredibly detailed analysis that
13 seems to be demanded, with data that doesn't exist, to
14 prove a point that I think I have proven quite
15 adequately with our current work.

16 Q Well, I don't want to belabor it either, but
17 when these eminent scholars take some data and run
18 regression equations, don't they find consistently that
19 rates has the highest coefficient of explanation in
20 their equations?

21 A If you are looking at the pure question of
22 truck/rail substitutability, relative rates are often
23 important and we have tried to incorporate that in the
24 study as much as possible by, in this case,
25 distinguishing by mileage block, inbound versus

1 outbound.

2 All those are characteristics of what end up
3 being rates in this analysis. We certainly disaggregate
4 the data by a number of ways to look at the issue of
5 what happens when you distinguish among mileage blocks.

6 Q Let me wind up, to everyone's relief, with a
7 few questions about Mr. Winston, Exhibit 29.

8 In your Appendix here, at pages 1-A-4 and
9 1-A-5, you sort of bring it to a climax with Mr.
10 Winston. You say he's the latest study, and he has
11 found, as you say on page 4, "A high degree of
12 substitutability existed between modal logistics
13 channels."

14 And then you go on, on page 5, and you talk
15 about a number of commodities where he found truck and
16 rail are highly competitive, and you also mentioned some
17 where he found less substitutability, as you put it.

18 A Right I, just for the record, state why that
19 is in that particular position and what its relationship
20 to other things are, or would you rather ask your
21 question?

22 Q Please.

23 A Winston's article is the first article that
24 takes the so-called disaggregate approach and says well,
25 maybe a lot of people were wrong about this disaggregate

1 approach in the past. Maybe there really is more
2 substitutability.

3 So the context of putting it there was just to
4 say that there aren't two schools of thought here that
5 are totally at odds, because if you read all the
6 literature, let's say before Winston, you'd come up with
7 the conclusion that you had these two separate schools
8 of thought and they never really met.

9 Winston's article was the first case which I
10 have seen that shows that there may not be that much
11 diversions actually between these two schools of thought
12 on relative rail/truck substitutability and in
13 competition and logistics channels.

14 Q I assume you're familiar with the recent book
15 by Mr. Keeler from Brockings, and I won't bother marking
16 this. But let me ask you if you agree with Mr. Keeler.
17 I think you do.

18 He says that Winston is the most sophisticated
19 estimate of rail and truck demand functions yet, because
20 of both better data and more advanced estimation
21 techniques.

22 Q I think if you look at his data, though, you
23 will find that it's still quite dated in terms of his
24 analysis. I'm not totally familiar with it, but the
25 manuscript was completed in August 1975, which means the

1 data had to be a lot older than that.

2 In terms of what Mr. Keeler says about the
3 quality of the work, I think that is fair statement.

4 Q Okay. Well, where I am heading here is, my
5 first stop is page 997 of Winston, which is a table in
6 which he sets forth some elasticities again, like Mr.
7 Oum and Friedlaender and Spady.

8 And am I right that your first two sentences
9 here on page 5 were based on this table, the first
10 column in this table? Didn't you basically just go down
11 these elasticities and say where they were more than
12 one, Winston found, quote -- I'm quoting you -- "a
13 number of markets in which rail and truck are highly
14 competitive."

15 And then where there were less than one, you
16 acknowledged that Mr. Winston found less
17 substitutability.

18 A I think it was a combination of looking at Mr.
19 Winston's text and that table that led me to those
20 conclusions. It's been a while since I've dealt with
21 this particular article. As we've seen from the
22 voluminous entry into the record today, I can't be up to
23 speed on every one of them. I'm not absolutely sure
24 where I derived that sentence from. I'd have to go back
25 and re-read things and decide where that came from.

1 Q Well, just to play a little numbers game here,
2 it looks to me like there are eight cases where he finds
3 low elasticities and four where he finds high ones. And
4 the low ones include some commodities that we have
5 seen: lumber, wood, furniture, paper, printing, and
6 publishing, regulated agriculture.

7 Are those findings sensible to you? Do they
8 look sensible to you?

9 A Given that they are likely, based on the 1977
10 Census of Transportation data, and all the changes that
11 have gone on since there, I can't state that that's the
12 situation in the marketplace today.

13 You have to remember that when you are using a
14 basic work like this, that the primary intent is to find
15 out what people have discovered is important, rather
16 than perhaps to take ancient elasticities and try to
17 convert them into policy statements.

18 Q Well, with all respect, is Mr. Winston dealing
19 with ancient elasticities or is he the latest thing in
20 coming up with rail/truck elasticities?

21 A He may be the latest thing, but he is well
22 before the impacts of deregulation have radically changed
23 markets. The price changes that have taken place in
24 rail and truck in the last couple of years in any
25 markets, nationwide markets, have -- I would not want

1 to, quite, try to run those price changes through these
2 elasticities and see what happened, because this is
3 based on a structural analysis of a market that doesn't
4 exist anymore, the pre-deregulation freight market in
5 the United States.

6 It's not there. It's not ground to be able to
7 say that these elasticities are the realities today. I
8 think I found a lot of evidence in my own mind, from the
9 real world research that we'd been doing here, that many
10 of these are likely invalid.

11 Q Where is that evidence? Is it in your study
12 somewhere?

13 A I said it was in my own mind.

14 Q Mr. Winston says, on page 996, at the end of
15 the last full paragraph on the page, that: "There are
16 many markets where rail in particular can improve its
17 profitability through rate increases.

18 Do you have any factual basis for agreeing or
19 disagreeing with that statement?

20 A It's a nice general statement that anybody can
21 make. And in this situation, again of course, you are
22 referring to the fact of some of the elasticities are
23 quite low, and that would imply that large price changes
24 would result, or even moderate price changes would
25 result in small volume changes leading to higher

1 revenues.

2 And, as a general statement of elasticity,
3 that's what elasticity means. And again, Mr. Finster's
4 information is based on pre-deregulation analysis of
5 markets. And I can't say whether this is, in fact, true
6 today.

7 Truck is becoming incredibly competitive in
8 this marketplace, and such more so than is reflected in
9 our esteemed colleague's analyses of much of what's
10 really happening today in the real world.

11 MR. ROACH: Thank you, sir.

12 THE WITNESS: Thank you.

13 JUDGE HOPKINS: You through?

14 MR. ROACH: I'm through.

15 JUDGE HOPKINS: Thank you very much.

16 Off the record.

17 (Discussion off the record.)

18 JUDGE HOPKINS: We will be in recess till 9:00
19 o'clock tomorrow.

20 (Whereupon, at 5:25 p.m. o'clock the hearing
21 in the above-entitled matter recessed, to reconvene at
22 9:00 a.m. o'clock, the following day, Tuesday,
23 October 30, 1984.)
24
25