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BEFORE THE

INTERSTATE COMMERCE COMMISSION

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In the Matter of: :

SANTA FE SOUTHERN PACIFIC CORPORATION : Finance Packet

-- CONFIDENTIAL -- : 30400 et al.

SOUTHERN PACIFIC TRANSPORTATION :

COMPANY :

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Hearing Room A

12th & Constitution, N.W.

Washington, D.C.

Tuesday, October 30, 1984

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

BEFORE:

JAMES E. HOPKINS,

Administrative Law Judge

0033-0217

1 APPEARANCES:

2
3 AS HERETOFORE NOTED, WITH THE FOLLOWING ADDITION:

4 On behalf of the State of Kansas:

5 JOHN R. SCHEIFMAN, ESQ.

6 Department of Transportation

7 State of Kansas

8 Topeka, Kansas
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C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
David L. Anderson				
By Mr. Von Salzen	4326			
By Mr. Bleakney	4369			
By Mr. Greenberg	4379			
By Mr. Ratner	4418			
By Ms. Reed	4496			
By Mr. Scheirman	4504			
By Mr. Moates			4523	
By Mr. Roach				4532
By Mr. Ratner				4533
James D. O'Connell				
By Mr. Weicher	4537			
By Mr. Roach		4538		

E X H I B I T S

<u>Exhibit No.</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
Ex. Nos. UP/MP-C-14 thru 34 inclusive		4329
DRGW-C-22	4340	4535
DRGW-C-23	4353	4535
DRGW-C-24	4354	4535
DRGW-C-25	4356	4535
DRGW-C-26	4360	4535
MKT-C-59 and MKT-C-60	4392	
MKT-C-61	4403	4535
DOT-C-3	4497	4535
SFSP-C-8	4534	
UP/MP-C-35	4567	

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P R O C E E D I N G S

(9:00 A.M.)

JUDGE HOPKINS: Let's get back on the record.
Who is going to start this morning?

MR. VON SAIZEN: Your Honor, the Rio Grande.

Thereupon,

DAVID L. ANDERSON,

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

CROSS EXAMINATION

BY MR. VON SAIZEN:

Q Mr. Anderson, my name is Eric Von Saizen, for
the Denver and Rio Grande Western Railroad.

A Good morning.

Q Do you prefer Dr. Anderson or Mr. Anderson?

MR. VON SAIZEN: Excuse me, counsel. We had a
preliminary matter. I want to state for the benefit of
the other counsel we said yesterday when Dr. Anderson
was finished Mr. Baker would be next. We would like to
put Mr. O'Connell on, simply for substantial personal
reasons that he has. We would like to get him out of
town today.

I would think that they are really a group of
witnesses of three, but just for advance notice it will

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1 be O'Connell and then Baker.

2 JUDGE HOPKINS: Thanks.

3 MR. PATNER: Can we respond, Your Honor? The
4 Department of Justice has a slight problem with having
5 Mr. O'Connell go on today. We frankly weren't prepared
6 for it.

7 MR. MOATES: When I said Baker would go on
8 next, I never said O'Connell would be on today, and I
9 expected we would get to him in any event, but the issue
10 is, we would like to finish him today. He has got an
11 out-of-town commitment.

12 JUDGE HOPKINS: Could one of you try to get
13 prepared for Mr. O'Connell? Because I would rather not
14 be having open spaces anyway, and if we finish one, I
15 would like to get into another one anyway.

16 MR. PATNER: Well, we will do the best we can,
17 and see what happens, Your Honor.

18 JUDGE HOPKINS: Thank you.

19 MR. VON SALZEN: Your Honor, in light of that
20 charge of plans, could we perhaps have a very brief
21 recess so I can contact my office and advise them?

22 MR. MOATES: I am sorry I didn't say that
23 before you started.

24 JUDGE HOPKINS: Go ahead. Off the record.

25 (Whereupon, a brief recess was taken.)

1 MR. ROACH: Your Honor, I neglected to move
2 the admission of exhibits, UP/MP-C-14 through 34. I
3 would exclude 24 and 25, which I ultimately did not
4 use.

5 MR. MCATES: We can do it now or at the end.
6 Is there a reason to move them now, Mr. Roach?

7 MR. ROACH: Yes, I would like to move their
8 admission into evidence.

9 MR. MCATES: He is still on cross
10 examination.

11 MR. ROACH: Well, I have completed my cross.
12 I thought it was appropriate at that time.

13 JUDGE HOPKINS: Do you want to leave? Is that
14 what you are going to do?

15 MR. ROACH: No.

16 JUDGE HOPKINS: Some have done it. I usually
17 used to like to wait until the completion of the cross,
18 but there hasn't been any objection several times when
19 that has been done, so do you have any objection at this
20 time?

21 MR. HOLLERS: No.

22 JUDGE HOPKINS: I am going to allow all of
23 them, rather than to try and pull out two of the
24 exhibits like that. We run into trouble.

25 MR. MCATES: Well, those two were never used.

1 actually.

2 JUDGE HOPKINS: I know, but we understand. We
3 indicated on the record that they were not used, but
4 otherwise we have to pull them out. We run into a
5 problem with the record. They will be received in
6 evidence.

7 (The documents referred to,
8 previously marked for
9 identification as Exhibits
10 Number UP/MP-C-14 through 34
11 inclusive, were received in
12 evidence.)

13 BY MR. VON SALZEN: (Resuming)

14 Q Dr. Anderson, would you turn to Page XV-8 in
15 your appendices? In the first --

16 A Excuse me? Is that page?

17 Q XV-8.

18 A It could be an exhibit, too.

19 Q I see. Page numbers. In the first paragraph
20 under the heading Definition of Focused Commodities and
21 Focused Customers, there is reference to two tests.
22 Were there more than 1,000 rail cars shipped in 1982 is
23 one test, and was the commodity within the top 80
24 percent of cumulative tonnage is the second test.

25 Q Could you explain, briefly, I hope, how the

1 two tests relate to each other?

2 A Well, the first test, let's start with the
3 cumulative 80 percent of total tonnage that captures all
4 the large movements from a volume perspective basis.
5 Now, there may be other movements that are also large,
6 but -- there may be shippers that ship 1,000 cars, let's
7 say, in and out of this region that may not be captured
8 by that first, shall we call it a screen, as we have
9 been calling other things screens, and so that makes
10 sure that the tonnage for significant shippers that may
11 not have been included in the first 80 percent was
12 included in the analysis.

13 I think if you look back in the tables, you
14 will see that the tonnage covered was well into the
15 nineties in most cases, 90 percent of tonnage.

16 Q Is it a correct interpretation that basically
17 if the commodity met either one of the two tests, then
18 it was selected, or did it need to meet both?

19 A No, it was either one of the tests. It was a
20 staged test.

21 Q In the same appendix, calling your attention
22 to Page XV-12, at the very bottom of the page, do you
23 see the sentence beginning, "According to MIST-SV
24 marketing personnel?"

25 A That's correct.

1 Q And goes on to the top of the next page? This
2 is talking about STCC-01 inbound tonnage in Mileage
3 Block Cell 4 and describes something that the marketing
4 people told TBS. Is that correct?

5 A That's correct.

6 Q And is that information that was provided to
7 TBS by the marketing people the basis for the TBS
8 conclusion that there were logistics options for this
9 traffic?

10 A I believe yesterday that I indicated we were
11 going to look into that, and we have an answer to the
12 question. It was going to come. Counsel says I should
13 give it now. We did look into it. The question was
14 raised by Mr. Roach yesterday about the use of how we --
15 given the table had a number -- I am sorry. I am going
16 to do this a little more consistently here.

17 Q Table 14?

18 A Yes, Exhibit XV-14 had a five in the greater
19 than 1,000 mile mileage block, which indicated that
20 according to case studies performed by IFAM of actual
21 shipper movements, shipper options were available. We
22 did check the work papers last night. We are unable to
23 locate all those movements that were supposed to have
24 been used to do this. We can only find a subset of
25 them, and at the present time right now we can't

1 establish that that number five is a correct number. We
2 don't really know where the other information went.

3 Q You don't know which is the basis for the
4 logistics option?

5 A Oh, I do know. I guess I just didn't quite
6 answer your question. We do know which is the basis.
7 The basis is always when it says a number five, it is
8 based on TRAM information. What I am telling you is
9 that I can't back that statement up at this time,
10 because I can't find the backup material for it.

11 There were thousands of movements that we
12 looked at here, and sometimes information slips through
13 the cracks.

14 Q So you did discuss with Mr. Poach yesterday
15 the fact that -- and I am not trying to get into any
16 specifics, but that there are some discussions in the
17 appendices that are intended to tell the reader what is
18 out there in the real world, but not necessarily an
19 explanation for how the logistics option judgment was
20 made, and that that explanation is to be found in the
21 exhibit that is equivalent to XV-14 in each of these
22 appendices. Is that correct?

23 A That's correct. That last exhibit is the
24 "ruling exhibit."

25 Q Moving on to the next appendix, XVI, on page

1 11, the last paragraph on that page, do you see the
2 references to some truck rate quotes?

3 A That's correct.

4 Q Can you tell me the source of those quotes?

5 A Those quotes, I believe, were made available
6 to us by a person on the Southern Pacific marketing
7 staff. I don't have his name on the top of my head, but
8 again, it is a descriptive sentence meant only to
9 indicate a level of rates. It was not used to screen
10 out any tonnage in the analysis.

11 Q Did TBS do any independent verification of
12 those rates?

13 A Of these particular rates?

14 Q Those particular rates.

15 A TBS has a number of motor carrier experts on
16 its staff that -- I believe we asked one of the experts,
17 are these rates reasonable, and the feeling was, the
18 rates were reasonable as presented. We didn't then go
19 out and do our own independent survey. That type of
20 question can also be asked of Mr. Baker, who will be up
21 some time later today, perhaps.

22 Q Do you recall at TBS who the truck expert was
23 to whom that question would have been put?

24 A It could have been one of a number of people.
25 I don't want to speculate right now. If you'd like the

1 name, I will --

2 Q I would appreciate it if you could provide us
3 with that name. Is that agreeable, counsel?

4 MR. MOATES: Sure.

5 BY MR. VON SALZEN: (Resuming)

6 Q I would like to back off the specifics for a
7 moment and look at the overall conclusion of your study,
8 and see if I understand what that conclusion is. Is it
9 your contention in this study that all of the traffic
10 that is screened out by the various screens, including
11 the TRAM screen, is traffic that will not suffer adverse
12 competitive harms as a result of this proposed merger?

13 A The way which we have expressed the conclusion
14 in the past has been that we found sufficient logistics
15 options for the great majority of the movements that
16 were analyzed in our study. The term "adverse
17 competitive harm" is not something that we
18 systematically studied throughout this analysis.

19 We were trying to determine whether options
20 exist in the channels for various shippers, whether
21 there is a diversity of other technologies, modes, what
22 have you being used to move the various products, and
23 that those particular options are what a shipper can use
24 as a threat to the railroad in the post-merger
25 environment to prevent any abuses of market power.

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1 Q So if I want to take up the question of
2 adverse competitive harms, I do that with another
3 witness than yourself. Is that the bottom line?

4 A I am not quite sure what you are driving at.
5 I guess if you could explain what you mean by adverse
6 competitive harm, I might be able to answer.

7 Q I guess what I am trying to find out is, when
8 you say that your study revealed that for most of the
9 traffic in the study, that there were logistics options
10 or sufficient logistics options -- I think you used
11 various phrases -- what I want to know is whether you
12 mean by that that if the Commission believes you, it
13 doesn't have to be concerned about adverse competitive
14 impacts with respect to that traffic.

15 A I see what you are asking now. We have
16 certainly identified to the best of our ability in this
17 study a number of distribution channels, however you
18 want to call it, that we felt at this point in time we
19 could not identify sufficient logistics options for, so
20 I think we were fairly honest and open about saying
21 where from the point of view of the applicants there may
22 be problems in the post-merger environment, and those
23 are -- every chapter's report lists those. So, I guess
24 our analysis does answer those kinds of questions.

25 Q Well, you see, that is why I focused on

1 question earlier of the traffic that your study screened
2 out. You just referred to the three million -- I think
3 it has been changed now -- tons that you didn't find
4 options for, but I want to focus on the rest of the
5 traffic, what is it, 49 million, or some number like
6 that, that you studied and found options for.

7 Don't hold me to the number, because I don't
8 want to take the time to go look it up and do the math.

9 A You are correct.

10 Q But there was that body of traffic that you
11 examined and found logistics options for, and focusing
12 on that traffic, my question is, is the conclusion that
13 there were sufficient logistics options for that traffic
14 in your mind equivalent to the conclusion that there was
15 no adverse competitive harm to be anticipated with
16 respect to that traffic if this merger is approved as
17 proposed?

18 A You are always going to be able to discover
19 one or two shippers in any of the regions that we
20 perhaps looked at that will claim competitive harm. If
21 you are asking me to generally respond to those kinds of
22 questions, I would have to see specific examples, and of
23 course the applicants would be more than glad to
24 evaluate those specific cases.

25 We did look at an awful lot of shippers across

1 an awful lot of areas. We feel that the methodology as
2 it stands is sufficient to capture in our analysis the
3 types of impacts that might occur in the post-merger
4 environment, but you can always find the shipper who
5 might feel that his particular issue wasn't addressed.

6 But for the great majority of those tons in
7 the 49 million we are talking about, I feel very secure
8 that those people are going to have sufficient options
9 in the post-merger environment. As I say, if you would
10 like to give us specific examples to further discuss,
11 then we will be glad to do it.

12 Q On the specific examples point, Mr. Roach
13 yesterday called to your attention verified statements
14 filed by three shippers who were supporting Union
15 Pacific's proposed conditions, as I recall it. Have you
16 made yourself any sort of an in-depth study of the
17 shipper statements filed pro and con in this
18 proceeding?

19 A If you are asking whether or not we made a
20 systematic study that would be equivalent to the level
21 of detail and depth that was done here, the answer is
22 no. We have spot checked a number of shipper claims,
23 both positive and negative, to make sure that in fact
24 that's the reality that's out there.

25 As I explained yesterday, I am a logistician.

1 I work with these people all the time, and you'd be
2 amazed at how many traffic managers don't understand
3 their options. They don't understand what real world
4 logistics channels are all about.

5 And so we feel we have to check any
6 statements, that they really do understand what is
7 taking place in the environment.

8 Q From the standpoint of the shipper, do you
9 believe that the cost of any alternative to rail
10 transportation is a significant factor in evaluating the
11 shipper's logistics options?

12 A As was discussed yesterday, cost is one of the
13 factors that is important. I will distinguish again
14 between a pure rail versus truck cost and perhaps the
15 overall cost of a distribution channel, which could
16 include inventory carrying costs and pickup and delivery
17 services.

18 Any other cost that might be included in the
19 shipper decision process as to whether or not that
20 shipper is going to use a specific channel, that would
21 be the relevant cost that I would consider in evaluating
22 these situations.

23 Q And I think I understood your testimony to be
24 that that is captured, if you will, in the actual
25 shipper judgments that are elicited in the 50 percent

1 screen. I think you and Mr. Beach agreed to call it a
2 50 percent screen yesterday, somewhat over your
3 resistance. But can we accept that as something that is
4 now established?

5 A Yes, that's correct.

6 Q Other than the 50 percent screen, was there
7 any other way in this study in which you explicitly took
8 account of the relative costs of rail versus non-rail
9 transportation or logistics options?

10 A As we also explained yesterday, when we were
11 evaluating within the TRAM analysis alternative
12 distribution channels for shippers, and this particular
13 channel, as you remember, is the new entry of the motor
14 carriers into a particular flow, let's say, that they
15 may not be active in or only partially active in at
16 present, that that analysis was dependent on looking at
17 the prevailing modal prices, shall we say, in that
18 distribution channel for movements.

19 So that in that sense as well one looks at,
20 among other factors, the relative rate. Of course, the
21 ability of a carrier to serve that lane and all is very
22 important as well, and there are a number of other
23 factors that Mr. Baker will explain during his
24 testimony.

25 Q That is in the TRAM side of this study, I take

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it.

A That's correct.

Q That's covered by Mr. Baker's testimony?

A Right. So it appears in two places.

MP. VON SAIZEN: Your Honor, I would like to mark as what I believe is Exhibit DRCW-C-22. According to my count that is the next one in sequence.

JUDGE HOPKINS: It will be marked for identification.

(The document referred to was marked for identification as Exhibit Number DRCW-C-22.)

BY MR. VON SAIZEN: (Resuming)

Q Dr. Anderson, we have marked as exhibit DRCW-C-22 some work papers bearing number CDA421 through 463, and I ask you if you can identify this exhibit.

A This is our -- one of the drafts of our work plan. It says final work plan on the front. I would only modify that to say the final work plan is obviously filed in the testimony. This was, I think, where we stopped writing the work plan and got onto writing the testimony, but it is reflective of where we were on January 4, 1984.

Q In fact, it says January 10 in handwriting on

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1 at the top.

2 A Yes. I am sorry.

3 Q I would suggest that that is the proper date.
4 You used the term "we." Did you personally prepare or
5 participate in preparing this document?

6 A Yes, that's correct.

7 Q Are you the principal author?

8 A I am the principal author of the methodology.
9 I may not have developed a lot of the tables and
10 everything in here that carries through a lot of the
11 individual pieces, but I certainly was in charge of the
12 overall methodological development of the process.

13 Q Just take a look at Page 2-A, Depository Page
14 424. Do you see the handwriting on that page? It is a
15 flow chart. Do you recognize the handwriting?

16 A Yes. Part of the handwriting is mine, the
17 field investigation clarification down at the bottom,
18 and I believe the other handwriting is my esteemed
19 colleague, Mr. Pennicke, which I can't really read.

20 Q That's a very handy talent for a consultant,
21 and then that would be Mr. Pennicke's handwriting on
22 Page 2-F as well, I take it?

23 A Well, I believe that says "Don't redo." Yes,
24 that's Mr. Pennicke's handwriting.

25 Q And would you turn over to Page 6?

1 A Is this 426?

2 Q I am sorry, it is 430.

3 A It would be helpful for me to stick to the --
4 it is easier to find in the copy.

5 Q I will stick to the depository number. It is
6 Page 430. Do you recognize the handwriting there?

7 A Well, it might be mine. It is only four
8 letters. It is kind of hard to tell. I don't know who
9 scratched out the line that says Number One.

10 Q You don't have a present recollection of doing
11 that yourself?

12 A No. Sorry.

13 Q Page 448 is a similar situation.

14 A Just so everybody will be clear on what is
15 going on here, when you have a draft, and a number of
16 people review it and make changes in it, I think that is
17 what we are seeing.

18 This is probably a final draft that went to
19 typing, and I read through it, and Mr. Pennicke read
20 through it, and some other people may have read through
21 it and made changes. So, it is not always all mine.

22 Q I understand that may be your handwriting that
23 substitutes TRAM for Forrest Baker on Page 448, but you
24 are not sure.

25 A That's correct.

1 Q Let's look at Depository Page 430, which we
2 have looked at before. Just to put this all in context,
3 if we flip back to Page 427, we see that we are dealing
4 with Chapters 2 through 13, Group 1 common points. All
5 right? That is specifically Page 430 to which I want to
6 call your attention, and if we look at Page 430,
7 numbered paragraph 5, subparagraph A, we will see that
8 one of the things that you were then planning to do was
9 to determine the availability, cost, and effects of
10 utilizing other rail or modal alternatives for specific
11 SFSP customers, shippers, and commodities. Do you see
12 that language?

13 A Yes. That's 5-A?

14 Q 5-A. That's correct. Now, aside from the 50
15 percent screen, did TRS in fact do this in this study?

16 A Just a slight correction on what you said.
17 You said aside from the 50 percent screen. As you
18 remember, I indicated that we also looked at the impact
19 of relative modal prices in the distribution channel in
20 the final TPA screen, and that is -- that is partially
21 in answer to your question, and I will just finish it
22 quickly.

23 In deciding on the absolute final process of
24 how one would do those screens, Mr. Baker and I sat down
25 and had discussions on the best way of doing it. We

1 decided on an interview process which he can describe
2 later this afternoon.

3 In that interview process, one of the factors
4 to be considered in determining alternative shipper
5 options was the channel distribution cost that shippers
6 would have to pay to use different modes, so that this
7 particular sentence here is consistent with that
8 discussion, and it does not mean that we went out and
9 did extensive rate or costing analysis of a lot of
10 individual movements in order to determine this -- to
11 answer this particular question.

12 I think you understand that it is part of a
13 number of factors that were looked at. I.e., cost is
14 one of a number of factors that were looked at, and our
15 analysis tried to consider what we felt to be all the
16 important factors that went into evaluating the
17 channel.

18 Q I should have made my question clearer. When
19 I said did TBS do this, I was really meaning TBS in the
20 sense of your part of the study, excluding the part that
21 Mr. Baker is going to come and talk about in greater
22 detail. I will try to make that distinction clearer in
23 my questions.

24 A I am sorry. I didn't mean to give you the
25 whole load then. I will try this again. Let's turn

1 over to page 442, numbered paragraph 5 again, and let's
2 just orient ourselves here. This is in Chapter 14,
3 market analysis, southwest Kansas and adjacent areas.

4 Numbered paragraph 5 says that one of the
5 things that you were planning to do was to develop the
6 relationship between truck and rail rates in general,
7 and the impact of pricing strategies that include
8 multi-car, unit train, and transit unit rates.

9 And my question is, aside from the 50 percent
10 screen and aside from Mr. Baker's TRAM work, was there
11 any other place in which the pricing strategies referred
12 to here were taken into account?

13 A Early on in our study, and you realize that we
14 covered, of course, the whole service region and
15 multiple types of shippers and receivers, multiple types
16 of distribution systems, we looked at possibly
17 investigating this particular issue in southwest
18 Kansas.

19 Our analysis led us to believe that there was
20 very little head to head competition between the
21 railroads making the direct analysis of these factors
22 really not important to that particular study. This
23 refers to the chapter -- the chapter refers to the
24 Kansas study, and the only real information that I can
25 recall that we developed relevant to this particular

1 area is some general information on the joint line grain
2 rates versus single line grain rates that we discovered
3 in general.

4 Of course, the joint line rates are more
5 expensive than a single line service, let's say, to the
6 Gulf, and that is primarily the level of detail that I
7 remember actually developing in this area. Early on,
8 our study showed that rate competition was really not a
9 major issue in this market. Grain flows move totally
10 different directions from each other.

11 Q I am going to accept that as a "no because"
12 answer and go on to the next page, Page 447. That is
13 the beginning of Chapter 15, which is the market
14 analysis for the Los Angeles-San Francisco, including
15 the San Joaquin Valley study, and if you turn over to
16 the next page, 448, under Section II, Paragraph A states
17 that with inputs from TRAM, TBS will detail typical
18 truck operations in the LA/SF market area, including
19 pricing, types of moves, companies involved, et cetera,
20 in an effort to identify the wide range of trucking
21 services available to shippers.

22 Focusing my question on the topic of pricing
23 that is covered in that statement, and again excluding
24 the 30 percent screen, and excluding what you have
25 already talked about with respect to Mr. Baker and TRAM,

1 is there any place else in your study that this factor
2 was taken account of?

3 A Before I answer your question, I would just
4 like to clear up one point that might confuse people.
5 This Chapter 15 refers to a market analysis of LA to San
6 Francisco, and then it also says, including the San
7 Joaquin.

8 I just looked back on the table of contents
9 here and realized that expects this document we had
10 separated out the San Joaquin as a market area, and the
11 Los Angeles to San Francisco movement was considered
12 separately as a local flow, so, in case there was any
13 confusion that might result from that.

14 With regard to your question, I would let my
15 previous answer on TEAM stand. We did not alter our
16 methodology at any point in the study. Once Mr. Baker
17 and I had agreed on the basic methodology for evaluating
18 options, that was what was used in all locations.

19 Q Okay, good. And on the same page, in
20 Paragraph B, it says that TBS will undertake "a
21 comprehensive overview of transportation alternatives,"
22 and among the things that that is going to cover is in
23 Subparagraph 2, "the unique transportation
24 characteristics of the market area, i.e., the need to
25 get backhauls from the inbound LA traffic up in the

1 valley and the resultant pricing service implication."

2 With respect to the pricing service
3 implications, again with my same exceptions of the 50
4 percent screen and the TRAM analysis, was there any
5 other place in your study that the pricing service
6 implications described here were studied?

7 A Just that one quote on Page YVI-11, that rate
8 that you mentioned earlier, which I don't really
9 consider more than a parenthetical insertion in the
10 text, but to be absolutely honest, that was the other
11 place, but again, the question there is one of using Mr.
12 Baker to put the whole picture together in those
13 channels and focus on all the factors that would affect
14 the availability of motor carrier service as an
15 alternative for the shipper, not just the cost or
16 price.

17 Q Okay. Let's turn to Page 453, and again,
18 let's put ourselves in the big picture here. This is
19 part of Chapter 16, the local flow between Houston and
20 Los Angeles, and in Section II you state that the
21 analysis of modal share will include, and I think it is
22 the third bullet, the relationship of transportation
23 costs to total product value.

24 I think you may have touched on this
25 yesterday, but can you explain the significance of

1 the -- briefly, I hope -- of the relationship between
2 transportation costs and total product value?

3 A Within a distribution channel, even involving
4 the same commodity perhaps moving between the same
5 origin and destination, you may have shipments that are
6 being hauled less than truckload, truckload, rail, tank
7 car, parcel tanker, all of which perhaps are the same
8 commodity, and perhaps even moving to the same
9 facility.

10 There are a number of reasons why this might
11 take place. The value of product can be thought of as
12 the value of that product to the producer, not just the
13 price per pound or something, and if I have to get a
14 particular movement into that plant to have a production
15 line stay open, that product has an extremely high value
16 to the producer at that point in time, and the producer
17 would perhaps choose a different option.

18 Increasingly, this is the way shippers are
19 operating. They are spreading out their movements of
20 the same commodity across a lot more options within the
21 same distribution channel, so that is really what I am
22 driving at when I talk about product value.

23 Q And again, to the extent this was covered in
24 your study, it was through the 50 percent screen and the
25 TEAM work and not anywhere else. Is that correct?

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1 A That's generally correct.

2 Q Okay. Let's look at your testimony itself. I
3 know it is a separate volume. And let's look at Page
4 10, if you could get that in front of you.

5 A This is my verified statement, Page 10?

6 Q In Volume 16. Okay, if you will look at the
7 sentence that begins in the last line of text on Page
8 10, beginning, "When the tonnage by other modes for a
9 given mileage block." Do you see that?

10 A That's correct.

11 Q And carries over onto the next page, and
12 concludes that there would be sufficient alternative
13 transportation capability in that mileage block in a
14 study region, and the next sentence says "TBS believes
15 this is a realistic and conservative test for intermodal
16 competition to or from the study region." Do you see
17 that language I am calling your attention to?

18 A Yes.

19 Q But in fact, your study did not compare rail
20 tonnage to and from the study region with non-rail
21 tonnage to and from the study region, did it?

22 A Are you referring to the fact that we used
23 common point SHIC's versus -- for rail tonnage versus
24 the BFA for truck tonnage?

25 Q That is the proper reference.

1 A It is not 100 percent true. There is a
2 situation where in the Houston, Texas -- I am sorry, the
3 Texas coast-los Angeles flow where we really did look at
4 the total BEA's for those movements, but you are
5 generally correct, for the Group 1 common points as an
6 example, or the Group 2 common points.

7 Market regions were also examples of where we
8 used a fairly broad region compared to a BEA. In the
9 San Joaquin, for example, even though the study region
10 was in more than one BEA, we used only one BEA's truck
11 tonnage to compare it with. That was fairly
12 conservative from that perspective.

13 Q Well, limiting this next question, then, to
14 the common points, the very next sentence that is on
15 Page 11, the carryover paragraph, if firms in the same
16 BEA ship or receive more of the same commodity over the
17 same distances by modes other than rail, this is
18 convincing evidence that the non-rail alternative is a
19 close substitute for rail.

20 And again, I just want to get this clear on
21 the record. You did not compare the volume of rail
22 shipments in a BEA with the volume of non-rail shipments
23 in that BEA, did you?

24 MR. MONTES: I am going to object, Your Honor,
25 on two bases. One, this specific sentence in this

1 paragraph, my notes reflect, those were examined or at
2 length by Mr. Boach yesterday. He has gone over exactly
3 the same area, and I have allowed the last two questions
4 to go along that line, and I would say that he has
5 answered that same question on cross.

6 The objection is, he has answered it yesterday
7 and he has answered it today, both.

8 MR. VON SALZEN: I don't believe Mr. Boach
9 asked that specific question, Your Honor.

10 JUDGE HOPKINS: I will have to admit with all
11 the questions, I don't remember it, but that doesn't
12 mean that he didn't ask.

13 MR. MOATES: I write margin notes for that
14 very reason.

15 JUDGE HOPKINS: See if you can answer it, but
16 let's try not to go over material.

17 MR. VON SALZEN: I am trying, and this is my
18 last question on this point, assuming the answer is
19 yes. I think it is.

20 JUDGE HOPKINS: It's understandable. Go
21 ahead.

22 BY MR. VON SALZEN: (Resuming)

23 Q The question was, again, you did not in fact
24 compare the volume of rail shipments in a PEA with the
25 volume of non-rail shipments in that PEA in doing the

1 common point studies, did you?

2 A The answer was no because we were only
3 examining rail shippers and receivers who may receive
4 competitive impacts as a result of the merger, and those
5 were shippers located at the common SPIC's within the
6 Group 1 points.

7 Q Okay. Let's go back to the work papers. I
8 think this next exhibit will be number DRGW-C-23.

9 JUDGE HOPKINS: It will be marked for
10 identification.

11 (The document referred to
12 was marked for
13 identification as Exhibit
14 Number DRGW-C-23.)

15 BY MR. VON SALZEN: (Resuming)

16 Q Have you had a chance to look at Exhibit 23,
17 Dr. Anderson?

18 A Yes, yes.

19 Q Do you recognize this?

20 A I don't recognize exactly when it was
21 produced. I recognize the handwriting.

22 Q Whose handwriting is that?

23 A It was our study coordinator from the Southern
24 Pacific, Mr. Zisman.

25 Q Zisman?

1 A (Nods affirmatively.)

2 Q Do you think you can translate the first line
3 under CP Miscellaneous Notes?

4 A "Inbound 01," which I believe is the STCC code
5 for grain -- in fact, that is grain -- and then says "is
6 grain. If greater than 500 miles, no IPAM. Talk to
7 market manager."

8 Q You may get some help from the next exhibits.
9 Let me go ahead with that.

10 Your Honor, I would like to have Exhibit
11 DBCW-C-24 marked for identification.

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

14 (The document referred to
15 was marked for
16 identification as Exhibit
17 Number DBCW-C-24.)

18 BY MR. VON SAIZEN: (Resuming)

19 Q Dr. Anderson, do you recognize this work
20 paper?

21 A This looks like some staff notes generated
22 some time during the process, perhaps at a meeting I
23 held of my staff to describe certain aspects of what we
24 were doing.

25 Q Okay. In the second section, if I can call it

1 that, of these notes, the phrase "decision rule"
2 appears. Do you see that?

3 A Yes.

4 Q And I think, as I read it, anyway, it says
5 "grain other than 1 and 2. Don't sic Forrest on it, use
6 other defences." And I note "defences" is spelled the
7 way the British do, if that helps identify whose
8 handwriting that is. Does that mean anything to you?

9 A I really don't know whose handwriting this is,
10 to be honest with you.

11 Q Do you know what "grain other than 1 and 2"
12 means?

13 A I am a little frightened of -- I have a sense
14 of what it means. I am a little frightened of where
15 this is leading, because of the fact that I hope I have
16 a chance to put things in a context a little later.
17 Many of these papers were somewhere in the middle of the
18 process generated, and notes taken by someone who may
19 have no relationship at all to this final study that was
20 done.

21 Q Well, you haven't had any trouble so far
22 putting things in context, and I don't think I'm going
23 to be able to stop you. Would you guess that 1 and 2
24 means Mileage Blocks 1 and 2?

25 A Yes, I would guess that that was the case. I

1 would also add that I see no relevance of this
2 particular note to anything that we did.

3 Q Okay. Well, let's do one more work paper.
4 And then maybe we can talk about relevance.

5 This would be Exhibit DPGW-C-25 for
6 identification. Here you are, Your Honor.

7 JUDGE HOPKINS: Thank you. It will be marked
8 for identification.

9 (The document referred to
10 was marked for
11 identification as Exhibit
12 Number DPGW-C-25.)

13 BY MR. VON SALZEN: (Resuming)

14 Q Do you recognize this document, Exhibit 25,
15 Dr. Anderson?

16 A It may be another set of notes from the same
17 meeting. I don't recognize the handwriting, but it
18 seems to correspond to DPGW-C-23 in terms of the logical
19 progression of the information on the page.

20 Q Okay. Let's see if I am translating this
21 document correctly. One-A says "01 grain" and B says
22 "greater than 500 miles." C says "Talk to market
23 manager." And D says "No Forrest." Is that how you
24 read that?

25 A That's correct.

1 Q So I take it that these phrases, like "No
2 TRAM," "No Forrest," "Don't sic Forrest on it," referred
3 to situations in which TRAM was not to be asked to
4 identify logistics options. Is that correct?

5 A I don't think that's correct at all. I am --
6 as you have been handing these out, I have been dredging
7 my mind to try to understand why this was written. I
8 frankly don't understand the primary context. I can
9 only guess at the fact that it was not meant to prevent
10 Mr. Baker from evaluating anything. It certainly wasn't
11 our case.

12 If you think about what we wanted to do, the
13 purpose of our study was to as much as possible find
14 logistics options, and I can't think of any good reason
15 why we would have said to Mr. Baker, don't study a
16 particular movement, because if he didn't study it, it
17 would have been one without options.

18 So, I am having a tough time in my own mind
19 understanding why -- I don't think these notes quite
20 refer to a sense of having Mr. Baker not look at
21 something. It may have referred to the fact that Mr.
22 Baker could not find anything on a particular movement,
23 and we have plenty of examples of this in our work.

24 Q Looking at these documents, they don't seem to
25 address a situation in which, if the matter is not

1 referred to Mr. Forrest, there is no option available,
2 because they say in one case, "Talk to the market
3 manager," and in another case they say, "Use other
4 defences."

5 In fact, in two of the documents, they say,
6 "Talk to the market manager," and the third document
7 says, "Use other defences."

8 Let me suggest to you, and maybe this will
9 refresh your recollection, let me suggest to you that at
10 the time that these documents were produced, at the time
11 there was a meeting at which these notes were made, or
12 whatever, someone had made a judgment that if you had a
13 logistics option problem for grain moving more than 500
14 miles, that Mr. Baker was not going to solve that
15 problem for you, and there was no point in sending it
16 over to him.

17 Now, does that refresh your recollection as to
18 what actually happened?

19 A No, sir, it doesn't. My suspicion is that
20 this refers to one cell out of approximately 1,200 that
21 we evaluated, and it might refer to a very, very unique
22 situation. That is my best guess of what is going on
23 here. I fall back on my previous answer, saying there
24 is no reason that I would prevent Mr. Baker from looking
26 at it. It would have certainly helped our case in these

1 situations.

2 Q You don't recall any situation in which a
3 decision was made not to refer issues of this kind to
4 Mr. Baker because he had said, sorry, I can't help you?

5 A You are asking a slightly different question.
6 You are saying, was there any -- did Mr. Baker -- I will
7 answer it a little bit backwards for you. Maybe this
8 will help. Was Mr. Baker ever told not to look at any
9 options, not to look at any moves? No. He looked at
10 the ones that we gave him.

11 There is no reason why Mr. Baker would have
12 been again asked not to look at a particular set of
13 flows. We did not pre-screen from that perspective if
14 it did not pass the first set of tests. And again,
15 because of the absence of truck data in the Beebie data
16 base, was a common area that we would have Mr. Baker
17 examine for logistics options. Then he would have been
18 involved in it.

19 I must admit, I am having a hard time
20 understanding what you are asking.

21 Q I am just asking for your best explanation of
22 why there notes taken by people who were affiliated with
23 you in this study appear in your work papers and what
24 they mean. Have you told me as much as you are able to
25 tell me on that subject?

1 particular aspect, such as a common point or a local
2 flow.

3 Q Do you know who prepared this document?

4 A I may have had a hand in developing some of
5 the alternatives. I can't answer for sure if I was the
6 one who did it all.

7 Q Do you know when it was prepared?

8 A No, sir.

9 Q The title of the document is Hierarchy of
10 "Other" Defenses. And is that term -- or does that term
11 "defenses," refer to defenses against claims that this
12 merger would adversely affect the transportation
13 alternatives available to Santa Fe and Southern Pacific
14 customers?

15 A I think it is an inappropriate use of the word
16 here. I would not and have not used it since we were
17 working early in the project.

18 Q Do you recall that that term was used in the
19 first exhibit that we marked here today, 22? That was
20 the January 10th revision, Page 2-A, Page 2-B, Page
21 2-C. There may be other places, but those just popped
22 out. If it was inappropriate, if it was used at least
23 as late as January 10th, is that correct?

24 A From this document, you are correct.

25 Q What is the significance of the -- it says at

1 the top of the page, just under the title, "In rank
2 order." What is the significance of the ranking that
3 has been given to those other defenses in this
4 document?

5 A On this particular page, I am not exactly
6 sure. As I said, I did not know whether this was in
7 specific reference to, let's say, an LA-San Francisco
8 flow, where we might look at alternative water moves,
9 because you could move water between them, or to
10 Houston-Los Angeles movements.

11 It is difficult for me to answer it, because I
12 don't know the exact context. I could only indicate
13 that ordering changed a number of times in our process
14 as we were trying to find a correct mix of screens to
15 look at a specific market that best fit the alternative
16 options available to shippers in that market.

17 In certain cases you would have water
18 available. In certain cases, you wouldn't. So the
19 types of logistics options did vary as we know in the
20 real world and varied here. This couldn't refer to a
21 specific movement channel, like Texas coast-LA.

22 Q Let's turn to Appendix 1 of your verified
23 statement. On Page I-4 --

24 (Whereupon, a brief recess was taken.)

25 JUDGE HOPKINS: Back on the record.

1 MR. VON SALZEN: Thank you, Your Honor.

2 BY MR. VON SALZEN: (Resuming)

3 Q Dr. Andersen, if you would turn to Page I-3 of
4 your verified statement -- Do you have that page before
5 you?

6 A Is this the appendix?

7 Q That's correct, but it is in Volume 16, the
8 main volume.

9 A It is the appendix. Is it I-A-3?

10 Q No, it is just plain I-3.

11 A Okay. It is in Chapter 1, then.

12 Q It is sort of a few pages after the blue
13 divider page, if your volume has got the blue divider
14 page.

15 This is a section that is called Selection of
16 Study Regions, and this is really just a point of
17 clarification. In the carry-over paragraph on that page
18 there is a sentence that begins, "Table I-1 lists all
19 current ATSF-SF common points," and so forth, and it
20 says "identified by the client railroads."

21 Now, I had understood your testimony yesterday
22 to be that in fact TPE identified the common points
23 through a fairly complicated process that you were
24 describing yesterday. Is your oral testimony yesterday
25 correct as distinct from what is here on the page?

1 A Yes. The sentence is not quite clear in terms
2 of the actual process of how it was done. Certainly the
3 railroads were involved in helping to determine these
4 common points. As you know, it might be a very complex
5 issue as to who is open for reciprocal switching and who
6 isn't, but my oral testimony of yesterday basically
7 stands.

8 Q Then let's turn over to the next page, Page
9 I-4, and Table I-1. And let's, if we can, just focus on
10 this table as it was originally presented for a moment
11 before the various changes that you've talked about.

12 There are, if you will accept my count,
13 roughly 40 common points listed in that table. Will you
14 accept that as being plus or minus two correct?

15 A Could I ask for a clarification? Why are we
16 looking at an unrevised table? I focus on the
17 revision. Is there some reason you need to use the
18 unrevised table?

19 Q Well, do you have the unrevised version before
20 you, except that the revisions --

21 A I have a copy of it here. I would prefer to
22 use the table as we have corrected it.

23 Q I understand. I am not going to try and
24 confuse you. I am just trying to get some information.
25 Let's accept for the sake of my questions that there are

1 roughly 40 common points identified there, and do you
2 have yesterday's exhibits, the UP/MP exhibits that you
3 were given yesterday?

4 It would keep the record one document thinner
5 if we could use that instead of remarking. This was
6 UP/MP-C-19. It was a letter from you to Mr. Smith dated
7 November 23, 1983.

8 Do you have that before you?

9 A Yes, I now have it.

10 Q And you identified that letter yesterday.

11 A That's correct.

12 Q Okay. On the first page, under the heading
13 Background, the first sentence reads, "The Southern
14 Pacific-Santa Fe, SPSF hereafter, steering committee has
15 identified approximately 50 communities in which the
16 number of rail carriers serving the community will be
17 reduced by one as a result of the merger."

18 My first question to you is how you got from
19 approximately 50 on November 23, 1983, to approximately
20 40 in March of 1984.

21 A As the sentence says, we had identified at
22 that point approximately 50 communities. Given the
23 first bit of corrections to my testimony, I think it is
24 pretty clear that this is a very difficult process to
25 discover all these points.

1 We have to look through many tariffs, many
2 circulars, and also discuss things often with local
3 agents as to exact conditions in a particular region.

4 So that I am not sure what you are driving
5 at. Approximately 50 sent to me. We were in the
6 process of looking, trying to determine which ones were
7 actually common points all through this process. We
8 have now come out to a final list of those.

9 We handed out a table yesterday with the
10 final, hopefully our final list of SPLC's that were
11 included in those common points, and that I will let
12 stand as the record on this in terms of the exact
13 numbers.

14 I frankly can't -- you have got somewhat of a
15 confusion here between cities or communities and common
16 points. There may be a lot of SPLC's in a certain
17 common point, and the numbers. It is hard to actually
18 characterize a comparison of the 50 that were here to
19 the ones that have actually emerged as our final list.

20 Some that were on here initially, for example,
21 like Dodge City, were taken off the final list that were
22 in that list of 50 because SF abandoned the line. So
23 there are situations like that that clarified as we went
24 along, and the list -- I will say that we had identified
25 133 SPSF common points.

1 Now, these could be competitive or
2 noncompetitive common points, and in our study I believe
3 we analyzed somewhere over 100 of those points, which
4 is, if my math serves me well, somewhat greater than 80
5 percent of common points, both competitive and
6 noncompetitive.

7 Those would be points that would be created as
8 common as a result of this merger, 133, and we have
9 studied in here, to the best of my knowledge, somewhere
10 about 80 percent of those points, both competitive and
11 noncompetitive.

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1 Q In the very last line of that page, the first
2 page, the sentence begins: "Finally, they," meaning
3 SFPSI, "have identified some flows between common points;
4 e.g., Los Angeles-Houston, Kansas City-Los Angeles,
5 Kansas City-San Francisco, Dallas-Los Angeles, where the
6 merger would also potentially reduce transportation
7 options for shippers.

8 I know you discussed this sentence with Mr.
9 Roach yesterday. I don't want to plow old ground, but I
10 don't believe he asked you specifically about the
11 Kansas City-San Francisco local flow that's referred to
12 here.

13 And maybe the answer to this is the same
14 answer you gave yesterday, but can you tell me why it
15 was ultimately in your study that you did not study this
16 local flow as such?

17 A You are correct in saying we didn't study it
18 as a separate chapter. However, flows moving San
19 Francisco was a Group II common point, so flows moving
20 out of San Francisco or into San Francisco from Kansas
21 City would have been included in that part of the
22 analysis.

23 Secondly, Feeble Associates, as a separate
24 part of this application -- I believe the books are
25 SFPSI-19 and 20 -- did evaluate a number of these

1 particular flows, and it's also evaluated there. We did
2 not do any special charter on this particular flow;
3 that's correct.

4 Q Was that then simply a situation in which,
5 given the time constraints you were operating under, and
6 the study that Feeble was doing, this simply was taken
7 out of your scope of work?

8 A No. As you see in front of that, it says
9 "e.g." They were examples of ones that might be
10 studied. It was determined when we were getting into
11 this process that Kansas City has a number of
12 alternative carriers, much greater than other common
13 points, that fan out in all directions from it.

14 It was felt that it was unnecessary to do the
15 amount of detailed evaluation there that we might have
16 done in other places where the number of rail carriers
17 was fewer.

18 And again, it was studied in two places in the
19 Applicants' submission, the Feeble's and ours.

20 Q Well, Kansas City wasn't studied in yours, was
21 it?

22 A Flows to and from Kansas City that moved into
23 San Francisco were studied, yes.

24 Q Oh, sure. Sure. But Kansas City, per se, was
25 not.

1 A That's correct. As it states in Table I-1,
2 there is more than one competing rail carrier after the
3 proposed merger at that point.

4 Q The local flow between Kansas City and San
5 Francisco may have been covered elsewhere, but it's not
6 as a local flow dealt with in your study.

7 That, I think we've established. And do you
8 have anything more to add to your answer to my question
9 of why it wasn't studied in your study?

10 A I'll let the record stand as it is. The
11 methodology did not require this analysis on the basic
12 table here.

13 MR. VON SALZEN: I have no further questions,
14 Your Honor.

15 JUDGE HOPKINS: Thank you.

16 Mr. Bleakney.

17 BY MR. BLEAKNEY: (Resuming)

18 Q Dr. Anderson, I'm Robert Bleakney. I'm
19 counsel for Kansas City Southern Railway, and have a
20 very few questions. And those few questions will focus
21 primarily around the subject on which we've had a lot of
22 testimony; namely, customer logistics options. And I
23 will certainly endeavor not to replot any ground, except
24 to any minimum necessary for context.

25 First, do I correctly understand both your

1 direct testimony and what I've heard in the last few
2 days, that a customer logistic option has value to a
3 customer whether or not that particular option is used
4 by the customer?

5 A That's correct.

6 Q And am I right in understanding that a
7 particularly significant aspect of that value is the
8 value to the customer of having a logistic option or
9 multiple logistic options which can affect the
10 customer's ability to negotiate rates or service with a
11 particular railroad?

12 A That's what competition is all about.

13 Q Yes.

14 And I am certainly not going to try to list
15 the logistic options which are in your testimony and so
16 forth, but certainly among them are options to either
17 reduce or terminate the use of that particular railroad,
18 whether that is by transferring traffic to some other
19 railroad, some other mode, or in fact changing one's way
20 of doing business in the way you have described as
21 source competition.

22 I'm not trying to be exhaustive, but those are
23 all included, are they not?

24 Q I'm not quite sure I understood the first
25 option you presented. Reduced another mode?

1 Q Okay. Well, absent that, is my sentence
2 correct as you understand it in terms of your testimony
3 as to what some of these principal options are that are
4 available to customers?

5 A The testimony indicates a wide variety of
6 options.

7 Q And on the question of reducing, first, one
8 form of reduction would be just to move only a lesser
9 amount of your existing traffic by that railroad, as
10 compared to what had been your past practice.

11 Would that be a logistic option available
12 to the customer?

13 A No, I wouldn't characterize that as a
14 logistics option at all. That's altering the level of
15 movement in a particular channel. The option is still
16 there to use greater or lesser amounts of a particular
17 carrier; in this case, the railroad to the shipper.

18 Q Would that become an aspect of a logistics
19 option if a portion of the past railroad traffic was
20 transferred to another mode of transportation or to
21 another railroad?

22 Would that be the exercise of a logistic
23 option?

24 A Generally, a logistics option could be moving
25 it to another carrier or moving it to intermodal even.

1 Q Isn't it also true that commonly in the United
2 States, railroad shippers do have the ability to short
3 haul a particular railroad by exercising routing options
4 for their traffic?

5 A That's generally been true in the past. The
6 shippers I work with at present do not find the short
7 haul to be a very attractive alternative because of
8 their own needs for single line service or a variety of
9 other reasons: increased transit times and other
10 problems that might arise from the short hauling
11 option.

12 Q To the extent that short hauling is an option
13 available to shippers, have you evaluated the extent to
14 which that option exists in the territory served by the
15 Santa Fe and Southern Pacific?

16 A I'm not quite sure what the question is. What
17 you're asking is not so much -- that's part of one of
18 the logistics options available, part of a distribution
19 channel. It's a fairly sophisticated part of a channel.

20 Q Are you asking whether or not we evaluated a
21 particular channel with respect to keeping a gateway
22 open? I'm not sure what you're asking.

23 Q I'm asking whether you made any study -- any
24 study -- to measure the extent of short haul logistic
25 options in the territory served by these two railroads.

1 A We basically kept the gateways open in this
2 region that would allow short hauling to occur in our
3 analysis. We didn't close gateways and see what the
4 impact of that was.

5 The statements that have been made in this
6 hearing have all related to the continued open gateway
7 policy at Ogden, Sweetwater, El Paso, for example.

8 Q So, with that explanation, the answer to my
9 question is no, you made no such study; is that
10 correct?

11 MR. MOATES: I object to that
12 characterization. I think that mischaracterizes what
13 Dr. Anderson said.

14 JUDGE HOPKINS: Well, what is the answer?

15 THE WITNESS: The answer is we kept short
16 hauling open. I thought that was pretty clear.

17 JUDGE HOPKINS: That isn't the question. Will
18 you restate the question?

19 THE WITNESS: I'm sorry, Judge.

20 BY MR. BLEAKNEY: (Resuming)

21 Q Have you made any study of the extent to which
22 rail customers in the Santa Fe Southern Pacific
23 territory have the option to short haul either of those
24 carriers?

25 A We did not make any specific study.

1 simultaneously. We did not take that out of our
2 logistics option. We did not say that wasn't part of an
3 option that could exist.

4 We did not go out and interview a set of
5 shippers, if that was the question you were asking,
6 about their short haul options. No, we didn't do that.

7 Q You said you did not take it out of an option
8 that did exist. Would you please explain that
9 statement?

10 A That's what I explained in the previous
11 question when I thought I was answering your question,
12 was that assuming the gateways stay open in the West for
13 the places I named, then short hauling is certainly an
14 option that the shippers would still have in their bag.

15 Q So I also take it -- and I'm sure you'll free
16 to explain -- but is it correct that you have made no
17 study to determine whether short hauling options by way
18 of routing of shippers would or would not be adversely
19 affected by the merger?

20 A I missed the transition into your last
21 phrase. I didn't quite hear what you said.

22 Q Did you make any study as to whether the short
23 hauling routing option of shippers, as it exists today,
24 would be adversely affected by the proposed merger?

25 A No, we didn't.

1 Q Okay. One other limited area, if you will
2 bear with me a moment.

3 If you would turn to page 16 of your direct
4 testimony.

5 A Verified statement, page 16?

6 Q Yes. Your verified statement. I'm sorry.

7 And there, you will note your reference to the
8 exhibits C-4 and I believe also C-3 is involved in the
9 testimony concerning some general employment data in
10 certain areas; correct?

11 A Yes. There was a correction filed. They are
12 both C-3. I will just note that for the record.

13 Q Yes. I don't intend to get into the numbers
14 specifically, Dr. Anderson. Let me ask you, however,
15 how critical is the information on those exhibits and
16 the testimony based on them to your conclusions in this
17 case?

18 A One of the ways in which we evaluated the
19 impacts of any change in the logistics systems on the
20 service region was to look at how important the railroad
21 was to both the existing industries and to those
22 industries that were growing the fastest in those
23 regions.

24 And I would say that these particular
25 summarizations here of the economic areas are background

1 material, just as indicator of the relative role of the
2 railroad in the regional economy, just as we did in the
3 transportation profiles. We looked at the relative role
4 of the truck and rail carriers in regional activity.

5 Q If these figures produce statistics
6 dramatically different, and particularly I refer to your
7 percentage on the bottom of page 16, say if they
8 produced a percentage substantially higher than 40
9 percent, would that affect your conclusion in this
10 case?

11 A I must admit to another slight omission in the
12 testimony. We didn't include government employment, so
13 if you included government employment, you would cut
14 down these numbers substantially further. And so I
15 wouldn't think that the -- some of these numbers aren't
16 exactly the reality of what's out there.

17 I just raised that parenthetically. The
18 question you raise is, if it was greater than 40
19 percent, would this be a major impact? Might there be
20 an impact on this? I can't say. We didn't do any
21 specific study of the relevant impacts on regions of
22 changing rail service.

23 Q And that 40 percent, as I understand it -- and
24 correct me if I'm wrong -- assumes no rail
25 transportation need for the wholesale/retail trade; is

1 that correct?

2 A As it says on page 16 in that second sentence
3 of the second bullet paragraph there, "The sectors are
4 heavily dependent on motor carriers." It doesn't say
5 that they are not dependent on railroads.

6 Q So you're saying that you would recognize that
7 the wholesale/retail trade does have some need for rail
8 service; is that correct?

9 A I haven't studied it specifically lately as to
10 exactly what they use, but I'm sure that some intermodal
11 traffic moves to the wholesale/retail trades.

12 Q Well, am I right in understanding that the 40
13 percent figure on page 16 is arrived at by observing and
14 noting the figures on your Exhibit C-3 as revised, and
15 then applying a factor for agricultural employment?

16 A It was a general statement that was made.
17 You've expressed it approximately correctly how we
18 arrived at that number.

19 Q So it's basically a judgment number, I take
20 it?

21 A That's correct.

22 MR. BURKNEY: I have nothing further. Thank
23 you.

24 JUDGE HOPKINS: Thank you.

25 Mr. Greenberg.

1 BY MR. GREENBERG:

2 Q Good morning, Dr. Anderson. My name is Ed
3 Greenberg, and, like several of my predecessors here
4 this morning, I will try very hard not to go over too
5 much of the ground or any of the ground which has
6 already been discussed.

7 While you have them in front of you, I'd like
8 to call your attention to a couple of exhibits that have
9 been discussed this morning, if you have in front of you
10 UP/MP-C-19. Do you have that before you?

11 A Yes.

12 Q In the bottom paragraph on the first page,
13 under the category of background, the first sentence
14 refers to a steering committee. That steering committee
15 is also identified midway through that paragraph.

16 I apologize if you explained what the steering
17 committee was when this exhibit was introduced
18 originally, but can you please tell me who was on that
19 steering committee?

20 A The steering committee was made up of both
21 Southern Pacific and Santa Fe lawyers, marketing
22 personnel, and the primary consultants in the case:
23 Terile, Parker & Sloane, Mr. Baker from TRAB, Mr. Iever
24 from Reebie Associates.

25 Q And who was it who actually identified the 50

1 communities that you refer to in that paragraph? Was it
2 Temple, Parker & Sloane? Was it TRAM? Was it the
3 lawyers? Who specifically identified those
4 communities?

5 A We had a number of initial meetings where the
6 railroads gave us some preliminary lists and said these
7 are what we think it is; go find out if this is the
8 case.

9 So they initiated the process to the best of
10 their knowledge. But it was our prime responsibility to
11 determine whether or not common points did exist where
12 they were.

13 Q When did those meetings begin?

14 A Oh, I would say somewhere around mid-November
15 of last year that I was initially involved in. There
16 may have been some meetings previous to that. I would
17 have no knowledge of those.

18 Q At the first meetings which you attended, were
19 there lists of communities that were supplied to you by
20 the railroads?

21 A There were preliminary lists that were
22 generated to work on at those meetings. That's
23 correct.

24 Q How different was the list that was presented
25 to you at your first introduction to this steering

1 committee from the list which you refer to in
2 UP/MP-C-19?

3 A I'm not quite sure I understood the question.
4 The final list

5 Q Let me rephrase it.

6 Did you add any communities to the list which
7 was originally supplied to you by the steering
8 committee?

9 A Over the course of the study there have been
10 substantial changes in the list, including additions and
11 subtractions from the common points.

12 Q I would like to ask you, as of November 23
13 when you wrote this letter, did you add any communities
14 to the list that was originally supplied to you by the
15 railroads?

16 A I'm not sure I understand the question. These
17 meetings were fairly open in terms of taking a piece of
18 paper that had some common points written on it, and
19 crossing some out and adding some to it during this
20 process.

21 I can't really say for sure whether I
22 personally added any common points before November 23,
23 if that was the question. I certainly have afterwards.
24 But before November 23, I'm just not -- I don't
25 recollect.

1 Q Do you have your appendix before you? This
2 would be the one -- I'm looking particularly at page
3 Roman numeral I-4. It's revised Table I-1.

4 A Yes.

5 Q Could you please tell me, under the column of
6 Other Line Haul Railroads, how do you define the term
7 "line haul"?

8 A A line haul railroad is basically a railroad
9 that can receive a line haul division of a rate.

10 Q You weren't using that term in order to
11 connote that the traffic -- the shipper could receive a
12 through railroad service from any given common point?

13 A Not necessarily.

14 Q I'd like you to look down at the entry for
15 Hutchinson, Kansas. Is Hutchinson, Kansas in your market
16 area for southwest Kansas?

17 A Yes.

18 Q Are there any common points that you studied
19 that fall within the area of southwest Kansas?

20 A The region defined by those counties in our
21 southwest Kansas market region is a big common point, so
22 to speak. So they are literally all common points to
23 some extent, by definition.

24 Q But you did not study them particularly?

25 A You are asking if there are any other points

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1 that were studied independently within the study
2 region?

3 Q Yes.

4 A No, there weren't.

5 Q Now, I note that when you took the stand
6 yesterday, that you made a correction to your testimony
7 to delete the reference to the CKT Railroad serving
8 Hutchison, Kansas.

9 I think that was an appropriate correction in
10 view of -- because of the fact that the Katy is asking
11 for track and rights to serve that city in this
12 proceeding.

13 How did it happen that CKT was originally
14 listed at Hutchison?

15 A I'm not exactly sure how it snuck in there.
16 It may have something to do with ancient Rock Island
17 rights or something of that nature that didn't carry
18 over with some of the purchases when the CKT bought that
19 north-south line out of Harrington.

20 Q Well, did you have Harrington confused with
21 Hutchison?

22 A No. We know the line. We know the line goes
23 south out of Harrington. The CKT line goes south out of
24 Harrington. There's no problem there.

25 I believe it was because somebody had accused

1 that there were trackage rights that existed over the
2 line from Harrington to Hutchison, the SSW line to be
3 precise.

4 Q What is the FN Railroad?

5 A The Hutchison Northern is a short line carrier
6 operating out of Hutchison, Kansas.

7 Q Do you happen to know how long their tracks
8 run?

9 A Would I be wrong if I said seven miles?

10 Q You'd be off by a mile. It's six.

11 A There are a few, shall we say, railroads in
12 this table that I am not totally comfortable with their
13 presence. And the Hutchison Northern is one of them.

14 Q Now, we've deleted, then, at Hutchison the FN
15 Railroad, which is the Hutchison Northern, and the CMT
16 which means that we are left with only a single railroad
17 serving Hutchison, Kansas.

18 A That's correct. No, I apologize. Of course it
19 isn't correct.

20 Q With the exception of the Santa Fe and
21 Southern Pacific. Of course. Thank you for the
22 correction.

23 A I want to keep my job.

24 (laughter.)

25 Q You've given the Katy trackage rights and

1 taken away the Santa Fe. Thank you.

2 Now, does that change the type of entry which
3 should appear in that third column with respect to
4 Hutchison, Kansas?

5 A Ideally, Hutchison, Kansas should then be
6 looked at as a Group II common point, since Hutchison,
7 Kansas was included in the southwest Kansas study area
8 which was studied more in depth than the Group II
9 locations in terms of the mileage block analysis that
10 was carried out there relative to the absence of mileage
11 block analysis in the Group II's.

12 We felt that in spite of the change, in other
13 words, the fact that the GXT and the EN really couldn't
14 be considered line haul carriers in Hutchison, that we
15 did a sufficient analysis, in fact a much more detailed
16 analysis of Hutchison as part of that particular study
17 area than we would have done if Hutchison had been done
18 separately.

19 Q In preparing your study, did you rely on any
20 data provided by the Applicants in their diversion
21 study?

22 A No.

23 Q Let me turn it around. Did you supply the
24 Applicants with any information that was ultimately used
25 in the preparation of their diversion study?

1 A Not to my knowledge

2 Q Now, one final question on an exhibit that's
3 been discussed this morning. If you would please turn
4 to DRGW-C-22, do you have that before you?

5 A Yes.

6 Q Would you please turn to the page which is
7 marked CDA 442. This falls under the area of southwest
8 Kansas. That was your market analysis of that
9 particular area; is that correct?

10 A That's correct.

11 Q And this is all part of this omnibus title
12 called "Final Work Plan," correct?

13 A Yes, that's correct.

14 Q Were there items in the Final Work Plan which
15 were not completed?

16 A I could restate that and say were there items
17 in the Current Work Plan that were not started. And
18 yes, there were items that were not started.

19 I can't recall any that may have not been
20 completed, because once we settled on a process we
21 carried it out, normally.

22 Q On CDA 442, under Category 4, it indicates
23 that one of the tasks was to develop a motor carrier
24 cost structure. And there are two different levels at
25 which this is to be done. Basically farm country

1 elevator movements and country elevator terminal
2 elevator movements.

3 Q Was this done?

4 A No.

5 Q Why not?

6 A Because when we began our analysis of Kansas,
7 we realized very quickly that there wasn't the
8 traditional type of competitive relationship between the
9 lines of the Santa Fe and the Southern Pacific through
10 that region, in the sense that the traffic that moved on
11 those lines generally moved in different directions.

12 In other words, the SP traffic was primarily
13 the east-west flow, the Santa Fe traffic primarily
14 north-south. So there was, to our estimation, little
15 direct competition between these two lines for traffic.

16 Q Well, weren't you concerned that motor
17 carriers might provide a modal option to rail service?

18 A That's correct.

19 Q Wouldn't it be helpful, in order to determine
20 the answer to that question, what the motor carrier cost
21 structure might be?

22 A You can also get the same information from
23 asking how many miles a particular elevator or farmer
24 might move his grain. That might be more reflective of
25 more general conditions in the marketplace that would

1 have influenced the logistics channel you were studying.

2 In other words, the fact that a certain type
3 of movement may be made at a certain time to take
4 advantage of a better price at an elevator that's, let's
5 say, even located on the OKT rather than sending it to
6 an elevator somewhere else. And if he was willing to
7 truck 100 miles, say, in that situation, then that would
8 be a reflection of what the distribution channel might
9 be at a certain time.

10 So cost is one aspect of it, but not the only
11 one.

12 Q So you felt that because of the geographic
13 orientation of the two lines, that that fact, standing
14 by itself, meant the two carriers, the Santa Fe and
15 Southern Pacific, do not and would not compete for the
16 grain traffic; is that correct?

1 A You asked a compound question. I will give a
2 simple answer. We found that the volume of traffic
3 moving on the two railroads was moving in quite
4 different directions, leading us to believe there
5 historically has been very little direct competition
6 among the rail lines for that traffic, basically because
7 the SSP, in this case part of the Southern Pacific
8 system, does not provide single line service to the
9 Gulf. It only provides it in conjunction with the OKT
10 over Harrington.

11 Q How is a farmer paid for his grain? Is he
12 paid by the railroad? Is he paid by some other source?

13 Who normally pays the farmer?

14 A I'm not a complete expert on all aspects of
15 how grain is marketed in the United States. I know that
16 it can be marketed through a co-op arrangement where
17 farmers get together and pool their grain for sale. It
18 can also be sold directly to a local elevator. It could
19 be sold to a terminal elevator, depending on whether or
20 not the farmer wanted to move the grain a distance to
21 get a better price for his crop.

22 There are many, many different ways in
23 which -- there are many, many different prices I guess
24 is the best way to express it, that a farmer would face
25 in the spectrum of prices he would look at in deciding

1 where to market his grain.

2 Q The farmer, I take it, would normally be paid
3 by whatever elevator he moves his grain to?

4 A I'm not sure if that's true in all cases. As
5 I say, I'm not an expert on grain marketing. I think
6 that's a fair statement of what my understanding is of
7 the system.

8 Q So depending upon the particular elevator that
9 he felt was in his best economic interest to utilize,
10 that would determine the price he was paid for his
11 grain.

12 A He would certainly look at the price being
13 offered at various elevators and determine whether or
14 not he could economically move his product there based
15 on his cost of production and any transportation costs
16 that would be inherent in the movement to the elevator,
17 that's correct. He is a profit-maximizing individual I
18 would hope.

19 Q And one of the elements of cost that he has is
20 the cost of moving to whatever elevators he has
21 available to him, is that not so?

22 A Unless he is directly served, let's say, by a
23 railroad, and certain farms may be served directly by a
24 railroad. But otherwise -- I'm sorry, I misspoke.
25 That's correct, basically. I was thinking of something

1 else.

2 Q So in order to determine what alternatives he
3 truly has, would it not be appropriate to look at what
4 those trucking costs are so that we can see whether he
5 wants to move his grain in an east-west direction down
6 the SSW line, or instead, he wants to move it to the
7 Gulf or he wants to move it to Kansas City.

8 The question is -- I guess it's a compound
9 question, but I'm trying to explain what I'm driving
10 at, that in terms of looking at his particular options,
11 when he can move his grain in different directions,
12 isn't it appropriate to determine what the motor carrier
13 cost would be so we can truly see what his options are?

14 A Is this a hypothetical question?

15 Q No, sir.

16 A I've already described the fact that our
17 findings in this study do not indicate that there was a
18 substantial competition between the two lines because of
19 the orientation. If we are referring it directly to the
20 study area, I can't answer the question directly because
21 I didn't feel that there were any substantial losses
22 occurring in competitive options from many of these
23 shippers, as a matter of fact. I think under the merger
24 that there will actually be improvement for many
25 shippers, as has been stated before, because of the new

1 ability to have single line service to the Gulf for SSW
2 grain shippers in the southwest Kansas region.

3 Q Did you study whatever option shippers might
4 have moving grain from southwest Kansas to Mexico?

5 A I'm not aware of any particular study we made
6 of that. Certainly if there were any movements that
7 were inherent in the flows in and out of that study
8 region to Texas -- excuse me, to Mexico, that they were
9 analyzed.

10 Q You are not aware that was analyzed? Is that
11 what you just said?

12 A I said we didn't make any special study of
13 this. If there were movements out of southwest Kansas
14 that did go to Mexico, then they were within the study
15 tonnage that was analyzed.

16 MR. GREENBERG: Your Honor, at this time I
17 would like to have marked for identification two
18 separate exhibits. They would be MKT-C-59 and MKT-C-60,
19 and these are sets of work papers. The MKT-C-59 would
20 be the work papers that commence with the description of
21 CDA 217.

22 JUDGE HOPKINS: They will be marked for
23 identification.

24 (The documents referred to
25 were marked Exhibit Nos.

1 MKT-C-59 and MKT-C-60 for
2 identification.)

3 THE WITNESS: Are we through for the present
4 with the DNRGW exhibit?

5 BY MR. GREENBERG: (Resuming)

6 Q Yes.

7 Dr. Anderson, can you please turn your
8 attention to what has been marked as Exhibit MKT-C-59,
9 which is a work paper which commences with the number
10 CDA 217. I will skip the first page and the reference
11 to the word "defenses" since that was gone over at some
12 length this morning.

13 Can you identify this work paper?

14 A Yes. It was a work paper that I prepared for
15 a presentation to the steering committee that was given
16 the middle of December last year.

17 Q Would you please turn your attention to the
18 second page, which is CDA 218, the top one-third of the
19 page, under the heading of "Report Outline," there is a
20 sentence which says "What do you want out of
21 testimony?"

22 Can you tell me, what did you mean when you
23 wrote that?

24 A It's very simple. We had to be able to mesh
25 with any work that Mr. Samuel or Mr. MacAvoy had to

1 perform to determine the overall costs and benefits of
2 the merger, and the question I was asking was what
3 exactly is the type of information you are looking for?

4 Are you looking for total tons that would be
5 affected, possibly, by the merger of these two railroads
6 as a way of initiating analysis of potential harm from
7 the merger, and that's what that discussion was all
8 about. It was on what exactly is the bottom line that I
9 have to feed into more general testimony on the impacts
10 of the merger.

11 Q Who did you send this note to?

12 A It wasn't sent to anybody. It was my notes
13 for the presentation. I asked the question at the
14 presentation.

15 Q And what did they tell you in response to that
16 particular question?

17 A They said we've have a meeting with Dr.
18 MacIvory and discuss it in more detail, which I believe
19 took place. I can't know the exact dates offhand, but I
20 would assume after that, where we discussed what he
21 needed to complete his analysis. He described his
22 methodology to me, and once I understood that, I knew
23 the type of final output and literally a couple of
24 numbers he needed from my work to calculate potential
25 welfare lost due to the merger.

1 Q Did you have a meeting with anybody on
2 December 14, 1983?

3 A That's what I've just explained.

4 Q Was it a meeting? I'm sorry. I missed that.

5 A Presentation to the steering committee, to the
6 SFSF steering committee.

7 Q The presentation took place that day?

8 A That is correct.

9 Q Could you please turn to what we've marked at
10 MKT-C-60, which is work papers CDA 224 and 225.

11 Can you identify that paper, please?

12 A Yes. Since I was doing all the talking that
13 day, as I am today, I asked someone in the room to take
14 notes for me on what was said at various points during
15 the meeting, and this was the writing of the famous Mr.
16 Zisman.

17 Q Now, I would like you to look at two separate
18 pages in answer to my next question. Take a look at
19 Exhibit 59, at CDA 221, and Exhibit 60 at CDA 224.

20 A At CDA 221, you wrote that you needed to
21 evaluate lessons from other reports, "really need help
22 here," and Mr. Zisman dutifully recorded that comment by
23 indicating that SFSF positions in other proceedings
24 should be researched so we don't embarrass ourselves as
25 self-serving.

1 What was that discussion about?

2 A Well, I can't comment what was in Mr. Zisman's
3 head with respect to what he exactly wrote there. I can
4 indicate to you what we were discussing, and that was
5 that there certainly had been other cases tried before
6 the Commission in the last couple of years, such as the
7 UP/MP merger, that issues that related to trackage
8 rights or whatever had come up, and it was important for
9 me to try to understand, as they related to grain, if
10 there was anything in there that I should know about.

11 I didn't have time necessarily to research all
12 the merger information that had been generated
13 historically, and I just wanted to be sure that I was
14 familiar with various types of previous rulings on
15 certain situations. I was particularly interested as to
16 what evidence, of course, the Commission felt to be most
17 valid in analyzing competitive potential harm as a
18 result of a merger.

19 It was a more generic statement, I think. I
20 don't think it was referring just to southwest Kansas.
21 I brought it up there. This was, of course, a
22 presentation I had actually put together the night
23 before, and it didn't always have everything in the
24 right place. It was a more general discussion, I
25 believe, of what lessons were there in other mergers.

1 that could help us here. Certainly southwest Kansas
2 analysis was part of that.

3 Q Did anyone offer you guidance as to what
4 positions might be self-serving?

5 A As I say, I didn't -- I don't remember that
6 particular comment being made. It could have been
7 written down as something that Mr. Zisman felt as a
8 personal opinion. I can't testify to that. I don't
9 remember any discussion other than the indication that
10 two things would happen.

11 One is that any records we wanted would be
12 made available to us, and secondly, that, as necessary,
13 paralegals would be available to help us look through
14 some various cases.

15 Q Now, before I ask my next question, I can tell
16 you that we can shorten my questions an awful lot
17 depending upon the answer to this next question. So I
18 ask the question with great trepidation.

19 Q Can I assume from your testimony that you are
20 not stating as a proposition that there is competition
21 for rail movement of grain from southwest Kansas in the
22 nature of trucks, that trucks compete with rail for the
23 movement of southwest grain to the ports?

24 A Do I believe that trucks compete with rail for
25 movements out of southeast Kansas?

1 You asked me two questions, one to the ports,
2 which could be a fairly long haul, or are you asking
3 versus to a terminal elevator from that district into --
4 there are many, many --

5 Q I'll break the question down.

6 A Thank you.

7 Q Do trucks compete with railroads for movements
8 from terminal elevators to the Gulf ports from southwest
9 Kansas?

10 A As part of the logistics channel that exists
11 between southwest Kansas and the Gulf, there are
12 options. One of the options might be to move via truck
13 off, let's say, an elevator or a country house on the
14 SSW to Enid, and then by rail to the Gulf. Now, I would
15 consider that to be -- truck to be "competitive" in some
16 sense in that type of movement.

17 Simultaneously, you could move all rail in
18 that channel. So I hope I answered your question. I
19 don't know for sure, and I can't testify that there are
20 actually trucks that run the whole long distance to Gulf
21 ports. I would suspect there are in certain
22 circumstances.

23 But if you are asking whether trucks
24 participate in the distribution channels to the Gulf,
25 absolutely. Trucks run stuff off the farms to local

1 elevators, they run it to terminal elevators, they run
2 it to -- perhaps even directly in many cases.

3 Q The question asked was restricted to terminal
4 elevators.

5 Do trucks move grain from terminal elevators
6 in southwest Kansas to the Gulf in any appreciable
7 quantity? And I'll define the term "appreciable."

8 Would you say that trucks have more than a 5
9 percent share of the market on moving grain from
10 terminal elevators to Gulf ports?

11 A These are terminal elevators that are located
12 in southwest Kansas?

13 Q Yes.

14 A Not a whole lot of them in southwest Kansas
15 proper.

16 Weren't you more talking about Hutchinson,
17 Topeka, Wichita?

18 Q No, sir, I said southwest Kansas, your study
19 area.

20 A That's more central than southwest. So that
21 would be a truck -- just so we understand ourselves
22 perfectly, that would be a truck line haul directly, no
23 rail connection at any point in the move. You put your
24 grain in the truck at Hutchinson and you run it all the
25 way down to Houston. Is that what you are saying?

1 Q That's what I'm saying.

2 A I told you earlier, I think there are probably
3 some movements like that. I can't say for sure what the
4 market share is. I'm not an expert in that particular
5 very narrow distribution channel that you are referring
6 to here.

7 Q Well, you used the Kansas grain marketing
8 study, did you not, as part of your analysis of modal
9 shares?

10 A If that is the document that was indicated --
11 is that the same document that you asked us about that
12 you might cross examine us on?

13 Q That's one of them, yes.

14 A I just forgot the title of it.

15 Is that based on 1977 data?

16 I'm just trying to get the right document in
17 mind.

18 Q That one was the one that was based on, in
19 your work papers, is based on the one in 1981. The
20 other one was -- the 1977 data was an earlier one done
21 by Kansas. I think it was Kansas University. I have it
22 here. We can get to that later. I was trying to avoid
23 having to get to it.

24 A I'm just trying to understand what you are
25 asking me, too. I want to answer the question.

1 Q The 1977 study was done by Kansas State
2 University, by the agricultural experimental station.

3 A There's a number of sources for data, as you
4 understand, and in many of these studies it is kind of
5 hard.

6 I would have -- the direct answer is I would
7 have to get back to you after I discussed with staff
8 exactly which we used from there. I'm sorry. I don't
9 have every citation to every one of the voluminous
10 tables in here memorized as to where exactly all the
11 information came from.

12 Q Well, in your testimony, do you not conclude
13 that the motor carrier's share of the grain that moves
14 from terminals, grain terminals, in southwest Kansas in
15 your study area moves in excess of, I believe it was 96
16 percent by rail?

17 A It would be a lot easier if you looked
18 directly in the part of the chapters where you are
19 referring your questions to. As you well know, the
20 grain logistic system is very complex, and it has
21 multiple parts to its system. And as I indicated, I
22 didn't memorize every number for every part of the
23 system. It would be easier for me if we worked with the
24 chapter.

25 JUDGE HOPKINS: While are you looking for

1 that, why don't we take a recess? We haven't had one.

2 Let's take a recess for fifteen minutes.

3 (A brief recess was taken.)

4 JUDGE HOPKINS: Back on the record.

5 Mr. Greenberg?

6 MR. GREENBERG: Thank you, Your Honor.

7 BY MR. GREENBERG: (Resuming)

8 Q Dr. Anderson, is it your testimony -- strike
9 that.

10 Am I correct in assuming that your testimony
11 does not stand for the proposition that trucks transport
12 any appreciable percentage of the grain which moves from
13 Kansas to the Gulf ports?

14 And I refer you specifically to your Exhibit
15 XIV-C. That's Roman numeral XIV-C.

16 A From our Exhibit XIV-C, it shows that truck is
17 approximately 6 percent of that market.

18 Q So is the answer to my question yes?

19 A The answer is it is 6 percent. That's as we
20 have discussed before, that could be appreciable in
21 certain circumstances for certain shippers, but
22 basically it is not a lot of traffic.

23 Q Now, you referred a few moments ago to a 1977
24 study that I suggested you prepare to be asked questions
25 on, one entitled "Market Movements of Kansas Grain."

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Did you have an opportunity to review that study before testifying today?

A Yes, my staff did review it. I must admit I don't know how to be prepared for a question on it.

Q Let me just ask you the question, whether you are aware that this particular pattern in terms of predominant transportation by rail has changed since 1977.

A I would have to get back to you on that. I didn't review that specific aspect. It's a fairly long study. There are hundreds of numbers in it. I didn't commit that particular number to memory. So I didn't know what question you were going to ask. Sorry.

MR. GREENBERG: Your Honor, I'd like to have marked for identification an exhibit entitled "Market Movements of Kansas Grain."

JUDGE HOPKINS: It will be marked for identification as MKT-C-61.

(The document referred to was marked Exhibit No. MKT-C-61 for identification.)

BY MR. GREENBERG: (Resuming)

Q Dr. Anderson, do you have this Exhibit 61 before you?

003300353

1 A Yes.

2 Q This bears the notation at the bottom CTB
3 2114, and it goes through some pages which are included
4 in here, but it goes through CTB 2126.

5 Q Was this part of your work papers?

6 A Yes, I believe that's correct.

7 Q I would ask you to turn to page CTB 2121, and
8 on the first full paragraph there is a sentence which
9 reads "Figure 5 illustrates the dominance of railroads
10 in wheat transportation in Kansas ranging from 83.8
11 percent of total volume shipped by local elevators to
12 90.4 percent of volume shipped by terminal elevators.

13 Q Do you see that sentence?

14 A Yes, I do.

15 Q Did you do any analysis, independent analysis
16 of these figures?

17 A Not to my knowledge. I could check with staff
18 on it. As I have indicated, this is a very
19 number-intensive chapter. You don't always know what
20 was looked at.

21 Q But this indicates at least that the
22 percentage of rail moving from Kansas elevators to --
23 excuse me, being shipped out of terminal elevators was
24 90.4 percent, is that correct?

25 A From the information here, that number is

1 apparently correct.

2 Q It roughly square with the numbers you have
3 for 1981 in your Exhibit XIV-C?

4 A It doesn't say shipments to export elevators,
5 it says total outbound Kansas. I'm not quite sure
6 without having studied these in detail what the
7 difference is.

8 Q But it does show predominant rail tonnages are
9 moving out of the terminal elevators, is that right?

10 A Rail is a very significant carrier of wheat,
11 that's correct.

12 Q Can you please turn to Exhibit XIV-G? You
13 have a series of tables. I think the same question will
14 pertain to Exhibits G, H and L.

15 Under the column for capacity in bushels, you
16 have two different terms, upright and flat.

17 Would you please tell us what those mean?

18 A I would have to get back and check the actual
19 definitions with my staff. I'm not 100 percent sure of
20 my definition.

21 Q Can you please check at lunch today?

22 A Sure.

23 Q Now, is it generally helpful for a farmer in
24 Kansas to have access to more than one particular rail
25 line?

1 A If you're asking the general question do
2 shippers state in their expressions of what they like
3 that they would like to have multiple rail access,
4 that's often said. Without answering -- I'm not trying
5 to evade your question here. It's just that certain
6 shippers who might be all truck couldn't care how many
7 rail lines might be around.

8 Q Is it your experience that there are many
9 shippers of grain, as many farmers in southwest Kansas,
10 that are not interested in being served by railroads,
11 not having access to railroads?

12 A No, I didn't mean to have you extrapolate it
13 into that. I just indicated that there were farmers
14 that owned large trucks, Class 0 vehicles, for example.
15 They could haul grain substantial distances and take
16 advantage of a wide variety perhaps of terminal
17 elevators that were served by a number of various rail
18 carriers, and in that sense, having a number of rail
19 carriers around really refers to the ability of the
20 farmer to get to a place where the rail carrier is.

21 And there are certainly lots of terminal
22 elevators in Hutchinson, Wichita, Topeka that are
23 multirail served, and thus, carriers, in this case
24 railroads -- I'm sorry, farmers, would -- are able to
25 access those elevators when they are able to move their

1 grain some distance.

2 Q Do you have any idea what percentage of grain
3 moves by transit?

4 A I don't know an answer off the top of my
5 head.

6 Q Do you know what is meant by the term
7 "transit?"

8 A I have a general understanding of transit
9 rates, yes.

10 Q Can you please explain what your understanding
11 is?

12 A It's a situation where you have an initial
13 movement via rail that perhaps goes into storage of a
14 particular grain, and then at some later date the grain
15 moves out of storage to, let's say, an export port, and
16 there is two separate rates that are in some sense paid
17 for the movement. The farther gets a discount, perhaps,
18 if you can call it that way, on the second part of the
19 movement.

20 I'm not an expert on transit, so I might be
21 probably better off stopping there. I do know it is
22 part of a distribution channel, and you can hold your
23 grain at a certain place and get a fixed rate in the
24 whole channel if you move it in transit.

25 Q Is there a benefit to the shippers to have the

1 availability of transit rates?

2 A Many shippers use them. I guess they feel
3 there is some advantage to them.

4 Q If grain moves into a terminal on a transit
5 basis, can it move out of that terminal on any other
6 railroad except the one that brought it in?

7 A I believe it can only move out under the
8 railroad that brought it in and hold that transit rate.

9 Q Did you consider in making your study the type
10 of rail contract which the Santa Fe offers its grain
11 customers in determining whether shippers have
12 logistical options?

13 A When you look at a particular channel, there
14 are a variety of ways a shipper can exercise that
15 channel. One you have described as being a contract --
16 specific contract. That wasn't excluded from
17 consideration, nor was it set aside for special study.
18 I guess that's the best way I can express it.

19 Q Well, did you ever see a copy of the type of
20 contract which the Santa Fe uses?

21 A I personally didn't. Some of my staff might
22 have.

23 Q Did anybody ever tell you what the essential
24 terms might be of such contracts?

25 A No.

1 Q Have you read all the testimony in this
2 proceeding?

3 A You mean the testimony besides my own?

4 Q Yes.

5 A I haven't read all of it, but I've sure read a
6 lot of it.

7 Q Did you read a lot of the cross examination?

8 A I have concentrated on certain areas to read.
9 I haven't read all the cross examination, no.

10 Q From your general reading, are you aware that
11 the kind of contract which is used by the Santa Fe
12 requires grain shippers to ship all of their transit
13 tonnage by the Santa Fe?

14 MR. MOATIS: Objection. I strongly object to
15 the attempt by counsel here to get back into the grain
16 contracts that we explored with Witness Fitzgerald. The
17 witness has said he hasn't seen them, doesn't know about
18 them, and I am not going to agree to his
19 characterization of what they require.

20 Your Honor will remember there were a number
21 of contracts and a substantial dispute as to what they
22 did or did not require. I expect we will see that on
23 the brief, and that is the appropriate place to argue
24 it.

25 MR. GREENBERG: Your Honor, he said the

1 question of the transit-type contracts that are here are
2 covered within his study. I am just asking him if he is
3 aware about the most essential terms that are in those
4 contracts. I don't believe there is really any dispute
5 about the fact that every single contract that we looked
6 at had exactly that same term.

7 JUDGE HOPKINS: Are you disputing that?

8 MR. MOATES: I am disputing that answer, yes.
9 What the witness said, as he said with respect to many
10 other things, is that he didn't specifically exclude
11 something from the special study, but rather, that if it
12 was part of the market, he looked at the market. It's
13 hardly the same thing as saying he made the particular
14 analysis of grain contracts with this or any other
15 railroad.

16 JUDGE HOPKINS: Ask that specific question.

17 Did it?

18 BY MR. GREENBERG: (Resuming)

19 Q Did you look at those type of contracts?

20 A My answer is the same. The answer is no.

21 Q If the Santa Fe uses grain contracts to tie up
22 transit grain moving at terminal facilities, do you feel
23 that the shippers have logistical options from that
24 point on?

25 MR. MOATES: Object to that. There's no

1 foundation.

2 JUDGE HOPKINS: I will allow it.
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1 THE WITNESS: Well, a shipper does have the
2 choice of using the transit option. As we have
3 indicated earlier, there are certainly shippers that can
4 truck to Enid if they don't like the options that they
5 might have somewhere else.

6 They can also perhaps truck over to your line
7 directly for that particular movement if they don't like
8 the options that a particular railroad is offering.

9 BY MR. GREENBERG: (Resuming)

10 Q By your line, you meant the MKT line or the
11 OKT line?

12 A The OKT line; that's correct.

13 Q Well, you didn't conduct any study of the
14 truck rates to determine whether or not trucking to the
15 OKT was a viable alternative, did you?

16 A As I indicated previously, we did look at
17 those alternatives in a more generic sense, from the
18 point of view of a logistic channel, and cost was one of
19 the alternatives.

20 I answered that question already.

21 Q Did you do any studies concerning what impact
22 the rate structures of the OKT might have on the grain
23 moving down the Santa Fe after this merger?

24 A I'm not sure I understood the question.

25 Q Did you do any study at all concerning the

1 rate structure of the OKT?

2 A Are you referring to it in connection with
3 joint line service with the SSW, because the OKT, to my
4 knowledge, doesn't serve a great part of the study
5 region.

6 I'm not quite sure of your question.

7 Q Did you do any study of the rate structure of
8 the OKT as it may have an influence on the rates in the
9 Southern Pacific Santa Fe corridor?

10 A No, I don't believe we did.

11 Q Did you consider doing such a study?

12 A I believe the farthest that we went was to
13 look at whether or not general joint rates, let's say
14 SSW, OKT, were relative to single line rates. Just
15 general impressions of knowledge from grain marketing
16 people, from shippers, but we didn't do any in-depth
17 study of the process of ratemaking.

18 Q When you used -- when you decided to put
19 Houston in a Group II common point, what did the term
20 "Houston" encompass, what geographic area?

21 A It was made up of commonly served SPICs.
22 Excuse me. SPICs that were commonly served by SE and SF
23 within the Houston area. You changed gears on me a
24 little bit there.

25 Q And on your Table I-4, I'd like to go back to

1 that table, please. Where you list the carriers present
2 in Houston, I see the term "CHH." What is CHH?

3 A It's Galveston, Houston, and Henderson
4 Railroad.

5 Q Now, is this the same kind of situation in
6 terms of a line haul carrier? It's relatively short?

7 A I indicated earlier there were a couple of
8 other carriers in this table that were perhaps not
9 correctly included. That is one.

10 Q Do you know whether the SP has any closed
11 industries within switching limits of the City of
12 Houston?

13 A I don't know for a fact. It certainly may be
14 possible.

15 Q Do you know whether there are significant
16 industries at Houston where multi-carrier service is not
17 now available?

18 A Not to my knowledge.

19 Q Well, if there are cities located on closed
20 sites -- excuse me -- if there are industries which are
21 closed to all carriers except the Southern Pacific,
22 would that indicate that there is not multi-carrier
23 service available?

24 A Before we get into that, can I make one simple
25 distinction here? When we studied the traffic in a

1 pcirt such as Houston, we did not exclude anybody that
2 was a closed industry. In other words we assumed, as I
3 explained to Mr. Roach yesterday, that the availability
4 within the Staggers Act to allow people to open --
5 request opening of reciprocal switching led us to
6 consider all tonnage within the basic common points that
7 the SP and the SF serve within Houston.

8 Q Did you make that assumption with respect to
9 the chemical complex which runs south of Houston, the
10 Houston city limits, towards Galveston along the SP
11 line?

12 A That would be what particular -- are you
13 referring to Bay City?

14 Q I am.

15 A I believe that Bay City is included in our
16 analysis.

17 Q So you assumed that multi-carrier service was
18 available to the chemical complex there because of the
19 reciprocal switching provisions of the Staggers Act?

20 A I think you're mischaracterizing what I was
21 saying. I said the traffic was included in our
22 analysis, to the best of my knowledge. There are lots
23 of little places, there are literally thousands of SMCs
24 here, and you're overloading my memory banks at the
25 moment as to exactly which ones might have been included.

1 To the best of my knowledge, Bay City's
2 traffic was included in our analysis.

3 Q Do you mean Payport, not Bay City, by the
4 way?

5 A There's lots of those. There's Bay Junction.
6 The names are -- lots of little names down there, on
7 little, tiny places. I'm not exactly sure which. They
8 are all, I believe, in the same area.

9 Q Now, in your Appendix -- back to Kansas drain
10 one last time -- In your Appendix, I guess it's Exhibit
11 Roman numeral I-F --

12 A Are you going back to Kansas?

13 Q Well, this is your basic introduction. This
14 would be just in the Appendix, I believe. The statement
15 of your methods.

16 A Is this the one entitled "List of Carriers,"
17 Appendix I-F?

18 Q Yes.

19 A List of regular route motor carriers.

20 Q What does that list purport to show us?

21 A Which list? Any of these lists in this
22 Appendix?

23 Q Excuse me. I-F, and I'm looking at the page 4
24 BEA 139 outbound. I don't have a page number on mine.

25 A 139 outbound. That purports to show TRAN

1 siteings of motor carriers moving outbound, I presume on
2 major highways, from BEA 139.

3 Q Does this purport to indicate that those
4 trucks would be available to haul whatever commodities
5 move out of BEA 139?

6 A This was a list that was an aggregation. This
7 was not the list we used to do any of our TEAM
8 screening. That was a much more detailed analysis and
9 there is extensive documentation in the work papers.

10 I believe this is a summary list, just showing
11 the carriers that are moving out from our surveys.

12 Q It doesn't necessarily indicate that those
13 particular carriers are able to handle just specified
14 commodities, does it?

15 A As I indicated, it's a summary table and this
16 is not -- not the evidence that we used, if you want to
17 put it that way, to look at options out of BEA 139.
18 It's a summary table of some of the carriers that we
19 observed moving out of 139.

20 It's intended basically to show that the motor
21 carrier, if you look at some of the other BEAs like 176,
22 how pervasive the motor carrier is, inbound and
23 outbound, to these areas.

24 MR. GREENBERG: I have no further questions,
25 Your Honor.

1 JUDGE HOPKINS: Thank you.

2 Mr. Ratner.

3 BY MR. RATNER:

4 Q Mr. Anderson, my name is James Ratner. I'm
5 with the United States Department of Justice. As with
6 everybody else, I tried hard to narrow down my questions
7 to areas that haven't been discussed, and I think it's
8 fair to say that none of my questions have been asked to
9 you before.

10 You may find some of the topics similar and,
11 in fact, the answers may be similar. But I will try as
12 hard as I can, and I hope you'll bear with me, to keep
13 it as narrow as possible.

14 Is it fair to say that you did not
15 systematically define any economic markets as part of
16 your testimony?

17 A That's correct.

18 Q And is it fair to say that you didn't in any
19 way estimate gross benefits or net benefits associated
20 with the merger in your testimony?

21 A Our work was, of course, an input to Dr.
22 MacAvoy's testimony where he calculated welfare.

23 Q I understand.

24 My question is whether you, in part of your
25 testimony and study, in any way estimated gross or net

1 benefits from the merger.

2 A Well, if you mean did we summarize it in the
3 same form that Dr. MacAvoy summarized it, we
4 certainly -- the whole study is intended to look at
5 those issues.

6 Q Did TDPS in any way evaluate possible
7 efficiencies associated with the merger?

8 A No. I'm not quite sure of your line of
9 questioning, but we did not do what Dr. MacAvoy did.

10 Q My line of questioning is only to determine
11 areas which you did not undertake. And I'm asking if
12 one of the areas which you did not undertake was an
13 estimate of the benefits of the merger.

14 A That was not in our study scope.

15 Q I believe you've testified that the purpose of
16 your testimony or study was to determine logistics
17 options for Santa Fe and Southern Pacific shippers; is
18 that correct?

19 A That's correct.

20 Q What does "logistics options" mean with
21 respect to current Southern Pacific and Santa Fe users
22 as far as price and service is concerned?

23 A As far as price and service is concerned,
24 price and service are one part of a logistics option
25 that would be available out of the multitude of factors

1 that would affect an option. That's one aspect of a
2 logistics option, is looking at relative distribution
3 channel prices.

4 Q Logistics options, is it fair to say, are just
5 various distribution possibilities that a shipper might
6 have?

7 A To move the shipper's goods to and from
8 markets or from suppliers; that's correct.

9 Q Is it fair to say that the purpose of your
10 testimony was not to make a substitutability estimate
11 between different modes of shipment?

12 A Certainly the issue of substitutability comes
13 up in analyzing the channels of distribution. We did
14 not attempt to independently develop specific
15 elasticities, if that's the question.

16 Q On the other hand, we certainly did look at
17 the volume of rail versus truck traffic moving in
18 certain cells as a way of evaluating the
19 "substitutability" in certain situations.

20 Q So the answer is yes, one of the purposes of
21 your study was an effort to make an estimate of the
22 substitutability between different modes; is that
23 correct? That was the purpose of the study?

24 A The purpose of the study was to look at
25 logistics options. Modal substitutability is one aspect

1 of the channel of logistics that we're involved with.

2 Q All right. Is it correct you didn't make any
3 cross-elasticity estimate of the various nodes?

4 A That's correct.

5 Q And it's correct, then, is it not, that you
6 did not make any estimate of demand elasticity for
7 surface freight transportation in general?

8 A Not to the extent that Mr. MacAvoy has
9 testified. We didn't do that, no.

10 Q Was any purpose of the study to determine how
11 much rail traffic would switch to a different mode based
12 on any set of circumstances?

13 A It was not the purpose of the study to
14 determine whether or not any modal shift would result
15 from the merger.

16 Q I'm going to use the term "market power," and
17 I'm going to define what I mean by it. And will you let
18 me know if you understand what I mean?

19 When I say "market power," I'm referring to
20 the ability of a firm or firms to keep price above what
21 is known as the competitive level, and keep it there for
22 a non-trivial amount of time. Do you understand what I
23 mean by that?

24 A Yes.

25 Q Do you also understand that when I say

1 "price," implicit in price is a service component, sort
2 of the price stays the same but service drops, I'm
3 considering that the same as if there's a price
4 increase?

5 Do you understand that?

6 A Yes.

7 Q Is it correct to say that the purpose of your
8 study and your testimony was not to evaluate whether the
9 merger would increase the ability of Southern Pacific
10 and Santa Fe to exercise market power with respect to
11 some or all of its shippers after the merger?

12 A As we've discussed here a lot over the last
13 couple of days, the availability of alternative options
14 is one way in which the shipper is able to have his own
15 market power with respect to carriers.

16 Q I understand, but that's a different question
17 from what I asked you, isn't it?

18 I asked you whether it is correct that the
19 purpose of the study was not to evaluate whether the
20 merger would increase the ability of Southern Pacific
21 and Santa Fe to exercise market power with respect to
22 some or all of its shippers after the merger.

23 A That was not part of our testimony.

24 Q So that is correct.

25 A Yes. We indicated the options. Now that all

1 plays itself out in the big world is another issue.

2 Q Is somebody else's testimony.

3 A That's correct.

4 Q The fact that TBS found that logistics options
5 exist for a particular cell does not mean, then, that
6 Southern Pacific or Santa Fe, the merged firm, will be
7 unable to exercise market power with respect to any or
8 all of the Southern Pacific Santa Fe shippers that are
9 represented in that cell; is that correct?

10 A We have identified a number of cells where we
11 are unable to say whether or not sufficient options
12 exist. If that is interpreted as being places where --

13 Q If you listen to the question, I said --

14 A It was a very long question. I was trying to
15 answer the question.

16 Q Let me try it again. Is it correct to say
17 that the fact that TBS found that logistics options do
18 exist for a particular cell, the fact that you found
19 that does not mean that the merged firm will be unable
20 to exercise market power with respect to any or all of
21 the Santa Fe and Southern Pacific shippers that are
22 represented in that cell?

23 Is that correct?

24 A There's always exceptions. Certainly, there
25 may be some that could be affected. But basically our

1 feeling was that, in general, that wouldn't be the
2 case. That was our testimony.

3 Q Your testimony is that -- so I understand
4 you -- your testimony is that if a logistics option
5 exists for a particular cell, that the merged firm will
6 be unable to exercise market power with respect to
7 virtually all of the shippers represented in that cell?

8 A Didn't we discuss the fact that I didn't do
9 market power in this?

10 Q I thought we did. That's why I was very
11 surprised at the answer to my question.

12 A As I indicated here, it was a very long
13 question. It was difficult for me to follow all aspects
14 of it.

15 Q Okay. I'll be happy to go over it with you as
16 slowly as you want me to.

17 A Maybe just a short question would help. I
18 answered your question about market power, and then you
19 came back with a paragraph that asked me the same
20 question as what I thought I heard.

21 Q Well, it's very similar to the question. It's
22 not the same question. I think it's important to have
23 the record be clear on what your study did and what it
24 didn't do, and that's what these questions are designed
25 to do.

1 Is it correct that TBS found in many cells
2 that logistics options exist?

3 A That's correct.

4 Q For all of those cells, should it be concluded
5 from your study that Southern Pacific and Santa Fe, as a
6 merged firm, will be unable to exercise market power
7 with respect to the shippers represented in those
8 cells?

9 A We did not study market power.

10 Q So the answer is no, it should not be
11 concluded from your study?

12 A I must admit, Mr. Fatter, to being close to
13 totally confused. And I apologize. It's my feeble
14 brain; cannot keep up with three propositions that were
15 stated earlier and then the very complex questions that
16 have followed for the last five or ten minutes.

17 Your questions, frankly, are just not easy to
18 answer. I'm not trying to avoid them. It's just very
19 difficult questions you're asking.

20 Q I understand. I hope you will bear with me.

21 A I'm trying, to the best of my ability.

22 Q All I am trying to determine from you is, when
23 you look at a cell, and for whatever reason TBS says
24 that the logistics options exist, what I want to know
25 is, does your study stand for the proposition that the

1 fact that the logistics options exist means that the
2 merged firm will not be able to exercise market power
3 with respect to the shippers in that cell.

4 And I think the answer to that question is
5 no.

6 A Curs was not a study of market power. You
7 don't find references to market power sprinkled all
8 throughout this. Our purpose was to identify sufficient
9 options. Dr. MacAvoy's testimony took that output and
10 used it to determine the impact on gross welfare of our
11 analysis.

12 That was where "the market power
13 determination" was made, and that's separate testimony
14 and a separate set of numbers. We did not calculate any
15 price increases in our study as to how particular
16 shippers might be affected by it.

17 I think that might clarify the whole picture.

18 Q That's starting to help. Let me try one other
19 thing. Take one more crack at it.

20 Does the fact that logistics options exist
21 mean that railroads or the merged firm doesn't have
22 market power?

23 A Well, as I thought I just stated, that was not
24 part of our analysis to determine in cases of individual
25 shippers within his study how the merged firm was going

1 to react.

2 We were identifying whether or not sufficient
3 options existed that would act as a competitive threat,
4 a competitive weapon for shippers to use against the
5 merged company. And that's where we stop. We don't get
6 into the negotiations between a shipper and a carrier in
7 the post-merger environment.

8 Q Then it's correct to say that how effective
9 that weapon will be is not part of your study.

10 A The weapons that we are describing are used,
11 Mr. Batner, every day in the competitive environment in
12 choosing carriers.

13 Q If you could just answer my question, I think
14 it would go a little faster.

15 MR. WOATES: The witness has stated several
16 times, counsel, that he did not evaluate market power.
17 And you're asking him to make a conclusion as to whether
18 his logistic options say anything about market power.
19 He said he didn't address that issue.

20 MR. BATNER: All I'm trying to do is get an
21 answer to the question about whether his study looks at
22 it.

23 MR. WOATES: He's given it several times.

24 JUDGE HOPKINS: Since he didn't address market
25 power, how can he answer your particular question?

1 You're going farther than his study went into. Isn't
2 that my understanding of it?

3 I think he's answered the question, not in
4 exactly the way you wanted, but he's answered the
5 question.

6 MR. RATNER: I think that's probably true. I
7 just want to make sure the record is clear on this,
8 because I think it's an important point to identify.

9 JUDGE HOPKINS: I understand.

10 MR. RATNER: What has been and what has not
11 been done.

12 JUDGE HOPKINS: I understand what you're
13 getting at, but I think the question has really been
14 answered, maybe not in exactly the way you wanted, but
15 it's been answered.

16 MR. RATNER: Okay, I hope so. I will move
17 on.

18 BY MR. RATNER: (Resuming)

19 Q What can we conclude from your study, if
20 anything, about how much of a constraint truck places on
21 rail rates and services?

22 A Our primary screen looked at the effect of
23 intermodal choice on the whole question of what
24 logistics options mean for certain channels. One aspect
25 of that screen is obviously price/service relationships.

1 within a channel.

2 Q Will you agree with me that when evaluating
3 whether a firm constrains another firm's ability to
4 exercise market power, that there are various levels
5 associated with that constraint?

6 A Are you referring to this hypothetically for
7 all industries, or are we talking about specific
8 logistics options in rail versus truck here?

9 Q I'm referring to a theoretical economic
10 proposition which is applicable to surface freight
11 transportation.

12 MR. MCATES: Dr. Anderson, is not a
13 theoretical economist. They have both been here and you
14 have cross examined them.

15 MR. RATNER: Your Honor, Dr. Anderson has a
16 Ph.D in econometrics and transportation, I believe, and
17 ought to be able to --

18 JUDGE HOPKINS: Go ahead with the question.

19 THE WITNESS: Are there -- if I may take a
20 moment and just restate it, to make sure I understood
21 it, are you asking is there different levels of
22 constraints that exist in the ability of one firm to,
23 shall we say, compete with another firm? Absolutely.

24 There are different ways, depending on product
25 substitution, technology, you name it, the whole

1 spectrum; ways in which firms compete.

2 BY MR. RATNER: (Resuming)

3 Q What can we conclude from your study about the
4 ability of motor carrier to act as a constraint on the
5 merged firm?

6 A The study states fairly clearly that the motor
7 carrier, because of a number of factors -- (1) ease of
8 entry, as shown by our work with the TRAM data; (2) by
9 the fact that significant shippers in the same
10 distribution channels are using motor carrier for these
11 movements already, and thus the technology ability to
12 operate motor carriers in these channels is available.

13 Those two factors together, I think, are
14 pretty convincing evidence of the fact that not only can
15 motor carriers get into these markets with relative
16 ease, but as our data shows very explicitly, in many
17 cases motor carrier traffic is 100 or more times rail
18 traffic in many of these places.

19 Q What can we conclude regarding Southern
20 Pacific and Santa Fe shippers about the level of
21 constraint that motor carriers will provide on the
22 merged firm?

23 A As our study also makes clear, that level of
24 constraint is going to vary by channel. There are some
25 places in here we identified, and we were extremely

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1 conservative, even if there were 49 percent of the flow
2 was truck tonnage and 51 percent rail, we said we're
3 being conservative.

4 That passes through the first screen. So a 49
5 percent share of a certain flow by another mode was a
6 non-qualified -- from our perspective -- a non-qualified
7 logistics option. That's a pretty conservative screen.

8 So, as I indicated, it varies a lot mileage
9 block by mileage block there.

10 Q I'm going to ask a complex question and I'll
11 try and go slowly as I can. You testified before that
12 TBS found in many cells that logistics options exist for
13 shippers; is that correct?

14 A That is correct.

15 Q For those cells, can we conclude from your
16 study that if the merged firm increased its price by 5
17 percent, that so many shippers would switch away from
18 the merged firm as to make that 5 percent price increase
19 unprofitable?

20 A That smacks a lot of Dr. MacAvoy's extensive
21 verified statement on the issue. In terms of trying to
22 provide a simple answer to the case as stated, there are
23 so many possible when you look at it with individual
24 shippers or individual mileage blocks, it's very
25 difficult for us to provide a general answer to that

1 particular question.

2 I would be glad to do to, you know, perhaps
3 some other form of asking it, if you want to be a little
4 more specific.

5 Q Well, is the answer to your question, then,
6 that you would not be able to conclude as a general
7 case --

8 MR. MOATES: It's not his question; it's
9 yours. I object to it because it's just another way of
10 asking the same question about market power. It's
11 breaking down market power. Market power means, as he
12 defined it, the ability to raise price.

13 He's testing the witness now and saying we've
14 identified logistics options in one of the cells.

15 JUDGE HOPKINS: Well, I think he could have
16 answered that one way or the other right at the
17 beginning.

18 MR. MOATES: I think it's the same question.

19 JUDGE HOPKINS: Not in exactly the same way.

20 MR. PATNER: I asked him whether he could
21 conclude it or not and it seems to me, based on what you
22 said -- tell me if I'm wrong -- that you said it would
23 be too difficult to make a general statement about
24 whether it would be unprofitable for the merged firm to
25 raise rates.

1 BY MR. RATNER: (Resuming)

2 Q So is it correct that the answer to my
3 question is that you cannot conclude that it would be
4 unprofitable in every case for the merged firm to do
5 that?

6 A Remember our study ended and where your
7 hypothesis picks up. Our study ended at identifying the
8 options. We did not -- in what I am testifying on
9 today, we did not look at the question of what happens
10 when prices go up by 5 percent.

11 Q I'll take that as a not possible to conclude
12 and move on.

13 Is it correct that your study did not examine
14 the question of whether, if the merged firms raised
15 their price, how much of a switch to truck would occur
16 during a period of a year if it took place after the
17 price increase?

18 MR. MCATES: I object. That's the same
19 question. He's just simply clarifying the switch to
20 truck as being the overtaking of the profitability.

21 MR. RATNER: Switching to truck is not
22 exercising market power, Your Honor.

23 JUDGE ROBINSON: Why can't he answer yes or
24 no? I think some of these questions he could answer
25 very easily yes or no, and then we wouldn't be going

1 into all of this.

2 Can you answer yes or no to that question?

3 THE WITNESS: Well, it seems I answered yes or
4 no to the question up front on market power, and these
5 are very difficult gradations that take a lot of
6 thought, and you know, in all frankness, it's an area
7 that we didn't explore in the study, and I'm trying to
8 be as cooperative as possible with the questioner on
9 this.

10 JUDGE HOPKINS: Well, if you indicate you
11 didn't explore it in there, then say you can't answer
12 that question. That's the perfect way to handle it.

13 BY MR. RATNER: (Resuming)

14 Q The last question I asked you was whether you
15 studied the question of if the merged firms raised
16 price, how much of a switch to truck would there be
17 during the one-year period after the price increase?

18 Is the answer to the question you did not
19 study it?

20 A The answer is, yes, we did not study it.

21 Q Who decided to use a common point format that
22 was adopted in your testimony, rather than using an
23 origin-destination pair format for evaluation of
24 logistics options?

25 A We were trying to isolate sets of shippers or

1 receivers who could possibly be affected by the merger
2 in a region that perhaps was served by reciprocal
3 switching.

4 Q Excuse me, Mr. Anderson. I'm not questioning
5 what the decisionmaking logic was. I asked who it was
6 who decided that.

7 A Who decided the common points? That was part
8 of the steering committee.

9 Q Who decided that the framework for the
10 analysis would be to use common points rather than C-D
11 pairs.

12 A These issues were discussed in the steering
13 committee and the results of that are shown in the ways
14 in which we divided up the common points.

15 Q Was one of the people who decided --

16 A I told you the steering committee did it.

17 Q One of those people was you; is that correct?

18 A I was on the steering committee; that's
19 correct.

20 Q Is it correct to say that for any particular
21 common point, that much of the logistics options pertain
22 to source options and not options for service on
23 particular C-D pairs provided by Southern Pacific and
24 Santa Fe?

25 A May I ask you to clarify what you mean by

1 "source"?

2 Q By "source competition," I mean --

3 A Oh, source competition? There's only one
4 place we use that.

5 Q Well, I'm referring to -- I think you've used
6 it as well. I referred to a "source option" in the same
7 sense that you would use "source competition." It's an
8 option from a source other than the head-to-head source
9 that you would examine, for example, in a parallel rail
10 merger.

11 A I understand what you mean by it. The answer
12 is the only place we used source competition is in the
13 Houston -- I mean Texas Coast, L.A. local flow
14 analysis.

15 Q Don't you implicitly use "source" in any
16 common point analysis?

17 A I really don't understand the question. I'm
18 sorry.

19 Q Maybe an example would be helpful. If one
20 source -- and this is speaking purely hypothetically --
21 if there's a common point which is Los Angeles, and one
22 source of coal is 400 miles away in Mexico -- well, say
23 in Texas, even though that's not realistic -- and one
24 source of coal is 400 miles in the Powder River Basin,
25 is it correct that the common point analysis that you

1 adopted does not distinguish between the fact that a
2 shipper may currently be receiving coal from only one of
3 those originations?

4 A I am still a bit confused. I answered the
5 question and said we did not use source competition with
6 the exception of the Houston-L.A. local flow. And so
7 we're not communicating on this issue.

8 We just did not use source competition in the
9 common point analysis.

10 Q I think you've been asked questions about
11 this, and I would like to go over it very quickly if I
12 can, just so I will understand.

13 Is it correct to say that for cells in this
14 study marked with a 1, that a preliminary analysis,
15 undertaken by yourselves and Mr. Baker, was done and
16 then the 50 percent screen was applied? And for all the
17 ones marked with a 1, it was concluded that logistics
18 options are present because of adequate other modes of
19 service?

20 A That's correct.

21 Q Is it correct that for cells marked with a 3,
22 that basically the same process was done, with the
23 exception being that you were looking at containerizable
24 traffic?

25 A May I just go to a table for reference?

1 Q Sure.

2 A For the particular point I'm looking at here,
3 that 3 is in fact containerizable.

4 Q Other than the fact that it was
5 containerizable, is the process basically the same as
6 the evaluation for cells that are marked with a 1?

7 A It is a comparison of truck tons to rail tons,
8 as in the case of 1; that is correct.

9 Q I certainly don't want you to have to go into
10 a long explanation. Is it possible for you to extremely
11 briefly explain to me how the containerizable traffic
12 was calculated, and then compared to motor carrier
13 tonnage?

14 A I can. I did a long explanation yesterday. I
15 don't feel comfortable doing a short explanation.

16 Q All right. If you think you have adequately
17 explained it before, I will trust that I can read it in
18 the record and understand it.

19 For cells marked with a 2, is it correct to
20 say that you didn't evaluate logistics options because
21 you believe that the merger could not enhance market
22 power in those cells?

23 A I wouldn't express it quite that way.

24 Q How would you express it?

25 A As it's stated here. The shippers in those

1 particular flows did not have the multiple carrier
2 options in the pre-merger environment, and really the
3 reality is they don't change. Nothing is going to
4 change in the merger for them.

5 They didn't have an option of moving to
6 railroads then, and there is no real change.

7 Q How far -- is there any average, or was any
8 generalization made about the distance of these local
9 moves?

10 A A local move doesn't just mean it's around the
11 block. It could be hundreds of miles long. It just
12 means it's on the same railroad.

13 Q I understand. So it could vary from one mile
14 to 1,000 miles?

15 A We didn't do any evaluation to decide whether
16 that was the correct range. I cannot tell you for
17 certain.

18 Q Was any standard evaluated for how far the
19 shipper had to be from another railroad before they
20 qualified as a local move for the shipper?

21 A It has absolutely nothing to do with the
22 distance to another railroad. It has to do with the
23 ratings and routines and tariffs. It's an expression of
24 the ability of a carrier -- or, pardon me -- a shipper
25 to move traffic based on existing rating/routine

1 structures that are published for those moves.

2 Q I think you may have been asked this before,
3 and forgive me if you have. In evaluating these local
4 moves, was it considered at all that a shipper may have
5 the ability to use both Southern Pacific and Santa Fe by
6 trucking to the other railroad?

7 A Well, that's one of those logistics options
8 that's out there. I didn't evaluate it directly. It is
9 not high on my list of alternatives in terms of do you
10 need to have team track and special unloading
11 equipment.

12 There are many, many factors that would go
13 into whether or not that ability existed.

14 Q I understand. I'm just trying to find out,
15 Dr. Anderson, what went into it and what didn't.

16 Does a 2 in a cell mean that the focused
17 customers that were investigated were moving in a local
18 non-competitive movement?

19 A That's correct.

20 Q Does a 2 also mean that all movements of that
21 commodity over that distance in that cell were
22 considered local non-competitive movements?

23 A In the majority of cases I've ever looked at
24 in this situation, the focused shippers made up an
25 extremely large volume of tonnage. You know, it could

1 have been 80-plus percent. I have never seen any other
2 numbers that weren't in the 80 or 90 percent range for
3 those focused shippers relative to the total cells.

4 So there may be some tonnage that is, and we
5 assume that since they have the same origin/destination
6 that -- forgive us for not looking at a few tons.

7 Q I'm not saying whether you're proper or
8 improper. I'm just trying to understand. The
9 determination, then, was made on the basis of the
10 focused customers. Is that correct?

11 A That's correct.

12 Q Were the focused customers asked by TBS
13 whether the Santa Fe price influenced the Southern
14 Pacific price or vice versa?

15 A No. All the analysis was done from railroad
16 tariff and circular information.

17 Q I think you've probably already answered this
18 question, but to make sure, did you evaluate possible
19 reductions in source competition that could occur on
20 these local moves?

21 A It's a very complex question.

22 Q Can I try an example and see if that helps?

23 A Thank you.

24 Q For example, in Phoenix I believe there's a 2
25 inbound for non-metallic minerals in the mileage group

1 zero to 200. It's conceivable, isn't it, that a
2 receiver could be getting --

3 A May I just take a minute to turn and look at
4 the table so I can have a correct reference here?

5 Q I'm sorry.

6 A Inbound non-metallic minerals. That's STCC 14
7 we were talking about?

8 Q Right.

9 A That's on Exhibit IX-15? Would that be where
10 we are?

11 Q I have Exhibit IX-18. It's where I got the 2
12 from.

13 A Oh, I'm sorry. I was referring back to the
14 actual tonnage information.

15 Q Sure.

16 A That's correct. It is listed as a local
17 non-competitive.

18 Q Okay. Is it conceivable that a receiver in
19 Phoenix could be receiving some non-metallic minerals
20 via SP local and some non-metallic minerals via -- which
21 did I say -- via Santa Fe local as well?

22 A You mean could there be two gravel pits
23 outside of town, one on Santa Fe's spur line, one on the
24 SP, that hypothetically ship to the shipper?

25 Q That's correct.

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1 A I suppose there could.

2 Q And all I'm asking you is, was that
3 possibility considered when deciding to categorize this
4 as a local competitive movement -- non-competitive
5 movement?

6 A The reason and rationale that a local
7 non-competitive movement is stated quite clearly here.
8 It would be a shipper who, because of geographical or
9 whatever orientation, couldn't move that way. And I
10 describe in detail how it was done.

11 We did not look at source competitive issues
12 here. It was a matter of looking at that specific
13 movement, waybill movement, who didn't have options
14 before them.

15 Q Well, I was suggesting a possible option that
16 that shipper might have. And I understand you to say
17 that that possible option, however slight it may be, was
18 not examined. Is that correct?

19 A I'm not sure whether you're trying to improve
20 my study here or not. If I went out and did -- are you
21 asking me if I went out and did some more work and found
22 that, gee, this shipper could get his non-metallic
23 minerals from somewhere else, and I misclassified that
24 as a 2, and it should be a 1 -- is that what we're
25 driving at here?

1 Q No, I'm not interested in characterizing it as
2 inadequate in any way. I'm interested in finding out
3 all of the parameters that went into defining a certain
4 cell in a certain way. And that was the purpose of the
5 question.

6 A Yes. Well, to have my final say on that
7 issue -- sorry -- you could have gone out and looked at
8 a lot of other options, and we determined that this,
9 since it was local non-competitive, was the primary
10 option we wanted to look at here.

11 Q For cells marked with a 4, is it correct that
12 you did not examine logistics options for those
13 movements?

14 A That's not entirely correct. There were
15 sampling done of some of those moves to see if truck
16 tonnage existed for some of those smaller moves.

17 I believe the sampling was done in Bakersfield
18 and Phoenix, which were two of our larger Group I common
19 points. In somewhere around 95 percent of the cases
20 that were examined -- which were cases, not tons -- it
21 was found that even for these tons, that options existed
22 using the first intermodal screen.

23 So we did cross-check within there. We didn't
24 just chuck out a lot of tons.

25 Q I understand. Was the sampling done as part

1 of Mr. Baker's preliminary evaluation of the industry,
2 or was it done once it was initially concluded that this
3 was a small lot movement?

4 A It wasn't done by Mr. Baker. It was done
5 simultaneously in our analysis. When we chose the
6 screen, we also sampled to make sure that screen, you
7 know, didn't challenge -- "challenge," I'm sorry, is the
8 wrong word -- didn't conflict with our basic conclusions
9 that we tried to show as much tons as possible had
10 logistics options.

11 We found that within the 600 tons, a number of
12 them did. We are convinced that it's not something that
13 excludes shipper options.

14 Q What kind of sample did you use?

15 A I told you it was the two major points,
16 Bakersfield and Phoenix, that we looked at.

17 Q All of the No. 4's?

18 A All those cells, all the No. 4's in
19 Bakersfield and Phoenix we felt was -- that was our
20 sample.

21 JUDGE HOPKINS: Excuse me a minute, Mr.
22 Ratner. Do you have many more? I'm not stopping you
23 from doing anymore.

24 MR. RATNER: I understand.

25 JUDGE HOPKINS: I think it might be a good

1 time for a recess. let's recess until 1:45.

2 (Whereupon, at 12:45 p.m. o'clock the hearing
3 in the above-entitled matter recessed, to reconvene at
4 1:45 p.m. o'clock, this same day.)
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AFTERNOON SESSION

(1:45 P.M.)

1 JUDGE HOPKINS: let's get back on the record.

2 Mr. Patner.

3 MR. PATNER: Thank you, Your Honor.

4 Whereupon,

5 DAVID L. ANDERSON

6 the witness on the stand at the time of the recess,
7 resumed the stand and, having been previously duly sworn
8 by the Administrative Law Judge, was further examined
9 and testified as follows:

10 CROSS EXAMINATION - RESUMED

11 BY MR. PATNER:

12 Q Good afternoon, Dr. Anderson.

13 A Good afternoon.

14 Q Before we broke, I was asking you about local
15 moves. And I have one more question for that, which is,
16 did you examine how the focused shippers got the
17 commodities they were shipping in the local moves to the
18 railroad?

19 A Waybills that we looked at would have just had
20 on them the waybill origin, and we wouldn't have looked
21 any further at that point. It was the railroad route
22 that's important in determining our definition of local
23 non-competitive flow, so we didn't study it directly.

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1 Q I understand.

2 So it's correct to say that you were unaware
3 of whether there was a direct load or whether the
4 shipper moved it to the local railroad, for example, by
5 truck?

6 A That's basically correct; yes.

7 Q I believe before the break, I asked you if you
8 had examined logistics options for sales that were
9 marked with a 4, and you had given me an answer for
10 that.

11 What was the data base that was used to
12 determine the rail movements that are categorized in a
13 cell with a 4?

14 A It would have been the same data base.
15 That's -- just so people who don't have the book can
16 understand, it's the less-than-600-tons-per-year; is
17 that correct?

18 Q The No. 4, yes. That's correct. Thank you.

19 A That was the same data base that we used for
20 other -- it's the basic 100 percent rail waybill sample
21 provided to us by the roads.

22 Q Is it correct to say that for the cells marked
23 with a 5, that TPS did not find any logistics options?

24 A We worked in conjunction with TEAM in defining
25 how to do the analysis. The work was actually performed

1 by Mr. Baker and TRAM.

2 Q Are you prepared to adopt as accurate what
3 TRAM did?

4 A Yes. Certainly I could have added another
5 sentence, but I'm trying to be a little shorter this
6 afternoon. I have added another sentence that said
7 when the TRAM work was completed it would be given to
8 us, and we would make the final judgment on how it would
9 be used.

10 So --

11 Q It is correct to say that if a cell is marked
12 with a 6, then no one found any logistics options for
13 those cell movements; is that correct?

14 A That's correct.

15 Q Is it correct that for all locations served by
16 three mine haul railroads after the merger, additional
17 shipper logistics options were, in general, not further
18 examined?

19 A These are for locations where you would have
20 more than two competing carriers. Is that what we were
21 saying?

22 Q I can ask the question again. For all
23 locations served by three or more railroads after the
24 merger, and one of them is the merged firm, shipper
25 logistics options in general were not further examined

1 for those locations? Is that correct?

2 A That's correct. Up front, we did look at rail
3 service options and made sure that you had coverage in
4 all directions for the rail lines. That's right.

5 Q I believe you testified yesterday -- and
6 correct me if I'm wrong -- that there were five focused
7 shippers that were identified and given to Forrest Baker
8 to study as part of the preliminary investigation of the
9 industry that you did. Is that correct?

10 A That's correct.

11 Q You may have already been asked this, and I'm
12 sorry. How were those five shippers determined?

13 A They were basically the top five shippers,
14 often covered more than 80 percent of the tons in a
15 particular cell.

16 Q Other than the fact that they were the top
17 five and had an amount of tonnage associated with being
18 in the top five, were there any other tests for whether
19 the shippers would be representative as a sample for the
20 entire group?

21 A When we went back to choose the two focused
22 shippers in our final pass, we did make an effort to
23 include shippers that had a different line of business
24 perhaps than the first shipper -- in fact, there was
25 such a shipper in the cell.

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1 Q But no other effort was made in terms of these
2 five shippers?

3 A Five shippers was an initial screening
4 process, and we were more concerned with Mr. Baker's
5 ability to find the shipper than to -- some of them are
6 pretty small shippers out there.

7 Q As to the two key shippers that were selected
8 for what I'll call further analysis, other than making
9 an attempt to pick two different businesses, was any
10 other effort made to determine that they were
11 representative of all the shippers that were
12 represented?

13 A I don't want to minimize the amount of
14 analysis that went into choosing the second shipper.
15 There were many factors that we did look at. The types
16 of commodities moving, the basic characteristics of what
17 was going on in that cell.

18 We did, of course, have a list of all shippers
19 and try off that list to choose what we considered to be
20 a representative one. I can't -- I could explain in
21 detail perhaps all the factors, but I think you
22 understand it was a process that varied cell by cell,
23 and you've got lots of different, very diverse types of
24 shippers out there.

25 Q Did you have any systematic list of criteria

1 or factors that you would use to test whether the key
2 shippers were, in fact, representative of the group as a
3 whole?

4 A Do you mean -- I indicated there were
5 standards we used over all standards in terms of a
6 different line of business, perhaps a different
7 commodity. They were already quite differentiated as
8 shippers in terms of the mileage block, whether moving
9 inbound and outbound, and all that type of situation.

10 But the other part of my answer would be that
11 a lot of these are special situations, and I can't say
12 for certain. There may be different standards for
13 different shippers, different ones for food shippers,
14 and different ones -- there's not just a simple answer
15 to your question.

16 Q Okay. Let me try and be a little more
17 precise. Was there any specific evaluation or testing
18 that was done to determine whether the shippers were
19 representative of the entire group's ability to employ
20 both truck and rail?

21 A You have to understand, up front, that in many
22 cases you don't know if a particular shipper employs
23 both truck and rail. So you're choosing that to find
24 out the answer to that question.

25 So that was the intent of why we did the work

1 we did.

2 Q All right. On page 8 and 9 of your verified
3 statement, there is a paragraph -- okay?

4 A Yes.

5 Q The start of the last paragraph on page 8 --
6 and it carries over onto the top of page 9. The first
7 sentence says: "For facilities currently served only by
8 Santa Fe or Southern Pacific, the alternative viable
9 logistics option is generally motor carrier service."

10 A That's correct.

11 Q And then the third sentence that starts: "If
12 motor carrier service is not available or is not
13 cost-effective -- "cost efficient," I'm sorry -- "a
14 facility could source materials from a non-ATSF/SP rail
15 or could ship products to markets not served by ATSF or
16 SP."

17 Do you see that?

18 A Yes, I see that.

19 Q If these are facilities which are currently
20 served only by Santa Fe or Southern Pacific, how is the
21 facility going to be able to source materials from a
22 non-ATSF/SP rail origin or ship products to markets not
23 served by the Santa Fe or Southern Pacific?

24 A A little while ago, we talked about the short
25 haul option, and that's something that could be used in

1 this situation.

2 Q But they would not be able to use a short haul
3 option without at least partially using Santa Fe or
4 Southern Pacific.

5 A That's right. It just says a non-ATSF/SP rail
6 origin. It doesn't say you couldn't have a multiple
7 carrier movement.

8 Q But in such case, the availability would still
9 be involved, making a movement over one of the merging
10 firms, at least for a portion of the move; is that
11 correct?

12 A That's correct. It's another distribution
13 channel to have multiple carrier service.

14 Q Dr. Anderson, I'm going to ask you a series of
15 questions and I'm going to refer to TBS, and I mean by
16 that, you in the study before you, and not including
17 something that Forrest Baker can testify to; okay?

18 A Uh-huh.

19 Q Other than in a manner that is accounted for
20 through what you described yesterday as revealed
21 preference, in order to evaluate whether Southern
22 Pacific and Santa Fe customers would switch to truck in
23 the event of price increases or service deletion by the
24 merged firm, did TBS specifically examine and compare
25 rail prices versus truck prices?

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1 A No, we did not specifically examine rail
2 prices versus truck prices in the separate sales we've
3 discussed.

4 Q Did TES examine, other than through review of
5 preference, examine and compare rail reliability versus
6 truck reliability of service?

7 A No, we did not compare these. I may add just
8 a quick sentence there and say that, of course, in
9 considering some of these options, that's an aspect of
10 the logistics channel. It does go into shipper
11 decisions.

12 I'm a little troubled by the black and white
13 aspect of it, but I understand why you're asking the
14 question.

15 Q I understand, and what I've tried to do is
16 exclude what you described yesterday as factors that
17 were accounted for in what you described as revealed
18 preference. And if there is something in addition to
19 that which you think is too black and white about my
20 question, please let me know.

21 A I would just add that in certain situations,
22 perhaps we did look at transit time. I mean it's not
23 quite -- but we didn't have an overall methodology that
24 did it.

25 Q Okay. You actually anticipated my next

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question. I had asked you about reliability. The next question I was going to ask you was did TPS, in your testimony, specifically examine and compare rail transit time versus truck transit time?

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1 A In certain situations, we may have done that
2 in general. This is part of the revealed preference
3 approach.

4 Q Did TBS specifically examine and compare rail
5 costs to truck costs in a manner other than through the
6 revealed preference?

7 A You mean as separate from any price analysis?
8 No, we didn't do any cost analysis.

9 Q You will agree with me, won't you, that prices
10 and costs are two different matters, aren't they?

11 A Yes, I was just trying to decide. If you are
12 talking about logistics channel costs.

13 Q Other than through the revealed preference,
14 did TBS specifically examine and compare rail size and
15 volume accommodation abilities with truck size and
16 volume accommodation abilities?

17 A Are you referring to shipment size?

18 Q Yes. Do you understand what I mean by size
19 and volume accommodation? By that I mean the ability of
20 a particular node to handle a particular size and volume
21 of a particular shipment. It is a service factor.

22 A I am trying to think of the -- the answer to
23 all these questions are approximately the same. I mean,
24 there are some situations where we had to analyze some
25 of these very particular issues when we ran across it.

1 It is not something that necessarily falls in every cell
2 that necessarily is evaluated at every step of the
3 process.

4 To characterize it as saying we didn't do it
5 is going to be incorrect, but then again, these
6 distribution channels are all very unique, with very
7 unique characteristics associated with them, and there
8 were cases where we did look at some of those situations
9 to make sure in a qualitative sense that we weren't
10 doing something silly.

11 But to make me dredge up an example of all
12 that, there are literally thousands of cells we are
13 dealing with here, and I think that it is important to
14 remember that these were all looked at individually, and
15 judgments were made individually on these cells. It
16 wasn't a matter of some mechanical monster cranking out
17 lots of numbers and we said, prof, it is all done.

18 Q Did TBS evaluate -- I will use the expression
19 "systematically evaluate," and by that I mean not that
20 it just came up once in a while, but as a general part
21 of your study. Did TBS systematically evaluate the sunk
22 costs associated with entry into trucking?

23 A Sunk costs of entry into trucking? What is
24 the sunk cost of entering into trucking, please?

25 Q Sunk costs are usually defined, and I define

1 them to be costs which must be incurred upon entry and
2 cannot be recouped upon exit.

3 A These would exclude situations where an
4 owner-operator perhaps would lease a truck, since he
5 might not have any sunk costs into those situations? I
6 am trying to understand what we are talking about here.

7 Q Did you read Professor Baumol's testimony in
8 this proceeding?

9 A (Nods affirmatively.)

10 Q Are you familiar with the way he described
11 sunk costs?

12 A (Nods affirmatively.)

13 JUDGE HOPKINS: Are you saying yes?

14 THE WITNESS: Excuse me. I am sorry.

15 BY MR. RATNER: (Resuming)

16 Q The answer to the last two questions was
17 yes?

18 JUDGE HOPKINS: The answer to the last two
19 questions was yes, wasn't it? You nodded your head both
20 times.

21 THE WITNESS: I am sorry. I was going to just
22 give a brief answer. We did not analyze it. That was
23 something that Mr. Baker looked into.

24 BY MR. RATNER: (Resuming)

25 Q The sunk costs associated with entry into

1 trucking?

2 A Yes, I am sorry.

3 Q Did you evaluate specifically the amount of
4 marketing expenses that a trucking firm would have to
5 engage in to enter into any particular movement?

6 A We are getting into an area where Mr. Baker
7 did a lot of that type of work.

8 Q Did TES specifically do it?

9 A Well, TES directed a lot of the work. You
10 know, you are really drawing extremely fine lines here.
11 I acquiesced in the front end of this because I thought
12 there was some distinction, and now we are getting into
13 an area where we specifically had a subcontractor doing
14 this analysis. And all I am saying is, any questions
15 that we had to deal with the trucking industry we can
16 ask Mr. Baker.

17 Q Can you direct me to the point in TES's
18 testimony where the expenses that trucks would incur
19 from entering a new market or movement, where those
20 expenses associated with marketing were evaluated?

21 A As I indicated, it was done, and you told me
22 not to answer from the perspective of how it was done
23 with Mr. Baker, and it was done in Mr. Baker's
24 evaluation of the channels. That type of information
25 rolls up into what the going prices are in various

1 distribution channels.

2 I assume we are still recovering fixed costs
3 in this society, so that would be part of any pricing
4 that would go on, and that type of analysis was handled
5 by Mr. Baker.

6 Q Is that broken out in any place in the TBS
7 study?

8 A I believe I just answered the question. It
9 may be better to go back and restate just briefly that
10 when we were examining alternatives in the channel, Mr.
11 Baker was tasked with looking at that particular
12 question. Now, he included lots of pieces in his
13 analysis, many of them which you are talking about.

14 So, to go back and piecemeal them out and say,
15 were these considered, you can ask Mr. Baker, or I can
16 say to you, yes, Mr. Baker considered those. Is that
17 what you would like to do? I am just asking for your
18 preference.

19 Q What I would like to do is find out the place
20 in the application where I can read about costs that
21 trucking firms incur associated with marketing when they
22 enter or expand into a new movement. Can you direct me
23 to where that is in the TBS study?

24 A There isn't a specific writer of that kind of
25 information that is explicitly included in any

1 determination of what the price might be in determining
2 a logistics option in a particular channel.

3 Q Is there any specific writeup for advertising
4 costs that the trucking firm might incur?

5 A No, sir.

6 Q Is there any specific writeup of the
7 networking or backhaul costs that a trucking firm might
8 have to incur in order to enter into a movement?

9 A Again, we assumed that when someone is
10 answering a question where we say, are you willing and
11 able to serve the market, those are the kinds of factors
12 that run through the person's head in making that
13 decision. All your factors are relevant here. I am not
14 denying that at all.

15 Q I am just asking you if there is any specific
16 writeup.

17 A I saw no reason to because of the fact that it
18 was done by our subcontractor, Mr. Baker, and he has
19 filed his own verified statement on it. I think those
20 questions are appropriate for Mr. Baker.

21 Q Did TBS specifically write up an evaluation of
22 whether trucks can enter a particular movement on the
23 same scale and with the same level of cost as
24 railroads?

25 A That type of evaluation is all included in our

1 other analysis. We did not provide specific writeups of
2 all these areas. You can save yourself a lot of
3 questions if you just ask me one question, why don't you
4 list all the various places, and I will be glad to
5 answer to it.

6 Q Well, I am about done with that. I wanted to
7 set them out separately.

8 A That is fine.

9 Q Hopefully for clarity. Perhaps I failed in
10 that area.

11 On Page 9 of your verified statement, you
12 state that most rail customers are also capable of
13 handling truck operations.

14 A Page 8?

15 Q That is right.

16 A I just wanted to get the right source.

17 Q I am sorry. What is the basis for that
18 statement?

19 A Extensive work by Mr. Baker in evaluating that
20 particular situation. We did have our top five
21 shippers. We are discussing, of course, the Santa
22 Fe-Southern Pacific service region here, and we are also
23 discussing specific shippers and receivers that might be
24 affected by the merger, so that is the context within
25 which this paragraph is written, just to clarify that

1 point.

2 Q Thank you.

3 On Page 9, the last sentence of the paragraph
4 that spills over from Page 8 says a facility could
5 redesign its operation to receivership goods via a
6 pooled freight operation, perhaps using freight
7 consolidators or forwarders instead of dealing directly
8 with rail carriers.

9 How did this change the option of the
10 shipper?

11 A Very straightforwardly. You have a
12 consolidator or forwarder who aggregates large volumes
13 of shippers' products and is able to get more favorable
14 rates, let's say, from a carrier than perhaps an
15 individual shipper is. This is a classic case of an
16 alternative logistics option that exists. It is an
17 alternative option. It allows them to deal with the
18 rail carriers indirectly.

19 Q It is not a different option in the sense that
20 they would still be using the same rail carrier. Is
21 that correct?

22 A I never claimed that that was the case here.

23 Q So that is correct?

24 A That's correct.

25 Q Is it a fair characterization that what this

1 is suggesting is that there is an option of trying to
2 obtain some bilateral power with respect to the
3 railroad?

4 A Are you referring perhaps to a shipper cartel,
5 bilateral meaning more than one shipper? Is that --

6 Q By bilateral, I mean if the railroad has
7 power, one way to deal with that is for the shippers to
8 have power themselves.

9 A Certainly this has been again a classic way in
10 which shippers for the last 50 years or more have done
11 this.

12 Q At Page 11 of your testimony, do you see the
13 sentence which is in the first full paragraph? I guess
14 it is the first sentence. The part I am interested in
15 is where it says "easily changed their operations to
16 provide additional service for a study region."

17 A This is the first full paragraph? Yes, I see
18 the sentence.

19 Q Do you see that sentence? What is the basis
20 for saying that all trucks in a BEA can change their
21 operations to provide service additional to the service
22 they are now providing?

23 A In many cases, you find that trucks will
24 deadhead empty out of regions to go to other regions to
25 pick up loads. The implication here is, they can

1 deadhead to a point within the BEA and take that load
2 out. That would be additional service. Instead of
3 going to perhaps another BEA, they could stay within
4 this BEA, get their load, and that additional service is
5 the fact that they are not moving their trucks somewhere
6 else empty, because, of course, that empty
7 transportation capacity when translated via loads
8 represents additional service.

9 Q Is there any other basis?

10 A I would ask you to read the next sentence, and
11 perhaps Mr. Baker could provide additional justification
12 for that since it is Mr. Baker's testimony on the
13 subject.

14 Q All right. Other than what Mr. Baker does,
15 does TBS systematically evaluate the ability of a motor
16 carrier to increase capacity?

17 A That was done by Mr. Baker under our
18 direction.

19 Q Did TBS evaluate in any way whether the
20 ability of a motor carrier to increase capacity is
21 correlated to current traffic served by motor carrier?

22 A I really admit to not understanding the
23 question. What is the relationship between adding new
24 capacity and correlation to existing capacity? I am not
25 sure what you are driving at.

1 Q I am asking if TBS did any study of the
2 relationship between those two.

3 A I have a hard time answering the question,
4 because I don't understand what the study would be. Is
5 it some sort of a correlation between if I am already
6 serving a market, can I provide additional service to
7 that market? That would be a correlation, because if I
8 provided more service and I was already there -- but the
9 word "correlation" has got me a little confused in terms
10 of what you are looking for.

11 Q Did TBS evaluate, other than what Forrest
12 Baker did, did TBS evaluate how much of the truck
13 tonnage for any cell was provided by a backhaul
14 movement?

15 A No.

16 Q Other than what Forrest Baker did, did TBS
17 evaluate how much of the truck tonnage for any cell was
18 provided by a front haul that had an associated backhaul
19 with it?

20 A These are extremely complex questions. In the
21 realm of 1,200 cells worth of analysis, certainly there
22 are situations that arose where we perhaps discussed
23 backhaul versus front haul moves. You are asking for
24 very definitive information here.

25 Q Again, is it the question of a systematic

1 study? These are all factors that came up at one time
2 or another in one of the possible or more of the
3 possible cells examined. It is not an overriding
4 question, however, that we spent a lot of time
5 evaluating front haul versus backhaul issues.

6 Q On Page 14 of your testimony, you refer to
7 Group I common points, and I think you have been asked a
8 similar question, and just to go over it to clarify,
9 were there any points that you identified that were not
10 listed as Group I common points where shippers were
11 within 50 miles of both the railroads and weren't served
12 by both directly?

13 A Are you talking about a shipper who is not
14 located on the railroad, who is located somewhere 50
15 miles from a railroad, and did we evaluate what is going
16 on with the shipper?

17 Q Fifty miles from both railroads.

18 A Some mythical shipper that is 50 miles from
19 both railroads, anywhere within a study region, I
20 presume. Did we evaluate anything about that shipper?

21 Q No. Let me ask the question another way.
22 Will you agree that it is possible that there are groups
23 of shippers that are not contained in your Group I
24 common points that nevertheless are within 50 miles of
25 both railroads and have the option of trucking to both

1 of those railroads?

2 A All the TOFC facilities that were on the
3 combined system were included in our analysis, since the
4 basic TOFC movement is way billed at the station where
5 it is loaded.

6 That tonnage is all in our analysis. The fact
7 that they dray in those movements, we have no idea of
8 knowing where they dray that from, but we are picking up
9 the traffic that is coming into that piggyback ramp
10 located somewhere in the SPSF system, and are evaluating
11 the options associated with it.

12 Unfortunately, neither TBS nor the railroads
13 know where every one of those movements have originated,
14 but I can assure you they all originate ten, fifteen,
15 twenty, twenty-five, a hundred miles spread all over the
16 countryside around any ramp, and so by definition those
17 shippers' options are evaluated because they have made
18 an economic decision that they can dray into that ramp
19 and move out of that area.

20 Q Are there any ramps or other methods for
21 shippers to truck their commodities to railroads which
22 are not included in either the Group I or Group II
23 common points?

24 A I am not quite sure what you mean. They can
25 have truck as the first movement to a rail head. We did

1 mention there was one operation in Stockton that
2 operated off a team track. Whenever we could identify
3 those types of situations, we would look at that type of
4 situation where it might affect a shipper's options. We
5 could identify those conditions.

6 Q Let me break it up. Are there any TOFC ramps
7 where a shipper could move TOFC equipment, I mean, TOFC
8 movements to Southern Pacific or Santa Fe which are not
9 accounted for in the Group I or Group II common points
10 or the market study regions?

11 A Did we leave out any TOFC ramps from our
12 analysis here?

13 Q I don't know if they are left out or not,
14 because I am trying to determine what was included.

15 A I was just trying to clarify the question. I
16 am not 100 percent sure on this. There may have been
17 one ramp left out, and it may have been in Tucson, but I
18 believe that's the only situation where because it
19 wasn't a Group I common point or didn't fall in the
20 market region that may have been left out, but we did
21 check assiduously, and went back and looked at the range
22 of where the ramps were located, and found that, I
23 think, with that one exception, that all other ramps
24 were covered.

25 Q Okay. The other part of my question, what I

1 am trying to determine is the extent to which there are
2 shippers that don't need a TOFC ramp but could use
3 either Southern Pacific or Santa Fe currently and are
4 not included in one of your Group I, Group II common
5 points or the market flows.

6 A Are you asking, Mr. Ratner, whether the
7 ability, the perceived ability to truck down and somehow
8 load -- I mean, I don't quite understand. I told you,
9 we tried to identify team track locations where it did
10 make a difference in this operation, where we found a
11 particular shipper that operated off a team track, and
12 we actually went over an example twice in my testimony
13 of that particular shipper, and there are, I believe,
14 others that we looked at.

15 I am not sure we wrote them up in the
16 testimony here, but beyond that, I am really not sure
17 what you are asking. They have to show up, and they
18 have to actually load at that facility, just as they
19 loaded a TOFC ramp or unloaded that facility. Then we
20 can pick them up on the way bill, and where that
21 information was available to us and generated to us, and
22 in a common point or a market region, certainly we
23 studied it.

24 Q What I am trying to determine is the extent to
25 which shippers loaded onto the railroad in a location

1 which is not in one of the common points.

2 MR. MOATES: Are you asking whether there are
3 shippers on these railroads who are outside the study
4 area of TBS?

5 MR. RATNER: Yes.

6 MR. MOATES: I think that is self-evident.
7 There are shippers in Kansas City, in Chicago.

8 THE WITNESS: I am sorry I am so dense, Mr.
9 Ratner.

10 MR. RATNER: Shippers which are currently
11 capable of trucking to both Southern Pacific and Santa
12 Fe who are outside of the study area.

13 THE WITNESS: If they trucked into one of the
14 competitive areas and did their business there, they
15 would be included into it. You are asking -- I
16 understand the kind of question you are asking. That is
17 why we have market regions. That is why we have local
18 flows.

19 We went out of our way to try to find any
20 possible point where that stuff would be affected, and
21 this was not just a study of common points. We had
22 market regions. We went out of our way to locate that,
23 especially in the agricultural regions, where that is
24 most likely to happen.

25 It is, of course, much less likely to happen

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1 for an industrial supplier, who is not going to haul his
2 bearings by truck down to a team track, I don't think,
3 to load onto a box car. That is very unlikely.
4 However, the agricultural issue which probably makes up
5 90 percent of the shippers that you are referring to
6 here as being off line and moving to rail were studied
7 extensively.

8 We really did try to look at all possible
9 cases like that, and the agriculture is the most obvious
10 one and, I think, covers the great majority of the
11 shippers that you are asking about.

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1 Q On page 15 at the bottom --

2 A Yes.

3 Q You indicate that a number of U.S. cities and
4 towns already have single carrier rail service.

5 A That is correct.

6 Q Do you have any idea how many of those cities
7 and towns had their rail service reduced to one through
8 a rail merger?

9 A I can't answer that question directly. I do
10 know there are 18,000 single service points in the
11 western part and central part of the United States, and
12 I would guess some proportion of those would have had
13 their rail service reduced to one by mergers. Certainly
14 there have been a lot of rail mergers that made that
15 happen.

16 We did testify earlier that there were only
17 133 new ones created by this particular proposed merger,
18 and that we had studied well over 100 of those in which
19 many were not even competitive points but were common
20 points that were located in places like the San Joaquin
21 Valley so that they would also include those shippers
22 you are concerned about that may not have been at a
23 competitive point, but there are a number of those that
24 are also included, I neglected to mention, in the San
25 Joaquin Valley.

1 Q Okay. I think we are getting a little bit far
2 from the question here.

3 On page 16 of your testimony, do you mean to
4 suggest when you say the Group I common point economies
5 generally constitute only a small share of the regional
6 economy, do you mean to suggest that Richmond, Fresno
7 and Bakersfield are insignificant portions of their
8 regional economy?

9 A Well, we can go back to the exhibit and look
10 at it. It says "generally constitutes only a small
11 share of the economy." In other words, their employment
12 levels are small in comparison to the state levels. If
13 you think of the state as being the measurable area, I
14 didn't say that they were a small part of their own
15 region. By definition, they are an important part of
16 their regional economy because they are the region. As
17 the table shows, they are a less important part of the
18 state economy.

19 Q On page 18 of your testimony, the sentence
20 beginning "For tonnage for inbound traffic total AT&SF/SP
21 rail customer tons are not found to have sufficient
22 logistic options."

23 Do you see that sentence?

24 A Yes.

25 Q Does the statistic you indicate in that

1 sentence indicate that for points which can be clearly
2 identified as affected by the merger, almost one-third
3 of the traffic may not have logistics options?

4 A The table indicates that 30 percent of the
5 tons were not found to have sufficient logistics
6 options. That's what the table states.

7 Q Did TBS, other than through what Forrest Baker
8 did, evaluate and write up the extent of excess capacity
9 in the trucking industry today?

10 A We didn't develop a separate write-up of
11 excess capacity in the trucking industry.

12 Q Did TBS examine and develop a separate
13 write-up of whether trucks would be able to perceive
14 when a railroad is charging a supernormal price to its
15 customer? And if you need a definition of supernormal,
16 I would be happy to give you one.

17 A You mean did we look for situations where the
18 railroad at the present time -- I got a little lost in
19 the question when you added the parenthetical.

20 Q All right.

21 Did TBS systematically evaluate and write up a
22 consideration of whether trucks will be able to perceive
23 when a railroad charges a supernormal price to a
24 customer?

25 A To my knowledge, we didn't try to get inside

1 the head of the motor carrier executive on that
2 particular question, no.

3 Q All right.

4 Did TBS systematically evaluate and write up a
5 consideration of how likely a tactic of long term
6 contracts engaged in by motor carriers would be in
7 allowing successful truck entry?

8 A Contracts are one factor that may have been
9 considered in the analysis by Mr. Baker. We did not
10 write up a treatise on that subject, no.

11 Q On page 5 of your testimony, you say TBS
12 studied only those locations where the Santa Fe and
13 Southern Pacific were either the only railroads serving
14 transportation customers, or with the exception of
15 Houston, where only one other railroad besides the Santa
16 Fe and Southern Pacific participated in the market.

17 For those that you didn't study, are you
18 making an assumption that three railroads is adequate to
19 provide competitive rail service for shippers?

20 A If there are sufficient other modal
21 alternatives that can keep the price of services in the
22 market for carrier services near long run marginal
23 costs, you only need one alternative rail carrier.

24 Q Is it the position of TBS in your testimony
25 that in a market where there are no alternatives other

1 than three railroads, that that will be adequate to
2 prevent shippers from any exercise of market power on
3 behalf of the railroads?

4 A No, we didn't say that. I may have been
5 confused on that question.

6 Q Could you ask it again, please? It was a
7 little -- well, I'm sorry.

8 MR. RATNER: I can have it read back if you
9 like.

10 JUDGE HOPKINS: Will you repeat the question?

11 THE REPORTER: Question: "Is it the position
12 of TBS in your testimony that in a market where there
13 are no alternatives other than three railroads, that
14 that will be adequate to prevent shippers from any
15 exercise of market power on behalf of the railroads?"

16 THE WITNESS: We didn't -- I stand by -- our
17 analysis was multimodal. That was the reason I was a
18 little confused. I don't know any markets that are
19 served by three railroads only and don't have other
20 modal competition, and I didn't understand whether it
21 was a hypothetical question or not.

22 BY MR. RATNER: (Resuming)

23 Q I don't want to hide anything. The reason I
24 asked it is because I think you testified earlier that
25 in cases where there were three or more railroads

1 serving a point you did no further investigation as to
2 the logistics options at that point.

3 A I indicated at that point that we did look and
4 make sure that the rail lines were serving in all
5 directions and there was sufficient line haul carriers
6 in there in places like Kansas City and whatever, so we
7 did look at it. We just didn't study it.

8 Of course, some of that traffic got studied as
9 part of local flows or Group II analyses as well.

10 Q On page 7 of your verified statement you
11 indicate that your screens were developed based on the
12 ICC market dominance guidelines. Do you see that?

13 A We went through this quite extensively with
14 Mr. --

15 Q What I was going to ask you is did you
16 consider using any guidelines other than the market
17 dominance guidelines.

18 A When I looked at those guidelines, as I
19 mentioned yesterday to Mr. Roach, they provided a nice
20 summarization of what our approach had been up to that
21 time to identify the --

22 Q Did you consider using the Department of
23 Justice guidelines for mergers?

24 A Which are you referring to specifically?
25 There are a number of them.

1 Q There is one set of merger guidelines
2 published by the Department of Justice for mergers.
3 That's the guidelines, the most recent set or the most
4 recent set that you would have had at the time you
5 prepared your testimony.

6 A We were aware of the existence of those
7 guidelines. I don't remember if we considered using
8 them or not.

9 MR. RATNER: May I have one moment, Your
10 Honor?

11 JUDGE HOPKINS: Sure.

12 (Pause.)

13 BY MR. RATNER: (Resuming)

14 Q I'm sorry for the delay. I was trying to
15 figure out the page that I could reference you to. On
16 page I-A-7, so I guess this is in Appendix I-A, really
17 page I-A-8; do you have that?

18 A Yes.

19 Q You discuss there a revealed preference, the
20 revealed preference consideration; do you see that?
21 It's on --

22 A Yes, I see what you mean.

23 Q Okay. Isn't it correct that the revealed
24 preference consideration tells us that combining all
25 price and service factors that for a particular cell

1 many people choose truck and many people choose rail?

2 A It shows what the aggregate of individual
3 shipper decisions are in their process of deciding which
4 modes to use.

5 Q Isn't it correct that the revealed preference
6 consideration does not tell us how less preferable the
7 alternatives not chosen are?

8 A Less preferable in what sense, Mr. Father?

9 Q Less preferable to the ones that are chosen,
10 the one that is chosen.

11 A Relative to ones that aren't chosen? I mean,
12 these would be ones that were excluded from the ones
13 that have already been chosen? I'm not sure what the
14 reference says.

15 Q The revealed preference tells us, does it not,
16 that certain numbers of people choose rail as a
17 movement; correct?

18 A If rail was part of their distribution system,
19 that's correct.

20 Q The revealed preference consideration does not
21 tell us what it is that they were dissatisfied with
22 about the other alternatives that made them choose rail;
23 is that correct?

24 A The revealed preference consideration is
25 pretty straightforward, and that is what is actually

1 happening in the marketplace. You are correct in saying
2 that it does not provide fine discriminations between
3 what one option may be over another. There are many,
4 many reasons why individual shippers choose those
5 options; that is absolutely correct.

6 Q Is it correct to say that the revealed
7 preference consideration does not tell us whether a
8 shipper currently choosing rail would be willing to
9 switch to truck at the slightest dissatisfaction with
10 his rail service or whether it would have to be an
11 enormous dissatisfaction that would make him to switch;
12 isn't that correct?

13 A Many, many decisions are made at the margin in
14 here. I wouldn't like to generalize and say that all
15 decisions were the way you characterize them. Certainly
16 there maybe a shipper who presently is moving computers
17 via truck that would not probably be interested in
18 moving them rail boxcar, if that's the point you are
19 driving at.

20 Q The point I am driving at is going to be asked
21 in another question, I guess, which is isn't it correct
22 that on the basis of the revealed preference
23 consideration, we just don't know the answers to the
24 questions I am asking?

25 A The purpose that we put this analysis to was

1 not to look at those particular issues that you are
2 raising. It was to look at the ability of shippers to
3 have market power relative to other -- in their
4 relationships with the railroads and motor carriers
5 after the merger.

6 Q Doesn't the revealed preference factor
7 indicating that the revealed preference for some people
8 is rail, doesn't that suggest that rail would be able to
9 either raise its price or dilute its service at least a
10 little bit before the people currently using rail would
11 switch to another mode?

12 A There may be cases of that. That was
13 certainly the purpose of our study, to identify those
14 situations where there might be the ability to, as you
15 put it, raise prices a little bit. That was the
16 purpose, to identify those points to Mr. MacAvoy could
17 then evaluate what was -- what the impact of those would
18 be. Certainly the options we have been identifying
19 here, however, do act as constraints on the ability of
20 carriers to act in a capricious manner, let us say,
21 against their customers.

22 Q The revealed preference factor doesn't tell us
23 how much of a constraint, is that correct?

24 A I thought I answered the question. I will
25 answer it again and say that the revealed preference

1 factor -- we did not systematically look at that issue.
2 Thus, it -- I can't answer the question yes or no.
3 There are certainly revealed preference. You can
4 gradate it that way. You are asking me a generic
5 question to which the answer is yes, that's what it's
6 all about.

7 Specifically, did we analyze every gradation
8 within these logistics channels of whether it would be a
9 less preferred or more preferred alternative, no, we
10 didn't. So there are two answers to it.

11 Q I'm sorry, I guess I didn't understand the
12 answer to my question. I asked you whether you can tell
13 by using the revealed preference consideration the
14 extent to which one characteristic of the revealed
15 preference is a constraint on the other preferences.

16 A Certainly the options we have identified here
17 can act as constraints relative to the ability of
18 carriers to alter rates, service, prices.

19 I hope I'm answering your question. I'm
20 trying hard to.

21 Q Does the revealed preference consideration
22 give any indication as to the level of constraint that
23 any particular option offers?

24 A Thank you for adding the word "level." Our
25 study did not address the question of level, certainly

1 in the context with a revealed preference. One could
2 investigate those types of issues. I apologize for
3 being confused, but it was specific versus general. But
4 on the revealed preference you went back and forth on me
5 a little bit.

6 Q I believe there's a yes or no answer to my
7 question on that.

8 A Then you'll have to ask it again. I'm sorry.

9 Q Does the revealed preference consideration
10 give you any information about the level of the
11 constraint offered by any of the options?

12 A I'll have to ask you what context you are
13 putting it in, then. Specifically in relationship to
14 the work that was done here, or generally in
15 relationship to the overall evaluation of revealed
16 preference?

17 Q Either.

18 A I thought I answered that question a couple of
19 questions ago.

20 In general, you can investigate the revealed
21 preference issue as to whether it is going to -- what
22 effect it would have on the level of constraint. You
23 can't say yes or no to that question. I'm sorry. It's
24 an investigative issue as to whether it has any
25 constraints.

1 A Yes, you can use revealed preference to
2 evaluate whether or not the level of constraint may be
3 effective in the context that you are using it.

4 Q If you want to know if truck constrains rail a
5 lot or a little, how do you use the revealed preference
6 to do that?

7 A You do a specific analysis in the distribution
8 channel that looks at all the shippers that are in here
9 and what's going on in their decision process.

10 Q In other words, you look at something other
11 than just the revealed preference, is that correct?

12 A Reveled preference is a summation, an
13 aggregation of the behavior of groups of people within a
14 distribution channel. All I said was that you could
15 then look at how that behavior actually took place
16 within that channel and come up with an answer to your
17 question.

18 Q If the question is how much can the merged
19 firm raise price before a switch to a different option
20 will occur, did you look at that question?

21 A That was not a question that we looked at
22 directly. We only identified the various types of
23 constraints that exist within the SPSP service region,
24 logistics channels that could be used to do that.

25 Q Did you examine how much the merged firm might

1 be able to let service deteriorate before there would be
2 a switch to a different option?

3 A No, we did not investigate directly any
4 specifics about price or service degradation that might
5 take place in this environment. You have to remember
6 that our study went up to a certain point of identifying
7 constraints in the marketplace.

8 Q At page 8 of your verified statement you talk
9 about a hierarchy of choices available in shipping or
10 receiving goods.

11 A That is correct.

12 Q And you refer to the least preferred one,
13 which is the complete relocation of the facility to
14 avoid adverse company impacts.

15 A That is correct.

16 Q Isn't it correct that such a relocation of the
17 facility as you have described would be likely to result
18 in large amounts of economic waste if the movement was
19 forced by a merger?

20 A We went over one of these examples with Mr.
21 Bosch where I stated that the company actually ended up
22 saving costs as a result of such a relocation. I am
23 sure that we could come up with examples in which the
24 opposite might be true.

25 Q I believe you have testified -- and correct me

1 if I am misstating it -- that the logistics options that
2 you have identified strengthen the bargaining power of
3 the shippers who have those options, even if those
4 shippers can't rapidly switch to the option, is that
5 correct?

6 A That is correct. The whole purpose of our
7 study was to identify those options and the constraints
8 they would impose upon switching -- I'm sorry, the
9 constraints they would impose upon the operations of
10 that marketplace.

11 Q If a shipper is unable to rapidly switch,
12 isn't it correct that a railroad in many cases will be
13 able to perceive that fact and succeed in charging a
14 higher price to that shipper than the shipper who is
15 effectively able to switch?

16 A You may be able to find certain situations
17 where that exists. Again, I have worked with a number
18 of shippers who faced that situation and were able to
19 use truck effectively in certain situations to prevent
20 that as well.

21 So you can find examples on both sides there.

22 Q Has TRS done any studies or analysis or
23 write-up on the effective bargaining in rates where
24 other mode options are not present for some shippers but
25 exist in the general industry?

1 A I'm trying to think of a situation where there
2 would not be any mode options present for a shipper, and
3 you might -- it's difficult to consider it. Perhaps the
4 classic utility at the end of a spur line. Is that the
5 situation you were referring to?

6 Q I'm asking you if there is any study or
7 analysis or write-up on the effect of bargaining and
8 rates where other mode options are not present for some
9 shipper but exist in the general industry.

10 A As part of this study we didn't do such a
11 writeup.

12 MR. RATNER: Can I take a moment more, Your
13 Honor?

14 JUDGE HOPKINS: Go ahead.

15 How many more moments are we having?

16 MR. RATNER: Hopefully just a few.

17 JUDGE HOPKINS: Thank you.

18 (Pause)

1 BY MR. PATNER: (Resuming)

2 Q On page I-4, which is Table I-1, you may have
3 already been asked this. Based on the carriers you have
4 listed there for Modesto, why is Modesto not properly
5 characterized as a Group II common point?

6 Have you already been asked that?

7 A I think it's been gone over.

8 MR. WOATES: Yes.

9 MR. PATNER: Okay, that's fine.

10 BY MR. PATNER: (Resuming)

11 Q I apologize if this has already been asked to
12 you. Is Southern Pacific Pipelines owned by Southern
13 Pacific Transportation or Southern Pacific Santa Fe
14 Company?

15 MR. WOATES: Objection. This witness isn't
16 the witness --

17 MR. PATNER: It's referred to in several
18 places in his testimony as far as its being a logistics
19 option. It's important enough.

20 JUDGE HOPKINS: If he knows.

21 BY MR. PATNER: (Resuming)

22 Q If he doesn't know, that's fine.

23 A Yes, it is. It was not used as a logistics
24 option in any situations.

25 JUDGE HOPKINS: Thank you.

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BY MR. RATNER: (Resuming)

Q In the Bakersfield common point and I think in the Fresno common point, you refer to non-ferrous recyclables. And you indicate that dominant portions of that traffic are subject to vigorous rate regulation.

Do you remember that?

A We made a comment on that. That's correct.

Q Does the availability of ICC vigorous rate regulation mean that we need not be concerned about anticompetitive behavior when two firms merge?

A That wasn't the point of what we said there. We were just making a comment on it, that we didn't use that to exclude that particular tonnage. I did not mean to imply that we shouldn't.

Q It's correct, isn't it, that railroads often compete on service as well as price, isn't it?

A Railroads, motor carriers, all sorts of modes compete on service and price, Mr. Ratner. Yes, that's correct.

Q In the El Paso, I guess Group II common point --

A El Paso is what we call the hybrid.

Q Okay. In El Paso, the whatever it is common point, you have an indicator in the legend for a rubber sign, which indicates that Santa Fe Southern Pacific

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1 shipments would still be competitive with the Missouri
2 Pacific after the proposed Santa Fe Southern Pacific
3 merger.

4 It's on the very last exhibit, XXII-14.

5 A Yes, that's correct.

6 Q If you haven't already been asked this, can
7 you tell me how that was determined?

8 A Since we knew the exact origin and
9 destinations of these movements, and we knew where the
10 collective railroad systems went, we could determine
11 that particular result.

12 We didn't know, down to the very detailed
13 level of the delivery point or origin point of the
14 movement, where it went. So obviously, what we did was
15 compare it to where the Santa Fe Southern Pacific went
16 in that direction.

17 Q How is "competitive" defined?

18 A As another railroad that could possibly move
19 the tonnage. I guess that's what one means by
20 competitive in this particular --

21 Q Were rates between Southern Pacific Santa Fe
22 and Missouri Pacific evaluated?

23 A You mean specific rates for that movement?

24 Q For these cells, yes.

25 A Our assumption was that if it was a

1 competitive movement and we determined that, in fact,
2 the pricing must be somewhat similar in those two, I
3 don't remember. I told you that we determined that the
4 pricing was somewhat similar in those two.

5 I can't state categorically that we watched
6 the price exactly on those movements. We determined
7 they would be competitive. There would be a number of
8 factors that would go into it. Certainly price was one
9 of them.

10 I'm not sure if we quantified the actual
11 prices on those, I have to admit.

12 Q Were these screened out, these number signs
13 screened out after they failed a 50 percent screening?

14 A I can't answer that question. I'm just not
15 sure.

16 Q Is there any way you could check on that and
17 provide an answer for me? It doesn't have to be right
18 here this moment.

19 A I could also refer you to the tables. You
20 have to remember that there is no Peeble gravel tonnage
21 in these tables. So, by definition, those blocks would
22 fail just by using the screen No. 1, unless the movement
23 was perishable, which in this case I don't believe;
24 some of it could be perishable but --

25 Q Well, I see pulp, paper and allied products.

1 primary metal products.

2 A There are a whole number of them on the
3 table. I agree with you. Do you want to go through
4 each one here?

5 Q I'm trying to determine what the methodology
6 was.

7 A Well, we would be pleased to -- there might be
8 different methodologies. Not different methodologies
9 for each, but there may be different ways in which it
10 was done for each of them in terms of looking for
11 competition.

12 What would your preference be? I'm not sure
13 exactly what you are asking. Do you want us to get back
14 and answer the question, which we are willing to do,
15 whether or not they failed -- some of these points
16 failed the first screen -- we are willing to do that.

17 Q I would like to know what the methodology was
18 to consider these as competitive routes separately, or
19 whether the methodology was to examine them after they
20 did not pass.

21 A That's a different question.

22 Q The 50 percent test. Well, that's what I'd
23 like to know.

24 A Okay.

25 Q Thank you.

1 Very briefly, you testified earlier this
2 morning you met with Dr. MacAvoy, and that Dr. MacAvoy
3 asked for some numbers. What numbers were those?

4 A When Dr. MacAvoy and I met, we talked about
5 the methodology. He discussed with us the types of
6 information he would need to do his welfare analysis.
7 He indicated to us that since we were doing the analysis
8 that showed what the level of tons would be that might
9 be affected and not have sufficient options after the
10 adequate -- adequate options after the merger -- to
11 provide him with that particular tonnage as well as the
12 average rate per ton on that tonnage.

13 Q Did you explain to Dr. MacAvoy at that time
14 that your study was not designed to evaluate the exercise
15 of market power by the merged firms?

16 A No. I misspoke earlier today when I said that
17 it was not designed to evaluate the impact of market
18 power. Certainly, the options we identified here are
19 all options that can be used to act as constraints to
20 behavior of carriers in these various flows that we were
21 analyzing.

22 Q Did you discuss with Dr. MacAvoy that you were
23 not going -- that you did not reach any effective
24 conclusions as to when and where the railroad would be
25 able to exercise any market power, if any, as a result

1 of the merger?

2 A That was not -- we were only -- it's a bit of
3 a confusing question. I think I just answered the
4 question. It was our job to identify those constraints
5 that would take place. We were not -- it was not part
6 of our analysis to identify the level of possible
7 impacts or the level of effect that those constraints
8 would have.

9 That was left to Dr. MacAvoy to do.

10 Q This morning you testified that he asked for
11 some specific numbers. What were those numbers?

12 A I thought I just told you.

13 Q There were no specific numbers, then?

14 A No, I'm sorry, Mr. Patner. I answered the
15 question.

16 Q That's fine, if you've answered the question.

17 MR. PATNER: I have no further questions for
18 this witness, Your Honor.

19 JUDGE HOPKINS: Thank you.

20 Ms. Reed, are you next?

21 BY MS. REED:

22 Q Good afternoon, Dr. Anderson. My name is Mary
23 Reed, and I'm appearing on behalf of the U.S. Department
24 of Transportation.

25 MS. REED: Your Honor, I'd like to have marked

1 as our next counsel's exhibit, DOT-C-3 which is entitled
2 "Questions for David L. Anderson on Temple, Barker &
3 Sloane Analysis of Shipper Transportation Options."

4 The first four pages of the exhibit are the
5 questions the Department presented to Fr. Anderson and
6 pages 5 through 12 are the responses.

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

9 (The document referred to
10 was marked Exhibit DOT-C-3
11 for identification.)

12 BY MS. REED: (Resuming)

13 Q On Question 1 of DOT-C-3, we had asked you to
14 indicate how you determined the common points. And in
15 your response which is set forth on page 5 of 12, you
16 indicate what things you had looked at.

17 Q Could you tell me what year that data was
18 based on?

19 A What year? I presume it was the most
20 up-to-date data available that we could possibly use.
21 There may have been -- it's hard to say a specific year
22 because, as you might know, different tariffs, different
23 circulars, different other documents are updated not in
24 all the same order.

25 Q Our effort was to use the most up-to-date

1 information that was available to do that, such as the
2 latest possible tape from the AAR and the Rail Service
3 Profile and things of that nature.

4 Q Are you aware that in 1982-1983, the SP closed
5 routes with other carriers?

6 A In 1983? I am not aware -- I don't quite
7 understand the question.

8 Q That they engaged in tariff route closings with
9 other carriers?

10 A In 1983?

11 Q '82 and '83, I believe.

12 A I'm only generally aware that that occurs in
13 the rail industry, and I have heard that the SP gets
14 involved with those things as well.

15 Q Do you know whether the data that you relied
16 on reflected those route closings?

17 A Certainly, there are route closings in this
18 analysis. I'm not sure what -- I'm not exactly sure
19 what the question is. I don't know specifically which
20 ones were.

21 Remember, we still chose all the tonnage for a
22 shipper. Even though that shipper might have been
23 closed in the tariff, its tonnage was not excluded from
24 the common point that we studied.

25 So that's why I'm a little bit confused.

1 There's the choice of points, and then there is how you
2 dealt with the shippers at the points in terms of
3 choosing the tonnage, and we assiduously included all
4 the tonnage that was available.

5 Q Even though the shipper might not be open to
6 reciprocal switching?

7 A Even though the shipper might appear at a
8 common point that was open to reciprocal switching. And
9 for some reason, in the circular or tariff, it was
10 stated that he wasn't open to reciprocal switching, that
11 tonnage was included in the analysis.

12 Q But it had to be within a SPLCC -- I'm
13 sorry -- that was open to reciprocal switching, of
14 course.

15 Q And how did you determine that it was open to
16 reciprocal switching?

17 A That could be done via the tariffs and
18 circulars provided by the railroads.

19 Q And you don't know what date those tariffs
20 were?

21 A In terms of the exact dates, again, tariffs
22 and circulars are voluminous and they can be updated all
23 the time. I can't tell you exactly which dates.

24 Q Now, on Question 4A, we had asked you whether
25 or not hazardous materials were included in Exhibit

1 IX-10, which is Phoenix. Could you please turn to that
2 exhibit?

3 Am I correct that you did not, in Exhibit
4 IX-10, incorporate into the various STCC codes
5 transportation of hazardous materials by rail?

6 A You're just a tiny bit ahead of me here.
7 Which exhibit are we talking about?

8 Q IX-10 for Phoenix, the first volume.

9 A Are you asking me to answer the question
10 again?

11 Q Well, I'm trying to interpret it. You stated
12 in your response that SP Santa Fe STCC 49 was converted
13 back to the corresponding generic STCC code. That was
14 done in Table 15. Is that IX-15 and not in Table
15 IX-10? Is that correct?

16 A Are you asking how 49s are treated in IX-10?

17 Q Yes, sir.

18 A Maybe I'm getting tired, but I don't see any
19 49s in IX-10. I would assume, and I would have to check
20 with staff, it's a simple question. I would just ask
21 them how it was dealt with in that table. I am not
22 sure.

23 I know that in the basic data base that we
24 were using for the study, that all the 49s were
25 converted back for our analysis purposes and we tried to

1 keep a consistent data base in that sense.

2 Now, some of this other information on these
3 other tables are Beebe information, and I'm not exactly
4 sure how it was dealt with.

5 Q All right. If I might refresh your memory, I
6 have a work paper which is CTB-001857, and I wasn't
7 planning on introducing this as an exhibit.

8 Now, am I correct that the corresponding
9 generic STCC codes that you referred to in your response
10 to Question 4 on page 2 are chemicals and petroleum
11 products?

12 A It could have been other commodities as well.
13 Hazardous materials are generally concentrated in the
14 two you mentioned.

15 Q Okay. Now, if you will look at the work
16 paper, page 1857, it shows that in BEA 162 which is
17 Phoenix, it originated -- rail tonnage originated
18 577,056 tons. Is that correct?

19 A That's correct.

20 Q Now, if you'll also look up chemicals or
21 allied products originated, 3,200.

22 A The rail carload number? Uh-huh.

23 Q Okay. Now, am I correct that that's the same
24 number as shown in Table IV-10?

25 A Yes, that's correct.

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1 Q And then if you'll flip to the outbound --

2 A That was the outbound.

3 Q Excuse me, the inbound. Work paper CTB-1858
4 shows that there were 451,390 carloads of rail traffic
5 and 3,000 TCPC movements of hazardous materials. Is
6 that correct?

7 A That's correct.

8 Q And that it shows that there were 759,000 --
9 excuse me -- 75,900 carloads of chemicals moving by rail
10 carload and 154,360 which I believe also match the
11 tonnages shown on Exhibit IX-10. Is that correct?

12 A As I said, I will be glad to get back to you.

13 Q What I was wondering was, did you just look at
14 hazardous materials in Exhibit IX-15 where you have SP
15 Santa Fe tonnages based on 100 percent tapes?

16 A This was different. This was one with the
17 Transearch data, and I just can't answer you why. This
18 was not -- I will get back to you.

19 Q If you can get back to me.

20 A Certainly.

21 Q Now, again, looking at Exhibit IX-15, you
22 have -- and this would be true in all of your cables --
23 you have things broken down by mileage blocks.

24 Would you tell me where the mileage block is
25 measured from? Is there a local focal point in the EPA,

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1 or do you measure the mileage block from the parameters
2 of the BEA?

3 A We were provided with BEA to BEA distances by
4 Mr. Carl Liba, and I would suggest that he would be on
5 the stand later. He could answer that question more
6 directly than I.

7 Q That's fine.

8 Now, yesterday you were explaining to Mr.
9 Roach that there was no double-counting on motor carrier
10 capacity. Could you -- I was confused as to your answer
11 to that.

12 Could you run through a specific example of
13 how you avoided double-counting?

14 A Let's take a BEA that had three common points
15 in it or three whatever. And when we used a specific
16 set of, shall we say, truck tons or other mode tons to
17 develop logistics options for a particular cell, and
18 those tons were never used again -- they were netted out
19 of the available tons that could be used to evaluate the
20 options in another cell at another common point within
21 that BEA.

22 So, used once, it became net of the BEA
23 tonnage. And then the next set of screens at a common
24 point, another common point, one would look at a reduced
25 set of tons in terms of their --

1 Q Would you turn to page 23 of your verified
2 statement? At the bottom you were asked a question by
3 Mr. Roach on this. But I have another question I'd like
4 to ask you.

5 You note that rail tons originating in Fresno
6 is well within the range of competing rail carrier
7 intermodal ramps located in nearby regions. Did you
8 have any mileage cutoff on how far things could be
9 trucked to a TOFC ramp?

10 A It varies a lot by the type of service you're
11 talking about. Generally, the drayage would be around
12 100 miles, perhaps. There are lots of cases that I have
13 been involved in where it's been as much as 300 miles.
14 So it depends on the distribution system you are talking
15 about. A hundred miles is good.

16 Q And that would be for the original point of
17 origination?

18 A That would be from a shipper or a receiver's
19 facility to the ramp.

20 MS. REED: Thank you. That's all that I
21 have.

22 MR. SCHEIBMAN: Good afternoon, Your Honor.
23 John Scheirman appearing for the State of Kansas.

24 BY MR. SCHEIBMAN:

25 Q Dr. Anderson, what were your reasons for

1 performing a detailed analysis of the market region you
2 call southwest Kansas and adjacent areas?

3 A I think we've gone over it a number of times
4 before. I'll be brief. We felt that given that this
5 was an area, an agricultural area where the initial haul
6 to the railroad was often by truck, that there was the
7 possibility of there being some effect on whatever
8 competitive options for those shippers, that currently
9 existed for the shippers, might be altered by the
10 merger.

11 So our purpose in analyzing it was to see if
12 there were sufficient logistics options present in the
13 market region.

14 Q Did you detect any interrelationships between
15 the southwest Kansas market region and any common points
16 or other market regions that were within the scope of
17 your study?

18 A Interrelationships in the sense of --

19 Q Well, in the sense of something akin to, say,
20 a common flow, if not actually reaching the definition
21 of common flow that you used.

22 A Well, certainly there were movements in and
23 out of -- well, basically out of southwest Kansas that
24 might have gone to another common point. That's
25 certainly the case. It's true for all the common

1 points.

2 Q Did you note any particular relationship
3 between the southwest Kansas market region and the
4 Fresno, California area?

5 A Southwest Kansas and Fresno?

6 Q Significant movement of a particular commodity
7 between those points.

8 A There may have been such a movement. It's a
9 pretty specific question. Certainly, the grain moves
10 lots of places. I don't recall exactly.

11 Q Do you recall any between southwest Kansas and
12 Phoenix, Arizona?

13 A That I do recall. There was a small grain
14 movement to Phoenix. I believe somewhere on the order
15 of 30,000 tons.

16 Q On page XIV-5 of Appendix XIV of your verified
17 statement --

18 A Did you say page XIV-5?

19 Q Right.

20 A Thank you.

21 Q You stated there the developing a modal
22 profile for movements in and out of the southwest Kansas
23 market area required integrating a number of data
24 sources.

25 Q Can you explain why that was necessary?

1 A Well, as you are aware, grain distribution
2 channels often involve multiple loading/unloading of
3 transportation equipment.

4 In order to understand the movements,
5 especially in situations where you have both rail and
6 truck involved in the movement, and the non-existence of
7 compatible data bases -- to evaluate that situation, you
8 would need to look at a data base that might contain
9 some information on truck, shall we say, from the farm
10 to the country house. Then perhaps you have rail
11 information from the country house to the terminal
12 elevator, and so you have to blend things together to
13 understand how the process works.

14 Q What data sources were used in looking at the
15 southwest Kansas market area?

16 A Those are documented in our study and our work
17 papers contain any information we used. Some of them
18 were discussed this morning. I don't know if you want
19 to get into those in great detail, but they are all
20 sourced in our document.

21 Q There's nothing that hasn't been referenced
22 already?

23 A Not to my knowledge. That was either in our
24 work papers, or is discussed in my verified statement.

25 Q What role did the TRAM analysis play in that

1 southwest Kansas market area study?

2 A We didn't use any truck tonnage in the grain
3 analysis. I am not familiar with -- I've just forgotten
4 whether there are any -- it doesn't appear that TRAM was
5 used in any of the southwest Kansas analysis. It's
6 based on my observation of looking at Table XIV, Exhibit
7 Roman XIV-15.

8 There are no 5's -- I'm sorry. There are two
9 in non-metallic mineral movements. So the TRAM analysis
10 wasn't used in the farm products evaluations, but it was
11 used for two as a non-metallic mineral movement. We did
12 try to locate alternative motor carrier capacity for
13 that movement.

14 Q All right. Why was TRAM not used for the
15 grain movements?

16 A Our analysis showed, as has been discussed in
17 great detail this morning, the geographical orientation
18 of the lines, and based on the fact there isn't a whole
19 lot of competition between the two rail lines, that we
20 found that we didn't need to use that as an option.

21 Q Are you saying, then, that you did not need
22 any data on those grain movements?

23 A No, I wasn't saying that. You asked me if I
24 used TRAM in this case.

25 Q What data was used?

1 A You asked if sufficient options exist. And I
2 said we didn't need to do that. We certainly looked at
3 a lot of truck information that's been talked about this
4 morning in here.

5 Q What specific data sources did you have for
6 grain movements by truck?

7 A They are outlined in the study. There is one,
8 for example, Grain Marketing and Transportation, Kansas
9 Crop and Livestock Reporting Service.

10 Q Okay. Are there any aspects of the southwest
11 Kansas market area logistics that Mr. Baker would be
12 more familiar with than you are?

13 A I'm not quite sure I understand the question.

14 Q Based on the work that he has done in this
15 study?

16 A Mr. Baker is an expert on the motor carrier
17 industry, and he does know things about grain marketing,
18 trucking by grain. As to his knowledge, southwest
19 Kansas grain, truck, you can ask him yourself.

20 Q On page XIV-12, you stated: "In certain
21 instances, shipper options actually will improve as a
22 result of the merger because it will create more single
23 line service to export locations."

24 Could you please mention any specific
25 improvements in shipper options that you discovered in

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1 the process of your analysis that would apply to the
2 southwest Kansas market area?

3 A Well, there are -- it's the ability for
4 shippers on the SSW lines to now have single line
5 service to the export markets where presently they have
6 to go over Harrington and move via the CKT.

7 That was a generic statement, the reference to
8 the generic statement made here. That is basically my
9 answer.

10 Q Did you identify particular movements from
11 origins to destinations in the Gulf that would benefit
12 from that single line service?

13 A Well, there isn't much going that way right
14 now. In other words, there isn't a lot of SSW grain
15 that's moving across Harrington and down because of the
16 single line service being offered by the Santa Fe.

17 Q Did you make any attempt to quantify these
18 advantages for these shippers?

19 A Other than the general statement that joint
20 line rates are generally more expensive than single line
21 rates, we didn't go much beyond that.

22 Q On page XIV-13, you state: "The only focused
23 commodity for which TBS was unable to conclusively
24 identify viable alternate logistics options in the
25 preceding stages of the analysis is non-metallic

1 minerals, STCC-14."

2 In what respects were the logistics options
3 identified for STCC-14 by TFS found not to be viable?

4 A It was one of those problems we spoke about
5 before, where the Transearch data base that we used did
6 not have any shipments in it of domestic non-metallic
7 minerals. So we were unable to look at that data base
8 and do our primary screen analysis.

9 Q Uh-huh.

10 A And I presume from our statement here,
11 although I will have to look at the table, that there
12 were TRAM options for those two movements. The
13 reference in the table here -- yeah, it says "preceding
14 stages." So this was before the TRAM analysis was
15 done. I just missed that.

16 Q All right. What data on STCC-14 was TRAM
17 asked to supply and how did they get it?

18 A In such situations, TRAM was asked to look for
19 whether or not there was available existing motor
20 carrier -- motor carriers that were able to serve that
21 particular movement that was in question.

22 Q Could you identify which particular minerals
23 are involved?

24 A Yes, we did when we would give the information
25 to TRAM. We would give the information to TRAM at the

1 five-digit level so that they would have a very close
2 identification of the particular movement, particular
3 commodity that was moving.

4 Q Do you recall what they were? I think there
5 are a limited number of minerals in that area.

6 A Yes. I don't recall what they were.

7 Q Okay. Do you recall whether there were any
8 salt movements involved?

9 A Salt was the one I was about to say. I
10 thought it might be salt.

11 Q Could you please refer to your Exhibit
12 XIV-15. Now, I don't have the reference here, but at
13 one point in your verified statement, you refer to
14 Exhibit XIV-15 which has the specific mileage blocks
15 annotated with a 5 or a 6. And there are no 6's
16 appearing on this exhibit.

17 And yet, if you look down to the sixth
18 footnote in the table, it states that Category 6
19 represents 2.5 percent of all cells.

20 Q Can you clarify that, please -- that
21 discrepancy?

22 A Yes, we can get back to you on that.

23 Q Okay. On page Appendix I, you state that
24 Trarsearch data for BEA 139 was used to represent the
25 study region. This is dealing with the southwest Kansas

1 grain logistics and distribution options.

2 Isn't it true that Transearch does not contain
3 any data on local truck movements of grain?

4 A Yes. That's what I've already testified.

5 Q And isn't it also true that Transearch does
6 not generally contain any truck movements of grain
7 because this commodity is not regulated and no such data
8 is collected?

9 A The reason that they don't include it is best
10 known to Mr. Liba who is the keeper of that data base.
11 I will just ask you to ask him the question.

12 Q Okay.

13 A For example, no unregulated perishables are
14 included in the data base, so that's the reason I was
15 hesitating.

16 Q It is still not clear to me what your sources
17 on data on truck movements of grain were, and you
18 mention some that are of an aggregate nature.

19 Could you explain what those sources were, and
20 what they told you about those movements, how much they
21 told you about those movements?

22 A Well, I think I ought to explain to you, we
23 didn't use the truck to look at whether or not
24 sufficient options would exist. You can see that on
25 Table XIV-15, that truck wasn't used to screen out

1 anything. So I'm not sure what you're driving at.

2 I mean, do we have a consistent data base of
3 all truck movements of grain in southwest Kansas? The
4 answer is no, we didn't have it. We had sample data
5 that we presented here, which was to the best of our
6 knowledge the information that was available at the most
7 disaggregate level of detail possible.

8 Q In your description of grain logistics and
9 distributions options, you state that farm to elevator
10 movements are dominated by trucks.

11 Now, isn't it true that these trucks are
12 generally privately owned by the farmers, rather than
13 common carriers?

14 A Do you mean from the farm itself to the local
15 elevator?

16 Q Right.

17 A Often, they are hauled in farm trucks; that's
18 correct. And those trucks are generally owned by the
19 farmer; right.

20 Q Is it meaningful, then, for that leg of the
21 distribution pattern to talk about those trucks as a
22 source of competition for rail carriers?

23 A I don't think we ever did.

24 Q Okay. Would you agree, then, that the focus
25 of interest in terms of the competitive impact is really

1 on the movements from country elevator to terminal to
2 the ultimate user of the grain?

3 A I don't like to separate out pieces of the
4 distribution system and start to isolate on them in my
5 mind. It's a process, it's a flow from the farm all the
6 way to the final receiver, whether it's a feed lot or a
7 country elevator.

8 So I can think of competition among
9 distribution channels in that context.

10 Q Well, do you know of any meaningful
11 competition by common carriers, either rail or truck,
12 for the farm to country elevator movements?

13 A Not -- I'm sure that some do move it, but I'm
14 not aware of any significant amount of any motor carrier
15 service in that particular -- that's not my area of
16 specialty either. So I don't want to get too far afield
17 here.

18 Q Could you please describe the southwest Kansas
19 to Arizona and the southwest Kansas to California
20 logistics for feed lot grains?

21 A Are you asking me to describe the logistics
22 options?

23 Q Yes. And the flow patterns.

24 A I'll try. I'm not quite sure what you're
25 asking. It generally moves by rail to those locations

1 as well as -- and I would hasten to add, that's not the
2 only source of feed lot grain in those areas. But
3 certainly, the Kansas grain is one source for the
4 Phoenix and -- I forget the other one. What was it?

5 Q California.

6 A I thought you said Fresno.

7 Q What other sources of feed lot grains are
8 those in those markets; do you know?

9 A I'm not sure of the exact origin of those
10 other sources. I do know that other railroads and
11 perhaps some trucks move grain into those markets.

12 Q Do you consider that Arizona and California
13 feed lots provide an identifiable market for southwest
14 Kansas milo or sorghum grains?

15 A We didn't define markets in our study. I'm
16 sorry, I misspoke earlier. It's getting late in the
17 day.

18 Q Does competition presently exist between ATSF
19 and SP in transportation of these milo sorghum grains
20 from southwest Kansas to Arizona and California?

21 A I think, as I say, we're getting a little far
22 afield. It's a very detailed question in a logistics
23 channel you're asking. I believe both carriers are
24 involved in the market, to the best of my knowledge, in
25 moving some amount of grain into the Phoenix market, but

1 I really should beg off the question and say I'm sorry,
2 it's too detailed for me to recall right on the stand
3 here exactly who moves, under what circumstances, into
4 what markets.

5 I do know some facts about the movement, but
6 they are quite limited.

7 Q Well, wouldn't it be significant in terms of
8 trying to determine the competitive impact of this
9 merger in the southwest Kansas market area? Wouldn't
10 such a movement and the question of whether it's
11 competitive or not at the present time be significant?

12 A I absolutely agree with you. I just said I
13 don't remember right now. If you'd like us to get back
14 with you with that information, we'd be glad to.

15 Q Yes, I would, please.

16 A It's just a question of failing memory here.

17 Q You will recall that you testified that there
18 is not significant competition between the two carriers
19 for movements to the Gulf.

20 A That's right. The SF really only moves around
21 4 percent of the grain in and out of the southwest
22 Kansas region, and generally moves it eastbound
23 westbound; eastbound being to some of the terminal areas
24 at Hutchinson or Topeka, Wichita, and westbound. It
25 moves it into some of those other feed lot movements we

1 were talking about earlier.

2 Q Do you know what Santa Fe's market share is
3 for that westbound movement?

4 A No, I'm sorry, I don't recall.

5 Q You testified you didn't recall the sources
6 of -- the other sources of feed lot grains to California
7 or Arizona.

8 Would it refresh your memory to mention West
9 Texas and Nebraska as sources for those movements?

10 A I have already stated that I would be glad to
11 get back to you. I'm not sure. I can't answer your
12 question. I'd like to, but I don't remember. And you
13 didn't trigger my memory.

14 Q While you're getting back to me on that issue,
15 then, if you could, would you consider whether either
16 West Texas or Nebraska would have any competitive edge
17 as against the southwest Kansas market as a source for
18 those grains to those destinations in the event that the
19 merged carriers control those movements?

20 A You're talking about a pretty small chunk of
21 traffic here. Let's take the Phoenix example, 30,000
22 tons. And we're talking about a really specific flow.

23 Are you asking me to do a broad scale source
24 competition analysis for you for that particular
25 movement? I'm sure we can find that the Union Pacific,

1 for example, moves one heck of a lot of feed grain to
2 California. I'm not exactly sure, but we're discussing
3 very detailed distribution systems here now, and it is
4 really in some sense more detailed than I can remember
5 all the facts, and I hate to give you the wrong
6 information.

7 We have done all of those analyses. But I
8 just don't have it at the tip of my fingers.

9 Q Well, I'm asking for anything that would bear
10 on the issue of whether the merger would result in
11 significant lost competition for the shippers of that
12 commodity from southwest Kansas.

13 A The study conclusions, I think, speak for
14 themselves here, our analyses. If you look at the
15 chapter, it's pretty clear about what we felt on that
16 subject, and we didn't feel there would be any problem.

1 Q On page Appendix XIV-10, you are referring to
2 mileage cell blocks annotated with a 2. You state that
3 when an origin and destination are located on the same
4 railroad line and rates and routes are available only
5 from the ATSF or SP, there has not generally been
6 meaningful competition for local flows.

7 Is that a fair summary of your statement
8 there?

9 A That is correct.

10 Q Would you say as a hypothetical that if two
11 lines of different rail carriers are parallel, and each
12 carrier offers a rate for the same commodity type from
13 points 25 miles apart to a point 100 miles away from
14 each origin which is common to both lines, would there
15 or would there not be meaningful competition between
16 those two carriers?

17 A It's just too complex a question you are
18 asking me.

19 May I just take a moment to try to structure
20 out what you are asking here?

21 Would you mind repeating the question? I'm
22 sorry.

23 Q You have two lines of rail carriers.

24 A How far apart are they?

25 Q At the origin point they are 25 miles apart,

1 at origin points.

2 A The two origins are 25 miles apart.

3 Q Right.

4 And they merge at a point which is equidistant
5 100 miles away.

6 A You're asking --

7 Q Is there or is there not meaningful
8 competition between those two carriers in that
9 situation?

10 A I assume they are different carriers. Shall
11 we call them F and P?

12 Q Yes.

13 A We are excluding any other, truck modes and
14 things like that at the present time? It's a fairly
15 short move here, 100 miles.

16 Q Not necessarily excluding truck modes, but
17 asking whether or not there would be competition between
18 the two railroads.

19 A Do these two roads compete for traffic in the
20 hypothetical?

21 Well, if they offer the same rate, they would
22 probably, as this is very similar to the question asked
23 Dr. MacAvoy in terms of how they would draw their grain
24 and all, they probably would draw grain from equal
25 distances between the two lines, if that was full of

1 farms, we can assume, and if they are offering the same
2 rate, they can perhaps be competitors. It depends on
3 other things like service and all.

4 Q Isn't that the situation basically in
5 southwest Kansas with local movements of grain?

6 A Unfortunately, the SSW is not a major player
7 in that marketplace. As I indicated, it hauls less than
8 4 percent of the grain. They really can't be considered
9 a major factor in the market, for a variety of
10 historical reasons.

11 Q Are you aware of any cross-hauling by grain
12 shippers in southwest Kansas, say, an SP grain elevator
13 located on an SP line, hauling to a grain elevator
14 located or hauling to a Santa Fe line and loading on the
15 Santa Fe line to take advantage of the lower rate there
16 than SP is offering?

17 A That specific instance, I must admit that I am
18 not aware of any situations like that. It could exist.
19 I'm personally not aware of it.

20 Q You didn't have any -- come across any
21 evidence of that in the course of your study in terms of
22 southwest Kansas?

23 A I indicated I was personally not aware of
24 them.

25 If you would like us to see if we did, I would

1 be glad to see if any of my staff did on that issue.

2 Q Yes, I would, please.

3 MR. SCHEERMAN: No further questions.

4 JUDGE HOPKINS: Thank you.

5 Any redirect?

6 MR. MOATES: Yes.

7 REDIRECT EXAMINATION

8 BY MR. MOATES:

9 Q Dr. Anderson, as a preliminary, for Mr.
10 Scheerman's benefit and mine, would you confirm and look
11 in your Chapter 14 at Exhibits XII and XIV-M, N, P, and
12 S for the moment and tell me if those tables don't deal
13 specifically with the question of where southwest Kansas
14 grain, as moved by the SP and Santa Fe, go today,
15 including Phoenix, which I draw your attention to on
16 Exhibit N as one of the points listed.

17 A Well, it depends whether it satisfies Mr.
18 Scheerman's desire.

19 Q I understand that, but I'm trying to clarify
20 for the record. You have four exhibits in that chapter
21 that deal with that.

22 A There are four exhibits in this chapter that
23 already address part of the question, that's correct.

24 Q All right, let me ask you a question with
25 respect to the examination of Mr. Patner.

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1 Just preliminarily, let me state it clearly
2 for the record. Do I understand that in your analyses
3 here generally you looked at four primary factors,
4 number one, commodity?

5 A Correct.

6 Q Number two, tonnage.

7 A Correct.

8 Q Number three, direction, that is, inbound
9 versus outbound.

10 A That is correct.

11 Q Number four, mileage blocks, is that correct?
12 And your answer to that was yes?

13 A Yes.

14 Q And you have testified several times, I
15 believe, in the last two days that there were times when
16 you found cells with many more times truck than rail
17 tonnage, I think you have even said several times as
18 much as a hundred times more, is that correct?

19 A That is correct.

20 Q Now, if trucks are found to be handling the
21 same commodities at the same tonnage levels in the same
22 direction and in the same mileage blocks as the traffic
23 that you identified as potentially affected by the
24 merger, especially if it is at levels many times in
25 excess of the rail tons, as you testified often happens,

1 do those facts tell you anything about the relative
2 effectiveness in constraining the merged carrier's rate
3 and service actions?

4 A They tell us a lot about the relative
5 effectiveness in those types of situations, and that's
6 basically what our study was based on. We were able to
7 conclude under those circumstances that sufficient
8 logistics options did exist for the movements, the great
9 majority of the movements in this study area, and also
10 that those particular options provided effective
11 constraints on the ability of carriers that are involved
12 in those logistics channels to alter price and service
13 options after the merger.

14 Q Okay.

15 MR. MCATES: I have a series of questions,
16 Your Honor, almost in the nature of answers to things
17 that we were asked to check on. I will, where
18 appropriate, try to indicate which counsel asked this.

19 BY MR. MCATES: (Resuming)

20 Q First, today before the lunch break Mr.
21 Greenberg asked you, Dr. Anderson, if you could refresh
22 yourself on the definition of the terms "flat and
23 upright grain" that appeared in the two tables.

24 Can you state for the record now what those
25 terms, how those terms are defined?

1 A Flat storage basically refers to warehouse
2 storage or storage in some facility that is more
3 longitudinal than upright. Upright storage is basically
4 silos.

5 Q Mr. Beach asked yesterday if you would check
6 on several things.

7 First of all, have you been able to determine
8 whether you have any work papers that support the
9 comparability of rail and truck traffic at the
10 three-digit stick level?

11 A Examination of our work files show that we did
12 not have any direct work papers. I can remember looking
13 over on computer screens runs from the data base that
14 did indicate the level of rail versus truck traffic in
15 the three-digit SPIC codes and shares and all that when
16 we were doing the initial analysis, but it was not
17 turned into a specific work paper. It was
18 computer-generated information that once it screened off
19 the screen, it disappeared.

20 Q Mr. Beach also asked you some questions about
21 the containerizability factor.

22 Have you been able to check to see if anywhere
23 in your study the rail tons in that containerizability
24 analysis came out to be less than the truck tons with
25 respect to NTCF Nos. 44, 45 and 46?

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1 A That occurred nowhere in our statement.

2 Q Another very specific question, have you been
3 able to check to see whether the tonnage attributable to
4 a point known as, variously as Gil City and Gil City
5 Junction, was included in the total tonnage for the San
6 Joaquin region?

7 A Yes, it was.

8 Q Similarly, have you been able to check and
9 determine whether tonnage attributed to the Sierra
10 Railroad was included in the tonnage for the common
11 point of Oakdale?

12 A If it was waybilled at Oakdale, it was.

13 Q I would like to direct your attention to a
14 portion of the testimony with respect to the next
15 question, Chapter 15, page 1. I will have specific
16 reference to that.

17 Chapter 15 is the San Joaquin Chapter.

18 Do you have that in front of you, sir?

19 A Yes.

20 Q And with particular reference to the footnote,
21 were Group I common points located in the San Joaquin
22 Valley area included in the tonnage attributable to the
23 San Joaquin study region?

24 A Yes, they were.

25 Q Is that also true of the point Stockton,

1 California?

2 A Yes.

3 Q You were asked I believe by Mr. Roach, but I
4 honestly can't remember which counsel, I think him,
5 whether you knew if your definition of the Texas Coast
6 was the same as that employed by Witness O'Connell.

7 Have you been able to refresh your
8 recollection as to that?

9 A Yes, it was.

10 Q Okay.

11 There were some specific questions -- in fact,
12 it has come up twice, I believe -- about when you looked
13 at focused shippers.

14 Let me ask you this very simple question.
15 Once a ton of freight was screened out of your study by
16 one of your screens, particularly by Screen 1, were the
17 options of the screened shippers ever looked at
18 further?

19 A Yes. We had asked TRAM to do an analysis of
20 all major SPSF movements. These were defined as
21 movements over 10,000 tons that fell within one of our
22 cells, to determine whether or not there would be
23 adequate motor carrier capacity available to, or that --
24 I really misstated that. I'm sorry. It is getting
25 late -- whether or not carriers were willing and able,

1 motor carriers were willing and able to haul that
2 traffic.

3 TRAM did complete that analysis somewhat late
4 in the process, too late for us to incorporate in our
5 direct filing. The information, however, was placed in
6 the TRAM work papers, and they are available for
7 review. They are referred to as the 10,000 rail ton
8 analysis or something like that. I can't remember the
9 exact rate.

10 Q For the record, the benefit of interested
11 counsel, those work papers are designated CFB-30412
12 through 3094.

13 Now, my last series of questions, Dr.
14 Anderson, relating in part to the UP/MP-C-19, and I
15 would like to hand it back to you. It is an exhibit on
16 which you have been examined several times.

17 For the record, this is the November 23, 1983
18 proposal letter from you to Mr. Michael Smith of the
19 Southern Pacific Transportation Company, is that right?

20 A That is correct.

21 Q Would you focus your attention to the
22 paragraph at the bottom of page 1 on which you have been
23 examined several times under the heading "background,"
24 and just for the sake of clarity of questioning, would
25 you read aloud for the record the first two sentences of

1 that paragraph?

2 A "Southern Pacific, Santa Fe" -- forget the
3 parenthetical? -- "Steering Committee has identified
4 approximately 50 communities in which the number of rail
5 carriers serving the community will be reduced by one as
6 a result of the merger."

7 Q And the next sentence?

8 A "Of these 50, approximately 20 will become
9 one-railroad towns."

10 Q Okay.

11 Now, first, specifically with respect to the
12 steering committee referred to, did that steering
13 committee after the meeting that you described
14 earlier -- I guess the meeting where you made your
15 presentation, I believe it was December 14, order you to
16 drop a number of common points from your analysis?

17 A We at no time were ordered to drop any common
18 points from our analysis. We were asked very carefully
19 to investigate which should be included, and if in fact
20 this list may have had some common points on it in
21 error.

22 Q Would you look at Table, revised Table, if you
23 will, I-4, which appears in Volume 16.

24 So you don't have to thrash around, I would
25 like you to have SFSI-C-8 nearby as well. I have a copy

1 of it if you can't find it.

2 Now, with apologies for the exercise, I will
3 ask you to take just a moment and quite literally, if
4 you would, count on the revised table, I-4 -- and I draw
5 your attention to the fact that it has been revised --
6 count the number of common point cities that are arrayed
7 in that table.

8 A I think I can handle it, hrm?

9 (Pause)

10 Am I right, 40?

11 Q Yes, 40. Mr. Greenberg kindly points out for
12 the record that this is Revised Table I-1 on page I-4 in
13 SFSP-16.

14 Keeping in mind the 40 so you don't have to
15 recount, would you then count the additional Group I
16 common points that are designated or arrayed on
17 SFSP-C-8, the exhibit we introduced yesterday?

18 A There are nine.

19 Q And the total, sir, common points between the
20 two exhibits?

21 A Forty-nine.

22 Q And then one other exercise, if I may.

23 How many of the 49 common points that you just
24 identified have you classified as Group I common points,
25 i.e., one-railroad towns?

1 A They would be the ones I just counted here
2 plus the ones on the other list. I believe the number
3 is 20.

4 Q Thank you, sir.

5 MR. MOATES: No further questions.

6 MR. ROACH: I just have one question of
7 clarification.

8 RECROSS EXAMINATION

9 BY MR. ROACH:

10 Q Back at page 1 of Chapter 15, I didn't
11 understand your answer. Were you saying that the
12 footnote on that page is correct as written?

13 A It is correct for the Group I common points.
14 We are sort of using it to answer two questions. It is
15 correct as written. We also indicated that Stockton --
16 I guess that was the point, wasn't it?

17 MR. MOATES: Read the footnote.

18 THE WITNESS: SP's for Group I common points
19 at San Joaquin Valley were not included in the traffic
20 base for the market region.

21 BY MR. ROACH: (Resuming)

22 Q And Stockton was included? Stockton is a
23 Group II common point.

24 A That was a separate question, I believe, that
25 was asked.

1 Q Right, and the answer was yes.

2 A The answer was yes to both questions, I
3 believe.

4 Q Stockton was included in the Valley traffic
5 base?

6 A I must admit to confusion at this point. I
7 believe that is what I answered.

8 Q Fine. We got yeses and noes, and it got
9 confusing, and I just wanted to clarify.

10 A For me also.

11 MR. BOACH: Okay.

12 JUDGE HOPKINS: Is that all?

13 MR. PATNER: Could I have one question, Your
14 Honor

15 JUDGE HOPKINS: All right.

16 BY MR. PATNER:

17 Q In response to Mr. Boates, I believe you said
18 that you are of the opinion that the logistics options
19 provide effective constraints on the merged firm.

20 What do you mean by effective?

21 A What do I mean by effective? They are the
22 same as any set of constraints you would look at in a
23 particular, let's use the word market here, as
24 constraints on pricing policies and changing service
25 levels and things of that nature.

1 I don't quite -- our study was not meant to
2 determine levels of constraints, only that there may be
3 a wide range within the options we identified from no
4 constraints perhaps to 100 percent effective
5 constraints.

6 MR. PATNER: That's all.

7 Thank you very much, Mr. Anderson.

8 JUDGE HOPKINS: Anything further?

9 MR. MCATERS: I would like to state for Mr.
10 Roach's benefit and for mine I think you were very
11 correct in picking up the problem. We will clarify it
12 for the record whether Stockton is in there.

13 JUDGE HOPKINS: Thank you.

14 You are excused.

15 (The witness was excused.)

16 MR. MCATERS: Your Honor, I move the exhibit at
17 this time as well as Exhibit SFSP-C-8.

18 JUDGE HOPKINS: Any objection?

19 They will be received in evidence.

20 (The document referred to,
21 previously marked Exhibit
22 SFSP-C-8 for identification,
23 was received in evidence.)

24 JUDGE HOPKINS: Do we have other exhibits?

25 MR. GREENBERG: Your Honor, we move admission

1 of the Katy exhibits which I no longer have here.

2 JUDGE HOPKINS: They will be received in
3 evidence.

4 MR. GREENBERG: Fifty-nine through 61. Thank
5 you.

6 (The documents referred to,
7 previously marked Exhibits
8 MKT-C-59-61 for
9 identification, were
10 received in evidence.)

11 MR. VON SAIZEN: The Rio Grande Exhibits, 22
12 through 26.

13 JUDGE HOPKINS: They will be received.

14 (The documents referred to,
15 previously marked Exhibits
16 RGN-C-22-26 for
17 identification, were
18 received in evidence.)

19 MS. BEED: Your Honor, I move the admission
20 DOT-C-3.

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

23 (The document referred to,
24 previously marked Exhibit
25 DOT-C-3 for identification,

was received in evidence.)

JUDGE HOPKINS: Are there any others?

Off the record now. We will take a
fifteen-minute recess.

(A brief recess was taken.)

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

2 MR. WEICHER: Your Honor, my name is Richard
3 Weicher for the Santa Fe. Applicants call as their next
4 witness Mr. James D. O'Connell.

5 Whereupon,

6 JAMES D. O'CONNELL

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

10 DIRECT EXAMINATION

11 BY MR. WEICHER:

12 Q Mr. O'Connell, could you state your full name
13 and business address for the record?

14 A James D. O'Connell, 33 Payden Avenue,
15 Lexington, Massachusetts.

16 Q Mr. O'Connell, have you prepared a verified
17 statement for submission in this proceeding contained in
18 Volume SFSP-17?

19 A Yes, I have.

20 Q Do you have any corrections to make to that
21 statement at this time?

22 A I have one typographical error. On page 6,
23 the first line in the last paragraph, which reads,
24 "Prior to the advent of MLE services in 1982," should be
25 "1972."

1 Q With that correction and the errata earlier
2 filed, is this statement your testimony, and is it
3 correct to the best of your knowledge and belief?

4 A Yes, sir.

5 MR. WEICHER: The witness is available for
6 cross examination.

7 JUDGE HOPKINS: Who is going to start?

8 CROSS EXAMINATION

9 BY MR. ROACH:

10 Q Mr. O'Connell, Marvin Roach, representing the
11 Union Pacific.

12 Do you have a copy of Mr. Anderson's testimony
13 there? He has got a definition at Page 17-b of ocean
14 liner which I wanted to ask you about. It is right
15 under the underlined heading on the page.

16 He says, "Ocean liner service is defined as
17 regularly scheduled common carrier service that adheres
18 to published itineraries. Liner service typically
19 includes the carriage of general cargo by all types of
20 liner ships (conventional break bulk container and
21 roll-on/roll-off)."

22 Is that an accurate definition of ocean liner
23 service?

24 A Yes, sir, I believe so.

25 Q And in your statement, in Table on Page 7,

1 is that the definition you followed in arriving at these
2 numbers for all water liner cargo?

3 A Yes, sir.

4 Q So those numbers include break bulk and
5 roll-on/roll-off as well as container cargo?

6 A Liner is a type of service. It doesn't refer
7 to whether it is containerized or not. That's
8 correct.

9 Q Right. And my specific question was,
10 referring to Mr. Anderson's definition, he said that
11 liners include break bulk and roll-on/roll-off as well
12 as containers, and I just want to ask you the very
13 specific question, is break bulk and roll-on/roll-off
14 included in your numbers for all water liner?

15 A Yes, but those are tied. I just want to make
16 clear those are types of vessels, not necessarily the
17 type of cargo. Break bulk, conventional break bulk
18 ships do carry containers, for instance, as do
19 roll-on/roll-off vessels.

20 Q Okay. Do you know what the numbers are if we
21 want to know the all water container flows?

22 A For?

23 Q For this 1982 year, and these particular --
24 what do you call them, corridors, or origin-destination
25 pairs?

1 A No, I do not.

2 Q You don't have those numbers?

3 A No.

4 Q Are they available?

5 A Not very easily. No, not to my knowledge,
6 they are not.

7 Q Do you have any idea whether the container
8 movements between the Far East and the U.S. Gulf, which
9 is what we are talking about here, that go all water are
10 a good deal less than the containers that move in mini
11 land bridge trade?

12 A No, I don't know that. The trouble with
13 container statistics is that they are maintained by the
14 Maritime Administration and are a totally separate data
15 base, and those statistics are only kept by trade
16 route.

17 A number of the trade routes that we are
18 looking at here from Southeast Asia, Trade Route 17, to
19 the Middle East, Trade Route 18, are for multiple
20 coasts, that is, 17 is Atlantic Gulf and Pacific; 18 is
21 Atlantic and Gulf. So it is impossible to break out
22 just the Gulf share of those containerized cargoes.

23 Q Okay. Now, focusing on the all water figures
24 here, isn't a substantial part of the all water movement
25 from the Far East to the U.S. Gulf made up of natural

1 rubber?

2 A I don't know that to be the case, but I
3 suspect so, yes.

4 Q And do you know whether or not natural rubber
5 is susceptible to being containerized?

6 A It has been containerized with some
7 difficulty. It is easy to get in, difficult to get
8 out. They have in recent years, though, been testing a
9 number of ways of wrapping it in plastic and things that
10 would allow it to be containerized more readily, and
11 there is a trend towards containerization of natural
12 rubber.

13 Q Now, some of the difficulties are ventilation
14 and temperature control and getting the stuff to flow.
15 Isn't that right?

16 A No, we are talking about baled rubber in
17 containers, and the bales tend to stick together. They
18 are talcum powdered, but they stick together. They are
19 now investigating, and have tried a number of different
20 ways of preventing them from sticking.

21 Q Okay. Let's talk about crude natural rubber,
22 which isn't in bales. Has that ever been
23 containerized?

24 A I am not sure when you say crude -- do you
25 mean liquid rubber?

1 Q I mean crude natural rubber. I don't know
2 whether it is liquid or not.

3 A Well, liquid rubber does move in containers,
4 tank containers, aboard container vessels, yes. That is
5 latex, so-called.

6 Q Do you know how much rubber in any form is in
7 these all water figures?

8 A No, sir.

9 Q Do you know how much of the non-container
10 traffic that is in the all water figures here is
11 susceptible to being containerized?

12 A Most of it is susceptible to containerization
13 in my estimation.

14 Q In your personal estimation?

15 A Yes.

16 Q And what is that based on?

17 A Based on the knowledge of other trades and
18 what cargoes had been containerized, what commodities
19 have been containerized over the years. I think there
20 are two definitions of containerizability. One is that
21 it physically can be put into a container. I would
22 agree that things that are oversized, like road vehicles,
23 bulldozers and things that will not fit in, are not
24 containerizable.

25 All other commodities are containerizable in

1 theory, but there is an economic question whether or not
2 those cargoes could be containerized. I think that
3 recent history has shown that virtually everything in a
4 trade that is becoming containerized will move in
5 containers.

6 I.e., ferrous scrap is one of the largest
7 commodities in the trans-Pacific trades. Waste papers,
8 bagged rags, those types of things that were once
9 thought not to be containerizable have been
10 containerized.

11 Coffee is another one very recently -- because
12 of ventilation problems and things it was not
13 historically containerized. In the last two years, most
14 of it has been containerized, very rapidly.

15 Q Now, you were just talking, I think, about the
16 physical capability of being containerized, correct?

17 A Yes, sir.

18 Q Okay. Have you done any studies about the
19 cost effectiveness of shipping these various commodities
20 by container as opposed to in other ways?

21 A Well, not specifically. Not in relation to
22 this. I have looked in the past at the -- I mean, a lot
23 depends on the rate that the steamship company is
24 willing to charge for moving the cargoes in container.
25 The handling costs usually are much less.

1 Q Well, a lot does depend on the rate, and you
2 have expressed an opinion here that a lot of this
3 traffic is susceptible of being containerized, and I am
4 trying to probe first whether it is susceptible of being
5 containerized at a competitive rate.

6 A I think if you look at the trans-Pacific
7 trades, which are the biggest line of trades in the
8 United States, 96 percent of the liner cargoes are
9 containerized. That includes wood pulp, iron and steel
10 products, rags, scrap metal. Everything you can imagine
11 has been containerized.

12 If you look at that and you say that it all
13 moves in containers, you have to come to the conclusion,
14 I believe, that these cargoes are containerizable in
15 other trades, and that ultimately the economics of a
16 container system will push out the break bulk carriers.

17 Q But right now in the flows that you are
18 examining here, isn't the majority of the traffic that
19 goes all water noncontainerized today?

20 A I wouldn't make that judgment, no.

21 Q You just don't know either way?

22 A No, I don't. My guess is that that is not
23 correct, though, that it is at least, probably the
24 majority of it is containerized.

25 Q All right. Well, let's assume hypothetically

1 that the figures are the other way around, and that the
2 majority is noncontainerized. Does that tell you that
3 today the economics favor sending it in bulk carriers or
4 in roll-on/roll-off or something other than containers?

5 A When you say the economics favor it, from
6 whose perspective, or what?

7 MR. WEICHER: Perhaps counsel could clarify if
8 he is asking a hypothetical, if his assumption were
9 correct, what the witness would think.

10 JUDGE HOPKINS: That is what he is going to
11 do.

12 BY MR. ROACH: (Resuming)

13 Q Let me suggest a term called revealed
14 preference that the last witness used a lot. Wouldn't
15 the shipper's choice for noncontainerized shipping
16 methods indicate that if hypothetically that is what
17 they are doing, that today the economics favor the
18 noncontainerized approach?

19 A No, I wouldn't agree with that statement.

20 Q Okay. Why not?

21 A I think in the U.S. Gulf, the Gulf was very
22 late to containerize, partially because it has a lot of
23 noncontainer trades, i.e., South America, West Africa,
24 East and South Africa, et cetera, where for a lot of
25 other reasons, political reasons, the pools that exist

1 and all where the carriers themselves had no incentive
2 to invest in new vessels, they already controlled a good
3 portion of cargo among them, that there was no incentive
4 for those lines to put container vessels into service.

5 I think that shippers have demanded
6 containers, and there are a lot of containers moving on
7 break bulk ships and ro-ro vessels, as I mentioned
8 earlier. I think because of that reluctance of them to
9 go to container systems, the Gulf ports were very slow
10 to containerize, to develop container terminals.

11 There are only two large terminals in the Gulf
12 today, one in New Orleans, the Transrow terminal, and
13 one in Houston. Compared to the Atlantic and Pacific
14 coasts, that development has been very slow and
15 relatively recent.

16 So, I would say there are a lot of other
17 factors that have influenced the development of
18 containerization in the Gulf trades other than simply
19 what the economics are between a break bulk vessel
20 versus carrying containers on a partial container ship,
21 which most of the ships in this trade in fact actually
22 are. There are very few conventional break bulk
23 freighters. They are almost all partial container ships
24 today.

25 Q Now, if a shipper of a particular commodity

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1 has the logistic option of either sending it in bulk or
2 sending it in containers, and he is shipping from the
3 Far East to Houston, isn't he going to look at the
4 comparative rates of all water ships versus mini land
5 bridge?

6 A I think you have two different questions. You
7 are asking first about the differential between break
8 bulk and container, and then you are also saying the
9 difference between mini land bridge and all water.

10 Q Yes, and I specifically meant to put both
11 factors into one question, and ask you how the shipper
12 decides when he has got really three choices. He can
13 put it in a container and send it on an all water boat
14 trip. Or he can not put it in a container and send it
15 on a boat. Or he can put it in a container and send it
16 mini land bridge.

17 Doesn't he look at rates in deciding which of
18 those choices to take?

19 A Yes. Rates are certainly an important factor.

20 Q Sure. And if commodities are newly
21 susceptible to containerization because of some
22 technological improvement, he still has to choose
23 between mini land bridge and all water on the basis at
24 least in significant part of rates. Isn't that right?

25 A If they are both container services?

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1 Q Right.

2 A Rates are equalized for all water and mini
3 land bridge services in general. They are the same.

4 Q Rates are the same?

5 A Yes.

6 Q Regardless of transit time?

7 A Right.

8 Q So if I am sending a container by ship from
9 Japan to Houston, and it is going to take more days to
10 get there than it takes to get there by mini land bridge
11 via Los Angeles, I am still going to get charged the
12 same rate?

13 A Yes, sir.

14 Q That is your testimony?

15 A Yes, sir.

16 Q Why does anyone ship by boat?

17 A There are a lot of people -- well, in the
18 first place, you have a lot of people who are not very
19 transit time sensitive. In the second case, there are a
20 lot of people, I think, who have an allegiance to a
21 specific line for some reason.

22 And thirdly, I think that the transit time
23 favors some people, depending on the terms of sale,
24 whether or not they pay for the goods when they receive
25 them, or when they are shipped, et cetera. Some people

1 use vessels as a pipeline essentially to a warehouse, to
2 keep their commodities, you know, in transit.

3 There are numerous factors, I think, why
4 people choose one service over another. There is also
5 admittedly a small factor, but many electronics
6 components like computer parts and things tend to move
7 via all water because of the vibration on the rail and
8 because of the interchange, the extra handling and
9 moving it off the vessel and onto the rail, and vice
10 versa.

11 So, there are some commodities that shippers
12 have specified a preference for putting it on the ship
13 and leaving it there, not having to worry about that
14 additional handling and the shocks.

15 Q Okay. So what you are saying is that there
16 are some shippers who are not averse to delay, indeed,
17 prefer delay. They want a free storage for their
18 commodities, right?

19 A That's right.

20 Q And on the other hand, a shipper who is
21 sensitive to time in the usual sense of that phrase, he
22 wants to get it there fast, he will ship it by mini land
23 bridge, because you are saying the rates are the same,
24 so he is going to ship it that way, right?

25 A That's right.

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1 Q Now, what are some of the other factors?

2 A I would just like to point out that all mini
3 land bridge services are not faster than all all water
4 services. There is an overlap in terms of transit time,
5 depending on the rotation of the vessels and where the
6 vessels are serving and everything.

7 But every mini land bridge service is not
8 faster than every all water service. I just wanted to
9 make that point.

10 Q Well, let me explore that. Are you saying
11 that if on October 30 I am in Nakasone or whatever in
12 Japan, and I want to send something, the schedules may
13 work out such that even if the transit time for mini
14 land bridge is shorter, I can get it there faster all
15 water because there is an all water ship sitting in
16 port?

17 A Well, in general I would say that the mini
18 land bridge probably would be your fastest alternative.
19 I was just making a point that not all mini land bridge
20 services are faster than all all water services.

21 Q So there is an exception to every rule, but
22 the rule here is that mini land bridge is faster,
23 right?

24 A That's right.

25 Q Now, you said there were some other factors, a

1 lot of other factors that shippers consider in choosing
2 between all water and mini land bridge. What are the
3 other factors?

4 A Well, price is certainly one, the rate
5 charged.

6 Q You said the rates are the same.

7 A That's right. I am just saying, in looking at
8 a service, typically the factors are rate, transit time,
9 frequency of service, and then whether the port --
10 whether they want to move it through a particular port,
11 you know, the routing of the cargo, et cetera.

12 Q And you mentioned concern with transferring
13 more times?

14 A That's right, damage in handling.

15 Q Anything else?

16 A Those are the major things, I think.

17 Q Okay. How much more in your opinion would a
18 shipper who is concerned with time be willing to pay for
19 mini land bridge than all water?

20 A In my opinion, not very much.

21 Q How much is not very much, 5 percent more?

22 A Well, I think we are talking about a spectrum
23 here where you say time sensitive shipments. There are
24 people who ship on airlines because they are very time
25 sensitive, and they choose to pay a high premium to get

1 that service.

2 I think that we are in a situation where
3 essentially people who move cargoes mini land bridge who
4 are interested in the time sensitivity obtain a premium
5 service at the same price as all water, which is
6 slower.

7 Whether those people would be willing to pay
8 more for a premium service is a question, and I think
9 nobody knows the answer to that right now.

10 Q So I won't get the answer by asking you that
11 question?

12 A No, I think we will find out in the next year
13 or two.

14 Q If I asked you, suppose the raised -- I think
15 we will find out in the next year or two also, or maybe
16 the next five years?

17 A From an ocean side, I think, in the next year
18 or two.

19 Q If they raise the rates 50 percent, how much
20 of the mini land bridge traffic will transfer to all
21 water if they raise the rail rates?

22 A If they raise the rail rates, presumably
23 the -- you know, I don't want to estimate what I think,
24 50 percent or 5 percent or 100 percent. I just feel
25 that if you raise the rates, you are going to effect the

1 volumes that are moving.

2 Q So there is some elasticity greater than
3 zero?

4 A That's right.

5 Q You don't know what it is?

6 A No, I don't.

7 Q Tell me what ports you included in the
8 definition of Texas coast.

9 A Houston, Galveston, Beaumont.

10 Q And that is it?

11 A That is it.

12 Q Are those the only ports in BEA's 121 and 122
13 that receive mini land bridge or container cargoes?

14 A Yes.

15 Q Do all three of them receive mini land
16 bridge?

17 A No, Beaumont did not, to my knowledge.

18 Q Why does someone who is shipping a container
19 ship it to Beaumont as opposed to Houston or Galveston?

20 A Presumably if they were located closer to
21 Beaumont they would want to receive it there.

22 Q Is it going to cost him more to go by mini
23 land bridge than to go by direct ship?

24 A No.

25 Q You mean the rates are equalized even though

1 there is a transshipment in the mini land bridge of
2 another rail link at the end?

3 A Well, the mini land bridge -- I am not sure.
4 Could you repeat the question, please?

5 Q Well, let's go through it step by step. I
6 thought you said that mini land bridge doesn't serve
7 Beaumont.

8 A I said to my knowledge. There are mini land
9 bridge tariffs into Beaumont. To my knowledge little if
10 any cargo actually moves into Beaumont.

11 Q Okay. But you think that there are tariffs,
12 and the rates are equal to the ocean container rate.

13 A To Houston.

14 Q The all water container rates to Beaumont?

15 A There is not any all water service out of
16 Beaumont, but the rates would be equalized with Houston,
17 yes.

18 Q Well, okay. Let me ask about that then. If I
19 am a receiver or a shipper and I want to get some
20 containers to Beaumont, do I have an all water option
21 today?

22 A Limited. Very limited. There is very little
23 all water liner, scheduled liner service. Most of the
24 liner operators will call their own inducement. I.e.,
25 if you have enough cargo, they will come in.

1 Q And the reason is the volumes are so low? Is
2 that right?

3 A Right.

4 Q Is that a valid general principle, the larger
5 the volume to a particular port, the better service is
6 likely to be?

7 A Yes.

8 Q And is one of the reasons that the higher the
9 volume, the more you can justify dedicating a ship to
10 that particular route?

11 A Or making a call at that port. If you are
12 talking about a port call, yes.

13 Q The frequency of calls as well. Isn't that
14 right?

15 A That's right. In general, if cargo doesn't
16 exist, people will not call there for long.

17 Q Okay. Let me ask you another question about
18 Table 4. Now, actually I think I got the answer to that
19 question in the process of asking you the last
20 questions. Let's turn to Exhibit 4.

21 Now, as I understand it, this exhibit is a
22 listing that you put together for service between the
23 Texas coast and the Far East that tells us what shipping
24 companies offer mini land bridge service and what
25 shipping companies offer all water service. Is that

1 right?

2 A Yes, sir.

3 Q And tell me exactly how you put this
4 together. I know you have the sources down here, the
5 Journal of Commerce and Pacific Shipper. What did you
6 look for in those publications?

7 A We looked in the Journal of Commerce as a
8 daily newspaper which publishes sailing schedules by
9 world area to and from U.S. coasts. The Pacific Shipper
10 does the same for the Pacific coast. We looked in those
11 for companies that advertised either direct service to
12 Houston or to the Texas coast or MIB service via west
13 coast ports. This is a tabulation of all those carriers
14 so identified.

15 Q So you don't have any particular standard here
16 about frequency of service or nature of service? Just
17 anybody?

18 A Anybody that advertises service. That's
19 right.

20 Q Have you got Alaska and Hawaii included in
21 your Far East flows?

22 A No.

23 Q What is in the Far East?

24 A I am not sure. When you say Alaska and
25 Hawaii, that is domestic cargo. It is not international

1 trade. This is only the carriers that are providing
2 international service.

3 Q Okay. How do you define the Far East?

4 A As we mentioned in the testimony, the
5 definition of the Far East was really driven by the
6 people who were moving MLB cargoes over the LA-Texas
7 route, and that included Australia, New Zealand,
8 Southeast Asia, and the Middle East, and the Far East,
9 so-called.

10 Q At Page 2, you have got a footnote.

11 A I think at the bottom here it says the Far
12 East includes the Far East which is essentially from --
13 typically it's the Census definition of the Far East,
14 which is from the Philippines north, Southeast Asia,
15 Australia, and New Zealand.

16 Q Part of what gave me trouble was that you
17 defined the Far East partly in terms of the Far East. I
18 am just trying to understand you. You have got
19 everything basically from Korea all the way down and
20 around through Southeast Asia?

21 A That's right. Down through Thailand,
22 Indonesia, and then dropping down to Australia and New
23 Zealand.

24 Q Then I think a couple of answers ago you said
25 something about South Asia. Do you go as far as

1 India?

2 A No, I meant Southeast Asia, which is, you
3 know, Thailand.

4 Q So your cutoff was between Thailand and
5 Burma?

6 A That's right.

7 Q Is Australia and New Zealand trade normally
8 thought of as part of the Far East trade?

9 A Maybe the choice of the wording here, Far
10 East, we were just looking at the two different flows,
11 one coming from the Far East and one from Europe. We
12 define the Far East in our testimony as what we were
13 using it by.

14 I would say, no, normally Australia and New
15 Zealand are probably not thought by most people to be in
16 the Far East, but those cargoes were moving in the
17 LA-Texas corridor over mini land bridges, so we included
18 the total flows there.

19 Q Isn't it true that the carriers that serve
20 Australia and New Zealand do not serve the other
21 countries in your definition of the Far East?

22 A I think in general that is true. Some of them
23 serve other Far Eastern countries in one direction or
24 the other, but I think in general they tend to serve
25 Australia and New Zealand.

1 Q Is it true that the Bank and Saville line, the
2 one near the bottom, is an Australia-New Zealand flag
3 carrier?

4 A I don't know that. I don't know. I believe
5 it is a British company.

6 Q My question is, is it restricted to carrying
7 Australia, New Zealand cargo? Let me restate that.

8 Is it subject to laws in Australia and New
9 Zealand that require cargoes from those countries to go
10 in vessels bearing the flag of that country?

11 A There is a lot of pressure because of the
12 Australian unions for lines that call at that country
13 that are third flag carriers, i.e., not either -- if you
14 are talking about trade between Australia and the U.S.,
15 not either U.S. flag or Australian flag, third flag
16 carriers that come into the trade, there has been a lot
17 of pressure put on them, not by the government, by
18 Australian unions, to flag vessels and crew them under
19 the Australian or New Zealand flag. That doesn't mean
20 that they cannot call at any other countries in the Far
21 East range.

22 Q But they basically don't. That was your
23 answer?

24 A I said they don't. I am just saying, you seem
25 to be asking if there was some restriction that would

1 not allow them to. There is no such restriction.

2 Q I was asking if there isn't an incentive which
3 explains why they focus on the Australia-New Zealand
4 market.

5 A I think it is a geographic incentive.
6 Essentially it is out of the way.

7 Q Isn't the transit time for all water service
8 from Australia and New Zealand to the Gulf equal or
9 better than the mini land bridge transit time?

10 A Through Los Angeles?

11 Q Yes.

12 A No, it would be longer.

13 Q Is it materially longer from the standpoint of
14 shippers?

15 A No, I don't think so.

16 Q Isn't that situation substantially different
17 than the situation when you are talking about, say,
18 Korea?

19 A In what respect?

20 Q In the sense that there is a much bigger
21 differential between the transit time for all water and
22 transit time for mini land bridge when you are dealing
23 with countries other than Australia and New Zealand?

24 A Yes.

25 Q Is mini land bridge competitive with all water

1 in cost in the Australia-New Zealand trade?

2 A You mean the rates charged?

3 Q No, the cost.

4 A I don't know. I would have to look at that.

5 Q Is it possible that the all water has
6 favorable costs?

7 A Quite possible.

8 Q Is there any material mini land bridge
9 movement from those countries?

10 A There is some, which is why we included
11 Australia and New Zealand in this. Because we were
12 looking at the Texas-Los Angeles corridor, we looked at
13 all the MLP movements and all the movements tendered by
14 those carriers, and I think Ned Lloyd, for instance,
15 moves some.

16 They were included here specifically because
17 they were MLP cargoes moving. In total the
18 Australia-New Zealand MLP cargoes are very small, as is
19 the total trade in the sphere of the trans-Pacific. If
20 you look at the northern Far East range, Hong Kong
21 through Korea, that much overwhelms the rest of
22 Southeast Asia, Australia, New Zealand, or anything
23 else.

24 I don't think those are material either on the
25 all water side or the MLP side. We included them here

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1 for completeness.

2 Q Let me put it this way. Back in your Table 4,
3 isn't it the case that the percentage of the all water
4 figures that is made up by Australia and New Zealand
5 cargoes is much higher than the percentage of mini land
6 bridge that is made up of Australian and New Zealand
7 cargoes?

8 A That is true, but if you remove both of them,
9 it wouldn't make a significant difference in the table
10 here.

11 Q Did you do that?

12 A No, it could easily be done.

13 Q Aren't most of the mini land bridge movements,
14 and I think you may have just said this, from the Far
15 East, from the so-called Big Four countries, Japan, Hong
16 Kong, Taiwan, and Korea?

17 A The majority of them are, yes.

18 Q And Southeast Asia and the Philippines tend to
19 be a considerably smaller share of the market. Isn't
20 that right?

21 A That's right, but growing much more rapidly
22 than the north.

23 Q Okay. Back to Exhibit 4, the list of shipping
24 lines. How many of these ships call at Houston?

25 A Well, of course, only the all water services.

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1 would call at Houston.

2 Q Right. I am sorry. I am focusing on the
3 second column.

4 A The NLR service? The direct all water
5 service? I believe most if not all of these call at
6 Houston.

7 Q And how many of them call at New Orleans?

8 A The same thing. Virtually all of the carriers
9 in the Gulf call at both New Orleans and Houston. Well,
10 many of them do. Let me change my answer and say many
11 of them do. I think most of them call at Houston. I
12 would guess that probably the majority of them also call
13 at New Orleans, but I don't know exactly. I would have
14 to go and look up exactly who calls at which ports.

15 Q And again focusing on the all water column,
16 how many of these vessels are container vessels, and how
17 many of them are other kinds of ships?

18 A I don't have that data immediately with me.

19 Q Are the costs significantly different for the
20 two kinds of ships?

21 A Yes.

22 Q Focusing for a moment on the mini land bridge
23 column, isn't it true, sir, that many of the shipping
24 companies that you list as only offering mini land
25 bridge service used to offer all water service between

1 the Far East and the Gulf?

2 A Some of them did. The Japanese carriers did.

3 Q Well, K-line, for example, just to take the
4 first one?

5 A Yes.

6 Q They got out of that market, didn't they?

7 A That's right.

8 Q And Matsui, the second one, they got out of
9 the all water trade, didn't they?

10 A That's right. All of the Japanese carriers
11 left.

12 Q And how about NYK or KMTC Lines? Didn't they
13 bail out of the all water market?

14 A NYK did, another Japanese carrier. I don't
15 know about KMTC. I don't know if they ever served the
16 Gulf directly.

17 Q Take a Korean carrier, the KS Line. Did they
18 also give up on water?

19 A Again, I am not sure whether they ever served
20 the Gulf.

21 Q Why did the shipping lines stop offering all
22 water service.

23 A I think all of them stopped offering all water
24 service when they went to -- the one thing I would say
25 unites them is that when they went to full container

1 services in the trans-Pacific and also when the 1975
2 recession hit, and caused cargoes to drop drastically,
3 many of them terminated their all water services and
4 started serving the Gulf via MIB.

5 You also have to remember that was a time when
6 the container facilities that existed in the Gulf were
7 much more rudimentary than they are today. So there
8 were a lot of delays at the existing container terminals
9 there.

10 Q Just taking this chart at face value, doesn't
11 it tell you something about relative costs? Doesn't it
12 tell you that lots of shipping companies find it
13 potentially profitable to run mini land bridge and not
14 to run all water?

15 A Well, I don't think you can make that
16 generalization, because we are really looking at two
17 different markets here in a sense, or two very different
18 types of carriers, those that serve the market directly
19 via all water, and those who serve it via MIB off the
20 Pacific coast.

21 The people who are serving it via MIB just
22 have to advertise and set up a joint service with a
23 railroad. If they carry one incremental box presumably
24 it could provide a contribution to them that is
25 attractive. Many of these carriers never have had any

1 service into the U.S. Gulf, nor did they have any
2 relationships there. They simply have a sales office or
3 something.

4 And they are sort of skimming the market in a
5 sense, in that they are providing service there without
6 providing any service there. The railroad is doing the
7 work for them in that sense.

8 So when you say isn't it true that because we
9 have so many of these trans-Pacific carriers here, the
10 trans-Pacific trades are the biggest trades in the
11 United States. The fact that you have all of these
12 carriers there is not unusual.

13 The fact that many of them provide MLB
14 services is in my estimation not unusual because it is
15 very easy to do. There is very little incremental cost
16 to them to provide that, and if they can fill one empty
17 slot, it provides a contribution above their fixed
18 cost.

19 Q We continue to see new carriers entering the
20 mini land bridge part of this market, don't we?

21 A Yes. And carriers dropping out, too.

22 Q And don't we see carriers dropping out of the
23 all water side of the market today?

24 A More that I have seen recently.

25 Q What about Bank and Seville once again? Have

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1 you heard that they have just given up all water?

2 A No, I haven't.

3 Q Let me ask you some questions about the routes
4 that these ships take. Take the first line that you
5 have got under direct all water, the Barber Blue Sea
6 Lines.

7 A Yes, sir.

8 Q Are those ships routed via Suez?

9 A No, they operate through the Panama Canal.
10 They operate on an eastbound around the world service.

11 Q So they go on and they go around the world,
12 right?

13 A That's right. In other words, they only
14 provide inbound service to the Gulf.

15 Q They aren't dedicated to the Gulf Texas coast
16 trade?

17 A Some of them are. No, I am sorry, not the
18 Texas coast trade. Some of them only call at the Gulf.
19 Some of them call Atlantic and Gulf.

20 MR. ROACH: Let me ask Your Honor to mark
21 Exhibit UP/MP-C-35.

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

24 (The document referred to
25 was marked for

identification as Exhibit
Number UP/MP-C-35.)

1
2
3 BY MR. BOACH: (Resuming)

4 Q This is a simple point I have to make, sir.
5 What I have given you is an excerpt from the October 15,
6 1984, edition of Pacific Shipper which you relied on for
7 this table. This is the publication you relied on,
8 right?

9 A Okay.

10 Q For Exhibit 4?

11 A This is the publication, different date. This
12 was one publication. The other one was the Journal of
13 Commerce, which is a daily newspaper.

14 Q Right, and I have given you Pages 198 and
15 199.

16 A I only have 199.

17 Q Well, 199 will do it. And these are the pages
18 that show the Barber Blue Sea schedules, and my question
19 is simply this. Isn't it true that the route that these
20 ships take from the Far East to the Gulf is via a whole
21 series of calls along the United States Atlantic coast?

22 A That's correct.

23 Q That is all I have to ask you about the
24 exhibit. Isn't that representative of the routes that
25 are taken by every one of these shipping lines except

1 one, which is the Yang Ming one?

2 A The reason for that is that the Gulf market is
3 an outbound market essentially. They are positioning --
4 of course, as I said, Barber Blue Sea, I think, is at
5 around the world service with most of these vessels.
6 The other services are all positioning themselves in the
7 Gulf for the outbound trade which is out of the Texas
8 coast, which is the primary market.

9 So they want to have the greatest, the best
10 sailing time and the best position outbound, and of
11 course New York and the Atlantic coast is a much bigger
12 market inbound. It is a consumer market essentially.
13 So they call inbound first at those to get the good
14 transit time inbound, and then the Gulf out.

15 It is the same reason on the west coast that
16 carriers call at Los Angeles first rather than San
17 Francisco, because it is an inbound trade. So the
18 rotation of the vessels tends to be set up in
19 conjunction with the primary market, you know.

20 If the market is an inbound trade, then people
21 will call at those ports first to position themselves
22 there and to get rid of the cargo, and in the outbound
23 trades they want to call last, so that they get the most
24 rapid transit time from those trades, and so they have
25 the most room left in the vessel to load those outbound.

1 cargoes. So that is true.

2 Q Okay, so if I want to ship from the Far East
3 to the Gulf coast by all water, my transit time is going
4 to be extended considerably by all these calls along the
5 U.S. Atlantic coast?

6 A Unless you choose a vessel that calls directly
7 at the Gulf inbound.

8 Q And why is it that there is only one shipping
9 line that offers direct service?

10 A It is a very thin market. The trade is mostly
11 outbound.

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1 Q And as we said earlier, they've got to worry
2 about the capacity of their ships and they couldn't
3 justify it?

4 A Also, the very real competition from the
5 trans-Pacific carriers that are offering MLB service. I
6 mean they have been very tough competitors and you have
7 a few lines in the Gulf, relatively speaking, competing
8 against a whole bunch of lines in the trans-Pacific, who
9 are very busily marketing.

10 So it's sort of the overwhelming strength in
11 terms of marketing is on the trans-Pacific carrier
12 side.

13 Q So basically, what's happened is the mini-land
14 bridge sector which is highly competitive, has driven
15 the all-water sector into offering a clearly inferior
16 service in terms of transit time?

17 A Well --

18 Q Isn't that what you just said?

19 A That's not what I said at all. I said that
20 mini-land bridge inbound -- that the MLB carriers have
21 been able to provide service there and take a portion of
22 the trade.

23 I think I said that the reason that the
24 transit time is longer is not a function of having lost
25 cargoes to MLB. It's a function of the outbound trade.

1 being the primary trade from the U.S. Texas Gulf.
2 Therefore, carriers want to position themselves for that
3 outbound trade.

4 The fact that the inbound transit time is
5 longer, I think, doesn't concern them very much.

6 Q Doesn't concern who very much?

7 A The ocean carriers. I think they're trying to
8 get the lowest transit time to the Atlantic Coast
9 market, which is a much, much bigger market both in
10 absolute terms and as compared to the Gulf.

11 So the fact that the vessels have a longer
12 transit time inbound into the Gulf is not a function of
13 MLE or competition from that, I believe. I believe it
14 is a factor of the size of the market and the fact that
15 the outbound trade is larger.

16 Q Well, I'm focusing on the inbound trade right
17 now, and I thought an answer ago, you told me that one
18 of the reasons that you don't have more carriers
19 offering direct all-water service is that the mini-land
20 bridge is intensely competitive.

21 Isn't that what you said?

22 A I don't think that's what I said.

23 Q Well, okay. Let me drop it then.

24 Isn't it the case that for the inbound
25 service, we're talking here about a segmented market

1 where the all-water carriage is considerably longer in
2 time? It is used by shippers who don't care very much
3 about time sensitivity, and the mini-land bridge sector
4 is used by shippers who do care about time sensitivity?

5 Q You've really said that before

6 A No, I never said that. We talked about time
7 sensitivity and all. I don't know that shippers are
8 that aware of the time differentials and all. I would
9 suspect that that is probably right, but I have never
10 seen any information or I don't believe the information
11 exists that would prove that statement.

12 Q Okay. It stands to reason, but you don't know
13 it firsthand?

14 A Right.

15 Q Let me ask you about Lykes Brothers, the
16 second all-water you've got here. Is that a container
17 service?

18 A Partial container. They run it on partial
19 containerships.

20 Q So, really, they are break bulk ships, but
21 they carry some containers?

22 A They have container capacity built in; yes.

23 Q And how often do they call at Houston?

24 A I don't know. I'd have to refer to the
25 scheduler.

1 Q Does it fit your recollection or your
 2 knowledge that many of these lines only call once a
 3 month at Houston?

4 A Yes.

5 Q How often do the mini-land bridge carriers
 6 offer service into Houston? How frequently per month?
 7 Take American President Lines?

8 A Probably, I would guess, twice a week.

9 Q Or more. Isn't it sometimes more frequent
 10 than that?

11 A Could be. You have to realize, we're talking
 12 about an enormous difference in the size of the market
 13 between the Gulf and the Pacific Coast. We're not
 14 talking about those vessels in the Pacific being there
 15 to serve the MIB market. We're talking about them as an
 16 extraneous service almost, providing MIB service into
 17 the Gulf.

18 These ships are not making a weekly call
 19 because of MIB, or twice-weekly call.

20 Q Okay. I'm focusing on Exhibit 4 now.

21 A Okay. Just trying to make it clear. It seems
 22 to me you're driving towards the point that somehow
 23 these MIB services are all set up and driven to provide
 24 the service into the Gulf, which they are not.

25 Q Well, you've got an exhibit here, and there

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1 isn't a note at the head of it that says don't pay
2 attention to this exhibit.

3 MR. WELCHER: Your Honor, I object to his
4 characterization

5 MR. ROACH: I'm sorry.

6 JUDGE HOPKINS: We'll withdraw that.

7 MR. ROACH: I withdraw it, and I think we're
8 getting into kind of a dialogue.

9 Let me just focus on question and answer.

10 BY MR. ROACH: (Resuming)

11 Q Go down to Cosco. Isn't Cosco a line that
12 serves only the People's Republic of China?

13 A I believe so.

14 Q And isn't Trikota Lloyd, which is the next one
15 you've got there in the all-water listing, out of the
16 market now?

17 A Not to my knowledge.

18 Q Well, if it's in the market, isn't it limited
19 to southeast Asia?

20 A Yes, I believe so.

21 Q And isn't that the case of Veterans also?
22 Aren't they a southeast Asia carrier?

23 A So, not to my knowledge. I believe they serve
24 on the inbound. I believe they serve the full range.

25 Q How about Hesch lines? Isn't that limited to

1 southeast Asia?

2 A Hoegh Lines?

3 Q Hoegh Lines.

4 A I don't know, to tell you the truth. I
5 believe they serve the northern Far East also.

6 Q Okay. My last one is Djarkara Lloyd. I'm
7 told that that again is a break bulk operation that
8 carries some containers as a secondary service. Isn't
9 that right?

10 A Partial container ships.

11 Q And are you confident that they serve the Gulf
12 on any kind of regular basis, that they're in the market
13 today?

14 A Yes.

15 Q If I wanted to confirm or disconfirm the
16 information here, are the Journal of Commerce and the
17 Pacific Shipper the sources I should go to?

18 A Yes, sir.

19 Q Are there any other authoritative sources for
20 this information?

21 A Those are the two primary ones. The Gulf
22 Shipper is the third.

23 Q Let me ask about Exhibit 5 on the next page.
24 Did you do a table like this that showed the trend over
25 the years for worldwide liner trade?

1 A No, I did not.

2 Q Isn't the function of this exhibit to provide
3 evidence about the capacity of the world shipping fleet
4 to handle the increase in container movements?

5 A No, sir.

6 Q That's not why you put Exhibit 5 in here?

7 A No, sir.

8 Q Okay. Now, you have an exhibit about
9 comparative costs, Exhibit 7. And one thing you talk
10 about there is the development that you see on the
11 horizon of 4,200 TEU ships.

12 Q Are any of those in service today?

13 A Yes, sir.

14 Q What markets do they serve?

15 A Far East to the Atlantic Coast and the Gulf
16 via feeder around the world. They are U.S. Lines
17 vessels that are operating around the world, eastbound;
18 eventually will be around the world westbound. Three of
19 them have been launched. The other nine are being
20 launched at the rate of about one a month, and they have
21 an option on two additional for a total of 14.

22 Q And do any of those call at the Gulf ports?

23 A Not yet, although U.S. Lines just opened an
24 office in New Orleans.

25 Q Does U.S. Lines have other kinds of container

1 ships?

2 A Yes, they do.

3 Q How about 1200 TEU ships? Do any of those
4 call at the Gulf ports today?

5 A Yes, sir.

6 Q And which of the companies on Exhibit 4
7 operate that kind of service in the Gulf ports today?

8 A On Exhibit 4?

9 Q Yes. In the last column.

10 A Just from the Far East? Yang Ming, I believe,
11 is the only one from the Far East. In course, in other
12 services of the European trade, there are a significant
13 number of them.

14 Q Isn't it true that the economics of running a
15 container ship are very much a function of the capacity
16 utilization rate that you can maintain?

17 A It's true of any vessel, I believe.

18 Q And if it's a container vessel, you've got to
19 keep it filled up with containers; right?

20 A Yes, sir. Full of containers. I only say
21 that because, since they tend to balance flows with
22 empties, you often see ships full of containers with no
23 cargo. I wasn't being facetious.

24 Q And how much would the Gulf market have to
25 extend in order to justify having a 4200 TEU ship call

1 at Houston?

2 A How much it would have to expand?

3 Q Yes.

4 A I don't know that it would have to expand at
5 all.

6 Q Well, they're not calling there now, are
7 they?

8 A No, they're not. They just started into
9 service a few months ago.

10 Q Well, I thought you said before that the Gulf
11 is really, if I can use the vernacular expression, a
12 tail on the dog in terms of these markets. The ships go
13 to the Atlantic Coast first because that's where the
14 volume is.

15 A You said inbound trade.

16 Q Yes. And what I'm trying to get at is how
17 much acre all-water container trade inbound to Houston
18 would there have to be before you would see a 4200 TEU
19 container ship that would come directly from the Far
20 East to Houston?

21 A Well, I think the all-water service, if that
22 vessel were to call there, I think the obvious
23 alternative would be for them to draw the current MIB
24 cargoes off MIB and carry them all-water. And I think
25 that's U.S. lines' intention, is to draw that cargo

1 back.

2 So I mean a ready market does exist for them.
3 It's just being carried by trans-Pacific carriers now.
4 So when you say how much does the all-water market have
5 to increase, the question really is how effectively can
6 they compete for the MIB cargoes, possibly?

7 Q Well, let's take your point; that maybe they
8 can get the cargo from the existing MIB movements. Have
9 you looked at whether, if every single container that's
10 going mini-land bridge today went in a 4200 TEU ship,
11 that would justify dedicating such a ship to the inbound
12 Houston trade?

13 A No. I don't believe so, but I don't think
14 anybody would logically dedicate a ship to the inbound
15 Houston trade. Those vessels are going to be operating
16 in around-the-world service. They're not going to be
17 dedicating their capacity to any individual port.
18 They're going to be carrying cargoes throughout the
19 ranges, you know, picking them up at one place,
20 dropping them in another.

21 And they will be carrying Atlantic cargoes,
22 Korean cargoes, and all sorts of cargoes into port.
23 They're not going to be dedicated to any single port or
24 trade or region, I believe.

25 So to say -- if the real question you're

1 asking is what is the break-even volume that they would
2 have to bring in there to justify a call, I don't know
3 the answer to that without doing some calculations.

4 Q Well, let me ask you two different ways.
5 First of all, let me ask you what would be the volume
6 that would be necessary to justify calling at Houston
7 with one of these ships on a schedule that would be
8 time-competitive with mini-land bridge?

9 A I can't answer that question.

10 Q And secondly, what would the volume have to be
11 to justify calling at Houston at all, even on an
12 inferior time schedule?

13 A I think to answer that question or the
14 previous question, one would really have to sit down and
15 do some calculations. It would have to include a lot of
16 assumptions about the routing, about the rates for the
17 cargo, about the port options and everything else.

18 It's not a simple answer. I don't think a
19 single answer can be given to that.

20 Q Okay. And those assumptions have a tremendous
21 impact on the cost of moving a single container, don't
22 they?

23 Q Which assumptions? The one I just mentioned?

24 Q Yes. If you're going to call directly at
25 Houston, it's going to cost you less, assuming the boat

1 is full or the boat is at 80 percent capacity than it's
2 going to cost you if you have to call first at -- to
3 take the Barber itinerary here, -- Miami, Jacksonville,
4 Savannah, Charleston, Baltimore, Philadelphia and New
5 York, Norfolk, Boston, St. John, Shreveport, and New
6 Orleans before you get to Houston.

7 Doesn't that cost a lot more?

8 A Are you saying if you added up the cost of
9 that entire voyage and then charged it to the container
10 that was going to Houston?

11 Q And split it up among the containers on the
12 ship.

13 A That's not logically the way carriers look at
14 the cost of serving a port.

15 Q Well, tell me how they do look at it.

16 A I think they tend to look at the cost of
17 serving a port, the revenue to be derived, and they look
18 at the incremental revenue or the incremental
19 contribution they can generate, and determine whether or
20 not it justifies a port call.

21 I think that if you were to add up the cost,
22 the full voyage cost, and then allocate it to a
23 container call in any one port, that wouldn't
24 logically -- I mean you keep talking about just the
25 inbound trade. The obvious thing is that of the

1 outbound side, it's the shortest voyage from Houston
2 back to the Far East, if you're continuing back that
3 way.

4 So I don't know -- what I'm saying, I guess,
5 in a sense is, from a carrier's perspective, I don't
6 think that the line haul cost varies a lot in terms of
7 serving one port or another. The port costs are the
8 primary difference from his perspective, and then the
9 volume he can push through that port and what the
10 contribution is.

11 They tend to look at the contribution for
12 individual ports, but the line haul cost is sort of
13 allocated evenly across all cargoes.

14 Q Let me ask you about feeder ships. You
15 mentioned feeder ships before. How does a feeder ship
16 operate?

17 A Well, for instance, Evergreen Line is going to
18 serve the Texas Gulf through Jamaica. They have 2700
19 TEU ships, 24 of them which are currently coming into
20 service.

21 They are also going to operate in two
22 round-the-world loops. They are going to feed both
23 eastbound and westbound cargoes through Kingston,
24 Jamaica on foreign flagships. So they will drop their
25 ships -- the big ships will call at Kingston, drop the

1 containers off. They will be reloaded onto foreign flag
2 feeder ship, a smaller ship that will run them into the
3 Gulf, and they will load the Gulf cargoes and bring them
4 back out to Kingsion and drop it off.

5 Q And does the feeder ship operation contribute
6 to the cost of moving the container?

7 A Well, it doesn't, but in that case it's
8 probably cheaper than having direct port calls, because
9 you consolidate. You don't slow down the line haul
10 vessel at all.

11 Q Whereas, if you tried to take one of these
12 4200 TEU ships and stop at this whole list of ports we
13 just looked at, you're adding to the cost.

14 A That's right. In fact, U.S. Lines' stated
15 intention is to call at only Savannah and New York with
16 those ships. And they are building four U.S. flag
17 vessels that, in my opinion, will likely serve the Gulf
18 by feeder out of Savannah.

19 Q Okay. So there are either additional costs
20 for making multiple port calls or there are additional
21 costs for running feeder ships; right?

22 A That's right. Additional cost to what? To
23 not serving multiple ports?

24 Q What I'm getting at is compared to mini-land
25 bridge which can make a direct movement and then send it

1 over a railroad to Houston. You said that the West
2 Coast trade is the high volume trade.

3 A Yes, sir.

4 Q And I'm talking about inbound to Houston.

5 A Right

6 Q And I think it follows from your statement
7 about the West Coast trade being high volume trade, that
8 those ships don't have to worry about these logistic
9 problems we've been discussing with the all-water
10 vessels in the inbound trade.

11 A I don't know what logistics problems you're
12 referring to. I've already mentioned that the trade
13 from the Gulf is an outbound trade, so there is no
14 logistics problem the way I see it. They are
15 positioning these vessels for the heavy outbound trade
16 out of the Texas Coast.

17 Q That's not a problem in my estimation. That
18 makes sense.

19 Q Again I'm sorry. I'm focusing on the inbound
20 trade, and the logistic problems I'm talking about are
21 the ones we just went through, of either having to call
22 at lots of ports or having to run feeder ships. And the
23 point I'm trying to see if you agree with is --

24 A Yano Line calls directly. They don't call at
25 a lot of ports.

1 Q Okay. That's an interesting piece of
2 evidence.

3 A Lykes also, I believe, calls directly. They
4 don't call at the Atlantic, I believe.

5 Q Okay. But my question was one about cost.
6 And what I was trying to see is whether you agree that
7 mini-land bridge has a cost advantage because it doesn't
8 have to deal with these logistic problems of all-water
9 movements inbound.

10 A No, I don't agree that that follows. In the
11 first place, I've just said I don't think there are any
12 logistic problems. In the second place, my analysis,
13 which you started this looking at Exhibit 7, I think
14 shows that I would say the opposite; that all-water
15 services have an advantage, in general, over the MIB
16 services.

17 Q Well, let me ask you about Exhibit 7.

18 A Yes, sir?

19 JUDGE HOPKINS: Excuse me a minute, Mr.
20 Roach. How much longer do you expect to go?

21 MR. ROACH: I think I've got 45 minutes.

22 JUDGE HOPKINS: Well, I think we ought to
23 recess at this time because we're starting at 8:30
24 tomorrow morning.

25 MR. WEICHER: Your Honor, this witness has

1 personal commitments elsewhere. If we can just have a
2 rough estimate of times to help him make his plans. We
3 realize that these things are not easily predictable to
4 the minute, but just to give us a feeling for tomorrow
5 morning.

6 MR. BAKER: I'd say perhaps an hour, hour and
7 a half, just dependent upon how much Mr. Boach covets.

8 VOICE: Your Honor, for the Denver Rio Grande,
9 I'd estimate about a half an hour.

10 MR. PATNER: The Department of Justice
11 estimates about 15 to 20 minutes.

12 JUDGE HOPKINS: So we're talking about three
13 hours or so. Two and a half to three hours? We're
14 starting tomorrow morning with the oral argument at
15 8:30, too. So I don't know how much time that will
16 take.

17 MR. WEICHER: Thank you, Your Honor.

18 JUDGE HOPKINS: You've got an idea anyway. At
19 least that's an idea. I'm not saying that's going to be
20 what's going to happen.

21 MR. HILSON: Your Honor, in connection with
22 the oral argument, Applicants have the opposition to the
23 Katy's motion to strike the traffic diversion study,
24 which I expect everybody's been awaiting with eager
25 anticipation.

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JUDGE HOPKINS: I'd like to have a copy.

MR. WILSON: We certainly will provide it.

JUDGE HOPKINS: We'll be in recess until 8:30 tomorrow morning, remember.

(Whereupon, at 5:15 p.m. o'clock the hearing in the above-entitled matter was recessed, to resume at 8:30 a.m. o'clock the following day, Wednesday, October 31, 1984.)