

F.D. 30400-10/31/84 - PGS.-4589 - 4647

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BEFORE THE
INTERSTATE COMMERCE COMMISSION

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

Hearing Room A
12th & Constitution, N.W.
Washington, D.C.
Wednesday, October 31, 1984

The hearing in the above-entitled matter was
convened, pursuant to notice, at 8:30 a.m.

BEFORE:
JAMES E. HOPKINS,
Administrative Law Judge

003480000

1 APPEARANCES:

2
3 (As heretofore noted, with the following addition:)

4
5 On behalf of Denver and Rio Grande Railroad Co.:

6 NELL HOFFMAN BONAPARTE, ESQ.

7 Hogan and Hartson

8 815 Connecticut Avenue

9 Washington, D.C. 20006

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C O N T E N T S

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WITNESS

DIRECT CROSS REDIRECT RECROSS

James D. O'Connell

By Mr. Roach-resumed		4629		
By Mr. Raker		4700		
By Ms. Eonaparte		4748		
By Mr. Ratner		4756		
By Ms. Reed		4763		
By Mr. Weicher			4766	
By Mr. Roach				4770
By Mr. Raker		4772		

Forrest S. Baker, Jr.

By Mr. Smith	4774			
By Mr. Roach		4775		

E X H I B I T S

<u>Exhibit No.</u>	<u>Identified</u>	<u>Received</u>
UP/MP-35A, 36,37, and 39	4628	4773
DRGW-C-27	4750	4774
UP/MP-C-40	4775	
UP/MP-C-41	4796	

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P R O C E E D I N G S

(8:30 A.M.)

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

4 As we indicated last week, we are going to
5 have oral argument on the motion to refuse admission
6 into evidence of the applicants' diversion study. Mr.
7 Kharasch, do you want to start?

8 MR. KHARASCH: Yes, Your Honor.

9 If Your Honor please, I would like to save
10 five minutes at the end for rebuttal.

11 Your Honor, we believe the applicants'
12 diversion study cannot be received into evidence. It is
13 important to note at the outset that we are not talking
14 today about the weight to be given the study.

15 For example, I would say that one of the basic
16 principles of the study leads to vain and foolish
17 results. That is, the study assumes that all railroads
18 in the west are open, which they never have been, were
19 not in 1982 generally, certainly were not for applicants
20 in 1982 or today. They were not in 1983, and they will
21 not be.

22 The validity of this assumption, although it
23 will lead to ridiculous results, is the question of
24 weight, and it is not the sort of thing we are talking
25 about this morning.

1 Rather, we say the study is flatly
2 inadmissible. This distinction is well made by the
3 Postal Rate Commission in the decision we provided
4 yesterday, Postal Rate in Fee Changes, 1983 Locket,
5 R84-1.

6 The Rate Commission says, Page 3 of its
7 decision, the documentation not provided the parties is
8 that which is necessary to independently discern what in
9 fact the program does and how it does it.

10 And then says the Commission, the absence of
11 such information does more than detract from the weight
12 to which this study is entitled. Without it, neither
13 the parties nor the Commission know whether the study is
14 entitled to any weight at all.

15 What the Postal Rate Commission is saying in
16 this case in its careful decision is that a foundation
17 is missing, and says the Commission, Page 6, such a
18 foundation ordinarily requires that a party be able to,
19 one, authenticate the program, two, test the program by
20 replicating the results, three, validate the program,
21 that is, compare its results against the results
22 obtained from a new set of input data.

23 The applicants' diversion study here is
24 totally deficient in foundation and in many other
25 respects. The first and most basic problem with the

1 study is, there is no documentation. There is no
2 statement of procedures, either overall or in part.

3 We pleaded for a complete statement of
4 procedures from the day after the application was
5 accepted. At the first prehearing conference, Your
6 Honor, you may remember Prehearing Conference Exhibit
7 1. That was a statement of agreements between
8 applicants and the MKT.

9 Page 1 of that says Kharasch requested a
10 detailed statement of procedures stating step by step
11 the procedure used, the data sources, assumptions,
12 stating the actual figures used, derivation of figures,
13 actual formulas used, exclusions, i.e., points where no
14 diversion calculation was made, and so on, with
15 identification of any documents containing listings,
16 figures, and formula.

17 That followed an almost all-day phone
18 conversation with Mr. Wilson. I wrote it up.
19 Prehearing Exhibit 1 says Wilson agrees to produce such
20 a statement with a tentative date of July 3.

21 Something called a statement of procedures
22 which was not a statement of procedures is SFSP-31.
23 That arrived August 25, but SFSP-31 is totally lacking
24 in any specificity. During the cross examination, long
25 and painful, some information dribbled in where the

1 applicants' witness said, oh, we eliminated Chicago, or
2 we truncated, or Rule 113 has exceptions, or there may
3 be some exceptions here or there, or there was the
4 Oregon rule, and so on.

5 These witnesses, as Your Honor has seen, did
6 not know what they did. They did not know what the
7 rules meant. They did not know why South Dakota turned
8 up east of Chicago instead of west of Chicago. They
9 just didn't know what they had done, and the meaning of
10 what they had done.

11 The applicants' witnesses admitted that no log
12 was kept of procedures. I have done a little reading on
13 proper data electronic processing procedures, Principles
14 of EDP Management, by Alexander Gaydasch,
15 G-a-y-d-a-s-c-h.

16 All the texts, this one by Gaydasch and
17 another one, Guide for Technical Documentation of
18 Computer Products, all of these say that there must be
19 proper program documentation, and the more complex a
20 computer procedure, the more important it is to have
21 proper program documentation.

22 But there is none here. There is no written
23 statement of the program. It may well be -- I believe
24 it is true -- that they couldn't do it. There was no
25 log kept of changes as they went through their

1 iterations and iterations. There was no complete
2 printout.

3 They did not use proper sampling procedures at
4 the time in massaging this enormous lump of data that
5 they felt they should start with. There are no control
6 numbers. The number of program changes is unknown. The
7 test runs have been destroyed. There is no record, no
8 statement of the specific rules used at any iteration.

9 Mr. Beyff, you may remember, turned up on the
10 stand, and he was correcting some information he put in
11 in response to interrogatories, and it turned out Mr.
12 Beyff, when he was doing it, didn't know what his
13 program was, so he had to change his answers completely.

14 There is simply here no way to know at a high
15 level, verbal level, what their procedure was. I don't
16 know. With respect to Your Honor, I don't think you can
17 know. The Commission cannot know. The Commission staff
18 cannot know. And it is quite clear from the cross
19 examination that the witnesses don't know. There is
20 simply no known procedure to give any weight to.

21 As Your Honor said at one point, we might be
22 here two years longer, and we still wouldn't know what
23 they did.

24 Now, there is a second level below that that
25 we don't know. The applicants blithely say, we used a

1 procedure, and they give us five pages. These were
2 exceptions to Rule 113.

3 Now, the purpose of proper program
4 documentation is to enable someone to say, if you
5 intended to do that, did your rule really do that? We
6 don't know, because we don't have any documentation.
7 That's a fundamental thing. The program could have had
8 glitches in it. It could have had all sorts of mistakes
9 in it. We don't know.

10 Let's pass that and move to something possibly
11 ever more important here. It is quite evident that no
12 way in the world exists to judge the effects of the
13 continuous changes and modifications in the rules of
14 computer processing that the applicants say they used.
15 The rules as we know are in general not written down,
16 and certainly the programs don't seem to be written
17 down.

18 It is no answer for the applicants to say, we
19 did some preliminary runs, or it is no answer to say,
20 well, there are 12 cubic yards of messy work papers, and
21 somewhere in the work papers there might have been some
22 notes where someone thought about changing the rule.

23 The witnesses don't know the rules, and what
24 is worse, when the witnesses were asked what was the
25 effect of the change in the rule, what was the effect of

1 changing rule this or adding this or adding the D&FGW
2 rule, or truncating the movements at Chicago.

3 They don't know what effects there are of the
4 Oregon rule, which was designed for northern tier
5 east-west traffic and somehow got applied to north-south
6 traffic to Texas. They don't know. I asked
7 repeatedly. Other counsel asked. The witnesses don't
8 know.

9 Now, I don't know what the effect is of South
10 Dakota being east of Chicago, and we'll never know,
11 because the witnesses don't know. The applicants did
12 not know, because there is a complete lack of any
13 program controls or checks.

14 The applicants don't know how many purely
15 hypothetical or imaginary movements exist in the
16 adjusted data base, how many real movements in 1982 were
17 discarded. They don't know what the final iteration was
18 applied to. They don't know that, and there is no way
19 to trace it.

20 Another way of putting this is the question of
21 auditability, which the Postal Rate Commission placed
22 great emphasis on, and which Your Honor earlier this
23 year placed great emphasis on in the coal rate case.

24 There are no control numbers for the actual
25 movements. There is no record of the compressions. You

1 remember that they said they compressed. The fact that
2 there are no reliable samples, and they dealt with
3 400,000 pieces of data, means we don't even know what
4 program they had for making their selections that do
5 give us selected printouts of diversions.

6 It is impossible to make an audit. There is
7 no audit trail. The day after the application was filed
8 and the MKT interrogatories, we asked for a complete
9 auditable audit trail. Again, the Postal Rate
10 Commission in a careful decision of this sort, dealing
11 with exactly this sort of inordinately complex computer
12 program, has been very clear that auditability is an
13 absolute requirement.

14 You cannot audit this statement in any way.
15 The Commission has no way to know the effect of
16 anything. They have no way to restate anything. We
17 don't know how much traffic was diverted to the Rio
18 Grande and how much was diverted to the UP and how it
19 would have been if they hadn't made their changes and
20 altered their rules.

21 Nor, because of -- I don't say it's
22 deliberate, but because of the way it was done, there is
23 no way to trace anything from the beginning run through
24 and show anything. There is no sample possible. If you
25 don't have any control numbers, you don't know what you

1 are sampling, and at the end we have nothing but a
2 population of data that are admittedly hypothetical in
3 some enormous degree, but we don't know how much.

4 What is more, the study used bad data. We
5 know they used bad data. We were told the input data
6 was bad. Certain movements were just truncated as if
7 they were local movements when they were joint line
8 movements.

9 Take a detail. Take the important question of
10 whether a station is exclusively served by the
11 applicants. Now, in what the applicants tell us in the
12 vaguest terms about their methods, it is important to
13 know whether a station is exclusively served. The vague
14 general testimony, that is, the testimony of the
15 witnesses, says, oh, well, we took care to write down
16 stations as exclusive.

17 But on the stand, the witness admitted that
18 something called four-digit, that is, aggregated SPLC,
19 Standard Point Location Codes, were used, or maybe, and
20 I have read the transcript again and I can't make it
21 out, maybe they used nodes, or just larger areas.

22 They were used in classification of stations,
23 so that a station 50 miles away from an exclusively
24 served station, if it had some other railroad's service,
25 would be treated as service to the particular station

1 which was served only by one of the applicants.

2 And therefore, when they treat a station as
3 open, that was plainly not open, because it was on a
4 railroad 50 miles from anywhere else. What is the
5 effect of this? Plainly, the exclusivity of a station
6 is important even on the applicants' principles. It
7 affects the amounts of diversion.

8 But no one has any idea what the effect of
9 this treatment of SPIC's, service to an SPIC as service
10 to a point is. We don't know. There is no
11 auditability. There is no way to tell what the effect
12 of this error on the applicants' part was.

13 I might call Your Honor's attention to the
14 fact that Mr. Swain says at Page 3,050 of the
15 transcript, he said, yes, we detected some errors, but
16 we didn't submit any errata. Who knows what those are?

17 Now, let's go to one more very important
18 point. Without questioning the intent of Mr. Swain and
19 his numerous collaborators, who knows whether they are
20 constantly changing an incredibly complex program that
21 had a bug in it or bugs in it.

22 For example, it takes five pages to write down
23 the exceptions to Rule 113. That came in the day before
24 Mr. Swain hit the stand. But with respect, who knows
25 what the program was that was supposed to apply there

1 five pages. It is quite a program. Nobody knows what
2 it is. We don't even know how it is supposed to work.

3 Maybe that program is rejecting all sorts of
4 things, and maybe it isn't. Who knows? Nobody knows.
5 In fact, if you do not write down your programs, and
6 complete documentation at every level, you don't know if
7 half the data were discarded. I don't know if half the
8 data were discarded or misclassified at some point in
9 some iteration, and remember, they did this five times.
10 We just don't know.

11 Finally, Your Honor, there was what one could
12 charitably call a weak attempt by the applicants to say,
13 well, everything is all right here, because some
14 experienced final evaluators looked at the results, and
15 they liked the results.

16 Now, with respect, the evaluators did not look
17 at all the results, because they never existed to look
18 at them. That is totally established. They did not
19 look at a proper sample, because they never made a
20 proper sample. The evaluators only looked at what they
21 wanted to look at.

22 Second, the evaluators passed and apparently
23 used, or they say they used rules, but we don't know
24 what programs they were, but they say they used rules
25 and passed these rules for application, and an example

1 would be the Oregon rule or the Chicago truncation.

2 These rules were said to be designed to deal
3 with east-west traffic, and the logic of those rules was
4 only to deal with east-west traffic flows, but these
5 rules had very apparent and quite foolish effects on
6 north-south traffic or Texas traffic.

7 But again, no one knows what effects they had,
8 and yet the evaluators passed those rules, and they
9 seemed to, according to the testimony, they were used.
10 Next, the evaluators sat constantly with applicants'
11 counsel.

12 Last and, I think, fatally here, and this was
13 pretty cute, the one evaluator, Mr. Beyff, in answering
14 our first interrogatories, gave us five examples of a
15 diversion calculation. All but one of those examples
16 were wrong, and were corrected by Mr. Beyff when he hit
17 the stand.

18 The examples appeared XVI-C-23, Pages 7 to 10,
19 and the corrections are SPSP-C-7, also called Pages 7 to
20 10.

21 What is interesting here is that Mr. Beyff,
22 the final evaluator, who prepared these first sets of
23 tables, in four out of the five cases were wrong, but he
24 didn't know that the program didn't work the way he
25 thought it did, and the differences were 355 percent. I

1 did the arithmetic yesterday.

2 The differences that he passed as a final
3 evaluator and gave to us as examples of how the program
4 worked were wrong by 350 percent in amounts of
5 diversion.

6 So, all I can say is, a casual glance by the
7 evaluators is no assurance at all that there is any of
8 this elaborate and unknown program, and indeed a careful
9 glance is no assurance at all.

10 Your Honor, we have supplied you with pages in
11 the record. You sat through the painful cross
12 examination. You know what has happened here. We don't
13 know in words what was done. We don't know in writing
14 what the programs were.

15 We have no way of judging any of the data.
16 There is no auditability. There is really nothing to go
17 in. It cannot be authenticated, tested, replicated, or
18 validated, and it therefore cannot be received in
19 evidence.

20 We urge that it must be excluded. We have
21 this suggestion. The applicants have tendered it. If
22 it is excluded, it will sit in the record as an offer of
23 proof, and as an offer of proof I believe we can make
24 contingent counteroffers on the date of December 10
25 which Your Honor has scheduled, and I may say our

1 counteroffers are not going to say your program was
2 wrong because we have never seen the program.

3 We are not going to be make any judgment, but
4 we can say what assumptions we were told about, if it
5 worked that way, are foolish. Those are the weight
6 objections. We can put those in as contingent
7 counteroffer of proof.

8 In that way, the program will sit there. If
9 the Commission thinks it could do anything with this,
10 and I don't see how it could, then the Commission could
11 look at the program and say something about it.

12 There is every harm if untestable,
13 unspecified, unauditale material is received in the
14 record. There is no harm if it is excluded, because the
15 other parties in this case, as part of their cases, will
16 be producing and will be filing November 21 their
17 careful and auditable and checkable diversion studies.

18 Those studies can be tested by the applicants,
19 and the record will have that impact of the application
20 study. The record will be complete. It will be
21 complete with useful material.

22 As it stands, if this stuff is admitted, then
23 anyone can go into the back room, say in the most
24 general form, I did something mysterious, I don't know
25 what I did, you don't know what I did, and comes in as

1 evidence.

2 It is not a question of weight here. It is a
3 question of no weight at all, because nothing can be
4 told about this.

5 Now, I received yesterday with almost
6 instantaneous speed an applicants' answer to this motion
7 before the motion was made, and they attached the motion
8 pages of what they say is our index, and in some way,
9 and this makes me quite angry, we were supposed to go to
10 12 messy file cases and deduce what they did, deduce,
11 play some enormous jigsaw puzzle game.

12 And I just wish to call Your Honor's attention
13 to the fact that the detailed and careful index, for
14 example, says in Box Number 7, RDS-632 through Page 797,
15 there are various OP files, and Box Number 8, Pages 798
16 to 846, there are various program reports, and Box
17 Number 9, RDS-847 to 863, there are various program
18 reports.

19 We can't do anything with this stuff. We
20 couldn't do anything with this stuff. We can't do
21 anything with this stuff today. Every text, every
22 authority, every dictate of logic and sense says, if the
23 applicants don't tell you what they did, you can't make
24 any judgments about it. If they don't put it in a form
25 that can be audited, it cannot be tested.

1 Therefore, we urge you, as you did earlier
2 this year, as the Postal Rate Commission has done, as
3 the courts have done, we urge you to reject this study
4 as evidence, and proceed as we have suggested, Your
5 Honor.

6 Thank you.

7 JUDGE HOPKINS: Thank you.

8 Before Mr. Wilson proceeds, do the other
9 parties in this proceeding join in this motion, or
10 what? I haven't heard anything.

11 MR. BAKER: Your Honor, KCS does join in MKT's
12 motion.

13 MR. LEVY: Your Honor, Union Pacific believes
14 that applicants' diversion study seriously understates
15 diversion of Dr. DeVeau's transaction on Union Pacific
16 and Missouri Pacific. We take no position on the motion
17 to strike.

18 MR. LEAFY: Your Honor, the Rio Grande is in
19 the same position as Union Pacific.

20 MR. WHITE: Your Honor, Texas Mexican joins in
21 the motion.

22 JUDGE HOPKINS: Mr. Wilson?

23 MR. WILSON: Your Honor, I would just like to
24 briefly address some of the points raised in MKT's
25 written materials, since I believe that our writer

1 materials sufficiently address the basic point.

2 First, MKT urges that the Postal Rate
3 Commission case that it submitted is helpful in
4 disposing of this motion to strike. Applicants agree
5 with that. However, applicants believe that the three
6 requirements to the motion to strike in the Postal Rate
7 Commission case are not at all present in this case.

8 In the Postal Rate case, on Pages 2 to 3 of
9 that decision, it is clear that the reason the motion to
10 strike was granted is because there were no
11 documentations or computer tapes made available. The
12 party proposing the evidence to the Postal Service
13 refused to permit their technical experts to discuss the
14 model with technical experts of other parties in the
15 case.

16 And the witness that they provided in that
17 case was unable to answer questions about the model.
18 That is completely different from what has gone on in
19 this case.

20 In this case, much documentation has been made
21 available. Indeed, 20 boxes of material was made
22 available showing all of the input into the model, all
23 of the assumptions in the model. There was also a flow
24 chart showing every stage of the procedures that were
25 undertaken in the traffic study, and there is output of

1 every iteration.

2 Now, there is not an output derived on the
3 basis of a sample taken by a sampling expert. However,
4 the method of sampling to develop that output was made
5 very clear. The sample was very large. There were
6 thousands of movements reviewed, probably more than any
7 of the protestants will have in their traffic studies
8 when we see them.

9 And these evaluators saw numerous movements,
10 numerous examples of their assumptions being applied in
11 the model. They were able to confidently conclude that
12 the assumptions were applied as they wanted them to be,
13 that the diversion results were reasonable.

14 The verified statements indicate this, both
15 Mr. Guerin's and Mr. Reyff's, and both Mr. Guerin and
16 Mr. Reyff stated on brief direct testimony that they
17 were able to conclude from their review of the output
18 material, which is what any rail traffic diversion study
19 is based on, that the diversion judgments were
20 reasonable, that the assumptions that they wanted to
21 have applied were in fact applied.

22 So, there was sufficient documentation. There
23 were also sufficient tapes. Eight different parties in
24 this case have been provided tapes, the tape of the data
25 base before the study, the tape after the end of the

1 base case adjustment phase, and the tape after the SFSP
2 study.

3 Four other parties were provided special run
4 tapes for other information that they wanted to derive
5 from the computer process. Union Pacific was provided
6 with every tape that had anything at all to do with the
7 study, so that Union Pacific could completely replicate
8 and reiterate the study process if they choose to do so
9 in their testimony in this case.

10 Certainly any other party could have asked.
11 It isn't a question where MKT is suggesting that they do
12 not have answers to questions, but these are questions
13 that they did not ask, and as applicants in this case,
14 obviously we have a duty to explain what was involved in
15 the study, but we feel that we have done it.

16 We have over 100 pages of testimony, verified
17 statements by people explaining the various steps taken
18 in the study. It was a complex study. We feel that
19 testimony along with references in that testimony to
20 various work papers make very clear the details that
21 were involved in the study, so that those who want to
22 try to understand can. Those who don't want to try to
23 understand are going to have problems.

24 On the other point, we have had our technical
25 experts available to discuss matters with the technical

1 experts of the other parties. There have been numerous
2 occasions where DNS people have talked with the staff
3 people and consultants from other parties, California
4 DOT, State of Kansas, and various railroads seeking
5 trackage rights in this case.

6 They have been available to answer questions.
7 We have also answered questions in interrogatories,
8 because the program used by Mr. Reyff, for example,
9 access to data base, was still in a preliminary stage.
10 It had nothing to do with the computer process. It was
11 simply that the program used to access the data base was
12 still in a preliminary stage, so we got some information
13 that was false information, which we corrected.

14 That has nothing to do with the traffic
15 diversion study process, of course. Also, we have had
16 witnesses who were in fact able to answer questions
17 about the model. For tactical reasons, counsel have
18 decided not to ask Mr. Reyff and Mr. Guerin any
19 questions about their review, their judgments, their
20 thoughts, how they were able to determine that the model
21 was done properly when they participated in this study.

22 However, they did ask Mr. Swain questions, and
23 he gave them answers. Admittedly on some questions he
24 stated he wanted to wait, to check, to be sure that his
25 answer was correct, because there are hundreds of rules

1 involved in the study. However, that procedure was
2 helpful to the record, since the substantive things Mr.
3 Swain stated about the study were almost universally
4 correct.

5 So, we don't have misstatements in the
6 record. Mr. Swain's care in that regard should not be
7 interpreted as his not understanding what is going on.
8 It is simply an attempt to make sure the record in this
9 case accurately states the procedures that were involved
10 in the study.

11 So, in other words, it is our position that
12 the Postal Rate Commission case strongly supports not
13 striking the traffic study. None of the three
14 requirements for striking that study were present in
15 this case. And therefore we think that there is no basis
16 whatsoever for MKT's motion.

17 MKT also cited some record references in an
18 attached memorandum that they provided to Your Honor. I
19 don't intend to go through all of these record
20 references at all at this time. But to give you a
21 flavor for these references, which I believe are
22 extremely inaccurate and not in fact supportive at all
23 of the MKT motion, I do want to go through, just to take
24 an example, the first listed support in each of the four
25 categories.

1 Now, Katy's first statement is, there is a
2 lack of complete statement of procedures. Their first
3 point is that allegedly there was an admission that no
4 complete statement of procedures exists which they say
5 occurred on Page 3,028 to 29 of the transcript.

6 If you turn to those pages, this is what the
7 question was from Mr. Kharasch: "Does there exist, sir,
8 other than the documents produced in this case, your
9 statement, Mr. Reyff's statement, and SFSP-31, any place
10 where there is a statement describing the diversion
11 study and its procedures, methods, assumptions,
12 adjustments, subjective judgments, where that is
13 incorporated?"

14 The answer is, "No, sir."

15 "Do there exist other documents other than
16 submitted by applicants in this case?" And the answer,
17 "The documents are available in my work papers and other
18 evaluators' work papers, are all available, to my
19 knowledge."

20 So, in other words, the question was, other
21 than the 100 pages of testimony, other than the detailed
22 statement of procedures that you submitted in response
23 to Katy's request for more information, other than the
24 20 boxes of work papers, is there anything else? And
25 the answer is, other than the complete statement of

1 procedures that we have already submitted, there is
2 nothing else.

3 That does not at all mean that there is no
4 complete statement of procedures.

5 The next Katy point is that applicants'
6 procedures cannot be audited. The reference there is to
7 an admission that no complete printout exists. There
8 are two page references. One reference is to a point
9 where Mr. Swain stated that he did not have a printout
10 of all of the movements involved, that it was a
11 substantial percentage of the movement, enough for him
12 to satisfy himself that the model was working properly.

13 But the other, on Page 3,046, was directed to
14 the question of tapes and printouts, and the question
15 was, "Does there exist anywhere in the world any
16 printout of the full final calculation of diversions
17 after the SFSP iteration?" Mr. Swain at first said,
18 "No, sir, no such printout. I take that back. Many
19 protestants have asked for the tapes of the output of
20 the merger. They may have produced such a report. We
21 at DNS never produced such a report."

22 In other words, while the printouts which the
23 evaluators relied on for applicants were complete enough
24 for our purposes, and we did not feel it was at all
25 necessary or appropriate to produce a more complete

1 printout, we did provide tapes to protestants, and if
2 they had felt it was necessary or appropriate, which we
3 still don't agree with, but if they had felt so, they
4 could have produced them.

5 Then, on Point Three, effects of program
6 changes in applicants' diversion study are unknown and
7 cannot be known. The point there is that there was an
8 alleged admission that the number of program changes
9 made each iteration is unknown.

10 Again, turn to the citation in the record,
11 Pages 3,038 to 3,041. The actual question is on Page
12 3,041. The question is, "Can you give me the number of
13 changes, the number of actual changes that you made in
14 going from Iteration 1 to 2 to 3 to 4 to 5 in each
15 step?"

16 The answer: "I could probably recreate that
17 with a fair degree of accuracy, but I cannot -- I mean,
18 I can try to do it here on the stand, but it would be
19 difficult for me to do that. The work papers we have
20 enumerated, the changes in impedences for each of the
21 iterations, the changes in the matrix are in the work
22 papers, and basically are only changes vis-a-vis the
23 Oregon rule."

24 So, in other words, Mr. Swain is simply
25 saying, I could count them up for you, but I can't do it

1 right here on the witness stand. There were a fair
2 number of changes. Certainly if someone is interested
3 in that information, we could supply that information,
4 but I don't think really -- I think this is an example
5 of what is really going on here, and I don't think
6 parties are necessarily interested in the answers to
7 these questions.

8 Otherwise, we would have heard them a lot
9 earlier. After we filed the detailed statement of
10 procedures in August, only one party, the U.S.
11 Department of Transportation, followed it up with more
12 questions.

13 If in fact our detailed statement of
14 procedures, which we thought was in full compliance with
15 your request for a detailed statement of procedures, as
16 broad and as imprecise as that request is, if it wasn't
17 complete enough in somebody's judgment, they could have
18 asked, they could have asked us, what does this
19 reference in the work paper mean. They could at least
20 have come to look at the work papers that were
21 referenced in SFSP-31, which to my knowledge MKT
22 representatives did not do.

23 Point Four, and the last category in the MKT
24 motion, was that bad data were used, and unknown
25 amounts. The reference is to Page 2,967 and 68, where

1 Mr. Swain stated that he was not sure of how much bad
2 data was caused by one specific problem.

3 However, the verified statement specifically
4 states that the amount of bad data was 1.3 percent, and
5 that because of this bad data it was not used at all,
6 and this is simply a reference to what is that subtotal
7 within the bad data that was caused by this specific
8 problem.

9 It is not really relevant to the Commission's
10 decision. In fact, the fact that there was only 1.3
11 percent of bad data in a study involving 18 million
12 carloads and 441,000 records is really significant, and
13 good accomplishment. It should be considered when you
14 get around to talking about weighing the traffic study.

15 In any event, these are examples of exactly
16 how inaccurate these citations to the record are. In
17 applicants' view, they do not in any way support MKI's
18 motion to strike this traffic study.

19 We believe that a correct reading of the
20 testimony in this case, the hundreds of pages we have
21 submitted, the corroboration that we have had in this
22 case, is that we have been cooperative, that the
23 testimony speaks for itself, and supplies a complete
24 record.

25 And frankly, Your Honor, I believe that we

1 will probably find when we get to the closing of the
2 record in this case that applicants' traffic study
3 submitted in the direct case is probably going to be the
4 best quality traffic study you are going to have in this
5 record.

6 JUDGE HOPKINS: Thank you.

7 MR. LEVY: Your Honor, may I be heard for one
8 minute?

9 JUDGE HOPKINS: Sure.

10 MR. LEVY: As I stated earlier, Union Pacific
11 has taken no position on the motion to strike, but I
12 must reluctantly correct one possibly incorrect
13 impression that Mr. Wilson's remarks may have left with
14 Your Honor.

15 That incorrect impression was suggested when
16 Mr. Wilson indicated that applicants had made available
17 to Union Pacific all the computer tapes necessary to
18 replicate the study.

19 As Mr. Wilson well knows, Union Pacific
20 discovered after Mr. Swain left the stand that several
21 computer tapes that were available at D&S Associates had
22 not been made available at discovery. At Union
23 Pacific's insistence, applicants acknowledged that fact
24 on the record on Monday morning.

25 Union Pacific will get those tapes later this

1 week, or perhaps early next week, and we intend to use
2 those tapes as part of our analysis, as part of our
3 opposition case, but I think that Mr. Wilson's
4 suggestion that those tapes had been made available to
5 Union Pacific may have left the incorrect impression
6 that those tapes were produced when they should have
7 been produced six months ago.

8 And while I draw no judgments about the
9 circumstances that led to the failure to produce those
10 tapes, I simply state that Union Pacific has spent weeks
11 and perhaps months of man hours trying to recreate the
12 data that appears on those tapes, and we are now
13 relieved to have them made available at this late date.

14 JUDGE HOPKINS : Thank you.

15 MR. WILSON: Could I address that just
16 briefly? I do stand corrected. There were three
17 tapes. They were not produced because the consultants
18 believed that they would not be helpful to the
19 understanding of the model, and because we had the input
20 tapes and the various tapes in the process.

21 At any rate, we have provided those tapes. We
22 are sorry for the inconvenience that we may have
23 caused. I think frankly when the experts get down to
24 looking at the tapes -- well, we will have to see what
25 they decide. Our consultants tell us that in fact these

1 tapes wouldn't have made very much difference, if at
2 all.

3 MR. LEVY: So that there is no
4 misunderstanding, we are not satisfied or convinced that
5 we can replicate results of the study, and we do not
6 have the necessary programming tapes where these tapes
7 reflect apparently the condition of the data base at the
8 end of each of the three intermediate iterations.

9 Even with those tapes, our consultants and
10 experts believe that replication of the applicants'
11 study is impossible.

12 JUDGE HOPKINS: Thank you.

13 Mr. Kharasch?

14 MR. KHARASCH: Your Honor, you have sat
15 through these witnesses. You know what they knew, what
16 they didn't know. I want to go back to a basic point
17 which is not at all answered by Mr. Wilson's reading
18 from the record and citations from the record.

19 There is no detailed statement of procedures.
20 SPSS-31, which we dragged through for two and a half
21 days or three days, was not complete. It is never
22 specific. It tells you nothing about the particular
23 program. It tells you nothing about the effects of all
24 the changes they made or the assumptions they made.

25 What was produced after our repeated, multiply

1 repeated and agreed demand for a complete statement of
2 procedures -- We were very precise in April, and we were
3 very precise in May, and we were very precise in June.
4 We wanted a complete statement of what went on here.
5 That doesn't exist. The witnesses directly testified
6 they don't have it written down, and they don't remember
7 what they did.

8 Now, these output tapes that we are supposed
9 to do something with, presumably at the cost of tens or
10 twenties or fifties or hundreds of thousands of dollars,
11 the output tapes, as the witnesses stated directly, did
12 not have any information that didn't have the matrix
13 references or anything else.

14 No one could tell except that this is the
15 output. Well, that is interesting, that this is the
16 output. What has been changed? Are you dealing with a
17 hypothetical movement here or not? We don't know.

18 The Postal Rate Commission case, which was the
19 first point discussed by Mr. Wilson, the Postal Rate
20 Commission case is 100 percent directly in point,
21 because it deals with the fact that the program
22 documentation was not in existence, and that means a
23 good bit in an EDE program, and it means a great deal
24 when the program is as insanely complicated as this
25 program, and changed as often as this program was.

1 Every principle in the text for correct
2 computer program documentation handling and control
3 appears to have been violated here. There must be a log
4 of changes. There must be a complete statement of
5 procedures. There must be descriptions of what they
6 call the high or verbal level, and detailed other
7 statements.

8 Don't forget, Your Honor, the witnesses
9 testified. We said, here is your statement of what the
10 rules were for rejection of diversion in the last
11 iteration. That was provided, what, one day before Mr.
12 Swain took the stand. It did not exist in the work
13 papers.

14 And what exists in the work papers is an
15 unmanageable rubble that you don't know whether it was
16 part of the program or not. It was people's scribbles.
17 But that important statement of what the rules were for
18 diversions didn't exist until one day before the witness
19 hit the stand for the last iteration.

20 Then I recall asking, I asked the witness, is
21 there such a statement for previous iterations? No,
22 nothing was written down here. This is ridiculous.
23 That is exactly what the Postal Rate Commission is
24 saying.

25 We can't put the computer on the stand here,

1 and we can't intelligibly put anyone on the stand who
2 said he ran the computer when he said he doesn't know
3 what he did, and never wrote down what he did. That is
4 the fatal thing.

5 And finally, consider if this untested mess is
6 admitted into the record. Consider what the problems
7 are for the Commission and the Commission staff and the
8 parties. No one can tell what the effect is of applying
9 the east-west rules to north-south traffic, because
10 there are no controls.

11 JUDGE HOPKINS: Mr. Kharasch, excuse me. If
12 the Commission does accept this diversion study, and
13 with all of its problems you say are inherent in this
14 study, and the protestants point out all of these
15 problems that are in the study, and the Commission
16 generally agrees with you or any of the protestants as
17 to the fallacies in the study, the error in the study,
18 haven't the applicants lost by that, and you have
19 gained?
20
21
22
23
24
25

1 Your Honor, there are two separate
2 statements. From what the witnesses have said, we can.
3 I think -- we are dealing with part, because we don't
4 know what the studied -- but we could talk about the
5 fallacies of the assumptions. This is a foolish
6 assumption.

7 But we cannot say this foolish assumption
8 caused them to lose \$4 million of Texas traffic
9 diversion. That's impossible. Now, that's the
10 distinction between the two things. We can talk about
11 the weight: This is a foolish assumption, this is a
12 ridiculous assumption, or this didn't work right, to the
13 extent we know what they were -- only to the extent.

14 But we can never restate them, and the
15 Commission -- the basic procedure cannot be tested.
16 Now, I do not say -- and this is 1984 -- that computer
17 study should not be received, and I never would say such
18 a thing. I say they didn't write down what they did
19 here.

20 And I make the distinction between questions
21 that go to weight. Was that a valid assumption? That's
22 a perfectly invalid assumption. And the objections that
23 go to admissibility -- nothing can be admitted that is
24 not known. That's my first point. That's the
25 admissibility.

1 You say you made this assumption about the
2 Oregon Rule. If we understood it and we knew when it
3 was and when it was applied, it's admitted on the record
4 and did not have any application for Texas traffic, but
5 it was applied to Texas traffic. We can't tell how much
6 effect it has. That is a weight question. That is a
7 foolish rule. It's an incorrect rule.

8 But it is not a weight question when someone
9 says I went into the closet, with a program apparently
10 of eight weeks, and I came up with this enormous mass of
11 data, with no controls and no statement of it, and you,
12 the Commission, are supposed to accept it. That's what
13 the Postal Rate Commission said no, we will not accept.
14 There is no auditability, there is no testability. And
15 in this case, there's not even anything for you to say I
16 know what was done here, or for us parties to say I know
17 what was done here.

18 It would be error to admit this study because
19 it is not admissible. If we knew what it was, and it
20 were testable and auditable, then it is not an error to
21 admit it. We can talk about this as wrong. The weight
22 should be given. It can be adjusted and restated, as
23 the Commission so often has.

24 No restatements are possible here. No
25 adjustments are possible here. It is error to admit it

1 because we don't know what the study was. The
2 Commission doesn't know; the Commission Staff doesn't.

3 JUDGE HOIKINS: Thank you, Mr. Kharasch.

4 Well, I'm not going to take any long period or
5 give a long decision on this, but I will state now that
6 I am denying the motion to strike. I'm going to allow
7 it into evidence.

8 Now, I have listened, too, to what has gone on
9 and I've looked over the record again. I disagree
10 somewhat with you, Mr. Kharasch, and with the Postal
11 Rate Commission. As to the essential aspect of the
12 computer study, I might agree with you. But as to the
13 case itself, I don't think it posed what you're saying.

14 But that's neither here nor there. I think
15 one of the problems in this whole situation is that this
16 is a new type of diversion study that's been introduced
17 in this proceeding. Now, I'm not certain -- I'll be
18 honest with you -- after listening to what's gone on,
19 that the Commission will be able to come up with a
20 decision as to the same points you've raised, Mr.
21 Kharasch.

22 But I feel, on the record that we've received,
23 we have received so far, that I will have to receive
24 this document. I see problems in it myself, and I have
25 seen the questioning going back and forth on this. And

1 I believe that the Applicants, in my opinion, have not
2 supplied the information that they should have supplied
3 in the first place.

4 This is my opinion. But, at the same time, I
5 am not going to refuse to admit this into evidence. I
6 am going to allow it into evidence. But, at the same
7 time, I'm going to say that I find that another
8 instance, another matter that I have been thinking of --
9 why wasn't a motion to produce brought to my attention
10 somewhere along as to these particular matters? Why
11 weren't there any depositions made of the experts?

12 Mr. Kharasch?

13 MR. KHARASCH: Because the Applicants, at the
14 prehearing conference, had agreed with me as far as I'm
15 concerned, to produce a complete statement of procedures
16 July 2.

17 JUDGE HOPKINS: I want to get all this on the
18 record anyway. So there are various and sundry reasons
19 why I'm going to allow it into evidence. I see the
20 problems that you've spoken of, and I see problems in
21 the Applicants putting this into evidence.

22 But we'll have to live with that. I believe
23 that the Protestants, from what they have in their own
24 files and what they've received so far from the
25 Applicants -- and frankly, I think the Applicants should

1 continue to give whatever information the Protestants
2 wish, right down to the date of the requirement that you
3 file your evidence concerning the diversion study, the
4 rail diversion study itself.

5 That is one reason why I allowed the
6 postponement to December 10. I'm taking that into
7 account, too.

8 But I have questions about the way the
9 Applicants have handled this proceeding and the way they
10 filed this diversion study. I know it's a new
11 procedure, but it seems to me that they've allowed their
12 consultants, from what I have seen so far -- and this
13 has been something that has bothered me from the
14 beginning -- it seems to me the consultants are wagging
15 -- it's the tail wagging the dog.

16 I'm not certain that that is what's happened,
17 but it appears to me that is somewhat what has happened
18 in this case. But I am denying your motion to strike.

19 We'll take a ten-minute recess at this time.

20 (RECESS.)

21 JUDGE HOPKINS: Back on the record.

22 Before we get to this witness, as I remember,
23 we had held the statements of Mr. Swain, Mr. Beyff, and
24 Mr. Guerin, as I remember. And were there any others?
25 SFSP-31.

1 MR. STEPHENSON: How about Mr. Keyes?

2 JUDGE HOPKINS: I think his has been
3 received. Well, if it hasn't, I'm going to receive them
4 at this time

5 Mr. Roach, as I remember you were questioning,
6 weren't you?

7 MR. ROACH: Yes, Your Honor.

8 If I may, I thought I could expedite things by
9 asking to have several exhibits marked and then take the
10 witness through those.

11 I would ask to have marked Exhibits 35A, 36,
12 37, 38, and 39. I apologize for the 35A, but I had my
13 own computer glitch or some kind of glitch.

14 JUDGE HOPKINS: I haven't been able to keep
15 track of them all anyway. I'm relying on you people.

16 All right, they will be marked for
17 identification.

18 (The documents referred to
19 were marked Exhibits
20 UP/MP-35A, 36, 37, 38, and
21 39 for identification.)

22 Whereupon,

23 JAMES D. O'CONNELL

24 the witness on the stand at the time of the recess,
25 resumed the stand and, having been previously duly sworn

1 by the Administrative Law Judge, was further examined
2 and testified as follows:

3 CROSS EXAMINATION - RESUMED

4 BY MR. ROACH:

5 Q Mr. O'Connell, let me ask you first, if we
6 focus on the Far East-Houston minilandbridge trade, and
7 I'm speaking both the eastbound and westbound -- if you
8 shifted that trade to an all-water route, am I right
9 that the ship loading and unloading work would shift
10 from Los Angeles to the Gulf ports?

11 A Yes, sir.

12 Q Let me ask you to look for a moment at your
13 figures in Table 3 on page 5 of your verified
14 statement. Those are numbers for the tons of
15 minilandbridge in the Los Angeles-Texas Coast flow on
16 these two merging carriers; is that right?

17 A Yes, sir.

18 Q And then the totals for eastbound and
19 westbound, 452,000 short tons eastbound and 447,000 tons
20 westbound appear on Table 4 on page 7; is that right?

21 A Yes, sir.

22 Q Can you break those figures down between the
23 Far East trade and the Europe trade?

24 A Well, if you make the assumption that those
25 cargoes reported by the railroads are the sole MIF

1 moving in that corridor, then you can at least estimate
2 what portion of them is in each trade.

3 The problem is that the statistics that are
4 kept by the Bureau of Census and ultimately by the
5 Customs do not track outbound MIB. There is no way to
6 capture outbound MIB movements. So nobody really knows
7 what they are.

8 The last time anybody knew was the 1976
9 origin-destination survey that was done by the
10 Interagency Task Force. However, if we assume that
11 these totals are correct, and then we turn to Exhibit 1
12 -- Exhibits 1 and 2, actually -- and we subtract the --
13 you have in Exhibit 1, the far right-hand column for
14 1981, the Texas Coast is 56,000 tons. Do you see that,
15 the third number down?

16 Q Right.

17 A So if you were to make a matrix that has
18 imports and exports down the left column -- do you want
19 me to do this, actually calculate out what they are?

20 Q Why don't you go ahead?

21 A Okay. Across the top, you put three columns:
22 Europe, Far East and Total. You would put the 56,000 in
23 the European imports, and then if you turn to Exhibit 2
24 where you have 246,000 in 1981 --

25 Q Should we look at that or the 225 figure for

1 Los Angeles?

2 A I'm sorry; the 225, yes. So then if you have
3 imports from the Far East of 225, that gives you a total
4 of 281 for imports.

5 Q Right.

6 A If you subtract those out of the --

7 Q The imports from Europe, the 56, are going to
8 be westbound movements; right?

9 A That's right. And imports from the Far East
10 are going to be eastbound. So if we subtract those out
11 of the eastbound and westbound totals, let's see -- so
12 Europe --

13 (Pause.)

14 So that if we take the total westbound, which
15 is 447,000, subtract the 56 from that, that will give us
16 the European -- no, it will give us the Far East
17 exports.

18 Q Far East exports?

19 A Right.

20 Q And that figure is?

21 A 391, I believe. And then if you do the same
22 thing with the eastbound, the 452, if you subtract the
23 452 of the 225 Far East imports from the 452 total
24 eastbound, it should give you the European exports.

25 Q Right. And that's 227.

1 A Yes.

2 Q So that the export total, if we go across that
3 row, is 618. Going across your export row, I have 227
4 in the Europe column and 391 in the Far East column.
5 And then if we add down for Europe, we have 283, and for
6 the Far East we've got 616; right?

7 A You have to understand that these are from two
8 very dissimilar data sources, and it's an
9 approximation. It's an estimate, at best; because one
10 set of data is calculated by the government and the
11 other one is from the railroad data.

12 Q Your numbers in Table 4 are arrived at how?
13 Table 3 or Table 4, the minilandbridge numbers in your
14 statement.

15 A Those are taken directly from the U.S.
16 Maritime Administration statistics.

17 Q No, I'm talking about Table 3 in the text of
18 your statement.

19 A Oh, I'm sorry. Table 3, the data came
20 directly from tapes of the railroad's traffic.

21 Q That's 100 percent data? It's not a sample of
22 traffic; it's 100 percent of the traffic?

23 A Yes, it is.

24 Q How did you identify minilandbridge
25 movements?

1 A We identified the ocean carriers. We were
2 tendering containers to the railroad, and assumed that
3 those were all minilandbridge containers. Also, that
4 were moving between L.A. and Houston.

5 Q And are you confident that that was a good way
6 of identifying the minilandbridge movements?

7 A Yes, sir.

8 Q Are you confident that the United States data
9 that you relied on in Exhibits 1 and 2 are reasonably
10 accurate? They are based on compilations of cargoes
11 moving through these ports?

12 A I have no reason to believe they are not
13 accurate.

14 Q So the conclusion you reached, if I am right,
15 is that the Far East trade appears to be something more
16 than two-thirds of the total? 616 versus 283?

17 A Right.

18 Q Does that comport with your knowledge of the
19 market?

20 A Yes, sir.

21 Q Let me ask you to take a look at Exhibit
22 UP/MP-C-35A. This is a work paper from your work papers
23 that were produced by the Applicants. This is a paper
24 that you recognize?

25 A Yes, sir.

1 Q Did you compile these figures?

2 A No. I had them compiled by a research
3 assistant.

4 Q Okay. Tell me if I'm reading this correctly.
5 I am interested in looking for the container capacity at
6 the Gulf Coast compared to the container capacity at Los
7 Angeles and Long Beach.

8 First, under public, you have a line that says
9 "container."

10 A Right.

11 Q Is it true that the data that is reported
12 there shows six container berths, public container
13 berths on the Gulf Coast, and 15 at Los Angeles and Long
14 Beach?

15 A Well, it shows six on the Texas Gulf Coast;
16 yes, sir.

17 Q That's what the study is about, right, the
18 Texas Coast?

19 A Yes. But I'm differentiating. You said on
20 the Gulf Coast. It does not show that. It just shows
21 five in Houston and one in Galveston, for a total of
22 six. It does indeed show five in Los Angeles and ten in
23 Long Beach. Those are container berths.

24 Q And your definition of Texas Coast is
25 Beaumont, Galveston, and Houston?

1 A Yes, sir.

2 Q Okay. Now, under "private," there is another
3 row marked "container." Am I right that that shows two
4 berths in Houston?

5 A Yes, sir.

6 Q And 24 in Los Angeles and Long Beach?

7 A Yes, sir.

8 Q Do you have any -- did you conduct any
9 analysis in this study based on these figures or
10 otherwise, as to whether the number of berths at the
11 Texas Coast was sufficient to handle this traffic if it
12 shifted, the Far East traffic, if it shifted from
13 minilandbridge to all-water which has the effect, as we
14 discussed earlier, of moving the unloading operation
15 from Los Angeles to the Gulf Coast?

16 A I think, as I pointed out in my verified
17 statement, the capacity that has been handled in the
18 past is significantly higher than it is currently,
19 number one.

20 And number two, Houston has just completed a
21 new terminal, and Los Angeles -- I mean New Orleans --
22 has just completed adding a new berth. So in my
23 expectation, there is significant overcapacity in the
24 Gulf trades right now.

25 We confirmed that by talking to the port

1 directors and the port engineers in each of the ports
2 and asking them what level of capacity they felt their
3 terminals were operating at. They told us, I think,
4 that the capacity was expected to be capable of handling
5 any foreseeable flows in the future, and that they were
6 well below their maximum capacities in both cases.

7 That was something that I did after I filed my
8 testimony, just to check to see whether or not the
9 capacity --

10 Q Just as a matter of logic, it can't be true
11 that they can handle any increase in the future, can
12 it?

13 A I suppose that's true.

14 Q Did you ask them whether they could
15 accommodate 616,000 short tons of ocean-borne containers
16 that had heretofore been coming in by railroad?

17 A Well, since that's only about 60,000 TEUs, I
18 would say that's not much of a problem. But no, I don't
19 think I specifically asked them that question.

20 Q Did you analyze whether they have enough
21 berths to accommodate that, as well as all of the other
22 container movements that they are receiving from other
23 places in the world?

24 A I didn't analyze it because I thought, on its
25 face, there was significant overcapacity.

1 Q In container berths?

2 A Yes, sir.

3 Q What do you base that statement on?

4 A Just my knowledge of the Port of Houston.
5 Having toured the facilities, looked at the berths,
6 looked at the berths under construction that they are
7 building now, talked to the people from the port about
8 their plans for the future.

9 I believe they have significant capacity for
10 the future right now that is unutilized.

11 Q How many days did you spend there?

12 A When? I mean I have been at the Port of
13 Houston many times.

14 Q At this visit or visits that you were
15 referring to as the predicate for your judgment about
16 the capacity to receive these containers.

17 A The last time I was at the Port of Houston I
18 think was in August, probably. At that time, I was at
19 the Port of Houston for about one day, half a day
20 touring the facilities.

21 Q What I'm getting at is, were you there long
22 enough to see firsthand how many days of the month the
23 berths are occupied?

24 A No, sir.

25 Q Did you ever ask for that piece of data?

1 A No, sir.

2 Q Let me ask you to look at Exhibit UP/MP-C-36.
3 Are these the backup work papers for the cost
4 computations that appear in Exhibits 7 and 9 of your
5 statement?

6 A They appear to be.

7 Q Let me ask you a series of questions about
8 these. Turn to Exhibit 9, if you will. You have a
9 figure in that exhibit for the mileage of an all-water
10 route from the Far East to the Texas Coast, and that
11 figure is 10,651 statute miles; is that right?

12 A Yes, sir.

13 Q What is a statute mile?

14 A 5,280 feet, whatever it is.

15 Q It's a general unit of measure. You were not
16 referring to something unique to the shipping world?

17 A No. We use nautical miles normally, because
18 we were mixing water and rail miles, and the railroads
19 use statute miles. We put everything in a statute mile
20 basis.

21 Q Okay. Well, that may answer my question. If
22 you look at page 82 of the work papers CJO-82, in the
23 second block of entries, the third one down, there's a
24 line that says "one way distance," and it gives a figure
25 of 9,262.

1 Is that consistent with the 10,651 statute
2 miles in your Exhibit 9?

3 A I would think so. It can easily be checked.

4 Q Is that nautical miles?

5 A Yes, sir.

6 Q In Exhibit 9, you've got a number, 32 days for
7 the transit time. Is that right?

8 A Yes, sir.

9 Q And then I think it's on page 83 of the work
10 paper, I had located a figure of 42 days for the voyage
11 time. No, I guess it's 46 days. Total voyage time,
12 46.22.

13 A Yes, sir; that's correct.

14 Q The pages we're looking at now, 81 and 82 of
15 the work papers, are they a calculation of the voyage
16 for one of these new 4200 TEU ships?

17 A Yes, sir.

18 Q Let me see if I can find the comparable work
19 paper for the 1200 TEU ship. Is that 88 and 89?

20 A Yes, sir.

21 Q And on 89, am I right that the voyage time
22 there is 41.81 days?

23 A I'm sorry, which one?

24 Q Page 89, sixth line on the page.

25 A Yes, sir. I am assuming that these pages are

1 correctly -- since there's no heading on the top of the
2 second series of pages, I'm assuming that the first half
3 goes with the second half on each one of these. But I
4 would have to really check them to make sure that was
5 the case.

6 Q Right. Well, they were presented in this
7 sequence in your work papers, and they seem to fit
8 together.

9 Can you reconcile for me the figure of 32 days
10 on Exhibit 9 with the figure of 42 days on page 89 of
11 the work papers? Let me just as a preparatory question.

12 Exhibit 9 is dealing with a 1200 TEU ship; is
13 that right?

14 A Yes, sir.

15 Q So we should be looking at page 89.

16 A Right.

17 Q So how do you explain the seven-day
18 differential? Well, let me try again. The ten-day
19 differential.

20 A Well, in the first case, the page 89 in the
21 work papers is a round voyage; that is, total voyage
22 time on a round voyage basis, I believe.

23 Exhibit 9, the 32 days is actual transit times
24 as measured -- it is average transit time, as measured
25 by carriers who are actually operating in the trades

1 today, the services that they advertise, the vessels and
2 the transit times that they advertise.

3 Also in our work papers, that is what the 32
4 days was based upon. It's a one-way transit. And, as
5 you observe, because many of the carriers call the
6 Atlantic Coast inbound, the transit time is much longer
7 to the Gulf, much shorter outbound, obviously.

8 That is why the discrepancy or the difference
9 between those two figures.

10 Q So if I am getting my cargo --

11 A Exhibit 9 is all one-way transit times, I
12 should say, not round voyages.

13 Q Okay. If I'm getting my cargo inbound from
14 the Far East and the ship is going to call at the
15 Atlantic ports first, then what is the transit time
16 going to be?

17 A Well, it depends on -- if you're calling the
18 Atlantic Coast ports first, it would be roughly 32 days,
19 I would guess.

20 Q I guess I'm confused by that. I thought what
21 your last answer said was that the 32 figure was for a
22 direct voyage, and the 42 figure took account of the
23 average of the indirect and direct voyages that make a
24 complete turn.

25 A Just the opposite. The 42 is a round voyage

1 in days. The 32 is the one-way distance which assumes,
2 calls at the Atlantic Coast, and then comes back to the
3 Gulf. This was done on a Far East inbound voyage
4 essentially.

5 Q So what you're costing on page 89 of the work
6 paper is both legs of the voyage, out and back. It
7 takes a total of 42 days.

8 A And is a direct voyage into the Gulf.

9 Q Direct to the Gulf and back.

10 A Yes. It would be Yang Mings service
11 essentially.

12 Q No stops on the Atlantic Coast?

13 A Yes, sir; no stops.

14 Q And you've assumed, if I interpret your
15 handwritten entry here correctly, 80 percent capacity
16 utilization in arriving at your final cost figure; is
17 that right?

18 A Yes, sir.

19 Q And so what you're saying is that you are
20 assuming that a container ship will sail directly from
21 the Far East to Houston, directly from Houston back to
22 the Far East, and it will be an average 80 percent full
23 both ways.

24 A One way. We were only looking at the inbound
25 voyage.

1 Q But don't your numbers assume that it is full
2 both ways?

3 A We were only looking at an inbound voyage.
4 What happens at the outbound did not really concern us
5 for purposes of this. You could say it assumed 80
6 percent both ways. We're only looking at a one-way
7 voyage essentially.

8 Q But you have 42 days of time in here, which is
9 the whole voyage, right?

10 A That's right. But the costs are only
11 associated with a one-way leg.

12 Q Well, if they can't fill up to go back, then
13 the costs are going to be higher than the costs you have
14 here, aren't they, per container?

15 A Yes.

16 Q So to be able to charge this price or a price
17 based on this cost, they've got to be 80 percent full
18 both ways, haven't they?

19 A We're only talking about a cost here. There's
20 nothing in this at all about price. So this simply says
21 that at 80 percent utilization of the vessel, this is
22 the required freight rate that you need to cover your
23 cost. It's a break-even essentially.

24 Q A break-even, and it has to be 80 percent
25 filled both directions, right, or the break-even is

1 going to be twice as high if it is empty going back?

2 A Okay, if you look at it on a round voyage
3 basis, that's correct.

4 Q I'm not finished with Exhibit 36, but let me
5 ask you to turn for a moment to Exhibit 37. You have
6 some numbers on Exhibit 9 for -- I'm sorry, strike
7 that. You have some numbers on Exhibit 7 for the rail
8 costs, for the rail component of the minilandbridge
9 movement. Is that right?

10 A I'm sorry; would you repeat that once more?

11 Q Exhibit 7 of your verified statement gives a
12 number of \$534 for the rail charge associated with
13 minilandbridge movements in this market.

14 A Yes, sir.

15 Q And is Exhibit 37 the work papers from which
16 you have derived that \$534 figure?

17 A I think it was one work paper. This is just
18 the Santa Fe numbers.

19 Q Well, let's go through it. The first page is
20 numbered 44 and has a Santa Fe quote for a contract rate
21 of \$544. Is that right?

22 A Yes, sir.

23 Q And that's for a 20-foot container; is that
24 right?

25 A Yes, sir.

1 Q And is this your handwriting?

2 A No, sir.

3 Q Is this the handwriting of someone who got
4 this information for you?

5 A Yes.

6 Q Did he get it by calling somebody at the Santa
7 Fe?

8 A Yes, sir.

9 Q And if you go to the third page which is
10 numbered 145, would I be correct in interpreting that as
11 a quote that was obtained from the Southern Pacific of
12 \$535 for a 20-foot trailer?

13 A I would really have to go back and look at the
14 work papers to see. As I recall, there are a
15 significant number of pages that have the rates. These
16 are dated and all. I would have to see whether or not,
17 you know, what the dates were and what went into the
18 final calculations, rather than saying -- I just don't
19 remember whether these are the numbers that ultimately
20 went into the rates, or whether these were early quotes,
21 or exactly what they were.

22 Q Okay. Well, let me finish leading you through
23 it, and then I'll ask you if you could confirm for me
24 what the facts really are. I will tell you that these
25 are the only pages I found that had anything about

1 railroad contract rates on them in your work papers.

2 Just directing your attention to page 109, the
3 second page of this exhibit, that looks to me like a
4 compilation of the numbers on the other two pages we
5 have looked at.

6 A Yes, it does.

7 Q And at the bottom, someone has taken an
8 average, is that right?

9 A Yes, sir.

10 Q Okay. And that average of \$539.50 for high
11 volume contracts, 20-foot trailer, is -- well, it's
12 \$5.50 different from the number in Exhibit 7, but it's
13 pretty close, isn't it?

14 A It's pretty close. I suspect maybe if you
15 took the 40-foot rate and broke that down into 20's, and
16 then got a weighted average or something, it might come
17 out to the \$534, but this appears to be the source.

18 Q Okay. As of what moment in time were these
19 rates in effect?

20 A These were the rates for 1982.

21 Q These are for 1982?

22 A Yes, sir.

23 Q You're sure of that?

24 A Yes, sir.

25 Q Back to Exhibit 30 for a moment. We were

1 looking at page 89, and there's a handwritten number on
2 that page of 1102.

3 Is that the same 1102 that shows up on Exhibit
4 7 of your verified statement?

5 A Yes, sir; I believe so.

6 Q So according to page 88 of the exhibit, what
7 you've got there is a figure for 1982 that is generated
8 by your cost model for a 1200 TEU ship under the
9 assumptions we discussed a minute ago; right?

10 A Yes, sir.

11 Q Now, take a look at page 96, the last page of
12 the work paper. It appears that you have done a
13 computation there of the figure for the same voyage in
14 1984. It looks like the number is 1266.

15 Is that a correct conclusion?

16 A Yes, sir.

17 Q Do you know what has happened to the
18 minilandbridge contract rate between 1982 and 1984?

19 A No, I don't.

20 Q Do you know even whether it's gone up or
21 down?

22 A No, I don't.

23 Q Let me ask you to look at Exhibit 9 again in
24 your verified statement. You have some numbers there
25 for the water costs in 1984. Is that right?

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1 A Yes, sir.

2 Q And you show costs for Seattle, Portland, and
3 San Francisco/Oakland; is that correct?

4 A Yes, sir.

5 Q Now, in the exhibit on page 92, there's a run
6 of the cost model for 1984 for Seattle. That shows a
7 figure of \$533; is that right?

8 A Yes, sir.

9 Q On the Exhibit 9, the figure is \$566. And my
10 question is: How do you reconcile those two numbers?

11 A I don't know, to tell you the truth. I'd have
12 to go back and see what this exhibit III-1 is, page 92
13 from the work papers; whether that was superseded by a
14 later run.

15 There could have been an error in this or
16 something; you know, an erroneous input number that was
17 corrected.

18 Q Okay. Well, we would very much like to know
19 the answer. We have given you here in Exhibit 36
20 everything in your work papers about the cost model, and
21 if there are other work papers they weren't produced.

22 Let me ask you about page 93 of the exhibit.
23 That shows a figure for Portland of \$606 compared to a
24 figure on your Exhibit 9 of \$574. I'm not going to ask
25 you again how you reconcile them, but I have a different

1 question. Is it --

2 A Could you direct me to that exhibit again?
3 What page you're on?

4 Q Yes. Let me start again. I started at page
5 93 of the work paper and I took the figure of \$606 for
6 Portland. And then I went to your Exhibit 9 which has a
7 figure of \$574.

8 In this instance, the figure on your exhibit
9 is lower than the figure on the work paper. In the
10 other instance it was the other way around.

11 What I wanted to ask you about is: Is there a
12 lot of volatility in the relative costs at these
13 different ports over time? Do they change a good deal?

14 A I'm not sure. Volatility in port costs?

15 Q Yes.

16 A What charges are you referring to when you
17 speak of port costs?

18 Q I am speaking in too much shorthand. I am
19 talking about the costs for ocean voyages to these
20 ports, the kinds of costs you are measuring in the work
21 papers and in the exhibit.

22 A Does the relationship between -- among those
23 costs remain fairly constant over time?

24 Q That's the question.

25 A Yes, I would expect that it does remain fairly

1 constant over time. When some prices -- prices for
2 some things like fuel which has a direct impact on the
3 voyage -- increases, of course it causes longer voyages
4 to increase proportionately more.

5 But, in general, over some reasonable period
6 of time, the relationship remains fairly constant.

7 Q Okay. I'm looking at page 94 of the work
8 paper. You've got a number of \$568 for Oakland,
9 compared to a figure on your exhibit of \$598. And my
10 question is: Given your statement that the
11 relationships among the ports remain pretty constant,
12 which relationship do you think is correct between
13 Portland and Oakland?

14 Is Oakland more expensive, as it shows on
15 Exhibit 9, or is it less expensive, as it shows on your
16 work paper?

17 A I would guess that it's less expensive. But
18 because it's a long river transit at very slow speeds,
19 it's conceivable to me that it could be more expensive.
20 I would expect they are fairly close, as it shows in
21 Exhibit 9, but I would really like to go back and take a
22 look at these and understand exactly what the
23 differences are.

24 Q Okay. Well, please do that.

25 If, in fact, the difference between Portland

1 and Oakland is \$38 in favor of Oakland as the work paper
2 suggests, rather than \$24 in favor of Portland as the
3 exhibit suggests, then you've got another \$60 or \$70 gap
4 opening up between those ports beyond what you show in
5 the total column on Exhibit 9; isn't that right?

6 A You're looking at Exhibit 9, the far right
7 column?

8 Q Yes.

9 A I have a difference of over \$200, \$211 I
10 believe.

11 Q Right. And it could be closer to \$300 if the
12 differential is the way it shows up in the work papers;
13 isn't that correct?

14 A I don't know. I'd have to look back and see
15 what differential you are talking about. On page 94,
16 you are talking the \$30 difference between the \$568 --

17 Q That's a \$38 difference between \$568 and
18 \$606. And it's in favor of Oakland.

19 A You're asking me if we take the difference
20 between those two, if it will tend to increase the
21 difference here? Yes, it would. It would increase the
22 spread.

23 Q Right. And it would increase it by a fairly
24 sizeable fraction, wouldn't it -- a third to a half?

25 A No.

1 Q Okay. Well, I don't want to go through the
2 math.

3 A It's only \$38 out of what we already said was
4 \$211. I'm not sure how you would get 50 percent.

5 Q It's \$38 in the work papers, but you also have
6 it cutting the other way, \$24 on the exhibit. So you
7 have to add those two together.

8 A It would still be only \$50 out of a total of
9 \$211. I don't see how you get 50 percent out of that.

10 Q \$62 out of \$211.

11 A It's still not 50 percent.

12 Q It's nearly a third; I'm sorry.

13 A It's easy enough to calculate that out, what
14 it actually is as a percentage. I don't have a
15 calculator.

16 Q Doesn't it make a good deal of difference, in
17 terms of the leeway that the railroads would have, to
18 increase the rates, exactly what these port
19 differentials are?

20 A I'm not sure I understand your question.

21 Q Well, my question is: You have a verified
22 statement here that says that after these railroads
23 merge and stop competing at Los Angeles, the shippers
24 can send their cargoes via Seattle or Portland. And
25 your exhibit shows that that's going to cost them a

1 couple of hundred dollars more.

2 A No, no. My exhibit doesn't show that at all.

3 Q I'm sorry.

4 A The rates for shippers are equalized among all
5 of these ports. The shipper pays the same, regardless
6 of whether he ships through Seattle or Los Angeles.
7 These are the underlying costs that the ocean carrier
8 would incur. So it has nothing to do with the price
9 that the shipper would pay.

10 Q So it's the price that's going to come out of
11 the hide of the shipping company.

12 A It is the cost that the shipper would pay for
13 service to these ports.

14 Q And the ocean carrier, if he has a lower
15 profit margin, he's going to have to either suffer that
16 loss himself or pass it on to the shipper. Isn't that
17 right?

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1 A You're mixing a lot of things in that
2 question. As I heard you say it, you were saying that
3 you would get less profit and then suffer a loss. I'm
4 not sure that one goes with the other. So if you could
5 clarify your question a little bit.

6 Q Yes. I was not using "loss" in the accounting
7 sense. I was using "loss" in the sense of less profit
8 or foregone revenue. If he wants to recover that
9 revenue, he's going to increase his rates to the
10 ultimate shipper, isn't that right?

11 A Or improve the efficiency of his service, one
12 or the other. Lower his costs or increase his revenue.

13 Q Sure. And if he doesn't, he's going to have a
14 lower profit margin, or he may have a loss; we don't
15 know. Isn't that right?

16 A That's right.

17 Q And is the impact, the competitive impact on
18 say American President Lines which runs some of these
19 ships, relevant to the public interest in deciding on
20 this merger, in your opinion?

21 MR. WEICHER: Your Honor, I object. That's a
22 rather broad conclusion for this witness to make.
23 Perhaps he could limit his question to a specific matter
24 that is not a legal conclusion.

25 JUDGE HOPKINS: I'll allow the question.

1 THE WITNESS: Could you repeat it, please?

2 BY MR. ROACH: (Resuming)

3 Q Is the potential impact on American President
4 Lines of either suffering lower profits or suffering a
5 loss that we just discussed a relevant public interest
6 consideration for the Commission to look at in deciding
7 about this merger?

8 A I have very limited knowledge of ICC
9 proceedings of this sort. It would seem to me, no, that
10 it is not a pertinent matter. But --

11 Q That's fine. In Exhibit 36 I want to ask you
12 about the model generally, so I don't need to direct you
13 to any particular page; but maybe if you looked at page
14 88 and 89, if you want to point something out, we can
15 all be looking at the same pages.

16 The first question is is there anything in
17 these numbers other than running costs for the ship
18 itself?

19 A How do you define "running costs?"

20 Q I don't know. Is that a term that is
21 meaningful in this particular industry?

22 A No. We tend to think of three types of cost:
23 capital costs, operating costs, which include crew,
24 maintenance and repair, insurance, et cetera -- the
25 things that you need to operate the vessel -- and then

1 voyage costs, which include fuel, canal tolls, port
2 costs, et cetera.

3 Q And those costs that you just described, with
4 the exception of port costs, are all associated with
5 actually operating the vessel from one point to the
6 other, isn't that right?

7 A Yes. Port costs are also. You have to incur
8 them.

9 Q You get to the port and you have to pay a
10 certain amount for berthing?

11 A Yes, sir.

12 Q And you have that in this model as well?

13 A Yes, sir.

14 Q Do you have costs for unloading the containers
15 in here?

16 A No, we don't.

17 Q How do those costs tend to break down as
18 between mini-landbridge movements and all water
19 movements? Is there any difference?

20 A No. Container is handled exactly the same way.

21 Q So this model you think focuses on all the
22 costs we need to know about to compare the economics of
23 the two kind of movements?

24 A Yes.

25 Q Let me ask you a broad question. Can you

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1 describe for me how this model was developed?

2 A It's very simple, I think. The first section
3 there is inputs, which have the vessel inputs and then
4 the trade route inputs. The first group provide
5 information on the size of the vessel, the deadweight,
6 et cetera, the speed, the daily capital cost, the daily
7 operating cost, the main generator fuel consumption.
8 You know, you could see all of the inputs going down.
9 And then the trade route is information about the
10 distances, the cargo-handling rates that we assumed in
11 ports, and the port charges, and then economic
12 assumptions on the cost of fuel, et cetera.

13 If you then turn to page 89, it simply takes
14 all of those inputs and calculates out what the carriage
15 per voyage is given, for instance, the vessel deadweight
16 and the cargo deadweight factor. The vessel deadweight
17 is the weight that a ship can carry. Subtracted from
18 that is the weight of fuel, water, storage, crews, et
19 cetera -- supplies. We generally assume a 90 percent
20 ratio, and I don't think anyone would challenge that in
21 the industry.

22 At any rate, then this just goes through and
23 calculates how long it takes to steam on the voyage
24 given the distance. It has time before cargo handling
25 in port; it has time for port delays. It comes up with

1 a total voyage time. Then using the cost data earlier
2 on, simply calculates out the operating costs, the
3 capital costs, the fuel costs, et cetera, canal tolls,
4 adds them up, divides them by the capacity to get at a
5 cost per unit of capacity.

6 Q And I hesitate to mention the term, but I
7 assume there's a computer program that converts these
8 input numbers into output numbers, is that right?

9 A There is, but you can do it with a calculator
10 based on the data that is here. It is a very simple and
11 straightforward calculation. There's nothing magical
12 about it.

13 Q But you have to have a model in your mind
14 before you can turn the input numbers about, statute
15 miles and so forth into --

16 A These are all nautical miles.

17 Q What I'm saying is you've got to have some way
18 of putting all these numbers into a pot and saying the
19 result is \$1102 per container, but that involves some
20 fairly complex mathematics, doesn't it?

21 A No, it doesn't. It's a very straightforward
22 voyage calculation which is in any maritime textbook
23 about voyage accounting. It is a very straightforward
24 calculation. Some other terminology may be a bit
25 obscure, but the calculations themselves are very simple.

1 Q Well, you have to have, for example, a concept
2 about how much of your fixed cost you're going to
3 reccever.

4 A How much of your fixed cost? This says no
5 reccovery. If you're talking about return on investment?

6 Q Well, that's not what I was talking about, but
7 answer that one. Is there a return on investment in
8 here?

9 A No, there is not. This is simply the
10 break-even.

11 Q And it's your judgment that there is uniform
12 consensus in the profession about how to do the
13 mechanics of figuring out break-even costs for a voyage?

14 A Yes, sir.

15 Q Okay. Fine. What is the lowest economic
16 return on investment that's necessary to keep an
17 entrepreneur in this trade?

18 A Well, it must be pretty low given the returns
19 people have experienced in recent years. I have no idea.

20 Q People have dropped out in recent years, too.

21 A The returns people have earned in many cases
22 are well below what one might expect to keep them in the
23 industry, but they are still there, so I can't answer
24 that question.

25 Q In the long run, the shipping company has got

1 to charge a rate that includes return on investment or
2 he's not going to be a shipping company in the long
3 run. Isn't that true?

4 A That sounds reasonable.

5 Q Isn't there, in your Exhibit 9, in your
6 verified statement, isn't there some return on
7 investment built into the railroad rates?

8 A I don't know, sir.

9 Q Do you think that the railroads are carrying
10 this traffic for zero profit?

11 MR. WEICHER: Your Honor, I object. The
12 witness answered he didn't know --

13 JUDGE HOPKINS: This is another question.
14 That isn't the same question. Go ahead.

15 BY MR. ROACH: (Resuming)

16 Q The question is: As an expert on
17 transportation economics, do you think that the
18 railroads are carrying this mini-landbridge traffic at
19 zero profit?

20 A You asked first about return on investment,
21 and now you're asking about profit. If you define
22 profit as above full, allocated cost, I would say no,
23 they're probably carrying it with no profit.

24 Q It's a fair observation. I am using profit
25 in, I guess, the layman's sense of any return above

1 covering your actual costs. Contribution I think is how
2 the railroads talk about it.

3 A Contribution. I don't know.

4 Q You have no opinion whether they're carrying
5 it for zero contribution?

6 A I don't know you're defining contribution, to
7 tell you the truth, whether you're talking about
8 something that includes -- on the one hand you talked
9 about the fixed costs and the return on investment or
10 those, and then you talk about the layman's term. I
11 don't know.

12 Q Well, I'm not trying to hide the ball. I'm
13 trying to figure out whether you're comparing apples and
14 oranges in Exhibit 9. You've got a water rate in here
15 that just covers break-even on costs, and you've got a
16 rail rate; and I'm trying to get you to tell me whether
17 it just covers break-even on costs, or it has something
18 else.

19 A I don't think that's pertinent in this
20 exhibit. The rail rate is simply a cost to the ocean
21 carrier. It's the rail division. It's what he has to
22 pay out to provide the joint service, so it is simply in
23 this respect a cost to him. I don't think the railroad
24 discusses its profit margin with the steamship company
25 when they're negotiating a division. They could. I

1 don't know. But I'm just looking at this as cost to the
2 water carrier, and whether it includes it or not, it
3 doesn't seem to be particularly pertinent. It's just as
4 if the water operator buys a can of paint from someone,
5 it's a cost to him regardless of whether the paint
6 manufacturer gets a profit or return on his investment.

7 Q If we're concerned about what the shippers are
8 going to have to pay, don't we have to make some
9 assumptions about what kind of return on investment the
10 transportation companies will be able to include in
11 their rates?

12 A Because these MLP services are essentially
13 traffic that is incremental both to the railroads and to
14 the ocean carriers that provide it, I'm not so sure that
15 return on investment is a criteria that is considered.
16 That may be changing in the future as people make more
17 investments in intermodal facilities, but to date I
18 don't think it has been a consideration.

19 Q Let me direct you back to Exhibit 37. The
20 first page of that exhibit we talked about the figure
21 there for a 20-foot container. There's also a figure
22 for a 40-foot container, is that right?

23 A Yes, sir.

24 Q And that figure is -- it says \$922, and then
25 it says range, \$850 to \$1000, correct?

1 A Yes, sir.

2 Q I take it that there is a significant
3 difference, then, in the cost for the two different
4 container sizes, is that right?

5 A Yes, sir.

6 Q What size did you assume in your Exhibits 7
7 and 9?

8 A It appears that we assumed the 20-foot
9 container.

10 Q Let me ask you to look at page 9 of your
11 verified statement for just a moment. You've got a long
12 paragraph on that page that carries out a calculation
13 about whether the -- what you estimate as the idle
14 container ship capacity is sufficient to carry all the
15 containers that move in the Texas coast-Los Angeles-Far
16 East trade, is that right?

17 A No.

18 Q What did I say that was wrong?

19 A The Texas coast-Los Angeles-Far East, this is
20 both Far East and European trade.

21 Q Okay. So with that one amendment was my
22 statement correct?

23 A Yes, sir. In other words, it's the total
24 899,000 tons that are moving MLB in the corridor.

25 Q Right. And your process there was, first, to

1 convert the tons of MLB that you had figures for into
2 assumed number of containers, isn't that right?

3 A Yes, sir.

4 Q Did you do that by turning them all into
5 20-foot containers?

6 A Yes, sir. Per TEU actually -- 20-foot
7 equivalent unit.

8 Q What did you assume as the number of tons per
9 20-foot container?

10 A Ten tons per container.

11 Q From that figure that you had backed into for
12 the number of containers, you took this next step of
13 comparing that with your estimate of the idle container
14 capacity, is that right?

15 A I don't know what you mean by "backed into."
16 We took that figure directly from the Maritime
17 Administration data on the load factors, or that allowed
18 you to calculate the load factors; so we didn't back
19 into it.

20 Q What I mean is that the railroads did not give
21 you a number of containers that moved in the Texas
22 coast-Los Angeles mini-landbridge corridor.

23 A That's right.

24 Q They gave you tons, is that right?

25 A Yes, sir.

1 Q And you converted that into equivalent 20-foot
2 container units.

3 A Yes, sir.

4 Q Now, in fact, there are some 40-foot
5 containers in that trade, aren't there?

6 A Yes, sir.

7 Q So it's a fictional number that you backed
8 into. I'm not criticizing you, but isn't that a fair
9 statement?

10 A A TEU or a 20-foot equivalent is in fact a
11 theoretical number, yes, sir. It's widely used
12 throughout the trade to measure capacity, but it is
13 theoretical.

14 Q Isn't the average weight of a 40-foot
15 container significantly less than twice the average
16 weight of a 20-foot container?

17 A Are you talking about the tare weight of the
18 container?

19 Q Yes.

20 A I don't know, to tell you the truth. I would
21 guess it's very close to double the weight.

22 Q Relatively speaking, when you are talking
23 about costs, isn't weight a bigger factor
24 proportionately for railroads than for ships, whereas on
25 the other hand, physical volume is a bigger factor for

1 ships than for railroads?

2 MR. WEICHER: Your Honor, I object to the
3 question. This witness is not testifying with respect
4 to rail costs. If he wishes to draw a comparison as to
5 ocean costs, that is appropriate.

6 MR. BOACH: Your Honor, he is most certainly --

7 JUDGE HOPKINS: He has been testifying.

8 MR. WEICHER: Well, if he knows.

9 THE WITNESS: I have no idea about whether or
10 no the weight is important on the railroads. I would
11 agree with your statement that in general, cubic
12 capacity is at a premium on vessels. Weight is less
13 important.

14 BY MR. BOACH: (Resuming)

15 Q Well, if it turns out that there are lots of
16 40-foot containers currently moving in mini-landbridge,
17 and if it turns out that they tend to weigh less, take
18 up more space, haven't you underestimated the amount of
19 ship capacity that would be needed to transport them?

20 A You lost me there, I'm afraid.

21 Q You came up with your estimated number of
22 containers that had to fill up these idle ships by
23 converting tons into containers, right?

24 A Yes, sir. Into 20-foot equivalent units.

25 Q Exactly. And if you had had to convert them

1 into a larger number of container units because 40-foot
2 containers on average weigh less, you would have had
3 more volume to put on those ships, wouldn't you?

4 A No. If I can just say that the data that is
5 collected by the Maritime Administration provides
6 information on tons in TEUs. They already convert 40s
7 and 20s into TEUs. All we simply did was take the tons
8 and divide them by the TEUs to get 10 tons per TEU.
9 That already reflects the mix of 20s and 40s that are
10 moving in the trade.

11 Q Okay. I understand your position.

12 A That was a conservative number, too. I think
13 the actual number was something like 10.8 tons per TEU.

14 Q Let me direct you to Exhibit 38 next. Now,
15 you said to me last afternoon that the ocean all-water
16 rates and the mini-landbridge rates are equalized, is
17 that right?

18 A Yes, sir.

19 Q Okay. What I want to ask you about in Exhibit
20 38 is what appear to an untutored lawyer as statements
21 that are inconsistent with that. On the first page, I
22 direct your attention to items 3 and 4. Item 3 says,
23 "Far East to west and Gulf coast ocean rates will be
24 obtained from ocean carriers." Item 4 says, "Ocean data
25 from three will be combined with SPSF MIB rates to

1 compare economics of all water against MLP service."

2 Is that in any way inconsistent with the
3 notion that these rates are equalized?

4 A No, sir.

5 Q Why is it not -- why didn't you need to go get
6 ocean rates as part of this study?

7 A We're talking about ocean rates to the west
8 coast and then to the Gulf coast. What we finally did,
9 because we found we could not compile the rates in the
10 time available, we used the ocean costs which are in the
11 model. We developed with our own model costs instead of
12 using rates which are commodity based.

13 The methodology that this intends is exactly
14 the same as the methodology we used, it appears to me.
15 The only differences, we used costs instead of rates.

1 Q Take a look at page 102, the second page of
2 this exhibit. Can you tell me what that work paper
3 represents?

4 A Well, under K-Line Houston in the middle of
5 the page, it appears that these would be MLE rates on
6 three different commodities, but it's somebody's
7 jottings. I'm not sure whose or exactly what they are.
8 It's MLE rates, I guess, because it says "has no
9 all-water service." I presume those are MLE rates for
10 those three commodities, nails and screws, hand and
11 machine tools, and telecommunications equipment.

12 Q And it gives a figure of \$2350 for a 40-foot
13 container, right?

14 A Yes. I have no idea what that refers to.

15 Q It says MLE at the left margin.

16 A Yes. I'm saying I have no idea what that
17 means, whether that was something -- it doesn't seem
18 that that's what they would be paying on the railroad.

19 Q Well, aren't these rates quoted on a through
20 basis for both the water leg and the MLE leg?

21 A MLE rates are, yes.

22 Q Take a look at page 120. There's a figure
23 there under Hanjin Container Line of something over
24 \$4000 for a 40-foot container.

25 A Yes, sir.

1 Q Is it possible that Hanjin could be quoting a
2 rate of \$4000 and some and K-Line could be quoting a
3 rate of \$2300?

4 A I have no idea what the \$2300 is. I have no
5 idea. All it says is a line that says MIB, and it's
6 under three different commodity categories, and then it
7 says 20 and 40, so I have no idea what that is.

8 Q Well, rather than walk you through more of
9 these, let me just ask you the question this way. If
10 all the rates were equalized, why did you have to call
11 all these different shipping companies to get rates?

12 A You were asking yesterday about rates being
13 equalized as between all-water service from a port like
14 Houston, the Far East, and MIB service from that same
15 port. I never meant to imply that rates were equalized
16 among all commodities, or even among all carriers. I
17 mean, there are conference carriers and non-conference
18 carriers. Every commodity carries a different rate, as
19 it does with railroads, I believe.

20 When I said rates were equalized, I was only
21 very specifically saying that in general all-water rates
22 and MIB rates in the same service are equalized.

23 Q You mean the very same shipping company
24 doesn't charge a different rate for Mirlandbridge than
25 for all-water? Is that what you're saying?

1 A There are only two companies in the Far East
2 trade that provide, and none I think in the European
3 trade, that provide both. So I'm saying that the rates
4 for all-water service -- let's take a very specific
5 example. From Houston to London, let's say, which is
6 the port of London, that move, whether it moves via New
7 York and then on a train down to Houston, or whether it
8 moves all-water from Houston to London, the rates are
9 equalized between those two moves. If it moves through
10 Savannah, if it moves through Baltimore by rail and then
11 on a vessel, the rate is the same rate that the shipper
12 would pay if he sent it all-water out of Houston. So
13 what I'm saying is that the rates in general for a
14 specific commodity were equalized as between MLP service
15 and all-water between the same U.S. port and the same
16 foreign port.

17 Q I thought you said a moment ago that you had
18 not meant to say that two different shipping companies
19 necessarily charged the same rate.

20 A I think that's what I said.

21 Q Okay. How do you square that statement with
22 your statement that the rates are equalized for all
23 movements between the same two points, regardless of
24 what port they go through or what modal combination they
25 use? How do you reconcile those two statements?

1 A I don't see that there's anything inconsistent
2 about those. I'm not sure what you're asking me.

3 Q Well, if two different shipping companies are
4 charging two different rates to move the same item from
5 Yokahama to Houston, then in what sense are the rates
6 equalized?

7 A Well, we have conference rates, for instance.
8 Essentially, we have a two-tiered market here. We have
9 conference carriers and we have nonconference or
10 independent carriers that essentially discount from
11 those rates. The nonconference or independent carriers
12 tend to be 10 to 15 percent lower on all moves than the
13 conference carriers, but you would find that in general
14 the conference rates would be relatively equalized, even
15 though we are talking about a different conference, and
16 the -- essentially, the all-water conference rates sort
17 of set the rate, and everything is measured against
18 that. The people discount from that, the independent
19 carriers.

20 Q Well, let's try it this way.

21 We are discussing here the issue of what
22 choices inlandbridge shippers would have if
23 competition between these two railroads were eliminated
24 in this particular corridor, and the issue that I at
25 least am concerned about is could they, could those

1 shippers confidently expect that they could go to an
2 all-water carrier and get a rate that would be
3 equivalent to the rate that they get from the railroad
4 either before or after the railroad might increase its
5 rate?

6 How is there any assurance that they are going
7 to get a comparable rate from an all-water shipping
8 company?

9 A The rates are the same today. I think the
10 all-water carriers set the rates.

11 Q Well, let me ask you about -- about the fourth
12 page of Exhibit 38, which is an article from your work
13 paper, and the work paper number, I couldn't find it.
14 It is in the middle of the page. It is 104.

15 You or someone working for you appears to have
16 cut out an article here that says Gulf units would
17 reverse microbridge west coast shift.

18 Is that article familiar to you?

19 A Yes, sir.

20 Q And it says in the first paragraph that the
21 Gulf ports -- well, let me read the whole first
22 paragraph rather than try to paraphrase it. "Through a
23 series of substantial rate cuts on the movement of
24 cotton cargoes, port and shipping interests here hope to
25 reverse a microbridge movement to the west coast ports

1 that has in recent years virtually killed the traffic
2 out of the gulf ports," and then it goes on and talks
3 about Yang Ming.

4 If the rates are equalized, how is it that
5 there could have been a microbridge movement that
6 virtually killed the traffic out of the Gulf ports?

7 A Any number of answers to that, I would say.

8 Q Well, all those answers have to come down to
9 lower costs for a minilandbridge, don't they?

10 A No, they don't. The costs are the same in the
11 European trade. Yet 75 percent of the containers move
12 all-water to the Pacific coast from Europe.

13 Q In the next to the last paragraph of the
14 article, the author quotes a gentleman who is an expert
15 traffic manager for one of the nation's largest cotton
16 exporters, and he says it would be necessary to narrow
17 the cost gap between the Gulf and west coast ports
18 further.

19 Do you deny that there is such a cost gap? Is
20 that what you are saying?

21 A Yes, sir. I think he was talking in the
22 context of this article about a very narrow -- he was
23 talking about the cost gap on this commodity. I think
24 in the testimony that was put in by the UP for American
25 President Lines, by Mr. Orris, he says that rates are

1 equalized, and I also think that Mr. Jones states that
2 rates are equalized between all-water and MIB, and I
3 think most people in the industry will tell you that
4 rates are equalized. I said generally equalized. There
5 are differences, and there are variances, but in
6 general, the rates are equalized between all-water and
7 MIB.

8 Q Let's assume the rates are equalized. If
9 there is a cost gap and it persists and is in favor of
10 minilandbridge, then I take it that the result of
11 equalized rates is that after a while the shipping
12 company has to throw in the towel and get out of the
13 market, isn't that right?

14 A I don't agree with your statement that the
15 cost-benefit would be with MIB carriers. I believe it
16 is with all-water carriers, according to the data that
17 we submitted here.

18 Q But whether or not the rates are equalized,
19 the real issue boils down to these comparative cost
20 estimates in your judgment, isn't that right, as to
21 whether the all-water can compete with the
22 minilandbridge?

23 A Would you repeat that question?

24 A I will repeat it.

25 Whether or not the rates are equalized, isn't

1 the real issue in terms of whether all-water can compete
2 with minilandbridge, what the costs are for the two
3 different modal alternatives?

4 A No, not necessarily.

5 Q Why did you put in this testimony about cost
6 if that is not the real issue?

7 A I was trying to show what the -- your question
8 was asking whether or not somebody could survive --
9 maybe you could repeat your question once more. I was
10 responding to your question.

11 Q The question was whether or not rates are
12 equalized in the short run between all-water and
13 minilandbridge.

14 Isn't it true that the ability of all-water
15 carriers to offer a competitive alternative to
16 minilandbridge is a function of the relative cost of the
17 two modal alternatives?

18 A And I answered no.

19 Q And I asked why did you submit this testimony
20 about cost if the answer is no?

21 MR. WEICHER: Your Honor, I object to the
22 question. He's arguing with the witness. The testimony
23 says what it says. He's asking why he put it in, and
24 he's explaining what he thinks it means and what it
25 says.

1 JUDGE HOPKINS: He's still trying to get an
2 explanation.

3 I will allow the question. Go ahead.

4 THE WITNESS: If I understand, you are saying
5 whether rates are equal or not, the ability of all-water
6 carriers to continue to provide all-water services is
7 dependent upon the relative cost differential between
8 all-water and MLB.

9 BY MR. ROACH: (Resuming)

10 Q That's right.

11 A I believe in the first place that the
12 all-water services are cheaper.

13 Q I know you do.

14 A I'm just explaining my answer. I believe that
15 the all-water services are cheaper. I believe that the
16 all-water services set the rates. So when I say no,
17 that I don't think it is important that the relationship
18 between all-water and MLB is particularly significant to
19 the MLB carriers, especially since I believe the rates,
20 being the same, is a very, very significant thing, which
21 you say, whether they are equal or not, I think that is
22 very key because the shipper sees no difference between
23 the two other than possibly a transit time advantage
24 with MLB, but also some disadvantages in the double
25 handling and all.

1 So I find it a little difficult to separate
2 those two out and say somewhat cavalierly, you know,
3 equal or not, the cost differentials that they both work
4 under are going to be different. We are really talking
5 about carriers that have totally different motivations.
6 The Far Eastern carriers are serving the west coast
7 market. That's what they are there for. It's a big
8 market. That's what all their services are set up to
9 do.

10 The MLB is simply an incremental cargo to
11 them, and as long as the carrier into Los Angeles can
12 put on one more local Los Angeles box, he is going to
13 shut out the MLB box because it provides a hell of a lot
14 less contribution to him than does the MLB box.

15 Under those circumstances, their motivations
16 are set by the Pacific coast market and the Pacific
17 coast trades.

18 The all-water carriers are serving the Gulf
19 and/or the Atlantic, and they are motivated by those
20 trades. So you really have two distinct groups of
21 carriers with different underlying stimuli based on the
22 costs.

23 Q Okay. I think we agree, and let me just make
24 a last effort to see if I am right.

25 I understand that your position is that the

1 water costs are lower.

2 A Yes, sir.

3 Q I understand that.

4 My question is isn't it important to your
5 conclusion in this testimony about the ability of
6 all-water to compete with minilandbridge, isn't it
7 important to that conclusion for you to look at the
8 relative costs?

9 A I thought I just answered that question by
10 saying that the carriers were motivated quite
11 differently. Cost is a factor, certainly, in providing
12 those services. It is not the only factor. The fact
13 that minilandbridge service could be provided more
14 cheaply would not particularly mean that carriers would
15 leave the all-water service if they could still earn a
16 reasonable return in that trade.

17 Q They have to be able to earn a reasonable
18 return. They are not going to run -- you nodded? Your
19 answer was yes to that?

20 A Yes, sir.

21 Q They are not going to run in the long term at
22 a loss, isn't that right?

23 A Yes, sir, although the Japanese claim they
24 have been doing it for the last four years in the east
25 trade.

1 Q Good news for us.

2 Let's turn to Exhibit 39. This is just a
3 short reprise of a discussion we had yesterday about
4 which of these carriers in your Exhibit 4 offer what
5 kind of service. The first page of this exhibit is a
6 work paper.

7 Is that your work paper?

8 A No, sir.

9 Q Do you know what it represents?

10 Let me ask you also to look at the second page
11 which is taken from the, again, from the October 15,
12 1984 Pacific Shipper, and is the announcement of Yang
13 Ming Lines in that publication.

14 A Page 131 it appears that somebody has put down
15 vessel names and the voyages and dates, that they copied
16 presumably from the Pacific Shipper or the Journal of
17 Commerce.

18 Q And the voyage times -- well, it's a little
19 hard to generalize. It looks to me -- and do you agree
20 with this -- that based on that page and on the next
21 page, the voyage times tend to run about a month, which
22 is consistent with your 32 days?

23 A Yes, sir.

24 Q Now, on the second page, the ports of call are
25 listed as Yockahama, Los Angeles, Oakland, Savannah, New

1 York.

2 A I'm sorry, are you looking at the second page,
3 Yang Ming?

4 Q Yes.

5 A At the top or the bottom?

6 A I am looking at inward from the Far East.

7 A Singapore, Manila?

8 Q Right. I started at Yokahama and read down.

9 A Oh, Arrives: Los Angeles, San Francisco,
10 Savannah.

11 Q And then New York, Baltimore, Wilmington, and
12 finally Houston.

13 A Yes, sir.

14 Q So this advertisement for Yang Ming does not
15 indicate direct services to Houston, is that right?

16 A That's right.

17 Q Do you know what the frequency and the service
18 offering is that Yang Ming has direct to Houston?

19 A No.

20 Q Do you know if it exists today?

21 A Yes, I believe it does. I would have to look
22 in the newspaper to determine exactly what the frequency
23 is.

24 Q Okay. The next page of the exhibit is the
25 announcement of Waterman.

1 I would like to ask you if Waterman was
2 restricted to the Southeast Asia trade and did not
3 encompass the Big Four countries that we talked about
4 today.

5 Is that what this announcement would indicate
6 to you?

7 A That's what it would appear, yes, sir.

8 Q And the next page is for the company I can't
9 pronounce, H-o-e-g-h.

10 A Hoegh.

11 Q I've asked you the same question about them.
12 Doesn't this appear to be limited to Southeast Asia?

13 A No, sir.

14 Q Okay.

15 Where else do they call?

16 A Kaohsiung and Keelung, which are in Taiwan.

17 Q Those are Taiwan?

18 A Yes, sir.

19 Q I'm sorry, and it doesn't call at Korea,
20 Japan?

21 A No, but they could very well draw cargoes.
22 There's a heavy feeder service between Korea and
23 Kaohsiung, for instance. Many of the carriers,
24 including the U.S. flag carriers, draw cargoes out over
25 the feeder from Pusan. So the fact that they only call

1 one port in the northern Far East does not mean that
2 they are not drawing cargo out of those other countries
3 like Japan. But they only call those two.

4 Q Somewhere in your work papers I saw a note
5 that said that 77.6 percent of Santa Fe and Southern
6 Pacific MLE tons are accounted for by ten shippers.

7 Do you recollect that figure or one like it as
8 part of your process of preparing this testimony?

9 A I have a vague recollection of that, yes.

10 Q It's not essential what the number is, but my
11 question is did you interview any of these shippers in
12 putting together this testimony?

13 A Are you talking about the ocean carriers or
14 shippers?

15 Q I'm talking about these Big Ten.

16 A Steamship companies? No, we did not.

17 Q They are the ones who pay the bills of the
18 railroads, is that right?

19 A They pay a rail division to the railroads,
20 that's right.

21 Q And they are the ones who, as we discussed
22 earlier, would feel the immediate effect of an increase
23 in rail rates, isn't that right, and then they would
24 have to decide --

25 A It's not a rail rate, really. It is a rail

1 division, so I don't exactly know, to tell you the
2 truth, how those are negotiated. But I don't think the
3 railroad can unilaterally increase the rate. I think it
4 has to be a negotiated division agreement, but I'm not
5 sure about that.

6 Q Okay, but you did not talk to those shippers
7 about the adequacy of all-water as an alternative?

8 A You are talking about steamship companies
9 first, and now you are talking about shippers. We did
10 not talk to the steamship companies about their -- about
11 the rail rates. If you are asking if we talked to
12 shippers about the adequacy of all-water, we did not
13 talk to them either.

14 Q Okay. So you didn't talk to either the Big
15 Ten steamship companies that split the rate with the
16 railroads or the shippers that own the cargoes.

17 A Yes, sir, we did not.

18 Q How did it arise that you looked at the
19 relative economics of all-water and inlandbridge? Did
20 someone suggest that at a meeting at some stage in the
21 evolution of the overall application here?

22 A No. I think it is something that I probably
23 recommended at a fairly early stage.

24 Q Did you have any discussions with your
25 colleagues at TRS about whether it made sense to study

1 costs in this sector of the overall presentation and not
2 anywhere else in the TFS study?

3 A Which segment are you referring to?

4 Q I'm talking about your testimony which looks
5 at costs, compared to Mr. Anderson's, which does not.

6 A I'm not really familiar with Mr. Anderson's,
7 to tell you the truth.

8 Q Well, the question was simply whether you had
9 discussed that issue with anyone.

10 A No. I think this was done quite independently
11 and away from the rest of the work that was being done
12 at TBS.

13 Q You think this is the good, professional way
14 to do it, to go out and look at the relative costs,
15 isn't that right?

16 A I think what we were trying to accomplish, it
17 made sense to take a look at the relative costs, yes,
18 sir.

19 Q Okay.

20 On page 4 of your verified statement there is
21 a table No. 2. I take it first -- and maybe this is a
22 truism -- you would agree that Santa Fe and Southern
23 Pacific are the only railroads that compete in this Los
24 Angeles-Texas Coast mainlandbridge sector.

25 A Yes, but they are not the only railroads that

1 compete for the same flows of cargo.

2 Q If I want to ship minilandbridge from Los
3 Angeles to Houston, is there any other railroad that I
4 can get a competitive rate from?

5 A I think the point is that you could ship it
6 through New York, for instance, to Los Angeles. That is
7 an alternative. Twenty-five percent of the cargo moves
8 that way. You could ship it from Seattle on the BN down
9 to Houston. That is an alternative which is used by
10 people today. So when you say -- the point is about MLE
11 that it is not dependent on those two ports. It is
12 dependent on the port of one end or the other, but it is
13 not dependent on both of them.

14 Q Right, and I understand your contention about
15 alternative ports, and I will get to it in a minute.

16 My question now is are there any other
17 railroads that compete in the Los Angeles to Houston
18 minilandbridge market?

19 A I'm not trying to be difficult. I'm saying
20 that there are other railroads that compete for those
21 same flows of cargoes. I really have to say that.

22 If you are asking if there are any other
23 railroads that operate on that corridor, I'm not sure
24 whether the UP does or not.

25 Q You can get there over the UP, can't you?

1 A Yes, I think so.

2 Q Do they quote a rate for minilandridge from
3 L.A. to Houston?

4 A I believe they do.

5 Q You think they do?

6 A I believe they do.

7 Q How has the split between Santa Fe and SP of
8 relative tons of minilandridge in this corridor evolved
9 over the years? Do you know?

10 A No, I don't.

11 Q You didn't study that?

12 A No, I did not.

13 Q Did you study the history of the rates in the
14 corridor?

15 A No, I did not.

16 Q Did you talk to anyone at the railroads about
17 what factors they considered in setting the rates?

18 A No, sir.

19 Q Did you talk to anyone at either railroad
20 about the competition between the two, how intense it
21 is?

22 A No, sir.

23 Q Let's look at Exhibit 1 at the end of your
24 testimony.

25 Actually, let's just go directly to Exhibit 2

1 since that's where the larger numbers are.

2 Am I correct that this table shows a growth in
3 Los Angeles minilandbridge volumes over the years?

4 A Yes, sir.

5 Q It also shows, does it not, a shift in the
6 relative -- I'm sorry, an increase in the percentage of
7 all minilandbridge movements from the Far East to the
8 Texas coast that go through Los Angeles as compared with
9 San Francisco, Portland and Seattle, isn't that right?

10 A Yes, sir.

11 Q Why has the Los Angeles port had increasing
12 success over these years in competing with these other
13 three ports?

14 A I think there are two obvious reasons. There
15 may be others that I am unaware of. The two obvious
16 ones are that in the first place, Los Angeles has -- the
17 whole Los Angeles area has emerged as a very large
18 import market for imports from the Far East. It has
19 lately become the first port of call on most of the
20 services that serve the southern tier on the west
21 coast.

22 At the first port of call it is logical to
23 drop the MLP cargoes off there.

24 Q Let me just stop you and follow that up for a
25 second.

1 What are the reasons that favor Los Angeles as
2 the first port of call? Are there logistic
3 considerations?

4 A No. It is simply a very large market inbound
5 where the Pacific northwest is larger outbound, so that
6 carriers tend to call at Los Angeles first in order to
7 maximize their transit time or reduce their transit time
8 inbound from the Far East, and also for the very obvious
9 operational reason of wanting to get the containers off
10 the ship when they arrive in port. If you have more
11 containers for one port, you like to get them off so you
12 can then start to backload.

13 Q Let me take it step by step.

14 Does it cost more to steam them all to the
15 ports where you are only going to discharge a few than
16 it would cost to let them off at the first port where
17 you are going to be able to offload the majority of the
18 containers?

19 A Are you asking me if it costs more to call at
20 a port with a few containers than if you have a lot of
21 containers?

22 Q Not exactly.

23 What I am asking you is do the total operating
24 costs tend to be greater if the sequence of your calls
25 is the small cargoes first and the big cargoes last than

1 if it is the other way around?

2 A It is really difficult to generalize. If you
3 got involved in double handling of containers, that is,
4 if you had to overstow containers that you wanted to get
5 off the ship at the next port so that you have to then
6 remove the container you just put on in order to get a
7 container off, yes. But it is awfully difficult to
8 generalize depending upon the number of ports a vessel
9 is calling and how the stowage is laid out. It doesn't
10 cost any more. If you are going to call at five ports,
11 it doesn't matter really whether you call them going in
12 one direction or the other. There's no cost advantage
13 there.

14 But normally speaking, you would want to, if
15 you had a lot of cargo going to one port, you want to
16 call there first and get that cargo off the ship so that
17 you can load the cargo back.

18 At some point, if you had half of the vessel
19 full of cargo for Los Angeles, say, that would mean you
20 couldn't load cargo in those slots because you already
21 had boxes there. It is a very, very simple, obvious
22 operational reason.

23 Q And I understand those reasons, and I have
24 been asking is there a further reason in terms of the
25 actual operating cost in terms of burning fuel, for

1 example, of pushing those containers further rather than
2 getting the majority of them off the ship at the first
3 port?

4 A Not significant.

5 Q Okay, but there are logistic reasons in terms
6 of the way you arrange the cargo on the ship that
7 militate in favor of calling at the rig port first?

8 A Yes, sir.

9 Q And that favors Los Angeles because Los
10 Angeles has lots of receivers of cargo?

11 A It's a very large consuming market, a lot of
12 cargoes from the Far East. So that's one obvious
13 reason. This is back to your original question, I
14 think, that you were asking what the reasons were.

15 Q Right.

16 A The second obvious reason is that the routing
17 between, the rail routing between Houston and Los
18 Angeles is shorter than routings from other ports, and
19 the rates are lower, so that the ocean carrier pays a
20 lower rail division to the railroads there, and since
21 it's -- I mean, it is a very nice fit. It has not
22 always been that way. It might not be that way in the
23 future.

24 But as long as the inbound market to L.A. is
25 the largest market and he is going to call there first

1 anyway, it makes it very neat for him to be able to drop
2 his MLB boxes off there to the Gulf because that's a
3 short haul.

4 Q Do you know why the tonnage dropped in 1979
5 compared to 1978?

6 A No, I don't. I could only hypothesize.

7 Q I guess I don't want you to do that.

8 Do you think that 1976 and 1977 are
9 representative base years.

10 A Representative of what? I don't think there
11 is a base year in MIB, to tell you the truth

12 JUDGE HOPKINS: Excuse me, Mr. Roach.

13 Are there many more questions you are going to
14 have?

15 MR. ROACH: No, probably 15 minutes or less.

16 JUDGE HOPKINS: Let's take a recess at this
17 time.

18 (A brief recess was taken.)

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

20 Mr. O'Connell, when were you supposed to leave
21 town?

22 THE WITNESS: Last night.

23 JUDGE HOPKINS: I mean, it is taking longer
24 today than I expected on this. I thought we would be
25 finished with you by now.

1 MR. WEICHER: We had hoped for that, Your
2 Honor.

3 THE WITNESS: I am prepared to stay as long as
4 I have to.

5 JUDGE HOPKINS: Mr. Roach?

6 MR. ROACH: Yes, I apologize for the time it
7 is taking. I will be finished in just a few moments.

8 BY MR. ROACH: (Resuming)

9 Q Mr. O'Connell, Exhibits 1 and 2 I think you
10 will agree show a growth in minilandbridge. We
11 discussed that before. My question is why has
12 minilandbridge grown in volume over the years? It
13 started in 1972 and has grown since that.

14 Why is that?

15 A I think because a lot of the trans-Pacific
16 carriers have seen it as an easy way to add incremental
17 cargo to their vessels without any additional
18 investment.

19 Q And if you turn to Exhibit 8 --

20 A And also because of overcapacity in the
21 trans-Pacific trades, which has made it ever more
22 attractive for these carriers to fill empty slots.

23 Q Well, they can fill empty slots with all-water
24 traffic, too, can't they?

25 A What I'm saying, there is significant

1 overcapacity in the trade and there's only a limited
2 amount of cargo in the trans-Pacific trades. They can
3 only fill it with all-water by diverting it from another
4 carrier. There is intense competition for those
5 cargoes. The minilandbridge cargoes are something they
6 can go after and at without any investment by simply
7 advertising it and signing a division agreement with the
8 railroad.

9 Q Why do those cargoes exist in the first
10 place? Why are they potentially minilandbridge cargoes
11 as opposed to going all-water today?

12 That's my real question. Why is
13 minilandbridge a viable economic phenomenon?

14 A I think it's because of the carriers that
15 provide the MLB service. They have an incentive to do
16 it. They can carry incremental cargo. I think that's
17 the primary reason that underlies MLB service.

18 Q Well, let me ask you to look at Exhibit 8 for
19 a moment. You have some estimated costs there of the
20 total cost for minilandbridge moves from Europe to Los
21 Angeles via the ports of New York, Baltimore, Charleston
22 and Houston, and then you have a figure for all-water.

23 A Yes, sir.

24 Q And the figure for all-water is \$1000 while
25 the next highest figure -- I'm sorry, the next figure in

1 order on the chart is \$1572 for Houston minilandbridge,
2 correct?

3 A Yes, sir.

4 Q My question is why isn't all the cargo going
5 all-water today if the cost differential is so great?

6 A About 75 percent of it is, of the container
7 traffic.

8 Q And why is the other 25 percent going in
9 minilandbridge?

10 A Because the carriers are competing very
11 aggressively for those cargoes.

12 Again, to a carrier that is serving New York
13 or a carrier that is serving only Houston, that is
14 incremental cargo that he can carry and pick up without
15 any additional investment.

16 Q So there is a demand for the minilandbridge
17 service even though in your opinion the cost of direct
18 all-water is significantly lower.

19 A There's a demand from the carriers?

20 Q That's right.

21 A That's right, yes, sir.

22 Q How much could the railroads increase their
23 divisions before the shipping companies would start to
24 transfer some of that cargo to all-water routes?

25 A I think that any increase would cause a

1 diversion to begin. A decline in -- I think you have to
2 remember that we are looking at a whole range of
3 steamship companies here with different utilization
4 rates, different vessel costs, different vessel sizes,
5 different crew nationalities and everything. The point
6 at which incremental cargo and the contribution they
7 receive from that is attractive to them or unattractive
8 because of the marketing effort, the advertising,
9 whatever they have to expend in order to capture that at
10 some point certainly is going to be less attractive to
11 an individual carrier to carry that.

12 My guess is that there are some MLP carriers
13 which are very marginal, and any increase in the rates
14 would cause them to lose interest and stop the MLP
15 service.

16 Now, at the other extreme, there may be some
17 that could afford to give a greater rail division and
18 would for some period of time, but they also have some
19 other alternatives. They could switch railroads, for
20 instance, negotiate with other railroads.

21 Q Have you done any study of what the percentage
22 reduction in minilandbridge volume would be if there
23 were, say, a 10 percent increase in the rail rates, the
24 rail divisions?

25 A No, sir.

1 Q Do you have any professional principled basis
2 for judging whether it would be more or less than 10
3 percent?

4 A No, sir.

5 Q One last question. You have said several
6 times that you think that it's the all-water rate that
7 sets the minilandbridge rate, is that right?

8 A Yes, sir.

9 Q What is your reasoning for -- what is the
10 reason that you would not conclude that it is just the
11 opposite, that the minilandbridge rates keep the
12 all-water rates down below the level that the shipping
13 companies with lots of fixed costs to cover would
14 otherwise charge?

15 A Well, you are talking about shipping companies
16 on both sides, of course. Each has their own fixed
17 costs to cover. But I think it is common knowledge in
18 the business, in the steamship company business, that
19 the rates are set by all-water. I think that there have
20 been a number of hearings relating to MLB traffic that
21 show the rates are essentially equalized, and I think
22 that the steamship companies that I mentioned earlier,
23 American President Lines, Mr. Orris and Mr. Jones who
24 submitted statements both indicated, and I also have a
25 clipping from Mr. Orris from the Pacific Shipper in

1 which he said rates were equalized with all-water.

2 American Sea-Land submitted a statement, I
3 think, on your behalf, which also states that they must
4 maintain competitiveness with the all-water carriers.
5 That in my mind said that the all-water carriers were
6 setting the rates.

7 The final reason I think is that the all-water
8 carriers -- I'm sorry, the MLB carriers who are
9 providing service to the west coast, for instance, and
10 then dropping the box off, are realizing a small
11 contribution from that box than they are from local
12 cargo. The railroads are also realizing significantly
13 smaller contribution on the MLB traffic than they would
14 on domestic traffic moving in the same corridor.

15 If those two carriers participating in the MLB
16 had the ability to set the rate, my expectation is that
17 they would set it at the full cost levels as they do
18 with their own domestic and their own local cargoes.

19 So the fact that they are pricing these
20 significantly below that indicates that the rate is
21 being set by the all-water.

22 Q The railroads compete intensely against each
23 other for this traffic, don't they?

24 A I presume they do.

25 Q And with the railroads competing against each

1 other, then the shipping companies have alternatives
2 that they can select between for the best deal for
3 minilandbridge, isn't that right?

4 A Yes, sir.

5 Q And then the shipping companies are competing
6 against each other also, isn't that correct?

7 A Yes, sir.

8 Q So they are really forced to enter into the
9 best deal with a railroad to compete with the other
10 shipping company, isn't that right?

11 A When you say they are forced to in order to
12 compete, we have already said that this cargo is
13 incremental cargo to those MLB carriers, and I also
14 believe that they are impacted quite differently by
15 MLB. Some of them carry very small volumes of MLB.
16 Others carry very large volumes of MLB. Some of the
17 carriers have actually made investments, like American
18 President Lines and Sea-Land in equipment for intermodal
19 cargoes. When you say wouldn't they be forced to get
20 the best deal in order to compete, I think that's a
21 generalization you just can't make.

22 Q I understand what you are saying about the
23 cargo being incremental, but if a shipping company wants
24 any of it, even an increment of one container, it has
25 got to strike a competitive deal with a railroad,

1 doesn't it?

2 A It has to provide the same rate to the
3 shipper, presumably, to compete for that cargo.

4 What its underlying costs are, I mean, what
5 rate it strikes with the railroad and what its ultimate
6 costs are depend on the vessels it operates, the
7 utilization rates, and many other factors. The rail
8 division they are paying is simply one of those factors
9 that influences their competitive posture.

10 Q And each shipping company has to look over its
11 shoulder at the next one to find out whether it's able
12 to compete, isn't that right?

13 A Yes, sir.

14 MR. ROACH: That's all the questions I have.
15 Thank you.

16 JUDGE HOPKINS: Thank you.

17 Mr. Baker?

18 MR. BAKER: Thank you, Your Honor.

19 BY MR. BAKER:

20 Q Good morning, Mr. O'Connell. My name is
21 Morris Baker. I represent Kansas City Southern.

22 I am going to attempt to avoid altogether the
23 various areas that have been covered by Mr. Roach, but I
24 am going to start off with an exception to that rule and
25 ask you a few followup questions on a point that he

1 discussed with you.

2 I think you stated that in computing the
3 number of TEUs from tons, you utilized some data that
4 was obtained from the Maritime Administration which
5 indicated the amount of tonnage which moves in a TEU, is
6 that correct?

7 A Yes, sir. They indicate the number of tons
8 and the number of TEUs. The TEU is a theoretical
9 number. There is no such thing as a TEU. It is a 20
10 foot equivalent unit. So if you move it in a 40-foot
11 container, that is two TEUs. A 20 would be one,
12 equivalent to one TEU.

13 Q Well, let's try to figure out how many tons
14 moves in a TEU and how many tons moves in an FEU, and as
15 I understand it, you relied on data obtained from the
16 Maritime Administration.

17 A Yes, sir.

18 Q I found in your, located in your work papers a
19 work paper that has the identification CJO-000003.

20 Would you happen to have a copy of that?

21 A No, I don't.

22 Q I only have one, but let me show it to you if
23 I may.

24 I have made a handwritten copy of it so that I
25 can go back to my seat and ask you some questions.

1 Now, that is entitled, is it not, Estimated
2 Long Tons Per Container Type.

3 A Yes, sir.

4 Q And then beneath that there is sort of a
5 subheading which says Trans-Pacific?

6 A Yes, sir.

7 Q And then a further subheading which says
8 Eastbound and then one below that which says
9 Westbound, is that correct?

10 A Yes, sir.

11 Q And under Eastbound it says dry 20 foot, and I
12 think it's an equal sign, 10.5, is that correct?

13 A Yes, sir.

14 Q And then beneath that it says dry 40
15 fcct = 11.

16 A Yes, sir.

17 Q Am I to understand from that that a dry 20
18 foot container eastbound in trans-Pacific movement holds
19 on average 10.5 long tons?

20 A Yes, sir.

21 Q And with regard to a 40 foot container in that
22 service, it holds on average 11 long tons.

23 A Yes, sir.

24 Q Now, I take it that this isn't because someone
25 decides that they have a choice of either putting 5.5

1 tons of the same commodity into a 20 foot container.
2 The issue is that they use -- different commodities go
3 into different size containers, is that correct?

4 A In general, heavy commodities tend to be in 20
5 foot boxes. Both containers have roughly the same
6 weight limitation, so heavy commodities tend to go in
7 20s where they blow the weight, and cubic, high cubic
8 cargoes go into the 40-foot boxes and tend to be very
9 light.

10 Q And is it often the case also that the less
11 dense, high cubic cargoes are sometimes also the higher
12 value cargoes?

13 A Yes.

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1 Q Now, do you have any idea, or do you know, I
2 should say first, do you know what is the mix of 20-foot
3 or TEU's or 40-foot or FEU's in the trans-Pacific
4 eastbound trade?

5 A If I may just make one small clarification, a
6 TEU is a 20-foot equivalent U that, you know, the old
7 theoretical thing, and an FEU is a 40-foot equivalent.
8 Twenties and 40's is really what move.

9 Q That is much easier for me to understand.

10 A The 20's and 40's, no, I don't know what the
11 mix of 20's and 40's is.

12 Q Would you estimate that more 40's than 20's
13 moved?

14 A No, I don't really know. I think inbound the
15 trade from some nations, like Japan, is heavily 40-foot
16 containers. From other nations, it is 20's. I really
17 can't generalize.

18 Q But just in terms of the methodology, as I
19 understand it, you did your calculations based on the
20 assumption of all 20-foot containers at ten short tons
21 per container.

22 If one were to use the data here, and make an
23 assumption that perhaps goes to the other extreme, and
24 assumes the use of all 40-foot containers, then one
25 would have to convert the eleven long tons into short

1 tons, which I guess gets us something over eleven
2 tons.

3 Is that correct?

4 A Yes, sir.

5 Q And then if we were to use your --

6 A It would be 12. -- yes, it would be over.

7 Q And then if we were to use your figures in
8 Table 3 for the total tonnage, as you did also, but now
9 we divide by the number of tons, short tons for a dry
10 40-foot container, that would give us the equivalent
11 calculation of the one you did, but based on 40-foot
12 containers instead of 20-foot containers. Is that
13 correct?

14 A As I understand it, you were asking a
15 theoretical or a hypothetical question that says, if the
16 load factor were six or something, would that be
17 different. We did not use the 20-foot container number
18 here that -- if that is what you are asking.

19 We used a number that was per TEU that was
20 taken from the MARAD statistics. This is per 20-foot
21 container. When I said per TEU, that data does not show
22 20's and 40's. It is converted by the Maritime
23 Administration into 20-foot equivalent units, which
24 includes the -- so you are saying the way I did it was
25 the 20-foot containers.

1 I did not. I used the TEU. But if you are
2 asking -- I think what you are getting towards is
3 saying, if the load factor is 5.5 or 6 or 6.5, what
4 would the impact then be on the calculation.

5 Q Well, no. I think I am asking something a
6 little bit different than that. Let me get at it this
7 way. Did you attempt to secure from Santa Fe and
8 Southern Pacific the actual count of containers that
9 they moved in the service that you were studying?

10 A Yes, sir.

11 Q And did you obtain that information?

12 A No, sir.

13 Q Why is that?

14 A I was told it was not available, that all they
15 keep track of is the tonnage.

16 Q And yet your figures, your work papers
17 indicate, isn't it the case, that in fact the railroads
18 charge on the basis of containers. Is that correct?

19 A Yes, sir.

20 Q So even though they have to know the number of
21 containers in order to be able to make a charge --

22 A They make a charge per flat car, whether you
23 put one 40 or two 20's. I think the charge actually may
24 be per flat car in many situations.

25 Q Well, don't -- let's go back to this exhibit,

1 UP/MP-C-37. Isn't the indication there that the charge,
2 either by non-volume rate or by contract rate, is based
3 upon either a 20-foot container or a 40-foot container?

4 A All I can say is, my belief is that some of
5 the rates are by flat car, and it doesn't matter what
6 you move on them. These may have been converted into
7 20's and 40's based on that. Some of them may be by
8 container. I just don't know which railroads charge
9 which way in which corridors.

10 Q Well, the charge, according to your work
11 papers, for a 40-foot container is only about -- what is
12 it, 1.65, 1.7 times the charge for a 20-foot container
13 based on contract rates? Is that the case?

14 A That would appear to be the case. Yes, sir.

15 Q So, that is inconsistent, isn't it, with your
16 statement that the charge is based on a flat car which
17 can carry either one 40 or two 20's?

18 A That would appear to be inconsistent, but I
19 believe that some railroads do charge per flat car.

20 Q But in any event, I take it that you consider
21 that the best evidence would have been to obtain the
22 information on the number of 20's and 40's that actually
23 moved, but the railroads were unable to provide you with
24 that information. Is that correct?

25 A Yes, sir.

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1 Q So being unable to do that, you did -- you
2 used what you had available to you, and you obtained the
3 tonnage figures, and then you moved from tonnage to
4 TEU's, and from there -- that's correct, is it not?

5 A Yes, sir.

6 Q And from there you calculated on a
7 hypothetical basis the number of container ships that
8 would be required, additional ships, that is, that would
9 be required to service this traffic if you moved to an
10 all water route.

11 Is that correct?

12 A Yes, sir.

13 Q Now, the capacity of ships is based on -- not
14 on tonnage, but on volume. Is that correct?

15 A Yes, sir. In this case, we are talking about
16 container ships, where the capacity is per slot.

17 Q All right. Now, a slot is a TEU. Is that
18 correct?

19 A Yes.

20 Q And if you have an FEU on board, that occupies
21 two slots. Is that correct?

22 A Yes, sir.

23 Q So in order to be able to determine the number
24 of ships required to carry the traffic, you have to know
25 the mix of FEU's and TEU's, or, excuse me, the mix of

1 20's and 40's, correct?

2 A Yes, sir. The maritime data that we use gives
3 you that mix, because they convert 20's and 40's into
4 20-foot equivalent units, so by dividing out the tons by
5 the TEU's, that gives you the average load factor per
6 TEU, which reflects the mix of 20's and 40's.

7 Q My problem, Mr. O'Connell, is, that is
8 something I didn't find in your work papers. Are you
9 familiar with whether that calculation is actually
10 included in your work papers?

11 A I don't know whether it is in there or not. I
12 think it is a calculation that is from the Maritime
13 Administration's containerized cargo statistics. It can
14 readily be done. It is a type of a calculation, you
15 divide one number by another on a calculator. I don't
16 know that you would need a work paper to do it.

17 Q It would be very helpful if that calculation
18 which was apparently used in preparing your testimony
19 could be furnished.

20 MR. WEICHER: Your Honor, we will review the
21 work papers and see if there is a specific work paper.
22 The witness has explained the basis of the calculation.

23 JUDGE HOPKINS: But if it isn't in the work
24 paper, I am certain he can provide them with that
25 information.

1 MR. WEICHER: Certainly.

2 MR. BAKER: Thank you.

3 BY MR. BAKER: (Resuming).

4 Q Now, hopefully the last point, associated
5 point, Mr. O'Connell, notwithstanding the fact that you
6 utilized this data from the Maritime Administration to
7 determine the TEU's for purposes of determining how many
8 ships you would need, when we go to the calculation of
9 the rail costs for MLB service, there we can't use
10 TEU's, can we? There we actually have to know the mix
11 of 20's and 40's. Isn't that correct?

12 A I am not sure why you would need to know the
13 mix.

14 Q All right. If we go back to the exhibit that
15 we were looking at, UP-MP-C-37, because the rail charge,
16 according to your work papers, and here we are talking
17 about the actual rates charged by the Santa Fe and the
18 SF, since that rail charge is, I think you said before,
19 approximately 1.7 times for a 40-foot, 1.7 times a
20 20-foot, you can't just assume that they are all 20-foot
21 containers, can you?

22 A Oh, I see what you are saying. I agree.

23 Q I would like you to tell me as precisely as
24 you can what was the nature and the scope of your
25 assignment in this case.

1 A When the flows in the Texas-LA corridor were
2 examined, I understand it, and it was determined that
3 there was a large proportion of MLP cargo moving in that
4 corridor, we were then asked as maritime people to come
5 in and asked whether there was any viable competition
6 that would act against the railroads in that corridor.

7 We said certainly there was. There was
8 significant all water competition. The all water
9 carriers, in fact, carried the majority of the trade.

10 We also said that it was relatively easy and
11 simple for steamship services to be modified to be
12 changed, and that there were a lot of things that were
13 happening on the scene today, such as the new
14 generation, fourth generation, so-called, container
15 ships coming in that were going to significantly reduce
16 the costs, and which in our expectation were going to
17 provide dramatic new competition for the MLP flows.

18 After that discussion, we were asked by the
19 railroad if we would develop testimony to that effect,
20 which we did, and our marching orders essentially were
21 to try to document the competition that we believed
22 existed, and to look at the alternatives and determine
23 whether or not they were reasonable and viable
24 alternatives.

25 Q Well, let me direct you to Page 1 of your

1 testimony, where you say that you were asked by the
2 Santa Fe and the SP to examine logistics options
3 available to shippers whose cargoes currently are routed
4 via mini land bridge service on Santa Fe or SP between
5 Los Angeles and the Texas coast areas. Do you see
6 that?

7 A Yes, sir.

8 Q Now, at Page 3 of your testimony, in Table 1,
9 you refer to land bridge and micro bridge as well as
10 mini land bridge traffic. Do you see that?

11 A Yes, sir.

12 Q Now, as I understand it, you were asked,
13 however, only to develop logistic options with regard to
14 mini land bridge service. Is that correct?

15 A Yes.

16 Q Were you involved in defining the assignment
17 that way? In other words, limiting it to mini land
18 bridge service?

19 A As opposed to --

20 Q Inclusion of all service which is in part rail
21 and in part water.

22 A I don't think that is a decision. I think
23 that is the actuality, that all the cargo moving between
24 Houston and LA is in fact mini land bridge. There is no
25 land bridge cargo in the United States -- there is

1 certainly none on these routes, and I don't believe
2 there has ever been any land bridge.

3 I put this table in here simply to show the
4 differences, because there is a lot of confusion in
5 people's minds, I find, between land bridge, mini land
6 bridge, micro bridge. People tend to use land bridge
7 and mini land bridge interchangeably, and they don't
8 understand the difference.

9 So I simply put that in. But the market we
10 were studying is mini land bridge. There is no land
11 bridge cargoes, and by definition micro bridge can't
12 move between LA and Houston.

13 Q But micro bridge does move in part of that
14 corridor, does it not?

15 A It could move to an intermediate point, but by
16 definition it can't move between LA and Houston, which
17 is the flow we were looking at.

18 Q Let's talk about that aspect of the
19 assignment. How was it decided that the only service
20 you would look at was service between Los Angeles and
21 the Texas coast areas?

22 A I don't know. That was a decision that was
23 made before I became involved in the study and before I
24 was asked to do the study. It was only after the flows
25 in that corridor were examined, and it was determined

1 that a high proportion of them were mini land bridge, 50
2 percent, that I was called in. I have no idea what --
3 my understanding was that because there was an area in
4 which the two railroads competed against one another
5 directly, that that would be an area that would be
6 looked at in the hearing.

7 Q The mini land bridge?

8 A No, the Houston-LA corridor. That had already
9 been selected for analysis before I got involved in it.
10 I was simply asked to look at the alternatives for
11 shippers of automobile cargoes that moved in that
12 corridor. I didn't really, to tell you the truth, ask
13 why that had been segregated.

14 Q But we do know that there is microbridge
15 traffic that is in part of that corridor. Is that
16 correct?

17 A I don't know that. There could be.

18 Q Well, didn't we look at an article that Mr.
19 Roach showed you that concerned a containerized cotton,
20 I believe, that had been moving micro bridge, and
21 doesn't that cotton move from either West Texas or
22 Arizona to Los Angeles?

23 A Well, I think that is an example of the misuse
24 of the term "micro bridge." They are obviously
25 referring to mini land bridge there, I believe. They

1 are talking about differences between the Texas coast
2 and the west coast. They are talking about the port of
3 Houston. It could be micro bridge. It could be.

4 Q You can have micro bridge coming in either at
5 Houston for Phoenix, let's say, destination, or coming
6 out Los Angeles for a Phoenix destination. Is that
7 correct?

8 A Yes, sir. That would not have been included
9 in the Los Angeles-Texas corridor we were looking at, I
10 presume.

11 Q So therefore any of that traffic, because of
12 the OD pairs that you used for determining either MIB
13 traffic or non-MIB traffic, it wouldn't be included in
14 either of those categories. Is that correct?

15 A That's right.

16 Q Now, when you refer to mini land bridge
17 traffic, you are referring to two trades, isn't that
18 correct? One is the Europe-U.S. west coast trade, and
19 the other is the Far East-U.S. Gulf coast trade,
20 correct?

21 A Yes.

22 Q Are you aware of whether there is any mini
23 land bridge traffic which moves between California and
24 the Caribbean via the Gulf?

25 A No, I am not. There is none reported by the

1 government.

2 Q None reported by the government?

3 A (Nods affirmatively.)

4 Q Is that based upon your understanding of the
5 Department of Transportation survey which is entitled
6 U.S. Imports Via Mini Bridge?

7 A Yes, sir.

8 Q So what you are saying is, if it isn't in
9 here, it probably doesn't exist?

10 A Well, I think that they capture the large
11 volume flows. If you are asking if there is a move from
12 the Far East -- you said from the Far East to the
13 Caribbean?

14 Q No, no.

15 A Via the west coast?

16 Q No. What I am saying is traffic between
17 California and the Caribbean.

18 A Via MLB?

19 Q Via MLB, right.

20 A I don't know. I would imagine that if it is
21 not in there, it is very small.

22 Q Are you aware of whether there is included in
23 this document any MLB traffic from New Zealand or
24 Australia?

25 A I believe it is. Yes, sir.

1 Q You believe it is?

2 MR. WEICHER: Would counsel permit the witness
3 to look at the document? It may speak for itself, or he
4 may wish the witness to interpret it.

5 MR. BAKER: A very good suggestion. Thank
6 you.

7 (Pause.)

8 THE WITNESS: This document does not say, I
9 know, whether the Australia-New Zealand cargo is in
10 here. I believe from talking to people at the Maritime
11 Administration that have developed this that the
12 procedure that they use, which is to track all cargoes
13 that move in bond, is one that would capture those
14 cargoes. Yes, sir.

15 BY MR. BAKER: (Resuming)

16 Q You are talking about the New Zealand?

17 A Yes, sir. Essentially it would capture -- all
18 cargoes that move into or out of the Houston or LA area
19 and move in bond to the other port would be captured.

20 Q And what flows are specifically identified in
21 that document?

22 A This has Far East to the east coast via the
23 west coast, Far East to the Gulf coast via the west
24 coast, Europe to the west coast via the Gulf coast,
25 Europe to the west coast via the Gulf coast.

1 Do you want me to read the table?

2 Q Is that all?

3 A Then it has performance by Customs district,
4 which showed the Customs district by port of ultimate
5 origin or destination.

6 Q No, I only meant in terms of the geographic
7 MIB flows. I think you have said what they are. Is that
8 correct?

9 A Yes, sir. The major ones.

10 Q Didn't you testify yesterday that normally
11 Australia and New Zealand would not be included in the
12 definition of Far East?

13 A In most people's minds, I think that's true.

14 Q But you are not sure what might be in the
15 minds of the people at the Department of
16 Transportation? Is that correct?

17 A No, all I am saying is that I understand the
18 methodology that they used to capture this data, and I
19 have discussed that with them. I believe that their
20 methodology would capture the Australia-New Zealand
21 flows.

22 They never define what Far East is in here.
23 They talk about it very broadly, and I believe it is a
24 very broad definition. I think anything that crosses
25 the trans-Pacific is captured by them in this.

1 Q All right. Do you know whether there is mini
2 bridge traffic between California and east coast of
3 Central America flowing over the Gulf coast?

4 A From California?

5 Q To the east coast of Central America.

6 A Via Houston?

7 Q Via the Gulf. Yes.

8 A No, I don't.

9 Q What about mini bridge traffic between
10 California and Saudi Arabia via the Gulf?

11 A I don't know.

12 Q Are you aware of whether the National Shipping
13 Company of Saudi Arabia, Ned Lloyd, and Sea Land have
14 that service?

15 A No.

16 Q Would Saudi Arabia be included in the
17 definition of Far East, do you believe, in that DOT
18 document that you have before you?

19 A Yes, it probably is.

20 Q Do you believe Saudi Arabia would be included
21 in the Far East?

22 A It could very well, depending on which
23 direction it is moving. If it is moving out of Houston,
24 it is probably not. If it is crossing the trans-Pacific
25 inbound, it probably is. Since a lot of those cargoes

1 are transshipped onto carriers like American President
2 Lines, they transship them onto other vessels. Census
3 only picks up the vessel as it is loaded in the major
4 foreign ports. So I am not sure --

5 Q I am talking about a vessel that is moving
6 between the Gulf and Saudi Arabia.

7 A And you are saying that if they have mini
8 bridge service to the west coast --

9 Q Really what I am asking you is, if they have
10 mini bridge service via the Gulf to the west coast, is
11 that traffic included in your definition of mini bridge
12 service that you studied?

13 A Yes.

14 Q It is?

15 A Yes, sir.

16 Q And is that included in your European traffic
17 or in your Far East traffic?

18 A We didn't differentiate between the European
19 traffic and the Far East traffic, as I recall. We had
20 eastbound and westbound. We could not make that
21 differentiation, because you have many carriers that
22 operate in both trades, like Sea Land. All we knew is
23 that Sea Land had moved boxes eastbound and westbound.
24 We had no idea what trades they were moving those in,
25 whether it was an inbound from Europe or an outbound to

1 the Orient.

2 Q Now, let's talk about your familiarity with
3 whether there is mini bridge traffic between California
4 and West Africa.

5 A I don't know that.

6 Q What about between California and South
7 Africa, Cape Town?

8 A I believe there is. Safmarine did show up in
9 the statistics as a railroad, somebody who was tendering
10 containers to the railroad. All of those flows you are
11 mentioning are miniscule in my estimation. They are
12 very small.

13 Q Very small. Too small for dedicated all water
14 traffic, I would think. Is that correct?

15 A You mean if you just had all water service
16 carrying those mini bridge flows themselves? Yes, I'd
17 say it's much too small for that. It could easily be
18 carried by the all water services.

19 I don't think you are talking about much of a
20 flow at all. I think that services that operate
21 directly to the west coast or to the Gulf coast could
22 easily carry them also. I think it is simply a
23 situation where those cargoes have been diverted by the
24 MIB carriers as a way to take them.

25 Q Now, your definition of mini bridge traffic is

1 confined to traffic that moves between a foreign port
2 and a U.S. port. Is that correct?

3 A Yes, sir.

4 Q Is there such a thing as domestic offshore
5 traffic which moves in containers or trailers between,
6 for example, California and Puerto Rico?

7 A Is there such a thing as domestic offshore
8 traffic that moves between California and Puerto Rico?

9 Q Via the Gulf.

10 A Are you asking does cargo move between Puerto
11 Rico and the west coast, or are you asking me if it
12 moves on an MLB tariff?

13 Q What I am asking you is whether a cargo moves
14 in part by rail between the west coast and the Gulf and
15 then by water, and I am talking about containerized
16 cargo, and then by water to Puerto Rico.

17 A I wouldn't be surprised. I don't have any
18 knowledge of that.

19 Q But that would not be included in your
20 definition of mini bridge traffic, would it?

21 A I don't think so.

22 Q Well, your definition refers to cargoes
23 between a foreign port and a U.S. port.

24 A You have to realize that our definition
25 included -- I mean, we looked at the carriers that were

1 tendering containers to the railroad. That is the only
2 way we could identify from the railroad statistics what
3 the actual MIB movements were.

4 We identified the shipping companies that they
5 were doing business with, and what volumes those were
6 using. If they were an operator, and there was only
7 one, Sea Land, to provide service to Puerto Rico, and
8 also shipped cargoes through the west coast, it is
9 conceivable that those could be moving on the same
10 train, but I don't think they would have -- I think it
11 would be a different rate than an MIB rate, but I don't
12 know that to be --

13 Q Let's talk about that. What about maritime
14 cargo that moves by rail on one bill of lading, and then
15 moves by water on another bill of lading? I take it
16 what you are saying is that that cargo is excluded from
17 your analysis.

18 Is that correct?

19 A Yes, sir.

20 Q Would that traffic fall into your definition
21 of non-MIB traffic?

22 A Yes, sir.

23 Q It would. And I take it, then, that --

24 A I don't know why anyone would want to move
25 traffic that way, given the domestic rates, but it would

1 be --

2 Q Weren't you just suggesting that this domestic
3 offshore traffic to Puerto Rico might move in that
4 fashion?

5 A That's right.

6 Q And what about domestic offshore traffic that
7 moves between the Gulf and Hawaii via the west coast?
8 Are you familiar with whether that exists?

9 A No, I am not.

10 Q What about the same type of domestic offshore
11 traffic that moves between the Gulf and Alaska via the
12 west coast?

13 A No, I am not.

14 Q Now, assuming for the moment that that traffic
15 does exist, would it be possible for your hypothetical
16 all water service coming in, let's say, from the Far
17 East, would it be possible for those vessels to service
18 Hawaii, let's say?

19 A Sure, many of those vessels call at Hawaii,
20 but -- ch, you are saying domestically.

21 Q Yes.

22 A Only the U.S. flag carriers, of course, could
23 serve domestic.

24 Q And that would cause a change in the economics
25 of the movements that you have forecast, wouldn't it?

1 A I don't think that Hawaii is an exporter of
2 much of anything these days. It is primarily an inbound
3 market out of the U.S. west coast, but Matson serves it
4 on a regular basis. U.S. Lines also, I believe, makes
5 calls there. There is no shortage of steamship service
6 from Hawaii, if that is what you are asking.

7 Q There may not be any shortage, but if you
8 assume that that MLB service exists because there are
9 advantages involved in it, the all water service that
10 you are projecting would not service that traffic. Is
11 that correct?

12 A You lost me. When you say the all water
13 service we are projecting, I think we were looking very
14 specifically at Europe and the Far East, which certainly
15 dominates the traffic in that corridor. We have seen
16 that they are 50 percent.

17 If you are asking me now if somehow the
18 vessels I was looking at from Europe or the Far East
19 could also serve Alaska or Hawaii or Puerto Rico, you
20 have really lost me.

21 Q They can't, can they, because they are not
22 necessarily a U.S. flag carrier.

23 A That's right, not necessarily.

24 Q Now, in selecting --

25 A All of those three trades are overtonnaged in

1 my estimation. It is very clear that there is gross
2 excess capacity. There have been a lot of new
3 competitors in those three trades.

4 Q But you are not familiar, are you, with
5 whether the MLB service actually exists?

6 A No, I am not.

7 Q Now I would like to talk with you about the
8 use of the corridor between Los Angeles and Houston.
9 Excuse me. The Texas Gulf.

10 The first thing I want to ask you about is,
11 with regard to Table 4, where there is a comparison
12 between all water liner traffic and Los Angeles-Texas
13 coast MLB traffic, what is the geographic area for the
14 column which is headed Far East U.S. Gulf? This is
15 under the all water liner.

16 A All water liner. What is the geographic
17 area?

18 Q Yes, what is the U.S. Gulf that is included in
19 those statistics?

20 A It is the total U.S. Gulf.

21 Q Could you tell me where that extends from and
22 to?

23 A It is from Brownsville to Tampa.

24 Q Would it be Key West?

25 A I don't know. I don't know where Key West is

1 geographically.

2 Q In any event, the definition used here is the
3 one that is included in FT-985, the FT-985 reports. Is
4 that right?

5 A Yes, sir.

6 Q So that is considerably broader
7 geographically, isn't it, than the Los Angeles-Texas
8 coast that you used for your MIB traffic?

9 A We are talking on the one hand about Los
10 Angeles to the Texas Gulf, which is an inland corridor.
11 On the other hand we are talking about the ocean ports.
12 Just in the Gulf. So in that sense it is broader, I
13 suppose. But we are talking about two different
14 things.

15 Q Aren't you comparing MIB to the total, and so
16 what you are doing is, you are comparing MIB traffic to
17 a limited portion of the Gulf with all water traffic to
18 the entire Gulf. Is that correct?

19 A That's right. I was comparing the MIB cargoes
20 that moved through Houston as a percentage of the total
21 liner cargoes in the Gulf. That's right.

22 Q Now, New Orleans is a principal port for MIB
23 traffic, isn't it?

24 A Yes, sir.

25 Q I note from your work papers that two of these

1 contain what I understand to be proposed exhibits for
2 your testimony, exhibits which ultimately were not
3 included in your testimony, and these identify the
4 number of liner operators and the number of railroads
5 serving the ports covered by your testimony, plus New
6 Orleans.

7 I wonder if it is reasonable to conclude,
8 based upon that, that at some point you had in mind
9 examining the traffic flows for MLB between Los Angeles
10 and New Orleans as well as Los Angeles and the Texas
11 coast. Is that correct?

12 A I think those exhibits were done for
13 completeness. I think it was ultimately determined that
14 they were just not pertinent to what we were looking at
15 here.

16 Q Are you aware that the Santa Fe and the
17 Southern Pacific compete for mini land bridge traffic
18 between Los Angeles and New Orleans?

19 A No. In fact, that is why I was told that they
20 did not. That's why I was told that Santa Fe did not
21 have any direct single line service into New Orleans,
22 and they did not compete with the SF. That was
23 something that I was -- it was a misconception I was
24 laboring under, and when I found out that that
25 competition did not exist, I thought that data was not

1 pertinent.

2 Q Who advised you that they did not compete for
3 that?

4 A I don't recall. I imagine somebody in our
5 transportation and logistics group.

6 Q Are you aware whether contracts with container
7 operators, and I am talking about contracts now that are
8 entered into by either Santa Fe or Southern Pacific
9 where those container operators provide for rates to and
10 from both New Orleans and Houston?

11 A No, I don't.

12 Q Now, if you assume with me hypothetically, if
13 you accept my assumption that the Santa Fe and the
14 Southern Pacific compete for mini land bridge traffic to
15 and from New Orleans, if that were the case, in order to
16 determine the impact of -- the potential impact of the
17 merger on shippers of mini land bridge, you would have
18 to include service to and from New Orleans as well as
19 service to and from the Texas Gulf, wouldn't you?

20 A On the assumption that the SF and SF only
21 competed with one another there, as they do in the
22 Houston, Texas, corridor, where the UP was thought to
23 be --

24 Q Yes. In other words, that there is no other
25 carrier that runs in that corridor.

1 A Yes, I'd say under that hypothetical you would
2 want to study that.

3 Q Yesterday, you defined what is meant by the
4 term "liner," and I think you referred to break bulk
5 carriers, conventional cargo ships, and you also
6 referred to roll-on/roll-off vessels. Is that correct?

7 A I didn't refer to those, but --

8 Q Perhaps they were called to your attention.
9 Would it also be fair to include the definition of
10 automobile carriers in the definition of liner?

11 A As I was trying to make clear, liner is a
12 service definition. It has nothing to do with the
13 vessels that provide the service. Liner is a regularly
14 scheduled, advertised, usually common carrier service,
15 totally independent of the type of vessel that provides
16 that service.

17 Having said that, most of the vessels that
18 provide liner services tend to be full container ships,
19 partial container ships, break bulk, freighters, and
20 then there are the odd IASH vessels, or roll-on/roll-off
21 vessels.

22 There also are some bulk ships that carry
23 automobiles inbound, for instance, to a coast and carry
24 liner cargoes or container outbound. They operate a
25 liner service in one direction. But liner is a service

1 definition, not a vessel definition.

2 Q So, to the extent that something such as an
3 automobile carrier or a LASH vessel carrying commodities
4 too large to be containerized, to the extent that those
5 are included in your all water data, we are talking
6 there about traffic which is not competitive for
7 container vessels. Is that correct?

8 A Yes. Outside cargoes that cannot fit into
9 containers would not be competitive, right.

10 Q And you would include automobiles in that
11 category, wouldn't you?

12 A Probably new automobiles. Of course,
13 automobiles are containerizable, many are, but for new
14 automobiles when they move in volume, it is economically
15 cheaper to put them in a large automobile carrier than
16 containers. Container ships have many cars aboard
17 them.

18 Q What about Public Law 480 cargo? That is
19 included in your all water traffic in Table 4, isn't
20 it?

21 A Some of it would be. A very small portion of
22 it would be.

23 Q I see. Why is that? Why would only a small
24 portion of it be?

25 A Much of it is bulk, so it would not tend to

1 move -- much that moves on contract vessels in any case,
2 not on liner vessels. Some does, but a very small
3 percentage of the total P.I. 480 cargo moves on liner
4 vessels.

5 Q None of it moves in containers? Is that
6 correct?

7 A That is not true.

8 Q That is not true?

9 A It is not true.

10 Q Some of it does move in containers?

11 A Yes.

12 Q A significant percentage, would you say?

13 A I would guess no, not a big percentage, but I
14 would not hazard a guess. It varies a lot by trade
15 route, where it is going, foreign. Some ports have no
16 container services into them.

17 Q What about steel and iron plates, pipes,
18 sheets, and tubes? Do those items commonly move in
19 containers?

20 A Yes, most of that is containerized.

21 Q I didn't ask you if it was containerizable. I
22 asked you, does it commonly move in containers?

23 A In what trade? In the trans-Pacific, it sure
24 does. In the trans-Atlantic, it sure does. In the Far
25 East to the Atlantic coast, it does. Any place where

1 there is a heavy concentration of containers, those
2 cargoes are usually containerized.

3 Q Would you say the same thing about forest
4 products, such as lumber, plywood, and pulp?

5 A Plywood is mostly containerized in those
6 container trades. Pulp is. Lumber not. I would say
7 lumber, only high-valued lumber, like mahogany and
8 stuff, tends to be containerized. You probably know
9 that Weyerhaeuser has just gone to almost a full
10 container system for their forest products in the
11 trans-Pacific trades. That is mostly plywood and pulp.

12 Q Turning to your Exhibit 5, is one supposed to
13 understand from that exhibit that both imports and
14 exports are down?

15 A No, sir.

16 Q You can't tell from that, can you, if the
17 reductions in exports and imports are balanced?

18 A No, sir.

19 Q Let me give you what I think is a very simple
20 hypothetical, two study years. Year One, X tonnage in a
21 particular trade. Year Two, exactly the same tonnage,
22 X, but Year One the trade is completely balanced, 50-50,
23 imports and exports. Year Two, 100 percent unbalanced.
24 It is all imports.

25 You would need twice as much vessel capacity

1 for Year Two than for Year One. Is that correct?

2 A Yes, sir.

3 Q Same hypothetical --

4 A You wouldn't need twice as much terminal
5 capacity.

6 Q Would you need more?

7 A The same.

8 Q Same question generally, except this time it
9 continues to be balanced 50-50 in Year Two. The
10 difference is that there has been a shift in the type of
11 commodity, so that while the tonnage is the same, the
12 volume requirements have doubled, because you have gone
13 to a far less dense commodity or mix of commodities. In
14 that case again you would need twice the number of
15 vessels, wouldn't you?

16 A You said it changed. You didn't say it
17 doubled.

18 Q Volume doubled.

19 A Volume doubled. Then you would need twice as
20 many vessels. That's right. Assuming that the original
21 vessels were operating at full capacity.

22 Q Yes. Now, your data in Exhibit 5 completely
23 excludes mini land bridge service, does it not?

24 A No, it includes it.

25 Q It includes it?

1 A Yes, sir.

2 Q Well, let me help you with this.

3 A It does. Insofar as we have -- no, it
4 doesn't, I am sorry. It excludes it.

5 Q It excludes it?

6 A Yes.

7 Q Because in fact if you look at the 1982 figure
8 on Exhibit 5, you see it says Europe, U.S., Pacific,
9 2,164. That column?

10 A Yes, sir.

11 Q And then Far East, U.S. Gulf, 1,785. If you
12 look over at Table 4 under all water liner total, those
13 are the same numbers, aren't they?

14 A Yes, sir.

15 Q I think you said yesterday, didn't you, that
16 mini bridge service didn't commence until almost 1972?

17 A Yes, sir.

18 Q So this table on Exhibit 5 which shows the
19 years '73 through '82 basically showed the years since
20 mini bridge service has been in existence. Is that
21 correct?

22 A Yes, sir.

23 Q And to the extent that mini bridge service
24 exists today, you would have to add that tonnage to what
25 is shown in Exhibit 5, correct?

1 A Yes, sir.

2 Q I would like you to look for a moment at
3 Exhibit 9, where you have rail transit times, the
4 estimated transit times in days. With regard to the Los
5 Angeles -- it says LA/LB --

6 A Los Angeles/Long Beach.

7 Q Thank you. I should have realized that. Los
8 Angeles/Long Beach, and it says three days. Is that
9 based upon anything that you were told about
10 improvements in transit time which the applicants here,
11 Santa Fe-Southern Pacific, project they will be able to
12 achieve after the merger?

13 A No, sir. That was based simply on telephone
14 interviews with the railroads. For these exhibits, all
15 of the railroads, we treated all the railroads exactly
16 equally. We just called them. They had no idea what we
17 were doing or why. So in that sense the SP and the
18 Santa Fe were treated the same as the other railroads.
19 We just had a researcher call their rate departments and
20 ask them what the transit time is.

21 Q I want to go back to a point we were talking
22 about before when I raised with you the question of
23 whether it was appropriate or would have been
24 appropriate to study mini land bridge service to and
25 from New Orleans.

1 I think that before when Mr. Roach was
2 questioning you about railroad service available to
3 Houston, it was pointed out that in addition to the
4 service, that the Santa Fe and the Southern Pacific
5 provide from Los Angeles, there was also a UP/MP
6 service, but that it is considerably more circuitous.

7 A Yes, sir.

8 Q I just wanted to point out to you that the
9 same also does apply to New Orleans.

10 MR. WEICHER: Your Honor, is counsel
11 testifying on the rail situation?

12 JUDGE HOPKINS: Are you going to ask a
13 question?

14 BY MR. BAKER: (Resuming)

15 Q I certainly was, and I wanted to make certain
16 that when you said to me that it was important to know
17 whether there was other service --

18 A You are telling me that the Santa Fe does have
19 direct single line service into New Orleans?

20 Q No, I am not saying that. What I am saying
21 is, let me tell you what the situation is. Let's go
22 back to that. The Santa Fe has daily runthrough train
23 service with KCS via Dallas to New Orleans. This is
24 dedicated intermodal service daily, in comparison to
25 what you show on --

1 MR. WEICHER: Your Honor, for clarification,
2 is this being asked as a hypothetical question of this
3 witness?

4 JUDGE HOIKINS: Why don't you say, assuming,
5 et cetera, et cetera, so we can get it over with?
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1 BY MR. RAKER: (Resuming)

2 Q Assume with me that Santa Fe competes with SP
3 for minibridge traffic between Los Angeles and San
4 Francisco via daily run-through service which is joint
5 line service with KCS.

6 Assume with me also that, as is the case with
7 Houston, there is also service between Los Angeles and
8 New Orleans via UP/MP.

9 And now the question is: If you had been
10 aware of this at the time that you commenced your study,
11 would you have felt that it was important to consider
12 New Orleans as well as the Texas Gulf ports that you did
13 consider?

14 A No, sir.

15 Q Why is that?

16 A We were looking at only those areas where the
17 two railroads, the Southern Pacific and the Santa Fe,
18 competed directly

19 The fact that Santa Fe does not compete with
20 single line service into the New Orleans market, in my
21 mind, says it's quite different. So I don't think I
22 would have included it.

23 Q Can you explain why it's different because
24 it's not single line service?

25 A As I understand it, a railroad can provide

1 service anywhere it wants by signing an interline
2 agreement or something, you know, some division of rates
3 or something with another railroad.

4 But we were only concerned with those areas
5 where the two railroads competed directly against one
6 another.

7 JUDGE HOPKINS: Do you have many more?

8 MR. BAKER: I'm going to answer that in a
9 moment. No, I think I'm very close to winding up.

10 JUDGE HOPKINS: All right. We might as well
11 finish with you.

12 Go ahead.

13 BY MR. BAKER: (Resuming)

14 Q Can you identify any vessel operators which
15 today deploy regularly scheduled container ships in a
16 Yokohama-Houston-Hokohama deployment?

17 A And calling no other ports?

18 Q That's correct.

19 A No, sir.

20 Q Same question with regard to
21 Rotterdam-Los Angeles-Rotterdam.

22 A No, sir.

23 Q I think you indicated in your testimony,
24 didn't you, that there are other principal European
25 origins for traffic to the U.S. West Coast, that is,

1 other than Rotterdam. Is that correct?

2 A Yes, sir. Our definition included the U.K.,
3 the Continent, and the Mediterranean.

4 Q In terms of your service that you propose,
5 which is exclusively Rotterdam-Los Angeles-Rotterdam,
6 how will the traffic get from these various origins to
7 Rotterdam?

8 A I don't believe I proposed any service.

9 Q You costed service, didn't you?

10 A Yes, sir.

11 Q But that service that you costed is not the
12 service that would actually operate; is that correct?

13 A That's correct.

14 Q And would it be important to cost the service
15 in the manner in which it is actually going to operate,
16 in order to determine what its costs are going to be?

17 A It depends on what you are trying to
18 determine. We were trying to determine what the
19 relative costs were of various ports in the range of
20 various logistic alternatives, routing it through
21 different ports.

22 By calculating out the costs for each one of
23 those individually, as if it were the only port being
24 served from one destination in the Far East and one in
25 Europe, took out a lot of the confusion that might

1 result if we put in innumerable different routings where
2 you said what happens if you route it this way or that
3 way, or call one port, two ports, three ports.

4 I can't see any point in doing that. I think
5 what we did was a very clean, simple approach to costing
6 out the service to different routings as if that were
7 being provided individually.

8 I don't see much point in calculating out
9 another -- innumerable number of other alternatives that
10 would include every possible alternative.

11 If, however, for some purposes, you wanted to
12 find out what the actual cost was of moving a container
13 through a very specific routing, then I suppose you'd
14 want to cost that out.

15 Q Do you have any --

16 A We were comparing alternatives, and our
17 intention was to use a methodology to impose it in the
18 same manner on every one of those alternatives, and
19 calculate it out through.

20 Q Do you have in mind the specific deployment
21 which the all-water vessels would have? For example, in
22 the Far East to Gulf Coast traffic?

23 A Yes. I would say we had it in mind.

24 Q Could you quickly tell me what that deployment
25 would be?

1 A Well, I think that with the -- you're asking
2 the existing deployments, or are you saying in the
3 future?

4 Q I's asking what you believe, assuming that
5 minilandbridge is gone, and we move to all-water, what
6 is going to be a typical deployment?

7 A I believe that probably the two large carriers
8 with the new super ships, Evergreen and U.S. Lines,
9 probably will operate those vessels without a stop at
10 the West Coast; will come directly from the Far East
11 into the U.S. and that U.S. Lines will call at Savannah
12 and then feed cargoes down, by water, to the Gulf.

13 Evergreen will call at Jamaica and feed
14 cargoes in by water from Jamaica.

15 Q And both there will bypass Los Angeles?

16 A Yes, sir.

17 Q They will have other vessels calling on Los
18 Angeles; is that the point?

19 A Yes. They both already have a fleet of
20 vessels calling those. All these vessels are
21 incremental. A total of 35 ships, or whatever it is.

22 Q In terms of the 4200 TEU vessels, they will
23 not be calling on Los Angeles; is that correct?

24 A They're going to go directly from the Far
25 East, from the northern Far East into Savannah.

1 Q And it will only be smaller vessels that U.S.
2 Lines will have going to Los Angeles; is that correct?

3 A Right

4 Q Just a few questions on your Exhibit 6. It's
5 entitled "Selected Port Development Projects." And I'd
6 like to find out what is the criteria used for
7 selection?

8 A Things that we knew about at the time that the
9 exhibit was made. We did not intend it to be
10 comprehensive. This was sort of the knowledge we had
11 readily available as to projects that were underway or
12 planned.

13 Q I'm wondering what is the relevance to your
14 analysis of items such as under Houston, where it talks
15 about the addition of Wharf No. 32, general cargo berth,
16 renovation of bulk materials terminals.

17 What is the relevance of that?

18 A The addition of Wharf 32 may have some
19 relevance because the ships are now calling at a
20 multi-purpose terminal at the container berths, but the
21 renovation of the bulk materials terminal I don't
22 really think has much purpose.

23 Q And look under Long Beach. It talks about a
24 cement terminal, a dry block terminal, inner harbor auto
25 terminal, lumber facility. Do those have any

1 relevance?

2 A I don't think so.

3 Q Last item, Exhibit 10. Was TBS advised by
4 Santa Fe that it has only one intermodal train per week
5 between Los Angeles-Long Beach and Houston?

6 A As shown in the second column, the very last
7 figure at the bottom?

8 Q Yes, sir. On the fourth column. Same thing.

9 A I presume that we were. Yes, sir.

10 Q In any event, that is information you received
11 from the railroad?

12 A As I said, we received it with essentially
13 blind phone calls, calling all of the railroads and
14 asking them about their service. A researcher did it.

15 Yes, that was information we obtained from
16 someone at the railroad.

17 Q I do remember -- and this really is the last
18 one so that we can go to lunch. At Table 3, you note
19 that you break down the Santa Fe and the SP MLB cargoes
20 by direction. And the Santa Fe, the preponderance of
21 tonnage on the Santa Fe is eastbound, whereas the
22 preponderance of tonnage on the SP is westbound. Do you
23 notice that?

24 A Yes, sir.

25 Q Can you explain the difference?

1 A No, sir. I wondered about it myself.

2 Q Doesn't it make you wonder about the tonnage
3 data that you used?

4 A In what respect?

5 Q Well, isn't the Pacific traffic, that is,
6 really imports from the Pacific, by far the largest of
7 the four movements, four movements in the sense of
8 inbound or outbound Pacific, inbound or outbound
9 Europe?

10 A I think that the Far East exports are by far
11 the largest. You're talking about Minilandbridge.

12 Q I'm talking about Minilandbridge.

13 A No I'd say that the Far East exports are the
14 largest.

15 Q I see. What you're saying is --

16 A And then European exports next -- by our
17 calculation that we did earlier today which broke down
18 the volumes by service and direction.

19 Q So in other words, it's your testimony that
20 for Minilandbridge, exports are really greater than
21 imports.

22 A With the one caveat that we're comparing two
23 different sources of data here, one from the railroad
24 statistics, and one is from the government.

25 But I would say yes. That's what that

1 comparison shows.

2 Q Okay. And then what you're saying is for
3 these figures to be reasonable, that's really the
4 conclusion that one has to draw.

5 A Yes, sir.

6 MR. BAKER: I have no further questions.

7 JUDGE HOPKINS: Thank you. We'll be in recess
8 until 1:45.

9 (Whereupon, at 12:40 p.m. o'clock the hearing
10 in the above-entitled matter was recessed, to reconvene
11 at 1:45 p.m. o'clock, this same day.)

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AFTERNOON SESSION

(1:45 P.M.)

1
2
3 JUDGE HOPKINS: Let's get back on the record.
4 Who is going to be next?
5 Whereupon,

JAMES D. O'CONNELL

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

CROSS EXAMINATION

BY MS. BONAPARTE:

11
12
13 Q Good afternoon, Mr. O'Connell. My name is
14 Nell Bonaparte for the Denver & Rio Grande. I just have
15 a few questions for you this afternoon.

16 Turning to page 1 of your verified statement,
17 you state that you examined the logistics options, at
18 the request of the Applicants, available to shippers
19 whose cargoes are currently routed via the
20 minilandbridge service between Los Angeles and Texas
21 Coast.

22 And then beginning at page 6, you discuss the
23 all-water services as options for these services. And
24 beginning at page 11, you discuss the competing
25 minilandbridge services, as offered, logistics options

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1 for these shippers. But you make no reference in your
2 testimony to trucks as offering logistics options for
3 these shippers for minilandbridge cargoes.

4 Does this mean, then, that you did not
5 consider trucks as a logistics option for the
6 minilandbridge shippers?

7 A I think that while we consider trucks to be an
8 available option, we felt that they were third on the
9 list behind these other alternatives. And that because
10 of the distance involved, there would be some real
11 argument as to whether trucks could effectively
12 compete.

13 I think rather than getting involved in that
14 argument, since I'm not a trucking specialist, we
15 decided to focus on the alternatives that we knew were
16 available and that we were familiar with.

17 Q Now, in preparing your verified statement, at
18 any point did you plan to assess trucking alternatives
19 as viable options?

20 A No. I think we may have discussed the fact
21 that trucks could provide competition, but we never
22 considered analyzing the trucks.

23 MS. BONAPARTE: I'd like to mark for
24 identification DBGW-C-27.

25 JUDGE HOPKINS: That will be marked for

1 identification.

2 (The document referred to
3 was marked Exhibit DEGW-C-27
4 for identification.)

5 BY MS. BONAPARTE: (Resuming)

6 Q Mr. O'Connell, do you recognize this as one of
7 your work papers?

8 A Yes, I do.

9 Q Are you familiar with the handwriting on this
10 document?

11 A Yes, it's my handwriting.

12 Q Now, in looking at paragraph No. 4 under the
13 title "Shipper Alternatives," as I read, there are three
14 different options here: all-water services, other
15 ports, other -- and RRs is for railroads?

16 A Yes.

17 Q And trucking.

18 So at some point in your analysis, it was
19 considered to evaluate trucking?

20 A No, it never was. I think that this exhibit,
21 although I don't know what the date was -- there
22 probably was a date on the earlier page -- looks to me
23 like it was my notes to sort of lay out some of the
24 issues that were involved and some of the possible
25 alternatives.

1 And I think trucking was discussed as a
2 possible alternative. I never considered using the
3 trucking alternative for the reasons I just expounded.

4 Q Did you conclude, then, that trucking really
5 wouldn't be competitive with the MLB services?

6 A I felt, in general, that trucks probably over
7 this distance were less competitive, but as I said, I'm
8 really not a trucking specialist and I didn't want to
9 get involved in the argument.

10 I knew there was considerable disagreement
11 among observers in the industry as to how, over what
12 distance trucks were competitive, whether they had back
13 hauls or forehauls, and whether they were dedicated or
14 not.

15 And I just felt that they might be
16 competitive, they might not, but I was not qualified to
17 testify to that.

18 Q I see.

19 Did you know that the Applicants in SFSP-20
20 showed zero truck participation of containerizable 1982
21 international traffic for this region?

22 A No, I did not.

23 Q Referring back for a moment to DRGW-C-27,
24 under the third paragraph, there's a reference to
25 shippers ten largest account for 77.6 percent of total,

1 SFSP MLB tons.

2 Could you explain your definition of
3 "shippers" in this context?

4 A That was really the steamship companies who
5 were tendering the containers to the railroads. It was
6 the ten largest steamship lines that we identified from
7 the customer lists.

8 Q Now, calling your attention to page 10 of your
9 verified statement, the first paragraph, the last
10 sentence, you state that: "The all-water and the MLB
11 services at issue currently have the same rates."

12 Do you see that?

13 A Yes, ma'am.

14 Q Now, you referred there to Exhibit 7 in which
15 you examined the relative cost in 1982 of the MLB and
16 all-water services.

17 Exhibit 7 is based on 1982 data, is that
18 correct?

19 A Yes, it is.

20 Q Now, how did the cost of the all-water
21 services relative to the cost of the MLB services affect
22 your conclusion, if it did, that all-water services
23 provided a viable option for these shippers?

24 A I don't think that the question of cost
25 influenced that decision. I think the fact that the

1 all-water services carries 75 percent of the containers
2 from Europe and a significant share of the containers
3 from the Far East told me that those were viable
4 services.

5 Q But cost was a factor that you investigated?

6 A Yes

7 Q Now, did you consider whether the rates for
8 all-water services in 1982 were then temporarily
9 depressed relative to the rates for the MLB services?

10 A If you're asking whether I think the fact that
11 the rate was equalized was an unusual situation then, I
12 did not then think that was unusual. I do not think it
13 is unusual now.

14 I think that historically, the MLB rates have
15 been fixed at the same level as all-water rates.

16 Q So you don't know if perhaps shipping rates
17 were depressed in 1982?

18 A Are you asking liner shipping rates?

19 Q Yes.

20 A As opposed to MLB rates or just generally?

21 Q Historically. As opposed to general shipping
22 rates.

23 A I'm not sure how you're defining general
24 shipping rates.

25 Q Well, let me rephrase my question.

1 Do you know if shipping rates for the
2 all-water services were depressed in 1982 relative to
3 the general pattern over the last ten years, for
4 example?

5 A I think that in many trades -- and it is
6 dependent on trade by trade, by world region essentially
7 -- that rates have been depressed in recent years, yes;
8 largely because of overcapacity which is a result of
9 declines in volumes in some trades.

10 Q Now, would you say that also applied to the
11 shipping trade involving all-water services?

12 Q Which trade? I said that different trades
13 have been affected differently. But which trades are
14 you talking about specifically? Are you talking about
15 the European service?

16 Q I guess specifically, I'm talking about the
17 Far East.

18 A Gulf?

19 Q Gulf.

20 A Yes. I would say the rates were depressed in
21 the Far Eastern trades relative to what they had been in
22 past years prior to 1982. And given the fact that there
23 had been some cost inflation, you would have expected
24 the rates to go up. That was not the case.

25 In some situations, the rates were actually,

1 in absolute terms, below what they had been in previous
2 years. So from that measure, rates were depressed.

3 Q Now, if these rates were to subsequently
4 increase, would that affect your conclusion or at least
5 make you reconsider your conclusion that the all-water
6 logistics options are competitive with the MLB
7 services?

8 A You seem to be implying that there was a
9 differential, that the all-water rates were depressed,
10 while the MLB rates were not depressed.

11 That's not the case. I'm saying that the
12 rates have been equalized and have moved in tandem. So
13 if the rates were to increase to more reasonable levels,
14 the MLB rates would increase along with them would be my
15 expectation.

16 Q But you are essentially saying that the rates
17 that a shipper would have to pay for either all-water
18 services or minilandbridge services is an important
19 factor that a shipper is going to take into account in
20 choosing one service over the other; correct?

21 A He doesn't have to take that into account
22 today because they are the same. He is indifferent as
23 to rate, given that the rates are essentially the same,
24 whether he chooses all-water or MLB.

25 Q But if the rates were different,

1 hypothetically?

2 A Yes, I believe it would be an important
3 factor.

4 MS. BONAPARTE: Thank you. I have no further
5 questions.

6 JUDGE HOPKINS: Thank you.

7 Mr. Ratner.

8 BY MR. RATNER:

9 Q Good afternoon. My name is James Ratner. I'm
10 with the U.S. Department of Justice. I have a very
11 brief set of questions for you.

12 Today, in testifying -- and I believe also
13 yesterday -- you discussed that minilandbridge is
14 incremental as far as the carriers are concerned; is
15 that correct?

16 A Insofar as the carriers that provide the MIB
17 services; yes, sir.

18 Q Yes. The ocean carriers.

19 Could you explain a little bit what you mean
20 by "incremental"?

21 A I mean that if we take a specific trade like
22 cargo moving between Europe and California, that that
23 cargo normally would move all-water. If an operator who
24 is operating between Europe and the U.S. North Atlantic,
25 i.e., New York or Baltimore or Philadelphia, were to

1 pick that cargo up and deliver it to a railroad in New
2 York and have it railed out to the West Coast, that is
3 incremental cargo to him because it's a market he did
4 not normally share in.

5 It's incremental in the sense that he doesn't
6 have to make any additional investment to do that.

7 And thirdly, it is incremental in the sense
8 that he makes a much smaller margin on that cargo than
9 he would, a much smaller contribution than he would on a
10 cargo that he carries between Europe and New York, for
11 instance.

12 Q I don't understand what you mean by a much
13 smaller contribution.

14 A Let's say that you have a container that had a
15 rate of \$2,000 between Europe and New York, and that the
16 ocean carrier's cost was \$1,000. He would then realize
17 a contribution of \$1,000 on that container.

18 If, however, there were a box moving between
19 Europe and the West Coast that had a rate of \$3,000, and
20 he had a cost of \$1,000 to get it to the port, and then
21 he gave up an additional \$1,500 to the railroad to carry
22 from New York to the West Coast, he would only realize
23 \$500 contribution on that container.

24 So, even though he's carrying two containers
25 between Europe and New York that look to him identical,

1 he's getting less money from the cargo, and in that
2 sense it is incremental.

3 Q Okay. Correct me if I'm wrong. In the second
4 example that you gave with the \$3,000 and the \$1,000 and
5 \$1,500, if the rail rate rose in that case by \$499,
6 isn't it correct that it would still be in the interest
7 of that ocean carrier to carry that and earn a dollar?

8 A There are a lot of other factors that come
9 into it because of equipment cost and rehandling and
10 everything.

11 Q Well, I took the \$1,000 and the \$1,500 as the
12 total cost.

13 A As the total cost. I would say that only the
14 carriers, the individual carriers, can answer what
15 minimum contribution is reasonable for them. And
16 although I gave a very simplified example, I think there
17 are in fact other costs, for marketing, for equipment
18 repositioning, for equipment leasing, cargo handling
19 charges and things, which mean that for every carrier
20 the situation is a little different.

21 And I believe that for some carriers, one
22 dollar more probably would make a difference. For other
23 carriers, it wouldn't. They each would have to make
24 that judgment, given their own position.

25 Q But it's correct, is it not, that what you

1 mean by "incremental" is that if there is a dollar's
2 worth of profit to be gained, that it will be in the
3 interest of that carrier to carry the container and make
4 a dollar?

5 A In a theoretical sense, yes.

6 Q Earlier, you talked about equalized rates, and
7 I know you talked a lot about it, and I want to make
8 sure I'm clear in understanding what you mean.

9 One thing you talked about is rates that are
10 equalized between the water/rail rate and the all-water
11 rate. Now, what do you mean by "equalized" in that
12 sense?

13 A I'm saying that the rate is essentially the
14 same for the same commodities.

15 Q When you say "essentially the same," what does
16 "essentially" add to it?

17 A I'm saying there may be small differentials
18 here and there, partly because steamship lines, their
19 tariffs are different. It's awfully hard to compare one
20 tariff with another because of the commodity
21 descriptions.

22 But if you look at similar commodities, the
23 rates are similar.

24 Q Okay. To make this clear right now, could you
25 confine it to just one carrier that offers both an

1 all-water rate and a water/rail rate?

2 When you say "equalize," you mean they are
3 exactly the same under those circumstances for that one
4 carrier?

5 A Yes. If you look at Sea-Land's tariff, for
6 instance, they are exactly the same, whether it's
7 all-water or intermodal.

8 Q And the second half of that is, you have
9 referred to equalized rates, I think, with respect to
10 different carriers charging them. Is that correct?

11 A That's right.

12 Q And when you say "essentially equalized," that
13 means that all of the carriers participating, even those
14 that are just participating in an all-water movement and
15 don't themselves offer a water/rail rate are all
16 charging virtually the same thing as the water/rail
17 rate; is that correct?

18 A No. Everybody is charging the same as the
19 water rate rather than vice versa.

20 Q But the water rate is the same as the rail
21 rate; am I correct?

22 A That's right.

23 Q So then you have --

24 A Well, the one thing I think I made clear
25 earlier is that the market is a tiered market. You

1 don't just have everybody charging the same. You have
2 conference carriers, and I know that conference concept
3 is not a particularly popular thing over at Justice, but
4 we won't go into that here.

5 The conferences essentially set rates and
6 agree on what they are going to charge. All carriers
7 who are members of the conference then charge the same
8 rate. Non-conference rates or independent rates are set
9 independently. They tend to be set as a discount off of
10 the conference rates, because that's a benchmark they
11 can look to and market to.

12 So when we say all the carriers are the same,
13 charge the same rates for the same service, the
14 independents generally charge less for the same
15 commodity.

16 Q Is it correct then that the independent rate
17 may not be equalized with the water/rail rate?

18 A That's right. It would likely be lower.

19 Q It's correct that independent rates can be set
20 at whatever level the carrier chooses, regardless of
21 what the conference rate is?

22 A I believe they have to be compensatory,
23 according to the law.

24 Q And to make it clear, when you refer to a
25 conference in rate setting, you are referring to a

1 conference that is -- has received antitrust immunity to
2 set those rates through Section 15 of the FMC, Federal
3 Maritime Commission Act.

4 A Yes.

5 Q Is it fair to say that what you described
6 about minilandbridge is that it is an input with respect
7 to ocean carriers?

8 A In what sense?

9 Q In the sense that they provide a finished
10 product from point A to point B and minilandbridge is an
11 input which they view as a cost that contributes towards
12 the final product.

13 A I don't understand. Are you saying the rail
14 portion of an MIB move?

15 Q Yes.

16 A If I think the rail portion is an input into
17 their total cost?

18 Q Yes. Earlier, you described -- you had
19 analogized to a can of paint. And what I'm asking you
20 is, is your analogy basically saying that ocean carriers
21 view the rail portion of minilandbridge as an input cost
22 towards the final product of moving cargo from, for
23 example, the Far East to the Gulf Coast?

24 A Yes. I believe that's essentially true; that
25 the rail division that they are charged is a cost to

1 them, given that they collect the money for the tariff,
2 the revenue, and have to divvy it up.

3 Q And believe, just to make sure, have you
4 testified earlier that you presume that Southern Pacific
5 and Santa Fe are competing with each other for providing
6 this input to various carriers?

7 A Yes, sir.

8 MR. PATNER: Thank you very much. I have no
9 other questions.

10 JUDGE HOPKINS: Thank you.

11 Ms. Reed.

12 BY MS. REED:

13 Q Good afternoon, Mr. C'Connell. My name is
14 Mary Reed. I'm with the U. S. Department of
15 Transportation.

16 Would you please turn to page 4 of your
17 verified statement? In the top paragraph, you state
18 that joint ocean/rail services under a single bill of
19 lading and that the rail carriers are defined as
20 participating carriers.

21 Can I take it from that sentence that these
22 tariffs are filed with the Federal Maritime Commission
23 by the ocean carrier?

24 A Yes.

25 Q And that on those tariffs, the railroad is

1 listed as a carrier joining in that tariff?

2 A That's right. They are listed as
3 participating carriers, specifically.

4 Q And this morning, when you were talking with
5 Mr. Roach about rates and divisions, is it not correct
6 that the railroads do not have a separate ICC rate for
7 those movements, but they have -- they are covered under
8 the FMC tariff?

9 A I don't know the answer to that. I don't know
10 what it is on the ICC side. The railroad divisions are
11 no longer listed in the ocean tariffs since the
12 deregulation of the rail industry.

13 Prior to that time, the rail divisions were in
14 fact listed in the tariff as a separate item and they
15 were shown. They are no longer -- the rail divisions
16 are no longer shown because of the contract nature of
17 the rates, I guess.

18 So whether there is an ICC tariff that has to
19 be filed -- I presume there is, but not publicly. I
20 mean you can't find out what the rail divisions --

21 MR. WEICHER: Your Honor, I think I can
22 generally clarify that for the witness's benefit. As I
23 understand the situation, at one time joint tariffs --
24 the same tariff might be filed with both the FMC and the
25 ICC. There were a lot of different ways. There was

1 some controversy over that.

2 And now I believe that the rail division is
3 not filed per se as a tariff anyplace.

4 Q I just want to clarify, because this morning
5 we were talking about a rail rate.

6 A No. It is simply the rail division.

7 Q Do you know how the ocean carrier and the rail
8 carrier reach such a division? Is it by negotiation
9 between the two parties?

10 A Well, in the case of large volume steamship
11 companies that are moving a large volume of MLP, yes;
12 that is through negotiation. Small volume, lines that
13 have small volumes MLP, I presume, use the single
14 container rates or the single car rates, which like
15 anything else, if you don't have much of a volume, you
16 don't have much to negotiate.

17 Q Where an ocean carrier and a rail carrier
18 enter into a division, do you know whether the rail
19 carrier could alter the division's arrangement without
20 the consent of the ocean carrier?

21 A No, I don't believe so.

22 Q Do the water carriers generally own the
23 containers that are used in MLP service?

24 A Very generally speaking, they probably own
25 about half of them or less, and lease the rest. Some

1 companies lease almost all of them. Few own more than
2 half.

3 Q Do rail carriers provide the containers that
4 are used in MLB service

5 A No. Provided by leasing companies.

6 Q That would be provided directly to the ocean
7 carrier?

8 A To the ocean carrier.

9 Q Do the ocean carriers own any rail flatcar
10 equipment?

11 A American President Lines does and Sea-Land
12 may. I'm not sure. Those are the only two, to my
13 knowledge. I know APL does and I think Sea-Land may. I
14 don't think there are any others.

15 Q Do you know to what extent American President
16 Lines owns flatcars?

17 A You mean how many? No, I don't.

18 MS. REED: Okay, thank you very much. That's
19 all I have.

20 JUDGE HOPKINS: Any redirect?

21 MR. WEICHER: Just a couple of brief matters.

22 REDIRECT EXAMINATION

23 BY MR. WEICHER:

24 Q Mr. C'Connell, this morning Mr. Beach inquired
25 about some discrepancies between the cost model output

1 in UP/MP-C-36 and the figures in Exhibit 9.

2 Have you had an opportunity to check with your
3 staff to determine if you believe the numbers in Exhibit
4 9 are correct and what reason there may be for the
5 discrepancy?

6 A Yes. I did check with them, and if you turn
7 to page 00093, which is Exhibit MLR-1, Japan to
8 Portland, I think I can use that to sort of describe.
9 Apparently -- and this was an error on my part -- in the
10 work papers that we submitted, they only included the
11 early runs.

12 We made some changes to these runs that I'm
13 about to describe that resulted in the numbers that are
14 in the final exhibit. I don't believe any of the
15 changes were significant, but they were done to be
16 consistent with the methodology we were using across all
17 of the trades.

18 If you look at that page 00093 and you look
19 down under "Trade Route" where it shows load port cargo
20 rate, the fourth line down, and then discharge port
21 cargo rate, one is 750, the other is 840. We equalized
22 those for all ports and all routes eventually, and used
23 800 for everything.

24 If you look further down that, there is a line
25 which says "discharge port delays," and it shows 4.5

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1 days. In the Portland trade -- because all of the
2 vessels that we identified called at Seattle first, and
3 then called ultimately at Portland -- we built in a
4 three-day delay to take account of the fact that it was
5 a much slower voyage because of the time it took in
6 Seattle.

7 As I mentioned earlier, to be consistent and
8 to provide the direct costs to all of these, we took
9 those delays out and put in actual direct sailings to
10 each one of these.

11 I think what may have happened is that when we
12 made the changes, we simply ran the computer and took
13 the data off the screen. I don't think there were
14 printouts to go along with it. It would very simple for
15 us to replicate the printouts if that were necessary to
16 show them.

17 But essentially, if you look through the other
18 ones, you will see that we used 800 and also that the
19 port delays were consistent throughout at a very low
20 rate. This was changed, simply to bring it in line with
21 the other ones and the fact that the numbers were
22 different in the table from on these was caused by those
23 changes.

24 Q Mr. D'Connell, this morning Mr. Roach asked
25 you a series of questions about the capacity at the Gulf

1 Coast to handle additional tonnage such as a
2 hypothetical 60,000 TEUs per year of additional
3 container capacity.

4 How many ships or what sort of calling
5 schedule, what sort of ocean capacity in terms of ships
6 per year would that require?

7 A Well, I think on something like the 60,000
8 TEUs, assuming you're talking about a Far East voyage
9 that is roughly 42 days, a round voyage that would be a
10 direct service back and forth, and 350 operating days
11 per year, that would give you 6.3 voyages per year times
12 -- I think we used 1054 as an average TEU capacity of
13 the available vessels -- that would give you 8.8
14 thousand containers per year, which is about 6.8 vessels
15 or seven vessels.

16 Q Another matter that Mr. Baker, I believe,
17 asked you about was the presence or absence in your
18 study of data concerning landbridge or microbridge
19 shipments between Houston and L.A.

20 I believe you testified you weren't sure there
21 were such shipments, but if there were, or to the extent
22 there were, is it your understanding that they were
23 studied by Temple, Parker & Sloane, and if so, when?

24 A As I mentioned earlier, they were not included
25 in our study because we were looking only at the cargo

1 moving between the two end points. The intermediate
2 flows, I understand, were studied by Mr. Dave Anderson,
3 or Dr. Anderson, in his testimony.

4 Q One more item, if I may. When you were
5 discussing with Mr. Roach the assumptions underlying the
6 cost model and the 80 percent loaded inbound assumption,
7 you discussed the assumptions or your understanding of
8 what happens on the outbound movement.

9 What is your understanding of the availability
10 of outbound loads at Houston for the other side of that
11 cost model?

12 A Well, the trade is imbalanced, heavily
13 outbound. There is much more outbound cargo than there
14 is inbound. Therefore, I think there is more than
15 sufficient cargo to fill any inbound vessels.

16 MR. WEICHER: No further questions.

17 JUDGE HOPKINS: Anything?

18 MR. ROACH: I have two questions on recross.

19 RE-CROSS EXAMINATION

20 BY MR. ROACH:

21 Q First of all, would you have any problem in
22 running those revised costing papers and providing
23 copies of them to us? Perhaps your counsel should
24 answer that.

25 MR. WEICHER: We have no objection, Your

1 Honor. We will have to make the run and furnish it
2 directly to counsel.

3 JUDGE HOPKINS: Thank you.

4 MR. ROACH: If there are any significant
5 questions that arise from that, I assume we can put them
6 in writing to you and get a response?

7 MR. WEICHER: Yes. The witness understands
8 it's a quite straightforward model, and he has no
9 objection to explaining it.

10 BY MR. ROACH: (Resuming)

11 Q Now, you said that -- I think what I heard you
12 say was that seven vessels, eight voyages a year would
13 be enough to accommodate the 60,000 TEUs. Is that
14 basically what you said?

15 A Yes. I think we're talking in terms of vessel
16 equivalence is sort of the concept.

17 Q What sort of vessel equivalent is that?

18 A I think the example I showed in my testimony
19 was the average of the vessels that are idle in the
20 world today, which at 80 percent had a capacity of about
21 1,054 TEUs.

22 Q So that is going to have a cost closer to your
23 1200 TEU model.

24 A A higher cost, but not much.

25 Q A little bit higher. And if it's sever

1 vessels a year, eight voyages per year per vessel, is it
2 correct that it's going to call about once a week?
3 You're talking about roughly 56 arrivals in Houston?

4 A That's right. We are also talking, very
5 hypothetically here, about how many vessels are
6 required, but we are ignoring the fact that the vessels
7 that exist in the trade today and that are operating
8 probably are operating at levels below capacity, and
9 they could absorb a lot of the cargo before you'd have
10 to add any ships.

11 Q And if the trade were handled in dedicated 4200
12 TEU vessels, the frequency of call would drop by a
13 factor of about three or four, wouldn't it?

14 A If it were dedicated, yes.

15 MR. ROACH: Thank you.

16 JUDGE HOPKINS: Anything further.

17 MR. BAKER: I do have a question.

18 BY MR. BAKER:

19 Q Mr. O'Connell, with regard to the microbridge
20 traffic that was apparently studied by Dr. Anderson, are
21 you familiar with any microbridge service where the
22 ocean carrier ships -- where traffic moves by a single
23 bill of lading issued by the ocean carrier, and then
24 moves via truck from a distance such as Los Angeles to
25 West Texas?

1 A Not that specific move, but certainly similar
2 moves. Without regard to how much distance we're
3 talking about, truck versus rail, certainly there are a
4 lot of intermodal tariffs where it moves by water and
5 then is transferred to a truck carrier under a single
6 intermodal bill issued by the steamship company.

7 Sea-Land and U.S. Lines and American
8 Presidents Lines list in their tariff numerous motor
9 carriers and railroads, and they specify the routings
10 involved there.

11 So those two exist.

12 JUDGE HOPKINS: Is that all?

13 MR. WEICHER: Your Honor, I move for the
14 admission.

15 JUDGE HOPKINS: Any objection? It will be
16 received in evidence.

17 MR. BOACH: I move for the admission of the
18 Union Pacific exhibits that were introduced, 35A and so
19 forth.

20 JUDGE HOPKINS: They will be received in
21 evidence.

22 (The documents referred to,
23 previously marked Exhibits
24 UP/MP-C-35, 35A, 36, 37, 38,
25 and 39 for identification,

1 were received in evidence.)

2 MR. WEICHER: I move the admission of
3 DRGW-C-27.

4 JUDGE HOPKINS: Any objection? They will be
5 received.

6 (The document referred to,
7 previously marked Exhibit
8 DRGW-C-27 for
9 identification, was received
10 in evidence.)

11 JUDGE HOPKINS: You are excused.

12 (Witness excused.)

13 MR. SMITH: Your Honor, we'd like to call our
14 next witness, Mr Forrest Baker.

15 Whereupon,

16 FORREST S. BAKER, JR.

17 was called as a witness by counsel for Southern Pacific
18 Transportation Company and, having first been duly sworn
19 by the Administrative Law Judge, was examined and
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. SMITH:

23 Q Please state your name and business address,
24 sir, for the record.

25 A My name is Forrest S. Baker, Post Office Box

1 914, Challis -- C-h-a-l-l-i-s -- Challis, Idaho 83226.

2 Q And did you prepare and was there filed in
3 this proceeding the verified statement of Forrest S.
4 Baker, identified as Statement No. 3 in Volume SFSP-18?

5 A I did.

6 Q And is that, as corrected, with the errata
7 that was filed dated September 20, 1984, is that
8 statement true and correct to the best of your
9 knowledge?

10 A To the best of my knowledge.

11 MR. SMITH: Your Honor, the witness is then
12 tendered for cross-examination.

13 JUDGE HOPKINS: Are you starting, Mr. Roach?

14 MR. ROACH: Yes, I'm afraid it's me again,
15 Your Honor. I would like to ask to mark UP/MP-C-40.

16 JUDGE HOPKINS: It will be marked for
17 identification

18 (The document referred to
19 was marked Exhibit
20 UP/MP-C-40 for
21 identification.)

22 CROSS EXAMINATION

23 BY MR. ROACH:

24 Q Mr. Baker, before we talked about general
25 concepts. I thought we might start with some of the

1 details about how you assisted TBS in this study.

2 Mr. Anderson testified that there were
3 basically two components to your work. There was a
4 component at the outset of their study where they sent
5 you to look at some major shippers and take a general
6 look at their physical situation, and then there was a
7 second component after TBS had conducted its several
8 filtering steps with the traffic in the different
9 traffic cells, where they would send you details about a
10 particular cell that had fallen through all the filters
11 and ask you to see whether you felt that there were
12 modal options for that cell.

13 Is that a fair summary of your two-part
14 function in assisting TBS?

15 A That's a fair summary.

16 Q Could you tell me in complete detail, step by
17 step, what you did in the first component that we just
18 described?

19 A In the field work, evaluating the location?

20 Q Yes

21 A We sent our people into each of these
22 locations over a period of time, a week to two weeks.
23 Most of it, I believe, was contained within a week. We
24 visited the premise, we observed the activities, we
25 observed the nature of the facility. Where possible, we

1 visited with truck drivers coming and going; we
2 determine the nature of the rail facilities, if
3 possible; we determined the nature of the truck
4 facility, if possible; whether or not there was evidence
5 of use of either mode; and, in general, simply
6 determined whether or not the facility was capable of
7 utilizing truck, utilizing rail, or whether one could be
8 substituted for the other easily or with difficulty.

9 Simply a facility inspection.

10 Q Did your observations generally tell you what
11 volumes were actually being shipped by rail and truck
12 from the facility?

13 A In some instances, the observations gave us a
14 good feel of that. In other instances, we could get no
15 feel on volume.

16 Q And what about the nature or identify of the
17 particular commodities that may have been shipped from a
18 particular facility by rail, as opposed to by truck?
19 What does your observation tell you about that?

20 A Again, it varied heavily. In some instances,
21 conversations with gate guards, conversations with truck
22 drivers, conversations with fleets that were servicing
23 the facility gave us substantial insight into what was
24 happening with the firm.

25 In other instances, we had relatively limited

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or no insight.

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1 Q How about the distance of the movement? Did
2 you learn anything about that from these visits?

3 A Again, the answer is the same. Some
4 businesses we learned about the distance of the
5 movement, some we didn't.

6 Q And I assume you didn't learn anything about
7 rates from those visits.

8 A No.

9 Q Am I right or am I wrong?

10 A No, you are totally right.

11 Q I'm right, you did not learn about rates?

12 A We didn't even inquire about rates.

13 Q Did you learn anything about the cost of the
14 railroad versus the truck to serve each of those
15 facilities?

16 A From the visits?

17 Q Yes.

18 A No.

19 Q Did you learn anything about the relative time
20 sensitivities of the cargoes that were sent by rail as
21 opposed to those that were sent by truck?

22 A In some instances, yes.

23 Q And in some instances not?

24 A And in some instances, no. In some instances,
25 yes, there is a residual.

1 Q I take it you did not actually go interview
2 the shipper.

3 A No.

4 Q I put the question badly.

5 Did you or did you not go interview any of
6 these shippers?

7 A Well, let me answer it obliquely. We
8 interviewed some shipper personnel. We did not
9 interview the traffic manager or the president.

10 Q All right.

11 What shipper personnel did you interview?

12 A We talked, as I said earlier, to people on the
13 gates, to people in the loading areas, to people who
14 were in the every day, day-to-day commerce of the
15 activity. We did not talk to the people responsible for
16 traffic.

17 Q The people you talked to, in other words, were
18 not the people that had to make shipping decisions for
19 the company?

20 A That's what I'm trying to imply. We talked to
21 the people handling the daily work.

22 Q And the people you talked to would not have
23 been confronted with the waybill, for example, with the
24 ultimate need to write the check to cover the rate?

25 A Well, now, there's a difference.

1 Q Well, I'm asking.

2 A They could have well been in contact with the
3 waybill or the bill of lading or whatever the shipping
4 documents were. They were not the people who put their
5 signature on the check.

6 Q How many people did you have engaged in this
7 activity?

8 A We had on average I think four of our field
9 people.

10 Q When you say on average, it must have covered
11 a period of time.

12 What was that period of time?

13 A I really can't tell you since we were in some
14 areas and then in other areas. I can't give you a
15 block. It covered a period of 60 to 90 days.

16 Q In what months, if you recall?

17 A It would have been in the months of January
18 and February, part of March, perchance, maybe a little
19 of December, but it was in the winter months of this
20 year, early spring.

21 Q I take it then that another issue that you may
22 not have touched on -- and you can tell me whether you
23 did -- was the issue of seasonality of shipments.

24 A Well, there is no seasonality in the nature of
25 a facility, although seasonality may be involved in the

1 fact that we could not get a feel of usage.

2 Q Could not get a what?

3 A A feel of usage. A cotton-shipping facility
4 in January is woefully inactive.

5 Q You say you have on average about four people
6 for a couple of months, is that right?

7 A Two to three months, yes.

8 Q How many total plant visits did you make?

9 A I can't tell you that. I haven't counted.

10 Q Let's say you had four people working for
11 sixty days. How many visits a day do you suppose that
12 you people made?

13 A I would suggest that it depends on the
14 geography, the nature of the layout, how readily the
15 plant is observed. They could have observed anything
16 from five to eight or nine plants a day, probably four
17 and five comfortably.

18 Q What initiated this process? Did you receive
19 a list of sites from FBS to go and look at?

20 A We received a request to evaluate a list of
21 sites.

22 Q And did you check them off as you visited
23 them?

24 A Well, mind you, they were visited more than
25 once. Our people would go back different times of the

1 day and different days of the week to observe the
2 plants. So what happened is that a field person would
3 be assigned the plants in an area, and that person would
4 work those plants, go back, check over. So ultimately
5 when all of the plants in the area had been checked,
6 then they were crossed off the list.

7 Q Each plant was crossed off as you visited it?

8 A No, each plant was crossed off at the end of
9 the week after it had been visited several times.

10 Q And what percentage of the plants on the TES
11 list did you succeed in visiting?

12 A We visited all the plants that TBS requested
13 us to visit.

14 Q Do you know what was the principle by which
15 TBS selected these plants?

16 A I do not.

17 Q What was the product of your work? Was it a
18 written product?

19 A We sent a summary -- I believe a copy of it is
20 in the work sheets -- a narrative summary of the
21 observations in each of the locations. There were some
22 verbal discussions, very few, but there might have been
23 a verbal discussion of the location. But most of them
24 are summarized in the written sheet.

25 Q Now, without taking time to look at any of

1 these, is it fair to say that the vast preponderance of
2 your reports provide an indication of whether or not,
3 yes or no, the plant can be served by trucks? Isn't
4 that really the heart of what you are reporting on
5 here?

6 A Whether or not it can be served by truck,
7 whether or not it is being served by truck, and whether
8 or not the rail is active.

9 Q How often would you say the rail wasn't active
10 at all?

11 A There were several instances where there was
12 no evidence of rail activity.

13 Q Do you mean that the track was closed or
14 simply you didn't see a boxcar or some other piece of
15 equipment?

16 A We did not assume inactivity unless the track
17 were heavily rusted or giving obvious signs of nonuse.

18 Q Now, were there cases where you would report
19 back that you hadn't found a truck lay and TBS would
20 call you up and say could you explore further and see
21 what modal options this plant might have besides rail?

22 A To the best of my knowledge, no.

23 Q Were there cases where you did report that you
24 didn't find a truck lay?

25 A The cases we reported that we could not even

1 observe the loading area without trespass.

2 Q And you simply didn't get any feedback from
3 TBS about those cases?

4 A None whatsoever.

5 Q Did you get any feedback from them about any
6 cases?

7 A Perhaps you would like to define what you mean
8 by feedback.

9 Q Well, I mean it quite broadly to be any
10 dialogue between the two of you. I am really searching
11 for your help in what kind of dialogue may have gone on
12 during this process.

13 A Our purpose was simply to observe and report.
14 There was no interference on the part of TBS in our
15 conduct of this observation.

16 Q And I didn't mean to imply that at all. I
17 simply am trying to get a feeling for whether this was a
18 process that involved communication between you and TBS,
19 and TBS telling you what they were interested in and
20 having you focus on particular issues.

21 A I would say no, there was none of that.

22 Mr. Anderson of TBS accompanied me into the
23 field with one of my people on an afternoon to get a
24 feel of the nature of the observations, and to
25 familiarize himself with how the observations were

1 conducted, and I would say that would be as close to a
2 feedback as I could respond to your question.

3 Q Did he express himself of any judgments during
4 that sojourn? Did he say we have learned a lot about
5 something and describe what he had learned?

6 A A lot of water has flowed down our river since
7 that day. I couldn't tell you.

8 Q Did he say anything about the intensity of
9 truck competition that he had learned about from
10 visiting these plants?

11 A Mr. Roach, when it comes to discussions of
12 truck competition, I probably initiate most of the
13 discussions.

14 Q Let's turn to page 2 of your responsibilities,
15 which is when TPS would send you a particular traffic
16 cell that had failed the various screens and asked you
17 to see if you could find some modal options, let me --
18 I'm going to use the exhibit I just marked, but I want
19 to hand you another exhibit briefly which is UP Exhibit
20 14. It has already been admitted. This is a document I
21 talked to Dr. Anderson about, and he told me, I believe,
22 that it was some notes of the SE contact person for the
23 overall TPS study.

24 What I want to ask you about is on the third
25 page marked 1651. There is an annotation there which is

1 similar to a lot of others in these papers, and it says
2 should be able to argue options although unless FP,
3 which I take is a reference to you, Mr. Baker, comes up
4 with capacity, may have to reluctantly concede.

5 My question to you, just as an introductory
6 question on this subject, is did you regard your mission
7 as finding truck capacity when you received these
8 cells?

9 A We regarded our assignment to handle a
10 brokering of truckloads in a theoretical time block.

11 Q I'm going to have to ask you to explain that
12 further. What does that mean?

13 A That simply means that Transportation Research
14 and Marketing has been issued a license to be a broker
15 of property, that we have in the past operated a freight
16 brokerage for a client, that we approached our
17 assignment of finding trucks as if the loads actually
18 would exist in a timeframe not yet defined, so that we
19 approached the shipper -- I'm sorry, the carrier, with
20 the probability of a load in a near distant future. We
21 didn't know exactly when the load might be available,
22 but would he make equipment available?

23 Within that framework, we sought actual
24 capacity. We attempted to define whether or not the
25 carrier had capability of meeting a commitment, what his

1 existing fleet supply was of equipment, what his
2 penetration into that market was at the present time,
3 and whether or not we could put any confidence in his
4 commitment to serve.

5 We approached each of these assignments as if
6 we had the load in hand. If we were out to sell, and in
7 fact, on occasion we did get rid of some of the freight
8 at hand inadvertently. We had one firm call us back and
9 tell us we didn't need to worry anymore; they had the
10 freight.

11 So I think that gives you a feel of how we
12 approached it.

13 I can tell you that we were exceptionally
14 comfortable with the commitments.

15 Q So at least in that one instance you found a
16 real modal option because the freight was delivered to
17 the trucker.

18 A Mr. Roach, I would assure you that more than
19 that one load isn't any longer on this list. I am sure
20 they have found some of the other ones by now.

21 We have had over 200 calls back from the
22 carriers we worked with worrying further about these
23 loads.

24 Q I think I will withstand the temptation to
25 pursue that.

1 A Don't. Yu might cost me a client.

2 Q And ask you this. What was the first question
3 that the trucking company would ask you when you would
4 call them up and say you had this load?

5 A It would vary with company to company. I
6 think across the board the concern was over the nature
7 of the freight, the frequency of the loads, how quickly
8 they would have to absorb them in a time period, whether
9 or not the rates were at current market levels or
10 whether they had room to move if there were a balance
11 problem.

12 Q Let me stop you there.

13 What did you tell them about the rates?

14 A We told them they would have to consider all
15 hauls at current market rate.

16 Q When TBS told you about these shipments to
17 investigate, exactly what information did you receive
18 from them?

19 A We received an origin-destination pair, a
20 commodity, and a tonnage.

21 Q Did you get the name of the actual shipper?

22 A We did not get the name of the actual
23 shipper.

24 Q Did you get any details about his logistic
25 situation, the way out of his plant and so forth?

1 A If you will recall, we had visited many of
2 these plants. We obtained no other information.

3 Q Do you know whether you visited many of these
4 plants, the ones for these shippers?

5 A We have not visited many of these plants
6 here. That's what I say. But we have visited many
7 plants; if they fell on the list, we had that.
8 Otherwise, we got nothing.

9 Q Well, we are talking now about --

10 A The loads.

11 Q The final step in the TBS tonnage scrutiny
12 process.

13 A That's right.

14 Q And my question for you is how many of --
15 well, let me back up and ask you this.

16 Are we on the same wavelength that what you
17 received was focused shipper movements? Is that a term
18 that is familiar to you?

19 A I believe that's what you could call these.
20 We received specific movements, five-digit commodity,
21 between defined points.

22 Q For a particular shipper, but you weren't told
23 the name of that shipper?

24 A We have no idea who the shipper is.

25 Q But in the real world, it had been a movement

1 of a real shipper in 1982, isn't that right?

2 A That is correct. That's our understanding.

3 Q And the question is, in your first phase, when
4 you visited all the plants, do you have any idea how
5 many of these focus shippers at the last phase you
6 actually visited?

7 A No, not at all. We do, however, have great
8 comfort that these are real shipments. We encountered
9 some of the motor carriers who are hauling from
10 identical modes.

11 Q Okay.

12 Did they send you the rail rate?

13 A No.

14 Q Did the trucking company ever ask you how the
15 goods were moving today?

16 A In some instances.

17 Q And what did you tell them?

18 A Rail.

19 Q Did they then ask you what is the rail rate?

20 A Most motor carriers are quite conversant with
21 the competitive rail structure.

22 Q Are they quite conversant with contracts, rail
23 contracts?

24 A Rail contract rates are terribly hard to be
25 conversant with from published sources, but a great many

1 corporate traffic managers share them.

2 Q Well, the question was --

3 A I can't tell you beyond that. I don't know
4 whether any specific carrier was conversant with
5 contract rates.

6 Q We are talking about motor carriers now.

7 A That's what I'm talking about.

8 Is there any other?

9 Q Well, there are some railroads. There are
10 going to be fewer, I suspect.

11 Let me ask you about Exhibit 40 now.

12 You say on page 26 of your verified statement
13 in the second sentence that you interviewed these motor
14 carriers to determine their willingness and ability to
15 provide truck service, is that right?

16 A That is correct.

17 Q That's what we have just been talking about?

18 A That's what we just discussed.

19 Q And you just told me that the willingness was
20 at current truck market rates.

21 A Current truck market rates.

22 Q Was that a published or going rate, or was it
23 a contract rate?

24 A In most instances the motor carrier rate is
25 still a published rate, or at least a tariff rate.

1 Q And who did these interviews now that we are
2 on the second phase?

3 A These interviews?

4 Q Yes.

5 A Most of these interviews -- well, I would say
6 all but a handful of these interviews were conducted by
7 two of my people, both very competent.

8 Q How many in total were involved, how many
9 interviews?

10 A How many interviews?

11 Q Yes.

12 A Oh, heavens. There's 189 movements, and I
13 imagine we had upwards of 1000 interviews, maybe more.

14 Q Do you recall how many of the 189 movements
15 you were able to find, as you say, willingness and
16 ability to provide truck service?

17 A I would say a substantial number of them.
18 There were some that we could not find, some that we
19 could find only a limited amount of capacity for. But
20 for the most part we were ultimately able to find
21 capacity, although for some of them we searched quite
22 diligently.

23 Q Did you have a script or questionnaire that
24 you followed in this interview?

25 A We had a basic format.

1 Q Was that in your head, or did you have it
2 written down?

3 A I can't honestly tell you how the girls
4 handled it? I know initially they had it down, but I
5 suspect by the time our people had worked for two or
6 three days, that it was more tctally committed to a
7 state of memcry.

8 Q Well, I have been through a lot of your work
9 papers, and I haven't seen any script or questionnaire
10 or survey form.

11 Do you think that there is one and it didn't
12 make its way into the work papers?

13 A I would imagine that -- both of our people
14 made notes and used them for a while, as I said, and
15 discarded them. I do not believe that there was a set
16 that went in the work papers or should have gone in the
17 work papers.

18 Q So the only evidence we have, turning to
19 Exhibit 40, the next to the last page of that exhibit.

20 Is that a representative page of notes from
21 some of these interviews?
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1 Q You had a seven-digit STCC code?

2 A We had -- we did not have a STCC code. We had
3 a commodity.

4 Q Well, let me ask you about the first page of
5 Exhibit 40. What is that? Actually, the first five
6 pages.

7 A That is a summary page of some of the loads,
8 some of the movements for which we sought capacity.

9 Q The first five pages of this exhibit? Just
10 look through those. Are those all the same kind of
11 summary pages?

12 A Yes, those are summary pages.

13 Q Did those come to you from TBS?

14 A No. We had -- some place in the work papers
15 you will find some of the sheets that came from TBS with
16 the specific movements on them.

17 Q So you prepared these papers, the first five?

18 A These were prepared in my office. Yes.

19 Q Is this the full information in Columns 2 and
20 3, the five-digit STCC code and the name of the
21 commodity? Is that the full information you had about
22 the definition of the commodity?

23 A In some instances, I think we had a little
24 more information about the commodity, but this is the
25 least information we had about the commodity.

1 Q Is it mostly -- is it generally also the most
2 you had?

3 A I would say for the most part that I may have
4 spoken in error. We may have been limited to a
5 five-digit STCC in many instances.

6 MR. ROACH: Let me ask to mark UP/MP-C-41.
7 This is an excerpt from the Standard Classification
8 Directory, STCC Code 32.

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 UP/MP-C-41.)

15 BY MR. ROACH: (Resuming)

16 Q Just purely by way of illustration, Mr. Baker,
17 on Exhibit 40, Page 3,063, the third page of that
18 exhibit, toward the bottom of the page there are three
19 entries for STCC Code 32411. Do you see those?

20 A I see them.

21 Q And it says cement. Right?

22 A That's correct.

23 Q Now, if you look at Page 494 of Exhibit 41,
24 there are six different seven-digit codes within that
25 five-digit code. Isn't that right?

1 A There are.

2 Q Would it make any difference in terms of truck
3 capacity and truck rates whether the commodity was tile
4 grout, 3241135, as opposed to, say, cement flue dust,
5 3241120?

6 A Obviously, it would make a difference. I
7 think you will find in most every instance we assume the
8 worst case. In terms of specialized equipment, it would
9 have been far easier to have found capacity of vans,
10 flats, or reefers to haul package goods than it would to
11 find a bulk tank to haul the bulk cement in.

12 I said we assumed the worst case. We
13 obviously didn't assume that it was Ready-Mix running
14 that far with water added, but beyond that, we assumed
15 that if we found bulk capacity, that that would be the
16 worst case.

17 Q Actually, I think Ready-Mix is 32412, so you
18 were safe in your assumption, but isn't it true that the
19 rates for moving these six different seven-digit items
20 by truck would vary quite considerably?

21 A Package goods would vary hardly at all. After
22 1980, the truck rates went almost straight line. We
23 have in the United States today an FAK rate structure.
24 It really doesn't matter what you are moving.
25 Everything we see, the truck is sitting right now for

1 all intents and purposes in the dollar a mile range. In
2 the vans, flats, or reefers, it wouldn't make that much
3 difference.

4 Q This STCC code directory doesn't tell me
5 whether it is packaged or not, does it?

6 A No. That is all we made, as I say, the
7 assumption of a bulk movement. But 85 percent of your
8 equipment is vans, flats, or reefers, and we dispose of
9 that, and the bulk is separate.

10 Q And if it is a bulk movement, are the rates
11 going to vary depending on which of these six different
12 seven-digit commodities might be involved?

13 A Again, I think you will find that most of them
14 are going to move packaged rather than Portland Cement,
15 but the rate would not again vary that much in standard
16 tanks.

17 Q All these different things can go in standard
18 tanks?

19 A No, negative. I simply told you most of them
20 would go packaged, but I suspect, and there are a couple
21 of them that -- I can't tell you from personal
22 experience, but I suspect that most of them would go in
23 standard tanks, in pneumatics.

24 Q Is it possible that some of them could go in
25 other kinds of specialized motor vehicles?

1 A Yes, but if you move away from a pneumatic,
2 again, you move to the lesser level tank, so you move
3 away from the worst case situation, either in specific
4 equipment supply or in rates.

5 Q The worst case in the sense that the rate
6 won't be quite as high and the equipment won't be quite
7 as scarce?

8 A That's right.

9 Q Is it necessarily the worst case in terms of
10 how much more you have got to pay compared to the
11 railroad?

12 A That would depend on the specifics of any
13 specific market and where they would find their
14 balance.

15 Q Well, you had these two assistants making
16 these calls, right?

17 A Yes.

18 Q Did you leave it to them to decide what the
19 precise commodity was?

20 A In most instances, yes.

21 Q And did they make a record of that?

22 A You see the record here.

23 Q If I don't find a seven-digit STCC code in any
24 of these notes, can I assume that your assistants were
25 not going to the directory and picking out a very

1 precise commodity?

2 A I think you will find that you cannot make
3 that assumption. In most every instance, we were
4 seeking -- if there were a need -- now, you can see that
5 in this instance we made the assumption of Portland
6 Cement in the 32411, made the assumption of bulk
7 Portland Cement.

8 Q Wait a minute. How do I know that?

9 A You simply -- you see that, A, we specified
10 the equipment type bulk, all right, and so obviously we
11 eliminated all the packaged goods. In some instances,
12 you will see that we did not make that assumption, and
13 you will see that we sought equally capacity for
14 packaged and for bulk.

15 Q Are you testifying that none of the other
16 seven-digit codes in 32411 other than Portland Cement
17 would go by bulk? Is that what you are saying?

18 A No, I am saying that it has obviously made
19 that assumption. I don't know personally whether
20 Klinker Cement would go by bulk or flue dust. Those are
21 cements I am not familiar with. I have moved. The
22 Portland Cement, we made the assumption that that is
23 what we had from the information we had.

24 Q I don't want to belabor it, but how is it
25 obvious that you assumed Portland Cement -- is it

1 something other than the word "bulk" here?

2 A Well, I will just tell you, we assumed
3 Portland Cement.

4 Q Okay. Do you remember personally this
5 movement?

6 A I remember specifically these movements, and
7 these were Portland Cement.

8 Q Very good. Now, what did your interviewer say
9 about the origin, exact origin of the commodity?

10 A The exact origin was simply the community,
11 Richmond, California, Clarkdale, Arizona, San
12 Bernardino. Richmond happened to be gasoline. San
13 Jose.

14 Q In the case of these three cement movements,
15 they are listed as Clarkdale, Arizona, San Bernardino,
16 California, and San Jose, California, right?

17 A That's correct.

18 Q And that is all you told the shipper, was the
19 name of the city?

20 A The carrier.

21 Q I am sorry, the carrier.

22 A That's all we told the carrier.

23 Q And the destination? Did you simply tell them
24 Phoenix?

25 A Phoenix.

1 Q What did you tell them about the logistics of
2 the loading and unloading facilities?

3 A Nothing. We didn't have any information.

4 Q Didn't they want to know about that?

5 A Basically, first of all, a truck doesn't have
6 to serve a siding or has no restrictions on switch, so
7 we don't need to worry about where in Phoenix or where
8 in Clarkdale, so the specific plant location is almost
9 irrelevant.

10 Secondly, people shipping bulk and asking to
11 move bulk truck are not asked to move bulk truck unless
12 they can load a bulk truck. So, in most instances, a
13 carrier will not be concerned with the nature of the
14 facility unless it requires some specific connections.

15 Q What did your interviewers tell the carriers
16 about the volume?

17 A If you notice, we converted the tonnages to
18 truckload equivalents, and then we sought 50 percent
19 over and above the need, and the reason obviously for
20 asking for 50 percent more than the capacity required
21 was to give a confidence level to the availability of
22 equipment, so we would tell them that we were going to
23 need 50 truckloads of barley a month, 54 truckloads of
24 barley or four truckloads of cement a month from --
25 well, 218 truckloads of cement a month from San Jose to

1 Phoenix.

2 Q So you translated these tonnage figures here
3 on Exhibit 40 into truckloads?

4 A Into truckloads.

5 Q And you put on a 50 percent confidence
6 factor?

7 A We put on a 50 percent confidence factor.

8 Q There is a column on this exhibit called
9 Equivalent Truckloads Per Year. Did you make any use of
10 that in your discussions with the carriers?

11 A That's how we converted tons per year to
12 truckloads per year. Then we reduced that to truckloads
13 per month or per week in discussing with the carrier.

14 Q How long did you tell the carrier that you
15 were going to have the movement going?

16 A Indefinitely.

17 Q Oh, so many truckloads a week or month for the
18 indefinite future?

19 A Yes, for at a year's period.

20 Q Isn't the issue of volume and regularity of
21 shipments significant in determining rates?

22 A In all shipments, there is a lack of
23 predictability. There are rhythms, but a motor carrier
24 who is assured he will get 100 loads a year or get ten
25 loads a month knows that that may be six loads this

1 month and 12 next. And he knows that there is
2 seasonality in some markets.

3 In a market like Phoenix, your building trades
4 don't go down in the winter like they do in an area like
5 Montana. So, into a market like Phoenix you can pretty
6 much assume that you would have a constant flow. If
7 this movement were going to Billings, Montana, we would
8 not have been able to make that assurance.

9 Q All right. Now, let's just stay with one of
10 these hypotheticals. Let's assume that you called
11 several carriers, and that you found one who said he was
12 willing to carry that volume at the going rate. Did you
13 ask him what the going rate was?

14 A In some instances, but I doubt that the rates
15 were discussed in the majority of movements.

16 Q If they were discussed, do we have to look to
17 these interview notes as the only source to find out
18 what they were?

19 A That's correct.

20 Q Did you ever get into discussions about
21 expanding the truckers' capacity of the fleet?

22 A The answer of some of the carriers who serve
23 specific markets would indicate that their equipment
24 fleets might be limited, and that there may be a
25 willingness to expand equipment, but most of the

1 carriers who committed have adequate capacity.

2 Q Let me put it this way. If I was a small
3 trucking company, and you called me up, Mr. Baker, and
4 said I would like to place 588 truckloads a month of
5 Portland Cement with you forever, for the indefinite
6 future, wouldn't I be pretty likely to say it is a deal,
7 and if you said at the going rate?

8 A If you were, Mr. Feach, you wouldn't be in
9 business very long. I ran sales programs in this
10 industry for a long time. Truckers are promised great
11 amounts of freight. There is no way to enforce such a
12 promise.

13 The general tendency is to commit equipment
14 within your capacity to handle, and to never commit
15 equipment that you would have to hypothecate your
16 revenues on for the unknown future until such time as
17 you were actually under the movement and running. In
18 fact, if you look at these movements, you will find many
19 of them are divided over five and six carriers, which
20 contravenes your assumption.

21 The carrier says, I will take ten of them. I
22 have got that much capacity. And he says to himself, if
23 the ten prove out, I will figure out how to jockey and
24 get 20. I don't believe that you will find much
25 equipment overhypothecated here.

1 Q I assume that if this had been a conversation
2 in the real world between a broker and a truck company,
3 first of all, the two people talking to each other would
4 be living this sort of experience day in and day out,
5 and it would be a familiar kind of conversation to them,
6 wouldn't it?

7 A Not necessarily at all.

8 Q No?

9 A No.

10 Q Then let me try to pursue it without that
11 assumption. In such a conversation, is it fair to say
12 that there would be an initial conversation where the
13 trucker would express his general willingness, but that
14 the trucker from his perspective would expect there to
15 be some followup discussions where he found out more
16 about the shipper, more about the shipper's financial
17 position, and more about the facts, the bona fides of
18 the arrangement and so forth before he went ahead and
19 really, really committed himself?

20 A If you have examined our notes, you will find
21 that on average there were two to four conversations
22 with each carrier where a commitment was made. You will
23 find that the carriers checked their rates, checked
24 their capacity, discussed internally their ability to
25 handle such a movement.

1 Q You say they checked their rates. Why were
2 they doing that?

3 A Why does anyone check what his present rate
4 level is, and whether or not he thinks he could handle
5 such a movement? They were making internal management
6 decisions over whether or not they could handle the
7 movement that was being offered to them.

8 Q In other words, they were considering whether
9 their company could handle this movement at a profit at
10 the going rate?

11 A That's right.

12 Q And you never talked about what that going
13 rate was, or occasionally or rarely you might, but
14 generally you didn't. Is that right?

15 A Generally we left it for them to determine
16 internally what the rate level was and what the market
17 rate level was.

18 Q So they were making a calculation of their own
19 cost situation compared to the going rate?

20 A Compared to the market rate.

21 Q And you don't know what either of those
22 numbers were, right?

23 A We left that to the carrier.

24 Q You don't know what the rail rate was, right?

25 A No.

1 Q Now, tell me about these three or four
2 conversations. In general, what tended to happen in
3 each one of the conversations? How did it focus down
4 from one conversation to the next?

5 A In general, a contact was made. Often the
6 initial contact with the carrier might be to a dispatch,
7 and the magnitude of the load might be such that you
8 need to go to traffic. You would then visit with the
9 traffic people over the characteristics of load, tell
10 them the specifics that we had available.

11 They would research. They would come back,
12 want to know a little more information. Sometimes we
13 could give them a little more. Usually we couldn't.
14 They would come back again with the fact that they can
15 commit ten loads, or they could commit 20, or that they
16 had excess capacity moving in this corridor, whatever
17 the nature was, and ultimately, if we got a commitment,
18 and I do not in any way want to imply that we got a
19 commitment from every call, if we got a commitment, they
20 called and said, we would be able to handle, if the move
21 develops, we can handle X number of moves.

22 Q How did you test that commitment as to whether
23 it was real, whether they would follow through and
24 deliver the promised service?

25 A Well, as I said to you earlier, we had no way

1 of testing the commitment, obviously, because we had no
2 freight to tender.

3 Q Except in one case where some freight showed
4 up anyway.

5 A Except in the case where the man called us
6 back and told us not to worry about it, it was in good
7 hands. But the fact that over 200 carriers called us
8 back, following up on the availability of this freight,
9 wanting to assure us that they did have the capacity,
10 offering to fly out and sit with us if they could help
11 us work out the movement details, gives us a high level
12 of confidence that we could cover each and every one of
13 these loads that we said we could cover.

14 That confidence is reinforced by the loads we
15 couldn't cover. Had your premise had validity, we would
16 have had no uncovered loads.

17 Q I am not sure that is right. What I was
18 asking you is, how do you know whether these commitments
19 would have been reliable? That is to say, there are
20 presumably a lot of reasons why a trucking company might
21 not succeed in following through on such a commitment,
22 and I am asking you what indications you had as to
23 whether that was the case.

24 A Well, I think I will just have to simply say
25 to you, it has been my experience in 35 years in this

1 business that I have personally dispatched equipment
2 against telephone commitments to pick up loads, I have
3 accepted on behalf of clients commitments and had the
4 loads move with frequent enough reliability that I have
5 every reason to place reasonable confidence in these
6 numbers.

7 Now, at the same time, I will hasten to tell
8 you that we have a 50 percent overkill in here, because
9 there may have been a problem on one load, and we would
10 hate to have these railroads merge and have assured this
11 Commission that we could cover the loads, and then not
12 be able to do so.

13 So, we did put an overkill in there.

14 Q I take it that there are unreliable trucking
15 companies in this country.

16 A I wouldn't admit to that.

17 Q Let me ask you to look at Page 3,312 of
18 Exhibit 40, the next to the last page. I direct your
19 attention to the third entry on the page, the one for --

20 A You have to forgive me. What document are we
21 on?

22 Q We are on Exhibit 40.

23 A Okay.

24 Q The next to the last page. I am looking at
25 Curtis.

1 A Curtis Feed.

2 Q Now, is that the notes of your assistant of a
3 telephone call to a trucking company in Minnesota?

4 A It is.

5 Q This is one of your two assistants, I take it?

6 A It is.

7 Q These are a little difficult to read, but
8 would I be correct in interpreting this to say that
9 Curtis presently has 50 trailers, some of which are dry
10 bulk?

11 A That's correct.

12 Q And going on, it looks like right now they
13 make about two trips a month between Kansas and
14 California carrying corn or some other similar
15 commodity?

16 A That's correct.

17 Q And they say they could increase this to 16
18 loads a month.

19 A That's correct.

20 Q They also make five trips a month of dry bulk
21 and ten trips a month with other equipment between
22 Minnesota and California, right?

23 A That's right.

24 Q Finally, they would like to increase this flow
25 to 50 loads a month.

1 A That's the way I read it.

2 Q What do you interpret the phrase "ten a month
3 with other equipment" to mean?

4 A Well, since I didn't make the notes, I am not
5 in a position to interpret it other than equipment other
6 than dry bulk.

7 Q Right.

8 A So I would assume, without anything else here,
9 that we have either vans or reefers, perhaps flats.

10 Q And from the phrase in here that they would
11 like an increase of 50 loads a month, do you know how
12 many are dry bulk and how many are other equipment of
13 that increase they would like?

14 A I don't know. The person who made the notes
15 did.

16 Q In the lefthand column there are three
17 numbers, 59, 162, and 192. Am I right that those refer
18 to the file numbers on the righthand column of pages
19 like the first one on this exhibit? I would direct your
20 attention to the second page of the exhibit, the second
21 line, File 59.

22 A Okay.

23 Q Is that how the process worked here? The link
24 was the file number?

25 A The link was the file number.

1 Q File Number 59 on Page 2 of the exhibit shows
2 that this is a movement of sand from Minneapolis to
3 Bakersfield. Is that right?

4 A That's right.

5 Q And looking at the next to the last column,
6 based on our discussion earlier, I gather that what you
7 were looking for for that move was 19 truckloads a
8 month.

9 A That's right.

10 Q Now, going to the sixth page of this exhibit,
11 the page numbered 3,074, there is another entry for File
12 Number 59. Can you explain what that is all about?

13 A It shows you the target loads.

14 Q Nineteen?

15 A Nineteen. The carrier now moving it, the
16 fleet location and name, and we did a good job of
17 blocking in one place and not another, and there may be
18 some missing mouths at the table, it tells you the
19 present movements the carrier is making and the number
20 that they are willing to expand to.

21 Q So you have concluded that Curtis is willing
22 to pick up the 19 truckloads of bulk that you needed for
23 File 59.

24 A That's correct.

25 Q What is the explanation of the reference to

1 two per month? How does that link up with Page 3,312?
2 Does that refer to the two trips a month between Kansas
3 and California?

4 A I would suspect that it is probably a
5 reference to loads out of Minnesota, but I don't know
6 why she would have made that restriction unless she had
7 possibly used some of the capacity elsewhere.

8 Q Well, her notes indicate two trips a month of
9 corn from Kansas to California.

10 A But I also indicate five bulk trips a month
11 from Minnesota. So I would be more inclined to believe
12 that she may have had another load from Minnesota that
13 she might have also sought from use of this carrier.

14 Q Isn't it possible she made a mistake and
15 should have put five per month as the present volume on
16 Page 3,074?

17 A I would like you to explain that to her, not
18 I. I mean, it is a possibility. I don't mean to be
19 facetious. I was simply trying to point out that the
20 person who did this is an extremely capable and thorough
21 person, and I, knowing her, would be more inclined to
22 believe that she may have divided the capacity. Either
23 one of the two hypotheticals is possible.

24 Q Did you have an audit step in this process
25 where someone else went in and checked the work of the

1 first person?

2 A We have checked and rechecked, but that still
3 doesn't eliminate the possibility of an error.

4 Q Let me ask you to turn to Page 3,065 and focus
5 on the second file number that was on the margin. 162,
6 File Number 162, that is a bulk movement of sand from
7 New Prague, Minnesota, to the San Joaquin Valley,
8 right?

9 A Right.

10 Q It is the same five-digit STCC code as File
11 Number 59 that we looked at.

12 A That's right.

13 Q Now, on Page 3,088, you have an entry for File
14 162, and this one is a little more complicated. Can you
15 explain that one?

16 A What file number did you want?

17 Q It is File Number 162 on Page 3,088.

18 A All right. You see here that -- first, this
19 is one of those I explained to you earlier. We did not
20 feel comfortable in making an assumption as to how it is
21 moving, whether bagged or in bulk. So you have a dual
22 solicitation, 78 target loads if in van and 78 if in
23 bulk.

24 Q Let me stop you there and ask you why you
25 didn't make a dual assumption about File Number 59 on

1 the previous page.

2 A The number involved there was not nearly as
3 large. We simply made the worst case assumption. You
4 will find that that will happen several times in here,
5 where we will make the worst case assumption instead of
6 the dual assumption, and we will test the dual
7 assumption at the same time, in the same market.

8 There is no need to go through four sand
9 movements from Minnesota seeking both types of
10 capacity. We can demonstrate that the bulk is available
11 in all instances. Twenty-three percent of the trailers
12 out there are flats, and if it is sacks, it can go in
13 vans. If it is sacks, it can go in reefers. It is
14 difficult to get out of Minnesota. So, there is no
15 problem getting out of Minnesota with packaged goods.

16 Q The worst case assumption is bulk?

17 A The worst case assumption is bulk.

18 Q And you made that assumption for the smaller
19 move, but you made alternative assumptions for the
20 larger move?

21 A The larger move.

22 Q And why does that make sense? I am not sure I
23 understand.

24 A Because I think you would take great offense
25 if I made alternative arrangements for the smaller move

1 and did not verify it on the larger move. So what we
2 did is, where we had 78 loads, we assumed that they were
3 bulk, and we covered them bulk, and then we said, if
4 they were packaged, could we cover them van or flat, and
5 we covered them with vans.

6 Now, obviously, if I can cover the 78, and
7 instead of the 78 becoming a problem shipment, the 19
8 dead, I am 59 vans to the good.

9 Now, I think that makes sense, to cover the
10 larger movements, and not the smaller ones, but I am not
11 sure any more. I have been sitting here too long.

12 Q Well, so have I, so let me go to the next
13 question. On Page 3,088, you have an entry in the
14 column called Present Capacity, and it says 50. Is that
15 right?

16 A Present capacity, 50.

17 Q Where does that come from?

18 A That comes from the number of pieces of
19 equipment that a specific carrier had. That is an
20 equipment expression.

21 Q Is that back on Page 3,312, the statement that
22 Curtis has 50 trailers?

23 A Fifty trailers, right.

24 Q It says some dry bulk, right?

25 A Some dry bulk.

1 Q And you have a number 50 here next to hulk.

2 A I can't tell you whether that is Curtis or
3 not. You are assuming from the letter on the lefthand
4 side -- that may or may not be a C -- that that is
5 Curtis.

6 Q I guess that is right. What I am starting
7 from is the number 162 in the lefthand column on Page
8 3,312. Does that lead me anywhere in terms of what
9 entry on Page 3,088 is Curtis?

10 A It leaves you a good reason to assume, but I
11 can't tell you myself.

12 Q It looks like the first letter of --

13 A It looks like it is a C. I agree with you.
14 That is like I say. I see where you are coming from. I
15 just can't tell you.

16 Q It looks like the others are not C's, doesn't
17 it?

18 A It does.

19 Q If indeed that is Curtis, and if indeed
20 somebody put 50 there, that was a mistake, wasn't it?

21 A No. That is no mistake. She assigned
22 Curtis's entire fleet. She should not have assigned it
23 all because it is hulk. But you notice in the next
24 column she did not use any present movement. Curtis
25 presently is moving some to California, which is why I

1 questioned --

2 Q There is some confusion about that. In the
3 last place we looked where Curtis was down for two per
4 month. --

5 A Two per month, right. And I assume she had
6 allocated some, and she didn't allocate any here, if
7 this in fact is the one.

8 Q Okay. Now, if this is Curtis, you have it
9 down as willing to move 25 more trailers a month for
10 this Movement Number File 162. Is that right?

11 A That's correct.

12 Q And you had them down for 19 more a month for
13 File 59.

14 A That's right.

15 Q So up to 44 a month?

16 A If this is Curtis.

17 Q Now, the last one is File Number 192, and I
18 will tell you first of all that you get up to Page
19 3,065, and then the next numbered page in your work
20 papers doesn't give us the next file number, so I would
21 like to ask if you can find the continuation of this
22 list that should follow 3,065.

23 A I believe 189 was the total of the list.

24 Q Now, how did you get File Number 192 on Page
25 3,312?

1 A I am going to have to find out for you. I
2 don't have a number beyond 189.

3 Q You did tell me there were 189 moves. So the
4 mystery is, why do we have File Number 192?

5 A I will have to get you the other page.

6 JUDGE HOPKINS: This might be a good time for
7 a recess.

8 MR. ROACH: Could I just ask one more
9 question, and we will be finished with this horribly
10 complicated exhibit?

11 JUDGE HOPKINS: Go right ahead.

12 BY MR. ROACH: (Resuming)

13 Q Page 3,094.

14 A May I finish making a note? Just one minute,
15 please. Otherwise, you won't get what you want.

16 (Pause.)

17 A Thank you.

18 Q Now, I want to direct you to Page 3,094, and
19 we are coming to the end of the road, so to speak. File
20 Number 192 shows up on this page, right?

21 A Right.

22 Q And once again we are talking about bulk
23 movements. In this case it is 16 target loads, right?

24 A Right.

25 Q And it sort of looks like there is another C

1 there that has been partially obscured, doesn't it?

2 A Possibly.

3 Q And the present capacity is 50 again. Is that
4 right?

5 A Right.

6 Q And now you have committed them to expand 16
7 loads a month, right?

8 A That's right.

9 Q Okay. My last question is, if we have been
10 looking at Curtis in each of these cases, haven't you
11 got them up to 60 more movements a month between the
12 three that we have looked at?

13 A If it is Curtis we have been looking at, we
14 are up to 60 loads.

15 Q Do you think that that might have been another
16 error in the process here?

17 A I am not sure that there isn't another sheet
18 on Curtis to begin with. I will have to find out just
19 exactly what has happened here. They would like to
20 increase 50 loads from Minnesota to California. Whether
21 she discussed with them that they wanted to shift some
22 of the Kansas equipment, I can't tell you.

23 Q You have also got them -- one of the
24 movements, you've got them carrying -- which was on Page
25 3,062. File Number 59 is actually not from Minnesota.

1 It is from Wisconsin. Isn't that right?

2 A Well, that is no matter.

3 Q No matter?

4 A No matter. Trucks will shift back and forth
5 geographically from Minnesota or Wisconsin. If they
6 have the loads coming back into Minnesota, to relocate
7 100, 150 miles is no concern.

8 Q Do you know how far it is from Minneapolis to
9 New Prague, Minnesota?

10 A It is interesting you should ask. It is 27
11 miles. I was involved in litigation involving New
12 Prague three weeks ago.

13 MR. BOACH: I am ready, and indeed I may need
14 a break.

15 JUDGE HOPKINS: We will be in recess.

16 (Whereupon, a brief recess was taken.)
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1 JUDGE HOIKINS: Let's get back on the record.

2 BY MR. ROACH: (Resuming)

3 Q Mr. Baker, I have a couple more questions
4 about this movement of sand that we have been talking
5 about, and I direct you to page 3062 of Exhibit 40.

6 We have been looking at the second line for
7 File No. 59, and the STCC Code, am I correct, is 14413?

8 A Right.

9 Q Now, I want to give you a copy of the Standard
10 Transportation Commodity Code directory and ask you to
11 interpret two entries for me. The first one is -- and I
12 will give this to you to read, but I just want to read
13 it onto the record -- the first one is 1441310, which is
14 defined as sand, industrial. Let me start again, "sand,
15 industrial, unground and unloded viz. blast, core, core
16 and foundry, engine (traction), filtering, fire
17 (furnace), foundry glass, grinding, molding, polishing
18 or silicon," and then in the next entry, 1441315, which
19 is "sand, industrial, unground and bonded (naturally or
20 otherwise) viz. core, core and foundry, foundry, loam or
21 molding." Those are those two entries.

22 The question is, is there any difference
23 between those two seven-digit STCC codes in terms of the
24 logistics of moving them by truck or by rail?

25 A Well, actually, you have four sand

1 descriptions here in a row. Three of them I have no
2 trouble answering. I do not know what bonded sand is,
3 so I can't tell you if there would be any difference
4 between moving it and the other three.

5 Q Okay, thank you.

6 MR. SMITH: Mr. Roach, before we proceed
7 further, maybe this would be an appropriate time for the
8 witness to answer the questions you had before the
9 break.

10 MR. ROACH: Yes, that would be fine.

11 THE WITNESS: I would like to make two
12 comments. Number one, the page seems to be missing from
13 the work papers. I will have to get it out of the
14 machine for both of us, frankly, and we will see that
15 that is provided to you.

16 Number two, I would like to add that I
17 misspoke earlier in that we do have the data on the
18 shippers on the list. We know who the shipper is. We
19 did not provide it to our people to provide to the
20 carrier, but we did have a list with the shippers' names
21 on it. It was simply not provided to the carrier, for
22 very obvious reasons.

23 BY MR. ROACH: (Resuming)

24 Q Well, that's just a follow-up question.
25 Knowing the actual identity of the shipper,

1 did you go and investigate the shipper's particular
2 logistic situation?

3 A Many of them were the situations we had
4 suggested that we had looked at earlier when I answered
5 the question.

6 Q The ones you looked at in Phase 1?

7 A Right, one end of the shipment. We didn't
8 look at the other end.

9 Q And then that same shipper sometimes would
10 come down to you in Phase 2?

11 A Yes.

12 Q When you went through the Phase 2 process for
13 such a shipper, did you go back and get your notes from
14 Phase 1 to see the details about that shipper?

15 A The persons who handled most of the contacts
16 were the people who had worked Phoenix, Bakersfield and
17 Fresno, so they would have worked with a knowledge of
18 those three markets. The other markets I can't respond
19 whether they researched them or not, but I assume that
20 knowing the background, that they would have.

21 We looked at a few, but most of them were in
22 the hands of my two research assistants.

23 Q Now, let me ask you to take a look. Do you
24 have a copy of Mr. Anderson's verified statement?

25 A I do not.

1 MR. SMITH: This is not with the corrections,
2 so if you know if there is a corrected page, you might
3 say that.

4 BY MR. ROACH: (Resuming)

5 Q This is an uncorrected page, and it is Exhibit
6 3-16. It is in the first volume.

7 A Okay, Exhibit 3-16.

8 Q I am looking at the next to the last page of
9 Exhibit 3-16, and there is an entry there for Inbound
10 STCC Code 14 on the left hand page there at the top.

11 Do you see that?

12 A Inbound STCC Code 14, right.

13 Q The indication is that there were 37,000 some
14 tons by rail and none by truck, correct?

15 A Correct.

16 Q And then if you could just look over at
17 Exhibit 3-18 for STCC Code 14, inbound, mileage of 1000
18 or more, or mileage of more than 1000, the entry is
19 five, is that right?

20 A Yes.

21 Q The legend indicates that that means that you
22 found shipper options, right?

23 A That's right.

24 Q Am I right that the way you found these
25 options was through the process we just went through in

1 these work papers?

2 A That is correct.

3 Q Is that everything you did for that particular
4 item?

5 In other words, let me clarify the question.
6 Is the interview of Curtis the information on which the
7 existence of shipper options would be based here?

8 A That is one. If you will look in the work
9 papers at the fuel study interviews at Button Willow,
10 California, which is a truck stop on I-5 fourteen miles
11 to the west of Bakersfield, you will find that we picked
12 up 20 loads of STCC 14 moving from as far away as
13 Gascoyne, North Dakota, Aurora, Utah, Lovell, Wyoming,
14 Vancouver, British Columbia, and Sansaba, Texas. We
15 established that there were a great many loads of STCC
16 14 moving.

17 If you look at the El Paso loads for 14, you
18 will find that we have drilling mud, gravel, dirt
19 moving. We have a load of blasting sand from
20 Philadelphia, Pennsylvania moving to Los Angeles. We
21 found enough evidence of 14 moving at the various
22 interview sites that we had no qualms whatsoever about
23 accepting the long distance movement of nonmetallic
24 minerals.

25 Q Okay.