

F.D. 30400 - 10/31/84 - PAGES- 4828 - 4872

1 My question for you is in terms of the
2 capacity to move that number of tons inbound more than
3 1000 miles to Bakersfield.

4 Was the factual basis for that specific
5 finding in your study the interview of Curtis?

6 A Not only Curtis.

7 Q There were other shippers as well?

8 A Certainly.

9 If you remember our discussion --

10 Q I said shippers, and I should have said
11 carriers.

12 A Well, certainly you remember the discussion
13 where we debated the C, whether or not the letter was a
14 C, and there were two other carriers. We have more than
15 one carriers in those blocks. You can't say -- you
16 can't base anything on one carrier. There are a
17 multiplicity of carriers, and there is evidence in the
18 interviews of substantial movement. The two reinforce
19 each other.

20 Q Okay, let me rephrase the question.

21 Is Curtis -- is the detailed information we
22 saw in the Curtis entry representative of the sort of
23 information that you obtained in order to arrive at a
24 judgment for TBS about whether or not they were logistic
25 options?

1 A Yes. We interviewed fleets and determined,
2 and continually contacted these fleets.

3 Q All right. Let me move to another subject.

4 We have seen indications in your work papers
5 that you made a particular study of potential flatbed
6 truck capacity for movements from the Pacific Northwest
7 to Phoenix, is that right?

8 A That's true.

9 Q Was that based on trucking company
10 interviews?

11 A that was all trucking company interviews.

12 Q Was there a survey form or a script for those
13 interviews?

14 A There was a basic script.

15 Q A written script?

16 A No, simply verbal instructions to the
17 enumerator.

18 Q What were the verbal instructions?

19 A The verbal instructions were to determine
20 whether or not the carrier was presently moving to
21 Phoenix, the amount of capacity available in the fleet,
22 the number of flatbeds was specifically addressed to
23 flatbed capacity, the number of flatbeds in the fleet,
24 the number of present movements to the Phoenix market
25 area, whether or not there was a willingness to expand

1 the number of loads, the rate of movement to Phoenix,
2 what if any qualifications were placed on the
3 willingness to expand.

4 Q And did you give the trucking companies a
5 particular commodity?

6 A Number.

7 Q And did you ask them about the rate they would
8 charge?

9 A The market rate. It was a well-established,
10 movement of lumber from Oregon to Phoenix, and there is
11 a market rate on lumber, and we simply assumed that rate
12 across the broad spectrum.

13 Q Okay. Let me go back and just clarify
14 something I asked you before.

15 I have asked you if you were provided with
16 information about rail rates, and I just want to clarify
17 that question and ask it to you separately for the two
18 phases of your work.

19 The first phase of your work was going out and
20 physically inspecting facilities. At that stage did you
21 have any information about rail rates?

22 A Well, let me tell you, on rail rate, I told
23 you earlier there is an FAK rate structure. Now, that
24 FAK rate structure prevails in both trailer freight and
25 in -- well, in trailer freight, highway and rail would

1 be the easiest way to describe it.

2 If you look at Mr. Matley's exhibit which the
3 UP entered into the record, you will find that the rail
4 trailer freight rate is 75 cents to 80 cents a mile,
5 with the exception of the Conrail territory where it
6 moves to 90 cents. That is the two and a half FAK
7 ramp-to-ramp rate with the carrier furnishing the
8 trailer. If the shipper furnishes the trailer, there is
9 a deduct.

10 That rate, adjusted to the brokerage fee and
11 \$100 cartage at each end, which is basically your urban
12 cartage rate, gives you a \$250 plus 80 cent a mile
13 production function which gives you an FAK rail rate,
14 TOFC intermodal, of approximately 90 cents to \$1.10,
15 depending on the length of the movement. That brackets
16 very closely to the FAK truck rate of \$1.00.

17 The tremendous demise in the use of boxcars,
18 50 foot car loadings dropped over 900,000 in '82, were
19 down further in '83, and our shipper interviews indicate
20 that they are dropping even further, and the willingness
21 of shippers to substitute trailer freight -- no colon --
22 truck or rail, caused us to use the trailer freight rate
23 as a proxy in both instances.

24 As the haul lengthens, the FAK trailer rate on
25 rail drops below truck on the exceptionally long hauls,

1 if you assume close proximity to the ramp on both ends
2 of the haul.

3 Q I don't want to cut you off, but my question
4 was were you provided with any information about rail
5 rates by TBS in Phase 1 of your work?

6 A No. We used our own knowledge of the rail
7 rate structure and of the intermodal rate levels.

8 Q So you didn't know the rail rates that were
9 being paid by the particular shippers whose facilities
10 you went to inspect?

11 A No. That we did not know.

12 Q And is the same true in Phase 2 of the study?

13 A That's true.

14 Q Okay, that was really all I wanted to pin
15 down.

16 Let me give you a copy of a previously
17 admitted exhibit, UP/MF-C-15, which is a letter from Mr.
18 Renecke of TBS to you.

19 I want to direct your attention to paragraph 3
20 on page 1. Mr. Renecke --

21 A Before you do, may I comment on this letter?

22 Q Well, I think I had better ask a question.

23 A We did not do what is in the letter. That's
24 what I was going to say.

25 Q You have perfectly anticipated my question.

1 You didn't do what he asked you in paragraph 3 or in
2 paragraph 4?

3 A By the time this letter had arrived, we were
4 working on verbal instructions from Mr. Anderson, and
5 had done other work that was used as an alternate to
6 this letter. So we never followed up on any of the
7 items in this letter.

8 Q Okay. I do need to pursue this a little bit.

9 Paragraph 3, as I understand it, is asking you
10 to tell Mr. Renecke or tell TBS whether truckers would
11 enter the Arizona, New Mexico and Imperial Valley feed
12 grain markets, that is, whether they would truck grain
13 to those locations from southwest Kansas if SFSP, after
14 the merger, raised rates by, and it says X percent, or
15 otherwise adjusted service or car supply.

16 And I understand you said you didn't do that.
17 And my question is did you answer that kind of question
18 anywhere in your study? Did you ever get asked would a
19 rail rate change of X percent induce truckers to enter a
20 particular market at a particular rate?

21 A Well, yes, we did address such questions.

22 I should respond to this one with a statement
23 that truckers are in this market at the present time,
24 that there is some feed grain moving by truck from
25 southwest Kansas to Arizona. There is feed grain moving

1 by truck from Nebraska to Arizona. We did talk to
2 truckers who were moving feed grains from southwest
3 Kansas.

4 It is not a big move, and yes, an increase in
5 rail rates would bring on an additional amount of
6 entry. The X would determine it. The magnitude of the
7 X would determine the magnitude of the entry.

8 Q That statement is a general statement, and my
9 particular question was did you ever try to answer that
10 question in a particular market for a particular move?

11 A The answer I give is yes. We interviewed
12 truckers from southwest Kansas, I thought I just told
13 you that, specifically as to their present participation
14 in Phoenix grain moves and Arizona grain moves were than
15 Phoenix because it is a bigger market, the whole Salt
16 River area, and what would be required to get further
17 entrance into the market.

18 Q Well, the question is did you ever go out and
19 try to find out what effect a particular percentage
20 increase in rail rates would have? That's the
21 question.

22 A No. X was an unknown. We --

23 Q The answer is no?

24 A Well, the answer isn't no. The answer isn't
25 yes. We played with it.

1 Having dropped this, it was one of these
2 things you start to do. You interview two dozen
3 fleets. You start to frame what is happening. And then
4 you don't follow up on it, so the answer is neither yes
5 or no. The answer is no, we don't have a conclusive
6 answer. The answer is yes, we did work in it, which is
7 what your first question was, did you ever in any way do
8 it?

9 Q Right, that's a very fair answer, and I
10 understand that you have testified that it is your
11 opinion that an increase of some unknown amount in rail
12 rates would at some point attract trucks into the
13 market, right?

14 A That's right.

15 Q The question I am putting to you is did you do
16 any -- let me not say did you do any. Let me say did
17 you complete any study, did you come to any conclusions
18 about for any commodity, any distance, any market, what
19 the effect would be on truck services of a particular
20 percentage increase in rail rates?

21 A Now you have moved away from southwest
22 Arizona, southwest Kansas.

23 Q Either one, yes.

24 A I hope you will forgive me for saying what I'm
25 going to say. Since deregulation, since '79, the

1 consumption of diesel fuel in the United States has
2 risen dramatically. Trucks are the only major user of
3 diesel fuel. We are running in the year 1984, through
4 the first six months, 15 percent ahead of last year in
5 the consumption of diesel fuel. And the reason I point
6 this out is we went up from 11.8 billion gallons of fuel
7 in '78, which we hold as the benchmark, really, as the
8 start of deregulation, in magnitude -- it started in
9 '75, but in '78 it is moving -- we moved from 11.89
10 billion to 16.3 billion gallons of diesel burned last
11 year, and we are going to move close to 20 billion
12 gallons this year.

13 Now, that shows a massive truck entry. That
14 massive truck entry is occurring all across the board.
15 And as I said earlier, we see the truck and the rail
16 sitting right in a knife edge balance with a continuing
17 shift to truck. We interviewed shippers both in all
18 four years. We find a drastic downturn in the use of
19 standard box. We find a downturn in the use of DF
20 loaders. We find a downturn in boxcars in general, an
21 upturn in trailer freight, which is both TOFC and
22 trailers.

23 So we say that right now we are sitting where
24 the two rates -- and that is what I told you a few
25 minutes ago about the dollar-dollar, where the two rates

1 are sitting right by side.

2 Now, as this market continues to shift, as the
3 trucks find the hauls, they are continuing to come
4 over. That is why we are moving up 2 billion gallons of
5 diesel consumption this year. That's why the traffic on
6 I-40 -- I'm sorry, I don't mean to do this, but I'm
7 trying to answer your question. We did look at it in
8 relative markets.

9 Q I enjoy hearing you discuss these issues.

10 A I am glad somebody does.

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1 Q I don't think I do forgive you. I asked you a
2 narrow question and I got an answer to an entirely
3 different question.

4 My question was: Did you study, in any
5 market, what the effect on truck service offerings would
6 be of any particular percentage increase in rail rates?

7 A And I would say to you, we studied no specific
8 market. We looked at the total market.

9 Q Well, when you looked at the total market, did
10 you come up with a figure for the percentage change in
11 rail services, the percentage decrease in rail and
12 increase in truck usage that would occur if there were a
13 particular percentage increase in rail rates, in all
14 rail rates across the board?

15 A Well, I have to say to you again, with no
16 increase in the rail rates, in the present structure
17 there is a continuing shift, substantially continuing
18 shift at the present time.

19 So while we did not measure what a 10 percent
20 increase would do, I think its effect would be
21 substantial.

22 Q Paragraph 4 of this letter, as I understand
23 it, was asking you to calculate or predict the extent of
24 a rail rate increase on the SFSP lines that would cause
25 farmers to truck their grain to a line or the MP further

1 north.

2 Is that a fair statement?

3 A That's a fair statement.

4 Q Now, that's a little bit different issue.

5 That's a question of how much of a rail rate increase
6 does it take to induce a shipper to truck to a distant
7 rail line.

8 A That's right.

9 Q And my question is -- and I really hope you
10 will focus on the question -- did you study -- you told
11 me you didn't study it here. Did you study in any other
12 market the answer to this kind of question?

13 A We again looked at this question. As I told
14 you, the two things were going on simultaneously. At
15 the very time that this letter was written, we were
16 looking at the obverse of the question you asked. The
17 Union Pacific had opened a new multi-car facility at
18 Colby, Kansas. And it was pulling a sufficient amount
19 of grain out of historic areas, moving to the Gulf, that
20 Senator Kassebaum held her hearings in that market
21 area.

22 So we accepted the diversion caused by a
23 reduction in costs as being a reasonable parallel to the
24 diversion that would be caused by an increase in cost
25 elsewhere. And we furnished that data to TBS.

1 Q And what is the answer? How much of a
2 percentage increase in rail rates does it take to induce
3 a grain shipper to truck his grain X additional miles?

4 A I don't have those notes.

5 Q Do you have notes that give that answer?

6 A No. Again, you see, the rail rate that
7 diverted the traffic to the multi-car station at Colby
8 was a contract rate which is not available. That was
9 the extent of Senator Kassebaum's hearings, was on the
10 non-public nature of contract rates and their ability to
11 disrupt traditional flows.

12 So whatever the reduction caused by Union
13 Pacific's contract rate at Colby, which I'm sure you
14 have access to, will give you a measurement of what
15 caused the massive diversion in that market.

16 Q And the answer to my question is?

17 A I don't have the figure.

18 Q In that or any other market; right? You
19 haven't studied what percentage rail rate increase will
20 induce people to truck to another rail line a certain
21 distance?

22 A Not in this study, no.

23 Q Were you here when we discussed the particular
24 Packersfield movement where Mr. Anderson reported that he
25 had been told by railroad marketing people that the

1 industrial sand could be bagged and moved to a TOFC
2 facility and then trucked to alternate destinations?
3 Did you hear that discussion?

4 A I did not.

5 Q Okay. Let me ask you very quickly about it.
6 This is at page 3-13 of Mr. Anderson's study. That is
7 the page number, rather than the exhibit number.

8 The sentence I was talking to Mr. Anderson
9 about begins at the very bottom of the page. It says:
10 "Santa Fe SP marketing personnel have stated that this
11 material --

12 A 313, the major inbound commodity?

13 Q Yes. He's talking about industrial sand.

14 A Yes. Now, where are you reading about SP?

15 Q I'm picking up the very last sentence.

16 A Okay.

17 Q Stated that this material can be bagged and
18 move via UP TOFC to Los Angeles and then trucked to
19 Bakersfield 112 miles. Just that phrase I was asking
20 Mr. Anderson about, about bagging it, moving it to a
21 TOFC facility, and then trucking it to destination.

22 And he testified that you were not involved in
23 any of the discussions in the text of this report that
24 rely upon railroad marketing personnel judgments.

25 I just want to pin that down. Is that right?

1 A That's true.

2 Q And in every other case?

3 A Well, in this case, because I would not have
4 taken it to L.A. But that's all right. Is that the
5 only question on that page?

6 Q Yes, sir.

7 MR. ROACH: Your Honor, keeping to my tradition
8 of cutting things short, I am skipping a number of
9 exhibits.

10 JUDGE HOPKINS: Thank you very much.

11 MR. ROACH: Forgive me for the delay as I get
12 myself recombobulated.

13 (Pause.)

14 MR. ROACH: If Your Honor would care for a
15 break now?

16 JUDGE HOPKINS: We just took a break.

17 MR. ROACH: It's his idea.

18 (Laughter.)

19 JUDGE HOPKINS: I'm planning on quitting at
20 five o'clock tonight. As much as we can get in, I would
21 like to get as much as we can done.

22 BY MR. ROACH: (Resuming)

23 Q Mr. Baker, let me turn you to Appendix A of
24 your verified statement. This is the Appendix that
25 discusses the NMTDB and its sampling methodology.

1 You say, at the very beginning, that this is a
2 study of long haul intercity motor carrier practices.
3 And that the interview locations are situated in
4 relatively sterile areas, free of urban-urban or short
5 haul motor carrier capacity.

6 Could you tell me how you define the terms
7 "long haul intercity motor carrier" and "urban-urban"
8 and "short haul"?

9 A We deliberately located the interview sites
10 outside of the metropolitan areas where we would be
11 prone to get the grocery fleets and the distribution
12 local supply fleets.

13 Our interview location in northern
14 Pennsylvania on I-80 is at Brookville. We used
15 Carlisle, Pennsylvania, west of the central Pennsylvania
16 industrial complex so that we don't get any of the
17 traffic running from Harrisburg into Trenton or
18 Harrisburg into Philadelphia or Harrisburg to Hershey.

19 So "urban-urban," we are referring to the
20 movement between Washington, D.C. and Baltimore, for
21 example, which are two closely located urban centers.
22 We don't get the traffic moving from the South Jerseys
23 to the North Jerseys.

24 We refer to "long haul" as the intercity
25 truck, the truck that is literally the over-the-road

1 truck moving freight between markets and not within a
2 short geographic range.

3 Q Is it something physical about the truck, or
4 is what the driver tells you he's doing?

5 A Well, the NMTDB was designed primarily by the
6 staff of the Association of American Railroads, and its
7 intent was to delineate out rail competitive traffic.
8 Since the railroads are not interested in switching the
9 freight from Baltimore to Washington, it was
10 deliberately designed to eliminate that traffic from its
11 pickup.

12 And that's what it's about, not whether there
13 is anything insidious about the truck or the driver.
14 But it's the freight that we are interested in, the long
15 haul freight, as opposed to distribution freight

16 Q And did you find that out from the
17 questionnaire? Is that the idea, what kind of freight
18 it is?

19 A Well, first of all, by very design, we are in
20 that. But the questionnaire tells us the freight is
21 moving from where to where.

22 Q I guess what I'm asking is, is there no short
23 haul movement at all at locations where you are doing
24 the interviewing?

25 A There will always be a little short haul

1 movement. But the short haul movement is basically
2 eliminated. I think we use the term "relatively
3 sterile." We did not use the term "absolutely sterile"
4 in terms of short haul traffic.

5 Q I take it that you regard urban-urban trucking
6 and short haul trucking as freight sectors that are
7 truck-dominated. The railroads don't compete for that
8 sort of movement, do they?

9 A There are some short haul rail movements, but
10 it's primarily not their profits.

11 Q Very heavily truck in this kind of movement.

12 A But it's not the intercity truck; it's the
13 distribution truck.

14 Q Right. So you are trying to focus here on
15 trucks that you regard as competitive with rail; is that
16 the idea?

17 A That is the purpose.

18 Q Now, turning to Appendix F, you say in the
19 second paragraph that you tabulate the passing trucks on
20 the basis of "type of ownership by type of carrier
21 operation -- private, regular route, or irregular
22 route."

23 How do your people know which is which?

24 A Well, the Type A or the regular route common
25 carrier constitutes less than 8 or 10 percent of the

1 passings. And the carriers are quite well-known:
2 United Parcel, Consolidated Freightways, Ryder, PIE, et
3 al.

4 Those are a matter of knowledge on the part of
5 our people. On the side of every for-hire tractor,
6 there is an Interstate Commerce Commission motor carrier
7 permit number. The ICC MC number is normally either on
8 the door panel or on the fuel tank or on the rear
9 corridor panel of the tractor.

10 So as we count trucks, we watch for the MC
11 numbers. We always count trucks in close proximity to
12 our interview point which is also a major truck stop
13 complex. So that if we are uncertain as to whether or
14 not the number is on, we frequently go to the truck stop
15 and observe a tractor that we were unable to identify on
16 the highway, wherever possible.

17 But our people sit and watch for the MC
18 numbers.

19 Q And do the markings on the truck tell you
20 whether it's private, regular route, or irregular
21 route?

22 A Well, I thought I had explained that. If it
23 says "Consolidated Freightways," it's a regular route
24 truck. If it doesn't say "Consolidated Freightways," or
25 "PIE," or one of the other regular routes, and says "ICC

1 UC X," whatever that X is, it is a for-hire truck, not
2 in regular route service.

3 If it says nothing or it says "Gimbels," or it
4 says "Monkeyshine and Zoo Brothers Grocery Store," it is
5 private.

6 Q Are there some carriers that provide both
7 regular and irregular service?

8 A There are carriers such as the Thermal
9 Division of Yellow that is an irregular route operation,
10 operated by a regular route carrier. Yellow's thermals
11 are counted as irregular route, while Yellow's line
12 tractors are counted as regular route.

13 The same is true of Consolidated Freightways.
14 The same is true of the Ryder Truck Lines. They have a
15 Ranger Division. FIF has a plethora of contract
16 carriers. They have got Ligon. They've got C&H. Those
17 are all tallied for what they are -- irregular route,
18 even though they are owned by a regular route common
19 carrier or by IU.

20 Q Are you focusing here on what you describe at
21 page 22 of your verified statement in the footnote on
22 Class VII and VIII trucks?

23 A Yes, totally.

24 Q And you are trying to count all of those, and
25 not anything else? Is that basically it?

1 A We are counting all of those and not anything
2 else, what is commonly known as 18-wheelers.

3 Q On page B-2, there is a reference to areas
4 where seven-day passing counts have not been taken.
5 What does that mean?

6 A We count at 18 locations around the United
7 States. If anyone asks -- and there is no such request
8 in this study -- but that's a standard caveat. Your
9 employer at times will ask for passing counts at other
10 areas in between two passing counts.

11 It gives us an opportunity of adjusting a
12 count on I-80 with the gallons of fuel pumped in that
13 market.

14 Q How are the estimates that you arrive at based
15 on seven-day passing counts likely to differ from the
16 estimates that you base on fuel purchasing practices and
17 diesel gallon?

18 A Fuel purchasing practices in diesel gallons
19 will not be as reliable as a seven-day passing count.

20 Q At page 4 of your verified statement, you are
21 talking there under the heading about sectors that are
22 most competitive with rail. And again, is that what we
23 have just been talking about -- these large trucks?

24 A That's right.

25 Q Here, you also mention contract carriage.

1 Does that fit into your residual category of private, or
2 could anybody be a contract carrier?

3 A No. Contract -- for counting purposes, we do
4 not know how to differentiate between the contract and
5 an irregular route. They both have MC numbers and they
6 both have carrier identities.

7 Q Let me ask you about Table 1 on page 6. You
8 say on page 5 that this table "confirms a substantial
9 growing motor freight presence over the past decade."

10 A That's correct.

11 Q And exactly what does that mean, a growing
12 number of trucks in the United States?

13 A An ever-increasing number of trucks using more
14 and more fuel. The two cross-check each other. If we
15 had an increase in trucks and no increase in fuel, we
16 wouldn't have any increase in presence.

17 Q What do we know about the capacity
18 utilization?

19 A I beg your pardon?

20 Q What do we know about the capacity
21 utilization? What percent of the time are these trucks
22 full?

23 A The intercity fleet runs an average of 103 to
24 109,000 miles a year across the board, loaded better
25 than 80 percent of the time. We know nothing about

1 other than the intercity fleet, except that the
2 utilization is far below that level. It's not uncommon
3 to find 10 to 40,000 mile tractors in local urban-urban
4 fleets.

5 If I may, I would call to your attention the
6 footnote 4 on that table, which is a DoT caveat on those
7 numbers going down. They didn't actually go down.

8 Q I can read footnote 4.

9 In your opinion, what role does changes in
10 regulation, changes in regulatory requirements have in
11 the numbers that we see here on Table 1?

12 A Well, changes in regulatory requirements had
13 two increases. There was a substantial increase of
14 truck sales in '78, '79, and '80, as a result of
15 anticipating deregulation.

16 Those are reflected there, although they don't
17 show clearly because of the adjustments made in the
18 numbers. The most telling impact of deregulation is the
19 drastic increase in fuel consumption from '78 on.

20 Q The increase in fuel consumption?

21 A Yes.

22 Q How does that result from deregulation
23 exactly?

24 A Well, if you look at the numbers coming up
25 through the early 70s, you will find the increase in

1 fuel consumption was very slow. It was a regulated
2 economy. It was paralleling up the growth in the nation
3 as a whole.

4 When we deregulated, truck moved very
5 aggressively into other freight. If you want to look
6 at, I believe, Table 5, if you look at page 13 you will
7 find that '69-'79, the total car loadings trailed the
8 peculiarly trucked freight of shipper association and
9 everything, but when you shift to '82, you will find
10 that those numbers are virtually identical in rail car
11 loadings. The trucks moved heavily into other areas
12 that they had not moved into before deregulation.

13 That is what is reflected in the drastic
14 increase in diesel consumption. And as I said earlier,
15 that 16 billion you are looking at for '83, based on the
16 first six months of '84, is going to come close to 20
17 billion gallons this year if there is no downturn.

18 When you equate that at 5.2 miles per gallon
19 for 17-1/2 tons of truck 80 percent of the time, that's
20 an awful lot of loaded ton miles.

21 Q Okay. Table 2, page 7. Let me ask you first,
22 did you have this data at the five-digit STCC code
23 level?

24 A Yes.

25 Q And is that available to us or is it in your

1 work papers?

2 A We could make it available to you. Your
3 client has it on tape if you want to run it.

4 Q Is that right?

5 A They have the total tape. I have no objection
6 to making it available to you, but you have it in a much
7 easier way to use it right now.

8 Actually, it's seven-digit STCC.

9 Q All right, very good.

10 Am I right in generalizing that these numbers
11 tend to show a sharply increasing truck share as you
12 move to shorter and shorter distance moves?

13 A Well, first of all, because of the nature of
14 what we are doing, I would not use the word "share." I
15 would use the word "presence."

16 And I think I would disagree with you. If you
17 would take the Rand McNally Atlas, which I find rail
18 people have never done, and I thought everybody did --
19 take the 60 city pairs in the back of the Atlas that
20 they give the mileage to, and equate those distances
21 into mileage blocks, you will find those mileage blocks
22 remarkably parallel in this distribution.

23 Q Maybe you didn't understand what I asked you.

24 A No. It does not show a concentration in
25 shorter distances. It shows a distribution of freight

1 that parallels the anticipated distribution predicated
2 on city pairs.

3 Q If I took these percentage figures and ran
4 them through a regression equation against mileage,
5 wouldn't I find that the percentage is negatively
6 correlated with mileage, that the correlation tends to
7 be: the longer the distance, the lower the truck
8 percentage?

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1 A Only if that is what you wanted to find. What
2 you should find is that 13.7 percent of our city pairs
3 are between zero and 500 miles apart, that 28.82 of our
4 city pairs are 500 to 1000 miles apart, that 25.7
5 percent of our city pairs are 1000 to 1500 miles apart,
6 that 14.77 percent of our city pairs are 1500 to 2000
7 miles apart, that 10.6 percent of our city pairs are
8 2000 to 2500 miles apart, that 5.28 percent of our city
9 pairs are 2500 to 3000 miles apart, and that less than 1
10 percent of our city pairs are beyond 3000 miles, and
11 that you will find the distribution of the freight
12 parallels that distribution.

13 Since 29 percent of our city pairs are in the
14 500 to 1000 mile range, and 13.7 are in the zero to 500,
15 you would find that over 40 percent of the freight would
16 be very short haul because that is the distance our city
17 pairs are. So your regression equation would show you
18 just that. But it wouldn't mean anything.

19 It only means something because freight
20 doesn't move unless there is a reason to move it.
21 Freight is a secondary derived demand function. First,
22 somebody needs it, and then we move it. We don't move
23 it -- I started to say the wrong thing. We don't move
24 it for pleasure. The exercise would be futility.

25 Now, the distance -- for the last decade there

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1 has been a myth that rail is a long haul device and
2 truck is a short haul device. It's a myth. You don't
3 have a railroad in the United States that goes
4 anyplace. All the truck lines in the United States run
5 48 states since the Commission started giving 48 state
6 authority. You don't have a railroad that can run from
7 Los Angeles to New York.

8 For a decade the trucks have been running 3000
9 mile hauls, and we say they are short haul. The trucks,
10 if you look at our distribution, you will find a
11 disproportionate number of long hauls. You will find
12 too many hauls in the 2000 to 3100 mile block because
13 the truck is hauling a disproportionate amount of that
14 freight.

15 So your regression would tell you something,
16 but it wouldn't be right.

17 O Okay.

18 You have told me very forcefully your views.
19 Let me try to state what my question is for you.

20 Do you know what result you would get if you
21 took these mileage blocks and current data about the
22 modal split between rail and truck and did a regression
23 to see whether the rail share is positively correlated
24 with distance?

25 Now, please focus on the question.

1 A I am focused.

2 You would find the rail has a disproportionate
3 share -- pardon me. I'm sorry.

4 MR. SMITH: I want to advise counsel that this
5 table is not a modal share.

6 MR. ROACH: I understand that, Mr. Smith.

7 THE WITNESS: You would find rail with a
8 disproportionate share in the 1000 to 1500 mile block.

9 BY MR. ROACH: (Resuming)

10 Q And how about beyond 1500 miles?

11 A You would find I have no data. I am only
12 going on the disturbance in the truck market, all
13 right?

14 Q I don't know what that means. What is the
15 disturbance in the truck market?

16 A I'm telling you that the fit of these
17 distributions to the city pair mileages, the possible
18 length of haul, that's all there is is the possible
19 length of haul between the various cities in this land.

20 Q Okay, let me see if I understood.

21 You made a long answer before, and I am not
22 sure I understood.

23 First you said there are a lot of different
24 city pairs in this country, and they are distributed in
25 various mileage blocks, which stands to reason. We have

1 a big country, and we have --

2 A And they are not all 3000 miles apart.

3 Q Right.

4 Then I think I heard you say that, something
5 about how truck traffic is distributed among the
6 different mileage blocks.

7 A Paralleling that same distribution.

8 Q So what you are suggesting is that when there
9 are more cities, more city pairs in a particular mileage
10 block, there tends to be a proportionately more amount
11 of truck freight in that mileage block?

12 A There should be a proportionately more amount
13 of everybody's freight in that mileage block.

14 Q That's right, but not necessarily truck.

15 A That's why I say rail or truck. So when you
16 asked the second question, I said that the only place I
17 found a disturbance was in the 1000 to 1500 mile block.

18 Q I don't understand what you mean by a
19 disturbance.

20 A I do not find the trucks getting what I would
21 anticipate them to get in that mileage block.

22 Q What would you anticipate them to get exactly,
23 a share of the freight equal to the share of the number
24 of city pairs in that mileage block?

25 A Approximately equal.

1 Q Okay.

2 Does that tell me anything either way about my
3 question which is whether rail modal share compared with
4 truck tends to increase as distance increases?

5 A Your question I believe was -- well, again, it
6 tells you -- you asked if we made a linear regression of
7 truck traffic. You didn't ask about rail modal share.
8 You said if I made a linear regression of truck traffic,
9 would it not show that the truck was primarily a short
10 haul device? And my response was it would show that it
11 was short haul only to the extent that those mileage
12 blocks aggregated that percentage into short haul.

13 Q Okay, then I shifted the focus to the issue of
14 relative modal shares, rail versus truck.

15 A Right.

16 Q Now I am asking you, do you have data that
17 tells me one way or another whether rail modal share
18 versus truck is positively correlated with longer
19 distance shipments?

20 A I have data that shows the truck is correlated
21 to distances across the mileage block, and that the only
22 disturbance in that was in that one range, and I said I
23 had no data on the length of rail haul movement by
24 mileage block.

25 Q I know it is risky to try to summarize these

1 answers.

2 A I will let you try that.

3 Q Is the answer that if someone has published
4 something saying that rail modal shares are positively
5 correlated with distance, you don't have any numbers
6 that deny that?

7 A No. I simply say it is a meaningless
8 correlation without reference to what the length of haul
9 should be.

10 Q What the length of haul should be?

11 A Right, based on city pairs, based on where the
12 freight should be moving.

13 Q Well, a shipper has got a movement that has a
14 fixed distance attached to it, doesn't he? You can't
15 tell him it should be shorter.

16 A No, but I'm telling you there are not that
17 many 3000 mile movements in the land. You only have a
18 handful of city pairs that you would expect that in.

19 Q Okay, but for those city pairs, aren't we
20 going to find that rail is a disproportionately high
21 share of the market?

22 A I don't believe so.

23 Q In general.

24 A By commodity you might, but in general, you
25 shan't.

1 Q And is that based on your judgment, or is it
2 based on any numbers that you've got access to?

3 A It's based on looking at an awful lot of truck
4 movements over a long period of time that are spread
5 over long hauls.

6 Q Forgive me for being slow.

7 A Your food movements are dominated by the
8 truck. You don't have any long haul processed food
9 movements by rail proportional to the truck movements.

10 Q How do you figure out what the rail modal
11 share is if all you are looking at is truck movements?

12 A First of all, you look at some of the rail
13 published data on commodities moved and percentages
14 moved.

15 Q That's why I was asking you about what data
16 you have, and my question was do you have any data that
17 denies the published indicators that say that rail modal
18 share is positively correlated with distance?

19 I think it is a straightforward question.

20 A I answered it. I have no data on rail by
21 mileage block.

22 MR. SMITH: You referred to published data.

23 JUDGE HOPKINS: He's answered the question.

24 MR. SMITH: I was going to suggest that
25 perhaps it would be good to identify for the record what

1 published data --

2 JUDGE HOPKINS: Why do it now that he has
3 answered the question? Why add to it?

4 MR. ROACH: There are already exhibits
5 anyway.

6 BY MR. ROACH: (Resuming)

7 Q On page 9 you have a remark from the first
8 sentence on that page about the motor transport industry
9 growing, commencing with the evolution of the interstate
10 highway system, and accelerating with regulatory changes
11 which culminated in the Motor Carrier Act, right?

12 A That is correct.

13 Q We have talked about deregulation.

14 I want to ask you about the highway system.

15 What is the current trend in terms of the
16 quality of the highway system in your opinion?

17 A We had three or four years of very bad
18 highways. In the last year we have seen a drastic
19 improvement in the highways, a major rebuilding program
20 of bridges. They are rebuilding I-80 across northern
21 Pennsylvania. The quality of roads is substantially
22 improving.

23 Q And what happened to the period where we had a
24 trend that was toward deterioration? Did that affect
25 the motor carrier growth?

1 A No, I don't think it did. There wasn't that
2 much deterioration. But it was something that was about
3 to happen.

4 Q You say on this page that 86 percent of all
5 motor carrier applications are today unopposed.

6 Now, what exactly does that tell you about the
7 trucking industry and its growth?

8 A It is a reflection on the ease of entry as
9 opposed to the decade prior to the '80s when every
10 application was bitterly contested.

11 Q What is the situation as far as exit?

12 A Motor carrier exit?

13 Q Yes.

14 A How do you mean as to exit?

15 Q One example is bankruptcy.

16 Haven't we seen a good deal of that?

17 A We have seen a considerable number of
18 bankruptcies in the LTL carriers. I don't think you
19 have seen many full load bankruptcies.

20 Q How does it all net out? We have a number
21 here that says 86 percent of the applications are
22 unopposed. But what is the net effect in terms of the
23 number of participants in the market? You have got data
24 in Table 3 about grants of authority.

25 What are the numbers as far as the number of

1 participants in the market?

2 A We have no numbers on the number of
3 participants. We use diesel fuel consumption and trucks
4 in the market as a proxy for overall activity. We use
5 the rate structure and the impact of competition on the
6 motor carrier rate structure as indication that entry is
7 occurring and that competition is occurring, but I can't
8 tell you of the 60,000 carrier applications that were
9 filed how many of them are being used.

10 Q I know this is a little repetitive, but your
11 sources of information on actual truck capacity or the
12 number of participants in the truck market are your
13 passing counts and the consumption of fuel?

14 A Passing counts and the consumption of fuel.

15 Q Okay.

16 On page 10 you say at the bottom that "motor
17 carrier prices have shown less tendency to increase over
18 the past five to seven year period than have prices for
19 rail transportation, despite strong cost pressures on
20 the trucks."

21 Now, my question for you is if trucking is so
22 intensely competitive with rail, why have the railroads
23 increased their rates more than trucks?

24 A Both carriers have been under the same
25 competitive pressure. Diesel fuel went up for both.

1 The same people who manufacture trucks manufacture
2 diesel electric locomotives. The pressure is on
3 trailers equally in intermodal, and as long as rail was
4 below the truck rate, it could move upward, or in the
5 area of unit trains of coal, rates have increased on
6 coal trains. In some special areas, the rates have
7 increased enough that the Bureau of Labor Statistics
8 index shows a substantial lead post-'80 in rail over
9 truck.

10 Q So I think I hear in your last answer a
11 recognition that there are some commodities or some
12 movements where the railroads can increase their rates
13 and come out ahead in terms of their net revenues?

14 A As long as they are below the truck rate.

15 Q Let me see if we can find any confirmation of
16 that in Tables 4 and 5.

17 Table 4 has a column called Revenue Yield
18 Index, Motor. Is that an index that you compiled?

19 A Yes. Actually, the background of this table
20 is the Southwest Rate Bureau did an intensive study of
21 rail rates. The BN did a magnificent job of indexing,
22 and we did not feel it proper to use that table and
23 studied the long term stable interregional and
24 transcontinental motor carriers to see if their revenue
25 per mile yield would parallel it as it should and did.

1 The numbers are not at all out of sequence
2 with the study done by the Southwest Rate Bureau.

3 Q And am I right that what you come up with, if
4 you compare 1979 and 1982, for example, is an increase
5 in the motor revenue yield from an index of 141 to an
6 index of 162?

7 A Mine says 165 in '81 and 162 in '82.

8 Q I'm sorry. If I said '81, I misspoke. I
9 meant '82. So it goes from 141 to 162?

10 A Right.

11 Q Between '79 and '82.

12 Do you regard that as an index of average
13 motor carrier rates?

14 A It's a reasonable approximation. The other
15 index shows that by incremental break, that in that same
16 period we would have risen from a base of 100 in '75, or
17 from 180 in '79, down to 170 in '82, 150 in October of
18 '82 on the short haul, and on the 2000 mile haul, we
19 would have risen from 104 in January of '79 to 143 in
20 January of '83, which is the end of '82. So it is a
21 close parallel.

22 Q What are you reading from?

23 A The Southwest Index, Southwest Rate Bureau
24 Index of Motor Carrier rates.

25 Q Is that a publicly available document?

1 A I would be happy to make it available to you.

2 Q Yes. I would appreciate it.

3 Now, if you take those numbers and go over to
4 Table 5, you have got some information there about
5 freight ton miles for trucks between 1979 and 1982.

6 Am I right that what that shows is a drop in
7 the index from 155 to 125 on the base of 100?

8 A This is a table that shows the Class I and II
9 for hire carriers. Your shift occurred with the heavy
10 growth in contract carriage. If you read before, we are
11 estimating the total truck intercity ton miles at 900
12 billion. There was a shift, but we used the Rail Fact
13 Book for these numbers to show what was happening with
14 the rail in the face of this truck growth. So we used
15 that intercity for hire Class I and II carrier, though
16 it did show a downturn, but the overall number is up
17 drastically.

18 Q Well, I guess I am just trying to get a sense
19 of what happens here when the truck rates go up from an
20 index of 141 to an index of 162.

21 Do you think the effect is to decrease the
22 volume of utilization of trucks or to increase it?

23 A Well, you can't ask that question in a
24 vacuum. While the truck rate was going up from 140 to
25 160, the rail rate was traveling up substantially

1 greater, and if you go back to the diesel consumption,
2 go to the passing counts, we have an increase on the
3 three transcontinental roads of about 50 percent in the
4 last three years in truck passings.

5 So I would say that the overall truck
6 utilization went up drastically.

7 Q Well, I guess I am just trying to focus on
8 some numbers that I can get my hands on. You have a big
9 volume of numbers in front of you, and I have Table 5.

10 A You also have the other numbers in the
11 statement.

12 In Table 5, the for hire Class I and II motor
13 carriers, the traditional motor carrier industry
14 sustained a downturn as a result of the growth of
15 contract carriage.

16 Q Let's take a look at rail just for a second.

17 On Table 4, in 1979 you have a rail price
18 index, and that is a direct price index from the
19 government, isn't it?

20 A That's the BLS statistic.

21 Q 146 in 1979. Then it goes up to 221 in 1982.
22 is that right?

23 A That's right.

24 Q So just to get our hands on something
25 concrete, we can agree, can't we, that the railroads

1 increased their rates.

2 A Substantially.

3 Q Between '79 and '82.

4 A Right.

5 Q Going over to Table 5, am I right that what
6 you see during those years where there was an increase
7 of over a third in the rail rate is a decrease from 119
8 to 104 in the ton miles of rail freight?

9 A That's right.

10 Q And that's a good deal less than a 30 percent
11 decrease.

12 A That's right.

13 Q So just on the face of those numbers, doesn't
14 that suggest to you that railroads have got an ability
15 to increase their rates X percentage points without
16 losing anywhere near X percentage points in volume?

17 A If you want to ignore the contract carriage
18 and the private sector in the truck business, if you
19 want to ignore the private fleets that increased, the
20 shippers who bought trucks and all of that, as a result
21 of the rail increase, you are right, the Class I and II
22 for hire carriers suffered a downturn.

23 If you want to take all of the growth in
24 contract carriage, if you want to take the total
25 increase in highway tonnage, there was no downturn at

1 all. It was a shift within a mode rather than a shift
2 between modes.

3 If you turn to the second part of that table,
4 you will find that in 1979, rail had fallen from 100
5 percent in 1969 to 73 percent of forwarded shipper
6 traffic, and down to 67 in '82, but if you look at all
7 car loadings you will find they dropped from 84 to 66.

8 Now, part of that is a result of larger
9 capacity cars, but most of the larger capacity cars were
10 in service in '79.

11 So there is a substantial drop in rail
12 carloadings that goes with those revenue miles.

13 Q Okay, but I am focusing now on revenue,
14 revenue miles as you reported here, revenue freight ton
15 miles.

16 A That's a lot of coal, 41 percent.

17 Q Fine, but you are not suggesting that that is
18 a number that doesn't include something that it should
19 include?

20 A No, not at all. I am simply saying the truck
21 number does not include the contract carriage.

22 Q Okay, fine. And that talks about the trucks.

23 But what I am trying to get you to focus on
24 this time is the railroads, and I asked you whether these
25 numbers don't indicate that whatever the -- whatever is

1 happening to the size of the truck freight being
2 carried, whatever is happening to the amount of truck
3 freight, it is the case that the railroads have been
4 able to increase their rates by a considerably larger
5 percentage than they lost in revenue freight miles
6 during the same period.

7 A They increased their rates and they lost
8 roughly, they lost about 12 percent of their traffic.

9 Q I think that if you take those two indexes,
10 the increase of something like 30 percent in rates and a
11 loss of something like 12 percent in traffic, you will
12 find that the result is an elasticity of $-.27$, which
13 means you can increase your rates 1 percent and you lose
14 $.27$ percent of your revenues.

15 Is that a fair --

16 A That's a fair statement.

17 Q Doesn't that give you some cause for concern
18 about rail market power, quite aside from the growth in
19 the trucking sector?

20 MF. SMITH: Objection, Your Honor. This
21 witness is not testifying as an economist on
22 elasticities of demand. We don't know. Maybe this
23 witness can tell us whether these rail indexes include
24 inflation, whether they are in constant dollars. This
25 witness is not being offered to testify on that

1 subject.

2 MR. ROACH: I don't think it is appropriate
3 for Mr. Smith to answer the question, but I must say
4 that the witness has a discussion in his statement which
5 culminates at pages 16 and 17 where he tries to defend
6 Mr. Anderson's 50 percent screening test, and we spent
7 two days with Mr. Anderson trying to find out why that
8 screen tells us anything about market power, and now I
9 am asking the other man who apparently is advocating
10 that screen.

11 JUDGE HOPKINS: I will allow the question
12 because this man seems to be able to answer just about
13 anything anyway.

14 How many more questions are you going to
15 have? We were going to stop at 5:00 o'clock. I thought
16 we would be through by now.

17 MR. ROACH: I have a fair amount left.

18 Maybe I should try to conclude in the
19 morning.

20 JUDGE HOPKINS: I would like to know how long
21 are you going to be tomorrow morning because this
22 proceeding is running a lot longer with each witness
23 than I had expected and than we really expected.

24 How long do you think it will be tomorrow
25 morning? I don't want you to try to think about two or

1 three more hours of questioning overnight to come up
2 with more questions.

3 MR. ROACH: No, it would be exactly the
4 opposite.

5 JUDGE HOPKINS: I am not trying to limit you,
6 really.

7 MR. ROACH: I would hold myself to half an
8 hour.

9 JUDGE HOPKINS: Well, I think it is wise now,
10 it is late in the day anyway. You might be able to find
11 it easier tomorrow morning.

12 We will be in recess until 9:00 o'clock
13 tomorrow morning.

14 (Whereupon, at 5:05 o'clock p.m., the hearing
15 in the above-entitled matter recessed, to reconvene at
16 9:00 o'clock a.m., Thursday, November 1, 1984.)
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