

F.D. 30400 - 11/1/84 - PGS. 4873-4931

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 : :

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Hearing Room A

12th & Constitution, N.W.

Washington, D.C.

Thursday, November 1, 1984

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

BEFORE:

JAMES E. HOPKINS,
Administrative Law Judge

APPEARANCES AS HERETOFORE NOTED

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C O N T E N T S

2	<u>WITNESS</u>		<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Forrest S. Baker, Jr.					
4	By Mr. Roach		4874			
5	By Ms. Bonaparte		4906			
6	By Mr. Greenberg		4947			
7	By Ms. Budeiri		4951			
8	By Mr. Smith			4987		
9	By Ms. Budeira					4994
10	Carl J. Liba					
11	By Mr. Wilson	4997				
12	By Mr. Roach		5000			
13	By Mr. Kevin MacKenzie		5083			

E X H I B I T S

11	<u>NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
12	UP/MP-C-42 & 43	4891	
13	DRGW-C-28	4907	4996
14	DRGW-C-29 & 30	4915	4996
15	DRGW-C-31	4922	4996
16	DRGW-C-32 & 33	4932	4996
17	UP/MP-C-40 thru 43		4996
18	SFSP-C-9	4999	
19	UP/MP-C-44 thru 47	5033	
20	UP/MP-C-48	5051	
21	UP/MP-C-49 thru 52	5063	
22	DRGW-C-34	5107	
23	DRGW-C-35	5109	
24	DRGW-C-36	5111	

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P R O C E E D I N G S

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

3 Mr. Roach, have at it.

4 MR. ROACH: Thank you, Your Honor.

5 Whereupon,

6 FORREST S. BAKER, JR.,

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

10 CROSS EXAMINATION - RESUMED

11 BY MR. ROACH:

12 Q Mr. Baker, I have tried to pare my questions
13 back so we can finish quickly, and I implore you to
14 focus on the question and answer the question.

15 At the end of the day yesterday, Mr. Smith
16 entered an objection to a question I asked, and his
17 objection was that your study was not a study of
18 elasticities and so I shouldn't be asking you about that
19 sort of thing. I would just like to pin down exactly
20 whether he was correct in what the facts are.

21 Is it the case that your testimony here or
22 your truck data base, neither of those tell us how much
23 traffic these two railroads, if they merged, would lose
24 to trucks for any particular commodity if they increased
25 their rates by five percent?

1 A That's true.

2 Q Let me ask you to look at Exhibit 41, which
3 was a chapter from the STCC code directory, for code
4 number 32.

5 MR. SMITH: Exhibit No. 41.

6 MR. ROACH: I'm sorry, do I have my numbers
7 confused? 41 is what I meant to say.

8 BY MR. ROACH: (Resuming)

9 Q Let me hand you a copy.

10 A Thank you.

11 Q If you could, at the same time also turn -- at
12 the end of volume one of Mr. Anderson's testimony,
13 there's an Exhibit 9-15, and I want to direct your
14 attention to the second page of that exhibit. Now, do
15 you see at the bottom of that page -- and I'm just
16 taking this as a particular example -- there is Phoenix,
17 incbund, STCC No. 32.

18 And under the mileage block 3, 501 to 1,000
19 miles, there are tonnage figures showing 46,685 tons for
20 SPSP and 57,360 tons for truck. Do you see that?

21 A I see that.

22 Q Now, looking at Exhibit -- well, do you
23 understand that Mr. Anderson, when he saw that the truck
24 tons exceeded the railroad tons, concluded that there
25 were sufficient logistical options in that particular

1 traffic cell?

2 A Yes.

3 Q Looking at Exhibit 41, the STCC code charter,
4 take a look, for example, at STCC code numbe 3273,
5 32731. That's a five-digit code number. Am I right
6 that that is the number for wet ready-mix concrete?

7 A Rady-mix concrete, wet.

8 Q We were discussing that yesterday and I think
9 you said that that is a good example of a commodity
10 that's likely to be going in going in trucks, is that
11 right?

12 A No, I believe I said yesterday that we made
13 the assumption it would not be moving a distance in
14 truck.

15 Q Okay, but if it moves anywhere it's likely to
16 move in a truck, isn't it?

17 A In all probability, yes.

18 Q And wouldn't you suspect that, looking back at
19 Exhibit 9-15, that a good deal of the truck mileage down
20 in block 1, the short mileace block, may well be
21 ready-mix concrete moving around to construction sites
22 in Phoenix?

23 A I don't know how that data is drawn.

24 Q Okay. Look back at the STCC directory, at the
25 next entry, 32741, lime or lime plaster. Is it the case

1 that that is a commodity that tends to move heavily by
2 rail?

3 A I suspect you'll find lime moving both by
4 truck and rail.

5 Q Do you have any sense from your experience in
6 the transportation marketplace whether it tends to move
7 predominantly by rail?

8 A I would concur, substantially by rail. I have
9 no basis for predominantly one way or the other.

10 Q We looked yesterday at 32411, which is
11 Portland cement, hydraulic cement. Do you recall that?

12 A I recall.

13 Q And isn't that similar to lime in the sense
14 that it tends to move quite heavily by rail, although it
15 also moves by truck?

16 A It moves quite heavily by truck also. They
17 are very similar.

18 Q Now, isn't it true that the relative economics
19 -- let me strike that and direct your attention to one
20 other number here. That one is 32932. That is called
21 packing, all types, is that right?

22 A Packing, all types, yes.

23 Q Now, under that there are quite a number of
24 seven-digit STCC codes, right?

25 A That's correct.

1 Q One of them is 3293248, which is metal
2 packing?

3 A Right.

4 Q And another one is 3293279, which is packing
5 flats, correct?

6 A Right.

7 Q Now, my question is, isn't it the case that
8 the relative economics of truck and rail are going to
9 differ for these two seven-digit commodities, metal
10 packing and packing flats, and they're also going to
11 differ for different quantities of those two particular
12 seven-digit commodities? Isn't that a fair statement?

13 A I'm not sure. I don't think you can make a
14 flat statement that way.

15 Q Okay, you would agree with me, I hope, that
16 metal packing is going to have a higher weight per volume
17 than packing flats is?

18 A Are you talking now in a rate density rate
19 basis or the cost of moving?

20 Q Actually, I was just talking in that last
21 question on a physical basis.

22 A But you're talking about density when you talk
23 about heavier weight in metal packing?

24 Q That's right, pounds per square foot.

25 A Pounds per square foot.

1 Q It's clearly true that that's going to have a
2 higher poundage per square foot than packing flats,
3 isn't it?

4 A Yes.

5 Q Isn't that an important factor in the relative
6 economics of truck versus rail for moving commodities?

7 A Here, you can't take a single attribute and
8 say it's important. What size did the shipper want the
9 shipment in? How many units can he use? 40,000 pounds
10 of steel strapping, which would fall in the steel
11 packing area, is a lot of steel strapping.

12 So you have to know more than just the density
13 of the commodity.

14 Q Well, actually the question I had asked you
15 combined two elements: the difference between the
16 nature of the commodities and also shipment size. I
17 think that's what you said to me in the answer, that
18 shipment size is another important factor.

19 A That's right.

20 Q Are there other important factors that would
21 dictate the relative economics of truck versus rail for
22 these two specific seven-digit commodities?

23 A I can't see any real basic ones. Handling
24 problems maybe, depending on how widely you define metal
25 packing.

1 Q Okay, and aren't similar factors -- shipment
2 size, product weight, product value, and others -- also
3 involved, for example, in the use of rail to ship lime
4 or to ship Portland cement?

5 A Certainly in the lime and cement shipments
6 size of the shipment is a factor.

7 Q Okay. The question I'm going to ask you to
8 culminate this discussion is this: Don't you have to
9 look at particular commodities, and really quite
10 particular, down to the seven-digit level sometimes, and
11 particular shipment sizes, and now you say particular
12 service needs and shipper logistics, and indeed other
13 factors, before you can assess the potential market
14 power of railroads to increase their prices without
15 losing their volume?

16 A Yes, and I think we did.

17 Q Well, let me ask you about that. I get the
18 sense in reading your testimony that your basic position
19 is the trucking industry is growing and is competitive
20 in a broad sense. Trucks can be found in lots of
21 different mileage blocks and in lots of different
22 locations.

23 And you then, it seems to me, jumped to a
24 conclusion, which is that trucks are so price
25 competitive for every single commodity and every single

1 shipper that railroad competition is simply of no value
2 to shippers. Is that a fair reading of your testimony?

3 A I think it's an overstatement. What we say is
4 that the truck is so pervasive -- if I may, under STCC
5 32 I am looking at granite moving from Minnesota to Los
6 Angeles, at roofing felt moving from Shreveport,
7 Louisiana to Los Angeles, at fishbowls moving from
8 Harrison, New Jersey, to Los Angeles, just the little
9 fishbowls -- that we find such a broad spectrum of
10 freight moving by truck, that it's pervasive in so many
11 commodity brackets that it's theoretically not capable
12 of being pervasive in.

13 And from extensive interviews with shippers
14 the last four years to see what was making them tick,
15 that the old concepts that both you and I shared about
16 the size of shipment and volume have fallen away, except
17 from the very -- I would stay with you on lime or cement
18 or coal or wheat in large part.

19 But when you move away from those commodities,
20 we find such a broad spectrum of everything moving.
21 Believe it or not, every year the NMTDF picks up eight
22 loads of cadavers coming out of New York to the
23 California medical schools. I mean, just everything
24 moving in truck today; that we are not limiting it as
25 you did, you see.

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1 We said that the evidence is that the truck is
2 present in all commodity groups.

3 Q Okay. Let me focus you back on the question.
4 The question is is it your judgment that truck
5 competition is so pervasive that the Commission simply
6 doesn't have to be concerned about railroad
7 competition?

8 A I believe, if you read my statement you will
9 find that I said, with the singular exception of those
10 commodities that are handled in multiple car loadings,
11 in large loadings, exceptionally large loadings, which
12 again comes back to unit trains or multiple cars, that
13 the truck can balance 80 percent or better, that the
14 truck is an aggressive competitor in those markets.

15 Q And those exceptions are the only times that
16 you would concede that the Commission ought to be
17 worried about intramodal competition between railroads?

18 A Frankly, I'm not even sure I would advocate
19 they be concerned with those exceptions, because from 20
20 years of sales experience in the motor freight industry
21 I've found shippers who have that kind of volume seldom
22 have to apologize for the rates that they pay. I mean,
23 they have enough leverage to leverage the rates down.

24 But I am saying that we did not say that the
25 truck would provide viable competition in those areas.

1 Q I take it that in the process of doing the
2 study you did not go out and talk to shippers who are
3 using rail and try to find out why they are choosing to
4 use rail?

5 A Let me answer that question this way.
6 Throughout the conduct of this project, we were
7 interviewing shippers, but not shippers involved in this
8 market area. And we were asking just that question:
9 Why are you using rail? What is your rail picture?

10 And frankly, we were getting answers like: In
11 30 days we will have shipped our last boxcar; we are
12 going trailer freight.

13 Q Okay. Let me bring you back to the question
14 or we're not going to get finished.

15 A I'm just trying to answer it, that we were not
16 ignoring the question.

17 Q I made a good faith commitment to the Judge --

18 A I was trying to be brief. I thought I was
19 doing well.

20 Q I don't want to cut you off or seem
21 argumentative.

22 A No, I am trying to hold it as close as I can
23 and answer your question fairly.

24 Q I am just asking, in this study of these
25 particular locations, which is where these railroads are

1 merging, did you go out and talk to the shippers who are
2 shipping by rail and find out why they're doing it?

3 A We did not. We could not figure out how to
4 ask a question that wouldn't be biased.

5 Q You say in your verified statement at page 17
6 that in your opinion, "There is no question that when
7 the truck volume for a particular commodity flow equals
8 or exceeds the comparable rail volume for the same
9 movement, truck must be accepted not only as a long-term
10 viable competitor, but fully substitutable for rail
11 service, with the capacity to expand penetration if
12 economic conditions warrant."

13 Do you see that?

14 A Yes.

15 Q I want to focus first on the phrase
16 "particular commodity flow." Did you discuss with TFS
17 whether it made sense to compare truck and rail tonnages
18 at the two-digit SIC code level, as opposed to the
19 five-digit level?

20 A We discussed it at length.

21 Q Did you talk about examples like the
22 difference between Portland cement and packing flats and
23 putting those together in SIC 32, whether that tends to
24 make a two-digit comparison misleading?

25 A We discussed that.

1 Q What did you say? What was your conclusion as
2 to why it made sense to look at two-digits instead of,
3 for example, five?

4 A We felt, very frankly, that for anything to
5 move it must be loose at both ends.

6 Q It must be what?

7 A Loose at both ends. And again, coming back to
8 the exceptions that we have defined, the bulk
9 exceptions, we are finding that all of the rest of the
10 commodities fall generically into, 85 percent of them,
11 into the van, flat or reefer box capacity; and that we
12 had defined away the problem areas sufficiently to say
13 that broad spectrum, we could go across two-digit STCC
14 codes, that the areas of concern could be defined rather
15 than trying to limit.

16 Because even though these are widely diverse
17 commodity descriptions, they fit in boxes, sacks,
18 barrels, firthingins, or other shipping containers. And
19 once they fit in those containers, they then fit into
20 trailers or on trailers.

21 Q Or shrouds?

22 A Or shrouds. I forgot shrouds. They would
23 have been on the cadavers.

24 Q Again, what I'm having trouble with is that
25 what you just said sounds to me like a description of

1 physical capacity, physical capability. You're saying
2 that trucks can in fact carry a high proportion of all
3 commodities because a high proportion of all commodities
4 can be put into certain standardized carrying
5 containers, right?

6 A I think that is not what we said. I think we
7 said trucks do in fact, not can.

8 Q Fine. With that correction, you're addressing
9 physical capabilities?

10 A We're addressing presence.

11 Q Presence. And what troubles me is that it
12 seems to me that the issue before the Commission here is
13 potential market power, and what I read your statement
14 on pages 16 and 17 as being all about is the question of
15 whether, if you apply this 50 percent test that Mr.
16 Anderson applied, you have got a reliable indicator that
17 the railroads cannot exercise market power.

18 And what I'm trying to press you on is, where
19 is the evidence of that? You have told me that you
20 don't know about the elasticities. Where is the
21 evidence that if more than half the tons are going by
22 truck railroads cannot exercise market power?

23 A I would say the evidence, the best evidence is
24 what we discussed yesterday, the difference in rail rate
25 index and the truck rate index. And we discussed the

1 fact that there is a substantially growing truck
2 presence, a dramatically substantially growing truck
3 presence, out of this small upturn in the economy; and
4 that we are getting indications of rail business holding
5 or going down while the trucks are streaming upwards.

6 And I know of no better indication of a
7 substitution, in fact, than the empirical evidence that
8 the trucks are growing at a geometric rate, almost. I
9 mean, if the economy is staying relatively flat and I
10 watch truck usage go up dramatically, I can't say that
11 it came from new production. It has to be moving from
12 someone else, and there's only one other major supplier
13 of transport in the United States and that's rail.

14 So I don't think we beg anything when we say
15 we have massive observed truck presence across vast
16 commodity descriptions and a substantially growing truck
17 volume in the face of a not substantially growing
18 economy.

19 Q Yes, and what that tells you is that there is
20 in fact substitution between the two modes?

21 A Right, at a rate level that we talked about
22 yesterday on FAK that is pulling the freight over from
23 rail. Now, it goes to say that if you and I fight every
24 afternoon after school for two weeks and you come home
25 crying more times than I, then it's not an unfair

1 statement that I tromp you, even though you whip me once
2 in a while.

3 Q Well, I am tempted to reach for a
4 counter-metaphor.

5 A You're bigger than I am, I know.

6 Q I resist the temptation.

7 Let me try to come at it a different way. At
8 the bottom of page 17, you say that at some point of
9 truck market share, truck share of a particular
10 commodity, the truck "clearly puts an upper limit upon
11 the ability of rail" to increase rates. That's
12 basically what you're saying?

13 A That's what I'm saying.

14 Q What is the upper limit? How much can the
15 railroads increase their rates before they will more
16 than pay for it in lost volume?

17 A The difficulty in that lies in the basic
18 logistical problem that rail often moves from A to B en
19 route to C. Lumber moves from Oregon to Phoenix to a
20 lumber yard to go to a building site. The truck moves
21 directly from Oregon to the building site.

22 And because of this characteristic in the
23 movement, it is not proper -- and this is one of the
24 problems that we have endured over time, and not only
25 here but many places -- it is not proper to compare

1 strictly truck rates and rail rates. We have to
2 actually compare the delivered cost or the logistical
3 cost of moving from A to C.

4 So I can't tell you -- we could take 25
5 movements that someone wanted to define and we could
6 define what that proper interval would be. But when you
7 have a STCC code directory that is as finely defined as
8 this, we could not possibly sample enough loads without
9 your concurrence to even define that for you that you
10 wouldn't object to whatever we chose.

11 So what I'm saying is that the very market
12 activity, the very conduct of the market -- I a long
13 time ago learned to have total confidence in the
14 market. I once thought it made stupid decisions, but it
15 does not. It makes the proper decision.

16 . And the conduct of the market in moving to
17 truck simply says that in movement after movement, and
18 an increasing proportion of those movements, the total
19 logistics cost favors truck.

20 Q If you have so much confidence in markets,
21 don't you recognize that there's a benefit in
22 competition between two railroads, intramodal
23 competition?

24 A I would say that I am not sure of that, and I
25 would refer you to one of your exhibits of Mr. Matley,

1 where he pointed out carefully that there was a
2 difference in the mileage of the various rail routes
3 between points. You will find that all of his rates
4 that he computed by mile are truck mileage. He did not
5 use any of the rail miles.

6 So he is saying, even as he points out the
7 circuitry, that the truck was the dominant factor he was
8 competing against.

9 Q Is your answer, no, I did not see any benefit?

10 A The answer is no, I'm not certain that you can
11 take the stand either way.

12 Q Okay. Let's take a look at Exhibit 40, which
13 we had in yesterday. I just want to ask you about the
14 last page on the exhibit. Is this a representative
15 sample of the kind of report you got in phase one of
16 your work for TBS?

17 A Yes.

18 Q That's all I had to ask you about that.

19 MR. ROACH: Your Honor, may I please have
20 marked two exhibits, my last two exhibits for this
21 witness: UP/MP-C-42 and 43.

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

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

1 UP/MP-C-42 and C-43 for
2 identification.)

3 BY MR. ROACH: (Resuming)

4 Q Now, let me direct your attention to the
5 statements in Exhibit 42. First let me ask you this.
6 Turning to the last five pages of this exhibit, is that
7 a letter that you've seen before?

8 A No, it's not addressed to me. I have never
9 seen it.

10 Q Okay. Well, let me ask about a statement in
11 there. I'm just asking for your knowledge. At the
12 bottom of page 261, Mr. Anderson is telling counsel for
13 SP that "TBS will use both statistical analysis (e.g.,
14 rail dependence, available carrier options), evidentiary
15 information, secondary research, and input from rail
16 marketing departments to identify which rail shippers
17 could arguably be most impacted by the merger."

18 My question for you is, did you participate in
19 any effort in connection with this application to
20 identify particular rail shippers who could arguably be
21 most impacted by the merger?

22 A I would suggest that in working with TBS to
23 define the facilities, in working with TBS to provide
24 names of carriers servicing, and talking to chambers of
25 commerce and talking to specific shippers, we

1 undoubtedly worked with them on such an assignment, if
2 that's what you're asking.

3 Q That's the phase one and phase two process we
4 talked about yesterday?

5 A That's right.

6 Q But otherwise you didn't go out and try to
7 find particular rail shippers who in your opinion would
8 be most impacted?

9 A Oh, negative. No, sir.

10 Q In the first two pages of this exhibit there's
11 a letter from Mr. Rennie to you. Is that familiar to
12 you?

13 A The letter of December 16th?

14 Q Yes, sir.

15 A Yes, sir.

16 Q It says on page 1: "In general, your role
17 will be to determine the transportation and distribution
18 options available to major Santa Fe-Southern Pacific
19 shippers and receivers at the principal common points --
20 Phoenix, Bakersfield, Fresno and Richmond." Then it
21 goes on to talk about looking at up to five industries
22 served primarily by rail at each of these points and
23 doing a detailed analysis for up to ten specific
24 shippers at each point.

25 And then finally, a little lower on the page

1 it cites among the issues to be studied modal
2 dependence, sensitivities, rates, transit times,
3 shipment size, specialized equipment, and then skipping
4 down, rates to nearest bulk intermodal facility.

5 Now, my question is, did you ever embark on a
6 study of the five major industries at each of these four
7 principal common points and of ten specific shippers at
8 each of those common points?

9 A We started on a study of five. We started out
10 looking at the facilities of five. The list was
11 subsequently reduced, zeroed in more specifically on
12 certain accounts which we looked at.

13 Q And in that process, did you look at, for
14 example, rates, which is one of the factors listed
15 here?

16 A As I told you yesterday, on some of the plants
17 we had a tremendous amount of information, even talked
18 to carriers, what they had filed. On some of the plants
19 we did not have anywhere near that amount of data. In
20 general, we did not have that much data.

21 Q Who decided, and when and why, not to look at
22 rates, as it was planned to do in this letter?

23 A I think I probably influenced that more than
24 anyone else. When we found that we were simply talking
25 about an FAK rate structure, the problem that fell out

1 very quickly -- I can go out today and I can keep
2 checking rates and I can keep finding a rate to lower my
3 cost. Now, if I use the rate of a carrier that is
4 currently hauling I will find one level. If I use the
5 rate of the carrier knocking at the door, I may be able
6 to shave a few pennies.

7 But basically we're looking at the \$1.00,
8 \$1.10 a mile bracket, and it becomes an exercise in
9 futility to check truck rates. We're talking about
10 trailer miles, so it will vary with the density and the
11 commodity, but with the big trailers of today not that
12 much in a 40,000 pound shipment.

13 Q Well, are you saying to me that there was
14 never any intention to look at rail rates?

15 A As I explained to you yesterday, we have this
16 dual FAK structure paralleling each other in TOFC and
17 truck at basically the same rate level. So the only
18 place that you would intently look at rates would be in
19 the specific commodities that were not handled FAK truck
20 or rail.

21 Q Precisely, and my question is, are you
22 testifying here that there was never any intention to
23 look at rail rates as part of the study referred to in
24 the December 16 letter?

25 A No, I think I would better testify to you that

1 we simply ran out of time.

2 Q How about the other issues mentioned here --
3 modal dependence, transit time, shipment size? Is the
4 only effort to investigate those the plant visits and
5 conversations with guards and so forth that you talked
6 about yesterday?

7 A We do a tremendous amount of truck
8 interviewing. We watch the transit times very closely.
9 We've done a tremendous amount of shipper interviewing.
10 We watch the transit times on rail. We did not go
11 beyond that.

12 Q Okay. Now let me just keep the focus here.
13 We are talking about an investigation of Santa Fe-SP
14 shippers specifically, not about interviewers of
15 truckers at truck stops. And I'm asking you, in the
16 process of looking at the shippers in either phase one
17 or phase two of your work for TRAM -- for TBS, did you
18 collect data about modal dependence, transit times,
19 shipment size, and the other items discussed here in any
20 way other than you described yesterday?

21 A If you will go back to the last page on your
22 number 40 and look at the notes on Bayles, you will find
23 that Willis Shaw of Elm Springs is delivering. We
24 already know that Shaw runs two-man teams. You will
25 find that Miller out of Utah is delivering. Miller runs

1 two-man teams. Finkle is a solo driver. McGraw I don't
2 know.

3 What I'm telling you is, when you are
4 cognizant of the operating characteristics of the
5 observed fleets and you know their running times, it
6 really is a study in redundancy to expend somebody's
7 money to go back and ask somebody to tell you what you
8 know.

9 Q So you're saying that by looking at the rate
10 of the trucking company that tells you some information
11 about transit time?

12 A That told us their transit times.

13 Q For truck shipments?

14 A For truck shipments. And the transit times
15 for rail are well established.

16 Q At the bottom of that page there's a
17 discussion of an analysis of chemical flow patterns
18 between Houston and Los Angeles.

19 A Which page are we on?

20 Q The first page of Exhibit 42.

21 A All right.

22 Q Right at the bottom.

23 A That is sort of blotted out on mine. Does it
24 read "chemical flow patterns"? Is that the first three
25 words?

1 Q Yes.

2 A I have half of it. All right, thank you.

3 Q Did you do an analysis of chemical flow
4 patterns between Houston and Los Angeles?

5 A We have interviewed the tanker fleets in the
6 Texas area. We have watched the emerging applications
7 for bulk authority. We watched the loads coming
8 through. We interviewed the tankers at El Paso and at
9 Ontario, and we generally studied the movements of
10 chemicals in bulk, which was the critical movement, as
11 opposed to the packaged goods, which fall back into our
12 FAK discussion.

13 Q And those interviews constituted your --

14 A That was our investigation.

15 Q -- analysis of chemical flow patterns?

16 A Right. We talked to fleets and to individual
17 operators.

18 Q Let me ask you to look at Exhibit 17-32 in
19 volume two of Mr. Anderson's testimony.

20 A Summary of transportation, L.A.-Texas?

21 Q Right. This is an example. On the top of the
22 second page there's an entry next to STCC code 28183,
23 miscellaneous cyclic chemical products, and the entry is
24 the letter "E", which it says at the bottom of the page
25 indicates that: "At the level of detail studied in the

1 TBS analysis, sufficient rail customer logistics options
2 were not found."

3 Now, am I right that that would be a traffic
4 cell where you looked for truck capacity and couldn't
5 find it?

6 A That is a traffic cell where we looked for
7 truck capacity that we did not find. let me say that I
8 assume this is based on our work. If this is based on
9 our work, it would be one that we did not find.

10 Q If it's not, your quarrel is with Mr. Anderson
11 and not with me?

12 A That's right. I am simply qualifying it to
13 say that we looked at the chemical movements and I made
14 that assumption.

15 Q And the same applies to the five-digit code
16 28184, alcohols? And just take that. That's another
17 example, right?

18 A Yes. However, if I might comment on that --

19 Q Don't comment. Let me ask a question.

20 My question is this, and it will probably lead
21 to your comment anyway: What is it that makes trucks
22 available for some of these five-digit chemical
23 movements, like miscellaneous chemical compounds, lower
24 down on the page, and chemical products not elsewhere
25 classified, and yet not available for the two five-digit

1 codes we just talked about?

2 A There are three problems in the use of truck
3 in bulk liquid transport. One is that prior to 1980
4 entry was frightfully restricted, restricted both by
5 regulatory restraint and by the massive cost of
6 equipment. Subsequent to '80, '81 saw a substantial
7 amount of applications for authority by the existing
8 carriers.

9 Subsequent to that, if you availed yourself of
10 the reading rack in front of the men's reading room,
11 you'll find in the last two ICC weekly publications
12 there are seven grants of extensive national bulk
13 authority. We are now getting the entry in bulk that we
14 did not have prior to '81 or even in '82.

15 Now, commodities -- where the trailer flat and
16 the trailer van and the trailer reefer are ubiquitous,
17 the trailer tank is not. We have to talk about
18 stainless steel, and not just stainless steel but
19 different alloys of stainless steel for specific
20 commodities.

21 We have not only the problem of cleaning, but
22 the problem of disposal of the cleaned-up residual. It
23 takes time for an emerging industry to arrange clean-out
24 facilities in a market area that they have not been in
25 before. We have some commodities that require pressure

1 vessels. The commodity does not move under atmospheric
2 conditions, but must be restrained under pressure.

3 We did not start picking up substantial
4 long-haul tank movements until this year. If I were
5 rewriting that section ten months after I wrote it and
6 if we were redoing the work for Mr. Anderson now, we in
7 fact, checking some chemical movements in the last two
8 weeks, fearful that this question might come out and
9 predicating on one submission of the Union Pacific that
10 a commodity could not even be hauled at all by truck, we
11 found that now it, A, can be hauled by truck and that
12 this presence is growing.

13 But what we are suffering from here was a time
14 restraint, that the tankers started moving after the
15 rest of the industry. Five years from now, you and I
16 can talk about this and there will be every bit as much
17 competition because of the grants the Commission has
18 been making in the last few weeks.

19 Q When TBS sent you a particular traffic cell
20 that had fallen through these various screens, I believe
21 that we said yesterday that they would send you that
22 information in the form of a particular movement,
23 correct?

24 A Yes.

25 Q Did they tell you the number of tons in the

1 cell that they were looking at which were in turn
2 represented by that sample movement?

3 A That's correct.

4 Q They did tell you the total number of tons in
5 the cell?

6 A The total number of tons -- no, I'm sorry.
7 They gave us the number of tons in the actual movement.

8 Q In the actual movements. So am I right that
9 you did not know how many tons were in the entire cell
10 that would be governed by your decision as to whether
11 enough trucks were available to move the tons in the
12 sample movement?

13 A We can only tell you that we oversupplied by
14 50 percent the actual number of tons in the movement.

15 Q On the third page of Exhibit 42, there is a
16 document on the letterhead of your company.

17 A A copy of an invoice, I hope.

18 Q No, unfortunately not.

19 Is that a memo you prepared?

20 A Yes.

21 Q And am I right that this refers to mobilizing
22 employees of the two railroads at the common point
23 locations to go out and investigate about motor
24 carriers?

25 A Originally, we intended to try to save money

1 and use field people, yes.

2 Q Why didn't that happen?

3 A I can't honestly answer that. All I can tell
4 you is that this work was subsequently done by my
5 personnel.

6 Q On the next page there is a reference in
7 paragraph 3 to using Reehie Associates' third quarter
8 1983 cost levels for rail and truck competitive
9 evaluations. Were you involved in any effort to utilize
10 Reehie's cost models to evaluate potential competition
11 between rail and trucks?

12 A No.

13 Q My last questions, which will be very brief,
14 have to do with Exhibit 43. Is this the report of the
15 study of lumber truck capacity between the Pacific
16 Northwest and Phoenix that we discussed yesterday?

17 A I believe it is.

18 Q Okay. Let me ask you to take a look at some
19 entries, starting with the second page, 1677.

20 A Is there a better copy at all?

21 Q No, this is how it came out in your work
22 papers. You will find that the obscuring of information
23 at the left was done for confidentiality reasons.

24 A I see.

25 Q By the Applicants.

1 A Okay. Some of the pages, the headings are
2 missing on page 2. But I can shift here.

3 Q This is exactly the way it looked in the work
4 papers.

5 I just want to ask you about some of these
6 comments that are noted in the right-hand column. On
7 the second page you've got a notation, "Phoenix not
8 profitable; interested if steady." What does that
9 signify to you?

10 A Well, what it signifies to me is that that
11 particular carrier had found that he did not have enough
12 predictability going into Phoenix to arrange balance,
13 and it was not profitable for him unless the movements
14 were predictably steady going in so that he could
15 balance out.

16 Q When you did this study, were you pretending
17 to be offering loads to these companies the way we
18 talked about yesterday?

19 A No. In this study we called to ask -- this
20 was the first study we did and we simply wanted to know,
21 are you now serving Phoenix, how many loads do you carry
22 a week or a month to Phoenix, do you have flatbeds
23 capable of taking lumber to Phoenix, would you be
24 interested in more loads to Phoenix at current rates or
25 under what conditions.

1 Q Okay. On page 1679, the fourth page of the
2 exhibit, there are that say -- one of them says
3 "increase only if profitable." Two others say "if
4 profitable." Was that a common response, that people
5 wanted to serve this market, but only if it would be
6 profitable?

7 A I would hope that would be a common response
8 for anyone. Many carriers were in the market, familiar
9 with the market, had additional capacity and were
10 willing to serve it on today's rates. Others -- well,
11 the one above says "could increase." I mean, he would
12 be happy to.

13 Others said, if I can serve it profitably I
14 will get in, if I can find a backhaul I could go, or if
15 I get \$1.15 a mile on the haul I will go. You'll find
16 all of those notations in here.

17 Q On the next page there's one that says "if
18 price is right." Do you interpret that as meaning the
19 same thing as "if profitable"?

20 A Yes, I would interpret that the same.

21 Q Okay. On the next page there are some
22 entries. One of them says "need to be sure of return
23 load." Another one says "only go to Phoenix on round
24 trips." Another one says "reluctant to go to Phoenix."
25 Another one says "can't get out; most owner-operators

1 refuse to go."

2 Do you think those are all talking about the
3 backhaul problem?

4 A Yes, basically alluding to the balance
5 situation out of Phoenix.

6 Q And then there's one that says "if rates are
7 raised to make it profitable." Do you know how much
8 that trucker thought the rates had to go up to make it
9 profitable?

10 A I would have to go back to the notes on that
11 interview to tell you if we had any information or not.

12 Q Next page it says: "If price is right. Avoid
13 Phoenix now. Need two dollars a mile to cover
14 backhaul." Is that a pretty universal response from
15 these truckers?

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1 A The \$2 a mile is not a universal response. I
2 think you will find in here total recognition of the
3 point we made of the 80 percent balance. The trucker
4 needs to know he can get back or he doesn't want to go
5 or he needs to have enough predictability that he can
6 find his own way to get back.

7 MR. ROACH: Thank you very much. No further
8 questions.

9 JUDGE HOPKINS: Ms. Bonaparte?

10 BY MS. BONAPARTE:

11 Q Good morning, Mr. Baker. My name is Nell
12 Bonaparte, representing the Denver Rio Grande.

13 Calling your attention -- do you have your
14 verified statement in front of you?

15 A I do.

16 Q Calling your attention to Page 20, you refer
17 to the assistance --

18 A Would you let me find it first, please? I
19 appreciate your going quickly, but -- thank you.

20 Q Now, in looking at the second paragraph on
21 that page, under Support for Other Consultants, you
22 refer to the assistance which TRAM provided to Beeble
23 Associates. Now, this assistance was provided at the
24 request of the applicants, correct?

25 A The assistance was provided at the request of

1 Reebie. We were made available to the consultants.

2 Q Now, and you supervised URAM personnel who
3 were providing the services to Reebie, correct?

4 A Yes.

5 Q Did you deal directly with Carl Liba of Reebie
6 Associates?

7 A I talked to Carl, yes.

8 Q Now, am I correct that the data which you
9 provided to Reebie Associates was used to develop cost
10 information on trucks?

11 A I have no idea to what use the data was put.
12 you have to ask Mr. Liba.

13 MS. BONAPARTE: Okay. I would like to mark
14 for identification DRGW-C-28.

15 JUDGE HOJKINS: It will be marked for
16 identification.

17 (The document referred to
18 was marked for
19 identification as Exhibit
20 Number DRGW-C-28.)

21 BY MS. BONAPARTE: (Resuming)

22 Q Now, Mr. Baker, do you recognize this letter?

23 A The note?

24 Q This note.

25 A Yes.

1 Q Is this addressed to yourself?

2 A Yes.

3 Q And it is Carl Liba of Reeble Associates?

4 A I think so.

5 Q Now, in looking at the second sentence, he is
6 asking you to "concentrate your efforts on data for
7 truck costing in these lanes and at these western end
8 points." Do you see that?

9 A I see it.

10 Q So wouldn't you say then that this data that
11 you provided to Carl Liba concerned truck costing
12 information?

13 A Yes. I am still trying to get the question.
14 I wasn't answering. What is the question, is what I am
15 asking.

16 Q Well, I had originally asked you if TRAM
17 provided this information to Reeble which was used to
18 develop cost information on trucks.

19 A And I told you we provided data to Reeble, and
20 I didn't know what the data was used for.

21 Q But the nature of the data was truck costing
22 information. Is that correct?

23 A Most of the data we provided to Mr. Liba was
24 balance information, loaded empty miles. We provided
25 him some revenue blocks, but mostly balance information.

1 corridor balance.

2 Q Were you aware that Carl Liba of Reebie
3 Associates was developing a truck costing model?

4 A I don't think that's the proper term. Mr.
5 Liba and Reebie developed a costing model a long time
6 ago. They are utilizing a costing model.

7 Q Well, referring to Page 20 of your verified
8 statement, I believe you referred to it as a motor
9 carrier costing model.

10 A Yes, and I believe I used it in updating their
11 motor carrier costing model. It is an existing model.

12 Q Correct. Now, are you aware that Reebie
13 Associates' truck costing model examined shippers'
14 choices at given truck versus rail prices and services
15 to determine the number of potential truck to rail
16 diversions after the proposed merger?

17 A I am not aware of that.

18 Q Now, at Pages 20 through 27 of your verified
19 statement, you describe the assistance which TRAM
20 provided to Temple, Parker, and Sloane in their
21 analysis. Now, was this assistance provided at the
22 request of the applicants?

23 A This assistance was provided, again, I was
24 made available to the consultants at the request of the
25 applicants. The assistance I provided the consultants

1 was at the request of the consultants.

2 Q And did you supervise the consulting services
3 which TRAM provided to TBS?

4 A I did.

5 Q Now, isn't it true, Mr. Baker, that you were
6 not requested to provide any truck costing information
7 to TBS such as was provided to Carl Liba?

8 A We provided -- provided may be a poor word.
9 During the period from November through March or April
10 when this was filed, we were in continuous contact with
11 TBS personnel. We looked at many things. We discussed
12 many things.

13 Q Thank you, Mr. Baker. I don't want to cut you
14 off, but I believe I did ask a specific question.

15 A I am trying to answer a specific question.
16 You asked, did we provide TBS costing information. We
17 often discussed costs. We did not provide TBS a
18 document in the nature we provided Mr. Liba.

19 Q So you did not assist TBS or Mr. Anderson in
20 the development of a truck costing model?

21 A We did not.

22 Q Now, is this because TBS did not compare
23 relative truck and rail prices in their analysis?

24 A You will have to ask Mr. Anderson.

25 Q But you did not provide TBS such truck and

1 rail prices which could be used in their analysis,
2 correct?

3 MR. SMITH: Objection, Your Honor.

4 JUDGE HOPKINS: I thought he just answered
5 that question.

6 BY MS. BONAPARTE: (Resuming)

7 Q Mr. Baker, at any point in your work with TBS
8 and Mr. Anderson -- forgive me if this is a bit of
9 repetition, but I do want to make this point clear.
10 Were you specifically asked to provide information
11 relating to truck rates or truck costs?

12 A Again, I thought we answered it. Let me
13 answer it this way. The NMTDP, came out, as you know,
14 at the AAF, and the AAF published through 1981
15 statistics, and the '81 data shows an absolutely flat
16 truck cost, which data was available to everyone.

17 We have discussed it. There was no need to
18 provide beyond that. We discussed that this morning.
19 Beyond that we did not provide anything. Again, a
20 specific series of truck costs outside of the NMTDP data
21 that was published.

22 Q Thank you, Mr. Baker.

23 Now, calling you attention to Paragraph 2,
24 Page 25 of your verified statement, you state that TEAM
25 assisted TBS in determining the substitutability of

1 truck for rail service and selected Santa Fe-Southern
2 Pacific study regions.

3 Can you tell me, if you know, on what basis
4 TBS selected the specific areas for you to study?

5 A The Group 1 common points?

6 Q Well, you referred to it as selected Santa
7 Fe-Southern Pacific study regions.

8 A Those were the Group 1 common points and Group
9 2 common points.

10 Q Can you tell me, then, did you study all of
11 those common points, or were there certain ones you were
12 asked to study?

13 A Well, we studied, as we have testified, we
14 studied specific movements. We studied movements
15 between all of the common points in the location of our
16 interview sites, the special interview sites. They were
17 designed to trap the traffic that would be moving
18 through those corridors. I am not quite sure what you
19 are asking for.

20 Q Well, looking at the second sentence of that
21 paragraph, it would seem that you studied several of the
22 Group 1 common points and El Paso, so it is correct you
23 didn't study all of the Group 1 common points?

24 A We didn't mention the Houston interviews
25 here. They are mentioned elsewhere. They are in the

1 papers. We didn't mention the Reno, Nevada, interviews
2 here. They are in the papers elsewhere. We didn't
3 mention the fact that we cut the northern movements at
4 Reading, California.

5 I think this statement is fairly clear that we
6 assisted them in the preparation of work on the common
7 points.

8 Q Yesterday we talked about the two different
9 phases of your study. I would like to narrow these
10 questions so I don't duplicate any questions posed
11 yesterday, but in discussing the carrier interviews on
12 Page 26 of your statement, at the top of the page you
13 state that TBS selected various rail commodity movements
14 in specific mileage blocks for your study.

15 Now, do you know the basis on which TBS
16 selected the specific rail commodity movements for you
17 to study?

18 A I do not know intimately. I have been party
19 to the discussions, but I was not party to the
20 decisions.

21 Q When you interviewed these motor carriers, you
22 stated that you assessed their current ownership of the
23 required equipment types to determine whether the
24 carrier had the necessary equipment to haul the selected
25 rail commodity.

1 Now, did you examine the commodity at the
2 five-digit STCC level in making this evaluation?

3 A I believe again we testified yesterday that
4 the data was given us at the five-digit level. We were
5 aware who the shippers were, and we made an assumption
6 down to the seven-digit STCC level on several of these.

7 Many of them were adequate at the five.

8 Q Now, realistically, Mr. Baker, if you had been
9 given these commodities at the two-digit STCC level, for
10 example, you wouldn't have been able to evaluate the
11 type of equipment necessary, would you?

12 A Well, again, as we discussed with Mr. Roach
13 this morning, most freight fits in boxes, bags, or can
14 be handled on the three conventional types of trailers.
15 We made that assumption across broad ranges and defined
16 out the exceptions where we were aware of the
17 exceptions.

18 Q But for your analysis, you felt more
19 comfortable examining the commodity at the five-digit
20 level?

21 A I don't think that would have altered my
22 comfort a bit.

23 Q In order to determine what specialized
24 equipment was necessary for a particular commodity --

25 A Pardon me. I think I misanswered to you. I

1 was thinking between five and seven. Were you alluding
2 to between two and five?

3 Q Yes, Mr. Baker.

4 A For our analysis, we did go at the five-digit
5 level, and we were more comfortable with five.

6 Q Thank you.

7 I would like to have marked for identification
8 DRGW-C-29 and 30.

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

11 (The documents referred to
12 were marked for
13 identification as Exhibits
14 Number DRGW-C-29 and
15 DRGW-C-30.)

16 BY MS. BONAPARTE: (Resuming)

17 Q Mr. Baker, do you recognize these documents?

18 A Yes.

19 Q These are your primary work papers, correct?

20 A These are my work papers.

21 Q Now, in comparing these two exhibits, would
22 you say that the first exhibit, DRGW Number 29, looks
23 identical to the second exhibit, DRGW-30, except for the
24 fact that the second exhibit contains some handwritten
25 revisions to the first? Would you agree to that

1 characterization?

2 A I would agree with that.

3 Q Now, in first looking at DRGW-29, did TRAM
4 receive this exhibit from TBS?

5 A Yes.

6 Q Do you recall the approximate time in your
7 study that you would have received this from TBS?

8 A It would have been December, probably late
9 November, right in that period. I don't recall the time
10 exactly.

11 Q Now, you confirm my understanding of the
12 headings, Fresno, California, Top Two Shippers By STCC
13 Outbound, and Fresno, California, Top Two Receivers By
14 STCC Inbound, that this exhibit represents a list of
15 focused customers which TBS selected for the Fresno
16 area?

17 A That's right. Phase One.

18 Q Now, what in your understanding constitutes a
19 focused customer?

20 A My understanding of what constitutes a focused
21 customer is one we are asked to look at.

22 Q Well, the designation Top Two Shippers By
23 STCC, would it be fair to say that these are the major
24 rail shippers in Fresno that are also customers of the
25 Santa Fe and Southern Pacific Railroads?

1 MR. SMITH: Your Honor, I think I am going to
2 have to object. I think Dave Anderson of Temple,
3 Barker, and Sloane is the witness who testified at great
4 length about focused shippers, how they were selected.
5 I don't think this is the right witness to ask that of.

6 JUDGE HOPKINS: I think he can give his
7 understanding. I will allow him to answer.

8 THE WITNESS: Well, I would say again that it
9 would be my reading that these were the top two in the
10 terms of TBS's interest, and I can't tell you what the
11 basis of that interest was.

12 BY MS. BCRAPARTE: (Resuming)

13 Q All right. Thank you, Mr. Baker.

14 Now, looking at the second exhibit, DRGW-30,
15 did TRAM receive this directly from TBS? Or would you
16 characterize this as a working copy that was used by
17 TRAM personnel?

18 A I would say that this would be a working copy
19 used by our people.

20 Q Now, do you recognize from the handwriting who
21 has made the revisions that are noted on DRGW Number
22 30?

23 A I really -- I wouldn't say they are
24 revisions. I find addresses, notations of addresses and
25 comments.

1 Q Do you recognize the handwriting?

2 A I really don't.

3 Q Would you know the circumstances under which
4 these comments were added and made?

5 A Looking at the document and the presence of
6 the addresses, I would say the comments were made in the
7 field.

8 Q So the changes were not made at the direction
9 of TBS?

10 A Pardon me? I can't see that putting the
11 address, 2874 South Cherry Avenue, with the phone
12 number, 486-2770, is a change.

13 Q Well, Mr. Baker, in looking at the first
14 exhibit, were these the focused customers which TRAM
15 originally asked TBS to perform field observations for?

16 A As has been testified, TRAM was originally
17 given a list of five. They were further refined to
18 two. So these are not the ones we were first given a
19 list of.

20 Q Is this a subsequent list that was provided to
21 you by TBS?

22 A Yes.

23 Q Now, Mr. Baker, looking at the first exhibit,
24 DRGW-C-29, at Page 2838 -- it is a little difficult to
25 see the page designation, but I am looking at STCC 20

1 for shippers by STCC outbound.

2 Can you confirm for me that there are two
3 shippers listed under STCC 20, which I believe is food
4 products, is it not? Cartage Service and LDS Truck
5 Lines, Inc.?

6 A Yes.

7 Q Now, in looking at the second exhibit on Page
8 CFB 2843, under STCC 20, can you confirm for me that LDS
9 Truck Lines, Inc., for some reason has a line drawn
10 through it?

11 A I can confirm that.

12 Q Do you know whether TRAM conducted field
13 observations of LDS Truck Lines, Inc.?

14 A I can't tell you for certain. I would take
15 the line through it and the presence of the address
16 above to indicate that she was at least having
17 difficulty in locating it.

18 Q Do you know whether TRAM conducted field
19 observation of Cartage Service?

20 A I am sure that -- well, I am not sure.

21 Q Mr. Baker, if I could direct your attention
22 to --

23 JUDGE HIGKINS: He is looking up to see.

24 THE WITNESS: I am looking up to see if I
25 brought the sheets that would allow me to answer that.

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The question was Cartage Service?

BY MS. BONAPARTE: (Resuming)

Q Yes, sir.

A Cartage Service, 2915 Gibson Street, small yard, a rented trailer for an office, one truck dock appears unused. No railroad spur. The railroad appears unused.

Would you like me to continue?

Q No, that is quite sufficient. Thank you, sir. We will be getting to that.

Now, looking at 2840 on Page -- on Exhibit DRGW-C-30, can you confirm for me that under STCC 14 there are two top two receivers listed, PPG Industries and Berven Carpets Corp.?

A I can.

Q And can you confirm that Berven Carpets Corp. has a line drawn through it, and that Agro Save Corporation is written next to it?

A I can.

Q Can you tell me whether TRAM conducted field observations work for Berven Carpets Corp.?

A I shouldn't have turned my pages back.

(Pause.)

A Not from the materials I brought with me.

Q Now, in looking at that same page, under STCC

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1 20, can you confirm for me that Zacky Farms, Inc., and
2 Carnation Company have apparently been stricken off the
3 list, and that American Beauty Mac looks like it is
4 substituted for Zacky Farms, Inc. Is that correct?

5 A That is the way it appears there.

6 Q Do you think American Beauty Mac might stand
7 for American Beauty Macaroni?

8 A I would suspect it does.

9 Q Do you know whether TRAM performed field
10 observations of American Beauty Macaroni?

11 A Let me say to you that many of these are
12 shipments into a market that there may a warehouse or
13 facility at, and I can't tell you what the observations
14 are from the material I have.

15 Some of these movements do not necessarily
16 connote a facility.

17 Q In turning now to CFE 4823 in the same
18 exhibit, can you confirm under STCC 01, farm products,
19 that Gelco Rail Service has been crossed off the list
20 apparently?

21 A Right.

22 MS. BONAPARTE: I would now like to mark for
23 identification DRGW-C-31.

24 JUDGE HOEKINS: It will be marked for
25 identification.

1 (The document referred to
2 was marked for
3 identification as Exhibit
4 Number DRGW-C-31.)

5 BY MS. BONAPARTE: (Resuming)

6 Q Mr. Baker, we earlier touched on the field
7 observation work which TRAM performed. Would you say
8 that this exhibit represents the facilities which TRAM
9 observed in the Fresno area?

10 A Yes.

11 Q Does this represent a list of the focused
12 customers which TBS asked TRAM to observe?

13 A Well, it represents at least a part of them.

14 Q Is this a complete list?

15 A I have not had a chance to compare it against
16 the other. I can't tell you that.

17 Q Do the numbers in the left margin represent
18 STCC codes, Mr. Baker?

19 A STCC codes.

20 Q Now, did TBS determine which plant facility
21 would be observed by TRAM?

22 A Yes.

23 Q Did TBS determine whether TRAM would locate
24 more than one shipper receiver for a particular
25 commodity?

1 A Yes.

2 Q Now, calling your attention to Page CFB 2823,
3 is it true that TRAM studied one shipper for the
4 outbound shipment at STCC 20 for Fresno?

5 A It is true that on this exhibit, on 02823,
6 there was one STCC 20 description shown. I can't tell
7 you beyond that.

8 Q Can you confirm that Cartage Service was
9 picked as a focused customer for STCC 20 by TBS?

10 A It is on the other list.

11 Q Now, I believe you read part of this
12 description before, but can you confirm for me the
13 description of no rail spur and no truck dock area, and
14 that for at least two of the three days that it was
15 observed, there was a record of no vehicles or
16 activity?

17 Is that correct, Mr. Baker?

18 A That's correct.

19 Q Now, what did you conclude from observing this
20 facility about the rail facilities of Cartage Services?

21 A The name itself implies that this is a company
22 that provides cartage service for TOFC movements or for
23 some movements, not necessarily TOFC, but the inclusion
24 would imply TOFC.

25 Q But --

1 A You asked me what I concluded. Do you want me
2 to answer or not?

3 Q Yes, I would.

4 A Okay, I was trying. Beyond that, what would
5 you like me to conclude? It is a cartage company.

6 Q That is fine. I would like to go down now to
7 Hosposable Products, STCC 26.

8 A All right.

9 Q Would you say that Hosposable Products was a
10 focused customer that TBS selected for STCC 26 in the
11 Fresno area for outbound shipments?

12 A Yes.

13 Q Now, in reading the description, would you
14 agree that it states, on closer investigation rail
15 appears unused? Most of the warehouse, 85 percent, is
16 empty. And for January 17 I see no activity; for
17 January 19, no trucks, cars parked in ramps. And for
18 January 20th, I see no truck activity.

19 What could you conclude about the truck
20 activities or the rail activities at this facility from
21 this observation?

22 A This observation? I would conclude that in
23 January we are not in harvest. There is no product
24 moving and probably shan't be until the agricultural
25 community starts to work again.

1 Q Well, would you say, then, Mr. Baker, that if
2 your observation had included a longer time period, that
3 you might have been able to observe some of the
4 activities of this facility?

5 A Had we done the observations in the summer
6 time at this particular one, I think you would have seen
7 a substantially different activity.

8 Q Is this an example, then, of the seasonality
9 of shipments of various products?

10 A In varying areas you have seasonality.

11 Q Now, Mr. Baker, turning now to 2827, under
12 STCC 01, Zacky Farms, Inc., can you confirm for me the
13 description of "No rail spur to be seen?"

14 A "No rail spur to be seen."

15 Q Can you tell me what you could conclude about
16 the rail activities at this facility from this
17 description?

18 A From this description, we would tell you that
19 we could see no rail spur, that it was a 20-acre parcel
20 with a fenced lot and a guarded gate, that we did not
21 intrude upon the property, and that we have no awareness
22 of whether or not a rail is or is not on premise.

23 Q So from the description of the 20-acre fenced
24 lot and the guarded gate, then TRAM personnel was not
25 admitted into the facility? Is that correct?

1 A We did not even ask for admission.

2 Q Now, in looking at the description of this
3 facility, I see a lot of references to chickens. Are
4 chickens a STCC 01 product?

5 A Chickens are the byproduct of a STCC 01
6 product. The conversion rate on TDM is about two and a
7 half to one. It is the end result and the purpose of
8 bringing the seed in. We cannot tell you what was going
9 in. We can only tell you that there was a considerable
10 amount of truck activity at the plant.

11 Q So from this description in other words you
12 couldn't know which STCC 01 commodity it was for which
13 Zacky Farms was chosen as a focused customer. Is that
14 right?

15 A It would be a grain product, because they are
16 converting it to chickens, and I couldn't tell you
17 whether it was corn or wheat. I could surmise it was
18 barley, but who would know the difference? And it
19 wouldn't make any difference in its transport
20 characteristics.

21 Q Do you happen to know whether or not -- I
22 don't want to skip ahead, but the Phase Two part of your
23 study, you conducted interviews. Do you happen to
24 recall whether or not any interviews were conducted of
25 motor carriers to see whether they could transport this

1 STCC 01 product for Zacky Farms?

2 A I don't even know how to answer that. I have
3 been in the trucking business for 35 years. I have
4 hauled millions of pounds of wheat, barley, corn. I
5 have hauled chicken feed.

6 I have hauled cattle feed. I ever developed a
7 system to convert alfalfa to wafers so that I could haul
8 cattle feed from alfalfa. The truck has been hauling,
9 and the wagon before it, the feed for chickens, cows,
10 and pigs since there were wheels. I don't even think I
11 could justify to a client the expenditure to ask such a
12 question.

13 Q I was merely asking you, Mr. Baker, if Zacky
14 Farms, Inc., and this particular rail commodity was one
15 of the ones chosen for the second phase of your analysis
16 in which you conducted motor carrier interviews.

17 A I can -- if you are asking, did we solicit
18 freight inbound to Fresno for Zacky Farms, did we
19 solicit capacity for that, which I didn't understand to
20 be your first question, but if I misread you, I
21 apologize.

22 Q Mr. Baker, maybe I could suggest you could
23 look that up during a break.

24 A I don't see a Fresno inbound 01 in a quick
25 perusal.

1 Q Excuse me. If I may pursue the point, Your
2 Honor, you were looking at Phase 2 of your study for
3 the --

4 A That's what I thought you reasked me a minute
5 ago.

6 Q Yes, I did. And you didn't perform any
7 interviews for STCC 01 inbound for Fresno?

8 A I said a quick survey of these five pages, I
9 didn't see one. I will be happy to look thoroughly at
10 the break and tell you whether or not there is one, but
11 I just ran the freight inbound loads quickly while you
12 were talking.

13 Q Now, Mr. Baker, still on CFB 2827, under Lgro
14 Save Corporation, can you confirm for me the description
15 in which it is stated "No rail spur and not enough space
16 between buildings for a long van?" And for January 17th,
17 I see the notation, "No activities." And for January
18 18th through 20th, the same.

19 A I can.

20 Q Can you tell me what you could conclude from
21 examining this focused customer for STCC 14 inbound
22 products? Can you tell me what you could conclude about
23 the rail activities or truck activities at that point?

24 A Well, I would conclude that we have an office,
25 that we have no other rail activity, and no other

1 activity taking place in the Fresno area at that time.
2 Again, if you will look at the dates, it is mid-January,
3 and that there was no team track or warehouse activity
4 to observe.

5 Q Would you thus agree, then, that you would
6 need to send somebody out to the field perhaps during a
7 more active season in order to evaluate the rail
8 facilities or truck facilities at Agro Save
9 Corporation?

10 A Well, I would concur with that, but we would
11 have to see the shipments moving to know specifically
12 what was happening.

13 Q Now, turning to the next page, CFB 2828, under
14 STCC 14, PPG Industries, could you please read for me
15 the description for January 20th?

16 A Certainly. "The binoculars were fogged."

17 Q Could you read it out loud?

18 A "It is fogged in too thick to see across
19 field."

20 Q Turning to CFB 2831, looking at the -- under
21 STCC 33, could you tell me what is meant by the phrase
22 "Rail activity out of sight?" Would this mean -- I am
23 sorry. Let me ask you that question.

24 A Go ahead. Would you finish your question?

25 Q I have finished my question.

1 A You are not going to give me the answer you
2 want?

3 Q I want you to give me the answer.

4 A Okay. It simply means that we cannot observe
5 the unloading activity, that there is rail presence,
6 that there are stockpiles of rods and beams, that there
7 is rail activity occurring, that we did not observe the
8 loading and unloading of the rail cars.

9 Q Can you tell me what the notation means,
10 "Comes in by rail?" And then the notation, "Six trucks
11 for local deliveries of steel?"

12 A Would you help me where you find the "comes in
13 by rail?"

14 Q Yes. In the first paragraph description of
15 Pittsburgh Des Moines.

16 A All right. It simply means -- the statement I
17 thought was quite lucid. Steel distribution center.
18 Steel, if you want to move the word "steel" over again,
19 steel comes in by rail.

20 Stockpiles of rods and beams on the west side,
21 that we could not observe the loading and unloading
22 activity, and then there is the statement there of local
23 delivery trucks in the fleet to distribute the movement.

24 Q Would you thus say that the rail handled the
25 bulk movements of the steel shipment in this case, or

1 the long haul movements?

2 A I would say the rail brings the steel in. I
3 can't give you a long haul description from this
4 narrative. It brings the steel in.

5 Q Now, Mr. Baker, turning back for a moment to
6 2829, under the description of Weyerhaeuser for
7 STCC 24 --

8 A 2829 for STCC 24?

9 Q Yes, and it is a description of Weyerhaeuser.

10 A That is how you throw me, ma'am. It is
11 Weyerhaeuser.

12 Q Excuse me. I stand corrected.

13 Now, in reading this description, the lumber
14 is loaded in by rail and out to local area by the five
15 Weyerhaeuser-owned trucks to make it two loads each per
16 day. Does this mean that the lumber arrives by rail,
17 and it is the trucks that make the local deliveries?

18 A Yes. The lumber that is coming through that
19 facility is arriving by rail and being distributed.

20 Q Now, turning to the last page of this exhibit,
21 CFB 2834, looking under STCC 49 for Beacon Oil, I see
22 the description of "Ecc particularly thick. Difficult
23 to assess the size of facility." And the last phrase in
24 the description is "Can see two to three more trucks in
25 fog."

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1 Can you tell me what you could conclude from
2 this observation about the truck activities of Beacon
3 Oil?

4 A This description of Beacon Oil is again
5 accurate. The girl didn't see everything. Excuse the
6 expression. My ladies are not young ladies. They are
7 just very fine ladies. The size of the descriptions,
8 approximately 20 acres. It is a large fenced property.
9 It is a refinery.

10 They have a transportation company. The trucks
11 are moving in and out. The tankers are coming in and
12 out. A Smith tanker came in. A Beacon tanker came in.
13 And she could observe two or three more on that
14 morning.

15 MS. BONAFANTE: I would like to mark two more
16 exhibits, DRGW-C-32 and DRGW-C-33.

17 JUDGE HOPKINS: They will be marked for
18 identification.

19 (The documents referred to
20 were marked for
21 identification as DRGW-C-32
22 and DRGW-C-33.)

23 BY MS. BONAFANTE: (Resuming)

24 Q Mr. Baker, do you recognize these two
25 exhibits?

1 A I do.

2 Q Documents from your work papers?

3 A Yes.

4 Q Do these include further descriptions of field
5 observation work performed by TRAM in the Bakersfield
6 area?

7 A They do.

8 Q Now, looking at DRGW-C-32 for the description
9 of the Tosco Corporation, could you please read for me
10 the description of this facility?

11 A "Huge. One road for about three miles, and it
12 leads to Tosco. No view from side or anywhere.
13 Helicopter needed to observe activity. Can't see rail.
14 Immense security."

15 Q Can you tell me what you could conclude about
16 rail activity at the Tosco Corporation?

17 A I can conclude only its presence.

18 Q But your observer couldn't see it?

19 A Obvious.

20 Q Now, looking at DRGW-C-33, at the Land and
21 Marine Tank Service, I presume this is a focused
22 customer that was selected by TBS for your study?

23 A I would assure.

24 Q Is it also correct that the facility was a
25 "posh condo and office complex?"

1 A I would say to you again you have been very
2 selective. There are firms whose offices are domiciled,
3 who work out of warehouses, who receive freight, and
4 that is what it says. It is the office complex of the
5 firm, Land and Marine Tank Service.

6 Q Thank you. Now, turning back to you verified
7 statement, if you could look at Page 4, the first full
8 paragraph, second sentence, here you state that "The
9 sectors of the motor carrier industry that are the most
10 competitive with rail," and then you list the four
11 different types. "Regular route, irregular route,
12 contract carriage, and private carriage comprise
13 intercity motor carrier fleet."

14 Do you see any difference in the
15 competitiveness of these sectors with the rail
16 industry?

17 A In what way? What are you asking?

18 Q Would you say, for example, that irregular
19 route common carriage was more competitive with rail
20 than regular route common carriage?

21 A Well, let's be more definitive yet. Are we
22 talking full loads, or are you bringing in the LTL
23 element of regular route?

24 Q I am bringing in the LTL element.

25 A You see, regular routes move approximately 60

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1 percent LTL, but 40 percent of their movements are full
2 loads in direct competition with the irregular route
3 carrier activities.

4 Q I see. Are you saying then that the LTL
5 regular route are less competitive with rail than the
6 full load?

7 A Well, the rail is not in the LCL business any
8 longer, abdicated the LCL business in the fifties.

9 Q Yes. I see. But does the regular route common
10 carriage include LTL?

11 A Regular route common carriage includes LTL.

12 Q Now, in looking at Page 6, Table 1, the fourth
13 column over with the heading Estimated Gallons Diesel
14 Consumption, Footnote 3, and I read down, Footnote 3
15 says "Includes diesel fuel burned by buses." Would this
16 also include diesel fuel burned by automobiles?

17 A This includes diesel fuel burned by
18 automobiles. The automobile, the small city truck, the
19 diesel pickup, we allow 15 percent, which is the oil
20 companies', the oil industry's estimate of local cartage
21 use, city use, and automobiles and little pickups and
22 that sort of thing.

23 Q Now, in turning to Page 11 of your verified
24 statement, if you will, and calling your attention to
25 Table 4, actually, to the paragraph above Table 4 in

1 which you show that Table 4 compares the actual revenue
2 per mile between 1975 and 1982 of 25 substantial
3 regional and national motor carriers.

4 I would just like to ask you, if you know,
5 what the breakdown is for the substantial regional and
6 national motor carriers in terms of are these primarily
7 regular route carriers?

8 A Irregular, all.

9 Q They are all irregular?

10 A All irregular.

11 Q Now, calling your attention to Page 13 of your
12 statement, the sentence which flows over to Page 14,
13 "the atomistic nature of the motor truck," and then
14 skipping several lines, "allows the motor carrier
15 freedom in the development of movement patterns that
16 will allow the motor carrier to set prices at levels
17 sufficient to capture single car rail movements."

18 Focusing for a moment on the phrase "will
19 allow the motor carrier to set prices at levels
20 sufficient to capture single rail car movements," did
21 you in your study analyze at any point the rail
22 pricing?

23 A We have been through this several times. We
24 did analyze very closely the TOFC. We did interview, we
25 have interviewed, we have continually interviewed

1 shippers and found the shift to TOFC. We have had a
2 continuing narrative on the differential pricing between
3 rail box and rail TOFC.

4 Q But you didn't specifically analyze it for
5 this study?

6 A No, I didn't run the clock on it. No.

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1 Q Now, in your study did you rely on the
2 assumption that trucks can offer substantially lower
3 rates if they handle large volume shipments or regular
4 shipments?

5 A As I said in the earlier part of this
6 paragraph, the truck is atomistic. It is not aggregated
7 in any way. The volume beyond one load does not affect
8 the economics of that truck's movement. Predictability
9 in the total market area may affect it, but not in any
10 given commodity.

11 Q Looking now, if you will, at page 17 of your
12 statement. I will try not to duplicate any of Mr.
13 Roach's questions, but I would like to ask you about the
14 last sentence of that paragraph, beginning "There is no
15 question."

16 A Bottom of page 17?

17 JUDGE HOPKINS: The carryover paragraph, is
18 that what it is? It's the end of the carryover
19 paragraph?

20 MS. BONAPARTE: Yes.

21 JUDGE HOPKINS: Thank you.

22 BY MS. BONAPARTE: (Resuming)

23 Q "There is no question that when the truck
24 volume for a particular commodity flow equals or exceeds
25 the comparable rail volume on the same movement, truck

1 must be accepted not only as a long-term viable
2 competitor, but fully substitutable for rail service."

3 A I think that's a fair statement.

4 Q Well, that wasn't my question.

5 Is this statement intended as a justification
6 for Mr. Anderson's 50 percent filter test, in which he
7 compares BEA volume of truck with the common point rail
8 tonnage?

9 MR. SMITH: Your Honor, I would like to have a
10 definition for "as justification." Do you mean was this
11 relied on by Dr. Anderson or does it support
12 incidentally what Dr. Anderson has concluded? I think
13 there's a distinction.

14 MS. BONAPARTE: I think the question stands on
15 its own. Mr. Anderson in his verified statement states
16 that he relies on Mr. Baker's economic justification for
17 his use of the 50 percent filter test.

18 JUDGE HOPKINS: Can you answer it?

19 THE WITNESS: All I can say is that this is
20 the part of the first 20 pages that is my statement, not
21 a statement of my support for the other consultants.
22 This is my belief. I can't tell you what Mr. Anderson
23 did with any statement I made, but this is my
24 statement.

25 BY MS. BONAPARTE: (Resuming)

1 Q You said the first 20 pages. Do you mean
2 pages 1 through --

3 A 1 through 19. The top of page 20 says
4 "Support for other consultants."

5 Q Now, when you use the phrase "on the same
6 movement," are you talking there about the same -- are
7 you talking there about origin and destination points?

8 A There is no question but when the truck volume
9 for a particular commodity equals or exceeds the
10 comparable rail volume on the same movement, on specific
11 origin-destination pairs for that commodities, truck
12 must be accepted not only as a long-term viable
13 competitor but fully substitutable for rail.

14 Q Now, I just have some minor things to clear up
15 here. On page 21 of your statement, the first full
16 paragraph, you state that you also were to develop
17 reliable current field-generated data to update certain
18 data bases used by TBS. Could you tell me just briefly
19 what those certain data bases were?

20 A Oh, my. I really can't tell you what I had in
21 mind when I wrote that sentence. Would you like me to
22 tell you after I think about it a minute? Would you
23 like me to wait or would you like me to go on and come
24 back?

25 Q Why don't you wait on that one.

1 Now, looking at page 25 of your statement, the
2 first full paragraph, the last sentence in that, you
3 state that: "Motor carrier equipment emptying into any
4 given study BEA" --

5 A Pardon me. I am not --

6 Q Pardon me. Page 25, the first paragraph.

7 A Right.

8 Q Second sentence.

9 A Second sentence, "Motor carrier equipment
10 emptying."

11 Q "In any given study BEA can be considered
12 available to a shipper for a subsequent loaded movement
13 from anywhere in that BEA." Can you tell me, the choice
14 of the word "available"? Does this conclusion involve
15 consideration of the consequences to a shipper of
16 shifting from rail to truck transportation?

17 A It implies only availability of equipment.

18 Q I see, so it doesn't include considerations of
19 the costs that a trucker might incur -- excuse me, that
20 a shipper might incur?

21 A No. In evaluating whether or not available
22 capacity is available in a BEA, we find repeatedly that
23 trucks relocate. They most often do not unload and
24 reload in the same location. So we simply studied here
25 the relocation miles compared to the dimensions of the

1 BEA and concluded that the relocation miles equaled or
2 exceeded the dimensional runs in the BEA from the
3 midpoint, and therefore that the truck is physically
4 available throughout that if there is a need.

5 Q Mr. Baker, on page 25. We discussed this
6 briefly before, but there's one more point I'd like to
7 bring up to you. You discuss the areas that TBS
8 requested that you conduct the carrier interviews and
9 field observation work in, and you mentioned several
10 group one common points: El Paso, the Texas coast, Los
11 Angeles local flow, and the San Joaquin Valley market
12 region. And before you mentioned several additional
13 regions that you did look at.

14 Q Were you ever asked to study movements of
15 grain in southwest Kansas?

16 A We did early on, yes.

17 Q Did you actually perform that study?

18 A We discussed this yesterday quite at length.
19 There was an overlapping between oral instructions and
20 written instructions. We did part of it.

21 Q But did you complete it?

22 A Well, it depends on "completion." We did
23 interview fleets who were hauling grain from southwest
24 Kansas to Arizona, and we discuss with them the
25 requirements necessary to increase the flow of that

1 grain.

2 We also interviewed trucks moving between
3 Nebraska and Kansas and Colorado and Arizona. Outside
4 of that we did no more.

5 Q Were you aware, Mr. Baker, of any decision
6 rule such that you would not be asked to look at
7 movements of grain over 500 miles?

8 A I was not.

9 Q I just have two small points of
10 clarification. Table 2, page 7.

11 A May I make an addendum to the answer I just
12 gave you?

13 Q Certainly.

14 A We did in fact look at grain movements over
15 500 miles.

16 Q For what areas?

17 A Not from southwest Kansas, but we looked at --
18 for instance, one of the movements that caused the
19 discussion yesterday over Curtis Feed was grain moving
20 out of the Worthington, Minnesota, area to the San
21 Joaquin Valley, a distance of 2,000 miles, 1800, 2,000
22 miles.

23 Q I see. But if I'm correct, you just stated
24 you didn't look at grain movements for southwest
25 Kansas?

1 A That's right. But you then parenthetically
2 came back with a question, did we look at grain -- were
3 we aware of a ruling that we wouldn't look at grain
4 movements over 500 miles. And I wasn't sure whether
5 those were connected to southwest Kansas or not.

6 Q Okay. I'm looking at page 7 of your verified
7 statement, Table 2. I will again try not to duplicate
8 any of the questions asked by Mr. Boach yesterday.

9 In looking at the heading of Table 2, it
10 states "Ten Months, 1983." Can you tell me which ten
11 months that encompassed?

12 A Just the first ten months.

13 Q Now, in looking at page 8, down at the bottom
14 of the chart it states that two dashes means
15 insufficient observations. What was the minimum number
16 of observations necessary for a movement to show up on
17 Table 2?

18 A Well, first of all I should say the purpose of
19 Table 2 is to show the presence of trucks. So
20 obviously, to show any reasonable presence you would
21 need at least ten movements. Actually, we would like to
22 have had a hundred, but we wanted to come down --
23 normally your freight concentrates in 15, 18 STCC codes,
24 two-digit STCC codes. The rest are sort of flyers, so
25 there are some thin dates in here.

1 But the point we were trying to show is that,
2 even where there was a minimum number of observations,
3 it's spread across the mileage blocks.

4 Q Am I correct in saying that you said the
5 minimum number was ten movements?

6 A No. I said that one would like to think there
7 would be -- the minimum number to get them in all
8 mileage blocks would be six, all right? We did not use
9 observations if we couldn't find enough to -- if there
10 is a movement or four or five movements, we didn't use
11 them.

12 Q So six was the minimum number of movements?

13 A I imagine you wouldn't find much under ten, but
14 there are I believe ten movements of less than 50 in
15 this table.

16 Q Now, directing your attention to the sentence
17 above Table 2 on page 7, in which you state, the last
18 sentence: "Trucks are generally quite active and rail
19 competitive without regard to the nature of the
20 commodity or the length of haul."

21 Is this statement based on the data that you
22 have displayed in Table 2?

23 A This table is basically based on the data
24 displayed in the major STCC codes in Table 2, in the
25 interview sheets that we did in the special locations,

1 and on awareness of the industry from the many years I
2 have been here.

3 Q Now, Table 2 as I understand it is a
4 percentage of truck movements in a year --

5 A No, in ten months.

6 Q Excuse me, in ten months. That traveled in
7 these various different mileage blocks; is that
8 correct?

9 A That's right.

10 Q Now, Table 2, then, doesn't show the
11 percentage of total movements of each commodity that
12 moved by rail as opposed to moved by -- excuse me,
13 strike that question.

14 It does not show, then, the percentage of
15 total movements of each commodity which moved by truck
16 as opposed to by rail; is that correct?

17 A It's not a market share statement, no.

18 Q So for example, in looking at your table under
19 STCC code 24, let's hypothesize that that involved a
20 thousand movements by truck for the ten months in '83.
21 So there would be 231 movements in the first mileage
22 block, zero to 499, 321 movements in the 500 to 999
23 mileage block, and so on.

24 Couldn't it also be possible, and your table
25 would not show this, say for example there were 50,000

1 movements of that commodity by rail in that ten months.
2 There would be no means of comparing that rail and truck
3 traffic based on this table?

4 A No, this is not a market share statement.

5 MS. BONAPARTE: Thank you, Mr. Baker. I have
6 no further questions.

7 JUDGE HOPKINS: Thank you.

8 We'll take a 15-minute recess at this time.

9 (Recess.)

10 JUDGE HOPKINS: Let's go back on the record.

11 Are you going to be next, Mr. Greenberg?

12 MR. GREENBERG: Well, I guess I am, Your

13 Honor. It doesn't make any difference.

14 CROSS EXAMINATION

15 BY MR. GREENBERG:

16 Q Good morning, sir. How are you. We have met
17 before.

18 I cut down my cross-examination quite a bit
19 from last night and I think I'm pretty much able to cut
20 down most of the rest of it. So I'm just going to ask
21 you a couple of questions that I think will be
22 susceptible to a yes or no answer.

23 A Good.

24 Q Is it correct to say that you did not study
25 whether motor carriers can replace rail as a dominant

1 mode for moving grain out of Kansas to the Texas Gulf
2 ports or Mexico?

3 A That's correct. That was close to a yes,
4 wasn't it?

5 Q It certainly was, thank you.

6 Is it correct to say that you did not conduct
7 any on-site inspections of grain terminals in the Texas
8 port area?

9 A That's correct.

10 Q Now, do you happen to have Dr. Anderson's
11 testimony and exhibits? I direct your attention to the
12 introduction, statement of methods, and particularly I'm
13 interested in Exhibit I-F.

14 A Is that in book one or two?

15 Q Probably book one. And more specifically, I'd
16 like you to look at BEA --

17 A Let me get to I-F first. Okay.

18 Q Now, I would like you to look specifically at
19 BEA 139 outbound.

20 A BEA 139 outbound.

21 Q Did you supply the list of carriers that are
22 on this exhibit?

23 A Yes.

24 Q Can you tell me what that list purports to
25 show?

1 A All that is is a list of carriers that were
2 determined to be serving that BEA.

3 Q That list is not intended to show that each of
4 those carriers is available and able to haul grain out
5 of southwest Kansas, does it?

6 A No, that simply shows that these carriers were
7 in fact running in or out of that BEA.

8 Q Now, do you still have a copy of what was
9 introduced as an exhibit, UP/MP-C-15? I think there
10 were questions on it yesterday. It's a letter of
11 December 9, addressed to you, sir.

12 A From whom?

13 Q From Mr. Rennieke.

14 A That's the grain letter?

15 Q Yes.

16 A All right.

17 Q You were asked some questions about this
18 yesterday by Mr. Roach. He asked you some questions
19 about items 3 and 4 on CDA 227. I'd like to ask you
20 some questions on items one and two.

21 Is it correct that you also did not perform
22 the analysis that is requested in items one and two?

23 A No, we did not specifically perform either of
24 those two.

25 Q Can you look over slightly to the left of item

1 one. There is a notation which appears to bear the date
2 of 12/27, and it appears to say "being written up."
3 Would you agree that's what it appears to say?

4 A Yes.

5 Q Do you have any idea what that might refer
6 to?

7 A Well, as I testified yesterday, we did not
8 specifically study this because, A, after working with
9 the Department of Agriculture and gathering all the
10 available documents, many of which had studied this
11 specific item, we simply turned our notes over and they
12 were written up, because there was extensive work done
13 on this previously.

14 Q You turned the notes over to whom?

15 A To TBS.

16 Q Your notes on analyzing the cost structure?

17 A No. The documentation, the documentation that
18 was available. We had talked to the University of
19 Kansas, we had talked to the University of Iowa, we had
20 talked to the Kansas City Board of Trade, we had talked
21 to the Department of Agriculture. We had picked up all
22 the documents from Senator Kassebaum's hearings. We had
23 talked to the multi-car facility at Enid. We had talked
24 to several motor carriers in that market. We had the
25 published tariff rates, and Kansas is an intrastate

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1 regulated state on rates.

2 And when we had all that documentation, we
3 simply turned it over to TBS.

4 Q Did you provide Peerie Associates with any
5 traffic or other statistical data --

6 A Only that we have testified to.

7 Q -- with respect to -- let me finish the
8 question. With respect to the movement of grain from
9 Dr. Anderson's southwest Kansas market region?

10 A No.

11 Q Did you do so with respect to the movement of
12 grain from any other areas?

13 A No specific commodity-oriented movements, no.

14 MR. GREENBERG: No further questions.

15 JUDGE HOPKINS: Mr. Bleakney?

16 MR. BLEAKNEY: Your Honor, in light of the
17 prior questions I have eliminated all of mine.

18 JUDGE HOPKINS: Thank you.

19 Department of Justice?

20 CROSS EXAMINATION

21 BY MS. BUDEIRI:

22 Q Good morning, Mr. Baker. My name is Priscilla
23 Budeiri and I'm representing the United States
24 Department of Justice. I have also eliminated the
25 majority of my questions due to the prior questions, but

1 I do have a few.

2 Did you do any systematic study, beside what
3 you have already discussed, to support Dr. Anderson's
4 work?

5 A No. Well, let me come back. What do you mean
6 by "systematic study"? Maybe I made an assumption I
7 shouldn't have.

8 Q Well, any analysis based on research and data
9 collection?

10 A As I testified, we have been continually doing
11 shipper studies throughout this period, not specifically
12 for this case, but we did those and we have made some of
13 the results available, or have revised the conclusions.
14 That might be a better statement. But we did no other
15 specific studies than we have discussed.

16 Q In your support work for Dr. Anderson, did you
17 systematically study sunk costs associated with entry by
18 trucks into railroad markets?

19 A The sunk costs associated with entry by truck
20 in the United States are part of the public
21 infrastructure. There are virtually no sunk costs to
22 industry.

23 Q Does that mean the answer to your question is
24 no?

25 A It means the answer to your question is

1 there's nothing to study. The highway system is here.

2 JUDGE HOPKINS: In other words, you didn't
3 study it?

4 THE WITNESS: There's nothing to study. No,
5 we didn't study it.

6 BY MS. BUDEIRI: (Resuming)

7 Q And in the support work you did for Dr.
8 Anderson, did you systematically study the possibility
9 of a motor carrier entrant using a long-term to
10 establish a presence?

11 A A long-term contract with a supplier in the
12 form of an owner-operator or a long-term contract with a
13 information?

14 Q A shipper.

15 A A shipper? We have considered that. We have
16 not found it common enough to be a valid assumption.

17 Q So the answer again is no, you did not do any
18 systematic study?

19 A We did no systematic study. We knew of none
20 to study.

21 Q Again, in any of the support work you did for
22 Dr. Anderson did you systematically study the ability of
23 railroads to respond quickly to motor carrier entry at
24 competitive prices?

25 A As we discussed yesterday, we used the TCFC as

1 a surrogate for motor carrier activity, and I believe it
2 responds quite quickly to motor carrier pricing. We did
3 not do a detailed study. We simply watched the market.
4 We did, however, watch the rate activities that were
5 occurring at the time of the program.

6 Q Is your conclusion that railroads can respond
7 quickly?

8 A They do respond quickly.

9 Q And finally, in any of your support work for
10 Dr. Anderson did you systematically study the cost of a
11 shipper shifting from rail to truck?

12 A The internal cost?

13 Q Any costs, all costs.

14 A Not in this specific study. We have studied
15 that over time.

16 Q I'd like to hand you a copy of some of your
17 work papers that are encoded CFR-03041 through 03060,
18 and ask you to look at them.

19 A Yes, ma'am.

20 Q What are these papers?

21 A These are movements. They are actually
22 shippers and SPIC codes and consignees and destination
23 SPIC codes and the number of units and the tons moving
24 between those points, indicated as whether they're
25 inbound or outbound movements, with mileage block

1 designation and common point location.

2 Q In connection to what were these papers
3 generated?

4 A These were generated for identifying field
5 work.

6 Q What field work is that?

7 A I believe most of these are commodity
8 movements that we sought trucks to cover.

9 Q Are these the 189 movements you discussed
10 earlier?

11 A They will be a substantial portion of it.

12 Q On the first page, CFB 03041, what does
13 "gorilla" mean?

14 A I beg your pardon?

15 Q What does "gorilla" mean on page CFB 03041?

16 A Well, a gorilla is an animal in a zoo, and
17 Gorilla was a project designation for shippers that got
18 sent to somebody who looked remarkably like one.

19 JUDGE HOPKINS: Not mentioning any names.

20 THE WITNESS: Not mentioning any names.

21 However, they kept trying to put a mask on me last
22 night.

23 BY MS. BUDEIRI: (Resuming)

24 Q Who generated the data in your work papers
25 that we have been discussing?

1 A Well, that depends on which papers we're
2 discussing. This one?

3 Q Yes.

4 A This was provided to us by TBS.

5 Q Did you systematically study what percentage
6 of the goods carried by truck were carried on a
7 backhaul?

8 A Ma'am, there is no such thing as a backhaul.
9 A backhaul is a rail-generated concept for a slot
10 movement where the iron doesn't let you bend. As I
11 testified yesterday, truck rates are linear. They are
12 running straight on the dollar a mile. Trucks
13 relocate.

14 If I could give you a good example, Willis
15 Shaw, one of the carriers running into East Texas and
16 Oklahoma, could not not get out, the full-load
17 carriers. They developed a poultry business in broilers
18 on the West Coast so that they could go back with the
19 frozen food off the West Coast.

20 So the truck that should run from Chicago to
21 Dallas to back to Chicago is going Chicago, Dallas, I.A.
22 to Chicago. There is no backhaul. It's a
23 misconception.

24 Q What percentage of the goods carried by truck
25 was the forthaul for which there was no backhaul?

1 A Ma'am, there is no fronthaul. There is a
2 movement. Every headhaul is someone else's backhaul.
3 Every backhaul is someone else's headhaul. There just
4 is no such delineation.

5 In the thirties and forties when the trucks
6 were autofreights and they had all rail traffic people,
7 it was a good description.

8 Q Did you systematically study what percentage
9 of the goods carried by a truck were carried going in or
10 going out of its operation?

11 A You're going to have to do that one again. I
12 don't understand what you're asking.

13 Q Did you systematically study what percentage
14 of the goods carried by truck were carried going in
15 versus going out of its home base?

16 A Well, there again, you see, 40 percent of all
17 of the intercity fleet, 38 to 40 percent of the fleet
18 are owner-operators, domiciled everywhere. The
19 irregular route industry does not operate out of fixed
20 terminals. There are no terminals to speak of. There
21 are dispatch facilities. I don't even know what you
22 mean by home base.

23 Q Referring to page 25 of your testimony, this
24 has been gone over, but I want to try to make something
25 clear that I didn't understand. Exactly which group one

1 common points did you study?

2 A We studied freight moving between points in
3 California, which would include the common points in the
4 San Joaquin Valley, the common points in the L.A. basin,
5 and the common points in the Bay Area, between Phoenix,
6 which includes the Arizona common points, between points
7 in Arizona, between points in the Houston market area,
8 which would be Beaumont-Houston area. And we
9 interviewed in the north of the state covering points
10 that were really not common points.

11 I think we covered -- the common points in
12 northern Arizona might be the only ones. I believe
13 there's one at Needles or Kingman that we did not gather
14 any specific data on. But most of the other common
15 points were caught in our special interviews, our
16 special passing counts.

17 Q Who decided which which common points you
18 would study, group one common points?

19 A Well, I can't really answer that who in TBS or
20 when in joint. The specific movements were given to us
21 by TBS. Problem areas were defined over time.

22 Q Referring to page 25 again, in what way did
23 you assess whether a plant's motor carrier facilities
24 were comparable to the plant's rail facilities?

25 A I think "comparable" here has to be used in

1 the sense of whether -- accepting that the railcar can
2 be loaded with facility, readily, the thing you have to
3 recognize here is if anyone wants to be devious, a truck
4 can be loaded from the ground with a forklift anywhere.
5 so what we were looking for is the presence of loading
6 ramps, of docks, of adequate facilities to work out of a
7 warehouse facility, rather than simply accepting that a
8 fork on the ground would be adequate.

9 Q On page 26, what do you mean by "general
10 service area" when you state, "In seeking an expression
11 of" --

12 A Pardon me. whereabouts? Oh, I found it,
13 mid-page. Thank you.

14 Q When you say "In seeking an expression of
15 ability and willingness to serve, current ownership of
16 required equipment and current service by the carrier to
17 the general service area was a prerequisite for
18 accepting ability and willingness to serve as an
19 indicator of future ability of motor carrier service to
20 that shipper."

21 A By that I mean that if a carrier was serving
22 from Kansas to Oklahoma with bulk equipment, we would
23 not ask him if he were willing to serve from Kansas to
24 Fresno. We were looking for people -- on the other
25 hand, if the carrier were running Nevada or southern

1 California or northern California other than the San
2 Joaquin Valley and he said he was willing to come to
3 California and he had that kind of equipment, we would
4 accept it as a valid answer.

5 Otherwise we would get a lot of Christmas
6 shopping.

7 Q Referring to the questionnaire in A-3 --

8 A Page 1 or 2?

9 Q Both. Actually, the questionnaire is on A-3
10 and 4. Do you have that?

11 A Our NMIDE questionnaire?

12 Q Yes.

13 A Yes, I have it.

14 Q What percentage of the drivers you approached
15 agreed to the survey?

16 A Well, about 95. It would vary from truck stop
17 to truck stop, and it will vary in weather. In severe
18 weather we would get a high refusal rate and generally
19 do not interview in severe weather.

20 Q Once you began this survey, what percentage of
21 the interviewees wouldn't answer certain questions?

22 A Well, I can't answer wouldn't, because there's
23 a difference between wouldn't and can't. I would say
24 that in general -- let's put it this way. We have done
25 over the last year, the last eight years, approximately

1 125,000 interviews, about 250,000 commodity movements.
2 And based on locking back across that, you will find out
3 of 16,000 interviews the "N" for any single answer will
4 run from about 14,750, 14,800, all the way up to
5 16,000.

6 There are many people, particularly wage-paid
7 drivers, for instance, who can't tell us the year or
8 make of their trailers. There are drivers who can't
9 tell us even the year or make of their tractor, but
10 those are mostly regular route. There are many drivers
11 who don't know the revenue.

12 There are some that don't know the commodity
13 they're hauling if they have picked up the box on a
14 relay. Many slipseat operations relay boxes,
15 particularly in general freight again, and the driver
16 who happens to be under this load now only knows it's
17 moving between two terminals and the IPI area.

18 Q Can you give me a percentage of the
19 interviewees who would not answer or did not answer?

20 A I thought I gave you the percentage in
21 absolute numbers range. It ranges from 14,700 to
22 16,000, all the way up to a total on any given
23 question. I can't give you anything better than that.
24 And that would not be true of rates. Rates would be
25 much lower.

1 There are a lot of questions on there. The
2 answer to your question is different on each of these
3 questions.

4 Q Do you know what percentage of the
5 interviewees quit altogether before finishing the
6 questionnaire?

7 A Virtually none. May I make a comment on
8 that? The interview is conducted with the support of
9 the truck stop. The driver feels very comfortable being
10 interviewed. He knows that there are no federal DOT or
11 BMCS people that are going to bite him in the butt as a
12 result of the interview.

13 So we have no such problems of apprehension
14 that you might be anticipating.

15 Q Boxes 129 through 133 and 201 to 205.

16 A Out of deference to my age, would you flip
17 over to the question number instead? The box numbers
18 are very small and not totally legible.

19 Q That's question IV, Roman IV-E.

20 A Question Roman IV-G?

21 Q "E" as in "Edward."

22 A What commodity area are you hauling?

23 Q And "N" as in "Nancy."

24 A And what commodity digit involved?

25 Q Those look like they call for a five-digit

1 STCC code answer; is that correct?

2 A They are seven-digit STCC code answers. I'm
3 sorry, five, five answers.

4 Q Five-digit STCC code?

5 A Five-digit STCC.

6 Q What percentage of the truckers you questioned
7 did not know what they were hauling?

8 A A terribly small percentage. We can just take
9 any one of the groups, compare the working papers. If
10 you look at the El Paso loads, out of a thousand loads,
11 28 out of a thousand answered confidential, can't tell.
12 And of those, only three told us it was not known. So
13 out of a thousand interviews we got 172 specifics, all
14 right, we got three "I don't know".

15 You have to recognize that some people are
16 very worried. It's a terribly competitive business.
17 Some people are worried we might want their freight.
18 Others are hauling military traffic; they simply can't
19 tell. And often the military loads will simply show as
20 "sealed," which only allows us -- it would be classified
21 as "sealed, military."

22 Q As far as I can see, there is no space for a
23 second five-digit STCC code in the answer to those
24 questions. What happened if a trucker was hauling more
25 than one commodity?

1 A Again, you are back into a general freight
2 carrier. Most carriers are full loads. What will
3 happen often out of the Salinas area is I may, instead
4 of having 800 cases of lettuce aboard, I may have 700
5 cases of lettuce and 100 cases of carrots, for example,
6 and those would categorize as produce.

7 I may have 620 cases of chocolates and 60
8 cases of jellies, and those will categorize as candy.
9 We'll just simply move up one notch in what we have
10 aboard.

11 Q Have you done any studies of excess capacity
12 in the trucking industry?

13 A You will find three things on this
14 questionnaire, if we can go back to the questionnaire.
15 Question IV-E is: "Are you loaded or empty?" Then when
16 you get down, there is a layover question, if you look
17 at IV-S: "Did you have to lay over for current load?"
18 Do you see the question? "And if so, for how many
19 days?"

20 Those questions pick up the loaded-empty
21 ratios and they pick up the delays that trucks are
22 experiencing. And you can compare those for seasonality
23 because, well, what will happen at this time of the year
24 in California is you will get heavy rains and the trucks
25 can't get in the field for a couple of days. So you

1 have to compare that.

2 But you will find all of a sudden the meat
3 trucks coming up out of middle Missouri into the
4 Northeast experiencing a delay in returning, or the
5 empty ratio will go up. We will find some short-term
6 overcapacities.

7 But we have not found any long-run
8 overcapacity in the industry. We thought we had a
9 little in '80-'81, but we can't verify that. The growth
10 went right on up.

11 Q Have you done any systematic study of the
12 ability of trucking companies to expand their
13 operations?

14 A Again, the best judge of the ability of
15 trucking companies to expand their operations is caught
16 in the question over on page one: "Do you own your own
17 tractor? What make is your tractor, and the year?" We
18 ask them the year of manufacture.

19 If you look at question I-I, "Year of
20 manufacture of the tractor and trailer," looking at
21 current equipment. We have a mythology in the land that
22 there is no capital to regenerate or expand. .1746 of
23 all tractors interviewed in the first nine months of '74
24 are 1984 equipment, and another 31 -- I'm sorry, another
25 14 percent, for an aggregate of 32 percent, 31.73, are

1 '83's and '84's.

2 Now, those are years of manufacture, so they
3 will cover equipment built from September '82 through
4 the current time. But that's an excellent measure of
5 the ability of truck to generate capital and enter.
6 There's no aging of the equipment in the for-hire
7 company fleet.

8 Q Referring to page 7 and Table 2 --

9 A Page 7 and Table 2.

10 Q Table 2 doesn't indicate the actual quantity
11 of a commodity that is carried, does it?

12 A No. The only thing is, as we explained
13 yesterday, flopping off of Table 2 to our mileage block
14 index, it simply shows truck presence and truck presence
15 in ratio to anticipated demand. But it gives no
16 indication of market share.

17 Q Table 2 doesn't give that information on which
18 specific commodities can and cannot be transported by
19 both rail and truck, does it?

20 A No. It simply says these are the commodities
21 being hauled by truck.

22 Q I added up the percentages for STCC codes 01
23 and 23 and found them to equal 96.2 and 97.7,
24 respectively. How can that be?

25 A Well, I would say that that could be only

1 because when they were run we have an error in a
2 program, where we have a rounding error that would
3 account for it. A rounding error would account for part
4 of it, but I don't see a rounding error accounting for
5 three points.

6 Q Do you think it would be useful to break down
7 the commodities you studied into a less aggregated
8 level?

9 A Would it be useful to break down the
10 commodities we studied to a less aggregated level? I
11 would say, to answer that, we were looking last night,
12 asking that same question of ourselves. If you look
13 across any of the STCC codes, you find such a broad
14 gamut of commodities that to disaggregate to a level
15 that would be meaningful would require such a massive
16 level of interviewing that the cost would be
17 prohibitive.

18 Now, having said that, I would love to break
19 it down to a less aggregated level, and if the DCJ has
20 the money God bless you.

21 Q Isn't it likely that truck does not move a
22 commodity within STCC code 49 at all, let alone that 46
23 percent of the commodity is moved by truck between 500
24 and 999 miles?

25 A Well, let me cheat and see what 49 is.

1 Q It is hazardous materials, according to Table
2 2.

3 A Oh, my goodness. We have trucks moving nerve
4 gas and we have trucks moving atomic materials. And I
5 sit on the Commercial Vehicle Safety Alliance, and one
6 of our concerns is trucks moving some such loads. I
7 wouldn't say that at all.

8 If you look at -- I believe it's here. If you
9 look in our work papers, STCC 28 at El Paso, which is
10 just a thousand-truck survey, I have nerve gas moving
11 from Anniston, Alabama, to Fresno. Now that gives you a
12 reasonable length of haul, I believe about 2100 miles.
13 You have nuclear weapons moving from Milan, Tennessee,
14 to Fort Bliss, Texas.

15 We have -- we could go on. We have poison
16 moving from Alamo, Texas, to Carmen, California.

17 Q Do you have any listing for polyvinyl
18 chloride?

19 A PVC? I don't believe you want to talk about
20 polyvinyl chloride. That's what we make car seats out
21 of. There are lots of movements of PVC.

22 I think you are looking at the one that we
23 contaminated the Missouri town with. I will tell you
24 that we have moved tens of thousands of transformers
25 with that material in it and that the tanks are

1 currently moving, much of it out of the transformers
2 they're reclaiming for salvage, for burning off or
3 disposal. I think it's PB -- anyway, we know what
4 you're asking, and it is moving by truck.
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1 Q Do you have any figures showing the percentage
2 of any of the commodities STCC 49 that moves rail versus
3 truck?

4 A No, but I will tell you, I ran an ordnance
5 depo motor freight terminal for two years of my life,
6 and I moved everything from the heavy stuff to the fuses
7 that made it go bang, and they came in in unopened line,
8 and at Christmas, 1969, when Nixon was trying to stop
9 the war, I had enough fixed costs that I was praying to
10 God he didn't, so I got my 50 loads of bombs a day.

11 Q So you don't have the figures? Is that
12 correct?

13 A We have no market share on any of it. All I
14 am telling you is, the truck presence is pervasive.

15 Q Now, as I understand the methodology of the
16 interviews, the NMTDE interviews, Appendix A says that
17 you do 75 interviews with drivers each month. Is that
18 correct?

19 A That's correct.

20 Q Thus, for Table 2, you did 750 interviews,
21 which is 75 times ten months, and that was done to
22 obtain data from 216 cells.

23 A No, at 18 locations. That represents about
24 14,000 interviews, about 28 -- well, it probably
25 represents about 12,000 interviews and about 28,000

1 commodity movements. I didn't bring -- you've got 75
2 times 18 times 10.

3 Q Where does it indicate the number of spots
4 where you did the interviews in your statement?

5 A Hopefully in Appendix A. If you will turn to
6 Page A1, second paragraph, fifth line, it says, "From
7 this analysis, 18 interstate highway system interview
8 locations were defined that allowed for a sampling of
9 major transcontinental and regional truck traffic flows
10 without interference from local carriers."

11 Q There is no way you tell from Table 2, is
12 there, that truck rates are competitive with rail rates,
13 is there?

14 A Only that the trucks are hauling the freight,
15 and therefore it must be assumed that they are
16 competitive or they wouldn't be. To assume otherwise
17 assumes market irrationality.

18 Q Isn't it possible that some shippers are using
19 truck because there is no rail availability for them?

20 A Well, Mr. Barber in his CF case said that rail
21 was an anachronism, but I have competed with it for 35
22 years in the trucking business, and have not found
23 anybody to be disadvantaged by access to rail, because
24 every customer virtually has access to TOFC whether he
25 has a rail siding or not.

1 And so I don't think anyone is using truck
2 except someone from my town, where we don't have a rail
3 within 65 miles, is using truck because they don't have
4 rail. They have TOFC access virtually across the land.

5 Q So your answer is that, no, it is not possible
6 that some shippers are using truck because there is no
7 rail availability for them?

8 A My answer is, except that there is an
9 exception to every rule, no, it is not reasonably
10 possible that anyone is using truck because they don't
11 have access to rail.

12 Q On Page 12, you state in the second paragraph
13 that "It is also apparent that growth in the motor
14 carrier industry has occurred at least in part" --

15 A Excuse me. Okay. I have it.

16 Q -- "at the expense of the railroads, whose
17 overall share of competitive traffic has continued to
18 decline." What do you mean by competitive traffic?

19 A Well, first of all, if you look at that, the
20 first part of that table, you will see that the rail
21 revenue freight ton miles rose from 780 in 1969 to only
22 812 in 1982, despite a very substantial growth in GNP
23 during that time, and despite a tremendous offshore
24 flow, as we testified yesterday.

25 Then, as we discussed yesterday, historically

1 we considered the freight forwarder susceptible traffic,
2 the shipper association susceptible traffic, and the all
3 other, the fabricated goods, as truck susceptible, and
4 more likely to diversion.

5 But if you look at the bottom of that table,
6 you will see that from '79 to '82, the rail share of all
7 car loadings which had held up at 84 percent compared to
8 100 in '69 dropped in just those three short years to 66
9 percent, which is indicative of a truck incursion pretty
10 well across the board.

11 Q I don't believe you answered my question.

12 A I am sorry. I tried to. Let me try again.

13 Q How do you define competitive traffic as you
14 use it in the sentence I just quoted?

15 A Traffic that can be diverted to truck.

16 Q Can you explain what you mean by that more
17 fully?

18 A Well, obviously, there is some dimensional
19 traffic that requires rail. Our highways have only so
20 much width to a lane, and we do not want to send traffic
21 down a highway that extrudes into the other lane.
22 Highways have bridges that are so high.

23 So there is dimensional traffic that can only
24 be hauled by truck in relatively rural areas. There are
25 some movements such as coal, again, that are amenable to

1 high volume cars in unit trains, and we don't really
2 conclude that the high volume movements of coal are
3 susceptible to diversion by truck.

4 That doesn't mean truck doesn't haul a lot of
5 coal, but it means that we do not see the truck as a
6 totally viable competitor for coal. Again, with the
7 wheat, during the Russian wheat deal, trucks poured in
8 and moved millions of bushels of wheat.

9 In the long run, the blending, the marketing,
10 the storage practices of the grain industry mean that
11 the bulk of it is not going to be diverted by truck.
12 Truck hauls a very substantial amount of it. Truck
13 provides a link between different roads.

14 Truck makes rail very flexible. Truck makes
15 it possible for an elevator to pistol whip a railroad,
16 but truck is not an ultimate major mover of all of our
17 grains. That is what I mean.

18 Q On Page 13, Table 5 -- excuse me, that would
19 be Page 12 -- the figures showing relative growth don't
20 show that the growth came about at the expense of rail,
21 do they?

22 A Well, if you stay only with this table, but as
23 we discussed yesterday, this table reflects only the for
24 hire Class 1 and 2 carriage.

25 Q The question was in reference to this table,

1 Mr. Baker.

2 A Pardon me?

3 Q The question was in reference to the table on
4 Page 12.

5 A And I say if you hold only to this table, in
6 this regard, the total shift of the rest, you are
7 correct.

8 Q Thank you.

9 On Page 13, in the middle of the first
10 paragraph, what is the basis for your statement that
11 motor truck trailer is more capable of custom adaptation
12 to the specific needs of a given shipper than is the
13 rail car?

14 A The truck is atomistic. It is one unit hooked
15 to one tractor with one driver. It is far easier to
16 customize one truck for one customer or ten trucks for
17 one customer with rapid turnaround than it is to
18 customize a car fleet.

19 Railroads in fact do customize very large
20 groups of equipment, but they don't have the ability to
21 customize it for smaller shippers with the facility that
22 truck does.

23 Q On Page 14, you state that truck moves with
24 essentially --

25 A Would you tell me where? I mean, you start

1 out while I am just starting locking.

2 Q Right. This is in the first full paragraph,
3 the second sentence.

4 You state that truck moves with essentially no
5 empty movements per se.

6 A Page 14? The second line in the first
7 paragraph?

8 Q The second sentence of the first full
9 paragraph.

10 A Triangulations that are often not available?

11 Q Are you on Page 14?

12 A I am on Page 14. Oh, okay, third and fourth
13 line, a typical. A typical motor carrier movement will
14 involve two or three primary product movements? Is that
15 where we are?

16 Q Yes.

17 A All right. What is the question?

18 Q What do you mean by per se?

19 A Well, I mean that an empty is normally
20 conceived of as an empty return to the point of origin.
21 There are no empty movements per se except in the tank
22 industry, or there are relatively few empty movements
23 except in the tank industry.

24 Q Have you compared rail empty move costs to
25 truck empty move costs for any movement?

1 A Not for this study. We have quite at length,
2 but not for this study.

3 Q On the top of Page 15, you state that rail's
4 inability to perform triangulations like motor carrier
5 can means that rail cannot achieve a high level of
6 loaded to empty miles. And then you conclude on the
7 fourth line on Page 15 that this situation puts rail at
8 a substantial competitive disadvantage.

9 A That's correct.

10 Q Have you done any systematic study to identify
11 for which traffic rail is at a competitive disadvantage
12 due to its inability to perform triangulations?

13 A We have done lots of work that shows that.
14 You have only to look at a rail movement. We talked in
15 some of this hearing about reciprocal switching rights,
16 about closed switches, about the inability of rail to
17 get in.

18 One of the strong advantages of TCFC is the
19 ability to move that trailer.

20 Q Have you collected any data on this subject?

21 A Not on the rail side. On the truck side,
22 again.

23 Q Still on Page 15, if you would direct your
24 attention to the first full paragraph, the third line,
25 you state, "Based on data generated on the volume of

1 truck traffic currently moving and TRAM discussions with
2 motor carriers about specific rail movements, one can
3 conclude that the motor truck is a strong contender for
4 any rail movement where a return haul or a combination
5 of return hauls can be developed that will enable motor
6 carrier to stay loaded 80 percent or more of the total
7 miles run."

8 A Totally correct, except you turned "allow" to
9 "enable."

10 Q Have you done any systematic study for this
11 testimony comparing truck rates to rail rates for any
12 commodities moving any distances?

13 A Well, as I testified yesterday, we gathered
14 the truck data every day on the truck rates. We do the
15 work for Trailer Train, who is the rail pooled ownership
16 of TOFC cars. We have studied the rail rates TOFC, the
17 rail rates boxcar, and the rail rates truck in general
18 with specific shippers, but we have not taken a given
19 single commodity, if that is what you are asking, and
20 taken a multiplicity of points and made a point to point
21 comparison.

22 Q So the answer is no?

23 A Well, I don't think so. I think the answer
24 is, yes, we have looked at it in great detail, but the
25 answer is no, we have not taken 40 points to 40 points

1 and made it specific.

2 Q So the answer to the question that I asked is
3 no?

4 MR. SMITH: Objection. This has been asked
5 and answered three times.

6 JUDGE HOPKINS: The answer is no as to the
7 specific one. I don't see why he can't answer that way,
8 too.

9 THE WITNESS: I have said, no, we did not, to
10 the specific 40 points.

11 BY MS. BUDEIRI: (Resuming)

12 Q Have you done a study to identify when return
13 hauls can or cannot versus cannot be developed?

14 A By whom?

15 Q Trucks.

16 JUDGE HOPKINS: Are you talking about for this
17 particular case?

18 MS. BUDEIRI: Yes.

19 THE WITNESS: We repeatedly, as I say, studied
20 the movements, and we studied all these specific hauls,
21 but we did not ask anybody. We know that they have
22 difficulty getting out of Phoenix, and have to relocate
23 into the valleys. We have studied that.

24 BY MS. BUDEIRI: (Resuming)

25 Q What is the basis of your conclusion that

1 truck is more competitive when it can stay loaded 80
2 percent or more of the total miles run?

3 A The fact that it cannot hold its dollar a mile
4 below 80 percent.

5 Q What data have you collected that brought you
6 to that conclusion?

7 A Truck costs.

8 Q Is that from your NMTBD study?

9 A That's from NMTBD study. That's from work we
10 have done for specific carriers in procuring equipment
11 supplies for them.

12 Q Again on Page 15, the first sentence of the
13 second paragraph, it begins, "This ability of truck."

14 A Yes.

15 Q You state that truck substitutability for rail
16 is broadly based. Commodities that require the same
17 basic trailer type for transport are substitutable or
18 interchangeable for each other.

19 Have you done any systematic study for this
20 testimony of any commodities to determine which
21 commodities require haulage in containers that must be
22 cleaned before or after use?

23 A We have studied that. It requires cleaning
24 over a lot of years. We did not ask cleaning
25 specifically for this study. We are well conversant

1 with the commodities that require cleaning.

2 Q Have you done any systematic study for this
3 testimony of any commodities to determine which
4 commodities require special equipment for loading or
5 unloading?

6 A Again, we are well conversant with that. We
7 made no specific study here.

8 Q Have you done any systematic study for this
9 testimony of any commodities to determine which
10 commodities are not suitable to basic trailer type
11 size?

12 A Anything that exceeds the dimensions. No,
13 those are exception movements that are very custom.

14 Q So that means you have not done a study for
15 this testimony?

16 A Not for dimensions, no.

17 JUDGE HOPKINS: Do you have any more
18 questions?

19 MS. BUDEIRI: Maybe 15 minutes at most.

20 JUDGE HOPKINS: Go ahead. I would like to
21 finish this witness before lunch, if possible. Who else
22 is there? DCT?

23 MS. REED: No, Your Honor.

24 MS. BUDEIRI: May we have a few minutes to
25 evaluate whether we want to go ahead?

1 JUDGE HOPKINS: Go right ahead.

2 (Pause.)

3 BY MS. BUDEIRI: (Resuming)

4 Q Isn't it true that trucks may move commodities
5 long distances at low rates simply to earn some revenue
6 on what would otherwise be an empty return haul?

7 A Backhaul again. Ma'am, let me tell you, I ran
8 my own trucks.

9 Q Excuse me --

10 A I ran them. No, that is not true.

11 JUDGE HOPKINS: We had this question, as I
12 remember, just a short time ago, a very similar
13 question, if not this question, and this man expounded
14 quite extensively on it, and I would rather not have him
15 expound for a long time again on that particular
16 question.

17 I think you can look in the record and find
18 what he stated.

19 MS. BUDEIRI: My recollection was that he did
20 not answer the question.

21 JUDGE HOPKINS: I think he expounded. I don't
22 know what more you need than what he stated, but if you
23 want to try again with a short question and a short
24 answer, go ahead.

25 BY MS. BUDEIRI: (Resuming)

1 Q I understand that trucks try to maintain full
2 loads most of the time. Is that correct?

3 A That's correct.

4 Q And trucks will put movements together to
5 achieve this. Isn't that right?

6 A That's correct.

7 Q Carriers may not take loads if they can't put
8 together loads for most of its mileage. Isn't that
9 right?

10 A I don't understand the question.

11 Q A carrier may refuse to move a load if it
12 cannot put together enough load for most of the mileage
13 that it is going to be moving?

14 A A specific movement, or a general movement
15 over time? A truck will move towards where he wants to
16 go. But you are talking about a fleet refusing it,
17 going back to the Oregon situation where the carrier in
18 several instances specifically said he didn't want to
19 haul unless he had predictability of the movement.

20 Is that your question?

21 Q Yes.

22 A Yes, carriers who do not have enough presence
23 in a market to feel comfortable in generating backhauls
24 may decline an outbound load. Now, backhaul is not the
25 sense that you are thinking of. It is the answer you

1 are trying to find.

2 Okay, you want to use that word, so I will use
3 it. The carrier may not be able to find a triangulation
4 or a relocation that will permit him to return, and he
5 will reject the haul.

6 Q Did you study for TBS what percent of goods in
7 the cells which passed the first screen were carried
8 when they did not have load for a substantial part of
9 its trip?

10 A No.

11 Q Turning to Page 18 and 19, does Figure 1 on
12 Page 19 or the NMTDE indicate how much of the estimated
13 five billion pounds of freight moving into California
14 each month was formerly carried by rail?

15 A No.

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1 Q Was any systematic study done to determine how
2 much of the freight carried by these trucks was formerly
3 carried by rail and diverted to truck?

4 A I think that's the question I just answered.

5 Q And the answer is?

6 A No.

7 Q That last question was more specifically
8 referring to your TEAM field interviews in Houston, El
9 Paso, and Phoenix.

10 A The answer to both is no. We did not ask, "Do
11 you have a load you stole from the railways?"

12 Q Now, according to Figure 1, there are 20,000
13 more trucks going into San Francisco than go out every
14 month.

15 A Negative. There are 20,000 more trucks a
16 month going over the grapevine. They are going into the
17 San Joaquin Valley to reload for the East. They are
18 going to go out 58 over Barstow, back to 40, or north
19 and out 80, and back to Chicago.

20 But there's a disproportionate movement of
21 trucks going that direction.

22 Q I don't understand what you just said, Mr.
23 Baker. Can you explain it to me, referring to Figure 1
24 on page 19?

25 A All right. Let me find something here that

1 may help.

2 All right. Now, Los Angeles is a basin.

3 Q Excuse me. Let me ask my question again, and
4 please look at page 19.

5 A I know what you're asking. It shows 109,000
6 southbound trucks and 129,000 northbound trucks. And
7 you are asking why they're going to San Francisco, and I
8 tell you they're not going to San Francisco.

9 And then you ask me please to explain why
10 not. And what I'm trying to tell you is, four out of
11 every five trucks coming into the State of California
12 come into the L.A. Basin because that's where four out
13 of five people live. But those four out of five people
14 don't generate enough loads to go east. So the surplus
15 trucks move north into the San Joaquin Valley and they
16 reload at Bakersfield and Fresno, at Firebaugh, at
17 Coalinga, all the way up with freight for the East, and
18 they do not go back to Los Angeles because that would
19 put circuitry in the route.

20 They cut across Highway 58 from Bakersfield,
21 back to Highway 40, or back to where they can cut down
22 to Phoenix and go out on I-10.

23 So all I'm telling you is the trucks are
24 taking the direct route out of the Valley once they
25 load. Most of that disparity is in reefers. There are

1 22,346 northbound irregular route reefers, and there are
2 10,328 southbound reefers. So you have 12,000 of the
3 20,000 in irregular route reefers.

4 Q Referring to your questionnaire in Appendix C,
5 how many people whom you approached refused to respond?

6 A You asked that before. I told you less than 5
7 percent.

8 Q I am asking you about Appendix C now.

9 A Oh, Appendix C? I'm sorry. That's the other
10 questionnaire? It would be the same refusal rate. Even
11 less.

12 MS. BUDEIRI: That's all I have. Thank you,
13 Mr. Baker.

14 JUDGE HOPKINS: You don't have any, Ms. Reed?

15 MS. REED: No, Your Honor?

16 JUDGE HOPKINS: Are there any other?

17 MR. SMITH: I have a few questions on
18 redirect, principally to clear up some of the questions
19 that came up earlier that we were going to look into.

20 REDIRECT EXAMINATION

21 BY MR. SMITH:

22 Q The first one, Mr. Baker, if you would please
23 refer to Exhibit UI/EP-40. Do you have a copy of that?

24 A I have it.

25 Q At page 3312, which is the second from the

1 last page of that Exhibit 40, there's a reference there
2 to -- and you will probably recall the cross-examination
3 by Mr. Boach concerning the Curtis Feed Service. And it
4 developed that there was an apparent inconsistency or
5 discrepancy of the 60 loads that you found from Curtis
6 Feed Services in your files 59, 162, and 192 where these
7 interview notes appeared to only indicate 50 loads.

8 Can you explain that apparent inconsistency?

9 A Yes. As I promised yesterday, we checked into
10 it and we got the answer late last night. First of all,
11 the reason that we have only 189 targets -- and there
12 were 193 movements -- is that these last four came in
13 actually after the material was boxed to ship. And they
14 did not get put in.

15 And because of that, the other situation did
16 occur. If you look at Exhibit 162, you will see three
17 carriers, A, B, and C. The first one was, as Mr. Boach
18 assumed correctly, Curtis Feed. The third one is L&I
19 Trucking of Rock Springs, Wyoming.

20 The opposite side of that exhibit should read,
21 and did not get changed and put in the machine -- should
22 show that L&I Trucking has 60 trailers currently moving
23 ten loads of sand into the California market, and of
24 those 60, they would like to move 50 loads a month.

25 That 25 should shift to 50. Now, the exhibit,

1 because of the time and because of the nature of the
2 situation, Curtis was not removed. The additional
3 capacity was only added to I&L and the girl simply
4 subtracted it and moved it up to the 16 loads of corn.

5 But you have, then, a substantial surplus of
6 capacity. And in questioning both of my people last
7 night at length, they assure me that there is absolutely
8 no double use. In fact, they assured me, if you had
9 some loads you wanted covered, they had a few extras.
10 But there is no double-counting or overuse of this
11 equipment.

12 Q Okay. Another question, sir. You had some
13 cross-examination by DRGW this morning regarding
14 observations of the so-called, in your Phase I, Phase I
15 of your assistance of TDS, observation of so-called
16 "focused shippers," where you were intending to identify
17 transport options for specific movements of tonnages
18 which passed through the screens.

19 The question is: Were you attempting in that
20 Phase I of your study, attempting to identify movements
21 or tonnages which had passed through the screens that
22 Dr. Anderson set up in his study?

23 A Not in Phase I.

24 Q So I want to direct your attention to, first
25 of all, to DRGW Exhibit 31. Do you have a copy of

1 that?

2 A What is that?

3 Q It begins with "Fresno outbound."

4 A Okay.

5 Q Now, if you refer to page 2827 of that exhibit
6 where there is Fresno inbound STCC Code 01 --

7 A Yes.

8 Q You recall you were asked a series of
9 questions about Zacky Farms?

10 A That's correct.

11 Q Now, keeping that in mind, if you will turn
12 back to Exhibit 40, UP/MP-C-40. On the first page,
13 which is marked CFB 3061 on that exhibit, does that
14 indicate whether you did conduct any analysis of
15 movements of STCC Code 01 commodities inbound to Fresno
16 in addition to the initial Phase I observation of the
17 facilities at Zacky Farms?

18 A As I promised, we would check during the
19 break. There are four inbound movements on page 1, on
20 page 3061, and two inbound movements on page 3062. Five
21 of the six are of 01 commodities.

22 Q Also, I wanted to refer to -- we had several
23 conversations this morning about your Table 2 in your
24 verified statement. I believe that's at pages 7 and 8.

25 And I believe you also referred, in response

1 to a series of questions from the Department of Justice,
2 that although this particular table is based on a
3 ten-month period, it is consistent with NMTDB interviews
4 covering a period of time.

5 Q Could you confirm that?

6 A Yes. As I said this morning, these data
7 paralleled those out of the previous published years or
8 the previous years. We are finishing our eighth year
9 and the data is consistent across all 80 years, as I
10 told you, a quarter of a million commodity movements.

11 Q So the conclusions that you have drawn from
12 Table 2, did you also rely for making those conclusions
13 upon the 80 years of observations from NMTDB?

14 A That's correct. I think I said that several
15 times.

16 Q And finally, or nearly finally, you were asked
17 by Department of Justice, questions about the NMTDB
18 survey itself and the percentage of instances where
19 people did not know what commodity they were carrying,
20 "Do Not Know" responses.

21 Q Do you recall that?

22 A Yes.

23 Q Do these types of "I don't know what commodity
24 I am carrying" responses come more frequently with any
25 specific type of carrier such as regular route or

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1 irregular route carrier?

2 A The reason, as we state in the methodology,
3 the reason we under-sample the regular route LTL
4 carrier, as I explained to somebody this morning, is he
5 is only moving between two terminal facilities and he
6 doesn't know what's in the trailer.

7 That's the most frequent source of the "I
8 don't know." But we try not to sample them.

9 Q The regular route carrier?

10 A He loaded it. He knows what's in it. He
11 handled it with his own hands.

12 Q What percentage of the overall intercity motor
13 carrier fleet is made up of regular route common
14 carriers, do you know?

15 A Well, it depends on whether you answer it by
16 registrations or movements. Simply stated, if you drive
17 a stake in the highway and stand there and count the
18 trucks coming past that stake, the regular route sector
19 will constitute less than 10 percent of the passings.

20 Q Finally, you had a long series of questions
21 from the Department of Justice as to whether or not you had
22 conducted systematic studies for the purpose of
23 preparing your testimony in this case. And sometimes
24 you had, and sometimes you had not.

25 Generally, can you testify that -- well, let

1 me ask it differently. Did you take into account prior
2 work done by TRAM and your own knowledge and experience
3 when you reached your conclusions in your testimony?

4 A Yes. I tried to indicate that in my answers,
5 that many of these -- many times, the reason no specific
6 study was done is we couldn't justify the expenditure.
7 We had done the work in the past. It was part of our
8 basic knowledge.

9 Q So where you knew something, you didn't have
10 to specifically study it?

11 A Right. I don't mind spending people's money
12 to learn something, but it's awfully boring to go out
13 and ask questions you know the answers to.

14 MR. SMITH: Thank you. That's all I have.

15 JUDGE HOPKINS: Anything further?

16 MS. BONAPARTE: Your Honor, I just had one
17 question that was left over from my cross-examination,
18 and maybe I should direct it to counsel.

19 I had asked, page 21 of Mr. Baker's verified
20 statement, he had stated that he supplied certain data
21 to update some data bases used by TBS. And I just
22 wondered if I could get an idea from counsel as to when
23 that answer could be provided.

24 MR. SMITH: Well, do you know, Mr. Baker?

25 THE WITNESS: I can tell you now what we were

1 alluding to here. We went back through the work
2 papers. We did -- if you will look at the Exhibit 1,
3 the Figure 1, where we did many extra passing counts
4 over and above those normally done for NMTDE, and we did
5 more passing counts than are even shown on the figure,
6 we did the 4,5005, 5,000 special interviews. Those are
7 the two primary pieces of material we were alluding to
8 in that instance.

9 We were updating basically the data we had
10 furnished TBS previously from the NMTDE. We were
11 reinforcing that where there might be some concerns.

12 RE-CROSS EXAMINATION

13 BY MS. BONAPARTE:

14 Q I see. Was there anything in addition to
15 that?

16 A Not that I know of.

17 BY MS. BUDEIRA:

18 Q When I asked you if you had done a specific
19 systematic study for this testimony about a certain
20 subject, you responded no, because in your experience,
21 et cetera, you did not do a study for this testimony.

22 A That's right.

23 Q Do your work papers contain the studies and
24 the data that are the basis that you have done in the
25 past?

1 A No. We did not put those in. We have some
2 frequent studies. We would invite you -- we can make it
3 available if there is any specific question. But many
4 of these things are that I have been here for more years
5 -- I have been here long enough to get 21 grandkids in
6 the service of the truck.

7 JUDGE HOPKINS: You've been here a long time,
8 too.

9 THE WITNESS: I've been here a long time, and
10 I'd like to go home.

11 JUDGE HOPKINS: Any further questions?

12 MR. SMITH: Your Honor, I move the admission
13 of Mr. Baker's verified statement.

14 JUDGE HOPKINS: Any objection? It will be
15 received in evidence.

16 MR. ROACH: Your Honor, I move the admission
17 of UP Exhibits 40 through 43. I'd also like to note for
18 the record that Mr. Baker and his counsel have agreed to
19 provide UP with copies of the volume that Mr. Baker was
20 referring to on the stand and used in preparing his
21 testimony, selected pages from it.

22 MR. SMITH: That's correct.

23 JUDGE HOPKINS: Any objection?

24 They will be received in evidence.

25 (The documents referred to,

1 previously marked Exhibits
2 UP/MP-C-40 through 43 for
3 identification, were
4 received in evidence.)

5 MS. BONAPARTE: Your Honor, I move the
6 introduction of DRGW-C-28 through 33.

7 JUDGE HOPKINS: Any objection?

8 They will be received into evidence.

9 (The documents referred to,
10 previously marked exhibits
11 DRGW-C-28 through 33 for
12 identification, were
13 received in evidence.)

14 JUDGE HOPKINS: Anything further?

15 We will be in recess until 1:45.

16 (Whereupon, at 12:35 p.m. o'clock the hearing
17 in the above-entitled matter was recessed, to reconvene
18 at 1:45 p.m. o'clock, this same day.)
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AFTERNOCN SESSION

(1:45 p.m.)

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

4 MR. WILSON: Your Honor, Applicants call as
5 the next witness Mr. Carl Liba, Vice President of Beebie
6 Associates.

7 JUDGE HOPKINS: For the record, he has already
8 been sworn in, so I won't swear him, some weeks ago, as
9 you say.

10 Whereupon,

11 CARL J. LIBA

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

DIRECT EXAMINATION

15
16 BY MR. WILSON:

17 Q Mr. Liba, in connection with this proceeding,
18 did you prepare a second verified statement contained in
19 Exhibit SFSP 18, that verified statement being 24 pages
20 in length and signed by you on the 13th of March, 1947?

21 A That is correct, I did.

22 Q Other than the corrections to the text of that
23 statement that were made in the errata filed by
24 Applicants, do you have any corrections or modifications
25 that you would like to make at this time?

1 A I have no corrections or modifications.

2 Q Were you also responsible for preparing
3 Exhibits SFSP 19 and 20 as filed in March with the
4 application?

5 A That is correct, I was.

6 Q And were you responsible for preparing the
7 replacement volumes, SFSP 19 and 20, as filed as part of
8 Applicant's errata?

9 A Yes, I was.

10 Q Could you briefly state the reasons for the
11 changes?

12 A There were three adjustments made to the data
13 base that resulted in the replacement volumes. The
14 first adjustment was to extend to all carriers the
15 gateway adjustments made to TOFC flows appearing in
16 small shipments and in containerizable flows at the
17 major gateway cities, that is, Chicago, St. Louis, and
18 Memphis-New Orleans.

19 The second adjustment was to correct the
20 flows of the Burlington Northern by including the Fort
21 Worth & Denver, which was merged into the Burlington
22 Northern. My programmer had not included them
23 originally.

24 And then third, we excluded from the flows
25 some ten corridors which didn't relate to the case,

1 Pacific Northwest flows that were inadvertently put into
2 SFSP 19 and 20.

3 Q Okay, sir, did you also prepare a four-page
4 summary exhibit summarizing the distribution of market
5 shares by type of transportation service, those
6 statistics being a summary of statistics in the
7 replacement Volume SFSP 20?

8 A Yes, we did. In order to provide additional
9 information which we thought would be of interest and
10 value to the Commission, the Department of Justice,
11 whoever, we exploded the market share data into the four
12 shipping categories and showed the modal and carrier
13 shares in that table.

14 MR. WILSON: Your Honor, I would like these
15 summary sheets to be marked as Exhibit SFSP-C-9 at this
16 time.

17 JUDGE HOPKINS: It will be so marked for
18 identification.

19 (The document referred to
20 was marked Exhibit No.
21 SFSP-C-9 for
22 identification.)

23 BY MR. WILSON: (Resuming)

24 Q Sir, do you have any changes or modifications
25 you would like to make in any of the market shares?

1 A No, I do not.

2 Q In that case, is your verified statement and
3 the market share data which you have presented true and
4 correct to the best of your knowledge and belief?

5 A It is.

6 MR. WILSON: The witness is available for
7 cross examination.

8 JUDGE HOPKINS: Thank you.

9 Who is going to commence?

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

11 CROSS EXAMINATION

12 BY MR. ROACH:

13 Q I am Arvin Roach, Mr. Liba, for Union
14 Pacific.

15 Let me ask you to turn to page 5 of your
16 verified statement. You say there in the last
17 paragraph, toward the middle of the paragraph, that you
18 agree that Mr. Beyff's regional definitions "establish
19 appropriate geographic boundaries for use in analyzing
20 freight traffic flow participation as it will be
21 affected by the Santa Fe-Southern Pacific merger."

22 Do you see that?

23 A Yes, sir, I do.

24 Q Tell me generally, first, if you can, what
25 your notion of appropriate geographic boundaries is.

1 What are you trying to find by drawing the geographic
2 boundaries in the right place?

3 A We are trying to do two things. One, we are
4 trying to identify market areas, geographic areas
5 appropriate to the Department of Justice guidelines for
6 merger applications. And then secondly, we are trying
7 to provide enough detail to be of interest and value to
8 the participants in the proceedings.

9 The geographic areas were designed such that
10 they encompassed the gathering areas that are common to
11 railroads and water carriers, for instance, in their
12 traffic flows. It is a mistake to think that at the
13 five digit level, for example, and all rail traffic
14 originates at the SHIC of the reporting station, the
15 reporting station, the numbers of reporting stations
16 have declined, and very often the traffic that is
17 reported out of that station originates at distances of
18 many, many miles from that station. That's one reason.

19 Second, water carriers operate from terminal
20 facilities along the waterways. Their traffic is
21 gathered by rail carriers and truck lines from the
22 surrounding radius, and therefore it is inappropriate to
23 show that as a point as well.

24 Third, with rail TOFC, as we testified
25 earlier, and as other witnesses have testified, that

1 gathers from radii of up to 100 miles, or perhaps even
2 more.

3 So it is inappropriate to look at station
4 level reporting. The wider geographic areas that we
5 used reflect that.

6 Q Now, given the fact that you felt you needed
7 to look at regions that were large enough to take
8 account of the factors you just mentioned, isn't it then
9 the case that you have got a variety of options as to
10 where you are going to draw the boundaries to define
11 such regions?

12 A That is correct. There are always options.
13 There are judgment calls. However, we are constrained
14 by the reporting of data, and so part of the decision
15 process is oriented around the business economic areas
16 defined by the Department of Commerce on which our data
17 base is oriented, particularly with regard to the truck
18 flows. So that is part of it.

19 Q Yes. You have a map following page 5 of your
20 testimony that depicts the 183 BEAs and depicts how you
21 carved those up, along with Mr. Beyff, into 19 regions,
22 is that correct?

23 A That is correct.

24 Q All right, now, my question for you is going
25 back to page 5, what are the factors that you employe

1 that you consider correct in delimiting, as you put it,
2 appropriate geographic boundaries?

3 A First of all, the first consideration that was
4 reviewed by Mr. Peyff and myself in the designation of
5 these was the route structure of the two railroads, the
6 Santa Fe and the Southern Pacific. Secondly, we want to
7 have a commonality of economic activity in the areas as
8 well. And then third, in the sparse areas, we wanted to
9 recognize the fact that the level of activity would be
10 such that it wouldn't be appropriate to fragment the
11 areas any finer. Those were the three primary
12 characteristics.

13 Q So your three items are, or your three
14 criteria for drawing boundaries are taking account of
15 the route structure of these merging carriers, second,
16 achieving a commonality of economic activity within each
17 region, and third, a sufficiently high level of -- are
18 you saying transportation activity?

19 A That's correct. The level of activity in
20 Arizona, New Mexico, for example, was not that
21 significant, and so we lumped those two together.

22 With every rule there are exceptions,
23 however. In the Central Valley of California, we made
24 that single BEA an area just because it was recognized
25 as being of significant interest because of the produce

1 transportation originating in that area.

2 Q Well, the first factor you talked about was
3 the route structure of these railroads, and that
4 suggests to me the following question:

5 Is the appropriate way to define regions to
6 look at them in terms of what will tell us the most
7 about potential railroad market power resulting from
8 this merger?

9 A The 19 regions that we have used have been
10 characterized as being too narrow by Professors MacAvoy
11 and Baumol, I think, in the proceedings. They reviewed
12 the geographic descriptions that we put together back in
13 November or December of last year when the process was
14 starting, and saw nothing objectionable to these, and
15 decided that these were indeed representative market
16 areas appropriate to the railroads of DOJ.

17 Q I guess what I am getting at is if I look at
18 your map here, following page 5, I can see a clustering
19 of smaller regions, as you define the term, along
20 essentially the deployment of the routes of these
21 railroads. That is to say, there are a number of
22 regions through the middle of the country where the two
23 railroads run, and there are several regions that you
24 have carved out on the west coast, and I assume that
25 that reflects your first criterion, the route structure

1 of the railroads, is that right?

2 A That is correct.

3 Q Is the reason for that that your ultimate
4 purpose here is to tell the world something useful about
5 potential market power as a result of this merger?

6 A Indeed that is the purpose of the displays and
7 the regional identification.

8 Q Did you work with TBS on their study in any
9 way?

10 A The Beebie data base, Transearch database, was
11 modified with the addition of specific, of more specific
12 rail traffic flow information from the Santa Fe-Southern
13 Pacific Corporation. In replacement of the ICC waybill
14 for those two carriers, they substituted a 10 percent or
15 greater sample, and that data base, the rail traffic
16 plus all of our other Transearch traffic, became the
17 data base for several different people in the course of
18 this study. We provided information on rail and truck
19 flows to TBS for their studies. We provided them to
20 A. T. Kearney for their studies. We provided
21 information to a number of people.

22 Those reports are on a somewhat different
23 basis than is this construction, however.

24 Q Well, focusing particularly on the issue of
25 defining geographically what we ought to be looking at

1 in assessing the anticompetitive consequences, if any,
2 of this merger, did you communicate back and forth with
3 TBS about the appropriateness of their definitions of
4 Group I common points, Group II common points, market
5 regions and local flows as compared with your
6 definitions of region-to-region flows?

7 A No, we did not because they were doing a
8 tactical study, and some of our Transearch data on a BEA
9 basis was better used for tactical reasons than the
10 larger aggregations here. That's because of data
11 reporting problems.

12 Q What do you mean by a tactical study.

13 A Well, many carriers, trucking carriers,
14 railroads, buy Transearch in order to identify new
15 traffic lanes for competitive reasons. Trucks are
16 looking for backhauls. They are exploring new market
17 areas in which to expand, and they buy Transearch from
18 us to identify the traffic flows.

19 At the BEA level, which is useful for them,
20 they recognize that the rail traffic, as I pointed out
21 earlier, while not originating at a station, is
22 originating over a wider area. They recognize that the
23 commodity reporting for truck flows at the five digit
24 level is very often not complete because of disclosure
25 problems and things such as that.

1 So when TBS was utilizing the information at
2 that level, it shouldn't be construed as indicating
3 market measurement devices, but rather, the appearance
4 of competition at that level.

5 Q I'm not sure I got an answer.

6 I was asking you what you mean by the word
7 "tactical." You say TBS did a tactical study, and I
8 didn't understand what that meant.

9 A By tactical I meant that they were looking --
10 they were focusing on single points, common points, as
11 they termed them. I don't know enough about their
12 study to comment on it, but they are looking for
13 competition down to single points. We are looking at
14 competition in this display in a broader sense, a
15 strategic sense as opposed to a tactical.

16 Q Did you ever talk to anybody about why you
17 were doing that, why were you doing it at one level and
18 they were doing it at another level with different
19 definitions in two studies.

20 A Oh, yes, absolutely. The purpose of this was
21 to answer questions about the market power and the
22 market areas of the combined railroads and the amount of
23 competition that they were facing, both from other modes
24 and from the railroad community in those areas.

25 Maybe we are getting somewhere.

1 Is your point that you were looking in markets
2 ands TBS isn't looking in markets?

3 A That is correct.

4 Q Are these regions supposed to be markets,
5 flows between any two of these regions?

6 A We have termed them as being markets, yes.

7 Q And what do you call what TBS would look at
8 in, for example, their Los Angeles to Texas coast flow?
9 Isn't that a market?

10 A There are a lot of definitions of market,
11 depending on the particular use. that can be construed
12 as a market, sure.

13 Q How about the Group I common points that TBS
14 studies? Are those markets?

15 A No, I wouldn't term them as being specific
16 markets because as Forrest Paker testified earlier, the
17 trucks are coming in from wider areas, the types of
18 commodities being shipped have a commonality of form and
19 application with regard to transportation equipment.

20 Q So strictly speaking, they are not markets.
21 They are competitive situations.

22 Q And what is it that leads you to conclude that
23 any two pairs of these regions of yours constitute a
24 market?

25 A The aggregation of areas, BBA areas, in order

1 to encompass the wider gathering regions, as I said, in
2 order to establish boundaries identifying within those
3 boundaries the action of competing firms.

4 Q Is that all you can say about why these are
5 markets?

6 Do you have anything else you could add about
7 why from an economic perspective the movement of tons of
8 freight between this entity you have drawn in Texas of
9 124 and 125 BEAs on the one hand and these four BEA's
10 over here on the West Coast, 172, 173, 174, and 175,
11 constitutes a transportation market?

12 A As I indicated prior, there is a commonality
13 of economic activity that tends to indicate that the
14 Dallas region, for example, is a fairly cohesive region
15 with different transportation characteristics and
16 requirements than would be the grain producing region to
17 the north of it.

18 On the one hand, we didn't want to go too
19 fine, because the finer we went, the more volume would
20 be added to the reports and the exhibits. On the other
21 hand, we didn't want to go too broadly because then we
22 would lose some of the interesting detail that this
23 information provides.

24 Q Let me ask you this. Suppose you had started
25 with information about the flows of traffic on these two

1 merging railroads, and you had proceeded from there to
2 an attempt to specify the areas where the largest
3 volumes are going to and from.

4 Would you have gotten regional definitions
5 that looked like this or resembled this?

6 A I think the answer to that would be yes
7 because the traffic characteristics of the railroads
8 are -- tend to be centered in these areas. The heaviest
9 traffic flows tend to be the east-west flows from
10 California north and south, California areas, over
11 toward the border points. There are heavy flows out of
12 Chicago down into Texas and the Gulf Coast region.
13 There are heavy flows out of California to central
14 Texas.

15 If you look at their traffic, as thin as it
16 is, you can see there are really only about four major
17 corridors in which they have any appreciable traffic
18 volume.

19 Q Let's take a look at Texas and Louisiana in
20 that general Gulf area.

21 You have drawn several of your regions, each
22 one of which is an aggregation of a number of BEAs
23 here. For example, you have one called South Texas,
24 Region No. 11, which is defined as BEAs 123, 127 to 132,
25 and 134.

1 Do you see what I am referring to?

2 A Yes.

3 Q And to the west of that you have a so-called
4 region that you call southwest, which is BEAs 133 and
5 160 through 162, and that essentially constitutes --
6 well, it does constitute all of Arizona and virtually
7 all of New Mexico, and then a piece of Texas.

8 Do you see that?

9 A Yes.

10 Q And then you have got another one to the east
11 of the south Texas region called Texas Coast Region,
12 which is BEAs 115, 116, 121, and 122.

13 Is that right?

14 A That is correct.

15 Q And that one happens to be -- it happens to
16 include the two BEAs that Mr. Anderson calls the Texas
17 Coast, isn't that correct, 121 and 122?

18 A I guess, yes.

19 Q And then one more step to the east you have
20 one called Louisiana Arkansas, which is BEAs 109 through
21 111, and 117 through 120. No, I'm sorry, strike that.

22 A 47, 113, 114.

23 Q Strike that. I meant to say instead of No. 9,
24 Louisiana, Arkansas, I meant to say No. 19, New Orleans,
25 which is BEAs 113, 114, and 147, is that correct?

1 A Correct.

2 Q So just looking at the southern part of the
3 United States, along the center of the country, you have
4 defined these four regions, is that right?

5 A That is correct.

6 Q Actually, I guess I should also say that you
7 have got a Dallas region which nestles up above the Texas
8 coast and south Texas regions and is only two BEAs, 124
9 and 125.

10 A That is correct.

11 Q Now, my question for you is if we are looking
12 at traffic flows to and from California, how is it that
13 you conclude that in this region in total that is
14 defined by the five regions we just described, that
15 there are five markets as opposed to ten markets or two
16 markets or any other number of markets?

17 A The major traffic generating areas of the
18 railroads are concentrated in New Orleans, 113, Houston,
19 122, Dallas, 125, the Mexican border points, 129, I
20 guess would cover most, and 131. Those are the centers
21 of that activity.

22 There is a lesser amount of SFSP activity in
23 the other BEAs. However, there are secondary movements
24 to or from the railroads in those areas. I would
25 comment on the El Paso BEA, 133, being up in the

1 Texas -- pardon me, New Mexico-Arizona one, and that is
2 because all the traffic in that BEA is concentrated in
3 the El Paso area.

4 Q What?

5 A All the traffic in that BEA tends to be
6 concentrated up in the El Paso area, up in the northern
7 edge of that BEA, closely adjacent to New Mexico. The
8 bright lines that we have put around the traffic areas
9 of the railroad are, we think, reflective of where the
10 traffic concentrations of the railroad are.

11 Q It sounds to me as if what you are saying is
12 that you have certain BEAs that you know are central to
13 the traffic flows of this railroad such as BEA 113,
14 which is New Orleans, BEA 125, Dallas, BEA 122,
15 Houston. And then you have a whole lot of other
16 surrounding BEAs that you have to lump together with the
17 key BEAs into regions, is that a fair vernacular summary
18 of the problem?

19 A That's a good summary, yes.

20 Q How do you decide where to put the other BEAs
21 that you are going to attach to the core BEAs? For
22 example, how do you decide whether BEA 115 belongs with
23 New Orleans or Houston?

24 A Because the Santa Fe-SP is an east-west
25 carrier. The tributary area for its TOFC, for example.

1 tends to be in an elliptical pattern away from the
2 direction of movement such that if traffic were being
3 deramped, if it was TOFC traffic in Houston, it would
4 tend to flow more toward the east than it would to the
5 west. The same in New Orleans, it would tend to flow
6 more toward the east than it would toward the west.

7 There are a number of considerations that I
8 indicated earlier that went into this. Concentrated as
9 they are around the major hubs of the railroad, I think
10 they are a good reflection of the traffic area.

11 Q I think you said before there is an exception
12 to every rule, and I assure that when you are dealing
13 with, as you say, a number of considerations, that at
14 some point you reach a stage where it is sort of
15 arbitrary, you have got to draw a line somewhere, and
16 you have several different considerations which may put
17 in different directions, and you just make a decision,
18 isn't that a fair statement?

19 A That is correct.

20 Q If the essential issue here is what we call,
21 in talking a minute ago, the key BEAs, the ones where
22 the Santa Fe-SP traffic is concentrated, why wouldn't it
23 make a lot of sense to look at flows from those
24 particular BEAs to other important BEAs as markets?

25 A As I indicated before, if you are looking at

1 the traffic on the BEA level, you are missing the
2 essence of the true traffic characteristics, the fact
3 that the traffic does not originate, or the overwhelming
4 portion of the traffic doesn't originate or terminate
5 within that BEA.

6 As an example, we found TOFC traffic into
7 Chicago is overwhelmingly destined for points outside of
8 the BEA 93. The same is true in Houston. It would be
9 inappropriate to look only at the BEA flows.

10 Q I confess to confusion in understanding why
11 it would be -- why the fact that the traffic is destined
12 for somewhere else is a reason that it would be
13 inappropriate to look at flows in and out of the
14 particular BEA.

15 Why does it matter that the traffic isn't
16 originating or terminating there?

17 A The entire point of this verified statement
18 and its exhibits is to show market shares, to establish
19 the competitive environment in which the railroad, the
20 two railroads operate, and what the merged railroad
21 would look like when it operates.

22 In order to identify for market share
23 purposes, you have to have a geographic distinction that
24 encompasses all of the relevant factors for market
25 measurement. It is supposed to be all of the forces

1 acting upon a market within a given geographic area, and
2 for that consideration, you have to include, then, the
3 drayage to and from, you have to look at the actual
4 points of origin and destination of the traffic, you
5 have to take into account that a railroad is a traffic
6 gathering device that operates by gathering traffic and
7 amassing that into an economic unit for measurement, a
8 trainload. It doesn't mean that the traffic all
9 originates at a yard or a terminal or an elevator and
10 the competition is at the distant point at which the
11 traffic originates.

12 As Forrest Baker was indicating before, the
13 trucker competes for the shipment at the origin and at
14 the destination. He doesn't compete for it at the
15 terminal of a railroad or the elevator.

16 Q Well, surely no matter where you draw these
17 boundaries you are going to find that some traffic is
18 being brought across the border and some traffic is
19 heading in a lot of different directions.

20 I am just trying to understand why it doesn't
21 make sense to define as a market -- I don't necessarily
22 mean to the exclusion of your definition, but why
23 doesn't it make sense to define as a market flows
24 between, for example, BBA 179, which you have defined as
25 a region --

1 MR. WILSON: Your Honor, I believe that
2 question has been asked and answered.

3 MR. ROACH: I haven't even asked it yet.

4 JUDGE HOPKINS: Let him finish his question.

5 BY MR. ROACH: (Resuming)

6 Q -- and on the other hand, BEA 125 -- I'm
7 sorry, BEA 122, which is Houston.

8 A The data display that we have does indicate
9 that. It indicates that we have made allowance for the
10 fact that there is probably going to be drayage out of
11 122 into 121 and 116.

12 Q Let me put it this way. Would you consider a
13 measurement of relative tonnages between truck and rail
14 and water in traffic flows between BEA 179 and BEA 122
15 to be an appropriate study of the market shares?

16 A Depending upon the level of detail at which
17 you are looking, it could be. And I have to emphasize
18 again that unless you recognize the fact that the traffic
19 is going to be drayed, the interpretation you give to
20 the reports that are that specific are going to be
21 misleading.

22 Q Why does it make any difference if the traffic
23 is going to be drayed? I still can't understand the
24 reasoning behind that.

25 MR. WILSON: That's what I think has been

1 asked and answered.

2 JUDGE HOPKINS: He can't understand it. Maybe
3 the record can't understand it.

4 Go ahead.

5 THE WITNESS: If there are four points in the
6 movement of a shipment, let's say it's grain moving out
7 of -- moving off of a farm, out of an elevator -- pardon
8 me, out of farm storage.

9 BY MR. ROACH: (Resuming)

10 Q Could I stop you?

11 Can we focus, just to keep a focus, on 179 to
12 122? Let's talk about freight movements between the San
13 Joaquin Valley, just as an example, and Houston BEA,
14 these two BEAs.

15 Why would the drayage issue potentially make
16 that an inappropriate market study?

17 A Because you would tend to have reflected in
18 BEA 122 the traffic that is going to 121, 116 and 115,
19 that is being offloaded at the 122 facilities.

20 Q Well, so what? If somebody is monopolizing
21 the transport from 179 to 122, does it make any
22 difference if the freight has got to be drayed further
23 east after that?

24 A Well, there are two considerations there,
25 aren't there? We are looking at the competition to the

1 railroad, and the competition will haul out of the
2 Central Valley of California directly to a customer,
3 whether he is in 122 or 121, and the railroad falls
4 between a terminal at Fresno and a terminal at Houston
5 but is delivering not only to people in Houston or
6 customers in Houston, but also further east, Lake
7 Charles, wherever it may be.

8 So if you had to report just on the BEA 122,
9 you're going to have the two problems I am pointing
10 out. One, you will have an inflated volume that will
11 distort your market measurement on the rail side; you
12 will have an understatement of the competition on the
13 truck side, and then depending upon what level of
14 commodity detail you are looking at, you are going to
15 have distortions in the data caused by the reporting
16 methodologies that are in place.

17 So it is not so much that it is a bad
18 measurement, it is that it would be a bad, an invalid
19 interpretation of the data.

20 Q Are you seriously suggesting that you have got
21 to include BEAs 121, 116 and 115 because shippers
22 located in and around Houston have the alternative of
23 having their freight sent to Lafayette, Louisiana? Is
24 that the point?

25

1 A What I'm saying is that this is a railroad
2 market share oriented exposition for purposes of this
3 merger proceeding.

4 A If you want to look at the competition between
5 railroads and/or trucks, you have to include all of the
6 relevant area.

7 Q Well, "relevent" is the key word in that
8 statement, isn't it?

9 A Yes. You keep trying to narrow it down to
10 what I have termed "inappropriately small levels." And
11 I've explained why it is inappropriate.

12 Q No, I'm not trying to narrow it down. I'm
13 trying to find out your reasons for defining it the way
14 you did, and I am coming at that. I have come at it
15 from a number of different directions.

16 A I appreciate that.

17 Q From the standpoint of trying to get you to
18 explain why a smaller definition a BEA definition, would
19 be, as you put it, not relevant, not appropriate, you
20 used those words -- and I am trying to ask you for the
21 content of those words, what is the reasoning, rather
22 than a word that simply states a conclusion?

23 A I think I've answered that, but I'll go over
24 it again. It's inappropriate because you will have an
25 overstatement of rail traffic, you'll have an

1 understatement of the truck traffic.

2 Q Okay. Can I stop you there? I promise I will
3 let you finish. But that picks up, very well, my point
4 about Houston.

5 My question had been: Is it helpful to the
6 shipper in Houston that he could have his traffic
7 trucked to Lafayette, Louisiana? Why does it matter
8 that the truck traffic over in Lafayette to an
9 assessment of whether there's railroad market power in
10 connection with shippers at Houston?

11 That is the question.

12 A We were talking about shipments out of
13 California to Houston.

14 Q Right.

15 A What I am saying is that Houston is not
16 Houston alone. Houston includes Lafayette or Lake
17 Charles, or whatever it may be. And that's the relevant
18 market for the evaluation of market shares between the
19 two areas.

20 Q Houston includes Lafayette, Louisiana? Isn't
21 it a couple of hundred miles away or more?

22 JUDGE HOPKINS: Are you saying the traffic
23 doesn't stop at Houston? It goes on to Lafayette?

24 THE WITNESS: That's what I'm saying, yes.
25 When you look at the flows of railroad traffic,

1 primarily the intermodal flows, you will find that they
2 are not terminating there at Houston. They're being
3 drayed over the road, primarily eastward out of the
4 Houston BEA.

5 BY MR. ROACH: (Resuming)

6 Q Well then, let me put it this way. Suppose
7 you look at traffic originating or terminating in these
8 BEAs, and thereby, you instantly shed yourself of the
9 problem of onward drayage that you've been talking
10 about.

11 Would you then be looking at an appropriate
12 market study if you compare rail and truck shares
13 between BEAs 179 and 122?

14 A You would have to make a number of adjustments
15 in order to get down that fine.

16 The other item that I mentioned in our
17 conversation thus far was the fact that the reporting of
18 truck volumes at the BEA level has a great deal of
19 sampling variability associated with it, and the
20 confidence intervals might tend to overstate the truck
21 volume or understate it by plus or minus 12 percent.

22 So you'd have to be very careful, then, how
23 you evaluated how much traffic was actually moving in
24 that area.

25 Q Was that answer yes, it would be an

1 appropriate market study?

2 MR. WILSON: Could you restate the question?

3 BY MR. ROACH: (Resuming)

4 Q Do I need to restate the question, Mr. Liba?

5 JUDGE HOPKINS: I think he understands the
6 question.

7 THE WITNESS: And my answer was it would be
8 appropriate if you made substantial adjustments to the
9 rail and truck flows.

10 BY MR. ROACH: (Resuming)

11 Q Thank you. That's very responsive.

12 Let me ask you a question to which I hope the
13 answer is obvious. Isn't it true that Santa Fe and
14 Southern Pacific are the only railroads serving any part
15 of your southwest region, except for the Missouri
16 Pacific's access to El Paso?

17 A Yes, that's correct.

18 Q And I take it you would agree with me, then,
19 that after this railroad merger, shippers located
20 anywhere in that region other than in El Paso, will have
21 one rail choice and only one?

22 A If you're looking at just the railroad
23 portion of the transportation equation, that's correct.

24 Q Okay. Let me ask you to look at replacement
25 Volume SFSP-20.

1 I direct your attention to page 207 which is
2 the flow from Region 14, central California, to Region
3 I, Chicago.

4 A Yes.

5 Q Now, in the third block down on the page under
6 the heading "traffic participation (percentages by
7 category)," you have some numbers. Could you just tell
8 me, explain for the record the format of those numbers,
9 what they are telling us?

10 A The third table that you just referenced gives
11 you the market shares. Each one of those numbers in
12 those cells are market shares of modes or carriers, rail
13 carriers, of a shipping category.

14 Your client, the Union Pacific, has 3.82
15 percent market share of the small shipment category, for
16 example, where the SFSP has a 78.8 percent market share
17 in that same category.

18 Q And if I want to see, for example, what
19 happens according to your study, when these two
20 railroads merge -- and I'm looking at the total traffic
21 -- do I add up the 51.04 percent under Santa Fe with the
22 7.76 percent under Southern Pacific?

23 A At the suggestion of the economist, Dr.
24 MacAvoy, we have done that work for you. The SFSP
25 column is the addition of the separate SF and SP. So

1 you can see the Santa Fe in that corridor has an overall
2 market share of 51 percent.

3 Adding the Southern Pacific to the SP moves it
4 incrementally up 7.79 percent to 58.8 percent.

5 Q So your answer is yes, that tells me the
6 effect on market shares of the merger?

7 A That's correct.

8 Q And when you look at this and it says that
9 74.4 percent of the traffic in this market is moving by
10 rail and 26 percent is moving by truck, what do you
11 conclude from that about the potential market power of
12 railroads?

13 A What you're looking at is one of the best
14 markets that the Santa Fe, who is a primary competitor
15 in the market right now, has. Its high share is a
16 result of the long haul economics that it can exercise
17 compared to truck.

18 That's how I would interpret the table. I
19 would expect a high share in a lane such as this. It's
20 a natural result of the type of competition that the
21 Santa Fe provides.

22 Q And so is your answer that, in that case, a
23 high share is an indication that there is not market
24 power?

25 A I would also conclude that there is no market

1 power because there is the existence of other
2 competition.

3 Q Can I infer from that that market share
4 percentages from your tables, taken in and of
5 themselves, don't tell us anything about market power?

6 A No, just the contrary. If you look at these,
7 they indicate whether there is competition there or not,
8 and that says a lot about market power.

9 In fact, if you look back to my earlier
10 testimony where we looked at the competition between
11 rail and truck, you can see that even though the Santa
12 Fe or the Southern Pacific might have a low rate in a
13 corridor, it doesn't have all the traffic.

14 In fact, they're pricing below competition in
15 order to get traffic. It doesn't mean they could charge
16 a high rate.

17 Q What percentage figures would cause you to
18 have concern about market power as a result of this
19 merger in a table like this?

20 A I'd say the only one might be 100 percent.
21 But then you'd have to look at that over a period of
22 years to see whether the fact that there's 100 percent
23 share has been able to be withstood over a period of
24 time.

25 Q So you would only be concerned about the

1 market power resulting from this railroad merger if the
2 figure under the SF and SP column were 100 percent, and
3 if you could look at other years' data and see that it
4 was also 100 percent?

5 A Correct.

6 Q Let me ask you to look at the flow from Region
7 14 to Region 12 on page 218.

8 This is one where Santa Fe, before the merger,
9 is reported in your figures as having 33 percent and SF
10 is reported before the merger as having 42 percent. And
11 there aren't any other railroads shown as having
12 anything, and so the result when they merge is 75
13 percent, with the other 25 going to trucks.

14 A Correct.

15 Q I know it's implicit in the last answer, but
16 you don't see any market power problem here. But
17 perhaps you could explain, with this particular flow in
18 mind, why there is no market power problem.

19 A Well, I would echo my last statement. There
20 is still competition from trucks in that corridor. I
21 would also add that our Transearch data base is a
22 conservative one in that it doesn't have full reporting
23 of all the truck moves. And so this tends to be a
24 conservative view of the competition.

25 So it's likely that the Santa Fe SP has

1 something less than a 74 percent market share.

2 Q Now, we discussed earlier the fact that Region
3 12 is Arizona and most of New Mexico and that piece of
4 southwest Texas that you include. Is that right?

5 A Yes.

6 Q And I take it that other than -- again, other
7 than El Paso, all of this traffic has got to be
8 terminating on the Santa Fe and the Southern Pacific;
9 right?

10 A That's correct.

11 Q And that's why there aren't any percentages
12 for the other railroads.

13 A That's correct. If there were other carrier
14 participation in the move and they were terminating
15 within this area, it would have been indicated. The
16 tonnage would have been allocated between carriers.

17 Q Right.

18 And central California is your term for BEA
19 179.

20 A That's right.

21 Q Which is Fresno-Bakersfield; right?

22 A That's right.

23 Q And the only railroads serving that BEA are
24 Santa Fe and Southern Pacific; correct?

25 A That's correct.

1 Q So that explains to us, since all the traffic
2 is originating and terminating on the merging carriers,
3 why we have the circumstance of zeroes under all of the
4 other railroad columns; correct?

5 A That's correct.

6 Q Okay.

7 To get a contrast to that, let me ask you to
8 turn to the flow from Region 12 to Region 5 on page
9 173.

10 Here is where I get a little confused, Mr.
11 Liba. This is the flow from the southwest again, and in
12 this case it's to the southeast, which you define as --

13 A Essentially everything east of New Orleans and
14 Memphis.

15 Q It's a whole flock of BEAs, everything in the
16 southeast corner of the United States; right?

17 A That's correct.

18 Q And what's confusing me is, you have a total
19 rail share here of 85 percent of the traffic compared to
20 15 percent for trucks and zero for water. But even
21 though Santa Fe and SP are the only -- essentially,
22 except for El Paso -- the only railroad serving your
23 southwest region, you've got them down for only 46
24 percent of the traffic.

25 How is that?

1 A That's because the traffic is interchanged at
2 points such as Dallas and Sweetwater and Avard, places
3 like that, to other carriers in order to complete the
4 move within the western area, west of the Mississippi

5 It is the allocation between carriers that
6 causes the phenomenon you're talking about.

7 Q So there might be an interchange at Avard with
8 the Burlington Northern, and so the Burlington Northern
9 gets some of the tons on that movement?

10 A That's correct.

11 Q How much of the movement do you give them?

12 A If they were the only two western carriers in
13 the move, each got a 50 percent share. The share was
14 proportional to the number of western Class I carriers.

15 Q All right. Now let me ask you this. If I am
16 a shipper at Phoenix and I've got access to both of
17 these merging carriers, is it going to do me any good,
18 after the merger, to have the Burlington Northern up in
19 Avard in terms of resisting any rate increases by the
20 merging carriers?

21 A Fortunately, I sat in at the earlier testimony
22 way back. Mr. Fitzgerald. He testified that all routes
23 would remain open, so you will still have that amount of
24 pricing power exercised by the terminating carrier on
25 the move. Yes.

1 Q Are you saying that I don't have to worry as
2 long as the Santa Fe and the SP, at their sufferance,
3 keep an existing joint line tariff in effect?

4 A Well, they will not only have the competitive
5 power of the connecting lines to assist them and they'll
6 not have their own leverage that they have a result of
7 whatever volume they can bring to bear on the thing, but
8 they'll also have the competitive pressure that is
9 present in the truck moves that are also in that lane.

10 And so the shippers will have quite adequate
11 leverage to keep the market power of the SFSP from being
12 exercised, to the extent they have any at all.

13 Q Well, I understand that there are 15 percent
14 of the market you have given to trucks here, and I also
15 understand that in your opinion there is no market power
16 problem unless SF and SP are down for 100 percent.

17 But let's put that aside and just focus for a
18 minute on the relative percentages you are assigning
19 here to the railroads. You've got the SF and SP down
20 for 46 percent. And in my mathematics, if you add up
21 the other three railroads, you come out at about 39
22 percent. Is that correct?

23 A That's correct.

24 Q And if you just look at those numbers, it
25 sounds like, to a reader like myself, it sounds like the

1 Burlington Northern and the Southern Pacific, and all
2 these other railroads you've got under the heading
3 "Western Carriers" have got some influence over whether
4 the shipper at Phoenix is subjected to market power by
5 Santa Fe and Southern Pacific.

6 And my question for you, quite seriously, is:
7 Isn't that very misleading? Isn't the appropriate
8 number that shipper in Phoenix is looking at really 85
9 percent, the figure under "Total Rail"?

10 A No, it isn't, because he will have the truck
11 option available to him now. They're already in the
12 flow and have a presence. And, in fact, the presence we
13 show here may be understated, because we don't have good
14 coverage in the bulk modes.

15 As was testified earlier, our truck movements
16 of grain into feedlots in New Mexico -- and they haul
17 the potash out -- so the truck presence is even greater
18 than we state here. And that factor alone should be
19 sufficient to keep, one, the shipper quite satisfied,
20 keep the rate level in line and the service levels up.

21 MR. BOACH: Your Honor, may I please ask to
22 have marked four exhibits? JP/MP-C-44 through 47.

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

25 (The documents referred to

1 were marked Exhibits
2 UP/MP-C-44 through 47 for
3 identification.)

4 BY MR. POACH: (Resuming)

5 Q Mr. Liba, I want to ask you some questions
6 about these papers and start with Exhibit 44.

7 A Yes, sir.

8 Q Is that your handwriting?

9 A No, sir. That is Mr. Wilson's handwriting.

10 Q Dennis Wilson?

11 A Dennis Wilson.

12 Q What does it represent?

13 A Notes for a meeting between Santa Fe -- Santa
14 Fe, Southern Pacific, and Beebe Associates last fall
15 when the initial programs and collection of the data was
16 first being developed.

17 Q And when you say "notes for a meeting," do you
18 mean notes that were circulated at a meeting as an
19 agenda or notes of what happened at a meeting, or what?

20 A Notes that were circulated at a meeting. As
21 you can see, they are specific. And UP/MP-C-44, in
22 effect, are corrections to a first run that we made in
23 order to refine the reporting and make corrections.

24 Q Right. Under Item No. 2 on page 1, there is a
25 circled 2 in the left margin. Do you see that?

1 A Yes, sir.

2 Q There are a couple of entries there that
3 interested me. You have an entry that says "Add to
4 South Texas BEAs 132, 134, and 127."

5 What's that all about?

6 A I believe that this note refers to an early
7 run that we made, a first compilation of the data. When
8 the flows were presented, it indicated that the
9 preconceived opinion about what might be there wasn't
10 clear and, as a result, adjustments were made. It was
11 general realignment of the regions, the elimination of
12 central Indiana, and that was because the traffic flows
13 into central Indiana were too thin.

14 It was fine-tuning the display. It was a
15 reaction to an initial run.

16 Q Well, you just said something which I tried to
17 write down. I don't know if I got it right. You said,
18 I think, the preconceived opinion that what might be
19 there wasn't there.

20 What does that mean?

21 A Let me see if I can encapsulate it. The first
22 run, which was exploratory, portrayed or gave a view of
23 the market that was apparently either understated,
24 overstated, or was misstated because Region 2, for
25 example, designed to reflect the activity of the

1 Remington ramp at which they had very little traffic,
2 led to significantly non-reporting of what was going
3 on.

4 Q Am I right that what you did with respect to
5 Region 2, which is a different issue than I had just
6 been asking you about -- the South Texas issue -- but
7 with respect to Region 2, what you did was to abolish a
8 region and parcel it out among surrounding regions.

9 Is that right?

10 A That's correct.

11 Q And that's what accounts, isn't it, for the
12 sort of unusually long region in the middle of the
13 country that snakes all the way up to Chicago? You used
14 to have a region around Chicago, didn't you?

15 A That's right; the Central Illinois.

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1 Q Back to South Texas, my question is why were
2 you adding 132, 134 and 127 to South Texas? Where had
3 they been before?

4 A I would have to go back into my work papers in
5 order to answer that. They were either lumped in with
6 the New Mexico-Arizona zone, or they were up in the
7 South Plains, one or the other.

8 MR. WILSON: I believe it states on the
9 sheet.

10 JUDGE HOPKINS: Doesn't the next one right
11 below state that?

12 MR. ROACH: Yes, I think that's right.

13 BY MR. ROACH: (Resuming)

14 Q You removed them from Southwest?

15 A That's right.

16 Q And your reasoning for that?

17 Was the reason that you looked at the results
18 and didn't like them, or was the reason that you had
19 some of these many considerations we talked about
20 earlier today in mind?

21 A It was a result of the considerations because
22 the first display was the first look that people had at
23 the data, and the view indicated that the traffic into
24 those BEAs that are being shifted around, were
25 inappropriate.

1 Q You have used the word "inappropriate," and I
2 have complained about that before.

3 Is there some rational reason that these
4 belonged in South Texas?

5 I just don't find "inappropriate" really tells
6 me much about your reasoning process.

7 A The thought process that went into it was a
8 result of discussions between the Santa Fe-SP people and
9 ourselves and reported here by Mr. Wilson, and the -- it
10 became apparent by view of the rail traffic that it
11 related more toward the Texas area than it did into the
12 Arizona-New Mexico.

13 Q And what told you that in looking at printouts
14 like you have got here in Volume SFSP-20? Was there
15 anything in those tonnage numbers that told you that
16 these regions belong economically to South Texas?

17 A It was apparent at the time that the eastward
18 extension of the Texas-New Mexico regions into Texas
19 distorted the view we were having of the New Mexico and
20 Arizona traffic.

21 Q So it wasn't a distortion of South Texas you
22 were concerned about; it was a distortion of Arizona and
23 New Mexico?

24 A That is correct. The first judgments that
25 were made gave regions that were, upon first inspection,

1 in some cases inappropriate, and I'm sorry to use the
2 word, but that's the one that came to mind.

3 It is an evolutionary process, you understand,
4 and the first time you look at the results of a display
5 of 846,000 records is naturally to find areas for
6 improvement. What we wanted to get was as clear display
7 as was possible to give.

8 Q You did have the results of a first run in
9 front of you and you decided to reallocate these BEAs,
10 is that right?

11 A That is correct.

12 Q Why did you change BEA 47 from the
13 Southeastern corner of the United States and take it and
14 link it up with New Orleans instead?

15 A That was an input from the truck-rail study.
16 We recognized that by and large the traffic that was
17 being terminated by the railroads at New Orleans, TCFC
18 traffic particularly, included some that was being
19 drayed over to Mobile rather than being forwarded
20 directly by connecting rail or truck further east.

21 Q One effect of adding 47 in there is that when
22 you look at terminations to the region, as redefined,
23 you are going to get -- any traffic that terminates in
24 47, you are going to have those tons included in the
25 region printout, isn't that right?

1 A That is correct.

2 Q And you are also going to have interline
3 movements that go to New Orleans and then continue on to
4 47. Those are going to count as terminations in the
5 region, right?

6 A For rail movements, we counted only the
7 western carriers.

8 Q Right.

9 Did you consider, for example, what the
10 direction of flow tends to be between -- as compared --
11 between New Orleans, on the one hand, and Mobile,
12 Alabama on the other?

13 A You mean which way the flow balance was
14 between the two BEAs?

15 Q Yes, which direction the traffic generally
16 tends to be oriented in from those two different areas.

17 A Rail traffic or total traffic?

18 Q Any kind of traffic.

19 A It would be primarily oriented toward New
20 Orleans.

21 Q On page 2 of Exhibit 44, at the very bottom,
22 there is a paragraph numbered 2.

23 Do you see that?

24 A Yes.

25 Q Is it fair to say that what Mr. Wilson is

1 saying in that paragraph is that at that point in time
2 he liked the idea of including eastern carriers in the
3 moves and giving them an equal percentage of each
4 movement's tonnage?

5 A That's what the note would indicate, yes.

6 Q And the same point is made on the next page in
7 paragraph 4, is that right?

8 A That seems to contradict it. "It seems clear
9 that eastern railroads are being counted in limiting
10 shares of western railroads."

11 Q He says it in both paragraphs. He said it
12 looks like that's what you are doing, and he likes the
13 idea because it waters down the SPSP's market shares,
14 isn't that what it says?

15 MR. WILSON: I object. That's not what this
16 says.

17 MR. ROACH: It is exactly what it says.

18 JUDGE HOPKINS: He is asking this gentleman if
19 that is what it says. He can either say yes or no.

20 THE WITNESS: It seems to be saying that,
21 yes.

22 JUDGE HOPKINS: You see, Mr. Wilson, he just
23 disagrees with you.

24 BY MR. ROACH: (Resuming)

25 Q And you didn't ultimately do that, did you?

1 I'm not suggesting you did.

2 A No, but this is a reflection of the
3 evoluticrary process of the display.

4 At the outset, when we made the initial
5 presentations, after massaging the data base, we gave a
6 very straightforward presentation of the results, and on
7 interline traffic coming into the east, we included the
8 eastern carriers. It was recognized that the eastern
9 carriers, one, were acting on proportional rates, by and
10 lawrge, so secondly, it would be inappropriate tha' --
11 and weren't being influenced by the merger, you would
12 still have the same eastern carriers, the same set of
13 connections. Therefore, it would be better to reflet
14 just the impact on the western carriers.

15 Q Did you ever do a run where you just included
16 Santa Fe-SP and didn't carve their tonnage up among
17 their interline connections?

18 A No, we did not, because, one, there is a high
19 amount of interline traffic. Secondly, it would be an
20 inappropriate analysis to do. I am sorry to use that
21 word, but it crops up every now and then.

22 Q And the effect of including the interline
23 railroads and giving them an equal share is, in Mr.
24 Wilson's words here at the bottom, reducing SFSP's
25 market share. That is the inevitable effect, isn't it,

1 as we saw on this Phoenix page?

2 A That is correct.

3 Q Now, let me ask you about another paragraph on
4 the third page of this exhibit. There's a paragraph No.
5 6 which says "It would help considerably if we could
6 find more truck tons from Texas coast to Central
7 California. Can we use another source here, like NMTDB,
8 without becoming inconsistent?"

9 What happened as a result of that point?

10 A One, it is a reflection of the fact that the
11 Transearch data base does not have good truck coverage
12 in bulk commodities because of data reporting problems.

13 Secondly, it is a reflection that everybody
14 knows there is truck traffic there; is there any way of
15 putting it in? The direct result of the Paragraph 6
16 statement was that we did not add any truck traffic.
17 The National Motor Freight Data Base, as interesting as
18 it is, and as informative as it is, unfortunately
19 doesn't have the comprehensive detailed characteristics
20 necessary to match the other items in Transearch, and we
21 did not add it.

22 Q So Mr. Baker's data base really doesn't tell
23 you what the tonnages are, is that what you are saying?

24 A It doesn't tell it to us in a fashion that is
25 as comprehensive and as reliable as we need.

1 Q Okay.

2 The next paragraph says "It may help to check
3 with Dave Anderson and use his 'special study' numbers
4 to try to come up with lower market shares here," and
5 that is referring to Texas Coast to Southern
6 California.

7 Did you do that?

8 A No, we did not. It is not that we didn't talk
9 to Dave Anderson. It's a reflection of the fact that
10 there are high market shares in those lanes and there
11 was worry about whether display of those might lead
12 people to think. However, there was nothing that came
13 out of Dave Anderson's study, out of the National Motor
14 Freight Data Base, that we could add to our data base to
15 adjust the results.

16 Q All right, then, in paragraph 9 it says "South
17 Texas, Central California bulk market, can we find some
18 data indicating truck tonnage or UP participation on an
19 interline basis (this may be helped by redefining South
20 Texas)."

21 Now, was that one of the reasons you redefined
22 South Texas?

23 A No, it was not, and its listing in the order
24 of this memo indicates it is totally separate.

25 Again, he was trying to determine if we could

1 identify any other truck, any other sources of truck
2 data that we could add.

3 Q Who redefined South Texas? It says on page 1,
4 we need the following changes in traffic regions. And
5 that is Mr. Wilson's memo.

6 Did he tell you how to define South Texas?

7 A It wasn't a unilateral decision. It was
8 jointly reached.

9 Q In other words, he suggested it or some
10 stronger word I might use?

11 A He was reflecting the need to make a change
12 there.

13 Q My question is, he came to you with this memo
14 and then you concurred, is that the way it happened?

15 A That is correct.

16 Q You didn't suggest these changes on page 1?

17 A No, I did not.

18 Q Okay. Let me ask you about Exhibit 45.

19 This is a page from your work papers, and it
20 shows a definition of the southwest as 134, 160, 161 and
21 162. 161 and 162 are Arizona. 160 is northern New
22 Mexico, or I guess it is most of New Mexico, and 134 is
23 Lubbock, Texas.

24 Was there a time when you had that definition
25 of the Southwest?

1 A I believe so. The sheet, UP/MP-C-45, of which
2 it is a copy, is a title sheet, and we had flows that
3 represented this orientation as well.

4 Q And did you later put El Paso in with Arizona
5 partly in order to get some Missouri Pacific tonnage
6 into that region?

7 MR. WILSON: I object to this question. It
8 appears to me that there may well be a typographical
9 error on this page that you are asking about. The
10 number 134 appears in South Texas on line 11, Mr. Roach,
11 and it appears again in the Southwest on Line 12. It
12 suggests that in fact I don't think the number 133
13 appears at all on the page. I think that perhaps we are
14 getting some misinformation into the record.

15 MR. ROACH: Well, I confess I had not noticed
16 that.

17 BY MR. ROACH: (Resuming)

18 Q Mr. Liba, was there a typo, and was the typo
19 that South Texas should have said 127 to 133?

20 A That is correct.

21 I'm sorry I didn't pick that up.

22 Q I think that leaves me with the same
23 question.

24 If you had 133, which is El Paso, as part of
25 South Texas, and then you shifted it over later to the

1 Southwest and shifted 134 over to South Texas, my
2 question is did you do that partly to get some Missouri
3 Pacific tonnage in there with Arizona?

4 A That was never a consideration. The volume of
5 traffic there frankly wasn't sufficient to influence the
6 results because the traffic that is running through that
7 interchange tends to be originated or terminated further
8 to the east.

9 Q Let me ask you to turn to Exhibit 46.

10 Is this a letter that you received from Mr.
11 Wilson on December 5?

12 A It was sent from Chicago on December 5. We
13 would have a copy in our work papers most likely
14 indicating a receipt date.

15 But yes, I received it.

16 Q This is from your work papers. I don't know
17 when you received it, but it is dated December 5, right?

18 A That is correct.

19 Q And I just want to ask you a question about
20 page 3.

21 Is the first paragraph on page 3 a discussion
22 of the four traffic categories that you ultimately ended
23 up using in this study?

24 A It is the beginning of the discussion on how
25 we would organize that category. We recognized the need

1 to identify a small shipment area because of the
2 distinctly different transportation characteristics of
3 it. However, getting down to a definition of the TOFC
4 business that would be aggregated into that area had to
5 result from discussions with the intermodal people at
6 the two railroads because a portion of the shipper
7 association traffic, freight forwarder traffic, is small
8 shipments, and they were the people that provided us
9 with the final definitions of just what it was.

10 The opening process in this, the evolution of
11 this report was an initial 1981 data base that was used
12 to start the ball rolling in terms of formulating in
13 people's minds what the market looked like, and as we
14 got into 1982 data, as that became available, what Mr.
15 Wilson is indicating here is that we have to have a
16 goods representation of what is actually in the market
17 in as full a display as possible.

18 Q I take it that this is another instance where
19 the initiative came from counsel and you concurred in
20 the suggestion as to how to divide up the traffic, is
21 that right?

22 MR. WILSON: Objection.

23 MR. BOACH: What's the objection?

24 MR. WILSON: I think you have to ask him
25 whether he knows where this initiative came from.

1 Counsel, as a foundation question.

2 JUDGE HOPKINS: Why don't we try it that way?

3 Q Did the initiative for the four categories
4 come from counsel?

5 A No. As a matter of fact, it came out of the
6 marketing department of the Santa Fe Railroad. We had
7 meetings with them after the assignment was received,
8 and in discussing how to portray the data in a
9 comprehensive yet meaningful fashion, we related back to
10 the Temple, Parker, Sloane study which initially broke
11 down shipments into essentially four categories of
12 display.

13 Q I'm sorry, I didn't realize Temple, Barker,
14 Sloane had broken down shipments into these four
15 categories. Is that what you just said?

16 A Yes, I did. They ran a study for National
17 Council of Physical Distribution Management several
18 years ago.

19 Q I do understand that. You are not saying they
20 did it in this study.

21 A No.

22 Q All right.

23 On page 3, again, in the next to the last
24 sentence of that first paragraph, you say -- I'm sorry,
25 Mr. Wilson says, "Category 3 market data should be

1 assembled on the basis of the list of time-sensitive
2 rail carload commodities which is attached as Appendix B
3 to this letter."

4 Q Do you see that?

5 A Yes, I do.

6 Q And do you have a copy of Mr. Reyff's verified
7 statement handy?

8 A Yes, I do.

9 Q Could you look at the Appendix B to that
10 verified statement and tell me if that is the same list
11 of time-sensitive commodities?

12 A That is a list of time-sensitive commodities
13 that he defined. It was defined in the context of being
14 a minimal list to make sure we included at least these.

15 Q In other words, he was telling you that these
16 are definitely time sensitive and there may be lots of
17 others?

18 A That is correct. The final evolution of the
19 commodities that flowed into the time sensitive category
20 were essentially most noncontainerizable manufactured
21 commodities.

22 Q Well, in Appendix B Mr. Reyff has got
23 basically three things, if I am correct, and you tell me
24 if I am. He has got fruits and vegetables, both fresh
25 and canned. He has got automobile related items, and he

1 has got STCC Codes 44 through 46, which are freight
2 forwarder, shipper association, and miscellaneous mixed
3 shipments.

4 Is that a fair summary of what all of these
5 STCC codes amount to?

6 A There are some other manufactured items,
7 machinery items, things such as that in the list, but
8 yes, otherwise it is a fair reflection.

9 Q 3522 is farm machinery. Is that what you are
10 referring to?

11 A Yes.

12 Q But basically that pretty much runs the gamut
13 of what these include, isn't that right?

14 A Well, it is the start of what should be in
15 there. As we subsequently defined that area of traffic,
16 we were beginning to reflect the fact that everybody was
17 driving toward the on-time concept of transportation
18 where you minimize inventories and depend upon
19 manufacturing directly from the inventory in the car or
20 out of the truck.

21 As a result, the final list of everything that
22 is in the time sensitive area, the list in the report is
23 somewhat larger than this. This was a the start of a
24 minimal list.

25 Q Where is the final list?

1 A I have a final list that I developed last
2 night, if you are interested in that.

3 Q Yes.

4 A Let me tell you how I developed it. It would
5 be informative, and perhaps also amusing.

6 Last night we were anticipating your question,
7 and we were sitting in the cocktail lounge listening to
8 some Chopin and Brahms and whatever, and all you had to
9 do to develop it was to go down through the
10 containerizable factors which flowed into that category,
11 subtract out the bulks which are listed in one of the
12 exhibits in my testimony, and the remainder flowed into
13 the time sensitive.

14 Q The bulks are Exhibit 4 in your testimony, is
15 that right?

16 A That is correct.

17 MR. ROACH: Your Honor, let me ask to have
18 marked as Exhibit 48 what I believe is what Mr. Liba is
19 referring to as the list of containerizability factors.

20 JUDGE HOPKINS: That will be marked for
21 identification.

22 (The document referred to
23 was marked Exhibit No.
24 UP/MP-C-48 for
25 identification.)

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1 BY MR. ROACH: (Resuming)

2 Q Is this in fact the list of containerizability
3 factors?

4 A Yes, sir, it is.

5 Q So what you are saying is that -- well,
6 perhaps you could say it again as to what ultimately
7 ended up in the time sensitive category.

8 A It would be the net of these less bulk, i.e.,
9 if we say that 100 percent of commodity 2490 is
10 containerizable, none of that commodity went into time
11 sensitive. If we said commodity 2439 was 80 percent
12 containerizable, 20 percent then went into the time
13 sensitive area.

14 Q What you are saying is you start with a list
15 of all of the STCC codes and you have got a list of the
16 percentage containerizability factors for each one of
17 those at the four-digit level, is that correct?

18 A That's right.

19 Q And what ends up in your containerizable
20 category is that particular percentage factor times the
21 tonnage in that particular four-digit code.

22 A That is correct.

23 Q And if it is 100 percent, that gets rid of
24 that four-digit code altogether.

25 A That's right.

1 Q Then what you've got left over is assigned to
2 bulk if it is on your list as bulk STCC codes in
3 Exhibit 4.

4 A That is correct.

5 Q And everything that is left over is time
6 sensitive.

7 A That is correct.

8 Q What goes in the small shipment category?

9 A The small shipment category is all of the LTL
10 traffic of the trucks. It also includes some air
11 traffic, all of the air traffic, and it includes a
12 portion of the TOFC traffic in commodities 45, 46, 47,
13 as indicated in my verified statement.

14 Q Are you suggesting in your traffic here that
15 all of the traffic that you put in the time sensitive
16 category by this methodology is in fact time sensitive?

17 A Yes, sir, I am.

18 Q So anything that doesn't get containerized --
19 I'm sorry, anything that isn't susceptible according to
20 your containerizability factors of being containerized,
21 and that isn't a bulk is time sensitive?

22 A That is correct.

23 Q And that is your vision of the real world?

24 A Yes, it is.

25 Q Where did these containerizability factors

1 come from? I know you have a study and you cite it on
2 page 10.

3 What I am asking you is what is the reasoning
4 process that leads to it?

5 A The commission we had from the Federal
6 Railroad Administration at the time we developed these
7 was to identify how much traffic would flow out of
8 railroad box cars into TOFC service or to truck, and
9 this file of four-digit codes and percentages is a
10 portion of that resulting file. There was another
11 additional time dimension to this file at that time,
12 something that would have indicated how fast the shift
13 out of box cars would occur.

14 At that time we, in addition to these
15 percentages that are listed in our exhibit, we also had
16 categories called prime, marginal and suitable. The
17 prime would be those commodities that would flow
18 immediately into trailers. The suitable would be the
19 ones that flowed in the mid term. And the marginal
20 would be those that flowed in the longer term. That was
21 a reflection of the fact that in the suitable or
22 marginal categories, a shipper would have to adjust
23 their shipper volume, packaging, and perhaps even add
24 shipping docks in order to accomplish the transfer.

25 Several years ago we dropped the prime,

1 suitable and marginal categories to reflect the fact
2 that sufficient time had passed since we had created
3 these, and at this time virtually all shippers have
4 accomplished all of the adjustments in their packaging
5 shipment sizes and loading docks so that they can load
6 trucks and/or trailers.

7 Q Well, that raises a question which has
8 intrigued me.

9 Let's take a four-digit code, 2951. You have
10 got a containerizability factor of 80 percent there, is
11 that right?

12 A 2951?

13 Q Right.

14 A 80 percent, yes.

15 Q And my STCC code directory says that that is
16 asphalt paving blocks or mixtures.

17 Does that sound right to you?

18 A That is correct.

19 Q You can look at it if you like?

20 A I have a short list here.

21 Q When did you come up with these percentages,
22 what year?

23 A These were done in about 1973-'74.

24 Q Is it fair to say that the growth of
25 containerizable traffic was still under way at that time?

1 A That is correct, it was.

2 Q And a lot of traffic has been containerized
3 between then and now, isn't that right?

4 A Indeed, yes.

5 Q What do you think the right percentage would
6 be today for all traffic that is going by rail in that
7 four-digit code?

8 A If there is anything moving in that four-digit
9 code, it is probably close to 100 percent now.

10 Q So as 890 percent of it got containerized, the
11 chance that the other 20 percent would be containerized
12 became 100 percent?

13 A I would say that if anything, our factors are
14 now conservative as to the amount of individual traffic
15 that might move to trailerload lots.

16 The provision for a 20 percent residual in
17 that commodity, I would have to go back to notes made at
18 that time, but it was probably a reflection of the fact
19 that if there was anything moving in rail, it might
20 still be more economical to handle it in that form.

21 Q Let me put it this way. Are these percentage
22 factors based on a composition of rail traffic from a
23 very different environment, the environment in 1973 and
24 '74?

25 A I think you are confusing two things.

1 Granted, the rail traffic composition at that time was
2 different than it is now, but there are factors
3 independent of that. They are oriented around the
4 shape, shipping density of the individual commodity, and
5 those are essentially timeless. Commodity attributes
6 haven't changed.

7 Q Well, commodity attributes aren't homogeneous
8 in a four-digit STCC code, are they?

9 A There is some variability, that's right,
10 depending on which commodity you are talking about. In
11 some it would be more pronounced than in others.

12 Q And the part that is less susceptible to
13 containerization is presumably the part that hasn't been
14 containerized since 1973, is that right?

15 A That is correct.

16 Q So are you aware of the fact that Mr. Anderson
17 used these factors?

18 A That is correct.

19 Q Are you aware of the fact that he used them to
20 compute a fictional universe of rail traffic that was
21 containerizable which he then compared with -- I'm
22 sorry, strike that -- of truck traffic that was
23 potentially containerizable which he then compared with
24 rail traffic that was going in STCCs 44 through 46?

25 A The factors are not related to a particular

1 mode. They could apply to the truck mode as well. The
2 residual, if it is in the truck mode, is that portion
3 which cannot be moved in van-type containers. It would
4 take either a flat or a tank or something like that.

5 His composition of a trucking universe of
6 noncontainerizable freight would be that portion which
7 is not moving in trailers or containers.

8 Q Okay, but you are aware of the fact that both
9 you and Mr. Anderson used these factors that were
10 developed in 1973 as a way of estimating, in his case
11 for trucks and in your case for rail, what percentage of
12 the traffic in 1982 was containerizable.

13 A That is correct.

14 As I indicated at the outset, we provided data
15 to him and the containerizable factors were provided to
16 him as well.

17 Q Now, when it says containerizable on your
18 printouts in SFSP-20, does that mean it is moving in
19 containers or it is created by the application of these
20 factors, or both?

21 A It means that it is moving in trailers and it
22 was created by the application of those factors.

23 Q Where have you got railroad TOFC on your
24 printouts?

25 A Railroad TOFC is in two places. The small

1 shipment portion is in small shipments, and the
2 remainder, rail TOFC, is in containerizable. In
3 addition to that, we have that portion of remaining
4 carload traffic as there is also in containerizable.

5 Q Can you explain the last thing you said about
6 that portion of remaining carload traffic being in
7 containerizable?

8 What does that mean?

9 A My statement was a reflection of the fact that
10 there has been continued erosion of traffic out of box
11 cars, reefer cars, into trailers, and what I said is a
12 reflection of that.

13 Q Yes. I just didn't understand what you said.

14 What do you mean that the remaining portion of
15 box car traffic is in containerizable. Remaining from
16 what?

17 A That portion remaining in the existing traffic
18 flow. Of the traffic now in railroad service in box
19 cars and reefers, that portion is allocated by the
20 container factors to containerizable traffic. My
21 statement was a reflection of the fact that that portion
22 is now smaller than it was the year before, the year
23 before, and the year before.

24 Q Just to make sure we understand each other,
25 you are saying that if you have tonnage under -- if you

1 have rail tonnage reported in one of these four-digit
2 codes in Exhibit 48, that is box car traffic, is that
3 right, if it starts out as rail tonnage in these
4 four-digit STCCs, before you allocate it to these four
5 categories.

6 A That is correct.

7 Q And then you apply the containerizability
8 factors and deem the particular percentage of it to be
9 containerizable.

10 A Yes.

11 Q And what is left over you deem to be time
12 sensitive.

13 A That is correct.

14 Q And the TOFC goes either into time sensitive
15 or into containerizable.

16 A Correct.

17 Q And what is the criterion for splitting up the
18 TOFC?

19 A The criterion was described in my statement,
20 and it was on page 10 of my exhibit, 95 percent of STCC
21 44, 33 percent of STCC 45, and 33 percent of STCC 46.

22 Q Those numbers are reflected on Exhibit 47
23 also, is that right?

24 A That's right.

25 Q Is that in your handwriting, Exhibit 47?

1 A This is a note made by Mark Shulberg, my
2 programmer at my office, when I gave him the instruction
3 to utilize those percentages.

4 Q Let me ask you about another line on this
5 exhibit. It says no time sensitive water.

6 What does that mean?

7 A That was definitional. By the characteristics
8 of the mode, we assigned water traffic other than that
9 which might have been containerizable to the bulks. The
10 definition of time sensitive was not seen to apply to
11 water traffic by its very nature, i.e., slow speed.

12 Q But in the case of rail traffic, you have got
13 all of it either in the time sensitive category or
14 containerizable, or in the case of a little bit of TCFC,
15 you call it small shipments, correct?

16 A That is correct.

17 Q Now, in Exhibit 48, you are using four-digit
18 STCC codes, is that correct?

19 A For the containerizability factors, yes.

20 Q Right.

21 Do you regard the four-digit data that you
22 applied these factors to, to be sufficiently reliable to
23 use?

24 A Yes, obviously, that's the level at which we
25 used them.

1 Q And as an appendix to your verified statement,
2 you have got a description of the Beebie Transearch data
3 base, and I want to ask you about something on page 35.

4 Do you see the chart on that page?

5 A 35 of the appendix?

6 Q Yes. It is a little hard to read the page
7 numbers, but it is this page that has the chart on the
8 bottom.

9 Oh, I'm sorry. I must be looking at Mr.
10 Reyff's statement. Forgive me.

11 A I see it. It is page 35 of Appendix 1 to my
12 statement.

13 Q All right, it is your statement, and we are
14 looking at the chart labeled Guidelines for Reliable
15 Application of Detailed Data, is that right?

16 A Yes.

17 Q Now, what I want to focus on is the X that
18 appears in the row Relative Shares, and under the column
19 Commodity STCC.

20 What does that X convey?

21 A Well, we mean to convey with this little table
22 a reflection to our client that generally you can get
23 better data at the four-digit level than you can at the
24 five, and still better data at the three-digit level
25 than at the five or four.

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JUDGE HOPKINS: We will be in recess for
fifteen minutes.

(A brief recess was taken.)

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1 JUDGE HOPKINS: Back on the record.

2 Mr. Roach.

3 MR. ROACH: Thank you, Your Honor.

4 BY MR. POACH: (Resuming)

5 Q We're in the home stretch, Mr. Lila. I ask
6 you to look at page 10 of your verified statement.

7 A Yes.

8 Q You say at the bottom that you assigned
9 commodity flows to the top sensitive category,
10 principally on the basis of a STCC listing provided to
11 you by Mr. Beyff.

12 Now, in light of our discussion of how you
13 arrive at what ends up in the time-sensitive category,
14 do you have -- would you like to withdraw that word
15 "principally"?

16 A I think it would be appropriate; yes, sir.

17 Q And on page 13, you have a listing of the bulk
18 commodity STCC codes. Have you studied how these two
19 particular two-digit STCC codes tend to break down
20 between rail and water?

21 A All of the water mode was assigned in two
22 areas: bulk and containerizable.

23 Q Let me just stop you. I think you may
24 misunderstand my question. My question is: In the real
25 world, have you studied how movements of commodities in

1 these particular two-digit codes tend to break down as
2 between rail moves and water moves?

3 A Yes, sir.

4 Q For each of these two-digit codes, could you
5 tell me whether they tend to be heavily moved by water
6 or by rail or what the case is?

7 A Commodity group 01, field crops, which are
8 primarily the grains. Rails have about a 52 percent
9 market share; water, perhaps about 48.

10 Q Okay. How about code 10?

11 A There, the picture is more confused, because
12 the secondary nature of a great many of the rail hauls;
13 i.e., feeding the Great Lakes, there is duplicate
14 tonnage counted.

15 Q How would you guess the split looks, based
16 upon available data?

17 A 75/25 percent; 75 percent water, 25 percent
18 rail.

19 Q Okay. How about coal?

20 A Coal is about 65 percent rail, 20 percent
21 water, 5 percent truck. Something like that.

22 Q Right. And how about 14, non-metallic
23 minerals?

24 A There are different flow patterns involved in
25 all of these areas, but I guess 14 is approximately 60

1 percent rail; just between rail and water, 60/40; 60
2 percent rail, 40 percent water.

3 Q Why don't we agree to leave trucks out in our
4 discussions and just talk about the split between rail
5 and water.

6 I skipped over 13, petroleum gas. That is
7 heavily water, isn't it?

8 A Yes.

9 Q What would you say the split is?

10 A 90 percent water.

11 Q 90 percent water, 10 percent rail. And
12 petroleum, is that about the same if you disregard
13 pipelines and trucks?

14 A Yes.

15 Q How about scrap?

16 A That would be about 75 percent rail -- 75
17 percent rail, 25 percent water.

18 Q And 286 is gum or wood chemicals.

19 A These are all off the top of my head. The two
20 groups, 286 and 287, perhaps 60 percent water, 40
21 percent rail.

22 Q Okay. My question is, going back to the
23 notion that what you are looking at here is markets,
24 wouldn't it make a lot more sense to look at shares at
25 the two-digit STCC code level in light of the fact that

1 the split between rail and water tends to vary so
2 sharply, as you have just described?

3 A No. The variance in share between rail and
4 water are more an accident of geography than it is of
5 modal capability. So it's not unreasonable to have the
6 bulks combined into one area.

7 They have similar characteristics in that they
8 tend to move in larger blocks, larger shipment lots,
9 that is. There is more to be lost with the two-digit
10 examination than to be gained.

11 Q Well, for example, when you're talking about
12 petroleum, isn't there a logistical reason why it tends
13 not to go by rail, quite apart from geography?

14 A No, I wouldn't agree with that. Rails are
15 always trying to compete for traffic wherever they can.
16 When they can put together the right rate/service
17 package, they can get some commodity group 13, commodity
18 group 29 flows.

19 So it depends upon the individual lanes that
20 you are looking at.

21 Q 13 is crude petroleum gas, and you are
22 addressing that together with petroleum; right?

23 A Well, petroleum products are 29, and crude
24 petroleum is in 13. There should be a common after
25 "petroleum."

1 Q "Crude petroleum," ccmma, "gas."

2 A Yes.

3 Q I'm not sure that you answered my last
4 question. You said that rails try harder to get some
5 petroleum or gas traffic. But my question was: Aren't
6 there logistic reasons that make it easier to transport
7 those commodities by water?

8 A There are logistics reasons why portions of
9 flows move by water, but some of the others pertain more
10 to the availability of water transportation.

11 So I don't think it appropriate to look at it
12 at a two-digit level.

13 Q Did you ever run any of these market share
14 tables on the two-digit commodity level?

15 A In our work papers, you will see that we run
16 check totals on our transfers data base at the two-digit
17 level. We run it on the BEA level, the state level, as
18 well as different commodity levels for checking purposes.

19 That sort of information is available.

20 Q Well, in Exhibit 46, Mr. Wilson, on page 2, at
21 the beginning of the first full paragraph on the page,
22 talks about analyzing certain markets in detail, with
23 data displayed at the two-digit commodity submarket
24 level. That is the word he uses.

25 My question is: Did you ever do that?

1 A I think I told you when we first started the
2 process, we displayed the 1981 flows on the two-digit
3 level, just to give people a feel for what the data base
4 looked like at that time and what the flows looked
5 like.

6 In addition, as I said, there are in the work
7 papers, two-digit summaries of what the data base looked
8 like in overall for checking purposes.

9 Q When you say "overall," do you mean --

10 A Nationwide.

11 Q Nationwide. But did you ever do a study at
12 the two-digit STCC code level for any of these PEA pairs
13 or any of the region pairs?

14 A We commonly produce reports for our clients
15 and include both two-digit and to the five-digit level
16 reports. So yes, we do perform analyses of that sort
17 for various of our clients.

18 Q How about this particular client in this
19 particular case?

20 A No, we did not.

21 Q Let me ask you to look at SFSP-20, the
22 replacement volume. And about three pages into there,
23 there are a couple of tables about international flows.

24 A That's correct.

25 Q Do you have those in front of you?

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1 A Yes, I do.

2 Q Now, the first of those tables is described as
3 origin, region southern California; and destination,
4 Texas Coast; is that right?

5 A That's correct.

6 Q And the second one is the other way around,
7 from the Texas Coast to southern California; correct?

8 A That's right.

9 Q Let me ask you about Exhibit 49 for a moment.
10 There's a statement up at the top there, that of
11 aggregating the traffic into 19 U.S. and eight foreign
12 trade regions. Was that your intention at one point in
13 time?

14 A Yes, it was. Again, at the start of the
15 process, we indicated to the SFSP that they competed
16 with water via minbridge and minilandbridge at a number
17 of different gateways across the United States.

18 We resulted in showing only, in effect, one --
19 one each way -- because we couldn't put together from
20 available data a picture of other railroad traffic with
21 which the Santa Fe SP was competing.

22 Q Well, look at the next page of Exhibit 49,
23 paragraph 4. Does that -- would I be correct in
24 interpreting that as suggesting that you had done data
25 runs on multiple international flows, and then you

1 decided to redo the data, just looking at L.A. to
2 Texas?

3 A Yes, we did. This was just to indicate to the
4 SFSP what amount of traffic they had compared to water.
5 Again, we couldn't indicate other railroad traffic,
6 because upon investigation into the waybill sample, we
7 were not able to identify CCPC traffic and import/export
8 traffic with a great deal of reliability.

9 And, as a result, the investigations into
10 those other markets did not materialize.

11 Q Did you send the results of those tabulations
12 to the client?

13 A We had some preliminary reports that showed
14 that, yes.

15 Q In your international flows, as they appear in
16 SFSP-20, what is the definition of "international
17 origin"? How do you define an international origin?

18 A The international origin in that area was all
19 of the Pacific Rim countries, everything from Korea on
20 the north, Korea, Japan, all the way down to New Zealand
21 and Australia, the Pacific Islands on the south.

22 Q You don't have any European origins in here?

23 A No. We were looking at the competition
24 between minilandbridge traffic flowing through the Port
25 of Los Angeles and Long Beach, going into Houston,

1 compared with direct water movement.

2 Q And am I right that you found virtually no
3 Union Pacific participation in those flows?

4 A The only Union Pacific participation in those
5 flows was a result of some interline traffic routed
6 through Sweetwater.

7 Q Which is to say that even that traffic didn't
8 go over the central corridor?

9 A No. It's only connection traffic; it's not
10 traffic that the UP originated, because we couldn't
11 identify UP traffic.

12 Q So you didn't find any flows from Los Angeles
13 to the Texas Coast in minilardbridge that were routed
14 over the Union Pacific central corridor route?

15 A We didn't find any, but that doesn't mean they
16 don't exist.

17 Q Why is that? Why didnt you find them, if they
18 do exist?

19 A We found some that are indicated here because
20 they were interline between the UP and Santa Fe or
21 Southern Pacific. Any local UP moves that may exist in
22 that corridor, even considering the circuitry of the
23 move, we could not identify from the waybill sample.

24 Q Okay. And I take it your definition of
25 "international" applies to both origin and destination?

1 It's the Pacific Rim only that you're looking at?

2 A That's right.

3 Q Do those definitions apply equally to the rail
4 data and the water data?

5 A The rail data had to be international traffic
6 originating in Los Angeles at the Port of Long Beach or
7 Los Angeles. And that traffic would have been landed
8 from Pacific Rim countries.

9 There may be a small amount of perhaps some
10 European traffic in there that might be carried all the
11 way around the world. I doubt it, though. It seems
12 unlikely that it would be routed that way.

13 Q Okay. In Exhibit 50, at the end of the
14 next-to-the-last paragraph, you are telling Mr. Wilson
15 that the result in the international flows table that
16 you are sending him in this March 8 correspondence
17 reflect the new data with coverage of BN and UP
18 participation in several of the corridors.

19 What does that refer to?

20 A Apparently, there were some coding errors with
21 some of the BN or DRGW records that had been found. And
22 those codings were corrected and a restatement of the
23 flows were necessary as a result of the correction.

24 Q Is this a reference to the eight different
25 international flows that you were originally going to

1 do? Does this letter talk about more than just the two
2 flows in your final report?

3 A No, it does not. It relates to the other
4 carload traffic.

5 Q Okay. Well, my confusion is that I don't see
6 Burlington Northern on your international reports in the
7 final volume. Can you explain that? They don't seem to
8 have any tonnage on those reports.

9 A Right. We were looking at New Orleans as
10 well, before we narrowed down to just the Los Angeles to
11 Texas corridor. And in the New Orleans flows, there was
12 some BN as a result of connections. But there is none
13 in Houston.

14 Q So as of March 8, you had New Orleans in your
15 definition of these flows?

16 A We are still trying to identify international
17 traffic at that time, yes.

18 Q Look at Exhibit 51. Can you tell me what that
19 is?

20 A This is an extract from an import/export trade
21 summary of the United States for 1982. It is the
22 identification of flow between -- an export flow out of
23 New Orleans, by water, to Thailand.

24 And it shows the STCC code. This is a process
25 tape, converting from the import/export commodity

1 schedules commonly in use, Schedules A and B, or
2 whatever is in use, to STCC. It shows the tons that
3 were reported in 1982 and the portion that was
4 containerizable.

5 It was a sample to show what commodities were
6 actually being moved as an indication of the level of
7 detail that was available.

8 Q Why did you prepare this in connection with
9 the present application?

10 A Just as proof that the flow really existed;
11 that the single figure that indicates a total had a lot
12 of individual commodities behind it. Just an indication
13 that if it was necessary for some practical reason, that
14 information could be provided.

15 Q Are these non-containerized cargoes?

16 A This is a total flow. The tons is total
17 tons. Some of it is containerized. That portion is
18 indicated in the right-hand column.

19 Q And where did you get those figures? Are they
20 the product of your containerizability factors? Or are
21 they actual figures on containers?

22 A They are the result of processing down through
23 the containerizability factors.

24 Q So basically what you have done is, you have
25 estimated the portion of actual flows that were

1 containerized?

2 A Yes, we did.

3 Q Did you ever discuss with Mr. O'Connell
4 whether he could do the same thing in preparing his
5 testimony?

6 A No, I did not.

7 Q Let me ask you to look at Exhibit 52, and
8 direct your attention just to the first page for the
9 moment. Why did you prepare that page?

10 A This page was produced by Peter Stone, who
11 works for me, who was looking at the total, and he
12 prepared this and sent a copy off to the Santa Fe SP to
13 give them a picture of the competition that they were
14 facing.

15 Q Where did the numbers of containers come
16 from?

17 A The container movements shown are purely
18 SFSP.

19 Q Are they actual data that you obtained from
20 the railroads?

21 A That's 100 percent information from the SFSP.
22 Yes.

23 Q So somebody at Beebie asked them for a number
24 of containers that moved in these particular directions
25 from the Gulf ports?

1 A We had a data file from the two railroads that
2 provide that information on a terminal-to-terminal
3 basis.

4 Q Did you ever discuss with Mr. O'Connell
5 whether or not data existed on the number of containers
6 moving in minilandbridge traffic?

7 A No, I did not.

8 Q Did you ever discuss with him the market
9 shares between all-water and minilandbridge, such as you
10 show on this page?

11 A No, I did not.

12 Q Did you obtain your data on the international
13 flows by multiplying container -- number of containers
14 by 15 tons per container?

15 A Yes, we did; from the rail side.

16 Q From where?

17 A Just the rail containers.

18 Q What is the basis of your 15-ton figure?

19 A It was an analysis of the reports to the
20 Maritime Administration on import/export container
21 traffic by trade lane, and it indicates an average of
22 about 15 tons per container.

23 Q These figures in SFSP-20, just to make sure
24 I'm clear, these represent traffic that, in your
25 opinion, is containerizable, not traffic that is

1 actually moving in containers; is that right?

2 A The rail side is containers actually moving.
3 The water side is containerizable.

4 Q Okay. So the rail data, as in Exhibit 52,
5 comes from actual 100 percent rail information.

6 A That's correct.

7 Q On containers. And the water data is
8 estimated through your containerizability factors.

9 A That's correct.

10 Q Would you just quickly tell me what the rest
11 of the pages in this exhibit represent? You can skip
12 the second page. I think that's just an earlier version
13 of the first. But if you could quickly describe the
14 others.

15 A They show -- the matrix on the third page, CCI
16 212, shows the container volumes between the West Coast
17 ports on the one hand and the competing ports or port
18 areas on the other hand.

19 It's a worksheet. It's a compilation off of
20 the 100 percent files from the SFSP.

21 Q This is actual data from the railroads?

22 A Yes.

23 Q Is this containers or tons?
24
25

1 A It looks to me to be containers.

2 Q All right, and does that -- does the same
3 description apply to the next two pages, earlier
4 versions of the same work?

5 A Yes, it does.

6 Q Okay. And what is the last set of pages, from
7 215 through 228?

8 A These are the individual origin ramp to
9 destination ramp SFSP container counts or container
10 loads.

11 Q And what are the last two pages of the
12 exhibit?

13 A The next to the last page is the waterborne
14 container flows, Pacific Basin to and from Gulf ports.
15 And the last page, 230, is a work sheet with the
16 combined container flows of the SFSP.

17 Q If you compare 230 to 212, is the difference
18 that you have disaggregated in some way?

19 A My recollection of this is that at some point
20 along the way the container counts were revised or
21 adjusted by the SFSP, and that caused a little bit of
22 adjustment.

23 Q Do you know why the numbers on 212 are broken
24 down into subcolumns the way they are?

25 A That's a reflection of taken the data off from

1 the reports. The two carriers have multiple facilities
2 in the different cities where there are multiple
3 gateways in the market areas that we were starting to
4 build up data for, and that's what this sub-information
5 stands for.

6 Q So you were just pulling the numbers all
7 together and ultimately you are coming up with totals
8 between the points?

9 A That's correct.

10 Q Did anyone at SF or SP ever tell you that they
11 didn't have data on containers, for the number of
12 containers moving in these trades?

13 A No, because we have the data.

14 Q Let me hand you a copy of an exhibit, UP-42,
15 and ask you to look at page CDA-253, paragraph 3.

16 MR. WILSON: What is that exhibit?

17 MR. ROACH: UP-42.

18 THE WITNESS: These are my notes from our
19 truck study. Somehow a copy of these worked its way
20 into Dave Anderson's file. That is my writing.

21 BY MR. ROACH: (Resuming)

22 Q My question for you on paragraph 3 is, was it
23 ever proposed that Beebie would provide relative cost
24 analyses between rail and truck for use in conjunction
25 with Mr. Anderson's study?

1 A No, it was not.

2 Q Okay, thank you.

3 The last thing I want to ask you about quickly
4 is at the appendix to your testimony, page 29. There's
5 a table and one of the headings is "Fresh Fruit and
6 Vegetables."

7 A Yes.

8 Q Back at page 8 of the appendix, there's a
9 publication cited at the bottom of the page. Is that
10 the source of your information on fresh fruit and
11 vegetables?

12 A That was a source for the statement in the
13 appendix. We used more current fresh fruit and
14 vegetable information in our current Transearch data.
15 In the 1982 Transearch, we have 1982 FF&V information
16 from the Department of Agriculture.

17 Q If your reports showed traffic for fresh fruit
18 and vegetables being handled by for-hire trucks, but on
19 a less than truckload basis, what is the source of that
20 data?

21 A The source for that information relates to
22 import-export cargo. There is some amount of fresh
23 fruits and vegetables that is imported, and that is
24 reported to be hauled in less than truckload lots.

25 Q And then if we have numbers in your reports

1 showing railroad movements of fresh fruit and
2 vegetables, where do those numbers come from?

3 A These come strictly from the railroad
4 waybills.

5 MR. ROACH: No further questions. Thank you.

6 JUDGE HOPKINS: Who's next?

7 MR. KEVIN MacKENZIE: Your Honor, Kevin
8 MacKenzie for the Denver & Pio Grande.

9 CROSS EXAMINATION

10 BY MR. KEVIN MacKENZIE:

11 Q Now, Mr. Liba, let me direct your attention to
12 SFSP-C-9. That is a summary, as I understand, of the
13 market share information for each of the traffic flows
14 that you studied; is that correct?

15 A The one that was passed out just after we
16 started?

17 Q Yes.

18 A Yes, it is.

19 Q And I believe you testified that each of those
20 traffic flows in your view was an individual
21 transportation market?

22 A Yes, sir, I believe those are individual
23 markets.

24 Q Now let me ask you to turn to page 4 of
25 SFSP-C-9, which relates to the commodity grouping. other

1 bulks. Now, if my calculations are correct this page 4
2 shows that in 51 of your markets Santa Fe and SP have a
3 combined market share of over 50 percent?

4 A That could be correct, yes.

5 Q In order to determine that, you would simply
6 add up the number of markets under the SFSP column from
7 the 50 to 55 percent row on down?

8 A That's correct. However, I caution again that
9 in the bulk area the truck coverage is very light, and
10 as a result there are some minor distortions in the
11 volumes. The rail reporting is 100 percent. Truck
12 reporting is a lot less.

13 Q But this summary does take into account what
14 you do know about truck competition?

15 A That's right.

16 Q And it also takes into account water
17 competition?

18 A Yes, it does. Water we have comprehensive
19 coverage.

20 Q And the market share information that you
21 summarize here also reflects your interline tonnage
22 allocation methodology, does it not?

23 A Yes, it does.

24 Q Now, how would one go about determining where
25 these 51 markets are located that have a combined SF-SP

1 market share of greater than 50 percent?

2 A We provided the summary page to make it easier
3 for you to make the determination that you just made.
4 After this, I'm afraid you'll have to go back to SFSP-20
5 and wade through the individual flows in order to find
6 that.

7 Q But we could identify each of these flows from
8 SFSP-20?

9 A That's right. If you look in the Table 3, the
10 market share by shipping category, you would find that.

11 Q Now, looking again at page 4 of SFSP-9, again
12 if my mathematics are correct that shows that 215 of the
13 total 303 markets you analyzed the trucks account for
14 less than 30 percent of traffic. Can you agree that,
15 subject to check of my mathematics, that appears to be
16 correct?

17 A If we look at the summary -- no, we can't get
18 it. I will accept yours, yes.

19 Q Now let's turn over to page 1 of SFSP-9, which
20 is the commodity grouping "small shipments." And again,
21 we're referring to truck competition. If you add up the
22 number of markets in which trucks account for more than
23 70 percent of the traffic flow, my figures indicate that
24 you come up with a total of 206 out of the 303 markets.
25 Again, subject to checking my mathematics, would you

1 agree that that is about right?

2 A I would imagine that's correct, yes.

3 Q Now, comparing the summaries for the other
4 bulk grouping and the small shipment grouping in
5 SFSP-C-9, can one not conclude that there's a wide
6 variation in the degree of truck participation by
7 commodity, even within the broad commodity groupings
8 that you have used?

9 A That's correct, subject to two exceptions, I
10 would say. One is the lack of reporting of bulk truck
11 movements; and second is the fact that this is a 1982
12 report and trucks are just starting to make their
13 incursions into what has been the exclusive, more or
14 less exclusive realm of railroads, and that is the bulk
15 market.

16 Q If we were to look at a narrower grouping of
17 commodities than you have used for your study, would you
18 expect to find a still wider variation in the degree of
19 truck participation than was reflected by SFSP-9?

20 A Could you define what you mean by "narrower"?

21 Q Anything narrower than the grouping of four
22 basic commodity groupings that you have used.

23 A By "narrower" do you mean two commodity groups
24 or --

25 Q I mean that you would be looking at a larger

1 number of commodity groupings.

2 A You would find more variation, but I'm not
3 sure that that would necessarily lead you to a better
4 understanding of what is going on.

5 Q Now, Mr. Liba, let me direct your attention to
6 UF/MP-44. Do you still have a copy of that before you?

7 A Yes, I do.

8 Q During Mr. Roach's questioning there was some
9 discussion about the changes in the regional groupings
10 that are reflected on page 1 of that exhibit, the page
11 CCL-166. Were there any other in regional groupings
12 made during the course of your study apart from the ones
13 that are reflected here?

14 A The two groups of changes that were made are:
15 One, that listed here; and then the second, the change
16 in the international flow coverage that we discussed
17 earlier with Mr. Roach. I would remark here that these
18 notes were the result of meetings between the SFSE and
19 ourselves, and they were being conveyed as a result of
20 that meeting back to the parties concerned.

21 Q Allright. Now, Mr. Liba, if I understand
22 correctly there were certain traffic flows that were
23 simply excluded from your study; is that correct?

24 A They were excluded from the report, and those
25 were flows between the Pacific Northwest and the East of

1 between the Northeast and the Southeast, those that
2 didn't relate to the merger at hand.

3 Q Did you prepare reports for those traffic
4 flows?

5 A The data exists in our computer. When we
6 printed it out, we suppressed them, in effect.

7 Q If I understand correctly, you did print out
8 reports of the type that appear in SFSP-20 for those
9 excluded traffic flows?

10 A No, just the opposite. We did not print them
11 out.

12 Q You did not print them out?

13 A That's correct. But the data does exist.

14 Q In your computer?

15 A Yes.

16 Q Was the decision to exclude those flows based
17 on an examination of the data that is located in your
18 computer?

19 A No, it was not. They were defined out purely
20 on the basis of not relating to the SFSP area.

21 Q Let me direct your attention to the appendix
22 to your verified statement at page 24. The first
23 paragraph on that page, where you're describing the
24 level of detail for Transearch reports, in the last
25 sentence of that paragraph you indicate that commodity

1 details were to be presented in five detailed
2 categories. Do you see that sentence?

3 A That's correct.

4 Q What are those five categories?

5 A The five categories are -- by that I meant
6 five-digit detail. Our written reports are at the
7 five-digit level.

8 Q I see. But if I understand from your earlier
9 testimony, you did not generate reports at the
10 five-digit level on Santa Fe and Southern Pacific?

11 A That's correct.

12 Q In developing your commodity categories for
13 use in this traffic flow study, did you consider at all
14 the cost of handling commodities within each category?

15 A No, we did not.

16 Q Did you consider the rate levels for
17 commodities?

18 A No, we did not.

19 Q The relationship between the rate levels and
20 costs?

21 A No, we did not.

22 Q Did you consider shipper sensitivity to rate
23 levels in determining modal choice?

24 A No, we did not. We were reporting on what
25 existed in terms of participation in the different

1 shipping categories, the reports of what actually moved
2 during 1982.

3 Q Would you agree that within each of your
4 commodity groupings there is variation among the
5 commodities within each grouping with respect to the
6 cost of handling the commodity?

7 A Oh, certainly. It depends upon the specific
8 commodities, upon the length of haul, the particular
9 traffic lane we're looking at or market pair. There are
10 variations.

11 Q Would you agree that there are also variations
12 within each of your commodities between the right levels
13 for the commodities within each grouping?

14 A That's correct.

15 Q And there are also variations between -- with
16 respect to the relationship between rate and cost of
17 handling?

18 A That's correct.

19 Q There would also be variations with respect to
20 shipper sensitivity to rate levels in determining their
21 modal choice?

22 A As reflected in commodity totals, yes. What
23 we're showing is a result of all the decisions relating
24 to rate levels or logistics costs associated with all of
25 the moves. This is the downstream end result of modal

1 participation.

2 Q But you yourself did not specifically consider
3 costs or the rate level in defining your categories?

4 A That's correct.

5 Q Within each category would you agree that rail
6 rates specifically might rise for some commodities
7 within that category, but remain uncharged for other
8 commodities?

9 A Rise for what reason?

10 Q For any reason.

11 A If the railroads had to impose a rate increase
12 in order to play catch-up with increasing costs, they
13 might rise in differential ways between commodity groups
14 or shipping categories depending on the degree of
15 competition, depending on the circumstances of the
16 move.

17 On the other hand, depending on the approach
18 the railroads are using, they might tend to use an ex
19 parte increase and flow a uniform increase across all
20 their moves. So a price increase up until now has
21 tended to be more or less uniform across the spectrum of
22 different commodities or, as we have termed them,
23 shipping categories. There have been holdouts more than
24 differential adjustments, I would say.

25 Q Let me ask you this, Mr. Liba. With respect

1 to commodities within any one of your commodity
2 groupings, is there any necessary relationship between
3 the movement of rail rates for each of those
4 commodities?

5 A No, the reports that are here are independent
6 of the rates that are charged.

7 Q There is no -- so far as you know, there is no
8 necessary relationship between rail rates for the
9 commodities within each commodity grouping?

10 A So far as I know, no, and so far as I would
11 expect.

12 Q Do your commodity categories cover the entire
13 universe of traffic?

14 A It is our attempt to do so, yes.

15 Q Let me just run through some examples and ask
16 you to tell me where, in which of your commodity
17 groupings, you would place a particular type of
18 traffic. The first example would be lumber. In which
19 grouping would you place that?

20 A Part of that would be in the containerizable
21 group and part of it would be in the time-sensitive
22 group.

23 Q And you would determine the part that goes
24 into the containerizable group based on your
25 containerizability factors?

1 A Yes. There would also be a part in the
2 containerizable group if it were moving in TOFC
3 service.

4 Q Now what about canned goods?

5 A Canned goods would be wholly within the
6 containerizable group.

7 Q Would there be any distinction in your
8 grouping or your placing those canned goods in the
9 containerizable group depending on whether they were
10 westbound or eastbound?

11 A No.

12 Q How about industrial chemicals?

13 A Some of the industrial chemicals are in the
14 bulk category and some are in the time sensitive
15 category.

16 Q How did you determine that some should go into
17 the time-sensitive category?

18 A In two ways, either through specification or a
19 default as a result of the containerizability factors.

20 Q I'm sorry, I don't think I understood the last
21 answer. Could you explain that again?

22 A Okay. It depends upon the four-digit STCC of
23 the industrial chemical that's involved, and it depends
24 then on the containerizability factor. Some of the
25 industrial chemicals, the 287's, 287's, were identified

1 as being bulk. Other than that, some would be in time
2 sensitive and some in the containerizable.

3 Q And apart from the ones that you treated as
4 bulk categories, you would then apply your
5 containerizability factor to allocate a portion of the
6 remainder to the containerizability category?

7 A That's correct.

8 Q And then whatever was left would be treated as
9 time sensitive?

10 A That's correct.

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1 Q How about soybean oil?

2 A Can you give me the STCC code on that?

3 Q I wish I could.

4 A Soybean oil. Just a minute; I will look it
5 up. Soybeans are in Group 01144. And we would have
6 about 70 percent of that in the time-sensitive category,
7 30 percent containerizable.

8 Q All right. How about corn syrup, Mr. Lila?

9 A Let me correct my previous statement on
10 soybean oil. I found the proper STCC code for it. That
11 would be 50 percent containerizable and 50 percent
12 time-sensitive.

13 What was your second one?

14 Q Corn syrup. I believe that's 2046.

15 A 2046, we would have 65 percent containerizable
16 and 35 percent time-sensitive.

17 Q How about freight, all kinds?

18 A The FAK commodities are 100 percent
19 containerizable.

20 Q Automobiles?

21 A The set-up automobiles?

22 Q Yes.

23 A Those would be time-sensitive.

24 Q 100 percent?

25 A 100 percent.

1 Q Fresh fruits and vegetables?
2 A That would be 100 percent containerized.
3 Q Frozen foods?
4 A I'm fairly certain those are all 100 percent
5 containerized.
6 (Pause.)
7 That group is 100 percent containerized.
8 Q How about furniture?
9 A That is commodity 25. There are a few
10 exceptions, but -- no, I'm sorry; that's 100 percent
11 containerized.
12 Q Tin plate?
13 A Tin plate? By tin plate, do you mean metal
14 containers?
15 Q I believe it would be 3312.
16 A 3312 is primary iron and steel products. Oh,
17 33127, I'm sorry; tin mill products. Okay. We have
18 that as being 25 percent containerizable and 75 percent
19 time-sensitive.
20 Q Just two more. Alcoholic liquors.
21 A 208, I guess. And 208 is --
22 Q Yes, I think that's right.
23 A We have that 91 percent containerized and
24 about 9 percent time-sensitive.
25 Q And how about flour?

1 A 20419. We have that 80 percent containerized
2 and 20 percent time-sensitive.

3 Q Mr. Liba, with respect to your
4 containerizability factors, did you, in determining what
5 commodities were to go into the containerizable
6 commodity grouping, did you apply those factors to the
7 entirety of the traffic flow?

8 A We applied it individually to mode and a flow,
9 as appropriate for the analysis.

10 Q Could you explain to me what you mean by
11 "applied them individually"? Did you apply the same
12 factors to each --

13 A The same factors were applied to each, but we
14 had a few definitional adjustments. As I indicated, or
15 as was indicated earlier, in the water area everything
16 was either containerized or bulk. And the bulks were
17 defined, and therefore everything else was
18 containerized.

19 We defined the small shipment area for trucks
20 as being all LTL traffic, so the containerizable factors
21 are not applied to them.

22 To the remaining of the truckload tonnage,
23 they were applied. To the carload area, we defined
24 certain of those STCC codes as being small shipments,
25 and then the rest were subject to the containerizability

1 factors, with the exception of TOFC which was also --
2 the remainder of TOFC which was also applied to
3 containerized.

4 Q With respect to that traffic to which you
5 applied the factors, you applied the same factors to
6 truck traffic and to rail traffic?

7 A That's correct.

8 Q And with respect to rail traffic, you applied
9 the same factors, regardless of carrier?

10 A That's right

11 Q Mr. Liba, let me direct your attention to
12 SFSP-20 at page 89, which is a report for the traffic
13 flow from the Southern Plains region to the Bay Area.

14 A Yes, sir.

15 Q If I'm reading it correctly, that report
16 indicates that 83.57 percent of other bulk shipments
17 moved by truck; is that correct?

18 A You're in SFSP-20, page 89?

19 Q Yes.

20 A And truck between South Plains and Bay Area,
21 other bulks? As a percent of other bulks, it is 83.57.

22 Q Does this mean that each commodity within your
23 other bulks category was moved -- 83.57 percent of that
24 commodity moved by truck?

25 A No. This is the downstream result of a lot of

1 processing. Underneath this, there is a significant
2 amount of variation by individual commodity.

3 Q I take it that there could be commodities that
4 would have -- show a much lower percentage of movement
5 by truck?

6 A Yes.

7 Q Some that could show virtually zero movement
8 by truck?

9 A I doubt that in this particular flow, but it
10 could.

11 Q Did you perform any analysis that would
12 indicate to you whether particular commodities within
13 the grouping "other bulk shipments" were transported
14 either almost entirely by rail or almost entirely by
15 truck?

16 A For this study we did not prepare an analysis
17 on that particular point.

18 Q Do you agree that within each of your four
19 commodity categories, there is a different degree of
20 truck/rail substitutability?

21 A I wouldn't answer it in quite that way.
22 Within the bulk category, you will have
23 substitutability, depending upon the particulars of a
24 market pair -- the haul length, the shipping volume, and
25 things like that.

1 So there might be, but then again there are
2 cases where it would not be.

3 Q I'm not sure I understand your answer. Is
4 your answer that there might be differing degrees of
5 truck/rail substitutability as between you four
6 commodity categories?

7 A Yes.

8 Q Let me direct your attention to Appendix I to
9 your verified statement at page 39.

10 Exhibit 9, I believe it is.

11 A That's a sample report; yes.

12 Q This is a sample of the type of report that
13 Transearch is capable of producing?

14 A Yes. This type of report, traffic lane flow
15 report, is developed for tactical use by carriers in
16 addressing traffic opportunities.

17 Q Now, if we look at the two-digit STCC level
18 for waste or scrap materials, if I can read this, the
19 report shows 15,088 tons moving by rail and 1,610 tons
20 moving by truck. Is that correct?

21 A That's what this report says; yes.

22 Q So that again, if my mathematics are correct,
23 that's approximately 90 percent moving by rail and 10
24 percent by truck?

25 A When you look at a report such as this -- and

1 this is a good point you are bringing out -- I have to
2 caution you that the interpretation you just made is a
3 little bit suspect because again we are plagued by the
4 problem of non-reporting of traffic flows. And scrap is
5 one of those areas that is just not reported.

6 So the lack of truck tonnage, or the apparent
7 90 percent share that you pointed out may be illusory.
8 There may be more truck tonnage in that particular
9 commodity flow in this lane than appears on this
10 report.

11 Q But to the extent that this report reflects
12 tonnage, those are the shares?

13 A That's correct.

14 Q Now, let's lock down at the five-digit level.
15 I believe you have two categories there: one, iron or
16 steel scrap; and the other, textile scrap or sweepings;
17 is that right?

18 A That's correct.

19 Q And the report shows that all of the iron and
20 steel scrap was carried by rail and all of the textile
21 scrap or sweepings was carried by truck; is that
22 correct?

23 A That's correct for this report at that time;
24 yes.

25 Q As a general matter, would you agree that as

1 you examine commodities at this more detailed level, you
2 will tend to find increasingly that commodities are
3 moving almost entirely by rail or almost entirely by
4 truck?

5 A No, I wouldn't conclude that.

6 Q You don't agree with that?

7 A No.

8 Q Have you done as a study, as a general matter,
9 as a basis for that conclusion?

10 A In the matter of iron and steel scrap, I do
11 have knowledge of general national figures. I can't
12 apply them to a particular corridor.

13 I know that rail has about a 60 percent market
14 share and truck has a 40 percent market share, just as a
15 rail and truck comparison.

16 So it isn't fair to conclude the point you are
17 making, that there can be that great a variation, when
18 it is the accident of just the reporting.

19 Q So what you are saying is that, as a general
20 matter, the more detailed the commodity categories, it's
21 your testimony that you will not find a greater
22 variation in truck movement as compared to rail movement
23 than you would at a less refined grouping?

24 A No. The thought I would like to leave with
25 you is that when you look at the fine level of detail,

1 whether it be geographic or commodity, the more
2 interpretative value you have to place on the
3 information.

4 Unfortunately, as a result of the reporting
5 capability of the agencies of the government or the
6 budgetary constraints placed on that, things such as
7 that, as well as what I explained to Mr. Pearch earlier,
8 the gathering nature associated with different types of
9 flows, and so I just urge caution in using the data down
10 to this fine a level.

11 Q But you do indicate that the five-digit level
12 is sufficient as an indication of activity and the order
13 of magnitude of that activity, is it not?

14 A Yes, it is.

15 Q Let's move over to the interline tonnage
16 allocation that you made in this study. Where you had
17 interline rail movements, you allocated the tonnage on
18 those movements, based on the simple number of western
19 railroads participating in the movement. Is that
20 right?

21 A Yes. Western railroad, Class I railroads.

22 Q And those railroads are listed at page 14 of
23 your verified statement?

24 A That's correct.

25 Q Did you use this same listing throughout the

1 course of your study?

2 A The intent was to, but as I remarked at the
3 beginning, we had to rerun 19 and 20 to account for an
4 error in the construction of the BN data. The FWD was
5 inadvertently omitted in the coding.

6 Other than that, the listing was the same
7 through the reports.

8 Q What was the basis for treating the railroads
9 that you have listed on page 14 of your verified statement
10 as western railroads?

11 A Basically, that the major amount of their
12 service was within the west. We excluded the Norfolk
13 Southern whose line extends over to Kansas City, because
14 the bulk of their traffic is in the east.

15 We excluded the Class II's and Class III's
16 because we considered that most of their traffic would
17 be interchanged with a Class I carrier. And it was a
18 Class I carrier that had the most relationship in this
19 measurement

20 Q Let me ask you this, Mr. Liba. What do you
21 mean by "the west" in defining western railroads?

22 A Essentially, west of the Mississippi. West of
23 the eastern boundaries of the Santa Fe Southern
24 Pacific.

25 Q Do you know how many of these railroads

1 operate west of Kansas City?

2 A I have a fair familiarity with the different
3 railroads, yes.

4 Q Which of these railroads in this list on page
5 14 operate west of Kansas City?

6 A Santa Fe, Southern Pacific, Burlington
7 Northern, UP, DRGW. That's about 50 percent of that
8 list, I guess.

9 Q Does your methodology for allocating tonnage
10 assume that every carrier participating in a movement
11 has equal influence over routing and rate levels?

12 A Our methodology doesn't reflect the influence;
13 it just reflects the participation in the move. We
14 weren't trying to reflect control over pricing or
15 routing or anything in our identification of the
16 tonnages; but rather, the simple fact that they
17 participate in the move, and therefore they share in the
18 tonnage.

19 Q By not adjusting allocation based on specific
20 factors relating to particular railroads, do you not in
21 effect assume that each railroad has equal influence
22 over routing and rate levels?

23 A I guess you could say, in effect, that we
24 consider each railroad to have an equal impact. If you
25 got into an artificial measure, you'd be making

1 continual adjustments, to nobody's satisfaction, and for
2 all lengths of time.

3 In addition, the adjustments perhaps relate
4 more to such things as circuitry, cost of operation, old
5 divisional arrangements, and things such as that. And
6 as a result, we chose to allocate on an equal basis.

7 Q Do you agree that the method of allocation you
8 used produced an accurate result?

9 A It produces a fair result, I think, for the
10 purposes of this display for market share measurements.

11 Q Did it produce an accurate result, in your
12 opinion?

13 A It accurately portrays what we have decided to
14 produce here. Whether it's accurate in the sense that
15 you are looking for, I think, is subject to a lot of
16 interpretation.

17 We interpret it as being the most accurate way
18 to do it. We think more distortions would be added in
19 if you were to allocate it on a ton-mile basis or
20 something like that.

21 MR. KEVIN MAC KENZIE: Your Honor, I would ask
22 to have marked for identification DRGW-C-34.

23 JUDGE HOPKINS: Do you have any more
24 questions, Mr. MacKenzie?

25 MR. KEVIN MAC KENZIE: I would estimate

1 another 15 minutes.

2 (The document referred to
3 was marked Exhibit DRGW-C-34
4 for identification.)

5 BY MR. KEVIN MAC KENZIE: (Resuming)

6 Q Mr. Liba, can you identify for me what has
7 been marked as DRGW-C-34?

8 A It is a memo from myself to Mr. Wilson,
9 covering the shipment of a summary page for Volume 19.

10 Q Volume 19? That would be SFSP-19?

11 A SFSP-19.

12 Q And it's dated March 8, 1984?

13 A That's correct.

14 Q And the second sentence of this note reads:
15 "In my opinion, the individual railroad shares are
16 misstated because of the tonnage allocations on the
17 interline moves."

18 A That's correct.

19 Q In what respect are they misstated?

20 A If someone were to add the railroad totals,
21 you would not get a total for the individual railroad.
22 It would vary by the degree of interline moves in which
23 the railroad is engaging.

24 That is what I meant by that.

25 Q I'm not quite sure I understood. Is what

1 you're saying here that the method of allocating tonnage
2 in effect misstated individual railroad shares?

3 A What I'm saying is that the sentence I have
4 there indicates that you can't get a good reading of
5 what the individual railroad totals are, because of the
6 interline allocations.

7 Q Mr. Liba, in your study, did you consider the
8 extent to which truck market shares would vary for any
9 commodity category or for any regional grouping if there
10 were a 5 percent increase in rail rates?

11 A No, we did not, because the -- what we were
12 doing was simply reporting what was present in 1982; and
13 then secondly, because of that direct report, we thought
14 it a fair indication of the market power that the
15 railroad would have, through the indication of
16 competitive presence.

17 Moreover, in discussions, we indicated that it
18 would be extremely difficult, as a result, for the
19 railroad to impose any 5 percent increase, for two
20 reasons: One, the presence of the competitive
21 capabilities. Virtually all of the cells of the markets
22 were presented, would contain that capability.

23 But then, secondly, having gone through a
24 period of rapid rate adjustments for inflationary
25 reasons, it would be hard to get a fair result and an

1 evaluation from shippers because of that previous
2 action.

3 The 5 percent guideline indicated by the DOJ
4 merger guidelines is meant in terms of a real dollar
5 increase, not current dollars. And I don't think the
6 railroads had a clear 5 percent increase in a long
7 time.

8 MR. KEVIN MAC KENZIE: Your Honor, I would ask
9 that the document I'm handing you be marked for
10 identification as DRGW-C-35.

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

13 (The document referred to
14 was marked Exhibit DRGW-C-35
15 for identification.)

16 BY MR. KEVIN MC KENZIE: (Resuming)

17 Q Mr. Liba, can you identify what has been
18 marked for identification as DRGW-C-35?

19 A Yes, I can. These are three different types
20 of reports that we supplied to other people
21 participating in the merger analysis for the SFSP.

22 They were all drawn off the same data base.
23 And people were using them for different types of
24 studies.

25 Q Specifically, with reference to page 1, which

1 is stamped (CI 249, it's correct that this is a sample
2 of the data that you supplied to A.T. Kearney?

3 A Yes. They were looking at shipper benefits
4 and asked us to produce a file of data off the waybill
5 sample by car type, with the parameters shown on the
6 report.

7 This is on a state-to-state basis.

8 Q Did they indicate what purpose they were going
9 to use this data for?

10 A No, they did not. We were in a simple data
11 processing mode for their purposes.

12 Q Do you know whether they used this data?

13 A I would hope that they did, but I don't know
14 that they did.

15 Q Now, turning to pages 2 and 3 of DRGW-35, is
16 it correct that these are samples of the data that you
17 provided to TBS?

18 A That is correct also.

19 Q And again, do you know for what purpose they
20 requested this data?

21 A I only know it in the general context of their
22 work on common point analysis. I would indicate on this
23 page that the empty cells there for truck again are
24 illusory.

25 Q Do you know whether they actually made use of

1 this data?

2 A I'm fairly certain they did. I recall looking
3 through their statement, and I saw different tables.
4 And I imagine this data worked its way into their
5 information.

6 Q I note that pages 2 and 3 of DRGW-35 are dated
7 May 1983. What does that signify?

8 A We supplied two sets of information to TBS in
9 order to get them started in their work as quickly as
10 possible. Information was provided on 1981 flows, and
11 that May 1982 report would be that data.

12 Q So there was a second set of data that you
13 also provided to them?

14 A Yes. Everything was upgraded to 1982 levels
15 when that information was finally made available.

16 Q But the data was provided in the same format
17 as we see here?

18 A That's correct.

19 MF. KEVIN MAC KENZIE: And, Your Honor, if I
20 may have marked for identification DRGW-C-36.

21 JUDGE HOPKINS: It will be marked for
22 identification.

23 (The document referred to
24 was marked Exhibit DRGW-C-36
25 for identification.)

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1 BY MR. KEVIN MAC KENZIE: (Resuming)

2 Q Mr. Liba, can you identify ERGW-C-36?

3 A Yes. I certainly can. It's a letter from
4 myself to James Down of Temple, Baker & Sloane. It
5 relates to a meeting I had with Mr. Down earlier.
6 However, it does not relate to the Santa Fe Southern
7 Pacific merger case. It relates to another project that
8 we were discussing.

9 Q So that the projects that you refer to in the
10 first sentence are not -- do not relate to the Santa Fe
11 Southern Pacific case?

12 A That's correct, they do not. I don't know how
13 it worked its way into these files, but I'm sorry that
14 it did, not because of anything it contains; it just
15 doesn't relate.

16 Q But you did describe to TES the capabilities
17 of Transearch with respect to cost analysis and the
18 other items that you describe here?

19 A Yes. We worked together with them on several
20 different projects, and they are fairly well familiar
21 with the data we have.

22 MR. KEVIN MAC KENZIE: Thank you, Mr. Liba.
23 That's all I have.

24 JUDGE HOPKINS: Thank you.

25 Off the record a minute.

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(Discussion off the record.)

JUDGE HOTKINS: We'll start at 8:30 tomorrow morning. We'll be in recess until then.

Whereupon, at 5:10 p.m. o'clock the hearing in the above-entitled matter was recessed, to reconvene at 8:30 a.m. o'clock, the following day, Friday, November 2, 1984.)

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