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BEFORE THE

INTERSTATE COMMERCE COMMISSION

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In the Matter of: :

SANTA FE SOUTHERN PACIFIC CORPORATION : Finance Docket

-- CONTROL -- : 30400 et al.

SOUTHERN PACIFIC TRANSPORTATION :

COMPANY :

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Hearing Room A

12th & Constitution, N.W.

Washington, D.C.

Friday, November 2, 1984

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

BEFORE:

JAMES E. HOPKINS,

Administrative Law Judge

004380000

1 APPEARANCES:

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(As heretofore noted.)

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004380004

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3 C O N T E N T S

4	<u>WITNESS</u>	<u>DIRECT</u>	<u>GROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
5	Carl J. Libra				
6	By Mr. Greenberg		5116		
7	By Mr. Bleakney		5149		
8	By Ms. Kooerstein		5157		
9	By Mr. Wilson			5159	
10	By Kevin MacKenzie				5163
11	Randall R. Reyff				
12	By Mr. Wilson	5165			
13	By Mr. Kevin MacKenzie		5169		
14	By Mr. Kharasch		5173		
15	By Mr. Wilson			5197	
16	By Mr. Kharasch			5198	

17
18 E X H I B I T S

19	<u>Exhibit No.</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
20	SFSP-C-9		5164
21	UP/MF-C-44 thru 52		5164
22	DRGW-34 thru 36		5165
23	SFSP-C-10	5167	5199

P R O C E E D I N G S

(8:30 P.M.)

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

4 Who is going to be next?

5 MR. GREENBERG: Your Honor, at least before
6 they come and grab my transcript away, there is a
7 question I wish to ask.

8 Whereupon,

9 CARL J. LIBA,

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

CROSS EXAMINATION

13
14 BY MR. GREENBERG:

15 Q Good morning. My name is Ed Greenberg, for
16 the MKT. Let me start by asking you a couple of
17 questions to clear up my confusion about a couple of
18 things you said yesterday concerning the reason for the
19 replacement volumes.

20 As I understand it, there were three
21 adjustments basically made in those replacement
22 volumes.

23 A That's correct.

24 Q The first was that you extended certain
25 gateway adjustments to all carriers and rearranged both

1 shares. Is that right?

2 A That's correct. It applied just to two areas,
3 the containerizable flows and the small shipment flows.
4 It was adjustments -- they were adjustments for the TOFC
5 gateway allocation procedures.

6 Q And the second adjustment was, you adjusted
7 the share of the Burlington Northern to add a subsidiary
8 of theirs?

9 A That's right. That would have moved tonnage
10 from the Western Carrier column over to the Burlington
11 Northern column.

12 Q Then the third adjustment was that you deleted
13 certain traffic flows.

14 A That's correct. We just took several pages
15 out of the display.

16 Q Which pages did you take out?

17 A I don't have a copy of the original volume,
18 but they were flows in the Pacific Northwest. If you
19 look at Mr. Beyff's testimony, he gives his Appendix A,
20 flows that were to be eliminated from the display
21 because they were unaffected by the merger.

22 A It was the flows in the bottom section of that
23 exhibit, Rocky Mountain to Pacific Northwest, Pacific
24 Northwest to Rocky Mountain, Pacific Northwest, Pacific
25 Northwest, those flows.

1 Q How many flows were deleted in total?

2 A It was -- we went from 1,252 total markets
3 down to 1,212. That would have been 40 pages. But each
4 is the reverse, so it would be a total of 20.

5 Q Did you delete any intermodal traffic flows?

6 A No, we did not delete any intermodal traffic
7 flows. Those were just, as I said, reallocated on the
8 basis of extending the gateway adjustments that we used
9 for the Santa Fe and SP to all carriers at the gateway
10 areas.

11 Q Did any of the flows that involved traffic to
12 the Pacific Northwest involve intermodal traffic?

13 A It was all flows in the Pacific Northwest, so,
14 yes, the answer to your question would be yes.

15 Q So for each one of the 20 flows that was
16 deleted, there would have been intermodal traffic
17 deleted?

18 A That's correct. It was the elimination of a
19 complete page. So it would have been all four of the
20 shipping categories for those markets.

21 Q Did you anywhere give a total of the amount of
22 intermodal traffic which you studied in preparing these
23 tables?

24 A There were check totals in the original
25 volumes that showed totals by shipping category, and as

1 I explained earlier, the TOFC, the most common form of
2 intermodal, was included in the small shipments in
3 containerizable areas, so the correct answer to your
4 question would be no, we had no separate display of the
5 TOFC volumes.

6 Q Is there any reason why individual carrier
7 totals would change from the original volume to the
8 replacement volume? And I will be specific. I will
9 say, is there any reason why, for example, the Southern
10 Pacific total would change from volume to volume?

11 MR. WILSON: Counsel, are you speaking of a
12 change in total or a change in the specific market?

13 MR. GREENBERG: I am talking about a change in
14 the specific market.

15 MR. WILSON: Okay.

16 BY MR. GREENBERG: (Resuming)

17 Q I could direct your attention if you have both
18 volumes. For example, if you look at your volume,
19 original Volume 20 and replacement Volume 20, if you
20 would turn to the flow between Origin Region 6 and
21 Destination Region 10, it would be Page 68 in both
22 cases, if you have them.

23 (Pause.)

24 Q Do you have those before you, sir?

25 A Yes, I do.

1 Q Do you see for other bulks that in the
2 replacement volume the tonnage figure is 24,243,842, and
3 in the original volume it is 210,948. What would
4 account for that change?

5 A At this point I wouldn't be able to answer
6 your question. I have to go back into the office to
7 determine the reason. On the face of it, North Plains
8 to Texas Coast -- okay, this is attributable to the FWD
9 allocation. There is interline traffic between the
10 Burlington Northern FWD and Southern Pacific coming in.

11 The redefinition of FWD would have changed the
12 amount of traffic then between the Southern Pacific,
13 Burlington Northern, and western carriers.

14 If you look at western carriers in that flow,
15 you see other bulks, 850,000 tons, and then the
16 replacement volume, it went down to 817,000. If you
17 look at Burlington Northern, their share remained the
18 same because they had participated in the flow.

19 The shift was from other western carriers back
20 into Southern Pacific because of their participation.

21 Q So in deleting the participation of the FWD,
22 then you end up increasing the Southern Pacific's share
23 of traffic?

24 A Yes, I do.

25 Q Why wouldn't that tonnage get allocated to the

1 Burlington Northern?

2 A The Burlington Northern was already reflected
3 in the routing.

4 Q For that particular traffic?

5 A The exact answer to your question would depend
6 upon the particular flows and the specific
7 identification of those, but because the change occurred
8 in western carriers and it was transferred over to the
9 Southern Pacific, and the only thing that changed in the
10 two volumes was the FWD, it would be my contention that
11 it was an increased allocation back to Southern
12 Pacific.

13 Q But you don't know for sure why that
14 happened?

15 A No, we would have to get into specific flows
16 that are in that category.

17 Q I am a bit confused, because your testimony in
18 your verified statement and yesterday was that when you
19 did your allocations of the various carriers in the
20 western region --

21 A That is right. We gave everyone equal
22 shares.

23 Q So if the FWD participated as an individual
24 carrier, then the share for an particular move would
25 have been a third, a third, a third if you had FWD,

1 Burlington Northern, and SP.

2 A That's correct.

3 Q Now, if you end up compressing FWD into
4 Burlington Northern, the allocation should be now half
5 and half, which means both the SP and the Burlington
6 tonnage ought to go up. But there has been no change in
7 the Burlington Northern tonnage.

8 A That's correct. It may be that the flow was
9 local to FWD, not local in the sense of originating and
10 terminating alone on the line, but as between the FWD
11 and Southern Pacific. I can't give you a clear answer,
12 because the detail is buried in the statistics. I would
13 have to dig back in order to identify specifically what
14 happened.

15 MR. GREENBERG: Your Honor, at this time I
16 would like to request counsel to provide us with that
17 information, and then also if we would be permitted to
18 submit additional questions -- they would be written
19 interrogatories -- if it turns out that the answers they
20 now supply provoke other questions.

21 JUDGE HOPKINS: You don't see any problem with
22 that, do you?

23 MR. WILSON: There is no problem with that.

24 BY MR. GREENBERG: (Resuming)

25 Q Mr. Liba, did you do any other studies of the

1 aggregated BEA's besides the one that appears in your
2 verified statement, Volumes 19 and 20, and the original
3 one which you prepared that you discussed with Mr. Roach
4 yesterday?

5 A They were preliminary runs to the one that
6 appeared in the application, and those were in effect
7 evolutionary reports in the process, evolutionary in the
8 sense of getting the carriers with the right family
9 relationships, things such as that.

10 Essentially, the regions were fixed after that
11 initial adjustment to transfer out the Central Illinois
12 region, elimination of the original Region 2. Other
13 than that, there were no changes other than programming
14 charges to get the flows into the right places.

15 Q In your preliminary analyses, were you dealing
16 with the same general subject matter, though, dealing
17 with adjusted prediversion flows or unadjusted
18 prediversion flows?

19 A We were working with the same definitions that
20 you see, the same shipping categories, the same regions,
21 the same premerger readjustments, adjusted
22 prediversion.

23 Q Now, your regional aggregations of BEA's, as I
24 understand your testimony yesterday, it was that you
25 selected these areas because they resembled gathering

1 areas for the various railroads. Is that so?

2 A As I indicated yesterday, there were several
3 different reasons why the regions ended up as they did,
4 route structure reflecting the concentration of traffic
5 areas of the railroad, the minimal nature of the traffic
6 flow identification being the FEA, the commonality of
7 economic and -- that's the regional economics, and
8 transportation requirements of the area, and all of
9 those reasons dictated the design of the market areas
10 that we show.

11 Q Well, the first two reasons you gave me sound
12 very similar. The gathering area for a railroad and the
13 track system, is there a distinction between those two?

14 A No, not at all. They are complimentary. In
15 truth, there is a continuum of competition for railroad
16 traffic, a continuum of traffic gathering across the
17 railroad.

18 There are stations where traffic is originated
19 to go along the railroad line, and so you have to draw a
20 line somewhere. We try to make those division points
21 logical breaks between areas.

22 Q Would you please turn to your Exhibit 1, which
23 is the map of the various regions as you have defined
24 them here?

25 A Yes.

1 Q I would like you to look at the region, for
2 example, the Southern Plains. Do you have that before
3 you?

4 A Yes, I do.

5 Q Can you tell me how it is that you end up
6 putting in BEA's 86 and 87 from Illinois into this broad
7 region which encompasses the territory in Southwest
8 Oklahoma, Northwest Texas, and Kansas? Why are BEA's 86
9 and 87 in that particular area as opposed to in the area
10 involved with Chicago?

11 A Primarily because the Chicago BEA is a heavily
12 industrialized area, a lot of manufacturing and
13 distribution centers, whereas the areas in Southern
14 Illinois are more agricultural, corn and soybeans,
15 commodities such as that, and in that way it resembles
16 more of the traffic characteristics of that entire
17 Southwest region.

18 So, it is distinctly different from the
19 industrial activity and traffic characteristics of the
20 Chicago region that we included in the Southwest.

21 Q So that it has no particular relationship to
22 the track structure of any given railroads in this
23 proceeding? It is merely because it happens to be an
24 agricultural area that you put it in the Southern
25 Plains?

1 A That's correct.

2 Q In preparing your analysis of what BEA's are
3 in what regions, did you also consider the physical
4 characteristics of the river system in the country?

5 A No. The primary orientation was centered on
6 the general route structure of the applicants. The
7 water traffic fell in where it fell in.

8 Q With respect to agricultural traffic or other
9 traffic which tends to move by barge if it is within
10 proximity to the waterways, would it have made sense to
11 have put a region, market region in that would have
12 reflected that particular factor?

13 A In other studies that we have conducted, we
14 have found that waterways traffic is gathered from
15 regions as far away as, in some cases, 500 miles from
16 the river, particularly in the northern reaches. We
17 think that if the market areas were oriented around the
18 water transportation infrastructure of the nation, i.e.,
19 the Mississippi, Illinois, Missouri, whichever, you
20 would not have correctly identified the interplay
21 between rail and water in these particular areas.

22 Q Well, is there competition for the movement of
23 bulks from Southern Plains to the Texas Coast,
24 competition between rail and barge?

25 A Oh, indeed there is. You have a substantial

1 volume of grain that is trucked over to Tulsa, the port
2 serving the Tulsa area, and that is moved down by barge,
3 down the Arkansas. In addition, along the Mississippi
4 River as it proceeds northward through the eastern side
5 of that southwest region, you are moving grain down that
6 way.

7 We have grain flowing down as well from Kansas
8 City down the Missouri.

9 Q Can you turn to your replacement volume,
10 SFSI-20, Page 84? And look in the column under Traffic
11 Participation, Percentages by Category, and under the
12 heading for Other Barges, doesn't it indicate that barges
13 get a share of .18 percent?

14 A That's correct.

15 Q That is not very high, is it?

16 A No, it is not.

17 Q Now, is that particular result caused by how
18 you put the BEA's, which region you put the BEA's in?

19 A No, it is not.

20 Q You have to remember that the water reporting
21 is purely water. It doesn't relate to the traffic
22 gathering. It shows the movement from the point of
23 origin on the water.

24 You also have to remember that in this
25 particular case, the page you are looking at is from

1 South Plains to Texas Coast, which is oriented around
2 Houston, that Houston is a major grain market for the
3 railroads.

4 Most of the rail activity in grain exports are
5 centered on Houston. The flows of barge traffic
6 gathered from that area down the river for export would
7 be oriented more around the New Orleans, Baton Rouge
8 area. So I would suggest if you wanted to look at the
9 barge traffic flowing out of the Southwest region, look
10 more carefully into the New Orleans flows.

11 Q Well, then, can we assure from the review of
12 this particular table that rail is not in fact
13 competitive with barge with respect to traffic moving to
14 Houston?

15 A No, you cannot, because as I said, the
16 competition is across a continuum. The traffic, grain
17 traffic moving down for export is governed by the lowest
18 cost mode available, and so the prices on grain all
19 along the coast are pretty much set by the barge
20 competition, even though you may have a totally separate
21 rail flow down into the Houston area.

22 Q Well, I must confess that I don't understand
23 that answer. If this purports to show us modal shares,
24 and if modal shares are your measurement of market power
25 or market competition between the various modes, then

1 how can we not come to the conclusion that a result that
2 has less than 1 percent moving by water indicates that
3 there is no competition?

4 A What you are asking questions about, it is a
5 very valid question. There is no doubt about that. But
6 you have to tie a lot of information together in order
7 to get a complete understanding of what is going on in
8 the transportation market.

9 This shows traffic flows in a particular
10 area. If you are asking questions about why prices are
11 what they are, you have to look across a wider area. I
12 would relate to you the prior testimony of two people.

13 One is Mr. Kober of Continental Grain, who
14 testified on the matter of grain market, and then
15 second, Professor MacAvoy, who is saying that our market
16 areas perhaps are too narrow for the greater
17 appreciation of what is going on.

18 Q Didn't Dr. Anderson talk about the revealed
19 preference of shippers and what the actual results by
20 mode should show us? What it should tell us?

21 A He was looking at tactical logistical options
22 available to shippers in specific areas. Those aren't
23 necessarily market areas. Those are interface areas
24 between two modes at very specific places, and those
25 places were a great deal different than the descriptions

1 we show. It was oriented to a different objective.

2 If you look at Page 93, South Plains to New
3 Orleans, you will see that barges have a 45 percent
4 market share coming out of the Southwest Plains area in
5 the other bulk area.

6 Q I am not surprised, because New Orleans is on
7 the Mississippi, and it draws down the Mississippi
8 River, but the chart I was looking at was Houston, and I
9 was asking you whether there would be any competition on
10 rail versus water from the Southern Plains to Houston,
11 and you tell me that I cannot conclude from looking at
12 your table that there is no competition, despite the
13 fact that your table shows that there is less than 1
14 percent of traffic that moves by water.

15 I tell you that I still don't understand your
16 answer, but I will let it go at that, and move on to
17 another topic.

18 A I will just respond by saying that you don't
19 have a complete understanding then of what the nature of
20 the markets are that are included in this. There is no
21 reason for a barge to move from New Orleans over to
22 Houston in order to accomplish a ship loading.

23 Q I think you just said that. I think you just
24 proved my point, that grain doesn't move to Houston by
25 water. I think that is what you just said.

1 A That's correct. But that doesn't mean that it
2 is not competitive with grain at Houston.

3 Q We will go on to another area, because I don't
4 understand that. Maybe other people will.

5 I would like you to turn back to Exhibit 1.
6 Let me ask you something about the makeup of these
7 regional areas. Now, is it fair to say that the
8 transportation characteristics of commodities moving
9 from any BEA may share the same types of characteristics
10 as those in the region to which it is immediately
11 contiguous?

12 A That's correct, and that will always happen,
13 no matter where you draw it.

14 Q Would that also be somewhat the case between
15 any two given regions?

16 A I would imagine it would be.

17 Q And relating specifically to Exhibit 1, is it
18 likely that traffic moving out of BEA's 139 and 140
19 might share the same traffic characteristics as traffic
20 moving from the Northeast Plains?

21 A That's correct. That is a grain producing
22 area, wheat, in Eastern Colorado, Western Kansas. That
23 is correct. We limited the northward expansion of that
24 area because we were moving out beyond the service area
25 of the affected roads.

1 Q Okay. And if the record evidence in this case
2 and the testimony of the witnesses indicates that there
3 is not substantial trucking, in fact, no trucking from
4 BEA 139 and 140 to the Texas Gulf, would it not be more
5 appropriate to put those BEA's, at least the traffic on
6 those BEA's, into Northeast Plains, for which you
7 indicate that there is no trucking of other bulks to
8 Texas Gulf?

9 A But there is trucking out of those areas down
10 to loading stations on the Santa Fe-Southern Pacific,
11 and for that reason I would object. It is not so much
12 that you are looking also at the Texas Gulf area, but
13 you are also looking at the competition for the rail
14 lines going to that area.

15 Q By traffic moving to the loading stations of
16 the Southern Pacific and Santa Fe, what do you mean? Do
17 you mean the terminals, the grain terminals?

18 A Yes.

19 Q Kansas?

20 A Yes.

21 Q I thought this analysis purported to show
22 flows from BEA 139 -- excuse me, from the Southern
23 Plains region to the Texas Coast region. Is that
24 correct?

25 A We were talking about the definition of the

1 region, were we not?

2 Q Yes, I think so.

3 A And the definition of the region was designed
4 to encompass the gathering area of the railroad as well
5 as when it is portrayed in a market flow to portray the
6 competition. You are correct. There is not a great
7 deal of competition from truck over that distance down
8 to the Gulf.

9 Q Just so that the record is clear, does this
10 particular analysis purport to show for the Southern
11 Plains traffic moving within the Southern Plains?

12 A Yes, there are displays that show traffic
13 moving within the Southern Plains. In any of the
14 display pages, it doesn't include unless it specifically
15 states intraregional flows.

16 Q So that the information in your tables that
17 would show us only the traffic that moves from a region
18 to another region.

19 A Subject only to the restrictions on the amount
20 of data that was available.

21 Q So that in that case, then, this data would
22 not include truck traffic that moves to a receiving
23 station on the Santa Fe, would it, because that would be
24 within the same region area?

25 MR. WILSON: I am sorry, counsel. I refer you

1 to Page 81, for example, of this exhibit, if you are
2 looking at flows from Southern Plains to Southern
3 Plains.

4 MR. GREENBERG: That is not the question I am
5 asking.

6 THE WITNESS: The question you are asking is
7 whether or not it displays the secondary flow as we have
8 termed it in the gathering region. No, it doesn't. It
9 doesn't display the volume of traffic that is flowing by
10 truck to a Burlington Northern or a Santa Fe or a
11 Southern Pacific elevator, served elevator.

12 The Transearch data base only includes primary
13 flows.

14 BY MR. GREENBERG: (Resuming)

15 Q So that if, for example, the Northeast Plains
16 flow from Northeast Plains to Texas Gulf showed that
17 there was zero percent moving by truck, and if you turn
18 to Page 68, I think you will see that for other bulks.

19 A That's correct.

20 Q And it is likely that we would expect the same
21 results for other bulks moving from BEA's 139 and 140 to
22 the Texas coast. Is that correct?

23 A That would be a logical extension, yes.

24 Q Now, did you make any adjustments for the data
25 base other than as you described yesterday in your

1 testimony on the stand?

2 A No, I did not.

3 Q Did you take into consideration in doing your
4 analysis any of the route closings which occurred in
5 territories served by the Southern Pacific and Santa Fe
6 since 1982?

7 A The rail data that we received was processed
8 by DNS Associates. It was the data base they used in
9 their rail diversion study.

10 The Volume 1, SFSP-19, was a literal display
11 of the data just as it appears on the way bills. We
12 started out with the SPIC at the finest level of detail
13 and aggregated those shipments, and so it portrayed
14 whatever route availability was present in 1982.

15 The second volume, SFSP-20, shows the flows
16 adjusted for a number of conditions. People have
17 already testified to those. And that, then, might
18 include route adjustments for the effects of the western
19 mergers.

20 Q But the adjustments that were made did not
21 include the route closings of the Southern Pacific, did
22 they?

23 A It is a straightforward display of what was
24 present. If there were route closings of the SP in
25 place at that time or during that period, it is

1 reflected in that data.

2 Q So if the diversion study that DNS provided
3 you with included the route closings, then your
4 testimony is based on the route closings?

5 A That's correct.

6 Q And if it was absent from that data base, it
7 is absent from your study?

8 A That would be correct. We did no separate
9 processing of the rail data. It was a straight through
10 adaptation of the information.

11 Q If there were route closings which are not
12 reflected in the DNS data base that they provided to
13 you, would that affect the results of your study?

14 A No, it would not, because all we are
15 interested in is the origin and destination. The
16 interior route of the movement really has no impact on
17 the market definition or the definition of market
18 shares. It is strictly origin and destination.

19 Q Wouldn't it affect the intramodal shares of
20 the traffic?

21 A Yes, it does.

22 Q And if, as a result of route closings,
23 shippers changed modes, wouldn't that also affect the
24 intermodal share?

25 A That is also correct.

1 Q I gather, then, that if that data base also
2 did not take into consideration any closings of
3 reciprocal switching, that also would not be reflected
4 in your papers.

5 A The identification of the line haul carrier is
6 what we adopt in this, and it has to be the Class 1
7 carrier, so whether there was reciprocal switching if it
8 didn't affect who the origin carrier was, it may not or
9 may have affected as appropriate to the condition that
10 existed.

11 So I am saying if there was a change in
12 reciprocal switching arrangements, unless you change
13 identification of the line haul carrier, it wouldn't
14 have made any difference.

15 Q But if as a result of the close of reciprocal
16 switching either intramodal participation was altered or
17 intermodal participation was altered, and if it was not
18 in the data given to you, it would not be in here?

19 A That is correct.

20 Q So that would adjust your results also?

21 A Yes.

22 Q Now, I would like you to please turn to an
23 exhibit that was given to you yesterday, which was
24 marked UP/BI-C-44. Do you have that before you?

25 A I have it, yes.

1 Q My copy is not quite clear. Do you happen to
2 know what it says at the very top?

3 A At the very top line?

4 Q Yes.

5 A Above the word "Title?"

6 Q Yes.

7 A No, I do not. My copy is equally poor. My
8 recollection doesn't go that fine.

9 Q I will resist the temptation to ask counsel.

10 MR. WILSON: We don't know either.

11 BY MR. GREENBERG: (Resuming)

12 Q These were -- strike that.

13 When you testified initially in response to
14 Mr. Roach's cross examination, you indicated that these
15 were notes that were distributed at a meeting you
16 attended, and then when you testified in response to
17 cross examination by Mr. MacKenzie, you changed that a
18 little bit, and you indicated that they resulted from --
19 they were notes that resulted from that meeting.

20 Can you please tell me, which one was it?

21 A I will clarify the record. I thank you for
22 the question.

23 The nature of the relationship of Feebie
24 Associates to the applicants was that we were hired by
25 Santa Fe Industries at the time, and the working

1 relationship then was to have the appropriate people
2 from the Santa Fe and Southern Pacific in the detailed
3 work, and the Santa Fe Industries person, Mr. Wilson,
4 would act as the scribe at the meetings.

5 We distributed copies of initial reports to
6 the Santa Fe and Southern Pacific people, and we had a
7 long telephone conference on review of those reports,
8 and in the interest of getting a single report on that
9 meeting out, these notes resulted.

10 Q I don't think that has helped me a great
11 deal. Are you saying that these notes were available as
12 an agenda for the meeting which you attended?

13 A No, they were not. They resulted from the
14 meeting, from the telephone meeting.

15 Q There was no person to person? There was no
16 personal meeting? It was telephone calling?

17 A We had meetings on the topic the week prior.
18 This is some time in early December. There is no date
19 on this that I can see, but it was some time in early
20 December. We had meetings at that time. It was
21 followed up by phone calls, and this was the result of
22 the telephone conference.

23 Q You are suggesting then that we should assume
24 that everything that appears on UP/MP-C-44 is the result
25 of Mr. Wilson's description of your recommendations,

1 yours and Mr. Reyff's recommendations?

2 A Well, the combination of recommendations from
3 Mr. Basanka of the Southern Pacific, Mr. Reyff of the
4 Santa Fe, who were acting for their respective marketing
5 departments, and then myself, funneled through Mr.
6 Wilson.

7 Q If that is the case, then, why would Mr.
8 Wilson be injecting personal comments concerning which
9 railroads should be included and what changes should be
10 made? He does use the term "I." Do you agree with
11 that?

12 A He does interject the word "I."

13 Q Several times.

14 A Yes. We didn't adopt necessarily what he was
15 recommending.

16 Q In fact, I thought you testified yesterday
17 that you did adopt all the charges that were made in
18 this.

19 A No, not all of them.

20 Q Which ones did you not adopt?

21 A Down in Item Number 6, Paragraph 2, he
22 reflects, "I thought a group decision was made not to do
23 this, but I like the idea of the Eastern Railroad
24 participation," and so on. We didn't adopt the Eastern
25 Railroad participation.

1 Q But all the other changes were made?

2 A Yes.

3 Q Now, on Page 1 of this exhibit, there is a
4 note that says "changed label on book as well as cover
5 page." What does that mean?

6 A In the first distribution, we put a title on
7 the book, just so people would know what they are
8 looking at. This is a refinement of the title.

9 Q What was the original title?

10 A I don't recall at this time.

11 Q Let me also ask you, as a result of the
12 telephonic meeting, did you take your own notes, or did
13 you rely on Mr. Wilson to make all the notes that were
14 necessary?

15 A I undoubtedly took notes. I can't imagine
16 that I did not.

17 Q And if you made those notes, would they turn
18 up in the work papers?

19 A If I hadn't destroyed them as a result of
20 receiving this comprehensive one, they would have been
21 in the work papers.

22 Q How many telephone calls do you feel there
23 were that formed the basis of this particular display?

24 A This particular display, I think it was just
25 one long, rather lengthy telephone conference.

1 MR. GREENBERG: Could I ask counsel to provide
2 us with copies of any work papers which would indicate
3 Mr. Liba's notes from that telephone conversation?

4 MR. WILSON: Certainly, we will undertake a
5 search and provide you copies of any additional notes.

6 MR. GREENBERG: In fact, I would like the work
7 papers from all the participants in that telephone
8 conversation. I believe he indicated Mr. Beyff and Mr.
9 Bosanka as well.

10 MR. WILSON: Those work papers, if there are
11 any, of course, have been in the depository for many
12 months. We will just have to go pull those specific
13 pages out of the depository.

14 MR. BLEAKNEY: Would other counsel be served
15 with any response to that request to save us making a
16 separate request for KCS?

17 MR. WILSON: Certainly.

18 JUDGE HOPKINS: Thank you.

19 BY MR. GREENBERG: (Resuming)

20 Q Would you please turn to UP/MP-C-46?

21 Do you have that before you?

22 A Yes, I do.

23 Q The third paragraph, discussing the new
24 system's market share, or at least Mr. Wilson is
25 discussing the new system's market share in his letter

1 to you.

2 A Yes.

3 Q Can you explain what that means?

4 A This is one of the formative letters in the
5 design of just what we were seeking to do in the
6 process. This is prior to the compilation of any of the
7 statistics. It is just setting out the task that we
8 were supposed to accomplish.

9 Q Well, you were supposed to accomplish a task
10 of demonstrating the new system's market share. Now, as
11 I read your Volumes 19 and 20, the titles very
12 specifically say, Unadjusted Prediversion and Adjusted
13 Prediversion.

14 Q Would those show the new system's market
15 share?

16 A It shows the market share in the SFSP Combined
17 column, shows it in 1982 terms. There is an additional
18 volume that is in preparation showing the results of
19 diversions, but it is our understanding from the rules
20 of the Commission that that did not have to be
21 accomplished at this time.

22 Q Let me ask you some questions about that.
23 There is a Volume 3?

24 A There is a Volume 3. You will see references
25 to it in the work papers. Draft copies have been

1 provided to the SFSP. It includes results of the truck
2 rail diversions or rail diversions. However, it is not
3 complete because of the same factors that cause us to
4 adjust SFSP-19 and 20. Those have not been accomplished
5 for the Volume 3. That is the gateway allocations for
6 the TOFC flows.

7 Q What was the purpose of your testimony here?
8 What is the purpose of Volumes 19 and 20? What good
9 does it do this record to have volumes and volumes of
10 testimony and studies that have nothing to do with what
11 the new system's modal share will be?

12 A On the contrary, this shows you exactly what
13 the new system's modal shares would be at the point of
14 merger. Diversions to the new system are not likely to
15 occur within some period of time, so at the instant of
16 merger, this is what it would have been in 1982 terms.

17 So, they do indeed show exactly what the
18 merger would look like at that time.

19 Q I can't understand that at all. I don't see
20 how you can possibly say that. If it doesn't indicate
21 the postdiversion share of these carriers, how can you
22 come on the stand and tell us that this shows that this
23 can tell us anything about modal shares and market
24 power?

25 A We define the share of the Santa Fe. We

1 define the share of the Southern Pacific, and merger
2 guidelines tell you you sum the two. Any diverions that
3 are likely to occur as a result of merger downstream are
4 not considered within the merger guidelines, and in
5 addition are not likely to occur for a protracted period
6 of time.

7 Q When did you first complete Volume 3?

8 MR. WILSON: Objection, counsel. I believe
9 his testimony was Volume 3 is not completed as yet.

10 MR. GREENBERG: That is not what his testimony
11 was. His testimony was that he did do a Volume 3 at the
12 unadjusted level and that he was working on the adjusted
13 level. I believe that is what his testimony was.

14 JUDGE HOPKINS: Why don't we explain what has
15 been done?

16 THE WITNESS: We have provided draft reports
17 of Volume 3 to the Santa Fe-Southern Pacific without the
18 final revisions or adjustments, and those were provided
19 about March 19th or thereabouts.

20 BY MR. GREENBERG: (Resuming)

21 Q They were provided March 19th?

22 A Yes.

23 Q Were they provided at the same time that you
24 provided Volumes 1 and 2?

25 A In several drafts they were. The final copy

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of Volume 3 has not been prepared, though.

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1 Q Why is it that six months after you prepared
2 Volume 3 that it has still not been completed?

3 A It was held in abeyance, awaiting the
4 possibility of getting finer information on specific
5 gateway adjustments for other carriers in the TOFC
6 flows.

7 Those are the hardest ones to correctly
8 identify.

9 Q Why couldn't you just use the same diversion
10 study that you used for your traffic base to prepare
11 Volume 3?

12 A As I indicated, it is not required. For
13 merger guidelines, showing what the downstream result of
14 the merger will be, it is not required.

15 Q So you're telling us that the purpose of your
16 testimony is not to show what the results will be after
17 the merger on competition between railroads?

18 A As I said, there's a time dimension to it. At
19 the instant of merger and for a period thereafter, it
20 will look as we show.

21 Q Who told you not to submit the completed
22 Volume 3?

23 MR. WILSON: Objection, counsel. I think
24 he's testified two or three times now that Volume 3 is
25 not yet completed. Don't worry; you'll get your

1 charge. I think we're probably going to have some
2 rebuttal testimony on this topic.

3 MR. GREENBERG: I'd still like an answer to
4 that question, Your Honor. I don't think that's a
5 proper objection. I asked him a question: Did anyone
6 tell him not to prepare it?

7 THE WITNESS: Our client indicated that it was
8 not necessary to complete that at this time.

9 BY MR. GREENBERG: (Resuming)

10 Q Who was your client?

11 A Santa Fe Industries.

12 Q Who told you specifically?

13 A Mr. Wilson.

14 Q When did he tell you that?

15 A This would have been back in March, near the
16 filing date.

17 Q The last question I have relates to the work
18 paper and errata sheet. I'm not going to ask many
19 substantive questions, but it's something I noticed this
20 morning.

21 Under cover of a letter dated September 20,
22 Mr. Wilson supplied counsel with an errata sheet and
23 some additional work papers. Here is his letter.

24 A Yes.

25 Q Could you identify those work papers?

1 A The work papers that were attached were
2 prepared by Reebie Associates, by our people, to
3 document specifically what was included in the
4 definition of railroads, which gateway allocation
5 factors were used, and then overall flow chart showing
6 the computer processing that was done.

7 Q What did those work papers relate to?

8 A The work papers relate to SFSP-19 and 20.

9 Q When were those work papers first prepared?

10 A They are dated September 21st.

11 Q 1984?

12 A Yes.

13 Q Can you explain how they were prepared the day
14 after they were transmitted?

15 A That I cannot. You can see on the flow
16 charts, the flow charts were dated September 10th.

17 MR. GREENBERG: No further questions, Your
18 Honor.

19 JUDGE HOPKINS: Thank you.

20 Mr. Bleakney.

21 BY MR. BLEAKNEY:

22 Q Good morning, Mr. Lifa. I am Robert
23 Bleakney. I'm counsel for Kansas City Southern, and I
24 have a few questions.

25 A Good morning, sir.

1 Q First, just a general question. Am I right in
2 understanding that you used, for the present testimony,
3 essentially the same traffic data that you used for your
4 earlier diversion testimony? Is that correct?

5 A With the exception of the fact that the
6 regions are different, the gateway allocations were
7 revised and are different. With those two exceptions,
8 yes, it's the same data base.

9 Q I'm going to shift away. That's all I had on
10 that.

11 I think you have UP/MP Exhibit C-44 somewhere
12 handy, because you've already had some questions on it
13 today. First, I gather that as far as item 2 goes, if I
14 understand your cross-examination yesterday, that item
15 summarizes for the most part, the changes you made in
16 your BEA regional compilations prior to filing your
17 testimony; is that correct?

18 A Yes. The first definition of the regions were
19 purely lines on the map and, prior to the C-44 memo or
20 notes, nobody had seen what the flows look like.

21 Q And C-44, I believe you said, was a
22 culmination of meetings among yourselves and the persons
23 you have mentioned already to prior counsel; is that
24 correct?

25 A That's correct.

1 Q Now, representing as I do Kansas City
2 Southern, I have some interest in item 4 or section 4,
3 item 2 on that page.

4 First, just so the record is clear because of
5 the abbreviations, could you read into the record what
6 the first sentence says, as you read it?

7 A This is in item 4, "Changes to International
8 Flow Tables." Item 2, "Other railroad tonnages for New
9 Orleans flows must at least equal Santa Fe's, since ATSE
10 must use KCS to serve New Orleans on CCFC traffic." And
11 then, in parentheses, "(also, ATSE tonnage must be
12 divided by two, based upon the carrier participation
13 rules."

14 Q I see. That latter item means that as far as
15 tonnage jointly handled by Santa Fe and Kansas City
16 Southern, that the tonnage was split between the two for
17 those flows; is that correct?

18 A That's correct.

19 Q Can you also identify for me where these
20 traffic flows would appear in SFSP-20, as revised?

21 A As revised, they do not appear because the
22 only international flows we show are to the Houston
23 area. The New Orleans flows were dropped because we
24 couldn't identify, for other roads than the ones
25 directly involved in the application, the amount of

1 traffic that they were also bringing into the area.

2 Q Now, is this one of the six international
3 flows you said you dropped from the analysis?

4 A That's correct.

5 Q Could you identify for the record what the
6 other five may be?

7 A They were covered in -- if you look at UP-52,
8 you can see the matrix that we had originally started
9 out to compile. We were looking at flows from the Bay
10 Area and Los Angeles into Houston, Dallas, New Orleans,
11 and mid-America, served through essentially Memphis.

12 Q Can you, by pointing to a particular page,
13 identify what flows were removed? Are you saying all
14 the flows on Exhibit UP-52 were omitted from your
15 study?

16 A With the exception of flows between the Port
17 of Los Angeles, Los Angeles-Long Beach in that southern
18 California region, into the Texas Coast region, centered
19 on Houston. All the others were dropped.

20 Q All the others were dropped.

21 Could you, just to help me, point to one of
22 the summary tables and just point to the container flows
23 by numbers of containers, if you will, the ones
24 included, so that I know that all others were dropped --
25 if that's a fair conclusion?

1 A Well, the tonnage of the containers would
2 appear in the international flow tables in the opening
3 pages of SFSP-19 or 20.

4 Q Yes. And those tonnages relate to which
5 containers on UP Exhibit 52?

6 A It's not the clearest display because the
7 figures are still disaggregated, but on the second page
8 there would just be the containers in the
9 Los Angeles-Houston cells.

10 Q You mean the second page being the third page
11 on which there is writing? Is that correct, on this
12 Exhibit 52?

13 A That's correct.

14 Q In the Los Angeles-Houston column, and on that
15 particular page there seem to be three numbers that have
16 not been deleted; correct?

17 A That's correct. Los Angeles -- well, the left
18 column is from Houston to Los Angeles. There were 4,516
19 containers, in addition. I think those would be
20 Southern Pacific. There were 176 containers handled by
21 Sweetwater; 11,229 containers handled directly; that
22 would be Santa Fe, I think.

23 Q And is there a figure I can look at in SFSP-20
24 replacement volume that would show me the tonnages
25 related to those particular containers?

1 A Yes. If you look in the appropriate columns,
2 you can identify the tonnages by railroad.

3 Q And the tonnages for the SFSE there would be
4 directly related to the containers you've identified for
5 me; is that correct?

6 A Subject to checking to make sure they're the
7 correct ones, since there are several pages in here and
8 it was revised. I believe that's it.

9 Q Are you looking at the last page of the
10 exhibit? I'm talking about Exhibit UP-52 for the
11 record.

12 A No, that would not be the correct one either,
13 because that page aggregates them all together and
14 eliminates the modal distinction; not modal, the carrier
15 distinction that we reflected in the table.

16 I think the better representation would be on
17 the third page.

18 Q The one we have been talking about, right?

19 A Yes. I'm fairly certain those are the
20 appropriate ones.

21 Q And do either of those or any of those tonnage
22 figures related to SF and SF on the international pages
23 of Exhibit 20, the replacement volume, involve any joint
24 line traffic where the tonnages may have been split with
25 another railroad?

1 A With the exception of the small amount of
2 container traffic that moved through Sweetwater to the
3 Union Pacific System, no. They're mainly local.

4 Q It would be your view, I take it, that a
5 reasonable representation of the tonnages for the
6 containers shown on the third page of Exhibit UP-52 is
7 found on the international flow pages of replacement
8 volume 20; is that correct?

9 A Yes, sir.

10 Q One further question on Exhibit UP-52. From
11 time to time, there is reference to waterborne --
12 waterborne containers, on the cover page. Are those
13 containers in which there is any rail movement involved
14 at all?

15 A No. Those would be the containers that are
16 handled directly by water through the Panama Canal from
17 Pacific Rim countries. Some of the ships may have
18 stopped at West Coast ports before proceeding through
19 the canal. Others would come direct.

20 Q And a similar question as to SFSP-20, as
21 finally filed. The comparable page, the international
22 page, are the water tonnages similarly related to
23 all-water movement?

24 A That would be the all-water movement. The
25 rail tonnages would be the CCPC service in

1 minilandbridge.

2 Q I see. So there's no split of that tonnage
3 between the rail and water carrier?

4 A No, there is not. Those are two distinctly
5 different portions of that market.

6 Q Now, did I hear you correctly yesterday to
7 indicate that you had some contact with Dr. Baumol
8 concerning your grouping of BEAs into regions?

9 A It was not Dr. Baumol. It was Professor Berry
10 from Princeton, working for -- working for him. He, at
11 a meeting in New York, back in early December I think it
12 was, reviewed the initial reports prior to the C-44
13 memo; looked at the definitions of the regions, said
14 those were acceptable; looked at the trial page layouts
15 we had proposed and said, look, why don't you make it
16 easier for people to read; add this table. That is, the
17 Part 3 totals. It would eliminate someone having to go
18 through all of the pages and do computations.

19 Q Did you make a memorandum of that meeting with
20 Professor Berry?

21 A I would have. It would have been in the
22 instructions to my programmer to make the adjustments.
23 Yes, I did.

24 Q And that memorandum should have been in the
25 work papers?

1 A It should have been; yes.

2 MR. BLEAKNEY: I wonder if counsel could at
3 least give us a reference to that. Could we make that
4 request?

5 MR. WILSON: Okay. We will find specific
6 pages in the work papers and identify for you those
7 specific pages when we find them.

8 JUDGE HOPKINS: Thank you.

9 MR. GREENBERG: Again, that will be for all
10 counsel?

11 JUDGE HOPKINS: For all counsel. Just send a
12 copy to everybody -- all counsel.

13 BY MR. BLEAKNEY: (Resuming)

14 Q Did you also meet with Dr. MacAvoy or one of
15 his representatives?

16 A No, we did not. He received copies of our
17 reports, but we did not meet with him until the time he
18 appeared here.

19 Q And did you have any telephone or written
20 communication with him on this particular subject prior
21 to that time?

22 A No.

23 MR. BLEAKNEY: No further questions.

24 JUDGE HOPKINS: Ms. Kooperstein.

25 BY MS. KOOPERSTEIN:

1 Q I'm Donna Kooperstein from the Department of
2 Justice. All my questions have been asked.

3 I have one question from DoT for you. And
4 this is in regard to the work that you did for IRS. DoT
5 would like to know from where in the BEA did you compute
6 the mileage blocks where trucks were competitive?

7 A That would be on a centroid basis.

8 Q If you could explain that?

9 JUDGE HOPKINS: Explain that for everybody

10 THE WITNESS: The centroid, very simply, would
11 be the center of -- the geographic center of the BEA.

12 BY MS. KOOPERSTEIN: (Resuming)

13 Q How do you determine that?

14 A I think it's a very straightforward mileage
15 calculation. We know the area of all the contiguous
16 counties within the BEA. For a further definition, I
17 would really have to refer back to our work papers.

18 Q Well, if DoT wants that, I assume you will do
19 it.

20 A Yes.

21 MS. KOOPERSTEIN: Thank you.

22 JUDGE HOPKINS: Is that it?

23 MS. KOOPERSTEIN: That's it.

24 JUDGE HOPKINS: Thank you very much.

25 Any redirect?

1 MR. WILSON: I'm afraid so, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. WILSON

4 Q Mr. Liba, Mr. Poach asked you whether Temple,
5 Barker & Sloane looked at the Los Angeles to Texas Coast
6 traffic flow. If, in fact, Temple, Barker & Sloane
7 looked at a flow between BEA 180 and BEA 121 and 122, do
8 you believe that Temple, Barker & Sloane analyzed the
9 market?

10 A As I explained, I think at length yesterday,
11 they have been looking only at a portion of the market
12 because traffic in BEA 180 is subject to a great deal of
13 gathering from adjacent regions. So that the clear
14 answer is no; they would be looking at a portion of the
15 market, and it would take a lot of interpretation to
16 distinguish which portion it was.

17 Q Sir, you were asked many questions about the
18 memo that I wrote, UP-C-44. I have one question on
19 redirect.

20 Referring you to paragraph 2, the changes in
21 the definition of the southwest territory where two BEAs
22 were switched from southwest territory to South Texas
23 territory, what was the effect of redefining the
24 southwest territory as the group decided to do?

25 A In moving the BEAs out of the southwest

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1 territory, it effectively moved tonnage, truck tonnage,
2 cut of that BEA and had the impact of driving up the
3 railroad's apparent share of market.

4 Q There were questions on UP-C-45 which contains
5 some typographical errors. I don't think it's clear on
6 the record. Could you please state what the typos are
7 in UP-C-45, so that the document will be understood?

8 A Again, this was a preliminary document. Line
9 11, South Texas, should read: "123, 127 to 133."

10 Q How should line 12 read?

11 A Line 12 should read: "134, 160, 161, 162."

12 Q Next, Mr. Roach asked two questions about the
13 table on page 35 of the appendix to your verified
14 statement.

15 A Yes.

16 Q What is the context of that table in the
17 paragraph immediately above it?

18 A We prepare for users of Transearch a reference
19 manual, and this is a version of that reference manual.
20 What we were trying to do in the discussion and that
21 table is to indicate to the people who use it in its
22 greatest use, how to apply the data.

23 Most of the use of Transearch is done on a
24 tactical basis. That is, modal competition. And what
25 we were trying to indicate is that if you are looking

1 for available traffic at the five-digit level, it is not
2 as reliable as at higher levels.

3 The publication is general in nature and does
4 not necessarily relate to the use of the data that we
5 have put to SFSP-19 and 20.

6 Q What does the term "relative shares" and
7 "specific shares" in that table mean?

8 A That relates to the amount of truck traffic or
9 the amount of rail traffic that would be in a traffic
10 lane. It doesn't necessarily relate to market shares,
11 however.

12 Q Mr. MacKenzie asked you about two pages from
13 Exhibit IRGW-C-35. Do you have that?

14 A Yes. These were samples of data provided to
15 other users.

16 Q My question has to do with the second and
17 third pages and the reference to the date of May 1983.
18 Can you explain for the record the references to May
19 1983?

20 A Yes. It does not mean that we supplied data
21 to TPS in May of 1983. It meant that the date of the
22 preparation of this report was May 1983. This is a
23 standard report format that we use for different of our
24 clients.

25 The report format was made back when the 1981

1 data base had been finally completed and was ready for
2 use, and this sample page is merely to indicate the type
3 of data that was supplied to them, not the fact that it
4 was done in May of 1983.

5 Q When, to your recollection, was the data
6 supplied to Temple, Barker & Slocane?

7 A That would have been December-January.

8 Q Finally, what is your reference in the second
9 sentence of the DRGW-C-34 that you were asked about by
10 Mr. MacKenzie?

11 A Yes. That is my memo of March 8th. My
12 recollection has been improved. Basically, what we are
13 stating there is that the gateway allocations being
14 applied only to Santa Fe and Southern Pacific flows
15 meant that there were misstatements of the tonnage of
16 the other railroads.

17 And, as a result, the individual railroad
18 flows were misstated in those gateway flows, and the
19 total railroad picture, then, could only be obtained in
20 the total column.

21 Q So is this reference merely to a programming
22 problem at that particular point in time?

23 A Yes.

24 MR. WILSON: That's all the redirect I have.

25 JUDGE HOPKINS: Anything further?

1 THE WITNESS: Can I correct a statement I made
2 on C-45? The correct layout for that page?

3 JUDGE HOPKINS: Go right ahead if there's a
4 mistake.

5 THE WITNESS: I misspoke when I gave my
6 response before. South Texas should be 123, 127 to 132,
7 and 134. And then southwest should be 133, 160, 161,
8 and 162.

9 MR. WILSON: Thank you very much, Mr. Liba.

10 JUDGE HOPKINS: You are excused, sir.

11 MR. KEVIN MAC KENZIE: Your Honor, I wanted to
12 ask Mr. Liba one further question.

13 RE-CROSS EXAMINATION

14 BY MR. KEVIN MAC KENZIE:

15 Q Mr. Liba, could you tell us who improved your
16 recollection with respect to DRCW-C-34?

17 A Basically, there was a lot of anguish on my
18 part after the question was asked, because it appears,
19 on the face of it, to be misleading. When we got back,
20 I discussed it with Mr. Reyff, who had been reviewing in
21 detail the reports that we're sending out.

22 Q Did you discuss it with Mr. Reyff?

23 A Yes.

24 Q Anyone else?

25 A No.

1 JUDGE HOPKINS: Is that all?

2 MR. KEVIN MAC KENZIE: Yes.

3 JUDGE HOPKINS: You're excused.

4 (Witness
5 excused.)

6 MR. WILSON: Your Honor, I move the admission
7 of Mr. Liba's verified statement and also Exhibit
8 SFSP-C-9.

9 JUDGE HOPKINS: Any objection?

10 It will be received into evidence.

11 (The document referred to,
12 previously marked Exhibit
13 SFSP-C-9 for identification,
14 was received in evidence.)

15 MR. BOACH: Move the admission of UP Exhibits
16 44 to 52.

17 JUDGE HOPKINS: Any objection?

18 They will be received.

19 (The documents referred to,
20 previously marked Exhibits
21 UP/MP-C-44 through 52 for
22 identification, were
23 received in evidence.)

24 MR. KEVIN MAC KENZIE: Move the admission of
25 DRGW-34 through 36.

1 JUDGE HOFKINS: Any objection?

2 They will be received.

3 (The documents referred to,
4 previously marked Exhibits
5 DRCW-34 through 36 for
6 identification, were
7 received in evidence.)

8 JUDGE HOFKINS: Call your next witness.

9 MR. WILSON: Your Honor, Applicants call Mr.
10 Randall Beyff, Manager of Transportation Research of the
11 Atchison, Topke & Santa Fe Railroad.
12 Whereupon,

13 RANDALL R. REYFF
14 was recalled to the stand and, having been previously
15 duly sworn by the Administrative Law Judge, was further
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. WILSON:

19 Q Mr. Beyff, in connection with this proceeding,
20 did you prepare a second verified statement which is
21 contained in Volume SFSP-18?

22 A Yes, sir; I did.

23 Q Would you have any corrections or
24 modifications you would like to make to your verified
25 statement?

1 A I've got two minor corrections, one on page 8
2 and one on page 10. On page 8, at the last sentence in
3 the first paragraph on that page, strike the word "more
4 influence over the routing of," and substitute "greater
5 participation in."

6 On page 10, down in the last paragraph on that
7 page, the number 1,252 appears. That should be 1,212.

8 I had no other changes, other than those two.

9 Q Did you participate in the preparation of
10 Volumes SFSP-19 and 20, as filed in March of this year?

11 A Yes.

12 Q Did you also participate in the preparation of
13 Volume 19, in SFSP-19 and 20, as filed with the errata
14 to Applicants' case in August?

15 A Yes, I did.

16 Q Do you have any corrections or modifications
17 you would like to make to either of those?

18 A Of those volumes? No.

19 Q Sir, did you also participate in explanation
20 of the reasoning behind the geographical region
21 definitions which were supplied to Union Pacific,
22 Department of Justice, Kansas City Southern, and others
23 during the discovery phase of this case?

24 A Yes, I did. We were evidently asked by UP/MP
25 to elaborate on our regional definitions. In

1 cross-examination yesterday by Mr. Roach and then again
2 by Mr. Greenberg this morning, it seems some additional
3 questions have been raised with respect to these
4 definitions.

5 And I think it might be clarification on the
6 record, or at least additional explanation of the point
7 if I were to offer our response to UP/MP which sets
8 forth, on about three or four pages here, the rather
9 specific explanation of each of these regions.

10 MR. WILSON: Your Honor, I would like this
11 document to be marked as Exhibit SFSP-C-10.

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

14 (The document referred to
15 was marked Exhibit SFSP-C-10
16 for identification.)

17 BY MR. WILSON: (Resuming)

18 Q Mr. Beyff, with the changes that you made, is
19 your testimony and these exhibits true and correct, to
20 the best of your knowledge and belief?

21 A Yes, sir; it is.

22 Q Sir, I have four more brief questions. First,
23 have you seen UP-C-44 before today?

24 A Certainly.

25 Q Was Mr. Iiba's testimony on that the same as

1 your recollection of the genesis and content of that
2 document?

3 A Yes, sir. I think he stated it well. We had
4 a number of people involved in conference calls, he
5 explained. And what we have here are recommendations,
6 observations, points of view, et cetera, at that point
7 in the developmental process.

8 Q Could you also look at UP-C-46? In that
9 document, whose ideas are being cast?

10 A Essentially, everyone was involved in the
11 process up to that point. This was on December 5th,
12 stated as we thought we understood it at that point, the
13 objectives of the project and our thinking at that point
14 in time of how to proceed with it.

15 Q Sir, what was the reason why Applicants did
16 not submit a Volume 3 that would show post-diversion
17 market shares?

18 A Well, basically, my recollection is that we
19 had received some advice from Dr. MacAvoy, who suggested
20 that the appropriate presentation to make at this point
21 in the proceeding at least was the representation of
22 SFSI-20, where we showed at the point in time of the
23 merger -- maybe I better state that again.

24 We received advice from Dr. MacAvoy that the
25 appropriate presentation to make in SFSI-C-20 and that

1 the relevant presentation to make to the Commission at
2 this point in time was a presentation which described
3 the combined shares of the companies, Santa Fe and
4 Southern Pacific, at the point in time of the merger.
5 And that post-rail and truck diversion shares, which
6 would be the Volume 3 that is being referred to, was not
7 necessary or appropriate at this place in the
8 proceeding.

9 Q Finally, which table did Dr. Baumol's
10 assistant, Professor Berry, suggest adding to the market
11 share?

12 A In both SFSP-19 and 20, on each page in the
13 body of those things, there are four separate tables.
14 The second table on each page has a title which says
15 "Traffic participation percentages of total." It was
16 that table that Dr. Berry suggested would be
17 an appropriate additional illustration to include.

18 MR. WILSON: The witness is available for
19 cross-examination.

20 JUDGE HOPKINS: Who's going to start?

21 CROSS EXAMINATION

22 BY MR. KEVIN MAC KENZIE:

23 Q Mr. Beyff, let me call your attention to page
24 8 of your verified statement.

25 A All right.

1 Q You have changed the last sentence in the
2 first paragraph on page 8; is that correct?

3 A That's correct.

4 Q That sentence formerly read: "Consequently,
5 there is no reason to believe that any one carrier
6 involved in an interline rail movement has any more
7 influence over the routing of the movement than any
8 other carrier involved in the route." Is that correct?

9 A That's right. That's the way it used to
10 read.

11 Q And you now want it to read: "Consequently,
12 there is no reason to believe that any one carrier
13 involved in an interline rail movement has any greater
14 participation in the movement than any other carrier
15 involved in the route." Is that right?

16 A That's right.

17 Q What is the reason for that change?

18 A Well, when I drafted this paragraph back in
19 March, what I had in mind were the kinds of market
20 share, if you will, presentations that had been made in
21 other merger cases and in other government agency
22 reports, things that I had seen in the past which seemed
23 to use a methodology that allocated tonnage or ton
24 miles, or what have you, to originating or terminating
25 carriers and tended not to count or to discount heavily

1 the participation of interline carriers.

2 I've always disagreed with that. I think it
3 has no basis in marketing practice to discount the
4 participation of interline carriers.

5 Now, on reading back through this, prior to
6 coming here, it occurred to me that as we looked at this,
7 this would be a sentence that could be very easily taken
8 out of context and perhaps confused with the objective
9 we were trying to accomplish in the rail traffic
10 diversion study which I had also spoken to earlier in
11 this proceeding.

12 So basically, I want to get attention focused
13 away from this business of discounting interline
14 participation in traffic and accruing all the traffic to
15 originating and/or terminating carriers.

16 Q Is it your view that an origin or destination
17 carrier has the same influence over routing as an
18 overhead carrier?

19 A Well, it depends on where you want to go with
20 it. For the purposes of a rail traffic diversion study,
21 we agree -- and I think most people in this room agree
22 -- that an originating carrier, for instance, has more
23 influence over the routing of traffic and can therefore
24 influence a diversion in the context of a merger study.

25 What we're doing here, SFSP-19 and 20 are

1 simply stating what has happened, rather than what will
2 happen. In other words, it's a snapshot of
3 participation, without trying to get into causative
4 factors for that.

5 For instance, with Denver & Rio Grande
6 Western, if we use terminating/originating carrier
7 criteria, you wouldn't have any market share in your
8 overhead traffic. And I think that your marketing
9 people would like to take credit for some of that.

10 Q Let me ask you this, Mr. Royff. Is the
11 snapshot that you have, is the snapshot that you have
12 referred to intended to demonstrate the market power of
13 the various railroads participating in a movement?

14 A SFSP-19 and 20 try to illustrate participation
15 in markets, as best and appropriately as we can define
16 them. It's simply an illustration of participation.

17 Q A measurement of their market share?

18 A A measurement of -- well, market share, yes,
19 but cautiously using the market share to reflect markets
20 as we've defined them here.

21 Q And based on that measurement of market share,
22 I assume that it is your intent that the Commission draw
23 certain conclusions as to the market power of the
24 various railroads involved or affected by the merger?

25 A I think so. I think you can look at those

F.D. 30400 - 11/2/84 - PGS. - 5173 - 5199

1 tables and infer rather easily that there is little or
2 no market power present on the part of SF or SP, or any
3 other railroad in those tables.

4 Q And that's because in areas where they may be
5 the only rail carrier, you have reduced their tonnage
6 allocation or market share by splitting it up with
7 interline carriers?

8 A With interline carriers, showing also the
9 participation of other modes. I'm not even taking into
10 account other constraining factors which are present in
11 real world markets, as Dr. Baumol, and I think Dr.
12 MacIvoy tried to relate in their testimony.

13 We're trying to make, in other words, a very
14 conservative presentation here, having to stop at some
15 point with illustrations.

16 MR. KEVIN MAC KENZIE: Thank you. No further
17 questions.

18 JUDGE HOPKINS: Who's next?

19 Mr. Kharasch.

20 BY MR. KHARASCH:

21 Q Mr. Reyff, the source data for the columns
22 labeled Santa Fe, Southern Pacific, SF and SP,
23 Burlington Northern, Union Pacific, and Western Carriers
24 in your Exhibit SFSP-19 is, I believe, the traffic base
25 that was used at the outset of your diversion study. Is

1 that correct or not?

2 A That's correct.

3 Q Is it different in any way as to those columns
4 that I've described?

5 A I can't think of how it would be different.
6 It is simply the sorting process described by Mr. Iika,
7 applied to the traffic movement data base which is, as
8 you know, the composition of the ICC waybill sample and
9 the individual merger proponents traffic base samples in
this case.

11 Q You say on page 2 of your statement here that
12 you reviewed the reports to check for completeness and
13 overall content integrity, based on your personal
14 knowledge of rail and other modal regional traffic
15 flows.

16 A Yes, sir; I reviewed it, and several other
17 people were also looking at as well.

18 Q I was just directing your attention to that
19 point.

20 Now, did you check to see that the total
21 figures in the columns we just described appearing in
22 SFSI-19, that is, Santa Fe and Southern Pacific, SF and
23 SP combined, Burlington Northern, Union Pacific and
24 Western Carriers -- did you check to see that those
25 total figures were the same as the total figures

1 appearing in the data base for your diversion study?

2 A I did not make that specific check, no.

3 Q We do not have in this record the totals for
4 the amount of traffic under those categories that I've
5 just recited, as they appeared in the data base used in
6 the diversion study; do we?

7 A It seems to me that you should have the total
8 traffic of any and all of those railroads in the 1982
9 unadjusted data base. I can't tell you exactly where.
10 I assume it's in the tapes or the records of DNS.

11 Q Is it anywhere in this record of this
12 proceeding?

13 A You're specifically referring to somewhere in
14 19 or 20?

15 Q I'm asking you, without reference to 19 and
16 20, is there somewhere in this proceeding any total of
17 the traffic by carriers that was included in the 1982
18 data base?

19 A Unless I am missing your point, I guess I just
20 have to repeat my earlier answer. I think probably that
21 in the DNS material, there is -- you can determine
22 that. I don't recall seeing, although there may have
23 been, a table or a compilation or something that said
24 Burlington total tonnage, Santa Fe total tonnage, et
25 cetera, was X, Y, or Z. But I don't recall seeing

1 that.

2 MR. WILSON: Perhaps, are you discussing
3 whether -- how many sample movements there were from
4 each railroad? Is that the question?

5 MR. KHARASCH: No. I'm talking about
6 tonnage. I think the questions have been asked and
7 answered to my satisfaction so far.

8 MR. WILSON: Okay.

9 BY MR. KHARASCH: (Resuming)

10 Q Now, Mr. Beyff, what I am asking you
11 specifically is, in the material, including your
12 material -- and, if you know, in Mr. Swain's or Mr.
13 Guerin's material, or of any of the exhibits put in,
14 describing the diversion study -- are there any figures
15 for total traffic flows in terms of tonnage handled by
16 Santa Fe, Southern Pacific, SF and SP, Burlington
17 Northern, Union Pacific, and Western Carriers in 1982?

18 A What comes to my mind most clearly is the DNS
19 summary reports at the base case iteration and at the
20 post-SESE iteration, which showed, I think, cars,
21 tonnage, revenue ton miles, revenue and so forth, and
22 what I refer to as revenue charge report.

23 I don't recall seeing, although there may have
24 been, I just can't recollect a pre-adjusted base case
25 version of that. That just simply --

1 Q That's what I'm asking you. Did you start --
2 is there any place in the record prior to today, let's
3 say, any statement of what tonnage was handled by the
4 railroads in the pre-adjustments, the base data for 1982
5 that was massaged in the diversion study?

6 A I guess I don't recall seeing it.

7 Q I do not either. And I'm just trying to
8 confirm that.

9 All right. Now, if we look at Volume SFSP-19
10 in its uncorrected form before it was replaced, there
11 was at the end, at page 314, a table that said "Total
12 All Regions, Total All Regions," and that contained,
13 again, the railroad tonnages carried.

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1 A Yes, I see that.

2 Q Now, that table, such a total for everything,
3 does not appear in the replacement volume for SFSP-19.

4 A No, it doesn't.

5 Q Why not?

6 A Well, in the first place, this table is a
7 little bit misleading. Total-all regions to total-all
8 regions is not the total of all the tonnage of all the
9 carriers there. This is the total of all of the regions
10 which were displayed in the preceding 300 and some odd
11 pages.

12 Q Why does such a table not appear in
13 replacement volume SFSP-19?

14 A In my view it doesn't add anything to it. The
15 table doesn't tell you anything.

16 Q I didn't ask you for your view of what the
17 table tells you. I asked you why it does not appear.

18 MR. WILSON: Objection. Asked and answered.
19 He just told you why it didn't appear.

20 THE WITNESS: In my view it's not relevant and
21 that's why we didn't put it in. We said don't put it
22 in. I said don't put it in.

23 BY MR. KHARASCH: (Resuming)

24 Q Oh, you are the person who said don't put it
25 in?

1 A Right. It makes no sense to put it in.

2 Q The answer to my question specifically is the
3 table doesn't appear because you said don't put it in?

4 A That's right. It adds nothing.

5 Q Okay. While you are looking at this
6 uncorrected SFSP-19 -- do you have a copy of that?

7 A Yes, sir.

8 Q Look at page 314. You see there figures for
9 total rail traffic?

10 A Yes, total rail traffic.

11 Q And I'm now looking at Exhibit NP-C-49, sir.
12 Do you have that exhibit up there?

13 A I'm not sure I have that one.

14 (Pause.)

15 Q It seems to have two sides. Turn it over,
16 would you?

17 A Yes, now I have it.

18 Q It says "change total rail to equal the total
19 of SF and SP and BN and UP and western carriers." Are
20 you familiar with a rerun of this market share report
21 exhibit that involves such a change?

22 A Well, there were several reruns. I can't
23 relate this to any one particular rerun.

24 Q Well, was there a separate place that total
25 rail traffic could be obtained? That is, a separate

1 source for total rail traffic, so the total rail traffic
2 would not be the sum of the Santa Fe, Southern Pacific,
3 Burlington Northern, Union Pacific and western
4 carriers?

5 Is that a clear statement to you? Why is it
6 necessary to change the total to equal the sum of its
7 parts, unless you had another source for the total
8 figure?

9 A I think what is being reflected here -- and I
10 believe Mr. Iiba touched on this at some point in his
11 cross-examination. We were attempting to -- we had a
12 lot of tonnage in there. We had some tonnage from Class
13 II and Class III carriers, some of which was local. And
14 at least at this point in the process, we were trying to
15 take that tonnage out so as to not distort the picture
16 as between the major Class I carriers that we have
17 identified.

18 That is about all I can relate this to, quite
19 frankly.

20 Q Well, if I am understanding your testimony, it
21 is the diversion study tapes that were the source of the
22 figures appearing in SFSP-19?

23 A That's correct.

24 Q And what I don't understand from your last
25 answer is, why is it necessary to change the total for

1 rail to equal the sum of the preceding columns, since in
2 the treatment carriers, Mr. Liba has explained, they
3 were hooked onto the carriers they connected with?

4 A There are some Class II or perhaps Class III
5 carriers, particularly over in Louisiana-Arkansas, that
6 have a pretty fair amount of local tonnage. And I think
7 that my recollection is we were trying to not get that
8 in, but somehow have this data confused in some way.

9 Not all the tonnage that a Class II or Class
10 III carrier has interchanges with a Class I carrier. It
11 depends on the carrier and, as I said, there are several
12 down there, I think the DeQueen & Eastern and MD&N and
13 so forth, have a fair amount of local business.

14 Q So in the table, let's talk about SFSP-19.
15 There is some traffic that appeared in the 1982 data
16 base used for the diversion study that has been dropped
17 from these tables, is that right? That is local traffic
18 on Class II carriers?

19 A That would be part of it. And then, of
20 course, you have in the rail traffic diversion study, in
21 that data base, you have traffic describing Burlington
22 Northern local movements from St. Paul to Seattle, which
23 are not relevant to what we're doing here either. So
24 that tonnage isn't there, which is why this summary
25 table of total-all regions, all regions, doesn't make

1 any sense or add anything.

2 Q Let's not confuse two points. Part of the
3 material in the data base dealing with traffic flows
4 from point to point, a certain BFA to another BFA, was
5 excluded in assembling the table.

6 A That's right.

7 Q That is, the table just doesn't include that
8 data.

9 A That's right.

10 Q Then is there another class of data that were
11 not included and that appears to be systematically,
12 whatever region, those would be what, Class II and Class
13 III railroad local traffic?

14 A Yes, that would be most of it, I believe. I
15 can't think of any other exclusions, any other
16 exclusions that go to this point. I honestly can't.

17 Q Okay. Now, SFSP-20 consists of data that were
18 produced after the fourth iteration of the diversion
19 model?

20 A That's right.

21 Q I have the same questions as before, on the
22 prior two iterations of 1982 traffic. Did you make any
23 check to see that the total tonnage being reported by
24 the 1982, your fourth iteration as a result of your
25 diversion study, was the total tonnage being handled by

1 Reelie Associates?

2 A No, not a specific check. I believe Reelie
3 had added checks in their program to see that tonnage
4 wasn't somehow disappearing into thin air. But I did
5 not make such a specific check myself.

6 Q Did you ever make a check to see that tonnage
7 had not disappeared between the 1982 data base and the
8 results after the fourth iteration?

9 A Yes, I believe so. I think Mr. Swain in his
10 testimony went into a great amount of detail describing
11 the records checks and so forth that they had.

12 Q He described no such checks. Did you do any
13 such checks?

14 A No, I don't run DNS' computer. I didn't do
15 such a check.

16 Q Did you apply your knowledge, as you say you
17 did to these tables, to checking that to be sure no
18 traffic was lost?

19 A Well, we reviewed the traffic diversion study
20 output, trying to relate it to diversion judgments, not
21 to check for gain or loss of tons.

22 Q The reason there is no total figures in
23 revised SFSP-40 is again that you directed that no
24 totals should be provided for the revised run?

25 A You mean SFSP-20?

1 Q 20. I'm sorry.

2 A Right. As I explained before, that's not a
3 table that adds anything or makes any particular sense.

4 Q Now, at as late a date as March 8, 1984, which
5 is 13 days, I think, before the application was filed by
6 these Applicants, Messrs. Beebe were diligently
7 preparing, as they always had planned to prepare, three
8 volumes of testimony: SFSP-19, SFSP-20, and a third
9 volume that would show traffic shares after the SFSP
10 iteration of your diversion study, right?

11 A Yes, sir, that's correct.

12 Q As late as March 9. And they ran something,
13 apparently, at least in preliminary form. When was
14 that?

15 A Well, about that same time.

16 Q Then according to your oral testimony this
17 morning on direct: "We received advice from Professor
18 MacAvoy about an appropriate presentation." Do you
19 recall that testimony?

20 A Yes, sir.

21 Q Who was the "we" that received the advice?

22 A Those of us working on --

23 Q Give me the names, please.

24 A Well, myself, Mr. Wilson, Mr. Liba indirectly,
25 Mr. Bosanka.

1 Q Who talked to Professor MacAvoy?

2 A I believe -- I'm not certain on this. I want
3 to say Mr. Weicher.

4 Q One of counsel?

5 A Yes, Santa Fe counsel.

6 Q Did you talk to Professor MacAvoy?

7 A No, I didn't.

8 Q Do you know what Professor MacAvoy said, then,
9 other than what was reported to you?

10 A No. I just know what was reported to me and
11 how we acted on it.

12 Q When did you hear of the conversation with
13 Professor MacAvoy?

14 A Some time prior to filing the application. I
15 don't recall the date. We were working weekends and
16 weekdays as well. Time kind of ran together.

17 Q Look at the verification page of your
18 statement, would you, please. What date did you swear?
19 I can't read the figure.

20 A It looks to me to be March 18th.

21 Q 18th?

22 A I believe that's correct.

23 Q All right. Some time in the ten-day when the
24 third volume was being briskly prepared, you received,
25 as far as you know, news that there had been a

1 conversation with Professor MacAvoy?

2 A Yes, sir, that's right.

3 Q And you don't know how soon or late in the
4 ten-day period between the 8th of March and the 18th?

5 A No, I honestly don't.

6 Q In your statement you say such things as, "I
7 was responsible for defining the geographic boundaries,"
8 or "I directed that the allocation process exclude Class
9 II, Class III, or switching railroads." Such language
10 is used.

11 Did you direct that volume three be dropped
12 here?

13 A Well, it didn't seem -- no, I guess -- I
14 didn't specifically direct that it be dropped. It
15 seemed clear from Professor MacAvoy, at least through
16 counsel, that it wasn't -- it didn't add anything at
17 this point in the case.

18 Q What it would have added to the case is: one,
19 a picture of what your diversion model would have
20 predicted the modal shares and the share of the
21 Applicants would be.

22 A That's right, and I understand it will in fact
23 be coming along.

24 Q Also, it would have for the first time, would
25 it not, Mr. Beyff, volume three for the first time,

1 would have told us at least something about what lay
2 behind the total diversion figures that you provided for
3 each railroad as a result of the SFSP merger?

4 A I guess I don't really understand the
5 question.

6 Q Perhaps it is ill put. Let me reput it,
7 then.

8 In the diversion study as you have presented
9 it so far in the record, you have shown that so many
10 million dollars would be diverted from a particular
11 railroad by the SFSP study. That is not broken down by
12 any particular flow of traffic or region of traffic. It
13 only shows UP \$100 million. Is that right?

14 A That's correct. We didn't make a traffic flow
15 summary.

16 Q But if you add SFSP-21, the third volume of
17 the study that was coming along as early as ten days
18 before the application, that would have given some
19 little information at least about the regional -- the
20 regions or the point to point places where the diversion
21 was coming from, would it not?

22 A Well, it would have related the diversion
23 study not only from rail, but from truck, and cast it in
24 the same format we presented in 19 and 20. You would
25 have seen the sum of the diversion studies in that

1 context.

2 Q Was there anything wrong with the data in this
3 third volume?

4 A In that point in time, as we subsequently
5 discovered -- well, yes. The answer to the question is
6 yes, there was. The allocation over gateways that Mr.
7 Liba described was done erroneously or inappropriately,
8 I guess, in that case as well as the other two.

9 Q How long did it take you to correct the
10 erroneous allocation of gateway traffic for SFSP-20?

11 A Well, the errata was filed when it was filed.
12 I don't recall. The production of these volumes was
13 some time prior to that, during the summertime.

14 Q How long did it take to make that correction?

15 A Well, I'm not sure I can express it in days.
16 It took maybe two months, two or three months, but it
17 wasn't two months of constant work. When we filed the
18 application, I think we all turned away from that
19 immediate step and went into trying to deal with
20 discovery and setting up the depository and all of
21 that.

22 Q Is it correct that up to today you have or
23 have not seen to it that volume three is also
24 corrected?

25 A I have not yet reviewed the final volume

1 three, or what we hope will be the final volume three.
2 So I can't verify that it's correct as yet.

3 Q I think you didn't answer quite my question.
4 You said you have not reviewed the final volume three.
5 Does it exist in a form for you to review?

6 A No, I haven't seen it yet.

7 Q In the previous prints of volume three, did
8 anyone check to see that the data presented in volume
9 three were consistent with the data in volume two?

10 A Yes. As we went along, we tried to check them
11 both internally and to one another to see if the charges
12 that were being reflected made sense.

13 Q And did those checks involve any check,
14 control checks about the amount of tonnage?

15 A No. The checks I'm referring to would be my
16 scan of the data, simply looking through these pages.
17 What checks Mr. Liba did or has done I can't speak to.

18 Q If we go from SFSP-19 to SFSP-20, and we're
19 going from one region to another region, the volume of
20 traffic moving within that region should not change
21 merely because you had performed the first four of your
22 iterations?

23 A No. I believe -- I can't think of any areas
24 where it does change.

25 Q It should not change. If there were this

1 volume three which has been prepared but isn't here yet,
2 then the volume of traffic should not change?

3 A That's correct. That would be one of the
4 first things we would look at to see, if there should
5 be, if there is an inconsistency there, if it's
6 something other than a rounding error or whatever. But
7 basically it shouldn't change.

8 Q In your statement you state to largely
9 disaggregated details, BEA to BEA movements, would be
10 unduly detailed and cumbersome. Do you recall that
11 testimony?

12 A Yes.

13 Q Page 4.

14 Did you have the ability, if a question were
15 asked about a particular BEA, to provide the traffic
16 flows from that BEA?

17 A If a question were asked about a specific BEA,
18 it sounds to me like that falls back into what I would
19 describe as an ordinary Transearch report. I'm
20 confident Mr. Liba could provide such a thing.

21 Q Now, I'm asking you -- let's look at the data
22 that appear in SFSP-19. That is actual 1982 traffic
23 flowing according to your data base for your diversion
24 study, right?

25 A Right, that's correct.

1 Q Now, the BEA's are aggregated?

2 A In many cases they are.

3 Q Well, in all cases they are. The regions are
4 larger than a single BEA, aren't they?

5 A With the exception of the Central Valley of
6 California.

7 Q Thank you.

8 My question is is it possible to have provided
9 the figures for a specific BEA from the data that were
10 being massaged to make SVSP-19?

11 A I guess it would have been possible to do it
12 if we thought it spoke to any particularly relevant
13 point.

14 Q The answer is it would have been possible?

15 A I can't think of why it would be impossible.

16 Q All right. And did you receive -- to your
17 knowledge, did anyone receive a request from any of the
18 various consultants hired by SFSP in this proceeding, a
19 request to please provide the modal shares for BEA 139?

20 A I honestly can't tell you what the other
21 consultants asked Mr. Liba to provide, other than what
22 he's explained here in the last couple of days.

23 Q How about traffic to Mexico? Did anyone ask
24 for that?

25 A I don't know if anyone asked for it.

1 Q Did you ever look at the modal shares from
2 southwest Kansas, BEA 139?

3 A No, not 139 distinctly or discretely or by
4 itself.

5 Q The interline traffic treatment in this table,
6 these Tables 19 and 20, is a 50-50 split if there are
7 two lines, or a third each if there are three lines?

8 A Yes.

9 Q With the refinement about the Class II
10 railroads.

11 A If we're speaking about western railroads,
12 that's true.

13 Q Is it not true that in your diversion matrices
14 in the iterations you gave greater weight in computing a
15 diversion to the railroad serving the origin than the
16 destination?

17 A That's right.

18 Q For example, if you had an exclusive origin
19 didn't you give a 1.34 multiplier?

20 A Yes, there was a multiplier like that.

21 Q And you only got half of that, 1.17, if you
22 served the destination?

23 A Well, you're referring to that long list of
24 multipliers. I don't recall what they all are, but the
25 thrust of your point is correct. The origin carrier was

1 accorded more influence over the potential to divert the
2 traffic if that became relevant.

3 Q And such diversions have been calculated four
4 times by your methodology, your diversion methodology,
5 in order to appear in SFSP-20?

6 A That's right.

7 Q But then, instead of following, if you permit,
8 that same methodology to just split the traffic 50-50 or
9 one-third/one-third/one-third --

10 A Right, there's no relationship between the two
11 things. In one case we were trying to relate causative
12 factors that we think will influence a shipper's routing
13 decision. In this case here we are simply saying, after
14 all that is done, or in 19 before any of it is done,
15 here is participation in the traffic, adjusted of course
16 by tonnage that is diverted as appropriate in each of
17 the base case iterations.

18 Q Incidentally, was your interline tonnage
19 division such that if a carrier was just a delivering
20 carrier, the delivering carrier showed one mile, for
21 example, would they get their share for one mile?

22 A I believe that would be correct. I think the
23 one mile you referred to in many cases is in an area
24 where you're not really looking at one mile. You're
25 looking at a delivering carrier making deliveries, say,

1 within the area of Dallas or Houston or something, which
2 because of the DNS network construction could certainly
3 be more than one mile.

4 JUDGE HOPKINS: Mr. Kharasch, do you have much
5 more?

6 MR. KHARASCH: I'm almost done.

7 JUDGE HOPKINS: If you're almost through, I'll
8 wait until you're through.

9 BY MR. KHARASCH: (Resuming)

10 Q Mr. Reyff, in your work papers are there any
11 of your notes concerning the future of volume three or
12 your notes about what should be done in redefining the
13 big area groupings, either of those subjects?

14 A I quite frankly can't tell you what's in the
15 file of my work papers. I can't tell you if there are
16 or are not.

17 Q Let's finish up with a few questions about the
18 lines of authority in the SHSP working group. You had
19 the authority to direct that the allocation process
20 exclude Class II or Class III or switching railroads?

21 A Yes, I was assigned the responsibility to make
22 the final decision.

23 Q Assigned by who?

24 A The merger coordinators.

25 Q Who were the merger coordinators?

1 A For our side, Mr. Champion was a coordinator.
2 I believe Mr. Wilson was a coordinator. Mr. Stephenson
3 may be a coordinator on the other side. This was just a
4 general responsibility to focus who could make the final
5 decision with respect to these details of what have come
6 to be SFSP-19 and 20.

7 Q And you had the final responsibility for
8 directing how the BFA's should be lumped?

9 A Yes, after incorporating my own views and
10 anyone else who had an opinion.

11 Q You had the power to direct that. And the
12 power to cut off the presentation of volume three of the
13 study, which would be the third follow-on volume showing
14 the effects of the merger on market share, the SFSP
15 merger, the power to cut that off was whose?

16 A I'm not really certain. Given Dr. MacAvoy's
17 as it was related to me, I couldn't think of any reason
18 why I would argue with the man. I don't recall saying,
19 don't submit volume three, or some specific thing like
20 that.

21 Q Do you know who did tell Mr. Liba not to
22 submit volume three?

23 A I guess someone from Santa Fe Industries. Mr.
24 Wilson, Mr. Nelson, somebody. I don't honestly know.
25 It seemed clear that there was no point in submitting

1 it, based on this man's advice.

2 Q All right. Then finish up just by telling us
3 precisely who told you and precisely what he said Dr.
4 MacAvoy's advice was?

5 A I think as I indicated before -- well, I
6 believe Mr. Weicher had talked to Dr. MacAvoy. He was
7 working with him at the time, and as I recall a
8 conversation came up as we were all at lunch talking
9 about the project, and Mr. Weicher related his advice
10 from Dr. MacAvoy.

11 I'm sorry, I may not have responded to your
12 question.

13 Q You didn't exactly.

14 Then it would be Mr. Weicher who told you
15 about his conversation with Dr. MacAvoy?

16 A Well, at a table of about eight or nine
17 people, Mr. Weicher was the one who had been talking
18 with Dr. MacAvoy. He may not have been the only one.

19 Q And he said what, that Dr. MacAvoy had said
20 what?

21 A Well, just to describe it generally --

22 Q Be as precise as you can.

23 A I'm being as precise as I can, because this
24 was the nature of the conversation: that the proper
25 presentation to be made in the direct case here was the

1 presentation of the combined companies' pre-diversion
2 market shares, that is to say the sum of Santa Fe and
3 Southern Pacific which appears in these tables.

4 MR. KHARASCH: That's all.

5 JUDGE HOPKINS: Off the record a minute.

6 (Discussion off the record.)

7 REDIRECT EXAMINATION

8 BY MR. WILSON:

9 Q You were asked some questions by, I think, Mr.
10 Kharasch about the idea at some point in time, which is
11 set forth in UP-49, to revise the display and only show
12 the total rail tonnage of Class I rail carriers, instead
13 of showing the total rail tonnage of all rail carriers.
14 And my question to you about that point is, do you
15 recall whether this idea was ever put into place or,
16 alternatively, whether the volumes that are submitted in
17 SFSP-19 and 20 do contain the local traffic for Class II
18 and Class III railroads?

19 A My recollection from looking at some of these
20 tables is that there may still be some of that tonnage
21 there, but I can't state that for certain.

22 Q You were also asked a question as to whether
23 you looked separately at modal shares from only BEA 139,
24 which Mr. Kharasch directed your attention to. Why was
25 it that you did not look separately at modal shares from

1 this single BEA?

2 A It doesn't in any way constitute anything
3 approaching a distinct market, a distinct geographical
4 market. It was just not relevant to look at in those
5 terms.

6 MR. WILSON: Thank you.

7 MR. KHARASCH: I have a question on redirect.

8 REDIRECT EXAMINATION

9 BY MR. KHARASCH:

10 Q When then did Santa Fe-Southern Pacific spend
11 a lot of money hiring a consultant who made a special
12 study of BEA 139?

13 A I think we were trying to develop a
14 complementary presentation. I think if you read SFSI-19
15 and 20 you get a rather broad overview and there are
16 some rather clear inferences that can be drawn. My
17 impression of the TBS study was that it was more of a
18 micro view within those broader areas to see if anything
19 of substance changed when you took a closer look.

20 Q And if I'm understanding you, TBS never had
21 the benefit of your micro view figures for the BEA that
22 they were studying in southwest Kansas?

23 A I don't know what they had the benefit of. It
24 was their study.

25 JUDGE HOPKINS: Is that it?

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MR. KHARASCH: That's enough.

JUDGE HOPKINS: You're excused.

(Witness excused.)

MR. WILSON: I move the admission of Mr. Reyff's verified statement and SFSP-C-10.

JUDGE HOPKINS: Any objection?

(No response.)

JUDGE HOPKINS: It will be received in evidence.

(The document previously marked Exhibit No. SFSP-C-10 for identification was received in evidence.)

JUDGE HOPKINS: Off the record a minute.

(Discussion off the record.)

JUDGE HOPKINS: We'll be in recess until January 7th.

(Whereupon, at 10:50 a.m., the hearing in the above-entitled matter was recessed, to reconvene on Monday, January 7, 1985.)

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