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BEFORE THE
INTERSTATE COMMERCE COMMISSION

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

Hearing Room A
12th & Constitution, N.W.
Washington, D.C.
Monday, January 7, 1984

The hearing in the above-entitled matter was
convened, pursuant to notice, at 9:30 a.m.

BEFORE:
JAMES E. HOPKINS,
Administrative Law Judge

0004 0000

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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Harold Gastler				
By Mr. Kharasch	5212			
By Mr. Svolos		5215		
By Ms. Reed		5342		
By Mr. Kharasch			5348	
Harry T. Dimmerman				
By Mr. Greenberg	5351			
By Mr. Smith		5353		
By Ms. Reed		5418		
By Mr. Greenberg			5425	

E X H I B I T S

<u>Exhibit No.</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
SFSP-C-11	5238	5350
SFSP-C-12	5250	5350
SFSP-C-13	5290	5350
SFSP-C-14	5302	5350
SFSP-C-15	5303	5350
SFSP-C-16	5312	5350
SFSP-C-17	5321	5350
SFSP-C-18	5324	5350
SFSP-C-19	5360	5428
SFSP-C-20	5384	

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P R O C E E D I N G S

1
2 JUDGE HOPKINS: Let's get on the record. This
3 is the second stage of Finance Docket No. 30400 and
4 related dockets.

5 I might as well take the appearances. There's
6 no need to list the appearances of everybody that's
7 handling this proceeding, just the appearances -- I want
8 the appearances of those that are here today. That's
9 all we need right now.

10 Who appears for the Applicants?

11 MR. SVOLOS: Gus Svolos for the Santa Fe.

12 MR. NELSON: Milton P. Nelson, Jr.

13 MR. KNOWLTON: R.K. Knowlton for the
14 Applicants.

15 MR. SMITH: Michael A. Smith for Applicants.

16 MR. STEPHENSON: Douglas E. Stephenson for
17 Applicants.

18 MR. BLAZAK: Mike Blazak for Applicants.

19 MR. MOATES: Paul Moates for Applicants.

20 MR. WILSON: Dennis Wilson for Applicants.

21 JUDGE HOPKINS: Who appears for the
22 Protestants and Intervenors?

23 MR. KHARASCH: Robert M. Kharasch for MKT.

24 MS. MAHON: Kathleen Mahon for MKT.

25 MR. ROOPER: Michael Roper for MKT.

1 MR. GREENBERG: Ed Greenberg for MKT.

2 MR. PRIESING: Mark Priesing for MKT.

3 MR. ROACH: Arvid Roach and Bill Livingston
4 also, for Union Pacific.

5 MR. PRETTYMAN: E. Barrett Prettyman and
6 Thomas Leary for the Rio Grande.

7 MS. DE SANTI: Susan De Santi for the Rio
8 Grande.

9 MS. AUERBACH: Joseph Auerbach, Morris Baker,
10 and Robert Drelling for Kansas City Southern.

11 JUDGE HOPKINS: Thank you.

12 Any other appearances?

13 MR. WHITE: Charles White for Texas Mexican.

14 MR. EVANS: William C. Evans, Chicago
15 Northwestern.

16 MR. HYMSON: Edward Hymson representing
17 Conrail.

18 MR. MacDOUGALL: Gordon MacDougall for
19 Simmons.

20 JUDGE HOPKINS: Any other appearances today?

21 MS. MADIGAN: Kimberley Madigan and John
22 Delaney for the Railway Labor Executives Association.

23 MS. REED: Mary Reed for the U.S. Department
24 of Transportation.

25 MS. KOOPERSTEIN: Donna Kooperstein for the

1 Department of Justice.

2 JUDGE HOPKINS: Have we reached everybody
3 now? Any preliminary matters?

4 MR. MOATES: Yes, Your Honor. Your Honor,
5 Applicants, pursuant to your order, have circulated to
6 the active parties of record a list of the witnesses for
7 this phase. This list is our best attempt at a
8 compilation of cross-examination length estimates that
9 include those of Applicants as well as the Department of
10 Justice and Transportation, and witnesses appear in the
11 order in which the party sponsoring has indicated to
12 Applicants they intend to present the witnesses.

13 Since this letter was circulated on December
14 31, Applicants have continued the process of trying to
15 review the basis for cross-examination length and we're
16 prepared to announce this morning a few changes to the
17 schedule which may be of interest to the parties.

18 First of all, we have already informed counsel
19 for HKT that witness LaGrone, L-a-G-r-o-n-e, who appears
20 as number 8 and 16 on the Katy list has been dropped.
21 In addition, witness Hacker, who is witness number 18
22 for the Katy, has been dropped.

23 Applicants are also prepared at this time --

24 MR. KHARASCH: Excuse me. Dropped by the
25 Applicant, but not by ELEA?

1 MR. MOATES: Yes, I'm sorry. Dropped by the
2 Applicant, but not by BLEA.

3 At this time Applicants are also prepared to
4 announce their dropping of their call for
5 cross-examination of several of the labor witnesses who
6 appear on pages 5 and 6 of our December 31 letter. In
7 particular, witness Hirst, H-i-r-s-t, with the BLE, we
8 now drop.

9 Witness Simmons, since Mr. MacDougall is here,
10 of the Illinois UTU, we drop. And the six witnesses for
11 BLEA who appear on page 6 of our letter we also drop.

12 I don't know whether counsel is here, but he
13 is being notified by telephone this morning, witness
14 Hewlett of Arizona Electric Power Cooperative we are
15 also dropping.

16 JUDGE HOPKINS: Thank you.

17 MR. MOATES: We will continue to review this
18 list as we go on and we are hopeful that we may have
19 some additional deletions.

20 JUDGE HOPKINS: Keep up the good work, Mr.
21 Moates.

22 MR. MOATES: Thank you, Your Honor.

23 Another preliminary matter if I may, Your
24 Honor. This falls simply in the nature of
25 clarification. We will be having a number of counsel's

1 exhibits to utilize with witnesses in this phase of the
2 case. May we assume and would Your Honor rule at this
3 point that these exhibits would be received in all of
4 the consolidated dockets, so that we don't need to go
5 through the formality each time of moving them into the
6 main docket as well as the trackage rights sub-dockets?

7 JUDGE HOPKINS: No, it is clear that it should
8 be, if it is admitted in one, it is admitted in all. We
9 don't need to go through all of that. Thank you.

10 Any other preliminary matter?

11 MR. HYMSON: Your Honor, several of the
12 parties whose witnesses will be called would appreciate
13 it very much if we could at least set a tentative week
14 in which they can be expected to occur. Specifically,
15 Conrail's witnesses, who should come up, by my best
16 estimate, some time around the week of the 28th, have
17 other scheduling, other conflicts, and I'd like to, if
18 we could, narrow it down to a week that we could try to
19 keep clear so that they will be available, if that's
20 possible.

21 JUDGE HOPKINS: Mr. Moates.

22 MR. MOATES: Your Honor, we have no objection
23 to working with counsel for other parties to set a date
24 certain if you so desire. As you know, we have agreed
25 with certain of the other railroad Applicants to

1 preserve certain dates, for example the 22nd for Mr.
2 Kenefick of the Union Pacific and the 25th for Union
3 Pacific shipper witnesses.

4 If it's understood that by making the kind of
5 commitment Mr. Hymson is talking about we might
6 interrupt one of the trackage rights cases, we can do
7 that. That's my only concern about a date certain.

8 JUDGE HOPKINS: One of the problems is, too,
9 if by any luck we move along faster than is expected, I
10 would expect the parties to be ready to proceed. You
11 would be notified ahead of time anyway. I think we can
12 work that out.

13 Normally it would be scheduled in the last
14 week of the hearing probably anyway that week of the
15 28th, wouldn't it?

16 MR. MOATES: That's what it looks like.

17 MR. HYMSON: Your Honor, specifically, two of
18 my witnesses have a scheduling conflict on the 22nd and
19 the 23rd of the preceding week, and it's right in that
20 area that it would fall. That was my main concern.

21 JUDGE HOPKINS: I think they have scheduled
22 witnesses, scheduled for those days anyway; don't you,
23 Mr. Moates?

24 MR. MOATES: As I say, we have Mr. Kenefick
25 promised on the 22nd, and we would anticipate the Union

1 Pacific's witnesses would be on then.

2 JUDGE HOPKINS: It doesn't appear like there
3 would be any conflict at this time. But you know, I
4 think I would keep in touch. If you want to leave -- if
5 any of the counsel that aren't going to participate at
6 the present time want to leave, I am perfectly willing
7 to excuse you at any time you want to go.

8 Anything further?

9 (No response.)

10 JUDGE HOPKINS: Mr. Kharasch, do you want to
11 call your first witness?

12 MR. KHARASCH: Mr. Gastler, please.

13 (Witness sworn.)

14 Whereupon,

15 HAROLD GASTLER
16 was called as a witness by counsel for the
17 Missouri-Kansas-Texas Railroad and, having been first
18 duly sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. KHARASCH:

21 Q Mr. Gastler, please let us have your name and
22 your business address and your position.

23 A My name is Harold Gastler. My business
24 address is 701 Commerce, Dallas, Texas. My present
25 position is president and chief operating officer of the

1 MKT Railroad System.

2 Q Mr. Gastler, let's look at your verified
3 statement in opposition, which appears in volume MKT-27
4 of material already submitted in this case. Is that
5 your statement?

6 A Yes, it is.

7 Q Is it true and correct to the best of your
8 knowledge and belief, and do you adopt it as your
9 testimony in this case?

10 A Yes, I do.

11 MR. KHARASCH: There are no corrections to
12 this statement, Your Honor. Mr. Gastler has a second
13 statement, but we will take this statement first and Mr.
14 Gastler is submitted for cross-examination on this
15 statement.

16 JUDGE HOPKINS: Thank you.

17 Who's going to cross-examine?

18 MR. SVOLOS: Your Honor, I am going to
19 cross-examine.

20 I hadn't planned to follow any particular
21 sequence related to the questions. Most of my questions
22 are going to relate to MKT-20. I have a few relating to
23 MKT-27, but I think it would be more orderly if I could
24 start with MKT-20. Most of my questions will be
25 directed to that.

1 JUDGE HOPKINS: Thank you.

2 MR. KHARASCH: Your Honor, I'm not sure that
3 the Commission's order of procedure in this case was --
4 makes a lot of logical sense. It seems to us that in
5 general we are going to present the opposition case and
6 then the witnesses will return to present the responsive
7 application case.

8 In Mr. Gastler's case, he appears twice at the
9 same time.

10 JUDGE HOPKINS: One of the problems, of
11 course, there might be questions that relate to both.
12 That is the problem I can see. I think we have to cross
13 over at various times in this. If you want to submit
14 both, submit him for questioning on both at the present
15 time, then we don't have the problem. If there is
16 any --

17 MR. KHARASCH: We will proceed as you
18 instruct, Your Honor. Is that what you prefer?

19 JUDGE HOPKINS: Yes, I would.

20 BY MR. KHARASCH: (Resuming)

21 Q Now, Mr. Gastler, in addition, I refer you to
22 a somewhat more extensive statement of 85 pages, which
23 appears in Exhibit MKT-21 -- excuse me, MKT-20,
24 previously submitted in this case. Is that your
25 statement? Is it true and correct to the best of your

1 knowledge and belief, and do you offer it as your
2 testimony in this case?

3 A I offer it as my testimony. I think on page 6
4 I need to make -- I need to change one word.

5 Q All right. On page 6 of the longer
6 statement.

7 A First line in the second paragraph, it reads
8 "MKT System" and that should be "MKT Railroad."

9 Q That's the sentence beginning "Similarly, the
10 operating ratio for the MKT System"?

11 A Yes, sir.

12 Q With that correction, is this true and correct
13 to the best of your knowledge and belief, and your
14 testimony in this case?

15 A Yes, it is.

16 MR. KHARASCH: All right, Your Honor. Now Mr.
17 Gastler is submitted both in opposition and in support
18 of the responsive application.

19 JUDGE HOPKINS: You may proceed.

20 CROSS EXAMINATION

21 BY MR. SVOLOS:

22 Q Good morning, Mr. Gastler. My name is Gus
23 Svolos. I represent the Santa Fe and I am talking
24 through a Chicago cold, so if any of my questions aren't
25 clear just let me know and I'd be happy to repeat them.

1 A Thank you.

2 Q Could we start out by having you describe your
3 responsibilities as president and chief operating
4 officer of the MKT Railroad.

5 A Well, my responsibilities are very general in
6 nature and at the same time quite specific. I probably
7 have responsibility for, in a general way, for
8 everything on the railroad, both MKT, OKT, and our
9 subsidiaries.

10 I serve on the railroad board and on the
11 boards of most of our subsidiaries, on our executive
12 committee, and work with our management team in
13 developing policies and strategies that we might
14 undertake in the future, as well as be responsible for
15 the day to day operations of the railroad.

16 I report to the chief executive officer, who
17 is chairman of the board.

18 Q And who is that?

19 A Reginald Whitman.

20 Q It sounds like you're involved in almost every
21 activity of the railroad; is that right?

22 A Well, most of the time. Not everything, of
23 course. A lot of people -- we have over 2,000
24 employees, and basically they do most of the work.

25 Q Do you get involved in preparation of annual

1 reports? Are those cleared through you?

2 A I'm involved in those, yes, sir.

3 Q You make the major policy decisions affecting
4 the Katy Railroad, isn't that right?

5 A Well, I'm part of the group that does. Myself
6 and the chairman and the vice presidents make the major
7 policy decisions.

8 Q Who made the policy decision which determined
9 the position that the Katy would take in this case?

10 A That group that I just mentioned, basically
11 myself and the vice presidents.

12 Q Was that approved at the holding company
13 level?

14 A Yes, I think so. That was approved by the
15 railroad board and the holding company.

16 Q Were any written reports submitted to the
17 railroad board and the holding company board
18 representing the position taken by the Katy Railroad in
19 this proceeding?

20 A It was listed on the agenda for the railroad
21 board. We certainly had board authority to proceed. I
22 do not know of any written reports right today that were
23 rendered to that board.

24 Q Is there any written record of the proceedings
25 before the board in which this was discussed, either the

1 holding company or the railroad?

2 A I'm sure the simple fact that these trackage
3 rights that we request were approved by the board is in
4 the minutes. I don't believe there's any other record
5 than that.

6 Q How long have you been with the Katy, Mr.
7 Gastler?

8 A Eleven years.

9 Q When did you become president?

10 A Six years ago.

11 Q That would be in 1974?

12 A I became president in 1979, and I came to the
13 Katy in 1973, the end of 1973.

14 Q Mr. Gastler, would you please refer to page 28
15 of your testimony in MKT-20. In the second paragraph
16 you refer to the significance of certain route closings
17 by Applicants in this case.

18 A Yes.

19 Q And it basically is your position that the
20 SF-SP system will have greater power to close routes or
21 cancel joint rates than the Santa Fe and Southern
22 Pacific acting individually; is that correct?

23 A I don't know that they can -- perhaps that's
24 what my testimony says, but I don't know how they can
25 have much more power than they have utilized in the last

1 couple of years. Most of our routes have been closed.
2 Certainly that power will be retained by the new company
3 and, simply because of its size, exercise of market
4 power in closing routes, if not constrained, can be
5 extreme.

6 Q Well, it's your position, isn't it, that
7 because Santa Fe and Southern Pacific have cancelled
8 rates in the past, that the Commission should assure for
9 the purposes of this case that they will continue to do
10 that in the future?

11 A Yes. I know of no reason why we should think
12 otherwise.

13 Q And that's basically the justification for
14 some of the trackage rights requests that the Katy has
15 made in this case, is it not?

16 A In our deliberations on the trackage rights --
17 and those deliberations were carried on for a long time
18 -- I really don't believe that the route cancellations
19 were a reason that we even talked about the trackage
20 rights. Basically, our trackage rights were developed
21 by shipper customer suggestions about loss of
22 competition in these areas, and the route closings had
23 nothing to do with it.

24 Certainly, if you're familiar with our former
25 case with the Union Pacific, we at that time thought we

1 should go to Mexico. The Commission found otherwise,
2 much to our chagrin, but they did say that it is not
3 necessary as long as the SP was there to take us to
4 Mexico.

5 Q Mr. Gastler, don't you state in your testimony
6 that the Applicants will close the Denison route after
7 the merger?

8 A In all likelihood, that would happen.

9 Q And isn't that the justification for the
10 trackage rights from San Antonio to Corpus Christi?

11 A No, that is not the justification for that.
12 In the Staggers environment -- and we have learned
13 fairly well that operates with the large railroads,
14 particularly in the West where we are involved, that if
15 you do not have access to points of origin and points of
16 destination, you simply will not be in the business.
17 And that's more the reason that in this merger, which,
18 different from some of the others, has a lot of
19 parallelism, we have this loss of competition
20 occurring.

21 And in the Mexican extension, we simply tick
22 up on what the Commission said about going to Mexico in
23 the UP case, where they said as long as the SP is there
24 the Katy doesn't need to go to Corpus. This eliminates
25 that opportunity.

1 Q Now, Mr. Gastler, let me get back to the
2 question about closing routes. Do I understand your
3 testimony correctly now that the fact that the Santa Fe
4 and Southern Pacific have closed routes in the past and
5 may continue to do so in the future has nothing to do
6 whatsoever with your request for trackage rights?

7 A No, I didn't say that. I said that the
8 principal reason was the anti-competitive effect of this
9 parallel merger. But the closing of routes has had a
10 devastating effect on the company I represent.

11 Q Does the danger that routes will be closed in
12 the future present a justification for any of the
13 trackage rights that you have requested in this case?
14 That's my question.

15 A It contributes to those trackage rights. I
16 don't think that's a stand-alone consideration.

17 Q Which trackage rights requested by the Katy
18 involve that as a factor?

19 A We have had -- let's take southwestern Kansas,
20 where we formerly had an interchange with the Southern
21 Pacific at Harrington. In recent years -- and you'll
22 have to refer for detailed route cancellations to Mr.
23 Dimmerman or Mr. Noser, who are here -- but we have had
24 business moving with the SP via Harrington in the past.
25 Now that traffic moves in connection with the Santa Fe

1 at Hutchinson.

2 Q Let's stop and talk about --

3 A And we do not have traffic moving over
4 Harrington. That's one example about southwestern
5 Kansas.

6 Q Let's stop and talk about that for a minute.
7 Where is Harrington in relation to Hutchinson? It's
8 about 60 miles to the northeast, isn't it?

9 A Slightly northeast of Hutchinson.

10 Q And the traffic you're talking about came off
11 the Tucumcari line from Liberal and went up to the CKT
12 at Harrington, where it was interchanged, is that
13 right?

14 A I believe that's right.

15 Q Harrington does not have a terminal, does it,
16 for grain?

17 A Well, there's a substantial Scoller Bishop
18 house there. I don't know what you characterize as a
19 terminal.

20 Q As a matter of fact, a major terminal is
21 located at Hutchinson, which receives grain shipments
22 for transit, doesn't it?

23 A Hutchinson is one grain terminal in that part
24 of the world.

25 Q There is a large grain terminal in Hutchinson

1 and there isn't one in Harrington, and the shipments
2 you're talking about had to move to Harrington to be
3 interchanged with the OKT and then back down to
4 Hutchinson to be stored in transit at the Hutchinson
5 terminal; and that involved a circuitry of 60 miles in
6 one direction and 60 miles back in the other direction,
7 and that's the reason that that traffic moved on the OKT
8 to the Santa Fe, isn't that correct, Mr. Gastler?

9 A I don't think that's right at all, no, sir.
10 That is not right. The grain that we were involved in
11 originated on the Liberal line at some point, came to us
12 at Harrington, and went in transit at a terminal like
13 Wichita or Enid or Fort Worth or direct to the Gulf.

14 Q Your testimony is it didn't move back down to
15 Hutchinson for transit?

16 A As far as I know, it did not, that's right.

17 Q And that wasn't the reason that the Southern
18 Pacific found it much more economical to deal with the
19 Santa Fe at Hutchinson than with the OKT out of
20 Harrington?

21 A You would have to refer that specific question
22 to Mr. Noser, but in my opinion the route worked at one
23 time and could continue to work.

24 Q Mr. Dinnerman would also have an answer to
25 that, I suppose?

1 A I think so.

2 Q Now, Mr. Gastler, is it your position that all
3 joint rate cancellations are anti-competitive?

4 A Well, it's hard to answer that question in
5 total. "All" is probably never correct, but with the
6 many, many, many rate cancellations that we've had from
7 the Santa Fe and Southern Pacific and the miniscule
8 number that we've been able to restore, that action on
9 the part of both of those carriers in our opinion was
10 tremendously anti-competitive.

11 Q Well, when is, in your judgment, is a joint
12 rate cancellation not anti-competitive?

13 A Again, you're talking to someone who is not a
14 technician in the rate world, and I think you could get
15 one of our people who is quite knowledgeable about rates
16 to discuss this. But if you let me state, I understand
17 that over the years there have been many old so-called
18 paper rates perpetuated in our tariffs. Some of those
19 perhaps move no traffic and their cancellation neither
20 helps the Santa Fe nor the Southern Pacific nor hurts
21 the MKT system.

22 Q Is that the old open route structure we are
23 talking about?

24 A I can't answer that.

25 Q What about a situation where a carrier just

1 isn't making money over a joint route and cancels the
2 rate over that route? Do you consider that to be
3 anti-competitive?

4 A In a general way, where there are facts that
5 show that the short haul route doesn't make money, there
6 should be a way to sit down and work out a joint rate
7 that has been in place for years and could continue,
8 rather than the arbitrary market power cancellations
9 that have taken place.

10 This is an exercise of tremendous market power
11 by the giants on a very small company.

12 Q You think that if a carrier isn't making money
13 over the joint route it does have the right to sit down
14 and negotiate a change in the divisions?

15 A I believe that the Staggers Act was
16 established to be pro-competitive, rather than the
17 anti-competitive status that the large railroads in the
18 West have taken.

19 MR. SVOLOS: Your Honor, I'm going to move
20 that the answer be stricken as being non-responsive.

21 JUDGE HOPKINS: It is non-responsive. I will
22 grant the motion to strike.

23 MR. SVOLOS: Could you read the question back,
24 please.

25 THE REPORTER: "Q. You think that if a

1 carrier isn't making money over the joint route it does
2 have the right to sit down and negotiate a change in the
3 divisions?"

4 THE WITNESS: I think we at least ought to
5 talk about it.

6 BY MR. SVOLOS: (Resuming)

7 Q And if an agreement can't be reached, what
8 option does a carrier have who is not making money over
9 the joint route? Does it have to cancel the rate?

10 A I suppose in the final analysis that could be
11 the result, but we've never gotten that far with our
12 friends here.

13 Q Is it your testimony, Mr. Gastler, that the
14 Santa Fe and the Southern Pacific have not negotiated
15 over joint routes?

16 A As I said earlier, sir, we had a cancellation
17 of perhaps a thousand rates, and I believe in the recent
18 days we have had a flurry of letters by Mr. Fitzgerald,
19 for example, and certainly an offer from the SP to
20 renegotiate five or six rates.

21 And we have examples, if we should present
22 them, of routes to our own industries -- Mr. Noser can
23 present this -- to industries we serve where we cannot
24 get a rate with the Santa Fe, yet the Union Pacific has
25 a rate, a joint rate like we'd like to have with the

1 same industry, but we serve it.

2 We believe we have a reason to have an honest
3 complaint with that type of action.

4 Q There are negotiations going on right now
5 between the Katy and the Santa Fe, isn't that correct?

6 A The letters I have seen from Mr. Steiniger to
7 Mr. Fitzgerald are fairly much like Mr. Shultz and
8 Gromyko today. Nothing is happening, and the offer from
9 Mr. Fitzgerald could not be considered reasonable
10 negotiations under any sense of the word, not after he's
11 cancelled a thousand rates and offered five.

12 Q Let's talk about other cancellations or other
13 -- what about closing industries to reciprocal
14 switching, Mr. Gastler? Do you consider that to be
15 anti-competitive?

16 A Well, I've been president six years and on the
17 Katy for eleven, and I've done that in that time --
18 we've closed no industries in six years that I know of.

19 Q Do you know if the Katy has any industries in
20 Texas, for instance, that are closed to reciprocal
21 switching?

22 A I think we have some industries that are
23 closed to reciprocal switching, yes.

24 Q Would it be fair to state that there are over
25 150 of them in Texas alone that are now closed to

1 reciprocal switching?

2 A Well, I think we have about a thousand
3 industries in Texas and possibly we have 150, but that
4 150 industries, if there are that many, do not represent
5 much of our business. Most of our business comes from
6 open industries and most of our major friendly
7 connections handle a lot of business to our open
8 industries.

9 Q Well, the negotiations that you referred to
10 between Mr. Fitzgerald and your people, hasn't Mr.
11 Fitzgerald requested that you open some of those closed
12 industries?

13 A I believe that Mr. Noser should present this,
14 I think, in more detail. I think he is -- again, I
15 believe that Mr. Fitzgerald's offer should be made a
16 part of this record to show, so Mr. Noser can present it
17 and show you really what the offer is.

18 Q All right. But if Mr. Fitzgerald has asked
19 you to open some industries that Santa Fe would like to
20 serve which are now closed to Santa Fe and are served
21 only by the Katy, that's not an anti-competitive act on
22 the part of Mr. Fitzgerald, is it?

23 A I think if Mr. Fitzgerald wanted five open,
24 we'd probably like to have Santa Fe open five, and maybe
25 on that basis we can negotiate.

1 Q So there is a basis for negotiation going on
2 right now, isn't that true?

3 A I think I characterized the structure of
4 what's going on. The flurry of letters from Mr.
5 Fitzgerald has picked up the closer this
6 cross-examination became. Only in recent days have we
7 really seen action from Mr. Fitzgerald, and nothing of
8 value.

9 Q Mr. Gastler, this route closing action by --
10 or rate cancellation action by Santa Fe and Southern
11 Pacific is not unique in the industry right now, is it?

12 A Well, it is unique among the giants, and it is
13 nonexistent among the regional carriers. In fact, I'm a
14 member of the AAR board and I can recite to you what's
15 going on there if that is of benefit.

16 Q I think it would just -- we'll just follow the
17 procedure of my asking questions and your answering, and
18 we'll probably get out of here earlier. At any rate, in
19 the east all the major carriers started taking action
20 some time in 1981, and that was followed by the major
21 roads in the West in 1983 -- Burlington Northern, Union
22 Pacific, Santa Fe, Southern Pacific; isn't that
23 correct?

24 MR. KHARASCH: Your Honor, on this sort of
25 question, that is really three or four questions

1 together. It's about the East, the West, and the BN.
2 Could we please have questions individually?

3 JUDGE HOPKINS: I think it's a good idea. We
4 have testimony going on here, too.

5 MR. SVOLOS: All right.

6 BY MR. SVOLOS: (Resuming)

7 Q This started in the East with the major
8 carriers, as you have indicated, the CSX, Conrail, NWS;
9 isn't that correct?

10 MR. KHARASCH: Excuse me. This question
11 contains two statements: one, that the witness had
12 indicated something about the East, which I don't think
13 he did.

14 JUDGE HOPKINS: Why don't you just ask the
15 question.

16 MR. SVOLOS: All right.

17 BY MR. SVOLOS: (Resuming)

18 Q Did the rate cancellations start in the East
19 with the major carriers?

20 A I believe that's the first I have heard that
21 Conrail perhaps was the leading -- the leader of rate
22 cancellations.

23 Q And that was followed by the CSX?

24 A I don't know. I can't answer that. I know
25 there has been some rate cancellations.

1 Q You don't know if the CSX cancelled any
2 rates?

3 A Perhaps they did.

4 Q Or the Norfolk Southern?

5 A I don't know.

6 Q You do know, however, that there has been a
7 lot of joint rate cancellations since the passage of the
8 Staggers Act?

9 A Yes, there have been a lot of rate
10 cancellations, joint rate cancellations with the MKT.
11 That I know.

12 Q And this has been going on all over the
13 country?

14 A West of the Mississippi River, there were some
15 massive cancellations by the giants. They then sat down
16 and restored those rates in bilateral agreements amongst
17 themselves. But the Katy has been excluded.

18 JUDGE HOPKINS: Why don't you list what you
19 consider the giants, so that we have that for the
20 record?

21 THE WITNESS: I'm sorry. They are so obvious
22 to me.

23 JUDGE HOPKINS: All right, but why don't we
24 list them for the record.

25 THE WITNESS: Santa Fe, Southern Pacific,

1 Burlington Northern, Union Pacific are what we consider
2 to be the giants.

3 JUDGE HOPKINS: Thank you.

4 BY MR. SVOLOS: (Resuming)

5 Q Now, this has taken place after the withdrawal
6 of antitrust immunity for rate bureaus, isn't that true,
7 Mr. Gastler?

8 A This bilateral action I mentioned?

9 Q The cancellation of joint rates.

10 A This massive cancellation and the signing of
11 bilateral agreements between the major carriers in the
12 West excluding the Katy did occur in 1984.

13 Q That was after the antitrust immunities for
14 rate bureaus had been abolished, isn't that correct?

15 MR. KHARASCH: I think that's a legal
16 question, Your Honor.

17 JUDGE HOPKINS: I don't think he knows.
18 Do you know?

19 THE WITNESS: I can't answer that.

20 BY MR. SVOLOS: (Resuming)

21 Q You don't know if there was any relationship
22 between the withdrawal of antitrust immunity and the
23 wave of joint rate cancellations which has occurred
24 since the Staggers Act?

25 A No.

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1 Q Now, Mr. Gastler, would you please refer to
2 page 27 of your statement in MKT-20. You refer at that
3 point to a Santa Fe route closing, cancellation.

4 A Yes, sir.

5 Q Now, that publication by the Santa Fe was the
6 subject of a protest filed by the Katy with the
7 Interstate Commerce Commission, was it not?

8 A I don't know that to be a certainty. Mr.
9 Noser could answer that. I don't know.

10 Q Are you aware that the Commission ruled on the
11 protest and it found nothing wrong with the tariff that
12 you are complaining about at page 27?

13 A I know we protested many of the
14 cancellations.

15 Q I'm talking about the one that you're talking
16 about at page --

17 A I don't know.

18 Q You don't know whether that happened or not?

19 A No.

20 Q Who would know about that?

21 A Mr. Noser and perhaps Mr. Dimmerman.

22 MR. KHARASCH: If it speeds things up, Your
23 Honor, we will stipulate that protest was filed against
24 the cancellations and the Commission determined not to
25 suspend. That does not constitute --

1 JUDGE HOPKINS: Or investigate?

2 MR. KHARASCH: Suspend or investigate.

3 That does not constitute a Commission approval
4 of what happened. It is Commission inaction.

5 JUDGE HOPKINS: Thank you, Mr. Kharasch, for
6 stating what the Commission's position is.

7 BY MR. SVOLOS: (Resuming)

8 Q You also -- well, you wouldn't know anything
9 about that because you don't know anything about the
10 protest, so I won't ask that question.

11 Now, Mr. Castler, do you recall that the Katy
12 Railroad opposed the formation of the holding companies,
13 Southern Pacific Company and Santa Fe Industries, over a
14 year ago?

15 A Yes, sir.

16 Q And you opposed the formation of the voting
17 trust which preceded that consolidation; is that
18 correct?

19 A Yes, sir.

20 Q Did you take part in the decision which
21 determined the position which the Katy took in that
22 case?

23 A Yes, sir, in the fact that we would oppose
24 it.

25 Q Did you review any of the evidence that the

1 Katy submitted before the Interstate Commerce Commission
2 in opposing the voting trust?

3 A I probably read it. As far as --

4 Q Do you know that Mr. Dimmerman, for instance,
5 submitted an affidavit?

6 A I recall that he did.

7 Q Do you recall that Mr. Dimmerman in his
8 affidavit said that if the voting trust was put into
9 effect a massive loss of traffic was threatened to the
10 MKT during the period of the voting trust?

11 A I don't remember those exact words, no, sir.

12 Q Do you recall that he signed an affidavit
13 stating that this massive loss of traffic would occur
14 because the Southern Pacific would close the Denison
15 route and divert all of that business to the Santa Fe at
16 Fort Worth?

17 A I can't, without seeing the document, I
18 couldn't say what was in it.

19 Q Now let me ask you, has anything like that
20 happened since the voting trust went into effect in
21 December of 1983? Has the SF closed the Denison gateway
22 connection?

23 A There is much less traffic over it.

24 Q There's much less traffic?

25 A There's not as much traffic. I don't know

1 what causes that.

2 Q Is it your testimony that since the voting
3 trust the traffic interchanged with the SP at Denison
4 has declined?

5 A I can't say that the voting trust did that,
6 no, sir, I wouldn't say that. I think economic
7 conditions -- SP's management decides how they operate
8 trains. Some trains go through St. Louis. I'm not
9 saying the voting trust does that, no, sir.

10 Q But it's your testimony that since December of
11 1983 the traffic interchanged at Denison has declined?

12 A That is my -- and I don't count the cars, but
13 that's my view. I think it's more an economic situation
14 than the voting trust. I can't blame that on the voting
15 trust.

16 Q Now, at page 35 of MKT-20, if you would please
17 turn to that.

18 A Yes, sir.

19 Q You testify on that page regarding the
20 importance of traffic density to the MKT.

21 A Yes, sir.

22 Q Of course, that traffic density is something
23 that's important to all the railroads?

24 A Yes, sir.

25 Q And you have included on that page Table 5,

1 which is captioned "Freight Revenue Per Mile of Road,
2 1982, All U.S. Class 1, East-South-West Railroads, and
3 MKT."

4 A Yes, sir.

5 Q It shows average revenues per mile and by
6 class 1 carriers in three regions and revenues per mile
7 earned by the MKT in 1982.

8 A Yes, sir.

9 Q And your purpose in referring to that table is
10 to compare the Katy's density ratio with those of all
11 Class 1 carriers in the United States; is that correct?

12 A Yes. It's simply shows that we are a light
13 density railroad.

14 Q Well, hasn't Mr. Ziebarth in his testimony
15 also made such an analysis?

16 A Mr. Ziebarth makes those kinds of analyses,
17 yes.

18 Q I would like to refer to an exhibit in Mr.
19 Ziebarth's testimony and discuss it with you. It's
20 Appendix A to his testimony. I have made copies which I
21 can distribute.

22 MR. SVOLOS: I would like to have this marked
23 SFSP No. 11.

24 MR. KHARASCH: C?

25 JUDGE HOPKINS: That's right, counsel's

1 exhibit. That will be marked for identification as
2 SFSP-C-11.

3 (The document referred to
4 was marked Exhibit No.
5 SFSP-C-11 for
6 identification.)

7 BY MR. SVOLOS: (Resuming)

8 Q Do you have SFSP-C-11 in front of you, Mr.
9 Gastler, which is statistical comparisons with Class 1
10 railroads on an RRB basis, Missouri-Kansas-Texas
11 Railroad?

12 A Right.

13 Q At the top of the exhibit, the second column
14 from the left, there's a column marked "Density." The
15 performance of the MKT as compared to all Class I
16 carriers using 1966 as the base year. Do you see that?

17 A Yes, sir.

18 Q It shows, doesn't it, that since 1966 Katy's
19 growth has risen by 89 percent, growth in density, while
20 Class I carriers as a group have averaged only a 36
21 percent increase in density?

22 A I believe that's what it shows, yes.

23 Q Now, can you please locate the fourth column
24 from the left at the top of the page, captioned "Revenue
25 Ton-Mile."

1 A Yes, sir.

2 Q That shows that the Katy's revenue per
3 ton-mile has increased by 162 percent compared to 149
4 percent by Class I carriers as a group since 1966; is
5 that correct?

6 A Yes, sir.

7 Q Now, would you please refer to the second row
8 of statistics. At the far right, the second row under
9 operating statistics, you find a caption "Gross Profit
10 Margin."

11 A Yes.

12 Q Now, you have to follow across. Can you
13 follow across the year, 1977 to the far right?

14 A Yes, sir.

15 Q It shows that in 1977 the Katy did not enjoy a
16 profit margin; is that correct? It shows a deficit of
17 0.7?

18 A Can I just explain something about these
19 numbers?

20 Q Well, why don't we go through them and then
21 you can explain it, okay.

22 A Yes, it shows we have a slight deficit that
23 year.

24 Q Do you want to explain that part now?

25 A That simply because we had an extensive

1 rehabilitation program. Under RRB accounting, all of
2 those expenses are charged, all those costs are charged
3 to expense in the P&L statement, which greatly affects
4 your margins.

5 Once you are beyond that program, your margin
6 naturally increases.

7 Q Wasn't 1977 -- do you recall if 1977 was a
8 particularly bad year for the Katy?

9 A I've only been there eleven years and they've
10 all been good and bad. They're a mixture of the same
11 thing, except for 1981, which was a good year.

12 Q Well, at any rate, 1981 -- the column shows
13 that for 1981 the Katy enjoyed the same profit margin as
14 the average for all Class I carriers, 7.5 percent?

15 A Yes, that was a good year.

16 Q And the same table shows that in 1982 the
17 Katy's profit margin was 7.6 percent and the average for
18 Class I carriers was 3.8 percent. That was also a good
19 year, wasn't it?

20 A That was a bad year. We were in a recession
21 and our other friendly railroads in the West forced us
22 into a severe cutback of employment due to a lack of
23 revenue to survive. You can create profit margins, but
24 you can't perpetuate a company. And our business has
25 been -- short-term profits have led many of the

1 railroads into bad times in the past, and we have tried
2 to avoid that.

3 We had to cut back and that's how that profit
4 margin was created. We would rather have more business,
5 spend more on the track, and have a smaller profit
6 margin and more cash.

7 Q It's your testimony that you were able to
8 enjoy a profit margin of 7.6 in 1982, a recession year?

9 A With much less revenue.

10 Q Because you cut back on costs?

11 A We cut expenses. We cut expenses
12 tremendously.

13 Q But that was a recession year, wasn't it?

14 A That's what I said.

15 Q That was perhaps the most severe economic
16 decline in the country since the Great Depression?

17 A Well, we -- on the MKT, 1975 was worse. 1975
18 was worse. I was alive in the Depression, but I was
19 only two years old. I don't know much about it. But
20 1975 was very severe for us.

21 Q Well, in 1982, Mr. Castler, didn't every
22 railroad in the United States have to cut back on
23 costs?

24 A I don't know about the others. I know this,
25 that profit margin is not the only measure of a

1 railroad.

2 Q Didn't the revenues for the railroad industry
3 as a whole go down in 1982, which was a severe recession
4 year?

5 A I know ours did. I don't have much time to
6 spend on the others.

7 Q You don't know if that was true for the rest
8 of the industry?

9 A No.

10 Q And you don't know if the rest of the industry
11 also had to cut costs?

12 A I do not know.

13 Q But at any rate, this column shows that in
14 1982, whatever you were doing, you were doing better
15 than the rest of the industry, because you had a gross
16 profit margin of 7.6, while the average for Class I
17 carriers was 3.8. And in 1983 --

18 MR. KHARASCH: Again, could we have the
19 questions one at a time.

20 MR. SVOLOS: Okay. I thought he answered
21 that.

22 BY MR. SVOLOS: (Resuming)

23 Q Did you answer that?

24 A No. In 1982 we apparently did a better job of
25 cutting back our expenses than the other railroads.

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1 Q All right. And in 1983 the statistics show
2 that you had a better gross profit margin than Class I
3 carriers, 7.1 percent for the Katy, 4.7 for the rest
4 of --

5 A But 1983 is a good example of the MKT and the
6 bite of the changing environment. Our profit margin
7 went down. 1983 was again a tough year for us. The
8 other railroads went up by 25 percent, their margins
9 went up by 25 percent.

10 Q But you still enjoyed a superiority of 7.1
11 percent/4.7 percent?

12 A We are better, we are better. I don't
13 consider that to be a total measure of how a railroad
14 does.

15 Q Well, Mr. Castler, wouldn't you agree that the
16 statistics presented by Mr. Ziebarth demonstrate that
17 Katy enjoyed a growth in traffic density and gross
18 profit margin which has surpassed the averages for Class
19 I carriers?

20 A The statistics show that we have been
21 improving. We are far from having any money in our cash
22 drawer, which is really the measure of a business. And
23 if I compare us to the Santa Fe, UP, Burlington, SP, our
24 working capital deficit remains very, very severe.

25 Q Do you think you have a worse working capital

1 deficit than the SP does?

2 A Percentagewise? I don't study the SP, but our
3 percentagewise to total revenue working capital deficit
4 is a tough one.

5 Q But you wouldn't say it's as bad as the SP?

6 A I don't know anything about the SP.

7 Q Mr. Gastler, would you please refer to page 40
8 of your statement. In the middle of the page, the
9 second complete paragraph, you state that you tailored
10 your request for trackage rights to lines where MKT's
11 service was absolutely required to provide regional rail
12 service.

13 A Yes, sir.

14 Q And then, page 41, the next page, at the end
15 of the first paragraph you state that even if you
16 identified routes where one or the other carriers had a
17 monopoly today and where shippers would benefit from
18 competitive service, you eliminated such routes from
19 consideration unless the merger caused the monopoly.

20 A That's what I said.

21 Q Is that basically what you did in determining
22 your trackage rights request? Does that sum it up?

23 A As I said earlier, the competitive -- the
24 anti-competitive effect of the merger was a factor in
25 each traffic condition we have requested.

1 Q Now, let's take the Bayport, your trackage
2 rights request over the Bayport line. Now, the
3 industries over which you have requested trackage rights
4 on the Bayport line today are now served only by the SP,
5 isn't that correct?

6 A Yes, sir.

7 Q So the fact that service will be provided to
8 those shippers by only one rail carrier if this merger
9 is approved would not be a situation which is created by
10 this merger, isn't that right?

11 A Except that combining the Santa Fe with the SP
12 makes it a much, much, much stronger system.

13 Q I'm not sure I follow that. What is the
14 anti-competitive situation which now exists at Bayport
15 which your request for trackage rights is going to
16 cure?

17 A I think our shipper witnesses have fairly well
18 set that out in their testimony in this case. ICI,
19 Hercules, all of those have fairly well set out their
20 views about that, which is one of the things that
21 stimulated our thinking about this condition.

22 The Santa Fe joining the SP simply gives many
23 more points where the railroad controls both origin and
24 destination. This is almost a requirement under
25 Staggers.

1 Q Let me see if I follow that. We've got these
2 shippers at Bayport who are now served only by the SP;
3 that's correct?

4 A Yes, sir.

5 Q One railroad. And after the merger, if there
6 are no trackage rights they are going to be served by
7 SFSP, one railroad?

8 A Yes.

9 Q So that hasn't changed by the merger, the fact
10 that there's only one railroad serving those shippers?

11 A The number of one has not changed, but other
12 elements have changed.

13 Q Now, let's get to the other elements. These
14 shippers will have the benefit -- maybe you don't agree
15 it's a benefit, but they will have available extended
16 single line service to new points which was not
17 available to them before; isn't that correct?

18 A That's right. There will be more points.
19 Just as you say, there are more points which are solely
20 controlled by this one railroad, origin and destination
21 both ways. That gives this one railroad, the new
22 company -- and I have great respect for both of these
23 railroads; I have competed with them and collaborated
24 with them all of my career.

25 They have a tremendous amount of market power

1 to exercise on those chemical companies.

2 Q Now, these shippers are going to have single
3 line service available to them to more points than they
4 had before the merger, isn't that right?

5 A Only one single line service, only one
6 possible way to ship by rail.

7 Q Extended single line service.

8 Now, Mr. Castler, hasn't the Commission looked
9 upon that in the past as a favorable aspect of a
10 proposed merger, that so-called captive shippers will
11 have extended single line service made available to
12 them?

13 A I believe so, and in fact I only can deal with
14 my experience in these cases, and that's one of the
15 findings they found in granting us our trackage rights
16 north of Kansas City in the UP case.

17 Q You had extended single line service?

18 A Where we were granted extended single line
19 service, and that's very similar to what we're asking
20 for in the Bayport case. It's very similar.

21 Q And in your case the Commission found that
22 extended single line service was a positive factor?

23 A They found that, in addition because the area
24 we were granted trackage rights in the UP case was where
25 the Union Pacific and Missouri Pacific were parallel,

1 and those trackage rights provided some competition.

2 Q Could we move to page 45 of your statement.

3 A Yes, sir.

4 Q At the bottom of the page, near the bottom,
5 you say Conasupo designates the crossing where a grain
6 order will be received.

7 A Yes, sir.

8 Q Conasupo is an agency of the Mexican
9 Government; is that correct?

10 A Yes, sir.

11 Q And it has the responsibility of seeing to it
12 that Mexico gets the lowest competitive price for the
13 purchase of grain?

14 A I would assume so. I can't answer that.

15 Q And this presumably would include the
16 transportation cost?

17 A Well, transportation is a part of the cost,
18 yes, sir.

19 Q So in fulfilling this responsibility, Conasupo
20 designates the rail crossings which are most competitive
21 from the standpoint of costs, does it not?

22 A That would be a part, hopefully a part of that
23 consideration.

24 Q Or it might select water gateways or ports,
25 including Houston or Galveston, which are served by the

1 Katy; is that correct?

2 A It's possible to select those. Most of the
3 traffic we have moved to Mexico has gone other ways,
4 either via Eagle Pass or via SP-Tex Mex-Laredo.

5 Q Well, I understand that. But Conasupo can and
6 does elect to receive grain by water?

7 A Oh, I am sure there's water traffic that goes
8 down the Mississippi River, but that doesn't affect our
9 shippers on the MKT-OKI. They can't get to that water.

10 Q We will get to that part of it later.

11 Conasupo can also buy grain from foreign
12 countries. It has, as a matter of fact.

13 A I'm sure they can.

14 Q Substantial volumes from Argentina, for
15 instance?

16 A I don't know.

17 Q Now, most of the grain that Mexico buys from
18 the United States goes into Mexico by water, doesn't
19 it?

20 A I don't know how much grain Mexico buys in the
21 world market. I'm sure there's grain that moves over
22 Veracruz and places like that. But my answer lies in
23 what goes over the crossings at Laredo and Eagle Pass
24 that we have been handling.

25 Q I would like to introduce an internal

1 memorandum from Mr. A.L. O'Mary to T.F. Steiniger which
2 is in the work papers and ask you a few questions about
3 it on this point if I may.

4 JUDGE HOPKINS: It will be marked for
5 identification as SFSP-C-12.

6 (The document referred to
7 was marked Exhibit No.
8 SFSP-C-12 for
9 identification.)

10 BY MR. SVOLOS: (Resuming)

11 Q Mr. Gastler, you have before you SFSP-C-12,
12 which is a memorandum dated March 16th, 1984, from Mr.
13 A.L. O'Mary to T.F. Steiniger. Could you state for the
14 record who Mr. O'Mary is?

15 A O'Mary is our grain marketing and pricing man
16 on the MKT-OKT.

17 Q And who is Mr. T.F. Steiniger, for the
18 record?

19 A Yes, he is our vice president of marketing and
20 pricing.

21 Q Would you look at the subject of the
22 memorandum?

23 A It says "A USDA-Conasupo Meeting."

24 Q Did Mr. O'Mary attend that meeting as part of
25 his duties with the Katy?

1 A Apparently he did.

2 Q All right. Around the middle of the page the
3 exhibit contains an analysis for the year 1983 of the
4 amount of grain that moved into Mexico via water as
5 opposed to by land. And it shows that 60 percent moved
6 in by water and 40 percent by land.

7 A Yes, sir.

8 Q Has that been consistent more or less over the
9 years in your experience?

10 A I would have no way to know.

11 Q At the bottom of the page in the next to the
12 last paragraph, Mr. O'Mary states: "However, it is
13 obvious that Laredo is the most important crossing, and
14 at the same time Eagle Pass is one of the least used
15 crossings."

16 Has that been consistently true in the past
17 several years to your knowledge?

18 A I don't know. I know that the total of
19 60,000, approximately 60,000 cars, moves into Mexico by
20 land. I don't know what is consistent -- how that has
21 been --

22 Q I was talking about the comparison between
23 Laredo and Eagle Pass which is made at the bottom of the
24 memorandum. Do you see that?

25 A Oh, yes. And that is the reason we have

1 characterized this request to prefer to go to Laredo,
2 and if the Commission finds against us there we would go
3 to Eagle Pass. We would prefer to go to Laredo because
4 we have had a longstanding good relationship with the
5 Tex-Mex and we're very hopeful we can continue that.

6 Q At the present time there is very little grain
7 moving to Eagle Pass?

8 A Apparently, although with the right incentives
9 I'm sure Conasupo would move grain over Eagle Pass. And
10 I personally feel that Santa Fe-SP will move
11 considerable grain that way.

12 Q Do you know how much grain has moved into
13 Eagle Pass in 1984, the first ten and a half months?

14 A I do not know. I don't think the past is any
15 guide for the future when we deal with these large
16 companies, like Santa Fe-SP will be.

17 Q Do you think the experience in the past four
18 or five years regarding the amount of grain that's moved
19 into Eagle Pass would be helpful in forecasting how much
20 is likely to move?

21 A I don't think it will have anything to do with
22 the future. This is an entirely new ballgame with this
23 merger.
24
25

1 Q Do you think, Mr. Gastler, that after this
2 merger the SFSP will have greater power to influence the
3 movement of grain to Eagle Pass?

4 A I certainly do. Tremendously.

5 Q Let me ask you, you've testified that Laredo
6 is the rail crossing where most of the grain is now
7 handled; is that correct?

8 A That's what this document says.

9 Q Is that your experience?

10 A Yes. I have found Laredo to be a busier grain
11 point. That's the only really --

12 Q Which carrier, in your opinion, carries most
13 of the grain from Laredo?

14 A Well, today the Union Pacific does because
15 they originate most of us. But after the Santa Fe-SF
16 merger, the Santa Fe -- I have been around Kansas and
17 Oklahoma and the Santa Fe all of my life. They
18 originate enormous amounts of grain, which the SP did
19 not.

20 Q Let me ask you something about the UP-MP
21 routes from the grain origin areas of Kansas to the
22 central states and Kansas City to Laredo. What kind of
23 condition would you say those routes are in?

24 A You mean the structural condition?

25 Q Yes.

1 A The Union Pacific Railroad and the Missouri
2 Pacific Railroad are in excellent physical condition.
3 We have some joint trackage rights with them where they
4 use us and we use them. Those tracks are all in
5 excellent shape.

6 Q And they have direct routes from Kansas City
7 to Laredo, direct routes from places like Wichita,
8 Hutchinson, Colby, Topeka, where terminal elevators are
9 located; isn't that correct?

10 A I don't know anything about Colby. I'm not
11 familiar with that location. But I know of those
12 others. The Union Pacific has a good route. Our route
13 from Wichita to the Gulf to Fort Worth is 180 miles
14 shorter than the UP. That is a bit of a factor.

15 Q But the UP is now delivering most of the grain
16 to Laredo because of the superiority of its service;
17 isn't that correct?

18 A I think grain -- I believe that we talked just
19 a moment ago of grain moving over the Mexican crossings
20 is probably decided on the price.

21 Q Service is not a factor?

22 A I don't believe service is that great a factor
23 in the movement of grain.

24 Q Of course, if you have a direct route, you can
25 quote a lower price; isn't that right?

1 A One thing you need is it helps to be the
2 shortest.

3 Q That's important?

4 A Yes.

5 Q Would you say that's that number one factor?

6 A Well, that's a factor. It reduces fuel
7 costs. It reduces crew costs.

8 Q The shortness of the route is the most
9 important factor?

10 A No. I don't say that's the most important. I
11 say that is important.

12 Q What is more important?

13 A Well, having a good physical plant like the
14 Santa Fe or Union Pacific has is pretty attractive.

15 Q That's important also?

16 A That's attractive.

17 Q Anything else?

18 A Having multiple train operation is important,
19 many trains.

20 Q All right. Mr. Gastler, could you turn to
21 page 46, please, of MKT-20? In the middle of the page
22 you have a quotation from the opinion of the Interstate
23 Commerce Commission in a Union Pacific case.

24 A Yes.

25 Q And in the middle of that first indented

1 quoted paragraph there's a statement: "MKT asserts that
2 SP is not always interested in handling interline grain
3 traffic over the Denison gateway, and that the two or
4 three carrier hauls are not competitive with single line
5 service."

6 MR. KHARASCH: Single system service.

7 BY MR. SVOLOS: (Resuming)

8 Q Single system service.

9 Now, in that case you asked the Commission for
10 trackage rights over the MP line from San Antonio, Texas
11 to the border crossing at Laredo, isn't that correct?

12 A Well, we asked them for the alternative,
13 either to go via Corpus TexMex or to Laredo. We asked
14 them for the Corpus Christi route also.

15 Q Well, does the language that I have quoted
16 from the opinion basically represent the position you
17 took in the UP case regarding the Denison interchange
18 with the Southern Pacific?

19 A I am reaching back in my memory now, but I
20 think there was a time when we had some reluctance on
21 the part of the SP to handle grain to the TexMex because
22 of the three-line haul south of Kansas City. In recent
23 -- since this UP merger, I don't know of any problems
24 with the SP.

25 Q Well, as a matter of fact, the Southern

1 Pacific has been cooperative in establishing joint rates
2 with the MKT through Denison.

3 A That's one of our major, if not the major loss
4 in this merger case is that traffic that we have been
5 bridging between Kansas City and Denison.

6 Q You feel you're going to lose that traffic?

7 A Without a doubt.

8 Q We will get to that later.

9 Now, we have already noted in Mr. O'Mary's
10 letter that based on volume, Laredo has proven to be the
11 most important rail crossing point into Mexico for
12 grain; is that right?

13 A Yes, sir.

14 Q And the single line routes of the combined
15 UP-Missouri Pacific system now deliver most of the grain
16 going to Laredo. Would you concede that?

17 A They handle more than I believe the joint line
18 does, although we have moved grain.

19 Q Would you agree with an estimate that they
20 deliver as much as 75 percent of the grain that goes
21 into Laredo?

22 A Well, you're getting me out of my element. I
23 don't know what SP-TexMex handles that we do not see.
24 Burlington Northern is in the picture. I can only --
25 Mr. Dimmerman probably can zero in on those numbers.

1 Q Mr. Dimmerman can answer that?

2 A He could zero in on those numbers better than
3 I can about Laredo.

4 Q Union Pacific now has a direct single line
5 route from Kansas City to Laredo.

6 A And very soon the Santa Fe-SP will have one
7 direct to Eagle Pass.

8 Q They have a direct single line route to
9 Laredo. Would you agree that that route, based on the
10 fact that it is shorter, based on the fact that it's in
11 great shape, is the superior route, superior available
12 route from Kansas City to Laredo?

13 MR. KHARASCH: Excuse me. There is again in
14 the question an assumption of shortness, and again, if
15 we could have it broken down: a) is it shorter; and b)
16 is it superior.

17 JUDGE HOPKINS: It might be easy if we do that.

18 MR. SVOLOS: All right.

19 BY MR. SVOLOS: (Resuming)

20 Q Do you know if the UP's route, single line
21 route, from Kansas City to Laredo is the shortest
22 available route to shipper?

23 A To Laredo or to Eagle Pass?

24 Q Laredo.

25 A Well, it is the only single line route from

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- 1/7/85 - Pgs. 5259-5318

1 Kansas City to Laredo. And I can't answer that, but I
2 think it's the shortest, but I don't know.

3 MR. KHARASCH: Mr. Svolos, if you would, there
4 are mileage figures to Laredo on page 52 of this
5 statement.

6 JUDGE HOPKINS: Thank you.

7 BY MR. SVOLOS: (Resuming)

8 Q Would you refer to page 52?

9 A Yes, sir.

10 Q Under paragraph 2, the MP route shown to be
11 1,046.4 miles.

12 A Yes, sir.

13 Q And that appears to be the shortest route.

14 A Yes, sir.

15 Q And it's the only single line route now
16 available.

17 A Yes. At this time.

18 Q At this time. Would you agree that at this
19 time it has to be the superior route available to
20 shippers who want to ship grain from Kansas City to
21 Laredo?

22 A That, of course, depends on the price that is
23 charged, and certainly working before this merger
24 consummates is sort of an erroneous assumption. We are
25 looking at the situation after the merger is consummated.

1 Q Well, if we can, Mr. Gastler, I would just
2 like to first of all focus on what the situation is now,
3 and then we can compare it, if you like, with what the
4 situation would be later.

5 A The situation today, if the price -- the Union
6 Pacific has the opportunity at least to attract the
7 business to Laredo.

8 Q They'd have a real advantage right now.

9 A They have an advantage. They have an
10 advantage, but nevertheless, with that advantage they
11 have not been able to -- for instance, from Council
12 Bluffs to Laredo they're the only carrier -- will be the
13 only carriers from Council Bluffs to Laredo after this
14 merger that could get single line to Mexico. And
15 Council Bluffs, Iowa is a rather large grain terminal.

16 Q Well, if we could concentrate on Kansas City
17 to Laredo, we have agreed that the Union Pacific now has
18 the advantage of being able to provide superior service
19 to shippers from Kansas City to Laredo.

20 A Before merger, right.

21 Q Now, what is the second best option available
22 to shippers who want to transport grain from Kansas City
23 to Laredo at the present time, in your judgment?

24 A Well, the second best option would be some
25 carrier working in conjunction with the Southern Pacific

1 if you're going to Laredo and the TexMex, if that's
2 where you want to go, or you would work in connection
3 with the Missouri Pacific to Corpus Christi and Laredo.

4 Q At the present time would you agree that your
5 route with the Southern Pacific interchanges at Denison
6 and then interchanges with the TM at Corpus Christi to
7 Laredo is the second best competitive route?

8 A It's a good route. It's a good route.

9 Q Would you call it a route that is the second
10 best competitive route from the standpoint of distance
11 and service?

12 A I think so. That's the reason we hate to lose
13 it so badly.

14 Q That's the reason you have been able to
15 interchange a number of cars with the CP at Denison in
16 1983; for instance, refer to page 38 of your statement.

17 A Right.

18 Q According to the figures shown on Table 7, you
19 interchanged 5,271 cars with the Southern Pacific at
20 Denison in 1983, and that was out of a total of 5,730
21 cars which moved through Denison via the MKT. Am I
22 reading that correctly?

23 A I think that's right, yes, sir.

24 MR. KHARASCH: Excuse me. With respect -- I
25 hate to interrupt, but I think Mr. Svolos has misspoken

1 himself. The 5,730 is designated in the table as
2 carloads for interchange or delivery at Denison.
3 Something that moved through Denison I don't think would
4 be in this table.

5 THE WITNESS: Yes. This is interchange
6 traffic only.

7 MR. SVOLOS: Thank you, Mr. Kharasch.

8 BY MR. SVOLOS: (Resuming)

9 Q At any rate, the 5,271 is the number out of
10 the 5,730 which would move to Denison for interchange.

11 A Yes, sir.

12 Q So that demonstrates, doesn't it, that your
13 Denison connection with the Southern Pacific has been
14 very valuable in competing with the single line route of
15 the Union Pacific from Kansas City to Laredo?

16 A Yes.

17 Q Now, after the merger -- I want to talk about
18 after the merger. After the merger, the SFSP would have
19 a single line route from Kansas City to Corpus Christi,
20 right?

21 A Yes.

22 Q And that would have to go through Fort Worth,
23 wouldn't it?

24 A Yes. Yes, it would go through Fort Worth.

25 Q And that route -- would you look at page 38 of

1 your statement, Mr. Gastler? At the bottom, after you
2 say that we're going to cancel the MKT routes, you note
3 that the SFSP routing require a haul 92 miles longer, or
4 12 percent longer.

5 A Yes.

6 Q So that single line route, the Santa Fe is
7 going to be 12 percent longer than the route which you
8 are now using with the Southern Pacific through Denison,
9 right?

10 A Yes.

11 Q So that means that after this merger, we would
12 have available to a shipper from Kansas City to Laredo
13 the superior route of the Union Pacific, the number one
14 route, the route of the Katy railroad to Denison with
15 the interchange with the SP, and then to the TM at
16 Corpus Christi to Laredo. And we have acknowledged that
17 that is the number two route in terms of
18 competitiveness, and that we would have a new route, the
19 single line route, of the Santa Fe which we would have
20 to designate as the number three route because it's 12
21 percent and 92 miles longer; is that right?

22 MR. KHARASCH: Your Honor, there is an
23 assumption in this question that the 92 miles is a
24 mileage difference to Laredo. The reference on page 38
25 is to the mileages Kansas City to Houston, Texas. And

1 mixed up at the beginning of the long question, and also
2 at the end, is an assumption by Mr. Svolos that the 92
3 miles are mileage differentials to Laredo. But the
4 testimony at page 38 is about Houston mileage -- an
5 example of, I think, the benefit in taking it in steps,
6 short steps, as we go along. The mileages are on page
7 52, I think. There is one set on that table, and there
8 are other mileage figures to Houston in the statement.

9 JUDGE HOPKINS: So you are incorrect in saying
10 that it is to Laredo, as I understand. It is only to
11 Houston, the 92.

12 MR. KHARASCH: Yes. Page 36 has the Houston
13 mileages, and page 52 the Laredo mileages. The
14 testimony at page 38 is about Houston.

15 BY MR. SVOLOS: (Resuming)

16 Q All right. Let's go back to page 52. In the
17 second paragraph we have the MP mileage, which is 1,046
18 miles, and then we have SFSP, which is 1,151 miles; is
19 that correct?

20 A Yes, sir.

21 Q And then we have the MKT-Corpus Christi-TM in
22 the center. Do you see that?

23 A Yes.

24 Q That is 1,094 miles. Now, does that refer to
25 the route through Denison?

1 A The MKT-TexMex route goes through Denison, yes.

2 Q So the shortest route shown there is the
3 Missouri Pacific route. The next shortest route is the
4 route through Denison.

5 A Which means that we get our trackage rights
6 and go to Corpus.

7 Q But the present move with the SP would be the
8 same distance, would it not?

9 A No. Our route is different than to San
10 Antonio than the SP's route to San Antonio. It's not
11 the same route.

12 Q Do you know what the mileage is over the
13 SP-Denison route?

14 A No, I don't.

15 Q It's shorter, however, is it not, than the
16 Santa Fe route through Fort Worth?

17 A It might be a bit shorter. I don't know.
18 This was only characterized with our trackage rights
19 being approved.

20 Q It's about 100 miles shorter, isn't it?

21 A I doubt that. I wouldn't think so.

22 Q All right. Getting back to my question --

23 A The SP takes their trains east to a point
24 called Ennis. I'm not sure of the route of those grain
25 trains.

1 Q All right. Let's assume for the purpose of
2 this question that the current joint line route through
3 Denison is shorter than the new single line route of the
4 Santa Fe through Fort Worth. The Santa Fe route through
5 Fort Worth would then be the number three available
6 route for shippers from Kansas City to Laredo from the
7 standpoint of distance.

8 A That's possible. The Santa Fe just has never
9 operated their railroad like that. They're much better
10 business people than that. We and the TexMex know the
11 Santa Fe is not going to use a joint line route to
12 Laredo when they can get there single line.

13 MR. SVOLOS: That wasn't my question. I ask
14 that that be stricken. That wasn't my question.

15 JUDGE HOPKINS: I'll grant the motion to
16 strike.

17 BY MR. SVOLOS: (Resuming)

18 Q We're just trying to get the mileages down.
19 The shortest route is the UP route from Kansas City to
20 Laredo. The next shortest route is going to be the
21 joint line route which is now used through Denison. And
22 then the longest route will be the Santa Fe single line
23 route from Kansas City through Fort Worth to Corpus
24 Christi.

25 MR. KHARASCH: It's a simple matter, Your

1 Honor, but again, buried in that question is an
2 assumption which the witness says he does not know
3 whether he agrees with, about the mileage of the present
4 joint line MKT-SP route. I'd be glad to have the
5 figures produced. The mileage figures would be what
6 they are.

7 MR. SVOLOS: I think I'm entitled to ask a
8 hypothetical.

9 JUDGE HOPKINS: Well, ask it on a hypothetical
10 basis, and he can reply.

11 BY MR. SVOLOS: (Resuming)

12 Q Assuming that that is true, Mr. Gastler, the
13 number one route from the standpoint of service which
14 will be available to shippers after this merger will be
15 the Union Pacific route; isn't that true?

16 A After this merger, as long as you're talking
17 about Laredo only and not to Mexico, yes.

18 Q And from the standpoint of service, the number
19 two route would be the combined Katy-SP route through
20 Denison, assuming that it is shorter.

21 A That is, providing that our trackage rights
22 are not approved. If the trackage rights are approved,
23 our trackage rights will be better than that route.

24 Q All right. Let's assume the trackage rights
25 are not approved.

1 A Well, I don't know why I should assume that,
2 but hypothetically, if the trackage rights are declined
3 and if we're only talking about Laredo, which we can't,
4 but if we're just talking about going to Mexico via
5 Laredo, perhaps that route would be shorter, but it will
6 not be used by the Santa Fe system.

7 Q And then the third most efficient route would
8 be the one that you say is going to be used, the Santa
9 Fe single line haul.

10 A To Eagle Pass. That's the one I say would be
11 used.

12 Q No. To Laredo.

13 A None of us expect that to be used, nor the
14 Santa Fe.

15 Q Well, I don't think you can speak for the
16 Santa Fe.

17 A I have lived with them for a long time.

18 Q Now, are you testifying that after this
19 merger, the shippers that are now using the number two
20 route will sheepishly shift their business to the number
21 three route after the Denison route is cancelled?

22 A The market power of these carriers will cause
23 them to lose their sheepishness. They will drift
24 immediately to where the price is the best.

25 Q The Union Pacific has market power, does it

1 not?

2 A The Union Pacific has the most market power
3 until this merger is consummated.

4 Q All right. And why wouldn't those shippers
5 who are going to have this joint line route that they
6 are now using taken away from them merely shift their
7 business to the Union Pacific?

8 A Some of them will.

9 Q Wouldn't practically all of them do that?

10 A Well, some of them are using the joint route
11 today, and the shippers -- in our testimony you will
12 notice they are interested in maintaining competitive
13 railroad routes. They use competitive routes.

14 Q Would they they reward the Santa Fe if they
15 are interested in maintaining competitive routes --
16 would they then reward the Santa Fe by transferring
17 their business to their single line haul after Santa Fe
18 had cancelled out of a competitive route with the Katy?

19 A Sure. The Santa Fe will have no trouble
20 getting the business. Mr. Dimmerman in his diversions
21 can discuss that much better than I can, but he lives
22 with this traffic problem constantly.

23 Q I'm just trying to follow your reasoning. If
24 they're interested in maintaining competitive routes,
25 and we cancel a competitive route, why wouldn't they

1 give the business to the Union Pacific, which has a
2 superior route? Why would they give it to us?

3 A The Santa Fe, I can assure you, will be a
4 competitor of the Union Pacific after this merger, which
5 they haven't been up till now. And the two of you will
6 be strong competitors, and hopefully we will be able to
7 get to Corpus and also compete with the joint route.

8 JUDGE HOPKINS: Before you ask any more, I
9 think this would be a good time for a break. We'll take
10 a 15-minute recess.

11 (Recess.)

12 JUDGE HOPKINS: Back on the record.

13 Mr. Svolos.

14 BY MR. SVOLOS: (Resuming)

15 Q Mr. Gastler, please refer to page 54 of MKT-20.

16 A Yes, sir.

17 Q The first complete paragraph you state that
18 "This means that from a grain shipping point such as
19 Enid, Oklahoma, which is served by the Santa Fe but not
20 by the MP, after the merger the SFSP will have the only
21 permitted rail service from Enid to Corpus Christi.
22 This Enid example is not just hypothetical, because in
23 1983, 81 percent of MKT carloads to Corpus Christi
24 consisted of grain originating in Enid, Oklahoma."

25 Now, where was that grain originated at Enid

1 by the MKT destined to? What was the destination point?

2 A I can't answer that. I think it probably was
3 export. I don't know.

4 Q All right. So then if it was export, it would
5 have gone to Corpus Christi to connect with the TM and
6 then from the TM to Laredo.

7 A No. I think it probably went by -- I don't
8 believe it -- it would have been wheat for Mexico, but I
9 think that wheat went someplace else. I'm not sure.

10 Q But it could have gone to Laredo, or it could
11 have been exported.

12 A It's the only access we have to Mexico, to
13 move that way.

14 Q It would be the only way you could get to
15 Laredo; isn't that right? You'd have to go up through
16 Corpus Christi.

17 A The only way the MKT could, right.

18 Q Yes.

19 A Right.

20 Q Now, as noted in your statement, the Missouri
21 Pacific does not serve Enid. However, the Missouri
22 Pacific does serve Laredo. Why wouldn't the Missouri
23 Pacific be happy to deliver MKT grain originating in
24 Enid to Laredo through its interchange with you at San
25 Antonio?

1 A It's possible they may.

2 Q Is there any reason they wouldn't be happy to
3 take that traffic at San Antonio?

4 A We'd have to be able to make a joint rate with
5 them.

6 Q They don't serve Enid?

7 A That's right.

8 Q There's no other way they could get that
9 business?

10 A That's right. It's possible.

11 Q Is it likely that they would be happy to make
12 the joint rate with you?

13 A It's possible the Santa Fe will have a single
14 line to Enid, to Eagle Pass, which if it goes to Mexico,
15 as you suggest, or to Corpus single line, if it goes
16 export at Corpus.

17 Q But from Enid to Laredo the MKT routes in
18 connection with the UP would be superior than the Santa
19 Fe route to Corpus Christi to connect with the TM and
20 then over to Laredo, would it not?

21 A I think they would be two equal joint line
22 routes to Laredo, but its our feeling we shouldn't think
23 the Pass is going to be the way the Mexican grain moves
24 when the Santa Fe gets into this marketplace.

25 Q Now, the Missouri Pacific also goes to Corpus

1 Christi, don't they?

2 A Yes, sir.

3 Q And they would be happy to deliver that grain
4 for you at Corpus Christi, wouldn't they?

5 A Well, possibly. We have -- I think, Mr.
6 Dimmerman and Noser can talk about this. We have not
7 been extremely successful in making routes and rates
8 with the Missouri Pacific, but possibly they would.

9 Q In places where they don't have single line
10 service between the two points wouldn't it be in their
11 economic interest to make joint line rates with you?

12 A It would depend on the divisions. It might
13 not be.

14 Q You mean they would turn down the business out
15 of Enid even though they don't have access to Enid?

16 A Possibly. I could not predict what they might
17 do.

18 Q Well, assuming that you could make those
19 rates, then your service from Enid to Corpus Christi and
20 your access to Mexico would not be affected; isn't that
21 right?

22 A If we can make rates with the Missouri
23 Pacific, we would have a joint line rate to compete with
24 what we think will be a Santa Fe single line rate to
25 Eagle Pass, that's right. However --

1 Q Talking about Laredo and Corpus Christi.

2 A Well, you are making an assumption that we can
3 focus on Laredo, and the world just isn't that way.

4 Q Well, Mr. Gastler, the world is that more
5 grain is moving through Laredo right now than the rest
6 of the rail crossings in Mexico put together.

7 A Until the Santa Fe main line goes to Eagle
8 Pass, which will happen very soon, or after this merger
9 there will be an incentive to change the crossing. I
10 don't think either us or the TexMex thinks you're going
11 to be dealing with us to get to Mexico.

12 Q Do you believe that because there would be a
13 single line route to Eagle Pass that Conasupo is going
14 to shift the grain that it now purchases from Laredo to
15 Eagle Pass?

16 A There will be an economic incentive for them
17 to do it.

18 Q Please refer to page 59 of your statement,
19 MKT-20. In the second paragraph you recognize that the
20 trackage rights that you request between San Antonio and
21 Corpus Christi would require rights over seven miles of
22 MP lines between Stanton and Odem, Texas.

23 MR. KHARASCH: Sinton, sir.

24 BY MR. SVOLOS: (Resuming)

25 Q Sinton and Odem, Texas. And another 13 miles

1 of MP track from Oden to Corpus Christi. Do you know
2 whether the Missouri Pacific as the landlord of this
3 piece of track is agreeable to the Katy running over it?

4 A I do not know.

5 Q Have you discussed it with them?

6 A I have not presently, no, sir.

7 Q Do you know if anybody at the Katy has talked
8 to the Missouri Pacific about those trackage rights?

9 A I don't know of anyone who has done that. The
10 Commission will have to find this to provide us terminal
11 access to Corpus. This is the reason we show as
12 alternate at Eagle Pass. We prefer to work with the
13 TexMex, and we feel confident we can move grain through
14 Eagle Pass. We do not want to do that --

15 Q I'm sorry. I didn't get your statement about
16 the reason that you chose the alternate.

17 A We chose the alternate of Eagle Pass because
18 we feel confident we can move grain to Mexico through
19 Eagle Pass if the Commission does not find in favor of
20 us going to Corpus. We want to go to Corpus Christi as
21 a preference.

22 Q You say if the Commission does not find in
23 favor of your going to Corpus Christi?

24 A Right. We do not want both is what I'm trying
25 to say.

1 Q Does that relate to your argument that you are
2 serving terminal facilities; in other words, if that is
3 turned down?

4 A Then we want trackage rights to Eagle Pass.
5 We do not want both. And our grain bargaining people
6 feel we can move grain over that junction.

7 Q Mr. Gastler, would you turn to page 63 of your
8 statement, please? The first sentence in the first
9 complete paragraph you state, "It is not economical to
10 truck grain long distances."

11 Now, Mr. Gastler, in making that statement
12 were you aware that grain is now being trucked to the
13 port of Catoosa at Tulsa, Oklahoma from points as far
14 away as Kansas, eastern Colorado, western Oklahoma, and
15 that it moves from the port of Catoosa on the Arkansas
16 River to the Mississippi and then down to the Gulf? Are
17 you aware that those truck movements are now taking
18 place?

19 A I know there is some trucking of grain, yes --
20 not substantial.

21 Q Well, are you aware of the trucking of grain
22 to the port of Catoosa that I have just described?

23 A I am aware that there is some trucking, yes,
24 sir.

25 Q I'm sorry, Mr. Gastler. I think I'll have to

1 ask that you answer the question. Are you aware of the
2 trucking to the port of Catoosa from the states of
3 Kansas, eastern Colorado and western Oklahoma?

4 A No, I'm not aware. I can easily imagine there
5 would be some trucking of grain from parts of Oklahoma.
6 I'm not aware of the other points.

7 Q Do you recall that in October of 1983 when the
8 OKT began its operations that it attracted substantial
9 trackage to its Salina railhead which was trucked into
10 Salina?

11 A I recall that we still have quite a good deal
12 of business out of Salina today.

13 Q And that is trucked into Salina?

14 A I think the trucking is practically nil
15 today. We still have access via truck, but I believe we
16 have published competitive flat rates out of there which
17 has attracted what grain we get today.

18 Q There's a lot of flat grain moving into Salina
19 by truck?

20 A Well, there is some. We don't haul a lot of
21 anything, but if we get a train of wheat out of Salina,
22 that is a success story.

23 Q Does that come from places as far as away as
24 southwest Kansas in SP territory?

25 A I wouldn't think so. Grain --

1 Q Mr. Gastler, let me ask you, do you know if
2 Katy traffic people solicit grain shippers in southwest
3 Kansas for truck movements to Salina where it can then
4 be moved by the Katy?

5 A I don't know how far southwest you would go,
6 but Wichita is closer to southwestern Kansas than
7 Salina, and Katy people who solicit business solicit
8 everywhere there is business for the Katy. We would be
9 soliciting for Cotton Belt-Katy routings, and we have
10 some routings. We'll solicit business everywhere.

11 Q Do they go down as far as Liberal?

12 JUDGE HOPKINS: One at a time here. We are
13 having this trouble again. Wait until he finishes the
14 answer before you start the next question.

15 THE WITNESS: I would not think that we would
16 solicit any grain from Liberal to move through Wichita
17 and certainly not in Salina. Well, we might try it, but
18 what I'm saying is I don't think it would be a practical
19 option.

20 BY MR. SVOLOS: (Resuming)

21 Q You don't believe you have been successful in
22 doing that?

23 A I don't think we have, right. I also don't
24 think we've tried it.

25 Q Mr. Gastler, would you please refer to page

1 64? At the top of the page, the last sentence, the
2 first incomplete paragraph, you quote a sentence from
3 the Commission's findings in the Tucumcari case relating
4 to parallel lines. Do you see that?

5 A Yes.

6 Q Mr. Gastler, are the lines of the OKT and the
7 MKT parallel? Look at the map. You see those two lines
8 coming down. Aren't they parallel?

9 A Well, they are parallel and about 250 miles
10 apart, yes.

11 Q All right. When you applied to the Commission
12 for authority to operate over the line, to have the OKT
13 operate over the line, wasn't a question raised
14 regarding the loss of competition which might result
15 from having common operation over those parallel lines?

16 A Oh, no, because the line right in the middle
17 of it is the Santa Fe main line which pulls from both
18 ways. I mean the Santa Fe is the driving force in
19 there, and there is nothing that crosses that Santa Fe
20 barrier. You control it all.

21 Q Do you recall, Mr. Gastler, that one of the
22 points raised by the Katy in that case was that there
23 are 400 trucks serving the area?

24 MR. KHARASCH: Could we have a reference to
25 the case? I'm a little lost. Maybe Mr. Gastler knows,

1 but I do not know what case we are referring to.

2 JUDGE HOPKINS: He is going to refer to it.

3 BY MR. SVOLOS: (Resuming)

4 Q This was the application for authority for the
5 OKT to operate over the Rock Island lines, ICC decision
6 Finance Docket No. 29923.

7 Do you have that?

8 A What page are you on?

9 Q Would you look at page 15?

10 A Yes, sir.

11 Q The third paragraph. It says, "The record
12 reveals that there are over 400 motor common carriers
13 serving the involved area." And on the previous page
14 14b, "The Commission found that the fact that the MKT's
15 lines parallel those to be operated by the OKT would not
16 result in a lessening of competition."

17 A Yes.

18 Q So the Commission noted that you had parallel
19 lines, and one of the factors which they considered was
20 the fact that there were 400 motor common carriers
21 operating in the area; isn't that right?

22 A They were operating there until we started up,
23 and today they are not longer operating. But in
24 addition to all of this parallel lines, you need to
25 recall something I said earlier, that lying in between

1 us is the Santa Fe, which is a fairly tough competitor
2 for grain shipments.

3 Q However, in that case the Commission
4 apparently felt that it was significant enough that they
5 made a finding that there were 400 motor common carriers
6 operating in the area.

7 A Before the railroad began operating. And if
8 you will look at Bob Case's testimony in this case
9 regarding the Kingfisher Co-op, he fairly well outlines
10 the problems that occur when a small country elevator of
11 4 million bushels has to use trucks.

12 Q Would you turn to page 65 of your statement,
13 please? In the middle of the page you state in
14 discussing the reason for your application for Liberal
15 to Topeka trackage rights, you state, "Our decision to
16 apply for trackage rights is rather based on the
17 apparent urgent public need to provide competitive
18 service that would be lost by the merger."

19 A Yes, sir.

20 Q Now, this is in southwest Kansas we're talking
21 about.

22 A Yes, sir.

23 Q And, Mr. Gastler, your statement that
24 competitive service would be lost was based upon the
25 assumption that Santa Fe and Southern Pacific now

1 compete with each other for the transportation of grain
2 in southwest Kansas?

3 A Yes, sir.

4 Q And that they do not compete with anybody else.

5 A I don't know of much other competition out
6 there in southwestern Kansas.

7 Q No other railroad?

8 A There will be three railroads fairly well
9 controlled by the merged company after merger. There
10 are other railroads in Kansas, but the Union Pacific is
11 far to the north.

12 Q We're talking about the situation now. There
13 is no other railroad which is competing for the
14 transportation of grain from southwest Kansas other than
15 the Santa Fe and Southern Pacific, is that your
16 testimony?

17 A That's right.

18 Q And there's no competition for the
19 transportation of grain that is presented by a
20 combination of motor carrier and rail carrier or a
21 combination of motor carrier and water carrier from
22 southwest Kansas?

23 A If there is, it's very small. There might
24 always be a truckload at a peak time.

25 Q All right. Another way of putting it is that

1 your conclusion that competitive service would be lost
2 by the merger is based on your assumption that shippers
3 who have grain in southwest Kansas cannot economically
4 move their grain by truck to the lines on the Missouri
5 Pacific or the Katy?

6 A That's right.

7 Q And that the shippers of grain in southwest
8 Kansas could not economically truck their grain to a
9 terminal at Hutchinson?

10 A Yes, that's right.

11 Q And Hutchinson, of course, is served by the
12 Missouri Pacific?

13 A Yes, sir.

14 Q And I think you've already said that you doubt
15 that they could economically truck their grain from
16 southwest Kansas to the Katy up at Salina?

17 A That's right.

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1 Q And you also have to assume that it could not
2 be trucked to the Port of Catoosa at Tulsa, Oklahoma.

3 A You know, we have to surround this with a
4 bodyguard of economics. If you don't consider
5 economics, you can move the grain in a small vehicle,
6 but to the farmer an economic competitive price is what
7 he is worried about.

8 He can't get to the Mississippi River
9 economically from southwestern Kansas. I think I can
10 say he can't get to the Port of Catoosa economically.

11 I think it would be stretching way beyond our
12 imagination to think you could truck from Liberal to
13 Salina and go to the Gulf on the Katy economically. A
14 farmer out there isn't interested in the world market
15 quite so much as we are, sitting around this table.
16 He's trying to get the best price for his grain at his
17 place of business.

18 Q All right, Mr. Gastler. Your statement that
19 competitive service would be lost in southwest Kansas is
20 also based on the theory or on the assumption that Santa
21 Fe and Southern Pacific ship to the same markets from
22 those points, is it not?

23 A That's right. That's right. And that they
24 compete for that 100 pounds of grain, and they do.

25 Q Would your opinion that Santa Fe and Southern

1 Pacific compete, would that change if it were true that
2 the Southern Pacific ships most of the grain which it
3 originates from southwest Kansas to feedlots in Arizona
4 and the Imperial Valley in California, points which are
5 not served by the Santa Fe?

6 A Well, grain moves to its most economic use,
7 and it is based on the pricing of the Santa Fe today and
8 the pricing of the SP. And you highlighted that the
9 SP's major route with the Santa Fe is through
10 Hutchinson, so that perhaps has already eliminated some
11 competition in this area.

12 But today, the two railroads do compete for
13 the grain. They are there in the territory and they do
14 compete for the grain.

15 Q I'm sorry, Mr. Gastler. I don't think you
16 answered my question. My question was, if the evidence
17 in this case shows that most of the grain that
18 originates on the Southern Pacific moves to the west, to
19 Arizona and California on SP single line service, it
20 doesn't go to Santa Fe points, would that change your
21 opinion as to whether or not the Santa Fe and Southern
22 Pacific are competing with each other?

23 A I don't know if there are feedlots on the
24 Santa Fe or not in California and Arizona and New
25 Mexico. They serve those points also. And in fact, the

1 Santa Fe serves some of the major feedlots in West
2 Texas, I believe, that they could be competing for the
3 feedlot tonnage to the West and Southwest as well as the
4 Southern Pacific.

5 Q If the facts show that the Santa Fe is serving
6 markets to the south towards the Gulf, and the SP is
7 moving its grain to the west, wouldn't that indicate tht
8 they are serving different markets?

9 A It depends on the pricing of the two
10 railroads. It moves based on the pricing of the two
11 railroads. One sees fit to compete perhaps to the Gulf
12 and one to the southwest. The shippers on the line in
13 southwestern Kansas feel certain they will route some
14 business over our trackage rights. There must be
15 something to that or we couldn't get the business.

16 Q Mr. Gastler, would you please turn to page
17 58. The first paragraph near the top of the page, you
18 state: "In order to survive and succeed as a strong
19 regional railroad, we need to be able to carry cargo
20 between the points our shippers want it to move."

21 Mr. Gastler, is it your position in this case
22 that if the trackage rights which you request are not
23 approved and this merger goes through, that the Katy's
24 continued existence will be threatened?

25 A Yes. If this merger goes through and we

1 suffer our loss of approximately \$20 million, and we get
2 no trackage rights, our position will be very tenuous.
3 That doesn't mean we are going to fall out of the
4 marketplace.

5 Q All right, Mr. Castler. Have you been
6 involved in the policy decisions affecting the Katy's
7 position in previous merger cases?

8 A Yes, sir.

9 Q As a matter of fact, am I correct that this is
10 the fifth merger case in the past six years in which the
11 Katy has appeared as a Protestant?

12 A We probably have the most experienced group
13 here.

14 Q You have a lot more experience at this than I
15 do, I'll tell you that. And in practically all of those
16 cases, you made the claim, didn't you, that Katy's
17 continued existence is threatened by a particular
18 merger?

19 A And it was.

20 Q I think the first one of those cases was the
21 BN/Frisco case. Is that correct?

22 A Yes.

23 Q And the position basically, the position of
24 the Commission at that time was that the Katy could not
25 withstand the anticipated diversions from the merger.

1 A Yes. And the diversions did occur.

2 Q In that case, you told the Commission that you
3 anticipated revenue losses of approximately 11-1/2
4 million. Do you recall that?

5 A I can't be that specific, but it was a
6 significant number.

7 Q And you asked for an indemnification in that
8 case as opposed to trackage rights?

9 A Yes, sir.

10 Q And you asked that the indemnification run to
11 the year 1997; do you recall that?

12 A I don't recall the specific number, but it was
13 a while.

14 Q The year was significant because that's the
15 year in which your obligations on federal loans would
16 end. And do you recall that you asked that the
17 indemnification run until that year because you feared
18 that the BN/Frisco merger would jeopardize your ability
19 to repay federal loans?

20 A It was some number in the '90s. I don't
21 remember the specific year.

22 Q Now, did the Commission grant indemnification
23 to the Katy in that case?

24 A No, they did not.

25 Q Do you recall that in the Commission's opinion

1 in turning down your request, it said that the merger
2 would not affect your ability to provide essential
3 services because of your bright future. It said the
4 Katy had a bright future?

5 A I vaguely remember that and was shocked.

6 Q Well, don't you think the Commission was
7 visionary in making that forecast?

8 A Well, they saw something coming that I didn't
9 see, but they did approve our purchase of the Katy which
10 sort of helped us offset the Burlington losses. That's
11 one thing that we had to seek other remedies. But we
12 lost our decision to the Commission and to the various
13 courts.

14 Q All right. Now, the Katy then took a similar
15 position in the Southern Pacific/Tumcumcari case. That
16 is, that the merger would threaten its continued
17 existence.

18 A I think our position there was that as long as
19 the Southern Pacific did not go beyond Kansas City,
20 that we would not be damaged. We did not, as I recall,
21 want the Southern Pacific to go to St. Louis. That is
22 where our -- I think that is where our diversions
23 developed.

24 Q Do you have a copy of your verified statement
25 in that case?

1 A I have all the papers, I think, that you asked
2 me to have here. Perhaps I do. Is that 285?

3 JUDGE HOPKINS: This will be marked for
4 identification as SFSP-C-13.

5 (The document referred to
6 was marked Exhibit SFSP-C-13
7 for identification.)

8 BY MR. SVOLOS: (Resuming)

9 Q At the top of the page, it appears that you
10 forecast a revenue loss of \$6,700,000 to the Katy as a
11 result of the SP's acquisition of the Tumcumcari line;
12 is that correct?

13 A Yes, sir.

14 Q And then, in the second paragraph you stated
15 that this diversion would occur over three years. Do
16 you see that on page 19?

17 A Yes, sir.

18 Q Divided 40 percent in the first year, 80
19 percent in the second year, and 100 percent in the third
20 year; is that correct?

21 A Yes.

22 Q And in the third paragraph on the page, you
23 testified that the loss to MKT clearly would place MKT
24 in violation of its covenants assumed by MKT in the U.S.
25 Government-guaranteed loans.

1 A Yes.

2 Q And finally, you say the above loss, escalated
3 and perpetuated, will create the same problem in future
4 years, and in addition will make it extremely difficult
5 to remain solvent while providing a safe, competitive
6 service.

7 So you did -- is it fair to state that in the
8 SP/Tucumcari case, you did say that that particular
9 transaction would affect the solvency of the Katy?

10 A And that's where we stand today. That
11 describes us today. It has been very difficult.

12 Q All right. And then after that came the CSX
13 case and I believe you also expressed concern about the
14 impact of that merger on your viability.

15 A Yes. But there, Mr. Sheridan who is in this
16 case and our general counsel worked with the CSX
17 people. Mr. Sheridan can tell you more about this than
18 I. I think we worked out continuing routings on certain
19 traffic and did not suffer appreciably from CSX.

20 Q You worked out some sort of an open route
21 policy?

22 A Some joint routes.

23 Q Joint route policy.

24 A Some routes via --

25 Q Is that over the St. Louis connection that you

1 were concerned about?

2 A Yes.

3 Q And you worked out some kind of an agreement
4 which assured you that that connection would remain
5 open?

6 A I believe that Mr. Sheridan should -- I recall
7 something occurred in connection with CSX which caused
8 us to not be harmed by so much as we thought.

9 Q But that was an agreement that you had entered
10 into with the CSX?

11 A Well, I think it was just an understanding tht
12 we would continue to use, that we would solicit joint
13 routes through there. I don't really believe we ever
14 had an agreement. We just agreed to jointly solicit
15 traffic over St. Louis.

16 Q And that agreement satisfied your concerns
17 concerning keeping the St. Louis Gateway open in the CSX
18 case?

19 A Well, it partially offset some of the
20 problem.

21 Q All right. Mr. Whitman was the policy witness
22 for the Katy in the BN/Frisco case, the first one we
23 were discussing, and his testimony was presented in
24 1978. At that time, you had the 1977 results.

25 Am I correct in stating that 1977 was one of

1 the worst years in the Katy's history from the
2 standpoint of losses?

3 A I don't recall that. You see, the losses --
4 it possibly was because we were doing large
5 rehabilitation work, and under the ERB accounting rules
6 you might have seen some large losses there.

7 '77 was a difficult year, but not as difficult
8 as '75.

9 Q All right. By the time you testified in the
10 SP/Tucumcari case which was in 1980, you had the 1979
11 results of the Katy. Was that also a loss year?

12 A I'd have to look at the figures. I don't
13 know. Whatever it was --

14 Q But at any rate, it was a much better year
15 than 1977.

16 A Yes. I believe 1979 was the first full year
17 of the first steam-generated unit on the Katy, unit coal
18 trains from the Powder River Basin in connection with
19 the Burlington. They started that, that train started
20 in November of 1978.

21 Q And when you testified in the Union
22 Pacific/Missouri Pacific case in June of 1981, you had
23 the 1980 results which reported a net profit before
24 taxes of \$4.1 million. Do you recall that?

25 A If that's what the record showed.

1 Q That was your testimony in the Union Pacific
2 case. Would you like to look at the transcript?

3 A No. It was in that range.

4 Q You testified in that case approximately 4-1/2
5 years ago, June of 1981?

6 A Yes, sir.

7 Q Now, at that time, Mr. Gastler, you forecast
8 that the cumulative effect of the four mergers,
9 BN/Frisco, SP/Tucumcari, CSX and Union Pacific, would
10 result in a 25 percent reduction in Katy's total revenue
11 based on the year 1979.

12 I have the transcript if you would like to
13 look at it.

14 A That's all right.

15 Q Is that correct?

16 A That seems reasonable.

17 Q And Katy's revenue for the year 1979, I
18 believe, is shown at page 5 of your statement in MKT-20
19 as being \$166,086,000.

20 A Yes, sir.

21 Q And you testified that you expected to lose
22 one-fourth of your revenues based on that year.

23 A Yes, sir; the cumulative effect of all of the
24 mergers.

25 Q Yes.

1 A Right.

2 Q And that was based on the anticipated loss of
3 friendly connections with those carriers in part, was it
4 not?

5 A Yes, sir. And that occurred in the Tucumcari,
6 though I want to just add there, did not occur until the
7 UP merger was approved because that's when the Southern
8 Pacific got their rights to St. Louis. So our Tucumcari
9 losses occurred simultaneously with the UP losses.

10 Q Well, as a matter of fact, in the SP/Tucumcari
11 case, you forecast the loss of Denison as a friendly
12 connection with the SP.

13 A Yes, after they could go to St. Louis with the
14 business, you see, and they used St. Louis to bypass us
15 on their way to Houston.

16 Q Did they do that?

17 A Oh, that's been done. That is done today.
18 And some days when they don't want to do that, we bridge
19 trains for them to Denison.

20 Q So the SP is now routing traffic through St.
21 Louis which could go through Denison?

22 A Yes.

23 Q Despite the fact -- you state that despite the
24 fact that your testimony shows that you interchanged
25 over 5,000 cars with them at Denison in 1983?

1 A Oh, yes. I don't mean to say anything wrong
2 with the Denison interchange.

3 Q All right. Now, you forecast, as we noted i
4 your Tucumcari testimony, that these diversions would be
5 felt within two to three years after each of these
6 mergers was consummated.

7 A Yes.

8 Q On a percentage basis; 25 percent the first
9 year, 20 percent the second year, and by the third year
10 you would feel the full impact?

11 A Yes.

12 Q Has it followed that pattern in your
13 judgment?

14 A I think our people and Mr. Dimmerman can talk
15 about this better than I can. But I think our diversion
16 people have had so much experience, they are pretty
17 adept at properly predicting what occurred, except that
18 I caution to say that the Tucumcari thing did not occur
19 until UP was approved, which of course at that time the
20 Interstate Commerce Commission saw fit to give us our
21 trackage rights which tended to partially offset that
22 damage.

23 Q Well, the BN/Frisco merger was consummated in
24 November of 1980; CSX, I believe, in October of 1980;
25 the SP started operating over the Tucumcari line in

1 March of 1980; and the Missouri Pacific, I believe, was
2 consummated in December of 1982.

3 A Yes.

4 Q Mr. Gastler, would you refer to Table 1 on
5 page 5 of your statement?

6 A I have it; yes.

7 Q That shows that in 1983, the MKT system had
8 total operating revenues of \$249,609,000.

9 A Yes, sir.

10 Q And assuming that that comes out to an annual
11 growth of 10 percent from 1979 to 1983, compounded
12 annual growth of 10 percent, would you agree that that's
13 pretty good performance on the part of the Katy, the 10
14 percent annual growth in revenues?

15 A Well, when you consider -- you know, we are in
16 an environment today where we have no inflation. During
17 those years, we had an inflationary spiral that let us
18 index our rates. The railroads nationally indexed their
19 rates enormously.

20 That inflated these numbers considerably. Our
21 costs -- you can look at gross if you like -- but our
22 costs went up this much or more, and the reason our
23 gross is here is simply because the Commission saw fit
24 to give us the North End trackage rights and approve the
25 OKT which we commenced immediately after that loss which

1 started immediately after the OKT. We had to replace
2 our lost business or we would not have survived.

3 Q Mr. Gastler, the reason I focused on revenues
4 is that you used revenues to determine the level of
5 diversions which would occur as a result of the mergers,
6 which seems reasonable to me. I don't know any other
7 way that you can do it.

8 A Right. We did and they did.

9 Q That's why I was trying to compare the
10 revenues in 1979, which is the last full year before any
11 of these mergers took place, and the revenues which you
12 earned in 1983. And I asked you if that showed a 10
13 percent, roughly 10 percent annual growth during those
14 years.

15 Wouldn't you agree that that was a very
16 favorable performance by the Katy Railroad?

17 A Well, I think I said yes, thanks to the ICC
18 who approved our OKT purchase and our North End trackage
19 rights. Our diversions -- and Mr. Dimmerman can answer
20 this better than I can -- did occur. I think our
21 diversions did occur, but we had to go out and replace
22 the traffic.

23 And all I'm trying to do is tell you that I
24 think our people did a great performance. You know, we
25 have to scrap for what we get. They did well, but it

1 was done with some help from the ICC. It would not have
2 occurred without that.

3 Q But during this period, the Katy Railroad has
4 emerged as a truly valued asset of Katy Industries;
5 there is no doubt about that, is there?

6 A Well, they carry us on their books at one
7 dollar. They did not consolidate us.

8 Q Is that the book value?

9 A It is negative. The stockholders' equity is a
10 minus \$50 million. It is not -- you know, we are
11 railroad people and we think we know where we stand in
12 the business.

13 Q Well, you stand pretty well, according to your
14 operating ratio, 71.9 percent on an RRB basis. I
15 believe that's in your statement at page 6.

16 A We have good operating people. We run our
17 operations very close.

18 Q It's a lot better than any Class I carrier in
19 the industry, isn't it?

20 A I don't think so. I think you would have
21 other carriers that are doing as well or better.

22 Q 71 percent.

23 A I am talking right now -- I think the
24 Burlington is doing better.

25 Q Do you know what the Santa Fe's operating

1 ratio is?

2 A No.

3 Q The SP's?

4 A No. Operating ratio is a thing that's
5 affected tremendously by management. You can do a lot
6 of rebuilding to affect the operating ratio.

7 Q All right.

8 Now, finally, the last question I have about
9 the UP case, I ask it because it seems to me that you
10 were really a little pessimistic about what would happen
11 to you.

12 You testified in that case that it would take
13 the Katy 20 years to build its traffic level up to where
14 it was from the base year of 1975 as a result of the
15 merger. Do you recall that?

16 A I don't recall it, but it sounds like
17 something I might have said. I feel that way today.

18 Q You were a little pessimistic back there,
19 weren't you, in saying that it would take you 20 years
20 to build your traffic level back up to \$166 million,
21 which was your 1979 revenues?

22 A Of course, you have to index those dollars.
23 The present value of that 166 is much different than
24 166. You have to inflate those dollars to get -- what I
25 said earlier is a large amount of that is inflation.

1 Our units have not changed that much.

2 Q I asked you earlier if the Katy had not become
3 a truly valued asset of Katy Industries. As a matter of
4 fact, Katy has experienced such impressive growth, in
5 the opinion of the chairman of the board of the Katy
6 Industries, that in March 30, 1984, in a message to the
7 stockholders, he praised the Katy in exactly those words.

8 He said that you were a truly valued asset of
9 Katy Industries. Do you have any reason to disagree
10 with Chairman Carroll's assessment?

11 A I don't disagree with the Chairman. I am
12 delighted he said it.

13 Q Now, I'd like to go over some of the
14 statements that were contained in other reports to the
15 stockholders because I think they might bear on some of
16 the issues in this case, starting with 1981.

17 A MKT or Katy?

18 Q Katy Industries.

19 A I have it.

20 Q Do you have a copy in front of you?

21 A What year?

22 Q 1981, Katy Industries.

23 A I don't have 1981.

24 Q We have a copy of the pages I would like to
25 refer you to.

1 JUDGE HOPKINS: That will be marked for
2 identification as SFSP-C-14.

3 (The document referred to
4 was marked Exhibit SFSP-C-14
5 for identification.)

6 BY MR. SVOLOS: (Resuming)

7 Q All right, Mr. Gastler, you have before you
8 two pages, a cover page of the 1981 report for Katy
9 Industries, and page 20 of the report which I'd like to
10 ask you about.

11 The report indicates that revenues for 1981
12 reached \$266 million, an increase of 20 percent over
13 1980. Then it is noted that on a pretax basis, the more
14 reliable case of Katy's operating experience, income
15 rose better than 165 percent to \$10,900,000 from
16 \$4,100,000 in 1980.

17 Then it is noted that although carloading and
18 10-mile increases were modest, revenue per car rose an
19 impressive 17 percent due to a concentrated effort to
20 haul high-yielding traffic.

21 What is meant by high-yielding traffic?

22 A Well, 1981, of course, was a stemwinder year
23 for every railroad. We did very well. Inflation was
24 rampant and fuel prices were up. The trucks were having
25 a heck of a time. And we all had a lot of business.

1 In addition, that was our first full year of
2 the OKT which fed us a lot of traffic, and finally, we
3 still had the UP which is high-yielding traffic.

4 In other words, the traffic from the Union
5 Pacific at Kansas City produces our highest revenue per
6 ton mile. That's what we mean by high-yielding
7 traffic.

8 1981 was a good year. We have not experienced
9 one like that before or since.

10 Q All right. This was a full year after the
11 BN/Erisco merger and the CSX merger and the SP
12 acquisition of the Tucumcari Line.

13 A The Tucumcari Line had not affected us yet.
14 They did not yet get to St. Louis. CSX Line barely
15 affected us. I believe the Burlington diversion was
16 about half done then. Mr. Dimmerman will give you the
17 specifics, but we would like to have more years like
18 1981. We can handle those.

19 Q All right. Let's go to 1982.

20 JUDGE HOPKINS: That will be marked for
21 identification as SFSP-C-15.

22 (The document referred to
23 was marked Exhibit SFSP-C-15
24 for identification.)

25 BY MR. SVOLOS: (Resuming)

1 Q Mr. Gastler, you have before you portions of
2 the 1982 Annual Report for Katy Industries, the cover
3 page and three other pages. Or do you have the entire
4 report?

5 A I have the entire report.

6 Q Would you look at page 5 of the report, at the
7 message to the stockholders by Chairman Wallace E.
8 Carroll. Have you located that?

9 A Yes, sir.

10 Q In the right-hand column, the third paragraph
11 from the bottom, Chairman Carroll stated, commenting on
12 the economy: "In this sparse economy, divisions fared
13 differently. Some fought for survival. Others turned
14 in stellar performances as sketched above. The majority
15 operated in the middle ground between the extremes."

16 What category was Katy Railroad? Would you
17 agree that it was in the stellar category?

18 A Well, we were -- well, I don't know what Mr.
19 Carroll -- which division he was talking about. In
20 1982, the Union Pacific merger occurred, I believe, at
21 the end of the year. So we still had the Union
22 Pacific.

23 Q By then, the SP/Tucumcari acquisition had been
24 in effect --

25 A But it was affecting us yet, because they

1 weren't yet getting to St. Louis.

2 Q Was the St. Louis extension which you say hurt
3 you as far as Tucumcari?

4 A Yes. And that's what we finally told this
5 Commission in the hearing.

6 Q Without St. Louis, the Tucumcari acquisition
7 had no effect?

8 A Well, it was minimum, let's say. Right.

9 Q Well, getting back to this Annual Report,
10 would you turn to page 20, please.

11 A Yes, I have it.

12 Q At the top of the page in about the second
13 column, it states: "The comparison with 1981 pretax net
14 is distorted substantially by the inclusion in 1981 of a
15 4.2 million benefit from the sale of tax attributes."

16 Then it says: "Exclusive of this item, pretax
17 operating income in 1982 was \$4.6 million compared with
18 the restated \$4.4 million in 1981."

19 Do you see that?

20 A Yes, sir.

21 Q Then it says, at the end of that paragraph,
22 "That the MKT was able to remain profitable in the face
23 of a severe recession is a significant milestone in
24 MKT's financial history."

25 Now, would you agree that you turned in a

1 stellar performance?

2 A Well, this is Mr. Carroll's words. It is good
3 that they say that.

4 Q Do you disagree with Mr. Carroll?

5 A It was a very tough year, a very tough year.

6 Q I think Mr. Carroll acknowledged that, but the
7 way I read this is that you turned in a marvelous
8 performance that year in view of the fact that there was
9 a harsh business climate. That's the message I get.

10 Do you agree with that?

11 A I think we did well. We have to do that way.
12 As I said before, our working capital is such that we
13 have no room for a bad year at the bottom line in the
14 cash drawer. We cut back tremendously in 1982 to create
15 the bottom line.

16 Q All right. At the bottom of the page where
17 the discussion begins on the left-hand side, the
18 statment is made that: "As anticipated, the railroad
19 sustained a substantial decline in gross revenues in
20 1982. However, it was able to slightly increase its
21 operating margins in contrast to the industry as a
22 whole."

23 Now, Mr. Gastler, were you able to increase
24 your operating margins because you were able to maintain
25 your ability to attract higher yield traffic?

1 A Pure and simple, cutting people off is the way
2 you made any operating margin in a recession year.

3 Q What about traffic density?

4 A Traffic density fell out of bed. We still had
5 the UP, however, which was high-yielding business. But
6 you maintain operating margins in a recession year by
7 cutting off everybody you can.

8 Q All right. Could you turn to the next page,
9 to page 21. In the left-hand column it talks about the
10 most notable development. Do you see that near the top,
11 the first full paragraph on that page?

12 A I can't find that.

13 Q Well, the paragraph begins with: "The effects
14 of the recession continue to have great impact." Are
15 you with me?

16 A Yes, sir.

17 Q The next sentence is: "The most notable
18 development was the severe and sustained erosion of unit
19 yields which ran 10 to 12 percent below the average."
20 Do you see that?

21 A Yes, sir.

22 Q And then I would like to read the balance of
23 that paragraph because I think it has some relevance to
24 this proceeding.

25 It says: "Given continued massive federal

1 subsidies to highway and water carriers, it is
2 inevitable in a competitive environment that, since the
3 Federal Government is picking up most of the true
4 capital costs involved, rates will be slashed by such
5 carriers to pure fuel and labor costs in desperate
6 attempts to maintain volume.

7 "The railroad industry has been forced to meet
8 these subsidized rates, and the consequences are
9 potentially devastating."

10 Now, Mr. Gastler, based on the language in
11 that report, isn't it clear that Katy management
12 concluded that it is confronted with very serious
13 competition from motor carriers and the water carriers
14 in the area in which it operates?

15 A Of course, when you are talking about Katy,
16 this is Katy Industries; this is not MKT Railroad.

17 Q But it is talking about the railroad
18 industry.

19 A Yes.

20 Q And can you conclude based upon that language,
21 that the management has concluded that it's confronted
22 with very serious competition from motor carriers and
23 water carriers in the area in which it operates?

24 A We are --about 10 to 12 percent of our
25 business is piggyback, and in that area our yields have

1 been fairly flat, as I recall, over the past three
2 years. And this would be -- the intermodal competition
3 we face is the piggyback traffic out of St. Louis into
4 Kansas City, basically.

5 Q What about water carriers?

6 A We do not operate in that part of the world.
7 Water carriers affect us, but we don't normally address
8 the water carriers. We are talking about merchandise
9 freight on the interstate highway system from St. Louis
10 and Kansas City to Texas.

11 Q Mr. Gastler, I believe you testified earlier,
12 did you not, that you, as part of your duties, review
13 annual reports that relate to the railroad?

14 A Yes.

15 Q Do you recall reviewing the language in this
16 report, in the 1982 report?

17 A I don't recall. I probably did review it, but
18 then it finally gets a final editorial -- it's
19 editorialized by our holding company.

20 Q It is a fairly substantial statement and a
21 pointed statement of policy as it relates to the
22 railroad, isn't it?

23 A What part of that?

24 Q "The railroad industry has been forced to meet
25 these subsidized rates and the consequences are

1 potentially devastating."

2 A Well, that's the industry, and the industry
3 can do what it pleases. Again, maybe it wasn't in '82,
4 but very soon thereafter, we raised our piggyback rates
5 alone and had those raises stick. So we are not acting
6 in concert with the industry. Piggyback is deregulated
7 totally and people act on their own.

8 Q This is Katy Industries Annual Report and I
9 assume it is talking about the Katy Railroad as well as
10 the industry; isn't that correct?

11 A That paragraph there is about the industry.
12 By and large, they talk about the MKT; right.

13 Q By and large, it also refers to the MKT.

14 A This paragraph here refers to the railroad
15 industry.

16 Q You don't believe it also refers to the MKT?

17 A Part of it does and part of it doesn't. We
18 are such that there are many truck rates that we
19 certainly don't try to meet.

20 Q I'm just wondering why Katy Industries would
21 include something in their annual report which relates
22 generally to the industry and doesn't relate to one of
23 its subsidiaries.

24 A I think it generally relates to MKT as well.
25 I don't know why they talked about the industry. There

1 is no percentage in that.

2 JUDGE HOPKINS: We'll recess until 1:30.

3 (Whereupon, at 12:30 o'clock p.m. the hearing
4 recessed, to reconvene at 1:30 o'clock p.m., this same
5 day.)
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AFTERNOON SESSION

(1:30 p.m.)

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

MR. SVOLOS: Before we begin, I would like to mark another exhibit for identification, the Annual Report of the Missouri-Kansas-Texas System for the year 1983.

JUDGE HOPKINS: That will be marked for identification as SFSP-C-16.

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

Whereupon,

HAROLD GASTLER,

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

CROSS EXAMINATION - RESUMED

BY MR. SVOLOS:

Q Mr. Gastler, you have before the 1983 Annual Report for the Missouri-Kansas-Texas System?

A Yes, sir.

Q Would you refer to page 3 of that report?

A Yes, sir.

Q Under the discussion headed "Traffic and

1 Marketing," at the bottom of the page in the left-hand
2 column, there is a discussion of statutory recovery
3 procedures. Do you see that?

4 A Yes, sir.

5 Q And it says on January 1, 1984, rail carriers
6 were able to increase rates by 4.1 percent.

7 A Yes.

8 Q Now, does that refer to the general rate
9 increase that was authorized by the Commission for
10 1984?

11 A I believe that's right. But I think it did
12 not remain 4.1. I believe that was netted out like 2.4
13 or 5, as I recall. And maybe Mr. Dimmerman can clear
14 that up for you more closely.

15 Q Whatever it was, I'm really interested in what
16 follows. It states: "It is not clear at this time
17 whether this cost recovery approach can be used in the
18 future. These general increases were unfortunately more
19 than offset by competitive rate reductions on specific
20 commodities during 1983."

21 And I'd like to direct your attention to that
22 last sentence. What commodities are referred to in that
23 sentence as far as the Katy Railroad is concerned in
24 1983?

25 A I think that applied to most commodities that

1 we have under contract, and that is many commodities.

2 Q Did it include grain, of course?

3 A It could include grain. I don't think it
4 always did, but it could include grain on some
5 contracts; yes.

6 Q Doesn't most of the grain transported on the
7 Katy move under contract?

8 A No. There is -- I suppose it would be 50
9 percent under contract.

10 Q What other commodities did the Katy move under
11 contract?

12 A We have crushed stone contracts, we have TCFC
13 contracts. I would say that I don't know of, I don't
14 believe we have any coal contracts. We probably have
15 contracts in most other commodities to some limited
16 extent. Automobiles.

17 Q And what are the destinations?

18 A Of these contracted --

19 Q Yes.

20 A They would be numerous, all over the place.
21 They would be to nearly all destinations, to the Gulf
22 ports, to Dallas. I don't quite get the sense of your
23 question because I don't think they are very limited.

24 Q You mentioned Gulf ports. What Gulf ports
25 would be covered by these contracts?

1 A Traffic that would move to Galveston, Houston,
2 to the Gulf ports that we serve.

3 Q What about Gulf ports that you might serve by
4 interlining with other railroads?

5 A I do not know right now of contract
6 commodities that we have moving to Gulf ports. That's
7 one of our real limitations, that we do not serve the
8 multitudinous Gulf ports that our competitors do. We
9 are fairly limited there.

10 Q Do you originate traffic which ultimately is
11 delivered at Gulf ports by other carriers?

12 A Well, I think one thing I mentioned this
13 morning or that we talked about this morning was the
14 grain from Enid. That terminated, as I recall, at
15 Corpus Christi. That would have been the movement that
16 we mentioned in our testimony that did terminate at a
17 Gulf port off of our railroad.

18 But generally, we find ourselves quite limited
19 because we do not serve the Gulf ports that our
20 competitors do.

21 Q Well, do you originate any traffic that
22 terminates through interline with other carriers at
23 Freeport, for instance?

24 A I don't know of any.

25 Q Orange, Texas?

1 A Orange, Texas, I don't know of any. It could
2 be, but I don't know of it.

3 Q What about Brownsville?

4 A Brownsville, I don't recall any.

5 Q Texas City?

6 A We originate traffic at Texas City, and I
7 suppose we would probably have some traffic into Texas
8 City. I just can't recall. I don't know of any.

9 Q But most of your traffic would go to the
10 Galveston-Houston area as far as ports are concerned?

11 A It goes to those major ports that we only have
12 two. We would like to have more, like the Santa Fe or
13 the UP.

14 Q And the traffic that moves to
15 Galveston-Houston moves -- some of it moves under
16 contract?

17 A Some of it does; yes, sir.

18 Q In 1983, it moved under contracts which
19 provided revenues which were less than you would have
20 gotten under this cost recovery index?

21 A Well, I don't know if that's true because had
22 not been under contracts, we probably wouldn't have
23 gotten it at all. So it was under contract for a
24 reason. Without it being under contract, we probably
25 wouldn't have seen any of it, much less the 4.1

1 percent.

2 Q I think my question was whether or not it
3 moved for rates which were under the 4.1 percent.

4 A Yes. Well, some of it did, as the statement
5 says. Some of our commodities were moving for less than
6 the index amount.

7 Q And this included commodities which you moved
8 to Galveston and Houston?

9 A I think it probably did. I know we had some
10 piggyback moves to those points that move under
11 contract.

12 Q Mr. Gastler, can you tell me what the revenues
13 were that the MKT reported for the first three quarters
14 of 1984?

15 A I don't have that right on the tip of my
16 tongue.

17 Q I looked in Moody's and that is not always the
18 best source. But anyway, according to Moody's, your
19 revenues for the first half of 1984 were \$142,199,000,
20 as opposed to \$127,905,000 for the first half of 1983, a
21 substantial increase. Does that seem right to you?

22 A This is first half to first half?

23 Q Yes.

24 A How much was that increase?

25 Q \$142,199,000, as opposed to \$127,905,000 for

1 1982. This was for the first half of '84 compared to
2 the first half of '83.

3 A I believe that must include the OKT and it
4 would in Moody's, so that would be about \$290 million
5 for the year, and that should be about right. But the
6 major component of that increase represents added
7 traffic that the OKT generates. That is where the gain
8 comes, the OKT revenues.

9 Q You project \$290 million for the entire
10 system.

11 A That's about right.

12 Q What percentage of that would come from the
13 OKT?

14 A 15. I am calculating in my head here, but 15,
15 something like that. It's one of the major reasons we
16 were able to offset our UP/PN/Tucumcari losses was the
17 OKT's contribution, or the Commission made it possible
18 for us to go out and compete for the traffic.

19 They didn't give us the business, but we have
20 the right to compete for it.

21 Q Mr. Gastler, would you refer to page 9 of
22 MKT-27. On that page, you seem to be complaining a
23 little bit about some of the volume contracts that the
24 Santa Fe has entered into with grain shippers in
25 Kansas. And I would like to ask you a few questions,

FD 30400 - 1/7/85 - Pgs. 5319-5378

1 first of all, about volume contracts generally.

2 Now, the MKT is now aggressively nursing a
3 policy of trying to get shippers to sign volume
4 contracts, isn't it?

5 A I think so; yes. We have limited success, but
6 we are trying.

7 Q So there are advantages to a shipper in volume
8 contracts?

9 MR. KHARASCH: Can we have a definition of
10 "volume contracts"?

11 MR. SVOLOS: The witness answered the
12 question. I thought he understood it.

13 JUDGE HOPKINS: It looks like both of them
14 understand what it is, but for the record, what do you
15 call a volume contract?

16 THE WITNESS: I'm sure the MKT would call it
17 quite a bit smaller than the Santa Fe, probably 100
18 loads per year would be a contract for us.

19 BY MR. SVOLOS: (Resuming)

20 Q In other words, there is a minimum volume
21 which has to be met in order to get the rate specified
22 in the agreement?

23 A It's more than one. It's more than one.

24 Q All right. Now, volume contracts, shippers
25 seem to like volume contracts, isn't that right?

1 A Yes. Right. I think there is more benefit
2 for the shipper sometimes than the carrier.

3 Q I agree with you. It allows them to ship more
4 grain at a lower rate.

5 A More of anything, any commodity.

6 Q And that's why they sign these agreements?

7 A Well, I suppose they are at lower rates. You
8 know, that depends on the package.

9 Q Now, the reason that a carrier benefits from a
10 volume contract is that it provides reasonable assurance
11 that a significant part of its business will be stable
12 and predictable, isn't that right?

13 A It has a leveling feature; right.

14 Q As a matter of fact, if you look at page 2 of
15 the MKT report for 1983, the third paragraph from the
16 bottom, around the middle of that paragraph, you see the
17 statement: "Substantial business was placed under
18 contract so that for the first time, the MKT has
19 reasonable assurance that a significant part of its
20 business will be stable and predictable."

21 A Yes, sir.

22 Q "And we are aggressively seeking additional
23 opportunities to build on this base."

24 A Yes, sir.

25 Q So you agree that there is nothing wrong with

1 volume contracts in principle?

2 A Oh, no. Right. I don't have any problem with
3 them.

4 Q All right. At the bottom of page 9, you
5 state: "This kind of contract," referring to the kind
6 of contract used by the Santa Fe, "covering a wide
7 geographical area and all kinds of grain can only be
8 made by a railroad such as Santa Fe with considerable
9 market power."

10 Now, Mr. Gastler, hasn't the Katy entered into
11 contracts with its shippers which cover wide
12 geographical areas?

13 A Well, we might have such a contract. I don't
14 know whether contracts would have the width or depth of
15 Santa Fe's, simply because we do not serve the multiple
16 origins that you might serve, or we do not serve the
17 many port areas that you serve. We are very limited as
18 compared to what you could do.

19 Q Maybe we could get a couple of examples. I
20 would like to have two exhibits marked for
21 identification.

22 JUDGE HOPKINS: Contract summary will be
23 marked for identification as SFSP-C-17.

24 (The document referred to
25 was marked Exhibit SFSP-C-17

1 for identification.)

2 BY MR. SVOLOS: (Resuming)

3 Q All right, Mr. Castler. You have before you
4 what has been marked as SFSP-C-17. It is a contract
5 summary for the Missouri-Kansas-Texas Railroad Company,
6 issued by T. F. Steiniger, Vice President, Marketing,
7 Missouri-Kansas-Texas Railroad. It is issued on
8 November 16, 1984, effective November 17, 1984. And at
9 the top, it is marked "Supplement 3 to ICC MKT C-0322."

10 Do you have that one in front of you?

11 A Yes, sir.

12 Q If you open to the next page, you see that the
13 commodity described is -- do you see that?

14 A Yes, sir.

15 Q -- corn. The origin is shown as Lincoln,
16 Nebraska, and the destination is shown as various KCS,
17 LA, or ARW stations in Arkansas, Texas, Louisiana and/or
18 Oklahoma.

19 A Yes.

20 Q The origins is Lincoln, Nebraska and the
21 destinations shown are four different states.

22 A Yes.

23 Q And that covers a geographic area of four
24 states as far as the destination is concerned, does it
25 not?

1 A Yes.

2 Q And that is a fairly broad area?

3 A Yes. This contract, though, I think differs
4 quite a lot from what is mentioned in my testimony.

5 Q Well, let me just ask one more question, two
6 more questions. The annual routing requirement is 95
7 percent and the effective term of the contract is from
8 June 21, 1983 to May 31, 1985, a period of almost two
9 years.

10 A Yes.

11 Q Now, for a two-year period, the Katy Railroad
12 has a commitment from this shipper to ship 95 percent,
13 the shipper in Lincoln, Nebraska, and you got into
14 Lincoln through trackage rights -- to ship 95 percent of
15 his grain to those four states, to points in those four
16 states. Isn't that right?

17 A 95 percent of the traffic that could move to
18 those points is to be routed over the MKT. It is tied
19 to no other point. Lincoln is one origin.

20 Q One origin and multiple destinations.

21 A Only traffic that can make the move.

22 Q To multiple destinations?

23 A That's right.

24 MR. SVOLGS: Can we have the next one marked
25 for identification?

1 JUDGE HOPKINS: The next contract summary will
2 be marked for identification as SFSP-C-18.

3 (The document referred to
4 was marked Exhibit SFSP-C-18
5 for identification.)

6 BY MR. SVOLOS: (Resuming)

7 Q Now, Mr. Gastler, you have before you SFSP-18
8 which is supplement to ICC MKT C-0312, issued by T. F.
9 Steiniger, Vice President of Marketing, on November 1,
10 1984, effective November 2. And this one on the next
11 page, you see that the origin is shown as Council
12 Bluffs, Iowa?

13 A Yes.

14 Q Of course, you got to Council Bluffs through
15 trackage rights.

16 A Yes, sir. In the Union Pacific, the
17 Commission gave us the right to compete in there.

18 Q And the destinations shown are various KCS,
19 IA, or ARW stations in Arkansas, Texas, Louisiana,
20 and/or Oklahoma, four states?

21 A Yes.

22 Q And special features require a 95 percent
23 routing requirement, is that correct? Is that what this
24 document shows?

25 A 95 percent of the business that could move

1 that way.

2 Q And this, the effective duration of the
3 contract, is from May 31 -- sorry -- June 8, 1983 to May
4 31, 1985. That's a two-year period.

5 A Yes.

6 Q So for two years, shipper A has committed to
7 the Katy 95 percent of all of the commodities shown
8 moving from Council Bluffs, Iowa to various stations in
9 Arkansas, Texas, Louisiana, and Oklahoma?

10 A It is tied only, this movement is tied to
11 nothing else. Non-transit is not involved with
12 transit. There is no requirement like that.

13 Q I didn't say there was. My question was, he
14 has committed from Council Bluffs, Iowa 95 percent of
15 his business for two years to various points in four
16 states.

17 A That's right. That's what the contract says.

18 Q And that covers a wide geographic area, does
19 it not?

20 A Well, it is one origin and it ties -- it
21 doesn't tie transit and non-transit together. It is
22 only one type of move.

23 Q What does it tie together -- the destinations
24 at four different states?

25 A It ties the destinations to Council Bluffs for

1 that shipper, product he can sell to those points.

2 Q To four states?

3 A From Council Bluffs only.

4 Q To four states?

5 A Yes.

6 Q I have just a few more questions to ask, Mr.
7 Gawtler. On page 70, in MKT-20, you state at the top of
8 the page: "Our grain shippers particularly were anxious
9 to have the MKT provide Beaumont service and replace
0 competition lost by the merger between the SP and Santa
11 Fe."

12 A Yes, sir.

13 Q That is your justification for your request
14 for trackage rights?

15 A Basically, the shippers approached us for
16 those trackage rights.

17 Q Well, Mr. Gastler, did you apply for those
18 trackage rights because the shippers asked you to apply
19 or because you determined that there was, in fact,
20 competition which would be lost by this merger?

21 A There is a competitive loss. And, in
22 addition, we followed that up with the admissions of
23 the shippers.

24 Q Do you know if the Southern Pacific presently
25 is competing with the Santa Fe for the shipment of grain

1 from the State of Kansas to Beaumont?

2 A The Southern Pacific grain movements have been
3 very limited. I do not know; no, sir.

4 Q As a matter of fact, does the Southern Pacific
5 deliver at grain at Beaumont?

6 A I don't know.

7 Q There are now four rail carriers serving
8 Beaumont; isn't that true? Santa Fe, Southern Pacific,
9 Missouri Pacific, and the Kansas City Southern?

10 A Yes, sir.

11 Q And the Union Pacific Missouri Pacific System
12 has an excellent route from towns in Kansas where
13 terminal elevators are located, to Beaumont? I'm
14 talking about towns in Kansas like Kansas City,
15 Hutchinson, Wichita, Salinas, Topeka, Colby, where
16 terminal elevators are located, Union Pacific has
17 excellent routes from those points to Beaumont; does
18 it?

19 A I don't know anything about Colby, but I think
20 they have good routes from the other points.

21 Q Moreover, the Missouri Pacific has a very good
22 direct route between Houston and Beaumont, doesn't it?

23 A Yes, sir.

24 Q Would you refer to page 82 of MKT-20? You are
25 discussing your request for trackage rights to

1 Midlothian and Ward Spur. At the top of the page, you
2 state that in 1983 the MKT moved 674 carloads destined
3 to Midlothian and Ward Spur and 45 carloads from these
4 points.

5 And then you state that after reviewing this
6 traffic, you believe that little is divertible as a
7 result of this merger. Is that correct?

8 A Yes, sir.

9 Q The question, then, is whether -- and then you
10 go on to say on the same page, the question, then, since
11 an SFSP merger would destroy competitive rail service,
12 public interest requires provision of continued
13 competitive rail service to this point. And that's the
14 reason for your request for trackage rights to the
15 Midlothian and ward Spur.

16 Is that correct?

17 A Here again, what I've said is correct. And
18 the shipper support, particularly I believe it was
19 Mazda.

20 Q Mazda? Mr. Gastler, are they the ones -- is
21 the Mazda the principal reason that you are applying for
22 -- is Mazda's request the principal reason you are
23 applying for trackage rights to Midlothian?

24 A I believe Mazda is where the idea came from to
25 Mr. Dimmerman who is part of our decisionmaking group.

1 that decided what we would do -- as I recall.

2 Q Well, would it be fair to state that Mazda
3 really inspired your request for trackage rights to
4 Midlothian in the first instance?

5 A I think they stimulated our thoughts.

6 Q And they are very important in your reason for
7 applying for these trackage rights to Midlothian?

8 A They are certainly a part of it; right. They
9 are not the entire reason but they're a part of it.

10 Q Mr. Gastler, do you know if any of the
11 shippers which the Katy proposes to serve on the
12 Midlothian and Ward Spur are now served by both the
13 Santa Fe and the Southern Pacific?

14 A I believe none of them are presently served by
15 the other.

16 Q All right. It's a fact then that they are all
17 exclusively served by either the Santa Fe or the
18 Southern Pacific at this time?

19 A I believe that's right, with the opportunity
20 to -- it would be very easy to connect them, but I do
21 not believe either serves the other.

22 MR. SVOLOS: I think that's all. Thank you
23 for your patience.

24 JUDGE HOPKINS: Thank you.

25 The Justice Department?

1 BY MS. KOOPERSTEIN:

2 Q Good afternoon, Mr. Gastler. My name is Donna
3 Kooperstein. I represent the Department of Justice. I
4 just have a few questions for you.

5 Would you please look at MKT-20, page 8?
6 Could you direct your attention to the second sentence
7 in the second paragraph? Do you have that?

8 A Yes.

9 Q In that sentence you speak about the trackage
10 rental being so high -- "It's so high that our
11 operations over the North End rights are not totally
12 paying their fair share." Is that correct?

13 A Yes.

14 Q What do you mean by not paying their fair
15 share?

16 A Well, those trackage rights initially, when we
17 agreed with the Union Pacific on the charges, the
18 situation has changed quite a lot since that occurred.
19 They are different than we anticipated them being. And
20 for movements limited to Council Bluffs to Kansas City,
21 for example, we are now close to being noncompetitive.

22 If we go to the Gulf, we have no problem. But
23 those charges are such that we will have to go back to
24 UP and try to adjust back to the situation that is
25 occurring today.

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1 Q How has the situation changed?

2 A Their volumes, as presented in the merger
3 case, are far different than what they presented. Our
4 decisions were made on those volumes which do not
5 exist.

6 Q Are you in the process of renegotiating those
7 rates?

8 A We haven't proceeded on that yet. We're doing
9 one thing at a time here. We need to get this case
10 beyond us; then we'll proceed on that matter. Mr. Roper
11 and I will do that.

12 Q Do you believe you'll be able to renegotiate
13 those rates to the proper level?

14 A We're dealing with the UP. I couldn't say.

15 Q You don't know?

16 A No, we don't. We'll stay in the marketplace
17 to the Gulf. It's a question of the Kansas City-Omaha
18 traffic that we really didn't know was there. We didn't
19 -- if you look back at our proposal in the UP case, we
20 were talking about traffic to the Gulf.

21 And there was another whole family of loads
22 there that we need to be competitive for. Of course,
23 the trackage rights were granted by the Interstate
24 Commerce Commission to give us the right to compete in
25 an economical way. Once these become uneconomical for

1 whatever reason, we think we have some grounds for
2 talking with Union Pacific, and we plan to do that.

3 Q Are the trackage rate levels set at such a
4 level that you cannot compete competitively for the
5 Kansas City to Omaha traffic?

6 A Yes. That traffic only; we cannot compete for
7 that traffic. It was the intention of the Commission,
8 of course, to put us in the market in a competitive
9 manner.

10 Q Now, if the trackage rate rental were lower,
11 would you then be able to compete for that traffic?

12 A Yes, ma'am.

13 Q How do your rates compare with UP's rates to
14 the Gulf?

15 A You mean the grain rates, commodity rates?

16 Q Right.

17 A They are competitive or we don't have the
18 business. We compete with them.

19 Q Using the trackage rights, have you been able
20 to compete effectively with the UP on a service basis?

21 A Oh, you bet; from Council Bluffs, Omaha to the
22 Gulf, you bet we have. We use one through and they use
23 two. We have some other cost advantages in there.

24 Q Could you explain that? I'm not sure I
25 understood.

1 A Well, it's 200 miles, and we, if you recall --
2 I believe you were in the UP case -- we had quite a
3 discussion with Mr. Todd at least about whether our
4 crews could make the 200 miles in a working day, and
5 they have done that easily.

6 A So our crew costs are less than UP's crew
7 costs in this territory. So while we have a cost
8 disadvantage in the one area, we have a cost advantage
9 in another. So we have been able to compete with UP to
10 the Gulf from Lincoln-Omaha, to Council Bluffs, Topeka,
11 Hutchinson.

12 Q What was the cost disadvantage to which you
13 referred?

14 A The cost disadvantage was the trackage rights
15 charged from the UP that I mentioned earlier.

16 Q What matters have you needed to coordinate
17 with UP in regard to using your trackage rights?

18 A Well, it was really very simple to establish.
19 We always work together. We all work together all over
20 the country. And it is not difficult to establish
21 trackage rights and operate.

22 A It was, you know -- Mr. Todd can tell you in
23 detail, but I think started the first day we could after
24 the Commission's authorization. I don't know of any
25 problems that have occurred.

1 Q What did you need to work out, though,
2 specifically?

3 A Well, we had to talk to them about the
4 services they would perform at Council Bluffs where the
5 trains terminate on the North End. And we had to
6 establish a set of charges for the various supplementary
7 services that they perform in those areas, like who is
8 going to put ice on the caboose and fuel the engines if
9 they need them. What will the charges be?

10 And there's a whole list of things you do that
11 we have all done with each other. This is not anything,
12 we haven't plowed any new ground here. This is all
13 things that we understand and are easily done.

14 And the trackage rights have worked real
15 well. UP's operation is a good one, and we fit right
16 into the flow of traffic and our trains move right along
17 with theirs. It's worked very well.

18 Q Do you need to coordinate on an ongoing basis
19 with UP?

20 A We do. I mean that's the Operating
21 Department's constant responsibility.

22 Q Is it correct that at present, MKT can provide
23 shippers with service to Laredo by interlining with SP
24 and Tex Mex?

25 A Yes, ma'am. That's one of the major issues

1 for us in this case; that we're likely to lose that.

2 Q If the merger is approved and MKT's trackage
3 rights request to Corpus Christi are granted, will you
4 be able to compete as effectively as you do now for
5 service to Laredo?

6 A We think it would be better.

7 Q Why?

8 A A two-line haul is better than a three-line
9 haul. We will only be dealing right with Tex Mex, not
10 that we'd have anything against dealing with the SP.
11 But if there are three parties in the deal like there
12 are today, that's three people to work with; whereas, in
13 the future, we're hoping that just ourselves and the Tex
14 Mex will be together.

15 Q Do you perceive that there would be any
16 disadvantages to operating with trackage rights, as
17 compared to the present operation?

18 A We think there will be advantages.

19 Q If MKT receives the trackage rights it has
20 requested on the Mexican border, Gulf port, Bayport, and
21 Dallas area, do you expect that that grant of trackage
22 rights would give the SFSP, if the merger is approved,
23 incentive to continue to interline with MKT?

24 A I don't think they will interline with MKT
25 except where they must, to get to MKT local points.

1 Q So even if your request for trackage rights is
2 granted, you don't think that the merged carrier will
3 interline with you?

4 A They will have no incentive. Their purpose in
5 the Stagers world is to serve origins and destinations
6 yourself, and hold onto the car and our trailer, our
7 container, and that's what we expect they will do.

8 Q Is it correct, then, that you expect in those
9 areas where MKT receives traffic rights, to move most of
10 the shipments on your own, as opposed to interlining as
11 you do now?

12 A Yes. We would move them on -- for instance, a
13 car from a load from Liberal, Kansas to Laredo would be
14 routed MKT -- well, let's say MKT System, Corpus
15 Christi, Tex Mex.

16 Q Based on your experience, if you had a choice,
17 would you prefer to operate on your own tracks or on
18 another railroad's tracks under trackage rights?

19 A I'd prefer to operate on our own tracks.

20 Q Would you explain why?

21 A It's sort of like living in your own house or
22 renting one. It's about the same. It's not that -- we
23 use the tracks of all the railroads in the west, the
24 Burlington's, the UP's, the Santa Fe's and the SP's, and
25 we get along with them fine. We mean nothing bad about

1 them, but we get along better when we're on our own
2 tracks.

3 It's just a matter of we have total control
4 over that operation, and I think they use our tracks in
5 places, and I suspect they would say the same thing;
6 that they would prefer to be managing their own
7 trackage.

8 Q So you believe that control is important then;
9 is that correct?

10 A I think the more that you can do yourself, the
11 better. And I don't mean that they don't handle us
12 first come, first serve. But it's still better if
13 you're on your own railroad.

14 Q Could you please turn to page 38 in MKT-20.
15 Is it correct that on this page, you discuss the
16 run-through operation that you perform from Kansas
17 City?

18 A Basically, it's from Kansas City. It could be
19 from any point to Denison. And an interchange, we might
20 have a movement from Topeka to Denison, or Kansas City,
21 or Council Bluffs. But all those would pass through
22 Kansas City on their way to Denison.

23 Q With which railroads do you compete on these
24 movements?

25 A From Kansas City south?

1 Q Yes.

2 A We compete with the Santa Fe, the Union
3 Pacific, and the Burlington.

4 Q Have you been able to compete effectively with
5 these railroads on a service basis?

6 A I think so. I think our record, working with
7 the SP, indicates that we have.

8 Q Have you been able to compete effectively on a
9 rate basis?

10 A Yes, ma'am.

11 Q How difficult has it been to coordinate the
12 operation with SP?

13 A Well, it's not difficult at all, and we simply
14 call them and say there's a train that will be at
15 Denison in two hours. We give them the entire train,
16 the engine, the caboose; they put a crew on and go.
17 It's not difficult at all.

18 Q How does the service compare to single line
19 service?

20 A In the single line service, you wouldn't have
21 any coordination with anybody you control at all
22 yourself. And that's the reason you are seeing these
23 larger mergers where the large railroads take over total
24 control of the shipment from A to Z with no intermediate
25 interchange points.

1 Q How do you think the service you provide using
2 a run-through train compares to single line service
3 provided by the other railroads?

4 A I think it's as long as the opportunity is
5 there, it is competitive. It's competitive; it would be
6 or we wouldn't see the business. It will be -- after
7 merger, that will be gone. That is not going to be
8 there.

9 Q Would you please look at page 34 of your
10 testimony, MKT-20. On that page, is it correct that you
11 talk about density losses?

12 A Yes.

13 Q If the merger is approved, do you expect to
14 lose traffic on high or low density lines?

15 A If the merger is approved, I believe we are
16 going to lose traffic on both high and low density
17 lines, and on the low density lines we probably won't
18 lose train service, but on the high density lines there
19 will be less trains.

20 Q Which low density lines do you expect to lose
21 traffic on?

22 A I think we will lose some traffic out of the
23 North End trackage rights which, for us, are low
24 density, but not for the UP. I think we will lose some
25 traffic. We possibly could lose some traffic from the

1 Tulsa line. I think we stand a chance to lose traffic
2 wherever the Santa Fe serves the point.

3 Q Could you please turn to page 22 of MKT-20.
4 If you would focus on the second paragraph where you
5 discuss switching charges -- do you have that?

6 A Yes.

7 Q Is there presently ICC regulation of switching
8 rates?

9 A I believe there is. I think so.

10 Q You state in this paragraph, isn't it correct,
11 that the switching rates are too high that you have been
12 paying?

13 A I don't -- I think I said that could happen.

14 Q You anticipate that will happen?

15 A Not necessarily. Not necessarily. As I
16 recall, the large railroads in the west made bilateral
17 agreements with each other that consider reciprocal
18 rates and in those considerations, some provision is
19 made for reciprocal switching.

20 And if that is done, this would be taken care
21 of. We are in hopes that we can make bilateral
22 agreements with the partners here today. If we are able
23 to do that, then we would have the same consistency the
24 other large carriers have.

25 Q Could you please look at page 26 of your

1 testimony? If you could focus on the bottom of page 25
2 and on page 26.

3 A Yes, ma'am.

4 Q At this point in your testimony, you discuss
5 the circuitry of certain routes; is that correct?

6 A Yes.

7 Q Is it possible that despite circuitry of a
8 route, a single line route may be lower cost than the
9 less circuitous joint line route in certain cases?

10 A Well, if you are talking about the routes
11 listed on page 25, the disparity there is so great that
12 I suspect that the longer routes would be more costly.
13 I can't see how the cost could be absorbed by that
14 disparity in distance.

15 Q You don't know that for certain, though. Is
16 that the case?

17 A Well, you know, a train burns 20 gallons of
18 fuel per mile, a big train. So that is a start. And
19 crews cost more per mile. And wear and tear costs more
20 per mile. So I don't know it exactly, but I'm not
21 probably far from the point that with this disparity I
22 can almost assure you the short routes are lower cost.

23

24

25

1 MS. KOOPERSTEIN: Thank you. I have no
2 further questions.

3 JUDGE HOPKINS: Ms. Reed.

4 BY MS. REED:

5 Q Good afternoon, Mr. Gastler. My name is Mary
6 Reed and I'm appearing on behalf of the U.S. Department
7 of Transportation.

8 A Good afternoon.

9 Q How are you today?

10 A Fine.

11 Q Could you please turn to page 42 to 43 of
12 MKT-20, where you set forth the trackage rights which
13 the MKT is seeking. And I would like to know whether or
14 not these trackage rights and conditions requests are
15 set in the order of priority as far as the MKT is
16 concerned?

17 A I don't think I had anything to do with
18 listing them that way. Let me look at them. They may
19 come up -- you know, if we have to list in order of
20 priority, they may be in that order of priority.

21 I would say the Mexican service, which is
22 first, would be very important for us, very important.
23 We took action to get those rights in the Union Pacific
24 case. The Commission saw fit to say no, let's wait
25 until -- as long as the SP is around, we won't do

1 anything about that. So we are back now. So I suppose
2 I would say that, from MKT's standpoint and from a
3 competitive standpoint, we would say that -- I would
4 have to say Mexico would be my first choice.

5 You might have to ask some of the rest of the
6 team that question, but I think that's the way I would
7 rate it.

8 Q What about the trackage rights request in
9 southwest Kansas? Would that rank fairly close to the
10 top, as you show on -- you have given it number two as
11 you set it forth. Is it close to the top or is it
12 further down?

13 A I think the competitive angle in southwest
14 Kansas probably, and on the Bayport line, are perhaps
15 comparable. You know, it becomes a question of
16 shipper-receiver input in these things, and the
17 competition that exists today and the competition that
18 would exist in the future.

19 I guess I would rate those two as either 2A
20 and 2B or something like that.

21 Q And what about the rest? What would be your
22 next order of priority?

23 A Of course, I might say also before I leave the
24 Kansas thing that we asked to connect with all railroads
25 at all points. We have had a problem. The Rio Grande

1 was granted trackage rights through Harrington in the
2 Union Pacific case. The SP has extopped us from
3 interchanging with the Rio Grande there up until now.
4 We haven't worked that out.

5 We need to get an interchange with the Rio
6 Grande at Harrington. Before I leave that, I needed to
7 mention that to you.

8 The other two trackage rights, Beaumont and
9 Midlothian, are, as I told counsel earlier, quite a bit
10 of shipper inspiration. They're not totally, but quite
11 a lot. Probably had it not been for our customers, we
12 wouldn't be asking for those. But because, as I said,
13 at Midlothian really the only industry there that
14 contemplated service from both railroads was Mazda.
15 They do have the facility to build a connection track
16 easily into the Mazda plant.

17 One other right that we mentioned is the
18 continuance of our service to Agra elevator in Houston,
19 which is necessary to get industries on the MKT, our
20 customers on the MKT and OKT, a chance to sell grain to
21 Agra down in Houston. Without that switching right, our
22 cost would be out of line to the Santa Fe-SP and
23 possibly the other large railroads.

24 Q Now, you have testified earlier that the
25 impacts of the SP-Santa Fe merger will be substantial on

1 the MKT.

2 A Yes.

3 Q Do you know whether or not the MKT will be
4 forced to abandon any lines as a result of this merger?

5 MR. KHARASCH: Excuse me, counsel. Would you
6 specify, is that with or without a grant of trackage
7 rights?

8 MS. REED: Without a grant of trackage
9 rights.

10 THE WITNESS: Well, without trackage rights we
11 face the same situation we faced in the Union Pacific
12 case. We need -- you know, if you're just talking about
13 the MKT, we're now talking about -- if that's all we're
14 focusing on, we need some right to compete.

15 You understand that because the ICC grants us
16 the trackage rights doesn't give us any business. They
17 do not by fiat give us any business. We have to
18 convince our friends in the West that we can compete in
19 this territory, and we feel like we can.

20 But I don't know that -- you know, it will
21 cause us to do a lot of things. That \$19 million
22 diversion that Mr. Dimmerman is talking about will cause
23 us to do a number of things to remain viable.

24 BY MS. REED: (Resuming)

25 Q Are there any specific lines which you believe

1 you might have to abandon if the merger is approved
2 without your trackage rights?

3 A I don't know of any today, but we have some
4 fairly low density branch lines that -- I just don't
5 know of any that we are planning to abandon. I wouldn't
6 want to say, though, that we wouldn't, because I don't
7 know what the future brings.

8 Q Thank you.

9 Now, you talked earlier about traffic moving
10 to Mexico and how Conasupo, which is an agency of the
11 Mexican Government, purchases traffic. Could you please
12 describe how Conasupo solicits bids for traffic moving
13 to Mexico?

14 A I think you better let Mr. Dimmerman do that.
15 I am not very strong in that area.

16 Q So if I have any questions on Mexico
17 traffic --

18 A He may know that better than I.

19 Q You're getting tired, aren't you?

20 A No. I have experts that are better than me.

21 Q Do you know whether there's any truck traffic
22 moving into Mexico?

23 A Well, there is some milo produced in far south
24 Texas and undoubtedly that could be trucked to Mexico.
25 I don't know that it is. We have carloads of milo close

1 to south Texas going to Mexico by freightcar, but I
2 don't know of any trucking to Mexico.

3 Q But as far as grain traffic is concerned, on
4 traffic that moves by rail, are the grain shippers that
5 are involved in securing the transportation fairly large
6 companies or are you dealing directly with individual
7 farmers?

8 A We deal all with very large -- we were talking
9 with counsel earlier about grain contracts, and we write
10 them with everybody -- small, very, very small
11 shippers. We do not deal with farmers, but we deal with
12 farmers coops. So you are dealing with that sort of
13 thing.

14 On the Liberal line that we were talking
15 about, for instance, at almost every station you have a
16 Bunge elevator and a farmers coop, and we would be
17 dealing directly with them.

18 Q Would you say that the majority of the traffic
19 moves under -- was paid by large companies instead of
20 the smaller farmer coops?

21 A I think the rate that's charged is eventually
22 paid right by the farmers themselves. I mean, Bob Case
23 in this case at Kingfisher, Oklahoma, illustrates what
24 happens if you have a high rate, and the benefit of a
25 lower rate can go right back to the farmer.

1 Q And your contract with Agri Industries, do you
2 have a contract now with the SP to reach them; is that
3 correct?

4 A Yes, ma'am.

5 Q What is the length of that contract?

6 A I can't answer that. I really don't know.

7 Q Do you know whether it's a long-term or a
8 short-term?

9 A I don't think it is -- I think it's short-term
10 enough that we would like to get it approved in this
11 case.

12 Q You don't know whether it is terminable at
13 will by either party?

14 MR. KHARASCH: Mr. Todd could testify on this
15 subject.

16 MS. BEED: Thank you.

17 That's all I have. Thank you very much.

18 JUDGE HOPKINS: Thank you.

19 Mr. Kharash?

20 MR. KHARASCH: Just a couple of very minor
21 questions on redirect.

22 REDIRECT EXAMINATION

23 BY MR. KHARASCH:

24 Q Page 54 of your statement, MKT-20, the first
25 new paragraph. Do you recall testifying about the

1 figure 81 percent of MKT carloads to Corpus Christi
2 consisted of grain originating in Enid?

3 A Yes.

4 Q Shall we understand that testimony to be
5 dealing with carloads destined to Corpus Christi
6 destinations or destined to Corpus Christi destinations
7 and destinations beyond, such as Laredo?

8 A I think I said that I didn't think we went to
9 Mexico, and I think this went to Corpus.

10 Q To Corpus Christi destinations?

11 A Yes, to Corpus Christi destinations.

12 Q Do you recall the testimony that you gave
13 about Exhibit SFSP-C-17 and 18? Those were contract
14 summaries.

15 A Yes.

16 Q In those contract summaries, do you recall
17 giving some answers about what cargo was covered by the
18 contract?

19 A I vaguely remember that.

20 Q And in answering those questions with respect
21 to cargo moving to destinations in four states --

22 A Yes.

23 Q -- were you speaking of all destinations in
24 those states or only those destinations on the KCS
25 System Railroad?

1 A It would be only those destinations that were
2 terminating on the railroads I mentioned.

3 Q And those railroads were all KCS system, is
4 that right?

5 A I believe that's right.

6 MR. KHARASCH: Thank you. That's all the
7 questions I have.

8 JUDGE HOPKINS: Anything further?

9 MR. SVOLOS: No.

10 JUDGE HOPKINS: You're excused finally, sir.
11 Thank you very much.

12 (Witness excused.)

13 MR. KHARASCH: Do you wish a motion to receive
14 the two statements of Mr. Gastler in evidence?

15 JUDGE HOPKINS: Any objection to the receipt
16 in evidence?

17 (No response.)

18 JUDGE HOPKINS: Hearing none, they will be
19 received in evidence.

20 MR. SVOLOS: I move to introduce the exhibits
21 that were marked during Mr. Gastler's testimony.

22 JUDGE HOPKINS: I think we started with 11.
23 Exhibits 11 through 18 will be received in evidence.

24 (The documents previously
25 marked Exhibit Nos.

1 SFSP-C-11 through 18 for
2 identification were received
3 in evidence.)

4 JUDGE HOPKINS: Who is the next witness?

5 Mr. Greenberg, are you handling this witness?

6 MR. GREENBERG: Yes, Your Honor.

7 JUDGE HOPKINS: Go right ahead.

8 (Witness sworn.)

9 Whereupon,

10 HARRY T. DIMMERMAN

11 was called as a witness by counsel for
12 Missouri-Kansas-Texas Railroad Company and, having been
13 first duly sworn, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. GREENBERG:

17 Q Mr. Dimmerman, could you please state your
18 full name and address for the record.

19 A Harry T. Dimmerman, vice president of traffic
20 for the MKT Railroad, 701 Commerce Street, Dallas,
21 Texas.

22 Q And among the verified statements that you
23 have prepared, have you prepared a verified statement
24 which appears in MKT-20?

25 A Yes, sir.

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1 Q And have you prepared a verified statement
2 which appears in MKT-27?

3 A Yes, sir.

4 Q Do you have any changes you wish to make to
5 the statement which appears in MKT-20?

6 A Yes, sir.

7 Q And could you please tell us what change that
8 is?

9 A On page 32 in the last paragraph, in the
10 middle of the paragraph ending with Mr. Gastler's
11 statement starting with the word "The" and ending with
12 "statement," "The SP's schematic diagram of its track is
13 attached as item one to this statement," delete it.

14 MR. GREENBERG: Your Honor, may we go off the
15 record for a moment?

16 JUDGE HOPKINS: Surely.

17 (Discussion off the record.)

18 BY MR. GREENBERG: (Resuming)

19 Q Mr. Dimmerman, with respect to MKT-27, the
20 statement that appears there, do you adopt that as your
21 statement in this proceeding?

22 A Yes, sir.

23 Q Is it true and correct to the best of your
24 knowledge, information and belief?

25 A Yes, sir.

1 MR. GREENBERG: With that, Your Honor, I
2 tender the witness.

3 JUDGE HOPKINS: Thank you.
4 Mr. Smith.

5 CROSS EXAMINATION

6 BY MR. SMITH:

7 Q Good afternoon, Mr. Dimmerman. My name is
8 Mike Smith and I will be cross-examining you with a few
9 questions on your opposition statement this afternoon,
10 and I suppose later, probably tomorrow or the next day,
11 we will get to your pro-trackage rights statement, I
12 will call it.

13 Turning to your opposition testimony, Mr.
14 Dimmerman, I notice on page 1 you say that you are
15 submitting this statement in opposition to the approval
16 of the consolidation absent a grant of MKT's request for
17 trackage rights. That's the first sentence of the
18 second paragraph.

19 Does this mean that with the grant of MKT's
20 trackage rights MKT does not oppose this merger, or what
21 does that mean?

22 A Well, we are in opposition. However, it is
23 our opinion that with the granting of the trackage
24 rights, all of the trackage rights that we have
25 requested, that we would be able to provide a

1 competitive area in our region, geographic region of the
2 country, and at the same time offset some or most of the
3 losses that the MKT would result in, as well as provide
4 our shippers the opportunity to move their traffic
5 competitively.

6 Q Well, let me ask it this way. What is really
7 in your opinion MKT's preference here? Is your first
8 choice to defeat the merger entirely and therefore
9 obviously not get these trackage rights? Or is your
10 first preference to get these trackage rights?

11 A Well, I guess what I have to say is, be as
12 realistic as I can be, is that if I honestly thought
13 this merger would go away it would be fine, but I just
14 don't believe that the merger is going away. So I guess
15 what I'm going to have to say is that we will need the
16 trackage rights.

17 Q I don't think that's responsive. Are you the
18 chief commercial officer of MKT?

19 A Chief traffic officer, yes, sir.

20 Q As chief traffic officer, do you think MKT is
21 better off with the status quo, no merger and no
22 trackage rights?

23 A Probably.

24 Q Or better off with the merger and these
25 trackage rights which you have asked for, assuming you

1 get them?

2 A If the merger was completely abolished and
3 there was no merger, we would probably be better off
4 that way.

5 Q Than you would with the merger and with the
6 trackage rights that you are seeking?

7 A Yes.

8 Q Turn to page 6 of your statement for a moment
9 if you will. The first paragraph there at the top, you
10 say that -- you refer to MKT's present ability to offer
11 joint line rates competitive with single line rates.
12 And then later on in that same paragraph you refer to an
13 SP internal memo indicating that SP has worked very
14 closely with the MKT on grain traffic to Mexico and corn
15 from the Midwest to Houston.

16 Overall would you say, in view of that, that
17 MKT's relationship with SP -- and when I use the word
18 "SP" throughout this, I'm going to include the Cotton
19 Belt and the SSW as well. Overall, would you say that
20 MKT's relationship with the SP today is a friendly one
21 for grain moving from the Midwest to the Gulf?

22 A Not necessarily. I couldn't answer that in
23 that fashion. I would say that in some cases the
24 Southern Pacific-Cotton Belt has made rates and routes
25 with the MKT, but in many other cases they have not.

1 Q For grain?

2 A Yes, sir. Yes, sir.

3 Q But at least, if I read your testimony right
4 -- well, let me ask it this way. This SP --

5 A Excuse me. When I say grain, I mean grain
6 products, all-encompassing things. That would include
7 corn, soybeans, sunflower seeds, things of that nature.

8 Q I see.

9 When you refer here to this SP internal memo
10 that is an exhibit in this case, indicating that SP has
11 worked very closely with the MKT on grain traffic to
12 Mexico -- and I will stop right there. Do you agree
13 with that SP memo?

14 A Yes.

15 Q So at least as far as all grain traffic moving
16 to Mexico, there is some sort of a friendly or
17 cooperative relationship right now, today?

18 A Only in some cases, only in some cases. Not
19 in all.

20 Q Can you distinguish for me here where there is
21 a cooperative friendly relationship on grain versus
22 where there is not, and limiting ourselves to movements
23 to Mexico?

24 A This goes back a long time. It goes back to
25 some of the former vice presidents of traffic with the

1 SP that I have dealt with. First of all, we're talking
2 about Frank Kriebel, who has since retired. Frank came
3 right out and told me he wasn't going to make any rates
4 with the MKT until we adjusted the divisions.

5 And the next face in the picture was Bob
6 King. Bob was a friend of mine. We had both come out
7 of the operating departments, and at that time we had
8 little or no grain routes with the SP. And finally, Bob
9 and I got together with his pricing man, Yogi Sethi, in
10 Phoenix, Arizona, and with that we started to make some
11 headway into the rates.

12 Tom Steiniger has since worked with some of
13 the grain people and we have secured some routes and
14 rates, but certainly not all of them. One of the good
15 areas that we worked out, and especially with our
16 operating departments' help, was the movement of corn
17 for Agra Industries to the elevator that is served by
18 the Southern Pacific, the elevator which is the old
19 Goodpasture elevator at Houston, Texas. We worked out
20 some things that made it better for the SP and good for
21 the MKT.

22 We worked out routes over Denison, Texas, with
23 the SP where they delivered the traffic directly, and in
24 some cases where we handled the traffic into Houston.

25 There are other areas, especially in cases to

1 Mexico, where some routes were given, some routes were
2 not given. Some traffic the SF continued and continues
3 to haul circuitously around via the St. Louis gateway.

4 Q This is grain traffic?

5 A Yes, sir. Yes, sir.

6 Q Well, I guess I'm going to get back to the
7 grain subject later, so I will let you go for now on
8 that.

9 Let's ask about briefly MKT's present
10 relationship with the Santa Fe on grain moving from the
11 Midwest to either the Gulf or to Mexico. Does MKT have
12 any relationship today with the Santa Fe, and if so how
13 would you describe it, on that traffic?

14 A As far as the relationship with the people at
15 the Santa Fe, I would say it was excellent. As far as
16 the marketing and pricing area, I guess you would have
17 to -- I would have to push that to Mike Roser, because
18 he does a lot more of that. In fact, I do little or
19 nothing of it.

20 The Santa Fe and the MKT are very competitive
21 in their area, and in some cases we have lost routes,
22 some routes that they have failed to give us. But Mike
23 would be better to answer that.

24 Q Is it fair to say that the thrust of MKT's
25 opposition is that after the merger whatever cooperation

1 there is today between SP and Santa Fe on the one hand
2 and the MKT on the other is going to go away, and that
3 you're not going to get that same kind of cooperation or
4 any cooperation after the merger? Is that a fair
5 characterization?

6 A I would say anyplace where the Santa Fe-SP
7 serve as the origin or destination that is common with
8 the MKT and not common with the SP or the Santa Fe, we
9 will no longer be able to compete in that area,
10 regardless of relationships.

11 Q And that is because, I take it, you don't
12 think that the merged system will join in rates or
13 routes with the Katy or will close the rates and routes
14 that exist today between the SP and Santa Fe on the one
15 hand and the Katy on the other hand?

16 A Yes, sir, when you consider, you know, what
17 has been done in the past, and the other areas where
18 they have closed routes. The Southern Pacific and the
19 BN were the first ones to go into closing routes in the
20 West.

21 MR. SMITH: Let me introduce, or mark, rather,
22 as an exhibit SFSP-C-19. This is a copy of your
23 verified statement in the Tucumcari case, Finance Docket
24 28799. It was Exhibit 277 in that case, and I guess in
25 this case it would be SFSP-19.

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1 JUDGE HOPKINS: That will be marked for
2 identification.

3 (The document referred to
4 was marked Exhibit No.
5 SFSP-C-19 for
6 identification.)

7 BY MR. SMITH: (Resuming)

8 Q Are you familiar with this document, Mr.
9 Dimmerman?

10 A I don't recall everything that I said in it,
11 but I am familiar that it is my statement.

12 Q In any case, this was a prediction. The
13 statement contains, does it not, a prediction that you
14 made back in June of '79? I believe that's when it was
15 signed, anyway. That was your prediction as of June
16 1979 as to what would happen if the Tucumcari line
17 from --

18 A Where is my prediction?

19 Q Well, let's refer to it. Take a look at page
20 3 of Exhibit 19. The last sentence of the second to the
21 last paragraph: "By the SP system acquiring the Kansas
22 City gateway, all movements will be highly susceptible
23 to traffic diversion to the system."

24 And then take again over here a look on page
25 7, the second -- the first full paragraph, last

1 sentence: "After the acquisition, SP will become
2 strictly a competitor line to the Katy, and we can" --

3 A Page 7?

4 Q Yes.

5 A All right.

6 Q "After the acquisition, SP will become
7 strictly a competitor line to the Katy and we can expect
8 little cooperation from SP." Do you see that?

9 A Yes.

10 Q Do you think it is true that all movements
11 between Kansas City and the Gulf became susceptible and
12 were diverted to the SP system as a result of our
13 acquisition of the Tucumcari line?

14 A A good share of them. When Mr. Gastler
15 testified, I believe he made some statement as far as
16 the routing between Kansas City and St. Louis prior to
17 the merger going into effect. And in preparation for
18 the case, Mr. Sheridan and I made the diversion study,
19 and we were asked by Mr. Gastler -- I think he asked
20 me. He said: Harry, if the Cotton Belt didn't get the
21 trackage between Kansas City and St. Louis, how would we
22 stand?

23 I said: We wouldn't belong in the case. Our
24 chief problem was the route between Kansas City and St.
25 Louis, and of course this didn't come to bear until

1 after the UP-MoP merger case, when you were given --
2 your line through Windsor, Missouri, was, well, just not
3 operable, and I assume with the cost you just never did
4 operate it.

5 And we received the trackage rights over the
6 UP-Missouri Pacific. That's when we felt the big move
7 on traffic.

8 Q I see. So that was in January of '83?

9 A That's about right, yes.

10 Q But you earlier say, on page 6 of your
11 opposition testimony in this case, that at least on
12 grain moving to Mexico, SP and MKT work closely
13 together?

14 A In some cases that's true. In some cases
15 that's true.

16 Q Take a look at page 6 of Exhibit 19, the
17 Tucumcari statement. I am looking at the first full
18 paragraph, the second sentence: "The attractiveness of
19 single line service to and from Kansas City prompts
20 shippers whenever possible to reduce the number of
21 carriers in their routing and substitute a single line
22 for two-line hauls in order to obtain expedited service,
23 less lading damage from interchange between carriers,
24 fewer railroad personnel to contact, and ease of tracing
25 shipments, as well as opportunity for better rate

1 adjustments due to single line service."

2 Are these, the factors which you list here on
3 page 6 of Exhibit 19 which I just read, are those
4 factors that influence shippers' choice of carriers and
5 routes, are they still valid today, do you think?

6 A Some of them are, yes, sir.

7 Q Which ones?

8 A When this was in effect, I don't believe Mr.
9 Todd had set up his run-through with the SP through
10 Denison. And a run-through operation is in effect
11 almost the same as a single line operation, especially
12 where -- I think Mr. Todd will testify as to engines and
13 cabooses going through. All you have is a crew change.
14 That's basically what you have.

15 With the single line service you have a crew
16 change point, which is usually, and in our case it is,
17 the same place where they will change crews anyway.

18 Now let me look at this.

19 (Pause.)

20 A I would say everything is true, with possibly
21 the exception of the rate adjustments. When this was
22 written, it did not have the Staggers Act in effect.
23 Therefore, you didn't have the opportunity to make
24 contracts. You didn't have -- you just did not have the
25 competitive area ratemaking that you have now.

1 Q So you think today the opportunity for better
2 rate adjustments due to single line service is even
3 greater than it was before the Staggers Act?

4 A I think that rate adjustments now are --
5 through the Staggers Act, you can make these, make your
6 rates based on, for example, the length of your haul.
7 The MKV has by far the short mileage between Kansas City
8 and Denison, Texas. Therefore, we have the ability to
9 price ourselves in that area. On a single line basis,
10 if you're able to cut out any additional costs, the
11 answer is yes.

12 Q Now, when you wrote this you were speaking, I
13 take it, of the single line service to and from Kansas
14 City on the SP route via St. Louis; is that correct?

15 A That's correct.

16 Q Would you say that these factors that you
17 describe in this same paragraph we're reading here on
18 page 6, are those the same as what you would define
19 maybe as efficiency in a route?

20 A I'd say that the route between Kansas City and
21 St. Louis and Texas is very inefficient.

22 Q And yet you said nevertheless that all of
23 these factors listed on page 6 applied there: less
24 lading damage, for example, fewer railroad personnel,
25 ease of tracing shipment, and so on.

1 A Well, nothing is all-encompassing, so I guess
2 you'd better be specific. Like you asked me about the
3 route from Kansas City to St. Louis to Texas, and it is
4 very inefficient.

5 Q And yet, it is still an attractive route for
6 shippers?

7 A It could be. It could be, for example, in
8 times of surplus cars. The shipper might want to route
9 his car via St. Louis because he has no other place to
10 put it and he collects the mileage on the movement.

11 Q That's the only occasion you can think of
12 where your statement on page 6 in the Tucumcari case
13 would apply?

14 A Tracing would be an advantage. You would only
15 have to talk to one customer.

16 Q Let's talk a little more now about the route
17 closing issue. That is something that you mention on
18 page 2 of your opposition testimony now in this case,
19 started. You state that competition will be foreclosed
20 unless trackage rights are granted to the MKT.

21 A Whereabouts is this?

22 Q I think that's the basic theme in the very
23 first sentence under heading number one, "The proposed
24 merger will foreclose competition." Do you see that?

25 I take it that your theory, again, is that the

1 reason competition will be foreclosed is that the merged
2 system will simply not participate with the MKT any more
3 in joint routes where the merged system serves both the
4 origin and the destination. Is that about the size of
5 it?

6 A Yes, sir.

7 Q Now, you're going to have to bear with me
8 because I'm not a real expert on this kind of stuff like
9 you are.

10 A I kind of stumble along myself.

11 Q But I think I heard Mr. Gastler this morning
12 say -- and counsel or you can correct me if I am wrong
13 -- that most of the MKT's routes, former routes with
14 either Santa Fe or SP, had already been closed or
15 cancelled as a result of these two carriers' programs
16 that have already occurred. Is that accurate?

17 A Yes, I would say that many of the routes where
18 we were formerly competitive, that they have been
19 closed. For example, Mike can probably tell you better,
20 but our lumber routes that we had with the SP over
21 Kansas City to Texas, they were all closed out. They
22 routed the traffic via St. Louis.

23 I don't want to get out of a specific area,
24 but I can't recall any route that we were formerly
25 competitive with the SP on that is still in effect, with

1 the exception of some of the grain routes and especially
2 with Agra Industries, where something new was worked out
3 with the SP. I'm sure Mike has more examples that he
4 would be better to speak from.

5 Q So as far as this whole theory that the
6 proposed merger is going to foreclose competition that
7 we are talking about here, may I then assume that all
8 we're talking about is grain?

9 A No, sir, not at all. Where we have
10 competition now is something that, for example, the
11 Santa Fe is big in Oklahoma, Southern Pacific is not.
12 Oklahoma City, Tulsa, the two largest cities in
13 Oklahoma, Enid, Oklahoma -- all these points are common
14 to the Santa Fe, but they are not to the SP.

15 So once you put these two railroads together,
16 then we will lose our ability to compete where you have
17 joined your system, where a destination was common on
18 one and not on the other on either point.

19 Q Is it your position that the SP and Santa Fe
20 route closings that have already occurred, they are a
21 fait accompli today, should be redressed by the
22 Commission?

23 A Oh, I would certainly like to see that, yes.

24 Q And you would like to do that by way of
25 trackage rights in this proceeding?

1 A That would be one way to do it.

2 Q Let's talk a little bit about the SP's route
3 closing program. Were you here when Mr. Jack Edwards
4 testified for SP-Santa Fe, for the Applicants?

5 A No, I was not.

6 Q Did you know or do you know that the SP's, we
7 call it, the route simplification program only applied
8 to traffic that was subject to SP's general routing
9 tariff? Did you know that?

10 A I read a description of it, but I didn't fully
11 understand it. Better you should ask me a question
12 pertaining to any specific on it. I was rather confused
13 when I got done with reading it.

14 Q For example -- and again, I am no expert on
15 this either, so we can help each other on it. But isn't
16 it true that in the tariff lore that you have both --

17 MR. GREENBERG: Excuse me. I missed that.
18 Tariff what?

19 MR. SMITH: Tariff lore, in the law of tariffs
20 or the practice of tariff rates and so on.

21 BY MR. SMITH: (Resuming)

22 Q That there are both general routing tariffs
23 and specifically rated tariffs to which the specific
24 routes apply?

25 A That's about as much as I know about it, yes.

1 Q Well, did you know that -- do you have any
2 idea whether the SP route simplification program applied
3 to anything except the general routing tariffs?

4 A The general routing tariff -- well, this is
5 hearsay. I got most of this from Tom Steiniger and Tom
6 is Mike Noser's boss. You're better off talking to Mike
7 about it.

8 But the general routing tariff ended up
9 closing out a considerable number of routes with the
10 MKT.

11 Q Did they move any traffic, substantial
12 traffic?

13 A Yes, some of them did.

14 Q Can you give me an estimate, about what
15 percent of the business that MKT formerly handled with
16 SP was lost as a result of SP's route closings?

17 A I can't say.

18 Q Would you say it was substantial?

19 A Yes, I would say substantial. You know, it
20 was substantial to the MKT; probably not substantial to
21 the SP.

22 Q I just wanted to know in terms of a
23 percentage. Is it greater than 15 percent?

24 A If we lose a couple of million dollars, it is
25 one percent of our traffic, you see.

1 Q Is that what you're saying? You're not saying
2 it affected one percent?

3 A No, I'm not saying that. I'm just stating
4 that if it only was one percent, \$2 million, it would
5 still be one percent of our traffic.

6 Q How about Santa Fe route closings? Do you
7 have any estimate on what percent of business that Katy
8 formerly handled with Santa Fe was lost as a result of
9 Santa Fe route closings?

10 A That would be less, but I do know that Tom
11 Steiniger handles specifically with Tom Fitzgerald with
12 the Santa Fe to make restoration in certain areas, and
13 in some cases he did and in some cases he didn't.

14 Q Have you ever done or are you aware that any
15 study has ever been done by Katy that tries to measure
16 the amount of dollars or revenue traffic that was lost
17 as a result of route closings by SP or Santa Fe?

18 A Whatever was done was done in our marketing
19 department and I am not aware of it. But I do know that
20 specific cases have been handled with both the SP and
21 the Santa Fe on specific route closings.

22 Q Looking at individual routes, is that what
23 you're saying?

24 A They handled it. Tom handled the various
25 items with, I believe, well, Fitzgerald on the Santa Fe

1 and Bob Sharp of the SP. And we received some success
2 with the Santa Fe and I believe very little with the
3 SP.

4 Q Page 2 of your testimony, the same page,
5 you're talking about your review of some MKT -- an MKT
6 exhibit which consisted of certain SP documents, that
7 you reviewed those and you saw no reference to route
8 efficiencies. Those were documents that your counsel
9 introduced as an exhibit on the subject of route
10 closings by SP.

11 You say you saw no reference to efficiencies.
12 Are you saying that route closings are reasonable and
13 not contrary to the public interest if they result in
14 more efficient routes handling the traffic?

15 A I'm saying that it was evident to me from
16 looking at the way routes were closed that it was
17 probably taken off a computer printout, and if you could
18 get -- if you could eliminate the MKT specifically out
19 of a route, regardless of the efficiency, we would have
20 been eliminated.

21 So it was something that was done not by
22 looking at it specifically for efficiency, but looking
23 at it for expedience of removing somebody from the route
24 that you figured, the SP figured, was not needed.

25 Q Well, that's -- let me ask the same question,

1 because I don't think you answered it. My question is,
2 in your opinion are route closings reasonable if the
3 effect of them is to result in traffic moving via more
4 efficient routes?

5 A It would depend on whose definition, I guess,
6 of efficiency.

7 Q Let me ask you to give me yours.

8 A I think that -- well, I think that if two
9 railroads got together and they say, here is my bushel
10 basket of routes that aren't efficient, let's look at
11 them, and here's my bushel basket of routes that I
12 believe are inefficient, let's look at them, and if you
13 could develop this here between the railroads, I would
14 see no problem about it.

15 But just for somebody to say that a route is
16 inefficient on one side of the fence and not looking at
17 the other, it is not a good way to do it.

18 Q I asked you to give me your definition if you
19 have one. What makes a route efficient or inefficient?
20 What does "efficiency" mean?

21 A There are many things that can make a route
22 inefficient. For one, of course, would be your
23 mileage. Mr. Gastler testified to the amount of fuel
24 that is utilized.

25 If you are going on a route, for example, like

1 the -- like you are talking from Kansas City to St.
2 Louis, you have got a crew problem, where you have
3 additional crew costs. The next thing is that if you're
4 talking about -- even in areas where you may have a
5 shorter mileage, you may have a bad track problem and
6 the bad track problem would make you inefficient even if
7 you did have the short mileage.

8 There are many things you have to look at.
9 You have to look at your costs, the time that it would
10 take to deliver the traffic, and mainly the shippers'
11 desires and needs.

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1 Q So you mentioned mileage. You mentioned track
2 problems. Can we call that physical condition of the
3 line?

4 A Yes.

5 Q You mentioned costs in general.

6 A Equipment.

7 Q Okay. What do you mean, equipment costs or
8 equipment availability?

9 A Availability. Whatever.

10 Q You mentioned transit time.

11 A Yes.

12 Q Is that right?

13 A Yes.

14 Q In your definition of efficiency, would you
15 include whether or not the route returns any kind of
16 profit to the carrier?

17 A What I am saying is that these examples will
18 bring back your profit. If you have a short line
19 mileage, you have good track conditions, these will
20 bring you a net return.

21 Q May we assume, then, that if a route results
22 in a -- a joint line route results in a loss to one of
23 the participants, that that participant who is losing
24 money is not efficient?

25 A I could just answer yes to that. But to be

1 more explicit, I can recall one piece of correspondence
2 between Tom Steiniger and Bob Sharp of the SP, where
3 Sharp come back and said that the route was not
4 remunerative, but on the other hand, Tom showed him
5 where there was another route where they received less
6 money for the same type of traffic, and they okayed the
7 route on that.

8 It is hard to understand.

9 Q I'm not sure we got an answer. The answer, I
10 take it, is yes. But --

11 A Yes. But, on the other hand, you're going to
12 have to have -- both sides are going to have to be able
13 to look at it with reasonableness as to what is
14 efficient and what is not.

15 Q And also, it's a question of divisions, isn't
16 it, when you're talking about the efficiency of the
17 joint line route and whether one of the participants is
18 losing money or not?

19 I think Mr. Gastler said this morning, if one
20 participant is losing money, he ought to sit down with
21 the other and try to negotiate a better division.

22 A There's nothing wrong with that at all.

23 Q So with this definition of efficiency that we
24 have talked about, mileage, physical condition, costs,
25 time of transit, shipper preference, equipment

1 availability, and let's say whether or not it produces
2 any revenue or profit, are you saying that where route
3 closing results in more efficient route handling the
4 traffic, that it's not against the public interest?

5 A Again, I say it is through this definition of
6 efficiency.

7 Q This definition?

8 A If you go according to those things, and it
9 can be shown in black and white that it is inefficient
10 for a railroad, the answer is yes.

11 Q On the other hand, I asked our people about
12 this and I better ask you. To your knowledge, did MKT
13 ever protest or otherwise challenge in the ICC the SP
14 route closings, any of them?

15 A I had better buck that again to Mr. Noser,
16 because I know there was some conversation between Mr.
17 Steiniger and Mr. Roper, but I don't know just exactly
18 where that ended up.

19 Q But you would agree, I take it, that there is
20 what we lawyers call a remedy? You do have the right to
21 challenge such an action before this Commission, do you
22 not?

23 A Yes. I understand that.

24 MR. KHARASCH: It doesn't work, I may say.

25 JUDGE HOPKINS: I think this might be a good

1 time for a 15-minute recess.

2 (Recess.)

3 JUDGE HOPKINS: Let's get back on the record.
4 Before we proceed, I just want to let you know that we
5 are going to start at 9:00 o'clock tomorrow morning, in
6 case anybody leaves before the end of the day.

7 MR. SMITH: Your Honor, at the close of the
8 session before the break, I had asked Mr. Dimmerman
9 about whether or not the MKT had a remedy to protest or
10 otherwise challenge before this Commission any route
11 closings, and he agreed that there was, and his counsel
12 interjected and remarked that it was not easily done.

13 I would move to strike counsel's remarks.

14 JUDGE HOPKINS: I grant your motion to
15 strike.

16 MR. KHARASCH: Then I move to strike the
17 question as a legal question of the witness, because I
18 think as a matter of law, the Commission is not
19 suspending joint route cancellations.

20 MR. MOATES: I didn't know Mr. Kharasch was
21 sponsoring this witness.

22 JUDGE HOPKINS: Mr. Greenberg is. Mr.
23 Greenberg, do you adopt what Mr. Kharasch has said?

24 MR. GREENBERG: I will adopt Mr. Kharasch's
25 comment and just say that perhaps the Commission can

1 take official notice of its own policies in the joint
2 rate cancellation. I think that will settle the
3 matter.

4 JUDGE HOPKINS: I think that's a very good
5 idea.

6 BY MR. SMITH: (Resuming)

7 Q Mr. Dimmerman, let's talk for a little bit now
8 about the subject that you alluded to earlier. It is
9 the Canadian lumber movements. Are you familiar with
10 the action the SP took in effect canceling route with
11 the MKT for Canadian lumber originating on the Canadian
12 National and destined to SP points in Texas?

13 A To a degree, yes.

14 Q Is that one of the route closings that you are
15 mentioning and citing as evidence in your statement?

16 A Yes, it is.

17 Q I take it, you already said that you weren't
18 here when Mr. Jack Edwards testified. Did you read the
19 transcript of his cross-examination by Mr. Kharasch and
20 others?

21 A Yes, I read his testimony.

22 Q So you would be aware then, I take it, that
23 the SP's actions taken with respect to the movement of
24 the Canadian lumber that we are talking about here is
25 not part of SP's so-called route simplification

FD 30400 - 1/7/85 - Pgs. 5379-5428

1 program?

2 A I don't know if it was or not as far as the
3 route simplification policy. I assumed it was.

4 Q But you do know, I take it, that it was a
5 specific response to a Canadian National tariff
6 restriction that, in effect, forced the Kansas City
7 Gateway as opposed to the St. Louis Gateway?

8 MR. GREENBERG: Your Honor, I object to the
9 form of the question. I've let a couple of these
10 questions go by. I think it would make it a lot easier
11 if he asked what the witness's knowledge is, rather than
12 trying to agree with this characterization of what it
13 was in response to.

14 MR. SMITH: Let me ask it this way.

15 JUDGE HOPKINS: Go ahead.

16 BY MR. SMITH: (Resuming)

17 Q Do you -- what do you know about SP's
18 preference with respect to Canadian lumber for receipt
19 of that lumber either at Kansas City Gateway versus St.
20 Louis Gateway?

21 A SP preference?

22 Q Yes.

23 A It's a very difficult question for me, what SP
24 would prefer.

25 JUDGE HOPKINS: If you don't know anything,

1 just say that.

2 THE WITNESS: Well, I know that they canceled
3 the route with the MKT over Kansas City, so their
4 preference had to be over the St. Louis Gateway.

5 BY MR. SMITH: (Resuming)

6 Q Okay. The preference was to receive the
7 traffic at St. Louis rather than Kansas City?

8 A Not necessarily. Some of this traffic was
9 handled via the Milwaukee Railway who doesn't go into
10 St. Louis.

11 Q Would it surprise you if SP's preference was
12 to receive it at St. Louis rather than Kansas City, that
13 being Canadian lumber originating on the Canadian
14 National?

15 A That would not surprise me; no.

16 Q Why?

17 A Because if they received it at Kansas City,
18 they would have to haul it for the same price from
19 Kansas City to St. Louis over that -- rather than
20 hauling it strictly down from St. Louis.

21 So they are better off to receive it, for
22 example, Canadian National-Duluth, C&NW-St. Louis, than
23 it would be Canadian National-Duluth, Milwaukee, Kansas
24 City, Cotton Belt.

25 Q Let's ask about the route that some of the

1 traffic moved over in connection with the MKT via Kansas
2 City. That is the route that was canceled; right?

3 A Yes, sir.

4 Q Do you know whether or not on that particular
5 movement, that particular route, at the then-current
6 divisions, do you know whether SP was making or losing
7 money on that?

8 A Just as sure as I'm sitting here, if the SP
9 wasn't making some money on it, they wouldn't have
10 gotten into the route.

11 Q If that's the case, isn't that a good
12 explanation as to why they might have preferred to
13 receive it at St. Louis?

14 A I'm not talking about St. Louis. I'm talking
15 about Kansas City. I can understand why they would want
16 it routed over St. Louis, but I can't understand why
17 they would want to receive it at Kansas City and haul it
18 to St. Louis, then haul it back to Texas.

19 Q Could you understand that if handling it via
20 Kansas City in joint line service with the MKT produced
21 a loss? Wouldn't it make sense then to -- would it be
22 unreasonable -- let me ask it that way -- under those
23 circumstances, for SP to cancel the route?

24 A If that were true, the answer would be yes.
25 But like I say, I'm sure that the Cotton Belt SP would

1 not get into a route over Denison, Texas with the MKT if
2 they did not make money from it.

3 Q Your answer is yes, it would not be
4 unreasonable if that were the case, that being that --

5 A If they were not making money; yes. If they
6 were not making a net return.

7 Q Did you participate or are you aware of any
8 attempts by SP to try to renegotiate the divisions on
9 this Canadian lumber traffic, its division with the MKT
10 for movement via Kansas City?

11 A I was told that the SP was unreasonable in
12 their request.

13 Q So you do know that the SP came to the MKT and
14 tried to renegotiate the division for that traffic
15 moving via Kansas City?

16 A No. I believe the MKT went to the SP, trying
17 to reestablish the routes.

18 Q Oh, I see. However, before the cancellation
19 of that particular route, again we're talking about the
20 Canadian lumber.

21 Do you know whether or not the SP came to the
22 MKT and attempted to negotiate a different division with
23 the MKT?

24 A If they did, I'm not aware of it.

25 Q Another subject I wanted to talk about -- I'm

1 not sure whether you are the right witness or whether it
2 would be Mr. Noser -- is the fact that SP and MKT have
3 had discussions over the past year or so concerning
4 reciprocal switching and joint routes.

5 Are you aware of that, and are you the proper
6 witness to talk about that with?

7 A I am aware of the discussion. I guess you
8 just have to ask the question. If it's within my
9 knowledge, I'll answer it.

10 Q Okay. What I want to do is mark an exhibit
11 that is a letter from Mr. A. P. Chapman of Southern
12 Pacific, addressed to a Mr. H. W. Pyatt, P-y-a-t-t,
13 Manager, Pricing Negotiations, Missouri-Kansas-Texas
14 Railroad in St. Louis.

15 Who is Mr. Pyatt?

16 A Mr. Pyatt works in St. Louis for Mr.
17 Steiniger. And he handles the switching.

18 Q And who is Mr. Steiniger?

19 A Mr. Steiniger is our Vice President of
20 Marketing and Pricing.

21 Q Does he report to you?

22 A No, sir.

23 Q Do you report to him?

24 A No, sir.

25 Q You each report, then, I take it, to Mr.

1 Gastler?

2 A That's true.

3 Q And this letter that I've shown you, dated
4 June 25, 1984, we might as well have it marked as the
5 next exhibit.

6 JUDGE HOPKINS: It will be marked for
7 identification as SFSP-C-20.

8 (The document referred to
9 was marked Exhibit SFSP-C-20
10 for identification.)

11 BY MR. SMITH: (Resuring)

12 Q Were you shown a copy of this letter prior to
13 your testimony here today?

14 A No, I have never seen this.

15 Q I'll give you a chance to look at it. I
16 thought we had produced it, and I told your counsel I
17 wasn't sure whether you or Mr. Noser would be the right
18 one. But this refers to past correspondence and
19 meetings and so on between SP and MKT regarding routing
20 agreement and reciprocal switching.

21 Are you familiar with this particular
22 correspondence?

23 A No. I'm not familiar with it. Possibly Mr.
24 Noser is.

25 Q All right. So you wouldn't know whether, for

1 example, there had been any correspondence or
2 communication on this subject between SP and MKT since
3 June of 1984?

4 A I know we were having some correspondence and
5 conversation, but I am not aware of this particular --

6 Q Do you know of any correspondence or
7 communications since June of '84 on this subject?

8 A No.

9 Q Now, let's talk briefly about the merged
10 company's proposed routing policy, SPSF. And on that
11 general subject, I'd first like to ask you if you could
12 describe what MKT's present policy is with respect to
13 the establishment, maintenance and joint rates and joint
14 routes with its connections.

15 Do you have a policy?

16 A I don't know of any routes that have been
17 canceled, any joint routes that have been canceled. I
18 don't know of anything where we have acted contrarily to
19 any of our shippers' requests.

20 As far as cancellation of routes, we just
21 haven't done it.

22 Q Does MKT always join in joint rates with other
23 railroads where MKT could serve the origin and
24 destination itself?

25 A They better not.

1 Q They better not? Why is that?

2 A Well, if you've got a position where you've
3 got a certain shipper on your line that is local to you,
4 you keep him competitive. But you certainly don't let
5 somebody else haul your business.

6 Q How do you keep him competitive?

7 A By making sure that the rates that you give
8 him are competitive with any other rates. If you don't
9 keep him competitive, he is not going to be there.

10 Q That is true even if there is no other
11 railroads around, isn't it? If that shipper has to
12 compete with shippers located in other states or
13 regions?

14 A He might have to get along with a little less
15 bread.

16 Q He might? Could you explain what you mean?

17 A Well, what I'm saying is everything, like Mr.
18 Kober of Continental explained, that the price of grain
19 is so much and that price is established by what the man
20 can sell it for, and he can sell that grain for so much,
21 and it works all the way back to the farmer, how much
22 the farmer receives for it.

23 If the farmer has to pay more, if the grain
24 company has to pay more for transportation from point A
25 to B, the farmer will get less for his commodity.

1 Q I will get back to that subject in a minute.
2 But let me ask you again about the merged companies'
3 routing policy and your view of it.

4 Is it your position that the merged company,
5 if the merger is allowed to take place without any
6 conditions, that the merged company would close all
7 present joint routes that it has with the MKT?

8 A Some of the routes that we talk about that are
9 presently in effect between the MKT over Kansas City and
10 the SP over Denison, Texas are in place because of the
11 fact that the SP Cotton Belt has the long route via St.
12 Louis.

13 Once the merger is consummated, the Santa Fe
14 will take the place of the MKT in the routing between
15 Kansas City and our Texas junction, probably Ft. Worth.
16 And when that happens, the MKT will be exclusively cut
17 out of any routes, even though it is the short haul
18 carrier.

19 Q And you think that that is going to occur by
20 way of some sort of publication, the way these other
21 route closings occurred, or you're speaking of a
22 competitive commercial closing of the route simply
23 because MKT won't be competitive with the merged system
24 single service?

25 A If the MKT is not competitive, it's simply

1 because we're not allowed to be competitive that we have
2 no route.

3 Q Do you assume that any routes will remain open
4 after the merger, joint routes that exist today between
5 MKT and either of the merging partners?

6 A Only to a, you know, MKT local point. I am
7 sure that routes may be open to an MKT local point where
8 you wouldn't have an ability to serve it.

9 Q Or from an MKT local point where you would not
10 serve it?

11 A Yes.

12 Q And that's because you would assume, I take
13 it, that we, the merged company, would still be very
14 much interested in getting the business where we don't
15 serve a point?

16 A Let me clarify that. To a local point which
17 neither the SP nor the Santa Fe is common with, or where
18 they close the industry with the same thing, because in
19 the past the MKT has actually been subject to loss of
20 haul to closed industries on this line at a common point
21 with the SP.

22 Q My question is -- the question is this, to
23 make sure I understood your answer. Maybe you didn't
24 understand the question. But is it not in the merged
25 companies' interest, any railroad's interest, to

1 continue to participate with connections where the
2 origin or destination served by that connection is not
3 served by the merged company?

4 A Normally.

5 Q Okay. And that's because otherwise, the
6 merged company wouldn't see any of that business if it
7 didn't deal with the Katy?

8 A Normally.

9 Q Let's talk a little bit about contracts. I
10 think Mr. Gastler may have already answered this. But
11 in your opinion, approximately what percent of the grain
12 traffic originating on MKT and destined to either the
13 Gulf of Mexico or to Mexico itself, moves under
14 contracts with customers?

15 He said, I think about 50 percent. Is that
16 accurate?

17 A I would say that grain moving from major
18 terminals -- in other words, I'm not talking about any
19 small local point where we load milc or wheat or
20 whatever -- I'd say the majority of it would be under
21 contract, more than 50 percent.

22 Q Are these allowance contracts, and do you know
23 what I mean by that?

24 A Of course.

25 Q Are these grain contracts predominantly

1 allowance contracts, or do they provide for a whole new
2 rate?

3 A Normally what they are is a flat rate
4 contract.

5 Q By flat rate, you mean in the grain sense,
6 flat grain versus transit grain?

7 A Yes. The tonnages. It's flat. There's no
8 transit connected with it, and it moves out on a set
9 rate that is competitive with the transit rate.

10 Q Oh, it is competitive with the transit rate?

11 A Yes. Otherwise, we would not be hauling it.

12 Q I see. Does MKT have transit rate contracts
13 with other shippers?

14 A None that I know of. We have transit rates,
15 but I know of no transit rate contracts.

16 Q On the grain contracts for grain originating
17 at MKT points and destined either to the Gulf or to
18 Mexico, what is the average or usual term -- one year,
19 two years, five years? Is there sort of a standard
20 pattern for those?

21 A I could not say. I could not say. But I
22 would say it would be short-term. It would not be one
23 or two years. It would be short-term contracts.

24 Q You mean less than two years?

25 A Yes, sir.

1 Q Do these contracts typically require the
2 customer to ship specified minimum volumes?

3 A Yes, sir.

4 Q And I take it you would agree with Mr. Gastler
5 and the Annual Report statements that we talked about
6 this morning that MKT's efforts to secure business
7 through contracts could be characterized as aggressive?

8 A Yes, sir.

9 Q In part 2 of your testimony, beginning at page
10 6, you talk about truck and barge competition for grain
11 traffic, whether it exists or not in areas of concern to
12 the MKT. As Vice President of Traffic for Katy, do you
13 consider yourself to be reasonably knowledgeable on the
14 subject of grain marketing and how transportation
15 relates to grain marketing?

16 A Reasonably so.

17 Q From what states does MKT handle grain to the
18 Gulf of Mexico for export? Would it be Nebraska,
19 Kansas, Missouri? I looked at a map. Nebraska, Kansas,
20 Missouri, Oklahoma. Are there any others?

21 A Well, we actually handle some from Texas.

22 Q What other railroads handle grain to the Gulf
23 for export from those states?

24 A From those states?

25 Q Yes.

1 A The Burlington Northern, the Union Pacific
2 System, the Santa Fe.

3 Q Do substantial volumes of this grain originate
4 at points that are not served by SP or Santa Fe in these
5 four states?

6 A I'd say, as far as Kansas and Oklahoma, the
7 Santa Fe serves probably more than all of the rest of us
8 combined. Missouri, a minimum, if any. Nebraska, a
9 minimum, if any.

10 Q In other words, there's a lot of grain coming
11 out of Nebraska that originates at places that Santa Fe
12 or SP don't serve?

13 A Yes, sir.

14 Q How about the KCS? Are they involved in any
15 of these grain traffic?

16 A South of Kansas City; yes, sir.

17 Q Can you tell me briefly -- I don't want a book
18 or anything -- what factors affect MXT's transportation
19 rates for grain moving from these areas to the Gulf
20 Coast? In other words, what is it that determines what
21 you are going to charge the shippers, what factors?

22 A What determines what we are going to charge?

23 Q Yes.

24 A Competition.

25 Q Competition from whom?

1 A Competition from our carriers that -- into our
2 same area. Santa Fe, Burlington Northern, and Union
3 Pacific.

4 Q I see. Well, are you saying that -- well, let
5 me first ask a foundation. Does MKT exclusively serve
6 any grain elevators where there are no other railroads
7 present?

8 A Yes, sir.

9 Q Give me a few examples of where those
10 situations are.

11 A The main points would be on the OKT in
12 Oklahoma, in Kansas; El Reno, Oklahoma; Kingfisher,
13 Oklahoma; Lawton, Oklahoma. All these points up here,
14 we're exclusive to those points. Lawton -- excuse me;
15 that is common with the RN. Many other points.

16 Q Okay. Now, at these places where MKT is the
17 only railroad serving an elevator, are your grain rates
18 to the Gulf generally higher than they are from places
19 of equal distance to the Gulf that are not served
20 exclusively by MKT, but where you have other railroads?

21 A No. It's very competitive. We have contracts
22 at any of these larger points such as Kingfisher and El
23 Reno where O'Mary has made contracts on hauling directly
24 to the Gulf, and they are very competitive with other
25 points such as Enid, Oklahoma. Kingfisher and El Reno

1 are south of Enid. But they are local and their price
2 is competitive with Enid.

3 Q Okay. And is that part of the reason that you
4 enter into these contracts, even though there is no
5 other railroad there, so that your grain shipper and
6 your exclusive point can remain competitive in his
7 markets?

8 A Yes, sir.

9 Q What would happen, do you think, if the Katy
10 tried to raise its rates at these exclusively served
11 points for grain in an effort to somehow exploit these
12 exclusively served shippers? What do you think would
13 happen?

14 A Well, those people have been down that road
15 when there was no Rock Island, when the Rock Island
16 folded. And they had to pay higher rates to truck over
17 to the Santa Fe. Because of the truck rates being
18 higher over to the Santa Fe point, they ended up paying
19 more for their grain.

20 Q But today, now that you're there with the OKT,
21 what do you think would happen if you tried to raise
22 their grain rates to exploit them where they had no
23 other rail alternative?

24 A Well, there are areas where we could raise the
25 rates to, you know, whatever the market would bear, but

1 it just has not been our practice to do so. And as far
2 as I know, as long as I am in my position and Tom
3 Steiniger is in his position, and more assuredly where
4 Mr. Gastler and Mr. Whitman are in their position, we
5 will not do it.

6 Q All right. What I am getting at is you have
7 these exclusively served points. There is no other
8 railroads there. Katy is it. The customer has got to
9 use Katy, I take it. If you tried to raise your rates
10 to these customers to exploit them, because of your
11 exclusive position, wouldn't they just -- what would
12 happen to them? Would they stop shipping?

13 A No. They would pay it. They wouldn't like
14 it, but they would pay it.

15 Q Would they be able to compete as effectively
16 in their grain markets?

17 A No, sir. Their area would shrink.

18 Q And you would get less traffic?

19 A Yes, sir.

20 Q In fact, isn't it true that grain producers
21 that are served by the MKT today, even at exclusive
22 points, are in direct competition with grain producers
23 served by other railroads in all sorts of other areas?

24 A To a degree; yes.

25 Q And isn't it also true that grain shippers

1 that are served by the Katy today in the four states
2 that you mentioned are also in direct competition with
3 other grain producers and shippers that can have access
4 and do have access to barge transportation down the
5 Mississippi?

6 A We are really not -- the way the MKT is
7 situated, about the only barge competitive traffic we
8 are faced with is out of the Port of Catoosa at Tulsa.
9 The Mississippi route is more like the ICG, who you know
10 moves right along.

11 Q But there are barge transportation factors
12 that your shippers, your MKT grain shippers have to be
13 aware of because they are competing with those barge
14 shippers that are located somewhere else?

15 A Well, I don't really believe that applies to
16 us, except like I told you with Catoosa.

17 Q But it does apply there?

18 A But not the Mississippi River.

19 Q But it does apply at Catoosa?

20 A To a certain extent, yes. But mainly with
21 Catoosa, it is a problem that we are trying to address
22 right now, where a farmer will take his grain over to
23 Catoosa, and he will contract for a little fertilizer
24 back. So that's a competitive area that all of the
25 railroads have not addressed as much as we should.

1 Q In general, would you say that MKT does
2 everything it can to keep MKT's grain shippers
3 competitive in their markets?

4 A Yes, sir.

5 Q And that is good business, isn't it?

6 A Yes, sir.

7 Q There was a lot of talk earlier about the
8 Laredo movements of grain to Mexico via Laredo. And I
9 believe Mr. Svolos asked Mr. Gastler whether or not it
10 was true that the UP System handled approximately 75
11 percent of all grain that moves to Laredo for export to
12 Mexico.

13 75 percent, is that a figure that you are
14 familiar with? Does that sound about right?

15 A Well, that's a tough one. The one you should
16 probably ask that to is Any Ramos, and he's going to be
17 on here with the Tex Mex. There's not a feather that
18 flies that Andy doesn't know about it in Laredo.

19 But the thing that I can tell you the most
20 about in Laredo is back several years ago when we had an
21 abnormally large movement of grain through Laredo, they
22 put on a permit system. And this is the only reason I
23 know, I can tell you accurately as to percentages, that
24 they put on a permit system where they authorized X
25 number of movements of traffic over Laredo, and they

1 gave half of the permits to the MP and half of the
2 permits to the Tex Mex, and so they shared equally on
3 the movement of traffic as I recall.

4 And Andy will correct these figures if you
5 really want to know. But just say, for example, that
6 there were 1,200 cars that moved daily, 600 on each
7 shift. The Tex Mex operates 12 hours, and the MP
8 operates 12 hours of shoving grain across the river.
9 Well, it was equal. Each one of them handled 600 cars
10 or whatever it was.

11 Since that time, I would say the percentage
12 has probably went in favor of the MP; to what extent, I
13 don't know.

14 Q This morning, they were talking mainly about
15 Kansas City to Laredo. Do you know anything about the
16 MP -- we will call it MP or UP interchangeably, I guess
17 -- do you know anything about that route, the UP route
18 between Kansas City and Laredo? Isn't it the preferred
19 high-volume right now for grain?

20 A A good share of it is over our line, over the
21 MKT trackage. And so yes, it would be the short route.

22 Q I think in your statement on page 7, you talk
23 about grain being a dense, low value commodity. In the
24 second line, dense, low valued commodity, and this is
25 particularly so for grain, and you are speaking about

1 the ability of trucks to be competitive.

2 Is grain a sense, low value commodity, in your
3 opinion?

4 A Yes.

5 Q And as such, I guess you would have to say the
6 transportation charge is a significant part or portion
7 of the total delivered price of the grain; right?

8 A Yes, sir.

9 Q Would you also say that the market for export
10 grain is highly competitive?

11 A Country-wise?

12 Q Yes.

13 A Argentina, United States, yes.

14 Q I see what you mean. Well, how about the
15 market for export grain competition? Isn't there quite
16 a bit of competition between and among the grain
17 producers in this country as well as the grain brokers
18 in this country?

19 A I would say so; yes.

20 Q So that the ability of a particular grain
21 producer or a particular grain broker to market his
22 grain, his export grain, is very sensitive to the grain
23 price and any increase or decrease in that price?
24 Right?

25 A Could you say that again?

1 Q I'm just saying that the ability of a grain
2 producer in the United States or a grain broker in the
3 United States to market grain is highly sensitive to any
4 change upward or downward in the price of grain.

5 A Actually, the Government makes more of a
6 change in there than actually what the price does. I
7 mean the Government's decision on what is to be done
8 with the grain or whether crops are to be held makes
9 more than that. But I suppose some; yes.

10 Q And therefore, because it is a dense, low
11 valued commodity, the transportation price is an
12 important factor in that.

13 A Very much so.

14 Q If the transportation price gets too high, a
15 particular grain producer who has to pay that higher
16 price isn't going to be able to compete; right?

17 A That's right.

18 Q But certainly, it's not in MKT's interest, is
19 it, to put its grain customers out of the market for
20 export grain, is it?

21 A No, sir.

22 Q Take a look at page 10 for a moment if you
23 will, down at the very last paragraph, beginning:
24 "Second, no matter what the volume of grain traffic
25 actually moving south to the Gulf off the SP's line

1 might be at any particular time, in fact, it is
2 extremely valuable to the shipper to have the SSW line
3 available to him."

4 Would you agree, then, that the availability
5 of an alternative means of transportation, just its
6 availability, even if you didn't use it very much, is an
7 effective way to restrain pricing and be competitive?

8 A Yes, sir.

9 Q So the fact that alternative means of
10 transportation may have a very low share of traffic does
11 not necessarily indicate that that alternative means is
12 not an effective, doesn't provide effective
13 competition?

14 A That's correct. The fact that they are
15 there.

16 Q Pardon?

17 A The fact that they are there.

18 Q Right. As far as exporting of grain, do
19 farmers actually export their own grain, or do they sell
20 it to grain brokers, people like Cargill or Bunge, or
21 those people who do the actual exporting?

22 A Are you familiar with the coops,
23 cooperatives? Talking about Far-Mar-Co, Union Equity,
24 Agri Industries. Are you familiar with those?

25 Q Not very.

1 A Well, you see, what these people are, they are
2 farmers. And way back when, they were being frozen out
3 of the market, and so they formed these cooperatives,
4 and you have many cooperatives in Oklahoma and Kansas.
5 That's their main area. They undoubtedly have coops in
6 the East that I'm not familiar with, but in our area of
7 geography -- and this was the farmer's attempt to sell
8 their grain in an overseas market. They're having
9 difficulty with it.

10 You're having many farmers that are going out
11 of business, and you're seeing larger farms because of
12 this. And I'm just trying to answer your question.

13 Q Sure.

14 A I believe that there will come a day when a
15 farmer will control 20,000 acres of wheat, will make a
16 contract with a railroad and with Russia or China or
17 whatever, but I think that is to come. It is an
18 evolutionary thing.

19 Q So that today anyway, the individual farmers
20 are -- well, how often are the individual farmers today
21 actually railroad customers, the ones who enter into
22 contracts with the railroad?

23 A Well, Mr. Gastler and I sat down to dinner
24 with about 300 up in Kingfisher, Oklahoma about three
25 months ago. We were at their annual meeting and it was

0004-0203

1 a real joy to be with them.

2 Q This is through the cooperative?

3 A That's right. Through the Kingfisher
4 Cooperative.

5 Q Beginning on 7 of your opposition testimony,
6 you quote from various -- on page 7 and 8, I guess it is
7 -- various shippers, witnesses here.

8 A Where are you?

9 Q Beginning at 7 of your testimony. The first
10 one is John Harvey of Bartlett Agri Enterprises.

11 A Yes, sir.

12 Q Then you have Agri Industries on page 8 and
13 Bunge Corporation. Is that the right way to say it?

14 A Yes. Bunge. It's a French company.

15 Q Which of those three are farmers or
16 cooperatives?

17 A Agri is a cooperative. Jerry van der Camp of
18 Agri Industries, they're a cooperative.

19 Q And the other two are -- what would you call
20 the other two?

21 A Bartlett is a semi-large grain concern. I
22 don't believe they have interests out of the country.
23 They may have.

24 Bunge is a large concern. I believe it's a
25 French concern and it has interests within and without

1 of the country.

2 Q Over on page 10, the third line on page 10,
3 you say that may be all very well so far as a major
4 grain trader is concerned and so on, and has nothing to
5 do with farmers in southwest Kansas. The major grain
6 traders with options to move cargoes, a cargo of grain
7 from many different origins to a number of different
8 export locations -- about what percent would you say of
9 total grain that's exported to Gulf ports from southwest
10 Kansas, about what percent is exported under the
11 auspices of these major grain traders that you describe
12 on page 10, the ones that have all the options?

13 A From southwest Kansas, most of the grain -- I
14 believe to be the largest portion of the grain -- would
15 come from cooperatives. The large grain firms would
16 control a large amount, but not as much as the
17 cooperatives.

18 Q Are the cooperatives -- you'll have to educate
19 me a little bit here. Are these cooperatives that you
20 speak of in southwest Kansas -- well, first of all,
21 which ones are they? Do you know?

22 A Union Equity at Enid, Oklahoma would be the
23 largest. Far-Mar-Co-Farmland Industries, they merged
24 several years ago -- they would probably be the second
25 largest cooperative.

1 Q Okay. And they are in southwest Kansas, too?

2 A Yes, sir. Kingfisher Cooperative that I
3 mentioned would be one of these smaller cooperatives.
4 But they filled a room full of farmers. I would say,
5 with their wives, there must have been four or five
6 hundred of them.

7 Bunge is large up in that area. Now, that is
8 a major grain concern. Schooler-Bishop, although
9 regional, is a large mover of wheat and corn. They are
10 in the area.

11 Q Are any of these organizations you referred to
12 just now organizations that you would say have options
13 to move cargo of grain from many different origins to a
14 number of different export locations?

15 A Some of them do.
16
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1 Q Would you say that those who do have quite a
2 bit of collaboration dealing with the railroad in terms
3 of entering into contracts or otherwise dealing with the
4 railroad in terms of rates and service?

5 A The grain concerns lately have more or less
6 felt it was the other way around. The large railroads
7 are pushing them.

8 Q Are you saying that Far-Mar-Co doesn't have
9 any leverage with the Katy or SP or Santa Fe?

10 A They have a lot of leverage with the Katy.

11 Q But not with SP or the Santa Fe?

12 A Not nearly as much.

13 Q But they do have some?

14 A Oh, some, yes.

15 Q Let's look again at page 7. Your first quote
16 there is from Bartlett, John Harvey of Bartlett?

17 A Yes, sir.

18 Q Do you know offhand where their terminal
19 elevators are?

20 A Bartlett has a flour mill on the MKT at
21 Coffeyville, Kansas. They have a large elevator system
22 in Kansas City, and I can't think of any other points,
23 but on the MKT at Kansas City they are located. They
24 have a flour mill located on us at Coffeyville, Kansas.

25 Q Are any of their elevators -- and "they" being

1 Bartlett again -- served by both SP and Santa Fe and no
2 other railroad?

3 A The Santa Fe serves Kansas City, as does the
4 SP. So they serve it, just like we do, through
5 reciprocal switching.

6 Q Are you saying that all of Bartlett's
7 elevators are served by other railroads besides SP and
8 Santa Fe?

9 A No, I'm not saying that. I just mentioned the
10 Kansas City elevator.

11 Q Which other ones?

12 A I just don't have a list of their -- the
13 business we do through them is at Kansas City.

14 Q Over here at the top of page 8, again I think
15 from Bartlett, the citation there refers to truck hauls
16 of 750 to 900 miles to the ports. Do you know how long
17 it is, how long the truck haul is, to the nearest
18 Bartlett facility served by another railroad?

19 A I don't know of any. Like I said, they have
20 reciprocal switching at Kansas City, and the traffic
21 that they move from Kansas City moves either to the Gulf
22 on our line or to Mexico. And they have -- all the
23 southwest carriers serve Kansas City.

24 Missouri Pacific is the only one that serves
25 the border points at Laredo. Santa Fe serves other

1 border points from Kansas City and they haul some of
2 that traffic direct now, I believe through Presidio. So
3 I don't really think that it is pertinent. I can't
4 answer your question because I don't think it's
5 pertinent, to my knowledge.

6 Q He says truck movements would entail hauls of
7 750 to 900 miles to Louisiana or Texas ports or Rio
8 Grande crossings. My question is, do you know what his
9 truck movements would entail, how many miles, if he
10 didn't have to move it all the way to the port, but just
11 to another elevator that was served by another railroad
12 besides SP or --

13 A John Harvey is a very private person and very
14 knowledgeable, and I think that what he is doing is he
15 is trying to tell us what he knows about the movement of
16 grain. And he is telling us that it is not practical to
17 move a truckload of grain, approximately a third of a
18 covered hopper of grain, anything in that 750 mile
19 area.

20 I would say that when you get above 400 miles,
21 you are in trouble hauling grain. John went as far as
22 750 to 900. He's a very cautious person.

23 Q In your experience, if it is less than 400
24 miles are you okay? Is that something that --

25 A No, I didn't say that. I just said that John

1 is being very conservative here on his length. But if
2 you are talking about 400 miles, you're talking about a
3 third of a covered hopper of grain and you are talking
4 about a covered hopper moving that distance for -- and
5 Mike can correct me, but I will say somewhere around the
6 vicinity of \$750.

7 To bring that down to the price of what the
8 truck would be hauling would be around \$250. So you are
9 saying that that man would take his truck and for \$250
10 he would put himself on the road for two days and expend
11 100 gallons of gas at a dollar a gallon. So for \$150 he
12 has leased himself and his truck for two days. You
13 know, it just would not be practical.

14 Q Well, we will talk more about grain when we
15 get to the trackage rights verified statement.

16 The next guy you quote from here is Agri
17 Industries, Jerry van der Camp. You say that Agri -- he
18 says that Agri can handle in excess of 21 million
19 bushels a month. Would you describe them as a large
20 shipper?

21 A Oh, yes, sir.

22 Q You also quote, on the same page, Mr. Walker
23 of Bunge Corporation with regard to movements from
24 Hutchinson, Kansas City, Salina, and Council Bluffs. Is
25 that where Bunge has elevators?

1 A That's where they have some of them. Bunge
2 has elevators all along the Cotton Belt line from
3 Hutchinson, Kansas, all the way out to Liberal.

4 Q And you can serve their elevators at Kansas
5 City, is that right?

6 A Yes, sir.

7 Q Which railroads can serve the elevator at
8 Salina?

9 A I believe the elevator at Salina is actually
10 served by the Santa Fe, and the elevator at Kansas City
11 is actually served by the MKT.

12 Q I'm saying, which railroads can serve it
13 through reciprocal switching?

14 A At Salina?

15 Q Yes.

16 A The MKT, the Union Pacific system, and the
17 Santa Fe.

18 Q How about at Council Bluffs?

19 A At Council Bluffs, it would be the UP system,
20 the MKT, Chicago Northwestern, probably the Burlington
21 Northern.

22 Q How about Hutchinson?

23 A At Hutchinson it would be Southern Pacific,
24 the Santa Fe, and the Missouri Pacific.

25 Q Can you tell me how far -- what's the closest

1 of those elevators that you mentioned here, Kansas City,
2 Salina, Council Bluffs, and Hutchinson? Which is the
3 closest? What's the closest one to what you call
4 southwest Kansas?

5 A Hutchinson would be the closest one to
6 southwest Kansas.

7 Q How far is that?

8 A How far is it from what?

9 Q Southwest Kansas to Hutchinson.

10 A Well, I think that Hutchinson would probably
11 be in central, central or south-central Kansas. And
12 from Liberal, I would say that is probably 150 or '60
13 miles.

14 Q And that is, in your opinion -- do you think
15 that is beyond the truck range for grain?

16 A Well, it is if you're going to have a
17 combination truck and rail move. In other words, to
18 move grain from Liberal to Hutchinson and have a
19 subsequent rail move out of that, it's pretty iffy.
20 Now, if you are going to maybe sell it to a flour mill
21 and move it, you know, by truck someplace close to it,
22 or even maybe by rail, it might be -- but for Gulf
23 shipments, I would say it would be tough.

24 Q Page 9 of your shipments, the last paragraph
25 before heading E, towards the end of it you say: "And

1 to that extent, the merged carrier will be able to
2 extract a monopoly profit from the traffic moving to and
3 from its greatly expanded exclusive points." Do you see
4 that?

5 A The last complete paragraph?

6 Q Yes, page 9. There is a clause. The sentence
7 begins "But because of the nature of the traffic," and
8 then you refer in that same sentence to "the merged
9 carrier will be able to extract a monopoly profit." Do
10 you see that?

11 A Yes.

12 Q Do you contend that, absent the MKT's
13 requested trackage rights here, that the merged carrier
14 could obtain monopoly profits on exported grain
15 traffic?

16 A I would say that from this area they would
17 establish a monopoly in southwest Kansas, where there
18 would be no other rail competition.

19 Q The question is, though, could the merged
20 system obtain monopoly profits on export grain?

21 A No, sir, I don't believe that they would be
22 able to control a monopoly as far as export grain. But
23 they would certainly have a monopoly on the farmers and
24 elevators in that area. They would be able to establish
25 where the grain would move from. They would be able to

1 establish where they would give the service to. Because
2 of all these combinations of things, they would end up
3 being able to establish exactly how grain would move out
4 of southwest Kansas to any point where it might be sold
5 or distributed from or milled or whatever.

6 Q Wholly apart from what we've already discussed
7 as a highly competitive market for export grain and the
8 forces in those markets?

9 A I guess I should qualify it. If you've got,
10 which they have -- they've got parallel lines -- and
11 they establish that this lane is going to be their
12 high-speed traffic lane, all right, now once they do
13 that they're going to take their so-called local engines
14 or switch engines and make them work the other line as
15 far as the grain.

16 They'll set up rates from XYZ will be higher
17 than they will from this point over here, and that'll
18 force the grain over to the other lane, where they'll
19 set up their local switching.

20 They'll still move the grain. They'll still
21 move the grain, but they'll establish from whom they
22 will ship it from and how they will handle it.

23 Q Is this what MKT does where you have
24 exclusively served grain shippers?

25 A I've never been in that position. We've never

1 been in that position to be able to do anything like
2 that. We just don't have a monopoly anyplace that I
3 know of.

4 Q You have exclusively served grain shippers,
5 however, do you not?

6 A Yes, sir, but that would hardly be considered
7 a monopoly.

8 Q And yet you've said here, in these areas we're
9 talking about now in southwest Kansas -- I think I heard
10 you say that you call it a monopoly, but you say that
11 the merged carrier would be unable to extract a monopoly
12 profit; is that correct?

13 A I told you that what they would be able to do
14 is they would be able to choose where they would put
15 their service, they would be able to choose who they
16 were going to give the competitive prices to. And you
17 can only do that with a monopoly.

18 We don't have any choice. Where we are, if we
19 don't work with our shippers we don't have anybody to
20 work with.

21 Q And so that if SP-Santa Fe after the merger
22 doesn't work with its shippers, won't the same thing
23 happen?

24 A What they can do is, for example, they can
25 take that whole Liberal line and establish that -- and I

1 believe from some things that I have seen that the
2 Liberal line as far as Hutchinson will be the main line
3 for the combined system. So if that's your main line
4 and you've got all of your high-speed traffic on it, you
5 sure as heck don't need local engines poking in and out
6 of every station with five or six cars of grain.

7 So what they will do is they will establish --
8 what I believe they will do is they will establish that
9 the Santa Fe line will be the line where they will carry
10 their grain from and they can handle all the local
11 switching over there that they want. But the farmers
12 close to the Cotton Belt side will end up paying the
13 price for it to move their grain from the Cotton Belt
14 location to the Santa Fe elevators, which may be 150
15 miles, and they will pay the difference; and the
16 elevators will dry up on the other line.

17 Q Do they have that option today, to truck it to
18 the Santa Fe line?

19 A Yes, sir. But the Cotton Belt is hauling the
20 grain off the line.

21 Q On page 9, you refer to other traffic to
22 Mexico and you say "for which there is virtually no
23 truck competition." It's a parenthetical sentence at
24 the end of the first full paragraph on page 9. Do you
25 see that?

1 A Yes.

2 Q You say those are zinc, soda ash, and scrap
3 paper. Do you know where most of the world's production
4 of soda ash originates?

5 A On the Union Pacific Railroad.

6 Q And that is an exclusively served point by UP,
7 isn't it?

8 A Yes, sir. Most of it, I believe, at Trona,
9 California. The SP has a soda ash, caustic soda ash --

10 Q Does the UP system have its own route to
11 Mexico?

12 A Yes, sir.

13 Q Where do the zinc and scrap paper shipments
14 that you refer to here originate, if you know?

15 A The zinc shipments come out of -- well, before
16 you leave the soda ash -- I almost got real provincial.
17 Before you leave the soda ash, we are hauling soda ash
18 presently in connection with the Southern Pacific.

19 On the zinc movements, it's concentrates. It
20 comes out of Mexico and it comes north. It's a
21 northbound move. We move it to Bartlesville, Oklahoma.
22 We share in that movement with the Southern Pacific over
23 Eagle Pass, and I believe some of it also moves through
24 Laredo.

25 On the paper shipments, that comes from many

1 areas. On the MKT, we've moved some scrap paper out of
2 the Houston area to the SP at San Antonio, and I'm not
3 sure if you handle it to Laredo or if you handle it at
4 Eagle Pass.

5 Q The point is there's plenty of other railroads
6 that handle that commodity to and from Mexico besides SP
7 and Santa Fe, isn't that right?

8 A Well, no, there's only -- there'll only be two
9 railroads that cross the border after your merger.

10 Q Well, all right, UP and its connections and
11 SP-Santa Fe.

12 A Yes, sir.

13 JUDGE HOPKINS: Excuse me, Mr. Smith. Are you
14 going to have many more questions?

15 MR. SMITH: Just two more; almost there.

16 JUDGE HOPKINS: Go ahead. I wanted to finish
17 this witness, if we could, this afternoon.

18 MR. SMITH: Actually, looking it, I'm going to
19 decide to just stop right here and say no further
20 questions.

21 JUDGE HOPKINS: Thank you.

22 MS. BUDEIRI: Judge Hopkins, the Department of
23 Justice questions have been covered. We have gotten our
24 answers, so we will have nothing of Mr. Dimmerman at
25 this point.

1 JUDGE HOPKINS: Thank you. You'll question
2 him some other time?

3 MS. BUDEIPI: Yes, we will.

4 JUDGE HOPKINS: Ms. Reed.

5 BY MS. REED:

6 Q How do you do, Mr. Dimmerman. My name is Mary
7 Reed and I'm with the U.S. Department of
8 Transportation. I just have a few questions.

9 Mr. Gastler referred my questions regarding
10 traffic moving into Mexico to you, and I would
11 appreciate it if you can answer them. If you can't,
12 refer me to the witness who you think will be able to
13 answer them.

14 A What was your question, Mary?

15 Q I will start all over again. Could you please
16 describe how Conasupo solicits bids for traffic moving
17 into Mexico?

18 A Our expert on Conasupo is Art O'Mary and he is
19 not very much of an expert, and I am certainly not. The
20 man that you should ask is Andy Ramos of the Tex-Mex
21 Railway, because Andy goes back and forth between Mexico
22 on a regular basis.

23 But from my knowledge, Conasupo will offer a
24 tender, a tender of let's say for example 10,000 tons of
25 corn, and that is the first thing that will come out.

1 And then the second thing that will come out is where
2 the cars, where the traffic will move, whether, you
3 know, it is a Laredo junction, a Needle Pass junction,
4 Presidio, El Paso, or wherever.

5 And from that area, then the railroads
6 recognize where they have the right to -- I take that
7 back. The grain concerns then recognize where they have
8 the right to bid on the grain, and once they get their
9 grain then it becomes up to the railroads to develop
10 who's going to haul it.

11 Andy can tell you much more than that. That's
12 just basic information.

13 Q Would you just clarify. Does the grain
14 shipper go to, say, the MKT and say what can you give me
15 as a rate into Mexico?

16 A That's right. Usually it's the other way
17 around. We'll find out that Cargill has, of the 10,000
18 tons, Cargill has 3,000 tons to move over Laredo, and
19 we'll go right to Cargill and, you know, what can we do
20 in conjunction with the SP and the Tex-Mex as far as the
21 movement.

22 Q So the grain shippers to your understanding
23 will make a bid without first having got the
24 transportation rate decided or agreed to?

25 A That's normal.

1 Q Do you know whether or not the grain shippers
2 are generally large companies on Conasupo traffic?

3 A Yes, normally. I have never seen any small.
4 You know, these people that we're talking about right
5 here, Bunge, Cargill, Union Equity, Far-Mar-Co, these
6 are the people.

7 Q And the amount of grain or the volume of grain
8 is fairly substantial on these tender bids?

9 A Yes, ma'am.

10 Q Do you know whether Conasupo would have
11 several gateways listed as far as their tender bid
12 submitted over Laredo, over Eagle Pass, or do they
13 usually just have one gateway per bid?

14 A They will have multiple crossings, but
15 normally Laredo will be the large crossing.

16 Q Do you know why Laredo is generally the large
17 crossing?

18 A It's the short route of the Mexico de Nacional
19 to Monterrey and Mexico City. Monterrey is their
20 principal manufacturing area and of course Mexico City
21 is their center of population.

22 Q Do you know whether or not the Mexican
23 Railroad line out of Laredo is in better condition than
24 the rail line from other Mexican border points?

25 A I'm not an expert on that, but I do know that

1 they've spent an awful lot of money right at Laredo and
2 on the Laredo line. And I also know that the connection
3 at Eagle Pass is excellent. They have good facilities
4 on both sides of the river.

5 Q Are you aware of the pricing practices of the
6 Mexican railroads once it reaches the border points?

7 A I know at one time the border points were
8 equalized, and right now I do not believe they are. I
9 think the cheapest route and rate in the Mexican
10 railroads would be over Laredo. But ask Andy about
11 that. This is just what I believe.

12 Q Now, in discussing Conasupo generally, you
13 talk about grain traffic, which is what they're
14 interested in. Do they also solicit bids for other
15 types of commodities?

16 A Not that I know of. I think that they're just
17 in the grain area.

18 Q Are there any other Mexican agencies that have
19 a similar role to Conasupo for other commodities, do you
20 know?

21 A Well, you've got a multiple of brokers, you
22 know, that do business at the border points, but nothing
23 that would be comparable to Conasupo.

24 Q That's all I have on Conasupo.

25 A Thank you.

1 Q Now for your questions. You were discussing
2 with Mr. Smith contract rates. Does the MKT offer
3 contracts to shippers which it does not directly reach?

4 A We can only do that in connection with another
5 railroad or in connection with an open routing.

6 Q Would you explain how that would work?

7 A Just for example, if we've got a movement
8 coming off the Burlington Northern coming from
9 Minnesota, and it's going to Houston, Texas, if there is
10 an open route via Kansas City we could propose a
11 contract with that shipper just for our portion of the
12 route. Say that if you give us X number of carloads of
13 widgets, we will pay you \$100 per car and have you give
14 us 300 cars, we will give you \$150, whatever it is, on a
15 volume basis.

16 We can set up that kind of a thing, but it's
17 only our portion of the haul that is considered. If we
18 are to get into a contract -- and many times we do this
19 with, say for example, the Southern Pacific on something
20 that's moving to Mexico, if we -- the only way that we
21 can haul it is in conjunction with the SP and the
22 Tex-Mex. The only way that the Tex-Mex can haul it is
23 in connection with the SP.

24 So the three of us will get together and say:
25 Well, let's give them this kind of an offer on a

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1 contract. We know that Conasupo has let this here
2 traffic to go by Laredo, we know what the available
3 rates are, and so we'll say, well, we'll give them this
4 kind of a reduction rate on a volume basis if we get 95
5 percent of that movement that they receive.

6 Does that explain it?

7 Q Now, you indicated an example of a Burlington
8 Northern move to Houston. Could the Burlington Northern
9 have reached Houston in single line service?

10 A Yes. That's why I said if there's an open
11 route over Kansas City.

12 Q So you're able to offer these kinds of
13 contracts even where the carrier can --

14 A If there is an open route.

15 Q Now, what about switching it around so that
16 you serve the originating carrier but you cannot reach
17 the destination. Do you offer any kind of contracts?
18 Say it's not an exclusively served origination point.

19 A You mean on an overhead basis?

20 Q You are originating, but it is a jointly
21 served point. Can you offer contracts to solicit the
22 traffic, even though it's moving to a point on another
23 railroad?

24 A Your contract would only be applied to the
25 portion of railroad, your portion of the railroad. In

1 other words, the other portion, if they are going to an
2 exclusive point on XYZ Railroad that is not served by
3 any other point, they are not going to get involved in
4 that contract. They will say, heck, we are going to get
5 it anyway, so we are not going to give you any rebate.
6 We don't care if we get it from you or somebody else.
7 But whatever contract you make, you're going to have to
8 do with the shipper yourself.

9 Q But you could offer the contract to the
10 shipper to give them a rebate so that you would be kept
11 in the haul?

12 A Yes.

13 Q How often does that happen?

14 A How could that happen?

15 Q How often does that happen?

16 A It happens. I don't know how often, but it
17 happens.

18 Q Now, on page 5 in the middle paragraph you
19 refer to attachment 1, which I would like some
20 clarification on. You indicate --

21 A On Table 1?

22 Q On page 5. You refer to attachment 1.

23 A I have the wrong book.

24 Q You indicate that this is a chart showing
25 closed industries served by the merging carriers. And

1 you have, in attachment 1, you have the industry and
2 location and then you have the railroad. Am I correct
3 that where you have the ATSF that you are stating that
4 they are exclusively served by the ATSF today, and that
5 where you have SSW that means that they are exclusively
6 served by that railroad today?

7 A Yes.

8 Q So these are basically all exclusively served
9 points?

10 A Yes.

11 Q Do you know -- strike that.

12 MS. REED: That's all I have. Thank you.

13 JUDGE HOPKINS: Mr. Greenberg?

14 REDIRECT EXAMINATION

15 BY MR. GREENBERG:

16 Q Mr. Dimmerman, when you were discussing with
17 Mr. Smith the issue of the kind of service the MKT
18 provides to grain shippers that the MKT exclusively
19 served -- do you have that in mind, that series of
20 questions?

21 A Yes.

22 Q Does the MKT serve any grain shippers in a
23 region where there is no other railroad service?

24 A Yes, sir, on the CKT there are railroads
25 reasonably close in areas, but we serve the points

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1 directly.

2 Q But are there any -- in the area along the
3 OKT, is there other railroad service available within a
4 relatively short distance?

5 A Yes, sir. I don't think there's anyplace
6 that's further than 50 miles. Most of them are closer
7 than that.

8 Q Is there any area in which the OKT or the MKT
9 serves the grain shippers which would be as large as
10 southwest Kansas?

11 A Oh, no, sir.

12 Q Now, on page 10 and 11 of your testimony you
13 were talking about potential competition, again in
14 response to some questions from Mr. Smith, talking about
15 the potential competition that the SP's line might
16 provide. With respect to that discussion, were you
17 speaking of rail-rail competition?

18 A Yes.

19 Q That is required to keep one railroad honest?

20 A Yes, sir.

21 Q If the alternative form of transportation in
22 that particular example is relatively high-priced, then
23 how effective is the potential competition in
24 controlling prices?

25 A It can only act as a cap. The high price will

1 act as a cap, in other words how much will the market
2 bear. What the market will bear whatever the high-price
3 route would be, whatever you're talking about, truck or
4 whatever, and the other one would be able to base his
5 pricing on that. You would have a cap rather than a
6 floor.

7 Q So that would be the situation, I think you
8 just said, with respect to truck competition on grain
9 moving from southwest Kansas to the Gulf?

10 A Yes, sir.

11 MR. GREENBERG: No further questions, Your
12 Honor.

13 JUDGE HOPKINS: Any further questions?

14 MR. SMITH: No.

15 JUDGE HOPKINS: You are excused for this
16 time. You will be back again.

17 (Witness excused.)

18 MR. GREENBERG: Your Honor, we move the
19 admission of the statement, MKT-27.

20 JUDGE HOPKINS: Any objection?

21 (No response.)

22 JUDGE HOPKINS: It will be received into
23 evidence.

24 MR. SMITH: We have 19 and 20. 19 we talked
25 about. 20 I guess we will --

1 JUDGE HOPKINS: I think we better hold 20
2 pending questioning of the witness.

3 MR. SMITH: Then SFSP-19.

4 JUDGE HOPKINS: It will be received in
5 evidence.

6 (The document previously
7 marked Exhibit No. SFSP-C-19
8 for identification was
9 received in evidence.)

10 JUDGE HOPKINS: Off the record.

11 (Discussion off the record.)

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

14 (Whereupon, at 4:45 p.m., the hearing in the
15 above-entitled matter was recessed, to reconvene at 9:00
16 a.m. on Tuesday, January 8, 1985.)

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