

FD 30400 - 1/9/85 - PAGES 5677-5734

BEFORE THE
INTERSTATE COMMERCE COMMISSION

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

Hearing Room A
12th & Constitution, N.W.
Washington, D.C.
Wednesday, January 9, 1980

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

BEFORE:
JAMES E. HOPKINS,
Administrative Law Judge

APPEARANCES AS HERETOFORE NOTED

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C O N T E N T S

2	<u>WITNESS</u>		<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Harry T. Dimmerman					
4	and Jerry Sheridan					
5	By Mr. Moates-resumed		5680			
6	By Mr. Kharasch			5747		
6	By Mr. Moates				5758	
7	Thomas G. Todd					
8	By Mr. Roper	5761				
9	By Mr. Blaszak		5762			
9	By Ms. Reed		5782			
10	By Mr. Delaney		5783			
11	Karl R. Ziebarth					
11	By Mr. Mahon	5792				
12	By Mr. Nelson		5794			
13	By Ms. Mahon-resuming	5795				
13	By Mr. Nelson-resuming		5799			
14	William E. Anderson					
15	By Mr. Priesing	5816				
16	By Mr. Moates-resuming		5817			
17	Harry T. Dimmerman-recalled					
18	By Mr. Greenberg	5836				
18	By Mr. Smith		5837			

E X H I B I T S

20	<u>Exhibit No.</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
21	SFSP-C-41	5682	5761
21	SFSP-C-42	5688	5761
22	SFSP-C-43	5696	5761
22	SFSP-C-44	5704	5761
23	SFSP-C-45	5717	5761
23	SFSP-C-46	5725	5761
24	SFSP-C-47	5736	5761
24	SFSP-C-48	5742	5761
25	SFSP-C-32 thru 40		5761

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E X H I B I T S

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<u>Exhibits No.</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
SFSP-C-49	5834	5836
SFSP-C-50	5843	
SFSP-C-51	5868	
SFSP-C-52 thru 54	5876	
SFSP-C-55	5889	
SFSP-C-56 and 57	5891	

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P R O C E E D I N G S

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

2 Mr. Kharasch.

3
4 MR. KHARASCH: Your Honor, several times
5 yesterday and the day before, questions have come up
6 about the Commission's policy and the meaning of the
7 Commission's non-suspensions of route cancellations.
8 I'd like to make a statement of position. There is no
9 witness on the stand at the moment.

10 First, I think that the meaning of the
11 non-suspension has perhaps been misinterpreted by some
12 on the record. A non-suspension is not a decision by
13 the Commission that is approving anything. That has
14 always been true.

15 Second, there is perhaps a legitimate question
16 to ask a witness about whether the witness knows what
17 the Commission practice is on suspensions. Now, it is
18 my understanding, and I suppose most witnesses will say,
19 if they're knowledgeable, that the Commission is not now
20 issuing suspensions on route cancellations. That's
21 legitimate.

22 I don't think it is legitimate -- I would tend
23 to object to -- having a discussion with the witness
24 about whether the Commission is enforcing the law. In
25 this field, in the first place, courts have disagreed to

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1 some extent with the Commission.

2 In the second place, the law is clear that it
3 is the Commission's discretion to suspend or not to
4 suspend and investigate. And it really does not
5 constitute a passing on the merits of anything. And I
6 don't think that could usefully be discussed with the
7 witness except perhaps a knowledgeable commerce counsel,
8 and for that reason I would suggest that I would object
9 in the future to any more discussions with witnesses
10 about what the law requires the Commission to do.

11 JUDGE HOPKINS: Thank you. Is that it?

12 MR. MOATES: Yes.

13 JUDGE HOPKINS: Mr. Moates, do you have
14 anything to say?

15 MR. MOATES: No. I enjoyed listening to Mr.
16 Kharasch. I have nothing to say.

17 JUDGE HOPKINS: It seems to me the Commission
18 knows its own position. The Commission is the one who's
19 going to make the decision on the case anyway, so I
20 don't see the need to argue the point one way or the
21 other. There's really no reason to raise the question.

22 If somebody wants to raise a question, we then
23 can handle it on objections.

24 MR. KHARASCH: If we could be off the record
25 for a minute.

1 JUDGE HOPKINS: Surely. Off the record.
2 (Discussion off the record.)
3 JUDGE HOPKINS: Let's get back on the record.
4 Call the witnesses.
5 MR. KHARASCH: Yes. Mr. Dimmerman and Mr.
6 Sheridan.
7 Whereupon,

8 HARRY T. DIMMERMAN

9 and

10 JERRY SHERIDAN,

11 the witnesses on the stand at the time of recess,
12 resumed the stand and, having been previously duly sworn,
13 were examined and testified further as follows:

14 CROSS EXAMINATION - RESUMED

15 BY MR. MOATES:

16 Q Good morning, gentlemen.
17 A (WITNESS DIMMERMAN) Good morning.
18 A (WITNESS SHERIDAN) Good morning.
19 Q You will recall that when we broke yesterday
20 evening we were discussing categories of movements from
21 your opposition diversion study, which appears in
22 MKI-27. Do you still have before you the counsel's
23 exhibit marked C-38, the letter from Mr. Roper, the
24 memorandum from Mr. Roper?
25 A (WITNESS SHERIDAN) Yes, I have it.

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1 Q Would you refer to page 4 of the memorandum
2 and to the numbered paragraph 8, which states as
3 follows:

4 "The next category of received traffic
5 involved movements to closed points on MKT. The ICC
6 found that a terminating carrier which serves a
7 consignee exclusively has substantial influence over the
8 routing of that traffic and that MKT would continue to
9 have enough influence to prevent itself from being
10 short-hauled.

11 "MKT had contended that it would be
12 short-hauled and be forced to receive the traffic at
13 Denison, Dallas, Denton, and Fort Worth, rather than at
14 Kansas City."

15 Now, sir, did you and Mr. Dimmerman review any
16 traffic of that type in this study in the Santa
17 Fe-Southern Pacific case, specifically traffic that was
18 received and moved to a closed point on the MVT or the
19 OKT?

20 A (WITNESS SHEPIDAN) Yes, we have traffic to
21 closed Katy points.

22 MR. MOATES: Your Honor, I have a two-page
23 counsel's exhibit that I think would be SFSP-C-41.

24 JUDGE HOPKINS: That's right. It will be
25 marked for identification as SFSP-C-41.

1 (The document referred to
2 was marked Exhibit No.
3 SFSP-C-41 for
4 identification.)

5 MR. MOATES: Let the record show that the
6 witnesses are conferring on these movements while I'm
7 not asking the questions.

8 WITNESS SHERIDAN: We don't have a copy yet.

9 MR. MOATES: Is that what you're discussing?

10 WITNESS SHERIDAN: No, but we don't have a
11 copy.

12 JUDGE HOPKINS: I think they're just talking
13 there.

14 MR. MOATES: That has happened a couple of
15 times.

16 BY MR. MOATES: (Resuming)

17 Q Do you now have a copy of the exhibit,
18 gentlemen??

19 A (WITNESS SHERIDAN) Yes.

20 A (WITNESS DIMMERMAN) Yes.

21 Q Would you confirm for me that the first
22 movement, strata BSX, page 0089, is a movement to Tulsa,
23 Oklahoma, and a station that your sheet shows to be a
24 closed station?

25 JUDGE HOPKINS: Off the record.

1 (Discussion off the record.)

2 BY MR. MOATES: (Resuming)

3 Q Gentlemen, would you please refer, putting
4 aside for a moment the question on the Tulsa, Oklahoma,
5 would you now refer to paragraph 9 of Mr. Roper's
6 memorandum, which is Counsel's Exhibit C-38 for
7 identification. It says:

8 "The next category of received traffic
9 involved movements where MKT performed the switching for
10 the consignee and received its longest haul from Kansas
11 City, while the UP performed only bridge service. The
12 ICC concluded that, as terminating carrier switching to
13 destination, MKT would have substantially more influence
14 over the routing of the traffic than would the UP."

15 Do you see that?

16 A (WITNESS DIMMERMAN) Yes, sir.

17 A (WITNESS SHERIDAN) Yes, sir.

18 Q I ask you again, did you have traffic that
19 fits that description generically in the Santa
20 Fe-Southern Pacific traffic diversion study?

21 A (WITNESS SHERIDAN) Yes.

22 Q And in fact, looking at SFSP-C-41 for
23 identification and directing your attention first to
24 strata RMX, page 200 -- do you have that in front of
25 you?

1 A (WITNESS SHERIDAN) Yes.

2 Q This is the movement from Asarco at Corpus
3 Christi to National Zinc at Bartlesville, Oklahoma; is
4 that correct?

5 A (WITNESS SHERIDAN) Yes.

6 A (WITNESS DIMMERMAN) Yes.

7 Q And in fact, does it not indicate on your
8 study movement sheet that the destination, National Zinc
9 at Bartlesville, is switched by the MKT Railroad and is
10 an open point also open to the Santa Fe through
11 reciprocal switching?

12 A (WITNESS SHERIDAN) Yes.

13 Q So that that is in fact a received movement
14 where Katy performed the switching for the consignee and
15 you didn't receive your long haul, and that was for San
16 Antonio, right?

17 A (WITNESS SHERIDAN) Yes.

18 Q By the way, is it also correct that Asarco and
19 National Zinc are both shippers that have supported Katy
20 in this trackage rights application?

21 A (WITNESS DIMMERMAN) That is true, Mr.
22 Moates. But the thing that should be mentioned here is
23 that Corpus Christi to Bartlesville will be a single
24 line movement on the SP-Santa Fe merged system, along
25 with the testimony about single line rates and routes.

1 Q Yes, we will get to that.

2 Parenthetically, when I have referred to
3 paragraph 9 of Mr. Roper's memorandum, the ICC there was
4 talking about movements in which the applicant in that
5 case, the Union Pacific, was actually in the route,
6 albeit as a bridge carrier, isn't that true?

7 A (WITNESS DIMMERMAN) That's true.

8 Q In the movement we're looking at, neither the
9 Southern Pacific nor the Santa Fe was even in the route
10 at all, were they?

11 A (WITNESS DIMMERMAN) That's true. But like I
12 mentioned, after the merger the SP-Santa Fe would be the
13 only single line route between Corpus Christi, Texas,
14 and Bartlesville, Oklahoma.

15 Q Thank you, Mr. Dimmerman.

16 Would you please look at the fifth page of
17 this exhibit, which is strata BMX, page 213. I think
18 you will find the next several pages are on the same
19 movement, namely Corpus to Bartlesville. But page 213
20 is a movement from Laredo to Bartlesville. Do you have
21 that in front of you?

22 A (WITNESS DIMMERMAN) Yes, sir.

23 Q And you will note, please, that the previous
24 pages on which we have just had examination are 100
25 percent diversions and this movement from Laredo is a 25

1 percent diversion. I do note that under the origin
2 switching you have written in "import." Is that the
3 reason why this is a 25 percent diversion, and if so
4 could you explain to me why that is the case?

5 A (WITNESS SHERIDAN) No, the "import" is not --
6 really, it's just for identification. It was Mexican
7 traffic that came across the border, and on that, the
8 reason being is that the Santa Fe-SP will have a new
9 route to Bartlesville, Tex-Mex on that, a direct route,
10 where today the Santa Fe doesn't have connection with
11 Tex-Mex. And we just don't feel that we will be able to
12 maintain all of the movement.

13 Q Okay, I understand that, Mr. Sheridan. But
14 then if you just look for a comparison at the first
15 sheet again, BMX-200, the top one, isn't that also a
16 case where the Santa Fe will have a new route?

17 A (WITNESS SHERIDAN) They will have a new
18 single line route.

19 Q And there you diverted 100 percent. I'm
20 asking you why there's 100 percent on the Corpus Christi
21 to Bartlesville moves, but only 25 percent Laredo to
22 Bartlesville? What's different?

23 A (WITNESS DIMMERMAN) We feel that you will now
24 have a joint line route to the destination, just as we
25 have, and because of it competitively you should be able

1 to enjoy some of the traffic. But prior to the merger
2 you did not have a good joint line route into
3 Bartlesville.

4 We feel we will retain some of the traffic in
5 connection with the Missouri Pacific, but because this
6 is not a single line route you will have a joint line
7 route, as we will have.

8 Q Okay. Is there any particular reason that you
9 think you will lose only 25 percent of this, instead of
10 say 50 percent? If we are both going to have
11 competitive joint line routes, why didn't you just
12 divide the traffic?

13 A (WITNESS DIMMERMAN) Well, actually the Santa
14 Fe has a joint line route now. They could work with the
15 Missouri Pacific, for example, into Bartlesville, too.
16 But we feel that, with the relationship we have with the
17 destination receiver, that we'll be able to retain most
18 of the traffic, but not all, because there's a
19 competitive situation now, a new competitive situation.

20 Q I understand clearly what you're telling me
21 about your expert judgment about how much you can
22 retain. But what I am driving at is this: Is there a
23 diversion rule, either written somewhere in your study
24 or a rule that you can state for me now, similar to
25 those rules that are in your trackage rights study that

1 we talked about yesterday for your different percentages
2 that you can state for a 25 percent diversion?

3 Is there some rule that we apply when we see a
4 25 percent? For example, this car comes from
5 competitive origin station and is moving to an open
6 destination station, something like that? Or is it
7 simply your expert judgment about a particular move?

8 A (WITNESS SHERIDAN) As we stated before, we're
9 making our percent judgments. We took each document
10 individually and analyzed all the information that we
11 had and made our decision.

12 A (WITNESS DIMMERMAN) A judgment decision.

13 Q A judgment decision. Thank you.

14 Now, with a little luck, I hope our next
15 exhibit will be --

16 JUDGE HOPKINS: Check it before we get back on
17 the record.

18 MR. MOATES: Could I then have Your Honor mark
19 for identification Counsel's Exhibit 42, which, so the
20 record is clear, I would say is a two-page exhibit. The
21 first page is Katy strata PSX, page 89.

22 JUDGE HOPKINS: That will be marked for
23 identification as SFSP-C-42.

24 (The document referred to
25 was marked Exhibit No.

1 SFSP-C-42 for
2 identification.)

3 BY MR. MOATES: (Resuming)

4 Q All right. Gentlemen, I apologize for the
5 confusion in these exhibits. I think you will find that
6 we can now talk again about paragraph 8 of Mr. Roper's
7 memorandum, SFSP-C-38 for identification. Would you
8 look back at that again. I won't read the whole thing,
9 but remind ourselves that that refers to received
10 traffic to points that were closed stations on the MKT.

11 A (WITNESS SHERIDAN) Yes.

12 Q Mr. Sheridan, is the first page of Counsel's
13 Exhibit C-42 in fact a movement to a station at Tulsa,
14 Oklahoma, that is a closed point on the MKT Railroad?

15 A (WITNESS SHERIDAN) Yes, it is.

16 Q And you diverted this car 100 percent, is that
17 right?

18 A (WITNESS SHERIDAN) By a short haul route,
19 yes.

20 Q By a short haul route of Tulsa?

21 A (WITNESS SHERIDAN) Yes.

22 Q What was your reason for that short haul?

23 A (WITNESS SHERIDAN) On this, like you were
24 referring to number 8, we had read that, but the thing
25 of it is, there's evidence today that that cannot be the

1 case. We have cases today where the SP has forced us to
2 take movements at the destination junction on industries
3 that are closed on their railroad. We had no control to
4 force that by any other junction than the destination
5 junction.

6 Therefore, we are taking the same stand here,
7 that after merger we will be forced to take some stuff
8 at destination junction, even though it's a closed
9 industry. It is being done today and we are assuming it
10 will continue to be done.

11 Q This was not a destination junction move, was
12 it? You got this at San Antonio, which was a long haul,
13 wasn't it?

14 A (WITNESS SHERIDAN) Prior to the merger, yes.

15 Q You said you did review that criticism in
16 category number 8 before you made these judgments? Did
17 I understand you to say that?

18 A (WITNESS SHERIDAN) We have seen this. In
19 other words, we tried to keep everything in mind. But
20 the thing as it is, there are things that were said
21 there that really is not the true situation today. So
22 we tried to take the true situation today as it was and
23 made that application.

24 Q You disagreed with the ICC's criticism in that
25 regard?

1 A (WITNESS SHFRIDAN) As far as we were
2 concerned, it did not apply in this case.

3 A (WITNESS DIMMERMAN) Mr. Moates, to better
4 explain that, what Jerry is talking about is we had a
5 closed industry and have a closed industry on the MKT at
6 Fort Worth, Texas, and the Southern Pacific routed
7 traffic into that closed industry and didn't even allow
8 us a switch charge, didn't allow us anything. We didn't
9 even show on the billing. It just said for MKT
10 delivery.

11 So the car sat at Fort Worth until our
12 marketing department worked out with your marketing
13 department a route over Fort Worth, so that the customer
14 would no longer be at a disadvantage. But there were
15 several shipments that lay in the town of Fort Worth for
16 about a week just waiting for our marketing department
17 to try to work out something, and it is no different
18 than this case right here.

19 Q Mr. Dimmerman, is that a common thing? Does
20 that happen all the time, frankly, honestly?

21 A (WITNESS DIMMERMAN) It's a common practice
22 with the Southern Pacific.

23 Q A common practice that the Southern Pacific
24 routes traffic to your closed points, not giving you
25 anything but a destination switch haul?

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1 A (WITNESS DIMMERMAN) They wouldn't even allow
2 for the switch. The customer had to pay for that.

3 Q This happens every day, does it?

4 A (WITNESS DIMMERMAN) You know, we don't enjoy
5 that many routes with the Southern Pacific.

6 Q Would you look at BSX-0015, the second page of
7 the exhibit. Mr. Dimmerman, in fact as this sheet
8 shows, Owanda, Oklahoma, which is the destination, is
9 that a local point on the MKT?

10 A (WITNESS DIMMERMAN) I believe it's right at
11 Oklahoma City.

12 Q Is it a local point on the MKT, as this sheet
13 shows?

14 A (WITNESS DIMMERMAN) It very well could be.
15 It's right outside of Oklahoma City, four or five miles
16 outside of Oklahoma City.

17 Q Doesn't the study movement sheet show that
18 it's a local point?

19 A (WITNESS DIMMERMAN) Yes, sir.

20 Q And you took a 100 percent short haul in this
21 movement to Oklahoma City, didn't you, which as you just
22 told me would be essentially a destination switch haul
23 for you on a move like this?

24 A (WITNESS DIMMERMAN) This is very similar to
25 the first case. Owanda is served by the switch engine

1 out of Oklahoma City and it's no different than the
2 first case, closed industry or local point.

3 Q Can you tell me, is there an applicable route
4 in existence today that would permit the SP to haul this
5 car to you at Oklahoma City? Do you have a route with
6 them that would permit that?

7 A (WITNESS DIMMERMAN) There is no route in
8 existence on the traffic going to Fort Worth, destined
9 to Waples Platter at Fort Worth, Texas. I believe those
10 shipments were shipped by Crown Zellerbach, if you want
11 to have your people check on it. Crown Zellerbach made
12 a contract with the Southern Pacific Railroad that
13 completely cut the MKT out of the routing. You might
14 want to have your people check on that.

15 Q Do you recall what the number of such
16 movements that you diverted in the Union
17 Pacific-Missouri Pacific merger case was in your study?
18 How many movements to MKT closed and local points you
19 diverted that the Commission said you wouldn't lose?

20 A (WITNESS SHERIDAN) No, sir.

21 A (WITNESS DIMMERMAN) I don't recall either.

22 Q I show you a copy of the decision, 366 ICC at
23 page 736, this paragraph right here. If you'd just look
24 at that paragraph and state from the record how many
25 movements to MKT local points and how many movements to

1 MKT closed points you had diverted in your study, and
2 that the Commission did not allow the diversion in its
3 decision.

4 Is it 127?

5 A (WITNESS SHERIDAN) We were looking at the
6 other paragraph. You're talking about right here?

7 (Pause.)

8 A (WITNESS SHERIDAN) It shows 127.

9 Q With revenue over one-half a million dollars?

10 A (WITNESS DIMMERMAN) In this case here the
11 Commission was --

12 Q Could we get the answer to that?

13 A (WITNESS DIMMERMAN) 127.

14 JUDGE HOPKINS: He is asking the amount.

15 WITNESS DIMMERMAN: The UP had not had that
16 practice.

17 BY MR. MOATES: (Resuming)

18 Q The revenue was over a half a million
19 dollars?

20 A (WITNESS SHERIDAN) Yes.

21 Q Do you know how many such movements to MKT
22 closed or local stations you diverted in this study?

23 A (WITNESS SHERIDAN) Repeat that?

24 Q Do you know how many movements to MKT closed
25 or local stations you diverted in this study?

1 A (WITNESS SHERIDAN) No, sir.

2 Q Would you look at page 5 of Mr. Roper's
3 memorandum, paragraph number 12. It states as follows:

4 "The last category of traffic involves
5 movements from Safeway Stores in Toledo, Oregon, to
6 Safeway Stores in Garland, Texas. The ICC concluded
7 that MKT, as terminating carrier switching the
8 consignee, would have more influence over the routing of
9 the traffic than would the UP, which could only
10 participate as a bridge carrier."

11 First of all, do you gentlemen know whether
12 Safeway Stores has a routing policy for its traffic,
13 traffic moved to and from its facilities?

14 A (WITNESS SHERIDAN) To and from its
15 facilities?

16 Q Yes.

17 A (WITNESS SHERIDAN) Their policy varies
18 depending upon traffic, whether it's bought from vendors
19 or whether it comes from some of their own plants. It's
20 not a straight policy. You have to kind of know what
21 their movements are.

22 Q Do they not typically give the serving
23 carriers, the origin and destination carriers, a road
24 haul of some kind?

25 A (WITNESS SHERIDAN) Normally, where possible.

1 Not always.

2 MR. MOATES: Could we have marked as a
3 counsel's exhibit, Your Honor, a four-page exhibit, the
4 first page of which is MKT strata RSX, page 2. This
5 would be, I think, C-43.

6 JUDGE HOPKINS: That will be marked for
7 identification as SFSP-C-43.

8 (The document referred to
9 was marked Exhibit No.
10 SFSP-C-43 for
11 identification.)

12 BY MR. MOATES: (Resuming)

13 Q Mr. Sheridan, can you confirm for me initially
14 that these four movements in this Counsel's Exhibit C-43
15 all show as the consignee Safeway Stores?

16 A (WITNESS SHERIDAN) Yes, sir.

17 Q And in fact, are the first two movements the
18 same move, sir, from Crossett, Arkansas, to Safeway at
19 Tulsa, Oklahoma?

20 A (WITNESS SHERIDAN) Yes, sir.

21 Q And on those movements, sir, to Tulsa, do not
22 the SWS's show the fact that the MKT is the switching
23 railroad at destination?

24 A (WITNESS SHERIDAN) Yes.

25 Q And in these routes, the Cotton Belt was

1 simply a bridge carrier, isn't that right, from Fordyce
2 to Dallas?

3 A (WITNESS SHERIDAN) Yes, sir, a bridge carrier
4 with a short line railroad.

5 Q A short line railroad originating the
6 traffic?

7 A (WITNESS SHERIDAN) Yes.

8 Q And you and Mr. Dimmerman diverted these
9 movements on a 100 percent basis, and the reason you
10 gave for diversion is reason number 10, which simply
11 states "new route available"; is that correct?

12 A (WITNESS SHERIDAN) For the Applicants, yes.

13 Q I'm sorry?

14 A (WITNESS SHERIDAN) New route for the
15 Applicants.

16 Q New route for the Applicants.

17 Did you have in mind the ICC's rejection of
18 your diversions for Safeway Stores in the Union Pacific
19 case as reflected in Mr. Roper's memorandum when you
20 concluded that this traffic would be divertable 100
21 percent to the Applicant?

22 A (WITNESS SHERIDAN) We had in mind that we
23 would no longer have a route with the Cotton Belt-SF,
24 since they would be going directly from where they
25 received it to Tulsa; that they won't make a route with

1 us after they merge.

2 Q Notwithstanding the fact that you serve the
3 industry and they were merely a bridge carrier in the
4 movement as it was studied?

5 A (WITNESS SHERIDAN) You are allowed to go
6 direct where you want to on that, and we do not believe
7 that you would continue a route with MKT.

8 Q Do you think that Safeway Stores would be at
9 all interested or involved in the decision of whether
10 MKT is the switching carrier at Tulsa and should
11 continue to participate in the road haul movement of
12 traffic like this?

13 A (WITNESS DIMMERMAN) The main thing taken into
14 consideration here, Mr. Moates, is the fact that, with
15 the all-encompassing origin and destinations that the
16 SFSP will have, is they will be able to write contracts
17 with Safeway and they will cut us out of every single
18 route.

19 It is common practice now and it was not
20 common practice before. Contracts are what's made it
21 almost impossible for a regional carrier to continue,
22 because you can put it in a contract, a joint line route
23 is cut out, and there's no way we can actually serve our
24 own destination industries. Contracts are a big thing
25 that we took into consideration.

1 Q Okay. Well, I've got a couple of questions
2 about that. First of all, does the SF or SP serve the
3 origin on these movements? Didn't Mr. Sheridan point
4 out there is a short line railroad?

5 A (WITNESS DIMMERMAN) But a short line railroad
6 -- in this case here I believe it is at Crossett,
7 Arkansas. It's the paper company that actually owns
8 it. It's almost like the shipper itself routing it.
9 And the SFSP won't make routes from a short line carrier
10 to Tulsa, Oklahoma, to an open industry. There is no
11 way.

12 As far as the closed industry, they'll just
13 leave us out of the routing and let the shipper and the
14 MKT figure out how they're going to get it to
15 destination.

16 Q Now, Mr. Dimmerman, I see as a diversion
17 reason on this sheet "new route available." Where do I
18 find the information you just gave me, that the primary
19 factor in your judgment to divert this car is that you
20 assume that the Applicants would make a contract for 100
21 percent of this traffic?

22 A (WITNESS DIMMERMAN) We know because of past
23 experience.

24 Q I understand that you know, but how do I know
25 and how does the Commission know?

1 A (WITNESS DIMMERMAN) Well, I think that your
2 traffic people should have advised you of that. We have
3 one instance in my testimony, for example, with Phillips
4 Petroleum, another major shipper, where this was going
5 to a local point that you can't even come close, but you
6 made a contract on that movement and short hauled us
7 over Denison, Texas. And we serve both the origin and
8 the destination on that movement.

9 Q Let's stick with the movement we're talking
10 about. How do I know, without having sat here and
11 listened to you give me this answer about contracts,
12 that the reason you diverted this car on a 100 percent
13 basis is your judgment that this will become 100 percent
14 captive, if you will, to the SFSP because of a contract
15 with Safeway Stores?

16 That doesn't appear anywhere in your
17 documentation, does it? And that's not a reason written
18 on the sheet or given in your Appendix A for diversion
19 factors, is it?

20 A (WITNESS DIMMERMAN) With the time that we had
21 on the diversion movements here, there's no way we could
22 have put all of that information on every single car.

23 Q Did you ask Safeway Stores whether they would
24 make a contract with SFSP for 100 percent of the traffic
25 and cut you out of the road haul? Did you discuss it

1 with them?

2 A (WITNESS DIMMERMAN) No, we never discussed
3 that.

4 Q Would you look at the third sheet, which is
5 strata RSX, page 13. Mr. Sheridan has already confirmed
6 this is also a movement to Safeway at Tulsa. I think
7 these are all Tulsa from different origins. And again,
8 in fact, we won't belabor this. On the last two
9 examples, aren't these also both 100 percent diversions
10 to Safeway, and the only diversion reason given is
11 number 10, "new route available"?

12 A (WITNESS SHERIDAN) That's right, it's a new
13 route, and we don't feel that we will have a route with
14 the Applicants after the merger.

15 Q Would you tell me, Mr. Sheridan, looking back
16 at page 2, the first one on the exhibit, would you tell
17 me where the route is going to be for the Applicants on
18 that, by the way? Tell me how that traffic will move if
19 they have that as a single system?

20 A (WITNESS SHERIDAN) Which page?

21 Q The first one we were talking about, just for
22 simplicity, Crossett to Tulsa.

23 A (WITNESS DIMMERMAN) The route is on there.

24 Q How would the Applicants handle that? The
25 same way, over Dallas?

1 A (WITNESS SHERIDAN) No, sir. It shows right
2 here under "new routing," it shows exactly where the
3 route would be. I can read it if you want.

4 Q Okay. Would you read that.

5 A (WITNESS SHERIDAN) It's the ADM, and then it
6 says junction, the SP railroad Fordyce, and the SP-Santa
7 Fe system.

8 Q How would the SP-Santa Fe system handle a car
9 from Tulsa to Fordyce?

10 A (WITNESS SHERIDAN) I would assume like
11 today. They take it to Dallas and give it to the Katy
12 and they would give it to your system at Fort
13 Worth-Dallas area, north Texas junction, would be my
14 assumption.

15 They could possibly move it -- based on where
16 it is, it could possibly be Cotton Belt-St. Louis, back
17 across and down. I don't know what way they would move
18 it.

19 Q That's what I'm getting at. It would be a
20 fairly circuitous routing for the system, wouldn't it?
21 It would be more circuitous than the way it was routed
22 with the Katy?

23 A (WITNESS SHERIDAN) I don't think it would be
24 that much further.

25 A (WITNESS DIMMERMAN) Pretty much similar, with

1 the Santa Fe junction at north Texas to Tulsa, the same
2 as the Katy junction to Tulsa.

3 Q In your view it's not more circuitous?

4 A (WITNESS DIMMERMAN) It may be. I didn't
5 check it, but it shouldn't be that much. You see, Tulsa
6 is actually on a branch line for the Katy. It is not on
7 their main line. That would affect service also.

8 Q Do you provide good service to Safeway at
9 Tulsa today?

10 A (WITNESS DIMMERMAN) We do the best we can
11 with what we have.

12 Q Do you know how often you serve that
13 industry?

14 A (WITNESS DIMMERMAN) Tulsa is normally served
15 on a daily basis out of Parsons, Kansas. This movement
16 here would have to either be set out at a little town
17 called Wybark just north of Muskogee or be carried into
18 Parsons and wait for the train at Wybark to pick it up,
19 or else wait for the train to take it out of Parsons,
20 Kansas. But there would be a delay involved.

21 Q Allright, gentlemen, you can put those
22 aside.

23 Let me ask you, did you consider when you
24 determined the divertability of a particular car and
25 gave as a reason for the diversion your reason number

1 one on Appendix A, which states "SFSP single line rate
2 route service," did you consider when you deemed a car
3 to be divertable for that reason whether or not there
4 was existing single system service on some other
5 railroad in place at the time that the car moved?

6 A (WITNESS SHERIDAN) Sometimes there was and
7 sometimes there wasn't.

8 A (WITNESS DIMMERMAN) We considered it.

9 Q You considered it.

10 MR. MOATES: Could we have a counsel's exhibit
11 marked, Your Honor, C-44, a seven-page exhibit, the
12 first page of which is strata FO-2, page 4.

13 JUDGE HOPKINS: That will be marked for
14 identification.

15 (The document referred to
16 was marked Exhibit No.
17 SFSP-C-44 for
18 identification.)

19 BY MR. MOATES: (Resuming)

20 Q Gentlemen, do you have this exhibit in front
21 of you?

22 A (WITNESS DIMMERMAN) Yes.

23 A (WITNESS SHERIDAN) Yes.

24 Q Let's take them one or two at a time. The
25 first two pages of the exhibit, strata FO-2, pages 4 and

1 5, I think you will find are examples of the same type
2 of movement. They aren't the same consignee, but they
3 are both from Abilene, Kansas, to New Orleans, are they
4 not? And they're both the same commodity?

5 A (WITNESS DIMMERMAN) Yes, sir.

6 Q And they're both routed the same way, are they
7 not? OKT is the origin carrier to Dallas, and the
8 traffic was interlined with the LNA for termination in
9 New Orleans?

10 A (WITNESS DIMMERMAN) Yes, sir.

11 Q Now, isn't it true, Mr. Sheridan, that the
12 abstract itself or the study movement sheet shows that
13 at the time this traffic moved, the Union Pacific system
14 served both the origin and destination?

15 A (WITNESS SHERIDAN) Yes, sir.

16 Q So that the shipper who routed this traffic --
17 and do you know, by the way, whether this traffic was
18 routed by the consignor or the consignee?

19 A (WITNESS SHERIDAN) It's usually routed by the
20 consignor.

21 Q By the consignor. So is that ADM Milling?

22 A (WITNESS SHERIDAN) Yes.

23 Q ADM Milling had available to it at the time it
24 chose the route to route this car OKT-Dallas-LNA, a
25 single system route with Union Pacific-Missouri Pacific

1 system, did it not?

2 A (WITNESS SHERIDAN) Yes.

3 Q And in fact, this shipment even moved in a
4 Union Pacific car? They both did, didn't they?

5 A (WITNESS SHERIDAN) Yes.

6 Q With that kind of single system available and
7 that influence with the UP system, you nonetheless
8 deemed these cars to be divertable to the SFSP for one
9 reason shown on this sheet, which is "single line rate
10 route service"?

11 A (WITNESS DIMMERMAN) But only 50 percent, sir,
12 only 50 percent. We feel we will be able to retain some
13 of the traffic.

14 And there, just as you pointed out, is another
15 example of equipment. It's a Union Pacific car. They
16 had a single line available, and yet it moved via the
17 MKT. So equipment no longer means anything, like it did
18 when the Commission reviewed our past testimony.

19 Q Why do you suppose the OKT got that haul, Mr.
20 Dimmerman? It was a UP car and you say it didn't mean
21 anything, and they had a single system available. You
22 guys did a pretty good job of solicitation?

23 A (WITNESS DIMMERMAN) That's right.

24 A (WITNESS SHERIDAN) On that, UP-McP are
25 handling some of the movement, but in this case we got

1 in on some of it, too. And our feeling is that after
2 the merger you will also have a single line system, and
3 we certainly feel that you will be able to take part of
4 that movement away from us.

5 Q Of course, neither the Santa Fe nor the SP
6 were in the route as the car moved, were they?

7 A (WITNESS SHERIDAN) No, sir.

8 Q Would you look at the third sheet in, BMY,
9 page 35. Confirm for me, sir, that this is a movement
10 from Baytown, Texas, with Exxon as consignor, to
11 Wichita, Kansas, routed Missouri Pacific-Forth
12 Worth-OKT; is that correct?

13 A (WITNESS SHERIDAN) Yes.

14 Q And does not the SMS show that the OKT
15 Railroad switches the consignee?

16 A (WITNESS SHERIDAN) Yes.

17 Q And again, doesn't the sheet show that the
18 origin is served, in fact switched, by the Missouri
19 Pacific, and that the Union Pacific also serves the
20 destination?

21 A (WITNESS SHERIDAN) Yes, sir.

22 Q Would you look over under the comment section
23 on the right-hand side. And I don't know which of your
24 handwritings that is, but one of you has written
25 something in there. Would you read it.

1 A (WITNESS SHERIDAN) Yes. "SFSP will have only
2 single line route."

3 Q That's not right, is it?

4 A (WITNESS SHERIDAN) "Only" is not right, sir.

5 Q Because, again, the Missouri Pacific-Union
6 Pacific system has a single line route in place which
7 the shipper could have used in the study year, but in
8 fact he chose to route this with the OKT over Fort
9 Worth, didn't he?

10 A (WITNESS SHERIDAN) Yes. It should have been
11 "will also have a single line route."

12 Q Do you know why the shipment was routed with
13 the OKT over Fort Worth? Wasn't that done because the
14 OKT serves the destination industry, switches it?

15 A (WITNESS DIMMERMAN) And because we have a
16 competitive route available. As soon as these
17 competitive routes are all gone -- and in fact, this may
18 be even gone now, I don't know. But they certainly will
19 be gone, and we'll lose it 100 percent.

20 Q Oh, I see. You're going to lose it 100
21 percent because the UP-MP is going to close you off and
22 they're going to take the traffic, is that right?

23 A (WITNESS DIMMERMAN) That's exactly right,
24 because probably -- probably, the reason that our
25 marketing people were able to get a route over Fort

1 Worth is because we could handle it with you on a
2 combination route. And the UP at this time has decided,
3 because of the fact that there was another combination
4 available, they gave us that route. But just as soon as
5 we no longer have the other combination available, it
6 will be gone.

7 Q Would you lock, gentlemen, at the next page,
8 OSX-125. I say "the next page"; for clarification, the
9 next page of the counsel's exhibit. This car moved from
10 Decatur, Illinois, to Corpus Christi, is that right?

11 A (WITNESS SHERIDAN) Yes, sir.

12 Q And it was routed with a number of railroads:
13 Norfolk & Western to Kansas City, Katy to Denison,
14 Southern Pacific to Corpus Christi, and Tex-Mex for
15 delivery; is that right?

16 A (WITNESS DIMMERMAN) Correct.

17 Q And you say that this car will be diverted 100
18 percent of the time because of a new route being
19 available, and the new route I guess is NEW-Kansas City,
20 SESP to Corpus Christi, and Tex-Mex to delivery?

21 A (WITNESS SHERIDAN) That's right. Today we
22 have worked closely with the SP trying to get routes to
23 Corpus Christi in that area, where after the merger we
24 feel there will no longer be an SP-Katy route over
25 Denison on this move.

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1 Q In fact, so that we won't go through a whole
2 lot of these, as you just said, because you assume there
3 wouldn't be an SP-Katy route over Denison, you diverted
4 all kinds of movements from Kansas City over the Lenison
5 gateway that moved with the SP today, didn't you?

6 A (WITNESS SHERIDAN) Yes, there are several on
7 that. And our feeling is they will not maintain the
8 route.

9 Q Okay. Isn't it true, Mr. Sheridan, that at
10 the time this car moved the Missouri Pacific could have
11 handled this directly from Kansas City, and in fact not
12 just from Kansas City to Corpus Christi, but if I read
13 this sheet correctly it serves the destination and could
14 have even cut the Tex-Mex out of it, isn't that right?
15 This could have routed, in other words, N&W-Kansas
16 City-MP, just a two-line haul?

17 A (WITNESS DIMMERMAN) I would say that the
18 Tex-Mex probably could not have been cut out of this
19 haul. If you show the Tex-Mex serves it there, it's
20 very doubtful to me that the Tex-Mex had good control of
21 it.

22 If you look at the money involved, if there
23 was any way that the SP or MoP could deliver that car,
24 they would. I'm sure that the SP controls that traffic
25 into the industry.

1 Q The SP? You mean the TM?

2 A (WITNESS DIMMERMAN) The Tex-Mex controls it.
3 But as far as the MKT is concerned, we certainly won't
4 have any route in there. That's been proven by your
5 past action in closing routes.

6 Q Let me see if I understand it. When the
7 Tex-Mex switches an industry, they have a lock on the
8 traffic, but when the Katy switches the industry you are
9 in great jeopardy, is that right?

10 A (WITNESS DIMMERMAN) Because of your
11 practices. But on this Tex-Mex traffic it is obvious to
12 me -- I believe I've seen something in the
13 correspondence about the Southern Pacific objecting to
14 the fact that they have to turn over the waybills to the
15 Tex-Mex on industries at their line, and that's one of
16 the reasons why they control it.

17 When you take traffic into Corpus Christi
18 where the Tex-Mex serves it, I believe you have to turn
19 over the waybills to them.

20 Q What does that have to do with anything?

21 A (WITNESS DIMMERMAN) Well, if you have to turn
22 over the waybilling and you show -- and that waybill
23 shows that they're a part of the route, most of the
24 railroad traffic is handled on a collect basis. The
25 Tex-Mex will collect the entire amount and apportion out

1 the rest of the other participating carriers.

2 If the waybill isn't delivered, I don't think
3 the Tex-Mex can deliver the car.

4 Q Was my statement correct that the MP could
5 handled this car from Kansas City to Corpus Christi or
6 Robstown?

7 A (WITNESS SHERIDAN) Yes, they could.

8 Q Would you look at the next exhibit, the last
9 page. Well, it's OSX-0007. This is a particularly
10 interesting one. This car moved from Gary, Indiana, to
11 Fort Worth, Texas, and this was routed by U.S. Steel,
12 wasn't it?

13 A (WITNESS SHERIDAN) Yes.

14 Q Is U.S. Steel in your judgment a fairly
15 sophisticated shipper?

16 A (WITNESS DIMMERMAN) Very much so.

17 Q Does it in fact direct the routings on its
18 traffic?

19 A (WITNESS SHERIDAN) Normally, yes.

20 Q This car was routed EJ&E-West Chicago, Chicago
21 North Western to Kansas City, Cotton Belt to Harrington,
22 OKT to North Fort Worth, BN for switch delivery; is that
23 right?

24 A (WITNESS SHERIDAN) Yes, sir.

25 Q Five railroads in that route?

1 A (WITNESS SHERIDAN) Yes.

2 Q And you say you project that there will be a
3 100 percent diversion away from the Katy so that the car
4 would route from Kansas City, inserting the merged
5 system in place of the SSW and the OKT together, all the
6 way to North Fort Worth for BN delivery. So in essence,
7 in other words, you have just cut yourselves out of the
8 route and made this five-road haul a four-road haul,
9 isn't that right?

10 A (WITNESS SHERIDAN) We tried to find some
11 reason that we were in on the movement and we could not
12 find where we had any control being in on it. And
13 there's a case where we do not feel after the merger
14 that you would maintain a route with us.

15 Q What control did the Cotton Belt have in this
16 route as a third carrier in the middle of the route,
17 receiving less revenue than either the Katy or the CNW?
18 Where was the control there?

19 A (WITNESS SHERIDAN) Your control would be
20 after the merger you would no longer provide a route
21 where we would participate.

22 Q Do you think that U.S. Steel would say
23 anything to the Applicants about that possibility?
24 Would they be interested in whether this route was
25 available?

1 A (WITNESS SHERIDAN) I don't think in this case
2 that they would say anything, no, sir.

3 Q They wouldn't say anything? This car could
4 have gone, could it not, all the way from Chicago to the
5 delivery at North Fort Worth by BN? This car could have
6 routed EG&J-West Chicago, BN for delivery at
7 destination, could it not?

8 A (WITNESS SHERIDAN) It could move by a number
9 of routes. But again, after the merger we would not
10 have a route available in our opinion.

11 Q You're right, it could have gone a number of
12 routes. It could have gone SSW direct from St. Louis or
13 Santa Fe direct from Kansas City, couldn't it have?

14 A (WITNESS SHERIDAN) It could have gone a
15 number of routes, yes.

16 Q None of those things happened. For whatever
17 reason, U.S. Steel chose to route this with a five-line
18 haul that included the Katy as an overhead carrier?

19 A (WITNESS SHERIDAN) Yes, today we have a
20 route.

21 A (WITNESS SHERIDAN) I doubt if we have one
22 today. I don't believe we have a route like that
23 today. This shipment occurred back in 1983.

24 Q So this is a movement you have lost regardless
25 of the merger? It has already happened?

1 A (WITNESS SHERIDAN) That I don't know.

2 A (WITNESS DIMMERMAN) We could very well have
3 lost it to you already, yes.

4 Q The last examples in this series are two cars,
5 strata FO-2, pages 15 and 16. I think you'll find it
6 essentially the same. These were routed from San
7 Antonio, Texas, to Chicago, Katy-Kansas City-Milwaukee
8 on the first one -- well, they are both routed
9 Milwaukee, isn't that right?

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1 A (WITNESS SHERIDAN) Yes.

2 Q You divert both of these cars 100 percent to
3 SFSP system haul, and give as the reason single line
4 service and new route available. Is that right?

5 A (WITNESS SHERIDAN) Yes.

6 Q I ask you again, sir, looking at the SMS
7 itself, doesn't that show that the Missouri Pacific
8 serves both the origin and the destination?

9 A (WITNESS SHERIDAN) Yes. The Missouri Pacific
10 serves both and they are handling some. Yes, sir.

11 Q They are handling some?

12 A (WITNESS SHERIDAN) Yes, sir.

13 Q So the Missouri Pacific could and does handle
14 this traffic single system today?

15 A (WITNESS SHERIDAN) They handle some; yes,
16 sir.

17 Q Again, the Applicants were not in the route on
18 either one of these movements in any way, shape, or
19 form, were they?

20 A (WITNESS SHERIDAN) Not in the route; no.
21 There's a case where, after the merger, you will have a
22 single line as well as the Missouri Pacific, and as far
23 as we are concerned, we know that UFC people like to
24 have more than one route, but there will be two single
25 line routes and we do not see any way where we will be

1 able to maintain that traffic when they are two single
2 line routes.

3 Q Who are you losing this 100 percent to, us or
4 the MoPac?

5 A (WITNESS SHERIDAN) We state right here we are
6 losing it to you.

7 Q Losing it to you because it's this case?

8 A (WITNESS SHERIDAN) The Applicants; yes.

9 Q We are finished with that counsel's exhibit.

10 MR. MOATES: Can we have marked, Your Honor,
11 as counsel's exhibit No. C-45, study movement sheets, a
12 package consisting of ten diversion sheets.

13 JUDGE HOPKINS: That will be marked for
14 identification.

15 (The document referred to
16 was marked Exhibit SFSP-C-45
17 for identification.)d

18 BY MR. MOATES: (Resuming)

19 Q Gentlemen, do you have the exhibit before you?

20 A (WITNESS SHERIDAN) Yes, sir.

21 A (WITNESS DIMMERMAN) Yes, sir.

22 Q Would you look first -- I think you will find
23 the first three pages of the exhibit, strata OSX, pages
24 4, 5, and 6 represent the same movement, the same type
25 of movement.

1 Are these cars routed today from Hutchinson,
2 Kansas and from Atco, Texas in the case of the third
3 example, SSW/Herington/OKT/Ft. Worth/SSW?

4 A (WITNESS DIMMERMAN) Yes, sir.

5 Q Isn't that a bit of a strange route?

6 A (WITNESS DIMMERMAN) No, because you really
7 don't have a crossover route between Herington and Ft.
8 Worth.

9 Q There is a single system service in place
10 today, isn't there? Look at the origin and destination
11 switching information which should be self-evident from
12 the route. Obviously, the Cotton Belt serves both the
13 origin and the destination, doesn't it? In fact, the
14 destination is a local point on the Cotton Belt.

15 A (WITNESS DIMMERMAN) A single system route.
16 Are you talking about going from Kansas City to St.
17 Louis?

18 Q I'm talking about -- you tell me how it would
19 route. Doesn't this show the ability of the Cotton Belt
20 to handle this car single system?

21 A (WITNESS DIMMERMAN) It would be a long one.
22 It would be really a long one. It's much more than what
23 we're talking about between Kansas City and St. Louis.
24 We're talking about all the way from Hutchinson to
25 Kansas City to St. Louis and coming down, or us going

1 back by El Paso on the Cotton Belt.

2 Well, on this movement here, you could come
3 straight out of Hutchinson on the new Santa Fe route,
4 come south directly to Ft. Worth, and handle it over to
5 Stuttgart on the Cotton Belt route.

6 It would be much shorter. But right now, I
7 would say that this is the short line route here on the
8 OKT.

9 Q All right. Have you heard testimony in this
10 case, Mr. Dimmerman, to the effect that the SP does
11 sometimes route traffic the way you described it?

12 A (WITNESS DIMMERMAN) I don't remember any, you
13 know, traffic being routed this far out of route. I
14 know you've handled a number of things from Kansas City
15 to St. Louis.

16 Q These three all moved in SP equipment,
17 although you keep telling me that doesn't make any
18 difference. But they did move in SP or SSW cars.

19 MR. KHARASCH: Which is the question. The
20 question is, did they move in the cars, or is the
21 question whether you're telling me that the equipment
22 doesn't make any difference?

23 JUDGE HOPKINS: We'll take the last question.

24 (WITNESS DIMMERMAN) I don't believe the
25 equipment made a difference. It's the control of the

1 movement, the routing. Because of the fact that you had
2 no crossover route between Hutchinson and Ft. Worth, it
3 moved OKT the short route.

4 BY MR. MOATES: (Resuming)

5 Q Okay. Would you look at the fourth page of
6 the exhibit OSX, page 7. This may look a little
7 familiar. U.S. Steel again, this time Gary, Indiana to
8 Ft. Worth, and again with that five-road haul which, for
9 the reporter's benefit I won't repeat; is that correct?

10 A (WITNESS SHERIDAN) Yes.

11 Q Couldn't the Santa Fe itself have handled this
12 car from Chicago to destination?

13 A (WITNESS SHERIDAN) It could have moved that
14 way; yes.

15 Q They don't need the merger to get this car, do
16 they?

17 A (WITNESS SHERIDAN) We're talking about a car
18 movement today with the Cotton Belt/SP system.

19 JUDGE HOPKINS: The Santa Fe itself could have
20 handled this car directly from Chicago to the
21 destination. They don't need the Cotton Belt or the SP
22 to participate in this, do they?

23 A (WITNESS SHERIDAN) It could have moved by
24 several routes that way, sir. This moved with the
25 Cotton Belt, OKT. Again, our assumption is that we will

1 not have a route with you to protect us in the routing.

2 Q Just confirm this for me, Mr. Sheridan, this
3 car moved EJ&E/Chicago/Santa Fe.

4 A (WITNESS SHERIDAN) Yes, I believe so.

5 A (WITNESS DIMMERMAN) It also could move
6 EJ&E/BN right to the destination to a closed industry,
7 but it didn't.

8 Q Mr. Dimmerman, I don't think there was a
9 question pending.

10 If you would look at the next sheet, PSX, page
11 37. Beaumont to Wichita, routed SP/Et. Worth/OKT;
12 correct?

13 A (WITNESS SHERIDAN) Yes, sir.

14 Q Doesn't the sheet show that the Santa Fe
15 serves both the origin and the destination today?

16 A (WITNESS DIMMERMAN) Yes, sir.

17 Q Couldn't this route Santa Fe direct today?

18 A (WITNESS DIMMERMAN) But it didn't.

19 Q No, it sure didn't. In fact, OKT got the
20 better part of the haul, didn't it? It got most of the
21 revenue.

22 A (WITNESS DIMMERMAN) That's correct, and the
23 SP got the other part, which would indicate to me that
24 the SP certainly controlled it or the Santa Fe would
25 have gotten it on a single line route. Our route won't

1 he there unless we get trackage rights.

2 Q So again, even though the Santa Fe could have
3 handled this single system, you assume that there would
4 be no route over Ft. Worth for the OKT to participate?

5 A (WITNESS DINNEMAN) That's right.

6 Q Look at the next two pages, SX 184 and 176.
7 These are moves from -- in the first case, from Fortuna,
8 California to Ft. Worth, Texas. The second one is from
9 Samoa, California to Broken Arrow, Oklahoma. Colorful
10 names.

11 Let me just ask you on these two movements,
12 maybe to save some time, could not the SP/Cotton Belt
13 system have handled these moves directly from the short
14 line junction at the time the car actually moved? In
15 other words, couldn't this have routed NWP/SP?

16 A (WITNESS SHERIDAN) Not using the Kansas City
17 Gateway.

18 Q Not using what?

19 A (WITNESS SHERIDAN) The Kansas City Gateway.

20 Q No. I understand that, but there was another
21 route available using the SP system, wasn't there, Mr.
22 Sheridan?

23 A (WITNESS SHERIDAN) Yes.

24 Q Now --

25 A (WITNESS DINNEMAN) Are you saying the first

1 and second one, 176 and 184 are similar?

2 Q 176 is a non-diversion. They are not the same
3 origin and destination. I am suggesting they are the
4 same kinds of movements. One is --

5 A (WITNESS DIMMERMAN) No. The second one is
6 going to Broken Arrow, Oklahoma which is a local point
7 on the MKT. The first one is going to an open
8 destination at Ft. Worth, Texas.

9 Q Okay. Explain to me the significance of
10 that. Explain to me the significance. You mean that
11 you wouldn't take a diversion to an MKT local point, is
12 that right?

13 A (WITNESS DIMMERMAN) That's correct. We have
14 no diversion on that because it's going to Broken Arrow,
15 Oklahoma.

16 Q Because it's an MKT local point?

17 A (WITNESS SHERIDAN) Excuse me. Can I look at
18 my original document on that?

19 Q Sure.

20 A (WITNESS SHERIDAN) I hate to admit this, but
21 I think we probably have an error on this one movement,
22 because we show on 176, we show no diversion. We should
23 have taken a diversion over to Tulsa.

24 For some reason -- in other words, we would
25 normally look at this one and would have taken a

1 diversion over Tulsa, but --

2 Q Notwithstanding the fact that it goes to a
3 local point because we've already --

4 A (WITNESS SHERIDAN) Broken Arrow is the same
5 relationship like you mentioned Owanda. It's just
6 outside Oklahoma City. Broken Arrow is really the same
7 as Tulsa and applies on the same reason.

8 Q Very good. The last three pages of this
9 exhibit, I think you will find are movements from
10 Modesto, California to San Antonio, Texas, routing
11 MET/Empire/Santa Fe/Dallas/Katy.

12 A (WITNESS SHERIDAN) Yes, sir.

13 Q Here you have taken a 100 percent diversion to
14 a route that is MET/Empire/SFSP; correct?

15 A (WITNESS SHERIDAN) Yes.

16 Q Couldn't the car route today MET/Empire/SP/SSW?

17 A (WITNESS DIMMERMAN) Yes, but they don't have
18 the affiliation between the two companies on the voting
19 trust.

20 Q No affiliation between the SF and the SSW?

21 A (WITNESS SHERIDAN) Well, these cars move
22 Santa Fe and the control on these were -- Santa Fe
23 evidently had the control to get the initial movements.
24 Santa Fe today doesn't serve San Antonio, and after the
25 merger we felt we will have no route with the Santa Fe.

1 Q But the point is, sir, that the SF serves the
2 destination today, does it not, and could have handled
3 this car all the way from Empire, but it didn't?

4 A (WITNESS SHERIDAN) And we assume because
5 Santa Fe had the control on the origin.

6 A (WITNESS DIMMERMAN) We certainly won't have a
7 route after the merger.

8 Q Are you going to have any routes after the
9 merger?

10 A (WITNESS DIMMERMAN) I certainly hope so, but
11 it's going to be tough.

12 MR. MOATES: Could we now have the next
13 counsel's exhibit? SFSP-C-46 for identification is an
14 11-page exhibit consisting of MKT study movement
15 sheets.

16 JUDGE HOPKINS: It will be marked for
17 identification.

18 (The document referred to
19 was marked Exhibit SFSP-C-46
20 for identification.)

21 BY MR. MOATES: (Resuming)

22 Q Gentlemen, could we look first at the first
23 movement in the exhibit which is RK-1-0125, the movement
24 from Enid, Oklahoma to Denison, Texas, to and from
25 Pillsbury; correct?

1 A (WITNESS SHERIDAN) Yes.

2 Q This car was moved OKT/Ft. Worth/MKT. So it
3 was an MKT single system haul; correct?

4 A (WITNESS SHERIDAN) Yes, sir.

5 Q Does not the underlying documentation which I
6 have attached to this movement, Mr. Sheridan, on the
7 third page in, indicate that this moved under an MKT
8 contract with Pillsbury?

9 A (WITNESS SHERIDAN) This movement is the same
10 as a movement we discussed previously, and the reason
11 for this one is the same as we said before. It is
12 Pillsbury to Pillsbury, and because of our familiarity
13 with Pillsbury, that once Santa Fe has a single line in
14 there, the same as the OKT, that they will split the
15 movement 50/50.

16 Q This is a contract move today, isn't it?

17 A (WITNESS DIMMERMAN) Even if it is, contracts
18 have expiration dates.

19 Q Oh, I understand.

20 A (WITNESS SHERIDAN) Yes, sir. This particular
21 one is.

22 Q Now, the first diversion reason you give for
23 this is single system rate route and service. Doesn't
24 this sheet, on its face, reflect that the Katy had a
25 single system rate route and service which it utilized

1 to make a contract with the shipper?

2 A (WITNESS SHERIDAN) Yes, sir. We have that.

3 Q And you are going to have it after the merger,
4 aren't you?

5 A (WITNESS DIMMERMAN) And you will also.

6 A (WITNESS SHERIDAN) Yes, sir; we will have it
7 after the merger. But also, like the movement we
8 discussed previously in testimony here, that there were
9 movements that moved Santa Fe/MKT as well.

10 Q I remember those, but we're looking now at the
11 one that moved OKT/MKT.

12 Now, do you know whether the Santa Fe/Southern
13 Pacific route from Enid to Denison is more or less --
14 involves more or less mileage than the MKT/OKT route?
15 Which is the shorter route?

16 A (WITNESS DIMMERMAN) I would say that -- well,
17 let's see. If you're just talking about from the
18 junction from North Texas/Ft. Worth, Dallas/Ft. Worth to
19 Denison, the SP would be the short route. Coming on the
20 OKT route, the OKT would be the short route.

21 So you've got a combination there. One is
22 short in one area and the other is short in the other.
23 I couldn't tell you exactly which is the shortest.

24 Q You don't know whether the SFSP route might be
25 90 miles more circuitous than your route?

1 A (WITNESS DIMMERMAN) It could be, but that
2 would be on the OKT side. On the MKT side between
3 Dallas/Ft. Worth, which is where we would receive the
4 car, and Denison, the SP route is much shorter, probably
5 about 50 miles shorter.

6 Q I'm talking about the whole route, though.
7 This car moved from Enid, not Ft. Worth.

8 A (WITNESS DIMMERMAN) Well, the OKT route is
9 shorter than the Santa Fe, and the SP route is shorter
10 than the MKT route.

11 MR. KHARASCH: If counsel has some mileages,
12 he can give them to us. We will accept them subject to
13 check. That may be better than talking about them in
14 general terms.

15 MR. MOATES: Well, I don't want to testify.

16 BY MR. MOATES: (Resuming)

17 Q Now, would you look at -- keeping this one in
18 hand, if you will, look at the next sheet in, which is
19 sheet 126. It's also a Pillsbury move from Enid to
20 Waco, Texas.

21 MR. KHARASCH: What page of the exhibit?

22 WITNESS DIMMERMAN: Page 6 of 11.

23 BY MR. MOATES: (Resuming)

24 Q This is a move from Pillsbury in Enid to Waco,
25 Texas, also routed on the MKT system; correct?

1 A (WITNESS SHERIDAN) Yes.

2 Q On the first move, you took a 50 percent
3 diversion, and I think you explained to me that that was
4 on the theory that the Applicants would have a competing
5 single system route.

6 This one, you took 100 percent diversion and
7 it still shows an SFSP route direct. What is the
8 difference?

9 A (WITNESS DIMMERMAN) If you look at the origin
10 served by the Santa Fe, the destination is served by the
11 Cotton Belt. So you have a merged destination and
12 origin served movement. And there again, if you look
13 it, you will see that it was a Santa Fe car.

14 Q That doesn't make any difference, does it?

15 A (WITNESS DIMMERMAN) That's why I'm telling
16 you; it don't make any difference because here's a Santa
17 Fe car, and it moved adverse to the Santa Fe.

18 Q Could that be because of Katy's relationship
19 with Pillsbury?

20 A (WITNESS DIMMERMAN) I don't even know if we
21 have a route at the present.

22 A (WITNESS SHERIDAN) This one is not a
23 Pillsbury-to-Pillsbury movement.

24 Q I know.

25 All right. Then would you look at page 8 of

1 the exhibit which is FK2-002 in your terminology. This
2 os a movement from Ralston Purina at Kansas City to
3 Frito Lay of Irving, Texas and again it was handled
4 directly by the OKT/MKT system, was it not?

5 A (WITNESS SHERIDAN) Yes, sir.

6 Q And the reason you give for a short haul
7 diversion is single line service to destination junction
8 and short haul, which is self-explanatory. Is that
9 right?

10 A (WITNESS SHERIDAN) Yes. On this one at
11 Kansas City, of course, we don't serve the shipper.
12 And, of course, the movement, as you'll see, took
13 transit at Sherman on the Cotton Belt industry. Today,
14 they have no route to Kansas City direct, unless they
15 went way around the horn.

16 That's one reason we've been able to get in on
17 it, because we feel because of not having a direct
18 route, the Cotton Belt does not today.

19 Q You say you don't serve the shipper. You do
20 serve the shipper through reciprocal switching, don't
21 you?

22 A (WITNESS SHERIDAN) We do not serve the
23 shipper directly. We do through reciprocal switching.

24 Q Now, you say this would be a diversion because
25 of a single line service to the destination junction.

1 MKT/Katy/OKT has single system service to the
2 destination junction, don't they, to the OKT closed
3 point?

4 A (WITNESS SHERIDAN) Yes, sir. We feel this
5 would be lost because of the industry taking the transit
6 is a Cotton Belt industry.

7 Q Couldn't the Missouri Pacific have handled
8 this movement in single system service?

9 A (WITNESS SHERIDAN) They could. They may be
10 handling some; I don't know.

11 Q Couldn't the Burlington Northern system have
12 handled this car in single system service?

13 A (WITNESS SHERIDAN) They could be handling
14 some.

15 Q Could the Santa Fe have handled this car in
16 single system service?

17 A (WITNESS DIMMERMAN) No, sir. Not at the
18 Sherman intermediate point.

19 Q It could have gotten the haul all the way to
20 Dallas and you could have switched it.

21 A (WITNESS SHERIDAN) It shows that the movement
22 went from Kansas City to Sherman for transit, and then
23 later moved from Sherman to destination. So the Santa
24 Fe could not have handled it to Dallas.

25 Q Because MKT transit was involved, is that

1 right?

2 A (WITNESS SHERIDAN) Because on this movement,
3 we handled to Sherman. Yes, sir. And after the merger,
4 we feel with the merged line, they will have a direct
5 line from Kansas City to the industry.

6 Q And the transit will still be performed at
7 Sherman by the merged system. Is that what you're
8 saying?

9 A (WITNESS SHERIDAN) Yes. In other words, the
10 movement would go to Sherman. It would transit at
11 Sherman.

12 A (WITNESS DIMMERMAN) Just to explain,
13 presently, the transit shipment originated at Kansas
14 City, then it went to Sherman, and then that's where it
15 was transited. Presently, it would be impractical for
16 the Santa Fe to handle it because they don't go into
17 Sherman.

18 The SP would have a very long haul. They
19 would have to haul it into Dallas and Ft. Worth, going
20 around via St. Louis and then back up to Sherman,
21 Texas. So it just wouldn't be practical. But after the
22 merger and combination of the routes, you will have a
23 destination Sherman. You won't have to go around via
24 St. Louis. It changes the picture.

25 But in the meantime, we only diverted 50

1 percent of them because we feel we will be able to
2 retain some of it.

3 Q This is to an OKT closed point, isn't it?

4 A (WITNESS SHERIDAN) Yes. After the transit.

5 Q Okay. The last two sheets in this exhibit are
6 FK2-20, FK2-22. I think they are both movements from
7 Houston, Texas to the ominous sounding place of Kremlin,
8 Oklahoma, routed OKT -- excuse me -- HKT/Dallas/OKT,
9 single system move for you. And you divert this car 50
10 percent, do you not, to a single system SFSP route?

11 A (WITNESS SHERIDAN) Yes. Kremlin,
12 incidentally, is in the switching limits of Oklahoma
13 City. We show it open here. We probably should have
14 written Enid on there. It's really not a local point.
15 It's switching limits of Enid.

16 Q But you, the OKT, switch the industry?

17 A (WITNESS SHERIDAN) The OKT switches it.

18 A (WITNESS DIMMERMAN) He said within the
19 switching limits of Oklahoma City and he meant Enid,
20 Oklahoma.

21 Q The reason for diversion is the single system
22 rate route service and new route; correct?

23 A (WITNESS SHERIDAN) Yes. We show, as you will
24 see, that the industry at Houston is served jointly by
25 PTRM/SP and, like I say, we will be able to retain 50

1 percent.

2 The SP today doesn't have a single line haul
3 on this, where after the merger, the Applicants will.

4 Q Doesn't the Santa Fe have a single line haul
5 on that move today?

6 A (WITNESS SHERIDAN) Yes, sir.

7 Q Why did it need the merger to handle the
8 traffic?

9 A (WITNESS SHERIDAN) The SP jointly serves the
10 industry. We feel that will definitely have an
11 influence on that movement, give them a single line
12 haul.

13 Q We could be looking at this sheet and it could
14 say ATSF, and that would be a correct routing, wouldn't
15 it?

16 A (WITNESS SHERIDAN) Where do you mean that?

17 Q I'm looking under present routing. It says
18 MKT/Dallas/OK/Katy. It could just say ATSF.

19 A (WITNESS SHERIDAN) We would not have had that
20 in our documents.

21 Q You would not have had it in your study, but
22 that car could have moved that way.

23 A (WITNESS SHERIDAN) They may be handling
24 some. I don't know.

25 Q How about the Burlington Northern? They could

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handle this thing directly, too, couldn't they?

A (WITNESS SHERIDAN) They may be handling
some. I don't know.

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1 MR. MOATES: Could we have marked as a
2 counsel's exhibit, as SFSP counsel's exhibit SFSP-C-47,
3 a three-page exhibit, the first page of which is RK-1,
4 page 1.

5 JUDGE HOPKINS: That will be marked for
6 identification.

7 (The document referred to
8 was marked Exhibit SFSP-C-47
9 for identification.)

10 BY MR. MOATES: (Resuming)

11 Q Gentlemen, what I want to point to on these
12 three exhibits is, I believe, if you can just confirm
13 that all three of these cars were transit shipments.

14 A (WITNESS SHERIDAN) No, sir. I don't see on
15 the first one where it showed transit.

16 Q Look under "traffic type" in the second line.

17 A (WITNESS SHERIDAN) Oh, okay.

18 Q All right. On the first movement, Mr.
19 Sheridan, which is from Enid, Oklahoma to Houston, a
20 shipment of wheat, this car was transited in movement,
21 was it not?

22 A (WITNESS SHERIDAN) That, I would like to get
23 my document to see for sure, sir. Yes, sir.

24 Q Would you tell us where it was transited?

25 A (WITNESS SHERIDAN) At Enid, Oklahoma.

1 Q You have your documentation there on this,
2 sir?

3 A (WITNESS SHERIDAN) Yes.

4 Q Does your second sheet look like this?

5 A (WITNESS SHERIDAN) Yes, sir.

6 Q Let the record show this is part of the
7 counsel's exhibit, but it's documentation behind the
8 SMS.

9 A (WITNESS SHERIDAN) We don't have it on ours.

10 MR. MOATES: Let the record show it's not a
11 part of the counsel's exhibit. I'm sorry; I misspoke
12 myself. That's what I meant to say.

13 BY MR. MOATES: (Resuming)

14 Q Does that indicate an additional origin of
15 Gruver, G-r-u-v-e-r, Texas?

16 A (WITNESS SHERIDAN) Yes, sir.

17 Q Gruver, Texas doesn't show on the route of
18 movement on the SMS, does it?

19 A (WITNESS SHERIDAN) No, sir.

20 Q Why is that?

21 A (WITNESS SHERIDAN) Of course, Gruver is on
22 the Texas Northwestern and it does show the full routing
23 that the car actually moved, but I see it does not show
24 -- it shows the origin as Enid, where it should have
25 read Gruver, sir.

1 Q But it did take transit at Enid on the MKT or
2 on the Cotton Belt?

3 A (WITNESS SHERIDAN) Yes. No, on the MKT,
4 sir.

5 A (WITNESS DIMMERMAN) It shows as origin on
6 your SMS, Enid, Oklahoma. But if you look at the
7 routing on there, it shows Texas Northwestern, and then
8 it shows LIBL, which is for Liberal, Kansas on the
9 Cotton Belt, and the Texas Northwestern is now served by
10 the Santa Fe and the Cotton Belt.

11 After the merger, it will just be served by
12 the one railroad.

13 Q Isn't it generally correct that when a
14 railroad performs transit services on a movement, that
15 that gives that railroad substantial influence over the
16 routing?

17 A (WITNESS SHERIDAN) Not in every case, sir.
18 And in this case I don't believe that it would.

19 Q I said "generally correct."

20 A (WITNESS DIMMERMAN) Not necessarily.

21 Q You don't think that transit services
22 constitute a factor of significance for the routing of a
23 car?

24 A (WITNESS DIMMERMAN) Not in this movement.

25 Q I'm asking you generally, sir.

1 A (WITNESS DIMMERMAN) Oh, I thought we were
2 talking about this movement here. On this movement
3 here, here would be no way that we would be able to
4 even perform a transit service because we wouldn't be
5 able to enjoy ourselves in the route.

6 Q Is that because you assume you will have no
7 route with the Cotton Belt over Herington?

8 A (WITNESS DIMMERMAN) That's correct.

9 Q No route at all for any traffic of this type?

10 A (WITNESS DIMMERMAN) No, I don't say that. I
11 say we will have no route on grain that originates on
12 the Texas Northwestern that your merged system will
13 interchange with and will be the only interchange.

14 We will not have any routes that way unless we
15 get to Liberal, Kansas on trackage rights.

16 Q All right. Would you look at sheet 02, this
17 same movement from Peck, Kansas to Corpus Christi?

18 A (WITNESS SHERIDAN) Yes, sir.

19 Q It's routed OKT/Ft. Worth/SF; correct?

20 A (WITNESS SHERIDAN) Yes, sir.

21 Q And you short haul this OKT/Enid/SFSP on 100
22 percent basis?

23 A (WITNESS SHERIDAN) Yes, sir.

24 Q And again, didn't this car take transit on the
25 MKT at Enid, Oklahoma?

1 A (WITNESS SHERIDAN) Car took transit at Enid.
2 Yes, sir.

3 Q The transit service was performed by the CKT,
4 wasn't it?

5 A (WITNESS SHERIDAN) Transit is OKT. Like I
6 say, we took a short haul. As far as we are concerned,
7 we would still handle it, if there is movements from
8 Peck to Enid, but from Enid beyond, we do not feel there
9 will be a continued route with the merged system.

10 Q Okay. The last one in this package, PSY-155,
11 if I move this right, it shows the origin as Kansas
12 City, Missouri, but underneath it you have written X Des
13 Moines, Iowa.

14 Does that mean this traffic actually
15 originated in Des Moines and was transited at Kansas
16 City?

17 A (WITNESS SHERIDAN) No. It means it was a
18 rebilled car, sir. I'd like to get my document for
19 backup to be sure. I feel that's what it was, sir.

20 (Pause.)

21 Yes, sir. On here, we have the backup
22 documents on all of these. And like I say, we can trace
23 any of our movements and shipments that we have. On
24 this one, it indicates it would be a rebille'.

25 Q Why is the car rebilled, Mr. Sheridan?

1 A (WITNESS SHERIDAN) Well, they were tendered
2 to us at Kansas City and like I say, in order to move
3 them on, we were giving billing at Kansas City to bill
4 them. Like I say, it originally came from Des Moines.

5 Q There was no storage in transit involved
6 here? No storage or milling?

7 A (WITNESS SHERIDAN) No. No storage in
8 transit.

9 Q Then the diversion reason here is simply, if I
10 use the word at this point, that you assume that the
11 route over Denison would have been eliminated with the
12 SP?

13 A (WITNESS SHERIDAN) Yes, sir. We will no
14 longer have a route with the SP to Laredo after the
15 merger.

16 Q By the way, just as a point of interest, if
17 you did receive your Laredo trackage rights, instead of
18 being 100 percent loss, this could be 100 percent gain
19 for y couldn't it? You would then be able to handle
20 this car all the way to Corpus, wouldn't you?

21 A (WITNESS SHERIDAN) We would hope that it
22 would, but there's no assurance because you all will
23 have the same route that we would. So really, we are
24 hoping that we would. Yes, sir. But there's no
25 guarantees.

1 A (WITNESS DIMMERMAN) We just want to be able
2 to compete.

3 Q I understand, Mr. Dimmerman.

4 Okay, if we could have a last counsel's
5 exhibit marked 48. This relates, gentlemen, to
6 something that I discussed with you yesterday afternoon,
7 the Agri Industries elevator at Houston.

8 JUDGE HOPKINS: It will be marked for
9 identification as counsel's exhibit C-48.

10 (The document referred to
11 was marked Exhibit SFSE-C-48
12 for identification.)

13 BY MR. MOATES: (Resuming)

14 Q Gentlemen, we have endeavored, and I hope
15 correctly, but I would -- certainly like the other
16 exhibit, this would be subject to your checking if you
17 wanted to correct us -- have endeavored to identify all
18 of the diversions in your study that you predicted to
19 this Agri Industries elevator at Houston.

20 I think it is the movements displayed here.
21 Now again, very briefly, this is the elevator, is it
22 not, that MKT -- as to which, excuse me, MKI seeks a
23 condition in this merger requiring the switching
24 services provided by Southern Pacific to be maintained?

25 A (WITNESS DIMMERMAN) Yes, sir.

1 Q This elevator is open to reciprocal switching
2 today.

3 A (WITNESS DIMMERMAN) Yes, sir.

4 Q What other railroads besides MKT serve this
5 elevator through reciprocal switching?

6 A (WITNESS DIMMERMAN) I imagine all of the
7 railroads entering Houston. However, it is served by
8 the Southern Pacific Railway, and it is the only
9 elevator that I know of of any capacity in Houston,
10 Texas that is not located on the PTRR.

11 Q Just looking at the first sheet, so the record
12 is clear, those railroads serving Houston that you
13 mentioned, this elevator is open to the Katy, the SP,
14 the Santa Fe, the Burlington Northern, and the Missouri
15 Pacific; correct?

16 A (WITNESS DIMMERMAN) Yes, sir.

17 Q Now, I think I asked you once yesterday, Mr.
18 Dimmerman, and I will ask again in light of having
19 pulled these together, did you assume for purposes of
20 this study that the Applicants had canceled the
21 reciprocal switching arrangement with MKT whereby you
22 are able to serve the Agri Industries elevator at
23 Houston?

24 A (WITNESS DIMMERMAN) Yes. However, you have
25 to understand that it's just not being able to serve it

1 reciprocally. It is being able to serve it under the
2 terms of the present agreement that our operating
3 department has initiated with your operating department.

4 That calls for -- and Mr. Todd can explain
5 this here, but as long as we're talking about it now,
6 there are different charges that the SP demands for
7 different numbers of cars. And I believe it's like from
8 1 to 25, the cars go through Englewood Yard, and we pay
9 the normal switch charge. From 25 to 50, it's handled
10 probably through Basin Siding where there is a different
11 charge. And 50 to 75, or 51 to 75 is handled at Basin
12 Siding for a different charge.

13 These lesser charges for large movements into
14 Agri Industries enable us to compete for the traffic.
15 If we were to have to pay the full switch charge, even
16 under reciprocal switching, we would be
17 non-competitive.

18 Q All right. Let me see if I can sort of
19 short-cut this. If you were able to serve the elevator
20 as you do today, with the same kinds of arrangements and
21 under the same kind of economic conditions which you
22 have just described, would any of these movements have
23 been diversions in your study?

24 A (WITNESS DIMMERMAN) Very likely. What this
25 would do would be allow us to compete. It would allow

1 us to compete for the traffic, for example, over either
2 Denison, if there was a route available, or via Houston,
3 which there naturally would be a route available.

4 I don't know how much we would be able to
5 retain, but if we had those conditions, we certainly
6 would be able to compete for the traffic.

7 Q Well, Mr. Dimmerman, if you look at the first
8 four examples, I think you'll find that they don't route
9 with anybody. They are all MKT/OKT system moves. And
10 you certainly wouldn't lose that kind of traffic, would
11 you?

12 A (WITNESS DIMMERMAN) I would hope not, sir,
13 but that is what we are asking for, the ability to
14 compete for the same traffic.

15 Q Let me ask you one other question about this.
16 The last page of the exhibit, page 28 of strata BK-1, is
17 a zero divert. Isn't that a mistake in light of what
18 you have just told me and in light of the fact that the
19 first sheet is the same?

20 A (WITNESS SHERIDAN) You have two mistakes on
21 there. Unfortunately, your second item, we show 75
22 percent. That should have been 100 percent. And then
23 also on the Salina, the last one, that shows zero. And
24 it should have been 100 percent.

25 MR. KHARASCH: You are getting me confused.

1 MR. MOATES: He's saying they are all 100
2 percent diverts.

3 MR. KHARASCH: Page 1, the last listed
4 movement on page 1 --

5 WITNESS SHERIDAN: The movements on the cover
6 sheet are not matched in the same order. They are not
7 in the same order. But if you look at the cover sheet,
8 it shows one movement on there, and the No. 2 movement
9 75 percent diversion. That should have been 100
10 percent.

11 JUDGE HOPKINS: You're saying page 3 of 8
12 should be 100 percent if you go to the sheets
13 themselves.

14 MR. MOATES: And page 8 of 8, which is a zero,
15 he is saying should also be 100 percent.

16 BY MR. MOATES: (Resuming)

17 Q So to correctly reflect your actual judgments,
18 SFSP-C-48, page 1, should show that all of these
19 movements were 100 percent divertible?

20 A (WITNESS SHERIDAN) Yes, sir.

21 MR. MOATES: Those are all my questions, Your
22 Honor. Thank you.

23 JUDGE HOPKINS: Mr. Kharasch?

24 MR. KHARASCH: Let me address a question to
25 counsel before I start the redirect.

1 Is it the position of the Applicants, if you
2 are willing to state it at this time, that the condition
3 requested for continuation of the contracts at the Agri
4 Industries facility is acceptable to the Applicant?

5 MR. MOATES: I certainly cannot address that.
6 It is a policy matter. The purpose of my questions was
7 to clarify, and I think I did, that their assumption on
8 all of that loss was on an assumption that we would
9 cancel. That's all I was attempting to do.

10 JUDGE HOPKINS: Thank you.

11 REDIRECT EXAMINATION

12 BY MR. KHARASCH:

13 Q Gentlemen, a preliminary question here.
14 Looking over the counsel's exhibits that have been
15 provide to you by Mr. Moates, is it correct that in your
16 study, in every instance where you took a diversion,
17 there is a sheet showing the percentage of diversion
18 that you took in the same form, as for example, SPSP
19 counsel exhibit C-47, the first page.

20 There is such a sheet for every movement in
21 which you took a diversion?

22 A (WITNESS SHERIDAN) Yes, sir.

23 A (WITNESS DINNEMAN) Yes, sir.

24 Q And is it also correct that for every movement
25 for which you took a diversion, the backup papers are

1 available in your files, in your work papers?

2 A (WITNESS SHERIDAN) Yes, sir.

3 A (WITNESS DIMMERMAN) Yes, sir.

4 Q And please explain what those backup papers,
5 files, and work papers are.

6 A (WITNESS SHERIDAN) Okay. You have, where we
7 do have an abstract which shows the distribution of
8 monies that was made on the movement, that comes from
9 accounting. Also, a copy of the waybill the movement
10 moved on. In some cases, where we are overhead traffic
11 only, we do not have a copy of the waybill, but in
12 almost every case there was a waybill.

13 Additionally, there is a sheet, a printout
14 sheet that was sent out to the agency, the sales office,
15 covering the origin point, and he was to fill in
16 information on there as to the shipper who serves it,
17 also what railroad serves that origin point.

18 Same thing on the destination. The sales
19 agencies that we have, the sheet was sent to them and
20 they were to fill out the information at the destination
21 end. And those are attached in all cases to the SMS
22 sheet which is the cover sheet in our study, so that
23 everything can be tracked as to what we did.

24 Q Is your judgment, Mr. Sheridan and Mr.
25 Dimmerman, that the information on these backup papers

1 is necessary in order to make an informed diversion
2 judgment?

3 A (WITNESS SHERIDAN) Yes, sir.

4 A (WITNESS DIMMERMAN) Yes, sir.

5 Q And if one should have a study which did not
6 take into account the type of information available to
7 you, would you think it was an informed or complete
8 study?

9 A (WITNESS DIMMERMAN) Yes, sir.

10 Q If a study were performed without the sort of
11 information that you had, would that be an informed and
12 complete study?

13 A (WITNESS DIMMERMAN) It would not.

14 A (WITNESS SHERIDAN) I do not believe it would,
15 sir.

16 Q In addition to these papers being available for
17 each movement for which you took a diversion, were such
18 papers available for each movement in the sample that
19 was drawn?

20 A (WITNESS SHERIDAN) On the sample?

21 Q Yes.

22 A (WITNESS SHERIDAN) Well, yes, sir. The
23 sample, the complete sample was made part of the full
24 study. So it is available. Yes, sir.

25 Q Now, yesterday, you had some discussion with

1 Mr. Moates about the Commission's guidelines and
2 comments on the UP/MP merger case diversion study that
3 you had made, and I want to be quite clear on this
4 situation.

5 In making this diversion study, did you at any
6 time go back and change the results of the study after
7 you had made the study?

8 A (WITNESS SHERIDAN) No, sir.

9 A (WITNESS DIMMERMAN) No, sir.

10 Q I think you told me or you told Mr. Moates
11 that at the time of the study, you didn't prepare the
12 revenue figures or the diversion revenue figures? That
13 was done elsewhere?

14 A (WITNESS SHERIDAN) No, sir. We had nothing
15 to do with figuring the revenue. We strictly received
16 the documents and the stuff from our sales agency we
17 assembled with the SMS sheet. We made the diversion
18 factor, showing either divertible -- if it was
19 divertible, showed our percent and reasons. If it
20 was non-divertible, we showed the reasons.

21 A (WITNESS DIMMERMAN) That's correct.

22 Q Now, in performing the diversion study, as you
23 were going through the diversion study and making your
24 evaluations, did you have in mind, or did you not have
25 in mind the Commission remarks in the UP/MP case?

1 A (WITNESS DIMMERMAN) We had them in mind. In
2 fact, we had discussions about it. For example, what
3 applied then didn't apply now. For example, with the
4 equipment, that certainly changed. The changes with the
5 cancellation of joint routes had changed, and anything
6 that we thought that still pertained, we certainly did
7 take that into account.

8 Q Now, you mentioned -- I believe it was you,
9 Mr. Dimmerman -- that there had been changes in
10 circumstances since the UP/MP case.

11 A (WITNESS DIMMERMAN) Yes.

12 Q I'd like the record to be clear on what
13 changes in circumstances you think are significant for
14 the purposes of a diversion study.

15 First, is the coming into force of the
16 Staggers Act a significant change?

17 MR. MOATES: I will object, Your Honor. That
18 is the most blatantly leading set of questions.

19 JUDGE HOPKINS: That was quite blatant. Go
20 ahead. Why don't you ask the questions rather than --

21 BY MR. MOATES: (Resuming)

22 Q Give us, if you would, a list of the
23 circumstances that have changed since the UP/MP case
24 that are circumstances that you think affect the making
25 of the diversion judgments.

1 JUDGE HOPKINS: Thank you.

2 WITNESS DIMMERMAN: The Staggers Act would be
3 the primary change that occurred, and along with the
4 Staggers Act, the different carriers' conception of what
5 should be done about joint routes. Switch charges in
6 many cases were changed, raised. I know exception was
7 taken to that by the Commission.

8 The equipment situation certainly was, if you
9 look at our sheet that shows reason for diversion, we
10 still have equipment on there, but I don't believe there
11 was one -- and one of the main reasons for it, of
12 course, is that we left it in there because the
13 Commission did take that into consideration.

14 But I don't think that we have one diversion
15 for equipment. We left that in there because we thought
16 there might be a specialized piece of equipment that we
17 either had and they didn't have, or vice versa.

18 But that was not indicated in the study. That
19 is what I would say the most important things, was the
20 Staggers Act and equipment.

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1 BY MR. KHARASCH: (Resuming)

2 Q Could we look at Exhibit SFSP-C-39? I wanted
3 to clarify your discussion with Mr. Moates on -- let's
4 take page 1 of this, the movement from Wichita to
5 Fresno, California.

6 A (WITNESS DIMMERMAN) Yes, sir.

7 Q What railroads must the MKT system use today
8 in order to get cargo to a destination in Fresno,
9 California if the cargo originates in Wichita?

10 A (WITNESS DIMMERMAN) Fresno is only served by
11 the Southern Pacific and the Santa Fe. After the merger
12 it will only be served by that same combination, only as
13 one railroad.

14 Q Is there any way you could get to Fresno,
15 California after the SFSP merger other than using SFSP?

16 A (WITNESS DIMMERMAN) No, sir, not direct.

17 Q Did you make any changes in your diversion
18 judgments at any time in this study in order to reach
19 any preconceived goal of volume of diversions that you
20 wanted to find?

21 A (WITNESS DIMMERMAN) No, sir.

22 A (WITNESS SHERIDAN) No, sir.

23 Q Do you recall having various questions from
24 Mr. Moates about what rule you applied to give a
25 percentage of diversion?

1 A (WITNESS DIMMERMAN) Yes, sir.

2 Q In your opinion, in making a diversion
3 projection or estimate, is a flat percentage rule --
4 that is, allow 10 percent or 25 percent because of the
5 new rules or because of equipment or whatever reason --
6 is such a flat percentage rule a proper way to go?

7 A (WITNESS SHERIDAN) In our opinion, yes, sir.

8 A (WITNESS DIMMERMAN) Yes, sir.

9 Q You like rules that have a flat percentage of
10 diversion, like if a single line is coming, if a new
11 single line service is coming, you will lose 25 or 50
12 percent, or do you want to look at all of the factors
13 before you make your percentage?

14 MR. MOATES: I'll object. They answered the
15 question the first time, and he's trying to get them to
16 change it with a leading question. I think that's
17 inappropriate.

18 JUDGE HOPKINS: It is a leading question
19 again, Mr. Kharasch.

20 MR. MOATES: It's the same question. He's
21 trying to get them to change their answer, and they both
22 said yes at the same time.

23 JUDGE HOPKINS: I think he can get the answer
24 now. Go ahead, Mr. Kharasch.

25 BY MR. KHARASCH: (Resuming)

1 Q Let's compare two types of diversion studies,
2 one of which gives a certain percentage of diversion for
3 a certain fact; that is, if the originating road owns a
4 car, it will give a certain percentage factor for
5 control of the car. And the other is the type of
6 diversion study where the evaluators look at all of the
7 facts before they make a diversion percentage. And
8 let's say there may be a third, another type of
9 diversion study.

10 Which type of diversion study do you think is
11 the proper one?

12 MR. MOATES. I'll object on the grounds that
13 the question was asked and answered previously.

14 JUDGE HOPKINS: I'm going to allow it. Go
15 ahead.

16 WITNESS DIMMERMAN: Well, for the record, I
17 didn't -- I don't believe Jerry understood the previous
18 question. As far as making a diversion on any piece of
19 traffic, you have to look at all of the circumstances
20 involved. You have to look at everything, including
21 knowledge of the shipper. There's no way you can make a
22 diversion by just saying that something happened with a
23 car out of a certain point to a certain point or because
24 it's in a certain car. Everything has to be looked at.

25 BY MR. KHARASCH: (Resuming)

1 Q Do you agree with that, Mr. Sheridan?

2 A (WITNESS SHERIDAN) Yes, sir. Everything has
3 to be looked. And as far as the percents, we try to use
4 our judgment factor on the percents. As far as trying
5 to fine-tune, you know, whether it was like 25 percent,
6 50 percent, we felt those were close enough areas. We
7 didn't feel that it was a case that one case we maybe
8 ought to go 55 percent and another case 45 percent. We
9 felt the ranges we used was satisfactory, in our
10 judgment.

11 Q Are you telling me that in answering my
12 previous question, the one that Mr. Moates says was
13 asked and answered, you thought you were answering a
14 question about whether percentages should be in the
15 range of 25 percent or 28.32 percent?

16 A (WITNESS DIMMERMAN) Yes, sir, that's what we
17 thought. We thought you were talking about percentages
18 which we used. I don't understand the other part. I
19 should have just let Jerry answer, because he worked the
20 diversion study on the applicants' side.

21 Q The question was put several times to you by
22 Mr. Moates as to whether in a particular movement there
23 was available in this historic past when the movement
24 occurred other single line service available. Do you
25 recall those questions?

1 A (WITNESS DIMMERMAN) Yes, sir.

2 A (WITNESS SHERIDAN) Yes, sir.

3 Q Do you think that's a useful thing or not a
4 useful thing, or an important thing or not an important
5 thing to keep in mind when looking at potential
6 diversions; that is, whether other single line services
7 were available at the time?

8 A (WITNESS DIMMERMAN) We looked at that.

9 A (WITNESS SHERIDAN) We were knowledgeable of
10 the other single lines. In some cases there were. In
11 many cases there weren't.

12 Q You say you were knowledgeable, but my
13 question is do you think that is a factor that should be
14 taken into account?

15 A (WITNESS DIMMERMAN) It's a factor we did take
16 into account.

17 A (WITNESS SHERIDAN) Yes.

18 Q And if a diversion study did not take such
19 factors into account, would it be as complete as the
20 study you made?

21 A (WITNESS SHERIDAN) I do not believe that it
22 would be, no, sir.

23 Q Mr. Moates at one point asked you, perhaps
24 sarcastically, whether you thought there would be any
25 MKT routes after merger, joint routes after the merger.

1 Do you recall that question?

2 A (WITNESS DIMMERMAN) Yes. I believe I said I
3 would certainly hope so.

4 Q Now, in instances where the SFSP does not
5 serve the town where the cargo is originating or
6 terminating and the MKT does serve the town, would you
7 expect to continue some joint routes with the SFSP?

8 A (WITNESS DIMMERMAN) I would certainly hope so.

9 A (WITNESS SHERIDAN) Yes, sir.

10 Q In instances where the SFSP after merger will
11 have within its system the ability to serve the origin
12 and destination both, would you expect the MKT to
13 continue any routes with the SF and SP?

14 A (WITNESS DIMMERMAN) I believe there will be
15 no routes available.

16 Q And is that belief reflected in your diversion
17 study that you just testified about?

18 A (WITNESS SHERIDAN) Yes, sir.

19 A (WITNESS DIMMERMAN) Yes, sir.

20 MR. KHARASCH: Thank you.

21 JUDGE HOPKINS: Mr. Moates?

22 MR. MOATES: One question.

23 RE-CROSS EXAMINATION

24 BY MR. MOATES:

25 Q Do I understand your answers to Mr. Kharash

1 the second time when he asked you about what kind of
2 study you think is the most appropriate one, namely one
3 based on all the factors, that a study, a diversion
4 study that is predicated upon stated rules for
5 percentages of diversion the type that he described
6 first, is it improper or an inaccurate study?

7 Do you understand my question?

8 A (WITNESS SHERIDAN) I wish you would repeat
9 it. I'm not sure what you're referring to.

10 Q If you have a diversion study that has a set
11 of written rules indicating 23.8 percent or whatever his
12 example was, these circumstances -- let's say origin is
13 served by one railroad, a bridge carrier is another
14 railroad, and there's some rule about equipment. If all
15 of those things happen, that it's a 23.8 percent
16 diversion, do you think that kind of a study is an
17 inappropriate study that results in inaccurate diversion
18 projections?

19 A (WITNESS SHERIDAN) I do not believe that you
20 can set a rule that will apply in every case, a straight
21 out rule on a diversion study. To me you still have to
22 analyze each movement with all the information
23 available. I think one of the examples as an example
24 you used like equipment, again, we didn't feel that --
25 like I say equipment, I don't think you can say if it's

1 this company's equipment it gets X percent diversion
2 factor, and this company gets an X percent diversion
3 factor if their car is supplied. I don't believe that
4 is the way that you could make it and be meaningful, no,
5 sir.

6 Q Too simplistic?

7 A (WITNESS SHERIDAN) I don't think that the
8 assumptions are correct that way, sir.

9 Q Do you agree, Mr. Dimmerman?

10 A (WITNESS DIMMERMAN) I agree that you have to
11 look at the individual movement, the rules that you
12 might think will apply, just like Jerry and I put down
13 equipment would be a reason; yet we never used equipment
14 throughout the whole study, because we didn't find any
15 piece of equipment that we felt actually would have
16 either involved a diversion or no diversion.

17 MR. MOATES: Thank you.

18 JUDGE HOPKINS: You're excused for now.

19 (The witnesses were excused.)

20 MR. KHARASCH: I move the admission of the
21 joint testimony of Mr. Dimmerman and Sheridan in
22 opposition.

23 JUDGE HOPKINS: Any objection?

24 MR. MOATES: No objection.

25 JUDGE HOPKINS: It will be received in

1 evidence.

2 MR. MOATES: I'd like to move, Your Honor,
3 SFSP-C-32 through and including C-48.

4 JUDGE HOPKINS: Any objection?

5 MR. KHARASCH: As long as it's understood that
6 the arithmetical summary that is in one of these
7 exhibits is subject to check, I have no objection.

8 MR. MOATES: And we will ask Mr. Anderson
9 about that.

10 JUDGE HOPKINS: They will be received in
11 evidence.

12 (The documents previously
13 marked Exhibit Nos.
14 SFSP-C-32 through 48 for
15 identification were received
16 in evidence.)

17 JUDGE HOPKINS: Let's recess for 15 minutes.

18 (Recess.)

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

20 Whereupon,

21 THOMAS G. TODD
22 was called as a witness and, having been first duly
23 sworn, was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. ROFER:

1 Q Would you state your name and business address
2 for the record, please?

3 A My name is Thomas G. Todd. My business
4 address is 506 West Chestnut -- that's Chestnut Street
5 -- Denison, Texas 75020.

6 Q And what is your position with the company
7 please?

8 A I'm Vice President-Operations.

9 Q Mr. Todd, did you prepare the statement which
10 is contained in MKT-27?

11 A Yes, sir.

12 Q Is that your testimony in opposition to the
13 proceeding?

14 A Yes, sir, it is.

15 Q Do you have any corrections to make on that
16 statement?

17 A No, sir.

18 Q Is that statement true and correct to the best
19 of your knowledge and belief?

20 A It is.

21 Q Do you have anything else to add to the
22 testimony at this time?

23 A No, sir.

24 MR. ROPER: The witness is available.

25 CROSS EXAMINATION

1 BY MR. BLASZAK:

2 Q Mr. Todd, my name is Mike Blaszak. I work for
3 the Santa Fe, and I represent the applicants. I'm going
4 to ask you a few questions about your statement in
5 MKT-27. I'm going to reserve some questions about your
6 qualifications and experience for your trackage rights
7 testimony.

8 Mr. Todd, on the first page of your statement
9 you comment on traffic diversion generally and state
10 that diversions have a detrimental effect on MKT's light
11 density lines. Would that statement also apply to the
12 effect that the Burlington Northern-Frisco and Union
13 Pacific-Missouri Pacific mergers have on the Katy?

14 A Yes, sir.

15 Q Could you specify some of the light density
16 lines that were affected by the BN-Frisco merger?

17 A Would I?

18 Q Could you?

19 A The same principle applies in any merger. I
20 don't recall at this time the specific light density
21 line that we studied at that time.

22 Q Well, how about your Oklahoma City branch?
23 Was that adversely affected by the BN-Frisco merger?

24 A The entire Katy system was adversely affected
25 by the BN merger.

1 Q You can't think of any light density lines
2 that you can recall that were adversely affected by any
3 of these mergers?

4 A Let me say that any of the light density lines
5 -- and I might at this point interject that the Katy as
6 a whole is not real dense -- suffers from density in my
7 opinion. But any light density line is affected more
8 acutely by loss of traffic than those lines that still
9 have considerable traffic.

10 Q Would you consider the Oklahoma City branch of
11 the Katy a light density line?

12 A Yes, sir, I would.

13 Q Could you tell me what level of service the
14 MKT provided on the Oklahoma City branch prior to the
15 BN-Frisco merger; that is, in terms of the number of
16 trains operated per day per week or some other
17 comparable measure of service?

18 A If I recall correctly -- and I'd have to check
19 the record to be real specific -- but I believe our
20 service was six days per week.

21 Q Six days per week in each direction?

22 A Yes.

23 Q Okay. Could you tell me what the present
24 level of service is on that line?

25 A Yes. The present level is six days per week.

1 It has been as low as three days per week in the interim
2 period.

3 Q It's now back up to six days per week?

4 A It is.

5 Q So it's essentially the same level of service
6 that you had before?

7 A Back up to six days per week at the specific
8 request of the Traffic Department to attempt to secure
9 additional business.

10 Q Do you have any plans to abandon or curtail
11 the service to Oklahoma City absent this merger?

12 A I beg your pardon, sir?

13 Q Do you have any plans to abandon or curtail
14 MKT service to Oklahoma City without this merger taking
15 place?

16 A We have no plans to abandon. It would be my
17 intent to offer a service commensurate with the traffic
18 needs.

19 Q Is that a general statement that is applicable
20 to all MKT lines?

21 A To the best of our ability.

22 Q Let's turn our attention to the Union
23 Pacific-Missouri Pacific merger. Could you specify any
24 light density lines with the Katy that were adversely
25 affected by the UP-MP merger?

1 A There again, you have the same situation
2 prevailing. The lighter density lines or branch lines
3 would be more acutely affected with the loss of traffic
4 than the main line.

5 Q But you can't think of any specific line that
6 was adversely affected by this merger; is that correct?

7 A Not at this time, because it's been a while
8 since we studied that merger.

9 Q Can you think of any lines where service was
10 curtailed following the UP-MP merger?

11 A Well, there have been periods of time where
12 the Oklahoma City line, which we previously discussed,
13 was down to three days as a cause of lack of traffic. I
14 am not personally in a position to say that that traffic
15 loss was entirely attributable to the UP-Missouri
16 Pacific merger. I think it would be safe to assume that
17 at least some of it was. To that extent, there would
18 have been an effect on that line.

19 Q Would it be a fair characterization of your
20 testimony to say that notwithstanding the effects of
21 these two mergers that the Katy continued to provide
22 service to the extent justified by the traffic on its
23 branch lines?

24 A Yes. And I think that you will recall that
25 Mr. Gastler testified that some of that traffic loss was

1 recovered by our acquisition of trackage rights to
2 Omaha, Council Bluffs, and also by acquisition of a
3 portion of the Rock Island now operated as the OKT.

4 Q So there were a lot of changed circumstances
5 besides these mergers?

6 A Yes, there have been.

7 Q Thank you.

8 Let's turn to your calculation of train
9 locomotive and car miles that MKT supposedly could save
10 following diversion of traffic to the merged SPSF
11 system. Now, your estimates are based solely on the MKT
12 traffic study; isn't that correct?

13 A That's correct.

14 Q Have you made any comparable estimates based
15 on the SPSF traffic study, the estimate of diverted
16 traffic that we made for the Katy?

17 A I have not.

18 Q Do you have an opinion regarding the number of
19 trains MKT might be able to save following diversions at
20 this level?

21 MR. ROPER: At what level?

22 BY MR. BLASZAK: (Resuming)

23 Q At the level that we specified in our traffic
24 study.

25 A I have not looked at it from that perspective.

1 Q If I told you that that level was between \$5
2 and \$6 million rather than the \$19 million figure that
3 MKT has testified to, would that assist you in giving me
4 an opinion?

5 A Well, I would have to assume that there would
6 be fewer cars diverted and, therefore, less effect on
7 train operations. But at this point it would have to be
8 simply an assumption on what you have told me.

9 Q Okay. I will accept that.

10 Now, as I understand what you did, you used
11 the traffic study to identify cars that would no longer
12 be carried along certain line segments of the Katy -- I
13 believe something like 50 line segments -- and from that
14 data decided which trains would no longer operate. Is
15 that more or less correct?

16 A That is more or less a general statement.

17 Q What criteria did you use to determine whether
18 or not a particular train would be operating?

19 A We used the criteria of the tonnage, and also
20 trying to bear in mind that we had to maintain integrity
21 of service.

22 Q What do you mean by integrity of service?

23 A Well, I do not believe that on certain
24 point-to-point destinations -- and, for example, St.
25 Louis to Parsons -- where are our average traffic is

1 slightly over one train per day, that you can go less
2 than one train a day and stay in the market. I feel
3 that between Kansas City and Texas that we must maintain
4 two to three schedules per day to stay in the market,
5 and not to do so would further deteriorate the traffic.

6 Q Would you tell me what tonnage criteria you
7 used?

8 A We used tonnage criteria similar to that that
9 had been experienced on those segments.

10 Q That would be something that is consistent
11 with your outstanding instructions to your terminal
12 superintendents?

13 A Right. Tonnage criteria consistent with the
14 train traffic on those segments, as long as we can
15 maintain integrity of service.

16 Q What is your basic tonnage criterion for
17 running a train, let's say, between Kansas City and
18 Parsons or between Parsons and Denison?

19 A Between Kansas City and Parsons and Parsons
20 and what?

21 Q Denison.

22 A Of course, basic criteria is -- number one
23 basic is service and tonnage.

24 Q Okay. Well, how many tons of traffic do you
25 need before you will call a train between Kansas City

1 and Parsons?

2 A We do not have specific tonnage requirements.

3 Q Would you look at such factors as the type of
4 traffic that you had in determining whether or not --

5 A Yes, we would, and the service required.

6 Q Is there some -- are there some types of
7 traffic that you would hold train for tonnage; for
8 example, grain, would that be one type of traffic where
9 you would hold a train for tonnage?

10 A Yes, unless it was mandated to operate the
11 train because of the export date. There have been cases
12 of that nature.

13 Q What would you consider to be an average Katy
14 grain train as far as tonnage is concerned?

15 A Seventy-five cars.

16 Q Is that hundred-ton cars?

17 A Yes. Covered hoppers. There are certain unit
18 trains that may come to you with 60 cars which we would
19 operate.

20 Q So generally speaking, Katy would call a grain
21 train when it had between 6,000 and 7,500 tons or more
22 to move at one time.

23 A Well, a grain train, I normally think you're
24 talking about 7,500 tons minimum.

25 Q Now, on a merchandise train do you have any

1 corresponding limit, tons or cars? I'm looking for
2 either.

3 A As I have stated to you, we do not consider
4 tonnage the primary criteria in moving our train.

5 Q Okay. I have here what I think is the current
6 MKT-OKT operating timetable, which is dated April 29,
7 '84. I don't intend to put this in the record, but you
8 are familiar with this document?

9 A Yes, sir.

10 Q Are you aware that the document shows certain
11 freight train schedules over various segments of the
12 Katy?

13 A Yes.

14 Q Do you generally operate your trains on those
15 schedules?

16 A The information contained is that is for the
17 guidance of the employees and does not govern the
18 calling of the trains.

19 Q Are those trains that are shown in the
20 schedules generally your grain trains, are they
21 generally merchandise trains, or both?

22 A Those are not necessarily grain trains. They
23 are schedules for operating conveniences.

24 Q But they don't necessarily reflect the actual
25 Katy operations?

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A Not necessarily.

1 Q Mr. Todd, do you have a limit on the number of
2 cars you will run on your trains or a limit on the train
3 length?

4 A Well, certainly there would be limitations on
5 what we would attempt to run. Our chief dispatcher's
6 office is the controlling factor on that normally, on a
7 day-to-day basis, for operating purposes.

8 Q Okay. That really isn't responsive to my
9 question. What I am looking for is how long of a train
10 can you run without getting into some operating problem
11 such as the trains not fitting into sidings?

12 A We operate trains up to and in excess of
13 10,000 feet.

14 Q You said 10,000 feet would be a fair
15 approximation of the absolute limit of the Katy train?

16 A That's a fair approximation. It could be more
17 or less.

18 Q I want to walk through your calculations with
19 respect to the first segment of the Katy which you
20 discuss in Appendix A. That is on page 107 of your
21 statement, just to make sure I understand and everybody
22 else here does.

23 A Appendix A?

24 Q Yes, Appendix A.

25 As I understand, this represents the Katy main

1 line between Kansas City and Parsons; is that correct?

2 A That's correct.

3 Q About how many trains per day does MKT
4 currently operate over this segment in each direction?

5 A Three to five.

6 Q That's in each direction?

7 A Yes, sir.

8 Q So it's a total of six to train tens a day,
9 total northbound and southbound?

10 A Yes.

11 Q Now, looking at page 1, looking at the month
12 of January and going down from left to right, you see
13 that the estimate of change in traffic is 13.2 fewer
14 loaded grain cars, 15.7 fewer loaded other cars, and 1.1
15 empty cars southbound. Is that correct?

16 A That's correct.

17 Q And the corresponding losses northbound are 0.1
18 and 29.8; is that correct?

19 A That's correct.

20 Q Okay. Then these figures are added together
21 at the bottom of the page and we come up with a total of
22 6,135 loaded grain cars lost, 5,757 loaded other cars
23 lost, 739 empty cars lost, and so forth.

24 I think you can see the figures at the
25 bottom. That is more or less correct, isn't it?

1 A Yes.

2 Q If you total these up, you come up with
3 something between 25 and 26,000, don't you?

4 A If you total the northbound and southbound?

5 Q Yes.

6 A Yes.

7 Q Okay. Let's refer now to Appendix B which is
8 page 1 of 1, as far as I can tell, and we look at
9 segment 01. Now, Mr. Todd, is this also Kansas City to
10 Parsons?

11 A 01 is identified as Kansas City to Parsons.

12 Q That's the same line segment we were
13 discussing?

14 A Yes.

15 Q And you show that you saved 141 trains over
16 the segment; is that correct?

17 A That's what is shown there; yes.

18 Q Well, if you -- well, let me ask you another
19 question. Is that both northbound and southbound
20 trains?

21 A I believe that's -- the controlling direction
22 is identified in my statement, which is the southbound.

23 Q So it's 141 southbound trains?

24 A Yes.

25 Q How many northbound trains have you saved?

1 A The mileage as calculated there shows that you
2 would save an equal amount, and that was done as a
3 matter of study. In reality, they were probably less,
4 because as we discussed a few minutes ago, we did handle
5 trains up to 10,000 feet, and those type trains are the
6 empty movement return trains going north.

7 A So we probably have overstated the train miles
8 saved there to some extent. But as a rule, that's the
9 way we calculated it.

10 Q So if I understand you correctly, what you are
11 saying is that if you saved the trains southbound, you
12 have saved it northbound, even though you might not
13 necessarily run that --

14 A We have assumed that for the study. Yes, sir;
15 you are correct.

16 Q Following down on the page, we see that you
17 have projected a loss of trains of 158 for segment 04,
18 08, and 10. Do you see that?

19 A Yes, sir.

20 Q And that figure in each case is 158. Is that
21 correct?

22 A That's correct, what is shown.

23 Q Do these segments represent the Katy's main
24 line between Parsons and Denison?

25 A I believe they do. Yes, sir.

1 2 Can you tell me if this represents both
2 northbound and southbound trains or just the southbound
3 trains?

4 A This represents the controlling direction.

5 Q And in this case, that is south?

6 A South.

7 Q How many northbound trains would you save over
8 this segment?

9 A Again, we have shown the miles saved to be an
10 equal number. In reality, it's probably something
11 less.

12 Q About how many trains per day does Katy
13 operate between Parsons and Denison in each direction at
14 present?

15 A Between Parsons and Denison?

16 Q Yes. Or if you want to break that up into
17 segments, please do.

18 A All the way to Denison is between five and six
19 trains, about three in each direction.

20 Q Are there some additional trains that do not
21 cover the entire route?

22 A Yes. The Tulsa train that goes from Parsons
23 just to the north edge of Muskogee that goes over that
24 subdivision. There are also some coal movements that
25 terminate at Pryor, Oklahoma.

1 Q Now, you show 158 trains and this is trains
2 per year; isn't that correct?

3 A Yes, sir.

4 Q 158 trains per year saved between Parsons and
5 Denison. And you said that of the trains that presently
6 operate, you have three in each direction between
7 Parsons and Denison. Would the 158 trains saved be the
8 same ones or different ones over different segments? In
9 other words, would you be saving Parsons-Denison trains,
10 or which trains would you be saving?

11 A Well, this is calculated just as finding a
12 tonnage value to it. It could or could not be.

13 Q What tonnage value did you use to calculate
14 those trains that would be saved?

15 A A tonnage equivalent to that which is the
16 experience that the experience of 1983 was for the
17 operations.

18 Q Would you tell me what number that was?

19 A In other words, about 70 cars represented a
20 train on an average. The tonnage and average trains was
21 developed for each segment in the study and based on
22 that.

23 Q Did you, in developing these numbers, just cut
24 off a train when you got 70 cars that you wouldn't have,
25 or did you reduce other trains as well and --

1 A A reduction of other trains would not
2 necessarily cut off the train operation.

3 Q I understand that. So what you're saying is
4 that every time you found 70 cars that didn't have to
5 move, you cut a train off?

6 A Yes. Unless the integrity of schedule would
7 be adversely affected.

8 Q Do you recall whether there were any
9 incidents?

10 A I recall offhand St. Louis to Parsons segment,
11 there was no train reduction. There was some tonnage
12 reductions.

13 Q Let's go to page 6 of your statement. You are
14 discussing here, as near as I can tell, some other
15 expenses which you think can be reduced following
16 diversion of traffic at the level claimed by MKT
17 following the SPSF merger.

18 And I need to have something explained to me
19 here. You talked about inputs to the Rail Form A and
20 identified accounts in which reduced expenditures can
21 take place with diversion, with the diversion loss of
22 traffic.

23 You say that accounts were treated as totally
24 in or out. Just what do you mean by that?

25 A That the loss of traffic would affect all of

1 that account totally in, or none of it, totally out.

2 Q You said there are two instances in which you
3 didn't do this. One of them, as I understand it, you
4 would continue to spend about \$1 million for weed
5 control and rail testing; is that correct?

6 A Yes, sir. That's correct.

7 Q But the rest of account 202, roadway
8 maintenance, was left out entirely?

9 A No. The \$1 million was excluded from the
10 merger, loss of traffic having any effect on that
11 portion of 202. In other words, the weed control and
12 the rail testing program would go on the same, although
13 the traffic might be diminished by some 20,000 cars.

14 Q What happened to the rest of account 202?

15 A It was given as being affected by the loss of
16 traffic.

17 Q And reduced by a factor?

18 A Yes.

19 Q What else would be in account 202? What other
20 source of expenditures?

21 A 202 is roadway maintenance, such as track
22 control, grading, drainage, and that sort of thing.

23 Q Then you identified two specific AFE projects
24 that would be excluded in the next sentence. First of
25 all, could you explain what an AFE project is?

1 A AFE is the term used that represents
2 Authorized Financial Expenditure, something above and
3 beyond that which is charged to maintenance.

4 Q These are programs that Katy has already
5 authorized?

6 A A program that was authorized and performed in
7 1983, the one we speak of here.

8 Q What are these projects?

9 A This particular project was a sledding
10 project.

11 Q From where to where?

12 A It was on the main line. I don't remember the
13 exact locations. Primarily in Oklahoma.

14 Q What was the other one?

15 A Both of them were sledding projects. They
16 were under two separate AFEs.

17 Q These two projects were projects that you
18 would not be able to, or that you claim that you would
19 cut out as a result of the merger?

20 A Yes. Those were projects that would not be
21 expected to recur every year. So under the RRB
22 accounting system, as was being done in 1983, the
23 operating expenses were inflated over normal maintenance
24 by the amount of those projects.

25 Q They are not projects that you expect would

1 have to be curtailed as a result of the merger?

2 A Well, similar projects could have to be
3 curtailed if there were no financial available.

4 Q But these particular ones were not?

5 A These particular ones occurred in 1983.

6 MR. BLASZAK: I think that will do it until we
7 are ready to talk about your trackage rights statement.

8 Thank you.

9 JUDGE HOPKINS: The Department of Justice.

10 MR. HOPER: Mr. Batner informed me they would
11 not have any questions on this particular statement, but
12 would on the trackage rights.

13 JUDGE HOPKINS: What about Ms. Reed?

14 MS. REED: I have one question.

15 BY MS. REED:

16 Q I had asked a question of Mr. Gastler
17 regarding a contract that you had with the Southern
18 Pacific to switch cars into Aeri Industries' facility,
19 and he indicated that you might be able to tell me as to
20 the length of the contract that you have with the
21 Southern Pacific .

22 Do you know how many years that contract is
23 for?

24 A Yes. First, the contract with Southern
25 Pacific is a trackage rights agreement that provides for

1 the operation of MKT trains over SP trackage to Basin
2 Yard, which is a yard adjacent to Acri Industries'
3 elevator. thereby bypassing the need for Southern
4 Pacific to switch those cars through their hump yard at
5 Englewood.

6 That contract is on a train mile basis and it
7 has a 30-day cancellation clause.

8 Q Is it for any specified term as far as years?

9 A I think it was for just 30 days. It was no
10 specified term, as I recall it.

11 Q So MKT has trackage rights over the SP? Is
12 that my understanding?

13 A Yes, ma'am, for approximately nine miles, from
14 a point in Houston to the elevator.

15 MS. REED: Thank you.

16 JUDGE HOPKINS: Does RLEA have something.

17 MR. DELANEY: Just a few, Your Honor.

18 BY MR. DELANEY:

19 Q Mr. Todd, my name is John Delaney. I am with
20 the Railway Labor Executives Association. I just have a
21 few questions.

22 Mr. Todd, would you tell me generally how you
23 calculate employee costs?

24 A I beg your pardon, sir?

25 Q Can you tell me generally how you calculate

1 employee costs?

2 A How I calculate employee costs? You mean
3 costs per employee?

4 Q Well, how employee costs fit in the finances
5 of MKT. You'll have to bear with me. My throat is a
6 little raw and I apologize.

7 A Well, our labor cost, of course, includes the
8 actual wages paid. Also, as a part of employee costs
9 are health and welfare benefits and payroll taxes.

10 Q Do you perform any studies whereby you
11 correlate employee costs in with operating expenses?

12 A I'm not sure that I understand you, sir,
13 exactly what you need. Certainly, employee costs are a
14 part of operating expenses and are considered in
15 operating expenses.

16 Q Do you correlate them at all with the number
17 of trains or the number of carloads?

18 A Not necessarily with the number of carloads.
19 Certainly, a train and engine man are in direct
20 correlation with trains operated.

21 Q Is it generally true that the greater volume
22 of traffic MKT has will necessitate a greater volume of
23 employees or a greater number of employees?

24 A That is a general statement; yes.

25 Q And the opposite is also true, if you have

1 less traffic?

2 A Yes.

3 Q Now, you conclude in the verified statement
4 that reduced traffic and revenues on light density
5 branch lines cannot be fully offset by reduction in
6 service; is that correct?

7 A That is correct.

8 Q And it is true, is it not, that MKT's unit
9 costs on these lines are driven up and MKT's ability to
10 continue to provide competitive service to shippers on
11 these lines is reduced?

12 A Yes, sir.

13 Q And as a result of these increases in MKT's
14 unit costs and a decrease in MKT's ability to continue
15 to provide a competitive service to shippers on these
16 lines, MKT will have to make some changes in operations
17 on these lines; is that correct?

18 A There would have to be some offsetting, some
19 offset to the reduced volume and therefore the
20 diminished revenue. That is correct.

21 Q To what extent?

22 A To the extent that can be done -- well, first
23 of all, the extent it can be done without disturbing the
24 integrity of the service too greatly, and if that is not
25 sufficient, then you have a real problem of trying to

1 survive with the decline in service as well as reduced
2 volume.

3 Q Could I ask you to turn to page 1 of your
4 verified statement? There, in the first paragraph,
5 right in the middle, you state that there will be a
6 complete or partial loss of 20,288 carloads of traffic.
7 Is that correct?

8 A Yes, sir.

9 Q So that is one of the operating changes that
10 would be made as a result of --

11 A That is the traffic loss that our studies
12 concluded would be lost as a result of the merger.

13 Q Now, there were a total of 17 MKT/OKT
14 terminals with yard switching assignments that were
15 reviewed as they existed in 1983, to establish potential
16 switch engine and yard labor savings. Is that correct?

17 A Yes, sir. I believe that's correct.

18 Q 17? And you concluded that the merger of the
19 Santa Fe and the Southern Pacific would result in MKT
20 suffering complete or partial -- well, that's the same
21 thing.

22 Despite these reductions, you concluded that
23 MKT would not have to reduce work forces at any of these
24 yards.

25 A I don't believe I stated that, did I?

1 Q Could I ask you to turn to page 5 of your
2 verified statement, paragraph 2?

3 A Page 5?

4 Q Yes, page 5, paragraph 2.

5 A Yes.

6 Q Right around there in the middle of the
7 paragraph, it says, "We found."

8 A Paragraph 2 refers to mechanical employees.

9 Q Mechanical?

10 A Yes. Those people engaged in what we call the
11 mechanical work, such as car inspections, servicing
12 locomotives and that sort of thing. Car repair.

13 Q These are not yard people?

14 A They are not train service people that would
15 work on yard engines or clerical forces. No, sir. They
16 are people working as carmen, mechanical service
17 employees.

18 Q So when you say there will be no reduction in
19 forces, you are referring --

20 A To that specific craft or those two crafts.

21 Q And what about mechanical employees? Will
22 there be any reduction in work forces?

23 A I believe there would be no physical reduction
24 in number. There would be a reduction in overtime.

25 Q A reduction in overtime?

1 A Yes.

2 Q Before we get into that, can I ask you -- Mr.
3 Gastler testified on Monday morning that in 1982, MKT
4 had to cut back in employment because there were
5 reductions in profit margins and revenues as a result of
6 the recession in 1982. Would you agree with that?

7 A 1982 was a very tough year. Yes, sir.

8 Q It was a bad year. And because it was a bad
9 year, you had to cut back in forces?

10 A Because of the loss of traffic.

11 Q Just as you are losing traffic as a result of
12 this merger?

13 A Yes.

14 Q Yet, you will not have to cut back on the work
15 force in this instance?

16 A The forces that will not be cut back, as in
17 paragraph 2 here, applies only to those in the
18 mechanical department. Certainly, there will be a
19 reduction in train and service employees commensurate
20 with the less number of trains that we operate, and
21 there will be a reduction in yard service employees, as
22 I mentioned; that there would be an approximate
23 reduction of about 4 percent in yard engine employees.
24 That is, employees engaged in the physical switching of
25 the cars.

1 Q Perhaps I missed it, and I apologize if I did,
2 but I didn't see anywhere in your verified statement
3 where you discussed any reductions in work forces of
4 employees.

5 Can you tell me what you plan to do with the
6 work force?

7 A Well, so that we are on the same wavelength
8 here, what work force do you refer to?

9 Q What work force were you talking about in your
10 verified statement?

11 A Okay. In paragraph 2 that we have discussed
12 here on page 5, are those people engaged in the repair
13 of cars and the inspection of trains. And we have
14 stated that there would be no physical reduction in the
15 number of employees there.

16 The paragraph preceding that, we have said
17 there would be a 4 percent reduction in assignments,
18 yard engine assignments. Well, certainly, if there was a
19 reduction in yard engine assignments, there will have to
20 be a reduction in those who are employed in that craft.

21 Now, as our working agreements provide, they
22 may bump down, and I can't tell you exactly how many
23 people, what the numbers of people will be reduced or
24 furloughed, but there would be approximately 4 percent
25 from my statement, less people engaged in working on

1 yard engines than there were in 1983.

2 Q And this would be as a result of the
3 approximately 20,000 or so carloads?

4 A Yes. Now, there also would be a reduction in
5 those people operating trains with this 990-something
6 loss of trains.

7 Q Let's get into overtime. How much overtime
8 right now is the MKT presently paying in the areas you
9 studied?

10 A This study is 1982, you understand.

11 Q Right.

12 A I really would have to be making an assumption
13 to give you an overtime number. Probably yard engine
14 employees in the area of 5 percent. Train service
15 employees, as you probably are aware, their pay scale is
16 based on miles, and there are a lot of factors before
17 they enter into overtime, so it would be very difficult
18 for me to tell you how much overtime was being paid.

19 Mechanical service employees are paid overtime
20 in excess of eight hours, because they are on a normal
21 working day. I don't remember the percentage in 1983,
22 that that might have been.

23 Q And the operating people, their basic wage is
24 based upon the 100-mile wage scale?

25 A Train service employees.

1 Q Are those the operating people?

2 A They are part of the operating people; yes.

3 Q And how much or to what extent do you
4 anticipate the overtime reductions to be?

5 A I can't tell you that, sir, because there
6 might not be any overtime involved in the reduction on
7 these trains. In other words, let me give you an
8 example to try to help explain this.

9 I think we said over here in Appendix E, 141
10 trains saved between Kansas City and Parsons. That
11 mileage is 136 miles. They may only be four or five
12 hours making that run, but they are going to be paid for
13 1.36 days, but there would be no overtime involved in
14 it, just paid for the run.

15 So I'm sorry, but I can't come to a number for
16 you.

17 Q I think that's good enough. That's all I
18 have, Your Honor. Thank you.

19 JUDGE HOPKINS: Anything further, Mr. Roper?

20 MR. ROPEB: No, Your Honor.

21 JUDGE HOPKINS: You are excused, sir.

22 (Witness excused.)

23 MR. ROPEB: I move for the admission of Mr.
24 Todd's statement.

25 JUDGE HOPKINS: Any objection? It will be

1 received in evidence. Do we have another witness?

2 MS. MAHON: Yes, Your Honor. We are calling
3 Mr. Ziebarth.

4 Whereupon,

5 KARL R. ZIEBARTH

6 was called as a witness in the above-entitled matter
7 and, having first been duly sworn by the Administrative
8 Law Judge, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. MAHON:

11 Q Mr. Ziebarth, would you state your name,
12 business address, and position for the record, please?

13 A Yes. My name is Carl R. Ziebarth. My
14 business address is 701 Commerce Street, Dallas, Texas
15 75202, and I am Executive Vice President, Financial, for
16 the MKT Railroad.

17 Q Do you have before you your verified statement
18 in MKT-27?

19 A Yes, ma'am.

20 Q Do you have any changes to make to that
21 statement?

22 A Let me take a quick look.

23 (Pause.)

24 No, I have no changes to make.

25 Q Is that statement true and correct according

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1 to the best of your knowledge and belief?

2 A Yes, ma'am.

3 MS. MAHON: The witness is tendered for
4 cross-examination.

5 JUDGE HOPKINS: Who is going to cross?

6 MR. NELSON: I am going to cross. I would
7 like to cross on both statements.

8 JUDGE HOPKINS: Well, why don't we indicate,
9 then, the other one, too?

10 MS. MAHON: We have no objection to that
11 procedure.

12 BY MS. MAHON: (Resuming)

13 Q Do you have before you your statement in
14 MKT-21?

15 A Yes, ma'am.

16 Q Do you have any changes to make in that
17 statement?

18 A One minor update. On page 3, in the little
19 table there, we used a preliminary number for the MKT's
20 rate of return on an RRB basis in 1983 of 6 percent.
21 The actual figure was 8.18 percent. It's the last
22 number on the right-hand column on the table there at
23 the bottom of page 3.

24 Q With that update, is this statement true and
25 correct, to the best of your knowledge and belief?

1 A Yes, ma'am.

2 MS. WAHON: The witness is tendered for
3 cross-examination.

4 CROSS EXAMINATION

5 BY MR. NELSON:

6 Q Good morning, Mr. Ziebarth. We know each
7 other, don't we?

8 A Yes, sir. We have met before.

9 Q Is it fair to say, Mr. Ziebarth, that you
10 regard this proceeding as offering an opportunity to the
11 MKT to achieve benefits which would -- market extensions
12 which would offset to some extent the impact of prior
13 transactions such as the BT/Frisco merger or the Union
14 Pacific consolidation?

15 A I wouldn't characterize it that way. We are
16 going to be affected by -- to a very significant degree
17 by the traffic diversions that result from the
18 Santa Fe/SP merger and from the reduction in market
19 access of which that merger will entail.

20 We have chosen, as Mr. Gastler explained,
21 market extensions which will permit us to compete
22 realistically for traffic to offset the anticompetitive
23 effects of the merger.

24 Q Would you turn to page 1 of the market
25 extension statement that appears in MKT-21. At the

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1 bottom of that page, you say that part of the purpose of
2 your testimony is to estimate the probable benefits
3 which we hope will offset to some extent the effects of
4 the Santa Fe/Southern Pacific merger application and the
5 cumulative reduction in competitive opportunities you
6 claim occurred as a result of the BN/Frisco/MP/UP and
7 Southern Pacific acquisition of the Tucumcari line which
8 is what prompted me to ask my first question.

9 A Well, we were -- I think the record is rather
10 complete, that in the MP/UP case, we sought a market
11 extension to Corpus Christi, and the Commission felt
12 that that was not appropriate at the time because the
13 Southern Pacific was still an active friendly
14 connection.

15 And obviously, in this case, that opportunity
16 has been foreclosed, and so we must seek redress.

17 MS. MAHON: Excuse me. Can you speak up, Mr.
18 Ziebarth? The people over there can't hear you.

19 BY MS. MAHON: (Resuming)

20 Q So I should not take the word "and" in that
21 sentence too seriously? You are only talking about
22 Corpus Christi?

23 A Well, it's the total context of a reduction of
24 the competitive opportunities which we and which our
25 customers have. Competitive alternatives, I should

1 say.

2 Q Of course, in terms of gross revenues, your
3 market extensions, if all of them are granted, would
4 substantially more than offset your anticipated
5 diversion resulting from the Santa Fe/Southern Pacific
6 merger; isn't that correct?

7 A We have noted that the diversions are almost
8 certain. The gains are strictly if we can provide the
9 service and the rates that are necessary. The losses
10 are certain. The gains are what we hope to attain.

11 Q The gains are approximately \$28 million; is
12 that right?

13 A In that range, yes. Depending on which way
14 the trackage rights are authorized.

15 Q And that was a result of a traffic study which
16 your people performed?

17 A Yes.

18 Q And your losses are expected to be about \$19
19 million, I think?

20 A Twenty, I think.

21 Q That's close enough. So at least in terms of
22 gross revenue diversions, if we are to take your
23 estimate of grains seriously, it would more than offset
24 the impact of the Santa Fe/Southern Pacific merger,
25 would it not?

1 A That's what the traffic study shows.

2 Q Now, in your opposition statement, Mr.
3 Ziebarth, you project a net loss of \$6.2 million on a
4 \$19.3 million loss in gross revenues, I think.

5 A Yes.

6 Q And at page 6 of that opposition statement
7 which is in MKT-27, you indicate that the costs
8 associated with the diverted traffic amount to 69
9 percent of the gross revenues. Do you see that?

10 A Yes, sir.

11 Q Now, at the bottom of that page and continuing
12 over to page 7, you state that if there is to be a cost
13 benefit to the national transportation system from
14 shifting traffic from the Katy to the Santa Fe Southern
15 Pacific, when the Santa Fe Southern Pacific must handle
16 the traffic, the Katy traffic, at a cost equal to or
17 lower than the cost of handling it on the MKT.

18 Do you see that?

19 A Yes.

20 Q And you suggest there on page 7, that there
21 isn't any such benefit, because based upon Applicants'
22 traffic study and cost study, we anticipate incurring
23 costs equal to 70 percent of the gross revenues or 1
24 percent more than the Katy experiences handling it
25 today.

1 Does that fairly state your contention?

2 A Yes.

3 Q Do you have any reason to doubt the
4 reasonableness of the Katy cost estimate?

5 A No. We feel that the cost estimates that we
6 have made are valid and we have worked on, I think in
7 great detail -- Mr. Todd and Mr. Anderson will go into
8 that at greater length.

9 Q Do you accept, for purposes of your testimony
10 here today, the reasonableness of the Applicants'
11 costs?

12 A I have simply taken the numbers from your
13 testimony and using them solely for the purpose stated
14 here.

15 Q And utilized them in your testimony?

16 A I have utilized them in my testimony. I would
17 not want to prejudge certain questions that we have
18 about the Applicants' testimony.

19 Q Do you happen to know whether any such
20 questions were asked?

21 A No. And it is not, to me, a subject of great
22 concern. Your best estimate was what was stated.

23 Q Do you know offhand the cost revenue ratio
24 applicable to the \$28 million gain you plan to divert
25 with the proposed market extensions?

1 A I believe it's given in Mr. Anderson's
2 testimony. I don't have it in front of me.

3 Q Does 86 percent sound correct?

4 A It would not surprise me. We are looking at
5 approximately a 4 million, bottom line, contribution on
6 a 28 million gross. So that is in line with that.

7 JUDGE HOPKINS: I think you are still speaking
8 a little too quietly. You'd better speak up.

9 BY MR. NELSON: (Resuming)

10 Q That means you do anticipate consuming 86
11 percent of the gross revenues, the 28 million gross
12 revenue?

13 A Yes. There is nothing that says that the
14 traffic we gain will necessarily be as profitable as the
15 traffic we lose. Unfortunately, some of the traffic
16 that we are losing is relatively high-margin business.
17 That's just the way the numbers fall out.

18 Q The \$28 million that we are talking about, you
19 suggest, is low-profit traffic?

20 A Well, clearly, if our cost study shows that
21 the cost of handling it is something like -- you used
22 the figure of 86 percent -- then, clearly, the margins
23 are not the same as on the traffic that we are losing.

24 Q That, of course, explains, in your mind at
25 least, why you project a loss of \$6.2 million on a \$19

1 million loss, and yet only a \$4.2 million net gain on
2 \$28 million.

3 A Yes, sir. These numbers result from the
4 studies we have made. There is no independent judgment
5 on my part. This is simply the way the data falls.

6 Q According to your Mr. Hacker, the Katy would
7 add 33 new employees to handle the \$28 million worth of
8 traffic. You can accept that. It is in his testimony.

9 A If that's what he says.

10 Q Are you aware of the fact that your
11 application states that your market extension should
12 have no labor impact on the Applicants?

13 A I'm sorry. I am not involved in that part of
14 the testimony.

15 Q Assume with me that your application states
16 that with respect to each of your market extensions.
17 Does that suggest that this \$28 million of traffic which
18 was formerly handled by the Santa Fe Southern Pacific,
19 now handled by the Katy, is being handled with 33
20 additional employees in the national transportation
21 system?

22 A I'm sorry. I don't quite understand the
23 question.

24 MR. KHABASCH: Could we be off the record?

25 JUDGE HOPKINS: Yes.

1 (Discussion off the record.)

2 BY MR. NELSON: (Resuming)

3 Q What I am suggesting, if I may rephrase the
4 question, your application suggests that there will be
5 no impact on Santa Fe Southern Pacific work forces as a
6 result of the diversion of \$28 million worth of Santa Fe
7 Southern Pacific traffic.

8 And you anticipate adding 33 employees in
9 order to handle the traffic. Does that suggest that the
10 same traffic is now being handled with 33 additional
11 employees?

12 A I'm sorry; I have no way of making that
13 judgment.

14 Q Okay At page 4 of your market extension
15 statement, that is, MKT-21, you say that the decline in
16 consolidated net income on a depreciation basis, it
17 declined from nearly \$20 million in 1981 to only \$3.5
18 million in 1983.

19 And you say that obviously reflects the
20 recession but, more important, reflects the impact of
21 the prior transactions that we referred to on the Katy.
22 Do you see that?

23 A Yes.

24 Q Now, I frankly get a little confused in going
25 back and forth in your statements, because you sometimes

1 use depreciation accounting and sometimes use betterment
2 accounting. That's correct, isn't it?

3 A That is the parameters in which we have to
4 work.

5 Q If you turn to Appendix A in your market
6 extension statement, you will see the bottom right-hand
7 set of numbers is net income.

8 A Yes.

9 Q That's an RRB basis.

10 A RRB and MMT only. It does not include the
11 rest of the system.

12 Q It indicates, though, doesn't it, that between
13 1981 and 1983, instead of a decrease we have a modest
14 increase in net income from \$7.7 to \$7.8 million.

15 A On the MMT alone, that is correct.

16 Q And it is correct there was an increase in
17 that period of time on the MMT on a betterment
18 accounting basis?

19 A On betterment accounting, yes.

20 Q In your pro forma exhibits, Mr. Ziebarth,
21 which are constructed on a letterman accounting basis,
22 are they not?

23 A Yes.

24 Q They indicate a net income of approximately \$5
25 million as I recall.

1 A That's correct.

2 Q Now, does the difference between the \$5
3 million and the \$7.8 million reflect negative effect of
4 the OKT operation?

5 A Yes. The OKT on betterment accounting lost
6 money in 1983.

7 Q And that accounts for this?

8 A That's right. The basis on which we had to
9 work was the fourth quarter RE&I which was on a
10 consolidated basis.

11 Q Now, at page 3 of your market extension
12 statement, you have a footnote that says on the basis of
13 depreciation accounting, your 1983 performance was
14 little different from what it was under betterment
15 accounting. Do you see that?

16 A Yes.

17 Q And that, I take it, is the difference between
18 5 million and 3.5 million?

19 A Yes. But there's another factor in that the
20 GAAP figures also make an allowance for deferred tax
21 computations and for certain adjustments having to do
22 with differences between the ICC and GAAP system of
23 accounts.

24 So it isn't exactly one on one. But we were
25 thinking of it in a different context, that on a ratio

1 basis, gross profit margin, for example, there is only
2 about a point difference in the operating income in 1983
3 when you make the shift from RRB to depreciation.

4 Q Is it unusual for depreciation accounting to
5 have a downward impact on net income?

6 A It depends upon the relationship of the work
7 you are doing in a given year to the accumulated
8 depreciation charges that have been built up over a
9 number of years. And it varies month by month.

10 Q Now, in 1981, the difference between
11 depreciation accounting and betterment accounting was
12 rather substantial, was it not?

13 A Yes. We had very substantial program work in
14 1981 which was expensed under RRB, but which was
15 capitalized under depreciation accounting

16 Q And that was a difference of -- well, could we
17 -- do you have MKT-18? It has some of your annual
18 reports in it as exhibits.

19 A Yes.
20
21
22
23
24
25

1 Q If you look at page 11 of 28 pages -- and I
2 think it is the 1983 MKT Annual Report --

3 A Yes.

4 Q Page 11 has some income information that
5 reflects the \$19.6 million net income on a depreciation
6 accounting basis.

7 A Yes, that's correct.

8 Q If you go back to page 12 of 32 pages of your
9 1982 Annual Report, we will see that we have net income
10 stated there on a betterment accounting basis, is that
11 correct?

12 A That is correct, yes.

13 Q And that is \$8.2 million?

14 A That's right.

15 Q Now, looking at that same column, there is an
16 item entitled "Income from sale of tax benefits."

17 Do you see that?

18 A Yes, sir.

19 Q That is \$4.2 million.

20 Does that \$4.2 million flow directly down to
21 the bottom line?

22 A Yes, that was a cash sale under the provisions
23 of that very strange tax bill that was permitted, and
24 you will find that same figure on page 11 of the 1983
25 report.

1 Q There were no, in 1983, as opposed to the 1983
2 Report, there was no income generated from sale of tax
3 credits.

4 A No, there was none.

5 Q So if you wanted to compare on a betterment
6 accounting basis rather than a depreciation accounting
7 basis the performance of the MKT system between 1981 and
8 1983, if you took out the tax sale credit, you would
9 actually find an increase.

10 A It was a very small increase, yes, a couple of
11 hundred thousand dollars.

12 Q So on a betterment accounting basis, the
13 impact of the prior transactions doesn't seem to have
14 been so marked on net income.

15 A I don't quite follow the question.

16 Q On a betterment accounting basis, if you
17 disregard income from the sale of tax credits, which I
18 think one could properly do, your net income increased
19 between 1981 and 1983, did it not, modestly?

20 A Yes, but you are using the wrong measure of
21 the impact. I think Mr. Castler explained in some
22 detail that we had a very severe revenue impact from the
23 prior mergers, and we also had to face a recession. We
24 were able to hold our margins by reason of very sharp
25 reductions in program work.

1 Now, that on an RRB basis does tend to keep
2 the impact on net income down. When you look at it on a
3 depreciation basis, you find that the change in your
4 program work is not directly reflected in expenses, and
5 consequently, your net income is impacted much more
6 severely.

7 Q Now, with respect to the sale of tax credits,
8 does that income also flow directly to the bottom line
9 under the depreciation accounting as well as
10 betterment?

11 A Yes. Both systems treat that the same way.

12 Q You say at the outset of your opposition
13 statement, talking about the tax allocation agreement,
14 that it had the effect of somewhat overstating income
15 through 1981, and may have the effect of understating
16 income on the ICC basis of accounting in the current
17 year.

18 Do you see that?

19 A Yes.

20 Q The first question is what do you mean by the
21 ICC basis of accounting in that statement?

22 A All right, under your ICC accounts, you are
23 not obligated to make a deferred tax accrual. You are
24 under GAAP accounting, and you must understanding that
25 the tax allocation agreement is something over which we

1 have no control, and we find out after the fact that
2 because of the parent company's use of our tax
3 attributes, that we in some years have a credit and in
4 other years it goes against us. And that is one reason
5 that we frankly tend to look on things on a pretax basis
6 and do not perhaps place tremendous weight on the after
7 tax figures.

8 Q To what extent, if you know, was income
9 overstated in 1981 as a result of the tax allocation
10 agreement?

11 A I wouldn't say overstated. It was affected --
12 let me see. I am not sure that I have that in these
13 documents. The effect was greater in years prior to
14 '81. I would have to take a look and see here. You
15 see, the change in accounting has forced each year a
16 recalculation of the tax position. If you look at the
17 GAAP figures, you can see the line on page 11 of 28 in
18 the 1983 report.

19 Broadly speaking, the line that says current,
20 under provision for federal income taxes, are the
21 revised credit figures that are developed. On an RRB
22 basis, let's see here --

23 (Pause)

24 I have a footnote. If you look at page 29 of
25 32 of the 1982 annual report, the figures they gave at

1 the time for 1981 was a \$4.7 million credit and a \$2.5
2 million debit in 1982. The difficulty with the
3 discussion is that they -- each year it is recalculated,
4 and so I simply put this note in to remind you that that
5 is a figure over which we really don't have control.

6 Q What is the effect of the tax allocation
7 agreement on income as reported in 1983?

8 A In 1983 I think we set up a credit of
9 approximately \$700,000, including the effect of
10 recalculating prior years, \$715,000.

11 Q Was that an understatement or overstatement?

12 A That was a credit item.

13 Q Would you refer, please, Mr. Ziebarth, to your
14 Appendix B of your opposition statement?

15 A Yes.

16 Q That reflects your projection of the negative
17 impact of your losses resulting from our merger on net
18 working capital, is that correct?

19 A Yes.

20 Q Now, you state elsewhere in your testimony, do
21 you not, that the effect, revenue effect of prior
22 transactions will be about \$40 million in 1983 dollars.

23 A Approximately, yes.

24 Q Did those diversions occur?

25 A I believe that Mr. Dimmerman and Mr. Castler

1 both testified that we have suffered very substantial
2 diversions. We have also, of course, gained traffic as
3 a result of exercising the competitive rights that the
4 Commission gave us in the Missouri Pacific-Union Pacific
5 case and as a result of starting up the OKT.

6 Q Of course, the starting up of the OKT has had
7 a negative effect on your working capital position, has
8 it not?

9 A On a consolidated basis it does, yes.

10 Q Now, despite the very substantial diversions,
11 and despite the losses you have incurred with the
12 operation of the OKT, at least through 1983, you have
13 been able to improve your working capital position, have
14 you not?

15 A We had a decline in 1982, we had a gain in
16 1983.

17 Q Do you expect a gain in 1984?

18 A I think we will hold a small gain in 1984,
19 yes.

20 Q Is there any qualitative difference between
21 the diversions resulting from the prior transactions and
22 those from the Santa Fe-Southern Pacific which would
23 account for the difference between what actually
24 happened and your projections?

25 A I am not sure I understand the question.

1 Q Well, on diversions of \$40 million,
2 approximately in 1983 dollars, there has been no adverse
3 impact on your working capital in the years 1983 and
4 1984.

5 A I don't think that you could -- you are
6 drawing a conclusion with which I certainly would not
7 agree. Had we not suffered the terrible diversions that
8 we have had to bear, we would have had a substantial
9 gain in working capital, a substantial gain in cash, and
10 we would have been able to do considerably more track
11 work.

12 As it was, and I think we made this point very
13 clear on the record, we have had to really cut back our
14 operations and our maintenance work very, very severely
15 just to hang on. We ended 1983 with a negative cash
16 position, and actually, what I have to deal with is the
17 cash position. Working capital is a problem, but less
18 severe than just paying the bills day by day.

19 I am here to tell you, we were hurt, and we
20 were hurt bad.

21 Q You had a fairly substantial maintenance
22 program in 1983, didn't you?

23 A It was minimal. It was minimal. It was much
24 less than we wanted to or planned to do. It was what we
25 could afford to do.

1 Q Was it substantially less than your peak year
2 of 1981?

3 A Yes, it was.

4 Q How many millions?

5 A Oh, good Lord.

6 Q About \$7 million?

7 A It was I would think more than that.

8 Q It is reflected in Mr. Gastler's testimony.

9 A Yes, it was a substantial reduction, and of
10 course, in 1983 you are looking at the consolidated
11 figures which do include the OKT.

12 Q Do joint rates and routes offer a practical
13 way for a railroad to reach off-line markets?

14 A No longer. Since the Staggers Act as it has
15 been interpreted so far, we have not been able to reach
16 the traditional markets that we could. I believe that
17 Mr. Noser and Mr. Dinnerman gave many examples of the
18 kind of route closings on a blanket basis which have cut
19 off the competitive alternatives our customers used to
20 have.

21 Q So this statement on page 8 of your opposition
22 testimony isn't really correct where you say that there
23 are two ways, two practical ways for a railroad to reach
24 an off-line market. The first is by joint rates and
25 routes.

1 A That the joint rates and routes is always a
2 practical way to reach your markets. The difficulty is
3 that you have to have a willing connection. The very
4 essence of this case is the foreclosure of connections
5 which we have worked closely in the past, especially at
6 the Southern Pacific. Therefore, that is no longer
7 practical, and our only alternative is to go with
8 trackage rights direct to the customers or the relevant
9 gateways.

10 Q And it is fair to say that the essence of the
11 market extensions you seek here is based upon what you
12 regard as the foreclosure of access to off-line markets
13 through joint rates and routes?

14 A A merger has that precise effect. You are
15 trying to eliminate competition and you are seeking a
16 special antitrust privilege to permit you to do that.
17 Those are very significant effects we have to deal with,
18 and we are not afraid to take you on head on where we
19 can.

20 Q Are you familiar, Mr. Ziebarth, just in
21 conclusion here, with your application of computers,
22 data processing to your operations?

23 A I am responsible for the computer side of the
24 shop, yes. I am not familiar with the details. I am
25 not a computer person per se.

1 Q Does Katy participate in the data exchange
2 with the various AAR programs that are in existence?

3 A I couldn't tell you offhand. I am sure we
4 participate in some of them, but you would have to ask
5 me a specific question, and I would have to call the
6 people that are directly responsible.

7 Q Just a couple of questions, then, and if you
8 don't know, it is fine.

9 Have you automated your per diem record?

10 A Yes. We have our per diem accounts on the
11 machine.

12 Q How about demurrage?

13 A I would hesitate to say. I think you would
14 find that at some points we do and at some points we
15 still do it by hand.

16 Q You have a detailed car location system built
17 into your machine?

18 A It depends at the location, depends on the
19 location. We have access to car records that will show
20 the last movement, but they wouldn't necessarily show
21 the location of the car unless it is at a terminal that
22 has been computerized.

23 Q Do you know which terminals are computerized?

24 A No. I am not that deeply into it.

25 Q Can you locate cars standing at industries,

1 for example?

2 A Well, if I wanted to know about a particular
3 car, what I have to do is pull the movement record, and
4 then you just call the agent and find out if it is there
5 or not.

6 MR. NELSON: Thank you, Mr. Ziebarth. That is
7 all I have.

8 JUDGE HOPKINS: Ms. Mahon?

9 MS. MAHON: No redirect.

10 JUDGE HOPKINS: You are excused, sir.

11 Any objection to the receipt into evidence of
12 his testimony?

13 It will be received in evidence.

14 We will be in recess until 1:45.

15 (Whereupon, at 12:30 o'clock p.m., the hearing
16 in the above-entitled matter recessed, to reconvene at
17 1:45 o'clock p.m. this same day.)

AFTERNOON SESSION

(1:45 p.m.)

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

Whereupon,

WILLIAM E. ANDERSON

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PRIESING:

Q Mr. Anderson, would you state your full name and your business address?

A My name is William E. Anderson. My business address is 7641 Leesburg Pike, Falls Church, Virginia. I am a principal in the firm of Applied Economics.

Q Are you familiar with the statement that appears in Exhibit MKT-27?

A Yes, sir.

Q Do you have any corrections to that statement?

A I have one typographical error that ought to be corrected on page 19, please.

Q And what is that correction?

A In the third line down, the dollar figure of \$236 million should be \$231 million. The underlying work papers reflect that, but it might cause confusion

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1 otherwise.

2 Q With that correction, Mr. Anderson, is your
3 statement true and accurate to your knowledge and
4 belief?

5 A To the best of my knowledge and belief.

6 MR. PRIESING: The witness is available for
7 cross examination.

8 CROSS EXAMINATION

9 BY MR. MOATES: (Resuming)

10 Q Good afternoon, Mr. Anderson.

11 A Good afternoon, sir.

12 Q Sir, preliminarily, since there has been a lot
13 of interest and excitement generally in the hearing room
14 about the matter, could we look at SF-SP Counsel Exhibit
15 C-35 for identification, which is one of the study
16 movement sheets on the MKT opposition study that
17 reflects on its face a 100 percent diversion, and our
18 counsel's exhibit represents the tape that the MKT
19 provided Applicants with this movement on it.

20 A Yes, sir.

21 Q And a 183 percent factor.

22 Do you have the exhibit with you, sir?

23 A I do, sir.

24 Q Have you had an opportunity in the last 24
25 hours to investigate this matter?

1 A I have.

2 Q Could you provide an explanation for the
3 apparent discrepancy?

4 A Yes. The -- it is correct that it was taken
5 at 183 percent diversion. It is correct that on the
6 face of the document, Mr. Sheridan and Mr. Dimmerman
7 diverted it at 100 percent. The process was next to
8 make a transcription of the revenue divisions and things
9 like that for preparation for keying onto magnetic
10 tape. When that was done, an incorrect figure was
11 placed down, and then it got keyed and carried through,
12 and another piece of information other than the
13 percentage of diversion that was being keyed at the same
14 time was the page number, and if you will look on the
15 underlying document, you will see that is page 183.

16 Q Very good. I didn't see that.

17 A Well, and a recalculation of it at 100 percent
18 would represent an overstatement of \$37,113, which is
19 probably offset by the three movements that Mr.
20 Dimmerman and Mr. Sheridan say they should have diverted
21 if either higher or a higher percentage this morning.

22 Q At least.

23 A Perhaps. I have not made that calculation,
24 sir.

25 Q I thank you for the clarification.

1 All right, Mr. Anderson, I realize that your
2 statement and your participation in this case has ranged
3 over a variety of matters. They are summarized I think
4 in terms of categories on the bottom of the first page
5 of your statement. I think I probably have only a few
6 questions that relate chiefly to the development of the
7 sample, and then the diversion impact on the costs, as
8 you call it, or the way the costs were treated once the
9 diversion judgments had been made.

10 First, if you would turn to page 3 of your
11 statement --

12 A Yes, sir.

13 Q Were you involved in the pilot study that the
14 evaluators, Witnesses Sheridan and Dimmerman, testified
15 that they first conducted?

16 A Yes, to a certain degree.

17 Q I was going to ask you to very briefly
18 describe your involvement.

19 A Well, I was one of the three parties
20 responsible for the 22 pages of instructions concerning
21 the sampling, a part of which is the pilot. I developed
22 the form which was completed. I was responsible for the
23 field work, along with Mr. La Grone, with respect to the
24 drawing of the 30 random samples in each unit of each
25 strata, that constituted the pilot. There were at least

1 30 items in the strata.

2 Beyond that point, I had no participation.
3 The information that was extracted and appears on those
4 completed sheets in the work papers were done by Mr. La
5 Grone's staff. The decisionmaking, of course, was by
6 Mr. Dimmerman and Mr. Sheridan. The projection was made
7 by Dr. O'Dell.

8 Q Were you involved in any way in the
9 determination of potential revenue losses that were used
10 in Mr. Dimmerman's affidavit at the time of the holding
11 company merger in December of 1983?

12 If it helps your memory, I think the number we
13 mentioned yesterday was \$15.6 million losses, if you
14 remember, sir.

15 A Not to my knowledge, Mr. Woates.

16 Q Now, after the \$18.763 million loss estimate
17 from the pilot study, which appears at page 3 of your
18 statement, had been identified for Mr. Dimmerman and Mr.
19 Sheridan, were there any discussions in which either you
20 participated or which you were aware about possible
21 adjustments to the diversion assumptions for the final
22 study?

23 A Not in which I participated, sir.

24 Q Or any of which you might be aware?

25 A No.

1 Q Farther down on page 3, a technical point, if
2 I may.

3 You indicate about the middle of the
4 paragraph, since the final settled rate.

5 Do you see the sentence? It is the eighth
6 line down.

7 A Yes.

8 Q "Since the final settled rate is the only rate
9 from the original origin to final destination, only the
10 outbound entry was accepted as pertinent to provide that
11 such moves had only a single chance to get into the
12 sample. The dominant inbound tonnage movement and the
13 dominant outbound tonnage movement were used as
14 reflective of the entire haul."

15 Can you tell us again briefly just what that
16 means, what was the significance of that for the
17 sampling procedure?

18 A That both movements, both the inbound movement
19 and the outbound movement would appear in the file to be
20 sampled. Therefore, the statistician required a rule
21 that would handle the problem of duplication, that the
22 same item would have two chances rather than one to get
23 into the sample.

24 Q Does this mean that only outbound transit
25 movements were included in the sample?

1 A Yes, sir, and then they were restated
2 backwards, I mean, to the original origin. I mean, the
3 outbound movement is the only one which was sampled, and
4 then that movement was looked at in terms of dominant
5 inbound and dominant outbound.

6 Q Let me see if I understand that. In layman's
7 terms, it means that if because of this rule an outbound
8 transit movement were in fact selected in the sample
9 procedure as a record to be studied, does that mean that
10 then an attempt was made to match the inbound record,
11 too, and so that the evaluators would have the entire
12 documentation for that?

13 A As far as I know, all of the inbound and all
14 of the outbound movements were available to them,
15 available to them.

16 Q Maybe I am missing something.

17 I thought that the effect of this rule was to,
18 if you will, exclude inbound transit movements from the
19 sample.

20 A But then -- I'm sorry, I thought a predicate
21 in your question was that it was drawn into the sample.

22 Q No. I thought the idea here was that it was
23 excluded.

24 Am I wrong about that?

25 A No. An inbound movement would be excluded.

1 If there were an outbound movement and it were selected
2 in the sample, it would be taken.

3 Q My question was if the outbound movement which
4 did get in the sample --

5 A Yes, sir.

6 Q -- got selected as a record to be evaluated,
7 was there then an effort made to go back to find the
8 documentation for the related inbound movement so that
9 the evaluators would have all available documentation on
10 that movement?

11 A It had to be done in order that the dominant
12 inbound segment be established, Mr. Moates, as well as
13 the dominant outbound.

14 Q If the movement selected was not the dominant
15 inbound movement, what happened to those records?

16 A I'm sorry, that wasn't a part of the original
17 rule, sir. It didn't say that. That's a question of
18 the restatement.

19 An outbound movement is acceptable. It is
20 selected into the sample. It is then restated in terms
21 of its total move.

22 With respect to the inbound move to the
23 transit point, the dominant -- if there were three
24 inbound moves, the dominant tonnage one of that was the
25 one taken to represent the inbound portion into the

1 transit point, and then the dominant tonnage movement,
2 if there were multiple ones outbound, was taken to
3 represent that portion, and they were put together.

4 Q Okay. I think I understand. This was simply
5 a device to make, a way to sample transit.

6 A Yes, sir, and to avoid the duplication. It
7 was required by Dr. O'Dell, sir.

8 Q Okay.

9 On page 4, the top sentence on the page,
10 "Minor errors, e.g., the incorrect use of 'excess'
11 random numbers, the wrong identification of nonpertinent
12 records, etc., were found and corrected."

13 Again, I am just curious. Would you describe
14 to us how there was an incorrect utilization of
15 so-called excess random numbers?

16 A May I describe?

17 Q I think you had better.

18 A Describe the process.

19 When we get a set of random numbers from Dr.
20 O'Dell for the purpose, we get several thousand so that
21 there is no chance that we will run out of consistently
22 generated random numbers, and maybe I can best explain
23 it in terms of the pilot. You made a decision that you
24 are going to select just 30 observations instead of the
25 larger sample. You must take in the order that they

1 were randomly generated the first 30 items. However,
2 Mr. La Grone's staff, the MIS Department, prints out
3 approximately 60, and the reason for that is when you
4 are going through the first 30, you may find a
5 nonpertinent movement such as an inbound transit.
6 Therefore, if that is the 25th one you are looking for,
7 when you get through the 30th, you only have 29, but you
8 want 30. Therefore, you have to start taking numbers,
9 random numbers from the second set of 30 to be sure you
10 are in the consistent random number order to make up the
11 rest of the sample size you desire.

12 Q Those are the excess random numbers?

13 A Yes, sir. The process that they follow in
14 doing it is to number those second set of thirties one,
15 two, three, four and then take them in that order.

16 When we did our checking, Mr. La Grone and I,
17 we found instances where the clerks had not taken the
18 right one, and we corrected those.

19 Q Instead of number one, they took number four
20 or something?

21 A Yes, sir.

22 Q And how did you correct that, by putting
23 number one back?

24 A Yes, by reversing the error, by reversing the
25 error.

1 Q How often did that incorrect use of excess
2 random numbers occur, if you recall, once or twice, or
3 did it happen throughout?

4 A No. It happened about five times for the
5 total sample, sir.

6 Q All right.

7 Then could you explain briefly what
8 constituted an incorrect identification of a so-called
9 nonpertinent record? Why would you even be trying to
10 identify nonpertinent records?

11 A Well, if they identified a record as
12 nonpertinent and we threw it out, but the clerk's
13 decision was erroneous in so identifying it as such,
14 that really should have been in the sample.

15 What I am saying is let's take your example.
16 We say that inbound transit does not get selected. He
17 looked at an item, he classified it as inbound transit.
18 He called it not applicable, set it aside and took an
19 excess number. Well that is inappropriate because that
20 one -- his decision was incorrect that it was
21 nonpertinent, and the excess one has to be taken out and
22 the original one which was erroneously classified in
23 decisionmaking has to be put in.

24 Q Did you oversee this process that you
25 described of the clerks, for example, applying excess

1 random numbers and removing nonpertinent records? Were
2 you generally in charge of that?

3 A The first level of responsibility was Mr.
4 La Grone's in Dennison. My responsibility was to
5 oversee Mr. La Grone, and I did do so.

6 Q In that process, I take it, you testified you
7 did identify some instances where this occurred?

8 A Yes. But they are probably classified as
9 minor, sir.

10 Q Would you turn to page 8.

11 A Yes, sir.

12 Q In the third full sentence underneath the
13 figures in the middle of the page, you are talking here
14 about the differences in the loss figures. You say the
15 differences arise since the annualizing --

16 A Excuse me. I'm very sorry.

17 Oh, yes, sir, go ahead.

18 Q Reading the sentence, "The differences arise
19 since the annualizing here is made by each individual
20 record rather than by strata."

21 A Yes, sir.

22 Q Why were the differences annualized or
23 expanded by individual record rather than by strata?
24 Who made that decision and why was it done that way?

25 A I made the decision and was responsible for

1 the establishment of it being annualized individually,
2 record by record, so that when you want to get an answer
3 for a certain subset of all the records which may cross
4 several strata, information, you can put them together
5 like that.

6 Dr. O'Dell's purpose, which was the projection
7 of the standard error, his methodology is to make that
8 projection by strata.

9 Q Do you know whether annualizing these results
10 by strata results in -- let me start over.

11 Do you know whether if you annualized by
12 strata rather than by individual record, whether the
13 results of your study are any different or are
14 materially different?

15 Did you make that comparison?

16 A I did not make such a calculation, sir.

17 Q Did you consult with Dr. O'Dell about your
18 decision to annualize by individual record?

19 A Yes.

20 Q On page 11, about eight lines from the top,
21 you have a sentence that says "The third group consists
22 of MOW, Maintenance of Way Accounts 212, 216, 218 and
23 220, where 90 percent of the monies associated with two
24 rehabilitation projects really represented deferred and
25 not routine maintenance."

1 A Yes, sir.

2 Q Do you know how much deferred maintenance the
3 NKT and the OKT have on their lines today?

4 A I do not, sir.

5 Q But you were at least able to determine thate
6 there is some, I take it, from that statement.

7 A Yes.

8 MR. MOATES: Would that be an appropriate area
9 to address Mr. Todd?

10 MR. KHARASCH: May we be off the record?

11 JUDGE HOPKINS: We can go off the record.

12 (Discussion off the record.)

13 BY MR. MOATES: (Resuming)

14 Q Just one or two other questions, Mr.
15 Anderson.

16 If you look at your Appendix F, please --

17 A Yes, sir.

18 Q This is a summary of the revenue changes by
19 railroad from the opposition diversion study, correct?

20 A Yes.

21 Q I note that there are separate entries here
22 for SFSE, the merged company, presumably, for SP and for
23 SSW Cottonbelt.

24 Do you see that?

25 A I do.

1 Q And then if you will look at the next
2 appendix, Appendix C, the OKT summary -- and I guess I
3 didn't say, and I should for the record, Appendix F is
4 the MKT Railroad. Appendix G is the OKT Railroad
5 revenue change summary. There is just an entry for
6 SFSP, no comparable entry for SF and SSW.

7 A Yes, sir.

8 Q Why is that?

9 A It is basically because the number of
10 diversions relatively in the two samples, Mr. Yoates.
11 There was an attempt to assign all gain to the SFSP
12 because there are, I think, something like 60 diversions
13 in the OKT, but 500 and some odd, as I remember, in the
14 MKT sample. There were instances where on certain
15 records the assignment was not made to the SFSP but
16 rather to the individual road.

17 Q So the little over \$200,000 of revenue shown
18 on Appendix F attributable to the SF and SSW, is that
19 additive to the \$20 million plus shown for --

20 A I believe so.

21 May I check that?
22
23
24
25

1 Q Surv.

2 (Pause.)

3 A I'm sorry. The answer is yes, it is
4 additive. It is not in any way duplicative, if that is
5 implicit in the question.

6 Q That's all I wanted to know.

7 All right. Now, Mr. Anderson, excuse me if
8 these questions sound simplistic, but they are
9 simplistic lawyers' foundation questions.

10 Each record in the opposition diversion study
11 that the evaluators studied had revenue associated with
12 it, correct?

13 A Yes, sir.

14 Q Revenue would be displayed, I believe, by each
15 participating carrier.

16 A Yes, sir.

17 Q And when the diversion evaluators made a
18 decision to divert a car or short haul a car, they
19 inserted new routing before the diversion route, right?

20 A Yes.

21 Q And that required some other person, persons,
22 being, I guess, you and Mr. LaGrone, to determine how
23 the revenue that had been applied to the car as a first
24 move would be allocated among the railroads
25 participating over the new route after the diversion.

1 A Divisions had to be made over the new route.

2 Q Now, each record, as I say, would have some
3 revenue associated with it. Was there an attempt made
4 in the design and drawing of the sample to consider the
5 amount of revenue per record in the stratification
6 process?

7 A No, sir.

8 Q There was no stratification done by revenue?

9 A That's correct.

10 Q Was that possibility discussed with Dr.
11 O'Dell, to your knowledge?

12 A It was discussed with Dr. O'Dell back in the
13 BN merger when he decided on his initial approach.
14 Since that time, or at the start of this case, for
15 example, to my knowledge it was not rediscussed.

16 Q From your knowledge as one responsible for
17 sample design and as an expert witness yourself, would
18 you anticipate that the amount of revenue per record in
19 the study -- the amount of revenue per car I guess would
20 be another way to say it -- would be bunched in a
21 particular numerical area? In other words, would you
22 anticipate that there would be a fair distribution
23 across the revenue spectrum on these records, or would
24 you anticipate that there might be a large number of
25 records with relatively low revenues?

1 A I'm very sorry, Mr. Moates.

2 Q I'm probably not asking this artfully. Let me
3 try it again. A record -- with the exception of TOFC
4 trailers -- which if you want to explain you can, but I
5 think we understand it -- but with the exception of
6 that, a record represents a car in the study, isn't that
7 right?

8 A Yes, sir.

9 Q And the car or the record has revenue
10 associated with it. Some shipper or some consignee paid
11 money to move that car to the railroads.

12 A Yes.

13 Q Those monies -- obviously each movement --

14 A By the commodity, the length of haul, and many
15 other factors, I would assume, yes.

16 Q All right. Given the fact that there are many
17 factors and many different movements, wouldn't you
18 anticipate that the revenue associated with the records
19 would -- and I may not be using the right term of art --
20 but would it be spread across or allocated across or be
21 varied in some manner across some kind of a spectrum
22 starting at zero?

23 A You're talking about near magnitude, high to
24 low?

25 Q Yes.

1 A Yes.

2 MR. MOATES: Can we have a counsel exhibit
3 marked, Your Honor? I think it would be SFSP Counsel's
4 Exhibit C-49, a one-page document.

5 JUDGE HOPKINS: That would be marked for
6 identification.

7 (The document referred to was
8 marked Exhibit No. SFSP-C-49
9 for identification.)

10 BY MR. MOATES: (Resuming)

11 Q Now, Mr. Anderson, the counsel's exhibit I
12 handed you is a summary of the 631 diversions in the MKT
13 opposition traffic diversion study by revenue impact per
14 record, and we have broken them into just three
15 categories, as you can see. Category 1 are records,
16 revenue of \$5,000 or more; category 2 is records with
17 revenue between \$2,500 and \$4,999; and category number 3
18 is records with revenue from \$1 to \$2,499.

19 Assuming these figures are correct -- and I'm
20 willing to have you accept them subject to your checking
21 -- does it, in light of your answer to my earlier
22 question, doesn't it strike you as unusual or surprising
23 in the extreme that 97 percent of the records in the
24 study were in the category of \$5,000 or more?

25 A No.

1 Q Why not?

2 A Well, to start with, when you were laying
3 so-called, I gather, foundation questions, I thought you
4 were talking about revenue per car, and you have now
5 translated this into MKT revenue impact, which brings in
6 the decisionmaking, which is a selective process which
7 brings in the percentages which vary, which is a
8 selective process. So I no longer think that you have
9 what I would consider a testable sample in that regard.

10 Q I see. So that if the diversion percentages
11 applied to the MKT's portion of the revenue were --

12 A Well, some are 75, some are 25, some of them
13 are 100, are they not?

14 Q Yes, they are. Doesn't this exhibit indicate
15 that those diversion percentages are rather highly
16 weighted toward the upper end of the spectrum?

17 A I cannot conclude that from this document.

18 MR. NOTES: Thank you, Mr. Anderson.

19 No further questions.

20 JUDGE HOPKINS: Mr. Priesing.

21 (Discussion off the record.)

22 MR. PRIESING: No redirect.

23 JUDGE HOPKINS: You are excused.

24 (The witness was excused.)

25 MR. PRIESING: We move the admission of Mr.

1 Anderson's verified statement.

2 JUDGE HOPKINS: Any objection?

3 MR. MOATES: No.

4 JUDGE HOPKINS: It will be received in
5 evidence.

6 MR. MOATES: We move SFSP-C-49.

7 JUDGE HOPKINS: Any objection on that?

8 MR. PRIESING: That will be received in
9 evidence.

10 (The document previously
11 marked Exhibit No. SFSP-C-49
12 for identification was
13 received in evidence.)

14 JUDGE HOPKINS: Would you call the next
15 witness?

16 MR. GREENBERG: Mr. Dimmerman.
17 Whereupon,

18 HARRY T. DIMMERMAN
19 was recalled to the stand and, having been previously
20 duly sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. GREENBERG:

23 Q Mr. Dimmerman, you have previously been sworn
24 in this proceeding?

25 A Yes, sir.

1 Q You are all alone this time. You have
2 returned to the stand. You are the same Harry T.
3 Dimmerman who submitted a verified statement in MKT No.
4 20?

5 A Yes, sir.

6 Q Do you have any changes you would like to make
7 to that verified statement?

8 A A couple of very small ones. On page 23, the
9 second line following the word "rail" add "or truck,
10 "covering a rail or truck movement."

11 On page 32, the last complete paragraph, about
12 the seventh line, the sentence beginning "The SP's
13 schematic diagram of its track is attached as Attachment
14 1 to the statement" should be deleted.

15 Q With those changes is your testimony true and
16 correct to the best of your knowledge and belief?

17 A Yes, sir.

18 MR. GREENBERG: With that, I tender the
19 witness.

20 JUDGE HOPKINS: Who is going to cross examine?

21 MR. SMITH: I am.

22 CROSS EXAMINATION

23 BY MR. SMITH:

24 Q Good afternoon again, Mr. Dimmerman. How are
25 you?

1 A Good afternoon, Mr. Smith. Very good.

2 Q Okay. When I use the term SP, I will be again
3 referring to including SPT, SSW and so on, the
4 subsidiaries, and the same thing about MKT. I will
5 include OKT in that unless I say otherwise.

6 A I understand.

7 Q Would you agree or disagree, sir, that the ICC
8 in ruling on this merger should only impose the minimum
9 conditions necessary to preserve competition?

10 A Competition is such an all-encompassing word.
11 Minimum conditions are so restrictive. I am really
12 concerned only about our geographic region. I'm not
13 really concerned about the California part where
14 competition is being restricted because we are not there
15 and we don't intend to go there. I would have to say
16 that minimum might be too restrictive a word.

17 Q Well, let's limit the question to the area of
18 impact that this merger you feel will have on the MKT.
19 Do you think that in that context the ICC should do more
20 than the minimum necessary to preserve competition on
21 ruling on this merger and any conditions?

22 A Well, I think it goes to the depth of the
23 individual shipper. I can remember when people would
24 talk about service, and they would talk about what is
25 perishable, and perishable is normally considered

1 something that will spoil. But on the other hand, if a
2 car of coal shipped in December arrives in July, it
3 might just as well be spoiled.

4 So I think that when you are talking about
5 minimum, I would hope that they would look to the
6 shippers in a region and make sure that they have
7 service and competition in order that they may compete
8 for their -- the sale of their product like we would be
9 able to compete for our service.

10 Q So do you believe that the Commission, for
11 example, should look to the shippers and give them, as a
12 result of conditions to this merger, more competition
13 than they would otherwise have without any conditions?

14 A Well, I would think that they will see that
15 they have a competitive service, a meaningful
16 competitive service. I mean, for example, saying that a
17 grain shipper has a truck available to haul grain from
18 western Kansas is really not competition. For most of
19 the chemical areas, the chemical commodities in the
20 Bayport area, as I believe one or more of our shipper
21 witnesses mentioned, truck competition is really not
22 competitive. They have to have rail service.

23 So I think that when you look at that angle
24 there, that just the word competition has to be
25 qualified.

1 Q In your opinion are the trackage rights
2 requests and other conditions requested by the MKT in
3 this case designed to do more than just alleviate what
4 you say are the anticompetitive effects of the merger?
5 Do they do more than that?

6 A If they are, it was not our intent.

7 Q Mr. Castler, I believe, testified that the
8 conditions that MKT is seeking -- and I'm looking at his
9 verified statement on page 40 in MKT-20 -- that the
10 conditions were carefully tailored and limited to
11 application to lines where MKT service was absolutely
12 required to provide competitive regional rail service.

13 Do you agree with him that your conditions
14 were carefully tailored and limited?

15 A Yes, sir.

16 Q He also refers on that page to a series of --
17 well, let me back up. Let me ask you when, in your
18 opinion, was the final decision made as to what
19 conditions MKT would seek as a result of this merger?
20 When was that decision made.

21 A You mean when did we establish what trackage
22 rights we were going to --

23 Q Yes.

24 A Well, we bantered it around, and we went over
25 several subjects. And I just can't remember the exact

1 date. If I had my other calendar, I would probably do
2 better. But I started out with '85, and I have a new
3 bunch of dates on here where I have to be, and I just
4 don't remember the exact date.

5 Q The application, if I am right, was filed
6 March 23, 1984. Do you think that MKT had reached a
7 decision before that time?

8 A I can't give you an honest answer to that.

9 Q Is it your view that the Commission ought to
10 be concerned -- let me strike that.

11 Is it your view that when MKT selected the
12 trackage rights that they were going to ask for and the
13 conditions that they were going to seek, that it's the
14 interest of the customers that should determine and that
15 did determine what was appropriate and not what MKT's
16 own interest might be?

17 A You know, I would like to think that they
18 would consider us, but I know that their directives are
19 to look for the competitive aspect and protection of the
20 shipping public.

21 Q My question, though, was -- let me establish a
22 foundation here. Were you involved in the group of
23 officers that Mr. Gastler mentioned as being ones
24 involved in deciding what trackage rights the MKT would
25 seek?

1 A Yes, sir.

2 Q Did that group of officers, when they sat down
3 and decided or tried to decide what conditions to seek,
4 did that group consider the interest of the customer as
5 being the real driving force, or were you looking
6 primarily at what would be best for the MKT?

7 A Oh, I'm sure that some looked at it one way,
8 and there are some that probably looked at it as a wish
9 list. I know that what I did is I directed, I believe,
10 through Mr. Sheridan who is my administrative officer,
11 to my top people and asked them what they thought would
12 be the better areas that we should be seeking in
13 trackage rights. I don't remember whether we laid out
14 any restrictions either way. And I know Mr. Steiniger
15 did the same thing, Mr. Todd did the same thing. And
16 then we met after that and, you know, kind of boiled it
17 down, you might say.

18 Q Who were the officers that Mr. Gastler
19 mentioned that were involved in making this decision as
20 to what trackage rights or other conditions you would
21 seek besides yourself?

22 A Well, his vice presidents. I don't know if he
23 had them all in there, but I know Mr. Ziebarth was in
24 there, and I was in there, and Mr. Steiniger and Mr.
25 Todd, possibly Mr. Brant.

1 Q I'd like to show you a document right now,
2 number 50, I believe it is, SFSP-C-50, a series of
3 documents. Actually, there's about 35 pages. These
4 were produced to us as part of the work papers by your
5 counsel.

6 JUDGE HOPKINS: It will be marked for
7 identification as SFSP-C-50.

8 (The document referred to was
9 marked Exhibit No. SFSP-C-50
10 for identification.)

11 BY MR. SMITH: (Resuming)

12 Q You can take a minute to look at this. We did
13 give this to your counsel over this last weekend as
14 something we would be introducing and talking to you
15 about. For identification, the first document in this
16 group is a memorandum to H.L. Castler from T.R.
17 Steiniger, dated February 17, 1984.

18 A February 17th?

19 Q Yes. That's the top one. And I'm just going
20 to go through these documents and ask you some questions
21 about them. I think that these relate to the selection
22 process that we've been talking about, how MKT arrived
23 at the decision as to what trackage rights or other
24 conditions MKT would seek.

25 Now, this first document is a letter from Mr.

1 Steiniger, and I believe you said he was the vice
2 president-marketing?

3 A Yes, sir.

4 Q And it lists or appears to list priorities for
5 trackage rights in the SP or Santa Fe-S. merger; and I
6 will just ask you about some of these. Item number 1,
7 of course, that is one that you ultimately did ask for,
8 correct?

9 A Yes, sir.

10 Q Item 2, Herington to Topeka, including
11 McFarland, also including interchange with DRGN at
12 Herington. That is not the way the final request
13 finally came out, is it, in your application? You're
14 asking for trackage rights, I believe, all the way from
15 Topeka to Liberal; is that correct?

16 A That's true.

17 Q Do you have any idea why that was expanded,
18 why the request was expanded to go all the way to
19 Liberal?

20 A If you'll notice, Mr. Steiniger also has as
21 item 3 Peabody to Hutchinson. Hutchinson is, of course,
22 on the same line as Herington-Topeka. To continue on,
23 you would go from Herington to Hutchinson.
24 Operatingwise, I believe Mr. Todd thought it would be
25 easier to go from Hutchinson to Herington to Topeka

1 rather than have that break in the thing and come down
2 from Hutchinson via the Santa Fe down to the OKT main
3 line. But you would have to ask him about that.

4 As far as going out to Liberal, as far as
5 going out to Liberal, we felt that in order for the
6 MKT-OKT to fairly compete for the traffic that we had to
7 go out to Liberal and provide a gathering area just as
8 the SP has done. We felt that for us to just go into
9 Hutchinson, we would probably not really be maintaining
10 the competitive area in the area by just going into
11 Hutchinson, because we would be doing nothing for the
12 farmers along the Liberal line and the elevators in the
13 same area, if that makes sense to you.

14 Q Do you have any idea why going all the way to
15 Liberal was not on the original recommendation or on
16 this February 17 recommendation of Mr. Steiniger?

17 A Well, I don't know if Mr. Steiniger considered
18 that. I just don't know. This was his list. Possibly
19 some of his people suggested it, and some didn't. But
20 this is what his list boiled down to.

21 Q Look at item 6 on that same page, Abilene,
22 Kansas to Superior, Nebraska and so on. That's not
23 included in what you are seeking now, is it?

24 A No, sir.

25 Q Do you know why this was included originally

1 and why it was not included in your final request?

2 A Well, we didn't feel that -- when you go from
3 Abilene up to Superior, you're going up into the
4 northern part of Kansas, and there is competition up
5 there. Your Missouri Pacific is coming across there; yo
6 know, the MoP-UP is coming across there, where there is
7 not so in southwestern Kansas.

8 The competitive aspect still remains in the
9 Superior area where it doesn't in the Liberal area.

10 Q Do you know why Mr. Steiniger wanted to go up
11 there on item 6, Abilene to Superior, why he recommended
12 it?

13 A Oh, I'm sure he thought that there was, you
14 know, some basis for business up there.

15 Q Something the Katy could gain, traffic that
16 Katy could gain?

17 A Possibly, possibly.

18 Q How about item 7, Kansas City to Chicago?
19 That's obviously not something you are seeking in this
20 case. Do you know why that was rejected?

21

22

23

24

25

1 A It extends beyond our normal geographic area,
2 and there is adequate competition in that corridor.
3 Actually, at the time this was being done, the Milwaukee
4 was still alive. The C&NW is in that corridor. The
5 Missouri Pacific is in that corridor. The Santa Fe is
6 in that corridor. The ICG is in that corridor, and the
7 NEW to a certain extent.

8 Q But apparently Mr. Steiniger thought that
9 there was enough business there that the Katy might like
10 to get in on that if it could, so he recommended it. Is
11 that a fair --

12 A It was his seventh choice, yes, sir.

13 Q Number 8 is Chanute to Wichita or Wellington.
14 Is that something you are seeking now?

15 A I don't know why he chose that.

16 Q Is there any business that could be gained by
17 the Katy? Could that be why he was seeking it?

18 A Possibly.

19 Q How about item 9, trackage rights to Los
20 Angeles and San Francisco, possible pooling
21 arrangement? Did you decide to leave that to the bigger
22 ones?

23 A No. We didn't make any decision like that.
24 Like I told you, we tend to stay within our geographic
25 area, and so that we cannot only provide competition but

1 provide a service. The Texan you had on the stand
2 before me, Todd, he can get awfully mean, and I don't
3 think he would handle it very well if I suggested he go
4 to Los Angeles.

5 Q So you're saying basically the reason that Mr.
6 Steiniger's recommendation that trackage rights to Los
7 Angeles and San Francisco, his recommendation was
8 rejected you think because of operating difficulties
9 that it would have created?

10 MR. GREENBERG: Your Honor, excuse me.

11 THE WITNESS: I don't know why Mr. Steiniger --

12 JUDGE HOPKINS: That takes care of that.

13 MR. GREENBERG: Your Honor, I would like to
14 point out it is not clear to me or clear to this record
15 or I'd like to make it at least clear for this record
16 that there is nothing in here to indicate this is Mr.
17 Steiniger's recommendation. It is stated that this is a
18 priority. It's a listing of trackage rights. I don't
19 know exactly --

20 JUDGE HOPKINS: However you want to call it,
21 it is his list of priorities.

22 MR. GREENBERG: It is not clear to me that it
23 is a recommendation.

24 JUDGE HOPKINS: It's a question of semantics,
25 and we can interpret it.

1 BY MR. SMITH: (Resuming)

2 Q Mr. Dimmerman, Mr. Steiniger was on this
3 committee that Mr. Gastler had to make recommendations
4 on what trackage rights ought to be sought, wasn't he?

5 A This was not the committee's decision.

6 Q I agree. This is Mr. Steiniger's priorities
7 or his department's priorities, correct?

8 A Right.

9 Q But do you believe that this particular letter
10 was written as part of the process by which the decision
11 was made as to what trackage rights would be sought by
12 the MKT?

13 A Well, it's part of the file. It's Mr.
14 Steiniger's idea.

15 Q How about Dallas to Shreveport, the last
16 item? Do you seek trackage rights there in this
17 proceeding?

18 A No, sir.

19 Q Do you know why Mr. Steiniger listed it as a
20 priority?

21 A Excuse me. I would say that -- I don't know.
22 I don't know why he would put it in there other than
23 that it goes into the southeast, and we do not reach
24 there.

25 Q So it would have given you new markets to

1 serve, new traffic?

2 A (Nods in the affirmative.)

3 Q Do you know why it was rejected, why it was
4 decided not to seek that right?

5 A There's enough competition in the area. There
6 is no direct loss of competition. The SP goes from
7 Dallas to Shreveport. The Santa Fe does not. Nothing
8 has really been changed in the area as far as lessening
9 of competition, I would say.

10 Q Okay. The second page of this is a letter
11 from Mr. Todd. He is the same Mr. Todd who is the Vice
12 President of Operations, is that right?

13 A Yes, sir. He was the man who was just on the
14 stand.

15 Q And you received a copy of his letter of
16 February the 13th as shown. Is it fair to say that this
17 was Mr. Todd's -- I don't know -- do you think this was
18 Mr. Todd's recommendation to Mr. Gastler as to what
19 trackage rights ought to be sought?

20 A I say this is a recommendation from Mr. Todd's
21 department. I'm sure he did this just like I did. He
22 talked to his general manager and superintendents and
23 arrived at these decisions.

24 Q Of course, the next page, Mr. Todd's February
25 10, 1984 letter to Mr. Gastler, appears to be related to

1 the earlier letter -- the later letter of February 13.

2 A Which one are you looking at, the 10th or the
3 13th?

4 Q The 10th. I just wanted to note that that was
5 also from Mr. Todd having to do with an inspection of
6 the Santa Fe line from Wichita to Hutchinson via Kingman
7 and Hutchinson to Peabody.

8 Do you know why Mr. Todd was inspecting that
9 line?

10 A Yes, sir. I was with him.

11 Q Okay. Do you know why it was done, why the
12 inspection was done?

13 A We wanted to look at the line to see what the
14 area was like, to look at the business aspect, look at
15 the trackage.

16 Q When you say the business aspect, can you
17 describe what you mean? Do you mean the traffic
18 potential for EKT?

19 A We wanted to know just what was there, yes.

20 Q This next page, a letter to J.M. Sheridan from
21 R.L. Teague, dated February 8.

22 A Yes, sir.

23 Q Who is Mr. Teague, T-e-a-g-u-e?

24 A Mr. Teague works for me. He is my general
25 manager of sales for the eastern half of the country.

1 Q And this is Mr. Teague's -- do you know why
2 Mr. Teague went out and listed elevators and their
3 capacity on the Herington to Topeka line? Did you ask
4 him to?

5 A Either I did or Mr. Sheridan did.

6 Q What was the purpose of that, do you know?

7 A Well, you know, there are several reasons.
8 One is how we would fit into that pattern. We go up
9 into Kansas, but we do not go over this section here,
10 and talk to the shippers. He did some of that. You
11 know, did they need us up there, did they want us up
12 there. He received some affirmative answers. He found
13 out just exactly what the bushel capacity was on these
14 elevators or what we would be doing up there if there
15 was no business. Naturally, you wouldn't have to worry
16 about competition.

17 Q The next page of this is a letter to Mr.
18 Gastler from you dated February 8th, and it does use the
19 word "Traffic Department recommendations," and it
20 attaches survey results by Traffic Department. Do you
21 recall this letter?

22 A Yes, sir.

23 Q It refers to a survey that was conducted to
24 determine ten trackage rights in order of preference
25 that we desire in this case. Can you tell me -- the

1 first one is Elking. Who is Mr. Elking, the first
2 participant?

3 A He is my assistant vice president.

4 Q Mr. Sheridan you know. Is that the same Mr.
5 Sheridan who has testified here?

6 A Yes, it is.

7 Q Who is Mr. Bartula?

8 A He is my staff assistant.

9 Q Mr. Teague is the same gentleman we just
10 talked about, right?

11 A That's right.

12 Q Who is Mr. Cypher?

13 A Mr. Cypher is my general manager of intermodal.

14 Q Are these five gentlemen that you list in your
15 February 8th letter -- why were they selected as
16 participants in this study?

17 A Because with the exception of Bartula, they
18 are the most knowledgeable as to the customers, the
19 area, and Bartula has his own expertise.

20 Q Okay. And tell me a little bit about this
21 survey which you apparently decided that you would ask
22 these gentlemen to rank in preference order their
23 priority or what they felt MKT ought to be seeking. Is
24 that an accurate description of what you told them to do?

25 A It's fair.

1 Q And is the attachment to your February 8th
2 letter to Mr. Gastler, "Survey Results by Traffic
3 Department," is that the correct copy of that?

4 A Yes, sir.

5 Q And this was your recommendation, your
6 department's recommendation?

7 A This letter, my department's recommendation?
8 Yes, sir.

9 Q And I notice in item number 2 in the survey
10 results Hutchinson, Kansas. That does not include the
11 line to Liberal, does it, all the way down to Liberal?

12 A No, sir.

13 Q Can you tell me why that didn't include that
14 in your recommendation?

15 A Well, the discussions that were held
16 subsequent after this here with shippers out in that
17 area, we had the town of Liberal, Kansas -- I had a
18 meeting, invited several of our people out there, and
19 after this was done, we realized that by going to
20 Hutchinson, we really weren't being a competitive factor
21 as far as the MKT Railroad was.

22 At Hutchinson, Kansas the picture hadn't
23 changed too much because of the fact that the Missouri
24 Pacific was still in there, and the Santa Fe-SP was in
25 there. But as you went further west on the line, it was

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1 southwest Kansas that was being deprived of the
2 competition. And so we thought that rather than just
3 going to Hutchinson, which would probably have been --
4 well, not probably -- it would have been much easier for
5 Mr. Todd to operate -- we felt that it was the thing to
6 do, to go out to Liberal.

7 I talked to various people in the grain trade
8 besides the actual shippers on the line, and they agreed
9 that if we wanted to be a competitive railroad in the
10 Kansas area, we should extend our trackage rights
11 request to go out as far as Liberal. One even suggested
12 going beyond that.

13 Q But the reason, I take it, or may I take it
14 that the reason you did not include the trackage rights
15 to Liberal in your original recommendation was that
16 there wasn't enough business out there to justify it?

17 A No, sir, that wasn't it at all. It's just
18 that it never occurred to us that we should be going
19 that far. We tried to stay more within our own
20 geographic area. As I remember, Liberal is around 160
21 to 75 miles southwest of Hutchinson, and we just didn't
22 think to extend our rights that far.

23 It was a consequent request from the shippers
24 in the area and the major grain shippers who had
25 elevators on the Liberal line that felt that we would be

1 a much more competitive aspect if we requested our
2 rights to be extended out as far as Liberal. It was not
3 our original thought; you are right.

4 Q Let's take the next page, and we are getting
5 earlier in time. And this is January 31, 1984, a letter
6 from Mr. Sheridan to the other four participants in your
7 survey, is that right, besides yourself?

8 A Yes, sir.

9 Q Is it fair to say that based on what this
10 letter says that the survey participants were asked to
11 rank in order of preference the choices that would be
12 the most valuable to the MKT?

13 A Yes.

14 Q And most valuable means would promise to have
15 the most traffic potential for MKT, right?

16 A Yes, sir. But as you know from our subsequent
17 choices, neither Mr. Steiniger, Mr. Todd, nor this list
18 here were the final evaluations. These were lists that
19 went on to Mr. Gastler. He evaluated them. We had
20 subsequent meetings, but this was the beginning aspect
21 of our investigation into the area.

22 Q The next page, of course, I guess is a blank
23 survey that Mr. Sheridan sent, and it is followed by a
24 document called "Trackage Rights Opportunities Tally
25 Sheet." Do you see that?

1 A Yes.

2 Q The third column there, HTD, is that you?

3 A That's me.

4 Q I notice that you have as your tenth priority
5 item number 4, and that if I look back on the survey on
6 the prior page, that is the Midlothian Wards Spur
7 request.

8 A Yes, sir.

9 Q And yet, I look also back to your report to
10 Mr. Gastler, the survey results, and that one was not
11 included.

12 MR. GREENBERG: Which page are you looking at?

13 BY MR. SMITH: (Resuming)

14 Q We can look at the same page, the tally
15 sheet. If you look at the survey order, do you see the
16 second column?

17 A You are talking about my --

18 Q Yes. Your results in the third column and
19 then the survey order. Do you see the second column?

20 MR. GREENBERG: I believe we're back on the
21 Trackage Rights Opportunities Tally Sheet?

22 MR. SMITH: Yes.

23 BY MR. SMITH: (Resuming)

24 Q I was just interested, is the survey order
25 column, the second column, that's the results of the

1 survey that were actually recommended to Mr. Castler?

2 MR. GREENBERG: Can we go off the record, Your
3 Honor?

4 (Discussion off the record.)

5 BY MR. SMITH: (Resuming)

6 Q The second column of the page, entitled
7 "Trackage Rights Opportunities Tally Sheet," is called
8 Survey Order. Do you see that?

9 A Right.

10 Q Is that the same order that was the results
11 that were reported or recommended to Mr. Castler?

12 A I can assume so.

13 Q And I notice that item number 4, the
14 Midlothian Wards Spur, is not included on there even
15 though it was included on your list.

16 A That just shows you I am democratic. I am not
17 completely autocratic.

18 Q And it's also the tenth item on JGE's list.

19 A Mr. Elking, yes.

20 Q And others have it on their list slightly
21 higher. I see Mr. DLB has it as item 8.

22 MR. GREENBERG: DLB has it as item 2. Doesn't
23 he have it as number 2?

24 THE WITNESS: No. He has it as item 8.

25 BY MR. SMITH: (Resuming)

1 Q And I guess the following page is a worksheet
2 that you used to compute this trackage rights tally
3 sheet. Is that your handwriting? Did you do this? Did
4 you put this together?

5 A Yes.

6 Q What I have done here so that you and your
7 counsel will know is I think I have included all of the
8 documents that we got on this, and so the next document
9 in order following your handwritten notes and so on is
10 another copy of the January 31 letter from Mr. Sheridan,
11 so we can skip over that as well as the following page,
12 which is another blank survey. And then we come to a
13 survey that has been filled in by JMS. Is that Mr.
14 Sheridan, his initials at the top, with the number 1/31
15 up in the upper righthand corner? I can see I should
16 have numbered these pages.

17 A What this is here, I believe, is mine to Mr.
18 Sheridan. You see the JMS and the slash. When I want
19 to note something to Jerry, that is normally the way I
20 will do it.

21 Q So that page and the next three pages are all
22 individual surveys that they filled out; is that right?

23 A Yes, sir, I would assume so. You see, they
24 went into Jerry to tally, and I didn't see it after
25 that. I guess this is George's tally and Sheridan's

1 tally and Teague's tally, and I guess that's it.

2 Q And then there's a letter, another copy of the
3 January 31 letter from Mr. Sheridan which has some
4 handwritten notations at the bottom from Mr. Teague. Do
5 you see that?

6 A Yes, sir.

7 Q This also was furnished as part of the survey.

8 A Yes, sir. It's on file.

9 Q And I guess we have two more pages of
10 filled-in survey which we can skip over, and I'm now
11 looking at a letter dated January 23 addressed to you
12 from Mr. Elking. Do you see that?

13 A Yes. You are talking about Mr. Elking's
14 letter to me of January 23rd?

15 Q Yes.

16 A Yes, sir.

17 Q And I notice that the second paragraph of that
18 refers to -- does this refer to the Midlothian Wards
19 Spur situation in the second paragraph?

20 A What was your question?

21 Q Does that refer to the same -- does the second
22 paragraph of the January 23rd letter where he talks
23 about the two cement plants would offer inbound coal
24 opportunities as well as outbound cement on a single
25 line basis, is that from the Wards Spur Midlothian area

1 that you are seeking trackage rights over?

2 A Yes, sir, but they are not included in our
3 application.

4 Q Why did you exclude them?

5 A Because after looking at it, we could see that
6 it really wasn't necessary for us to provide competition
7 to those people. Gifford Hill, Bob Caldwell is a real
8 good customer of ours and a good friend, and he and I
9 discussed it, and he felt that his service was all right
10 with the SP at Gifco, so we just never included it.

11 Q Is his position any different than that of --
12 in terms of numbers of carriers and identities of
13 carriers serving him, any different than either
14 Chaparral or Mazda?

15 A Yes. It's altogether different. You see, as
16 -- SP serves Gifco, and that is on the SP line. The
17 Santa Fe serves TXI and Chaparral Steel. TXI and
18 Chapa Steel are co-related. The Mazda plant is in,
19 I believe, the southeast quadrant -- and I might be
20 wrong on that -- but it is in one of the quadrants where
21 the SP and the Santa Fe line actually cross. And they
22 put that automobile distributing annex, and it's
23 partially a manufacturing plant, in that area so that
24 they would have the competitive future of both railroads.
25 Dave Watson of Mazda is the one that sought me

1 out and asked us to support -- asked that they support
2 us going into the area. That was really the deciding
3 factor.

4 So I went out there and looked at it and -- I
5 went out there twice, once myself and once with Mr.
6 Todd, because I wanted to show them specifically how
7 when Mazda had built their facility, you entered it on
8 rail off the Southern Pacific. However, on the Santa Fe
9 side, the fence that surrounds Mazda, they've got about
10 a 10-foot high chainlink fence. Actually, it has a jog
11 in the fence along the Santa Fe side so that you could
12 build with very little change in grade an entrance into
13 the terminal area, the Mazda terminal area, by just
14 tearing down one section of the fence and putting in a
15 gate. Normally a fence is straight, and it would make a
16 big disruption if you were to go in from a siding. All
17 you'd have to do is take down one section and put in a
18 gate, put in your grade, and you would be in there on
19 the Santa Fe side. It's obvious that the Santa Fe was
20 going to do something, and according to Dave, they
21 stopped after their announcement for their Santa Fe-SP
22 merger.

23 If you slip over about five more pages in
24 this, you will come to a December 13, 1987 letter that
25 you wrote, signed, addressed to the participants --

1 well, no, it's Mr. Elking, Sheridan, O'Hary, Teague and
2 Bartula. Do you see that?

3 A My letter, December 13th?

4 Q Yes.

5 A Yes, sir.

6 Q The last paragraph of that -- and I'll give
7 you a chance to look at it -- now, this was prior to
8 your survey, isn't it?

9 A What is your question?

10 Q I just wanted to make sure I understand. This
11 is your letter to these five individuals of December
12 13. This is before you decided to conduct a survey of
13 your people, isn't it?

14 A I would say so. This was in the advanced
15 stages of what we were going to do as far as opposition.

16 Q Now I see in the last paragraph you say that
17 Pillsbury is interested in St. Jo. What is St. Jo? St.
18 Joseph's Missouri?

19 A That's true. Pillsbury has a plant up there.

20 Q So what happened? Did they contact you or did
21 you contact them? And I mean Pillsbury.

22 A Oh, I think I probably talked to Glenn about
23 it, and he probably said that he thought he could use
24 some -- that he could use us as a transportation entity
25 at St. Joe. And this is one of the areas where we

1 looked at, and here again we thought that there was no
2 lessening of competition at St. Jo.

3 Q Well, you, in any event, on December 13 by
4 this letter instructed your people, I take it, to take a
5 look at these particular shippers and locations to see
6 whether there was any beneficial impact in connection
7 with trackage rights on SP-Santa Fe. Does that mean
8 that you asked the people, in effect, to take a look at
9 these particular shippers and any others they could find
10 and see if there was anything in it for the Katy?

11 A Well, if you notice, I qualify, and I say
12 possibly Beaumont, Corpus Christi for Mexican imports.
13 I was trying to direct them into areas where I knew that
14 there would be a lessening of competition.

15 Q Let's take a look at the letter that precedes
16 that one in this list. So you turn back to two pages
17 and you come to a letter to you dated December 21, 1983
18 from Mr. Teague, I believe that signature is. Can you
19 identify that?

20 A Yes, sir.

21 Q Take a look at the paragraph that is numbered
22 4 on Mr. Teague's December 21 letter. First of all, let
23 me ask you is this December 21 letter in response to
24 yours of December 13 that we just talked about?

25 A I'm looking at item 4. This is just Richard's

1 opinion. He is trying to put all of the facts into the
2 case.

3 Q I notice that it says we are cautious about
4 St. Jo because of the recent action by the UP system of
5 reducing gathering rates and giving a per-car allowance
6 for transit shipments. And then he says, "Serving St.
7 Jo would afford the MKT very little transit grain into
8 this terminal." So he was saying, I take it, that the
9 MKT really shouldn't be too interested in St. Jo,
10 because UP is very competitive there, and you'd have to
11 assume a similarly competitive posture.

12 A I think he's saying there is certainly
13 competition there. You are right.

14 Q Now we will pass over again your December 13
15 letter.

16 A Are we going forward or back?

17 Q I'm going towards the end now. I come to a
18 document, and I'm not sure what it is, but it came with
19 the rest of these. It says "Items which will enhance
20 competitive alternatives available to shippers without
21 injuring basic Santa Fe-SP interests," and it is about
22 -- it's a five-page document. Do you see that?

23 A Yes, sir.

24 Q Do you know who prepared it and when?

25 A I'm not absolutely certain, but I believe so.

1 Q Can you tell us who it was and is this
2 10-28-83 in the upper right-hand corner?

3 A That has nothing to do with it. That is
4 Sheridan's writing, and he says -- that means that he
5 initialed it on October 28th, '83. I believe this was
6 prepared by Mr. Ziebarth.

7 Q I see. Do you think that this was an effort
8 to quantify the volume of traffic that would be
9 available at these various locations?

10 A I'd have to look at the whole thing to give
11 you an answer. We are going back about a year and a
12 half.

13 Q I don't want to take too much time with this.
14 Let's skip over --

15 A I think this was a general discussion, and I
16 think Karl was the monitor.

17 Q The next document here is a letter to --

18 A We're going backward?

19 Q Yes. This is a letter dated October 25, '83,
20 and it's to you from Mr. Elking. That wasn't too long
21 after the SP-Santa Fe merger was announced, was it?

22 A George is pretty quick.

23 Q Did you ask him to prepare what he calls a
24 wish list?

25 A I doubt it. I doubt it very much. This would

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1 just be something that George would, you know --

2 Q Did he just do this on his own and provide it
3 to you and explain to you what it was?

4 A It's funny he didn't give it to Mr. Gastler.

5 Q Then we come to two pages of maps. I'm not
6 sure why they are there. We can skip them. And the
7 last document here is actually the earliest in terms of
8 time, is a letter dated October 10, 1983 to you from
9 H.E. Coker. Who is he?

10 A He is my sales manager at Kansas City, Elmer
11 Coker.

12 Q Did you ask him to do some sort of an analysis
13 to which this letter is his response?

14 A I'd have to look at it a little bit. I
15 believe the first paragraph in the letter kind of tells
16 a story. "Reference the above subject, I am positive
17 that management has already checked into possible
18 operating rights to various points that would be
19 beneficial to the MKT. However, would like to suggest
20 points from our territory which I feel would be a
21 benefit to us."

22 Now, this is just something that Elmer sent in.

23 Q Well, the second sentence there, that he is
24 positive that management has already checked and so on,
25 was he right, that by October 10 of '83 you have already

1 taken a look into possible operating rights that would
2 be beneficial to the MKT?

3 A As soon as the merger was announced, we all
4 quaked that we would lose all of our Mexican traffic.

5 Q All right. I'm going to stop with that
6 exhibit finally. I have another one here I would like
7 to have marked as SFSP-C-51. This is a two-page memo
8 addressed to all sales managers from Mr. J.K. Elking,
9 dated November 18, 1983.

10 JUDGE HOPKINS: That will be marked for
11 identification.

12 (The document referred to was
13 marked Exhibit No. SFSP-C-51
14 for identification.)

15 BY MR. SMITH: (Resuming)

16 Q Have you ever seen this document before?

17 A Yes, sir. That's my little note there:
18 "George forgot to mention Eagle Pass as an alternative
19 to Corpus Christi."

20 Q Did Mr. Elking do this on his own, or was he
21 told to contact the sales managers so that they could go
22 out and sell the Katy's position to the customers?

23 A I just don't recall. I'm sure George
24 discussed it with me before he sent it out.

25 Q Did he discuss with you -- I am looking at

1 paragraph number 3 in this letter on Exhibit 51, and
2 there's a sentence there, "Does the customer want us to
3 develop a position for going there and make sure we can
4 go through with it and be profitable?"

5 Is that something you told him to say?

6 A No.

7 Q And then he says, "What type of commitment
8 does the customer want to make if we are successful in
9 going there? Does he want to allocate a certain percent
10 of his traffic if we establish competitive rates?"

11 Do you know when the MKT sales managers and
12 sales representatives went out and contacted shippers
13 were they at the same time trying to see what kind of
14 traffic commitments the shippers would give MKT if MKT
15 were successful in obtaining trackage rights?

16 A Well, George is an exceptionally good man, but
17 he does a lot of wishful thinking. He should know and I
18 should know that, and any other traffic man in this room
19 should know that it's almost impossible to get a
20 commitment out of a shipper as far as how much or how
21 little traffic they'll give you.

22 I think what George is trying to say is if we
23 go out there and provide competition, they're going to
24 have to realize that in order for us to stay there,
25 they're going to have to give us some business, and I

1 think that's what he's trying to develop.

2 Q Do you know if any shippers gave MKT any
3 commitments as a result of these contacts?

4 A No. I know that when I talked to Dave Watson
5 of Mazda I told him, I said that if we were to go out
6 there, you know, to Midlothian and continue that
7 competitive aspect, we'd have to have some business, and
8 he said I realize that. But I mean, you know, it was --
9 he didn't say I'm going to give you a hundred cars a
10 month or ten cars a week or whatever, no.

11 Q Enough of the MKT sales efforts, and let's
12 talk about your first priority based on these surveys,
13 and that is access to Mexico. That is your number one
14 priority, correct?

15 A I would say so.

16 Q And I believe there has been some testimony
17 here that the preponderance of that traffic that you are
18 concerned about is grain; is that true also?

19 A It's not totally so, but the preponderance
20 would be a good way to point it out.

21 Q Is it over 90 percent?

22 A I think it was. I think it was.

23 Q Do you know about what percent of the grain
24 that MKT handles that is destined to Mexico originates
25 on MKT or OKT lines?

1 A We did originate some wheat in the first
2 go-around with the OKT. Then the Mexicans in 1982 and
3 '83 received very little wheat. At least they did that
4 we are aware of. And as far as corn, the corn would
5 come off our trackage rights area, Omaha-Council Bluffs,
6 and the soybeans could come from any of our areas either
7 on the MKT and somewhat on the OKT. Sunflower seeds
8 originate normally up on the Soo Line and moves in
9 connection with the MKT. It used to move on the old
10 Burlington Northern out of the Dakotas, and in
11 connection with Kansas City and Denison SP, but that was
12 prior to the Burlington Northern-Frisco merger.

13 Milo, not too much milo moves in there. Some
14 that does, that could come off of any one of our areas.

15 Q What is the primary grain that MKT handles to
16 Mexico? Is it wheat?

17 A Primary right now would be corn.

18 Q What percent of it is corn?

19 A What percent?

20 Q Of the grain that you're handling to Mexico,
21 how much of it is corn? Is it over half?

22 A I would say it probably was in '83.

23 Q How about '84?

24 A Well, the '84 shipping season has just
25 started. I would say it would probably be heavier to

1 corn than wheat.

2 Q Do you know how much of this corn and wheat
3 that is handled by MKT to Mexico today originates on
4 SP-Cotton Belt lines? Are we talking about a very small
5 amount?

6 A I couldn't say. I couldn't say how much it
7 would be.

8 Q Is it a smaller amount than MKT originates on
9 its own lines?

10 A Are you saying wheat that we diverted?

11 Q No. I'm just talking about wheat and corn
12 that you handle today to Mexico. You originate some of
13 it, correct, on your own lines?

14 A Yes, sir.

15 Q And some of it you get from SP-Cotton Belt
16 where SP-Cotton Belt originates it and interchanges it.

17 A I don't believe so.

18 Q None of it comes that way?

19 A I don't believe that we receive any wheat from
20 the SP-Cotton Belt. I believe that would be the wheat
21 that we probably received before via Herington when we
22 had routes and rates before you closed them. The wheat
23 now that comes out of Kansas, if you're talking about
24 Kansas, would probably go to Hutchinson on the SP and
25 move out of there on the Santa Fe, you know, to the
border crossings.

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1 Q You testified when I talked you about your
2 opposition statement that SP and MKT have somewhat of a
3 cooperative relationship anyway on grain moving in joint
4 line service today between southwest Kansas and either
5 the Gulf for export or Mexico.

6 You said that on at least some of that
7 traffic, SP and Katy do cooperate, is that right?

8 A Yes. There is one single item that we moved
9 out of Union Equity that moved over Fort Worth on the SP
10 to Corpus Christi, but that wasn't to Mexico, though.
11 That was to Corpus Christi.

12 Q Let's talk about Mexico for a minute.

13 You do know, don't you, that SP has a single
14 line route to Mexico for grain originating in southwest
15 Kansas.

16 A Through El Paso.

17 Q Is that a pretty direct route?

18 A I would say so.

19 Q I am a little confused maybe about your theory
20 that the merged company is going to close all the routes
21 with MKT where it can handle it in its own single system
22 service.

23 If that were true, wouldn't you have expected
24 that SP would have not cooperated at all with MKT on
25 grain to Mexico and instead handled it all to El Paso

1 itself?

2 A El Paso is in the extreme western border of
3 Texas, probably around 600 miles from Dallas-Fort Worth,
4 to give you some idea of mileage, maybe 650, and Laredo
5 is pretty much directly south of Dallas-Fort Worth,
6 approximately 430 or 440 miles. The main Mexican route
7 to central Mexico is through Lareda. It goes down to
8 Monterrey and south.

9 As I recall, your Nacionales de Mexico lines,
10 they come over from Presidio and Eagle Pass, and they
11 come back into Monterrey from the west and come south,
12 but Laredo is by far the more direct route. It is the
13 preferential route of Nacionales de Mexico, and unless
14 they would have some reason to be sending that grain
15 into the western part of Mexico, their normal route is
16 through Laredo.

17 Q Would that same distinction apply to Eagle
18 Pass, that Eagle Pass is not a favorite or good --

19 A Eagle Pass is directly on the SP line, is
20 directly south and slightly west of San Antonio. I am
21 estimating, I would say it is probably about 160 miles
22 from San Antonio. Corpus Christi is about the same
23 distance south and east of San Antonio. Eagle Pass is
24 by far the more direct route, but that line, too, from
25 Eagle Pass goes back into the main line to Monterrey.

1 It is not as good for the Nacionales de Mexico Railway.

2 Q So the Mexican National Railway does now
3 prefer Laredo because it is the best route for it?

4 A To the best of my knowledge, that is true.

5 Q Now, when I was looking through some of the
6 documents and work papers we were provided from MKT, I
7 came across several documents that indicate somewhere
8 around 60 percent or two-thirds of U.S. grain going to
9 Mexico is moving via water.

10 Does that figure ring a bell with you?

11 A Yes, sir, but you see, what you are talking
12 about is a water move after a prior rail move that goes
13 into the Gulf ports of -- all the way over from New
14 Orleans to Corpus Christi. It could be, for example, an
15 MKT-SP Tex Mex -- strike that -- MKT or an MKT-SP move
16 into Corpus Christi or Galveston-Houston, and then it
17 would go by boat over to Tampico, but it had a prior
18 rail move. So it still might be comprised of 60 percent
19 of the grain, but of that 60 percent, a good portion
20 would have had a prior rail haul.

21 Q Okay.

22 We will talk a little bit out that.

23 MR. SMITH: I want to mark three exhibits on
24 the subject of water.

25 JUDGE HOPKINS: Why don't you mark them now

1 and then we will take a 15 minute recess. We can mark
2 them and we will have them ready.

3 MR. SMITH: Okay, they are all ready.

4 JUDGE HOPKINS: We will take a 15 minute
5 recess.

6 (A brief recess was taken.)

7 JUDGE HOPKINS: Back on the record.

8 MR. KHARASCH: Your Honor, may we go off the
9 record?

10 (Discussion off the record.)

11 JUDGE HOPKINS: Back on the record.

12 BY MR. SMITH: (Resuming)

13 Q Mr. Dimmerman, before the break or during the
14 break we distributed and would ask to have marked three
15 exhibits, SFSP-C-52, 53 and 54.

16 JUDGE HOPKINS: That's what I am saying. I
17 haven't gotten copies of these.

18 Where are they?

19 (Pause)

20 (The documents referred to
21 were marked Exhibit Nos.
22 SFSP-C-52-54 for
23 identification.)

24 BY MR. SMITH: (Resuming)

25 Exhibit 52 is a document, a series of

1 documents, really, the first page of it is a letter
2 dated April 19, 1984, to Mr. M. E. Roper from Mr. J. M.
3 Sheridan, and on the face of it there is written Item
4 No. 9.

5 Do you see that?

6 A Yes.

7 Q And I will tell you that these were contained
8 in work papers that were furnished which we reviewed and
9 ask you if you have seen these. I believe it bears your
10 initial in the upper left hand corner of that first
11 page.

12 A Yes, sir.

13 Q Now, Exhibit 53, which for identification is a
14 May 10, 1984 letter to Mr. O'Mary, signed Paul Mills,
15 Chief, Transportation Services Division of --

16 A Where is this?

17 Q This is Exhibit 53.

18 A Oh, it's not on the same exhibit.

19 Q I'm just identifying them.

20 A All right.

21 Q Signed by Mr. Mills, addressed to Mr. O'Mary.
22 Mr. Mills is with the United States Department of
23 Agriculture.

24 Exhibit 54 is a two-page letter with a
25 one-page list of attachments. The attachments are not

1 included.

2 This letter is dated May 25, 1984. It is
3 addressed to Mr. Kharasch, and it is from Mr. O'Mary.

4 Now, all three of these -- well, let's deal
5 with them one at a time.

6 Exhibit 52 refers to and attaches
7 correspondence relating to a study that was made on
8 grain to Mexico via rail-water.

9 Have you ever seen these documents before?

10 A I have seen them, but it has been so long ago
11 that if these were used in connection with the SP-Santa
12 Fe merger, somebody must have been clairvoyant. All
13 this stuff was done in 1981, back as far as 1979.

14 Q Right, but this was a prior study, referring
15 to a prior study that had been done, and apparently not
16 had been done back several years ago.

17 MR. GREENBERG: Objection. I don't see
18 anything here that indicates anything of the kind,
19 certainly not on the first page.

20 Are you talking about the first page?

21 MR. SMITH: Yes, in the letter that says I was
22 requested to see if we could locate correspondence on a
23 study that was made on grain to Mexico via rail-water.
24 Attached is a copy of the correspondence requested.

25 MR. GREENBERG: I still say it doesn't

1 indicate to me that this has anything to do with the
2 1981 study. I don't know what that notation means.

3 My only objection is that Mr. Smith, if Mr.
4 Smith wishes to ask the witness some questions, that's
5 fine, but I wish that he would not characterize what the
6 document purports to show.

7 JUDGE HOPKINS: Go ahead, Mr. Smith.

8 BY MR. SMITH: (Resuming)

9 Q Do you know if there was such a study done
10 back in -- at any time prior to April of '84 studying
11 movements of grain to Mexico via rail-water?

12 A Yes, this is something that George Elking
13 initiated and he went through it trying to develop
14 something.

15 Q Mr. Elking, is he knowledgeable on this
16 subject?

17 A Yes, sir.

18 Q And was the purpose of this prior analysis of
19 rail-water movements to determine whether and the extent
20 to which MKT might be able to participate in such
21 movements?

22 A Yes, sir.

23 Q Take a look at Exhibit 53, the letter to Mr.
24 O'Mary.

25 Is Mr. O'Mary the MKT's -- was he the grain

1 expert, a grain expert for MKT?

2 A Yes, he is.

3 Q And if you would take a look at Exhibit 54.

4 A Do you want me to read? Is that all you
5 wanted, just that information about Mr. O'Mary?

6 Q For now, yes.

7 If you look at SFSP-C-54, that is a letter to
8 Mr. Kharasch, again from Mr. O'Mary. The second page of
9 that, the third full paragraph, "Finally, I was
10 requested to provide more information about grain moving
11 to Mexico by water." He says he is attaching a copy of
12 a letter that he wrote to Mr. Steiniger.

13 Do you see that sentence?

14 A Yes.

15 Q I handed you earlier a copy of SFSP-C-12,
16 which was an exhibit that was introduced previously.
17 That is a letter from Mr. O'Mary to Mr. Steiniger.

18 Is that -- that looks like the same letter,
19 doesn't it, that is referred to at page 2 of Exhibit
20 54?

21 A I would assume so.

22 Q Do you know why Mr. O'Mary requested Mr. Mills
23 of the U.S. Department of Agriculture to ask him about
24 movements, water movements of grain to Mexico?

25 A It had to be a request made of Mr. O'Mary.

1 The fact that he goes to Mr. Steiniger and Mr. Kharasch,
2 I would say that -- and I am just assuming. I am
3 looking at a date of May 9 and May 10 -- that tells me
4 that he was requested to look into it, but I don't know
5 that.

6 Q All right.

7 Now, you have said, and I think we have talked
8 about Exhibit 52 which deals with the earlier analysis
9 of rail-water movements of grain to Mexico, and if you
10 take a look at Mr. Mills' letter, which is Exhibit 53,
11 he says "there is a substantial rail movement to the
12 Texas ports, and reloading onto mini-vessels for
13 Mexico."

14 My question is does MKT participate in any of
15 this traffic today?

16 A Our billing just shows it to the port. We may
17 and we may not. I don't know.

18 Q I see.

19 So you don't know whether once the grain gets
20 to the port it may end up in Mexico or it may end up
21 anywhere?

22 A Yes, that's right.

23 Q Earlier before the break you were talking
24 about you had said that although 60 percent of the grain
25 from this country moving to Mexico goes by water, some

1 portion of that moves in connection with rail to ports,
2 and that is water, is that right?

3 A Yes, sir.

4 Q Do you know about what percent of grain moves
5 that way?

6 A No, I don't.

7 Q What ports would be included besides --

8 A Well, your primary port would be New Orleans.
9 It would go to the Mississippi River, mainly corn from
10 the States of Minnesota, Iowa, Illinois and down the
11 river to New Orleans. That would be your main
12 rail-barge type movement. Other ports, Texas Gulf
13 ports, I am assuming that any of them could be used to,
14 you know, as a rail-water type movement.

15 Q Okay.

16 And there is also quite a bit of foreign
17 grain, isn't there?

18 A Quite a bit of what?

19 Q Foreign grain that Mexico would be able to
20 import?

21 A Mexico could be importing from wherever. I
22 would assume it would be easier for them to do business
23 with the United States through the Gulf, but I don't
24 know where they receive all of their grain.

25 Q Let me ask you, I take it that one of the

1 primary positions that you have in this case is that
2 grain shippers who want to use the MKT to get their
3 traffic to Mexico will be unable to do that if they want
4 to use the Laredo gateway, is that fair, after the
5 merger, absent the trackage rights?

6 A No. Transportation is not involved here. It
7 is competition. They may be able to move their traffic
8 over the Laredo gateway, but they very well may have to
9 do it at a higher price if there is not adequate
10 competition to move it.

11 Q Do you think that MKT could provide those
12 shippers a competitive rate to get their grain to Mexico
13 via Houston or Galveston and thence a water movement?

14 A Well, not if we can't reach them.

15 Q Can you reach Houston and Galveston today?

16 A But on the other end I am talking about, on
17 the other end.

18 If you are talking about Houston and
19 Galveston, yes, we will be able to give them competition
20 from Kansas City, Council Bluffs, Omaha and so on, but
21 we won't be able to give any competition on any grain
22 out of southwest Kansas because we won't be able to make
23 rates with the line serving Corpus Christi or Eagle
24 Pass.

25 Q But in any event, you can go from Merington,

1 Kansas down to Houston or Galveston.

2 A Yes, sir.

3 Q I am going to talk a little bit again about
4 access to Mexico.

5 I take it that you are seeking either trackage
6 rights to Corpus Christi via San Antonio or to Eagle
7 Pass. These are alternative relief requests, is that
8 right?

9 A All of our customers that we have talked to
10 have indicated that Iaredo is the primary area where
11 they require the competition. Eagle Pass is only an
12 alternative if we are not able to get to Corpus Christi
13 and access to the Tex Mex Railway.

14 Q I take it, though, your first choice is
15 trackage rights to Corpus Christi.

16 A That is our competitive customer first choice,
17 yes.

18 Q You are aware, are you not, that a portion of
19 SP's route to Corpus Christi, namely, the portion
20 between a place called Sinton and a place called Odem,
21 which is outside of Corpus Christi, did you know that
22 that was owned by the Missouri Pacific?

23 A Yes, sir.

24 Q And that SP's operations there are pursuant to
25 a trackage rights agreement with the Missouri Pacific?

1 A Yes, sir, I knew that.

2 Q Now, I noticed back in your -- when we were
3 talking about your survey in Exhibit 50, you had made
4 the distinction at that time between these alternative
5 relief requests, namely, getting trackage rights to
6 Corpus Christi as one alternative, or Eagle Pass as the
7 other.

8 Was that because of the problem that exists
9 with the Missouri Pacific owning a portion of the route
10 to Corpus Christi?

11 A We were aware of that problem, yes, we were
12 aware of that problem.

13 Another area of concern was the Tex Mex
14 Railwa In the Union Pacific-Missouri Pacific case we
15 had sought access to Mexico through two different
16 points, one over Corpus Christi, and one via Laredo
17 direct. As I recall, the Laredo choice was completely
18 thrown out by the Commission, but as I recollect, the
19 route over Corpus Christi was on a three-to-three vote
20 by the Commission at that time, and we felt that
21 probably the deciding factor in that was that the Tex
22 Mex was so concerned that we had asked for Laredo, they
23 did not support our application to Corpus Christi.

24 At the time we put in Eagle Pass, we didn't
25 know how the Tex Mex felt, if we would be able to work

1 out some kind of an agreement as far as their handling
2 our traffic, which is indicated in our papers, and the
3 Tex Mex has indicated they did want us and do want us to
4 go into Corpus Christi. And so that has been our main
5 effort.

6 And actually, if you look at the Tex Mex line,
7 they are just as in need of support on movements into
8 Mexico as what we are because they are dependent upon
9 the Southern Pacific to make rates on the other end of
10 the spectrum.

11 Q Isn't Tex Mex seeking its own trackage rights
12 over the same line up to San Antonio from Corpus
13 Christi?

14 A Yes, sir.

15 Q Are you saying now that they have said to you
16 that they support MKT's trackage rights instead of their
17 own?

18 A Yes, sir.

19 Q Who told you that, and when?

20 A Well, I had this discussion, in fact, I
21 suggested that Mr. Ramos might even want to seek
22 trackage rights into San Antonio. I don't believe he
23 had thought of it before. He was sitting down there
24 with the problem of not having access, and I said, Andy,
25 I said, you know, if it is easier for you than us, we

1 have no objection.

2 Q Do you support the Tex Mex's request for
3 trackage rights in this case?

4 A I certainly would not have told him about it
5 if I wouldn't have supported it.

6 Q Do you think that the Commission should grant
7 both your, the MKT trackage rights request between
8 Corpus Christi -- and --

9 A I have enough problems making decisions for
10 the MKT traffic department without making them for the
11 Commission.

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1 Q But in any event, when you designed your
2 survey back whenever it was, Exhibit 50 here, you sent
3 it out to Mr. Gastler on February 8 and I believe Mr.
4 Sheridan circulated it to the participants on January
5 31, 1984.

6 At least at that time, I take it, you agree
7 that you realized that -- well, you had made these --
8 you had set it up, your access to Mexico request, as two
9 alternatives; one, via Corpus Christi, and the other
10 Eagle Pass.

11 MR. GREENBERG: If it will speed things up, we
12 are prepared to stipulate that that is exactly what our
13 request is.

14 JUDGE HOPKINS: Thank you.

15 BY MR. SMITH: (Resuming)

16 Q But when you did your survey internally, Mr.
17 Dimmerman, of your own people in January of last year, a
18 year ago, you were aware of the need to make this kind
19 of an alternative relief request?

20 MR. GREENBERG: Your Honor, on that point, I
21 think this question has been asked and answered. We
22 have spent quite a great deal of time on Exhibit No.
23 50. I really am trying not to impede things. But I
24 have a feeling --

25 JUDGE HOPKINS: Hasn't this been gone over

1 before, Mr. Smith?

2 MR. SMITH: Let me just ask this question.

3 BY MR. SMITH: (Resuming)

4 Q Is the reason or part of the reason that you
5 decided to go for alternative access to Mexico the legal
6 problem involved because of Missouri Pacific's ownership
7 of a portion of the line between Corpus Christi and San
8 Antonio?

9 A That was part of our -- yes, we had that in
10 mind. It was part of it. We were aware of the fact
11 that we had to traverse Missouri Pacific trackage on
12 your trackage rights.

13 Q Let me mark as the next exhibit SFSP-C-55.
14 This is April 7, 1984 memorandum addressed to Michael
15 Roper, and it is from Kathleen Mahon. Subject:
16 Piggyback Trackage Rights, Sinton-Corpus Christi
17 Options."

18 JUDGE HOPKINS: That will be marked for
19 identification.

20 (The document referred to
21 was marked Exhibit SFSP-C-55

22 BY MR. SMITH: (Resuming)

23 Q Have you seen this document before, Mr.
24 Dimmerman?

25 A I probably did. But there's an awful lot of

1 correspondence that's been over my desk in the last
2 year. I would have to read it to recall it.

3 Q I don't want to take your time reading it.
4 But is this the same legal obstacle -- is this legal
5 obstacle that is referred to here the reason for -- a
6 reason, let's put it that way -- a reason, not the only
7 reason necessarily -- for MKT's alternative relief
8 request?

9 A I don't recall this letter, but I recall the
10 subject very well. Yes, sir.

11 Q Okay. Let's talk a bit about your testimony
12 beginning on page 17. That's where you talk about
13 southwest Kansas and you set forth your position and
14 arguments in support of MKT's trackage rights request
15 between Topeka and Liberal.

16 Now, I notice that in that section of your
17 testimony that begins on page 17, what appears to be a
18 major, if not primary, source of data that you got on
19 Kansas grain is something called the Kansas Grain and
20 Marketing Transportation Data. It's the source of your
21 Table 2 and all the subsequent tables in that section,
22 if I'm not mistaken.

23 A Yes, sir.

24 Q Do you regard that as a generally accurate,
25 reliable source in terms of reporting on transportation

1 and marketing of grain from Kansas?

2 A I would, you know -- they reported it; I can't
3 say how reliable it is. But I mean, I would assume that
4 it's as reliable as something like that can be.

5 Q And do you use it, does MKT use it in your
6 grain, in your own grain marketing analyses and
7 decisions?

8 A We receive that periodical in our shop; yes,
9 sir.

10 MR. SMITH: I would like to have marked as the
11 next two exhibits, SFSP-56 and 57, the 1982 -- well, as
12 SFSP-56, Kansas Grain Marketing and Transportation, Data
13 for 1982 Crop. And as 57, the same publication, Data
14 for 1981 Crop.

15 JUDGE HOPKINS: They will be marked for
16 identification.

17 (The document referred to
18 was marked Exhibits
19 SFSP-C-56 and SFSP-C-57 for
20 identification.)

21 BY MR. SMITH: (Resuming)

22 Q I'm going to mainly be asking you about the
23 '82 report which is Exhibit 56. As far as the '81 crop,
24 I notice that that is Exhibit 57, that was published in
25 April of '83. Do you see that? That's No. 57.

1 A 57?

2 Q Yes. Exhibit 57 appears to be on the first
3 page under the cover, compiled April '83.

4 A Yes, sir.

5 Q And 56 was March of '84. When they say 1982
6 crop and 1981 crop, do they mean calendar year? I was a
7 little confused.

8 A When they're talking about the crop year, they
9 are talking about fall '84, spring '85, fall '83, spring
10 '84, and so on.

11 Q So the '82 crop.

12 A I think the crop years starts like July 1st or
13 something like that.

14 Q All right. Let's look at Exhibit 56 for a
15 minute. Well, before we look at Exhibit 56 in more
16 detail, I want to ask this general question.

17 In your opinion, is the principal problem with
18 the SP/Santa Fe competition for the transportation of
19 grain to the country elevators -- that is choice No. 1;
20 the transportation to the terminal elevators, which is a
21 second possibility; or is it the transportation of grain
22 from the terminal elevators to destination?

23 Did you follow me?

24 MR. GREENBERG: Your Honor, before there is an
25 answer, I am not sure that I understand what "principal

1 problem" means. I'd like to have that word defined.
2 I'd also like to know what area.

3 JUDGE HOPKINS: Why don't you explain what
4 your problem is?

5 BY MR. SMITH: (Resuming)

6 Q We are again looking here, with respect to
7 southwest Kansas, and we've got, as I see it, and I am
8 just a lawyer -- I am no grain expert, and that's why I
9 have you here to ask the questions of -- but you have
10 transportation from basically, I guess, the farm to the
11 country elevator. That's one type of transportation
12 that can take place, right, for grain?

13 A Correct.

14 Q Is that a problem as far as this merger is
15 concerned, do you think? And by problem, I mean do you
16 see competitive problems arising as a result in
17 southwest Kansas of the SP/Santa Fe merger for
18 transportation of grain to country elevators?

19 A I think that the problem doesn't lie in the
20 transportation per se. The problem lies in the ability
21 for the farmer to ultimately get a competitive price for
22 his product. And the farther that his grain has to
23 travel by truck before it reaches a terminal elevator is
24 the ultimate reduction in the price of his grain that he
25 will receive.

1 Q So it's the terminal elevator?

2 A As I see the problem.

3 Q As you see the problem, it relates to
4 transportation to or from terminal elevators?

5 A No. You have to go right back to the farmer
6 himself, what he does with his grain and how much it
7 costs him to get it from the farm to the ultimate
8 destination of the grain, whether it be Mexico, a bottom
9 in the Port of Houston, or in the belly of a Russian
10 civilian.

11 Q So you don't want to try to talk about the
12 movement of the grain from the farm to what we could
13 call country elevators, and then the movement from
14 country elevators to terminal elevators, and then the
15 movement from terminal elevators to destination?

16 A I'll talk about it if you want to, but I am
17 just talking about the competitive price. Different
18 things can happen in southwestern -- different things
19 will happen in southwestern Kansas once the SPSF has
20 established a monopoly in that area.

21 If we are there on the same line that provides
22 the present competition, things probably won't change.
23 If we are not there, prices probably will change.

24 Q Well, let's take a look at this crop report
25 for 1982. Exhibit 56. On page 5 of that document, in

1 the fourth paragraph, there is a list of terminal
2 elevator locations in Kansas.

3 Is it true that most of the grain for export
4 moves from terminal elevators as opposed to country
5 elevators?

6 A The final move to the port of export normally
7 comes from a terminal elevator. Yes, sir.

8 Q Now, let me just quickly ask you in the first
9 sentence of the fourth paragraph of page 5, it lists
10 locations for terminal elevators, and I would like to
11 know which ones of these locations are served by the
12 Katy. And I think, if I'm not mistaken, it is every one
13 but Hutchinson, and I'm not sure about Colby.

14 A There are elevators at Atchinson, Kansas and
15 we are in Atchinson, Kansas on trackage rights over the
16 Union Pacific system.

17 Hutchinson, Kansas we do not serve.

18 Salina, Kansas we serve through the OKT
19 Railroad.

20 Topeka, Kansas we serve, but we only have an
21 outlet to the east towards Kansas City.

22 And Wichita, Kansas we serve.

23 The Colby, Kansas is served by the Union
24 Pacific.

25 Q You skipped Kansas City, but obviously you are

1 there, too.

2 A Oh, I'm sorry. Yes. I see. Hutchinson and
3 then Kansas City we serve, yes.

4 Q Are any of these terminal elevators in what
5 you would call southwest Kansas?

6 A The closest one would be Hutchinson, Kansas.

7 Q Take a look at page 21 of that same report. I
8 just want to make sure I can read this and understand
9 what it is. That shows grain shipped from Kansas
10 elevators by transport mode, does it not?

11 A Yes, sir.

12 Q Now, if I read this right, let's say corn,
13 there's a section there, corn.

14 A Yes, sir; in the corner.

15 Q Corn was the primary grain that you were
16 talking about earlier, I believe, that moves to Mexico
17 on the Katy. Does that show that for southwest Kansas,
18 that 100 percent of the grain moving from Kansas
19 elevators, of corn moving from Kansas elevators in
20 southwest Kansas moved hopper truck or other truck?

21 MR. GREENBERG: First, Your Honor, I have to
22 object because this particular table does not list
23 southwest Kansas. It lists nine separate districts
24 which occur in Kansas. I'm not sure the question is
25 responsive to the table.

1 MR. SMITH: Well, there is a district called
2 Southwest, the third one listed.

3 MR. GREENBERG: Now, that question -- that
4 raises the question as to whether that is the same
5 southwest Kansas that Mr. Dimmerman has in mind. You
6 can ask that question.

7 JUDGE HOPKINS: We might have a problem
8 whether the southwest Kansas that you are referring to
9 in this is the southwest Kansas that they have been
10 referring to in the hearing. That's the only problem.

11 MR. GREENBERG: For example, Your Honor, in
12 Mr. Dimmerman's testimony, he uses three separate
13 districts from this table to comprise what he refers to
14 as southwest Kansas. It's not the Southwest District,
15 as this table sets it out.

16 BY MR. SMITH: (Resuming)

17 Q Let me ask the question, Mr. Dimmerman. When
18 you refer to the term in your verified statement,
19 southwest Kansas, what districts in Kansas do you
20 include as shown in the table on page 21?

21 A I believe Southwest, South Central, and
22 Central.

23 Q Take a look for that. For the Southwest
24 District on page 21 of this table, does it not show
25 that, if I am reading this right, 97 percent of total

1 shipments of corn moved via hopper truck?

2 A Probably to a feedlot.

3 Q And 3 percent by other truck, and that's all?

4 A Yes, probably to a feedlot.

5 Q And similar figures -- well, let's go down.

6 For Central, we have 10 percent rail and the rest
7 truck. Is that right? And South Central is also all
8 truck. Do you see that? We are on page 21 of Exhibit
9 56.

10 A Yes, I see it. But like I say, what you are
11 talking about is a movement to feedlots. Now, we can
12 trace it back. I believe there's another one that will
13 say where that goes.

14 Q That's the next page, page 22. That shows --
15 are you with me on page 22 of Exhibit 56?

16 A Yes, sir.

17 Q You can see, I think, that for example, corn
18 from the Southwest District, 64.4 percent goes to Kansas
19 feedlots. I guess that's what you said.

20 A Yes, sir.

21 Q Let's look at page 20 of this same document.
22 That shows -- does that show grain received at Kansas
23 elevators by transport mode?

24 A Yes, sir.

25 Q So that I know I'm reading this right, let's

1 take a look, for example -- well, I don't know. We can
2 look at any of these categories. Do you want to try
3 corn again?

4 A Whatever you want to do.

5 Q What's the principal grain in southwest
6 Kansas, and I use the term southwest Kansas now as you
7 do in your verified statement. What is the principal
8 grain that is coming out of that area?

9 A Wheat.

10 Q So let's look at wheat. On page 20 again of
11 Exhibit 56, it shows how the grain, the transport mode
12 used to get the grain to the elevator; is that right?

13 A Yes, sir.

14 Q And for example, the Southwest District, as
15 used in this report, shows 98 percent by truck.

16 A Yes, sir.

17 Q North Central would be 95. What was the other
18 district? I forgot. Central?

19 A South and South Central.

20 Q Central is 66 percent.

21 A Central and South Central.

22 Q And South Central is 46 percent by truck. Do
23 you see that?

24 A Yes, sir.

25 Q Do you think those are accurate?

1 A I would assume so.

2 Q I want to ask you now a little bit about why
3 you think MKT would be unable to compete with the merged
4 system for grain movements from major terminals in
5 southwest Kansas without having trackage rights between
6 Liberal and Topeka. Why is it that you need trackage
7 rights to compete?

8 A Why do we need trackage rights to compete?

9 Q Yes. Is that spelled out in your statement
10 pretty well?

11 A Yes, sir. If you want to trace all of these
12 charts or whatever back, you will find that the truck
13 moves it into the terminal, but it is a small country
14 elevator terminal where they move it into. And then
15 from that small country elevator terminal, after it has
16 made the initial move from the farm, it goes into the
17 elevator that is served on the Liberal line or one of
18 the Santa Fe parallel lines, and then from there it
19 moves into the large terminal area where it moves to the
20 port.

21 The other area is that there are lines that
22 have been torn up, rail lines that have been torn up.
23 Those elevators -- and they still receive grain from the
24 nearby farmers because that's the easiest way for the
25 farmer to get it there -- they have to have a subsequent

1 truck move from that elevator that is not rail-served to
2 the terminal area.

3 And so what you are looking at here where you
4 see 98 percent of the grain in southwest Kansas goes by
5 truck to an elevator, you are talking about either the
6 first or second truck move to the terminal elevator.
7 And because of that, just because of those figures
8 there, that is the reason why the farmers need
9 competition.

10 It is the amount of mileage incurred by the
11 first and second truck move that either makes the farmer
12 competitive or non-competitive in the marketplace.

13 Believe me, I am not a pricing expert. I'm
14 just giving you the best I can with what I've got to
15 give with.

16 Q Well, after it moves by truck to the small
17 elevator, can it move by truck from there to other
18 elevators in other parts of Kansas?

19 A It can; yes.

20 Q And can MKT -- does MKT today offer flat rate
21 contracts in an attempt to induce traffic to move MKT in
22 connection with movements by truck to the terminal or
23 the other elevator that MKT serves?

24 A Yes. This is approximately what is done up in
25 the Salina, Kansas area. When we first initially talked

1 about going into Hutchinson, Kansas, this was one of the
2 points of opposition; that the shippers said if you
3 really want to come out here and help us, come on out to
4 Liberal, come on out so that we can have some kind of
5 prior rail move to an elevator on the Liberal line.

6 If you are talking about just going into
7 Hutchinson and setting out at the truck terminal, we can
8 do that, but that wouldn't really help the farmers or
9 the elevator operators near and on the Liberal line.

10 Q Is wheat grown elsewhere in Kansas, besides
11 the area served by SP/Cotton Belt?

12 A Yes, sir.

13 Q It is grown in other states besides Kansas?

14 A Yes. Wheat is like a weed. It will grow
15 anyplace, some better and some worse.

16 Q I think we discussed the other day the fact
17 that the farmers in southwest Kansas are competing with
18 farmers in other places in Kansas, wheat farmers as well
19 as farmers in other states, are they not?

20 A Yes, sir.

21 Q So I think you also said to me the other day
22 that it's in the railroad's self-interest to keep its
23 farmers, its customers competitive in their markets.
24 Otherwise, they are not going to get the business and
25 use the railroad. Is that right?

1 A It depends on whether you have a monopoly in
2 an area like the SPSF will have after the merger; or you
3 are a small regional carrier like the MKT, running from
4 a point in Herington, Kansas down to Ft. Worth, Texas.
5 That area is so small and we are so close to the other
6 Santa Fe, Missouri Pacific, Burlington Northern lines in
7 that area, that there is no way that we could be the
8 true price setter for grain.

9 A If we are, you people are deluding yourselves
10 really. We can't move that much.

11 Q Well, that wasn't really responsive. The
12 question was whether the farmers that are served today
13 by the SP Cotton Belt line are in competition with other
14 farmers who are served by other railroads.

15 A That's true, that's true. The SP helped set
16 the cap on the grain rates for the Santa Fe line. yes,
17 sir, as we do in certain areas.

18 Q And so does the UP.

19 A True.

20 Q And the RN.

21 A True.

22 Q How about the barge? Any barge service, not
23 in southwest Kansas, but where other wheat farmers have
24 access to it?

25 A That's true but, like you say, not

1 southwest Kansas.

2 Q I'm also a little curious. You have a
3 discussion in your statement somewhere about the transit
4 rate contracts that are being offered today by Santa
5 Fe. Are you familiar with that discussion?

6 A Yes, sir.

7 Q Is it your position that after this merger,
8 that the merged system would not offer these transit
9 rate contracts to customers in what you define as
10 southwest Kansas?

11 A I don't say they will, I don't say they won't,
12 and I hardly know what kind of price they will put on
13 the contract.

14 Q Well, if the merged system continues to offer
15 transit rate contracts, those result in the shippers,
16 farmers, in southwest Kansas receiving lower
17 transportation costs, does it not?

18 A Well, let me give you an example. Somewhere
19 in the papers, a Southern Pacific pricing man said there
20 is no reason for the Southern Pacific to offer any kind
21 of rebates on lumber going to our SP local
22 destinations. And it's the same principle. If you are
23 not going to give a contract to somebody that you have a
24 monopoly on, because it is a car of lumber, I doubt very
25 much if he'll give a contract that is to their advantage

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1 on a car of wheat where you also have a monopoly.

2 Q So you don't think it advantageous where
3 contracts that are beneficial to shippers, such as these
4 transit contracts, will any longer be offered by the
5 merged company to shippers in southwest Kansas?

6 A I can't say what you will do.

7 Q If the merged company does not offer such
8 contracts, will the Katy be able to compete for the
9 grain by offering flat rate contracts, let's say, out of
10 Herington?

11 A I had Art O'Mary give me some figures of how
12 much it cost to haul grain, and I think he come up with
13 something like 11 cents a mile. It is in my testimony.
14 I can find it if you want me to take the time to. But
15 let's just say it's 11 cents a mile.

16 That means that if you haul that car of grain
17 100 miles, it's going to cost you -- what -- \$110?
18 Anyway, the further that you have to haul the grain by
19 truck, the less competitive you can be with a flat rate
20 contract. Your flat rate contract can only extend out
21 as far as it is competitive with the other rail lines.

22 And so I say no. If we were to do that, you
23 get out beyond, say, 30 or 40 miles, and you are no
24 longer in a competitive area.

25 Q Does the MKT offer volume contract rates on

1 grain shipments from terminal elevators today?

2 A Yes, sir.

3 Q Are you saying that despite that, you are
4 unable to compete for grain at farther than 30 miles
5 from that terminal elevator?

6 A A good example is Kansas City. Kansas City
7 was the MKT's primary origin for grain. In 1983, we
8 probably didn't move 10 percent of the grain that we
9 hauled out of there in previous years, and that is
10 mainly because where we had rates out of Kansas City
11 that utilized the inbound movements of the Union Pacific
12 and Burlington Northern because they didn't go south out
13 of Kansas City, we could contract rates out of there at
14 a tariff rated price.

15 But with the Burlington Northern and the Union
16 Pacific reaching way out into Nebraska, Kansas, and
17 wherever, their rates are now applicable not at Kansas
18 City anymore, but back at this origin point. And so we
19 haul little or no grain out of Kansas City.

20 We recently made a contract with one of our
21 customers there who had some flat rate tonnage, and
22 we're hauling some out in 1985. '84 was a disaster as
23 far as Kansas City and grain is concerned for the MKT.

24 Q My question, though, was you do have, you are
25 offering flat rate contracts today out of terminals?

1 A Yes, sir.

2 Q How far away -- from what terminals do you
3 offer these? How about Salina?

4 A Salina is one where we do; yes, sir.

5 Q Are you attracting grain under those contracts
6 that originates farther than 30 or 40 miles by truck
7 from that terminal?

8 A You see, at Salina, Kansas, we may have some
9 inbound truck transit rates, but I don't know of any
10 truck transit that moved into Salina on the MKT. The
11 grain that is moved into Salina that subsequently moved
12 on the MKT, moved in there on the basis of the farmer
13 trucked it into Salina and delivered it to the terminal,
14 sold it to the elevator. That is flat tonnage.

15 And the MKT contracted for flat tonnage out of
16 there. Here again, that is hauled in by the farmer or
17 somebody the farmer contracts to haul it in.

18 Q How far away was that farmer, do you know?

19 A I have no idea.

20 A I have no idea. Only far enough to be
21 competitive.

22 Q Let's talk a little bit about the Bayport
23 line. That is point that I think we established with
24 earlier witnesses that is today served exclusively by
25 Southern Pacific; right?

1 A Yes, sir.

2 Q So the merger, at least as far as who serves
3 the customers, is not going to change anything, is it?

4 A I don't know what percentage it will change.
5 It depends on where the ultimate origins and
6 destinations, primarily destinations are that may be
7 served by the Santa Fe Railroad. They will certainly be
8 changed.

9 And also, any of the customers who have
10 similar facilities per se, one on the SP and one on the
11 Santa Fe, like Celanese, for example.

12 Q The question was, I know your theory, I just
13 wanted to make sure that you agreed that as far as
14 serving that line, absent your trackage rights, you've
15 got one railroad today and after the merger you are
16 still going to have one railroad.

17 A Yes, sir.

18 Q And your theory is, I take it, that after the
19 merger, the merged company won't join with the MKT in
20 joint routes to or from that Bayport line where the
21 merged company also serves the other end.

22 Is that about it?

23 A They don't do it now, so I don't know why they
24 would after.

25 Q Does MKT terminate any traffic today that

1 originates on the Bayport line?

2 A We carry some in overhead and -- yes, I would
3 assume that we terminate some. Probably up in the
4 Pryor, Oklahoma area.

5 Q Would that be affected by the merger, do you
6 think?

7 A It's already been affected by the SP. That's
8 one of the shipments that I previously mentioned that
9 was moving out of the Houston area on the SP that you
10 have contracted to our destination. We are short
11 hauling on it.

12 Q So that sort of movement will not be related
13 to the merger or that kind of effect?

14 A No. But it just tells how it would happen
15 after the merger.

16 Q On page 32 of your statement, you say that all
17 points served today by Santa Fe, but not by SP, will
18 suddenly become points where traffic can move only by
19 SFSP.

20 I'd like to know what points you had in mind.

21 A Any points where it would affect the MKT. It
22 would be any points that were -- for example, north of
23 Kansas City. You have one plant, for example -- I
24 believe it's PPC has a facility up in the vicinity of
25 Houston, Kansas -- Hutchinson, Kansas - and it has

1 another facility on your Bayport line.

2 Right now, you can't serve it by single line.
3 Afterwards, you will.

4 Q By single line service?

5 A Yes, sir.

6 Q And today, this same shipper, PPG, does not
7 have single line service to that same point?

8 A No, sir. He does not.

9 Q So essentially, what you are saying is that
10 any single line service would result in a forclosure of
11 competition?

12 A Pretty much so; yes, sir.

13 Q Houston to Beaumont. Let's talk a little bit
14 about that. Today, the Port of Beaumont is served by
15 what railroads besides SP and Santa Fe?

16 A The KCS and the Missouri Pacific, I believe.
17 Union Pacific system.

18 Q Does Katy participate in joint routes to
19 Beaumont via the KCS?

20 A Yes, sir.

21 Q Do you give pretty good service with the KCS
22 on joint line service to Beaumont?

23 A We try to.

24 Q Do you know anything about the Santa Fe's
25 route between Houston and Beaumont?

1 A No, no. I went over the SP route between
2 Houston and Beaumont, but I did not look at the Santa Fe
3 route.

4 Q Do you know whether the Santa Fe's route
5 between Houston and Beaumont is competitive, or do you
6 think it's too circuitous?

7 A The Santa Fe's route from Houston to
8 Beaumont?

9 Q Right.

10 A I don't know. They serve both points. I just
11 don't recall what the competitiveness of it is.

12 Q I was going to ask you a little bit about
13 Wards Spur and Midlothian. But I think I will skip it
14 and go to Agri Industries. That's an exclusive SP point
15 today, too, right?

16 A Agri Industries?

17 Q Yes.

18 A Yes, sir. It is a terminal elevator in
19 Houston, Texas, only served by the SP.

20 Q It is open to reciprocal switching, though;
21 right?

22 A Yes, sir.

23 Q We have UP, BN, and Katy, is that right?

24 A There were some changes made down in that area
25 as far as how they served. At one time, we had an

1 advantage with that elevator, along with the SP. We
2 were the only ones that delivered the cars to the
3 elevator, to the Southern Pacific. The other railroads
4 had to deliver their traffic to the port terminal.

5 There were some changes made down there in the
6 recent years that allow some people to bring it direct.
7 And I know the Santa Fe is one, and we bring it to you
8 direct.

9 I don't know just how the Burlington Northern
10 brings it to you, but they used to go through the port
11 terminal railway, which delayed it. And the Union
12 Pacific used to go through the Port Terminal Railway,
13 which delayed the movement.

14 I just don't know how that is handled right
15 now. But there is a problem on the delivery to the
16 Southern Pacific for that elevator, and that is where
17 the competition comes in; the cost of delivering the car
18 of grain, once it arrives at Houston, to the elevator.

19 Our agreement that I believe Mr. Todd
20 mentioned is the advantage that Agri has as far as
21 competitiveness at the present time.

22 Q Does the Katy have its own route -- let me
23 back up. That agreement covers movements between Kansas
24 City and Houston; right?

25 A The agreement that I am discussing is just at

1 Houston and it is the delivery of the cars to your
2 railroad, the number of cars, the cost per car, you
3 know, based on the number. As the number of cars
4 graduates downward, the cost becomes heavier and
5 therefore anticompetitive.

6 Q So you are not concerned about getting it to
7 Houston. You are concerned about what happens once the
8 traffic is in the Houston area and how it's going to get
9 out to this particular facility?

10 A Of course I'm concerned about it getting into
11 Houston. If we can't deliver to the customer at a
12 competitive price, we won't handle it at all.

13 Q I didn't mean you are not concerned. I meant
14 there is no competitive problem as far as getting the
15 traffic to Houston. Is that what I hear you say?

16 A Oh, I'm not concerned about the movement of
17 the traffic on our own railroad if competitively we are
18 allowed to handle it.

19 Q And UP has its own route between Kansas City
20 and Houston, doesn't it?

21 A Yes, sir. In fact, they traverse over part of
22 the Katy.

23 Q How about BN? They do, too, right?

24 A Yes, sir.

25 Q So there's lots of competition at least

1 between Kansas City and Houston today; right?

2 A Well, I don't think that's the problem. I
3 don't think the problem between Kansas City and Houston
4 is where the competition comes in. The competition
5 comes in where the one railroad that's serving this
6 elevator -- if they will allow competition with the
7 other railroads.

8 And if Mr. Van der Camp of Agri Industries
9 wouldn't have been concerned about it, he would not have
10 acted as a supporting witness for the MKT for these very
11 same rights.

12 Q It's your theory that after the merger, absent
13 this condition, the merged company would cancel its
14 arrangement that it has today with the MKT?

15 A I am concerned that they might. Yes, sir.

16 Q Is your theory that we would also cancel it as
17 to the BN and the MP as well?

18 A I don't know what kind of agreement you have
19 with the BN and the Union Pacific.

20 Q To be consistent, wouldn't you expect we would
21 do the same thing under your theory?

22 A No, because the trackage is not the same.
23 Like I mentioned to you, at Houston the Southern Pacific
24 and the MKT interchanged traffic directly for the past
25 20 years that I know of. And we made an agreement that

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1 we would take the trains directly over to your Basin
2 Siding, which is right adjacent to the old Goodpasture
3 Elevator.

4 And so all your engine has to do is grab ahold
5 of them and shove them into the elevator. That made it
6 a very lucrative thing for you as far as competition.
7 You didn't have to bring these cars of grain through
8 your Englewood Yard, which at times are very congested.
9 And I don't know what you had with the other railroads,
10 because they used to have to go through the Port
11 Terminal Railway before they could deliver cars to you.

12 We didn't have to do that. Never had to do
13 that. So we have a competitive edge as far as the other
14 railroads are concerned.

15 Now, if they still go through the Port
16 Terminal Railroad, they cannot do it as fast. I know
17 that when we made some changes down there at Harrisburg,
18 it also allowed the Santa Fe traffic to come in and make
19 the same kind of move that the MKT is making. But I
20 don't know about the rest of it.

21 What I am concerned about is the fact that you
22 will be able to set a charge of our railroad going
23 through the Englewood Yard, regardless of how we handle
24 that, and that will make us anticompetitive with the
25 traffic that you are bringing in on a single line, even

1 though you may be open to reciprocal switching.

2 MR. SMITH: I think that's all the questions I
3 have. Thank you.

4 JUDGE HOPKINS: Department of Justice, do you
5 have some questions? How long do you expect?

6 MS. BUDEIRI: I hope it won't take more than
7 15 minutes.

8 JUDGE HOPKINS: And then DOT?

9 MS. REED: We have about 10 or 15 minutes
10 also, Your Honor.

11 JUDGE HOPKINS: I don't know if it would be
12 wiser to go over until tomorrow morning if we are going
13 on like this.

14 (Discussion off the record.)

15 JUDGE HOPKINS: We will recess until 9:00
16 o'clock tomorrow morning.

17 (Whereupon, at 4:50 o'clock p.m. the hearing
18 recessed, to reconvene at 9:00 o'clock a.m., the
19 following morning, Thursday, January 10, 1984.)
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