

F.D. 30400, et al. - Pages 6191 thru 6248

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BEFORE THE
INTERSTATE COMMERCE COMMISSION

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In the Matter of: :

SANTA FE SOUTHERN PACIFIC CORPORATION : Finance Docket

-- CONTROL -- : 30400 et al.

SOUTHERN PACIFIC TRANSPORTATION :

COMPANY :

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Hearing Room A
 12th & Constitution, N.W.
 Washington, D.C.
 Friday, January 11, 1985

The hearing in the above-entitled matter was
 convened, pursuant to notice, at 9:03 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

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	<u>WITNESS</u>				
4	Thomas G. Todd				
5	By Mr. Blaszak-resumed		6192		
6	By Mr. Delaney		6217		
7	By Mr. Roper			6231	
8	By Mr. Blaszak				6233
9	Harold Hacker				
10	By Mr. Roper	6234			
11	By Mr. Delaney		6236		
12	William Anderson				
13	By Mr. Priesing	6246			
14	By Mr. Moates		6246		
15	By Mr. Kharasch			6280	
16	By Mr. Moates				6282
17	By Mr. Priesing-further			6284	
18	By Mr. Moates-further				6285
19	Jerry M. Sheridan				
20	By Mr. Kharasch	6295			
21	By Mr. Wilson		6296		
22	Andres R. Ramos				
23	By Mr. White	6357			
24	By Mr. Stephenson		6358		
25	By Ms. Budeiri		6415		
26	By Ms. Reed		6419		
27	By Mr. Delaney		6424		
28	By Mr. Stephenson		6429		
29	By Mr. White			6431	
30	Manuel Ramirez				
31	By Mr. White	6435			
32	By Mr. Stephenson		6436		
33	By Mr. White			6489	

E X H I B I T S

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<u>Exhibit No.</u>	<u>Identified</u>	<u>Received</u>
Counsel's Ex. No. SFSP-C-78	6252	6288
SFSP-C-79,80, and 81	6359	6434
SFSP-C-82	6387	
SFSP-C-83 and 84	6392	
SFSP-C-85	6398	
SFSP-C-86	6403	
SFSP-C-87	6407	
SFSP-C-88	6436	6490

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P R O C E E D I N G S

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

3 Mr. Blaszak.

4 Whereupon,

5 THOMAS G. TODD

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

10 CROSS EXAMINATION - RESUMED

11 BY MR. BLASZAK:

12 Q Good morning, Mr. Todd.

13 In the interest of moving things along more
14 expeditiously, I think we'll just skip that exhibit that
15 I was handing out at the end of yesterday's hearing.
16 Can we turn now to the proposed MKT trackage rights over
17 the Southern Pacific Bayport line.

18 Mr. Todd, have you calculated an average size
19 for the MKT trains on this line? Based on your previous
20 testimony, can you tell me how many carloads per year
21 MKT projects to handle over this line?

22 A The projection given me was 6,220 cars per
23 year.

24 Q Mr. Todd, are you familiar with Mr. Gastler's
25 verified statement?

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20 F ST., N.W., WASHINGTON, D.C. 20001 (202) 628-9300

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1 A I read Mr. Gastler's statement, yes, sir.

2 Q I'm going to show you -- I haven't made
3 copies, but I'd like to show you attachment 9 to Mr.
4 Gastler's verified statement and ask you if you can
5 identify that.

6 (Document handed to witness.)

7 Q Can you identify that?

8 A As being an attachment to Mr. Gastler's
9 statement?

10 Q Well, let's start with that.

11 A Yes, sir, this is, I believe as it is labeled,
12 attachment 9 to Mr. Gastler's statement.

13 Q What does it show?

14 A It shows a Houston ship channel, turning
15 basin, and as listing of industries or warehouses in the
16 area adjacent to the ship channel.

17 Q Aren't those industries on the south shore of
18 the ship channel the MKT proposes to serve via the
19 Bayport line?

20 A The industries MKT would propose to serve are
21 among them, I believe, yes, sir.

22 Q Okay. Mr. Todd, you gave in your operating
23 plan a six to seven-hour running time for MKT trains
24 operating one way between Houston and Texas City. Do
25 you recall that?

1 A Yes, sir.

2 Q How long do you think it would take a train to
3 operate over this line without performing any switching
4 or meeting another train, just running straight
5 through?

6 A Well, straight on, that's at 20 miles an hour
7 and that's about a 25-mile run. Probably a couple of
8 hours.

9 Q In other words, you project that you would
10 have perhaps four or five hours to switch industries on
11 that line?

12 A Our application, as you will notice, basically
13 we propose to service industries along that corridor
14 either physically or through a reciprocal switching
15 arrangement. I believe that the Southern Pacific
16 operating personnel would prefer that we do that through
17 a reciprocal switching arrangement, and therefore our
18 plan is based more or less on that arrangement.

19 Q You will agree with me, Mr. Todd, that there
20 is no way that an MKT local, a single MKT local, could
21 physically serve all of these industries within six or
22 seven hours?

23 A That is true, but it is not likely that you
24 would service every industry on each trip. You've got
25 to also realize that.

1 Q Even if you served half of those industries,
2 Mr. Todd, wouldn't you run into trouble?

3 A We'd run into trouble doing it in three or
4 four hours, yes.

5 Q Well, let's assume that MKT and the Applicants
6 are able to work out a reciprocal switching
7 arrangement. Would you propose to bring MKT traffic
8 onto the Bayport line and set it out at some point?

9 A I would work with the Southern Pacific
10 personnel to have that traffic exchanged at the most
11 convenient place.

12 Q But you have not yourself come up with a
13 likely location for the interchange?

14 A There are locations there that it could be
15 done. Now, whether they'd want to do it on the industry
16 lead, the first hold track to that industry, or even a
17 train yard, I don't know about that because I haven't
18 talked with them.

19 Q Do you know what the -- strike that.

20 Did you make any assumptions regarding the
21 reciprocal switching charge SPSF would impose for this
22 service?

23 A I did not, no, sir, other than to assume that
24 it would be somewhere in the normal reciprocal switching
25 in that area.

1 Q You state on page 8 of your statement that you
2 don't anticipate "any serious" problems in coordinating
3 SPSF and MKT operations on the Bayport line, and I'm
4 just curious as to what you mean by a serious problem?

5 A That's a problem of a serious nature that
6 would create a real difficulty. I don't believe there
7 would be such problems.

8 Q What kind of problems do you think would
9 arise?

10 A Well, certainly in any operation there are
11 problems that must be solved in the cooperative efforts
12 of the two entities that may be operating on the same
13 track -- coordination, timing, and that sort of thing.

14 Q Would you agree with me that those
15 difficulties would be increased if MKT attempted to
16 switch the industries directly itself?

17 A I would agree with you that it would take a
18 coordinated effort. I do not view them as problems that
19 could not be overcome. I believe they could be worked
20 out if the Southern Pacific so chose to have us switch
21 each industry.

22 Q That's fair enough, Mr. Todd. Why don't we go
23 on to the proposed MKT operations between Houston and
24 Bayport -- or Beaumont, excuse me.

25 A Are you in the operating plan or my statement,

1 sir?

2 Q Well, I'm going to be in both, but why don't
3 we start with your statement. Actually, what I'd first
4 like to do is ask you whether you personally observed
5 the operations of this line?

6 A I made two trips along that line to Beaumont.

7 Q Could you tell me when those were?

8 A I can't give you an exact date on either. The
9 first trip was in the summer, and I have since visited
10 in the late fall, early winter.

11 Q Were both of those automobile trips?

12 A Yes, sir, they were.

13 Q Did you cover the entire line?

14 A Yes.

15 Q Now, on page 8 of your statement, Mr. Todd,
16 you say that this line has plenty of additional
17 capacity. Again, I'm going to ask you, what do you
18 think this capacity is?

19 A Well, that's a CTC line and it has numerous
20 sidings. You know, a line like that has a capacity in
21 my opinion of something like 50 million gross tons or
22 more, just depending on how -- that's an opinion.

23 Q Well, that's all I'm asking for. Do you have
24 an opinion as to the number of trains that could be
25 operated over that line?

1 A That could be operated over that line?

2 Q Well, without delays, efficiently.

3 A A line of that capability, I suppose 40 trains
4 a day could be handled over it efficiently.

5 Q You haven't performed any formal study,
6 though, of the capacity of this line?

7 A No. No, I have not performed any formal
8 study. But based on the experience, I think I could
9 confidently say that.

10 Q Are you aware that the Kansas City Southern
11 has requested operating rights between Houston and
12 Beaumont in this proceeding?

13 A I am aware they have requested rights, yes,
14 sir.

15 Q I take it that you have performed no study to
16 determine whether that would have any effect on the MKT
17 operating plan?

18 A I have not seen their operating plan. I do
19 not know how many trains they propose to operate. But
20 based on the number of trains shown in SPSF operating
21 plans, I believe the capacity is ample.

22 Q Now, Mr. Todd, you propose to operate MKT
23 Beaumont trains in and out of Southern Pacific's present
24 Beaumont yard. You indicate you are aware that the SPSF
25 plans to close the Santa Fe Beaumont yard and operate

1 all of its trains out of the SF yard. What is the basis
2 for your belief that this yard has adequate capacity for
3 MKT operations?

4 A Well, the basis of that is the business that I
5 observed on both occasions and the outlying area around
6 Beaumont that would be served from that yard. And the
7 Santa Fe yard to be a holding yard I assume would
8 relieve any holding from the Southern Pacific yard, as
9 you would envision.

10 Q Did you visit the Santa Fe yard to see what
11 the conditions were there?

12 A I drove by it, yes, sir.

13 Q What did you find?

14 A The SF yard is much superior.

15 Q Superior in condition or size?

16 A From my observation point, yes, sir.

17 Q You did not, however, perform any yard
18 capacity study?

19 A I had no way to perform any yard capacity
20 studies there.

21 Q Let me see if I understand the way that you
22 would operate your train from Houston to Beaumont and
23 then down to Chaison. As I understand it, the train
24 would operate from Houston to Beaumont and then tie up,
25 is that right?

1 A Yes, sir, that's correct.

2 Q And we would store it in the SPSF holding
3 yard?

4 A No, we have asked in our application for
5 Southern Pacific to perform the terminal facilities, and
6 I would assume they would do that at the most convenient
7 location.

8 Q Okay. And then I take it the crew would take
9 its rest and start out for Chaison after it takes its
10 rest; is that correct?

11 A Yes.

12 Q You state that the train would be blocked to
13 facilitate delivery at Beaumont. Do you have any idea
14 of how you would block your train coming into the SPSF
15 Beaumont yard?

16 A I have an idea that we would arrange those
17 blocks that would best fit SP's operating parameters at
18 Beaumont if they are performing the work.

19 Q Well, your plan indicates that the SPSF would
20 deliver your interchange traffic to KCS and MP at
21 Beaumont, and SPSF would also switch cars to Beaumont
22 for MKT. That's all correct, is it?

23 A It's on a contractual basis.

24 Q And that is all included in the terminal
25 services that you were referring to?

1 A Yes, sir.

2 Q And we would also -- well, let me ask this
3 question. Would terminal services also include repair
4 of light bad orders, initial terminal inspections, that
5 sort of thing?

6 A Yes, sir.

7 Q Would it include agency services?

8 A No, I would not contemplate it would include
9 what we term agency services.

10 Q How would MKT provide agency services?

11 A Through its Houston office.

12 Q The Houston office would assess the merge on
13 cars at Beaumont and Chaison; is that correct?

14 A Well, actually our billing is through a
15 customer accounting bureau, but the Houston office would
16 have jurisdiction.

17 Q You would expect SPSF personnel to communicate
18 set and release times on cars?

19 A Yes.

20 Q Do you have any idea how MKT would investigate
21 freight loss and damage claims at Beaumont or Chaison?

22 A Freight loss and damage claims, we touched on
23 that some yesterday. Those of the magnitude that would
24 create a problem would be investigated by a freight loss
25 and damage inspector from Houston.

1 Q And you have such an individual presently
2 employed?

3 A Yes, sir, we do.

4 Q Have you made any study of the level of
5 compensation SPSF would charge MKT for these services at
6 Beaumont?

7 A Not other than I would assume it would be
8 comparable to services that are performed in other areas
9 at other joint facilities.

10 Q So you would look at reciprocal switching
11 charges in the Houston-Beaumont area for a guide?

12 A No, sir. Reciprocal switching, I believe you
13 are in a different area than the contractual services
14 that we would require.

15 Q You would look at some other contract to see
16 what would be charged?

17 A Yes, sir.

18 Q You didn't have a specific figure in mind when
19 you put this together?

20 A Only the average of -- I think Mr. Anderson
21 used the average of similar contracts that were in
22 place.

23 Q Now, in the morning -- I'm using "morning"
24 advisedly; I should say after the crew's rest -- would
25 MKT take its entire train down to Chaison or leave the

1 cars going back to Houston in our SPSF yard?

2 A Well, the proper thing and to facilitate the
3 movement would be to leave those cars going to Houston
4 and pick them up on the way back. I might add also that
5 our application proposes we serve those industries in
6 Beaumont and Chaison through reciprocal switching.

7 Now, I am not certain about Chaison. It is
8 reciprocal switching for some cars, I believe, in
9 Southern Pacific's tariffs and it is not for others. If
10 SP would prefer that that be served through reciprocal
11 switching, we would be agreeable to that also.

12 Q So then what you're suggesting to me is that
13 if it could be worked out you would prefer to serve
14 Chaison just like any other Beaumont industry?

15 A What I'm suggesting is that I believe the
16 Southern Pacific operating personnel would prefer to
17 have it that way than to have our engine serving there
18 also, and we would be agreeable.

19 Q But your plan right now is to operate the
20 train physically down to Chaison?

21 A That's correct, sir.

22 Q Now, are you aware that the entire line
23 between Beaumont and Chaison is within the yard limits?

24 A Yes, sir.

25 Q Can you tell me what the major industry is at

1 Chaison which MKT intends to serve?

2 A I believe it's Mobil.

3 Q Are you aware that refinery is also served by
4 the Kansas City Southern?

5 A Yes, sir.

6 Q If MKT were to operate to Chaison, do you have
7 any idea where you would store cars for switching and
8 delivery to the SP?

9 A For switching and delivery to the SP?

10 Q The SP for switching into the refinery or to
11 KCS for switching into the refinery, whatever
12 arrangement would be made.

13 A That's something that would have to be worked
14 out to best advantage. I believe that most of them in
15 the magnitude that we would be handling would probably
16 go directly into the plant.

17 Q And you think an MKT engine would shove those
18 into the plant?

19 A Yes, sir.

20 Q In your opinion, then, no additional storage
21 or yard tracks would be required at Chaison?

22 A I do not think so.

23 Q Well, finally we come to the only Santa Fe
24 trackage involved in your request, and that's between
25 Dallas and Midlothian at Ward Spur. Again, Mr. Todd,

1 I'll ask you if you have observed operations on this
2 trackage.

3 A I visited that track, observed the track.
4 There were no operations on it at the time I looked at
5 it.

6 Q All right. About when did you go?

7 A This was in I'd say about July.

8 Q Mr. Todd, is this line signaled?

9 A I don't believe it is.

10 Q Do you know how many trains SPSF proposes to
11 operate over this line?

12 A I don't recall exactly from the operating
13 plan.

14 Q I think if you don't recall offhand that's
15 fine.

16 A I remember seeing the number, but I don't
17 recall the number.

18 Q Do you have any opinion regarding the capacity
19 of this line in terms of either million gross tons or
20 trains?

21 A The line is being upgraded to some extent.
22 There was welded rail alongside to be laid.

23 Q Do you think the replacement of jointed rail
24 with welded rail would have an impact on capacity?

25 A I think it probably increases the speed

1 somewhat and makes it a more stable line.

2 Q Now, Mr. Todd, what industries does MKT
3 propose to serve at Midlothian?

4 A Chaparral Steel and TXI, Texas Industries.

5 Q Do you propose to serve the Mid-Continent
6 automobile port or the Mazda facility, as it's been
7 referred to in this proceeding?

8 A We would propose to serve that upon request.

9 Q Now, are Chaparral Steel and TXI presently
10 Santa Fe industries?

11 A Yes, sir, they are.

12 Q Isn't the Mazda facility presently an SP
13 facility?

14 A It is.

15 Q Is there a connection at Midlothian permitting
16 MKT to operate from the Santa Fe track to the SP track?

17 A There is no physical connection at
18 Midlothian.

19 Q Yesterday Mr. Dimmerman was talking about
20 building a track into Mazda. Is that how you would
21 serve that facility?

22 A If Mazda desired service on that line, that's
23 the way it would have to be given. And as Mr. Dimmerman
24 pointed out, the plant is so designed for track to be
25 built in at that location.

1 Q Mr. Todd, what industries are at Ward Spur?

2 A That's TXI and Chaparral Steel.

3 Q Are those the same two you referred to with
4 reference to Midlothian?

5 A Yes, sir.

6 Q So there are no other industries in Midlothian
7 that you would serve?

8 A Those are the principal industries in
9 Midlothian.

10 Q Do you have any idea where MKT would store
11 empty cars at Ward Spur, if necessary?

12 A I don't believe it would be necessary to store
13 any empty cars at Ward Spur.

14 Q You would pick up and return all cars that you
15 had on any given day to Dallas, then?

16 A Yes, sir.

17 Q The final portion of your statement discusses
18 MKT access to the Agri Industries elevator at Houston.
19 Didn't MKT and Southern Pacific reach a voluntary
20 agreement guaranteeing MKT access to this elevator?

21 A There is a trackage rights agreement whereby
22 we operate into the Basin yard adjacent to the elevator,
23 yes, sir.

24 Q And Southern Pacific carries the traffic from
25 Basin yard over to the elevator?

1 A Yes.

2 Q Now, isn't Southern Pacific the only railroad
3 that physically switches this elevator?

4 A It is.

5 Q Now, wouldn't SPSF be in exactly the same
6 position as SP is with respect to this elevator, as the
7 sole serving carrier?

8 A Yes, it would.

9 Q Can you tell me why, then, you don't think
10 SPSF would honor this agreement with MKT?

11 A What we're seeking to do here is to perpetuate
12 this agreement, which -- it is presently written with a
13 30-day cancellation. That also is a reciprocal switch,
14 in addition to the agreement that provides the service
15 to the elevator.

16 Q I guess what my point is, Mr. Todd, is that in
17 negotiation the parties reached an agreement that
18 includes a 30-day termination clause, and you've said
19 that the situation wouldn't be any different. I'm
20 wondering why you think any protection is needed here.

21 A Well, there are two things. One is the
22 reciprocal switch. The other is a matter to facilitate
23 the handling of the cars for both roads at a savings for
24 Southern Pacific and a savings for MKT, and it's
25 superior service as opposed to going through Englewood.

1 Q Well, that's all fine, Mr. Todd. I guess
2 again what I'm trying to get at is that SP and MKT have
3 an agreement. And you are aware, aren't you, that upon
4 the merger that agreement will bind SPSF?

5 A Yes, sir.

6 Q Now, at the end of your statement you say that
7 you used, you or Mr. Anderson used, a nine dollar per
8 train mile charge to -- excuse me, strike that -- nine
9 dollar per train mile charge to approximate SPSF's
10 charge for the proposed trackage rights. You said this
11 charge is based upon an agreement between the SP and the
12 Galveston, Houston and Henderson.

13 Now, as I understand it Katy and the Missouri
14 Pacific are co-owners of the GH&H, isn't that correct?

15 A That's correct.

16 Q Can you tell me what the characteristics are
17 of the GH&H line subject to this agreement, the length,
18 the condition of the railroad, whether it's signaled or
19 not, the top speed, that sort of thing?

20 A Well, this agreement covers a short segment of
21 track. It is welded rail, good stable track. It is
22 used principally by grain trains.

23 Q About how long is the track?

24 A A mile or so. It's a short track.

25 Q What's the top speed?

1 A It's in yard limits.

2 Q Okay. What --

3 A The speed is not governed at that point by the
4 condition of the track, but by the operating route.

5 Q Okay. Is it a signaled line?

6 A Well, there are signals accompanying the
7 track. We're talking about a short segment. I don't
8 believe that we can say that that specific segment is
9 signaled, but there are signals to get on it.

10 Q Well, let's go at this another way, Mr. Todd.
11 MKT is both a tenant railroad and an owner railroad in
12 trackage rights situations, isn't it?

13 A Yes, we are.

14 Q You are familiar generally with joint facility
15 agreements?

16 A In general, yes.

17 Q When you set a charge for another railroad to
18 use your track, don't you take a look at the investment
19 that MKT has in that railroad in determining the charge
20 to be assessed?

21 A Usually there are -- I think in the industry
22 now, the train mile agreements are prevalent because of
23 the expediency in rendering bills. It does not require
24 as much calculations and that the train mile figure,
25 whatever it may be, is based a portion on the value and

1 a portion on the M&O, maintenance and operation cost,
2 with the maintenance and operation cost usually being
3 escalated by some indices and the interest rental
4 portion remaining static.

5 Q But you will agree with me that the type and
6 condition and the investment in the railroad itself is
7 critical to determining the trackage rights charge to be
8 applied?

9 A That is a factor.

10 Q And you will also agree that lines that are in
11 better condition should command a higher price than
12 lines that are not in quite as good condition?

13 A Not necessarily.

14 Q Okay, why?

15 A Because that condition can change.

16 Q In other words, if there are plans to upgrade
17 the railroad then that's worth something to the tenant?

18 A That becomes a part -- under present
19 accounting practices, that becomes a part of the M&O.
20 Under depreciation accounting, there would have to be
21 some other calculations, probably, to see to it.

22 Q But you will agree, won't you, as a general
23 proposition that if you have a high-speed main line
24 that's signaled and can offer you great productivity, it
25 would be worth more to you as a tenant railroad to

1 operate over that line than to operate over another line
2 which is not signaled and has all jointed rail that
3 requires replacement?

4 MR. ROPER: Your Honor, I believe that
5 question assumes a lot of factors there, and I think I
6 want to be sure we understand we want to break it down
7 to each portion or what.

8 JUDGE HOPKINS: I'm inclined to believe the
9 witness understands the question and can answer it in
10 the way it was given. I'll overrule the objection.

11 BY MR. BLASZAK: (Resuming)

12 Q Can you understand the question?

13 A The condition of the railroad certainly is a
14 factor in the operating practices. If the line is
15 adequate to move the trains, I do not know that
16 gold-plating, if you want to use that term, in excess of
17 that means a great deal.

18 Q Well, we don't use the term "gold-plating" on
19 the Santa Fe, Mr. Todd.

20 Can you tell me what MKT pays the Missouri
21 Pacific for its trackage rights between Omaha and Kansas
22 City that it acquired in the MoP-UP proceeding?

23 A I can't tell you how that would calculate, the
24 train miles, no, sir.

25 Q Can you tell me whether you think it's higher

1 or lower than nine dollars a train mile? If this will
2 help you, Mr. Gastler referred to it as an extremely
3 high rate.

4 A It is high. Now, when it comes down to train
5 miles it's probably over nine dollars, yes.

6 Q Would you consider the Missouri Pacific line
7 between Omaha and Kansas City a good piece of railroad?

8 A It's a good piece of railroad, but I also
9 consider that the value placed on it is in excess.

10 Q Wouldn't you say that's not surprising, given
11 your position as a tenant?

12 A Well, no. I don't believe -- I do not
13 personally conduct my affairs in that fashion and I
14 don't think that anyone else should.

15 Q That's fair enough, Mr. Todd.

16 How would you say the Missouri Pacific between
17 Omaha and Kansas City compares with, let's say, the
18 present condition of the Southern Pacific line between
19 Topeka and Liberal?

20 A Between Topeka and Liberal, I would say that
21 some of the track between Topeka and Liberal is superior
22 and some of it is not.

23 Q Okay. How about the Southern Pacific line
24 between San Antonio and Spofford?

25 A The Southern Pacific line between San Antonio

1 and Spofford is laid with heavier rail, but I do not
2 think it's a great deal more physically better than the
3 Missouri Pacific track, if any.

4 Q Now, Mr. Todd, if the charge for MKT's
5 trackage rights -- we'll take them all together here --
6 were set at a level similar to that applicable to the
7 MP-MKT trackage rights, how would that affect MKT's cost
8 projection for operating over our lines?

9 A I can't answer that without having a lot more
10 factors.

11 Q Well, you did say, though, that the MKT-MP
12 agreement does impose a higher level of costs on the
13 Katy.

14 A I did say what, now?

15 Q Didn't you say that the MKT-MP agreement
16 imposes a higher level of cost on the Katy than the nine
17 dollars per train mile?

18 A I said I think it does.

19 Q Well, wouldn't it follow from that that MKT,
20 by virtue of paying more for the trackage rights, would
21 receive less in the way of contribution income from
22 operating on these rights?

23 A Now, if we're going to have a train mile
24 agreement structured as the one that you seem to like to
25 refer to on the Missouri Pacific, then that's strictly

1 on a ton mile basis. I don't know what our percentage
2 of the ton miles would be between Spofford and San
3 Antonio.

4 I feel confident they are going to be very
5 light compared to the Southern Pacific tonnage in that
6 area, which might not cause them to be in excess. I
7 can't answer that without more information.

8 Q You are aware, though, that some of these
9 operations, given the Katy's cost assumptions, are
10 already pretty close to breakeven propositions, aren't
11 you? Some of the proposed trackage rights operations,
12 that is.

13 A There are a lot of railroad operations in this
14 competitive area today that are close to breakeven.

15 Q Well, isn't it possible that a higher charge
16 would make these operations unprofitable?

17 A Well, naturally we could be priced out of the
18 market and that would eliminate the competitive efforts
19 that we're trying to support here.

20 Q Well, let me ask you what MKT does when you
21 find that you're in an unprofitable operation, such as
22 on a branch line?

23 A We do the best we can toward the efficiencies
24 to try to make that operation profitable.

25 Q If you can't do that, do you consider

1 abandonment of the lie?

2 A We have abandoned lines in the past, yes,
3 sir.

4 Q In particular, I recall that the MKT had one
5 very large case and made quite a bit of abandonment law
6 with respect to the abandonment of the wheat line going
7 up into Bell Canyon. You're familiar with that, aren't
8 you?

9 A Yes.

10 Q MKT did move to eliminate losses from
11 operation of that line?

12 A We held on for several years.

13 Q But eventually you did abandon the railroad?
14 Why don't you say yes?

15 A Yes.

16 Q Did you consider the wheat line to be an
17 inefficient line in your opinion, Mr. Todd?

18 A The wheat line was inefficient in that the
19 traffic base began to diminish, and that line was a
20 railroad that was laid, shall we say, a dirt railroad.
21 It made maintenance very difficult and the maintenance
22 factors there were in excess of what they could have
23 been other places, which contributed to the inefficiency
24 of that line.

25 Q Mr. Todd, I think that's all I have. Thank

1 you very much.

2 A Thank you, sir.

3 JUDGE HOPKINS: Mr. Delaney.

4 BY MR. DELANEY:

5 Q Good morning, Mr. Todd.

6 A Good morning.

7 Q For the record, I'm John Delaney and I
8 represent the Railway Labor Executives Association.
9 I'll try to keep my voice up.

10 Could I ask you to focus for now on your
11 trackage rights application for the Topeka to Liberal
12 line. Approximately how long is that trackage? How
13 much traffic is involved?

14 A Let's turn to the operating plan, so I won't
15 give you something offhand here. Approximately 340
16 miles.

17 Q And whose trackage is that? Is that the
18 Southern Pacific's or St. Louis Southwestern?

19 A Yes.

20 Q Which one?

21 A Well, really I think we're talking about the
22 same. I think it's operated as SSW trackage, but it's
23 part of the Southern Pacific system, as I would
24 understand it.

25 Q Because the Cotton Belt is part of it?

1 A Yes.

2 Q Where is the farthest western point where MKT
3 has a home terminal for operating employees?

4 A In respect to that line, Harrington, Kansas.

5 Q Harrington?

6 A Yes.

7 Q And how far is that from Liberal,
8 approximately?

9 A About 260 miles, I guess.

10 Q 260.

11 As far as the operating employees go, does MKT
12 have agreements with any unions?

13 A Yes, we have agreements with operating
14 unions.

15 Q How many?

16 A On train and engine service, two.

17 Q And who are those agreements with?

18 A United Transportation Union and the
19 Brotherhood of Locomotive Engineers.

20 Q Are there any other agreements?

21 A There are other agreements on the railroad.
22 As you know, the railroad industry is very fragmented
23 when it comes to union representation.

24 Q But those two are just for the operating
25 employees?

- 1 A No, that's it.
- 2 Q Okay. Do these agreements to your knowledge
3 normally have the 100-mile pay structure?
- 4 A Yes, they do, for road service.
- 5 Q In order to operate from Liberal, MKT proposes
6 to operate with its own employees, doesn't it?
- 7 A Yes.
- 8 Q Is that a fixed proposal?
- 9 A Yes.
- 10 Q Are you willing to negotiate on it at all?
- 11 A We feel that if they are our trackage rights
12 that our employees should operate those trains.
- 13 Q So it's not negotiable?
- 14 A No, sir.
- 15 Q If you did operate from Liberal to Topeka with
16 your employees, would you have to establish terminals
17 along the way?
- 18 A We would establish a terminal at Pratt, which
19 is presently the terminal for trains operating in that
20 area.
- 21 Q I didn't catch the name?
- 22 A Pratt, P-r-a-t-t.
- 23 Q And would you have to switch crews to operate
24 a train through the line?
- 25 A There would be a crew change at Pratt.

1 Q At Pratt.

2 Now, under your proposal you also want the
3 ability to service industries along the line; is that
4 correct?

5 A That's correct.

6 Q And in servicing these industries, are you
7 talking about -- well, I guess is the phrase setting out
8 and picking up cars?

9 A Yes, sir.

10 Q Or is that actual switching?

11 A Well, setting out and picking up is
12 switching.

13 Q Is switching?

14 A Yes.

15 Q Could you explain to me just what is entailed
16 when you set out and pick up a car at an industry?

17 A Well, you move a car onto a track, uncouple
18 it, and leave it on the track. That's setting out. You
19 pick up a car by coupling to that car on another track
20 and put it back on the train and go on. That's picking
21 up. It's the terminology that they use.

22 Q And is there any proximity with the track that
23 you put the car on to the industry?

24 A You may be putting it on the industry track.

25 Q Their trackage itself?

1 A Yes.

2 Q And would the MKT employees be handling the
3 setting out?

4 A That's our proposal, yes, sir.

5 Q And the picking up?

6 A Yes, sir.

7 Q What kind of engine would you use to drop off
8 a car at a siding? Can you explain what the physical
9 process is for setting off a car?

10 A Are you familiar with the coupling devices on
11 a car?

12 Q No, just that they hook; what you see on a
13 typical model train.

14 A The cars and engines are equipped with what is
15 known as automatic couplers in the industry today. Now,
16 to break that coupling there is an uncoupling lever that
17 pulls the pin, is the term used, and you break the
18 coupling. That lever is pulled by an employee and then
19 the car with the engine is moved to the location desired
20 and uncoupled from the engine or the preceding car and
21 left.

22 That's about the best I can explain it to you
23 right now.

24 Q How do you move the car?

25 A You move the car with locomotive power.

1 Q Right, and which locomotive would you be
2 using?

3 A Which locomotive? Any one of our locomotives
4 that might be operating there.

5 Q So you'd have locomotives at the location?

6 A The train would be operated with locomotives.
7 That's the locomotive that would do the work.

8 Q Okay. All right, when we get down to the
9 actual yards or to the interchange points, is it your
10 intention that the MKT should have the right to perform
11 the interchange work at the yards?

12 A I believe that we stated in our application
13 that at places like Hutchison we were agreeable to
14 contracting with the SSW to do that work or we would
15 also perform that. At the smaller stations, I think
16 probably that it would be in the best interest of the
17 Cotton Belt and the MKT if we went ahead and did it.

18 Q And does that apply also for the
19 classification of cars?

20 A Does that what? Does that apply to what?

21 Q Does that also apply to classification of
22 cars?

23 A That's not normally the term you use in
24 speaking of classification of cars.

25 Q What term do you usually use?

1 A In classifying cars? It's a term used in
2 switching cars, classifying them.

3 Q Switching?

4 A For that term, yes.

5 Q Is there a yard at Liberal?

6 A Yes.

7 Q And right now you have no employees down
8 there?

9 A No.

10 Q Correct?

11 A That's correct.

12 Q That's because the farthest western terminal
13 is, you say, Harrington?

14 A Yes.

15 Q So would you have to establish a terminal at
16 Liberal?

17 A We would not establish a terminal at Liberal.
18 Our application proposes we use the terminal facilities
19 that are there.

20 Q Would you also have to switch engines at the
21 yards in Liberal?

22 A No, we would use the same engines in and same
23 engines out.

24 Q So the type of work that you envision to be
25 performed by MKT would be both road work and yard work?

1 A Limited yard work, as we would think of yard
2 work.

3 Q All right. And this work right now the MKT is
4 proposing that it be given the option to use its own
5 employees to perform, the road and the yard?

6 A Yes.

7 Q Is the MKT willing to negotiate with rail
8 labor -- and by "rail labor" I mean the unions that
9 represent the employees, the operating employees on both
10 the MKT and the Cotton Belt?

11 A Our negotiations are handled by our personnel
12 department, and the personnel director, Mr. Hacker, is
13 here. And I would prefer that he address himself to
14 negotiations.

15 Q So far as you are concerned, then, the actual
16 crew assignments, the manning issue, is separate and
17 distinct from the trackage rights, the rights to operate
18 and service industries? They're two distinct issues?

19 A No, I feel that when you're granted trackage
20 rights that that is a right to operate a company's
21 trains over that piece of track, and inherently its
22 employees should go with that right.

23 Q And you are actually involved in the
24 negotiations of trackage rights agreements, are you
25 not?

1 A No, no, we're not actually involved in any
2 negotiations at this point.

3 Q All right. If the Cotton Belt provided crews
4 to the MKT to perform the trackage rights work, would
5 the cost of those crews be a part of the fee that MKT
6 would pay for those trackage rights?

7 A I have not had any experience with any
8 trackage rights where another road provided the
9 employees. I don't feel that that is a proper way to
10 operate.

11 Q So you really wouldn't have an opinion on
12 that?

13 A No.

14 Q Did the MKT participate in the national
15 handling of wage agreements?

16 A We are part of the national settlement.

17 Q So you did participate?

18 A Mr. Hacker could better address our extent of
19 participation in that.

20 Q All right, we'll save that.

21 To your knowledge, do you know whether or not
22 the MKT's per operating employee costs are higher or
23 lower than the Cotton Belt's?

24 A I do not know.

25 Q You do not know. How about the Santa Fe?

1 A I do not know.

2 Q And how about Southern Pacific?

3 A I do not know.

4 Q What reasons do you have?

5 A What reasons do I have?

6 Q Well, are you aware of the agreements that MKT
7 has with other railroads providing for combined
8 switching agreements?

9 A I'm not sure I know what you're referring to.

10 Q Well, what I'm referring to are any agreements
11 themselves that MKT may have with other railroads,
12 anybody else, for combined switching agreements. Do you
13 understand what I mean by combined switching
14 agreements?

15 A I'm not sure that you and I are thinking about
16 the same thing on some of these questions, so I would
17 prefer you explain that a little.

18 Q Well, when I say "combined switching
19 agreement," what might you think of?

20 MR. ROPER: Your Honor, if I might interject,
21 why doesn't counsel just state what he means by
22 "combined switching agreements," so Mr. Todd knows what
23 he's talking about.

24 JUDGE HOPKINS: I think you're putting him on
25 the spot now. Can you explain what you mean, Mr.

1 Delaney?

2 BY MR. DELANEY: (Resuming)

3 Q Well, when you have two railroads operating a
4 train under trackage rights and there's going to be a
5 switching between the two, isn't there some agreement
6 set up to lay out the guidelines for how that process is
7 to take place?

8 JUDGE HOPKINS: Are you talking about as to
9 employees or what?

10 MR. DELANEY: Yes.

11 THE WITNESS: There are joint facility
12 agreements in the industry where joint switching
13 facilities are shared. Trackage rights does not
14 necessarily confer any switching authority to one road
15 or another. So I'm a little reluctant to attempt to
16 answer your question, because I don't understand it.

17 BY MR. DELANEY: (Resuming)

18 Q Have you ever heard of anything called the
19 equity ratio?

20 A Equity ratio in what?

21 Q Combined switching agreements. Yes or no?

22 A Well, if you're going to limit me to saying a
23 combined switching agreement I'm going to say no,
24 because I don't know anything about combined switching
25 agreements.

1 Q Okay, fair enough.

2 Is the MKT willing to participate in
3 negotiations with the Cotton Belt and the operating
4 employees of all the other carriers for an agreement to
5 provide for the selection and assignment of forces among
6 all the employees involved?

7 A The MKT would prefer that its trains and
8 engines be operated by its own employees, because I
9 think to have a successful operation the employees
10 should be a member of the organization for which they
11 are working.

12 Any questions regarding negotiations, as I've
13 told you before, are matters for our personnel people.

14 Q The traffic that the MKT would intend to serve
15 along the Topeka to Liberal line, MKT does not handle
16 that traffic at the present time except on an
17 interchange basis, is that true?

18 A That's correct.

19 Q And with the trackage rights you are seeking,
20 do you intend to be able to handle traffic that is
21 presently handled by Cotton Belt employees?

22 A Well, the traffic that we might handle with
23 the trackage rights agreement might be traffic that's
24 now moving by truck.

25 Q I'm not so sure that answers my question.

1 A We would intend to handle traffic that is on
2 -- that we could solicit and provide service for along
3 that line. I can't make the assumption of who's
4 handling the traffic today.

5 Q Do you also intend to solicit traffic that the
6 Cotton Belt is not handling at this time?

7 A We will solicit any traffic we could handle
8 along that line if we were there.

9 Q Have you made a study as to approximately how
10 much traffic you believe you would obtain from the
11 Cotton Belt that Cotton Belt employees presently handle
12 right now on the Topeka to Liberal line?

13 A As far as I know, studies were not made in
14 that realm.

15 Q How many employees does MKT believe it would
16 take to handle the work on this line?

17 A The minimum operating characteristics would be
18 for a crew to operate between Pratt and Liberal, and a
19 crew to operate between Pratt and Harrington, and a crew
20 to operate between Harrington and Kansas City.

21 Q So would you say three crews?

22 A Three crews in operation. It will take more
23 than three crews to support that on a continuing basis.

24 Q How many? Just assume that MKT does all the
25 work.

1 A What?

2 Q Just assume that MKT does all the work.

3 A Well, those are the crews that would be
4 operating every day, and when I'm talking about these
5 type of support crews, there are people with vacations,
6 laying off, and that sort of thing. So you're talking
7 about probably 15 employees, 16.

8 Q Okay. And of these 15, how many would it take
9 to handle simply the work that was diverted from the
10 Cotton Belt?

11 A I have no idea, because I don't know how much
12 work would be diverted from the Cotton Belt. After all,
13 the Cotton Belt will still be there.

14 Q Would you anticipate that the diversion of
15 traffic from the Cotton Belt would mean less work for
16 Cotton Belt employees?

17 A I would not make that assumption.

18 Q And is the MKT willing to give priority of
19 employment to displaced Cotton Belt employees to perform
20 MKT service if the MKT was the one who performed this
21 work with their crews?

22 A Are we willing to give priority for what?

23 Q Priority of employment.

24 A Our employment practices are governed by
25 certain regulations now with respect to priorities and

1 equal opportunity employment and so forth, and I would
2 prefer that Mr. Hacker, who is more familiar with our
3 employment practices, address that question for you.

4 MR. DELANEY: That's all I have, Your Honor.

5 MR. WHITE: Your Honor, I have, with the
6 indulgence of counsel, one question. My name is Charles
7 White and I represent the Texas-Mexican Railway.

8 BY MR. WHITE:

9 Q Mr. Todd, with respect to MKT's trackage
10 rights application between San Antonio and Corpus
11 Christi, do you intend to or do you request authority to
12 reciprocally switch Texas-Mexican industries at Corpus
13 Christi?

14 A We did not request, we did not.

15 JUDGE HOPKINS: Mr. Roper.

16 REDIRECT EXAMINATION

17 BY MR. ROPER:

18 Q Mr. Todd, when Mr. Blaszak was asking you some
19 questions regarding -- or do you recall Mr. Blaszak
20 asking you some questions regarding the terminal
21 services you would expect SP to perform for MKT, that
22 sort of operations?

23 A Yes, sir.

24 Q Do you have any actual experience in working
25 with the SP in these types of joint facility

1 arrangements?

2 A We have some joint operations with SP, but not
3 in the exact context that we are talking about here.

4 Q Are these type of joint facility arrangements
5 that are contemplated fairly common within the
6 industry?

7 A Yes, I believe they are.

8 Q And have they presented any insurmountable
9 problems in your experience?

10 A They have not.

11 Q You were also asked to compare the Missouri
12 Pacific line between Kansas City and Omaha with various
13 lines that we're seeking trackage rights for. Do you
14 recall those questions?

15 A Yes.

16 Q Would you compare the Kansas City to Omaha
17 line with the SP line between San Antonio and Seguin?

18 A It is superior.

19 Q Which line is?

20 A The Missouri Pacific line between Kansas City
21 and Omaha is superior physically to the SP line San
22 Antonio to Seguin.

23 Q What about the SP line from Houston to Texas
24 City?

25 A In comparison to the two, the Missouri Pacific

1 track is physically a superior track.

2 MR. ROOPER: I believe that's all the questions
3 I have.

4 JUDGE HOPKINS: Anything further?

5 MR. BLASZAK: I just have on, Your Honor.

6 RE CROSS EXAMINATION

7 BY MR. BLASZAK:

8 Q Mr. Todd, would you compare the Missouri
9 Pacific Kansas City-Omaha line with the Missouri Pacific
10 line between Sinton and Corpus Christi? Do you think
11 they're comparable in condition?

12 A The Missouri Pacific Kansas City-Omaha line
13 and Sinton to Corpus Christi?

14 Q Yes.

15 A From my viewing them -- I'd like to say at
16 this point, those type questions are asking me to make
17 some assumptions without the benefit that a man should
18 have in making that assumption.

19 Q Well, given that reservation --

20 A Given those parameters, I would say they are
21 comparable.

22 MR. BLASZAK: That's all I have, Your Honor.

23 JUDGE HOPKINS: Anything further?

24 (No response.)

25 MR. ROOPER: Your Honor, I move the admission

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of Mr. Todd's testimony and Exhibit 13.

JUDGE HOPKINS: Any objection?

MR. BLASZAK: No, Your Honor.

JUDGE HOPKINS: They will be received in evidence.

MR. BLASZAK: I move the admission of my exhibit. I believe it is 77.

JUDGE HOPKINS: Any objection?

(No response.)

JUDGE HOPKINS: It will be received in evidence.

(The document referred to was marked Exhibit No. SFSP-C-77 for identification.)

MR. ROPER: I call Mr. Hacker.

Whereupon,

HAROLD HACKER

was called as a witness by counsel for Missouri-Kansas-Texas Railroad Company and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ROPER:

Q Would you state your name and business address for the record, please.

00010096

1 A Harold M. Hacker, 701 Commerce Street, Dallas,
2 Texas.

3 Q And by whom and in what capacity are you
4 employed?

5 A I'm employed by the Missouri-Kansas-Texas
6 Railroad system in the capacity of Director of Public
7 Relations and Personnel.

8 Q In connection with the evidence filed or
9 statements filed by MKT in this proceeding, did you
10 prepare a verified statement which is found in MKT-21?

11 A I did, sir.

12 Q And did you also have prepared under your
13 direction the labor impact exhibits contained in
14 MKT-19?

15 A I did, sir.

16 Q Do you have any corrections or additions to
17 either one of those documents?

18 A No, I don't.

19 Q And are those documents true and correct to
20 the best of your knowledge and belief?

21 A Yes, they are.

22 MR. ROPER: The witness is available.

23 JUDGE HOPKINS: Is it my understanding Mr.
24 Delaney is the only one questioning this witness?

25 THE WITNESS: I believe so.

CROSS EXAMINATION

BY MR. DELANEY:

1
2
3 Q Good morning. My name is John Delaney. I
4 represent the Railway Labor Executives Association.

5 Who is presently designated as the highest
6 officer on the MKT to be able to handle Section 6
7 notices?

8 A I am, sir.

9 Q You are. As a result of your assignments with
10 MKT, are you quite familiar with the labor relations
11 aspects of MKT's operations?

12 A I think so, sir.

13 Q How long have you been with MKT in respect to
14 labor relations?

15 A I have been with the MKT for 19-1/2 years.

16 Q How many labor organizations does the MKT
17 currently deal with representing MKT employees?

18 A Approximately 14.

19 Q Fourteen. When you say 14, does that refer to
20 the number of general chairmen?

21 A No, that refers to the number of labor
22 organizations.

23 Q How many general chairmen?

24 A Oh, approximately 20 -- no, 17.

25 Q Seventeen?

1 A Yes.

2 Q Can you explain the difference between the two
3 numbers?

4 A Yes. We have two representatives of employees
5 with United Transportation Union.

6 Q You have two general chairmen?

7 A Yes. We have two general chairmen with the
8 maintenance of way employees. Sixteen is the correct
9 number, not 17.

10 Q Okay. Could we go through a list of all those
11 unions? We've done the UTU.

12 A I hope I can remember them all. The
13 Brotherhood of Locomotive Engineers; BFC, the
14 Brotherhood of Railway Clerks; the carmen's
15 organization; the machinists; electricians.

16 Q The machinists is the IAM?

17 A IAM.

18 Q And the electricians?

19 A IBEW.

20 The sheet metal workers; International
21 Brotherhood of Firemen and Oilers; the Brotherhood of
22 Railroad Signalmen.

23 Q That's ten.

24 A We've got four more.

25 Q Hotel and Restaurant?

1 A They are represented. We have no employees.
2 Just now the other four escape me.

3 Q Okay, let's move on. As to the organizations
4 you just listed, are the basic craftsmen and employees
5 represented by the same unions on both MKT and Santa Fe
6 and Southern Pacific, to your knowledge?

7 A To my knowledge, they are.

8 Q And if this is so, does that help your
9 negotiation of protective agreements? Does it
10 facilitate things at all?

11 A I don't know that it helps or hurts.

12 Q Has the MKT reached an agreement in principle
13 with any labor organization as to the type of
14 protections to be imposed or to be available for
15 employees in the event the Commission approves any of
16 MKT's applications?

17 A No, it hasn't.

18 Q Mr. Hacker, the term "schedule agreement" is a
19 term of art used in railway labor; is that correct?

20 A Yes.

21 Q And it is comparable with what people in other
22 industries refer to as a collective bargaining
23 agreement?

24 A That's correct.

25 Q Are there also written practices that would

1 apply -- unwritten, unwritten practices that would
2 apply?

3 A Are there also unwritten practices? There may
4 or may not be practices which are consistent
5 systemwide.

6 Q Are you familiar with what is known as an
7 attrition agreement?

8 A Attrition agreement? I know that there are
9 agreements that are based on an attrition factor.

10 Q Are the New York Dock conditions an attrition
11 agreement?

12 A They're not an agreement.

13 Q Would an agreement containing the New York
14 Dock conditions be considered an attrition agreement?

15 A I wouldn't classify it as an attrition
16 agreement.

17 Q To your knowledge, how would the two differ?
18 What would be the essential difference between the two?

19 A An attrition agreement, as I understand it,
20 would retain certain privileges to an individual
21 employee until separated by a specific item, such as
22 resignation, dismissal, death, retirement, whereas as I
23 understand New York Dock it provides benefits for a
24 specific period of time.

25 Q So the time limit would be there?

1 A Essentially.

2 JUDGE HOPKINS: I know it's an intimate
3 conversation between the two of you, but I think it
4 would be wiser for you to speak up so everybody can
5 hear.

6 MR. DELANEY: Okay.

7 BY MR. DELANEY: (Resuming)

8 Q Now, Mr. Hacker, have you participated in an
9 analysis of MKT's proposal and the impact of that
10 proposal on labor?

11 A I have prepared, or with my staff prepared, a
12 labor impact study.

13 Q And has MKT modified in any way the manner in
14 which it will accomplish its proposed trackage rights as
15 they have been filed with the Commission?

16 A Not to my knowledge.

17 Q How many employees would be affected if the
18 Commission approved all of the MKT's proposed trackage
19 rights?

20 A How many employees would be affected? What do
21 you mean by the term "affected"?

22 Q Under the New York Dock conditions, affected.

23 A I don't think any would be affected.

24

25

1 Q Does that also apply to employees of other
2 railroads?

3 A I have no knowledge about other railroads.

4 Q Would you have any knowledge as to where the
5 major impact would be?

6 A I don't think there would be a major impact.

7 Q Would any employment positions that would be
8 created at MKT as a result of MKT's proposals be covered
9 by present collective bargaining agreements?

10 A Yes.

11 Q All right. If the Commission approves any or
12 all of MKT's proposals, does MKT plan to create new
13 seniority districts?

14 A Yes.

15 Q Which groups of employees will encounter these
16 additions?

17 A Train and enginemen.

18 Q Pardon?

19 A Train and engine employees.

20 Q And MKT has not negotiated any agreements with
21 any representatives?

22 A No, we have not.

23 Q Now, the same question as to modifying any
24 current seniority districts.

25 A There would be some extension of certain

1 seniority districts.

2 Q Can you sketch for me what seniority districts
3 will be altered?

4 A Yes. What is known as our seventh seniority
5 district for trainmen, our eleventh seniority district
6 for enginemen, and the district we call the Nebraska
7 seniority district, also for train and enginemen.

8 Q For both, and MKT has not negotiated any
9 agreements on that, either?

10 A No, we have not.

11 Q Now, if I could go back to some questions that
12 were thrown in your lab, is MKT willing to negotiate any
13 agreements as to a method to select and assign forces to
14 perform the trackage rights?

15 A We have in the past worked with our labor
16 organizations to ensure that the proper employees were
17 selected for jobs and assigned to those jobs, and in a
18 situation such as this, I think perhaps negotiation is
19 too strong a word. The current agreement provides all
20 that is necessary to fill those jobs.

21 Q So you would not be willing to negotiate?

22 A Negotiation would not be necessary.

23 Q Did MKT participate in the national handling
24 of wage agreements?

25 A Did we?

1 Q Yes.

2 A In the past round, yes.

3 Q Do you know whether or not the wage
4 negotiations that the MKT participated in also included
5 health and welfare negotiations?

6 A Yes.

7 Q And your operating employees are covered by
8 the Railroad Retirement Act, are they not?

9 A Yes, they are, as are all employees, railroad
10 employees.

11 Q And this is the type of pension that the
12 operating employees are working for? Isn't that
13 correct?

14 A I am not sure it is the type they are working
15 for. It is the type that applies to all railroad
16 employees.

17 Q Okay. To your knowledge, are the wage rates
18 of MKT operating employees comparable with the wage
19 rates of Cotton Belt operating employees?

20 A I am not familiar with Cotton Belt
21 agreements. I assume since --

22 Q Is the MKT willing to give priority of
23 employment to displaced Cotton Belt people to perform
24 MKT service if the MKT was the one that performed it
25 with their own crews?

1 A Well, we contemplate, of course, operating
2 these trains with our own crews, and we have labor
3 contracts which provide a means by which the jobs would
4 be filled, and I would contemplate those jobs would be
5 filled from our internal sources, either from active or
6 furloughed employees. Otherwise, we have legal
7 obligations to meet, and we would hire the best
8 qualified people consistent with those legal
9 obligations.

10 Q What is the source of those obligations?

11 A Among others, the affirmative action programs,
12 the federal legislation granting first right of
13 consideration for hire to Conrail, Milwaukee, and Rock
14 Island employees.

15 Q And you referred to the agreements?

16 A Our agreements, yes. We have some -- we have
17 agreement provisions that provide for the use or the
18 right of furloughed employees to have preference in
19 employment over others, over outsiders. We have
20 provisions in certain of our agreements that provide for
21 transfer of employees from one district to another.

22 This would all be on a voluntary basis.

23 MR. DELANEY: I believe that is all I have,
24 Your Honor.

25 JUDGE HOPKINS: Anything further, Mr. Roper?

1 MR. ROOPER: Just one question to counsel. We
2 were served some interrogatories, I believe it was last
3 week, regarding questions, and I believe the agreement
4 we had was that if we answered these orally from the
5 stand, we would not need to furnish written responses.

6 I believe that was negotiated with Ms. Mahon
7 and Kimberly Madigan of the RLEA, and I presume that all
8 they want to ask has now been answered, and we don't
9 intend to furnish any written responses at this point.

10 MR. DELANEY: Well, as counsel indicated, I
11 wasn't part of those conversations. My understanding
12 was that we would sit down after cross examination and
13 just go through the questions and see which ones
14 required answers.

15 I purposely did not ask some of the
16 interrogatory questions on cross examination.

17 MS. MAHON: The agreement was that the
18 questions would be asked on cross examination. If you
19 did not receive an answer, if an answer took some
20 research, then we would have to go further and supply
21 the answer that was unsatisfactory, but all the
22 questions would be answered.

23 JUDGE HOPKINS: I don't know who you made the
24 agreement with, but I think it would be wise to talk it
25 over and work it out like that, because if they had made

1 the agreement and it appears there is no need for
2 further answers to interrogatories, if that is the
3 agreement --

4 MR. DELANEY: I think we can work it out, Your
5 Honor. We don't want to make any extra work for
6 anybody.

7 JUDGE HOPKINS: Thank you.

8 MR. ROPER: I have no questions.

9 JUDGE HOPKINS: You are excused, sir.

10 (Witness excused.)

11 JUDGE HOPKINS: Any objection to receipt in
12 evidence of Mr. Hacker's statement?

13 (No response.)

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

16 MR. KHARASCH: Your Honor, could we be off the
17 record for a minute?

18 (Whereupon, a discussion was held off the
19 record.)

20 Whereupon,

21 WILLIAM ANDERSON

22 was recalled as a witness, and having been previously
23 duly sworn, resumed the stand, and was examined and
24 testified further as follows:

25 DIRECT EXAMINATION

1 BY MR. PRIESING:

2 Q Good morning, Mr. Anderson.

3 Are you not the same Mr. Anderson who
4 testified previously in this proceeding?

5 A That is correct.

6 Q You prepared the verified statement that
7 appears in MKT-21, did you not?

8 A Yes.

9 Q Do you have any corrections to that exhibit at
10 this time?

11 A I have three corrections to the exhibit. The
12 first one is on Page 11, in the first full paragraph,
13 the short one in the center. The very last reference,
14 Appendix J should be Appendix I.

15 On Page 12 -- excuse me one minute.

16 On Page 10, rather, excuse me, the bottom
17 insert table, in the paragraph just above it, in the
18 second line up, there is a parenthetical phrase that
19 says "(Also a UP/MP average)." That should be struck.

20 And lastly, on Page 12, please, the second
21 line from the top, the sentence that starts "Then." The
22 fourth word, "of," should be "on," and then four words
23 later, "to total cost" should be struck, and for that
24 inserted the five words, "for trackage to total
25 revenue."

1 With those changes, to the best of my
2 knowledge, it is true and correct.

3 MR. PRIESING: All right, then, the witness is
4 available.

5 MR. MOATES: Does he adopt the statement?

6 MR. PRIESING: He just did.

7 CROSS EXAMINATION

8 BY MR. MOATES:

9 Q Mr. Anderson, good morning. Nice to see you
10 again.

11 A Good morning, Mr. Moates.

12 Q Let me just ask you a few questions that arose
13 preliminarily during Mr. Blaszak's examination of Mr.
14 Todd.

15 Were you in the hearing room yesterday when
16 Mr. Todd was examined?

17 A Yes, sir, I was.

18 Q Do you recall that counsel Blaszak inquired of
19 Mr. Todd with respect to the agency charges that the MKT
20 would incur because of services that the Texas Mexican
21 Railway would perform for it at Corpus Christi?

22 A Yes, sir.

23 Q Did you hear him testify that some
24 negotiations had taken place between the Texas Mexican
25 and the MKT with respect to, among other things,

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1 apparently, that charge?

2 A Yes, sir.

3 Q Did you utilize the charges identified or
4 agreed to in those negotiations in your cost analysis?

5 A To my knowledge, there are no final figures
6 from that that I am aware of. I did not.

7 Q Are you aware of any numbers that have been
8 agreed to?

9 A No, sir, I am not.

10 Q Let me ask this first. I take it you were not
11 part of those negotiations.

12 A No, sir, I am not.

13 Q No one privy to those negotiations from the
14 MKI then has passed on to you any of the charges
15 discussed in those negotiations?

16 A That is correct.

17 Q And would that also be true with respect to
18 any initial terminal services, charges for those
19 services that the TexMex might perform for the party?

20 A Yes, sir. If you are talking about
21 negotiations between those two firms --

22 Q I am.

23 A Yes.

24 Q Can you state for the record what assumption
25 you made with respect to the charges that SF would

1 assess the MKT for performing services at Eagle Pass if
2 those trackage rights are granted?

3 A With respect to agency cost?

4 Q Agency cost. I am sorry.

5 A With respect to agency cost, the Rail Form A
6 averages with respect to Account 373 and 376, station
7 employees and station supplies and expenses, were
8 introduced into the costing.

9 Q All right. Now, excuse me, one more
10 question. I am glad I have my learned co-counsel with
11 me.

12 What assumption did you make, if any, about
13 the costs of reciprocal switching that would be
14 performed on the Bayport line?

15 A Well, may I answer in this way, that the
16 costing treatment with respect to switching was treated
17 the same way for all segments.

18 Q That is fine. That is what we wanted, I
19 think.

20 All right. Would you look at Page 2 of your
21 verified statement, please.

22 A Yes, sir.

23 Q I would draw your attention to the last
24 sentence in the second full paragraph, the paragraph
25 under the caption Applicant Data File.

1 A Yes, sir.

2 Q The sentence reads, "Because of time
3 limitations, the applicant's tapes and data have been
4 used as provided without detailed checks or
5 verification."

6 A Yes, sir.

7 Q The question, Mr. Anderson, is, since the time
8 that you submitted this testimony, have you made the
9 detailed checks and verification that time constraints
10 kept you from doing initially?

11 A I have not.

12 MR. MOATES: Your Honor, I would like to have
13 marked as counsel's exhibit a two-page document. The
14 front page bears the caption Analysis of Revenue Impacts
15 by Record in M&T Trackage Rights Study -- strike that.
16 I will start over.

17 It is a one-page counsel's exhibit.

18 THE WITNESS: Well, that is progress, I
19 guess.

20 MR. MOATES: It is a one-page counsel's
21 exhibit, and it is a study sheet from the M&T trackage
22 study for Laredo. Specifically it is Page 29 from the
23 applicant's data base.

24 JUDGE HOPKINS: It will be marked for
25 identification as SFSP-C-78.

1 (The document referred to
2 was marked for
3 identification as Counsel's
4 Exhibit Number SFSP-C-78.)

5 THE WITNESS: Mr. Moates, it is 29, sir, Page
6 29?

7 MR. MOATES: Yes. I know it is hard to read
8 those numbers.

9 THE WITNESS: It is probably a Xerox of a
10 Xerox of a Xerox.

11 BY MR. MOATES: (Resuming)

12 Q I want to draw your attention to the second
13 movement on that page, a movement from Kansas City to
14 Laredo, Texas.

15 Do you see that?

16 A Yes, sir.

17 Q Now, this document, when completed by Messrs.
18 Dimmerman and Sheridan, I take it was then furnished to
19 you for some additional purposes. Is that right?

20 A There was an intervening step that I think
21 needs to be cited, Mr. Moates. It went from them to Mr.
22 LaGrone.

23 Q All right. Was Mr. LaGrone or his people,
24 were they the ones responsible for putting the revenue
25 numbers in that are written in by hand where it says

1 revenue?

2 A You are correct.

3 Q And the movement I am referring to was
4 diverged by the evaluators 15 percent, wasn't it?

5 A It was, sir.

6 Q And excuse me if this sounds like a simplistic
7 question, but that does mean, does it not, that there
8 should be MKT revenue gain and applicant revenue loss
9 reflected on the tape that contains the data for the
10 study, shouldn't it?

11 A Yes, that is correct.

12 Q Now, if I were to tell you, sir, and I would
13 ask you to assume this fact to be the case, because I
14 can't prove this in this courtroom, but the tape in fact
15 shows zero revenue for this movement.

16 Do you have any way to explain that?

17 A May I check some papers of mine, sir?

18 Q If you can do it, sure.

19 A This was the Laredo study. This is Page 29.
20 It is an applicant file to start with. Excuse me. And
21 it is Laredo, which is Study 1. It is Page 29. And it
22 is Entry 2.

23 Q Right, serial 965.

24 A 965A?

25 Q Right.

1 A Yes, sir. I am sorry. I have found it.

2 Q What is it that you were looking at, and what
3 is it that you have found?

4 A I am sorry. Excuse me, Mr. Moates.

5 Q The record has got to make this clear.

6 A Yes. I am very sorry.

7 I am looking at AEI work paper 30, one of the
8 pages in that. All of the individual pages are not
9 marked. And what it is is a listing of the diversion
10 input cards, well, records that were cut onto magnetic
11 tape from the data in Denison from the data on the
12 sheets.

13 Q If one were to put the magnetic tape on a
14 computer and ask the computer to print out the data that
15 was encoded on the tape for this movement, would one get
16 a hard copy document like that that you have in front of
17 you?

18 A Yes.

19 Q All right.

20 Now, does that document show whether there was
21 any revenue attributable to this movement as a gain to
22 the Katy and a loss to the applicant?

23 A Yes, this shows a gain to the Katy of -- on a
24 sample basis of \$1,106.

25 Q All right. Thank you.

1 Would you turn to Page 3 of your verified
2 statement?

3 A Yes, sir.

4 Q At the top of the page, for four of the
5 trackage rights studies, you indicate that certain
6 points were excluded because they were not involved, as
7 I understand it.

8 A Yes, sir.

9 Q With respect to the third entry on the Bayport
10 line it says "Houston (except for five shippers)."

11 A Yes, sir.

12 Q Could you tell us the names of those five
13 shippers?

14 A Yes, sir. It will take me a minute.

15 Q I'll tell you what. Would you be willing just
16 to provide us that? That will speed this up.

17 A Yes, sir, I will.

18 Q All right. Turn to Page 4, please.

19 A Yes.

20 Q Under the heading Waybill Sample File.

21 A Yes, sir.

22 Q You indicate in the third sentence, "This file
23 was used, however, to get applicant data for Chaison,
24 Texas, and Barbour's Cut, Texas. The former was not
25 specified in the initial data request relating to

1 Beaumont, Texas, and the latter was not specified in the
2 SPLC's used to identify involved traffic."

3 Why were not Chaison and Barbcours Cut included
4 in those requests?

5 A The second one was. That to my understanding
6 was a problem with respect to the SP people not using
7 all of the appropriate SPLC's that would identify
8 things, and they made up that list, which is my Appendix
9 B, sir. The first one with respect to Chaison has to do
10 with the fact that we assumed originally that Chaison
11 was covered by the SPLC of Beaumont.

12 Q Let me ask you about the exhibit that Mr.
13 Kharasch referred to at the outset.

14 A Is that 72, sir?

15 Q Yes. Do you have a copy of that up there?

16 A Yes, I do, sir.

17 Q First, to make reference on the same Page 4 of
18 your statement that we are looking at, the next sentence
19 after the one that I read says, "If a record qualified
20 for one trackage based on the origin SPLC and for
21 another under the destination SPLC, it appears in each
22 study."

23 A Yes, sir. I see the sentence.

24 Q Now, that tells us the fact that we find in
25 here, I believe, that there would be movements from one

1 trackage rights origin, say, Eagle Pass, to another
2 trackage right destination, say, a point on the Bayport
3 line, correct?

4 A Yes, sir.

5 Q And you could find movements in the reverse
6 direction in the Texas City study of movements from the
7 Texas City line or the Bayport line to Eagle Pass. Is
8 that right?

9 A Yes, sir.

10 Q Okay. Now, look at Page 6 of your statement.

11 A Yes, sir.

12 Q On the top carryover paragraph, halfway down,
13 there is a sentence, two sentences as follows. "Records
14 that could appear in more than one trackage study if the
15 origin was for one trackage request and the destination
16 another were diverted only on the origin end. All
17 revenue shifts were assigned to the origin trackage
18 location."

19 A Yes, sir.

20 Q Now, is that not the basis for the rule that
21 underlies the notation O-6 that Mr. Dimmerman and Mr.
22 Sheridan put on their diversion sheet?

23 A Yes, I understand that that is correct, Mr.
24 Moates.

25 Q That was your understanding when you saw those

1 0-6's on the sheet?

2 A Yes. I -- I am scrry.

3 Q Okay. Now, would you look on Exhibit C-72, Mr.
4 Anderson, at the second page of the exhibit, which is
5 the summary of 0-6 movements in the Eagle Pass study?

6 A Yes, sir.

7 Q Okay. Looking down the fifth column to the
8 right, we see origin and destination pairs, do we not?

9 A Yes, sir.

10 Q And could you confirm for me that all of the
11 0-6 movements in the Eagle Pass study that are listed on
12 this exhibit are points on the Bayport line?

13 A I know Pasadena and Bayport are, sir, to my
14 knowledge. I would accept that Senco is.

15 Q Accept my representation that it is. And how
16 many of those are there, by the way?

17 A There is one Pasadena, five Bayport, and two
18 Senco.

19 Q So a total of eight movements in that study
20 going from points on the Bayport line to Eagle Pass were
21 not evaluated in the Eagle Pass study on the assumption
22 that they would be evaluated on the origin side, that
23 is, in the Texas City study. Is that right?

24 Let me modify my question, because Mr.
25 Kharasch is shaking his head, and I know what is

1 bothering him. I know what I said wrong. Let me ask
2 the question again.

3 These eight movements in the Eagle Pass study,
4 all of which involve origin points on the Bayport line,
5 were not evaluated in the Eagle Pass study because it
6 was assumed that if any movements to Eagle Pass showed
7 up in the Texas City study, those movements would be
8 evaluated in that study.

9 Is that right?

10 A You are correct, Mr. Moates.

11 Q Not that these exact movements would be put in
12 the pile for the Texas City study and evaluated there.
13 Rather, that the Texas City study would capture some
14 similar movements that would permit the evaluators to
15 look at this traffic.

16 A Yes, sir.

17 Q All right. Now, would you please look at Page
18 6 of this counsel's exhibit, which is the depiction of
19 0-6 movements, that is, movements not evaluated for the
20 reasons we have just discussed that show up in the
21 Houston-Texas City study?

22 A Yes, sir.

23 Q Now, we have just been talking about Chaison.
24 Isn't that in the Houston-Texas City study, a point
25 included in it?

1 A No, Chaison is related to Beaumont, isn't it,
2 sir?

3 Q I am sorry. Let me restate the question. Is
4 Deer Park a station that is on the Bayport line?

5 A Yes.

6 Q And you have already identified Pasadena and
7 Bayport. What about Strang, Texas? Is that on it?

8 A Yes, sir, it is.

9 Q So we have on this page 18 movements that
10 originated -- strike that.

11 We have 14 movements on this page that
12 originated at Eagle Pass and moved to stations on the
13 Bayport line.

14 Is that correct?

15 A Yes, sir.

16 Q Now, why were these movements 0-6s in the
17 Houston-Texas City study if they were 0-6s in the Eagle
18 Pass study?

19 A Let me see.

20 Q Let me see if I can help you. Were they 0-6s
21 because they originated at a point off the Bayport line
22 and included in other trackage?

23 A They are 0-6s, are they not, because with
24 respect to Houston-Texas City lines they are
25 terminations and not originations.

1 Q That is right, so they should have been
2 evaluated in the Eagle Pass study if they had shown up
3 in the Eagle Pass study.

4 A Yes.

5 Q Which they did not.

6 A Yes.

7 Q Were you consulted by Mr. Dimmerman or Mr.
8 Sheridan or in fact did you direct Mr. Dimmerman or Mr.
9 Sheridan to create what we are calling the 0-6 rule?

10 A Yes, sir, it was my responsibility.

11 Q You instructed them to do that?

12 A Well, the coding 0-6, no. The rule with
13 respect to diverting only on one end is mine.

14 Q All right. Now, before you made that rule and
15 instructed them to follow it, did you consider the
16 possibility that that rule might lead to bias in the
17 analyses in the event that there was more inbound
18 traffic to a trackage rights point than outbound
19 traffic?

20 A I did not. My discussions with Dr. Odell
21 suggested that that would not be a problem, since each
22 one of these is an independent study. Each one of the
23 seven.

24 Q Do you now have any greater reservations about
25 that, since you have just seen that in the Eagle Pass

1 study there were eight movements that were excluded from
2 analysis because they were movements moving to points on
3 the Bayport line, and therefore not to be evaluated
4 here, and similarly in the Houston-Texas City study
5 there were 14 movements excluded from analysis because
6 they were moving to Eagle Pass, and the assumption was
7 that similar movements would be evaluated in the Eagle
8 Pass study?

9 A I do not.

10 Q Would you have an greater concern if I were to
11 represent to you, subject to check, that in the
12 Houston-Texas City study itself only four movements
13 appeared that were from the Bayport line to Eagle Pass?

14 A No.

15 Q And all four of those movements were diverted
16 by Mr. Dimmerman or Mr. Sheridan?

17 A No. The "no" is not to the fact that they
18 were diverted. The "no" is to whether or not it would
19 cause me concern.

20 Q I understand. How can you hold that opinion
21 when it is apparent here that in the two different
22 samples we have just looked at, there were in fact 26
23 movements excluded from analysis to and from stations on
24 the Bayport line and Eagle Pass, and yet there were only
25 four actually evaluated by Mr. Dimmerman and Mr.

1 Sheridan?

2 A My understanding from Dr. Odell is that this
3 is the proper way to do it, and that is the way I
4 applied the rule, at his direction, sir, in order to
5 avoid duplication.

6 Q Do you know whether Dr. Odell was informed of
7 the fact that indeed in some of these movements there
8 might be many more movements inbound to a particular
9 point than outbound?

10 A I do not know if he was so informed.

11 As long as we are looking at 72, may I speak
12 to it a minute, sir?

13 Q I think I would rather wait for your counsel
14 to do redirect. My question has been answered.

15 A Yes, sir.

16 Q Would you please turn to Page 5?

17 A Yes.

18 Q The first full paragraph on the page, you say
19 the 82 way bill sample file was also used to create a
20 data base for traffic to and from competitive points in
21 four categories, and you list them.

22 A Yes, sir.

23 Q First of all, can you tell me what the purpose
24 was of using the way bill file for these augmentations,
25 if that is the right characterization?

1 A Yes, sir. If you will look at Page 8 of my
2 testimony, just before the new subtitle, it relates to a
3 report given to Dr. Todd.

4 Q Okay. Can you tell me what selected Gulf
5 ports you provided him data on?

6 A May I provide that to you later, sir?

7 Q Sure. If you would, I would appreciate that.

8 A But basically speaking, it would be all of
9 those that appear in his table, sir, but I will provide
10 a list.

11 Q Okay. That is all right. It is all those
12 that are in his table.

13 A Whether there were any more or not, I am not
14 clear.

15 Q Well, all right. I guess I would like to have
16 that checked.

17 All right, if you look at Page 7 of your
18 statement, in the last full paragraph on the page --

19 A Yes, sir.

20 Q -- were you present when I examined Mr.
21 Dimmerman and Mr. Sheridan yesterday on their trackage
22 rights diversion study?

23 A Yes.

24 Q Did you hear me ask them some questions about
25 these two adjustments to their Topeka-Liberal study?

1 A I did, Mr. Moates.

2 Q Did you make any test, Mr. Anderson, to
3 determine the effect of adding two separate increments
4 of traffic to the Liberal-Topeka study when the study
5 was based on a stratified random sample designed by Dr.
6 Odell?

7 A I did not make a test for the following
8 reason. A historical sample was analyzed and used, and
9 the statistical inputs provided to Dr. Odell and his
10 work predicated on that. All of the machine work
11 related to that relate to the historical study.

12 The adding in of the \$2,506,800 was done by me
13 as a last step before the figures were used in the
14 testimony. They do not relate nor have any impact on
15 the sample.

16 Q I understood they don't relate to the sample
17 per se. That is my point. They were done from data
18 outside of the sample.

19 A That's correct. Yes, they were, Mr. Moates.

20 Q Did you hear Mr. Dimmerman or Mr. Sheridan
21 testify that those two adjustments involved in the one
22 case Cotton Belt and Santa Fe traffic and in the other
23 case Missouri Pacific traffic?

24 A I did.

25 Q Did you show comparable losses for the SSW,

1 Santa Fe, and Missouri Pacific for that traffic when you
2 added the revenue for the MKT?

3 A I did not.

4 Q Would you look at Page 8, please?

5 A Yes, sir.

6 Q At the top of the page you are displaying, are
7 you not, the different revenue results from the analyses
8 of the Corpus Christi trackage rights on the one hand
9 and the Eagle Pass rights on the other?

10 A Yes, sir.

11 Q When these studies were being designed, and
12 you were involved in that design, weren't you?

13 A I was involed, Mr. Moates.

14 Q Was there any discussion that you are aware
15 of, Mr. Anderson, of the possibility that traffic could
16 be shifted between these gateways in the event one or
17 the other request was granted?

18 A Not in those meetings which I was a part of,
19 Mr. Moates.

20 Q Did you ever raise that possibility with MKT
21 personnel in the discussions about the design of the
22 study?

23 A Not that I can remember. No.

24 Q All right. At the bottom of the same page we
25 are discussing --

1 A Yes, sir.

2 Q -- you indicate -- I will shorthand this due
3 to time constraints. You used some estimates of cost
4 elements for this study that were based on results of
5 studies in the Union Pacific-Missouri Pacific case. Is
6 that right?

7 A Certain characteristics of that were imputed
8 to this work.

9 Q Could you just briefly describe to us what
10 those characteristics were? In other words, what did
11 you carry over from the UP study?

12 A Yes, sir. It would be things like the average
13 gross ton miles on the system for the diverted traffic,
14 the average train miles related to the diverted cars on
15 the system, the average locomotive unit miles related to
16 diverted cars on the system, and certain average cost
17 factors.

18 Q Were those cost factors based on a particular
19 year?

20 A Those factors --

21 Q Were they based on Katy operating experience
22 in a particular year?

23 A In 1979.

24 Q Did you index them up?

25 A I did.

1 Q To what year?

2 A 1983, I think, sir. Yes, sir, '83.

3 Q Now, Mr. Anderson, you testified you were
4 present during the examination of Mr. Dimmerman and Mr.
5 Sheridan. Do you recall my discussing with them an
6 exhibit which is Counsel's Exhibit C-66, relating to
7 movements evaluating code 0-7, in which I believe they
8 indicated they had incomplete data to evaluate the
9 movement?

10 I have a copy of the exhibit here.

11 A I am sorry. What is the number, sir?

12 Q Sixty-six. I have one here if it is easier.

13 A I have one, sir.

14 Q Do you recall the examination with respect to
15 the exhibit?

16 A Yes. Is that 0-7, incomplete data? I am
17 sorry. Yes, I have that.

18 Q Do you recall that during the course of the
19 examination, from time to time Mr. Dimmerman or Mr.
20 Sheridan indicated that other movements on this sheet
21 that were marked with other notations, 0-1 as an
22 example, or 0-5, I think, should also have had an 0-7?

23 A I think during the course of that long thing
24 there were certain individual movements that that was
25 the response. I have no list, nor remember them.

1 Q I assume the reference to a long thing was not
2 a pejorative reference to counsel's examination.

3 A I am sure it was a joint operation, sir.

4 Q All right. Very good.

5 Now, with respect to this exhibit, Mr.
6 Anderson, did you or to your knowledge Dr. Odell do any
7 test as to the effect which between 7,500 and 9,500
8 carloads of traffic in the sample not being studied for
9 the reason of insufficient data would have on the
10 study's reliability?

11 A Number One, it has no effect upon the
12 statistical reliability. Number Two, the rule does tend
13 to limit the total gains. But last night, since this
14 issue came up, I have summarized your little table here,
15 and I find that out of 4,730 records you have 135, which
16 is 2.8 percent, 2.85 percent, which I consider small,
17 and if you assume that those that were not looked at
18 were diverted at the rate at which those that were
19 looked at applied, and that is 28 percent or 1316 out of
20 4,595, you multiply 28.6 percent times 2.85 percent, you
21 get something less than 1 percent that would be
22 impacted, sir.

23 I find that well within the statistical limits
24 of this study.

25 Q That little speech you just gave is in part a

1 tribute to the fact that they used very low diversion
2 percentages. You have jumped over the fact that the
3 average diversion percentage was, I think you said, 28
4 percent?

5 A No. That is the average -- that is the
6 percentage of records that were looked at that were
7 diverted, no matter what the percentage, no matter what
8 the diversion percentage was, Mr. Moates. That has
9 nothing to do, you know, with the diversion percents.

10 Q Did you check to see if the number of expanded
11 carloads that are shown in the exhibit are correct?

12 A Yes, they are not.

13 Q They are not?

14 A Yes, sir, that's correct. That's what I was
15 about to tell you about the other table before you cut
16 me off.

17 To state it very simply, in the second column
18 you have something called expansion factor in which you
19 show a three-digit number. The expansion factor is a
20 four-digit number, three integers and a decimal, and
21 that applies to all of the tables on which you have done
22 extensions like this. I mean, you --

23 Q Are you telling me the expansion factor, where
24 it says 50, should be five?

25 A No, sir. I say it is 50 point something.

1 Well, for example --

2 Q Well, that is a fairly inconsequential
3 change.

4 A Well, it is incorrect. It depends on how many
5 times you make the application, sir, and it depends on
6 the number of cars you multiply it by.

7 Q Let's put it this way. If it was 50 point
8 something instead of 50, to the extent there is
9 something wrong here, it is a slight understatement,
10 isn't it?

11 A It would be an understatement. Whether it is
12 slight or not I have no knowledge, Mr. Moates.

13 Q I thank you for the correction. So my numbers
14 are a little higher.

15 A You are welcome.

16 Q Now, I would like to ask you a few questions
17 about the data you provided to Dr. Tye. On Page 2 of
18 your verified statement, in the middle of the page is a
19 paragraph, three sentences. It says the report for the
20 1982 way bill sample file for individual competitive
21 city study was provided to Dr. William B. Tye. The
22 report analyzes the car tons and revenue data by record
23 and summarizes them for four basic categories by
24 location: grain and non-grain to and from each city.
25 The sample page is shown as Page 8.

1 A Yes, sir.

2 Q Could you tell me, first of all, what these
3 individual competitive cities are that are referred to
4 in the paragraph?

5 A They refer to Mexican border points and Gulf
6 ports and some other points. I think in that report,
7 for example, is the Bayport line points, Mr. Hoates.

8 Q What SPLC codes or standard point location
9 codes did you use to describe the Mexican border
10 crossing study by Dr. Tye?

11 A You want the exact SPLC, sir? Do you want me
12 to give them to you on the record?

13 Q As long as you will provide them to us
14 afterwards.

15 A I will provide them, Mr. Hoates.

16 Q Who identified the so-called competitive
17 cities? Did you or Dr. Tye?

18 A I don't think either Dr. Tye or I alone did
19 it. I think that was a result of the group that was
20 involved, Mr. Dimmerman, Mr. Tye, Mr. Sheridan, and I,
21 and the lawyers in meetings.

22 Q So this was sort of a committee
23 determination?

24 A Yes, sir.

25 Q Now, who decided to use the 1982 waybill

1 sample file for the purposes that Dr. Tye did?

2 A At the time we did the work, that was the
3 latest available, Mr. Moates.

4 Q Who decided to go to the '82 waybill file?
5 Did he make that decision? Did you suggest it to him?

6 A I am sorry. I honestly can't -- I don't
7 remember. I may have recommended it to him as being the
8 latest available. He was looking for a data base, but
9 he would have made the decision with respect to his use
10 of it.

11 Q Did he tell you the purpose for which he
12 intended to utilize or put this data, namely to
13 calculate Herfindahl indices?

14 A I do know that in certain meetings and at
15 certain points I was aware that he was calculating it,
16 Herfindahl indices. Whether or not I knew that at the
17 time of the identification of them I am not clear, Mr.
18 Moates. I don't remember.

19 Q Did you discuss with Dr. Tye, Mr. Anderson,
20 any concerns about sample size or accuracy with the '82
21 way bill sample?

22 A Yes.

23 Q What did you tell him about sample size and
24 accuracy problems?

25 A Well, I told him that it does have a

1 disaggregation problem, that when you sort these -- for
2 example, take the Mexican border points, that when you
3 sort it down and you start talking about, for example,
4 grain as a single commodity out of all the commodities
5 available to Calexico, California, that the number of
6 observations that might appear in that would be small,
7 and the tendency would be for the standard error to be
8 large.

9 Q Who actually applied the expansion factors?

10 A I did, Mr. Moates.

11 Q You were ready for that one.

12 A Well, yes. I heard it earlier.

13 Q You expanded the data.

14 A That's correct.

15 Q What expansion factors did you apply?

16 A I used the expansion factors I was provided by
17 a tape from the Interstate Commerce Commission, 214,750
18 records on that tape, representing the 1982 waybill
19 sample. That tape was created for the Interstate
20 Commerce Commission by a set contractor annually that
21 has -- it has in it in fields 256, 258, a three-digit
22 numeric expansion factor, and there are eight
23 categories.

24 There are two general categories. One is for
25 carriers who are reporting on a manual basis, and there

1 are three for them and the -- and then there are five
2 people who report on the so-called MRI, which is machine
3 readable input, and those five classifications are a
4 function of the number of cars per record.

5 The expansion factors are -- vary from two to
6 100.

7 Q Now, do you have a copy of Dr. Tye's
8 testimony, or could counsel provide you one? It is
9 MKT-25.

10 A Page?

11 Q I would like you to look at Page 55, which is
12 his Table 9.

13 A Will you be using the revised table, sir, or
14 will you be using the originals?

15 Q I guess you can use the revised table.

16 A Number 9, sir?

17 Q Table 9, Page 55 in the testimony originally.

18 A Yes, sir.

19 Q All right. There is an asterisk notation for
20 source, and it says as reported in 1982 way bill
21 statistics. Does that indicate that this is based on
22 some of the data you provided him that we have just been
23 discussing?

24 A That is correct, Mr. Moates.

25 Q All right. This table is captioned Grain

1 Traffic, Carriers at U.S. Gateways to and from Mexico.
2 Does grain for purposes of this table include grain mill
3 products in STCC Code 20, or does it only include STCC
4 Code 01?

5 A It includes basically 0113 and two other
6 additives, one for, I think, soybeans, and one for
7 sunflower seeds, sir.

8 Q The answer is, it does not include STCC 20?

9 A Yes. I am sorry. You are correct. It does
10 not, Mr. Moates.

11 Q Did you examine any of this data at a greater
12 disaggregation than the two-digit STCC level?

13 A Yes, the definition of grain goes down to --
14 the sunflower seeds is at the seven-digit level. The
15 basic grain, I think, is at a four. The soybeans, I
16 think, is at a five. But the sunflower seeds is at a
17 seven.

18 Q So you went all the way down to the
19 seven-digit level?

20 A For sunflower seeds to put into the grain
21 commodity, yes, sir.

22 Q All right. Would you look at the number of --
23 well, first of all, this table is set up in linear
24 columns, is it not?

25 A Yes, sir.

1 Q Do you see the Column 4 to the right that is
2 headed UP/MP?

3 A I do, sir.

4 Q And what is the number, even in the revised
5 tables, for the UP/MP carloads at Laredo, Texas?

6 A It looks to me like 100 cars, sir.

7 Q Okay. Have you been present during all of the
8 MKT examination this week?

9 A To my knowledge, Mr. Moates, yes.

10 Q Have you not heard numerous references to the
11 grain traffic at Laredo?

12 A Yes.

13 Q Particularly traffic going to Conasupo?

14 A Yes, sir.

15 Q Does it strike you as somewhat improbable, Mr.
16 Anderson, to put it mildly, that the Union
17 Pacific-Missouri Pacific handled only 100 cars of grain
18 over the Laredo gateway in 1982?

19 A It does.

20 Q In fact, they spill more than that at Laredo,
21 don't they?

22 A I have never made a study of how much they
23 have spilled at Laredo, Mr. Moates.

24 Q What is the number under the far right column,
25 not quite far right, the next column over, MP or SP via

1 TM for Laredo, number of carloads?

2 A The 2,000, sir?

3 Q Yes.

4 A Is that what you are referring to?

5 Q Yes.

6 A Yes, sir.

7 Q Does that number in conjunction with the other
8 Missouri Pacific number for Laredo strike you as a full
9 depiction of the number of carloads of grain over Laredo
10 in 1982?

11 A I don't know about the TM contribution, sir,
12 to it, but certainly with respect to the UP/MP, it is
13 not a reflection of it, and I -- my opinion is that
14 because we recognize this, this issue, I raised this
15 issue with our people early because in a gross amount it
16 appeared wrong.

17 My opinion is that the UP/MP is not reporting
18 any of this traffic at all.

19 Q Do you know that to be a fact?

20 A No, sir. I said it was my opinion, and that
21 is based on the fact that I locked up the 100 cars, and
22 the 100 cars is a movement from Petersburg, Texas, FWD
23 Fort Worth MP, and it was reported by the FWD and not
24 the MP, sir.

25 Q To your knowledge, is that true at other of

1 these gateway crossings?

2 A No, sir.

3 Q No, sir, it is not true, or you don't know?

4 A I am sorry. Is that true, that I feel they
5 are incorrect?

6 Q Do you have an opinion that the UP/MP is also
7 not reporting its grain crossing at other gateways than
8 Laredo?

9 A I have no opinion on the other gateways.

10 Q You don't know one way or the other?

11 A Yes. That is correct, Mr. Moates.

12 Q Do you see the second footnote, Texas Mexican
13 traffic was added to SF or UP/MP shares and so on?

14 A Yes, sir.

15 Q Who did that allocation? Did you do that?

16 A No, sir.

17 Q Did Dr. Tye do it?

18 A Yes, sir.

19 Q Mr. Anderson, did you calculate any confidence
20 intervals or make any other statistical calculations to
21 determine how representative the values in these tables
22 may be of the total population?

23 A I did not.

24 Q Thank you.

25 JUDGE HOPKINS: Anything further?

1 MR. KHARASCH: By the prior off-the-record
2 arrangement, I was to be allowed some questions on SFSP
3 C-72.

4 REDIRECT EXAMINATION

5 BY MR. KHARASCH:

6 Q Would you put that in front of you?

7 A Could you give me a minute, sir?

8 Yes. That is what Mr. Moates crossed me on a
9 little earlier. Yes, sir, I see it.

10 Q In your opinion, is there any bias in the
11 procedure of considering movements between two trackage
12 right request segments only if sampled in the origin
13 segment?

14 A No, sir.

15 Q In your opinion, would something be wrong with
16 the study if you picked up those movements at both
17 ends?

18 A As long as you didn't double count them.

19 Q If you double counted them?

20 A If you did not double count them it would be --

21 Q If you did double count them, counted them at
22 both ends?

23 A There would be something wrong, and that was
24 my reason for the rule, sir, in conjunction with Dr.
25 Odell.

1 Q Let's look at SFSP-C-72.

2 A Yes, sir.

3 Q Is there any reason that the number of
4 carloads on Page 1 should be the same as the number of
5 carloads on Page 6 of that exhibit?

6 A No, sir.

7 Q Is there any reason that the number of
8 carloads listed on Page 1 from Bayport and Strang to
9 Laredo should be the same as the number of carloads
10 listed on Page 6 from Laredo to Bayport and Strang?

11 A No.

12 Q In fact, in your opinion, does Exhibit
13 SFSP-C-72 tell you anything at all as to the bias or
14 nonbias of the procedure followed?

15 A It does not.

16 Q Now, in your discussion with Mr. Moates on
17 this exhibit, you indicated that you had some further
18 comments you wanted to make, and he said he would leave
19 that for redirect.

20 Please make such further comment as you wish
21 to make.

22 A No, sir. Excuse me. It is all over. What I
23 mean is, I made it. It was the expansion factor.

24 JUDGE HOPKINS: He handled it.

25 THE WITNESS: It is of no meaning at this

1 point in time.

2 MR. KHARASCH: Thank you.

3 MR. MOATES: Two things.

4 JUDGE HOPKINS: Mr. Priesing, are you going
5 to --

6 MR. PRIESING: I think the best way to follow
7 the prior arrangement is that your recross relates to
8 Mr. Kharasch's questions.

9 JUDGE HOPKINS: Is it only on that?

10 MR. MOATES: I have recross of Mr. Kharasch,
11 and I have another matter that can wait until the end
12 then.

13 RECROSS EXAMINATION

14 BY MR. MOATES:

15 Q With respect to what Mr. Kharasch just asked
16 you about with respect to Exhibit C-72, didn't we agree
17 during the examination that it turned out that all or
18 most of the traffic between two trackage rights points
19 moved in one direction, not only one direction, but your
20 rule studied the traffic at origin, could in fact lead
21 to bias?

22 A No, I don't think so.

23 Q Well, then, I will ask you that question now.
24 Isn't that a fact? If it turned out, Mr. Anderson, that
25 as a hypothetical, if all of the traffic moving between

1 Eagle Pass and Bayport moved in just one direction so
2 that it would never be seen at the origin end, Eagle
3 Pass, because the rule was evaluate Bayport, and if it
4 turned out there was no traffic hypothetically moving
5 from Bayport to Eagle Pass, there would be a bias in
6 that analysis, wouldn't there?

7 A No.

8 Q Why not?

9 A Because with respect to the individual
10 samples, the balance is an array of origins, not just
11 one origin. The mere fact that I can't balance Eagle
12 Pass to Laredo --

13 Q I didn't ask you about the seven studies. I
14 asked you about the particular instance I gave. There
15 would be traffic moving, potentially moving in large
16 volumes between those two points, and following your
17 rule, the MKT evaluators would not have evaluated a
18 single car. Isn't that right, under the hypothetical?

19 A The application of the rule would result in
20 that.

21 Q All right, thank you.

22 A That they would not be evaluated. That is as
23 much as I am --

24 Q That is as much as I want you to say.

25 A Okay. I just want to be clear with him.

1 JUDGE HOPKINS: Mr. Priesing?

2 MR. PRIESING: I just have a couple of
3 questions.

4 FURTHER REDIRECT EXAMINATION

5 BY MR. PRIESING:

6 Q Mr. Moates just asked you a couple of
7 questions about certain data missing from magnetic tapes
8 that were provided, revenue data.

9 A Yes.

10 Q How were such magnetic tapes prepared?

11 A They were supplied to us by the applicants.

12 Q Mr. Moates also asked you several questions
13 about Chaison and Barbours Cut and whether they are
14 correctly in the ICC way bill file. Can you tell me the
15 order in which you received the particular data files
16 used here? You used an applicant file and an ICC way
17 bill file. What was the order in which these were
18 received?

19 A You mean which one did I have available
20 first?

21 Q Exactly.

22 A I think I had the applicant files first. The
23 other had to be requested from the Interstate Commerce
24 Commission, and you have to be approved, and that is a
25 long process.

1 Q And did the request to the Interstate Commerce
2 Commission result from the discovery of errors in the
3 applicant's way bill file?

4 A No.

5 MR. PRIESING: No further questions.

6 MR. MOATES: May I have another question based
7 on that last recross or redirect?

8 FURTHER RECROSS EXAMINATION

9 BY MR. MOATES:

10 Q You said in response to Mr. Priesing's first
11 question on redirect that the magnetic tapes were
12 provided by applicants.

13 A With respect to the applicants file.

14 Q That is right.

15 A Oh, I am sorry. Excuse me.

16 Q Mr. Anderson, let me ask the question. We had
17 that discussion about potentially revenue information
18 missing. Weren't we talking about the magnetic tape
19 that MKT created to summarize the actual diversions of
20 the revenue impacts in that study?

21 A Which was a sample of your original tape.

22 Q It came from a sample, but it is a tape that
23 summarizes the diversions in your study, and it is one
24 that you provided to us with the work papers underlying
25 this filing.

1 A I am sorry, Mr. Moates.

2 Q Let me see if I can simplify it for you. The
3 revenue impact information that shows up in your
4 exhibits and whereby when we add them all up we get a
5 number of 27 million, 29 million, whatever it is --

6 A Yes, sir.

7 Q -- that results from you and Mr. LaGrone
8 applying revenue numbers and expansion factors to
9 diversion judgments made by Mr. Dimmerman and Mr.
10 Sheridan. Is that right?

11 A Yes, sir.

12 Q And that process whereby you and Mr. LaGrone
13 applied the expansion factors and revenue was put on a
14 magnetic tape, wasn't it?

15 A The decisions which themselves were on a
16 magnetic tape were applied against a file which
17 represented a magnetic tape that the applicants
18 supplied.

19 Q If hypothetically you had a movement that was
20 diverted by some percentage, necessarily it had revenue
21 associated with it. If that magnetic tape showed an
22 entry of zero for the total revenue impact, that isn't
23 something applicants would have done to that tape, is
24 it?

25 A No, and that is why there was a diversion

1 amount when it had said zero in the revenue field at the
2 top and it had the handwritten revenue figures above
3 it.

4 MR. MOATES: All right. Thank you.

5 JUDGE HOPKINS: Is that all?

6 MR. PRIESING: Yes.

7 MR. KHARASCH: Could we be off the record a
8 minute?

9 JUDGE HOPKINS: Off the record.

10 (Whereupon, a discussion was held off the
11 record.)

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1 MR. PRIESING: I move the admission of Mr.
2 Anderson's verified statement.

3 JUDGE HOPKINS: Any objection?

4 MR. MOATES: No objection.

5 JUDGE HOPKINS: It will be received.

6 MR. MOATES: I move my counsel's exhibit.

7 JUDGE HOPKINS: Any objection?

8 MR. KHARASCH: I object to the receipt of
9 counsel's exhibit C-72 in that it's not probative of
10 anything.

11 MR. MOATES: It's already been received.

12 JUDGE HOPKINS: It's already been received. I
13 said you could cross-examine, but I thought we should be
14 allowed to receive it at that time.

15 I will renew my ruling on that. I will be
16 receiving it in evidence.

17 What about Exhibit 78?

18 MR. MOATES: Move the admission --

19 JUDGE HOPKINS: Any objection to 78? It's
20 just one of these study sheets.

21 MR. KHARASCH: No.

22 JUDGE HOPKINS: It will be received in
23 evidence.

24 (The document previously
25 marked Exhibit Number

1 SFSP-C-78 for identification
2 was received in evidence.)

3 MR. KHARASCH: I believe you withheld the
4 receipt in evidence of tables in Dr. Tye's statement
5 until the cross-examination of Mr. Anderson. That has
6 taken place. He has explained the source.

7 I move for the receipt of Dr. Tye's tables.

8 MR. MOATES: That's the matter I wish to take
9 up. I wish to renew the motion to strike. I think we
10 have now a complete basis for the motion, Your Honor.
11 If you will look at -- you have available, I hope --
12 it's MKT-25.

13 For context, Your Honor, you recall that at
14 transcript 5543 and 44 Mr. Svolos made a motion to
15 strike Dr. Tye's tables 5 through 11 and 15 through 17.
16 That came at the conclusion of Dr. Tye's testimony and
17 we deferred until this time a ruling on that, because
18 Dr. Tye indicated that the source of the data using
19 those tables was Mr. Anderson, and Mr. Anderson would be
20 able to explain it.

21 I examined Mr. Anderson on Table 9. This is
22 on page 55. He confirmed for us several things. First
23 of all, he confirmed that the entry for the Missouri
24 Pacific at Laredo of 100 cars was improbable on its
25 face. He volunteered the additional information that in

1 his opinion, Union Pacific/Missouri Pacific wasn't even
2 reporting information on this kind of traffic for that
3 gateway.

4 He didn't know whether that was true for other
5 gateways or not.

6 Your Honor, the waybill statistics that Mr.
7 Anderson provided to Dr. Tye which Dr. Tye indicated he
8 did not expand, and Mr. Anderson has now said he has
9 expanded for him, underlie all of these tables in which
10 Dr. Tye calculates Herfindahl indices, a matter of some
11 considerable obviously to the competitive analysis of
12 this transaction.

13 And we have on the face of the data here, an
14 acknowledgment by the party sponsoring that this data is
15 incorrect. We don't know how incorrect. We know it's
16 pretty incorrect because we have heard, and I would ask
17 Your Honor to take notice of the fact that you have
18 heard many times this week, the Missouri Pacific is the
19 dominant carrier of grain over Laredo.

20 By definition, it has to have the bulk of the
21 traffic, and here they've got a showing for 100 cars.
22 Dr. Tye goes forward and calculates a very intricate
23 Herfindahl indices based on data which on its face, is
24 unreliable.

25 So we think the data should be stricken in its

1 entirety, and it simply can't go on this record for any
2 probative purposes. If it's been admitted, it would be
3 bad data.

4 MR. KHARASCH: Your Honor --

5 JUDGE HOPKINS: Which tables are you filing?

6 MR. MOATES: I believe Mr. Svolos' motion
7 referred to Tables 5 through 11 and 15 through 17. I
8 believe those tables all indicate, with that little
9 asterisk footnote that I asked Mr. Anderson about, that
10 they say is reported in '82 waybill statistics, and he
11 confirmed that that was the data that he dealt with and
12 gave Dr. Tye.

13 MR. KHARASCH: Your Honor, First, Mr. Svolos'
14 motion was based on the fact that Dr. Tye had not
15 performed the expansion. He indicated they came from
16 Mr. Anderson. And we understand, and the Applicants
17 have tested whether the expansion was properly made.

18 Secondly, it may well indeed be that there is
19 an error, there are errors in the waybill study. If you
20 were to exclude an exhibit because there was an error in
21 the waybill study, then you must exclude the Applicants'
22 diversion study because that is based on the waybill
23 study without any changes in the waybill study.

24 You must exclude the portion of our diversion
25 study and every other party's diversion study that is

1 based on the ICC waybill study. You must exclude, I
2 believe, those huge volumes of printouts of traffic
3 movement that were presented by Mr. Anderson and Temple,
4 Barker & Sloane, because they take in the waybill study
5 material also.

6 I am not going to say, and I am very pleased
7 that Mr. Anderson said, and in fact I had discussion
8 with Mr. Anderson, that there appears to have been a bad
9 reporting here. There is nothing wrong with what Mr.
10 Anderson did or Dr. Tye did. That is the data we have
11 to work with.

12 If you don't like the data, then you must
13 exclude the whole Applicants' study, the other portions
14 of the Applicants' case, the segment of our case that
15 depends on diversions that are calculated, the C1 study
16 so to speak.

17 JUDGE HOPKINS: Are you saying the data was
18 reported incorrectly?

19 MR. KHARASCH: It may well be that in the
20 waybill study, people have not reported to the ICC, and
21 in this case it would be the Missouri Pacific, certain
22 traffic. It may happen at other points, too, for all I
23 know or all anyone knows.

24 All I can say is that every party and the
25 Commission used the waybill study because that's what

1 we've got.

2 JUDGE HOPKINS: And you are saying the data
3 was taken directly from the waybill statistics, the 1
4 percent waybill that you received?

5 MR. KHARASCH: That's what was said by Mr.
6 Anderson quite explicitly.

7 MR. MOATES: May I be heard in reply? Mr.
8 Kharasch's response is the classic response that when
9 you are faced with something like this, you suggest that
10 the whole house of cards would come down.

11 That, in fact, is not the case, Your Honor.
12 Data is only as good, I agree, as the input to it. The
13 reporting apparently was faulty here, but the key is for
14 what purpose is the data being used?

15 Now, we used the data in the traffic diversion
16 studies that Your Honor has had to sit through some
17 extended examination on that from time to time. Certain
18 deficiencies were made clear there that related to the
19 traffic study.

20 Just to remind you, for example, of the
21 omission of consignor/consignee data, and in the context
22 of the traffic diversion study, that defect in the data
23 may have some relevance. That doesn't mean it's
24 inappropriate to use the waybill sample for a traffic
25 diversion study. It means you are faced with certain

1 limitations.

2 What we are faced with with Dr. Tye's tables,
3 and these are the only items with respect to the waybill
4 sample that we have made a motion at this time, our
5 concern, our great concern is the purpose to which Dr.
6 Tye is putting this data which has been acknowledged
7 now, even by Mr. Kharasch potentially, to have some
8 fairly serious deficiencies.

9 So we are not attacking the waybill sample.
10 We are ourselves aware of the limitations of that
11 sample. We are indeed objecting to the manner and the
12 purpose for which Dr. Tye has used that data to
13 calculate Herfindahl indices.

14 JUDGE HOPKINS: Aren't you just coming right
15 down to that you believe that you can't give any
16 importance to the statistical data that Dr. Tye uses?

17 MR. MOATES: Because of the deficiency of the
18 data, these tables in Dr. Tye's testimony cannot in way,
19 shape, or form be utilized for any proper purpose in the
20 case. And, therefore, they really ought not to be
21 received.

22 JUDGE HOPKINS: Well, isn't this something you
23 can argue about all the way through here that has tables
24 of no use in the record?

25 MR. MOATES: We can, Your Honor, and I expect

1 we will if you deny the motion.

2 JUDGE HOPKINS: I think I will deny. There is
3 no reason, Mr. Kharasch. I am denying the motion.

4 We will be in recess for 15 minutes. Thank
5 you.

6 (Recess.)

7 JUDGE HOPKINS: Let's get back on the record.
8 Is Mr. Sheridan coming back?

9 MR. KHARASCH: The last witness has been
10 called for cross-examination. At the end of that, Your
11 Honor, I would propose after Mr. Sheridan's testimony, I
12 move the admission of the rest of the statements that
13 have not been moved.

14 JUDGE HOPKINS: Yes, I understand that. I was
15 going to do it if you didn't.
16 Whereupon,

17 JERRY M. SHERIDAN
18 was recalled as a witness in the above-entitled case
19 and, having been previously duly sworn by the
20 Administrative Law Judge, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. KHARASCH:

24 Q Mr. Sheridan, are you the Jerry M. Sheridan
25 who has previously testified and whose answers appear in

1 the verified statement of Jerry M. Sheridan in MKT-29?

2 A Yes, sir.

3 MR. KHARASCH: Your Honor, I would like to
4 state preliminarily, these are in question and answer
5 form, the statement is. The questions are to be treated
6 as questions of counsel would be treated. They are not
7 evidence.

8 BY MR. KHARASCH: (Resuming)

9 Q Mr. Sheridan, are there any corrections in
10 MKT-29?

11 A No corrections.

12 Q Subject to my comment about the questions that
13 are counsel's questions in this exhibit, are the answers
14 provided true and correct, to the best of your knowledge
15 and belief?

16 A Yes, they are.

17 MR. KHARASCH: Mr. Sheridan is tendered for
18 cross-examination on this exhibit.

19 CROSS EXAMINATION

20 BY MR. WILSON:

21 Q Good morning, Mr. Sheridan. My name is Dennis
22 Wilson, representing the Applicants.

23 Mr. Sheridan, how many rail marketing
24 statements have you been responsible for at MKT that
25 have used a computer program diversion model?

1 A That have used a computer diversion? Zero.

2 Q Have you been involved in a computer diversion
3 model study at MKT or in any other position that you
4 have held?

5 A Not a diversion study as such. Segments. We
6 have run stuff in a computer and brought it out on
7 segment studies, but not a complete study; no, sir.

8 Q What do you mean by segment studies? The
9 computer divides the traffic into various groups and
10 then you look at the data? Is that what you mean?

11 A Yes. You pull it off certain documents for
12 certain line segments, things like that.

13 Q Those are not diversion studies in any way,
14 would you say?

15 A They were in connection with loss of traffic
16 due to diversion, due to a merger.

17 Q Sir, are you familiar with the rail traffic
18 diversion model that's been developed and is being
19 marketed by ALK Associates of Princeton?

20 A No, sir.

21 Q Are you familiar with the rail traffic
22 diversion model that was developed and is marketed by
23 Booze-Allen-Hamilton?

24 A No, sir.

25 Q Are you familiar with the rail traffic

1 diversion model that has been developed and is marketed
2 by Feebie Associates?

3 A No, sir.

4 Q Are you familiar with papers and presentations
5 that have been given to rail transportation forum groups
6 concerning the procedures and methods of rail traffic
7 diversion studies using computer models?

8 A Repeat that, sir?

9 Q Are you familiar with the papers and the
10 presentations that have been given to rail
11 transportation forum groups, setting forth the
12 procedures and methodology of rail traffic diversion
13 studies using computer models?

14 A I've read a few transcripts and things like
15 that at various times, but not a complete one, o, sir.

16 Q Okay What have you looked at?

17 A It was some articles that just came marked
18 "In." I just read them and put them on "Out." It was
19 just as reading material. I can't really recall exactly
20 what programs, what they were on. I just scanned them
21 and let them go on.

22 Q You don't recall the subject?

23 A No. I'd say it was just reading material and
24 it was just scanned and discarded.

25 Q Okay. Have you ever sat in on a presentation

1 by DNS of the theory and operations of the basic DNS
2 rail traffic diversion model?

3 A No, sir.

4 Q Sir, in your duties at MKT, have you ever been
5 involved in a truck to rail diversion study?

6 A Truck to rail diversion studies? No, sir.

7 Q Have you ever been involved in a study of
8 possible rail to truck diversion losses?

9 A Truck to rail losses?

10 Q Rail to truck diversion losses, where MKT rail
11 traffic would be lost to truck. Have you ever studied
12 that?

13 A Not personally. I mean, we have a TCC
14 department and they occasionally make studies on
15 different things like that. And I have looked at some
16 of their reports. Just different markets.

17 Q Could you describe what experience you have
18 had with modeling studies of any kind that are designed
19 to predict rail traffic diversions?

20 A Any model that I have designed? I have not
21 designed any models.

22 Q No, that was not -- you must have
23 misunderstood me. Have you participated or had any
24 experience of any modeling studies of any kind that were
25 designed to predict rail traffic diversions?

1 A Yes. I've been on meetings in that, sir.

2 Q Okay. And then can you describe those
3 modeling studies that you participated in?

4 A Well, basically, on merger studies with the
5 Katy, I was originally -- the first one I was in was the
6 old Rock Island case, the BN case, the CSC case, the
7 Cotton Belt/Tucumcari case, the BN/UP study. I've been
8 involved in all of those.

9 Q Okay. And those are all so-called traditional
10 rail traffic studies.

11 A That's right, sir.

12 Q Does MKT consider the efficiency and
13 competitiveness of competing rail routes when it makes
14 pricing decisions?

15 A In making rates?

16 Q Right.

17 A I can only assume so. Mr. Steiniger heads up
18 the rate department, and I do not get directly involved
19 in the rates, but I would assume so.

20 Q In your opinion, does the relative efficiency
21 of a rail route equate to its relative competitiveness?

22 A I don't believe always.

23 Q You don't believe that it does?

24 A I don't believe that it always does.

25 Q In what respect does a more -- well, let's

1 look at it both ways. In what respect are routes
2 relative competitiveness different from the relative
3 efficiency when you are comparing two routes.

4 A Repeat that again, sir?

5 Q When you are looking at two routes and one is
6 more efficient than another, I believe your testimony
7 was that that didn't mean it was always more competitive
8 than another. Is that right?

9 A Not always.

10 Q Okay. Now, that's what I want to try to get
11 at. In what respects does the fact that it's more
12 efficient make a route more competitive? That's one
13 part of question.

14 And then the other part: In what respects
15 could a route be more efficient but still be less
16 competitive?

17 Could you just elaborate on that?

18 A Let's take them one at a time. What was the
19 first part again, sir?

20 Q Okay. If one route is more competitive than
21 another one -- I'm sorry -- is more efficient than
22 another one, how would that tend to make that route more
23 competitive to a shipper?

24 A Well, as far as efficiency on a route, I'm not
25 totally clear just what you mean on the efficiency of

1 it, because I think every railroad has got their own
2 description there a little bit. There's a lot of things
3 involved.

4 In some cases, like where we have a short line
5 mileage, as an example, Kansas City to Texas, I would
6 say it's an efficient route and it's a short line route,
7 but there again there's a lot of routes that are longer
8 and they are very competitive.

9 In most cases, the routes -- excuse me -- the
10 rates are pretty well equal, and I think a lot of it
11 depends upon the shipper and what he wants to do.
12 Sometimes he will ship by various modes, because like I
13 say, he likes to have competition.

14 Q So shippers sometimes spread their business
15 around among more than one railroad just to keep
16 competition?

17 A Yes, sir. In my opinion, yes, sir.

18 Q And also, in various modes, they will use both
19 truck and rail just to keep competition.

20 A I would assume that some do.

21 Q Sir, I assume you are aware, but I'll ask you
22 just to be sure, that Bill Anderson, the MKT's
23 consultant, spoke to DHS about Applicants' rail traffic
24 diversion study on a number of occasions back shortly
25 after it was filed.

1 Are you aware of that?

2 A I understand several of their people talked
3 with him; yes, sir.

4 Q And you aware that Mr. Anderson was given
5 input and output tapes of all the MKT traffic movements
6 that were involved in the SFSP study iteration on a
7 special study run that DNS performed for MKT?

8 A I have no knowledge of what Mr. Anderson
9 received. I assume he's received some, but I have no
10 knowledge of that.

11 Q You have no knowledge of what he received.
12 Okay.

13 Did you at any time ask Mr. Anderson to
14 provide you with a printout from his tapes showing what
15 happened to the MKT movement records that were in the
16 Applicants' rail traffic diversion study?

17 A Yes. In one of our meetings, that was asked
18 to make the study, the Applicants' study, and of course
19 I asked at that time that I would need the documentation
20 that they showed for MKT diversions to make the study.

21 Q Okay. And what did Mr. Anderson tell you?

22 A I believe Mr. Anderson was assigned to that.
23 And on that, basically the information I got back was
24 that as far as individual movements, that they could not
25 furnish that information, showing total information, car

1 number, shipper, consignee, and you know, that type
2 documentation.

3 You know, we make our studies and we feel
4 that, you know, in order to make a study you've got to
5 have all those things present in order to, you know,
6 make the study and know what's going on.

7 Q Did Mr. Anderson make for you a printout of
8 the movement records that he had on the tape files that
9 DNS supplied to him?

10 A I received a stack of stuff; yes, sir, on
11 different movements. Do you have an example of what
12 you're talking about, a copy of, and I can tell you
13 whether I've seen it or not. I've seen some printout
14 stuff from Mr. Anderson; yes, sir.

15 Q Are you aware that two other MKT witnesses in
16 this case, Mr. Odell and Mr. LaGrone, visited DNS in
17 November?

18 A I understand they did.

19 Q What was the purpose of their visit, do you
20 know?

21 A I believe to get information, how it works in
22 that. I did not talk with them after they visited on
23 it, so I am really not quite sure.

24 Q You did not talk to them after the visit?

25 A No, sir.

1 Q Wasn't the purpose of their visit to obtain a
2 complete explanation of Applicants' rail traffic study,
3 get all the questions asked and answered so that they
4 could understand all aspects of Applicants' rail traffic
5 study?

6 A I assume that's what they were trying to find
7 out, sir.

8 Q And you are not aware, are you, that Mr. Cdell
9 or Mr. LaGrone have any outstanding questions or things
10 they don't understand about the traffic study, are you?

11 A Not directly; no, sir.

12 Q Sir, who decided that you should be the
13 witness filing this statement in this case?

14 A I believe it was Mr. Gastler. I had made a
15 similar study in several of the other merger cases we
16 were in and as I had made those, I was chose to do this
17 one.

18 Q I mean this particular statement here. Was
19 Mr. Gastler the one who said you should file this
20 statement?

21 A On this one here?

22 Q Right. Right.

23 A Well, of course, I was assigned to make a
24 study of the Applicants' documents. And, like I say, I
25 received some stuff from Mr. Anderson and I frankly

1 didn't show the type information I felt I needed. And I
2 received several volumes of material trying to explain
3 how it worked, and of course I read through it, and the
4 more I read through, trying to understand it, I'd get
5 confused myself on it.

6 And quite frankly, then I indicated from that
7 I did not feel how I could really make a detailed study,
8 because the detail was not there.

9 So in line with that, I was stymied a little
10 bit and then talking with our attorneys, I agreed that
11 they would ask me some questions about it.

12 MR. WILSON: Your Honor, I think I'd like to
13 move to strike that answer because it wasn't at all
14 responsive to my question. My question was a very
15 simple one. Who decided that Mr. Sheridan should be the
16 witness, and he gave me a speech.

17 THE WITNESS: I gave that to you first, and
18 you said that was not what you asked for. Mr. Castler --

19 JUDGE HOPKINS: I'm going to deny that motion
20 to strike.

21 BY MR. WILSON: (Resuming)

22 Q Mr. Castler decided you should be the witness
23 on this specific statement? That was my question.

24 A I thought you asked who made the study, sir.
25 Excuse me.

1 JUDGE HOPKINS: Start over again.

2 MR. WILSON: Never mind.

3 BY MR. WILSON: (Resuming)

4 Q When were you selected to be MKT's witness on
5 this specific subject?

6 A It was some time ago. I don't remember the
7 exact date on it. Back, I would say, early last year,
8 early '84.

9 Q Okay. Why didn't you go along with Mr.
10 LaGrone and Mr. Odell to learn more about the DNS
11 model?

12 MR. KHARASCH: Your Honor, excuse me. Before
13 the question is answered, I've sat patiently because
14 that moves along here. If these are questions and
15 answers put to Mr. Sheridan as a traffic expert, if you
16 read this statement, this is not a statement criticizing
17 the computer model as such. This is a traffic man's
18 statement about what's wrong with what the computer did
19 and such examples as were provided to us, the selection
20 that was available.

21 I do not think we have to waste any more time
22 on whether Mr. Sheridan is criticizing the computer
23 model or the procedures in the computer or the computer
24 programs. There is nothing in this statement about
25 that.

1 These are statements the computer gave a
2 certain percentage diversion or made the assumption.
3 Now, please assume that it did that. What do you say to
4 that? Is that a sensible thing? That's all this.

5 I don't think we have to go on and on about
6 whether Mr. Sheridan is a computer expert or whether he
7 wanted to run up and talk to Mr. Swain. We've had
8 plenty of talk with Mr. Swain.

9 JUDGE HOPKINS: We've already gone through all
10 that anyway.

11 MR. WILSON: Your Honor, this witness is
12 criticizing some aspects of the model, and I believe
13 that we will demonstrate through the cross-examination
14 that some of the criticisms are based on
15 misunderstandings about the model, not knowing what the
16 model is doing; misstatements about what data is
17 available and what has been supplied.

18 And so questions about the witness's
19 background in this type of study and what the witness
20 did to try to learn about the model that he's submitting
21 a statement criticizing, are directly relevant to the
22 weight, if any, that should be given to this witness's
23 testimony.

24 MR. KHARASCH: He's not criticizing the
25 model. He says, if you look, for example, at page 1, it

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1 says Mr. Swain told us that the diversion study assumes
2 that all possible railroads in the West will be open
3 after a merger.

4 Is this realistic or sensible? And then the
5 witness gives an answer.

6 That's why it's in question and answer form,
7 Your Honor.

8 JUDGE HOPKINS: You are saying, in other
9 words, that he's not questioning the model as
10 submitted.

11 MR. KHARASCH: I question the model. It's our
12 position, but not this witness. No, he is answering the
13 specific questions.

14 JUDGE HOPKINS: Since he's not, why go into it
15 that extensively then, since he's not questioning the
16 model itself?

17 MR. WILSON: I'm glad that he's not. Is that
18 your testimony, Mr. Sheridan?

19 THE WITNESS: That's correct. I am not.

20 MR. WILSON: Good. Well, there are still
21 several misstatements and misunderstandings about the
22 model, Your Honor, and that's why I'm asking these
23 background questions as to what study Mr. Sheridan did
24 of the model.

25 BY MR. WILSON: (Resuming)

1 Q Returning to my question, and I don't have
2 very many more because I've pretty much gone through
3 this background now, my question is, why didn't you go
4 along with Mr. LaGrone and Mr. Odell to learn more about
5 the DNS model? It's a simple question.

6 A On making studies of this type, I don't, even
7 in the previous case, I don't go into how they did their
8 study or what else have you. All I receive is documents
9 of the diversions and then I analyze them. That's what
10 I've done in the past, and that's what I was going to do
11 here.

12 I did not feel that knowing how this model
13 worked -- I don't know why that would help me because
14 what I wanted to do was analyze diversions that were
15 made, and they could not come up with that in detailed
16 form.

17 I mean, that's all I was requesting to make my
18 study. So I didn't care how it ran, really.

19 Q Okay. What contacts did you have, or have you
20 had any contacts with DNS or any members of the DNS
21 staff?

22 A No one, sir. No one.

23 Q Now, on page 1 of your verified statement, the
24 first criticism you have is questioning the assumption
25 in Applicants' traffic study that all rail routes will

1 remain open after the SPSF rail merger, all rail routes
2 in the West.

3 Isn't it true that as used in Applicants'
4 traffic diversion study, this open routing assumption
5 had a number of important implications?

6 A In the testimony that I recall reading, it
7 showed that that was the assumption that was made, and
8 this is what I was told. In other words, I am answering
9 what I was told here, assuming.

10 Q You don't recall any limitations to open
11 routing in Applicants' traffic study?

12 A Not any exact limitations. No, sir.

13 Q In a rail traffic diversion study, a decision,
14 an assumption that certain routes will never be used by
15 shippers is the same thing as deciding that those routes
16 would be closed, isn't it?

17 A Yes, sir.

18 Q And Applicants' rail traffic diversion study
19 assumed, for example, that traffic would never divert to
20 a route which short hauled an origin or destination
21 carrier by more than 80 percent.

22 Now, isn't that the same thing as assuming
23 that the origin or destination carrier wouldn't concur
24 in a route that short hauled it more than 80 percent?

25 A That would short haul it by more than 80

1 percent?

2 Q Yes, sir. That was the assumption in the
3 traffic study.

4 MR. KHARASCH: Excuse me. The question is
5 whether the assumption in the traffic study that the
6 carrier would not be short hauled by more than 80
7 percent is the same as assuming that the route be
8 closed? Is that the question?

9 JUDGE HOPKINS: Is that the question?

10 MR. WILSON: I thought it was a clear enough
11 question. Why don't you read the question back?

12 JUDGE HOPKINS: He's having difficulty
13 understanding it.

14 MR. WILSON: I'll ask the question again.

15 BY MR. WILSON: (Resuming)

16 Q Applicants' traffic diversion study assumed,
17 for example, that traffic would never divert to a route
18 that short hauled an origin or destination rail carrier
19 by more than 80 percent.

20 My question is, isn't that the same thing as
21 assuming that the origin or destination rail carrier
22 would not concur in the route over that short haul
23 junction?

24 A As far as I am concerned, they may or may
25 not. I would assume that most carriers would not short

1 haul themselves that way.

2 Q Right. But because Applicants had that
3 assumption, Applicants were assuming that those types of
4 routes would be closed. Or is the same thing as
5 assuming those types of routes would be closed; right?

6 A You said the Applicants did? You mean you all
7 considered it that way?

8 Q Right.

9 A I don't have anything specific showing that,
10 sir.

11 Q You didn't know that we had that rule that we
12 would take, we would have a non-diversion if the origin
13 or destination carrier was short hauled by more than 80
14 percent? You didn't know about that rule?

15 A No, sir. I'm not aware of that particular
16 one, sir.

17 Q Oh, okay.

18 What about Applicants' rail traffic diversion
19 study assumption that traffic would not divert to a
20 route which was significantly more circuitous than the
21 pre-diversion route, a route that was over 50 percent
22 more circuitous than the prediversion route we assumed
23 would not move the traffic, would not be.

24 Did you know that?

25 MR. KHARASCH: Wait a minute. In this form of

1 question and I think, I suspect there's going to be a
2 lot of them, I think the proper form is if this is what
3 was assumed in the Applicants' study, did you know.

4 We should not have testimony from Mr. Wilson
5 about what's in the study. We'll have a lot of
6 arguments about what they did or didn't do.

7 MR. WILSON: That's why I said did you know
8 that at the end.

9 MR. KHARASCH: But first you state a fact and
10 say did you know the fact. That's two questions. Is it
11 a fact, and did you know it if it was?

12 JUDGE HOPKINS: If that is the fact.

13 MR. KHARASCH: That they had a circuitous rule
14 or such and such.

15 BY MR. WILSON: (Resuming)

16 Q Would you answer Mr. Kharasch's question?

17 JUDGE HOPKINS: If you can understand it now.

18 THE WITNESS: No, I'm not aware of that,
19 exactly of that particular rule. No, sir.

20 BY MR. WILSON: (Resuming)

21 Q Were you aware that there were circuitry rules
22 in the study that automatically non-diverted movements
23 over circuitous routes, that automatically assumed that
24 those routes would not be used, that they would be
25 closed?

1 A No, sir.

2 MR. KHARASCH: Again, I object. You see, we
3 still have a factual statement. They didn't close the
4 routes. They said at a certain point, they would not
5 take a diversion.

6 I mean I've studied it, so I know they had such
7 a rule. But it wasn't that it would be closed. I don't
8 want to sit and argue with Mr. Wilson about whether he's
9 stating it right. Put this hypothetically.

10 JUDGE HOPKINS: It might be wise if we assume;
11 otherwise, we are going to be going here forever.

12 MR. KHARASCH: Or I'll want to cross-examine
13 Mr. Wilson.

14 JUDGE HOPKINS: We've been going on long
15 enough. Let's go on.

16 BY MR. WILSON: (Resuming)

17 Q Do you know if Applicants' rail traffic
18 diversion study assumed competitive impedances would
19 exist at interchanges?

20 A I understood that there were impedances in the
21 study; yes, sir.

22 Q Now, wouldn't those impedances have the effect
23 of assuming that multiple carrier routings, the
24 excessive number of railroads, would be non-competitive
25 or would be closed?

1 A I'm not totally aware of all of the
2 impedances. I was aware that there were impedances, but
3 I'm not aware of them specifically.

4 Q And you are not aware of how they would
5 operate to say whether a four carrier haul between A and
6 B versus a single line haul between A and B, the
7 competitive impedances would automatically make a four
8 carrier haul non-competitive or effectively closed,
9 which is no traffic, whatever, would be routed by that
10 particular route?

11 MR. KHARASCH: Again, I think this is a total
12 misstatement of what happened in the study. That's not
13 what went on in the study. Impedances had nothing to do
14 with the calculations of diversions. The witness has
15 got a statement here that says I don't think it's
16 sensible to have a study on a closed route.

17 MR. WILSON: I'll state it as a question, Your
18 Honor. I apologize.

19 BY MR. WILSON: (Resuming)

20 Q Do you know how the competitive impedances
21 would work between A and B, comparing a four carrier
22 route to a single line route?

23 A No, sir.

24 JUDGE HOPKINS: That simplifies it, doesn't
25 it?

1 BY MR. WILSON: (Resuming)

2 Q Sir, on page 2, you state as your first answer
3 at the top, that most SP routes are not open today.
4 What percentag of SP routes do you think are closed
5 today?

6 A I do not have a percent. I know, like I say,
7 a lot of them have been closed and a lot of them are
8 closed.

9 Q Do you know how many SP routes are open?

10 A No, sir.

11 Q What about Santa Fe? Do you know how many
12 Santa Fe routes, what percentage of Santa Fe routes have
13 been closed?

14 A No, sir. I have nothing on percents.

15 Q But your testimony is that over half of all
16 Santa Fe's interline routes have been closed. Is that
17 your testimony?

18 A I don't know if I said over half, do I?

19 Q You say most Santa Fe routes are not open
20 today. Would you like to amend that?

21 A Most routes that we've tried to get and most
22 routes that we've had are not open routes. No, sir.

23 Q Does "most" as you use it here mean more than
24 half?

25 A Okay. Are you talking about the routes that

1 we have asked for and not received, or what, sir?

2 Q It's your testimony. I'm trying to find out
3 what you mean.

4 A Well, it's like I'm saying there. As far as
5 I'm concerned, it's not an issue, because most SP routes
6 are not open today, and most Santa Fe routes are not
7 open today to us.

8 JUDGE HOPKINS: Well, can you quantify that?

9 THE WITNESS: Yes, sir. As an example, I
10 think we've used -- we've had like routes from Canville
11 and Lumber. They were closed down by the SP. Then, all
12 of a sudden at one time, they did come back and reopen
13 them.

14 But then later on, they took them out again.
15 Texas Intrastate, any time they serve the
16 origin-destination, they closed all the routes.

17 JUDGE HOPKINS: That's not quantifying. You
18 used the term "most." And that's what he's trying to
19 get at. You mean 50 percent of the routes are closed,
20 25 percent of the routes are closed, 75 percent, or any
21 quantified figure? Or don't you know?

22 THE WITNESS: I don't have a quantified
23 figure, sir.

24 JUDGE HOPKINS: Thank you.

25 BY MR. WILSON: (Resuming)

1 Q Sir, at the bottom of page 2, you criticize
2 the assumption in our traffic study, the Applicants'
3 traffic study, that a connecting railroad would give up
4 its long haul voluntarily where that railroad is
5 originating the traffic.

6 I take it you would like Applicants to have
7 assumed that where a connecting railroad is involved in
8 a haul, it could not be short hauled at all. Is that
9 the assumption that you would like us to use?

10 A Like I say, I do not believe all the routes
11 are open. There's a few documents I looked at where the
12 SP was the exclusive carrier on one end. They were
13 going to another point, point B, that was open to
14 several carriers. And as far as I am concerned, that's
15 an exclusive route, and they would not give a joint
16 route.

17 Q Well, if MKT has originated a car and moving
18 it over a junction of, say, Houston with the SP today,
19 don't you think it's possible that because of the
20 merger, the MKT might get short hauled and pushed back
21 to Dallas Junction because some shipper wanted to use
22 the merging carrier's line for a longer portion of the
23 route?

24 A That the SP might push our junction back?

25 Q Right.

1 Q They are doing it today on stuff that we would
2 have exclusive movement on if we closed the route.

3 Q Well, right. But I am talking about something
4 that's not related to route closings. I am talking
5 about the merger causing the shipper to divert the
6 traffic to a new route.

7 A The merger causing the shipper to divert to a
8 new route?

9 Q Right. Don't you think that shippers will
10 change their routing practices to give the merged system
11 a long haul junction, even if it means backing up the
12 junction of the connecting carrier in some cases?

13 A Well, it just depends on the specific
14 movement. Give an example of a movement and I'll give
15 you an answer.

16 Q Okay. Well, I have an example, and it won't
17 even involve Katy. So we can get this point clarified.

18 Let's take a Burlington Northern move from
19 Birmingham to California that's moving Burlington
20 Northern-Avard-Santa Fe today.

21 Now, in Applicants' traffic diversion study,
22 that move was diverted to Burlington
23 Northern-Memphis-Santa Fe-Southern Pacific.

24 Now, as I read your testimony here, my
25 understanding of it was that you were objecting to that

1 diversion because my understanding was that you were
2 saying Burlington Northern would never let that happen.
3 They'd never let themselves get short hauled to
4 Memphis.

5 A As far as I am concerned with the MKT, the SP
6 is not giving us any routes that short hauls
7 themselves. Now, what you are doing with the BN, I know
8 you all have got some agreements with the other
9 railroads in the West, but you don't have one with us.

10 Q I'm not talking about route closings. Could
11 you just answer the question? Do you think that that
12 would happen? Would Burlington Northern agree to
13 Memphis Junction routes or not?

14 A What junction is it now moving over?

15 Q Avarad.

16 A I question whether they would. Yes, sir.

17 Q Okay. So is it your testimony that that
18 traffic would never be diverted away from Burlington
19 Northern because Burlington Northern's origin influence
20 would hold it to the Avarad Junction?

21 A Well, I don't believe it would be changed
22 unless there was some type of agreement giving them the
23 same division over another junction. I don't think
24 they'd take a short haul division. No, sir.

25 Q Okay. So, to the extent that Applicants did

1 the opposite and did assume that connecting carriers
2 could be backed up to shorter haul junctions, in your
3 view they have overstated the rail traffic diversion
4 losses that this merger would cause.

5 A I believe so. Yes, sir.

6 Q Now, at the bottom of page 3, sir, you have a
7 statement and you say there is no SFSP study detail to
8 inspect to see what effect any assumption had.

9 Now, in addition to the input and output tapes
10 that DNS provided to Mr. Anderson, didn't Applicants
11 also have a 980-page report showing the study movement
12 of detail for about 5,000 movements?

13 A I got some printouts, but as far as I'm
14 concerned, it didn't show complete detail. It didn't
15 show the shippers, the consignors, things like that on
16 any report that I received, that Mr. Anderson or our
17 people received, that showed the shipper consignees, and
18 as far as I'm concerned, that does make a big
19 difference.

20 Q You're talking about the report, not whether
21 the detail was there. The actual piece of paper didn't
22 show the shipper, for example. Is that what you are
23 saying?

24 A As I understand it, there was no record of the
25 detailed record of the information. There was no record

1 kept. On the MKT movements, again we asked for what the
2 diversions were and complete information.

3 And we never received it, and like I say in
4 this testimony, it indicates there was no record on what
5 MKT movements were diverted and what were not.

6 Q You did receive, did you not, a tape that
7 showed all of the MKT movements before and after the
8 diversions?

9 A No, sir, I did not receive a tape. Maybe Mr.
10 Anderson might have, but the information that he got off
11 of it that I received did not have it. I cannot verify
12 whether it was on the tape or not, but the information
13 he got off of it did not have that information.

14 Q So the detail that you are testifying to is
15 lacking here is shipper names and consignee names?

16 A That's part of it. It didn't show the car
17 number. Like I say, I told him even if we could find
18 the car numbers, if it had been moved by the Katy, we
19 could pull documents that we had to get more
20 information, but we didn't even get a car number.

21 Q Now, on page 4, line 2, you say the movements
22 included in the printout were not selected by
23 statistical sampling process. Do you know the process
24 by which the movements were selected?

25 A Are you on page 4?

1 Q Uh-huh.

2 A Where at, sir?

3 Q Second line.

4 A Second line or second paragraph?

5 Q Second line. "There is no statistical
6 sample."

7 My question is: Do you know the process by
8 which the movements were selected?

9 A No, sir. I do not know.

10 Q What is the basis for your indication that
11 they were not selected by statistical sampling?

12 A As far as I am concerned on that, there was
13 none as far as what I received of our sampling. I mean
14 I'm not saying it wasn't taken from a sample. I'm
15 saying, in other words, we did not get the information
16 as such. There is no statistical sample that we
17 received as far as that showing full information.

18 MR. KHARASCH: Mr. Swain testified a dozen
19 times, Your Honor, that he didn't make any samples. Is
20 there any question about that? Why should we waste time
21 on it? He doesn't have any sample. There is no way.
22 We asked from day one of this case that they give us a
23 printout so we could analyze it. They didn't.

24 MR. WILSON: Your Honor, MKT has never asked
25 for a printout of MKT movements. No one at MKT has ever

1 asked anyone of Applicants or DNS for a printout of MKT
2 movements.

3 MR. KHARASCH: That's not true. It's in our
4 first interrogatories. We never received it. We were
5 told it would cost \$100 an example to get a calculation
6 of the diversion.

7 We didn't think we would pay \$2-1/2 million to
8 Mr. Swain to give us a complete sample.

9 JUDGE HOPKINS: You are both testifying here
10 as to what has occurred. Let's go on with the
11 questioning.

12 BY MR. WILSON: (Resuming)

13 Q As a marketing person, you don't have any
14 concerns, do you, in looking at 4,500 records, having a
15 good idea that that's a big enough block of traffic to
16 be sure that this study is reasonable and reliable?

17 A Looking at it to see if it would be
18 reasonable? Well, here again, the number of documents
19 doesn't bother me. It's what on it. I mean are you
20 talking about what your people did or what here?

21 Q Right.

22 A Well, here again, I don't know what they were
23 looking at. The number doesn't bother me, but I'd have
24 to know what they were looking at it to see if it's
25 reasonable or not.

1 Q Well, your criticism here, sir, that there is
2 no statistical sample, goes directly to the fact that we
3 didn't look at enough documents or we somehow did it
4 wrong in some way.

5 What is it you were trying to say here?

6 MR. KHARASCH: This is a characterization by
7 counsel. He says there are some examples of diversions
8 or non-diversions in the printout. There is no
9 statistical sample. That's not a criticism at that
10 point.

11 All he does, as the testimony says, is because
12 there isn't a sample, I can't correct or restate the
13 treatment. Now, why that has to be characterized as a
14 criticism and so on, that's the way you did it. This
15 man is testifying that, as a traffic officer, that's the
16 way you did it.

17 JUDGE HOPKINS: They are arguing they did it.
18 They do have statistical sample.

19 MR. KHARASCH: They never said that, Your
20 Honor.

21 JUDGE HOPKINS: I'm just saying that's what
22 Mr. Wilson seems to be getting at, he's trying to
23 prove.

24 MR. WILSON: No, no. I think it's better than
25 a statistical sample. That's what I am getting at.

1 JUDGE HOPKINS: Well, why don't you go
2 farther? Go ahead and ask that question.

3 MR. WILSON: I have a line of questions and
4 I'll get there.

5 JUDGE HOPKINS: Well, go on. I don't think
6 you're getting anywhere with this line of questioning
7 really, Mr. Wilson.

8 BY MR. WILSON. (Resuming)

9 Q Well, you would agree that final evaluators
10 don't have to look at as many movements when a computer
11 is making sure that you have consistency in the
12 evaluations across all the range of movements in the
13 data base. Would you agree with that?

14 A If the proper information is there, full
15 information, I feel that that's right.

16 Q Okay. And in a process like this where there
17 are a number of rules, a statistical sample might not
18 pick up a movement that -- well, a movement where every
19 rule has been used. Would you agree with that?

20 A I don't know how your sampling works or your
21 computer worked on that.

22 Q What I am getting is, don't you think the fact
23 that the Applicants not only look at so many movements,
24 4,500, it also made the special effort to look at more
25 diversions and non-diversions and look at at least ten

1 movements for every rule that was involved in the
2 study?

3 If, to your knowledge, that's what they did,
4 don't you think that that is at least as good as a
5 statistical sample from the standpoint of somebody
6 reviewing records in a traffic study?

7 A I don't have any idea on that being the
8 assumption. If the full information was there to make a
9 comparison, like I say, it would be fine. But I have no
10 idea what your sampling process was and what it
11 entailed.

12 MR. WILSON: Your Honor, I've got a short
13 motion to strike a couple of items here. The statement
14 at the top of page 4 that starts out, "There are no data
15 or records I can inspect to correct or restate." And
16 also, the statement at the bottom of page 3 that starts
17 out, "There's no SFSI study detail."

18 And the basis for my motion on that is that
19 there was a lot of study detail. We provided tapes to
20 the MKT of all of the MKT input and output movements.
21 We provided to the MKT numerous printouts, work papers
22 in our traffic diversion study, data on the 4,500
23 movements, and of course the complete file of all the
24 MKT movements.

25 Now, as far as the statement that the study

1 could not be restated, one of the other parties in this
2 case, Union Pacific, already has restated the study.
3 So, of course, that obviously can be done.

4 So it seems to me, Your Honor, that because
5 these two statements are just wrong, that the proper way
6 of handling them would be to strike them.

7 JUDGE HOPKINS: Mr. Kharasch.

8 MR. KHARASCH: I disagree totally with about
9 four different factual assumptions.

10 JUDGE HOPKINS: Why don't you explain?

11 MR. KHARASCH: Mr. Swain testified explicitly
12 that there is no way to trace today an MKT movement
13 through the five iterations and to know what happened.

14 There is no way at all. That is impossible.
15 We don't know what went in and what went out of this
16 study. You can't do it. You cannot trace it.

17 Second, Mr. Swain said ten times during his
18 cross-examination that there is no statistical sample.
19 That's what makes it impossible to restate. If you have
20 a properly drawn sample, as the Commission traditionally
21 uses, and something is wrong in one of the assumptions,
22 you can correct it and then you would have an expansion
23 factor and you can correct the result on the whole
24 study. That's what's being said here. That is
25 explicitly what Mr. Swain testified to.

1 I am not going to rehearse it this time, the
2 endless, endless efforts to get anything from the
3 Applicants that would enable us to make corrections or
4 restatements. We've discussed that over the weeks, Your
5 Honcr.

6 But you will recall Mr. Swain being on and
7 saying what he said. I say this is correct. That is
8 what Mr. Swain said. There is nothing that I could give
9 Mr. Sheridan to say look at this, and what do you think
10 as an evaluator of the changes in their assumption?

11 JUDGE HOPKINS: It comes down to me and
12 appears like there is a difference in interpretation.
13 That's all that we've got here. I am not going to grant
14 the motion to strike.

15 BY MR. WILSON: (Resuming)

16 Q Sir, on the middle of page 4, your last word
17 on that answer carrying over from the prior page is
18 "hypothetical." What do you mean by hypothetical
19 there?

20 A Well, the last one that comes out, I am
21 assuming that's what was distributed to us; as far as I
22 am concerned, not having any background, I don't know
23 whether it's actual or hypothetical because in some
24 cases, I understand in there that they took a
25 hypothetical situation -- I'm trying to think exactly

1 what they were.

2 I know in some cases movements were like
3 grouped together in SPLCs and certain things were
4 grouped together, were compacted, so to speak -- I think
5 was one of the words used. Consolidated, compacted,
6 something like that.

7 In other words, when you do that, I don't know
8 whether it's actual or what it is on the information
9 received.

10 Q So are you concerned about the origins and the
11 destinations, whether they are actual or not?

12 A I am concerned about complete information on
13 them.

14 Q Complete information. If hypothetical also is
15 intended to address the fact that Applicants had some
16 study iterations to measure the impact of the MP/UP and
17 trackage rights that happened there which would have an
18 impact on all the railroads in the West before our
19 merger, do you think that's one of the things that
20 "hypothetical" might be intended to address?

21 A It could.

22 Q Now, you are not indicating, are you, that it
23 was not appropriate for -- are you indicating that it
24 was inappropriate for Applicants to first study the
25 impact of the MP/UP and related trackage rights before

1 studying the SFSP merger?

2 A No, I am not implying that.

3 Q In fact, do you agree that it's better to try
4 to project what the impact of the MP/UP and related
5 trackage rights would be on 1982 traffic, rather than
6 assume that they would have no impact at all, which
7 would be what you would do if you weren't studying it?

8 MR. KHARASCH: I think I am going to object to
9 this, and if there are anymore questions like this, as
10 beyond the scope of the testimony. The testimony is the
11 testimony of a traffic officer about some of the
12 assumptions and results. Examples in the diversion
13 study.

14 It is not, I repeat, a critique of the
15 computer program. It's a critique, if you wish, of the
16 results as a traffic man.

17 MR. WILSON: This is not a computer oriented
18 question. This is a traffic oriented question. Would
19 it be better to look at the impact of MP/UP and related
20 trackage rights before you look at the SFSP merger?

21 JUDGE HOPKINS: You're not talking about the
22 computer program then, right?

23 MR. WILSON: No. I'm talking about the
24 marketing standpoint.

25 JUDGE HOPKINS: Go ahead then.

1 THE WITNESS: I thought you were talking about
2 what you were doing in the computer example.

3 BY MR. WILSON: (Resuming)

4 Q The question is, do you agree that it would be
5 better using the 1982 data to first determine how that
6 traffic would be affected by the MP/UP and related
7 trackage rights before you move on to determine how it
8 would be affected by the SFSP merger?

9 A If you had information to show the corrections
10 in there, I would see nothing wrong with that.

11 Q Would it be better to do that than not do
12 that?

13 A To the extent that you know what happened,
14 yes, sir; it would be good to do that.

15 Q Sir, in your response to the next question, I
16 think, yes, your one-sentence response -- you say you
17 were able to determine whether some of our assumptions
18 were realistic or sound.

19 Explain how you did that in looking at the
20 printout.

21
22
23
24
25

1 A How did I do that? I looked at the samples,
2 some of the samples.

3 Q Could you elaborate a little bit? I mean were
4 you able to determine from looking at the study movement
5 sheets what assumptions were used and how they affected
6 the traffic flows? Is that what you're driving at here?

7 A Well, as far as I am concerned, looking at
8 them and the results that they showed, to see whether
9 the calculations and the assumptions were realistic --
10 in other words, I'm talking about the results that they
11 showed on there, that's what I'm talking about, whether
12 they were sound or not.

13 And I would say that's what I'm giving an
14 opinion on.

15 Q At the top of page 5, you discuss a diversion
16 multiplier of 1.57 on the exclusive-to-exclusive
17 traffic. Do you know what the class of traffic
18 multipliers are that would be associated with this
19 traffic?

20 A I've seen the list, sir. Yes, sir.

21 Q Would you agree that those multipliers range
22 from between 76 percent and 100 percent for the class of
23 traffic multipliers?

24 A I can dig out the statement I saw, if you'd
25 like. You've got one there. If that's what you say it

1 reads, that's fine. In other words, there was quite a
2 variance on there, sir.

3 Q Don't all of the class of traffic multipliers,
4 when they are multiplied by 1.57 equal a 100 percent
5 diversion just like you said they should?

6 MR. KHARASCH: Are you asking him whether
7 that's factually true in the computer program, or should
8 it be that way if he assumes that's true? It's not
9 factually true. I dispute that. But go ahead. You
10 just keep asking him questions about the computer
11 program instead of what he's testifying about.

12 THE WITNESS: I think we've answered it. If
13 that was the only used, you're right.

14 BY MR. WILSON: (Resuming)

15 Q That was my question, too.

16 A If I could complete answer, if that the was
17 the only thing used, you are correct. But when you look
18 at movements that are exclusive-to-exclusive, they do
19 not show 100 percent. And that's what I'm saying in my
20 answer here.

21 Q That's because of other factors that are
22 involved in the movement; right?

23 A If you're exclusive-to-exclusive, how can you
24 not handle 100 percent? In other words, in my opinion,
25 exclusive-to-exclusive, you're going to handle 100

1 percent of it. And that's what I am stating as my
2 opinion here.

3 Q Okay. Now, my question was, just to make sure
4 we've got this clear, and this is all that the question
5 was: If you look at the traffic, the class of traffic
6 multiplier and you multiply that by the
7 exclusive-to-exclusive multiplier, you are going to be
8 at a 100 percent diversion for all of the traffic,
9 aren't you, so it would have to be another factor such
10 as special equipment of the MKT that would bring that
11 percentage down: isn't that right?

12 A You're bringing up other factors. When you
13 throw other factors in there, these did not come up to
14 100 percent of movement, and again my opinion is
15 exclusive-to-exclusive, you're going to handle 100
16 percent, when you are showing it's less than 100 percent
17 you're handling.

18 JUDGE HOPKINS: Mr. Wilson, before you go any
19 farther, I think we better take a luncheon recess.
20 Maybe over the luncheon recess, you can see if you can
21 cut down some of your questions if possible. We'll be
22 in recess until 1:30.

23 (Whereupon, at 12:37 o'clock p.m. the hearing
24 recessed, to reconvene at 1:30 o'clock p.m., this same
25 day.)

AFTERNOON SESSION

(1:36 P.M.)

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

5 Mr. Wilson.

6 Whereupon,

7 JERRY M. SHERIDAN

8 the witness on the stand at the time of the recess,
9 resumed the stand and, having been previously duly sworn
10 by the Administrative Law Judge, was further examined
11 and testified as follows:

12 BY MR. WILSON: (Resuming)

13 Q Mr. Sheridan, could you turn to page 7 of your
14 statement there? You discuss at the top in your
15 dialogue with Mr. Kharasch how stations were classified
16 in the Applicants' rail traffic diversion study.

17 Do you know whether any stations in
18 Applicants' study were classified as served but not open
19 to reciprocal switching?

20 A If any stations were? Well, I think they --
21 of course, from the question here, I'm supposed to go by
22 the assumption. That's what I am doing here.

23 In other words, he's given me a question, and
24 I'm assuming that in answering the question, but
25 specifically on the study, no.

1 Q I have eliminated several questions during
2 lunch, Your Honor, so we move on to the middle of page
3 9.

4 There, Mr. Sheridan, on your first full answer
5 on page 9, you mention possible mistakes by Applicants
6 in classifying points as exclusively served. Do you see
7 that?

8 A Yes, sir.

9 Q Other than the two small stations of Etter,
10 Texas and Hamlin, Texas that were brought out in
11 cross-examination, are you aware of any stations that
12 were misclassified in Applicants' rail traffic diversion
13 study?

14 A I covered one other station back on page 8,
15 Miller, Texas. The indication was that in the testimony
16 of Mr. Swain, that that was considered Dallas. Really,
17 it's a local point.

18 Q I understand that. I believe in the
19 testimony, Mr. Swain said that it might have been
20 considered Dallas, and for the record it was treated as
21 an exclusive point in Applicants' traffic diversion
22 study.

23 A That was the other one that I had thought and
24 was aware of. Other than those --

25 MR. KHARASCH: For the record, I don't accept

1 that as a stipulation.

2 JUDGE HOPKINS: He's just stating what he
3 says. We'll let the record speak for itself on that.

4 BY MR. WILSON: (Resuming)

5 Q But you are not aware of any other than
6 Hamlin, Texas and the possibility of Miller Yard?

7 A In the documents, in what I've seen, those are
8 the only ones I've seen. Yes, sir.

9 Q Now, sir, at the bottom of page 9, you say for
10 movements that are printed out, there is no shipper name
11 or consignee name.

12 Is it your understanding that Applicants did
13 not take into account shipper and consignee names in the
14 traffic diversion study?

15 A The documents I've seen, I think that some
16 indicate they did, but not all, because it indicates
17 that they've condensed or consolidated and what else
18 have you, and I don't think that, you know, they can do
19 that on some of their stuff, and come up with whether
20 it's open or closed.

21 The thing of it is, there was no way that I
22 could check on any documents to tell whether it was or
23 was not in my accounts.

24 Q Are you aware of any testimony describing
25 where the computer tapes were and how they were used to

1 check shipper names in the traffic diversion study
2 process?

3 A No, I'm not aware of the computer program.

4 MR. WILSON: Okay. Moving to page 10, the
5 last sentence on the answer carrying over from page 9, I
6 am still going to move to strike that sentence.

7 The sentence says that it's impossible to
8 check anything Applicants did or to correct their errors
9 or restate their results. One of the other Protestants,
10 Union Pacific, has already filed something that restates
11 Applicants' results so this statement can't possibly be
12 correct.

13 And, of course, it's our position that it is
14 not impossible to check what we did. So, because the
15 statement is just flatly wrong, I move to strike that
16 sentence.

17 JUDGE HOPKINS: Do you have something to say,
18 Mr. Kharasch?

19 MR. KHARASCH: Let's speed along. I believe
20 the sentence is absolutely correct.

21 JUDGE HOPKINS: Well, in his opinion it is
22 correct. He's the person making the statement. I'll
23 take it on that basis. The question of whether it is or
24 not is something else.

25 THE WITNESS: We never received anything that

1 would give us this opportunity to do so.

2 BY MR. WILSON: (Resuming)

3 Q By "we," you mean you, yourself?

4 A Well, the Katy.

5 MR. ROACH: Your Honor, may I just say on
6 behalf of the Union Pacific, that if you read the
7 testimony we submitted, I think you will find that it
8 does not say that the study can be restated accurately.

9 It says we tried a partial restatement. We
10 goes on at some length to explain why it can't be
11 restated accurately.

12 BY MR. WILSON: (Resuming)

13 Q Turning to page 17, Mr. Sheridan -- well, I'm
14 not even sure. Let's do this. Let's go to page 19
15 instead. At the movement at the top, you discuss --
16 this is one of the exhibits -- it's MKT-C-34. Could you
17 get that, please?

18 A Yes, I have 34.

19 Q You discuss there Applicants' evaluation of a
20 movement from Eagle Pass to Partelsville.

21 A Yes.

22 Q The --

23 A What page is that on, sir?

24 Q Yes. The top of page 19. Yes. The printouts
25 you have indicate that the consignee on this move is

1 served by the MKT, do they not?

2 A That's correct.

3 Q And they indicate that the commodity is
4 metallic ores, don't they?

5 A That's correct.

6 Q Does that indicate to you that the consignee
7 on this move is probably National Zinc in Bartelsville?

8 A That would be National Zinc. Yes, sir.

9 Q And where is National Zinc located in
10 Bartelsville?

11 A On the MKT.

12 Q And who serves National Zinc?

13 A MKT through reciprocal switching.

14 Q If the Applicants refuse to join with MKT in
15 joint routes over Denison, couldn't the MKT close
16 National Zinc to reciprocal switching?

17 A Couldn't they? They could. But it has not
18 been our policy on any routings like that to do so.

19 Q Well, do you think the leverage that MKT would
20 have from the possibility of closing National Zinc to
21 reciprocal switching might keep Applicants from closing
22 the Denison joint route?

23 A I don't think so. We've already experienced
24 from the Applicants' movements that they are going into
25 the destination point to closed industries.

1 Q Okay. But then you'd still, if it was a
2 closed industry, you'd still receive a line haul
3 division on the move?

4 A We would receive a destination line on a very
5 small amount.

6 Q Couldn't National Zinc also start receiving
7 zinc through the Laredo Gateway rather than Eagle Pass?

8 A I do not know, in Mexico, where this material
9 comes from. No, I could not answer that. All I'm
10 saying is it's from Eagle Pass and I've got to assume
11 that's where it's going to move from. You'd have to ask
12 them if they could do that. I have no idea.

13 Q So you don't know whether a route of
14 UP-Dallas-MKT, for example, might not be a competitive
15 route against the Denison route?

16 A Not over Eagle Pass it would not be.

17 Q Was UP-Dallas-MKT over laredo, though?

18 A But the movement is over Eagle Pass?

19 Q I understand.

20 A If you want to assume it came over Laredo,
21 maybe yes, they would, but there again, I am sure, since
22 the merged lines would serve Bartelsville, I am sure
23 that they would have something in connection with Tex
24 Mex as far as we're concerned to get some of the traffic
25 also.

1 Q The next answer on page 19, you discuss
2 MKT-C-38, where you say the diversion should be 100
3 percent instead of 28 percent.

4 Is that because you assume Applicants will
5 close routes on this move also?

6 A Yes, sir.

7 Q And what is the best service route for this
8 particular move?

9 A Today? I would say that it's by the
10 movement. It shows it was routed. But after the
11 merger, the Santa Fe/SP route would not be that much
12 further, and we do not believe they would continue to
13 route with us.

14 Q Well, isn't today there a better service route
15 via C&NW-Kansas City-UP to Laredo?

16 A If you're talking about -- of course, this is
17 going through Corpus-Tex Mex, and I assumed when you
18 asked me the first question, you were talking about
19 going by this route and movement, but yes, there would
20 be a service route, I am sure, via the UP system going
21 down there.

22 Q Would the MKT is in route today indicate to
23 you that MKT had some kind of influence on this route?

24 A In a case like this, I've already testified
25 previously today, prior to the merger, the SP and the

1 MKT has worked pretty close over the Denison Gateway
2 because we get our Kansas City haul to Denison which
3 were short line and you get your long haul from
4 Denison.

5 And we have cooperated. But again, after the
6 merger, we do not feel that would be the case.

7 Q Well, do you think SFSP would cancel the
8 Denison route if it meant losing business to the Union
9 Pacific?

10 A That I don't know. I mean the Union Pacific
11 won't give us a route down there now. So if you cancel
12 your route, we're out period. Now, what you and UP do,
13 I don't know as far as competing on it. But I don't
14 believe we have a route.

15 Q Okay. Turning to page 20, where you discuss
16 MKT-C-43, that movement shows on the movement sheet as a
17 destination of San Antonio, Texas. And you say that you
18 doubt that the destination is San Antonio, Texas.

19 Why is that?

20 A All right. On this, trying to, of course,
21 trace movements -- of course, MKT is in the routing
22 today, all right.

23 In trying to trace movements again, if I'd
24 even had a car number I could have gone back and picked
25 up the document, found out exactly, but in this, to San

1 Antonic, we're talking about a commodity which is food
2 products. And I've checked some of our movements going
3 to San Antonio in connection with the SP and, of course,
4 if you will notice, this went to the SP over Denison,
5 and I find nothing going to any open industry on the SP
6 that was reciprocal.

7 Most of it is going like to H. E. Butz, which
8 goes out, I think, to Butts, Texas -- or Hebco -- excuse
9 me -- Hebco, Texas which is a local point. And I think
10 this is the case of where they condense some of the
11 outlying areas into the city. And that's what I feel
12 this is, because I did not find anything.

13 I've gone through our records trying to find
14 anything that would be food products going to a SP
15 industry like this was that was open to reciprocal.

16 Usually, it's a local point like, say, Hebco
17 or one of the other surrounding areas. That's what I
18 based it on. Yes, sir.

19 Q That's your basis for your thinking on this?

20 A Yes. I tried to research it the best I
21 could.

22 Q What about Pearl Brewing Company in San
23 Antonic?

24 A Pearl Brewing? That would be open.

25 Q Who serves that?

1 A I'm trying to think of the little switch line
2 they have that connects, I believe, only with the SP.
3 And it is considered reciprocal.

4 Q My information is that Southern Pacific is
5 serving it. Well, doesn't Pearl Brewing Company bring
6 in this commodity?

7 A They bring in some malt, some type of malt,
8 but I don't believe it's under STCC 20. Now, it could
9 be. I would have to check on that.

10 There again, I'd say, you know, we could go
11 there today to San Antonio and you'd see we can't
12 control and get our movement today. And apparently, you
13 all have some influence there to get your long haul on
14 it.

15 We did not get our long haul.

16 Q Well, that's the SP's influence as being the
17 serving carrier there at San Antonio is what's getting
18 the Denison routings.

19 A And that's we feel you'll get the complete
20 haul after the merger.

21 Q If this consignee, just to make sure we are
22 clear on this, if this consignee is Pearl Brewing
23 Company in San Antonio, then indeed the destination of
24 this is San Antonio. That's where Pearl Brewing Company
25 is located, is it not?

1 A If it was Pearl Brewery, it would be San
2 Antcnic. And I see you all took 66 percent of it
3 anyway. And that's why I concluded it would be 100.

4 Q Now, if you could turn to page 21 and your
5 discussion of MKT-C-45 near the top of the page, the
6 information shows that's it a reciprocally switched move
7 by SFSP there in Tulsa, does it not?

8 A Yes.

9 Q I'd like you to assume that the consignee on
10 this move is Safeway Stores in Tulsa.

11 A Wait a minute. I have the wrong one.

12 Q MKT-C-45.

13 A I had 44, excuse me.

14 MR. KHARASCH: Excuse me. Before you
15 continue, counsel, you keep referring to these as
16 movements. It's my understanding that in the collapse
17 that Mr. Swain made they represent a number of records
18 quite often -- six, eight, 24. I am not quite sure it
19 is a movement.

20 If you want to put it in the question, if this
21 is a movement, that's fine.

22 MR. WILSON: The witness called it a movement
23 on page 21 in the answer.

24 MR. KHARASCH: Go ahead.

25 JUDGE HOPKINS: He's using the term the

1 witness said, as I understand it. Go ahead.

2 BY MR. WILSON: (Resuming)

3 Q Is Safeway served by MKT in Tulsa?

4 A Yes, it is.

5 Q With reciprocal switching via Santa Fe and
6 Union Pacific?

7 A All carriers.

8 Q Since MKT serves the consignee, couldn't MKT's
9 ability to close Safeway Stores to reciprocal switching
10 keep -- well, influence SFSP to keep this route open and
11 not close it?

12 A No, sir. They would still bring it to Tulsa
13 and give it to us at the destination junction.

14 Q And again, if that happened, you'd get your
15 line haul?

16 A We would get our minimal line haul, yes, sir,
17 instead of switch charge. On that one, if I could add,
18 of course it does show that it's two movements on that.
19 But also, you did take a 70.8 percent gain on that.

20 Of course, like I say --

21 Q That's true. We were trying to be fair.

22 Looking at MKT-C-48, the diversion route there
23 is BN-Klamath Falls-SFSP to Cypress, Texas. My question
24 is, couldn't Southern Pacific have handled the move by
25 this route today?

1 A Yes, they could.

2 Q What is there about the merger that's going to
3 make it more likely that this shipper will use SP's
4 route from Klamath Falls to Cypress after the merger,
5 compared to using SP's route from Klamath Falls to
6 Cypress before the merger?

7 A Okay. On there, as far as I am concerned, if
8 the SP, if the Applicant gets to Kansas City, of course,
9 number one, they are going to cut the Katy out. As far
10 as I am concerned, we would have no route.

11 Now, as the far the junction between you and
12 the BN after that, I would not know. But in my
13 experience in traffic, I cannot visualize the BN short
14 hauling themselves by Klamath Falls when today they are
15 getting it to Kansas City.

16 But anyway, we would be cut, but I cannot,
17 like I say, visualize the BN giving up that kind of a
18 haul. Again, that's my opinion and experience.

19 Q Turning to page 22, you discuss in the middle
20 of the page a movement MKT-C-52. And you state on page
21 22 -- it's in the middle of the middle paragraph, moving
22 toward the end of it -- your testimony states the fact
23 that UP cars were used.

24 How do you know that this is a UP car?

25 A Well, on the document it showed in matrix 14,

1 it showed under the symbol O, it said equipment owned by
2 competing railroad. Well, you're right. It could have
3 been --

4 Q That could have been UP or MKT; right?

5 A I am not sure how your computer model would
6 classify MKT up there. I don't know if you're
7 classifying by the origin point or by anybody in the
8 route. I am not familiar with the model that much to
9 know whether it could or could not be MKT cars.

10 But I would agree it possibly could have been
11 C&NW equipment, since they also serve Fremont.

12 Q But C&NW was not involved in the prediversion
13 route, was it?

14 A No. But they serve Fremont. You're right.
15 It was not.

16 Q If this were an MKT car, would you disagree
17 with the diversion percentage?

18 A No. I don't believe the equipment would have
19 a factor on this movement.

20 Q Turning to the top of page 24 --

21 MR. KHARASCH: Could we have the last answer,
22 just the answer?

23 THE REPORTER: Answer: " No. I don't believe
24 the equipment would have a factor on this movement."

25 MR. KHARASCH: I think those are two

1 diametrically opposed comments.

2 BY MR. WILSON: (Resuming)

3 Q Mr. Sheridan, would you like to amend your
4 answer?

5 A Well, as far as we are concerned, it would
6 still be a total loss on it. If the MKT car was
7 involved, I did not believe it would make any difference
8 in us remaining in the movement.

9 Q Do shippers have an influence on whether
10 carrier close routes in your experience?

11 A Possibly in some cases, but in many, no.

12 Q Would a shipper be inclined to try to keep a
13 route open for a railroad that is supplying it equipment
14 that it's using for its traffic?

15 A Very possibly.

16 Q Now we can go to the top of page 24. There,
17 at the very first line, you point out that the SFSP
18 would be competitive from Oregon to Texas.

19 How much more competitive would the SFSP be
20 than Southern Pacific's current route from Oregon to
21 Texas points today?

22 A Well, there again, it would depend on where
23 you were going. I think like to North Texas points, it
24 would be somewhat shorter. To some Southwest points, it
25 would not be much of a savings. It just depends on

1 where you are going.

2 Q Now, back on page 25, your first sentence on
3 the top of page 25 about the errors in failing to
4 classify points, is this sentence also based just on
5 those two examples, the misclassifications of Hamlin,
6 Texas and Etter, Texas that we talked about earlier?

7 A And Miller, Texas. Yes.

8 Q If it is misclassified.

9 A Well, that's what I based my decision on, was
10 those three points. That's what I was aware of.

11 MR. WILSON: Your Honor, I have another motion
12 to strike on this page the sentence by itself, the third
13 paragraph on page 25. Again, I believe that sentence
14 beginning, "Then, the fact the data," is flatly wrong.
15 There is no evidence in the record that is consistent
16 with that statement, and I think the record would be
17 better if this sentence were stricken.

18 JUDGE HOPKINS: I don't think it's going to
19 make much difference in this big record. But anyway, I
20 am going to deny, without waiting for Mr. Kharasch to
21 say anything.

22 BY MR. WILSON: (Resuming)

23 Q Mr. Sheridan, at the bottom of page 26, you
24 state that Applicants' computer program was never even
25 written down. What's your basis for that statement?

1 A Well, that's what I was told, and I believe
2 also I read that in Mr. Swain's testimony.

3 Q How could Applicants run the program if it
4 wasn't written down?

5 A I wish you'd tell me. I don't know. I'm just
6 going by what was supposedly in the testimony of Mr.
7 Swain. So, you know, don't ask me; ask Mr. Swain.

8 Q Weren't flow charts for all the programs made
9 available to all parties in the case?

10 A That I don't know. I am only going by what
11 was in the testimony there for my statement.

12 MR. WILSON: All right. Those are all the
13 questions I have.

14 JUDGE HOPKINS: Mr. Kharasch.

15 MR. KHARASCH: I wouldn't touch it.

16 JUDGE HOPKINS: Thank you. You are excused,
17 sir.

18 (Witness excused.)

19 MR. KHARASCH: Your Honor, I move the
20 admission of Mr. Sheridan's verified statement, MKT-29.

21 JUDGE HOPKINS: Any further objection, other
22 than what we've had stated already?

23 MR. WILSON: Since you cannot object on the
24 basis of the weight the statement will be given, I will
25 not object.

1 JUDGE HOPKINS: It will be received in
2 evidence.

3 MR. KHARASCH: And at this time, I would move
4 admission of the other verified statements made by
5 witnesses who were not called for cross-examination, and
6 the balance of the exhibits that go with them.

7 JUDGE HOPKINS: If there's no objection, they
8 will be received in evidence.

9 MR. KHARASCH: Your Honor, that concludes our
10 part of the show.

11 JUDGE HOPKINS: Thank you.

12 MR. STEPHENSON: Your Honor, I am going to do
13 the cross-examination on Mr. Ramos, and I have a few of
14 our system maps that have a little better detail on the
15 Mexican border points. This is not an exhibit.

16 JUDGE HOPKINS: It's just a helpful
17 suggestion.

18 Are you ready?

19 MR. WHITE: Yes, Your Honor. Before we call
20 the witness, I'd like to make just a short statement
21 about the witnesses that will be available for
22 cross-examination.

23 As Your Honor probably knows, we had a tragic
24 loss at the Texas Mexican Railway. Mr. Martinez, who
25 was the Operating Officer, was killed in an automobile

1 accident. In light of that loss, I have asked Mr.
2 Darnell, the President of Texas Mexican, to adopt Mr.
3 Martinez's testimony, and he will be here to be
4 cross-examined on operating matters with respect to
5 labor questions that would be normally addressed by Mr.
6 Martinez.

7 I have asked Mr. Ramos to address those
8 questions. Before the cross-examination began, in a
9 conference with counsel, the Applicants' counsel agreed
10 to waive cross-examination of Professor Corrado-Bravo if
11 we make him available to counsel on a conference call,
12 and we certainly will do that, and we thank counsel for
13 saving us that effort.

14 They also agreed to waive cross-examination of
15 Mr. Solis if somebody else would sponsor the financial
16 statements, and Mr. Ramos will address any financial
17 questions that the parties may have.

18 And before I began to speak, I handed Your
19 Honor four verified statements. These are nothing more
20 than Xeroxed copies of the verified statements that
21 appear embraced in our Volume IV. I just separated them
22 out for the convenience of the cross-examining parties
23 and for Your Honor.

24 JUDGE HOPKINS: Thank you.

25 MR. WHITE: With that, I would like to call to

1 the stand Mr. Ramos, please.

2 Whereupon,

3 ANDRES R. RAMOS

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

7 DIRECT EXAMINATION

8 BY MR. WHITE:

9 Q Sir, would you state for the record your name
10 and title?

11 A My name is Andres R. Ramos, known as Andy
12 Ramos. I am Chairman of the Board and Chief Executive
13 Officer of the Texas Mexican Railway Company.

14 Q And what is the address of your office, sir?

15 A My office is at 1200 Washington Street in
16 Laredo, Texas.

17 Q Mr. Ramos, did you cause to have prepared a
18 verified statement which appears at pages 2 through 6 of
19 Texas Mexican's application for trackage rights and
20 which is called TM-4-A?

21 A Yes, I did, sir.

22 Q Sir, did you cause to be prepared a document
23 called Verified Statement in Opposition which bears the
24 number TM-7?

25 A Yes, I did.

1 Q Are those documents true and accurate to the
2 best of your knowledge and belief?

3 A Yes, they are.

4 MR. WHITE: You may cross-examine.

5 CROSS EXAMINATION

6 BY MR. STEPHENSON:

7 Q Mr. Ramos, my name is Doug Stephenson. I
8 represent the Applicants in this case.

9 A Yes.

10 MR. STEPHENSON: At the outset, Your Honor, I
11 would like to have identified for the record three
12 documents. I understand that the first upcoming
13 document is 79.

14 JUDGE HOPKINS: That's right.

15 MR. STEPHENSON: That will be Tex Mex Annual
16 Report for 1983.

17 The next exhibit will be Tex Mex Annual Report
18 to the Texas Railroad Commission for the First Six
19 Months of '84. That will be 80.

20 And the third exhibit is a set of four yearly
21 interchange and traffic totals, Texas Mexican Railway
22 Company, Loads and Empties for '81, '82, and '83, and
23 1984 up through August of this year.

24 These documents were all obtained from the Tex
25 Mex working papers.

1 JUDGE HOPKINS: They will be marked for
2 identification.

3 (The documents referred to
4 were marked Exhibit Numbers
5 SFSP-C-79, 80, and 81 for
6 identification.)

7 JUDGE HOPKINS: Mr. Stephenson, some of the
8 others want copies.

9 BY MR. STEPHENSON: (Resuming)

10 Q Mr. Ramos, at page 2 of your verified
11 statement -- and I am going to question you first on
12 your verified statement in opposition to the merger, the
13 longer of the documents. On page 2 of that document,
14 you state that 80 percent of Tex Mex's traffic is
15 dependent upon originations on connecting carriers.

16 Are you saying that that 80 percent figure is
17 traffic that you received from Missouri Pacific or
18 Southern Pacific today?

19 A That's correct. Including also from the
20 National Railways of Mexico.

21 Q So that's connections from either end?

22 A Yes.

23 Q In looking at your work papers, and
24 specifically the document that I have marked for
25 identification as SFSP-C-80, that is, the one-page

1 document showing your traffic volumes from January '84
2 through June of 1984, you will see on the right-hand
3 column, I have put some figures; originated traffic,
4 2,488 cars.

5 Do you see that?

6 A Yes, sir.

7 Q By originated traffic, you mean traffic that
8 is interlined to other railroads and forwarded to other
9 railroads, you originate and forward to other railroads?

10 A Yes. This is originating on our line.

11 Q Okay. And the next column on terminating on
12 Respondents' road. That is, received from other
13 railroads and terminated on the Tex Mex; correct?

14 A That's correct.

15 Q And in the first half of 1984, you originated
16 and interlined 13.2 percent of your traffic and you
17 received at interchange and terminated 10 percent of
18 your traffic. Is that correct?

19 A It doesn't show the percentages here. These
20 are your figures?

21 Q On the right-hand column. Do you see that?

22 A Yes, I see it now. It's based on those
23 figures. Yes, I suppose it is correct.

24 Q Subject to correction later on, then it
25 indicates that you have bridged 59.6 percent of the

1 traffic?

2 A Yes.

3 Q And local traffic amounts to 17.2 percent; is
4 that correct?

5 A It does for this period.

6 Q For this period.

7 A Yes. The first half of '84.

8 Q Is the first half of '84 unusual for the Tex
9 Mex, or was it different than it has been in the past?

10 A It is in the fact that we handled more local
11 traffic with the movement of coal and gravel in multiple
12 cars.

13 Q So, ordinarily, you would not expect the local
14 traffic to be as great as it is?

15 A That's right. The first half of '84 is a
16 little heavier.

17 Q Now, would you agree with me, sir, that the
18 traffic that is interlined, forwarded or interline
19 received, or the traffic that is local to the Tex Mex is
20 not vulnerable to diversion from Southern Pacific or the
21 Union Pacific system?

22 Would you agree with that?

23 A No, not entirely. No, sir. There is a
24 percentage that is subject to diversion.

25 Q What percentage would be subject?

1 A About 5 percent, I think it is.

2 Q How does that happen?

3 A Okay. Let's say we originate a lot of scrap
4 iron in Corpus Christi locally on our line. The Missouri
5 Pacific has access to the same shippers. And the same
6 shippers that ship with us can ship with the Missouri
7 Pacific through Brownsville. And that's the biggest
8 part.

9 Other is that originates and comes by water
10 either through the channel or by boat from the Orient or
11 from Europe. We have shipments of iron and steel
12 articles that come in, depending on the destination.

13 There was an occasion where we used to handle
14 some iron ore in boatloads that were diverted to the
15 Southern Pacific through Eagle Pass, and that's years
16 ago. But that's still a possibility today of bridged
17 traffic, but that could amount to more than the 5
18 percent local traffic we count today.

19 Q So if I understand you, 5 percent of your
20 local traffic you think is subject to diversion because
21 Missouri Pacific reciprocally switches the traffic, or
22 Southern Pacific reciprocally switches? Is that it?

23 A Well, both; that originate at Corpus Christ,
24 and some of the shippers may be on both lines. Like,
25 for example, there are several that have access to the

1 same shipper in their own line, like the Missouri
2 Pacific. In the Southern Pacific, they don't have that,
3 but they can, under reciprocal switching, handle some
4 through Brownsville, and so does the Missouri Pacific
5 through Brownsville, to be able to -- depending on the
6 level of rates that are quoted or on a contract basis.

7 Q Okay. Would you agree with me that with the
8 exception of this 5 percent of your local traffic that
9 is subject to diversion, the rest of the local traffic
10 is going to be traffic that you retain, whether or not
11 the Santa Fe and Southern Pacific merge?

12 A Yes, that's true.

13 Q And with respect to the traffic that is
14 interlined, forwarded or interline received, that
15 traffic, to the extent that it is coming to a local Tex
16 Mex point, is going to continue to move over the Tex
17 Mex, irrespective of the merger.

18 Would you agree with that?

19 A Yes. But I may add that there's very few
20 carloads handled between Laredo and Corpus Christi. In
21 other words, in between those terminals.

22 Q Now, can you tell us how much traffic as
23 between the 80 percent of your traffic that comes to you
24 from Southern Pacific or Missouri Pacific, how much of
25 that is Southern Pacific and how much of it is Missouri

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1 Pacific?

2 A For what period?

3 Q Well, let's talk about 1984.

4 A During 1984, I would say 75/25 approximately,
5 Southern Pacific versus Missouri Pacific.

6 Q What was it in 1983?

7 A In 1983, if my memory serves me correctly,
8 it's approximately the same, with maybe a 5 percent
9 difference. It could be up or down.

10 Q All right. So not much has changed since the
11 Missouri Pacific merger?

12 A It hasn't changed since '83 and '84 that
13 much.

14 Q What are your predominant traffic flows with
15 Southern Pacific?

16 A Southern Pacific would be mostly, I suppose,
17 grain products, food products for Conasupo in Mexico,
18 and it's mostly traffic to and from Mexico, mostly
19 southbound.

20 Other items would be scrap paper, scrap iron,
21 chemicals, clays, some coal, and machinery.

22 Q What are your basic commodity interchanges
23 with the Missouri Pacific?

24 A Practically some of the same, including some
25 grain.

1 Q You heard the testimony earlier today with one
2 of the witnesses from the MKT about whether Union
3 Pacific reports its grain loadings at Laredo.

4 What is your knowledge of that?

5 A Well, I don't remember. Would you tell me
6 what he said?

7 Q One of the witnesses indicated that perhaps
8 the Missouri Pacific does not report grain traffic that
9 it moves across the border at Laredo. Did you hear that
10 testimony?

11 A No, I didn't. They don't report it you say?

12 Q Is it your knowledge that the Missouri Pacific
13 does report grain traffic?

14 A Yes, I am sure they do.

15 Q The Missouri Pacific would have moved more
16 than 100 cars of grain across the border into Laredo in
17 1982, wouldn't they?

18 A More than 100 you say?

19 Q Yes.

20 A Oh, certainly.

21 Q You have indicated, or you have quoted Mr.
22 Ramirez, where Mr. Ramirez talks about how the
23 interchange or the movement of traffic across the border
24 at Laredo has changed recently as between Tex Mex and
25 Missouri Pacific.

1 A Yes.

2 Q What is the change?

3 A The change came about and it's presently
4 around -- today it's about 75/25. At one time it was
5 about 50/50. I'm talking total traffic.

6 Q North and southbound?

7 A Well, the southbound's a little -- I mean the
8 northbound's a little different. This is southbound.
9 On the northbound, it used to be something like 55/35
10 and in my figures I have about 80/20 today.

11 After the merger of the UP/MP that came about,
12 tied in with the Staggers Act, both of those have really
13 hurt us.

14 Q Have you found that your traffic volumes are
15 down or are your volumes down only in comparison to the
16 Missouri Pacific?

17 A No. A proportion of that is down on the
18 handling of grain, most Conasupo's grain, and of course
19 other traffic such as automobile parts.

20 Q In your opinion, is the increase in Missouri
21 Pacific traffic the result of diversions from the Tex
22 Mex, or is it diversions from the Tex Mex and other
23 gateways?

24 A I must say that most of it I consider from the
25 Tex Mex, especially the grain, and it depends on what

1 origin the grain comes from, because if they originate,
2 which they do quite a bit, it's very hard to compete
3 with a direct single line movement of Missouri Pacific.

4 The merger did extend their traffic for local
5 single line movements all the way to the State of
6 Washington. And the other traffic, the automobile
7 parts, is taken also from other movements other than Tex
8 Mex, and so is their TCPC traffic.

9 Q You've talked about the new UP/NDM run-through
10 train at Laredo. Can you describe that train for us?
11 What's in the train?

12 A The train is supposed to be mostly automobile
13 parts and mostly southbound, but some northbound. It
14 isn't, as it is purported to be, a through run. It is a
15 fast train on the American side, and they're doing also
16 the same thing on the Mexican side to run it fast train
17 with a minimum of 50 cars as a unit train.

18 It never moves a full trainload, very seldom,
19 of automobile parts. They add other products or other
20 shipments that are not necessarily included in the
21 train.

22 Q Like what kind? Do they move grain and boxcar
23 traffic?

24 A Well, there is others, like we handle
25 automobile parts for Volkswagen, and some of that is

1 included there. But very few cars compared to the
2 overall, because they have most of the automobile
3 industry in Mexico.

4 Other, it doesn't matter. Just the cars that
5 are ready to go are added onto that train to make it
6 up.

7 Q Do they add to it at the border?

8 A At the border.

9 Q When it comes to the border, is it made up?
10 Is it a solid train at that point?

11 A The cars that are billed are premanifested at
12 San Antonio. They are blocked in the train, and they
13 come like that. It may be 10, 20 cars.

14 When that moves across the river, then they
15 add on more to it across the river to make up a 50-car
16 train.

17 Q Does it move across the border faster than
18 other trains? In other words, do they take care of the
19 documentation before they get to the border?

20 A That's what I meant when I said they are
21 premanifested. It means they have been billed and ready
22 to cross, as far as the American side is concerned, to
23 go through customs. On the Mexican side, they still
24 have to be processed across the river once they cross.
25 The cars have to be billed, and the train made up after

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1 inspection is made.

2 Some of it may move inbound and others may
3 not.

4 Q In the northbound traffic, does that move
5 across more rapidly than the ordinary train?

6 A Certain shipments of automobile parts move
7 faster to the border. And, of course, they have at the
8 same time to cross, they are not the same as going
9 southbound. It goes through the usual process through
10 Mexican customs.

11 Q Is it a mixed train as it comes north through
12 the border?

13 A Well, they do add, whenever they don't have
14 enough cars also, and usually they don't.

15 Q It generally is a 50-car train, though, once
16 they leave the border and head north?

17 A Well, I'm not really too sure of that, but
18 that's what I understand.

19 Q Do you feel that that train has, as a
20 marketing tool, taken traffic away from the Tex Mex?

21 A I claim it to be and I am working on that.
22 Yes, sir, I think so.

23 Q What reaction are you going to take to compete
24 against that?

25 A Well, I am having the privileges granted to

1 Tex Mex by the National Railways of Mexico. I have an
2 meeting next week in Mexico City to firm that up.

3 Q With whom?

4 A Well, right now it's with Tex Mex. Of course,
5 I hope to negotiate with the Southern Pacific to
6 establish a fast train also on the U.S. side.

7 Q So your meeting will be with NDM in Mexico to
8 work out a run-through train to the border in competition
9 with the UP train?

10 A Yes. Of course, that would be a basis to try
11 to compete with the automobile industry which they have
12 taken almost 100 percent.

13 Q Have they taken that traffic from other
14 carriers as well?

15 A Yes, some of it, I think, from SP at Eagle
16 Pass.

17 Q NDM is owned by an agency of the Mexican
18 Government, isn't it?

19 A It's Mexican Government-owned 100 percent,
20 yes.

21 Q And Tex Mex itself is owned, as you say in
22 your statement, indirectly by the Mexican Government.
23 Is that true?

24 A That's true, because Tex Mex is owned by Mex
25 Rail, a State of Delaware corporation.

1 Q What benefit or advantages does the Governmen
2 of Mexico get from its ownership of the Tex Mex
3 Railroad?

4 A The fact that ever since it was expropriated,
5 and that's how it became a part of that, is to assure
6 essential service at the border in Laredo with the U.S.,
7 because it's considered the foremost gateway to Mexico,
8 the shortest distance to any point south of Laredo,
9 Monterey to Guadalajara, and all of those places, as
10 well as being where the best U.S. custom house brokers
11 and forwarding agents exist, as well as warehouse space
12 bigger than anything on the border.

13 The fact that we handle through rate more than
14 50 percent of all Laredo traffic to and from Mexico and
15 the entire border shows that that's true. That's what
16 it does.

17 Q Would you say the 50 percent is the gateway
18 itself and not just Tex Mex?

19 A No, of course not. That's both MP and Tex
20 Mex.

21 Q You wish it was Tex Mex.

22 A Yes, I wish it was.

23 Q You've talked about a number of advantages of
24 the Laredo Gateway such as the brokers and customs
25 houses. Other gateways have those also, do they not?

1 A Yes, they do, but not as many or as efficient
2 as the majority of those in Laredo. They've been there
3 for years and years before there were other gateways. I
4 think Laredo was the first one to really handle
5 international traffic.

6 Q When you came to work for Tex Mex in -- 48
7 years ago, wasn't it?

8 A 1936, 49 years ago.

9 Q Forty-nine years ago. What was the position
10 of Laredo in relation to the other gateways at that
11 time? Was that still the predominant --

12 A I'd have to rely on -- well, on comparisons,
13 because I don't have the real figures. But what I've
14 seen, it was still -- it started with ox carts, way back
15 before the railroads were built. There was a trade in
16 hides and other products that were moving through
17 Brownsville, and thus this is how the Tex Mex started.

18 It started to work on this railroad since
19 1856. We finally got the railroad route in 1881.
20 Different attempts were made by different people to run
21 the railroad, to compete and be able to serve Mexico.

22 Mexico, of course, was exporting and they saw
23 the necessity of establishing an essential service, and
24 Tex Mex furnished that service.

25 Q You've talked about some things that I'd like

1 to get into in a little more detail. What does the
2 custom broker do?

3 A He has -- for example, on the northbound
4 especially, the U.S. custom house broker must handle
5 through customs, know the tariffs, know what's
6 dutyable. They are responsible to the customs for
7 proper duties being paid; if it moves in bond, to see
8 that it is properly released, be it at the port or
9 wherever it's unloaded.

10 Southbound forwarding agents are people that
11 have a license from the Mexican Government also to do
12 the same thing on the reverse side, to bill in properly,
13 then to see that the duties are properly paid, and
14 everything is handled on the up and up.

15 There's almost identical duties on each side,
16 depending on which way it's going, north or south.

17 Q And it's your feeling that Laredo has an
18 advantage over other gateways because they have more
19 customs brokers or more of the structure to handle the
20 imports and exports?

21 A Well, that's part of it. The other would be
22 the distance involved and the service by the National
23 Railroads of Mexico.

24 Q Okay. Give us the distances. What are the
25 advantages of the distances?

1 A Well, let's compare two gateways that are
2 competitive to Laredo. That's Brownsville, with
3 Matamoros across; Eagle Pass, with Piedras Negras on the
4 Mexican side.

5 Both of those are further from Monterey.

6 MR. WHITE: Excuse me, Mr. Ramos. Could you
7 keep your voice up, please, sir?

8 THE WITNESS: All right.

9 Both of those gateways are further from
10 whatever destination, be it Mexico City, anything going
11 to the south of Monterey has to go through Monterey,
12 Brownsville to Monterey, Eagle Pass to Monterey, Laredo
13 to Monterey. And the distance is much shorter from
14 Laredo and, as you know, all rates in Mexico are figured
15 on a mileage basis, kilometers, and by class rates. So
16 rates are much higher the further the distance.

17 To give an example: Like from El Paso, that
18 time was equalized with Laredo, and it is 660 kilometers
19 further, so the rate will reflect that and does reflect
20 that now. That's because of the distance.

21 So the most logical and foremost gateway to
22 Mexico is Laredo.

23 BY MR. STEPHENSON: (Resuming)

24 Q All right. Now, you also mentioned the
25 National Railway of Mexico, NDM, figured into the

1 advantage of Laredo, and I am not sure I understood what
2 your answer was.

3 Could you explain that for us?

4 A Well, they have the best railroad line. Now,
5 of course, they are working on others, but every time
6 there is some allotment of money to better the
7 railroads, the first one that is considered is the
8 Laredo line south to Monterey and all the way.

9 In fact, they have a program going on to
10 double the main line from Monterey south and what, of
11 course, was stopped when the devaluation of the peso
12 came about, and there was no more need for that. But
13 it's in the books, even to electrify that line.

14 Q What do you consider to be the gateways that
15 are in competition with Laredo for business? What are
16 your principal competitors?

17 Well, since the competition comes about
18 through the same destinations, I have to limit
19 Brownsville and Eagle Pass mostly, due to the fact that
20 Ojinaga or Presidio and El Paso, they handle mostly
21 traffic going towards the West Coast or away from a line
22 going south to Mexico City.

23 So our biggest competition is Brownsville,
24 Eagle Pass.

25 Q How long has Eagle Pass been a competitor of

1 Laredo?

2 A Well, it's been a competitor for many years,
3 even at the time that Mr. Bob King was Vice President of
4 Traffic for the Southern Pacific. I think he had an
5 obsession about Eagle Pass.

6 Q He liked Eagle Pass, didn't he?

7 A He really did.

8 (Laughter.)

9 Q And when Mr. Bob King was the Traffic Vice
10 President of Southern Pacific, was it your feeling that
11 Southern Pacific had a tendency to solicit
12 preferentially for the Eagle Pass Gateway?

13 A I'll give you a good example. Just one. We
14 used to handle some more -- well, it came in by water to
15 Corpus Christi, and since Laredo is the closest distance
16 to Monterey via Laredo, we had the same route published
17 to Laredo from Corpus Christi as we had to Eagle Pass.

18 Well, the ore started coming in heavier, so
19 they bumped their rate from Corpus Christi to Eagle Pass
20 around to Monterey, \$2 a ton cheaper going 100 miles
21 futher to Eagle Pass from Corpus Christi than through
22 Laredo.

23 Well, of course, you can see, Laredo, it was a
24 local movement by Tex Mex. And we even at one time
25 caught him on the route Corpus Christi-Ellis-Tex Mex

1 because we needed the use of some of the equipment.

2 But when they cut down, they tried it for one
3 year, and I think they lost a lot of money and they
4 didn't handle it anymore. That shows you what I mean.

5 Q And it would be fair to say, would it not,
6 that over the years, from time to time, you have had
7 discussions with Southern Pacific traffic people over
8 there, routing of traffic or what you perceive to be
9 their favoritism for the Eagle Pass Gateway. Isn't that
10 correct?

11 A I must say we have always had very friendly
12 relationships with the SP and we've considered them our
13 best connection and friendly connection, you know. And
14 actually it works both ways, since the only way they can
15 ship through Laredo is through Tex Mex.

16 Q And there is another factor that's involved,
17 and that is that there are many shippers who favor
18 Laredo as a gateway and if Southern Pacific wants the
19 traffic, they don't have any choice but to go to Laredo
20 and work with the Tex Mex.

21 Isn't that correct?

22 A That's true, and that's true on both sides of
23 the border. We have some shippers in the States that
24 prefer our route as well as buyers in Mexico who insist
25 on the Tex Mex routing.

1 Q Can you tell us who Conasupo is?

2 A Who is Conasupo? It's comparable to the
3 Commodity Corporation in the U.S. They go a little bit
4 further, though. They do buy grain for everybody. They
5 have even stores where they sell cheaper to the poor
6 people at a discounted price.

7 But they also furnish all the grain that's
8 necessary for the Mexican population and they bring in
9 everything edible like grain and food products,
10 including corn, wheat, barley, sunflower seeds,
11 soybeans, soybean meal, soybean oil, canned milk,
12 powdered milk, rice, beans, most everything that's
13 needed for consumption by the public.

14 Q Is Conasupo a government agency?

15 A Strictly.

16 Q And it buys the food products for consumption
17 in Mexico by the population of Mexico?

18 A Yes, sir. That's exactly what it is. It is a
19 government agency, through and through, and they do
20 handle all those products for sale.

21 Q Conasupo, it would be fair to say that they
22 favor the Laredo Gateway, do they not?

23 A Not necessarily. They do favor when the
24 destination demands it. Let's say they want to
25 distribute to Monterey, to Mexico City, Guadajajara.

1 That has to come through Laredo, because it's the
2 closest distance and the cheapest route. If it goes to,
3 let's say to the West Coast, it's going to be El Paso,
4 or even Nogales and on down to California, to Mexicali.

5 But also through Cjinaga and Eagle Pass,
6 there's a point like Monclova, who is much closer to the
7 border through Eagle Pass than it would be through
8 Laredo.

9 But they have more people concentrated south
10 and east than they do in the west, and that's why they
11 import more through Laredo than they do on the other
12 border points.

13 Q Now, at page 4 of your verified statement, you
14 state that the new UT/NDM service underscores Tex Mex's
15 vulnerability as an overhead carrier dependent on
16 connections such as SP for traffic originations.

17 Why, in your opinion, is a overhead carrier
18 vulnerable to traffic diversions?

19 A Well, in our position, where our dependency in
20 Mexico through one port, the other ports we just
21 mentioned are also competitive, especially on a single
22 line. Let's take a shipment originating on the
23 Santa Fe/SP. Let's take Kansas City, for example.

24 If that shipment is going to go to Monterey,
25 they can cut us off the route through Laredo and serve

1 it direct at a low price and still make more money.
2 Even though the rate is cheaper, they eliminate Tex Mex
3 portion 100 percent. And so it's cheaper for them.

4 Anything originating, let's say St. Louis,
5 coming to Laredo for export, we get 20 percent of the
6 revenue, so if they eliminate that and serve it direct
7 through Eagle Pass, they'd have 100 percent. They can
8 give a cheaper rate and still be competitive.

9 The only time that they can't do it is when
10 Conasupo has to have it through Laredo and not through
11 Eagle Pass. But it's, like everything else, a matter of
12 economics.

13 All the grain is brought in a tender on a bid
14 basis, and they state the border crossing, and when they
15 say the eastern border, it includes Brownsville, Laredo,
16 and Eagle Pass.

17 There are some instances in which they say
18 this must move through Laredo, and that happens often.
19 Then we have to -- well, SP has to handle through Tex
20 Mex to be able to serve it.

21 We have had in the past also moved things
22 through Laredo, with the Cotton Belt-SP-Tex Mex or other
23 carriers in connection with that; say, even
24 Katy-SP-Tex Mex and so forth.

25 Q Where does most of the grain that you move

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1 across the border, where does it originate? In the
2 Kansas City area?

3 A Oh, yes. Well, some that originates locally
4 on our line, some in Kansas City, Nebraska, depending
5 what the commodity -- you know, you take sunflower
6 seeds, it comes out of Nebraska mostly. Soybeans come
7 out of Minneapolis and different places. Grain, mostly
8 through Kansas City elevators; you know, the Midwest.
9 It varies.

10 There's different origins.

11 Q Explain how, when Conasupo specifies, puts out
12 a purchase of grain for bid and specifies the border
13 crossing, and let's say it's Laredo, how does Tex Mex,
14 as opposed to Missouri Pacific, find itself in a route
15 for that particular grain?

16 A Okay. Since all grain is purchased on a bid
17 basis, they put out tenders and they advertise to all
18 the shippers, all the sellers of grain. And they state
19 what they want and what ports or what border points they
20 must come through.

21 They pay freight prepaid to the middle of the
22 bridge, either Brownsville, Laredo, or Eagle Pass, all
23 the way to El Paso like that. And so when the railroads
24 find out the tender is coming, they try to make a deal
25 now because of the Staggers Act, to make a contract or

1 furnish lower rates to all the shippers so the bid can
2 be lowered, and that's the only way we get in it is to
3 bid, let the shipper know what the rate will be.

4 We know what they are going to bid on, and we
5 try to find out who is going to bid on it so we can give
6 them special rates if possible. So that the shipper can
7 be successful, get the bid; so that the railroad can
8 handle it.

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1 Q Does Tex Mex have a sales force that goes out
2 and solicits the grain companies for movement of the
3 traffic through Laredo?

4 A We solicit all shippers in the States and the
5 buyers in Mexico, which is Conasupo. Besides Conasupo,
6 there are other people who handle grain also, like the
7 brewers on barley and other products. But we do have
8 such others.

9 Q And you've indicated you have friendly
10 relations with Southern Pacific and try to work with
11 Southern Pacific for movement of grain. How about with
12 other carriers?

13 A Well, we have to be in this way. When we
14 can't get one, we have to handle through the other.
15 There's only two carriers involved, the Missouri
16 Pacific-Union Pacific and the SP.

17 Q But do you work -- I'm sorry, go ahead.

18 A As I say, we do have to handle with both.

19 Q Do you work with originating carriers like the
20 Katy out of Kansas City or Burlington Northern, and try
21 to set up a three-carrier rate?

22 A Of course we do. Burlington Northern, C&NW,
23 just anybody that originates anything like that. Then
24 they have to choose an intermediate carrier. We don't
25 connect directly with anyone except the Southern Pacific

1 and the Union Pacific.

2 So today let's say we had a shipment
3 originating on the Eurlington Northern. It would move
4 BN-SP-Tex Mex or BN-Missouri Pacific direct, a two-line
5 pro-rate against a three-line pro-rate. You see, that's
6 what makes it rough.

7 Q Would you ever find yourself in a position
8 where Southern Pacific was competing against itself for
9 a joint rate with the Tex Mex via Laredo and at the same
10 time was competing for traffic to go through Eagle
11 Pass?

12 A Well, of course that happens. The problem is,
13 when it's -- let's say that it's a grain that must move
14 through Laredo, and the Missouri Pacific -- I mean, the
15 Southern Pacific many times is not competitive. They
16 are too hard to get them to be competitive.

17 I think that, one, the figures of cost is way
18 off line. I've told them so many times. They have come
19 down some, but still sometimes they're not competitive,
20 which forces us to try to work with another carrier.
21 And that other carrier is the Union Pacific, which
22 serves Laredo direct, and it's very hard to get them to
23 do that.

24 We have done it recently on the movement of
25 sunflower seed, when the consignee insists on Tex Mex

1 being included in the route.

2 Q Including Tex Mex? The consignee insists on
3 Tex Mex being in the route?

4 A In many instances.

5 Q Why would that be?

6 A Well, because we have either helped them in
7 the past -- we have many shippers on both sides of the
8 border that are very friendly to us because during the
9 time we had an embargo, a system of permit embargo -- do
10 you remember that, where the competitive line at Laredo
11 would not have enough permits.

12 And it is my opinion, I think they chose the
13 highly priced freight and denied permits to many other
14 shippers. And we befriended them and helped them out on
15 a pro-rate basis of permits. Mexican plants that were
16 about to close down and couldn't get any permits, we
17 helped them out, and those are the kind of people that
18 today try to be friendly.

19 Q Do you find that Conasupo is that way
20 sometimes?

21 A No, because Conasupo never had any problems
22 like that. They are strictly on a bid basis and you
23 have to be competitive or you can't get it.

24 Q Whose sunflower seeds were those that you were
25 just describing in your testimony? Who was the shipper

1 in that case?

2 A I don't remember the shipper's name.

3 Q Now, you are obviously aware of the fact that
4 in 1980 the Southern Pacific acquired the Tucumcari line
5 from the Rock Island and for the first time got access
6 into the grain growing regions of the Midwest. Since
7 that time, in your opinion, in your experience with
8 Southern Pacific not only as a connection but as a
9 competitor, do you believe that they have been seeking
10 to route grain off their Tucumcari line and out through
11 the El Paso gateway?

12 A Yes, they have. Also to Eagle Pass.

13 Q Off the Tucumcari line?

14 A Yes, and around St. Louis from Kansas City
15 when they got the trackage rights from the MoP and UP.

16 Q Have they moved grain traffic in connection
17 with Tex Mex, routing it Kansas City-St. Louis, down the
18 Corsicana line to Corpus Christi?

19 A Yes. Also in connection with the Katy, they
20 have handled from Kansas City, and sometimes with the
21 Burlington Northern, depending on the origin. But I see
22 where, when they originate in Kansas City, they do go
23 around to St. Louis and eliminate the third carrier that
24 makes an interline pro-rate.

25 MR. STEPHENSON: Your Honor, I'd like to have

1 another exhibit marked for identification as SFSP-82.

2 JUDGE HOPKINS: That will be marked for
3 identification.

4 (The document referred to
5 was marked Exhibit Number
6 SFSP-C-82 for
7 identification.)

8 MR. STEPHENSON: A word of explanation, Your
9 Honor. The basic data, the 1979 through '83 carload
10 data at the various gateways, are from Exhibit No. 4 to
11 Mr. Ramos' verified statement. The average of the 1979
12 and 1980 figures is mine, as is the percent reduction
13 between '79 and '83. But the basic data are from his
14 verified statement.

15 JUDGE HOPKINS: Thank you.

16 BY MR. STEPHENSON: (Resuming)

17 Q You have seen this document during the break,
18 have you not, Mr. Ramos?

19 A Yes, sir.

20 Q These figures indicate that the Tex Mex
21 between '79 and '80 and 1983 is down, the interchange
22 between the Southern Pacific and the Tex Mex in that
23 period is down about 30 percent. Do you see that?

24 A Our overall traffic since '82 was down 50
25 percent. That's because of the devaluation of the peso

1 in '82. Now, '83 came back up some, but you can tell
2 from those figures the low point was 16,000 total cars
3 in 1982. In '83 it went back up to 22,000, but in '81
4 it was 25,609. and between '79 and '80 there are
5 31,000.

6 Q So you think that most of this dropoff in '82
7 and '83 is the result of devaluation?

8 A Yes, most of that, because I can tell you our
9 traffic in '82 declined 50 percent.

10 Q How about 1984? Do you have any figures for
11 1984?

12 A Well, 1984 were almost the same as 1983, with
13 the exception that the grain is down at Laredo compared
14 to the Missouri Pacific. I don't know how it compares
15 with the SP-Tex Mex, because the Missouri Pacific has
16 really capitalized on the grain movements from their
17 origins.

18 Q Now, I know that you are not involved in
19 railroading in Brownsville or El Paso or Eagle Pass, but
20 they are competitors of yours. You will note that there
21 is a dropoff in the SP interchange at Eagle Pass of
22 about 56 percent in that same four-year time period.

23 What do you attribute that to?

24 A Well, I believe the grain that has been
25 purchased probably moves to other destinations and that

1 there is no need to go that way. Every year on the
2 Mexican side they harvest a lot of grain, sorghums and
3 corn, and that may be one of the reasons when you're
4 talking about grain.

5 There's other products that move that way, but
6 as you know the Missouri Pacific more or less controls
7 the bridge in Brownsville. While the traffic over the
8 MoP might have increased, yours probably has decreased.
9 And it may have to do with what I say, plus the bridge.

10 You remember during '82-'83 that you could not
11 issue any permits to Brownsville unless the Missouri
12 Pacific approved it, and that's because they owned the
13 north half of the bridge.

14 Q Right. Do you have an explanation for the
15 rather substantial decrease in SP's interchange at El
16 Paso in the four-year period?

17 A Well, in what year?

18 Q The average of '79 and '80 and 1983.

19 A Again, I must say this is total carloads.

20 Q Yes.

21 A A lot of that was grain, and grain of
22 course -- also, the destinations, like I stated a while
23 ago, I think most of the grain goes to the South and
24 East, and not as much to the West Coast. What will go
25 to El Paso is mostly to serve those points towards the

1 West Coast, and nothing like Guadelajara and those
2 points further south and east.

3 And the other thing that I would say is, of
4 course, they reduced the total number of tons imported,
5 I mean Conasupo as a whole in those years, I think it
6 went down slightly, because '80, '81, they imported over
7 10 million metric tons. Ever since they've been trying
8 to reduce, and I think last year they did reduce a
9 little bit, but not very much. And that could be part
10 of it.

11 Q Looking at these numbers, it appears that the
12 Tex Mex -- the Southern Pacific's interchange with the
13 Tex Mex for movement via Laredo and SP's interchange at
14 Eagle Pass are by far the biggest, more important of the
15 competitive areas, wouldn't you agree with that?

16 A Yes.

17 Q Eagle Pass would be much more of a competitor
18 for Tex Mex than Brownsville?

19 A Oh, yes.

20 Q And El Paso, as you have indicated earlier,
21 because of its geography is more competitive for the
22 West Coast, is that right?

23 A Yes.

24 Q And Nagales -- and take it that Nagales and
25 Calexico wouldn't be competing with Laredo at all?

1 A No, not at all.

2 Q You have indicated earlier, you mentioned that
3 you said you feel vulnerable because you are a bridge
4 carrier. Don't you feel that, with these good,
5 reliable, friendly shippers of yours and your good,
6 friendly contacts with the Mexican Government, that no
7 matter what happens on the merger scene with SP and
8 Santa Fe, that Tex Mex is going to be taken care of by
9 the Mexican Government?

10 A No, sir, that's not true.

11 Q You don't feel that way?

12 A No, sir. They don't take care of us like
13 that.

14 Q But don't you feel that that is your
15 salvation, so to speak?

16 A To be able to get them to protect us, it has
17 to be where we are competitive. We wouldn't dare ask a
18 shipper to give us a route if it cost him more money,
19 and that's been a policy and it is today.

20 MR. STEPHENSON: Your Honor, I would like to
21 have several more documents marked for identification.
22 The first would be the minutes of the Tex Mex board of
23 directors, June 25, 1982. I'd like to have that marked
24 for identification as SFSP-C-83; and SFSP-C-84, minutes
25 of the board of directors of Tex Mex, June of 1983.

1 JUDGE HOPKINS: They will be marked for
2 identification.

3 (The documents referred to
4 were marked Exhibit Numbers
5 SFSP-C-83 and SFSP-C-84 for
6 identification.)

7 BY MR. STEPHENSON: (Resuming)

8 Q Looking at the second page of the 1982 report,
9 Mr. Ramos, the next to the bottom paragraph, can you
10 describe what this was? Was this a meeting of your
11 board of directors?

12 A Yes, at the annual meeting held in Laredo,
13 Texas, on June 25th, 1982.

14 Q And there was some concern voiced at that time
15 about the future of the Tex Mex?

16 A Yes. That's because that's the year of the
17 devaluation of the peso, and at that time the first big
18 devaluation occurred in February. Later in August of
19 that year, another big one hit, and that's after this
20 meeting.

21 Q And what was that?

22 A Well, the devaluation of the peso went
23 further.

24 Q I see. Well, you felt at that time that
25 Mexico was going to be the salvation of the Tex Mex, did

1 you not?

2 A Yes, I said Mexico, because our traffic today
3 and then is about 80-20 traffic to and from Mexico
4 compared to our local traffic or compared to local
5 domestic traffic.

6 Q If you look at the next exhibit, Exhibit 84,
7 which is the meeting of June of 1983, in that middle
8 paragraph I believe there was some discussion about what
9 the future held for the Tex Mex because of the MoP-UP
10 merger; is that correct?

11 A Yes.

12 Q And somebody indicated some concern as to
13 whether you'd be able to work with the Southern Pacific
14 to make up for the MoP-UP losses; is that correct?

15 A Yes. That was one of our directors.

16 Q And did you say that the only thing going for
17 us is our friendships with people in Mexico and the fact
18 that these friends are helping us?

19 A Yes, on equal circumstances, I did say that.
20 That's what I mean exactly. We do have friends in
21 Mexico. They would prefer Tex Mex routing, but not at a
22 higher rate. It's got to be under equal circumstances.

23 Q By the way, we've talked about Brownsville and
24 El Paso as competitive gateways. What is the -- or
25 which railroad is the dominant carrier at Brownsville?

1 Would that be the Missouri Pacific?

2 A Yes.

3 Q By far?

4 A By far.

5 Q And at El Paso, do you have any feel as to
6 which of the three carriers at El Paso is the dominant?

7 A No, I don't. All I can see is what they
8 handle. I think it's pretty even between the Missouri
9 Pacific and Southern Pacific. Santa Fe is mostly to
10 Ojinaga, but they do have some to El Paso.

11 Q Ojinaga or Presidio?

12 A Ojinaga or Presidio, that's right.

13 Q But do you have any feel for the Santa Fe's
14 interchange or movement of international traffic across
15 the border at Presidio?

16 A Well, I know they handle different
17 destinations. It's not the same competition that we
18 have with Eagle Pass. The only thing I can see is that
19 if and when they merge you have both of those, and still
20 the most competitive at Eagle Pass from a bigger area,
21 which includes the Santa Fe origins.

22 Q At page 3 of your statement you indicated --
23 and I think you've already discussed this -- that UP
24 moves about 65 percent of the traffic over Iaredo and
25 Tex Mex moves 35 percent. That figure actually has

1 changed?

2 A When this was written, that's right. But
3 today, the last couple of months or so, it is 75-25 and
4 it is 80-20.

5 Q You had about 22,000 fewer southbound cars
6 this year; is that correct? By "southbound" I mean
7 going across the border.?

8 A Yeah, going to Mexico. You mean during the
9 first half?

10 Q That would be for the year 1984.?

11 A '84, we have the figures here for the first
12 half, and I don't know about those figures for that
13 period of time. We're keeping pretty close to '83 and
14 may surpass it a little bit.

15 Q In terms of your interchange with NDM?

16 A Yes, sir.

17 Q Do you know how many cars, southbound cars,
18 MoP interchanged with NDM in 1984?

19 A No, I don't. But I can tell you it's much --
20 it's a bigger percentage than we had the year prior.

21 Q Around 35,000, would that be about it?

22 A I suppose something like that, because right
23 now they're running 75-25.

24 Q I don't know if we've gotten through all the
25 reasons for that. Perhaps the run-through train or the

1 so-called run-through train?

2 A There's no such thing as a run-through. Unit
3 trains to Laredo and then probably unit trains that
4 cross the river, but they still have to go through.

5 Q What are the other reasons? The fact that
6 they're now getting access to the Union Pacific grain
7 areas in Washington, Nebraska, Idaho?

8 A You mean the Missouri Pacific or us?

9 Q Yes. Why is the Missouri Pacific traffic
10 growing so rapidly across the border at Laredo?

11 A The biggest increase is in grain. Second
12 would be automobile parts, automobile industry
13 movements. And there's others that they make contracts
14 on, but those are the two biggest commodities.

15 Q Have they cancelled any rates with the Tex Mex
16 over Laredo?

17 A No, sir. They had at one time cut out a lot
18 of routes. They put them back on. It isn't necessary
19 to move the traffic. Some of it has, but it's not the
20 same as before, before the Staggers Act.

21 Q So it's basically not the fact that they've
22 cancelled rates, but they simply have solicited that
23 traffic away from you or taken it away by rate action?

24 A By contract rates, mostly, cheaper rates out
25 of Kansas City that we can't compete with, the SP-Tex

1 Mex. And we do handle some with the same rate that they
2 have to Laredo. We have handled some MP runs down Tex
3 Mex, but very few.

4 Q You have some contracts yourself, don't you?
5 Didn't I read in one of your --

6 A Oh, we have a lot of contracts jointly with
7 the SP and others, only Katy-Tex Mex with SP not
8 participating in the refunds. I like to call them
9 rebates because that's what they are.

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1 Q As of about a year ago you had 103 contracts.
2 How many do you have now?

3 A I don't have the figures, but a few more than
4 that.

5 MR. STEPHENSON: Your Honor, I'd like to have
6 one more document submitted or identified. It's
7 entitled -- it's on TexMex stationery. It's a letter
8 dated December 8, 1983.

9 JUDGE HOPKINS: It will be marked for
10 identification as SFSP-C-85.

11 (The document referred to was
12 marked Exhibit No. SFSP-C-85
13 for identification.)

14 BY MR. STEPHENSON: (Resuming)

15 Q What are some of the more significant
16 contracts that TexMex has entered into recently?

17 A One is waste paper -- that's a big one -- some
18 grain.

19 Q This letter to the board of directors was
20 written by Mr. Manual Ramirez.

21 A Yes. Our traffic manager.

22 Q And why did he write this letter?

23 A I requested a letter or a report to the board
24 at every board meeting from the different departments,
25 and this is his.

1 Q And in this letter at the top of page 2 he
2 discusses the fact that we have signed 103 contracts; 41
3 are joint contracts involving other carriers and 62
4 involve the TexMex only. Do you see that?

5 A Right.

6 Q How many joint contracts, if you know, do you
7 have with Southern Pacific today?

8 A Every one of those 62 involves Southern
9 Pacific.

10 Q How many would involve carriers beyond
11 Southern Pacific?

12 A There's a few with the Burlington Northern.

13 Q How many with the Southern?

14 A The Southern, no.

15 Q In the letter at the bottom of that same page
16 Mr. Ramirez indicates that -- and I'll just
17 paraphrase -- that the merger of Santa Fe and SP would
18 be good for TexMex because it would permit TexMex to
19 enjoy the combined traffic base of both Southern Pacific
20 and Santa Fe.

21 A While that's true, it's also true that you
22 have a big area in which to divert traffic through the
23 pass, so it's kind of offsetting.

24 Q And this comment of Mr. Ramirez, your traffic
25 manager, is not substantially different than the

1 position that you took when you were interviewed by
2 Texas Railway Magazine, is it?

3 A That's true. The same thing.

4 Q In that magazine you stated that you were
5 sorry -- this was in 1980, and you said you were sorry
6 that the Santa Fe-SP merger had fallen through.

7 A Fallen through.

8 Q Because you felt that you might be getting a
9 lot more combined system business for your railroad
10 after the merger?

11 A Let me tell you, my thinking on that is of
12 course a bigger area from where to move shipments of
13 grain and other products that must move through Laredo
14 where you can't divert it; I mean the Santa Fe can't
15 divert it, or the SP. And that's, of course, beneficial
16 to have a bigger origin. And Santa Fe originates grain
17 where the SP very little grain.

18 And that would give us a better shot at our
19 share of Conasupo's products. It would, but only
20 because they are forced through Laredo. They must move
21 through Laredo. That's the only time we can compete
22 with the MP.

23 We know they're going to move through Laredo,
24 and we can't compete because it's going to be handled
25 through Laredo whether it's TexMex or our competition.

1 So this gives us a better shot at being competitive
2 through Laredo.

3 Q Okay. If the new SPSF system, the new merged
4 system, were to work with TexMex and were to draw
5 additional traffic down from Chicago and the
6 grain-gathering area and Kansas City, and would not
7 close off the route but instead would work with the
8 TexMex, you could see that the merger would be
9 beneficial to your company, provided that the gateway
10 was not closed to TexMex; is that correct?

11 A It would be beneficial. It would be more
12 beneficial if they would route through Laredo and not
13 try to go around through Eagle Pass, which they do
14 today.

15 Q But you've seen the figures in Exhibit No.
16 82. They show that for whatever reason, Southern
17 Pacific's effort to solicit its traffic and solicit
18 grain off the new Tucumcari line are not doing very
19 well, at least so far as the numbers on Exhibit 82
20 reflect.

21 A Because if you're talking about grain, that's
22 one thing, but you're handling a lot of automobile parts
23 through Eagle Pass direct from Mexico north.

24 Q At least we were handling them before the MP
25 took them away.

1 A There are automobiles or trucks and bi- and
2 tri-levels.

3 Q Do you see -- speaking of trucks, do you see
4 trucks as being a competitive factor that would affect
5 the TexMex at all?

6 A You mean highway truck competition?

7 Q Yes.

8 A We have a lot of competition going northbound,
9 and when they haul something in southbound, rather than
10 go empty they haul it for gasoline money or whatever.
11 It's hard to compete.

12 Q How about water competition for grain? Do you
13 see that as a factor affecting the TexMex's future or
14 the future of all the railroads?

15 A Well, it's possible that they could move barge
16 to points such as Corpus Christi and Brownsville. It
17 could be, and it could be beneficial. It could be just
18 the opposite depending, you know, where the grain is
19 going and who is selling it.

20 Q Are you aware that CSX and its new barge line
21 intend to ultimately move grain out of the midwest down
22 to Corpus Christi?

23 A To New Orleans and across the Gulf all the
24 way, I think. You see, that's why I'm afraid of CSX.
25 There will be others on the Mississippi River that are

1 located on the river on barges and that could move it,
2 but it never has been. The port is not equipped anyway
3 to handle, to unload barges to boxcars or to hopper cars
4 or even to the elevator today in Corpus Christi.

5 Q Before the lunch break I showed you and your
6 counsel some Conasupo tonnage figures by water and
7 rail. Do those figures, subject to check, look accurate
8 to you?

9 A I don't have them.

10 MR. STEPHENSON: Your Honor, I would like to
11 have another document. It's entitled "Conasupo 1984
12 Purchases," and it ought to be number 86.

13 JUDGE HOPKINS: It will be SFSP-C-86 for
14 identification.

15 (The document referred to was
16 marked Exhibit No. SFSP-C-86
17 for identification.)

18 THE WITNESS: That's exactly what I said, you
19 know -- 51.3 percent through Laredo and over the Laredo
20 gateway.

21 BY MR. STEPHENSON: (Resuming)

22 Q Can you tell us, were you present at this
23 meeting on November 30, 1984 at Manzanillo?

24 A Yes, I was.

25 Q What was the purpose of that meeting?

1 A Well, we have periodic meetings with
2 Conasupo. This was the fifth or sixth one. The next
3 one will be in New Orleans. The purpose of this meeting
4 started out to be to find ways of expediting the
5 movement of grain for Conasupo at all the border
6 points. It has evolved into handling different matters
7 that interfere with the smooth flow, even custom matters
8 with the Mexican government, problems at the border
9 points, loss and damage claims, whatever. A lot of
10 things we handle at these meetings.

11 At each meeting they give us the record for
12 the past year and the future, for the future, for next
13 year, and they have always had this. Without looking at
14 this record, they have always said 60 percent moved by
15 water, 40 percent moves by land. They don't say rail,
16 mostly rail.

17 They allocate so much to each border --
18 eastern border, central and western. I guess at
19 Brownsville, Laredo, El Paso's eastern border; Presidio
20 and El Paso in the central; and the rest is western.
21 They allocate that way. And this is the results here.
22 It gives you the tons. So the difference between that
23 and almost -- well, here's two, four -- this was through
24 November.

25 Q Yes. November 15th.

1 A I think there is something lacking here.

2 Q There's one missing -- Tijuana. There are
3 some 2,000 tons through by truck.

4 A That's more like it, because 6 or 7 is not
5 enough. They imported close to 10 million metric tons.
6 They said 8 1/2 to 9 million.

7 Q I don't know about that. These are the
8 figures I have. These figures are not the figures that
9 you recall?

10 A Yes. I don't have it with me. But this is
11 okay, except there was other movement that belonged to
12 the previous year order and are probably not included.
13 It says rail transported purchases. It necessarily
14 crossed.

15 It could have crossed this year belonging to
16 the previous contract for the last year, but it's more
17 than this, through November 30th, and they will not
18 finish by the end of -- they didn't finish by December
19 31st the total contracted purchases. The rest will come
20 in at the beginning of '85.

21 Q Let me make sure I understand it. They
22 grouped these together in the year of purchase as
23 opposed to the year of delivery?

24 A This says purchases, but there's another
25 report that tells you how many tons of which commodity

1 that crossed through every port and through every port
2 by water and border crossing that they put out at these
3 meetings.

4 Here they went -- apparently on this one they
5 went 36 percent by rail only and 65 percent by water is
6 what they say here.

7 JUDGE HOPKINS: Mr. Stephenson, I think it
8 might be time for a little break. Fifteen minutes.

9 MR. STEPHENSON: Fine.

10 (Recess.)

11 JUDGE HOPKINS: Back on the record.

12 Mr. Stephenson.

13 BY MR. STEPHENSON: (Resuming)

14 Q Mr. Ramos, looking at Exhibit 86 -- that's the
15 Conasupo purchases -- one more time, the bottom figure
16 on the rail transported purchases for Eagle Pass and a
17 percentage of one percent for Eagle Pass for 1984, at
18 least up until November 15th when this was put together,
19 indicates that Conasupo doesn't have a very high regard
20 for Eagle Pass as a gateway.

21 Is that your impression, or is there something
22 else that's missing from this?

23 A Well, again I'll say it has to do with the
24 higher cost on the Mexican side for freight charges
25 based on mileage, wherever it's going, if it goes. What

1 little went through there is because the destination is
2 close thereby, like Monclova, which is served there, 155
3 miles south of Eagle Pass.

4 Of course, that's a steel mill there. But
5 things like that, if I was them, I would try to come
6 through Laredo if it's going to go to Monterey, because
7 I would save on the freight charges on the Mexican
8 side.

9 MR. STEPHENSON: Your Honor, I'd like to have
10 one more exhibit marked for identification as
11 Applicants' Number 87.

12 It's comparative rates from Mexico, and this
13 is something, for the record, that I showed to counsel
14 and the witnesses beforehand, and I think that they will
15 say that they are not in a position to verify or refute
16 any of the specific numbers. It is, of course, subject
17 to check, and it is also designed for the impression
18 more than the specific numbers.

19 JUDGE HOPKINS: It will be marked for
20 identification as Exhibit SFSP-C-87.

21 (The document referred to was
22 marked Exhibit No. SFSP-C-87
23 for identification.)

24 BY MR. STEPHENSON: (Resuming)

25 Q You've had a chance to briefly look at that,

1 have you not, Mr. Ramos, the rates from the various
2 border points to Mexico City, Guadalajara, Monterey,
3 Chihuahua, and Torreon? To those, without addressing
4 any of the specific rates, do the general trends look to
5 be accurate, in your experience?

6 A Well, I was looking at the bottom figures
7 where it says comparative distances from Laredo to Eagle
8 Pass to Mexican cities. Starting with Laredo and Eagle
9 Pass, I notice the difference in the distances from
10 Mexico City to Eagle Pass versus Laredo is 660
11 kilometers.

12 Q So this is incorrect?

13 A That's incorrect. And since the rates are
14 predicated on mileage, it is bound to be wrong, too. So
15 I would like to help this way. I would like to have you
16 let me verify these distances and verify the rates, and
17 I'll give you a corrected --

18 Q Very good. That's fair enough.

19 In your opinion, is the low percentage for
20 Conasupo through Eagle Pass principally the result of
21 these rate differentials that you have been describing
22 beforehand?

23 A That plus destination. It doesn't make sense
24 to go through Laredo if it's going to Monclova. It's
25 too far around the corner like that when Eagle Pass is

1 right there, and it's a cheaper rate on the Mexican side
2 because of distance in that case. But if it's going to
3 Monterey or Mexico City, it's much harder if you go
4 through Eagle Pass rather than Laredo. The same thing
5 would happen at Brownsville in going south, you know.

6 So I guess it's two things. One, it's
7 probably the wrong rates. And the second one would be
8 the destination of the grain.

9 Q Let's assume the worst for purposes of the
10 next question. Let's assume that Mr. King's son came
11 back and headed up Southern Pacific's traffic
12 department, and he was instrumental in the new merged
13 company in terms of choosing whether to use Laredo
14 versus Corpus -- I mean Laredo versus Eagle Pass. And
15 he said we're going to use Eagle Pass; forget about the
16 TexMex; forget about Laredo. With our new merger we'll
17 be able to convince Conasupo to use Eagle Pass. Do you
18 think that he's going to be successful?

19 A No, sir.

20 Q Why not?

21 A Because again, like I say, depending on
22 destinations, I don't think that they could rate it low
23 enough to offset the difference in Mexico to many, many
24 destinations, to short destinations.

25 The other thing I would say is like I said

1 before, under equal circumstances I think we can prevail
2 with the shippers to protect us, but not if it's at a
3 greater cost.

4 Q On another point, you have indicated in your
5 verified statement at page 12 that the TexMex is willing
6 to pay a fair price for the use of the line between
7 Corpus Christi and San Antonio. Do you have in mind
8 what a fair price is?

9 A I don't really. I just can compare it to the
10 price set by the ICC per train mile.

11 Q Have you high railed that line at all?

12 A No, we have not. I have been over it, but not
13 on a high rail, and this was many years ago.

14 Q Are you aware of the condition of the line at
15 all?

16 A Well, there's nothing new, you know. It's
17 always been bad.

18 Q Have you talked to the Missouri Pacific about
19 getting trackage rights over the segment of their
20 property around Odem?

21 A No, we have not even approached them yet on
22 that phase of it, but I am sure that we could work it
23 out, because they do have trackage rights over our main
24 line in Laredo to the international bridge which we
25 don't even use today.

1 We have a joint agreement to operate the
2 bridge forced upon us by the Interstate Commerce
3 Commission; but I can cancel that agreement any time and
4 go back to the trackage rights situation. And I'm sure
5 if we do that, I don't think they will be too hard to
6 deal with on the trackage rights over there.

7 Q As you know, the MKT is seeking trackage
8 rights over the same line segment that you are seeking.
9 In view of the fact that your objective is apparently
10 the same, can you give us your views as to why TexMex's
11 proposal makes more sense than Katy's or vice versa?

12 A Okay. To begin with, today in Corpus Christi
13 we have a joint freight office and a joint yard. We are
14 the operating carrier in the joint yard. We both,
15 together with the Missouri Pacific, serve the port, the
16 CCT, Corpus Christi Terminal Association. We take turns
17 being the operating company.

18 Twice, two years in a row, we served the port,
19 one for TexMex, one for the SP; the Missouri Pacific the
20 third year. We have all kinds of arrangements how we
21 settle our joint yard operations on a courtcon basis.
22 And for that reason, I think it would be easier for us
23 to come to San Antonio.

24 We also have the TCPS program, the computer
25 system from San Francisco, telephone lines and

1 everything, we have together with them today. Also, we
2 are almost ready just to take over and continue working
3 together on that basis through San Antonio.

4 The Katy has -- we never have connected with
5 them yet, of course, and I think we probably wouldn't
6 have any problems if they went to Corpus, but I'd prefer
7 to go to San Antonio rather than the Katy go to Corpus
8 Christi.

9 But I even said so in my verified statement,
10 that in the event we don't get it, well, I do hope they
11 could get it. So we need another outlet to connect with
12 another line to go north of Kansas City and St. Louis
13 and other points of origin where the grain is.

14 But I think it would be to our advantage, and
15 I think we can do better justice to Corpus Christi if we
16 go all the way to San Antonio.

17 Q Let's say you obtained your trackage rights to
18 San Antonio. Would you then be opposed to the Katy
19 getting trackage rights from San Antonio to Eagle Pass?

20 A Well, I would be opposed -- you say if we get
21 it and they would get it, too, to go to Corpus?

22 Q Yes.

23 A I wouldn't think --

24 Q No, no, no. You get it to San Antonio. Would
25 you be opposed to the Katy getting trackage rights

1 between San Antonio and Eagle Pass?

2 A Yes, I would, because I don't think it's
3 necessary. I think they get what they are striving to
4 do, and I think we do, too. We both would share with
5 that.

6 Q There wouldn't be enough traffic anyway. It
7 would be dividing up traffic, wouldn't it?

8 A Well, just to show you, today the SP don't
9 handle that much to Eagle Pass. It could be that the
10 Katy would add a little something, but they would become
11 another competitor over Eagle Pass rather than a
12 friendly connection at San Antonio.

13 Q But you've shown, haven't you, that -- or
14 hasn't Southern Pacific and Missouri Pacific shown that
15 they can be a friendly connection with you somewhat at
16 Corpus Christi and at the same time compete against you
17 for long hauls?

18 A No, sir. I don't feel that way today about
19 the SP. They have not lived up to that. They try to
20 move everything they can through Eagle Pass except what
21 has to move through Laredo. They will enter into some
22 agreement, including contract rates.

23 But I don't feel safe with the SP merger that
24 this will continue. I mean I feel it will continue more
25 that way. They will take all they can through Eagle

1 Pass direct and handle with us what they have to handle
2 through Laredo.

3 Q But don't you think that's the way it is
4 today? Don't you think that really what the traffic is
5 that you see today from the Southern Pacific is the
6 traffic that they didn't get to Eagle Pass?

7 A Well, it should be, but it isn't. I was
8 assured that the SP would quote any rate through Eagle
9 Pass, through Laredo at the same level, and they haven't
10 done it, and I think that's wrong. But that's why I say
11 we are always on the defensive.

12 I can't feel safe to tell you I don't mind the
13 merger. We have the same situation with a big area. I
14 think it's worse with the merger. With a bigger area
15 they will have more, especially grain, to handle direct
16 through Eagle Pass. The only grain that we would be
17 able to handle jointly would be that that is required to
18 move through Laredo, and I don't think that's fair. You
19 can't have your cake and eat it, too, you know.

20 Q They have grain today that they try to move
21 across Eagle Pass, and they don't seem to be doing very
22 well in doing it.

23 A Well, that's because that grain is supposed to
24 move to Laredo. We just saw that one percent, and some
25 of that has moved around going through Tucumcari to El

1 Paso and then routing through Eagle Pass, and some of it
2 might have moved through Kansas City to St. Louis and
3 around San Antonio through Eagle Pass when it could just
4 as easily move to Laredo.

5 They don't make as much in one shipment, but
6 over the long haul they would make more handling with us
7 than trying to go through Eagle Pass.

8 MR. STEPHENSON: Okay. That's all I have,
9 Your Honor. Thank you very much, Mr. Ramos.

10 JUDGE HOPKINS: Justice Department?

11 BY MS. BUDEIRI:

12 Q Good afternoon, Mr. Ramos. My name is
13 Priscilla Budeiri, and I represent the United States
14 Department of Justice.

15 You and Mr. Stephenson discussed a lot of the
16 questions I had, but I would just like to fill in a few
17 areas that I'd like more information on.

18 A Surely.

19 Q Does truck at all transport grain across the
20 Mexican border?

21 A Very little, and it's only at a very small
22 border point not served by rail, and that's Rio Grande
23 City. I think there's an elevator on the American side
24 and the few shipments that go close to that area on the
25 Mexican side is trucked in from the American side.

1 Q Why does truck carry very little?

2 A Because the distances, of course -- a shipper
3 would go by rail. It comes in by rail to Rio Grande
4 City. It is stored there, and then they ship it; but
5 there is no rail crossing at Rio Grande City, so they go
6 by truck over the river.

7 Q Is truck competitive to transport non-grain
8 traffic across the Mexican border?

9 A There is a lot of movement by truck, but it's
10 mostly because of the faster delivery service. They
11 don't have the same rules we have in the States as to
12 how long a driver can drive, and therefore, they get
13 faster long distances than what they do here; but it is
14 higher than the freight rates.

15 Q Truck rates are higher than rail rates?

16 A Yes.

17 Q What commodities does truck transport?

18 A Well, they transport most everything except
19 very heavy loads, and grain is not one of them, through
20 Laredo or other border points.

21 Q Are water carriers competitive with TexMex for
22 the transport of grain into Mexico?

23 A The first one, the biggest is the Missouri
24 Pacific-Union Pacific system.

25 Q I'm asking about water carriers.

1 A Oh, water carriers. Well, there's many water
2 carriers, and I'll say all are competitive, rather take
3 away not only from TexMex but from all of the railroads
4 when they ship to the ports in Mexico on both the
5 Pacific side and the Gulf of Mexico side. There is no
6 way we compete with them, although it takes longer.

7 But the competition by water, the rate itself
8 is cheaper, but the transit time and the cost of the
9 demurrage for the boats in my opinion are much higher.
10 I've always had a lot of arguments with Conasupo about
11 that.

12 Q What does Conasupo believe?

13 A Well, they say, of course, that now that it's
14 cheaper, they have a contract rate that costs so many
15 dollars per ton to unload. But I say have you
16 considered the cost of demurrage for boats? It's very
17 expensive, you know. And many times they do it fast,
18 but 90 percent of the time the demurrage of the boat
19 involved would run \$6,000 to \$8,000 a day. In addition
20 to that, unloading at the port is one thing.

21 To move it inland, they've got to have a bunch
22 of cars there that are tied up to move the grain from
23 the ports to the middle of the country, wherever it's
24 going. You see, it's not used on the coast. It's got
25 to go inland.

1 Q Do you have an estimation as to how much or
2 what percent of the grain that moves into Mexico is
3 moved by water carrier versus rail? We've seen a lot of
4 figures. Do you agree with the figures?

5 A The figures that I rely on is what Conasupo
6 states, that 60 percent must move by water and 40
7 percent by land.

8 Q Okay. If the TexMex receives the trackage
9 rights it seeks between San Antonio and Corpus Christi,
10 do you expect that the SFSP will thereafter have any
11 incentive to continue to interline with the TexMex?

12 A Yes, they will continue to have the same
13 interest they have today, if not more.

14 Q Does that mean that you expect to move most of
15 your traffic on your own or through interline
16 arrangements?

17 A No, ma'am. You see, there's only three
18 carriers, two carriers that we interline with today for
19 that kind of movement -- the Southern Pacific and the
20 Union Pacific system. By going to San Antonio, we open
21 another connection with another line which is the Katy.
22 That's the only other line we will connect with.

23 And depending on the origin, whether the Katy
24 originates it or whether they are intermediate or
25 whatever, Katy would come to San Antonio to deliver it

1 to us there. But it's a very small percentage of the
2 traffic that we handle with the Katy as compared to what
3 we handle with the SP.

4 Q Have you had any previous experience with
5 trackage, operating over trackage rights?

6 A We do not have any trackage rights with
7 anybody else, no, ma'am.

8 Q But you yourself have never had experience in
9 dealing with trackage rights, is that correct?

10 A Well, only in cases of washouts, you know, and
11 detours, like the Missouri Pacific has run over our line
12 to Corpus Christi, and we have run over their lines to
13 San Antonio and to Laredo.

14 MS. BUDEIRI: Thank you, Mr. Ramos.

15 THE WITNESS: You're welcome.

16 JUDGE HOPKINS: Ms. Reed.

17 BY MS. REED:

18 Q Good afternoon, Mr. Ramos. My name is Mary
19 Reed, and I'm appearing on behalf of the U.S. Department
20 of Transportation. I only have a few questions left.

21 When Conasupo solicits bids, are they for very
22 large volume shipments or are they for fairly small
23 shipments?

24 A They are large shipments of grain.

25 Q What would be an average volume shipment that

1 they would solicit a bid on?

2 A They ask for tenders all the way up to 100,000
3 tons of certain commodities but as low as 5,000 and even
4 sometimes, depending on the commodity, 2,500 tons.

5 Q What would be the average on a grain
6 shipment?

7 A On the grain shipment let's just say around
8 50,000 metric tons over a period of time, two or three
9 months.

10 Q Now, what types of shippers are making bids on
11 this traffic?

12 A All the major grain shippers in the U.S. --
13 Cargill, Peevy -- all the big ones.

14 Q Excuse me. What did you say?

15 A Cargill and Peevy. There's hoardes of
16 others -- Bartlett and Company. There are so many.

17 Q But they are very large shippers?

18 A They are large shippers.

19 Q Now, I wasn't clear in one of your responses
20 to a question by Mr. Stephenson, but does the shipper
21 make a bid to Conasupo before it arranges for the rail
22 transportation or after it arranges for the rail
23 transportation?

24 A I explained to Mr. Stephenson the shipper must
25 know their transportation costs before they bid on the

1 grain, so we must furnish and offer them rates or
2 contracts before the bidding goes in.

3 Q Now, does Conasupo also solicit bids from
4 other countries on grain shipments?

5 A Not yet, but I'm afraid they're going to start
6 going to South America.

7 Q Do they solicit bids from other countries on
8 any other commodities that you're aware of?

9 A I believe on oil. They don't get enough oil,
10 cooking oil like hartimo, and sunflower seeds,
11 cottonseed oil, soybean oil. They've been asking for
12 banana oil and other oils outside of the U.S.

13 Q Do you know whether there are any other
14 comparable Mexican agencies that purchase other types of
15 commodities?

16 A I didn't understand the question.

17 Q Conasupo basically purchases foodstuffs.

18 A Right.

19 Q Are there any other agencies which purchase --
20 Mexican agencies which purchase other types of
21 commodities?

22 A Oh, yes. They import a lot of goods, you
23 know, starting with machinery, chemicals, clay, scrap
24 paper, scrap iron, steel from Japan -- lots of stuff
25 they import.

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1 Q Is there another Mexican agency beside
2 Conasupo?

3 A You mean government agency?

4 Q Yes.

5 A Okay. Scrap paper is one of them.

6 Q Who purchases that?

7 A That's Pronopade or Pipsa, who furnishes all
8 the newsprint paper for the press in Mexico. That's one
9 of them. And there's others such as Fertimex used to
10 import a lot of fertilizer; that's government owned.
11 And there are still others that import, like Comision
12 Federal de Electricidad, the electric company,
13 government owned; the railroads, government owned; the
14 railroad car builders, government owned. All of those
15 agencies import a lot of stuff from the States.

16 Q Do you have any opinion as to how much of the
17 commodities moving into Mexico by land are purchased on
18 account of a Mexican governmental agency?

19 A Well, let me put it this way. Today it's over
20 50 percent because Mexico has stopped issuing import
21 permits because they must balance their budget also;
22 they are so much in debt. And in order to continue
23 doing business with the International Monetary Fund,
24 they had to reduce the government spending, so they had
25 to stop it.

1 They've curtailed a lot of imports for the
2 private industry by not issuing import permits, and so
3 that portion has reduced to where the Mexican government
4 imports much more than 50 percent today.

5 Q What was it before this monetary problem
6 arose? What percentage was the Mexican government's
7 share of imports, do you know?

8 A The monetary portion?

9 Q Yes.

10 A Well, it has to be over 50 percent.

11 Q No, prior to the monetary problems.

12 A Oh, I would say at that time it could have
13 been, let's say, like around 40 percent government, 60
14 percent private.

15 Q Now, do these other Mexican agencies have a
16 similar bidding practice as Conasupo?

17 A No. They do it on their own, you know. Well,
18 let me put it this way, depending what it is, let's say
19 the Federal Cardiles or the railroads, which are Mexican
20 government owned, buy a big commodity such as rail.
21 They put out for bids to the Colorado Fuel Iron at
22 Pueblo, Colorado. They may ask Japan or Germany,
23 Canada. Sometimes they buy from Canada, and they put
24 out for bids big things like that. Locomotives; when
25 they want to buy locomotives they put out for bids also,

1 and many other items that are big items, you know. Of
2 course, they try to get the best price.

3 MS. REED: Thank you. That's all I have.

4 JUDGE HOPKINS: Mr. White.

5 MR. WHITE: Yes, Your Honor. I have just a
6 few on redirect.

7 MR. DELANEY: Your Honor, if I can interrupt,
8 we have a few.

9 BY MR. DELANEY:

10 Q Good afternoon, Mr. Ramos. My name is John
11 Delaney. I represent the Railway Labor Executives
12 Association.

13 Who is presently designated as the highest
14 officer at TexMex assigned to handle Section 6 notes?

15 A I am. A while back while I had a Vice
16 President of Operations by the name of Hector Martinez,
17 I had designated him as the highest officer to whom
18 claims would be appealed to, but I still handle labor
19 matters with the different labor organizations.

20 Q So you're handling things in the interim?

21 A Well, Mr. Martinez passed away, and I have
22 delegated some authority to Mr. R.J. Spear, Robert
23 Spear, who we have now elected vice president of
24 operations and general manager.

25 Q I see. Are you familiar with the labor.

1 relations aspects of TexMex's operations?

2 A Yes.

3 Q How long have you been involved with labor
4 relations at TexMex?

5 A Well, let me put it this way. When I was
6 young, I was chairman for the clerks, general chairman
7 at one time for the clerks in the union BRAC, way back
8 there.

9 Q How many labor organizations does TexMex
10 currently deal with who represent TexMex?

11 A We have all but about two. We don't have --
12 or three -- the Yardmasters of America, the Pipefitters;
13 we don't have the Blacksmiths any more. But the
14 everything else we still have.

15 Q You're ahead of me. I was just going to ask
16 if you could go through a list. I understand the
17 situation now, and perhaps I could get a list from your
18 counsel.

19 To your knowledge, are the basic crafts of
20 employees represented by the same unions on TexMex as
21 they are on the Southern Pacific?

22 A Practically all the same unions.

23 Q And this would tend to make any negotiations
24 easier?

25 A The only exception there would be those I

1 mentioned, because we don't have those represented. We
2 don't have those employees.

3 Q Has TexMex reached an agreement in principle
4 with any labor organization as to type of protections
5 that would be imposed or would be available for
6 employees in the event the Commission approved your
7 trackage right applications?

8 A I didn't understand what the question was.

9 Q What I'm looking for is has TexMex reached any
10 agreements with any labor organizations?

11 A Yes.

12 Q Which organizations?

13 A BRAC.

14 Q BRAC?

15 A BRAC, the stabilization agreement. It's the
16 guarantee of pay, a guarantee to the employees for pay.
17 After so many years of work they have a guaranteed pay.

18 Q Now, the term schedule agreement is a term of
19 art used in railway labor, is it not?

20 A How's that?

21 Q Schedule agreement?

22 A Yes.

23 Q And that's comparable to what other industries
24 would call a collective bargaining agreement?

25 A Yes. We have collective bargaining.

1 Q Do you have -- well, are there also unwritten
2 practices that apply?

3 A No. Mostly outside of the agreement we have
4 letters of understanding or supplemental agreements, but
5 we do have some benefits that we provide that aren't
6 even included in any agreements.

7 Q Have you participated in any analysis of
8 TexMex's proposal and the impact of that proposal on
9 labor?

10 A Not yet. Impact you say?

11 Q Have you participated?

12 A On which one?

13 Q In any analysis of TexMex's proposal and the
14 impact that proposal would have on TexMex employees?

15 A No. We are, of course, represented by the
16 National Railway Labor Association. The ongoing
17 contract today for wages and some route changes is
18 handled nationally. I have had some dealings with local
19 rules with the UTU and others.

20 Q But in preparing this application to determine
21 the impact on labor did you have any input into that
22 process, or was it Mr. Martinez?

23 A No, I don't think even Mr. Martinez -- we
24 weren't approached -- who handled that.

25 Q Well, that's what I'm saying. In developing

1 your application for trackage rights.

2 A Oh, oh, that was Mr. Martinez, yes.

3 Q Has TexMex modified in any way the manner in
4 which it will accomplish its proposed trackage rights?

5 A No, because this trackage rights will give us
6 added employees, and it's not a merger or any reduction
7 of employee forces.

8 Q How many positions do you expect to be
9 created?

10 A At least two crews and maybe a clerk or two.
11 It all depends on what we get. If we go to San Antonio,
12 we have to at least two and maybe three crews additional
13 from what we have today to make the run to San Antonio
14 and back.

15 Q And would these new employees be covered under
16 the present agreements?

17 A Yes. We would continue the coverage with the
18 same unions we have today. It would just be an
19 extension under the same agreements that we have today.

20 Q Will you be modifying your seniority district
21 at all?

22 A We already have it modified. We have some
23 seniority in Corpus Christi as a district and some in
24 Laredo and some on the road, and we will continue the
25 same thing.