

F.D. 30400- 1/30/85- PAGES-9471-9529

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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.

Wednesday, January 30, 1985

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

BEFORE:

JAMES E. HOPKINS,

Administrative Law Judge

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APPEARANCES:

As heretofore noted.

000600001

C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Dennis W. Carlton				
By Mr. Leary	9474			
By Mr. Nelson		9476		
By Mr. Solander		9523		
By Ms. Budeiri		9529		
Charles D. Brainard				
By Mr. Von Salzen	9531			
By Mr. Stephenson		9532		
Ralph Von Dem Hagen				
By Mr. Hymson	9650			
By Mr. Flagg		9653		
By Mr. Hymson			9670	
Peter C. White				
By Ms. Kirschenbaum	9677			
By Mr. Hynes		9679		
By Ms. Kirschenbaum			9694	
Vince Aloise				
By Mr. Murray	9699			
By Mr. Lane		9699		
Marty Frates				
By Mr. Murray	9727			
By Mr. Lane		9727		
James L. Larson				
By Mr. Craig	9733			
By Mr. Blaszk		9734		

P R O C E E D I N G S

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

3 A preliminary matter?

4 MS. MADIGAN: Thank you, Your Honor. My name
5 is Kimberly Madigan.

6 Last week I understand Your Honor admitted
7 into evidence contingent upon our production of certain
8 exhibits the answers of the DRGW, the KCS, and the UP to
9 RLEA's interrogatories. I have with me today copies of
10 the complete text of the DRGW, the KCS, and the UP
11 interrogatories -- answers to our interrogatories, and I
12 would like to present them to you at this time.

13 I have identified the DRGW answers as
14 RLEA-H-6, the KCS's as RLEA-H-7, and the UP/MP answers
15 as RLEA-H-8.

16 JUDGE HOPKINS: Thank you. Are there any
17 objections to their admission? It was understood last
18 week we would do it this way. They will be received in
19 evidence.

20 (The documents referred to
21 were marked for
22 identification as Exhibits
23 Number RLEA-H-6, 7, and 8,
24 and were received in
25 evidence.)

1 MS. MADIGAN: Thank you very much, Your
2 Honor. I have copies here for other parties if they
3 would like them.

4 JUDGE HOPKINS: While we are on preliminary
5 matters, I would like to announce for the record that I
6 received a call from Mr. Evans of Verner Liipfert
7 indicating the Chicago and North Western was withdrawing
8 from the proceeding, withdrawing their opposition.

9 He wondered whether he should have to come
10 down here and announce it on the record. I told him he
11 didn't need to, that he could send in a letter
12 withdrawing.

13 Mr. Duernick then won't be appearing today.

14 Any other preliminary matters before we start
15 with this witness?

16 MR. LEARY: Your Honor, the Rio Grande calls
17 Professor Dennis Carlton.

18 Whereupon,

19 DENNIS W. CARLTON

20 was called as a witness, and having been first duly
21 sworn, took the stand, and was examined and testified a
22 follows:

23 DIRECT EXAMINATION

24 BY MR. LEARY:

25 Q Professor Carlton, will you state your name

1 and address, please?

2 A Dennis William Carlton, 1155 Melvin Drive in
3 Highland Park, Illinois.

4 Q Did you prepare two verified statements in
5 connection with this proceeding?

6 A Yes, I did.

7 Q Would you look at a statement entitled
8 Verified Statement of Dennis W. Carlton, sworn to on
9 August 28th, 1984, marked DRGW-14, Volume 3?

10 Do you have that in front of you?

11 A Yes, I do.

12 Q Do you have any corrections you would care to
13 make to this statement?

14 A Yes, I would like to make one correction. In
15 a diagram on Page 17, the labels of the diagram are
16 correct but the lines on the diagram were incorrectly
17 drawn. There should be an arrow pointing from wheat in
18 Minnesota to California, a single line, and similarly
19 there should be a single arrow pointing from wheat,
20 Kansas to California.

21 Q Are those arrows in addition to the lines
22 already drawn?

23 A No, those replace all of the existing lines.

24 Q Did you also prepare a statement entitled
25 Verified Opposition Statement of Dennis W. Carlton,

1 sworn to on November 14, 1984, and marked DRGW-20?

2 A Yes, I did.

3 Q Are there any corrections you would care to
4 make in this statement?

5 A No.

6 Q With the single correction indicated, are
7 those two statements true and accurate to the best of
8 your knowledge?

9 A That's correct.

10 MR. LEARY: Your witness.

11 CR S EXAMINATION

12 BY MR. NELSON:

13 Q My name is Milton Nelson, Dr. Carlton. How
14 does one commute from Highland Park to the University of
15 Chicago?

16 A Well, there are two ways. You can drive,
17 which actually is not so terrible, or you can rely on a
18 trusty railroad, the Chicago and North Western, which
19 turns out to be a very desirable way to commute.

20 Q That doesn't get all the way to --

21 A No, but the university, it turns out, runs a
22 bus that aids us.

23 Q I would like to ask you some questions about
24 your September statement in DRGW-14, Dr. Carlton. At
25 Page 7, you define market power as the ability of a firm

1 or group of firms acting jointly to raise price
2 profitably above the competitive level, towards the
3 bottom of the page.

4 My question there is, what do you mean by the
5 competitive level in that definition?

6 A The level that would result from competition.

7 Q Where competition is working efficiently, is
8 not the appropriate competitive price or competitive
9 level one which covers the cost of production?

10 A Well, typically, a textbook example of a
11 perfectly competitive industry, price equals marginal
12 cost, so you have to be careful which cost concept you
13 use, but that would be the relevant concept in a
14 standard model of competition.

15 Q Could one use the term "long-term incremental
16 cost?"

17 A No, those would be different definitions. We
18 want to distinguish between the short run and the long
19 run, and in the short run it is marginal cost. The
20 short-run marginal cost is different from the long-run
21 marginal cost.

22 Q Well, as a matter of fact, since we are
23 interested, I think, in the long term, at least I am
24 here, it is possible that marginal costs do not equal or
25 are not as high as long-term incremental costs.

1 A You said you were interested in the long
2 term.

3 Q Yes.

4 A The long term can take a long time to get to.
5 What you mean by the long run is that time period after
6 which all capital has adjusted to whatever levels it
7 would like to adjust to. In particular, in an industry
8 like the railroad industry, where capital is long lived,
9 you should realize that the long run may be very long
10 indeed, but in any case, there is in general -- it is
11 generally the case -- sometimes short-run marginal cost
12 is above long-run marginal cost, and sometimes short-run
13 marginal cost is below long-run marginal cost. It would
14 obviously depend upon the industry.

15 Q Does long-term marginal cost, incremental
16 cost, include in your thinking cost of capital?

17 A Well, long-run marginal cost is defined as the
18 change in long-run cost from expanding output by one
19 unit. The cost concept, long-run total cost that I have
20 just used, would certainly include a return to
21 investments, the contemplated investments.

22 Q Would it also include depreciation where the
23 firm's assets are expected to be replaced?

24 A The concept of cost certainly reflects the
25 cost of the investments, and depreciation is a relevant

1 cost.

2 Q And where the assets are expected to be
3 replaced, would it be appropriate in estimating this
4 cost, this element of cost, to use a replacement cost
5 value?

6 A In a long-run equilibrium, once an industry
7 has adjusted to the capital level it wishes to be at, it
8 will be the case that the cost concepts I am talking
9 about in long-run equilibrium will return enough money
10 for the firm not only to make a normal profit, but also
11 to replace and maintain its assets.

12 Q Where firms are not covering their long-term
13 incremental cost, does your economic theory predict that
14 the exit or demise of firms until equilibrium is reached
15 and price equals cost?

16 A Well, not necessarily the demise of firms, but
17 in a typical industry when firms are earning a rate of
18 return on their invested capital that is low and
19 therefore does not justify continued investment, those
20 firms are being given a signal to contract.

21 Similarly, if firms are earning a very low
22 rate of return on their past investments because, for
23 example, they are being poorly run, that again is a
24 signal that the marketplace has given for those firms
25 to contract. Whether they actually go out of business

1 or contract is not obvious.

2 Q Are you familiar with differential pricing in
3 relation to demand, or Ramsey pricing?

4 A I am familiar with the term Ramsey pricing.

5 Q Are you aware of the fact that the Interstate
6 Commerce Commission has found that differential pricing
7 is required in the railroad industry if railroads are to
8 cover their full cost?

9 A I have heard some -- I have not studied those
10 decisions in detail. I am generally aware that people
11 have made such statements.

12 Q Doesn't the practice of pricing above cost
13 where demand elasticity permits require the exercise of
14 some market power as you have defined market power
15 here?

16 A Yes. I think that the very notion of Ramsey
17 pricing, the term you used, is that firms will be
18 utilizing market power to price above marginal cost.

19 Q So you can't say then that market power is bad
20 per se, at least in industries where it is appropriate
21 to use Ramsey pricing principles. Would that be
22 correct?

23 A No, I wouldn't say that at all. Market power
24 by itself is not a goal. It is not an end in itself.
25 It sometimes may be unavoidable. It would certainly be

1 better to configure an industry if you can so that the
2 exercise of market power can be eliminated. There may
3 be special cases in which it is unavoidable, but I have
4 seen no evidence to suggest in this case that that would
5 be true.

6 Q Thank you. In your market definition section
7 that begins about Page 9, you say that in analyzing the
8 competitive effects of a merger, the economist seeks to
9 determine whether the merger will lead to higher
10 prices.

11 A I am sorry. What page is this?

12 Q This is on Page 9. It is the first sentence
13 under the market definition.

14 A Yes.

15 -- Q Now, when you say higher prices, you mean
16 non-competitive prices?

17 A No, there what I mean is that I want to, in
18 order to see whether market power will be enhanced, I
19 want to -- the question is whether after the merger
20 prices will go up from whatever levels they currently
21 are at.

22 Q So the higher prices, you are indifferent with
23 regard to what the price may be in relation to cost at
24 this point.

25 A I wouldn't say I am indifferent. I prefer,

1 since market power inevitably results in distortions, I
2 would prefer to be at competitive levels. In analyzing
3 the effect of the merger as I have, I have focused my
4 inquiry on the increase in market power that will occur
5 as a result of the merger, and therefore I am focusing
6 on the question as to whether prices will rise from
7 their current levels.

8 Q Did you assume that current prices are at
9 competitive levels?

10 A No, I didn't assume that at all. I am simply
11 asking the question, will prices go up after the
12 merger.

13 Q And you didn't ask yourself whether the prices
14 that are currently in effect are below competitive
15 levels, I take it.

16 A Let me back up a bit. The focus of my
17 testimony here was to see whether prices would rise from
18 whatever levels they are at, and that is what I
19 concentrated on. If you are asking me, do I believe
20 that prices are currently at competitive levels, I
21 didn't focus on that question.

22 It is my understanding from some other
23 testimony that prices are currently in several cases
24 exceeding marginal cost, but I did not specifically
25 study that issue.

1 Q So you didn't determine either whether prices
2 exceeded or were below marginal cost in any particular
3 market that you have analyzed here. Would that be a
4 correct statement?

5 A That certainly was not the direct focus of my
6 inquiry. It was to see whether market power was
7 enhanced as a result of this merger. It would be
8 surprising to see prices below marginal cost to an
9 economist, absent special reasons.

10 Q Would it surprise you if you found them below
11 long-term incremental cost?

12 A Oh, no, not necessarily. You can look at a
13 competitive industry that has undergone a decline in
14 demand, and they certainly may be at prices less than
15 the long-run marginal cost, and that is a signal that
16 competition -- that the competitive process is giving
17 those firms to cut back their size.

18 There is nothing that guarantees that in the
19 short run prices will equal long-run marginal cost. It
20 is only in the long run, after firms are able to make
21 sufficient adjustments, that in a textbook example of
22 perfect competition, prices will equal long-run marginal
23 cost.

24 Q As the economist here, you have used a method
25 to determine whether this merger will increase market

1 power as you defined it, which is set forth on Page 9
2 here.

3 You define the relevant markets, calculate the
4 market shares, and then use the size of the shares to
5 determine whether the market will be concentrated or
6 concentrated enough to cause concern. Is that a fair
7 generalization of your method?

8 A I didn't quite hear all the words in the last
9 sentence. I am sorry.

10 Q You used the size of the market shares to
11 determine whether the market will be concentrated and
12 whether the increase in concentration is large enough to
13 warrant concern.

14 A That's correct.

15 Q The words you use are "concern about a
16 significant reduction in competition." When you say
17 "significant reduction in competition," do you mean
18 significant increase in market power? Would those be
19 synonymous?

20 A Could you point to where I used those words?

21 Q Well, okay. The "significant reduction in
22 competition" actually flips over onto the top of Page
23 10, Dr. Carlton.

24 A Yes, I see that. What I mean by those words
25 are whether after the merger there is likely to be a

1 significant likelihood that prices will rise.

2 Q Okay. And right in the middle of Page 10 you
3 refer to the recent Department of Justice guidelines
4 suggesting a method for using market shares to decide
5 when markets are likely to be non-competitive. Do you
6 see that?

7 A Yes.

8 Q Do you mean there when prices are likely to be
9 above competitive levels?

10 A Yes, in a sense. The specific focus of that
11 statement is that I can analyze under the DOJ guidelines
12 the increase in concentration that is resulting from a
13 particular merger. The premise obviously is that large
14 increases will lead to increases in market power, and it
15 certainly is the case that high market shares are
16 suggestive of the likelihood of prices above competitive
17 levels.

18 Q I would like to turn now to your definition of
19 relevant markets. We have had a variety of definitions
20 of what the relevant markets are in the past few weeks
21 from economists and others.

22 You have three dimensions to yours, I take it,
23 the geographic, the mode of transportation, and the
24 commodity. Would that be the three dimensions of your
25 market definition?

1 A I wouldn't exactly characterize it that way.
2 I think I characterized it there were two dimensions.
3 One is the product market and one is the geographic
4 market. In considering how the product gets in
5 particular to California, obviously, I look at the
6 various possible modes of transportation.

7 Q With respect to the geographical definition,
8 you have used California or northern California on the
9 one hand and basically the rest of the world on the
10 other. Isn't that correct?

11 A No, on the geographical side, I have used
12 California, northern California. I even go down to the
13 county level also. I have gone from the very smallest
14 to a larger region.

15 Q Outside the state of California, that side of
16 the geographic equation is anything that can be reached
17 by rail to or from California. Would that be correct?

18 A Well, I think I go through carefully
19 distinguishing how you analyze the problem when people
20 are receiving goods in California versus people sending
21 goods.

22 If we are talking, for example, to make it
23 specific, about people receiving goods in California, it
24 is necessary to consider all possible places from which
25 they can receive goods, wherever they are in

1 California.

2 And that is what I have considered.

3 Q Okay. Would it surprise you that, not
4 counting your section about the counties, that the
5 California versus the rest of the world or northern
6 California would be the broadest geographic definition
7 we have seen yet in this case?

8 A Well, again, I want to be clear. In your
9 question, you said it is California to the rest of the
10 world or vice versa. I really have tried to lay out why
11 I believe that flows are not necessarily the correct way
12 of looking at the problem, and what you want to do is
13 look at a destination, a particular destination in
14 California, and ask the question, if all rates rise,
15 what are the constraints, and I have identified those
16 constraints.

17 To specifically answer your question, I have
18 used California, northern California, and county. My
19 understanding is that county is smaller than the BEA
20 areas that the economists, Professors Baumol and
21 MacAvoy, have relied upon. Northern California is
22 obviously larger than a BEA, and so is California. So I
23 used both a smaller and larger definition.

24 Q I am not trying to take issue or argue with
25 your definition. I just want to make sure we know what

1 it is.

2 A Right.

3 Q You have identified rail transportation as as
4 separate market, and rail shipments account for a large
5 fraction of the available products. That appears on
6 Page 14 of your statement, right about in the middle.

7 A Yes.

8 Q You refer to some economic studies in the
9 prior pages which provide support for treating rail as a
10 separate market for certain commodities where rail has a
11 high share of the market.

12 And on Page 13 you say, right about in the
13 middle, "These studies imply that as a group railroads
14 have market power. That is, there are not sufficient
15 outside competitive checks to prevent railroads if they
16 were to act collectively from raising prices on certain
17 commodities."

18 My question here is, these studies do not
19 imply then, the ones you are referring to, that an
20 individual railroad has such market power with respect
21 to any commodity, do they?

22 A These studies were calculating the elasticity
23 of demand. I just wanted to make that clear. I think
24 in your question you mentioned they looked at fraction
25 of market share. They didn't. They primarily estimated

1 the elasticity of demand, and that is what I was
2 referring to them for.

3 But specifically to answer the question that
4 you just asked, these studies are not asking whether any
5 one individual railroad has market power. It is
6 estimating the demand elasticity that is facing the
7 railroad industry. They did not investigate whether
8 particular railroads have market power.

9 Q So they deal with railroads as a group and
10 they presuppose collective action in order to measure
11 the elasticity. Would that be a correct statement?

12 A No. What they have done is, they have
13 measured the elasticity of demand facing the railroad
14 industry. It then logically follows that if that
15 elasticity is not high, then that means that railroads,
16 if they were to act as a group, would be able to
17 exercise market power, which is in economic terms
18 another way of precisely stating the requirements for
19 something to be a relevant market.

20 That is, that is a good test to determine
21 whether railroads should be regarded as a separate
22 market.

23 Q You say at the bottom of Page 13, or you
24 conclude here that if the general results of these
25 economic studies you refer to apply to California, then

1 rail transport of each of these commodities would
2 constitute relevant markets. Do you see that? It is
3 just a few lines up from the bottom of Page 13.

4 A Yes.

5 Q Now, by these commodities, you mean for
6 California, do you now, the commodities that you
7 specifically analyzed in your Tables 1 through 6?

8 A No. What I mean there is that these studies
9 of the demand elasticity have been done over a broad
10 range of commodities, and they generally find that for
11 most of these commodities, the demand for rail is not
12 very elastic.

13 That means, for all the commodities they have
14 looked at for which they find this, rail would be
15 considered a separate market. My analysis that I
16 present in Tables 1 through 6 is designed to just
17 illustrate some examples of commodities for which I
18 believe rail is - the evidence clearly points to rail
19 being a separate market.

20 But I have not tried to identify all
21 commodities or even examine all of the commodities that
22 these studies have found, that rail faces a low
23 elasticity.

24 Q On Page 15, in light of those remarks, you say
25 that near the top, if you want to refer to it, the

1 important point is that a merger can have an adverse
2 effect on competition even if it affects only some
3 commodities and some origins and destinations.

4 That is basically the conclusion you have
5 reached here in your testimony, isn't it, that as to
6 some commodities and some origins and destinations,
7 there will be an adverse effect on competition?

8 A Yes. My conclusion here is, I have presented
9 several examples of particular commodities for which I
10 think the evidence clearly points to rail rates
11 rising.

12 Q Okay. Now, you have selected the commodities.
13 Let's take the destinations in California. You selected
14 commodities there for which railroads have more than 70
15 percent market share. Would that be correct?

16 A Which page are you at?

17 Q Unfortunately, Dr. Carlton, I don't have the
18 page, and I can't remember where the 70 percent came
19 from. Am I wrong? Let me withdraw that.

20 Is it or is it not a fact that you selected
21 commodities with destinations in California treating
22 rail as a separate market where rail has more than 70
23 percent market share?

24 A I have selected some commodities with
25 destinations in California, and for the commodities that

1 I have chosen to present, at least some of them for
2 which I can get data, I used that 70 percent figure. As
3 I described in the text, there are likely to be many
4 more products if I did an exhaustive list.

5 Moreover, since I don't have detailed
6 information on agricultural commodities, I have relied
7 on personnel from the Denver and Rio Grande to suggest
8 other commodities for which it is likely that my test
9 would be --

10 Q I want to ask you about that a little bit
11 later, Dr. Carlton. The 70 percent figure comes on Page
12 19.

13 A Yes.

14 Q You refer to Table 1. You listed 14 such
15 commodities. That appears on Page 20, your Table 1, and
16 with respect to outbound commodities, you have listed
17 four such commodities, and that appears on Page 30.
18 Now, with respect to the outbound commodities, did you
19 or did you not use a figure of 60 percent rail market
20 share?

21 A With regard to the outbound commodity, in
22 particular the sugar, granulated or powdered, I said
23 that the number I got when I calculated the ratio was 60
24 percent, and even though it was below my 70 percent, I
25 still thought it was high.

1 I mention there that it is especially
2 important to recognize that for the outbound
3 commodities, there is a lot of missing data, and
4 therefore if I calculate a ratio of a numerator to a
5 denominator, I have a lot of things missing from the
6 numerator, because they are not reported in the Census
7 for confidentiality reasons.

8 So therefore that last column unfortunately is
9 missing a lot of data, so the numerator tends to be
10 low. And I explained that in the footnote to that
11 table. That is why I think it is very important not
12 only to rely on other people's opinions as to what is
13 going on regarding those commodities, but also to look
14 at another calculation for which this data problem is
15 not as severe, and that is the previous column.

16 You can see that for sugar, granulated or
17 powdered, if I just focus on shipments out of
18 California, rail share of shipments out of California is
19 95.7 percent. So that is very high.

20 So that is why it is suggestive to me that I
21 believe it is true that rail is an important transport
22 mode to take a shipper out of California and therefore
23 after checking with people at the Denver and Rio Grande,
24 they, too, felt that that was a commodity for which it
25 is likely that rail faced, in my terminology, a low

1 elasticity of demand.

2 Q So we have 18 illustrative markets where rail
3 is a separate market, and we have got 13 commodities, if
4 we take the two tables together. I want to turn to your
5 specific analysis, but first, is market power in your
6 analysis implied for the railroads serving California as
7 a group as opposed to individually?

8 A Well, my analysis, based on market shares,
9 focused on whether railroads, and in particular in this
10 case as a result of the merger between SF and SP,
11 whether there would be a sufficient increase in market
12 power that it would be likely that prices would rise, so
13 that I would say that is what I focused on.

14 Q You presume, don't you, that prices would rise
15 on these particular commodities if the railroads
16 remained colluded, don't you?

17 A Well, I think you have to be careful what you
18 mean by the word "collusion." I use the term in the
19 most general sense. That is that when there are only a
20 few competitors in an industry, it has been frequently
21 noted that you don't get competitive pricing, and in a
22 general sense they recognize that it is in their
23 interest not to compete vigorously with each other, and
24 that would be how I would choose to use the general word
25 "collusion."

1 I don't necessarily mean, if I would use that
2 term, that there is any explicit arrangement or explicit
3 cartel. It simply means that when you have few firms in
4 an industry, it is quite likely you will get
5 non-competitive behavior.

6 Q Prices above the competitive level?

7 A Yes, that's correct.

8 Q As a matter of fact, on Page 8, you say that
9 one of the ways that the merger can increase market
10 power is that it can facilitate collusion by reducing
11 the number of firms, and you say it is the last concern
12 that is most relevant to my analysis, and that is why I
13 asked you the question before.

14 You presume, whatever you mean by collusion,
15 that collusion will be the driving force for higher
16 prices.

17 A I am glad you asked this, so I can clarify it,
18 if there is any confusion as to what I mean by that term.

19 I really mean it in the quite general sense
20 that when you have only a few firms in an industry, you
21 are not going to get competitive results, or you tend
22 not to get competitive results, and that is really all I
23 mean by the use of that term.

24 Q When you take California or northern
25 California as the relevant geographic market, which you

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1 do in Tables 1 through 6, you assume there, do you not,
2 that the railroads serving the state are close
3 substitutes for each other throughout the state? Would
4 that be a fair statement?

5 A Well, certainly if the railroads serving
6 California are a close substitute to an individual
7 shipper, to one individual shipper, obviously that would
8 justify treating them, treating California and all those
9 railroads as in the same geographic market. That is not
10 necessary.

11 It could merely be that one shipper can choose
12 between Railroad 1 and 2 and another shipper can choose
13 between Railroads 2 and 3, and that may be sufficient to
14 link Railroad 1 to Railroad 3.

15 A good example, just to illustrate this point
16 in another context, is, people typically can only drive
17 a few miles to, you know, buy a shirt at a clothing
18 store, and no one consumer, say, in Chicago, where I
19 live, would drive 15 miles to the other side of town to
20 buy a shirt.

21 On the other hand, since even though no one
22 consumer can drive that big distance, since there are
23 enough consumers within overlapping areas, various
24 stores in the different parts of the city will indeed be
25 linked.

1 So, for example, that would be why, if you
2 were examining the clothing industry, you would not want
3 to say that a clothing store or shopping mall is an
4 individual market. You would want to say that all the
5 shopping malls in the area tend to be linked, even
6 though no one person can go to all the shopping malls.

7 So, this linkage is what matters.

8 Q Okay. With respect to that 18 markets we are
9 talking about or 18 commodities, you assume that this
10 kind of analysis pertains, so that the Union Pacific,
11 the Southern Pacific, and the Santa Fe are competing
12 with each other through links or overlaps or other modes
13 of delivery throughout the State of California?

14 A Well, whether I choose California or northern
15 California or a county, I am assuming when I am making
16 that geographic definition that the presence of each one
17 of the railroads within my geographic market affects the
18 prices that the other can charge.

19 Q And one of your geographic markets we will say
20 is northern California?

21 A One is northern California. One is the
22 county. And one is all of California. So I have really
23 gone from a very narrow market to a very large market in
24 an attempt to show that no matter how you define the
25 geographic market, you get the same competitive problems

1 rearing their heads.

2 Q So just for an example, to clarify it in my
3 mind, let's suppose we have a shipment of superphosphate
4 from Green River, Wyoming, originating on the Union
5 Pacific, destined to California, and we have a shipment
6 of superphosphate originating on the Santa Fe in
7 Houston, Texas, destined to California.

8 You would find those two shipments to be in
9 the same market, at least with respect to Table 1?

10 A Well, I calculate market shares in Table 2 for
11 all of California.

12 Q Okay.

13 A When I am examining the geographic market
14 definition of all of California, I am assuming that each
15 railroad is influencing the other in the rates they can
16 charge for the commodities I am examining.

17 Q Okay. I would like to now turn to your
18 specific analysis of the 18 markets you have identified
19 in these tables.

20 First you do say at Page 36 that each of the
21 products listed in Tables 1 through 5 constitutes or
22 accounts for a small fraction of any one railroad's
23 shipments. That is on Page 36.

24 A Page 36.

25 Q It is right about in the middle. Each of the

1 products listed in Tables 1 through 6 accounts for a
2 small fraction of any one railroad's shipments. About
3 ten lines up from the bottom.

4 So your specific analysis then is limited to
5 this small fraction. Well, I will withdraw that
6 question. At Pages 10 to 11 you discuss the DOJ
7 guidelines that point out that a market with a
8 Herfindahl index of over 1,800 is considered highly
9 concentrated.

10 Do you concur in that view?

11 A I am sorry. Where is that?

12 Q It is on Page 10, Dr. Carlton. You are
13 discussing DOJ guidelines.

14 A Yes, I see it, at the bottom.

15 Q "The market is considered moderately
16 concentrated if it is between 1,000 and 1,800, and if
17 the HHI, which I will call the Herfindahl index, exceeds
18 1,800, the market is considered highly concentrated."

19 And I have asked you whether you concurred in
20 that view that is set forth in the DOJ guidelines.

21 A Well, as the DOJ guidelines themselves admit,
22 the specific numbers, although numbers are precise, the
23 belief that it is exactly 1,000 or exactly 1,800
24 obviously is more -- is not a precise statement.

25 But in general I would say that I would concur

1 that a market with a Herfindahl certainly in excess of
2 1,800 is something that I would consider an industry
3 with concentration levels that should certainly merit
4 concern about the competitiveness of the industry.

5 And certainly in the specific case we are
6 dealing with here in which the Herfindahls are much,
7 much higher than that -- I think in my tables they are
8 far in excess often of that 1,800 -- I would certainly
9 concur in the application of the guidelines. Those are
10 highly concentrated markets.

11 Q You expect to find prices above the
12 competitive level where the Herfindahl exceeded, say,
13 3,000 or 5,000, wouldn't you?

14 A Yes. As long as what we mean, to go back to
15 our earlier discussion that above the competitive level
16 in this particular case is that prices are likely to be
17 above marginal cost or will tend to be in this
18 industry. That would not surprise me at all.

19 Q It wouldn't surprise you if the prices were
20 below long-term incremental costs in a highly
21 concentrated market?

22 A Oh, absolutely not, and I think that is a very
23 important point to understand in this case. In an
24 industry in which there is excess capacity, for example,
25 there is no guarantee that in the short run even so one

1 with market power will earn a rate of return on their
2 invested capital that is anything like a competitive
3 rate of return.

4 There is just no such relationship in
5 economics. It is quite possible for a competitive
6 industry to earn low rates of return on their invested
7 capital and in the short run, and similarly it is quite
8 possible in an industry that is not competitive in the
9 short run for that industry to earn low rates of
10 return.

11 And it is very important, and this gets back
12 to your earlier line of questioning about the need for
13 market power to cover costs, it is very important to
14 understand that you don't want to take the position that
15 any time an industry is not earning a rate of return on
16 its invested capital equal to some long-run competitive
17 rate of return, you don't want to take the position that
18 we should enter that industry and cartelize the industry
19 and raise prices.

20 That is not a desirable solution in general.
21 In fact, it is precisely a solution that economists
22 fear. In fact, it is -- I happened to be rereading
23 Professor Baumol's statement, and he puts it quite
24 eloquently.

25 He says, what is to be feared from this merger

1 is that prices will rise, and I think that really does
2 express the concern economists have about increases in
3 market power, and that is why simply observing prices
4 currently below long-run marginal costs is not in my
5 view and from what I have seen a justification to be
6 recommending increases in market power in this industry
7 to remedy that problem.

8 Q The remedy is to eliminate the excess
9 capacity?

10 A Well, in an example in which there is excess
11 capacity, it undoubtedly is true that the right signal
12 may well be to eliminate the excess capacity. If on the
13 other hand the firm is earning a low rate of return on
14 its invested capital because it is poorly run, the right
15 answer is to encourage the firm to be more efficiently
16 run.

17 In fact, that is why economists like
18 competition so much, because it has so many desirable
19 features of encouraging firms to behave efficiently. It
20 forces firms to get rid of inefficient management, to
21 improve the efficiency of their management.

22 In fact, there is a recent article
23 investigating the effects of deregulation, and what the
24 article shows is that by unleashing competition, rail
25 rates have declined at the same time that profits have

1 gone up. That is one of the desirable features of
2 competition in enhancing efficiency.

3 And that is why in my view it is a very
4 serious consequence to think of eliminating competition
5 in this industry, and especially when you recognize that
6 in the railroad industry, if you eliminate competition,
7 if you eliminate a railroad, unlike most other
8 industries, you can't expect new entry.

9 I don't think it is a realistic possibility
10 that if this merger goes through and the market power
11 that I envision is exercised and rates go up, I don't
12 think you can expect that a possible response is a new
13 western railroad.

14 So that is why the elimination of competition
15 in this industry strikes me as carrying with it very
16 serious consequences.

17 Q Would you turn to Page 27, your Table 3, Dr.
18 Carlton? That is entitled Rail Market Shares,
19 Concentration and Change in Concentration for Products
20 with Destinations in Northern California.

21 A Page 27?

22 Q Page 27.

23 A Yes.

24 Q And you show the rail market shares of UP,
25 Santa Fe, and Southern Pacific, and other post-merger

1 Herfindahl indices and the increase in the Herfindahl
2 index. Should I subtract the increase in the Herfindahl
3 index from the post-merger Herfindahl index to get the
4 pre-merger Herfindahl index?

5 P Yes, I believe that is correct, if I heard all
6 of the words in the question.

7 Q I think it is correct. I have tried it both
8 ways and it comes out pretty close.

9 Take a look at STCC Code 20923, which is
10 soybean cake. If my arithmetic is correct, we have a
11 pre-merger Herfindahl index of over 7,000 in that
12 particular commodity. You would expect to find some
13 evidence, I think, of power over price in such a
14 concentrated market, wouldn't you?

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1 A With such a high Hefindahl, I would think it
2 likely that prices may well be above marginal cost.

3 Q Do you know anything about the rates on
4 soybean cake, Dr. Carlton? Rail rates?

5 A I don't have specific knowledge off the top of
6 my head about these rail rates. I do know that Mike
7 Nelson presented some information about rail rates, and
8 I just don't recall if soybean cake was one of the
9 commodities he examined, since there were many in his
10 table.

11 I just don't recall right now whether TCC Code
12 20923 was in his table.

13 Q Take a look at sorghum grains, which is the
14 last item, as an example of a premerger Herfindahl of
15 over 7,000, in fact it's over 7,200. Would your answers
16 be the same in sorghum grain as they were about soybean
17 cake?

18 Well, let me withdraw that. There is another
19 feature here about the sorghum grain that is destined to
20 northern California. There's only two players in the
21 market today, the Santa Fe and the Southern Pacific, so
22 we have a duopoly, and we have a Herfindahl index of
23 over 7,200.

24 So there you certainly would expect to find
25 some evidence of power over price.

1 A Yes. And I think it's important to emphasize
2 that power over price, as we were discussing earlier in
3 regard to Ramsey pricing, this price is in excess of
4 marginal cost, and it's important that you remember
5 that. It's whatever the marginal cost is in this
6 instant, the short-run marginal cost.

7 You simply could not look at the rail rate on
8 sorghum grain and compare it to some long-run marginal
9 cost. That would be the improper calculation.

10 And my statements in response to your
11 questions are going to the issue as to whether price is
12 currently above marginal cost in those markets, how
13 likely I think it is. And, yes, I would think it's
14 likely in that instance.

15 Q Well, if the railroads, in a market with a
16 Herfindahl index of over 7,200, are unable in that kind
17 of concentrated market to charge rates in excess of
18 long-term incremental costs, in what circumstances under
19 Ramsey pricing principles could the railroads ever
20 charge rates in excess of long-run incremental cost?

21 Would they have to have a Herfindahl of
22 10,000?

23 A Well, let me answer the question. First of
24 all, marginal costs, short-run marginal cost depends on
25 the level of capacity you're at and the relation of

1 short-run to long-run at an instant when you have excess
2 capacity. They will be different when you've adjusted
3 your capacity to the optimal level, okay.

4 So just because prices right now may be below
5 long-run marginal costs does not mean that the railroad
6 won't be able to survive in the long run, because in the
7 long run, after it adapts its capital stock to the right
8 level, it may well be able to cover its long-run
9 marginal cost.

10 So I think that's the first very important
11 point.

12 The second important point in answer to your
13 question is, I did not agree that it was necessarily the
14 case that Ramsey pricing must be followed by every
15 railroad in order to survive. I said that -- I believe
16 I mentioned I didn't think that was -- I didn't see any
17 evidence that that was particularly the case.

18 Now, I didn't study that specific issue in
19 this case. I didn't study that specific issue,
20 primarily because I didn't think that was part of the
21 economic analysis that the Applicants were putting
22 forward, the Applicants' economists were putting forward
23 to justify this merger.

24 Nowhere does Professor Baumol or MacAvoy state
25 that a reason for this merger is so that rail rates can

1 rise. The fact is, they say just the opposite: that's
2 what is to be feared from this merger.

3 So I didn't investigate that issue. However,
4 I am familiar with some evidence that has investigated
5 that issue. There is a literature on it. And what that
6 literature shows is that, although in general for many
7 railroads, some market power may be necessary in the
8 long run for them to cover long-run marginal costs --
9 and those would typically be railroads that have not yet
10 exhausted their economies of scale and density -- for
11 some railroads, some few railroads, that may not be the
12 case.

13 In particular, for some railroads that have
14 already achieved sufficient density, it may well be the
15 case that pricing and long-run marginal costs, after
16 they've adjusted to the optimal capital stock, will
17 indeed cover their costs and generate a normal return to
18 capital.

19 And what railroads do they mention? In
20 particular and very important, they mention that the
21 Santa Fe and the Southern Pacific may well -- are
22 precisely the railroads they identify as those most
23 likely to be able to be viable at marginal cost
24 pricing.

25 Translated into English, that means that those

1 are railroads that may not need market power to
2 survive. So, although I haven't studied this specific
3 issue, I think that it is, in light of the absence of
4 evidence I've seen in this particular case presented by
5 the economists, and in light of this other literature
6 I've seen, I'm very skeptical right now that this could
7 be regarded that the reason that we should get rates up
8 to give a better return to the SF and SP is a reason to
9 justify this merger, especially when you realize that
10 it's going to come about through the elimination of
11 competition.

12 I've already explained why I think eliminating
13 competition in the railroad industry is a terrible
14 thing, since for one thing you won't get new entry; for
15 another thing, you will not provide the right incentives
16 for efficient management; and finally, as I mentioned
17 earlier, I think it's the wrong response to say just
18 because an industry is earning less than the normal rate
19 of return in the short run on its investment capital,
20 that the solution is to cartelize an industry and jack
21 up rates.

22 I don't think that is right at all. So, for
23 all those reasons, I am very reluctant to believe that
24 this notion that prices should go up to cover SF and
25 SP's cost should be viewed as a reasonable rationale for

1 this merger in light of the evidence I've seen.

2 In fact, as I mentioned, the evidence that
3 I've seen would suggest the contrary.

4 Q Dr. Carlton, you're messing up my timetable.
5 I'm asking you about the rates on sorghum grains, and
6 I'm asking you to draw inferences from questions that
7 enable you to make long speeches.

8 They are fine, but we want to get out of here
9 by five o'clock today, with all due respect. Let me
10 just ask you the question.

11 A I apologize. But I thought, since your
12 question did involve comparing the price to a cost, I
13 thought it was crucial that I make clear the cost
14 concept. So I appreciate your concern.

15 I, too, want to catch an early plane back.

16 JUDGE HOPKINS: All right. Both of you get
17 along that way, so that we can move along.

18 BY MR. NELSON: (Resuming)

19 Q So there is no correlation, then, in your mind
20 between market power and whether a price is at or not at
21 a competitive level?

22 A Well, no. I thought I tried to explain the
23 difference between the short run -- I'm sorry. Let me
24 rehear the question so I can try to keep my answer as
25 short as possible.

1 Q Let me reframe the question. I take it from
2 your remarks that you see no correlation, let's say,
3 between market share concentration and price level.

4 A No, quite the opposite. I thought I stated
5 that --

6 Q Let me cut you off. I don't want to unduly do
7 that. So then, if you do expect to see some
8 correlation, wouldn't you expect to find evidence of
9 that correlation with respect to the rates on sorghum
10 grains destined to northern California?

11 A Yes. Let me try to specifically answer that
12 question with regard to sorghum grains.

13 Suppose that instead of there being just two
14 railroads, SF and SP with market shares in sorghum
15 grain, instead take an extreme case, and we had 20
16 railroads, each with 5 percent of the market.

17 Then my prediction is, then in that latter
18 case, prices would tend to be lower than in the case we
19 have now.

20 Q But it's entirely possible in your line of
21 thinking that despite the level of premerger
22 concentration, a duopoly with a 7200 Herfindahl index
23 concentration, that the players in that market would not
24 be able to charge prices in excess of long-run
25 incremental cost? Is that correct?

1 A As I explained, when someone has market power,
2 it gives them the ability to charge a price above their
3 current marginal cost, their current short-run marginal
4 cost. That may or may not be above long-run marginal
5 cost.

6 That would depend on whether they're in
7 long-run equilibrium or not. So market power is the
8 ability to charge price above current short-run marginal
9 cost.

10 Q And in any event, you don't know anything
11 about the rates on sorghum grains, sitting on the
12 witness stand today.

13 A Well, I believe sorghum grains again is one of
14 those commodities for which Michael Nelson presented
15 evidence on the relative rail rate and truck rate, and
16 found that the truck rate was so far in excess of the
17 rail rate, it did not seem possible that truck could be
18 regarded as a conceivable substitute.

19 Q So Michael Nelson tells us that the rail rates
20 are comparatively low.

21 A No, no. What Michael Nelson tells us in his
22 rate comparison is that rail rates are low relative to
23 truck, and shows that that is why currently truck is not
24 a good substitute for rail for that particular commodity.

25 He did not compare rail rates to costs, which

1 was your question.

2 Q Now, turn to page 20, would you please, Dr.
3 Carlton? That's Table 1. That is, products with
4 destinations in California for which the merger could
5 create competitive problems.

6 Now, that shows for soybean cake that
7 approximately 17 percent of this product terminated in
8 California is handled by modes other than railroads; is
9 that correct?

10 A Yes, I believe so.

11 Q Now, when you constructed your Herfindahl
12 indices, say in Table 2 and Table 3, you disregarded
13 that particular fact. In other words, you didn't take
14 that into account in your calculations.

15 A In the calculations in Table 2, I am just
16 looking at rail share. But I think it's important to
17 emphasize that if you re-did Table 2 and did include
18 this other 17 percent as part of the market, these
19 Herfindahls and the change in Herfindahl would still be
20 far in excess of the merger guidelines.

21 So I could have done it the other way; it
22 would not have changed my conclusions. I think it's
23 more precise to do it the way I did, though my
24 conclusions would be unchanged.

25 Q With respect to sorghum grain and also corn

1 and wheat on Table 1, you don't have any market share
2 information, but you say on page 21 of your statement
3 that you included those commodities because Mr. Thiessen
4 told you that in his opinion, rail shipments of these
5 products are probably a large percentage of consumption,
6 plus shipments out.

7 Do you see that? It's on page 21.

8 A Yes, I see that statement.

9 Q Was the word "probably" Mr. Thiessen's or
10 yours?

11 A Well, I wrote this so it's obviously my word.
12 What I meant there was that I asked Mr. -- I described
13 to Mr. Thiessen what I was interested in, and he said
14 well, I suspect that -- my data is only on manufactured
15 products, and I asked him whether there are any other
16 products for which he thought I would find problems if I
17 had the data, and he enumerated those three: corn,
18 sorghum grains, and wheat.

19 I just don't remember if he used the word
20 "probably." He believes very strongly that those
21 products are indeed ones that are predominantly shipped
22 by rail.

23 My data, as I described from the Census of
24 Transportation, don't report that. It's possible to
25 use Feebie data, which I report in a footnote. And in

1 at least two of those cases, they confirm. In one of
2 those cases they don't. But I believe they do confirm
3 that a very large fraction of all shipments into the
4 state are by rail, okay?

5 In other words, it's easier to compute that
6 first column in Table 1 than the second sometimes, and
7 if you compute that first column, I believe, though I'd
8 have to check it precisely, that the Reebie data would
9 show that those indeed, those three that Mr. Thiessen
10 gave me are indeed primarily shipped in by rail.

11 Q How large a percentage did Mr. Thiessen tell
12 you probably were involved?

13 A Well, I told him my cutoffs.

14 Q Seventy percent?

15 A Yes. And he said that it was his view that a
16 very large fraction of corn, sorghum grains, and wheat
17 were shipped into California by rail.

18 Q Now, turn over to page 30. That's Table 4,
19 and those are your four outbound commodities. Now, with
20 respect to three of the four, Mr. Thiessen again said
21 that probably a large fraction of the rail shipments
22 constitute probably a large fraction of consumption,
23 plus shipments out, and that is canned goods, fruit,
24 canned fruits, wine, and motor passenger cars.

25 That is on page 31, is that correct?

1 A Canned fruits, wine, and motor passenger
2 cars. Yes, that's correct.

3 Q Those are commodities where Mr. Thiessen told
4 you probably a large share of the market was rail?

5 A That's correct.

6 Q And is this also a case where he knew your
7 cutoff points?

8 A I described them to him, yes.

9 Q Now, you concluded from your analysis, Doctor,
10 if you turn to page 40, that from your analysis of the
11 markets described in your tables, the merger is likely
12 to harm competition and lead to increased rail rates for
13 several products. And that would include products like
14 soybean cake and sorghum grains; is that correct?

15 A I don't see where you are reading, but that is
16 my general conclusion, I believe.

17 Q Is it true that for some other products, the
18 merger would present little or no danger of collusion
19 and would be not adversely affected by the merger?

20 A Well, I haven't studied specifically those
21 products, but I think it's fair to say that there are
22 probably products for which this merger may not result
23 in rates rising.

24 Q Suppose that the rail share of the market,
25 inbound, is less than 70 percent. Let's say it's 60

1 percent. What would your conclusion be then?

2 A Well, remember, my 70 percent cutoff was rail
3 share of something different than shipments in. And if
4 you look at rail share of shipments in for my products,
5 they are very high, mostly in excess of 90 percent. So
6 I actually used a larger denominator.

7 But I think that, had I used a different
8 cutoff, a lower cutoff, I think 60 percent for the
9 ratios I'm looking at, since they often correspond to a
10 very large fraction in excess of 90 percent of rail's
11 share of shipments in, which is different than the ratio
12 I calculated and applied the 70 percent cutoff to, I
13 think it's quite likely that if you look at something
14 with 60 percent, it might well still indicate the
15 presence of rail market power.

16 The reason I chose the 70 percent is I wanted
17 really to be ultraconservative, and my goal here was
18 really just to give some examples of some products.

19 Q Well, I'm asking you to come at it from the
20 other side. What if your percentage was 50 percent, the
21 way you compute it? Would you still be alarmed?

22 A Well, I think --

23 Q Concerned. Let me amend that.

24 A Obviously, the precise cutoff you use is
25 somewhat arbitrary. These obviously are rough guides.

1 I've become less concerned, the lower is the ratio. If
2 you do want to lower the ratio down 50, 40, 30 percent,
3 I think you would also want to calculate that first
4 column I calculate in Table 1 and see how important rail
5 is of all shipments in.

6 And if that number remains high, you may still
7 remain concerned, even if the fraction, even if the
8 ratio of rail shipments in to what I use -- consumption
9 plus shipments out -- is at, say, 50 percent.

10 And you might further want to examine rates.
11 You might want to look at a Mike Nelson type study of
12 rail rates versus truck rates to see if truck could
13 constrain.

14 So there are other things you could do, but I
15 guess what I'm saying is, the lower you go, obviously
16 the less concerned you are becoming, and you might want
17 to more carefully look at a lot of other evidence.

18 Q Would you be concerned if shipments in were as
19 little as 50 percent rail?

20 A If all of the shipments that are going into
21 California, half of them are rail?

22 Q Of a particular commodity.

23 A Yes, of a particular commodity going to a
24 particular destination. Well, I might well be concerned
25 if the merger led to the creation of a 50 percent firm,

1 and I would say I would have some concern, I would
2 obviously have less concern than if it were 60 percent
3 or 70 percent.

4 So I really don't want to --

5 Q Excuse me. Would you include trucks in the
6 market in that situation, 50 percent, if they were
7 handling 50 percent of the commodity?

8 A I think it would be not unreasonable,
9 certainly in doing a first pass, to think of truck and
10 rail as competing with each other perhaps in that case,
11 in the sense that what the rate trucks are charging may
12 well be influencing the rates that rail are charging.

13 I think it's very important you have the
14 market defined correctly in terms of the commodity. If
15 you choose overly broad commodities, you could come up
16 with nonsense. In other words, you could find out that
17 50 percent of product A is going by truck and 50 percent
18 of product B is going by rail.

19 And if you have improperly lumped together A
20 and B, well then, you know, you will get --

21 Q I have assumed we've got a proper commodity.
22 I read your explanation before.

23 If Fio Grande's relief were granted in this
24 case, it would not be limited to competing for the
25 products that you say would be adversely affected by the

1 merger, would it?

2 A That's my understanding; yes.

3 Q It would be competing, conceivably competing
4 in markets where there's already a surplus of service
5 transportation capacity; isn't that true?

6 A It may well be competing in markets in which
7 there is already sufficient competition.

8 Q In markets where demand is declining in
9 relation to supply?

10 A Well, I have not studied that. Obviously, it
11 would have the ability to compete for products that
12 railroads ship.

13 Q You are not claiming here in your testimony
14 that Rio Grande's extension into Oregon is justified by
15 any increased concentration in market power in that
16 state, are you?

17 A My analysis focused on California. And I
18 looked at the competitive problems arising in
19 California, and have not analyzed in detail the Oregon
20 issue.

21 Q Well, didn't Mr. Nance tell you that Oregon
22 entry was necessary in order to subsidize the
23 competition you think is desirable in the State of
24 California? And I refer you to page 40 of your
25 statement.

1 A 40?

2 Q Yes. I think it's 40. Well, I take that
3 back.

4 A 44?

5 Q 44.

6 A Well, it says "maintain the viability," rather
7 than "subsidize."

8 Q That is your only reference to Oregon, isn't
9 it?

10 A I believe that's my only reference to Oregon,
11 and that's why I said I have not specifically studied
12 the Oregon issue.

13 Q I will correct myself. Mr. Nance told you
14 that Oregon entry was necessary in order to maintain the
15 viability of the requested route to California.

16 If equilibrium were present in California,
17 would the Rio Grande entry, would more competition
18 create a misallocation of resources in the mind of an
19 economist?

20 A If we're currently in equilibrium, in a
21 financially viable, long-run equilibrium with three
22 railroads, it seems to me if you eliminate one of those
23 railroads through a merger, you will have created market
24 power.

25 Q I'm talking about Oregon.

1 A Oh, I'm sorry. I misunderstood the question.

2 Q All we're doing in Oregon is adding another
3 railroad. We're not subtracting anything.

4 A Well, I actually understood that there was a
5 request also for ownership into Oregon. I assume the
6 Denver Rio Grande buys the track in Oregon from the SP;
7 then you have Denver in parts of Oregon, rather than the
8 SP. So there is one in either case, if it is ownership.

9 Maybe I don't fully understand the question.

10 Q Assume that all that's happening is that the
11 Rio Grande is entering into Oregon over trackage
12 rights. Assume that the present transportation market
13 in Oregon is at equilibrium.

14 Would a misallocation of resources occur in
15 the mind of an economist by adding another railroad in
16 the State of Oregon?

17 A Okay. Well, it's my understanding that the
18 analysis of Oregon involved questions of feeder traffic
19 which are of concern to an economist. I have not
20 examined those particular issues; Dr. Banner has.

21 So, without analyzing those issues, I would be
22 hard pressed to specifically answer this question.

23 Q That's all right. I withdraw the question. I
24 will ask no further questions.

25 A One more sentence, if that's okay.

1 JUDGE HOPKINS: One more sentence, a short
2 one.

3 THE WITNESS: If the only way to remedy the
4 serious competitive problems in California is to give
5 Oregon trackage, or if that is the only way, then it may
6 well be worth it to prevent competitive problems in
7 California.

8 That was a short sentence.

9 MR. NELSON: No further questions.

10 JUDGE HOPKINS: The Department of Justice?

11 MS. BUDEIRI: May we have a moment, please,
12 Your Honor?

13 JUDGE HOPKINS: The Department of
14 Transportation?

15 MS. REED: No questions, Your Honor.

16 JUDGE HOPKINS: California?

17 MR SOLANDER: Yes, I have several questions,
18 Your Honor.

19 JUDGE HOPKINS: I'm sorry; did you say you had
20 some?

21 MS. BUDEIRI: Yes, but may we have a moment?

22 JUDGE HOPKINS: Why don't we let him proceed,
23 then?

24 MS. BUDEIRI: Fine.

25 BY MR. SOLANDER:

1 Q Dr. Carlton, my name is O. J. Solander, and I
2 represent the State of California, Department of
3 Transportation. And my department and the California
4 Public Utilities Commission are cooperating in
5 investigating the impacts of the merger, as well as the
6 proposed responsive applications.

7 On page 44 of your statement, the first full
8 paragraph toward the end, you make reference to a
9 conversation with Mr. Nance regarding the importance of
10 the request to serve Oregon.

11 Now, do I take it that in your judgment, the
12 request for DRGW to serve Oregon is not based on a need
13 to provide competition in Oregon, but rather, it is
14 based on the viability of the Oregon territory as it
15 relates to the entire DRGW proposal?

16 A Certainly, the analysis of the competitive
17 problems I have identified in California from my
18 perspective, looking at increases in concentration,
19 really primarily have to do with the trackage request to
20 California or the ownership request to California.

21 It is quite possible, though, that because of
22 certain vertical issues associated with the routing of
23 traffic and the routing of feeder traffic, that in order
24 to remedy that California problem that I am worried
25 about, it may well be necessary to deal with Oregon.

1 And that was really in the statement of Dr. Banner.

2 Q What did you understand Mr. Nance to mean by
3 the viability of the requested routing in California?

4 A Well, I think there is some concern that, for
5 example, one of the possibilities that Denver & Rio
6 Grande employees like Mr. Nance or Dr. Banner have is
7 that the Central Corridor will wind up dominated by UP
8 and the Southern Corridor dominated by the merged
9 carrier.

10 And, therefore, the Oregon track will be
11 allowed to wither away perhaps. And I think there is
12 some concern that that Oregon track may not be used
13 efficiently to route traffic over the Central Corridor.
14 I believe that would be a concern they have, and that is
15 probably better expressed in Dr. Banner's testimony.

16 Q I take it, then, that your request really did
17 not include an investigation of Oregon; is that correct?

18 A That would be correct; yes.

19 Q Are you familiar, Dr. Carlton, with the
20 application of the Union Pacific for trackage rights in
21 California?

22 A I have glanced at it. I realize they have
23 requested trackage rights. I have not studied it in
24 detail.

25 Q Are you familiar enough with that application

1 to be able to give an opinion on whether or not, if UP's
2 application is granted, that it would promote
3 competitive prices in rail goods in California?

4 A Well, I have not studied their application in
5 detail, the competitive problems their application might
6 remedy. But from my analysis, the competitive problems
7 I have identified, the UP is already in California. It
8 is one of the railroads in California for the
9 commodities that I'm worried about the competitive
10 problems, and therefore granting it trackage rights, it
11 already is going there, it is in California, it's one of
12 the railroads already in California.

13 So that while granting DRGW their ownership
14 request keeps the number of railroads at three, the
15 trackage request of UP doesn't change the number of
16 railroads serving California. So it wouldn't really
17 have much effect on the competitive problems I have
18 identified.

19 It may well have effects on other competitive
20 problems. I simply have not examined those other
21 commodities.

22 Q I think I really should have -- perhaps I
23 didn't -- but I should have prefaced my question with an
24 assumption that DRGW's application would be granted also
25 along with the Union Pacific.

1 A I see.

2 Q Given those assumptions, would you say that
3 the granting of both DRGW and Union Pacific's
4 application for trackage rights would promote
5 competitive prices in rail goods in California?

6 A I really have not studied the competitive
7 harms that the UP would remedy. And like I say, they
8 don't really affect the problems I'm worried about. They
9 may well have a pro-competitive effect on other
10 commodities. I just have not studied that.

11 Q Dr. Carlton, based on your statement on page
12 6, and I will read it to you: "Competition is most
13 likely to prevail when there are many firms or many
14 potential firms able to supply a product."

15 Would it almost automatically follow that
16 if the Union Pacific's application were granted and
17 DRGW's application were granted, that it would promote
18 competitive prices in California?

19 A Well, certainly, adding a competitor never
20 reduces competition. So I would certainly agree with
21 that.

22 My previous answer to you, I didn't want to
23 give the impression that I had studied this problem and
24 thought that there was a significant competitive problem
25 being remedied necessarily. It may well be. I just

1 have not studied that, not studied that the UP's request
2 will remedy a significant competitive problem.

3 I have not studied that.

4 Q I don't think that was my question. I believe
5 I asked you whether it would promote competitive
6 prices.

7 A I'm sorry. I thought I answered. In general,
8 I agree that as you add competitors to an industry, the
9 industry will have more competition. I just don't want
10 to indicate that I have done any study of the extra
11 competition UP's request would add.

12 Q You probably have not studied the application
13 of the Kansas City Southern either, have you, for
14 ratemaking authority in California?

15 A I have not studied that in detail.

16 Q I'll make a general assumption again. If the
17 Union Pacific's application were granted and the DRGW's
18 application were granted and the KCS's application were
19 granted, would you believe that that would tend to
20 promote competitive prices on rail goods to California?

21 A Again, when you add more competitors to a
22 market, in general, prices go down. I mean the market
23 will become more competitive. How much more and whether
24 that is desirable or not would depend on a lot of
25 factors, and I just really have not studied all of those

1 issues in regard to these other applications.

2 Q One final question. What would those factors
3 be that you would study, given the presence or the
4 potential presence of what could amount to four
5 railroads in California? That is, the merged railroad,
6 DRGW, Union Pacific in the Valley in California, and
7 then the independent ratemaking authority of the Kansas
8 City, Southern.

9 What would be some of the factors that you
10 would consider to analyze those firms in terms of
11 competitive prices?

12 A I could go through an analysis like the one I
13 have gone through to show that as a result of the
14 merger, there would be an increase in market power on
15 certain commodities.

16 And perhaps I would like to show that by
17 granting one of these requests, I could restore
18 competition. I mean that might be something I would
19 think I would want to look at. It's a complicated
20 question to ask how many do you want. And I just have
21 not studied that particular issue.

22 MR. SOLANDER: Thank you.

23 JUDGE HOPKINS: Ms. Budeiri?

24 BY MS. BUDEIRI:

25 Q Good morning, Dr. Carlton, my name is

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1 Priscilla Budeiri, and I represent the United States
2 Department of Justice.

3 Have you done a specific study evaluating the
4 feasibility or cost of trucking commodities to various
5 points in California after the commodities have been
6 transported into California by long haul rail?

7 A I have not done such a specific study; no.

8 Q Okay, thank you. That's all I have.

9 JUDGE HOPKINS: Thank you.

10 Any redirect?

11 MR. LEARY: Your Honor, I move the admission
12 of the two Carlton statements, DRGW-14 and DRGW-20.

13 JUDGE HOPKINS: Any objection?

14 MF NELSON: No objection. purchase order

15 JUDGE HOPKINS: They will be received in
16 evidence.

17 You are excused, sir.

18 (Witness excused.)

19 JUDGE HOPKINS: Why don't we, before we start
20 the next witness, take the recess now. We'll take a
21 15-minute recess.

22 (Recess.)

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

24 Mr. Von Salzen.

25 MR. VON SALZEN: Your Honor, Rio Grande calls

1 Charles D. Brainard.

2 Whereupon,

3 CHARLES D. BRAINARD

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

8 DIRECT EXAMINATION

9 BY MR. VON SALZEN:

10 Q Mr. Brainard, do you have before you the
11 verified statement of C. D. Brainard, filed September
12 10, 1984 in DRGW-14, Volume 3?

13 A I do.

14 Q And do you have any changes to make in that
15 statement at this time?

16 A No.

17 Q Is that statement true and correct, to the
18 best of your knowledge?

19 A Yes.

20 Q And do you adopt it as your testimony in this
21 case?

22 A Yes.

23 Q During the testimony of Mr. Thiessen, and I
24 believe Mr. Nance, questions were asked about
25 information regarding Rio Grande's SP and WP

1 interchange, and both those witness, I believe,
2 indicated that you have that information.

3 Do you have that information with you today?

4 A Yes.

5 MR. VON SALZEN: Thank you. We have no
6 further questions. The witness is available for
7 cross-examination.

8 JUDGE HOPKINS: Mr. Stephenson.

9 CROSS EXAMINATION

10 BY MR. STEPHENSON:

11 Q Good morning, Mr. Brainard. I am Doug
12 Stephenson, representing Applicants.

13 You are, among other things, the sponsor of
14 Rio Grande's market impact study?

15 A Is this the last part of my testimony,
16 projections of our traffic over the CP?

17 Q Yes.

18 A Yes.

19 Q And to summarize, that market impact study
20 estimated that following the merger of Southern Pacific
21 and Santa Fe, should your line extension be granted,
22 that the Rio Grande, based upon 1982 traffic volumes,
23 would obtain \$199 million of additional revenue from
24 traffic.

25 A I did not do the revenue projections. I only

1 did the carload projections. Do you have a table you
2 could refer me to?

3 Q Table 1, yes.

4 A Okay. These are the impact upon other
5 carriers, and that is \$199 million.

6 Q Would I be safe in assuming that the impact on
7 other carriers would result in a corresponding increase
8 to the D&RG revenues?

9 A Well, the total pro forma for Rio Grande
10 revenues is in Mr. Smith's testimony, and I don't know
11 what that figure is. I don't know if there is a
12 difference or not.

13 Q Would you expect any difference between the
14 losses sustained by the competitors from whom you took
15 traffic and the gains to your own system?

16 A It sounds logically to be the same, but I'm
17 really not sure. There may be something in this
18 testimony that I'm not aware of.

19 Q At page 12 of your verified statement, you
20 suggest that the reason why Rio Grande did a market
21 impact study in support of its responsive application,
22 rather than a traditional traffic diversion study, was
23 because traffic diversion studies, to quote you, had a
24 weakness in that only traffic handled by the sponsoring
25 railroad was included.

1 Are you saying that that is the reason that
2 you did this market impact study, rather than a
3 traditional traffic diversion study?

4 A Let me differentiate. When you mention
5 diversion studies, this is when you're doing a diversion
6 study of your own traffic, where you have all the data
7 in your possession, where you have a loss study.

8 Okay, that's not what I'm talking about. I'm
9 talking about a market study where you don't have all
10 the data in your possession. And that's the reason, is
11 that we needed to consider the effect on the entire
12 market and not just the traffic we were handling in this
13 particular instance.

14 Q So the reason that you did the market study as
15 because you wanted to study traffic that you were not
16 currently participating in; is that right?

17 A Yes, sir.

18 Q Don't you mention in your statement that Dr.
19 Banner utilized the ICC 1 percent sample of 1982 traffic
20 as part of your data base for the market impact study?

21 A He furnished that to me.

22 Q And that contains the traffic from other
23 carriers, does it not?

24 A It includes the entire rail market.

25 Q And if I understand what -- how he put the

1 traffic base together, it was a blend of the 1 percent,
2 ICC 1 percent, plus Applicants' 10 percent sample?

3 A No, no. It's my understanding he used
4 strictly the 1 percent sample.

5 Q Is there any reason why you could not have
6 done a traditional traffic diversion study utilizing
7 traffic from the Applicants mixed with the 1 percent --

8 A No, because the Applicants did not include the
9 entire market, and we didn't have the waybills for the
10 other railroads.

11 Q You had the 1 percent sample, did you not?

12 A Well, that's right, but they both showed the
13 same thing. They both showed the entire market.

14 Q Well, maybe I don't understand you. You say
15 that you wanted to study traffic that you did not
16 currently participate in. If I understand it, the 1
17 percent sample does include traffic that the Rio Grande
18 does not participate in.

19 A That's right.

20 Q You did use the 1 percent sample as part of
21 the input into your market impact study; correct?

22 A Yes.

23 Q Then why couldn't you do a traditional traffic
24 diversion study, such as the type that Mr. Thiessen
25 sponsored for your affirmative package rights case?

1 A You mean looking at each individual waybill?

2 Q That's correct.

3 A It seems to me in this particular instance,
4 you are better off to look at the entire market and
5 determine what market share you think you will get based
6 on the historical situation.

7 Now, it's conceivable you could have done it
8 the other way, but in my opinion, it would not have made
9 that much difference in the final result.

10 Q Was one of the factors that you considered in
11 doing your market impact study, as opposed to Mr.
12 Thiessen's study, that Mr. Thiessen's study uses an
13 assumption that if a movement is diverted, it's diverted
14 100 percent, and that would have resulted in unusual
15 results for your own market impact study?

16 A No, no. The reason that he could use Rio
17 Grande data is that he was only measuring the impact on
18 the Rio Grande of this merger, and he had all the data
19 in his possession to do so because it's only -- as far
20 as we're concerned, we can only lose a car if we're
21 handling it today.

22 So there's a difference in the two studies.

23 Q I understand there's a difference in the two
24 studies. I'm just asking why you didn't follow the same
25 format that Mr. Thiessen followed.

1 Q Well, I think I explained that in a study like
2 this, in my view, you are better off to look at the
3 entire market and line segments and use your past
4 experience which reflects shippers' preferences on what
5 your projected market share would be.

6 Q Am I correct that the basic approach followed
7 by Mr. Thiessen in this case in connection with
8 development of your opposition traffic diversion study
9 was the same approach basically that has been followed
10 by the Rio Grande in the past several cases, the
11 Tucumcari case and the UP case?

12 A Well, in the Tucumcari case, again we were
13 only projecting losses. In the Union Pacific/Missouri
14 Pacific case, we also were projecting gains. But that
15 was a less complex study because we were only projecting
16 what we would be able to handle to one point, which was
17 Kansas City or beyond, and then reach connections.

18 In this case, there are no connections for us
19 to reach. So we had to look at the origin territory
20 which we proposed to reach. So I think you have a
21 different situation there
22
23
24
25

1 Q The question was, did Mr. Thiessen's study
2 follow the same basic approach which has been followed
3 by the Rio Grande in the past two cases, specifically in
4 the Tucumcari and the UP case?

5 A Yes, insofar as the loss of traffic which we
6 would experience because of those mergers.

7 Q In the next sentence on Page 12, following
8 what I just asked you about, you say that, "We decided
9 that we should examine all rail traffic moving via all
10 routes to/from those markets in which Rio Grande now
11 participates."

12 The question is, who is we?

13 A Basically I decided that, but I discussed it
14 with our attorneys to make sure that it was an
15 appropriate way to approach it.

16 Q When was this done?

17 A Well, it would have been last spring. I don't
18 remember the exact day or the month. March or April.
19 Some place back there.

20 Q Focusing on March 22nd, I believe, is the date
21 of the filing of the application in this case, was it
22 before or after that?

23 A I don't recall.

24 Q Was it before Rio Grande made the decision to
25 go ahead with the responsive application as it now

1 exists?

2 A No, I was given certain lines that would be
3 purchased and certain lines that we would seek trackage
4 rights, and I was to make a market study reflecting
5 those lines.

6 Q Who gave those lines to you?

7 A I believe our attorneys.

8 Q And did you participate at all in the decision
9 as to which lines would be included and which lines
10 would be excluded?

11 A I was asked my views, and I gave my views, but
12 the decision was a management decision.

13 Q Now, is this group, the same group, the
14 lawyers or whoever, that passed this configuration of
15 your responsive application, did that also come up with
16 the configuration of the CP territory as that was
17 defined by you?

18 A Well, okay, there is -- the CP territory as it
19 is defined in my study or the CP lines reflects those
20 lines that we are seeking trackage rights or purchase.
21 It doesn't relate to the traditional Central Pacific
22 Territory and the preferential agreement or the former
23 CP lines.

24 There are some former CP lines in there, and
25 there are former CP lines that are not in there. So it

1 has nothing -- the two aren't the same.

2 Q Just to make sure that the record is clear,
3 the Central Pacific Territory that was described
4 yesterday in connection with the testimony of Dr. Banner
5 in his cross examination with Mr. Wilson is a brand new
6 Central Pacific Territory, not the Central Pacific
7 Territory that arose out of the old merger of the
8 Southern Pacific and the Central Pacific? Is that
9 right?

10 A Yes, and that is explained on Footnote 2 on
11 Page 13 of my testimony.

12 Q Now, my question is, who made up the CP
13 territory that was alluded to yesterday in Dr.
14 Banner's --

15 A The counties?

16 Q Yes.

17 A I did, and those counties or that description
18 reflects the counties that the lines that we are seeking
19 access to, the Central Pacific lines, run through. That
20 is how they were determined. And it is a traffic type
21 or marketing type description.

22 Q So the configuration of Central Pacific
23 Territory that is in Dr. Banner's -- is it Figure 1 --
24 Figure 1 is a reflection of the trackage rights and the
25 purchase proposal that was given to you by the Rio

1 Grande attorneys?

2 A Yes. It is the counties that those lines
3 serve on the west end.

4 Q I am going to ask you some questions about the
5 Central Pacific Territory in a few minutes, but first I
6 would like to talk to you about the lines that were
7 excluded from the Rio Grande proposal in terms of
8 trackage rights.

9 Do you know why the Toledo branch in Oregon
10 was excluded from the Rio Grande trackage rights
11 proposal?

12 A Not specifically. We tried to design
13 something that would attract them, or that would
14 preserve the maximum amount of competition in the
15 markets where we are participating today without unduly
16 interfering with the merged company's operations or
17 affecting their savings.

18 Q Did you think that the operation over -- the
19 joint operation over the Toledo branch would not satisfy
20 that goal in that it would cause undue interference with
21 the merged company's operations?

22 A I was not involved in that decision. I don't
23 know why the Toledo branch was not included.

24 Q Would your answer be the same with respect to
25 the Tillamook and Willamina, Monroe, Mill City, Molalla,

1 and the other branches in Oregon that were not included
2 in your trackage rights proposal?

3 A Yes.

4 Q Would you agree that the branches that I just
5 alluded to that were not included in the Rio Grande
6 proposal are light density lines?

7 A I don't know. I haven't studied that.

8 Q Does Rio Grande intend to have or to provide
9 service by way of truck-rail reload service to provide
10 service to the shippers on the Oregon branch lines that
11 were not included as part of the Rio Grande
12 application?

13 A I am not aware of any proposals to do that,
14 any specific proposals.

15 Q You were present, were you not, the other day
16 during the cross examination of Mr. Thiessen?

17 A Yes.

18 Q And you heard reference made to a document
19 that was sent out to shippers and sales people with
20 questions and answers concerning the proposed responsive
21 application of the Rio Grande?

22 A Yes. As I understand his response, he was not
23 aware of any specific propositions to do that either.

24 Q Did you see that document? Have you seen that
25 at any time since it went out and up to the present?

1 A It is possible. I didn't really pay much
2 attention to it. I wasn't involved in that phase of the
3 program.

4 Q I am showing you the document and focusing
5 your attention on Item Number 3. It says, how about
6 branch lines that you will not serve by rail? And the
7 answer is, we will serve by truck-rail reload program.
8 Example: BN's success in Eugene, Oregon.

9 A Okay. I have no such traffic in my study
10 other than TOFC traffic which would move over any of the
11 CP-served ramps, that would move from non-CP points, but
12 I have no truck-rail movements that you are describing
13 there in my study.

14 Q Can you tell us about the successful BN
15 truck-rail reload program in Eugene, Oregon?

16 A Well, as I understand it, I wouldn't term it
17 that much of a success. As I understand it, they are
18 limited, but they can go out about 40 or 50 miles,
19 because of the level of the transcontinental rates and
20 because of the transfer and the truck-in costs and the
21 cost of transferring from truck to rail.

22 And as I understand it it is limited to the
23 destination territory it applies, and it also has some
24 definite limitations in the origin territory as far as
25 the economics. Now, beyond that, I really can't tell

1 you much more about it.

2 Q Are you saying that Rio Grande has no proposal
3 to provide a truck-rail reload program or that at this
4 stage there is no plan under way, and in any event you
5 didn't study it?

6 A No, I didn't study it.

7 Q But it is something that -- don't you think
8 that the Rio Grande would consider in order to provide
9 service to the shippers on the branch lines that you
10 don't propose to serve directly or through?

11 And by directly I mean serve through Southern
12 Pacific.

13 A I think we would compete as vigorously as we
14 could, but as I understand it, you have some real
15 economic limits as to how far you can go out on
16 something like that.

17 Q Your understanding is, it is 40 or 50 miles?

18 A That is my understanding. With the level of
19 the transcontinental rates and the trucking costs and so
20 forth that is on a consistent basis. It is my
21 understanding that is about the best you can do.

22 Q Would truck-rail reload facilities be possible
23 or feasible on lines in northern California where you
24 have not proposed trackage rights?

25 A Do you have a commodity?

1 Q Lumber.

2 A Okay. I would say no for the reason that most
3 of the SP lumber producing points that we would not
4 serve, the Redding area, for example, northwestern
5 Pacific area, are too far to make the thing work
6 economically.

7 So I would say that based on what little I
8 know about it, that the economics wouldn't permit it to
9 work. So on that basis I don't think it is feasible.

10 Q The lines that you refer to, the northwestern
11 Pacific and the line north of Redding, which, as I am
12 sure you are aware --

13 A Well, that area, the lumber area that I am
14 most familiar with, that is, as I understand it, that is
15 the major lumber-producing area which we are not
16 reaching in northern California.

17 Q The line north of Redding is called the
18 Siskiyou line. Is that right?

19 A I just call it the line through Redding. If
20 it is the Siskiyou line, I will accept that.

21 Q And it goes up to Oregon, right?

22 A It goes up both to Klamath Falls and to
23 Medford, the Medford line.

24 Q And it goes down to Roseville?

25 A Yes.

1 Q Do you know why the decision was made to
2 exclude that line from the trackage rights proposal?

3 A It is my understanding that we wanted to
4 avoid, to the extent we could, interfering in your
5 north-south traffic while still preserving the maximum
6 amount of competition that we could.

7 Q Now, on the Redding line, as you call it,
8 there are some supporters of the Rio Grande such as
9 International Paper, Champion International,
10 Weyerhaeuser, that have plans along that line.

11 A They also have plans in Oregon that we would
12 serve directly.

13 Q Did you tell them when you solicited their
14 support that you did not intend to serve the Siskiyou
15 line?

16 A No, I did not solicit their --

17 JUDGE HOPKINS: Excuse me a minute. I see
18 everybody moving up, so I know that they can't hear.
19 Would you please speak up? Thank you.

20 BY MR. STEPHENSON: (Resuming)

21 Q The decision to exclude the Northwestern
22 Pacific from your proposal, what was that made for?

23 A I don't know.

24 Q You also have shippers, including Eel River
25 Lumber and Pacific Lumber, that are out on the NWP, are

1 they not?

2 A They could, but they could also be shipping
3 from some points we do serve or we would serve. I don't
4 know.

5 Q In the course of ongoing discussions between
6 Southern Pacific marketing people and Rio Grande
7 marketing people, either over the solicitation agreement
8 or other matters of mutual interest, does the subject of
9 the impact of competition from Canadian lumber and
10 southeastern lumber on traffic flows out of Oregon ever
11 come up?

12 A Well, I think it comes up, but there is still
13 a large volume of traffic out of Oregon, and also it is
14 a matter of your Canadian lumber, as I understand it, is
15 -- it may or may not be a long-range situation,
16 depending upon what happens to the U.S. dollar.

17 But beyond that, I have not been involved in
18 those discussions, so I do know there is a substantial
19 amount of lumber that moves out of Oregon and continues
20 to move out of Oregon, and that is the competition that
21 we seek to serve.

22 Q In your opinion, has competition from Canadian
23 lumber and southeastern lumber had an impact on the flow
24 of transcontinental lumber traffic generally and
25 specifically over the Ogden corridor?

1 A It has had an impact, but not the impact that
2 a reduction in rail competition has.

3 Q Can you quantify the impact?

4 A No.

5 Q Is Oregon traffic primarily outbound lumber
6 traffic or forest product traffic?

7 A Outbound lumber and paper primarily.

8 Q Because of source competition from Canada and
9 the southeast, are rail rates for lumber out of Oregon
10 generally depressed?

11 A I wouldn't say that's the reason they are
12 generally depressed. I would say it is rail competition
13 and particularly we have joined in rates because of
14 competition with the SP-Cotton Belt route, as an
15 example.

16 Q Let me ask you about that. Is it true that
17 Oregon is part of the solicitation territory under the
18 Rio Grande-SP solicitation agreement?

19 A It is to certain territories east of Colorado.
20 Others it is not.

21 Q Is it also true that there are occasions when
22 Southern Pacific has an opportunity to move traffic by
23 way of its long haul route, and they will contact the
24 Rio Grande and ask them if they want to participate in
25 that contract under the usual terms and divisions

1 between Rio Grande and Southern Pacific?

2 A I don't know of specific instances, but since
3 it is all a part of making the SP-Rio Grande-Kansas
4 City-Cotton Belt route work as envisioned by the
5 Commission in the UP-Missouri Pacific case, I would hope
6 that we are cooperating to make that route work. That
7 was the intent of the Commission.

8 Q But there are occasions, however, when the Rio
9 Grande declines to participate in that traffic because
10 of economics or whatever. Isn't that true?

11 A I don't know. I am not involved in that.

12 Q Do SP's marketing people to your knowledge in
13 connection with the meetings that you and your
14 colleagues have with them generally complain about the
15 profitability of Oregon traffic?

16 A I haven't heard any complaints. I would say
17 -- you asked that question of Mr. Thiessen, and I agree
18 with him. It is about the middle of the rung. It is
19 attractive traffic. It is large volume traffic. And
20 many of these cars are heavily loaded.

21 Q So your answer is, you have never heard
22 Southern Pacific marketing people complain about the
23 lack of profitability of Oregon lumber traffic?

24 A Oh, I think the typical pricing officer always
25 thinks his rates are too low. But I haven't heard

1 complaints specifically about this where it is
2 differentiaed from other traffic.

3 Q You mentioned earlier, in response to an
4 earlier question about depressed rate levels out of
5 Oregon, that it is not because of, in your opinion,
6 because of Canadian competition, but because of rail
7 competition. Who is the rail competition in Oregon and
8 from what points to what points?

9 A Our biggest competitor in Oregon is the
10 SP-Cotton Belt route, and then also there is the BN, but
11 they are mainly in northern Oregon. And out of Oregon
12 that would be basically it. The UP's territory is local
13 territory in eastern Oregon.

14 Q So you would agree that Southern Pacific can
15 be both a competitor and a cooperative friendly
16 connection for traffic, depending on what the origin and
17 what the destination is?

18 A We have said that all along. That is true.

19 Q And despite that competition, the volume of
20 traffic between Southern Pacific and Rio Grande has
21 grown steadily over the last few years, has it not?

22 A It has, and as long as there is not the Santa
23 Fe merger, I would hope it would continue to do so. But
24 you know, post-merger it is a different situation, and
25 this also is the intent of the Commision in the UP-MP

1 case, that your line and our line work together to make
2 this alternate route work.

3 Q And we have done that, haven't we?

4 A As far as I know. I hope so.

5 Q Would you hope that Rio Grande's proposed
6 entry into Oregon markets by way of the physical
7 presence of your through trains and having SP provide
8 your local service would stimulate price competition
9 with Southern Pacific and drive down rates for the
10 benefit of shippers in that territory?

11 A Well, it would preserve the competitive
12 alternatives that the shippers have today, and certainly
13 competition and preserving competition is much better
14 from the shippers' standpoint and what may happen to the
15 rates than elimination of competition.

16 So, I haven't made a forecast specifically as
17 to what will happen to the price levels other than my
18 own knowledge of what happens when competition is
19 eliminated.

20 Q I am not talking about competition
21 eliminated. I am talking about the presence of Rio
22 Grande, and I am asking you, what do you expect your
23 presence will do to rate levels in the State of Oregon?

24 A I have not made a study of it.

25 Q Wouldn't you expect that you would have the

1 effect of driving down rates? Isn't that what your
2 competition is all about?

3 A Well, our purpose is to preserve competition,
4 and preserving competition, if the shippers get some
5 further benefits on lower pricing, I guess that is icing
6 on the cake.

7 Q You certainly don't expect that rates to
8 Oregon shippers would increase as a result of your
9 presence, do you?

10 A I would hope not.

11 Q In view of the contention of SP's pricing
12 people that Oregon traffic is only marginally profitable
13 today, with only one railroad serving the state, was
14 there any discussion in Denver prior to filing your
15 responsive application about the prospective
16 profitability of Oregon traffic for Rio Grande or SP
17 when and if the traffic is to be divided up two ways?

18 A Okay. As I understand it, and I didn't make
19 the cost study, Mr. Smith did, as I understand it, the
20 traffic will be profitable under our proposed operation.

21 And as I mentioned earlier, having had pricing
22 experience myself, the typical pricing officer feels
23 that all rates are too low, so that everything is
24 relative, but according to Mr. Smith's study, as I
25 understand it, the traffic will be profitable.

1 Q The question was, was there any concern at
2 Denver prior to the filing of your responsive
3 application, about the prospective profitability of this
4 traffic?

5 A Well, if there was any concern -- let me put
6 it this way. We would have not filed an application
7 that would have gotten into an area where we were going
8 to lose money. If we felt that we were going to lose
9 money, we would not have filed the application.

10 Q Did Rio Grande assume in assessing the
11 potential profitability of Oregon traffic for itself and
12 SPSF that the cost of operations post-merger would be no
13 higher than they are on your single ownership of SP
14 today?

15 A I don't know. I did not make the cost study.

16 Q Would you agree that if the proposed D&RG
17 operation on top of the SPSF merger would increase the
18 combined SP-D&RG operating cost to a figure higher than
19 what it is today, that that would not be in the
20 long-term interest of Oregon shippers?

21 A No, I think it is in the long-term interest of
22 Oregon shippers that they preserve their competitive
23 alternatives, and we have got 650 shippers that are
24 saying the same thing that are supporting us. I think
25 that is the important thing from the shippers'

1 standpoint, is to preserve their competitive
2 alternatives.

3 Q So your answer is that if the costs of the
4 combined operation go up, that is incidental because
5 they will have this two-way competition? Is that it?

6 A Well, it preserves their alternatives. And
7 theoretically I suppose if you only have one railroad in
8 the U.S., it may be the low-cost operation, but it
9 doesn't preserve competition, and I think that's what
10 you have to look at.

11 Q Returning to your verified statement, at Page
12 12, you say that, "Our diversion study thus involved the
13 determination of Rio Grande's projected market share of
14 the universe of traffic to and from the area served by
15 the lines over which it is seeking access."

16 And specifically, I would like to focus on the
17 last part of that, "traffic to and from the area served
18 by the lines over which it is seeking access." Am I
19 correct in my understanding that your study looked only
20 at traffic to or from the lines and not local traffic or
21 not traffic, for example, that you might pick up at
22 Oakland and haul to Portland?

23 A No, it included all traffic, including traffic
24 that moves solely west of Ogden, and that is a segment
25 of my work papers.

1 Q Okay, so this is not technically accurate when
2 you say to and from the areas served by the lines over
3 which it is seeking access. You are also looking to,
4 from, via, and on local traffic, right?

5 A It is technically accurate because, as I
6 interpret it, it says to and from the area served by the
7 lines, and does not limit it to any particular traffic,
8 just traffic that would go to or from any point or
9 interchange on those lines.

10 Q Okay. I just wanted to make sure.

11 A Yes.

12 Q The local traffic, say, moving from Oakland to
13 Eugene, how much of that was in your study?

14 A We don't have any in it, because we considered
15 the route that we would have would be circuitous.

16 Q So --

17 A I don't have any Oakland to Eugene traffic in
18 my study.

19 Q So would I be correct that there would be no
20 traffic that would move from Roseville out to --

21 A Weso?

22 Q Weso, and then back up the Modoc line to
23 Klamath Falls, and then into Oregon?

24 A I don't have any of that traffic in my
25 study.

1 Q You are sure of that?

2 A Yes.

3 Q If it would be in your work papers, it would
4 be a mistake? Is that correct?

5 A Well, if you find some in my work papers, I
6 would be glad to comment on that. Now, there is some
7 between, for example, a place like Rockland or Reno and
8 those points, but you said Oakland.

9 Q Yes, but it would be okay. Just to identify
10 where Rockland is, Rockland is maybe ten miles east of
11 Roseville?

12 A That's right. It is on the purchase line.

13 Q So you would move traffic, say, from Rockland
14 out to Weso and then up the Modoc line to Klamath Falls,
15 and then to an Oregon point, correct?

16 A Well, most of that traffic, we anticipated
17 that the best route would -- say, from Eugene would be
18 SP-Roseville-D&RGW to Rockland, but if you decline to
19 join in such a route, then we would move it over Weso.

20 Q And apparently your study assumed that we
21 would decline, because you had some of that traffic in
22 your study that moved out to Weso and then back in to
23 Roseville.

24 A No, in my work papers I showed it as a joint
25 route. If it is coming from North Klamath Falls and

1 north, it is counted as a car in my work papers, but
2 from a revenue standpoint it is not shown as a single
3 line haul.

4 Q How was it shown from a revenue standpoint?

5 A SP-D&RGW haul.

6 Q How would that division be --

7 A We used as an estimate the mileage prorate
8 minimum of 25 percent. We are not advocating that that
9 should be the division, but we feel it gives a
10 reasonable estimate, because that has been used in other
11 areas.

12 Q So for a movement between Eugene, for example,
13 and Rockland -- let's use that example -- how would that
14 work in terms of using your mileage prorate? How would
15 that work in terms of -- let me finish the question.

16 A I am sorry.

17 Q How would that finish in terms of dividing up
18 the division of revenue?

19 A Well, It would be 25 percent for the Rio
20 Grande, 75 percent for the SP. If you were going to a
21 point 200 miles away, or let's say you were going from a
22 point where the Rio Grande had 90 percent of the miles
23 and SP had 10 percent of the miles, then it would be 25
24 percent SP, 75 percent Rio Grande.

25 And if it was going where you had 40 percent

1 of the miles and we had 60 percent of the miles, it
2 would be 40 percent for you and 60 percent for us.

3 Q Okay. I would like to talk to you now about
4 the questions that were deferred to you yesterday by Mr.
5 Banner concerning the market definition. In his Figure
6 1 -- well, let me back up for a second.

7 Is it correct that the starting point for Rio
8 Grande's analysis of the competitive impacts of the
9 merger was defining the universe of traffic the Rio
10 Grande would analyze.

11 A Well, the first thing we did -- let me
12 explain, because I am not sure what you mean by
13 universe. We defined the CP counties west of us. We
14 defined the areas east of us.

15 And those areas reflect where we would have
16 friendly connections and we could be reasonably assured
17 of getting concurrences as far as routes, competitive
18 rates, and so forth, and after that, and we are only
19 talking about transcontinental carload traffic, because
20 we did each of the segments differently, depending on
21 the best data available.

22 So, these definitions were only talking
23 transcontinental carload traffic, okay? Then after that
24 we asked Mr. Banner to run us the transcontinental
25 carload traffic on those territories that we gave him or

1 between those territories that we gave him.

2 And then -- now, that's how we establish the
3 universe.

4 Q Did the market that is reflected in the
5 Central Pacific Territory, did that serve two purposes?
6 Did it serve one purpose in analyzing the prospective
7 revenues that you would gain as a result of the merger,
8 your traffic diversion study, and also Mr. Banner's
9 competitive impact study?

10 A I don't know what purpose it served beyond the
11 use that I made of it. I am aware he used it because I
12 read his testimony, but as far as his thought process,
13 the use of that definition for his purposes, I don't
14 know, but I was the one to define the territory.

15 Q You defined the territory?

16 A For my purpose.

17 Q For your purpose. And then Dr. Banner came
18 along and he took the geographic territory that you had
19 already described and utilized that for his own
20 analytical purposes?

21 A Yes, because that was the territory that we
22 would serve directly by these line extensions.

23 Q Did you do any study of the elasticity of
24 supply and demand in deciding which counties would be
25 listed in your particular -- in this territory that you

1 set up, or was it simply counties that were going to be
2 served by the trackage rights that had already been
3 decided by the law department or management of Rio
4 Grande?

5 A The latter.

6 Q And I take it you didn't do any studies to
7 determine elasticity of supply and demand or whether the
8 counties that were included in the market were separate
9 or different from or alike counties next to it that were
10 not included in the market?

11 A No, just based on my traffic knowledge as to
12 where we could attract traffic, and that is the reason I
13 selected those counties. Now, again, this is for
14 carload transcontinental traffic only and not TOFC.

15 Q Do you know why the lawyers or Rio Grande's
16 management or whoever it was that made the decision as
17 to where the trackage rights would be sought, why they
18 chose the cutoff point that they did, Fresno, as opposed
19 to going down to Bakersfield, for example?

20 A Okay, those were the markets that we are
21 participating in today. We participate, Fresno --
22 Fresno, for example, is included in our BN -- joint
23 BN-SP-Rio Grande piggyback contracts, and we handle a
24 lot of other traffic to and from the Fresno area.

25 When you get south of Fresno, our

1 participation drops off significantly, so we are
2 preserving competition to Fresno, but when you get south
3 of there, we don't participate that heavily today. And
4 that was a factor.

5 Q Now, focusing on Figure 1 from Dr. Banner's
6 testimony again, the eastern transcontinental territory,
7 how was that compiled, and by whom?

8 A It was compiled by me, and if you -- I believe
9 the question was raised on Texas. The split in Texas
10 represents those counties that are served by the
11 Burlington Northern line down through Amarillo and
12 Lubbock, and then to Forth Worth, and then the MKT line
13 down to San Antonio and over to Houston. And that
14 reflects the areas where at those lines and east of
15 there we have friendly connections that we feel we will
16 be able to participate and compete for that traffic.

17 When you get west of there, it is basically
18 Santa Fe, SP, or Missouri Pacific territory, and we have
19 no assurance of being able to get rates, so that we did
20 not include that in our territory because we questioned
21 whether we would have the opportunity to compete.

22 Q So basically with respect to the territory in
23 the west, it was governed by or driven by the responsive
24 application, and on the east it was driven by the
25 ability of Rio Grande in connection with other carriers

1 to serve that market on a joint line basis.

2 A Yes.

3 Q Single line or joint line basis?

4 A That's right, and the areas where we could get
5 concurrences. For example, in North Dakota, most of the
6 traffic moves through Portland. The BN tries to get
7 their Portland haul. I won't take the time to describe
8 every little factor, but that generally gives you the
9 factors we consider.

10 Q Did you explain how you arrived at this market
11 definition to Mr. Banner?

12 A I would suspect I did, but I can't put my
13 finger on anything specific. If I didn't, possibly
14 somebody else did. I just can't recall specifically.

15 Q With respect to the Texas and Louisiana -- or
16 the inclusion of Texas and Louisiana in your territory,
17 would you agree that approximately 80 percent of the
18 traffic from Central Pacific Territory on the west would
19 move via the Southern Corridor to Texas and Louisiana
20 today?

21 A No, not if we get our conditions, and the
22 reason is that prior to the WP merger, we participated
23 in that market, both with the WP and with the Southern
24 Pacific.

25 Now, subsequent to the merger, and this is one

1 of the four predictions we made in that merger, is that
2 we would be closed out of certain markets because we
3 would lose our WP connection, and in certain areas you
4 would not work with us, and you people have closed us
5 out of that market, and the WP has.

6 There has been a reduction in competition.
7 Now, by our getting our extension to the west coast, we
8 will reestablish that competition. And so I don't think
9 what's happening today is necessarily what will happen
10 in the future.

11 Q But I am asking you, just based on your
12 experience today, would you agree that 80 percent of the
13 traffic coming out of northern California and Oregon
14 originations would move and does move today by way of
15 the Southern Corridor to Texas and Louisiana points as
16 opposed to the Central Corridor?

17 A I will accept your characterization that that
18 is what is happening today.

19 Q Going back to a point that you made about
20 being closed out of certain markets, is it true that
21 today Southern Pacific prefers its long haul to Texas
22 and Louisiana points from Oregon and Northern
23 California?

24 A I assume it does because they have eliminated
25 us from a lot of the routes and rates.

1 Q That is not -- Texas and Louisiana are not
2 part of the SP-Rio Grande solicitation agreement. Is
3 that correct?

4 A No.

5 Q The agreement covers generally traffic west of
6 Rio Grande but not southwest or not into the southeast?

7 A Well, it includes traffic -- I believe it is
8 roughly Kansas, Missouri, Kentucky, Virginia, and north,
9 as I recall.

10 Q Were you a participant in the negotiations of
11 that agreement?

12 A No.

13 Q Do you know that Southern Pacific took the
14 position -- and if you don't you can say so -- that they
15 felt that Texas and Louisiana were shorter line mileage
16 by way of single line haul than by virtue of the Ogden
17 gateway, and therefore ought not to be included?

18 A Well, I don't know what position they took,
19 but I think the corporate self-interest is more
20 important than the shorter line mileage, but I don't
21 know the reason they took that position.

22 Q At the bottom of Page 12 and the top of Page
23 13 of your verified statement, you say that you began
24 your analysis of 1982 total rail transcontinental
25 carload traffic to or from rail-served counties in CP

1 territory in California, Oregon, Nevada, and Utah.

2 Just to make sure I understand your position,
3 this to or from rail-served counties includes in your
4 mind the local traffic that we have been discussing
5 previously, or local traffic going out to interchange
6 with the BN at Portland, for example?

7 A Are you talking about traffic that would move
8 from Reno to Seattle?

9 Q Yes.

10 A Yes, it includes that. Our total study
11 included that. It may not have been included in this
12 particular 1982 data, the 1 percent sampling, but we did
13 include that type of traffic. We actually, on much of
14 it we used the SP 10 percent sample to determine that
15 traffic.

16 Q In the next paragraph on Page 13 you state
17 that you adjusted Mr. Banner's 1982 data to account for
18 eastern agricultural products traffic that Rio Grande
19 does not anticipate handling in significant volumes even
20 if its conditions are granted.

21 By adjustment, you mean that you removed the
22 agricultural traffic from the data base?

23 A Yes. We are not a car-owning line for
24 perishable traffic, and we would be the only west coast
25 line that did not have our own refrigerator car fleet.

1 So that is why we eliminate it. We would tend to
2 compete for it as best we can, but that is the reason we
3 eliminated it.

4 Q But when you say that you eliminated it, that
5 means that the 199 million or 200 or whatever the figure
6 is that will accrue to Rio Grande as a result of this
7 line extension would not include agricultural products.

8 A It would not include STCC-01, eastbound.

9 Q And STCC-01 is what? What products?

10 A Well, eastbound includes primarily perishable
11 freight. There is some other traffic in there, but it
12 includes primarily perishable freight.

13 Q Well, what are some of the others besides
14 perishable freight?

15 A Oh, there is cotton, but I think that is
16 mostly moving piggyback now. There is some rice. That
17 would probably include most of it.

18 Q What if the traffic had moved WP-Rio Grande or
19 SP-Rio Grande in 1982? Would you still have removed
20 that from the data base?

21 A We are talking about perishable traffic?

22 Q Yes.

23 A Yes. And I don't think I looked at our
24 traffic, and I don't recall handling much perishable
25 traffic from those CP counties. But we still removed

1 it, because we are making a future projection, not
2 necessarily what we are doing today.

3 Q And your reason for removing this traffic was
4 twofold, if I understand it, to not distort the revenues
5 on the high side if you are not going to be competing
6 for that traffic, and Number Two, not to have additional
7 volumes of that traffic in your operating plan when in
8 fact you are not going to be moving it.

9 A Yes. It wasn't a large amount. It was only
10 about 7,500 cars out of -- oh, as I recall, the
11 eastbound and the westbound total was over 200,000
12 cars. And I believe this is about 7,500.

13 Q Am I correct that most of that would have been
14 from upper San Joaquin Valley and Sacramento Valley?

15 A Yes. Most of it would have been from the
16 line, the Fresno-Stockton-Sacramento lines, about 7,700
17 cars out of a total, eastbound and westbound total of
18 250,000, so that gives you an approximation of the
19 magnitude of it.

20 Q You have mentioned car supply and lack of
21 refrigerated boxcar equipment. Is another reason that
22 you declined to include that agricultural business in
23 your traffic data base the fact that it is not
24 profitable traffic today and has adequate competition
25 from trucks?

1 A No, the only reason I removed it was because
2 of the equipment problem.

3 Q Do you think that agricultural traffic is
4 profitable?

5 A Well, I assume if the railroads are going
6 after it or handling it, it would be. I would assume
7 that a rational railroad would not knowingly try to
8 handle traffic that was unprofitable. It is
9 deregulated, so the railroads do have freedom in pricing
10 and so forth.

11 Q Does Rio Grande encourage Southern Pacific to
12 solicit perishable traffic by way of Ogden and the Rio
13 Grande?

14 A Oh, I think we have had some meetings on it,
15 but I don't recall what the outcome was. I was not
16 involved in that.

17 Q Has Rio Grande declined to participate in some
18 perishable traffic with Southern Pacific?

19 A I don't know.

20 Q Do you know of any plan on the part of
21 Southern Pacific or any other railroad to increase its
22 fleet of refrigerated boxcars in the future?

23 A No, my understanding is, the perishable
24 business, most of it moves in piggyback today in
25 shipper-owned trailers, Plan 3, and I think the

1 expectation is that it will gradually convert to that,
2 or continue to convert to that, and I am not aware of
3 any railroad that has plans to buy mechanical reefer
4 cars. There may be some, but if there are, I am not
5 aware of it.

6 Q Are trucks generally competitive for
7 agricultural products?

8 A Well, it depends upon the degree of
9 competition. There are trucks that handle it, and
10 handle the majority to certain markets. I heard a
11 comment by a UP witness that he estimated that 90
12 percent of the perishable traffic to the east, to
13 official territory was by rail now, and so I guess you
14 would have to look at the specific situation.

15 Q Is he talking TOFC?

16 A Yes. Well, he was talking the rail
17 participation via TOFC and carload versus trucks.

18 Q Do you have any figures or data that would
19 support his conclusion?

20 A I have not made a study of it.
21
22
23
24
25

1 Q Is it true that Rio Grande has been active in
2 soliciting support for its responsive application from
3 individual shippers, shipper associations, chambers of
4 commerce, local communities and so on that are all tied
5 to the agricultural community?

6 A Yes. And we also handle perishables in TOFC
7 service.

8 Q Can you confirm for me that Rio Grande has
9 solicited the support of the following organizations --
10 and you can just say yes or no as I go through them.

11 A I can't confirm whether we have solicited any
12 specific organization. I read our shipper support
13 statements. I know there are some of customers that are
14 using our TOFC piggyback service on perishables, or
15 could use it. But beyond that, if you read me a
16 shipper's name, I couldn't even guarantee that I could
17 remember whether it was in one of the ones I read.

18 Q Well, without going into all of your specific
19 shippers, how about the California Farm Federation?

20 A I don't know.

21 Q How about the California Grape and Tree Fruit
22 League?

23 A I don't know. I simply don't. We have 650
24 shippers and --

25 Q I will go through them fast, and if your

1 answer is the same you can --

2 A Raise my hand?

3 Q Yes.

4 Western Growers Association.

5 A I don't know.

6 Q Farmers Rice Cooperative.

7 A I think that may have been one I read.

8 Q Sunkist.

9 A Yes, I recall -- incidentally, the Farmers
10 Rice Co-op, now they are not a perishable shipper. They
11 ship rice.

12 Q And that is not an agricultural product?

13 A It is an STCC 01. But the reason I eliminated
14 it was because it's predominantly perishable traffic.
15 But there is also some perishable traffic in the STCC 20
16 series which I included. And if you take the STCC 01
17 nonperishables and balance them out against the ST 20
18 perishables, they about balance out. So the use of the
19 STCC 01 is a reasonable estimate of what the perishable
20 volume would be.

21 Q Sunkist.

22 A I recall seeing that one.

23 Q Agripac.

24 A It sounds familiar.

25 Q California Almond Growers Exchange.

1 A They're not a perishable shipper.

2 Q Is that agricultural products, STCC 1?

3 A Yes, but I explained how I handled the
4 agricultural products.

5 Q Davis Chamber of Commerce, Turlock Chamber of
6 Commerce, Tracy Chamber of Commerce.

7 A I can't tell you specifically.

8 Q Those three areas are all farm community areas?

9 A But they also ship canned goods and a lot of
10 nonperishable freight. They also receive a lot of
11 nonperishable freight: grain, soybean meal, that sort
12 of thing.

13 Q Do you know whether Rio Grande spokesmen or
14 salespeople who have gone out soliciting the support of
15 these groups have told these agricultural people that
16 they do not intend to solicit for agricultural business?

17 A I didn't say we did not intend to solicit. In
18 fact, I mentioned specifically we would seek it wherever
19 we could; but because we were at a disadvantage on
20 carload traffic because we did not own our own
21 refrigerator cars, I did not include it in my study.

22 Now, we also -- in my study is included TOFC
23 perishables. So I wanted to get that clear that I am
24 not saying we're not going to solicit or try to compete
25 for that traffic.

1 Q Does Rio Grande to your knowledge anticipate
2 that as part of its purchase price of \$43 million that
3 it will acquire a certain percentage of the car fleet of
4 Southern Pacific?

5 A I know it included in there a certain
6 percentage, but I don't know the details. Mr.
7 Whitehurst would know that.

8 Q Did you or anybody ask -- anybody else with
9 the Rio Grande ask whether that could include the large
10 fleet of perishable reefer cars that Southern Pacific
11 has today?

12 A No, I didn't, but we are a member of the FGE,
13 and while we don't own the cars, and it would be
14 primarily westbound freight, we are a member of that car
15 line. So I assume that to the extent we could compete
16 in the track perishables, we would utilize cars from the
17 FGE.

18 Q You would not assume that you would want to
19 acquire any of the Southern Pacific fleet of
20 refrigerated boxcars as part of your equipment purchase?

21 A I don't know.

22 Q To handle the business for some of these
23 agricultural people?

24 A I don't know.

25 Q On page 13 --

1 A Let me finish the answer. One of the
2 assumptions in my study was that there would be adequate
3 equipment available to handle the traffic volume, and I
4 passed that assumption on to Mr. Nance, so he is aware
5 of that assumption.

6 Now, how he plans to furnish the equipment,
7 whether it is through acquisition of SP or from some
8 other source, I don't know. He would be the one that
9 would know that.

10 Q Well, Mr. Brainard, if that was one of the
11 assumptions of your study, why didn't you simply assume
12 that you would acquire a portion of Southern Pacific's
13 fleet of refrigerated cars so as to be able to handle
14 the STCC 1 perishable --

15 A I passed the assumption on to Mr. Nance. Now,
16 Mr. Nance has a choice where he's going to purchase
17 cars, acquire cars. He can either seek to acquire a
18 portion of the SP, he can seek to lease them, he can
19 seek to use foreign cars, he can seek to use FGE cars.
20 That is his decision. All I am concerned about in my
21 study is that he tells me yes, I can furnish the
22 equipment to meet your projections. Where he gets them
23 is his decision, not mine.

24 Q At page 13 of your verifical statement in the
25 middle of that top full paragraph you say that, "We then

1 redistributed the traffic by state based upon Rio
2 Grande's July-December 1983 composition." Can you
3 explain what this redistribution of the '82 data base
4 consisted of?

5 A Well, at the time we did the study we did not
6 have the 1983 one percent waybill samplings. '82 was
7 the latest we had. So what I did is I took our -- the
8 1982 total traffic by state that Mr. Banner gave me,
9 expanded one percent sample. I think took a
10 distribution in our last six months of 1983 to reflect
11 the changed conditions since 1982 -- our trackage
12 rights, the SP solicitation agreement, the contracts.
13 There was a period of transformation in the first six
14 months, which in my view isn't a very good period
15 because we were switching over from WP to SP and all of
16 that sort of thing.

17 Okay. Then I redistributed that traffic by
18 state based on our 1983 experience, the last six
19 months. Now, just in the last day, the other day I did
20 receive the 1983 one percent samples, and it comes out
21 very close to what this did. Nevada is understated
22 somewhat. Oregon is overstated. But when you run
23 everything through, the total comes about the 170,000
24 cars I projected. So in the use of the actual 1983,
25 which I did not have when I made this study, it doesn't

1 make any significant difference.

2 Q Basically, the adjustments that you made were,
3 if I hear your testimony correctly, the same adjustments
4 that Applicants made to their 1982 data base to reflect
5 the solicitation agreement, the trackage rights, the UP
6 merger and so on.

7 A Well, I'm not that familiar with the
8 Applicants other than I understand you used the full
9 year; and it would seem to me that the use of the full
10 year would understate the actual result because of this
11 period of transition. But beyond that, Mr. Banner has
12 made that analysis, and I have not.

13 Q On the bottom of page 13 you cite some of
14 these changing traffic patterns resulting, I suppose,
15 from the UP merger. You state, for example, that in
16 1982, the year before the UP merger, SP interchanged 61
17 percent of Rio Grande's bridge traffic compared to 39
18 percent with WP, correct?

19 A Yes.

20 Q And that is now 97 percent and 3 percent?

21 A That is one of the projections that we made in
22 the merger and that has occurred.

23 Q What was the highest volume on an annual basis
24 that you ever had with WP for interchange of bridge
25 traffic?

1 A Okay. For the years 1978, 1979 and 1980 our
2 total interchange with the SP and the WP ran -- well, it
3 was 162,000 cars in '80, 164,000 in '79, 150,000 in
4 '78. Of this, 65,000 in '80, 65,000 in '79, and 62,000
5 in '78 was WP traffic.

6 Now, I would estimate that the bridge traffic
7 of that would be in the area of 57, 58, 59,000 cars,
8 some place in there.

9 Now, in 1984 our WP interchange was 10,000
10 cars, of which about, well, less than 3,000 was bridge
11 traffic. So using your figures that you furnished and
12 adding them to the WP figures, in 1984 our interchange
13 was 117,000 cars, which was down from the 160 to 164,000
14 in the '78, '79, 1980 period.

15 Q '78, '79 and '80, those were big years in the
16 railroad industry, were they not?

17 A Well, I can remember when our interchange was
18 higher than that.

19 Q But those are the most recent figures you have?

20 A Yes. The reason I selected these is that you
21 were talking about the Tucumcari line case, so I took
22 the years prior to that. The problem with the Tucumcari
23 line case is that you people didn't implement your
24 entire merger until after the UP merger. In other
25 words, you implemented your Tucumcari-Kansas City

1 operation, but it wasn't until after the UP-MP merger
2 that you implemented your Kansas City-St. Louis
3 operation; so it kind of came in two stages. So that's
4 why I took these time periods.

5 Q You have been saying for a long time that the
6 jury was still out on the effectiveness of the Tucumcari
7 route. Would you agree that the jury is now in?

8 A Yes. And I think that the predictions we made
9 in that case are pretty well entwined with the UP case,
10 because when we projected our impact of the Tucumcari
11 case, we had three different categories that it was
12 going to affect us: one on traffic interchange to
13 Kansas City, one on traffic going to or from the east
14 that you would take on the shorter route into St.
15 Louis. And again, this was not implemented until after
16 the UP-MP merger. And the third category was traffic
17 that was moving SP, Rio Grande and connections that
18 would move SP-UP-Kansas City-Cotton Belt. And, of
19 course, that changed in the UP-MP merger, because that
20 route became SP-Rio Grande-Cotton Belt. So that you
21 really need to take the two major mergers together to
22 assess the impact because of what happened.

23 Q By "major mergers" you mean not mergers but
24 the Tucumcari acquisition and the UP merger?

25 A Yes. And we made four predictions or four

1 projections in the UP-MP merger. We said, number one,
2 we would in effect be closed out of the WP traffic, the
3 interchange, and that has occurred. We dropped from 60
4 -- the high 50,000s down to 3,000 cars. We're probably
5 handling 2 percent of the total UP-WP transcontinental
6 traffic now.

7 The second prediction we made is that the SP
8 would reach an accommodation. We were wrong in the
9 railroad. We said the UP. We reached it with the Santa
10 Fe. So we cannot count on the SP as a longterm
11 connection.

12 Q Let me clarify that. I will let you go on.
13 But your position was in the UP case that because of the
14 gathering strength and terminating strength of SP,
15 according to your witnesses, SP and the Union Pacific
16 would reach an accommodation at Ogden, and the UP and
17 the SP would work together even after the UP merger and
18 would take the traffic away from the Rio Grande, and the
19 Rio Grande would be left without a friendly connection
20 at Ogden? Isn't that your position?

21 A In effect we said long term we can't count on
22 the SP as a friendly connection. As I say, we were
23 wrong on the railroad, but we were right on the event
24 with your merger with the Santa Fe.

25 The third projection we made is that we would

1 be closed out of certain routes, markets, and I've
2 already alluded to that earlier, that that has occurred,
3 the southeast and the southwest, because we no longer
4 had our WP connection, and you would limit your routes
5 to your long haul.

6 And the fourth projection we made was our
7 Kansas City trackage rights, we projected somewhat over
8 135,000 cars with 90 percent after year two, which comes
9 out to 121,800, approximately, and we actually handled
10 this year about 121,100 or 121,200.

11 So it's all entwined. The two cases are all
12 entwined together because of the way you implemented
13 your Tuzumcari line situation.

14 Q The figures that have been thrown around in
15 this proceeding for the interchange between SP and the
16 Rio Grande, 1984, have ranged between 105,000 cars and
17 110,000. The Rio Grande has submitted a statistic in
18 its application that shows 110,000, and we have put
19 105,000 in.

20 What is the figure so far as your figures show?

21 A Well, the problem is that we count trailers
22 differently. Actually -- and we have two different
23 reports depending upon how you count trailers. We count
24 one trailer as one car, and for our figures it comes out
25 to 142,000, and that is not the way we counted them four

1 or five years ago. And you count trailers, as I
2 understand it, as one car; so we're about 35,000 cars
3 apart. But I think that's the reason.

4 Q We count two trailers for one car.

5 A That's my point. We count one trailer as one
6 car, because trailers are basically single car shipments
7 or single trailer shipments. You don't have very many
8 two-trailer rates any more.

9 Q So your figure, using your figure and your way
10 of counting, it was 142,000 interchanged between Rio
11 Grande and SP at Ogden in 1984. How does that compare
12 to past years for SP and Rio Grande?

13 A Okay. I would say when we go back to 1980,
14 we're probably pretty close, because this discrepancy
15 has occurred for two factors. One, it's occurred
16 because of the transformation from two-trailer rates to
17 one-trailer rate on a lot of the piggyback, where before
18 when you had a two-trailer rate, it was considered as
19 one unit on an abstract, interline abstract. It was one
20 shipment.

21 The second is the growth of piggyback. For
22 example, in 1981 your figure and our figures were 8,000
23 cars apart. In 1984 it was 35,000 cars apart. But I
24 would say in 1978, '79 and '80 that our figures, which
25 ranged from 97 to 99,000 cars, probably should be pretty

1 close to yours.

2 JUDGE HOPKINS: Mr. Stephenson, before you go
3 on, I think we wanted to have a recess around noon today
4 so that the parties could discuss certain matters for
5 the next stage. How much time, Mr. Moates?

6 MR. MOATES: I don't anticipate it will take
7 more than 15 minutes, Your Honor.

8 JUDGE HOPKINS: Let's take a 15-minute recess.
9 (Recess.)

10 JUDGE HOPKINS: On the record.

11 MR. MOATES: Your Honor, we had a brief
12 recess, and counsel for parties present discussed
13 procedural matters and scheduling. We have arrived at
14 certain suggested days which we have apprised Your Honor
15 of and which I understand will be adopted. They are as
16 follows.

17 The filing for nongovernmental parties to file
18 evidence in opposition to the trackage rights applicants
19 will be February 21, 1985. The date for the filing of
20 evidence by governmental parties is moved to March 21,
21 1985. Parties will be required to make notification of
22 an intention to cross examine witnesses, both those
23 filing on February 21 and those filing March 21, by
24 March 27, 1985. That notification, of course, that
25 would be discussed, I think, with attorneys for all the

1 parties sponsoring witnesses, and the procedure to be
2 followed, as before, would be to create a witness list
3 and an estimate of time.

4 JUDGE HOPKINS: While I'm thinking of that, I
5 think we ought to add a third person to this group. Mr.
6 Ratner appears to be the one that would be a logical one
7 to add to that group, because we need somebody
8 representing the governmental parties.

9 MR. MOATES: The coordinating committee
10 welcomes Mr. Ratner.

11 We would also like, and I understand Your
12 Honor would agree, to start the next hearing phase on
13 April 9 rather than April 8, 1985.

14 With respect to transcript corrections, Your
15 Honor has designated Ms. Mahon, counsel for MKT, and
16 myself to resolve any outstanding disputes as to
17 corrections from phase one. We would anticipate
18 providing Your Honor in the fairly near future with the
19 agreed upon changes to phase one.

20 With respect to phase two, i.e., this phase of
21 hearings, parties having corrections to the transcript
22 should provide them, as appropriate, to either Ms. Mahon
23 or myself by March 12th. We will then endeavor to
24 provide the agreed changes to you by March 19th.

25 JUDGE HOPKINS: Thank you.

1 MR. MOATES: The only other matter I think I
2 properly have, Your Honor, is we would like at this time
3 to ask, as Mr. Wilson did yesterday, that the
4 stipulation between the Applicants and the port of
5 Corpus Christi, Texas be received as an exhibit.

6 JUDGE HOPKINS: Any objection. It will be
7 received in evidence.

8 Mr. Leary.

9 MR. LEARY: Yes, Your Honor. I would like to
10 move the admission of three depositions which had been
11 previously filed with the Commission. First is the
12 deposition of Raymond M. Champion, Jr., filed on
13 December 12, 1984. The second is -- and associated
14 documents. The second is the deposition of E. Phillip
15 Anderson and associated documents, filed on September
16 27, 1984; and I understand that that has been filed
17 under seal. The third are stipulated portions of the
18 deposition of Frank V. -- depositions, excuse me, of
19 Frank V. Sica, S-i-c-a, and Roger W. Miller. And the
20 stipulated portions of those depositions are described
21 in a letter to Your Honor on September 27, 1984. Those
22 depositions also have associated documents which have
23 been filed under seal.

24 MR. REMES: Your Honor, UP has a few pieces to
25 move admission of, if this is the proper time.

1 JUDGE HOPKINS: Let's get through with this
2 one first.

3 MR. LEARY: That's all, Your Honor.

4 JUDGE HOPKINS: There aren't any objections?

5 MR. MOATES: There are no objections.

6 JUDGE HOPKINS: Those matters that under seal
7 will be put in a confidential docket so there is no
8 question on that. They will be received in evidence.

9 Mr. Remes.

10 MR. REMES: My apologies, Your Honor.

11 UP-MP 13 through 20, any portions of UP-MP 11,
12 12 and 22 not heretofore admitted, shippers' statements
13 in UP-MP 23, and Allen Parker's statement, which is
14 statement number 5 in UP-MP 26. We move the admission
15 into evidence of these statements.

16 JUDGE HOPKINS: Any objection?

17 MR. MOATES: No.

18 JUDGE HOPKINS: They will be received in
19 evidence.

20 As a matter of fact, I was going to state for
21 the record that any of those that had been waived or
22 where there were no requests for cross examination, they
23 will be received in evidence at this time; so it's clear
24 for the record that they have already been received. If
25 we run into any problems, we will state it at the

1 conclusion of this case, too, so that we get everything
2 into the record. I don't want to have anything left
3 over.

4 MR. NELSON: Your Honor, excuse me. I think I
5 would like to nevertheless move the admission of Raymond
6 M. Champion's verified statement which was held up
7 pending the deposition.

8 JUDGE HOPKINS: No objection? It will be
9 received in evidence.

10 And the State of California?

11 MR. SOLANDER: Yes, Your Honor. We would move
12 for admission of CPUC-C-4 into evidence.

13 JUDGE HOPKINS: Hearing no objection, that
14 will be received in evidence.

15 (The document referred to was
16 marked Exhibit No. CPUC-C-4
17 for identification and
18 received in evidence.)

19 JUDGE HOPKINS: I guess we've taken care of
20 all of those that I have on my list, so I don't see any
21 further problem on that. One question I just wanted to
22 get straightened out, since we've got both governmental
23 ones this next stage and those opposing the responsive
24 applications, and we're going to have the same date as
25 you stated for the notification for cross examination of

1 the witnesses, why don't we just have the notification
2 to the combined group rather than as I did previously
3 certain ones to one individual, certain ones to another
4 individual. I will just make it to the combined group,
5 along with notification, of course, of the individual
6 parties that you're requesting cross examination.

7 Previously -- and you people will be the
8 coordinating group for the whole thing. I will put out
9 an order within the next week or so that will state
10 these dates.

11 Anything further on these matters?

12 All right. We will go on now to -- how much
13 longer would you have?

14 MR. STEPHENSON: Less than an hour, Your
15 Honor. I would guess around 45 minutes would probably
16 be the best.

17 MR. MOATES: May we be off the record?

18 JUDGE HOPKINS: Surely.

19 (Discussion off the record.)

20 JUDGE HOPKINS: We will recess until 1:10 and
21 then come back and finish with Mr. Brainard.

22 (Whereupon, at 12:10 p.m., the hearing was
23 recessed for lunch, to be reconvened at 1:10 p.m. the
24 same day.)

25

AFTERNOON SESSION

(1:10 p.m.)

JUDGE HOPKINS: Back on the record.

Whereupon,

CHARLES D. BRAINARD

resumed the stand and was further examined and testified
as follows:

CROSS EXAMINATION -- Continued

BY MR. STEPHENSON:

Q Mr. Brainard, at page 14 of your verified
statement you say that because traffic was up in '83
compared to '82, your study results are "if anything,
likely to be conservative." That's at the bottom of
that paragraph.

A I see it.

Q By that do you mean that the diversion numbers
are probably low?

A No. Since I wrote this statement and made the
study, we got the 1983 one percent samples. In fact, we
just got it, I think it was yesterday. I've gone
through them very hurriedly and very superficially, and
it appears as though there is no significant change.

Q What would you look at in the ICC one percent
for 1983 compared to '82 that would give you that
feeling or impression?

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1 A Well, I had the states separated. Nevada was
2 lower than I thought. Oregon was somewhat higher.
3 Northern California I think was pretty much the same.
4 But since I projected a hundred percent of Nevada and a
5 lesser percent of Oregon, even though Oregon and
6 California were up more than Nevada because we wouldn't
7 project as great a market share, when you balance that
8 out, it comes out pretty close to the 170,000 cars I
9 projected.

10 Q Pretty close meaning?

11 A Within one or two percent. That would be my
12 estimate at this time. It would not make any
13 significant difference in my total numbers.

14 Q Well, let me make sure I understand what that
15 would be based on. Is that the total flows of traffic
16 in those various regions that you identified?

17 A Yes.

18 Q '83 compared to '82?

19 A Yes.

20 Q The balance of my questions or most of the
21 remaining questions are rather technical, and I
22 apologize for having to ask them, but I have to
23 understand your study.

24 Page 16 of your verified statement in the
25 middle paragraph you mention various market share

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1 percentages -- 47 percent, 50 and so on. What are those
2 based on -- the percent of revenue, percent of miles of
3 participation?

4 A No. These are based on carload, percent of
5 carloads, and they are -- we had the 100 percent of the
6 1979 UP and Rio Grande traffic available in that case,
7 and these figures are very close to what was in there
8 also.

9 Q In the following paragraph on page 16 you talk
10 about the figure of 40 percent of total rail markets
11 acceptable to our handling. How is that 40 percent
12 factor put together or arrived at?

13 A Okay. What we did is I had three assumptions
14 when I made this study, and this involves the market
15 share study where we acquired -- it's the purchase track
16 plus the trackage rights.

17 The three assumptions were that our schedules
18 would be comparable to what they are today, that we
19 would have nondiscriminatory access to SP and Santa Fe
20 industries at the CP points on a contractual basis, and
21 that we would have adequate equipment to support the
22 projected volumes. And I gave these three assumptions
23 to Mr. Nance, and I asked him if he could design an
24 operating plan to encompass these assumptions. He
25 advised me he could. Mr. Thiessen advised that the

1 operating plan that Mr. Nance devised, or if they met
2 these assumptions they would meet his criteria as far as
3 adequate market access. So that is the predicate of
4 where we start.

5 Then I used these test markets where we and
6 the UP are the only competitors. We are either -- the
7 three of them were either an origin or a destination
8 line, and both have comparable access. Generally, we
9 both had to have a connecting line, or we were both an
10 overhead carrier where again basically we were the only
11 two railroads, in order to establish how we have done
12 historically competing with one other large railroad.

13 Q Historically being what period of time?

14 A 1982, okay. And as I say, these are 1979
15 experience, and we had the total information showing
16 approximately the same percentages.

17 Then, after we got these figures I sat down
18 with two of our senior sales officers, and we discussed
19 as to what our basic yardstick market share should be,
20 you know, generally what we projected. And after those
21 discussions I concluded that it should be 40 percent.

22 Now, following that, we looked at each
23 individual line segment. In other words, I'll just read
24 a couple to give you an idea. Outbound from jointly
25 served SP and BN Oregon stations -- and this is where we

1 have two other railroads -- 20 percent instead of 25
2 percent because of BN direct single line route to the
3 upper midwest, Memphis, Birmingham distribution centers
4 and so forth.

5 Inbound points served by SP-Santa Fe, Turlock
6 and north, 40 percent as most of the inbound commodities
7 are points on the Kansas City connections. And then we
8 had an inbound at 30 percent on another segment because
9 it was further south.

10 In other words, we looked at each of these
11 line segments and determined what our market share would
12 be for that line segment by using the 40 percent factor
13 as a yardstick. Does this explain it to you?

14 Q Exactly. I want to follow up.

15 What were the factors that you looked at to
16 change your judgment on the 40 percent yardstick? Some
17 things you have already mentioned: the BN direct route
18 from Portland to the midwest. What are other things?

19 A Well, let me give you an example. Inbound
20 points south to Turlock. Now, outbound we concluded 30
21 percent because it was further south, more competitive.
22 This is Santa Fe, SP and Rio Grande only. Generally,
23 the further south, the lower the Rio Grande market
24 share. However, it was projected in this instance at 40
25 percent. This is because much of the major commodity

1 inbound -- much of the major commodity, the inbound
2 grain, which is corn, can be moved from PN origins and
3 via D&R&W, and we should be able to be more competitive
4 on a two-line haul. This would be basically out of
5 Nebraska.

6 Also, another large inbound move is grain
7 products -- soybean meal, corn syrup and so forth --
8 which, because most originates on such Kansas City
9 connections, we would need to haul to Kansas City, we
10 rejected 40 percent. Inbound to jointly served Rio
11 Grande-WP-Santa Fe-SP stations in northern California,
12 except vehicles and parts, 25 percent because the SP or
13 the SP has most of the industry. These are the factors
14 we considered.

15 Now, when we used these test markets, all of
16 the factors that shippers consider in routing traffic
17 would be represented in the aggregate in those
18 percentages.

19 Q Did you also consider shipper support that you
20 were getting in this case and in past cases in terms of
21 modifying that 40 percent or whatever the benchmark
22 figure was?

23 A Well, I think in my testimony -- not
24 specifically. We considered the fact that we were
25 getting a lot of shipper support and the fact that we

1 would have Kansas City connections that would work with
2 us, and also that the BN was supporting us also. But we
3 did not consider that factor in each of the segments
4 unless I made a specific note, you know, where we did,
5 like if the commodity is corn syrup and basically moves
6 off Kansas City-Iowa lines, it has to go to Kansas City
7 whether it moves via the SP or the Rio Grande or
8 SP-Santa Fe or the Rio Grande.

9 Yes, we considered that type of factor.

10 Q How many changes did you make, in your
11 recollection, that took the diverted figure above 40
12 percent versus how many that took it below 40 percent?

13 A Well, 40 percent was essentially -- we used
14 that -- that was the figure out of Oregon. Then as we
15 went further south -- let's see, the only other area
16 where there would just be two railroads was south of
17 Turlock, which I have already covered. That was 30
18 percent, because the Santa Fe-SP route would be,
19 relative to the Rio Grande, the distance, you know,
20 would be closer.

21 Q By closer, closer to Kansas City?

22 A Yes. In other words, the mileage differential
23 isn't as great.

24 The others, the other areas were primarily,
25 well, inbound to Oregon to SP, a state where the Rio

1 Grande and the SP would be the only stations is 35
2 percent, because a lot of the traffic moves out of the
3 Texas-Louisiana area. And while we do have connections
4 down there, the ICG, the KCS -- a lot of it is chemical
5 traffic -- we didn't think we would do as well, you
6 know, as we would in other areas.

7 So I'm not sure I'm answering your question.

8 Q You are answering my question. You have been
9 reading from a document in your standbook that indicates
10 to you these changes from the norm, so to speak.

11 A It's Section A, page 14 and 15 of my work
12 papers that you people should have.

13 Q That was my next question.

14 On page 18 what are you saying in the first
15 sentence of the bottom paragraph, starting with "T
16 project." I don't understand that sentence.

17 A The sentence, "To project Rio Grande on line
18 and adjacent overhead carload traffic, I analyzed Rio
19 Grande's 1983 Colorado-Utah traffic," is that the
20 question -- is that the sentence?

21 Q Yes. What are you saying?

22 A I had a printout of a hundred percent of the
23 traffic that we handled that originates in Colorado or
24 Utah that was destined to states west of Colorado and
25 Utah, and I went through those and determined which we

1 would handle over the CP. And the reason I approached
2 this in this manner is that our analysis of the one
3 percent waybill samplings indicates that we have
4 approximately 50 percent of the Utah CP county market
5 and about 60 percent of the Denver CP county market.
6 And I concluded that we would continue to handle that
7 market share, but we would not increase it. And this
8 was based on 1982, because both the UP and us would have
9 single line service, you know, to the west coast.

10 So based on that conclusion, I then went
11 through our traffic because I considered I had all the
12 data necessary to make the conclusions, since I
13 determined that our market share would be what we had in
14 1982 and '83. I went through that traffic, determined
15 which we would handle over the CP lines.

16 Now, this was a fairly straightforward
17 analysis because excluding the U.S. Steel unit train of
18 our on-line interchange with the WP and the SP, about 95
19 percent of it goes with the SP, and there is then some
20 additional traffic that is going UP that is potential
21 for a CP extended haul. So there is very little
22 discretionary area. Probably 90 percent was merely
23 transferring the junction from Ogden to Klamath Falls or
24 Roseville.

25 Q So this is principally simply an extension of

1 your haul, interline forwarded traffic that you
2 originate in Denver or Utah that would or could use the
3 new extended line if the Commission were to award that
4 to you?

5 A Or terminates. And again, the reason we did
6 this in this fashion is that we did our study, and we
7 broke it up on the basis of the best data available.
8 And we had better data on this, so that's why we did it
9 in this form.

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1 Q Can you give me an example of a movement that
2 would fall within the category described in the bottom
3 of Page 18, that last sentence starting with Utah? I
4 just want an example of a movement.

5 A Okay. A car from Salt Lake City to Fresno.
6 Well, let me give you another example. Okay, that would
7 be one type. Another one would be a car from Salt Lake
8 City to Los Angeles.

9 If we handled it -- if it went through
10 northern Nevada, in other words, via Rio Grande-SP or
11 via Rio Grande-WP-Santa Fe, then I consider that we
12 would get an extended haul to a California junction. If
13 it moved Rio Grande-UP, the direct route, then I
14 consider that we would not get an extended haul.

15 Q Okay. Turn to Page -- well, let me back up
16 for a second. Where would the junction be? Any
17 California junction?

18 A Well, if it would be -- I think we considered
19 -- I talked to Mr. Nance, and I believe he considered
20 the logical junction as far as between the SP system and
21 the Rio Grande would be -- in California would be
22 Roseville.

23 Q All right. Turn to Page 19, please, the
24 bottom paragraph. You talk about an allocation process,
25 and I would like you to explain what that allocation

1 process was.

2 A Okay. This had nothing to do with my
3 numbers. What I did is, once I reached my projection,
4 Mr. Nance, for the purpose of his operating plan, needed
5 to know to what line segments or stations that traffic
6 would originate and terminate.

7 In other words, I determined that we would get
8 X amount of traffic to CP counties in California. He
9 said, okay, where is it going? So we concluded that we
10 would use the SP 10 percent sample to allocate that
11 traffic.

12 Q Allocate it how?

13 A Well, by station. Now, we just did this with
14 transcontinental. On the Colorado-Utah, we had the
15 actual origin and destination.

16 In other words, if we had 10,000 cars to
17 northern California that we projected we would handle on
18 transcontinental traffic, the CP stations, then we took
19 the SP 10 percent sample of transcontinental traffic,
20 and if it showed that 2 percent would go to Fresno, then
21 we allocated of the 10,000 cars 2 percent to Fresno.

22 If it said 7 percent to Oakland, then we
23 determined that 7 percent of that transcontinental
24 traffic would terminate in Oakland, and we used your
25 sample to do that. That was the best data we had.

1 Q I guess I don't understand. When you made the
2 initial diversion, didn't you have stations, or didn't
3 the computer have stations already for existing traffic
4 so that you would know where the traffic was going to or
5 from? Why do you have to then, after it has already
6 been diverted, figure out what stations it is going to?

7 A Okay. First of all, we started from a zero
8 base. We didn't make a diversion study as such. We
9 made a market study, and where it was Rio Grande
10 Colorado-Utah traffic, we knew the station, but in those
11 areas -- and the piggyback traffic we could calculate
12 the ramp, okay, we could determine the ramp.

13 But where we used the 1 percent way bill
14 samplings, we did not have the origin or destination
15 station. We had the origin or destination county
16 groups, and that is where we used the SP 10 percent
17 sample to allocate.

18 It was only on the transcontinental traffic,
19 plus we used the SP 10 percent sample for Nevada
20 transcontinental and -- because that was on the
21 purchased line, and we concluded we could handle 100
22 percent of the SP traffic on traffic that moved solely
23 west of Ogden, which -- most of it was purchased line
24 traffic, too.

25 Q Well, let me see if I understand what you

1 did. You would first make a market study to determine
2 how much traffic you would -- what percentage of the
3 traffic you would get, for example, between Albany and
4 Eugene.

5 A No. Well, let's break it up into segments.
6 The only place that we developed this percent, what we
7 did on some of the west of Ogden, but basically where we
8 used the percent of the total market was on
9 transcontinental carload traffic, okay?

10 Then we determined or I determined that there
11 was 100,000 cars of transcontinental traffic to northern
12 California, let's say. I don't remember what the figure
13 is.

14 Q Use a station. Give me a point.

15 A No, I didn't do it that way. Then I took
16 these market shares by line segment, and I used our last
17 six-month 1983 traffic to get a weighted average. In
18 other words, if there was 1,000 cars to a group of
19 stations where I projected 40 percent, then I considered
20 -- I multiplied the 40 times 1,000 to get a factor, and
21 I did the same thing if there were 300 cars to a 25
22 percent group of stations, and so forth.

23 So, I got a weighted average of our projected
24 market share for both northern California and Oregon by
25 direction. Then I multiplied that times the total

1 market. Let's say it was 100,000 cars, and let's say I
2 came up with 25,000 cars that we projected we would
3 handle.

4 Okay, this was just by -- the only information
5 I had was by this group of counties. And I adjusted it
6 to eliminate the non-CP stations, you know, on this
7 group of counties by our traffic experience, and after I
8 got this figure, my job was finished as far as estimating
9 what our total traffic would be.

10 But Mr. Nance, in making his operating plan,
11 had to know which stations this traffic was going to, so
12 I advised him that we should use the SP 10 percent
13 sample on transcontinental traffic for the purpose of
14 allocating it by stations for his purposes, because the
15 traffic mix, the commodity mix was similar.

16 And this is how he determined how many cars
17 would go to Albany, Oregon, for his purposes.

18 Q Let me try again. I think that you stopped me
19 the last time. Perhaps my question was not very good.
20 Let's talk about transcontinental traffic to or from
21 Albany.

22 You made a decision that it would be 40
23 percent or 38 percent or 35 percent, and then you used
24 the 10 percent way bill sample from the SPSF study to
25 determine how much traffic there was going to or from

1 Albany that you would apply your 38 percent or 40 or
2 whatever the percentage figure to.

3 A No.

4 Q Okay. Well, I am not going to cover it any
5 more. Am I close?

6 A No.

7 JUDGE HOPKINS: Don't try any more. Quit.
8 while you are behind.

9 BY MR. STEPHENSON: (Resuming)

10 Q I suppose that my marketing people when they
11 read the transcript, they understand it better than I
12 do. Let me ask you a question about the counties that
13 were excluded from your Central Pacific territory, and
14 let's talk about the station, Redding, for example.

15 Am I correct that because Redding was excluded
16 from your territory, you did not consider the
17 divertibility of traffic from Redding?

18 A We are talking transcontinental carload only?

19 Q Yes.

20 A We only considered the stations that the CP
21 would serve directly. We did not consider any
22 transcontinental traffic that we might handle to and
23 from a station such as Redding because we had no
24 assurance that we would get concurrences and routes.

25 Now, to the extent that we may handle traffic

1 from Redding, it would be reflected in Mr. Thiessen's
2 study. In other words, to the extent he feels we can
3 hold a car from Redding, even though we wouldn't serve
4 it by the CP because the CP won't help us, you know, on
5 Redding traffic, then that would be in addition.

6 It would give a rough idea. They are not on
7 comparable -- you know, it is not a comparable basis, a
8 different sample, and all that sort of thing. But it
9 would give a rough idea, to the extent there still may
10 be that type of traffic that we would handle.

11 Q You would have to go through his study and see
12 what traffic had not been diverted, correct?

13 A Yes, because we would not serve Redding. So I
14 only considered points that we would serve on
15 transcontinental traffic. I am not talking about
16 Colorado-Utah, but transcontinental traffic. And the
17 reason is, I had no assurance that we would get
18 concurrences from any point we would not serve.

19 In other words, we wouldn't have a route or a
20 rate.

21 Q So a movement from International Paper in
22 Redding or Anderson or wherever they are located off
23 your CP territory moving to Kansas City, you did not
24 study that traffic, at least in your affirmative market
25 share study?

1 A No. We have some International Paper traffic,
2 I think, from Gardner Junction on the Coos Bay branch
3 which we would serve, but if it came from Redding, where
4 we wouldn't serve, then I have not included it in my
5 study, but as I say, if Mr. Thiessen feels it would
6 continue to handle it, then that would be something in
7 addition to what I have.

8 Q Let me address the subject of the relationship
9 between your two studies. Did you assume as part of
10 your -- you have already given us some of your
11 assumptions as part of your market impact study, such as
12 equipment and so on.

13 One of the things you assumed was that you had
14 your extended route in place, the lines purchased, the
15 trackage rights had been granted by the Commission,
16 correct?

17 A Yes, in Year 3. My study is based on the third
18 year after that would be implemented.

19 Q And obviously that also assumed that the SPSF
20 merger was in place.

21 A Yes, sir.

22 Q Is your 200 million or whatever the figure is,
23 is that net of his -- of Mr. Thiessen's diversion study
24 or would one take your figure of 200 million, deduct his
25 85 million or whatever the real figure is, and come up

1 with a net gain to the Rio Grande system?

2 A Okay. Mr. Smith has that reflected in his
3 calculations as far as revenue. I did not do any of the
4 revenue calculations. The only thing I determined is
5 how much traffic we would handle over the CP.

6 And as far as I know, there is no relationship
7 between Mr. Thiessen's study and mine. Mine was done
8 completely independently. I did not discuss any of
9 these things with Mr. Thiessen other than whether Mr.
10 Nance's operating plan would meet his criteria as far as
11 adequate physical access.

12 But beyond that, I did not have any
13 discussions with him. The remark I made that whatever
14 traffic he may have in his study to a point like
15 Redding, a non-CP point, that I don't have in mind, to
16 that extent it would be an addition, but I did not
17 consider that when I made my study.

18 In other words, there are two separate and
19 distinct propositions.

20 Q And you did not assume, even though you
21 assumed that the primary application had been granted,
22 and you had been granted your line extension, you did
23 not assume that as a result of the SPSF merger certain
24 traffic would be diverted from you in the first
25 instance, and that therefore your market impact numbers

1 are -- would have deducted from them the diversions to
2 the SPSF system?

3 A Okay. Let me put it this way. Let's say we
4 are handling a car from Toledo, Oregon, today. It is
5 going over Ogden. Okay. Since it is not a CP point,
6 that would not be included in my study. So that would
7 be traffic that would be diverted to Santa Fe long haul,
8 Santa Fe-SP long haul.

9 Now, to a CP point like Eugene, we would
10 anticipate a better market share than we are getting
11 today because we would serve the point direct. So it
12 would reflect traffic that we are handling today that we
13 would lose to you, but it was not done in that fashion.

14 Q So to reconcile the two studies or try to come
15 up with a net figure, one would have to look at the
16 diversions in his study, determine whether or not they
17 were from a common point area. If they were not from a
18 common point area -- if they were not from your CP
19 territory, then they would still be divertible? Is that
20 it?

21 A If it is from -- if it is to or from a CP
22 point, my study shows what we are projected to handle,
23 okay? If it is from a non-CP point, which I don't have
24 in my study, let's say we handle 500 cars from Toledo,
25 Oregon, and Mr. Thiessen says that we will handle ten

1 after the merger.

2 Then my study is ten cars showing, except that
3 his is on a different basis. It would give you a rough
4 idea, but they are not really a comparable basis, and I
5 don't think -- I think the amount of traffic that would
6 be in that category is insignificant. And again we are
7 talking transcontinental carload only. We are not
8 talking Colorado-Utah or piggyback.

9 Q In your Table 1, you indicate a projected
10 decrease of 192,000 cars or trailers from SPSF or from
11 UP, correct?

12 A Yes, sir.

13 Q Do you have any idea what percentage of those,
14 that 192,000, is cars and what percentage is trailers,
15 or do you have any raw numbers to support --

16 A Well, it is set forth in Mr. Harvey's number
17 as to exactly how it was done. If you go to Table 2, it
18 shows how many TOFC trailers and cars, and we had
19 projected on our transcontinental piggyback, we had
20 projected a 20-percent increase because we would be able
21 to compete in the markets that we had been closed out
22 of, and also because we would have two-line service to
23 Chicago and places like that. But that tells you, of
24 this 192,000, how much is piggyback.

25 Now, this 192,000 is not comparable to 170,000

1 because if a car went Rio Grande-WP-BN, and it would go
2 Rio Grande direct to Portland, the loss would be shown
3 under BN and the WP, so that is why they are not
4 comparable.

5 Q I don't understand that, and that was my next
6 question.

7 A Okay. Let's say you have a car going from
8 Provo, Utah, to Portland, Oregon. It is going
9 D&RGW-WP-BN. That is one car on the CP. But there are
10 two carriers that are losing that car. So that is why
11 the 192,000 does not balance with the 170,000 projected
12 CP cars.

13 Q Several days ago we received a discovery
14 response from Rio Grande saying that about 131,000
15 annual carloads of D&RG traffic would require one or
16 more switches by SPSF, and the question is, if I
17 deducted that 131,000 from the 170,000 that are shown in
18 your Table 2, would that give me the number of -- should
19 that give me the number of TOFC?

20 A Well, the TOFC in Table 2 is 43,395 plus
21 49,025, and does that give 131,000? I don't know. I
22 can't answer your question.

23 Q Do you know how the 131,000 annual carloads
24 was derived?

25 A No.

1 Q Now, these trailers, the TOFC trailers that
2 are part of your study, it is expected that those would
3 be ramped and deramped by SPSF forces?

4 A That would be in Mr. Nance's operating plan.
5 I think he was asked -- I believe he was asked that.
6 Now, whatever -- I don't know. It is whatever is in his
7 operating plan.

8 Q Do you know where the TOFC ramps are planned
9 to be located?

10 A On Page 13, Section A of my work papers, it
11 shows the projected traffic by ramp, and this is based
12 on our experience, and I can read off the ramps:
13 Eugene, Fresno, Oakland, Portland, Roseville, and
14 Sparks.

15 Q Your study assumed purchase of the line to
16 Klamath Falls and Roseville and trackage rights beyond,
17 correct?

18 A Yes, sir.

19 Q And I take it that you assumed that SPSF
20 operations between Roseville and Klamath Falls to and
21 from Ogden would cease with the commencement of your
22 operation?

23 A Yes. I also made a projection based on
24 trackage rights only, and that assumes that we would
25 control the operations and the maintenance so that there

1 would not be any -- and it would be maintained to main
2 line standards so there would not be any adverse effect
3 on our through service between Roseville, Klamath Falls,
4 and west on the one hand and Ogden on the other, and
5 that we would also have non-discriminatory access to
6 traffic sources on the purchase lines.

7 But it would be trackage rights instead, and
8 basically the traffic that would be affected on that
9 would be traffic going to or from the purchased lines
10 which we would not handle 100 percent of, plus some of
11 the Colorado-Utah traffic that we would end up with an
12 Ogden haul instead of a California junction or Oregon
13 junction haul.

14 And I estimate that our traffic projections
15 would be reduced about 10 to 15 percent if we had
16 trackage rights instead of purchase.

17 Q It would be reduced by --

18 A Ten to 15 percent if we did not purchase the
19 lines, but instead had trackage rights based on the
20 assumptions that I gave you.

21 Q I must confess, I don't know where in your
22 application or verified statement that appears. Where
23 is it?

24 A It is not. I just made -- I reviewed our
25 traffic and made an estimate on that.

1 Q And that has been done recently in connection
2 with this -- let me finish my question.

3 Has that been done recently in connection with
4 this new trackage rights proposal that you are making?

5 A Well, we always had it as a backup position,
6 and I don't know when our attorneys asked me for an
7 estimate. It was since we wrote our testimony.

8 Q You have not filed it or supplied it to the
9 applicants, have you?

10 A I furnished it to our attorneys. I don't know
11 what -- but anyway, I don't know.

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1 Q If you can turn to page 2 of Appendix I, in
2 the section headed Colorado-Utah common points, you
3 mentioned the 25 percent minimum revenue on a mileage
4 pro rate system.

5 Is that the same mileage pro rate system that
6 you described earlier?

7 A Yes. In other words, this would come into
8 play if we had a car from Salt Lake City to Redding,
9 California, and instead of moving over Ogden, the
10 junction would be changed to Roseville, for example.
11 Then we estimated the revenue on that basis.

12 Q And how was that 25 percent calculated? How
13 was it figured?

14 A Well, we would take the mileage from Salt Lake
15 City to Redding, and then if your mileage from Roseville
16 to Redding was 20 percent of the revenue, then we
17 projected 25 percent for the SP. If it was 30 percent
18 of the revenue, then we projected 30 percent. We are
19 not proposing this as a division basis, but it is, we
20 feel, a reasonably accurate way of estimating revenue
21 for the purposes of this case.

22 Q I understand how it works. I guess my
23 question was not very good.

24 How did you develop it? What, was a study
25 done or anything?

1 A No. That is a basis that has been used in
2 that territory in the past as far as divisions.

3 Q Can you turn back one page, on the first page
4 of Appendix I?

5 A Yes, sir.

6 Q The bottom paragraph talks about SP Southern
7 Corridor TOFC losses.

8 Explain what those losses would be.

9 A Okay.

10 We made our projection that we would gain --
11 we would increase our piggyback market share on
12 transcontinental traffic, or our piggyback volume by 20
13 percent. This was for two reasons: one, that we would
14 be able to participate in markets that we had been shut
15 out of since the WP merger, and this is principally the
16 southwest and the southeast, and this adds about 20
17 percent to our potential.

18 In addition, since we would have single line
19 access to CP ramp points, we would be more competitive
20 with the UP going to places like Chicago because we
21 would have a two-line haul with the BN instead of a
22 three-line haul.

23 So, for the purposes of this study, we assumed
24 and basically projected that even though some of the
25 increase may come from the UP, that basically it would

1 come from the SP Southern Corridor traffic, and so that
2 is the basis for computing the impact on the SP as this
3 traffic being diverted from the SP Southern Corridor.

4 Q This might be a trailer from Stockton to
5 Dallas that is moving --

6 A Well, Dallas. Let's say Atlanta. Dallas
7 didn't happen to be --

8 Q So the Stockton to Houston by way of SP's
9 current route through El Paso?

10 A Let's say we have a trailer that is today
11 moving from Stockton to Atlanta, is moving SP long haul,
12 and we didn't do it by trailer, but this is the type of
13 traffic, and we said that a certain amount of this
14 traffic we are going to divert to D&RGW-NS, let's say.
15 So we calculated, as I understand it -- and I didn't
16 calculate the revenues, but as I understand it, the
17 impact on you reflects the revenues that you lost
18 because you are no longer going to haul it from Stockton
19 to New Orleans or wherever your interchange point is.

20 Q Okay.

21 Did you take any Santa Fe traffic?

22 A We considered, basically since 99 percent of
23 our interchanges is with the SP on piggyback, it could
24 have come from the Santa Fe also, but the revenue loss
25 to you is going to be the same, you know, because the

1 divisions beyond New Orleans are going to be the same
2 whether it moves Santa Fe, KCS, for example, or SP. But
3 we consider the traffic as traffic that has previously
4 moved via SP because you are the one that we lost our
5 routes with.

6 Q Well, Santa Fe is in that market, though, is
7 it not?

8 A Yes. But as I say, it wouldn't make any
9 difference as to the impact on the merged company
10 because either way you are going to lose a haul west of
11 New Orleans. I guess what maybe you are saying is that
12 if I considered Santa Fe, the loss would not have been
13 as great because the Santa Fe would have only handled it
14 to Dallas.

15 Q Correct.

16 A No, my answer is that we considered that it
17 would come from you.

18 Q Is there any service performance factor that
19 was considered there?

20 A Yes. I talked to our Assistant Vice President
21 of our intermodal, sales and intermodal. We discussed
22 this, and when we say we are going to get a 20 percent
23 increase or a 30 percent market share or whatever, this
24 does not mean that we are going to get this same market
25 share to each individual point. There may be some

1 points where there will be 60 points, and there will be
2 some points where we will do 20 percent.

3 As an example, in this case, we feel since we
4 have a direct connection with the NS, we will do better
5 with them than we will, say, to New Orleans.

6 Do you follow me?

7 Q Yes.

8 If you could turn to the third page of your
9 Appendix I, these deal with Mr. Odwalt's various
10 studies.

11 A Yes, sir.

12 Q Can you confirm for me that his studies of
13 coal, steel and oil resulted in a revenue gain of about
14 \$18 million?

15 A Mr. Smith calculated the revenue.

16 Q You have no knowledge?

17 A No, I have no knowledge.

18 Q The next page in that appendix under the
19 heading "West of Ogden," you mentioned that new routes
20 were determined for the new traffic diverted from other
21 railroads to Rio Grande.

22 Who determined those routes? Was that Mr.
23 Nance?

24 A No.

25 Okay, if it was moving from, say, Elko, Nevada

1 to Eugene, then we would give a single line haul. The
2 place where the routes were determined was by me, and
3 this is, which I explained this morning, because of the
4 circuitry on some of the traffic. For example, from
5 Eugene to Rockland, I determined that the logical route,
6 instead of D&RGW single line, would be SP to Roseville
7 and thence D&RGW. However, if you people decline to
8 concur, we could always handle it on single line.

9 Q Did you have any specific criteria when it
10 came to circuitry as to when a route could be used and
11 when it couldn't?

12 A Yes. As I recall, the cutoff point was if it
13 was moving Truckee and west, I considered that we would
14 handle it single line. I believe that is the point.
15 For example, between Klamath Falls and Rockland, the
16 circuitry over the more direct route through Weso and
17 Lovelock, and the more direct route via Reiding is 212
18 percent, Loomis, 209 percent, Auburn, 199 percent,
19 Foothill, 197 percent, Colfax, 183 percent, and then
20 there seems to be a void as far as any stations that
21 produce any traffic of any consequence until you get to
22 Truckee, and that is 139 percent.

23 So Colfax at 183 percent I felt was too
24 circuitous. Truckee at 139 percent I felt we would
25 continue to have. That is for the Klamath Falls, the

1 portion between Klamath Falls and those stations.

2 Q Was that the cutoff point, Truckee?

3 A Yes, I believe it was.

4 Q If you could turn to page 3 of your verified
5 statement, we have alluded to this earlier in your
6 testimony.

7 MR. STEPHENSON: Your Honor, perhaps not might
8 be a good time to distribute some exhibits for
9 identification.

10 JUDGE HOPKINS: Thank you.

11 Is this your last line of questioning?

12 MR. STEPHENSON: This is the last line, Your
13 Honor.

14 JUDGE HOPKINS: How long will this take?

15 MR. STEPHENSON: Oh, maybe no more than ten
16 minutes.

17 JUDGE HOPKINS: Thank you.

18 MR. VON SALZEN: Before you proceed, Mr.
19 Stephenson, could I ask if Rio Grande counsel was
20 advised that you were going to be using these prior
21 statements in your cross examination?

22 MR. STEPHENSON: You certainly were, on two
23 different occasions. I told Mr. Mayo once a week ago.
24 I gave him a handwritten list, and two days ago I
25 apprised him again.

1 MR. VON SALZEN: Well, he did not apprise me,
2 and I therefore did not apprise the witness.

3 JUDGE HOPKINS: Well, let's see if we can go
4 ahead.

5 MR. STEPHENSON: I gave him a handwritten
6 list, Your Honor, and I told him two days ago.

7 JUDGE HOPKINS: I will take your word for it.
8 You can go ahead.

9 MR. VON SALZEN: My only point, Your Honor, is
10 that the witness has not, at least at my request, read
11 these particular documents.

12 JUDGE HOPKINS: Well, let's see how he can
13 go.

14 Would you identify them?

15 MR. STEPHENSON: Oh, yes, I'm sorry, Your
16 Honor.

17 The first document would be SFSP No. 128. It
18 is portions of the verified statement of Mr. Brainard in
19 the UP case.

20 JUDGE HOPKINS: It will be marked for
21 identification.

22 (The document referred to
23 was marked Exhibit No.
24 SFSP-C-128 for
25 identification.)

1 MR. STEPHENSON: The next one would be
2 selected pages of verified -- wait a minute. No. 128,
3 verified statement of Mr. C. D. Brainard in the UP
4 merger case. That is 128.

5 SFSP-C-129, portions of transcript of
6 testimony of C. D. Brainard in UP merger case.

7 JUDGE HOPKINS: That will be marked for
8 identification.

9 (The document referred to
10 was marked Exhibit No.
11 SFSP-C-129 for
12 identification.)

13 MR. STEPHENSON: The third document is
14 selected pages of verified statement of C. D. Brainard
15 in the Tucumcari case. That is No. 130.

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

18 (The document referred to
19 was marked Exhibit No.
20 SFSP-C-130 for
21 identification.)

22 MR. STEPHENSON: And the next is portions of
23 transcript of Mr. C. D. Brainard in the Tucumcari case.
24 That is No. SFSP-C-131.

25 JUDGE HOPKINS: That will be marked for

1 identification.

2 (The document referred to
3 was marked Exhibit No.
4 SFSP-C-131 for
5 identification.)

6 BY MR. STEPHENSON: (Resuming)

7 Q At the bottom of page 3 of your verified
8 statement in this case, Mr. Brainard, you say the
9 proposed merger between Southern Pacific and Santa Fe
10 removes Southern Pacific as the last friendly
11 connection, last friendly western connection to Rio
12 Grande for the competitive movement of transcontinental
13 traffic.

14 Is that your statement?

15 A That is correct.

16 Q You were a witness in the UP merger case,
17 correct?

18 A Yes, sir.

19 Q In that case you filed a sworn statement
20 supporting Rio Grande's proposed trackage rights from
21 Pueblo to Kansas City over the Missouri Pacific, and
22 from Salt Lake City west to Oakland over the Western
23 Pacific, did you not?

24 A Yes.

25 Q And the statement submitted to the ICC in the

1 UP case was true and correct to the best of your
2 knowleige?

3 A Yes, except that the statements here and the
4 transcripts here are just a portion of the total
5 transcript, so that you really have to look at my entire
6 statement and transcript to get it in context.

7 Q Well, I have the entire transcript here in
8 front of me, and if you would care to look at it, I have
9 it available.

10 Did you subsequently appear in the UP case to
11 be cross examined on your statement under oath?

12 A Yes, sir.

13 Q When you tell the Commission in this
14 proceeding that this merger, that is, the SPSF merger,
15 will remove your last friendly connection in the west,
16 this is not the first time you have made that claim, is
17 it?

18 A Okay, in the Tucumcari case --

19 Q If you could answer the question, I will let
20 you explain it.

21 A I think that in the UP case, we termed the WP
22 as our last friendly connection in the context that it
23 was totally independent of any other system. The SP was
24 still a friendly connection but not as friendly because
25 they had their route through the south. But this was in

1 the context that the WP was the only railroad that was
2 independent of any other transcontinental system. It
3 was in that context.

4 Q And don't you term the Southern Pacific your
5 last friendly independent connection in this particular
6 case?

7 A It is all we have, and the Commission
8 recognized or told us that your part in preserving the
9 Central Corridor traffic, when they set up and
10 established this new SP-Rio Grande-Kansas City or
11 Herington Cotton Belt route, that we were to work
12 together to furnish the competition for the UP, and you
13 are the only connection we have left, and the Commission
14 stated that you would be friendly.

15 We have worked out the solicitation agreement
16 which I think indicates we are friendly, although that
17 is going to end when you merge with the Santa Fe. So
18 basically, you are our only physical access left that we
19 have that we can cooperate with to reach the west
20 coast.

21 Q And that is exactly the story that you told
22 the Commission in the UP case with respect to the
23 Western Pacific, that the Western Pacific was your last
24 friendly independent connection.

25 A You are not independent. We also told the

1 Commission that the reason we thought we could not count
2 on you is that you had reached an accommodation with the
3 UP. And we were wrong on the railroad, but we were
4 right that you would reach an accommodation, that we
5 could not count on you long term as someone that we
6 could work with for that reason.

7 Q Did you not also tell the Commission in the
8 Union Pacific case that Southern Pacific was not a
9 friendly connection, was not an independent connection
10 because they would work for their long haul via the
11 Tucumcari route, a 400 mile shorter route to Kansas
12 City, and that they would route their traffic over that
13 to the exclusion of the Rio Grande?

14 A We said that the Southern Pacific will not
15 provide an offset, an effective offset to the merger in
16 view of the SP's demonstrated preference for long haul
17 movements of transcontinental traffic.

18 You need to keep in mind that this was prior
19 to the Commission establishing the SP-Rio Grande Kansas
20 City-Cotton Belt route, and that the reason we said
21 this -- and it has been proved -- that there are certain
22 areas you would not cooperate with us. In fact, you
23 have eliminated us in your routes, as has the UP into
24 the southwest and the southeast. So I think you have to
25 take it in that context, that we didn't say the SP would

1 not work with us or we couldn't work with them. We said
2 they were going to be less friendly than the SP, the
3 WP. We also said we couldn't count on you long term.

4 Q And you said that because of our accommodation
5 with the Union Pacific and because of the shorter route
6 to Tucumcari, that you were going to be left without a
7 connection at Ogden.

8 A Where did I say that?

9 Q If you would look at the second page, without
10 the trackage rights --

11 A Wait a minute, second page of what?

12 Q Page 5 of 129, the verified statement of C. D.
13 Brainari in the UP merger case, 129.

14 A My 129 is transcript.

15 Q 128, I'm sorry.

16 A Page what?

17 Q Page 5, "Without the trackage rights
18 extensions it is requesting, the Rio Grande has no
19 alternative competing routes on which it could rely
20 effectively in competition with the single system
21 routing of the UP/MP. There are no offsetting routes
22 which could be made to meet the newly merged single
23 system routes of UP/MP since in every instance the only
24 remaining connections of the Rio Grande on
25 transcontinental traffic will also be direct competitors

1 with transcontinental long haul routes available."

2 A I would have to read the rest of my testimony,
3 if you have a copy, to place this in context. We are
4 only looking at one paragraph.

5 Q The next paragraph, "Since all of the Rio
6 Grande's remaining connections after this merger will
7 also be competitors with their own long haul
8 transcontinental routes encircling the Rio Grande,
9 another consolidation or merger could not enable the Rio
10 Grande to respond effectively in the Central Corridor
11 with single line service and rates between the West
12 Coast and points reached by the newly merged carrier
13 east of Colorado common points."

14 A Well, I think what I am saying here is that --
15 and again, I would have to read my entire testimony, but
16 I think what I am saying here is that the UP would have
17 a single line route and we would have a three-line
18 route, and that in order to respond effectively, we
19 would have to have a single-line route, too. I think
20 this is what I am saying.

21 But I would have to read my entire testimony.

22 Q Well, take a look at Exhibit No. 129. If you
23 will look at page 8866 of the transcript, you say there
24 to the Commission that the Western Pacific is your only
25 independent connection.

1 A They are, they were our only independent
2 connection that did not have a route through another
3 corridor. I think that in the paragraph up above where
4 there was a question of 12,000 to 15,000 cars, later on
5 in the cross examination I pointed out that we were
6 projecting a 60,000 car loss in the UP/WP/MP merger,
7 with no conditions, and this says 12,000 to 15,000, the
8 Tucumcari case we projected, so that the ratio of four
9 times as much loss to the UP versus Tucumcari is a rough
10 idea that the SP does compete in certain areas, but they
11 are not a complete competitor like the UP is.

12 And again, I would have to go through my
13 transcript, you know, to place the whole thing in
14 context. This is only two pages of, as I recall, it was
15 a couple of hundred pages that I was cross examined, and
16 this thing came up --

17 Q Be my guest.

18 A Do you want me to sit here on the stand and
19 read the thing through?

20 Q I don't think the judge does.

21 JUDGE HOPKINS: I don't think so.

22 BY MR. STEPHENSON: (Resuming)

23 Q In the Tucumcari case, did you -- well, let's
24 back up for a second.

25 In your verified statement at page 4 --

1 A Is this Tucumcari?

2 Q This is in this case.

3 A Oh, okay.

4 Q You say approval of the Southern Pacific/Santa
5 Fe merger would place Rio Grande in the position where
6 it would be the only carrier presently participating in
7 transcontinental traffic whose direct competitors
8 reached the destination-origin territories of Oregon and
9 California while it does not.

10 A And we reach it through you now.

11 Q And you would concede, would you not, based
12 upon our last reading of your verified statement in the
13 UP case, that that is the same story that you told the
14 Commission in the UP case?

15 A Okay, but keep in mind that the Commission
16 said that you were our connection that we should work
17 with. This was in the context of seeking conditions.
18 The Commission granted us our trackage rights to Kansas
19 City, they granted you your trackage rights between
20 Kansas City and St. Louis, and they said this is what we
21 want, the alternate route to the UP to be through the
22 Central Corridor, the Southern Pacific/Rio Grande Cotton
23 Belt, and that consequently, we have developed about
24 100,000 cars a year.

25 Now, the figures I gave you this morning on

1 interchange still show that our interchange prior to the
2 Tucumcari case to now has dropped from about 160,000 or
3 165,000 cars down to about 117,000, was that it?

4 Q Just to make sure that that is clear, that was
5 the combined interchange with both the Western Pacific
6 and the Southern Pacific.

7 A That's right.

8 Q And the decrease is due not to Southern
9 Pacific's slacking off on the volume but because the
10 Western Pacific is no longer working with you at Salt
11 Lake, isn't that right?

12 A Well, this I think is a good example of what
13 happens when there is a merger.

14 Q Could you answer the question and then go on?

15 A I can't answer that now without knowing what
16 your volume is through the south. It is entirely
17 possible in some figures I saw that Mr. Banner had that
18 your volume through the south versus your Central
19 Corridor volume has increased considerably.

20 In other words, at the time this case was --
21 or 1979, the Central Corridor volume was about 450,000
22 cars. Now it looks like it is about 300,000, which
23 means that sure, we are getting 100,000 cars, but it is
24 of a much smaller pie, and there may be a lot of that
25 business that we could have replaced our loss to the UP,

1 that instead of moving, continuing to move through the
2 Central Corridor, moving through the Southern Corridor.
3 I don't know without analyzing the figures.

4 Q The answer is you do not have any facts as the
5 previous Rio Grande witnesses have had no facts that
6 would suggest to you or that would demonstrate to the
7 Commission that Southern Pacific is diverting traffic
8 away from the Southern Corridor, and by that I mean
9 Northern California and Oregon traffic, diverting that
10 traffic away from the Central Corridor and to its
11 southern route?

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1 A The data I have shows from 1982 to 1983, this
2 is Mr. Banner's data, your Southern Corridor percent of
3 the total went from 45 to 55 percent, or whatever it
4 is. It is in his figures.

5 But beyond that, no, I don't have access to SP
6 traffic data beyond what he was able to obtain.

7 Q And his traffic did not consider flows, or his
8 traffic data did not focus on traffic moving over the
9 Tucumcari route, but simply that traffic moving the
10 Southern Corridor which could go into Texas and
11 Louisiana.

12 A Via SP. But we do know that you have
13 eliminated us from routes. So obviously, if we're not
14 handling it because you eliminated our routes, it's got
15 to be moving through the Southern Corridor

16 Q At the bottom of page 6 of your verified
17 statement, you say that the merger of Santa Fe and SP
18 would combine SP's gathering power in Northern
19 California and Oregon and Santa Fe's shorter route to
20 Kansas City and beyond, and that this will result in
21 diversions from the Rio Grande and the new SPSF route,
22 not because that route is more efficient but, in your
23 words, because the self-interest of the merged system
24 would dictate that it seeks its long haul to the maximum
25 extent possible.

1 That's your testimony.

2 A Yes, sir.

3 Q And that also is a statement that you have
4 made to the Commission both in the UP case and the
5 Tucumcari case as well.

6 A And we were right. Look what happened to our
7 WP interchange. It's dropped from 60 -- 58,000 cars to
8 3,000 cars. Our experience in working with the UP out
9 of southern California, this is pre-Staggers Act, when
10 we generally had equal routes. We've had about 1
11 percent of their transcontinental traffic through the
12 Central Corridor, and this is in the UP/MP case.

13 This is what happens when you lose the
14 cooperation of a friendly connection and become a
15 competitor. At best, you're looking at 2 or 3 percent
16 of the interchange. And this is not an idle statement.
17 It's what's really happened.

18 And this is what happens in these types of
19 cases.

20 Q In the Tucumcari case, Mr. Brainard, the Union
21 Pacific merger was not on the horizon. It was not a
22 reality. You were focusing your attention in the
23 Tucumcari case on SP's acquisition of the Tucumcari
24 route; correct?

25 A No, because -- well, yes and no, because you

1 did not implement your Tucumcari case in full until
2 after the UP merger.

3 We based our revenue or our diversion
4 estimates on the Tucumcari case going through as you
5 filed it. But you did not implement that until after
6 the UP merger. So there is really no way of anybody
7 determining what actually occurred.

8 What I am saying is that we made some
9 projections in the UP case, and they all came true.

10 Q I'm focusing on the Tucumcari case.

11 A I know you are.

12 Q Let me ask you the question. If you would
13 respond to the question, I'd appreciate it.

14 In the Tucumcari case, you were faced with
15 SP's acquisition and upgrading of the Tucumcari line,
16 were you not?

17 A Yes, sir.

18 Q And that proposal was put before you, and
19 there was an operating plan that indicated that at some
20 point in time, the Southern Pacific would upgrade that
21 Tucumcari line all the way from Kansas City to St.
22 Louis; correct?

23 A That's correct, except you never did implement
24 the entire thing.

25 Q But when you filed your opposition verified

1 statement in that case, you did not know what was going
2 to happen in the future as to the upgrading of the line
3 between Kansas City and St. Louis, did you?

4 A No, but what I'm saying is that when we made
5 the traffic study based on 12 to 15,000, or whatever
6 loss we projected, that was based on the Tucumcari line
7 being an isolated situation and occurring absent of any
8 other merger.

9 Now, what really happened is that you
10 implemented part of it to Kansas City, which was only
11 part of the diversion that we anticipated. Then you
12 didn't implement the rest until after the UP merger. So
13 I don't think that you can say that you can only
14 consider the Tucumcari line case in a vacuum, because
15 that's not the way it worked.

16 Q When you filed your verified statement in
17 opposition to the acquisition of the Tucumcari line, did
18 you know at that time that the line would not be
19 rehabilitated and that SP would not commence operations
20 between Kansas City and St. Louis until after the UP
21 merger was completed?

22 A No. But my point is, that's why -- we have
23 been hurt by the Tucumcari line but that's why we are
24 unable to determine whether we were right on our 12 or
25 15,000 cars, simply because it was never implemented in

1 the fashion that it was filed.

2 It got mixed up in the UP merger. And that's
3 why I think you have to look at them both together to
4 see the impact, because they are entwined.

5 Q Take a look at SFSP-130, page 3 and 4 of that
6 verified statement, and confirm that this is your
7 testimony.

8 "The acquisition of the
9 Rock Island-Tucumcari-Kansas City-St. Louis line by the
10 SP through the Cotton Belt or SSW has a significant new
11 impact on the anticompetitive problem of SP controlling
12 both a Central Corridor and a longer haul Southern
13 Corridor route by shortening the mileage substantially
14 on the latter, thereby making the Southern Pacific
15 Corridor even more attractive for SP. These mileage
16 comparisons are shown in Appendix B. SP's self-interest
17 will cause it to promote the use of its long haul
18 Southern Corridor route, even though it dominates the
19 Central Corridor west of Utah through handling 73
20 percent of the UP-SP-Utah Junction interchange."

21 That was your testimony in that case, was it
22 not?

23 A That's right. But again, we were talking
24 about the SP-Cotton Belt which was 12 -- 15,000 car
25 reduction, as opposed to 60,000 in the UP-MP. That

1 shows you the relative impact of the two, and we were
2 not talking about an SP-Santa Fe merger at that time.

3 That was an entirely different situation.

4 Q If you will look at Exhibit No. 131 -- I'm
5 sorry. The page has been clipped off of that. But at
6 the bottom of the page, in response to a question, you
7 say, "Okay, what I'm referring to here is that the
8 Southern Pacific has the Southern Corridor route and the
9 Ogden route. They have a self-interest to get their long
10 haul via the Southern Corridor route. They dominate the
11 Ogden interchange, and we have a competitive situation
12 because you are shortening your route by 400 miles."

13 That self-interest that you discussed in both
14 your written and cross-examination testimony in the
15 Tucumcari case is the same self-interest that you're
16 talking about at the bottom of page 6 in your verified
17 statement?

18 A That's right. That's right. But there's a
19 difference between self-interest and ability. You
20 didn't have the ability because your route was more
21 circuitous, as opposed to the Santa Fe merger.

22 And again, that is reflected by the fact that
23 we projected approximately 15,000 car loss, or whatever
24 it was, to the Tucumcari route versus 60,000 in the
25 UP-WP merger versus, what, 95,000 in this merger. It's

1 the degree of competition.

2 We did not predict anything like the diversion
3 in the Tucumcari case in this, and this reflects the
4 relative competitive ability of the Tucumcari route to
5 divert traffic, versus the SP-Santa Fe or the UP-WP.

6 Q Did you in the Tucumcari case say that with
7 the new 400-mile shorter, efficient route, that we would
8 be able to route around Ogden? Isn't that your
9 testimony?

10 A Yes. But again, you have to take it in the
11 full context of the case. It's a degree that you will
12 be able to do it. And you have a much greater ability
13 to do it with a shorter Santa Fe route than you do with
14 Tucumcari.

15 And the Commission in effect found that in the
16 UP-WP merger, that the Santa Fe was competitive with the
17 Central Corridor, but the Tucumcari route was not.

18 Q How many miles shorter is the Santa Fe route
19 from Stockton, for example, to Kansas City than the SP
20 route?

21 A I don't know, but it's the ability as to the
22 time you can make. The Commission found that the Santa
23 Fe sets the standard because of their route
24 configuration and everything for a lot of
25 service-sensitive traffic between San Francisco and

1 Chicago.

2 They made that finding in the MP case. They
3 did not make that finding on your Tucumcari route, and
4 they said that basically you would continue to work
5 through the Central Corridor when they set up these
6 Kansas City trackage rights with us and your Cotton Belt
7 trackage rights.

8 And so it's your ability to compete with the
9 Santa Fe. I think a good example is our solicitation
10 agreement and our piggyback traffic. You are working
11 the Central Corridor to compete with the Santa Fe and
12 the UP. If you could compete through Tucumcari, you
13 would.

14 So there is a degree of your ability to
15 compete, and that is reflected in our diversion figures
16 in Tucumcari versus these other mergers.

17 Q Would you agree that the Commission was
18 correct in its finding in both the Tucumcari case and
19 the UP case that the Central Corridor has a natural
20 advantage, and therefore shippers will continue to use
21 the Central Corridor as long as it's available?

22 A No, not in this case. I will agree they said
23 that, but they were not considering an SP-Santa Fe
24 merger. They said that the Santa Fe sets the service
25 standards for much service-sensitive traffic between

1 Chicago and the Central Corridor.

2 So what I'm saying in this testimony is when
3 you combine the gathering power and the gathering lines
4 of the SP with the direct Santa Fe route, you've got an
5 entirely different situation.

6 MR. STEPHENSON: That's all I have, Your
7 Honor. I don't think I'm going to win this debate. I
8 don't think he is either.

9 JUDGE HOPKINS: Thank you.

10 Ms. Reed, do you have any questions?

11 MS. REED: Just a couple.

12 BY MS. REED:

13 Q Good afternoon, Mr. Brainard. My name is Mary
14 Reed, and I'm with the U.S. Department of
15 Transportation.

16 Earlier today, you indicated that lumber and
17 paper were the commodities which come out of the lines
18 out of Oregon. Is that correct?

19 A Yes.

20 Q Are those commodities time-sensitive?

21 A No, because they have -- when they come out of
22 Oregon, they have two ways they can go. They can go
23 over Ogden or over the southern route. And an SP
24 witness testified to this.

25 So that the fact that they can go over the

1 southern route on a lot of this traffic would indicate
2 that it's not like piggyback, if that's what you're
3 talking about, as far as being time-sensitive.

4 Q So a three or four day difference in transit
5 time would have no effect on shippers' routing
6 policies? Is that it?

7 A Well, I think right now, I don't know if it
8 would be three or four days, but it certainly could
9 stand additional transit time.

10 Q You don't know how much -- a day or two?

11 A Well, of course, some lumber they purposefully
12 slow down. I would think a couple of days anyway. I'm
13 sorry I can't give you a more precise number.

14 Q Now, in determining how much traffic you can
15 attract from the various TOFC ramps that you plan to
16 have, how far did you -- how far were trucks able to
17 truck to the ramp?

18 A Okay. On this, it makes a difference of how
19 far ramps are apart. And let's say that you have point
20 A and point B at the extreme ends and point C in
21 between. If you have -- well, let's use specific points
22 because we will get all confused.

23 Let's say that you have a ramp at Fresno and
24 you have a ramp at Stockton which is about 100 miles
25 apart, and you've got a point that is midway in between,

1 50 miles from each.

2 Okay. Each of those ramps could compete
3 within that 50 miles. Now, if you get down to a point
4 20 miles from Fresno and it's 80 miles from Stockton,
5 it's questionable whether you could go out those 80
6 miles and compete because you're so close to the Fresno
7 ramp.

8 Now, if you're at a point that is equally 100
9 miles from Fresno and a 100 miles from Stockton, then
10 both ramps could compete for that traffic if they didn't
11 have a ramp at that third point.

12 So it really depends upon the particular
13 situation. I don't think there's any set rule as to how
14 far you can go out. A hundred miles has been mentioned,
15 but you have to consider the location of the competitive
16 ramps when you look at that.

17 Q If there are no competitive ramps within 100
18 miles, for example, we talked about putting one at
19 Klamath Falls, is that right? Is there one at Klamath
20 Falls?

21 A No. The SP, that I know of, does not have one
22 there.

23 Q Are there any ramps that are not within 100
24 miles of another ramp, do you know?

25 A Oh, sure. There are points. For example,

1 Eugene is -- I don't think there's any ramps, at least
2 there's no any on the SP that I'm aware of between, say,
3 Eugene and Roseville, so that the truck competition
4 would put the cap on how far out you could go there,
5 rather than intra-rail competition.

6 Q Do you know how far that would be?

7 A Well, Eugene and Roseville must be 500 miles.
8 You couldn't reach out that far. But you were asking if
9 there were any instances that I was aware of where ramps
10 were more than 100 miles apart. But after you get out
11 more than 100 miles, I would say it would be pretty --
12 as a general rule, you probably couldn't compete. It
13 would't be economical.

14 Q Now, you also indicated earlier that the
15 SP-SSW was your competition for northern California and
16 Oregon traffic versus the SP-DRGW.

17 A They are one of them, and, of course, the
18 Santa Fe and the UP also.

19 Q Now, in comparing the SP and the SSW, are
20 there single line rates -- do they have single line
21 rates to the same points as SP-DRGW?

22 A I think that -- okay, let's take regulated
23 traffic. First of all, if you keep in mind that, at
24 least based on the information that we have in the
25 transcontinental markets we compete in on the West

1 Coast, about 90 percent of the traffic is deregulated.
2 And when I say deregulated, it includes piggyback, it
3 includes boxcar, and it also includes contract rates
4 which I am defining as deregulated because once the
5 contracts are filed with the Commission, you know, they
6 are under the antitrust laws.

7 So on regulated traffic, that that is still
8 left, yes, they do. And I understand on contract rates
9 to some areas, they publish them with us. They also
10 publish them via their Southern Corridor route, but
11 again we are not privy to that information.

12 Q So you don't know whether the rate levels
13 would be the same?

14 A Well, prior to deregulation they were. A
15 couple of years ago they were, and I think there are
16 instances where they're the same, and there are
17 instances where they are not the same.

18 MS. REED: That's all I have.

19 JUDGE HOPKINS: Mr. Solander.

20 BY MR. SOLANDER:

21 Q Mr. Brainard, my name is O. J. Solander, and I
22 represent the California Department of Transportation.
23 My department and the Public Utilities Commission of
24 California are cooperating in the study of the impacts
25 of the proposed merger and the responsive application.

1 This afternoon you mentioned in the trackage
2 rights situation, if that is exclusively part of your
3 application as your fallback position --

4 A Yes.

5 Q You would not be authorized to purchase the
6 lines that you would witness a 10 to 15 percent
7 reduction in the traffic diversion. Is that correct?

8 A Well, okay. We projected 170,000 cars and
9 trailers and it would be 10 to 15 percent less than that
10 if instead of purchasing the lines east of Roseville and
11 Klamath Falls, that we have trackage rights over them.
12 And this is with the assumptions I gave, and including
13 serving the points on the present purchased lines.

14 Q Would the reason be that where you purchased
15 the line, SP would not be a competitor for the business,
16 whereas --

17 A Yes. In other words, under our study where we
18 purchased the line, we projected handling 100 percent of
19 SP traffic. .

20 Now, if we're both out there competing for it,
21 we are not going to get 100 percent. That would be one
22 factor.

23 The second factor would be -- say we'd
24 continue to operate into Ogden. There would be some
25 non-CP traffic where we had projected a California or

1 Oregon Junction haul -- this is Colorado-Utah traffic,
2 not transcontinental -- that we would get an Ogden haul
3 instead.

4 We still feel that even if -- whether they
5 continue to serve Ogden or not, they're still going to
6 seek as much traffic as they can through the Southern
7 Corridor, and this is reflected in Mr. Thiessen's
8 traffic study.

9 Q Did you or anyone in DRGW determine whether or
10 not that 10 to 15 percent reduction would also result in
11 a loss of income, proposed income to the railroad?

12 A Well, that would be Mr. Smith. He is our
13 financial witness. I can't answer your question.

14 Q Do you know whether or not he did put some --

15 A I don't know. He's being cross-examined by
16 phone. I don't know what his testimony says or, you
17 know, whether he has made any studies or not.

18 Q Do you know whether Mr. Smith or anybody in
19 DRGW has determined the amount of income that needs to
20 be realized from the diverted traffic in order to make
21 the proposal of DRGW, assuming a purchase of the
22 properties, a financially viable one for DRGW?

23 A Well, again, that would be Mr. Smith. I don't
24 know. I can't answer your question. He's our financial
25 witness.

1 Q Okay. How about in terms of your verified
2 statement, assuming the trackage rights situation and
3 the 10 to 15 percent reduction; would we simply be able
4 to go through and, on the numbers that you have
5 indicated, just apply a 10 to 15 percent reduction?

6 A Yes.

7 Q Would it make any difference as to whether
8 that reduction would apply in Oregon or California, or
9 would it simply be to the gross numbers?

10 A Basically, the reduction would apply on the
11 traffic, most of it would apply on the traffic that
12 originates or terminates on the lines between Ogden and
13 Roseville and Klamath Falls.

14 Now, if we only had trackage rights on the
15 main line and not like the Mina branch and the
16 Susanville branch and so on, it would be somewhat more
17 of a reduction than 10 to 15 percent.

18 But basically, most of it would occur on the
19 purchased lines.

20 Q Can you tell me how important the Oregon
21 traffic is to the financial viability of your proposal?

22 A Well, it's very important. You can kind of
23 back into it by taking what we project to Oregon, and
24 then considering that the piggyback trailer which is
25 mostly to California in terms of carloads -- of carload

1 freight, not piggyback freight where you have two
2 trailers to a car, but a carload freight which would
3 run, say, 120, 150, 180 tons to a car, is equivalent to
4 three to four trailers, and our divisions -- or in the
5 SP's divisions west of Ogden is maybe more 20 percent
6 more to the Bay Area.

7 And based on that, I would estimate that
8 Oregon would account for maybe 35 to 40 percent of the
9 total CP revenue, if you want a rough estimate.

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1 MR. SOLANDER: That's all I have.

2 JUDGE HOPKINS: Any redirect?

3 MR. VON SALZEN: No redirect.

4 JUDGE HOPKINS: You are excused, sir.

5 (The witness was excused.)

6 MR. VON SALZEN: Your Honor, I move the
7 admission of Mr. Brainard's verified statement.

8 JUDGE HOPKINS: Any objections?

9 MR. STEPHENSON: No objection.

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

12 Do you move the admission of your --

13 MR. STEPHENSON: Yes, I do, Your Honor. I
14 move the admission of the four exhibits, 128, 129, 130,
15 131.

16 JUDGE HOPKINS: Any objection?

17 MR. VON SALZEN: No objection, Your Honor.

18 JUDGE HOPKINS: They will be received in
19 evidence.

20 (The documents referred to,
21 previously marked Exhibits
22 SFSP-C-128-131 for
23 identification, were
24 received in evidence.)

25 JUDGE HOPKINS: Off the record.