

F.D 30400

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BEFORE THE
INTERSTATE COMMERCE COMMISSION

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

Hearing Room A
12th & Constitution, N.W.
Washington, D.C.
Thursday, January 31, 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.

00040004

C O N T E N T S

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2	<u>WITNESS</u>				
3	David Bernstein				
4	By Mr. Roberts	9753			
5	By Mr. Michael Smith		9759		
6	By Mr. Ratner		9784		
7	Laurence J. Stern				
8	By Mr. Roberts	9792			
9	By Mr. Michael Smith		9792		
10	By Mr. Paul Smith		9809		
11	By Mr. Ratner		9835		
12	Joseph R. Pantano				
13	By Mr. Roberts	9842			
14	By Mr. Michael Smith		9843		
15	By Mr. Paul Smit		9846		
16	By Mr. Ratner		9850		
17	Warren Black				
18	By Mr. Roberts	9853			
19	By Mr. Michael Smith		9854		
20	By Mr. Paul Smith		9860		
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1 JUDGE HOPKINS: Well, you don't need to have
2 that.

3 MR. ROBERTS: We have the designation. Thank
4 you.

5 JUDGE HOPKINS: Unless you have a counsel's
6 exhibit, these will be just received in the ordinary
7 way.

8 MR. ROBERTS: Thank you, Your Honor.

9 BY MR. ROBERTS: (Resuming)

10 Q Mr. Bernstein, do you have any additions or
11 corrections to your verified statement?

12 A I do not.

13 MR. ROBERTS: Your Honor, I tender the witness
14 for cross-examination.

15 JUDGE HOPKINS: Mr. Smith.

16 CROSS EXAMINATION

17 BY MR. MICHAEL SMITH:

18 Q Good morning, Mr. Bernstein. My name is Mike
19 Smith. I'm with the Southern Pacific, but I am going to
20 be cross-examining you on behalf of the Applicants.

21 Page 1 of your statement, I believe you say
22 that you generally sell your domestic fruit F.O.B.
23 origin. Does that mean that the consignee or the
24 receiver would be the one that would pay the freight
25 charge?

1 A Yes.

2 Q About what percentage, if you know, of your
3 shipments from California are of that type where the
4 consignee would pay the freight charge?

5 A I do not know the percentage, but Mr. Stern,
6 our transportation manager, will be testifying and he
7 should have a good idea of that. It's a large
8 percentage.

9 Q Okay. In that case where it's the consignee
10 rather than Sunkist that is actually paying the
11 transportation charges, does that affect the ability of
12 Sunkist and the railroad, either SP or Santa Fe, to
13 enter into any kind of contracts with Sunkist?

14 A Not really, because we have substantial
15 influence in that decision, based on various
16 transportation modes available. And, for the most part,
17 our customers look to us for substantial input and
18 advice regarding the most efficient, least costly
19 transportation mode.

20 Q Okay. Then I guess I'm trying to see whether
21 or not Sunkist -- do you actually have contracts with
22 the rail carriers for the transportation of your
23 commodities?

24 A Well, beyond a bill of lading contract for
25 each individual shipment, I know of no long-term rail

1 contracts. However, the fact that the consignee pays
2 the freight is really not a factor in our ability to do
3 that, because in export markets we have several
4 contracts for transportation where the buyer ends up
5 paying the freight.

6 Q Okay. But that's not involved in this case,
7 is it, the export?

8 A No, just the concept of the consignee paying
9 the freight is not an impediment to us entering a
10 contract.

11 Q On page 2 of your statement, you have some
12 figures in the center there. In the middle of that
13 second full paragraph, you say, "The lowest rail rate
14 rated to New York from SP origins," and so on.

15 My question there is, first of all, you say
16 that was during the 1983-1984 shipping season. First
17 of all, were the rates you quote there on page 2, were
18 those carload rates or TOFC rates?

19 A Carload rates.

20 Q Can you tell me, when you say 83-84 shipping
21 season, what period of time does that cover?

22 A That would be October -- that would be
23 November 1, 83 through October 31, 84, I believe.

24 Q Okay. During that period, in a shipping
25 season -- let's take this one since you have used it,

1 the '83-'84 shipping season -- by how much, if you know,
2 does this rail rate vary throughout the season?

3 A There is some variation. I would have our
4 transportation manager give you the -- I think he would
5 know the range with more accuracy than I would.

6 Q In other words, you have given us the lowest
7 rate for a season. Do you have any idea approximately
8 how much higher the rate would get throughout that
9 season?

10 A I could give you a guess, but the next witness
11 will know the precise number. This was an attempt to
12 show the lowest rate.

13 Q Do you have any idea whether or not the motor
14 carrier rates vary significantly throughout a season?

15 A Yes. Again, I would not quantify the range,
16 but they would vary to some degree and would, of course,
17 be higher than the rate I have listed here.

18 Q Right. Can you tell us what factors, in your
19 opinion, affect the level of rail rates throughout a
20 season? In other words, what factors will determine
21 whether that rail rate is going to be higher rather than
22 lower?

23 A The demand for various types of equipment, the
24 demand for the products in question, the level of
25 service, the performance of claims, the quality of the

1 equipment, all of those factors together would go into
2 the demand level.

3 Q In other words, when there's a higher demand
4 during the peak shipping season, let's say, the rail
5 rates would be expected to be higher?

6 A Yes.

7 Q Would the same be true of the motor carrier
8 rates?

9 A Yes.

10 Q Do you have any idea what the influence is on
11 the prevailing -- well, let me strike that.

12 Does the price of the commodities, in other
13 words, the price that your customers are able to get
14 when they sell the citrus in their markets, does the
15 level of the price of the commodities have anything to
16 do with the tendency of Sunkist and your customers to
17 use truck rather than rail?

18 A There will be a couple of our customers
19 testifying later, and you can ask them. In my view, it
20 would have some effect on their decision. The strength
21 of the market, the price of the product.

22 Q If the product is at a higher price level,
23 does that mean that there's going to be a greater
24 tendency to go truck rather than rail?

25 A Not necessarily.

1 Q You have noticed no such trend? In other
2 words, when the price levels are high on the East Coast,
3 you don't notice any trend of more truck usage?

4 A Not necessarily. Sudden and dramatic
5 increases in the price might have a tendency to increase
6 truck or any other mode that would cause the fruit to
7 arrive earlier. But that is usually of short duration
8 and is limited, I think, to relatively few occasions.

9 Q In your opinion, is there any relationship at
10 all between the rail rates and the truck rates? In
11 other words, do truck rates influence rail rates, or
12 vice versa?

13 A I think Mr. Stern would be much better able to
14 answer that question. From my perspective, maybe some
15 influence, but not a tremendous amount.

16 Q On the third page of your statement, Mr.
17 Bernstein, right at the top, you say that the cost of
18 TOFC and truck transportation is substantially higher.
19 And I think you're referring to higher than the rail
20 carload rate; is that correct?

21 A Yes.

22 Q The first question is, I want to ask you about
23 the relationship between TOFC rates and motor carrier
24 rates. They are both higher than carload rates, but how
25 do they compare to each other? Is TOFC about the same

1 as truck, or is it a little higher or a little lower, if
2 you know?

3 A It's a little lower. Again, the details on
4 that could be addressed by Mr. Stern who is very close
5 to it.

6 Q Would the same -- should I also ask Mr. Stern
7 about the level of the motor carrier rates throughout
8 the 83-84 shipping season as compared to the figures you
9 give on page 2 for the rail carload rate?

10 A Yes.

11 Q And when you say that the cost of TOFC and
12 truck transportation is substantially higher, are you
13 saying in that sentence substantially higher than the
14 lowest rail carload rate? Is that the thrust of what
15 you're saying?

16 A Would you repeat the question?

17 Q Well, in the context of your statement, the
18 paragraph in which at the top of page 3 you state that
19 the cost of TOFC and truck transportation is
20 substantially higher, you, I think, are comparing that
21 to -- you are saying that it is substantially higher
22 than the lowest rail carload rate; is that correct?

23 A All that is saying is what it says; that the
24 lowest rail rate in the year in question amounted to
25 about a third of the landed cost, and that if the same

1 fruit moved by truck with TOFC, it would be a higher
2 percentage.

3 That's all I'm saying; that the freight is a
4 substantial part of the landed cost. If it was the
5 other two modes, it would be a higher percentage of the
6 landed cost, regardless of where the rail level was.

7 Q Does the highest rail carload rate, the
8 highest, ever approach the lowest TOFC or motor carrier
9 rate?

10 A Well, it's a matter of degree. The range
11 closes and opens. The magnitude of the range I would
12 leave to Mr. Stern.

13 Q Do those ranges fluctuate together? In other
14 words, as the rail carload rates increase, do the TOFC
15 and motor carrier rates also increase?

16 A I think there is a tendency to it, but I would
17 again leave that to our expert.

18 Q Now, when you compare TOFC rates to motor
19 carrier rates, are you looking at -- you answered a
20 question earlier, and you said generally the TOFC rates
21 are lower than the motor carrier rates; correct?

22 My question is, when you made that statement
23 or answered that question, were you just talking about
24 the ramp-to-ramp TOFC charge, or were you looking at the
25 total door-to-door rate for using TOFC which would

1 include drayage on either end, ownership of the
2 equipment, and so on?

3 A I'm talking about the quoted rate, ramp to
4 ramp, and if any trucking is included in that rate, it
5 would be included, but certainly not intending to cover
6 investment cost, capital cost, or anything like that.

7 Q So you don't know, for example, whether the
8 rates that you are referring to here, the quoted rates
9 for TOFC, include the ramp-to-destination drayage or the
10 origin-to-ramp drayage charge, for example?

11 A Well, the only rate I'm referring to in the
12 statement is the rail rate. That's the only rate I
13 think I have mentioned.

14 Q But when you answered my question earlier
15 about TOFC rates generally being a little less than
16 motor carrier, you don't know whether that includes the
17 total charge or just the ramp-to-ramp?

18 A I believe that to include the total charge for
19 the movement in question.

20 Q Does Sunkist own -- well, does Sunkist use
21 Plan 3 TOFC shipments?

22 A Yes, we do.

23 Q Do you own your own vans, then?

24 A No, we don't.

25 Q Whose are you using? Your customers'?

1 A We use various third party services, several
2 of them.

3 Q Do you use Plan 2-1/2 TOFC where the railroad
4 provides the van, but you have to furnish -- you, the
5 customer, has to furnish the drayage at either end?

6 A I'm not sure.

7 Q Are you aware that generally the Plan 3 TOFC
8 rates do not include, obviously, the cost of ownership
9 of the van?

10 A I'm not aware one way or the other.

11 Q And it wouldn't include, would it -- if you
12 know -- the cost of providing protective service, the
13 refrigeration?

14 A I wouldn't know.

15 Q Are those, in your opinion, substantial
16 costs?

17 A I would not know.

18 Q Page 3 of your statement, "r. Bernstein, in
19 the first full paragraph you say, "Sunkist is very
20 concerned with the diminished rail competition over the
21 past few years."

22 And I am curious to know what you mean by
23 that, what period of time you're talking about, and how
24 competition has diminished.

25 A In terms of time period, I would be talking

1 generally about the last 10 to 15 years, and I would
2 refer to the various mergers, reduction in available
3 routes, and just the tendency towards concentration
4 which we see occurring and which, I think, we really
5 intend more to look almost prospectively at the prospect
6 of decreased rail competition.

7 Q When you say rail competition, do you mean
8 intramodal, rails competing with each other, or are you
9 referring to rails competing with other modes?

10 A Rails competing with each other.

11 Q So you think that there is already a trend
12 towards that, irrespective of this merger?

13 A Yes.

14 Q What about this? Do you agree that both SP
15 and Santa Fe compete with motor carriers for perishable
16 traffic from central California?

17 A Yes.

18 Q Now, you say, I believe somewhere in here,
19 that generally Sunkist does not actually -- well, let me
20 ask this. Does Sunkist select the actual mode, truck
21 versus rail, on these shipments?

22 A On some shipments, yes.

23 Q About what percent, if you know?

24 A It's very difficult for me to say.

25 Q Would it be less than half?

1 A I leave that to Mr. Stern.

2 Q In Appendix A, you've got some data on percent
3 of Sunkist traffic that moves rail TOFC. Do you see
4 that?

5 A Yes.

6 Q Do you know whether that data is on the
7 shipments for which Sunkist makes the mode selection, or
8 is that on all shipments, regardless of who makes the
9 selection?

10 A I believe it's on all shipments.

11 Q Now, I noticed here that these are East Coast
12 destinations, primarily, and my question is, this is for
13 the November through September -- November '83 through
14 September '84 season, before deregulation of fresh
15 fruits and vegetables, which I think happened in 1979.
16 Were these figures about like this, or how did they
17 differ, if you know?

18 A I'll let Mr. Stern answer that. I believe
19 that since deregulation, there has been an upward trend
20 in rail car and TOFC, but I will leave the detailed
21 answer to him.

22 Q So, in other words, your opinion is that
23 before deregulation, motor carriers had a higher share
24 of these long distance --

25 A That's my general perception.

1 Q On page 3, we were talking about this before,
2 where you were saying that the cost of TOFC
3 transportation is higher than rail carload. Do you
4 remember that?

5 A (Nods in the affirmative.)

6 Q According to your Appendix A, it is apparent
7 that at least for the destinations you show on Appendix
8 A, substantial portion of traffic is moving TOFC as
9 opposed to rail carload.

10 And my question is, if the rates are so much
11 higher, why, in your opinion, is more traffic moving
12 TOFC than rail carload on some of these moves?

13 A Well, I didn't say so much higher. They are
14 higher. We can talk about the degrees with the
15 appropriate witness, but service elements are obviously
16 important and claim experience, transit time, other
17 factors which would be balanced against the absolute
18 rate.

19 Q Okay. That's a point that I want to make
20 clear; that from a customer or rail user's point of
21 view, it isn't just the rate level that's important, but
22 it's the whole package; it's the transit time, the
23 service. So that you may, for example, be willing to
24 pay more to use a different type of service if you get a
25 better service from paying it.

1 A I would agree that it's the total range of
2 factors that determines the mode.

3 Q Do you have any idea what the transit time is,
4 on average, for rail carload service on your products
5 moving between central California and, let's say, New
6 York?

7 A I have a general idea, but the next witness
8 has a very specific idea.

9 Q How does it compare to motor carrier?

10 A It's longer.

11 Q Is it twice as long, do you think?

12 A No. But the degree can be answered in detail
13 by the next witness.

14 MR. MICHAEL SMITH: All right, thank you.
15 That's all I have.

16 JUDGE HOPKINS: Are there further question?

17 MR. PAUL SMITH: Your Honor, Paul Smith,
18 Department of Transportation. Mr. Ratner has kindly
19 consented to my going before him this morning.

20 BY MR. PAUL SMITH:

21 Q Good morning, Mr. Bernstein. Could I ask you,
22 please, to turn to the second page of your statement?
23 In the first sentence there, you state that some of your
24 most important markets are located in the eastern U.S.
25 and Canada.

1 Do you have any idea of the proportion of your
2 product that goes to what you consider the eastern part
3 of the U.S. and Canada?

4 A I think about 60 percent is a guess, an
5 educated guess.

6 Q Do you mean something other than, say, from
7 Washington up to Boston, along the seaboard? Do you
8 mean up and down the Coast, including Florida?

9 A No. I would mean the northeastern United
10 States and eastern Canada; Montreal, Toronto, east in
11 Canada; east of Chicago.

12 Q You do have customers in the South, the
13 Midwest, and the West; is that correct?

14 A Yes.

15 Q And they would get your other 40 percent or so
16 of the product?

17 A Yes. It's just a rough range.

18 Q Do you know whether your customers, both
19 eastern U.S. and Canada and elsewhere, have other
20 suppliers of fresh perishables and citrus?

21 A Yes, they do.

22 Q And those other suppliers would be located
23 along the Gulf States -- Florida, Texas, Louisiana, and
24 so forth?

25 A They'd be located in California, Arizona,

1 Texas, and Florida in the case of citrus.

2 Q Would you say that those suppliers that are
3 closer geographically to the customers, to a given
4 customer than you are, would have a cost advantage, at
5 least owing to their transportation portion of the
6 overall price over Sunkist?

7 A In some cases.

8 Q In some cases you might be able to meet or
9 beat them, despite their distance?

10 A Beat them in what sense?

11 Q Price.

12 A Total landed price?

13 Q Yes.

14 A Yes.

15 Q Because of the volume?

16 A Depending on crop conditions, market
17 conditions, inventories.

18 Q Assuming that the product desired was
19 available in equivalent prices and quantities from both
20 Sunkist and other shippers located in, say, the Gulf
21 States going to New York, would, in those circumstances,
22 the Gulf State producers, growers, have a cost advantage
23 over Sunkist going to the northeastern U.S. and Canada?

24 A Would you repeat the question?

25 Q Assuming the quantity of the desired product

1 is comparably available from both Sunkist and producers
2 along the Gulf State region to the northeast and Canada,
3 going to the northeastern U.S. and Canada, would those
4 growers have a transportation cost advantage over
5 Sunkist in general?

6 A I can't answer that in general, but I think
7 it's important for me to say that our primary
8 competition exists in California and Arizona, in the
9 growing areas where our members grow and pack their
10 fruit. So our primary competition is with other citrus
11 packers in California and Arizona. And secondary
12 competition in the Gulf States.

13 In those cases that we're looking at secondary
14 competition for the same mode, they would generally have
15 a freight advantage, and that is the reason that for the
16 eastern markets, for the large metropolitan markets
17 located in closest proximity to the Gulf growing areas,
18 rail is our major competitive tool to offset what is
19 usually a transportation advantage for them.

20 Q Secondary in the sense that they don't produce
21 the volume or quantity of goods?

22 A The type of fruit they produce is different
23 for the most part. Our largest variety are naval
24 oranges, grown and marketed from November through March
25 or April, and they really do not grow a market of fruit

1 that is competitive with that.

2 We compete more actively with other varieties
3 of citrus.

4 Q Would you know what proportion of citrus
5 produced -- what proportion of the total primary
6 competitive market that you have is produced by Sunkist
7 Growers versus your other competition? In other words,
8 what share of the market, volume-wise, does Sunkist
9 Growers have over your western competition, primary
10 competition?

11 A It varies. It varies by season and by
12 region. As a general benchmark, we have 50 to 60
13 percent of the citrus -- we market 50 to 60 percent of
14 the citrus grown in those two states.

15 Q Are your competitors combined into
16 cooperatives or other large associations the way Sunkist
17 is, or are they more independent?

18 A They are all forms, sizes, and shapes, large
19 corporations, cooperatives, individual units.

20 Q Also on page 2, you refer to the lowest rail
21 rates again between central California and New York.
22 Would you be able to tell me whether those rates are
23 mileage-based in the sense that they hold elsewhere in
24 the United States, so that if I were to know the mileage
25 between central California and New York, I could

1 determine what the rate would be from any given location
2 to New York?

3 A I couldn't answer that.

4 Q Now, in those cases, roughly as in this case,
5 where there is a \$500 difference in the rail rate, I
6 suppose on a per-car basis that might, if it were -- if
7 Santa Fe were more convenient but Southern Pacific had
8 the lower rate, you would nonetheless, to get that \$500
9 difference, attempt to get your product to Southern
10 Pacific; is that right?

11 A As a general rule we would.

12 Q Would you be able to give me any kind of
13 approximate distance or -- approximate distance that you
14 would be able to truck or otherwise transport your
15 product to Southern Pacific in order to take advantage
16 of that \$500 difference?

17 A It would vary. There are about 60 member
18 packing houses in the two states. The distance would
19 vary greatly. In all cases, just to load it into the
20 truck to move it, it's expensive. It is a costly
21 operation, regardless whether it is one mile, half a
22 mile, or ten miles.

23 Q And it could be a further distance if it were
24 in fact a TOFC service provided, so that you wouldn't
25 have to load and unload an additional time. In other

1 words, if you had the TOFC trailer, that would enable
2 you to truck it farther for a given dollar price
3 difference than if you had to load it onto a truck, and
4 that had to be in turn unloaded at a railroad loading
5 facility.

6 A I'm not sure I follow the question.

7 Q For any given dollar difference in rail
8 rates --

9 A Between the two carriers?

10 Q Between the two carriers. My question is,
11 assuming you have a distance to go to get to the cheaper
12 rail, I assume that it could be economically feasible to
13 go a longer distance if you had a trailer available at
14 your shipping facility that would be simply loaded on a
15 TOFC at a TOFC ramp, than if you had to load up a truck
16 and unload it onto a rail car at that same railroad.

17 A It sounds reasonable, but again I would defer
18 to our transportation expert.

19 Q Would you turn to page 3, please, of your
20 statement? Now, at that point on the first full
21 paragraph, you discuss motor carriers. Excuse me -- the
22 carryover paragraph, you suggest that TOFC and truck
23 transportation is substantially higher than rail
24 transportation costs.

25 Would you be able to tell us whether there's

1 some kind of mileage radius at which point it becomes
2 cheaper to transport by rail than by truck? Within that
3 radius, it's cheaper by truck, and beyond it's cheaper
4 by rail?

5 A You mean in terms of the carrier's cost?

6 Q The cost to you or your customer in the sense
7 that most of your customers have to pay for the
8 transportation. And, as you said, you are giving them the
9 most efficient, least costly transportation service.

10 In your capacity as adviser to your customers,
11 transportation adviser as well as the product adviser,
12 is there a distance beyond which it is cheaper to ship
13 by rail than by truck?

14 A Yes. I don't know precisely what that
15 distance is in miles, but obviously the longer the haul,
16 the more efficient and less costly rail transportation
17 would tend to be.

18 Q But you wouldn't have an idea as to even a
19 ballpark figure what that tipping point might be?

20 A I would not hazard a guess at what miles that
21 would be. I think our exhibit shows, Exhibit A shows
22 those markets where certainly there tends to be an
23 advantage for rail or TOFC.

24 Q For your southern, central, and western
25 markets, would we find a high percentage of truck

1 transportation?

2 A Yes. Truck and TOFC.

3 Q Now, for those markets that are located on
4 Appendix A, do you know which rail corridor those went
5 by, Central Corridor, across the middle of the United
6 States, or southern or even northern?

7 A I think Mr. Stern could address that. But
8 going back to your question, it is our policy, as a
9 matter of marketing policy, we encourage rail
10 transportation wherever we think -- or whenever the
11 rates and service appear to be advantageous.

12 As a matter of policy we encourage it, because
13 it is heavier loadings and a more efficient method of
14 transportation geared with our view of marketing.

15 Q Isn't it always your policy to encourage the
16 most efficient, least costly method, whatever that might
17 be, for a given customer and a given shipment?

18 A Yes. But in few cases does it get as vivid as
19 this.

20 Q I don't understand that.

21 A When you're talking about ocean transportation
22 and other forms of transportation, you are dealing
23 usually with a similar mode and you don't have the
24 differences in claims, transit time, overall service,
25 that we have between the three modes that are the

1 subject of your question.

2 Q In the second full paragraph on page 3, you
3 indicate that your use of rail transportation has been
4 increasing in recent years.

5 Is this because costs have gone down relative
6 to trucks?

7 A I think it's more the overall service has
8 improved. The overall service and the heavier loadings
9 triggered by the citrus industry complaint case several
10 years ago have made it an increasingly more cost
11 efficient mode.

12 Q Would that statement be -- do you mean me to
13 apply that statement to all your markets in general, or
14 to the eastern U.S. and Canadian markets in particular?

15 A To the longer distance markets.

16 Q Nor is that true, because customer
17 requirements or locations have changed? Is that a
18 factor in increased use of rail?

19 A I don't believe so.

20 Q Now, on page 3 and 4, on the bottom paragraph
21 that carries over, talking about your concerns, fears,
22 and beliefs about the loss of competitive rail service,
23 have you ever actually experienced a loss of competitive
24 rail service in the past?

25 A Yes.

1 Q Where? When was that?

2 A On the origin, the amount of origin routes
3 available to us. I'm sorry -- on the destination ends.

4 Q Eastern railroads?

5 A Yes.

6 Q What has been the effect on Sunkist of that?

7 A It has impeded the increase that we would like
8 to have seen in rail transportation.

9 Q Has it led to higher costs?

10 A I can't answer that.

11 Q Or to increased damages and therefore more
12 claims?

13 A It has led to decreased flexibility. We have
14 less options available in planning our destination
15 routes.

16 Q Finally, on page 4, your discussion focuses on
17 damages and payment of claims. Is that -- since your
18 customers pay for the transportation by and large, as
19 you have testified, that is something that the customers
20 generally make to the railroads rather than to Sunkist;
21 is that correct?

22 A No. On many occasions we will reimburse the
23 customer for what we believe is the valid loss and the
24 claim will be assigned to us.

25 Q Is that -- would you be able to give us an

1 approximate portion that claims costs or damage costs
2 are to your total rail transport costs?

3 A No, I wouldn't.

4 Q Do you know whether your claims experience
5 differs from railroad to railroad over time,
6 specifically between Southern Pacific and Santa Fe in
7 this instance?

8 A Yes, I believe there is a difference.

9 Q A consistent difference in what we will call
10 quality of service with respect to loss of perishables?

11 A Well, first of all, you said claims
12 experience. In terms of claims experience, the
13 procedures, it's my belief that we tend to have a much
14 more difficult time with the Southern Pacific than with
15 the Santa Fe.

16 With regard to claims experience, I would have
17 to defer to Mr. Stern.

18 Q I'm not sure I understand. You said you had
19 to make more claims with Southern Pacific over time?

20 A No, I didn't say that. In terms of the
21 efficiency, speed, and professionalism with which claims
22 are settled, I think our experience with the Santa Fe
23 tends to be better.

24 Q But in terms of the quantity, the number of
25 claims, the amount of loss?

1 A I can't answer that. And I'd like to point
2 out that the amount of money involved is not nearly so
3 relevant as the fact that you are dealing with a
4 perishable product with changing market conditions. And
5 when it happens, it's crucial between the customer and
6 Sunkist to resolve it quickly.

7 MR. PAUL SMITH: No further questions.

8 JUDGE HOPKINS: Do you have any?

9 MR. RATNER: I have just a couple.

10 BY MR. RATNER:

11 Q My name is James Ratner. I'm with the United
12 States Department of Justice, Mr. Bernstein.

13 Very briefly, on page 3, Mr. Smith of the
14 Department of Transportation was talking to you about
15 the paragraph that says, "Our use of rail transportation
16 has been increasing in recent years."

17 By that, do you mean that it has been -- that
18 rail has been increasing due to a switch from truck or
19 just due to an increase, for example, in production of
20 fruits in general?

21 A No. I mean as a percentage of our domestic
22 transportation, the share traveling on rail has
23 increased versus truck, regardless of the crop size.

24 Q Just to make that clear, it is conceivable
25 that the exact same quantity is moving in truck, and

1 that as your crop size increases, all of that is moving
2 rail.

3 Is that what is going on, or is the -- given
4 the same crop size, would more of it be moving rail, and
5 that's what you meant here?

6 Do you understand my question?

7 A Yes. Our use of rail transportation has been
8 increasing in recent years, and tends to mean that the
9 share of the product we market, moving by rail, has gone
10 up versus truck, period.

11 Q Also, Mr. Smith talked with you a little bit
12 about competition between California, Arizona produce,
13 and I believe you mentioned Texas and Florida. I know
14 you did a little bit, but could you specify for me the
15 specific fruits for which there is competition between
16 those two geographic areas?

17 A Sure. I think the most competition is with
18 grapefruit. The second most competition would be with
19 tangerines. The third most prevalent competition would
20 be with oranges. And fourth, lemons.

21 Q I realize this may sound like a naive
22 question, but is there any distinguishing
23 characteristics for any of those between what is grown
24 in California-Arizona and what is grown in
25 Texas-Florida?

1 A Yes. The West Coast oranges are cosmetically
2 superior and approximately 90 percent -- we try to
3 market 90 percent or more in fresh form. Florida, it's
4 the reverse, where the oranges are probably 90 percent
5 going to concentrate and 10 percent go fresh.

6 So if we're talking about fresh orange
7 marketing, the California-Arizona market is dominant
8 between the two.

9 Q So am I correct that if somebody in New York
10 is purchasing large amounts of California oranges, that
11 it wouldn't be proper to automatically assume that
12 Florida or Texas oranges would be an acceptable
13 substitute for that purchaser?

14 A It would not be an automatic assumption.
15 Whereas, with grapefruit, it is probably the reverse.
16 There is probably a preference for the Florida-Texas
17 fruit, and we would tend to much more of a regional
18 marketing group with our grapefruit.

19 Q If you know, how much of the grapefruit that
20 is supplied to the East Coast is supplied by
21 California-Arizona growers as compared to the
22 Texas-Florida growers?

23 A In a typical year, I think 80 to 90 percent or
24 more would come from Florida and Texas.

25 Q And how about for oranges?

1 A Probably the reverse. I'm sorry; 50 to 60
2 percent West Coast, the balance, Florida-Texas.

3 Q In your opinion, for these commodities, and
4 direct me to someone else if you don't know, but does
5 the fact that California and Arizona growers are
6 competing with growers for the four commodities you have
7 listed in other parts of the state, does that keep
8 railroads from raising their rates or deteriorating
9 their service for fear that the Arizona and California
10 customers will simply lose business to other geographic
11 parts of the country?

12 A I wish it did. It does to varying degrees.
13 We'd like to think it was attractive long-term business
14 for all carriers, and that competition both between the
15 railroads and between the railroads and motor carriers
16 would keep rates reasonable and service excellent.

17 In varying degrees, it works that way and in
18 some cases it doesn't.

19 Q Okay. What I'm asking about is a very
20 specific form of competition which is the idea that if
21 your rail carriers raise their rates, that Sunkist would
22 simply not be able to ship nearly so many products to
23 the East Coast, and instead the products would be
24 shipped, they would be obtained out of Texas and
25 Florida.

1 Does that factor seem to constrain the
2 railroads from raising their rates or deteriorating
3 their service to you?

4 A It should. It does to a degree. It's hard
5 for me to know what goes on in their mind.

6 Q I understand.

7 A Your premise is correct at some point. Higher
8 rates and poorer service will displace West Coast
9 business because at some point the price difference, the
10 impact on the landed price, will cause Florida-Texas
11 fruit or offshore fruit -- we do import citrus from
12 other countries, particularly Mediterranean regions to
13 the East Coast -- at some point, the poor service and
14 higher rates attract other citrus to those markets.

15 Q If it is possible for you to do so, could you
16 compare the effects of the constraints that these other
17 geographic areas have on a railroad, as compared to the
18 competitive effects of having two railroads providing
19 basically the same service?

20 A Do you want me to quantify?

21 Q Are they equally effective forms of keeping a
22 railroad from raising their rate?

23 A This is purely my opinion, but I think the
24 intercarrier competition is more of a factor than the
25 other region factor.

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Q Is there any particular reason why you think
that?

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1 A I just think it is more direct. It is more
2 discernible. It is easier to assess. Whereas the
3 potential displacement of the other fruits involves
4 involves quality, market conditions, consumer
5 preferences, export-import factors.

6 Long-term, I am sure those things come into
7 play, but on a day to day, week to week basis, each
8 railroad knows what the other is charging and what the
9 other is moving, and I think that that has a more
10 direct, sudden impact.

11 Q Finally, are there any products that Sunkist
12 ships or that are grown in Arizona and California that
13 really don't face competition from other geographic
14 sources in the United States?

15 A I think that there are limited cases. There
16 is never a case where there is no competition. There
17 are times when our relative market strength is higher.
18 Probably in the middle of the summer we are a very
19 strong lemon source. And during the middle of the
20 summer, we have heavy grapefruit superiority.

21 Q I think you mentioned this before, but do the
22 seasons differ when the peak growing season is in Texas
23 and Florida and when it is in California?

24 A Yes, for some varieties it differs markedly.

25 Q Could you give me a couple of examples?

1 sworn, took the stand, was examined, and testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. ROBERTS:

5 Q Sir, would you state your name, company
6 affiliation, and position for the record, please?

7 A I am Laurence J. Stern, director of
8 transportation, Sunkist Growers, Van Nuys, California.

9 Q Mr. Stern, have you prepared a verified
10 statement containing your direct testimony in this
11 case?

12 A I have.

13 Q Do you have any additions or corrections to
14 that statement?

15 A No, I do not.

16 MR. ROBERTS: I tender the witness for cross
17 examination.

18 JUDGE HOPKINS: Mr. Michael Smith.

19 MR. MICHAEL SMITH: Mike Smith, right, from
20 applicants.

21 CROSS EXAMINATION

22 BY MR. MICHAEL SMITH:

23 Q I will cross examine you briefly, I hope.

24 I notice that you said in your statement,
25 looking at Page 7, that -- in the very first paragraph

1 there you say that deregulation of your traffic has
2 generally benefitted both shippers and receivers.

3 Now, the transportation of fresh fruits and
4 vegetables was exempted or deregulated, I guess we call
5 it, by the ICC in 1979.

6 Is that correct?

7 A That's correct.

8 Q Can you tell me, can you agree with me that
9 the primary rationale of that action of deregulating
10 fresh fruits and vegetables was to better enable the
11 railroads to compete with motor carriers?

12 A That was the rationale advanced by the
13 railroads.

14 Q Now -- well, did Sunkist take a position in
15 those proceedings that led to the deregulation of fresh
16 fruits and vegetables?

17 A Yes, we did.

18 Q Wasn't Sunkist vigorously opposed to that?

19 A No, I don't recall that we were. As a matter
20 of fact, I think we supported it eventually. The premise
21 was that nothing else had worked, why not try
22 deregulation.

23 Q Well, I am surprised, because I was under the
24 impression that at least initially Sunkist was one of
25 the most vigorous opponents of the railroads' efforts to

1 deregulate fresh fruits and vegetables.

2 A We did initially, but eventually we supported
3 it. We changed our position.

4 Q Can you tell me how, referring again to Page
5 7, how it is in general that deregulation has benefitted
6 Sunkist and your customers?

7 A Well, I think the primary advantage has been
8 that -- well, there are really probably two or three
9 advantages. One, under deregulation, in theory, at
10 least, although it hasn't always worked out in practice,
11 in theory both parties, the railroads and the shippers
12 or receivers, whoever is doing the talking, has the
13 ability to hopefully discuss changes in service, changes
14 in accessorial charges, changes in rates, innovations,
15 whatever, and in some cases it has worked out.

16 In other cases it hasn't. So I think that is
17 a benefit. And the freedom to do so without going
18 through laborious proceedings before the Commission,
19 without going through suspension proceedings, without
20 being in a formal, at least a formal arena of
21 confrontation, is certainly an advantage, and we in the
22 produce industry are in a rather dynamic business, as I
23 assume you know.

24 It is a business characterized by frequent
25 changes and so forth, and the ability to deal with a

1 carrier on a quick basis is certainly an advantage to a
2 shipper. I think that is the primary benefit.

3 Q Is one aspect of that the ability of rail
4 carriers to quickly respond and change the rate levels?

5 A In theory it should be.

6 Q Does that happen, do you think, in practice?

7 A Sometimes, sometimes not.

8 Q A general question. We may get a little more
9 detailed later. But I asked Mr. Bernstein, and he
10 wasn't sure. Can you tell us the extent to which the
11 rail rates are set and changed on a daily or weekly
12 basis with respect to what the motor carrier route level
13 is? In other words, do the rail rates in any way
14 respond to the motor carrier rates?

15 A Sometimes they do, and sometimes they don't.
16 As a very rough general rule, making sort of a sweeping
17 statement, during the summer, when all kinds of
18 perishable commodities are moving from California,
19 Arizona, a lot of vegetables, obviously citrus and
20 deciduous fruit as well, there is a heavy demand for
21 transportation equipment of all types, refrigerated
22 transportation equipment.

23 There is a general upward movement in rates.
24 All of those carriers who serve those markets are exempt
25 from regulation, and they are free to change their

1 rates, and the railroads have, since 1979, ridden that
2 upward trend. On the other hand, I have found that the
3 railroads are highly unresponsive, I would say, during
4 most of the rest of the year with respect to changes in
5 motor carrier or TOFC rates. I am talking about the
6 refrigerated boxcar rates. I assume that is what we are
7 talking about.

8 Q How about TOFC?

9 A In what respect?

10 Q Are the TOFC rates responsive to the motor
11 carrier rate levels throughout the year?

12 A They tend to be far more responsive than the
13 rail rates.

14 Q Are the Santa Fe carload rates responsive to
15 the SP carload rates or vice versa?

16 A In general, yes.

17 Q But not to motor carriers? Is that your
18 testimony?

19 A That is my testimony, except during the
20 summer, when all the rates are going up, and you know,
21 everybody takes what they can get at that time, but I
22 would say during the rest of the year, no.

23 Q All right. Mr. Bernstein also had in his
24 Appendix A a table that showed percent of traffic moving
25 to certain eastern markets via rail, and in some cases

1 -- well, in all cases there was quite a high percent
2 moving rail in carload or TOFC. And I asked him whether
3 that was true prior to deregulation, and he wasn't
4 sure.

5 Can you tell us whether before deregulation
6 motor carriers had a much higher share of those long
7 distance moves than they do today?

8 A Prior to deregulation, the motor carriers did
9 not have a particularly high share of the markets on
10 that table. The percentage was probably largely the
11 same.

12 Q Largely the same, so you don't think that at
13 least in those markets deregulation has had any impact
14 at all on allowing rails to increase their market
15 share?

16 A Not significantly, no.

17 Q On Page 3 of your statement, you say that
18 Sunkist has 61 packing houses, and if I read it right,
19 you say eight of those 61 are served by both SP and
20 Santa Fe jointly served. Is that right?

21 A That's correct.

22 Q For the other 53 houses, are any of those
23 served by a railroad other than SP or Santa Fe?

24 A Not really. In a number of cases, four or
25 five case, some of the houses are served by the Visalia

1 Electric, which is a wholly owned subsidiary of Southern
2 Pacific, and I think one house is served by the Ventura
3 County Railway, which is about a mile and a half short
4 line that connects with the Southern Pacific, so for all
5 practical purposes it is Southern Pacific.

6 Q So you either have -- well, if I understand
7 it, then 53 of your houses are solely what some people
8 might call captive.

9 A Correct.

10 Q And the other six are jointly served. Now,
11 for those 53 that are singly served by either SP or
12 Santa Fe, do SP and Santa Fe compete for rail carload
13 traffic from those locations?

14 A In my opinion, yes.

15 Q And how is that, if you can explain to me how
16 it is?

17 A I think they compete on all the essentials.
18 They compete on rates. They compete in terms of
19 service. And they compete in terms of the other
20 features of your terms of doing business, claims
21 settlement practices, accessorial charges, rules of
22 dealing with the carrier, if you will, and there is
23 considerable variation between the two carriers.

24 Q I also asked Mr. Bernstein about, in his
25 opinion, how -- he had said that TOFC rates and motor

1 carrier rates on the one hand were substantially higher
2 than the lowest rail carload rates, and I asked him
3 first to tell me, if he could, how the TOFC rates
4 compared to motor carrier rates, and I think he said
5 that usually TOFC rates are a little bit lower. Is that
6 about right?

7 A They tend to be as a general rule. Starting
8 from the lowest end, rail carload rates are the lowest,
9 TOFC rates are in the middle, and motor carrier rates
10 are the highest.

11 Q Now, when you say TOFC rates, when you use
12 that term and make that comparison with motor carrier
13 rates, I want to know exactly what rate it is you are
14 talking about. Does Sunkist use Plan 3 shipments?

15 A Yes.

16 Q Is that the primary method of your
17 transportation of perishables by TOFC?

18 A That is the only method.

19 Q The only method. And Plan 3, that is where
20 the railroad does not furnish the equipment. Is that
21 correct?

22 A That is correct.

23 Q So when you compare TOFC rates to motor
24 carrier rates and you say the TOFC are generally lower,
25 are you including in that a charge or some cost that is

1 incurred for the ownership of the equipment on Plan 3?

2 A Yes, a TOFC operator includes that in his rate
3 to us.

4 Q I see, so you go through a consolidator or a
5 freight forwarder or some sort of a shipper association
6 traffic, is that right?

7 A No.

8 Q Maybe you should explain that.

9 A I think you need that explained. A Plan 3
10 TOFC operator is a third party, an independent party.
11 There are approximately 14 or 15 companies currently in
12 the business of providing Plan 3 service to perishable
13 shippers.

14 The Plan 3 operator owns or leases, whatever
15 his means of acquiring trailers is, a quantity of
16 refrigerated trailers. He has contracts with the
17 Southern Pacific or the Santa Fe Railroad to transport
18 his trailers on a ramp to ramp basis.

19 The TOFC operator also makes contracts with
20 motor carriers at either end to provide drayage
21 services. He quotes. When we desire TOFC
22 transportation, Plan 3 transportation, we contact one of
23 these TOFC operators, Plan 3 operators, and obtain a
24 quotation for him -- from him to the destination
25 involved.

1 He quotes us a through rate from our packing
2 house dock to the receiver's dock. It includes
3 everything.

4 Q How close are those rates then, those total
5 door-to-door TOFC rates to the motor carrier rates, if
6 you can generalize?

7 A Well, it is a little hard to generalize, but
8 they tend to range, in the case of citrus, I would say
9 about 25 cents a carton less than motor carrier,
10 somewhere in there. When equipment is very tight, they
11 will try to get their rates as close to the motor
12 carrier as possible.

13 When there is a great deal of equipment
14 around, the rates tend to fall, when they are hurting
15 for business. I would say that the range tends to be 25
16 to 30 cents a carton lower, in very general terms.

17 Q Would you regard the TOFC rail service as
18 being highly responsive to motor carrier rates, and vice
19 versa?

20 A Highly responsive? No, I wouldn't use the
21 term "highly." I would say fairly.

22 Q Fairly responsive?

23 A Yes.

24 Q In other words, they are competing for each
25 other for your business, they being TOFC operators on

1 the one hand?

2 A To some extent. The TOFC operator also tends
3 to pay very close attention to the rail carload rates as
4 well. He sort of walks a balancing act.

5 Q He is right in the middle?

6 A That is right.

7 Q Now, on Page 6 of your statement, you refer to
8 the greatly increased TOFC usage in recent years, right
9 in the center of the page there. Mr. Bernstein has
10 said, and you have also said here, that TOFC rates are
11 higher than the rail carload rates. That is right,
12 isn't it?

13 A Correct.

14 Q My question is, can you explain the growth of
15 TOFC in recent years despite the fact that the rates
16 were higher?

17 A Well, you know, it is -- how can I explain it?
18 It is a good service, highly reliable. It is certainly
19 more reliable than rail carload service, and it is
20 cheaper than truck.

21 Now, in most cases it is a day or two slower
22 to most destinations than truck, but it is cheaper, and
23 apparently in the mind of those people selecting and
24 paying for the transportation, that is a reasonable
25 tradeoff for value and service.

1 Q The fact that the rates are substantially
2 lower in most cases for rail carload, you can't just
3 look at that, can you? In terms of a customer, you have
4 got to look at the total transportation package. You
5 get more for your dollar by going TOFC because you get a
6 more reliable, faster service. Is that right?

7 A The customer or whoever is selecting the
8 transportation goes through, I think, a peculiar set of
9 mental gyrations when he chooses his transport mode.
10 Each mode has its advantages and disadvantages, and
11 depending on the nature of his business, the nature of
12 the market, the various features of that transport mode,
13 including service and rates and equipment supply and all
14 those different things, and he weights those to various
15 degrees, depending on his needs and desires, and he
16 makes his selection.

17 It is very hard to explain, other than that.
18 It is almost a mystical process, and I frankly think
19 that goes through, that that occurs in all kinds of
20 commodities, whether it is perishables or dry freight
21 or, you know, other than commodities that must move by a
22 single mode, such as iron ore or coal or something like
23 that, where you are pretty well captive to rail.

24 Q So your testimony is that it would be a
25 mistake to simply look at transportation rate without

1 looking at this whole host of other factors?

2 A That is my testimony.

3 Q Now, I heard you say that the TOFC is faster
4 than rail carload, but usually a day or two slower than
5 truck. Could that explain the difference between, or
6 could that explain the fact that truck rates are
7 slightly higher than TOFC because that is yet a faster
8 service?

9 A Yes. I think that in this world in general
10 you pay for what you get. You pay more for a Cadillac
11 than you do for a Chevrolet, and you pay somewhere in
12 the middle for a Pontiac or something like that.

13 Q How about claims? Can you give me a general
14 description of claims handling experience and the
15 incidence of loss and damage, truck versus TOFC versus
16 carload? Is there a relationship there? Are you
17 getting what you pay for there, too?

18 A Yes, I would say so. In general, we have very
19 few claims generally by truck or by TOFC. We have,
20 unfortunately, a lot of claims by rail carload service.
21 And there is a difference between the two origin
22 carriers in terms of -- on the incidence of claims and
23 the quality of claim handling as well.

24 Q And truck is better than TOFC?

25 A I would say they are about equal.

1 Q You would?

2 A (Nods affirmatively.)

3 Q Now, in terms of transit time, and I know
4 these things can vary, so you can give me a range if you
5 have one -- let's take a movement of citrus from central
6 California, a Sunkist house, and it is going to New York
7 City. Can you tell me the average transit time for
8 motor carrier and then for TOFC and then for rail
9 carload, if you know?

10 A Yes. Motor carrier would be typically fourth
11 morning arrivals some time, some time between 4:00 in
12 the morning and noon that fourth morning out of
13 California.

14 TOFC would be fifth or sixth morning arrival,
15 and depending on the origin railroad -- well, if you
16 will bear with me a second, I will give you an exact --
17 currently the Santa Fe would put a car on the customer's
18 dock in New York City probably the ninth morning some
19 time, and the Southern Pacific would put it on the
20 eleventh morning.

21 I would also tell you that the range of
22 liability is much higher or much different with rail
23 carload service than it would be with a motor carrier or
24 TOFC.

25 Q How does the choice of mode as between motor

1 carrier and rail, how is that affected by the price of
2 the oranges, let's say, on the east coast? Am I right
3 that if the market for oranges in the east is really
4 good, you are getting a very high price, and it is more
5 likely to go truck so you can get it there quicker?

6 A No.

7 Q There is no relationship at all?

8 A I don't know if there is absolutely no
9 relationship, but I do not think it is a strong
10 relationship.

11 Q How transit time sensitive, if you understand
12 that term, how important is quick transit time, fast
13 delivery in your business?

14 A We are in the produce business. We are
15 shipping a perishable product. It doesn't do the
16 product any good to keep it on the road eleven days.

17 Q Does Sunkist ever use TOFC service -- let me
18 first back up. The 61 houses, is that all of the
19 packing houses Sunkist has?

20 A Currently, yes.

21 Q So you don't have any that are physically
22 located on the UP system lines, for example?

23 A No.

24 Q Do you ever use on any significant basis TOFC
25 service provided by the Union Pacific system?

1 A No.

2 Q Now, on Page 7, Mr. Stern, you describe Santa
3 Fe's deemphasis of its mechanical refrigerated car
4 business, and you conclude that Santa Fe is going to be
5 out of the carload business in five to eight years. Can
6 you tell me what the basis for that statement is?

7 A This is a judgment factor. They haven't made
8 a positive statement to me or a negative statement, if
9 you will, but at one time in the not too distant past
10 the Santa Fe had, I think, well over 2,000 refrigerated
11 cars in service.

12 They have let that fleet dwindle by
13 attrition. When the cars needed repairs, they have not
14 repaired them, or they have scrapped them, or whatever.

15 If you want to stay in a business, obviously,
16 you don't engage in that kind of practice. Common sense
17 would tell you that if you have 1,000 cars under normal
18 conditions, about a third of them are in transit
19 somewhere east and west. a third of them are on the east
20 coast, and a third of them are on the west coast. It
21 doesn't take very much of an upsurge in demand to create
22 operating problems. So, obviously, they stretch
23 themselves pretty thin.

24 Q Okay. Well, then, if you are right, if your
25 projection is right, and five, six, seven, eight years

1 from now Santa Fe is out of the carload business, I take
2 it you would agree that by that time there won't be any
3 competition between SP and Santa Fe on carload.

4 A It is possible. I should have added that just
5 recently, after this statement was written, it was
6 brought to my attention that the Santa Fe has made a
7 deal with the Fruit Growers Express Company to bring in
8 Fruit Growers express cars.

9 Fruit Growers Express Company is located on
10 the east coast. And in fact in the last two months, I
11 think we have loaded probably as many FGE initial cars
12 on the Santa Fe origins as we have loaded Santa Fe
13 equipment.

14 I don't know what that really means, but you
15 know, I would assume that they are making some positive
16 step. I can't speculate beyond that.

17 Q You also say on the next page, Page 8, that
18 SP, in contrast to Santa Fe, is making some capital
19 investment in mechanical refrigerator cars. What is your
20 basis for that understanding?

21 A Primarily what I have been told by Pacific
22 Fruit Express personnel, their publicity, and so forth.

23 Q Do you know the extent to which PFE's
24 refrigerator car fleet is being reduced each year?

25 A No, I do not.

1 Q Do you know that about half of its fleet is
2 approaching 20 years of age?

3 A Yes.

4 Q Well, in any event, I take it that Sunkist's
5 primary concern in this case is the competition that
6 exists between Santa Fe TOFC and SP refrigerator car
7 service. Is that accurate?

8 A I don't think necessarily you can categorize
9 our concern strictly as that. We are simply concerned
10 with inter-railroad competition, and whether the
11 competition ultimately becomes such that there are no
12 more mechanical refrigerator cars at all, if that
13 happened tomorrow morning, or whenever, and there was
14 then only one origin carrier providing TOFC service, we
15 would be just as concerned as if there were only one
16 origin carrier providing mechanical refrigerator car
17 service.

18 MR. MICHAEL SMITH: That is all I have.

19 JUDGE HOPKINS: Mr. Ratner? Or Mr. Smith?

20 MR. PAUL SMITH: Thank you, Your Honor.

21 BY MR. PAUL SMITH:

22 Q Mr. Stern, I am Paul Smith. I represent the
23 Department of Transportation this morning. Could you
24 turn, please to Page 2 of your statement?

25 You are talking in the first full paragraph

1 there about customers located in the central and eastern
2 parts of the United States. Mr. Stern indicated --
3 excuse me. Mr. Bernstein indicated that the markets he
4 was talking about were predominantly the northeastern
5 seaboard as well as Toronto and Montreal in Canada.

6 Now, for those markets, do you know for rail
7 shipments what proportion goes by what we would have
8 called in this case the Southern Corridor along the
9 Santa Fe-Southern Pacific lines and/or Southern Pacific
10 lines which would go by the Central Corridor pretty much
11 across the plains, and which might go by the Northern
12 Corridor on rail shipments?

13 A Well, first of all, you should understand that
14 the Southern Pacific closed the overland route to
15 perishable shipments, I don't know, about a year and a
16 half ago or so, so it is no longer available to us. So
17 your question is partially incorrect.

18 The Central Corridor, I assume you are
19 referring to the Santa Fe route. Is that correct?

20 Q The DRGW.

21 A We do not use the DRGW. It is not available
22 to us. So if we ship via the Santa Fe, the car is
23 routed Santa Fe, Chicago, to wherever it is going in the
24 east, to eastern Canada or wherever, and that, I guess,
25 in the context of your question, I would characterize as

1 Central Corridor route. Is that correct?

2 Q I hadn't thought of it that way.

3 A I am not sure what you had in mind in that
4 respect.

5 Q You don't use any of the Union Pacific
6 system?

7 A No, Southern Pacific does not allow us to.

8 Q So in your rail shipments to the markets we
9 have talked about they would go to Chicago and then be
10 dispersed from that point?

11 A Let me back up. I just told you that if we
12 ship via the Santa Fe, the car moves from California to
13 Chicago and thence beyond to whatever eastern
14 destination it is going to. If it is moving via the
15 Southern Pacific, it moves south out through --
16 generally through the Los Angeles area. Not precisely
17 through Los Angeles. On out through Colton, California,
18 Yuma, El Paso, and then either on up through Kansas City
19 and thence to Chicago or through Kansas City and thence
20 to East St. Louis and beyond, depending on its ultimate
21 destination.

22 We take sort of a circuitous route.

23 Q It would appear from the map that the Southern
24 Pacific route is more circuitous than the Santa Fe route
25 would be for the markets we are talking about.

1 A That's correct.

2 Q Would that lead to more time in transit and/or
3 greater costs to go that route?

4 A It leads to more time in transit. Ironically,
5 Southern Pacific rates tend to be lower than Santa Fe
6 rates as a general rule, despite the more circuitous
7 route.

8 Q Now, Mr. Bernstein indicated that these
9 eastern U.S. and Canadian markets accounted for roughly
10 60 percent of Sunkist customer volume, and the others,
11 your other customers in the west and the south and
12 central portion would be 40 percent. Is that right?

13 A That's probably a reasonable rough
14 approximation.

15 Q And you have competitors in all of those
16 markets, do you not, for the type of citrus fruits you
17 produce?

18 A Competitors from our growing areas?

19 Q Anywhere.

20 A Yes.

21 Q Would you be able to tell me whether as a
22 general rule growers in the Gulf region, Texas,
23 Louisiana, Florida, would have a transportation cost
24 advantage over you on routes -- on markets east of
25 Chicago, Chicago and east?

1 A I would say as a general rule they do.

2 Q Do you know whether they use rail or truck or
3 both?

4 A Primarily truck, to my knowledge. In the last
5 couple of years, the Seaboard Coastline has instituted a
6 perishable piggyback service out from Florida to -- up
7 the east coast to the Washington, D.C., area, in fact,
8 and that has, I believe, been reasonably successful.

9 Q Do any of those growers in those regions
10 compete with you for western customers on the Pacific
11 coast?

12 A I would say in the case of grapefruit they do,
13 primarily in the case of grapefruit.

14 Q Do you know whether they use rail if they are
15 going that distance?

16 A Westbound?

17 Q Yes.

18 A There have been some instances of rail
19 shipments into the Los Angeles area.

20 Q Are they more likely to use rail than truck?

21 A I don't keep track of those kinds of things.

22 Q Do you face competition from imports?

23 A Yes.

24 Q From Mexico predominantly, or otherwise?

25 A There has been -- Mexican competition tends to

1 be primarily local in nature. That is, it tends to be
2 restricted to the southwest. In the markets you are
3 talking about, primarily offshore imports.

4 Q And they would ship by water to the nearest
5 port?

6 A Correct.

7 Q Now, in cases such as this most recently where
8 there is a hard freeze in Florida, does that lead to
9 greater demand for your product?

10 A Would you repeat that?

11 Q Does that lead to a greater demand for your
12 product?

13 A To some extent it has, yes.

14 Q Would you please turn to your Appendix A,
15 please?

16 Now, these figures here for various modal
17 volumes of perishables, is that your total volume, or is
18 that your volume just to the eastern and Canadian
19 markets?

20 A That is total. You used the term
21 "perishables." This is Sunkist business only.

22 Q That is what I am talking about, citrus type
23 perishables.

24 A Yes, total volume.

25 Q Turn back to Page 3 for a moment, please. You

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1 are talking there at the top of the page about western
2 markets such as Seattle, Denver, Houston, Dallas, and
3 New Orleans receiving their goods by truck. And
4 according to Mr. Stern, which you have confirmed, your
5 northeastern customers receive their goods by rail.

6 So is it accurate to picture it that from
7 essentially New Orleans in an northwesterly arc
8 customers in those areas are served Sunkist products by
9 truck and east of that they are served by rail?

10 A I would say that in the west, with the
11 exception of the Pacific Northwest, including Vancouver,
12 they tend to be truck markets. In the middle belt of
13 the country, you have sort of a mixture between truck
14 and rail. As you get exclusively east, or the farther
15 east you go, the more rail predominance.

16 Q Is distance the dominant factor there because
17 the cost rises with distance?

18 A Yes, it certainly plays a major part.

19 Q Would you be able to give us an approximate
20 rule of thumb for the distance beyond which it is less
21 costly to ship by rail than by truck?

22 A You are asking for mileage?

23 Q Yes.

24 A No, I couldn't give you that.

25 Q Would it differ by a specific product or a

1 specific customer?

2 A Certainly not necessarily by product. Some
3 customers, because of the nature of their business, are
4 more likely to take a rail car than a truck or a
5 piggyback van or vice versa. It depends on the size of
6 their business, the physical facilities, how they have
7 geared up, and so forth.

8 So that probably has some influence. I don't
9 know that there is any magic mileage figure that I could
10 apply to that.

11 Q To return to the competition you faced from
12 imported citrus perishables for the moment, you
13 indicated that the Mexican producers generally serve
14 customers in the southwestern U.S. Those that are
15 abroad, where would they come from?

16 Q Spain, Israel, Morocco.

17 Q Would they serve primarily the eastern U.S.
18 markets?

19 A They tend to probably in general rarely get
20 farther west than, say, Chicago, to my knowledge.

21 Q Do you have any idea of the relative portion
22 of the customer's demands in those markets that are met
23 by import producers?

24 A No, I have no idea.

25 Q How about customers in the same areas served

1 by the Gulf state producers here?

2 A I have no idea.

3 Q Could I ask you to turn to Page 4, please?
4 Oh, excuse me, Page 3 first. Talking again about your
5 various packing houses and on which rail lines they are
6 located, you said that in answer to the prior question
7 from Mr. Smith of Southern Pacific, that the 53 packing
8 houses located on a single rail line nevertheless
9 benefit from competitive overtures from the other rail
10 line that it is not located on. Is that correct?

11 A Would you repeat that, repeat the latter part
12 of your question?

13 Q They benefit from the competitive overtures
14 made by the rail on whose line those houses are not
15 situated.

16 A When you say they benefit, meaning if you are
17 a Southern Pacific house --

18 Q Santa Fe is competing for your business, and
19 you are on a Southern Pacific line. I assume that they
20 would compete for your business only if in some cases
21 you were responsive to those efforts and in fact you
22 switched over to them even if they were less convenient.

23 A Correct.

24 Q Is there -- to make it worth your while to go
25 with the offline carrier, I will call it, you have

1 indicated that more than just price is taken into
2 account in selecting that carrier. We are talking just
3 about rail carriers now. Focusing just on price for the
4 moment, I suppose that the greater the pricing incentive
5 offered, the farther you will go, the more trouble you
6 will take to reach that offline railroad.

7 A That's correct.

8 Q Is there any kind of dollar difference mileage
9 factor that you can give us as a rule of thumb?

10 A Are you looking for a formula?

11 Q For a \$500 difference you would go X miles.

12 A No, there is no formula. I wish I had one,
13 quite frankly. Then it would be easier to make those
14 kinds of decisions, because sometimes they are
15 agonizing. But no, there is no formula.

16 Q But you do, because you do respond to the
17 overtures from the offline carrier, they continue to
18 make those overtures and compete for your business?

19 A Yes.

20 Q Could you turn to Page 4, please? In the
21 middle of the page, you indicate that 50 percent of your
22 TOFC shipments are arranged by customers, and a little
23 further down, 90 percent of the truck shipments are
24 arranged by customers. Would I be correct or in error
25 in deducing from that that the 50 percent TOFC shipments

1 arranged by the customers, there is a lower percentage
2 of that than for the truck arrangements made by
3 customers, because the customers that are arranging the
4 TOFC shipments are located in the northeastern U.S. and
5 Canada?

6 A I don't know that the geographic location is
7 any real determining factor. I think the fact that
8 there is a much higher percentage of piggyback shipments
9 arranged for by the shipper, Sunkist in this case, is
10 because it is a newer mode of transportation, and many
11 customers are not as familiar with it, and quite frankly
12 also given our volumes we have been able to make good
13 arrangements in terms of equipment supply and rates on
14 occasion with piggyback companies. There is rather
15 vigorous competition out there. And we can do better
16 with our bargaining power sometimes in securing trailers
17 for that customer than the customer can on his own. He
18 is one entity. We are obviously shipping for a lot of
19 people.

20 Q That is true, even though, as Mr. Bernstein
21 has said, the customer pays the freight?

22 A That's correct.

23 Q And the overwhelming majority of instances you
24 are able to shift your recommendations because of your
25 overall volume?

1 A That's correct.

2 Q Would you turn to Page 9, please? There at
3 the last paragraph on the page you are talking about the
4 price difference, and you indicate that there is one
5 experience you have had where there is a \$1,000
6 difference between the Santa Fe and the Southern
7 Pacific. Is that kind of difference, price difference
8 an extreme one?

9 A That tends to be an extreme one in that case.
10 But there are sometimes fairly healthy differences.

11 Q Would it be more common to have one of the
12 \$500 range that Mr. Bernstein gave in his --

13 A Five to seven. It depends on the market. It
14 depends if the railroad is more interested in
15 penetrating an individual market. There is not always
16 an even pattern to the pricing.

17 Q When we talk about trucking the fruit to the
18 line with the more favorable rate, would I be correct in
19 assuming that given a dollar figure or \$1,000 in this
20 example, it would be more economically feasible for you
21 to go, if the rate given were a TOFC rate, you could go
22 further for a TOFC rate than for a situation in which
23 you had to actually load onto a truck at the packing
24 house and then have that truck offloaded again onto a
25 rail car at the line with the favorable rate? You could

1 go further with the TOFC and then pick it up and load it
2 onto the flatcar. Is that correct?

3 A I don't know what you mean by further.

4 Q If for a \$1,000 difference in the price that
5 you have here you could as easily go -- you could as
6 economically go X distance by truck in the sense that
7 you would have to load the cartons onto the truck and
8 then offload that truck after X distance at the cheaper
9 railroad line which would use a rail car as you could go
10 X plus distance if you were using a trailer that would
11 simply then be put onto a flatcar, you could go further
12 because you wouldn't have the extra loading and
13 unloading charges?

14 A No, you are not correct. No.

15 Q Why?

16 A Sometimes the rail rate is so low in relation
17 to the TOFC rate that the trucking cost even with the
18 cost of loading the truck, moving it, unloading it and
19 so forth, the differential is still substantial enough
20 to justify that activity. Remember, in some cases you
21 are not trucking the fruit very far. You may be
22 trucking the fruit across the street. You may be
23 trucking the fruit ten miles away, which is not that
24 enormous a cost.

25 Q Do you have any idea of the mileage range of

1 those 53 houses that are served by only one line, the
2 closest they are to the line and the farthest?

3 A It varies from literally across the street, I
4 would say, to, oh, as much as 200 miles at the extreme.

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1 Q Would you turn to page 10, please? At the top
2 of the page you are talking about concern for the
3 equipment supply in a rail merger.

4 Now, you had a discussion previously about
5 Santa Fe's use of cars, refrigerated rail cars from
6 another source, other than its own fleet which is
7 dwindling, you said.

8 Do you know of the refrigerated rail car
9 supplies, capabilities of other railroads involved in
10 this proceeding that are seeking trackage rights, such
11 as the Union Pacific or the DRGW or KCS?

12 A KCS has no cars. No cars, refrigerated cars
13 that it owns. DRGW has no cars that I'm aware of.
14 Union Pacific has, I believe, approximately 4,000 cars.

15 Q Do you know if any other third party suppliers
16 of cars, like the one the Santa Fe is now --

17 A Burlington Northern, I think they operate
18 under the Western Refrigerated Express. I believe
19 that's the case. And the Bangor & Arcostic had a number
20 of cars. We haven't seen them on the West Coast in the
21 last year or so. And I don't know how many cars are --

22 Q Let me explain my ignorance of the industry,
23 if I haven't already, by asking whether the fact that
24 these cars are owned by third party or other railroads
25 would mean that they would be unavailable to railroads

1 that served your points or might serve them through
2 trackage rights.

3 A First of all, I'm not aware of any so-called
4 third parties that own such cars. If they do, they are
5 not in any substantial numbers. They tend to be owned by
6 railroads or wholly-owned subsidiary of railroads.

7 In recent years, there does appear to be some
8 tendency for our two origin carriers, other than this
9 recent arrangement that the Santa Fe has made, to tend
10 to restrict cars to the cars that were loading to their
11 own equipment.

12 Prior to deregulation, we tended to see more
13 so-called foreign line equipment come in during heavy
14 shipping periods. That's a very general statement. I
15 don't watch it that closely from day to day.

16 Q So you don't know of the availability of
17 refrigerated cars to any carrier that might eventually
18 obtain trackage rights?

19 A No, I didn't say that. I pointed out the
20 Union Pacific, who I believe is a major Applicant, has
21 approximately 4,000 cars.

22 Q Further down that same page, you mention your
23 claims experience in regard to -- and shifting of
24 business on page 11 -- which can result from unfavorable
25 claims experience.

1 Have you had traditionally worse time getting
2 claims processed with one of the Applicants over the
3 other?

4 A Yes.

5 Q Would you tell us which one that is?

6 A Southern Pacific is far worse than the Santa
7 Fe.

8 Q In terms of ease of processing a given claim
9 or in terms of the number of claims you have to submit
10 to them in the first place because of the damage?

11 A You name it. Everything.

12 Q So at least in those respects, the competition
13 has existed between them since 1979 and 1980 when
14 various things were deregulated, your product and
15 others, there hasn't been much success caused by that
16 spur to --

17 A Let me make a comment. Prior to deregulation,
18 our claims handling experience with both railroads, in
19 my opinion, was pretty much the same. You must
20 remember, about 65 percent of our packing houses are
21 located on the Southern Pacific, so mathematically, you
22 know, we make more shipments on the Southern Pacific,
23 and therefore the law of averages says we're going to
24 have more claims.

25 That's just the way it works out. But in

1 terms of the way claims were handled prior to
2 deregulation, I would have to say that both carriers
3 were probably substantially the same in terms of --
4 well, certainly the ground rules were the same. They
5 applied common ground rules, and in terms of their
6 attitude towards dealing with us and all the various
7 things that go into settling a claim.

8 Since deregulation, I would have to say that
9 has not been the case, and increasingly we have found,
10 particularly during the last year, that the Southern
11 Pacific has become extremely difficult to deal with on
12 claims.

13 Q Not just because more of your packing houses
14 are located on their lines?

15 A No. I personally believe there has been a
16 policy decision made within the Pacific Fruit Express
17 Company to engage in certain practices, and those
18 practices are being carried out.

19 Q Page 10, you indicate that truckers and TOFC
20 operators are easier to deal with than railroads in
21 general, although, of course, there can be a difference
22 between railroads, as you just said.

23 Is part of your better record with Santa Fe as
24 opposed to Southern Pacific because they're going far
25 more with TOFC than with rail cars?

1 A No. My comments with regard to settlement of
2 claims are limited to rail cars. If we have a TOFC
3 claim, we file that claim with the Plan 3 operator. If
4 he, if because of the problem, in turn with something
5 that the railroad did, he may subrogate his claim to the
6 railroad. We do not deal with that part of the process
7 at all.

8 Our position, as I believe all shippers take
9 with the Plan 3 operator, is that you are the carrier;
10 we have contracted with you for the transportation. If
11 there is a problem, you are responsible. If someone
12 else really caused the problem, you take care of it with
13 him. But your obligation is to us.

14 Q Could you turn to page 11, please? There, in
15 the middle of the page, you are indicating that the
16 proposed plans to abandon trackage to and from Vasalia,
17 California and your packing facility that is there could
18 be left without rail service.

19 Would you agree that the consequences, if it
20 happened, the consequences would be greater, more
21 important to the extent that the product from that plant
22 went to the Northeastern and Canadian markets than if
23 they go to the markets that are served by truck?

24 A This particular packing house tends to ship a
25 great deal of product to New York and Boston. There is

1 a very substantially loyal customer in Boston. And as
2 such, he probably would be rather adversely affected.
3 The customer takes a lot of rail cars.

4 Q Well, you have 60 other packing houses. And
5 you said, or Mr. Bernstein has said, that different
6 customers sometimes specify particular packing houses.
7 And is it a difficult thing for Sunkist to, if faced
8 with a loss of rail service totally, or loss of
9 competitive rail service so that the rates would go up,
10 on cases where the customers don't specify a specific
11 packing house, to have that product sent to a market
12 serving a customer within the trucking markets, as
13 opposed to those served by the rail mode?

14 A Yes. That's a difficult thing and it's a
15 practical matter. Most customers do specify a
16 particular packing house.

17 Q Because of familiarity?

18 A Quality. Familiarity, quality of the fruit,
19 perceived quality or actual quality of the fruit coming
20 from that packing house, longstanding relationship with
21 that packing house.

22 We have customers that have been taking fruit
23 from some of our packing houses for probably 50 years,
24 the same labels, the same packing house, year after year
25 after year. We have some packing houses that do

1 business, for all practical purposes, with four or five
2 customers, and that's really it. Take all of their
3 output.

4 Q Would you say that more often than not,
5 customers specify packing houses?

6 A More often than not.

7 Q A question going to those who don't specify,
8 the minority, I suppose.

9 A Yes.

10 Q In that case is it difficult to shift the
11 actual individual packing house that actually supplies
12 the customer's needs?

13 A I think it's difficult. Our packing houses
14 tend to like rail carload business. When you move 2,664
15 cartons of fruit out at one time, that clears the
16 packing house inventory out. It's an efficient way for
17 him to do business as well.

18 It's a lot more efficient to load one railcar
19 than X number of cars or LTL.

20 Q You're talking about customers within the
21 region discussed before, that are served now by truck
22 from New Orleans up to but not including perhaps the
23 extreme Pacific Northwest.

24 A I still think that's difficult.

25 Q Why would that be, if they are now served by

1 truck? You would give them product from another house.
2 They would put it on a truck.

3 A Well, you know, you do not always easily shift
4 packing houses and customers back and forth to each
5 other. Customers are often very suspicious of taking
6 fruit from a house they have never dealt with before.

7 Q Even if they don't specify?

8 A Sometimes, yes. Sometimes we can give them
9 that fruit, and then he may say no, I don't want that.
10 I wasn't satisfied with that load. Get me something
11 else.

12 So we go shopping around again. It can be an
13 awkward and difficult and painful process for all
14 parties.

15 Q What is the -- I assume, of course, you start
16 out with a much lower number than 61 packing houses. Is
17 there any kind of expansion rate over, say, a five or
18 ten-year period for Sunkist, so that maybe ten years ago
19 you had 50, and ten years from now you will have 70, or
20 something like that?

21 A On the contrary. I would say it has been an
22 attrition rate. The citrus industry, like most other
23 businesses, and for that matter, the perishable
24 industry, is going through periods of consolidation.

25 Small packing houses are merging with other

1 small packing houses. The cost of operating a packing
2 house is very much like operating any other production
3 plant. If you've ever been in a packing house, it is a
4 very high-speed facility. The lower cost ones tend to
5 be automated like any other factory.

6 The cost of that kind of capital equipment is
7 obviously rather great. And increasingly, houses are
8 finding it necessary to automate and make those kinds of
9 investments. Unless they have the tonnage, the base,
10 moving through those packing houses, they can't sustain
11 that kind of investment. They can't cover that cost.

12 So we are seeing a consolidation. I would say
13 that we have far less packing houses, not only in
14 Sunkist, but in the citrus industry and certainly in the
15 whole perishable industry

16 Q Fewer packing houses shipping more product?

17 A I would say in general. I would not say, by
18 the way, this is a pell-mell process. It's a very slow
19 process, very slow.

20 Q For that plant in Vasalia, do you know what
21 percentage of their shipments now go to the Northeast
22 and into Canada and which percentage goes to --

23 A I don't know the precise percentage, but I
24 would say in excess of 60 percent.

25 Q Go to the East?

1 A Yes.

2 Q At the bottom of the page, you're talking
3 about the prospect of using early California Foods
4 track. Have you ever dealt with them before?

5 A Early California Foods?

6 Q Yes.

7 A No.

8 Q Have you had any experience with any private
9 track owner?

10 A No.

11 Q Could you turn to page 12, please, of your
12 statement?

13 JUDGE HOPKINS: Do you have many more, Mr.
14 Smith?

15 MR. PAUL SMITH: No, Your Honor, maybe five
16 minutes, seven minutes.

17 JUDGE HOPKINS: Well, if it's going on that
18 long, let's take a recess at this time. We'll take a
19 15-minute recess.

20 (Recess.)

21 JUDGE HOPKINS: Back on the record.

22 Mr. Smith.

23 MR. PAUL SMITH: Thank you, Your Honor.

24 BY MR. PAUL SMITH: (Resuming)

25 Q Mr. Stern, just a very few more questions. We

1 were on page 12 before, and I have one further question
2 on that page.

3 You make the prediction, toward the bottom of
4 the page, that approximately 50 percent of fresh fruit
5 will move by rail for the next three or four years, and
6 going even higher to your eastern markets.

7 Does your 50 percent figure, does that include
8 the TOFC service?

9 A Yes.

10 Q Now, one last return to the instance given in
11 your testimony on page 9, the price difference between
12 rail carriers, one of whom may serve your given packing
13 house, and one of whom may not be right there, but is
14 still competing for the business.

15 And if it's worth your while, you will in fact
16 truck the goods from the packing house to the off-line
17 railroad to a boxcar, I presume.

18 Do you have any idea how common that is, when
19 the incentive is enough to get you to go from the
20 on-line railroad to the off-line railroad to a boxcar?

21 A What do you mean by "common"? Do you mean
22 what percentage of our shipments?

23 Q Yes.

24 A No, I don't. I just know it happens.
25 Obviously, in a business our size, I don't keep track of

1 every shipment. And someone who works for me doesn't
2 come running in and, say, tell me that it's happening.
3 I'm just generally aware that it goes on from time to
4 time or week to week.

5 I am generally aware of the weight levels at
6 any given time, and I can pretty well know in my own
7 mind when I think it might start happening. And quite
8 often it is confirmed for me.

9 Q What type of facility are they trucked to for
10 eventual loading onto a railroad car?

11 A Another packing house.

12 Q As opposed to some team track or something
13 else?

14 A Correct.

15 Q And then they are loaded with that packing
16 house's product onto the rail cars; is that correct?

17 A No. If you have, for example, a Santa Fe
18 origin packing house and the Southern Pacific has a
19 lower quotation to a given market on a given day, and
20 there is sufficient incentive, financial incentive in
21 the difference between the two quotations to justify
22 trucking and reloading and so forth, the fruit from the
23 Santa Fe house will be trucked over to the Southern
24 Pacific house and loaded in its entirety in a Southern
25 Pacific rail car.

1 MR. PAUL SMITH: Thank you. No further
2 questions.

3 JUDGE HOPKINS: Mr. Ratner.

4 MR. RATNER: A few questions.

5 BY MR. RATNER:

6 Q My name is James Ratner. I'm with the United
7 States Department of Justice.

8 In response to Mr. Smith of DOT's questions,
9 you indicated that none of the produce out of California
10 is routed over the Overland route. Do you remember
11 that?

12 A Correct.

13 Q What did you mean by the Overland route?

14 A Historically, the term "Overland route" is the
15 nickname or term applied to the Southern Pacific/Union
16 Pacific route to Omaha, Nebraska or Fremont, Nebraska,
17 and thence to a connecting line, typically the Chicago
18 North Western Railroad. It has been in recent years.
19 And it got the name, I think, the Overland Trail, as I
20 recall. It was the old Southern Pacific/Central Pacific
21 Golden Spike route. It was the first transcontinental
22 railroad.

23 Q Before that route was closed by SP, did a
24 substantial portion of your traffic go over the Overland
25 route?

1 A All of our Southern Pacific origin traffic
2 from the San Joaquin Valley moved that way.

3 Q Did any of it move SP-Denver-Rio Grande?

4 A Virtually none. Probably less than 1
5 percent.

6 Q So that was never used as an alternative?

7 A No.

8 Q You indicated that now, when it goes over
9 Santa Fe and up to Chicago, you call that the Central
10 Corridor route.

11 A For want of a better name.

12 Q My understanding is that has been
13 traditionally part of the Southern Corridor. Could you
14 describe the routing that such a movement would take out
15 of the San Joaquin Valley and up to Chicago?

16 A Via the Santa Fe?

17 Q Yes.

18 A It move out of the San Joaquin Valley through
19 Barstow, California and then on out through Kansas City
20 and thence to Chicago.

21 Q For any of the commodities that Sunkist ships,
22 are there any distances for which truck is simply not a
23 cost competitive option?

24 A No.

25 Q Are there any distances for which rail is

1 simply not a cost competitive option?

2 A I assume you are talking about where it just
3 isn't worth it to use rail service?

4 Q Yes. I mean you could put it in the car,
5 obviously, but --

6 A Intrastate California. We're not going to shi
7 a rail car to San Francisco or to Phoenix. I think we
8 did once. We shipped a rail car from California to
9 Phoenix. Salt Lake City, Sacramento -- obviously,
10 close-in places.

11 Q You indicated, in response to, I think Mr
12 Smith of Southern Pacific, that there is a difference
13 between motor carrier and TOFC rate of about 25 to 30
14 cents a carton.

15 A In a very general sense; yes

16 Q In that same general sense, what is the carton
17 rate, the total rate for truck and TOFC?

18 A Would you rephrase that?

19 Q You indicated there is a differential of about
20 25 to 30 cents, and what I'm looking for is the --

21 A What are the rates?

22 Q The total rate per carton.

23 A Well, let's pick an example. To New York
24 City, truck rate might be \$2.50 a carton. The TOFC rate
25 might be \$2.25, \$2.20, \$2.30, somewhere in there.

1 Q Is it correct that anything that Sunkist is
2 going to move via rail will have to move either via
3 Southern Pacific or Santa Fe?

4 A Currently, yes.

5 Q This is hypothetical, but if there is a merger
6 of those two railroads and after the merger, the merged
7 firm either raises its rates or substantially alters its
8 service in an unsatisfactory manner, is it feasible for
9 you to switch all of the commodities that you have
10 moving by rail now to truck?

11 A In my opinion, no.

12 Q Could you briefly tell me the reasons for
13 that?

14 A Well, we are a very large volume shipper. I
15 do not believe there is sufficient truck equipment to
16 adequately service the needs of the entire perishable
17 industry from the West Coast.

18 I would assume, within the realm of that
19 hypothetical question, that if the railroad, based on
20 prior experience, if the merged railroad's behavior runs
21 true to form, they are not only going to raise rates or
22 render us unfit service, add unacceptable terms to doing
23 business, et cetera -- it has nothing to do with Sunkist
24 or the citrus industry, they will do it to shippers of
25 all types, all types of perishable commodities.

1 So there will be a combined surge into truck.
2 People shipping all types of commodities will leave,
3 will abandon the use of rail. And that would place an
4 enormous burden on what I would tell you is a fairly
5 thinly-stretched truck fleet now.

6 Q Leaving aside for a moment the rate
7 implications of the merger, if you had to switch a
8 substantial or all of your current rail traffic to
9 truck, would that impose facilities costs in terms of --

10 A Yes.

11 Q Could you describe that for me?

12 A For one thing, we don't have enough loading
13 dock facilities to accommodate all of those trucks.
14 It's just that simple. I mean our packing houses -- and
15 to the best of my knowledge, a lot of other packing
16 houses, not only in the citrus industry, but other
17 commodities as well, are simply -- they don't have the
18 dock space, so they are going to have to all
19 facilities. They're going to have to change things.

20 Q Do you have any idea of the estimate of the
21 sort of construction and physical plant cost?

22 A No, I do not.

23 Q Do you believe, in the event of a merger, that
24 your ability to switch some of your traffic over to
25 truck would be sufficient to keep the merged entity from

1 raising rates to you?

2 A That's a hard question to answer. I really
3 don't know. That's very hypothetical. I don't know
4 what would happen to the market. I guess that's the
5 fair answer to that question.

6 Q All right. You discussed this a little with
7 Mr. Smith of DOT. In the context of the same
8 hypothetical, which is that in the event of a merger,
9 that rates rise or service deteriorates in an
10 unsatisfactory manner, do you believe it is possible for
11 you to adjust your current routings and shipping
12 patterns in such a way as to avoid having to use
13 Southern Pacific and Santa Fe?

14 A No, I do not believe it would be possible.

15 Q You also indicated that for at least some of
16 your produce, you are competing with other geographic
17 parts of the country. In your opinion, do you think
18 that the factor of your competition with other growers
19 in other parts of the country is sufficient to keep the
20 merged entity from raising rates, because what would
21 happen is, you would simply lose business and then they
22 would lose the business?

23 A Well, you know, I would have to say that in my
24 opinion I don't think it would be a significant factor.
25 I think that -- I do not believe, as Mr. Barnstein also

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1 testified, that the railroads, at least based on my
2 experience, their knowledge of what is going on in the
3 market at any given time is precise enough or accurate
4 enough for them really to respond readily to that kind
5 of input from us.

6 I think it's been my experience that when we
7 talk to one of the railroads or both of the railroads
8 involved in this proceeding about their rate levels and
9 complain to them that we are getting pressures on the
10 East Coast or whatever it is, they really don't pay a
11 great deal of attention to those kinds of complaints.

12 And if they do, it tends to be a very
13 long-term kind of process, and in our business, it's a
14 rather dynamic business, and those long-term reactions
15 don't do us much good, I think.

16 Q I realize this is hard to do, but if you can
17 compare -- can you compare, in your opinion, the
18 significance of the geographic factors and that form of
19 constraint on rail rates with the effect of having two
20 railroads serving your markets directly?

21 A That's awfully hard to do. I would hesitate
22 to do it.

23 MR. RATNER: I have nothing else. Thank you
24 very much.

25 JUDGE HOPKINS: Any redirect?

1 MR. ROBERTS: No redirect.

2 JUDGE HOPKINS: You are excused, sir.

3 (Witness excused.)

4 MR. ROBERTS: We move the admission of Mr.
5 Stern's statement.

6 JUDGE HOPKINS: Any objection?

7 MR. MICHAEL SMITH: No.

8 JUDGE HOPKINS: It will be received in
9 evidence.

10 Call your next witness.

11 MR. ROBERTS: Mr. Pantano.

12 Whereupon,

13 JOSEPH R. PANTANO

14 was called as a witness in the above-entitled matter by
15 counsel for Sunkist Growers and, having first been duly
16 sworn by the Administrative Law Judge, was examined and
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. ROBERTS:

20 Q Would you state your name, position, and
21 company affiliation for the record?

22 A Joseph R. Pantano, President of P. J.'s
23 Packing Company, Inc. in Philadelphia.

24 Q Mr. Pantano, have you prepared a verified
25 statement to be submitted with the Commission in this

1 proceeding?

2 A Yes, I have.

3 Q Do you have any additions or corrections to
4 that statement?

5 A No, I don't.

6 MR. ROBERTS: Your Honor, I tender the witness
7 for cross-examination.

8 JUDGE HOPKINS: Mr. Michael Smith.

9 CROSS EXAMINATION

10 BY MR. MICHAEL SMITH:

11 Q Mr. Pantano, just a few quick questions here.
12 I believe you said on page 2, that you receive about 400
13 refrigerator cars and 200 TOFC trailer loads of fresh
14 citrus per year. Is that all coming from Sunkist?

15 A It all comes from the West Coast, whether it
16 be Sunkist as a shipper or an independent group, as was
17 stated before. All California and Arizona.

18 Q About what percent, if you know, comes from
19 Sunkist as opposed to other sources?

20 A Oh, I'd say about 70 percent comes from
21 Sunkist.

22 Q Are any of the other sources that you receive
23 from on the West Coast served by other railroads besides
24 SP or Santa Fe?

25 A No, I don't believe so.

1 Q Now, none of this citrus that you receive
2 comes from Texas or Florida, or from the East Coast?

3 A No, it does not.

4 Q Why is that? We were talking earlier with
5 other witnesses here about how you have the possibility
6 of buying from other locations.

7 A My company has established itself as the
8 California receiver on the East Coast. And being on the
9 East Coast and serving the eastern markets, a receiver
10 such as our company is needed, because of the time
11 differential and the transportation coming across the
12 country, bringing California merchandise, as opposed to
13 the proximity to your Florida merchandise, which my
14 customers can bring it in really without my services.

15 Q Sure. Is it unusual to have a house or a
16 company such as yours that specializes solely in
17 California citrus?

18 A Yes, it is.

19 Q Most of them draw either from California or
20 Texas or Florida?

21 A Wherever.

22 Q Do you pay the transportation charge on the
23 inbound shipments?

24 A Yes, I do.

25 Q So do you own your own trailers or vans that

1 are used in TOFC?

2 A No.

3 Q Now, you've told us you receive 400
4 refrigerator cars and 200 TOFC trailer loads a year.
5 About how many truck trailer loads do you receive a year
6 -- very many?

7 A Not very many. I would say about 1 percent.

8 Q You have heard the testimony here, I take it,
9 about the relative rate levels, TOFC versus motor
10 carrier versus carload.

11 Do you agree with the testimony of the earlier
12 witnesses on that generally?

13 A Yes.

14 Q Have you been in this business since prior to
15 deregulation in 1979?

16 A Yes.

17 Q What have you noticed, if anything, about the
18 rail rate levels since deregulation?

19 A I think they become flexible. They are much
20 more flexible than they were, say, ten years ago.

21 Q Do you have any opinion as to whether
22 deregulation has resulted in lower rates than would have
23 otherwise been?

24 A I think as an assumption, I would say yes.

25 MR. MICHAEL SMITH: That's all I have.

1 JUDGE HOPKINS: Paul Smith.

2 BY MR. PAUL SMITH:

3 Q My name is Paul Smith from the Department of
4 Transportation. I don't have much of you this morning.
5 Could you turn to page 2 of your statement please?

6 A Yes.

7 Q I'm sorry; page 3. At the top you indicate
8 that you rarely receive shipments by truck, and you give
9 as the reason that they are not consistent or dependable
10 for your operations. But you don't mention transport
11 cost.

12 Is that not a reason for you?

13 A Generally, trucks into a volume operation such
14 as mine are very cumbersome. They are at the top of the
15 list of a cumbersome vehicle. The next is the TOFC
16 trailer. The least is a railroad car.

17 Because of the volume that can be put in a
18 railroad car, one railroad car, let's say it would take
19 me three trailers. And then we talk about the
20 over-the-road truckers who want to get paid on arrival,
21 who are in a hurry to get unloaded, and they kind of
22 tend to bother your operation, which is a consistent
23 flow in and out, of fruit.

24 Q So your mode of -- your preferred mode is rail
25 because of a number of aggregate factors. And you don't

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1 focus purely on the actual cost of getting from A to B,
2 but you also take into account the problems of dealing
3 with individual independent truckers who want to get in
4 and out right away, and have independent checks written
5 to them, and all of that?

6 A Yes. That's correct.

7 Q Do you have competitors yourself, Mr.
8 Pantano?

9 A Yes.

10 Q Competitors for California perishables, or
11 just for the type of citrus fruits in general that we
12 are talking about?

13 A I don't have competitors in this volume.
14 There are other people who sell California citrus in
15 Philadelphia and New York, in Baltimore, wherever. But
16 no one of this volume, because we are more of a
17 processing company, where we buy the oranges.

18 Q Would you turn to page 5 of your statement,
19 please? There, you indicate that the TOFC operators are
20 the easiest to deal with. And then would it be
21 railroads next, and at the bottom would be independent
22 truckers?

23 A No, I think railroads would be last.

24 Q In the area of claims. Now, does that mean in
25 terms of the number of claims you have to submit in the

1 first place because the damages are high, or is that
2 just the responsiveness that --

3 A I think it's because of the bureaucracy of the
4 railroads.

5 Q Can you rank the modes in terms of the amount
6 of damages that they are responsible for?

7 A No. I really couldn't say one is higher than
8 another. You know, we are using mostly rail here; then
9 you have mostly rail claims.

10 Q On page -- keeping in mind that you said that
11 for claims processing, TOFC operators are easiest to
12 deal with, on page 3, just for a moment, I want to point
13 out where you indicate that TOFC is faster, five to
14 six-day delivery from California, than rail which is
15 nine.

16 Then on page 5, excuse me, on page 2 you
17 indicate that TOFC containers are more flexible because
18 they can be dropped off. You don't have to deal with
19 them immediately, whereas with trucks you would.

20 Is TOFC also price competitive with rail?

21 A If you take into account the faster service,
22 and depending on your needs at that time, TOFC is a
23 factor maybe today and not tomorrow. It's possible that
24 our needs at one period of time may be great. We cannot
25 afford to ride oranges nine days, eleven days in a

1 railroad car, because let's say a volume add to a
2 supermarket.

3 So, consequently, we must load TOFC trailers
4 and disregard the cost to service our customers. I mean
5 the added cost.

6 Q Now, also on page 5, toward the bottom, you
7 are concerned about the availability of rail boxcar
8 service, and that it might be phased out as a result of
9 the merger.

10 Have you discerned any decreased use of rail
11 cars from the Santa Fe Railroad?

12 A Have I noticed any?

13 Q Yes.

14 A Generally not. But you also must take into
15 consideration that, let's say, 15 years ago, most of
16 your produce rolled out of the West Coast in railroad
17 cars. That includes the highly perishable commodities
18 also -- cherries, apricots.

19 Today it's just the opposite. The more stable
20 commodities come in rail, such as oranges. So I guess
21 what I'm alluding to is that there are more cars
22 available now.

23 Q Do you know what proportion of shipments that
24 you receive from California come from Santa Fe as
25 opposed to Southern Pacific?

1 A There are times when we specify Santa Fe,
2 because Santa Fe seems to give us better service
3 directly into Philadelphia, the Philadelphia area.

4 Q Service. Does that include price or just
5 other considerations?

6 A No. It's service; because if you don't have
7 service, then you get into a problem of maybe a shipment
8 being on the road too long, and you have a claim. And
9 as I said, to get through the bureaucracy of the
10 railroad and file a claim is a nightmare.

11 MR. PAUL SMITH: Thank you very much. No
12 further questions.

13 JUDGE HOPKINS: Mr. Ratner.

14 BY MR. RATNER:

15 Q My name is James Ratner. I'm with the United
16 States Department of Justice. On page 3 of your
17 verifial statement, the second sentence, you say, "Many
18 of the major transcontinental trucking companies
19 previously engaged in perishable transportation have
20 gone out of business."

21 Why is that?

22 A That's just my opinion.

23 Q Do you have any estimate of the number there
24 used to be, as compared to the number that there is
25 now?

1 A Well, the opinion is derived from the fact
2 that years ago, before this company was formed, we
3 handled a lot of different commodities.

4 Q By "this company," you mean your company?

5 A P.J.'s. Yes. And consequently, there was --
6 it seemed like a large availability of large-sized
7 trucking outfits, 300, 400 truck fleets, which I think
8 when we had that gasoline problem there for a while, it
9 kind of put them out of business, the larger fleets.

10 Q If you had to switch all or a substantial
11 portion of the products that you are now receiving by
12 rail over to receiving it by truck, do you have any
13 estimate of how much that would cost in terms of
14 facilities adjustments and building of loading docks and
15 things like that?

16 A It may put me out of business.

17 Q Why would that be?

18 A Because of the things you alluded to; the
19 facility, the loading dock, the handling charges, the
20 competitiveness of the railroads, prices lower, dealing
21 in a commodity that's a little more stable than a highly
22 perishable commodity.

23 Q If there is a merger and the merged entity's
24 rail rates rise, and you ultimately are the person who
25 would have to bear the responsibility for that rise,

1 would you be able to adjust your purchases in such a way
2 as to avoid that price rise?

3 A I think the consumer would bear that, not me,
4 because I have to pass this cost on to the consumer on a
5 consistent basis.

6 Q So the answer is you would be able to adjust
7 your purchases and your selling in such a way as to --

8 A I would have, or else I would not be in
9 business.

10 Q Could you tell me what you would do, other
11 than pass the increased freight cost on to your
12 customers?

13 A It would probably decrease my volume.

14 Q Would you switch to trying to purchase
15 products from producers that don't use Southern Pacific
16 and Santa Fe?

17 A I sell California citrus.

18 Q So the answer to that is no?

19 A The answer to that is no.

20 MR. PATNER: That's all I have. Thank you
21 very much.

22 JUDGE HOPKINS: Redirect.

23 MR. ROBERTS: We move the admission of Mr.
24 Pantano's statement.

25 JUDGE HOPKINS: Any objection? Hearing none,

1 it will be received in evidence.

2 You are excused, sir.

3 (Witness excused.)

4 JUDGE HOPKINS: The next witness?

5 MR. ROBERTS: Mr. Black.

6 Whereupon,

7 WARREN BLACK

8 was called as a witness in the above-entitled matter by
9 counsel for Sunkist Growers and, having first been duly
10 sworn by the Administrative Law Judge, was examined and
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. ROBERTS:

14 Q Sir, will you state your name and company
15 affiliation for the record?

16 A Warren Black, Vice President in Charge of
17 Frozen Food Division of Wakerfern Food Corporation.

18 Q Mr. Black, did you prepare a verified
19 statement for submission to the Commission in this
20 proceeding?

21 A Yes, I did.

22 Q And do you have any additions or corrections
23 to that statement?

24 A At the time I made the statement, I was Vice
25 President of Produce. Since the first of the year, I am

1 now Vice President of the Frozen Foods Division.

2 Q Do you remain knowledgeable as to the matters
3 covered in your statement?

4 A Yes.

5 MR. ROBERTS: I tender the witness for
6 cross-examination.

7 JUDGE HOPKINS: Michael Smith.

8 CROSS EXAMINATION

9 BY MR. MICHAEL SMITH:

10 Q Hello, Mr. Black, my name is Michael Smith. I
11 noticed in your statement that you've got a purchasing
12 office for citrus. Is that citrus or fresh fruits;
13 fresh produce, okay.

14 You've got a buying office in San Francisco,
15 and another one in Pompano Beach, Florida; is that
16 right?

17 A Yes.

18 Q Is it true that you can get many of the same
19 items either on the West Coast or in Florida?

20 A No, not the same items. There are some like
21 your vegetables that we can duplicate. But Florida
22 citrus, for example, is a different commodity than
23 California.

24 Q On the items that you can duplicate, do you
25 have any idea what percent that is of your total produce

1 that you purchase? In other words --

2 A No, I never thought of it in that way.
3 Usually, when one area is drying up, the other one is
4 coming on. They don't normally compete too much with
5 each other, whether it be tomatoes or lettuce items or
6 what have you.

7 Q Where else besides Florida and California do
8 you purchase?

9 A Throughout the world. Israel, France,
10 Belgium.

11 Q But you don't regard the West Coast California
12 producers are in competition with the Texas-Florida and
13 other producers throughout the world?

14 A Well, on some items they are a factor, but
15 California, of course, is the garden spot of our own
16 agriculture. So it's a major, a very major shipping
17 source.

18 Q Have you ever had a situation with a
19 transportation charge -- first of all, does your company
20 pay the transportation charges?

21 A Yes.

22 Q Have you ever had a situation where the
23 transportation charge on a particular commodity that you
24 were purchasing from the West Coast became high or too
25 high, to the point where you were forced to switch your

1 purchase to another location, say, Florida, Texas?

2 A No, not for transportation reasons alone. We
3 would switch if we could make a savings. I work for a
4 co-op in a very competitive area.

5 Q Do you think the railroads in general are
6 aware of this fact, that if transportation charges from
7 the West Coast get too high, you may switch to another
8 source?

9 A I wouldn't have any idea.

10 Q Now, you receive fresh produce by both truck
11 and rail, is that true?

12 A That's true.

13 Q Do you use TOFC or rail carload or both?

14 A Both.

15 Q Do you have any idea, on traffic coming in
16 from the West Coast, what percent is TOFC, what percent
17 is rail carload?

18 A Not offhand. I can give you a ballpark
19 figure.

20 Q That would be good.

21 A Roughly speaking, trucks from the West Coast
22 shipments would account for maybe 60 percent of our
23 volume. Rail car and the other, the other 40 percent.

24 Q Okay. So motor carrier is about 60 percent.

25 A Yes.

1 Q And that is from the West Coast?

2 A Yes.

3 Q Do you have any dealings, directly yourself,
4 or your company, with rail carriers in terms of
5 negotiating things like rates?

6 A My people do. Not so much the rates as
7 claims.

8 Q Claims. Okay. In your opinion, do railroads
9 and motor carriers compete with each other for the
10 transportation of produce to your plant from the West
11 Coast?

12 A Not in my business; no. The trucks compete
13 with other trucks and the rails compete with other
14 rails. For example, take an item like strawberries.
15 There are times when we will fly strawberries in because
16 they are weak and they won't carry.

17 Other times when they are strong and firm and
18 will carry, then we will go by truck. But we wouldn't
19 put strawberries on rail car anymore. We could have to
20 much loss, whereby there are other items that we would
21 try to put on rail, such as cantaloupe, most of your
22 melons, citrus, that will carry. And then we try to
23 make the best arrangement possible with that particular
24 type of carrier.

25 Q Have you ever switched the carriage of any

1 particular commodity that was moving rail? Have you
2 ever switched or threatened to switch to truck in order
3 to get a better rate by the rail?

4 A To the railroads?

5 Q Yes. In other words, you have commodities
6 that are moving rail, and you want to try to use some
7 influence to get a lower rate with a rail carrier.

8 Have you ever threatened to switch your
9 traffic to truck in order to do that?

10 A No.

11 Q Of the 60 percent that moves truck, are any of
12 the same commodities that are moving truck also moving
13 rail?

14 A Yes.

15 Q What are those, if you can tell us?

16 A Well, for example, this past year we had many
17 shippers that would not put their melons, the
18 cantaloupe, in rail car because the equipment was poor.
19 And we had to take the responsibility of that arrival,
20 which we couldn't do, because we don't know what they
21 are putting it in.

22 So we had to switch a number of them to truck
23 until that particular shipper might get a good rail car
24 and then could ship it to us.

25 Q Do you select the mode of transport on this

1 traffic?

2 A Yes.

3 Q What determines, if you can give us in a
4 general way, whether you are going to select truck or
5 rail?

6 A Well, for example, go back to citrus. We can
7 save a dollar a box on citrus going by rail versus
8 truck. And citrus will carry.

9 Being in a highly competitive area, in the New
10 York Metropolitan area, this equates to maybe 15 cents a
11 dozen at retail. And our competitors will try to get
12 rail and get it in as cheaply as possible also.

13 Q Why is it, then, that 60 percent of it is
14 going truck?

15 A Because it won't carry by rail. We can't wait
16 12, 14 days for a rail car to arrive when we can get
17 fourth morning arrival by truck if they put two drivers
18 on it, which sometimes we will pay for.

19 Q So there's a trade off in other words. Trucks
20 cost more, but you get -- for your dollar, you may end
21 up that it's worth it to you?

22 A It depends on the commodity. It's not worth
23 it to me on citrus because the citrus will hold up if
24 the equipment on the rail is good.

25 Q What percent of your citrus, if you know,

1 moves from the West Coast to your facility?

2 A Seventy percent.

3 Q I'm sorry. That's 70 percent rail?

4 A Yes.

5 Q And 30 percent would be truck?

6 A Yes.

7 Q Of the 70 percent rail, what part of that is
8 TOFC versus carload, do you know?

9 A I would be guessing at that, but probably --
10 maybe half and half, depending again on what they can
11 get on equipment.

12 MR. MICHAEL SMITH: That's all I have.

13 JUDGE HOPKINS: Mr. Paul Smith.

14 BY MR. PAUL SMITH:

15 Q Mr. Black, my name is Paul Smith. I represent
16 the Department of Transportation this morning.

17 On page 1 of your statement, you indicate that
18 your annual produce purchase each year is roughly \$160
19 million. By produce, do you include citrus?

20 A Yes. All fresh fruit and vegetables and
21 related items. That includes some horticultural
22 products as well.

23 Q Do you know what percentage of that is the
24 transport cost, or does that include transport cost?

25 A Yes. This is our cost into our facility.

1 Q Do you know what percentage that is?

2 A No, I don't.

3 Q Do you know what proportion of that is from
4 your foreign suppliers of produce?

5 A From whom?

6 Q Your foreign suppliers. You mentioned
7 Israel.

8 A Foreign would be basically 5 percent or less.

9 Q Would the product be mostly in the citrus type
10 that they would supply?

11 A Well, bringing in a lot of things like peppers
12 and cucumbers out of Belgium now, a lot of citrus out of
13 Israel, citrus out of South America.

14 Q And those arrive by ship at a convenient port
15 to you?

16 A By plane and by ship.

17 Q On page 2, please, you're talking about
18 generally a preference for rail shipments rather than by
19 truck in general.

20 Two factors. One, the lower per-carton cost
21 of transportation; and second is your congestion at the
22 truck dock facilities.

23 You said before that truck, however, is faster
24 than rail and so that for the less stable produce,
25 things that don't ship well, those would go by truck

1 because you need the speed; is that correct?

2 A I'm not sure exactly what you're asking me
3 there. There are some commodities that hold up better
4 in transit than others. For example, I mentioned
5 strawberries. Strawberries is a very perishable
6 commodity. We want to get them in as quickly as we can,
7 at the best value to the consumer. If we had too much
8 problem with them by rail, like I said, we have switched
9 to air.

10 Say they have a rain out there. Well, rain
11 will hurt berries tremendously. We will switch to air
12 traffic until they get over their particular problems,
13 because otherwise we have tremendous losses.

14 This is far from the shipping point.

15 Q With respect to the congestion at the trucking
16 dock, have you from time to time, or ever, conducted any
17 study to determine the feasibility of expanding your
18 trucking operation?

19 A We just did. We opened a new warehouse on the
20 8th of January up in Wallkill, New York. And it wasn't
21 our number one location, but it was the best for us to
22 get rail service, so we put in a perishable facility up
23 there for bakery, produce, meat, and our dairy-deli
24 operation.

25 Now, the rail facility is for produce, so they

1 can use it, but they don't.

2 Q So what you have done is added a rail facility
3 instead of a trucking facility?

4 A Well, no. It's a trucking facility, but we
5 had to have rail also. That was a major part of our
6 decision to go into Wallkill.

7 Q So that won't -- will that not ease your
8 congestion problems when trucks are concerned?

9 A It will ease some of the congestion at
10 Elizabeth where our main plant is. But because of our
11 growth, we still don't have extra space for the slots
12 that we need. Everything still takes a slot. Today,
13 it's computer operation.

14 So, although we won't have as much congestion,
15 we ship in a warehouse that was designed to do a maximum
16 of, say, 15-20,000 pieces a night. We are averaging
17 45,000 pieces a night and have shipped close to 80,000
18 pieces in a night.

19 MR. PAUL SMITH: No further questions.

20 MR. RAINER: No questions, Your Honor.

21 JUDGE HOPKINS: Any redirect?

22 MR. ROBERTS: No redirect.

23 I move the admission of Mr. Black's
24 statement.

25 JUDGE HOPKINS: Any objection?

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MR. MICHAEL SMITH: No objection.

JUDGE HOPKINS: It's received into evidence.

You are excused, sir. Thank you very much.

(Witness excused.)

JUDGE HOPKINS: Thank you, everybody. We will be in recess now until April 9th. Remember that. April 9th. We'll see you then.

(Whereupon, at 11:42 o'clock a.m. the hearing in the above-entitled matter was recessed, to reconvene on April 9, 1985.)