

For Mr. Munsell
from C. H. Kunkel
Washington, D. C.

INTERSTATE COMMERCE COMMISSION

WASHINGTON, D.C. 20423

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FINANCE DOCKET NO. 22688, ET AL.

CHICAGO & NORTH WESTERN RAILWAY COMPANY—CONTROL—

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

REPORT AND ORDER RECOMMENDED BY

NATHAN KLITENIC, HEARING EXAMINER

VOLUME II

CHICAGO & NORTH WESTERN RAILWAY COMPANY--CONTROL--
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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PART L: EVIDENCE IN SUPPORT OF PROTESTANTS' OPPOSITION TO
UNION PACIFIC AND SOUTHERN PACIFIC TRANSACTIONS

(1) In General

This part of the report sets forth the evidence of protestants pertinent to the proposed Union Pacific-Rock Island merger and sale of the southern Rock Island lines to Southern Pacific, except that evidence relating to traffic studies, other than summary, is excluded for later discussion in Part O. Of course, protestants' evidence already discussed in Volume I will be excluded from the instant part of the report. As stated earlier, the Minneapolis, Northfield & Southern supports the application of Union Pacific and the Soo Line takes no position with respect thereto. The conditions sought by protestants seeking affirmative relief were set forth in Volume I, and are herein restated only to the extent necessary for clarity. The protestants seeking affirmative relief in the form of any acquisition of Rock Island lines, by purchase or otherwise, are discussed first, followed by a discussion of all other protestants. The various non-carrier intervenors are included in this part. Applicants' rebuttal of protestants' evidence concludes this part.

(2) Rio Grande

Rio Grande fears that as a result of the Union Pacific-Rock Island merger, Union Pacific will acquire increased dominance of rail traffic in the central corridor. Rio Grande contends that in Central Pac. Ry. Co. Control, 328 I.C.C. 345, the Commission determined that Rio Grande should be maintained as a viable transcontinental railroad in this corridor, and that the Commission did not favor a situation which tended to relegate Rio Grande to a secondary status as a transcontinental railroad. Rio Grande claims Union Pacific presently handles about 75 percent of the central corridor traffic as compared to Rio Grande's 25 percent.

Today, Rock Island is a friendly, cooperative connection with Rio Grande at Denver and Colorado Springs, with the operations of both railroads being coordinated in common yards at both cities and a substantial volume of transcontinental traffic moving overhead to Rio Grande interchanged between them (see Volume I, Part B). In 1964, this interchange of bridge traffic produced \$6,975,000 in revenue for Rio Grande, or over 18.8 percent of Rio Grande's total transcontinental bridge freight revenue for that year. Rio Grande claims that its financial success and stability are dependent upon those revenue.

Union Pacific, on the other hand, is a hostile competitor of Rio Grande in the central corridor, and very little competitive traffic is interchanged between the two. The traffic interchanged moves to and from local points on Rio Grande or which, for some other reason, Union Pacific cannot handle beyond the point of interchange with Rio Grande. In 1964, less than 2 percent of Rio Grande's transcontinental bridge revenue was earned as a result of traffic interchanged with Union Pacific.

Rio Grande fears that Union Pacific's self-interest would cause it to reroute existing Rock Island-Rio Grande traffic to Union Pacific's new single-line route, and that further, Union Pacific's increased competitive strength would enable it to attract to its own lines other traffic presently interchanged by Rio Grande with its eastern connections such as Burlington and Missouri Pacific. Rio Grande also contends that the Southern Pacific acquisition of the southern portion of Rock Island, giving that carrier access to Kansas City and Memphis, would also cause traffic to be diverted from the central corridor and Rio Grande. Rio Grande estimates a loss of over \$8.8 million in gross revenues if the Union Pacific and Southern Pacific applications are approved without the Rio Grande condition (see Part 0).

Rio Grande argues that its expected losses to the applicants would be compounded by the Northern Lines merger (now consummated). This consolidation has combined the Burlington, once a friendly, non-competitive connection of Rio Grande, with Northern Pacific and Great Northern. The resulting unified carrier, Rio Grande asserts, would definitely siphon some of the overhead traffic from Rio Grande, as will a Union Pacific-Rock Island merger. In fact, Rio Grande estimates a gross revenue loss of over \$4 million as a result of the Northern Lines merger.

Rio Grande's major requested condition is that it be allowed to purchase the western lines of Rock Island regardless of which applicant is successful in acquiring Rock Island. Such a purchase, Rio Grande alleges, would enable it to avert irreparable damage from losses of traffic diverted by the UP-RI and SP-RI systems. Rio Grande acknowledges a likely small net increase in revenue from such an acquisition. Embracing revenues gained through the elimination of Colorado interchanges by Rio Grande extending its haul to the Missouri River, revenues gained from traffic originating and terminating on such acquired Rock Island western lines, and the small amount of revenues which Rio Grande could likely divert from the two larger systems, Rio Grande estimates that, after expenses and taxes, it would realize an increase of almost \$2.3 million in net income.

In a later estimation added to its case in chief, Rio Grande agreed that the above-discussed purchase will also offset its claimed losses from the Northern Lines system. Rio Grande estimates that the \$2.3 million net income would thereby be further reduced by over \$1.3 million attributed to the Northern Lines loss, thus leaving a net income increase of just over \$960,000. At this point, the examiner must point out that no weight may properly be accorded Rio Grande's claimed losses as a result of the Northern Lines case. It suffices to bring to notice that issues directly pertinent to the Northern Lines case were not set by the Commission for determination in these proceedings and, of course, a full record has not been developed in such respect. No valid findings may here be made as to the losses claimed by Rio Grande as a result of the Northern Lines case.

It is the contention of the Rio Grande that the additional income it will gain following purchase of the western lines of Rock Island will allow it to continue to improve its physical plant; that such increased income will have the effect of maintaining employment levels on its present system as well as on the Rock Island western properties; and that by maintaining its improved plant and facilities, Rio Grande will continue to provide strong intramodal competition in the central corridor.

Through the acquisition, Rio Grande anticipates that it will be able to continue adequate rail service in its own territory and also in Kansas, Colorado, Utah, Nebraska and Council Bluffs, served by the western lines of Rock Island. It is Rio Grande's position that each of the applicants have more than one transcontinental line while Rio Grande, following the acquisition, would have only one to which it would devote its full interest, and that the purchase of the line would add over \$13 million in traffic to Rio Grande. To accommodate this addition of traffic and to ensure its efficient movement, Rio Grande proposes to implement a five-year improvement program on the purchased lines. Estimated rail improvement will cost over \$5.2 million, and plant and facilities improvements will cost \$1 million a year for several years. In contrast, Rio Grande asserts that neither of the two major applicants have offered plans for such improvement of Rock Island's western lines.

Rio Grande further asserts that its proposed purchase would protect the public interest through maintenance of a competitive central transcontinental route and provide Missouri River carriers with an alternate connection at Omaha-Council Bluffs and Kansas City, without which they would be forced to deal with Union Pacific

and other lines in competition with them between Chicago and St. Louis and the Missouri River. Rio Grande argues that while Union Pacific has agreed to maintain all present interchanges, rates, and routes, there is no guarantee or reason to expect Union Pacific to cooperate fully on future proposals, as its long-haul interests would discourage such cooperation, based on Rio Grande's experience that Union Pacific does not usually allow itself to be shorthauled.

Rio Grande contends that it is ready, financially and otherwise, to acquire these lines and facilities and to provide shippers thereon with the same service it provides on its own lines. It would keep open all Rock Island gateways on its portion of Rock Island's lines at equal rates and at any level established in the future. Further, it would join the Missouri River connections in establishment of schedules to and from Chicago and St. Louis, and maintain over-all schedules through the Denver and Pueblo gateways with connections at those points, comparable with those presently in effect through the Missouri River gateways.

The remaining conditions requested by Rio Grande have been set forth in complete detail in Volume I, Part C: Position of The Parties. Such conditions as they apply to the Union Pacific and Southern Pacific acquisitions, Rio Grande asserts, are designed to allow shippers the flexibility of routing traffic via carriers of their choice, thus eliminating artificial barriers created when a carrier refuses to join in the arrangements sought by the conditions. In addition, and as specifically applicable to the requested lifting of restrictions on the Colorado and Utah gateways, Rio Grande contends that its position would be aggravated by the Union Pacific-Rock Island merger. However, here again, the examiner is constrained to note that the loss of the Rock Island connection, as a result of the merger, does not in any practical effect have any bearing upon the situation set forth in Lumber Rates, Oregon and Washington to Eastern Points, 29 I.C.C. 609, and, supplemental report, 31 I.C.C. 191, dealing with imposition of the restrictions. In other words, the real result and purpose of the conditions proposed does not truly arise by reason of the proposed transactions but as to afford the Rio Grande increased traffic and revenues, and nothing more.

With respect to the situation regarding PFE equipment, Rio Grande has presented no evidence to support its inference that Southern Pacific, as an equal owner, has either abdicated or been deprived of an equal voice in the management of PFE to the detriment of Southern Pacific's own interests. In connection with the foregoing, several important factors should be borne

in mind. Southern Pacific in strictly its own interests makes intensive use of PFE equipment in local Pacific Coast and other transcontinental single-line and joint-line operations (exclusive of Union Pacific) and particularly with Rock Island. Secondly, in the movement of traffic requiring PFE equipment and under condition (e) of the Central Pacific case, certain of such traffic must move through the central corridor and over the lines of Union Pacific. Finally, D&RGW has made no case for discriminatory practices by Union Pacific in violation of the act. See: Routing Restrictions On Fresh Vegetables, 335 I.C.C. 665, 669 and 671. The relief for Southern Pacific clearly lies in the elimination of the conditions requiring the routing of traffic through the central corridor. mcp

With respect to the opposition of Burlington to Rio Grande's requested condition, the latter claims that Burlington's loss would be only .9 of 1 percent of its 1964 freight revenue, that on a system-wide basis, including Fort Worth & Denver and Colorado & Southern, the loss would be .4 of 1 percent, and that when Burlington is considered as a part of the merged Northern Lines system, with a 1966 annual net income of \$90.1 million and estimated pre-tax merger savings of \$39.0 million, the loss is negligible. Similarly, Rio Grande contends that MoPac will lose an estimated 1 percent of its total 1966 revenue of \$441.4 million, that at the hearings on MoPac's acquisition of control of Chicago and Eastern Illinois, MoPac stated that such a small loss is "tolerable" (the latter not here properly in evidence), that MoPac also is the beneficiary in the Transcontinental Divisions Case, that it receives a 16 percent increase in its share of divisions on traffic moving between St. Louis and Pueblo, which is accomplished partly at the expense of Rio Grande, and that the increased revenue to MoPac is without additional expense, while the decrease in Rio Grande's revenue has no corresponding decrease in expenses.

Some 38 shipper and public witnesses appeared in support of Rio Grande's position. The shippers, all substantial users of rail transportation, including of Rio Grande, generally are opposed to a Union Pacific-Rock Island merger on the grounds that competition in the central corridor would be lessened and Rio Grande would be weakened. In the event of an approval of the Union Pacific-Rock Island merger, such shippers support Rio Grande's proposed acquisition of Rock Island's western lines as a means of preserving both competition and the Rio Grande's present ability to provide good service.

The shipper witnesses are comprised of a lumber company at Portland and Smith River, Calif.; a copper mining company with

operations in Arizona, New Mexico, Nevada, Missouri, Utah, Alaska, and British Columbia; a freight forwarder with principal operations in Chicago and offices in the Northeast, Ohio Valley and West Coast States; a steel fabricator with offices in Salt Lake City; a furniture and bedding manufacturer with plants and warehouses throughout the United States; a Salina, Kans., grain merchandizer appearing on behalf of 27 similar companies in Kansas, Colorado, and Nebraska; the sales division of a national lumber company headquartered at San Francisco; a manufacturer of diversified products, headquartered in Pittsburgh, Pa., with worldwide operations, including 45 plants and 100 sales offices in the United States; a San Jose transportation consultant representing all independent canners and all shippers of dried fruit products in the San Jose and Santa Clara Valley areas; a Wisconsin association of companies manufacturing "building woodwork"; a Colorado organization comprised of 12 potato growers and shippers with rail service from Rio Grande only; a Chicago metal and plastic container manufacturer with plants throughout the country; a California association of rice growers with five plants and 1,800 members; a Kansas City fabricator of metal products with plants at seven other locations; the world's largest lettuce grower, headquartered at Salinas, Calif.; a Dayton, Ohio, paper manufacturer; a wholesale grocer, headquartered at Buffalo, N. Y.; a Kansas City association of 1,800 farm cooperatives which sells fertilizer, petroleum products, feed and fuel ingredients and other products related to agriculture; a Utah association representing over 100 Utah shippers; and a Portland, Oreg., purchaser of lumber and plywood products for various Ohio lumber companies.

Most of the above-named are interested in the preservation of central corridor competition and Rio Grande's undiminished service capabilities, and others, as next discussed, support Rio Grande on other grounds. The Salina, Kans., grain merchandizer, speaking also for 27 similar companies in Kansas, Colorado, and Nebraska, asserted that a possible abandonment by Union Pacific, with specific reference made only to a segment between Limon and Cheyenne Wells,⁸⁰ would leave some grain elevators on dead-end branch lines which would result in circuitous routes for receiving empty cars. These companies have not received an adequate supply of cars from either Union Pacific or Rock Island, and the combination of abandonments and inadequate car supply would worsen

⁸⁰ The previously described proposed abandonments herein in F.D. No. 24129 do not involve lines referred to by the shippers. In any event, following the proposed merger, any abandonments will have to be the subject of a separate application and be determined on its own merits.

an already adverse situation. The shippers believe that under the Rio Grande acquisition the lines would be retained intact. The witness for the Kansas City association of 1,800 farm cooperatives, which conducts business generally in the area between the Mississippi River and the Rocky Mountains, also feared the matter of abandonments by Union Pacific following the merger. However, here, too, the witness presented no probative evidence of such proposed abandonments, either actual or constructive.

The Dayton, Ohio, paper manufacturer and the Buffalo, N. Y., wholesale grocer, have experienced difficulty in routing cars via Ogden which is attributed to Union Pacific's refusal to establish joint rates and through routes with Rio Grande through Ogden. The shippers are of the opinion that this situation will worsen if Union Pacific becomes more dominant in the central corridor and therefore support the proposed Rio Grande acquisition. The paper manufacturer specifically supports Rio Grande's proposed conditions to "open" the Ogden gateway.

The furniture and bedding manufacturing company, while neither supporting nor objecting to the Union Pacific-Rock Island merger, anticipates a weakening of the Rio Grande as a result of diversion, and therefore supports the Rio Grande acquisition as a means of preserving the carrier and central corridor competition.

The Public Utilities Commission of the State of Colorado favors Rio Grande's requested purchase, contending that in order to ensure the strength of rail transportation in the State, the Rio Grande must remain a strong competitor. Although the industrial economy of the State centers around the cities of Pueblo, Colorado Springs and Denver, east of the mountain range, the industries are dependent upon the raw materials industries located in the western portion of the State, served solely by the Rio Grande. The State Commission believes that as a result of the Union Pacific-Rock Island merger, the Rio Grande may suffer traffic diversion and loss of revenues, causing it to downgrade or discontinue certain of its marginal or branch line service, and that the Rio Grande's acquisition of Rock Island's western lines would assist the carrier in maintaining a strong competitive position.

The Moffat Tunnel Commission opposes the Union Pacific-Rock Island merger unless Rio Grande is permitted to acquire the western Rock Island lines. The basis for the position is that Rio Grande, as a substantial carrier of bridge traffic, would lose a considerable amount of bridge revenues to Union Pacific

through diversion of traffic presently interchanged between Rio Grande and Rock Island. If Rio Grande thus were to suffer significant financial reverses making it impossible to meet its obligations under its Moffat Tunnel lease, the property owners would have the burden of making up the deficit. Annual payments amount to \$240,000 until 1973, and \$100,000 plus interest annually for the ten years thereafter.

Several counties, cities and chambers of commerce appeared in support of Rio Grande's acquisition on the grounds that Union Pacific's proposed abandonments and changes in service routes resulting from merger with Rock Island would result in diminution of service to their areas. Most of the cities and counties are in agricultural areas with relatively few large industries. Further, several of the areas include Union Pacific or Rock Island division points and therefore have railroad employees residing there who are taxpayers and patrons of local businesses. The railroads themselves are substantial taxpayers in some of the counties.

The witnesses, on the basis of their understanding of Union Pacific's proposals herein, expressed fears that downgrading of service and/or abandonments would adversely affect the economic well-being of their respective areas. The witnesses therefore urged that Rio Grande be permitted to acquire the western lines of Rock Island because the lines would remain competitive main lines to the Missouri River. The foregoing witnesses represent the following areas: (the serving railroad and population, where available, are in parentheses): City and Chamber of Commerce of Clay Center (RI-5,000) in Clay County (10,000), Kans.; City Council, Chamber of Commerce and Junior Chamber of Commerce of Limon (RI and UP-2,000), Colo.; City and Chamber of Commerce of Phillipsburg (RI-3,840), in Phillip County (8,300), Kans.; City and Chamber of Commerce of Manhattan (RI and UP-31,000), Kans.; County of Lincoln (RI and UP-8,300) and City of Hugo (UP), Colo.; City and Chamber of Commerce of Belleville (RI-3,200), in Republic County (10,000), Kans.; City and Chamber of Commerce of Goodland (RI-5,275), in Sherman County (6,500), Kans.; Chamber of Commerce of Wallace County (UP), Kans.; City and Chamber of Commerce of Smith Center (RI-2,700), in Smith County, Kans.; City of Cheyenne Wells (UP-1,100), Colo., and County of Cheyenne, Colo.; and the City of Norton (RI-4,200), in Norton County (8,600), Kans.

The public witnesses in support of Rio Grande, next discussed, represented gateways served by several of the carrier parties. The City of Council Bluffs, with a population of about 60,000, is the county seat of Pottawattamie County, Iowa, which has a

population of approximately 90,000. Council Bluffs is the fifth largest rail center in the country, and railroads comprise the largest industry in the city, employing some 2,600 people. The City's economy is based on railroad activity and interchanges. The City fears that the Union Pacific-Rock Island merger would reduce the City's status as a rail center on the Union Pacific, and that the traffic diverted from other carriers serving Council Bluffs would, in turn, reduce still further the City's importance as a gateway. It believes that the acquisition of Rock Island's lines west of Council Bluffs by Rio Grande would provide that carrier's connections operating from Council Bluffs eastward with interchanges and a route competitive to Union Pacific.

The City and Chamber of Commerce of Colorado Springs oppose the merger unless Rio Grande's conditions are authorized because in their view, without the conditions, rail competition would be reduced depriving shippers and the 360 industries in the area of the benefits of that competition; the Rock Island's line to Colorado Springs would become a branch line; and Rio Grande would be weakened. The City and Chamber of Commerce assert that the Rio Grande acquisition would maintain service and competition in the area.

The City and County of Denver, Colo., and its Chamber of Commerce do not oppose the Union Pacific-Rock Island merger, but believe that central corridor competition would be threatened, and the proposed abandonments (which were not specifically identified, if, indeed, the reference were to proposed abandonments of record) would result in severe difficulties to other communities and the State. Carriers receiving interchange traffic from Rock Island would lose revenue and profits with an accompanying loss in tax payments to local and State governments. Rio Grande's acquisition would preclude such repercussions.

Finally among the gateway cities, the Chamber of Commerce of Pueblo fears a reduction in competition, weakening of Rio Grande, and encroachment on the business of Santa Fe and MoPac. The Chamber of Commerce believes that Rio Grande's acquisition would help insure the continued use of the Pueblo gateway for transcontinental rail service.

The Chamber of Commerce of Grand Junction, Colo., with a population of about 23,000 (metropolitan area - 40,000) opposes the UP-RI merger unless Rio Grande's purchase is authorized. The Chamber of Commerce contends that if the Rio Grande is financially and operationally endangered by traffic diversion, industries in the city would suffer, and it would be difficult to attract new industry to the area, which is served only by Rio Grande.

(3) Burlington Northern (NP, GN, SP&S, CB&Q, FW&D and C&S)

The positions taken by the individual Northern Lines carriers and their subsidiaries are set forth in Volume I. Such positions and presentation of supporting evidence were established prior to consummation of the merger authorized in the Northern Lines case, and require a discussion herein on an individual basis. Of course, changed circumstances following the Northern Lines case are not of record for discussion and consideration, other than those matters and things of which official notice properly may be taken.

Great Northern and Northern Pacific fear the increased competitive service between the Pacific Northwest and the eastern gateways which they contend will result from the Union Pacific single-line service following acquisition of Rock Island's northern lines. Both carriers presently are competitors of Union Pacific for this traffic and face similar problems.

Rock Island is a friendly and cooperative connection for Great Northern, principally at the Twin Cities; the two companies have a fast, efficient direct interchange at Minneapolis, avoiding delays incident to interchange through Minnesota Transfer Railway; they have long maintained joint rates with commodity restrictions and have worked together in the solicitation and handling of traffic between the Pacific Northwest and points south and east of the Twin Cities; Great Northern is Rock Island's largest Twin Cities interchange, and another large volume is interchanged by bridging traffic over the MN&S via Northfield. Great Northern points to the obvious; namely that the close relationship will cease if Rock Island is merged into Union Pacific.

Great Northern asserts that, in addition to being a far stronger railroad than Great Northern, Union Pacific, a vigorous competitor, has the added advantage of a transloading operation at North Platte and important and strategically located storage facilities at Clearfield, Utah, which affords shippers of stop cars and manufactured goods stored in transit an opportunity to reach all of the enormous central and southern California markets as well as the Pacific Northwest.

Great Northern claims that the UP-RI merger will greatly benefit the competitive position of the Union Pacific to the detriment of Great Northern, for three reasons: the initially mentioned Union Pacific single-line service; the car fleet of the merged company will be vastly improved both through the better utilization of existing cars and by reason of the availability of Union Pacific capital to make new purchases; and the

improved capital structure and earning power of the new company will enable it to make improvements in its properties and operations, which will greatly improve its ability to provide expedited service competitive with that of Great Northern between Chicago and the North Pacific Coast, and through Chicago in conjunction with the large new systems in the East.

One of the problems facing Great Northern is its great imbalance of traffic. With the largest portion of its traffic moving eastbound, it is handicapped in the provision of empty cars in the west for loading. During peak seasons, Great Northern uses numerous westbound extras to handle empty equipment, and claims that a further loss of westbound traffic to the new merged company will aggravate the already serious problem. In addition to the claimed inefficient operations and deprivation of needed service to shippers, Great Northern fears that the aggravated car supply problem will result in further revenue losses.

Great Northern alleges that the purchase by Southern Pacific of the southern portion of Rock Island will cause problems for it by creating another single-line route to those points in the Pacific Northwest now served by Southern Pacific. Admittedly the present Southern Pacific-Rock Island two-line service competes with Great Northern, but the latter argues that new single-line service will increase competition.

Great Northern estimates that an unconditioned UP-RI merger and sale to Southern Pacific will cause Great Northern total losses of \$3.5 million in annual revenues; over \$300,000 of which is attributable to SP&S (see Part 0).

In the Pacific Northwest, Union Pacific serves more common points with Northern Pacific than with any other railroad; the principal ones being located in Washington, Idaho and Oregon. Including those three States and Montana, there are 162 points served in common by Union Pacific and Northern Pacific, many by UP and NP only.

In competing with Union Pacific, Northern Pacific claims certain existing disadvantages; for example, Northern Pacific's "zigzag" route is more circuitous than Union Pacific or any other of its major competitors, and to remain competitive, Northern Pacific alleges that it has been required to sacrifice efficiency by reducing train tonnage and increasing locomotive power in order to overcome physical handicaps. Like Great Northern, Northern Pacific has a large traffic imbalance, having far greater eastbound freight tonnage than it does westbound, and asserts that its traffic imbalance is greater than that of Union Pacific.

Another disadvantage claimed is that, between Seattle and Portland on the west, and the Twin Cities and Chicago on the east, Northern Pacific requires more train crews than its competitors. This, the carrier asserts, will be compounded by a Union Pacific-Rock Island merger, since that single-line service will require only 18 crews between Chicago and Portland and 19 crews between Chicago and Seattle, as compared to 20 or 21 crews required by Northern Pacific for both routes, depending upon the connecting line used east of the Twin Cities. In each case, Northern Pacific also must use interchange crews at the Twin Cities. The Northern Pacific contention that the Twin Cities interchange prevents it from offering single-line service between the Pacific Northwest and Chicago was, of course, made prior to consummation of the Northern Lines case.

Northern Pacific anticipates a loss of over \$3.8 million to the merged Union Pacific-Rock Island.

To alleviate the injury these Northern carriers expect to suffer, they, including SP&S, request certain conditions. Such conditions are discussed in complete detail in Part C: Position Of The Parties. With respect to conditions which cover the same areas, the carriers' positions are basically identical, and the discussion herein follows the numerical designation set forth in Part C.

Condition (1) involves the Tukwila-Andover-Kent Industrial area. Kent Valley is an industrial area south of Seattle, Wash., through which run the tracks of Northern Pacific and, to the west of those tracks, the tracks of Union Pacific and Milwaukee in joint ownership and operation. Great Northern utilizes the Northern Pacific trackage, and neither carrier has access to industries to the west of the Union Pacific-Milwaukee tracks, with the exception of two industries on the northerly Tukwila portion of the area, which they reach on a limited basis.

The Northern carriers' evidence is convincing that much of the present and future development in this area is taking place and will take place in the area lying between Black River Junction, south of Seattle, and South 228th Street, the north city limits of Auburn, Wash. At present there are 772 acres which have been industrially developed or are being developed. Another 430 acres are owned by companies capable of industrial development, and there are 1,740 more acres of potential development value.

The carriers estimated that around January 1, 1967, there was an annual movement of between 1,246 (Great Northern estimate) and 1,400 (Northern Pacific estimate) carloads to and from the area, producing revenues of at least \$645,075 (Great Northern estimate). The carriers estimated that, by the end of 1968, there

would be an increase to between 4,000 and 5,000 carloads, producing revenues of \$1.7 or \$1.8 million. In 10 to 15 more years, the Great Northern expects the area to produce around 16,000 carloads annually with revenues of about \$6.5 million.

Great Northern and Northern Pacific propose that Union Pacific be required to grant them access to this area by admitting them to full joint and equal use of the Union Pacific line between Black River Junction and South 228th Street. If, due to contractual restrictions with its joint owner, Milwaukee, Union Pacific is unable to comply with this request, Great Northern requests that Union Pacific be required to include the area in its Seattle switching tariff and to publish and maintain reasonable switching charges. Northern Pacific's alternative proposal is that Union Pacific be required to publish reasonable tariff switching rates agreed to by Northern Pacific or prescribed by the Commission to all industries which it now or may in the future serve in this area.

Great Northern proposes access to this area on a trackage rights basis by the construction of a relatively inexpensive connection at Black River Junction or by the construction of a connection between the present Great Northern-Northern Pacific joint line which runs parallel with and in some areas nearly adjacent to the Union Pacific line. The carrier estimates that a connection at either location could be constructed and maintained, since these two parallel lines are approximately at the same grade and there is no physical obstruction or condition which would prevent the construction or require the payment of any unusual expense.

Great Northern presses for the condition on a twofold basis; that the public interest would be served by shippers being provided a choice of routes to and from competitive areas, and, the added revenues to Great Northern would help offset the expected loss of revenues occasioned by the proposed Union Pacific transaction.

If Great Northern is granted access to the area, it estimates that it will be able to obtain approximately 15 percent of the traffic, resulting in revenues of about \$250,000 annually, with a predicted potential of \$1.0 million. Costs are estimated to be about \$50,000. Northern Pacific estimates an increase in annual revenues of \$275,000, which, after estimated expenses of \$68,000, will result in a net increase in freight revenues of \$207,000.

Under Condition (2) the Northern carriers and SP&S would secure direct access to present and future industries located in the area of Portland, Oreg., lying west of the SP&S main line, north of the Willamette River and south of the Columbia River Slough, and known as the St. John's Industrial District.

The reasons for the desired access are basically the same as for access to the Tukwila-Kent area; however, SP&S points out an additional argument. It charges that, with certain exceptions, Union Pacific delays the interchange traffic of these carriers, as much as 24 hours or more, by unnecessary circuitous switching in the Portland area, and then, Union Pacific uses these delays against the carriers in its solicitation of traffic.

The carriers claim that, in addition to the benefit to the shipping public of removal of the unnecessary delays now present and the elimination of competitive switching charges, the condition will result in an estimated net increase in freight revenues of \$60,000 to Great Northern and \$40,000 each to SP&S and Northern Pacific.

Condition (3) as previously set forth in the discussion of such condition was eliminated by consummation of the merger authority granted in the Northern Lines case.

Condition (4) would include publishing and maintenance of a tariff of reasonable charges for the switching of industries located in the described Fir Station-Rockwood-Troutdale areas and permitting the carriers to absorb all or any part of those switching charges in accordance with prevailing practices.

There are approximately 20 industries at Fir Station, consisting primarily of manufacturers and distributors, six industries engaged in distribution at Rockwood, and two major industries at Troutdale, all of which are presently served by Union Pacific. There are also 1,250 acres there capable of being developed for industrial use. Great Northern and Northern Pacific claim that granting this condition would permit the enjoyment of rail competition by shippers and receivers situated at Rock Island and Union Pacific points common to GN and NP, or their connections, or reached via connections of Union Pacific or Rock Island over competitive routes. Otherwise the shippers would be wholly captive to the merged Union Pacific-Rock Island for traffic to and from the above-named stations.

Presently, the traffic in this area is about 6,000 cars annually and is expected to be as high as 10,000 cars when fully developed. Great Northern expects to solicit around 10 percent of the traffic, resulting in increased revenues of \$240,000 now and a potential of \$400,000 annually, with costs estimated at \$24,000. Northern Pacific estimates an increase in annual revenue of \$238,000, which after an estimated switching expense of \$25,000, will result in a net increase in freight revenues of \$213,000 per year.

As seen, Condition (5) is a matter of extending the switching district at St. Paul to the southern limits of Inver Grove to include Inver Grove, St. Paul Park, and one specific shipper, on a geographical basis so that all switching charges will be maintained to and from all present and future industries.

The area is served by North Western, as a result of merger with Great Western, and by Rock Island, as shown in a Rock Island switching tariff. There are several important industries in this area, subject to the tariff; however, the tariff does not geographically define the area. Thus, the carriers allege, it is possible that the merged Union Pacific may not allow access to new industries in the general area, without more definite geographical limits.

Condition (6) requesting certain modifications and clarifications in the standard traffic conditions set forth in the DT&I case follows with the proposed additions and substitutions underscored:

I.

Upon consummation of the transaction in whole or in part, Union Pacific Railroad Company shall maintain and keep open all routes and channels of trade via existing junctions and gateways, unless and until otherwise mutually agreed upon by the carriers affected or otherwise authorized by the Commission.

II.

The present neutrality of handling traffic inbound and outbound and in overhead service by Union Pacific Railroad Company* and the Chicago, Rock Island and Pacific Railroad Company and their subsidiary lines shall be continued by Union Pacific Railroad Company* so as to permit equal opportunity for service to, and from, and via all lines reaching the rails operated-by-the-Chicago, Rock-Island-and-Pacific-prior-to-the-unification-herein proposed of the Union Pacific Railroad Company* and the Chicago, Rock Island and Pacific Railroad Company** without discrimination as to routing or movement of traffic and without discrimination in the arrangement of schedules or otherwise.

*Or Chicago and North Western Railway Company and/or Southern Pacific Company, or Atchison, Topeka and Santa Fe Railway Company, depending on the nature of the transaction ultimately approved.

**Applicable only in case Rock Island's operation is to continue.

III.

The-present Existing traffic and operating relationships, including contracts between the Union Pacific Railroad Company* and the Chicago, Rock Island and Pacific Railroad Company and their subsidiary lines, on the one hand, and, on the other, all lines connecting with its their tracks, shall be continued insofar as such matters are within the control of the Union Pacific Railroad Company.

IV.

The Union Pacific Railroad Company* shall accept, handle and deliver all cars inbound and outbound and in overhead or switching service, loaded and empty, without discrimination in promptness ~~or~~ and frequency of service as between cars destined to or received from competing carriers, and irrespective of origin or destination or route of movement.

V.

The Union Pacific Railroad Company* shall not do anything to restrain or curtail the right of industries ~~now-located-on~~ served by the Union Pacific Railroad Company* or the Chicago, Rock Island and Pacific Railroad Company to route traffic over any or all ~~existing~~ available routes and gateways.

VI.

Any party or person having an interest in the subject matter may at any future time make application for such modification in the above conditions, or any of them, as may be ~~deemed~~ required in the public interest, and jurisdiction ~~may~~ shall be retained to reopen the proceedings on the motion of the Commission for the same purpose.

*Or Chicago and North Western Railway Company and/or Southern Pacific Company, or Atchison, Topeka and Santa Fe Railway Company, depending on the nature of the transaction ultimately approved.

The carriers state that the change in paragraph I is self-explanatory as is paragraph II, basically. The major change proposed is that the present neutrality in the handling of traffic must be continued by the acquiring line, not only as to its own traffic but also as to that moving over the lines of subsidiaries and over the lines acquired. No surviving company should be able to refuse to provide its connections with rates and routes over the several terminals which the Northern Lines carriers have heretofore enjoyed in working with either applicant.

The changes in paragraph III are intended to avoid changes in traffic and operating relationships between the time of the Commission's order and the time of consummation, without alteration in anticipation of the merger. Also, the carriers state that the reference to contracts refers to trackage rights agreements.

The first change in paragraph IV, the carriers say, is also self-explanatory. The addition of the word "origin" is to make unnecessary the deleted language. This deletion of the reference to competing carriers is suggested, because, as now phrased, the possibility is raised that an acquiring line might be required to provide service only to competing carriers and not to others. This condition is also altered with the intention of giving it prospective application to apply to the benefit of industries which may now or hereafter be served by any successful applicant and not be limited to those now served by them.

The carriers contend that the remaining changes are also self-explanatory.

As seen, Condition (7) is divided into two parts. First, Northern Pacific seeks a grant of joint facility rights to operate with its own power and crews approximately 14.5 miles west from Wallace to Silver King, Idaho, and to serve all present and future industries at the latter point, and those located at all intermediate points, including Kellogg and Bradley. This area contains a large complex of zinc and lead smelters and also acid and fertilizer plants. Northern Pacific asserts that it will provide efficient service to and from the area and afford the shortest and fastest single-line service to and from Montana, Wyoming, North Dakota and South Dakota, and that it will offer the benefits of outbound single-line service for smelting products and fertilizers. Net freight revenues are anticipated to increase \$100,000 from this operation.

The second part of Condition (7) is a request for full joint facility rights over 66 miles of the Spokane International from the Northern Pacific connections at Sandpoint, Idaho, to the Spokane International-Canadian Pacific connection at Eastport, Idaho.

Presently, Northern Pacific originates around 8,000 cars of phosphate ore annually at points near Drummond, Montana, and furnishes all the equipment required for the move. It is moved 282 miles over Northern Pacific lines to Sandpoint, and Spokane International handles it from there to the Canadian Pacific interchange at Eastport. Canadian Pacific moves it to points in British Columbia, where it is processed into fertilizer and returned over Spokane International in the reverse direction to points in the western States. The carrier estimates additional freight revenues of about \$1.2 million annually.

Burlington argues that it will be more directly and adversely affected by the merger of Rock Island into Union Pacific than any other carrier. Predicated on the Rock Island lines in the Midwest being closely parallel to those of Burlington, the latter contends that a profound change in Rock Island affiliations and its operation as part of a much larger system will result in great harm to Burlington, and the shippers who need its services.

Burlington is confronted with uncertainties and problems substantially similar to those of other carriers in the Midwest, and indicators such as net freight revenues, total tons carried, tons originated and tons terminated show that Burlington is not in a markedly different position than North Western or Rock Island, while its trend of revenue ton-miles from 1947 to 1964 was less favorable than North Western or Rock Island. Burlington's 1967 earnings of over \$14.2 million was down more than 30 percent from the level prior to 1965, and the carrier points out that it has been going through a period of increased debt and reduced cash and cash assets, which, it says, is due in part to its furnishing of improved equipment and facilities so that its shippers can compete with concerns located in other areas.

Burlington argues that, in the face of these operational and financial problems, the expected loss to the Union Pacific will have a devastating effect, since such a financial deterioration must eventually give rise to deterioration in service and prejudice to the interests of Burlington's shippers and investors. During the four years ending in 1966, the carrier spent more than \$178 million upgrading and improving the

property, including large amounts of equipment, in order to provide fast, dependable service. It contends that a loss the size of which is anticipated from the proposed disposition of Rock Island would threaten its ability to maintain and upgrade its property and to continue providing the present standard of service.

Burlington alleges that, in view of the excellent service in the central corridor via the Burlington-Union Pacific through-train service, there is no need for single-line service, particularly since the great harm to the midwestern roads from the Union Pacific-Rock Island merger outweighs any alleged benefits. Westbound joint through trains originate on Burlington at Chicago and Lincoln and move via Burlington main lines to Grand Island, where operating schedules provide for a stop of only ten minutes before the trains proceed westward on Union Pacific's main lines. Crews are changed, and inspection made by Union Pacific inspectors, whereupon Burlington engines and cabooses operate beyond Grand Island on Union Pacific lines to Green River, Wyoming. More than 95 percent of the loaded cars interchanged at Grand Island are in train lots. Eastbound traffic is similarly handled, with the trains being preblocked by Union Pacific at North Platte, and Union Pacific engines operating to Chicago.

Burlington's high-speed route between Chicago and Grand Island has almost identical mileage to that of the Union Pacific-Rock Island line, and Burlington says that it is capable of providing equivalent service even with the improvement program contemplated by Union Pacific. Burlington contends, however, that the present Grand Island joint-line service will deteriorate as Union Pacific reduces its traffic contribution and favors its own long haul. Burlington estimates that some 61 percent of the Grand Island traffic will be diverted.

If the Union Pacific and Southern Pacific applications are approved, Burlington estimates that it will lose gross revenues of \$15.3 million, with an after-tax loss of almost \$7.7 million. If the Rio Grande condition is granted, Burlington claims Rio Grande's estimate of an increase in net income of almost \$2.3 million will come not only from the applicants but also from other railroads who will themselves lose revenues to the applicants. Burlington contends that its income will already have been seriously undermined by the Union Pacific-Rock Island merger, and Rio Grande's condition will greatly compound the injury.

Burlington points out that Rio Grande's evidence is that it will operate the western lines of Rock Island in basically the same manner as Rock Island is now doing, that Rio Grande proposes no schedule improvements and that the extension of its lines to Omaha and moving the interchange to that point will not result in service better than with the interchange presently at Denver. The foregoing shows, Burlington claims, that Rio Grande admits that service to or from Chicago or St. Louis will not be improved and that there will probably be no improvements in service so far as the shipper or receiver is concerned on the traffic interchanged between Rio Grande and Burlington or MoPac.

Burlington contends that, since the Rock Island mileage between Denver and Omaha is 11 percent greater than that of Burlington, it will be difficult for Rio Grande to provide faster schedules than now exist, and that, in view of the efficient Burlington-Rio Grande interchange at Denver, there would be no reduction in transit time if Rio Grande operated the trains through to Omaha over Rock Island. On traffic moving from Denver to points beyond Omaha, e.g., Chicago, Burlington claims that the Rio Grande would be at a disadvantage because the cars would need to travel over the circuitous line of Rock Island to Omaha, and also have to be interchanged to Burlington or some other connection in the Omaha-Council Bluffs area, and that, on the other hand, traffic now interchanged to Burlington at Denver for points east of Omaha now by-passes Omaha, and is handled over Burlington's direct line via Plattsmouth, Nebr., to Galesburg, Ill., and thence to Chicago or other eastern gateways.

The evidence adduced shows that Burlington and Rio Grande are now effective end-to-end connections at Denver, and that Burlington traffic moving between Denver and both Kansas City and Omaha is reasonably well-balanced eastbound and westbound, particularly traffic interchanged with Rio Grande at Denver. Following the proposed Rio Grande acquisition of Rock Island western lines, a substantial amount of eastbound traffic now moving over Rio Grande and Burlington via Denver will be held by Rio Grande for its long haul to the Missouri River, and Burlington will continue to solicit for its long haul to Denver on westbound traffic. In Burlington's view the anticipated imbalance between its eastbound and westbound traffic is definitely undesirable from an operating standpoint and will interfere with the service presently offered by the railroad to and from Denver.

There are now five major railroads providing competitive service in the central corridor between Colorado and the Missouri River gateways. From the River, Union Pacific and Burlington reach both Denver and Cheyenne, Rock Island and Santa Fe reach Denver and Colorado Springs, and MoPac reaches Pueblo. A merger of Rock Island into Union Pacific would reduce the number to four. While alleging that the merger would have a profound effect upon it, Burlington says that the effect between Denver and the River would not be so great, since there is already competition from Union Pacific in that territory. Burlington claims, however, that as to itself Rio Grande's proposed acquisition would greatly alter the competitive situation, since its friendly and non-competitive connection would be combining with a competitor. Burlington foresees not only an eventual downgrading of its own lines, but also those of Santa Fe and MoPac, leaving only two competitive routes between Denver and the Missouri River.

Burlington opposes the request by Kansas City Southern for trackage rights to Chicago, contending that there is presently a sufficient number of railroads operating between Kansas City and Chicago, including Burlington, Rock Island, Santa Fe, Milwaukee, North Western, Norfolk & Western and Gulf, Mobile & Ohio, and that these carriers provide the necessary service and facilities. Burlington argues that granting KCS trackage rights between Kansas City and Chicago would only further dilute the traffic available to the existing carriers between those points and would simply provide an opportunity for KCS to divert traffic from the carriers that have long served those two gateways. Further, the carrier states that the Rock Island route between Kansas City and Chicago is approximately 7 percent more circuitous than Burlington's. Thus, it feels that the time saved by Kansas City Southern avoiding the Kansas City interchange with Burlington will be offset by this circuitry.

Burlington interchanges more cars with KCS at Kansas City than any other railroad and would, therefore, be most adversely affected by the granting to KCS of trackage rights to Chicago.

FW&D is the only connection that Colorado & Southern has at its southernmost point, thus, these carriers contend that any adverse affect upon FW&D will also adversely affect Colorado & Southern. The two lines have, since their construction many years ago, formed a through route between Denver and Ft. Worth. A second interest Colorado & Southern has in the welfare of FW&D is that it has guaranteed all of FW&D's outstanding mortgage bonds, and C&S claims its earnings and funds are not sufficient to cover any of FW&D's losses. Therefore, Colorado & Southern joins FW&D in its position with respect to the major applications and requested conditions involved in this proceeding.

FW&D states that Southern Pacific's acquisition of Rock Island will affect it with respect to the Joint Texas Division (JTD), a 225-mile segment of line between Waxahachie, Tex., and Houston, owned jointly by FW&D and Rock Island. FW&D and Rock Island operate joint train service from Fort Worth to Houston and Galveston, including operations over the JTD. These operations are efficient and beneficial to both parties and are conducted pursuant to an agreement dated June 20, 1951, and effective June 1, 1950, which provides that all freight shipments of both companies between Fort Worth and Galveston shall be handled in jointly operated trains. The freight of each railroad moves on the billing of that road, and either company can have its cars moved in any of the trains regardless of who scheduled it or who furnishes the locomotive power for that train.

Southbound JTD trains originate at Ft. Worth in FW&D's yard, proceed to Rock Island's Peach Street Yard to pick up Rock Island cars, and the trains then move via Rock Island tracks to the Cadiz Street Yard in Dallas where cars of both companies are picked up or set out. The completed trains move to Waxahachie via Katy tracks, to Belt Junction in Houston over the JTD via Houston Belt & Terminal Railroad to its south yard, and then to Galveston via Santa Fe tracks. Northbound traffic travels in the reverse order.

Between Ft. Worth and Dallas, FW&D is not permitted to serve industries located along the Rock Island tracks, nor is it allowed to pick up or set out cars for industries located on the Great Southwest Railroad, which is owned in part by Rock Island and T&P (45 percent each). There are few industries located on the JTD, and the communities served by the JTD are relatively small. Traffic generated by the line is modest in volume and FW&D states that under its sole ownership, it would have every incentive to improve and develop the line in contrast to joint ownership with Southern Pacific which has a superior service route between Ft. Worth-Dallas and Houston.

Taxes, rentals and station expense, and charges for additions and betterments to the jointly owned segment are divided equally between FW&D and Rock Island. Monthly maintenance and operating expenses are divided on the basis of the respective percentages of car-miles operated by each company. JTD freight trains utilize locomotives and cabooses furnished by the two companies, with respective equalization on the basis of tractive power ton-miles and caboose-miles. In recent years the costs have been shared on an equal basis.

At Houston, switching service is provided by the HB&T, in which FW&D and Rock Island each own a 12.5 percent interest, with 25 percent owned by Santa Fe and 50 percent by MoPac. Southern Pacific also serves the Houston area and performs its own switching for industries on its lines. Generally, HB&T industries are open to Southern Pacific on a reciprocal switching basis, with Southern Pacific industries similarly open to HB&T owners. There are, however, some industries on Southern Pacific and HB&T tracks which are not subject to this arrangement.

If Southern Pacific acquires the southern portion of Rock Island, including the latter's interest in the Joint Texas Division, FW&D contends that the carrier will route all through business over the existing Southern Pacific lines between Ft. Worth and Galveston, via Dallas, bypassing the JTD between Waxahachie and Teague, Tex., and operating one train three times a week over the JTD between Mexia and Houston for local service to the points on that portion of the Joint Texas Division.

FW&D says that Southern Pacific expects an annual savings of over \$1.1 million on the operations between Dallas and Houston, whereas FW&D anticipates a cost increase of \$936,305 if Southern Pacific reduces its use of the JTD. According to FW&D, removal of Rock Island traffic, other than traffic originating or terminating on the line, from the JTD will not reduce the expenses proportionately. For example, it calculates that maintenance of way and structure expenses, now divided equally between FW&D and Rock Island, would nearly double for FW&D. Further, the carrier claims that various other expenses, now apportioned on a car-mile basis would be reallocated so that FW&D's increase would be over \$650,000 per year, resulting from the higher ratio of FW&D freight car-miles to total JTD freight car-miles. The carrier anticipates that the two items above would total over \$880,000 per year, a burden which it contends can not be supported without the proposed conditions.

FW&D calculates that its increased operating expenses under complete ownership of the Joint Texas Division will be approximately the same as expected under joint ownership with Southern Pacific. The carrier hopes to partially offset this increase in cost by the revenue it will receive from present Rock Island traffic it may be able to retain.

FW&D finds that, in Houston there is now a delicate competitive balance existing between the carriers serving that point, and following Southern Pacific's acquisition of Rock Island, it will then be able to serve all the HB&T industries, while reserving some of its own industries to itself, thereby

upsetting the balance. In order to avoid this, and to prevent part of the traffic loss which FW&D would otherwise suffer, the carrier seeks a condition requiring Southern Pacific to sell to FW&D Rock Island's interest in HB&T.

Presently, FW&D and Rock Island operate over the Rock Island line between Ft. Worth and Dallas under a joint facility agreement with costs shared on a use basis. Rock Island's use of this line exceeds that of FW&D; however, if Southern Pacific acquires this line and diverts present Rock Island traffic to its own line, FW&D claims it will face the same problem as it anticipates on the Joint Texas Division. Accordingly, FW&D requests that it be granted perpetual trackage rights over Rock Island's Ft. Worth-Dallas line, when acquired by Southern Pacific. The suggested rate is \$1.75, which is the applicable rate in that area for bridge trackage rights rather than the full trackage rights sought by FW&D. This rate would result in a payment by FW&D for full trackage rights of \$130,000 annually, whereas its present payment to Rock Island is \$260,000 for bridge trackage rights.

In addition to the trackage rights, FW&D seeks to protect its operations in and between Ft. Worth and Dallas. FW&D claims that because of the existing congestion in Rock Island's Peach Street Yard in Ft. Worth, it has encountered considerable difficulty in running its trains through the yard. It contends that this difficulty will be compounded if Southern Pacific takes over the Rock Island operations, since Southern Pacific's operating plan provides for consolidation of Southern Pacific, Cotton Belt and Rock Island Yard facilities at Peach Street Yard. FW&D therefore requests that Southern Pacific be required to make available an unobstructed and open main line through Peach Street Yard for the operation of all scheduled FW&D trains. FW&D also seeks the continuance of its present right to interchange traffic with Frisco at Irving, Tex., and continuance of its use of Rock Island's Cadiz Street Yard in Dallas, as well as Cotton Belt's switching services in Dallas.

Finally, in order to allow FW&D to generate additional traffic to offset the traffic lost to Southern Pacific, and in order to provide better competition and better service in the Ft. Worth-Dallas area, the carrier requests that Southern Pacific be required to grant it the right to serve Rock Island's industries between Ft. Worth and Dallas. This, it is claimed, will enable FW&D to provide those industries now closed to its operations with direct service to northwest Texas and, via Colorado & Southern, to Denver, which neither Rock Island nor

Southern Pacific can do. FW&D estimates it will realize \$200,686 additional annual gross revenues from serving this area.

FW&D estimates that it will suffer a gross revenue loss of \$389,424 and a net revenue loss of \$311,539 as a result of the Southern Pacific transaction. C&S estimates a gross revenue loss of \$30,465 and a net revenue loss of \$24,372 as a result of the Union Pacific transaction, and losses of \$218,287 in gross revenue and \$174,630 in net revenue under the SP transaction.

Among the Northern Lines system carriers, only FW&D presented shipper witnesses. These FW&D shippers, eleven in number, expressed the view that the Southern Pacific purchase of Rock Island's southern lines could weaken FW&D's competitive strength, financial health and continued ability to conduct existing levels of service. The shippers oppose the SP transaction unless the conditions sought by FW&D are imposed.

All of the shippers are substantial users of FW&D service, and most have one or more facilities served by FW&D. The shippers include a brick manufacturer at Teague, Tex.; a scrap paper and rug company at Corsicana; a grain elevator company with elevators in Texas, Nebraska, North Dakota, Colorado, Kansas, and California; a manufacturer of mobile homes headquartered in Ft. Worth with a plant at Hicks, Tex.; two grain merchandisers, one at Clayton, N. Mex., the other with facilities at various points in Texas; an exporter of cotton linters at Dallas; a lumber and building materials distributor at Wichita Falls, Tex.; a Dallas cotton growers' cooperative; a merchandiser and warehouser of appliances and other consumer goods at Wichita Falls; and a grain storage company at Saginaw, Tex.

(4) Kansas City Southern - L&A

The Kansas City Southern-Louisiana & Arkansas is a small system in comparison to its major competitors. It operates under a severe competitive handicap of having a short operating length and routes that connect relatively few major points; offering single-line service to relatively few of the important points and gateways. In many instances Kansas City Southern must offer two-line or three-line service in competition with single-line service and which it finds to be a handicap in the location and development of new industries along its lines and in its establishment and adjustment of rates. Its smaller area of service places KCS at a competitive disadvantage with respect to transit privileges, since larger carriers are able to offer shippers and receivers much larger territories within which they can take advantage of transit privileges. Scheduling is another handicap

facing KCS, as it must maintain and adjust its schedules in coordination with its connecting lines. Larger, single-line competitors are free to tailor schedules without consideration of other carriers.

Kansas City Southern raises two aspects of opposition to the Union Pacific's proposed acquisition of Rock Island's northern lines. KCS anticipates that it would lose a large portion of the present interchange traffic it receives from Union Pacific at Kansas City destined to the southwest, in view of the friendly relationship between Union Pacific and Southern Pacific. A second diversion it fears is a loss of interchange traffic at Kansas City, moving to and from the Louisiana area, since Union Pacific would have the longer haul to St. Louis where it would be able to connect with Illinois Central, in which it has an interest, or to other St. Louis carriers. In addition, Kansas City Southern fears that Union Pacific will be able to divert to its long-haul line extending to Chicago, traffic from other carriers serving Chicago which they now interchange with Kansas City Southern at Kansas City.

The result of the Southern Pacific purchase would add a stronger, single-line carrier throughout the KCS area and would largely eliminate KCS as a bridge carrier between present Southern Pacific points and Kansas City. A significant portion of KCS's traffic is bridge traffic between Kansas City and the Texas Gulf Coast, particularly Houston, and as a result of Southern Pacific's entry into Kansas City, KCS expects a large diversion of this traffic.

A similar situation is anticipated with respect to L&A's line between Alexandria, La., and Stamps, Ark., which carries bridge traffic almost entirely. It draws northbound traffic from Southern Pacific at Alexandria and southbound traffic from Cotton Belt at Stamps. The Southern Pacific-Cotton Belt route for traffic moving between the New Orleans area and Memphis and St. Louis is very circuitous, running via Houston and Shreveport. Southern Pacific's acquisition of Rock Island's Alexandria-Fordyce, Ark., line would give it a route duplicating L&A's Alexandria-Stamps route and also L&A service at Alexandria and Winfield, La. A further diversion is anticipated consisting of traffic which moves over the L&A's Alexandria-Stamps line, and consisting of bridge movement in which it participates and involving movements between other carriers and either Southern Pacific or Cotton Belt. Additionally, KCS claims that Southern Pacific ownership of Rock Island's line from El Reno, Okla., to Memphis would give it the capability of diverting traffic from L&A's Dallas-Shreveport bridge-line.

Kansas City Southern reasons that if it is granted trackage rights to Chicago and Peoria it would be able to conduct a single-line service in operations between Chicago and points in the south-central region and thus eliminate present interchange at Kansas City. At Chicago, KCS proposes the use of Burr Oak Yard. Any switching and other terminal facilities would be performed by Union Pacific for KCS's account under a negotiated arrangement.

With respect to the Southern Pacific proposal, KCS seeks the purchase of the Rock Island properties at and between Dallas and Ft. Worth and of Rock Island's interest in Great Southwest Railroad, which serves the Great Southwest Industrial District.⁸¹ It is anticipated that such acquisitions would enable L&A to improve its present service at Dallas and offer new service between Ft. Worth and the Great Southwest Industrial District, on the one hand, and southeastern carriers, on the other. It would also allow L&A to compete with T&P for the growing inter-line and bridge traffic between Ft. Worth-Great Southwest and connecting lines in Louisiana. Kansas City Southern argues that purchase of these lines and facilities by Southern Pacific would reduce the number of railroads serving the area, whereas purchase by the KCS System would retain the competitive balance now existing.

Since L&A has no terminal facilities at Dallas, its terminal services are performed by Santa Fe, and the proposed L&A acquisition of Rock Island's Westmoreland and Cadiz Street yards and other facilities in Dallas would eliminate the need for this. L&A would be enabled to provide service directly to its own shippers and receivers at Dallas, and make direct interchange with other carriers at Dallas. Similarly, acquisition of Rock Island's Peach Street yard and facilities at Ft. Worth would enable L&A to serve its own shippers and receivers at that point and also to deliver and receive cars in direct interchange with other railroads serving Ft. Worth.

Kansas City Southern argues that the public interest would be better served by the transfer of Southern Pacific's Houston-Shreveport line to KCS rather than by its retention by Southern Pacific. KCS claims that on traffic between Houston or western

⁸¹The description of KCS's requested conditions, set forth in Part C of Volume I, would have been clearer if condition (B)(1) had reflected specifically its requested purchase of Rock Island's interest in Houston Belt & Terminal, and if condition (B)(2) reflected the requested purchase of Rock Island's interest in Union Terminal Co., Dallas, and Great Southwest.

Texas, on the one hand, and St. Louis or Memphis, on the other, Southern Pacific presently favors its Corsicana-Texarkana route over the Houston-Shreveport route, considering the latter as a branch line. KCS proposes that, in its hands, the line will form a part of a major single-line route between Houston and Kansas City, and also, in conjunction with trackage rights to Chicago, will give KCS a route between Houston and Chicago more direct than any other now existing.

At Shreveport, KCS would construct 5,600 feet of track connecting the former Southern Pacific line with its own Deramus Yard at an estimated cost of \$81,000. KCS anticipates that acquisition of Rock Island's interest in Houston Belt and Terminal Railway would provide it access to adequate terminal facilities, although it would have access to port facilities through the Port Terminal Railroad Association.

The conditions proposed by KCS relating to routes, rates, service and the movement of traffic in general between KCS and its connections, on the other, are for the purpose of insuring the free flow of all types of traffic via any route a shipper may choose and at equal rates and service.

In further support of its proposed acquisition and conditions, Kansas City Southern argues that in addition to substantial volumes of new traffic the enlarged applicant railroads herein will find available to them, they will also have new routes and connections available allowing them to by-pass present, friendly connections, and that KCS' proposals will require the successful applicant to offer equal service at equal rates via any combination of carriers a shipper chooses to use now or in the future.

Kansas City Southern contends that the unconditioned merger of Rock Island into Union Pacific with the concurrent sale of the southern portion of Rock Island to Southern Pacific would reduce KCS' gross revenue by over \$5.9 million and result in a loss in net income after Federal income taxes of just under \$2.2 million. With imposition of its proposed conditions, KCS estimates it would gain \$17.4 million in gross revenue. This is comprised of \$6.9 million to be gained from the acquisition of trackage rights to Chicago and almost \$10.5 million to be gained from the conditions involving the southern portion of Rock Island.

Kansas City Southern-L&A presented 18 shipper witnesses, nine of which are each responsible for the movement of 1,000 to 5,000 cars over the KCS system annually. The shippers account for a wide variety of commodities and have found generally that service provided by the KCS has been good. They are all opposed to the pending applications unless KCS' proposed conditions are imposed. The shippers express the view that the conditions are necessary to preserve KCS' competitive position and enable the carrier to recoup revenue losses resulting from consummation of the proposed unifications. The shippers believe that without these conditions, the Kansas City Southern system would be forced to curtail its present standards of service thereby adversely affecting the shippers' ability to distribute their products.

The shippers are comprised of a livestock feed and poultry products manufacturer and distributor at Fort Smith, Ark.; a manufacturer of lubricating oils, greases and related products at Tampa, Fla., and New Orleans; a Decatur, Ark., industrial complex comprised of six companies producing live and processed poultry, one of which also sells liquid petroleum products; an oil refiner with facilities at Princeton, La., and Burnham, Ill.; a Shreveport steel fabricator; a sugar refiner at Gramercy, La.; three manufacturers at Hope, Ark., who produce wood products and clay, brick and tile; a manufacturer of rough steel forgings and castings at Beaumont and Houston; a New Orleans flour wholesaler; a Neosho, Mo., warehouser and ice manufacturer; a public warehouser of paper, paper products, rubber, fertilizer, woodpulp and cotton, also at Neosho; a chemical company with facilities at Houston, Austin, Youmens, and Port Neches, Tex.; a food wholesaler and distributor with warehouses in DeQuincy, La., and Beaumont, Jasper, and Nacogdoches, Tex.; a manufacturer of plastic injection moldings and insecticides at Kansas City and Baton Rouge; a Port Arthur commercial fishery with plants also at Dulac and Cameron, La.; a lime processor with facilities at Sallisaw, Marble City, and Oklahoma City, Okla.; a fruit and vegetable canner and freezer at Stillwell, Okla.; and a fabricator of rough brass, bronze and aluminum castings with facilities at Port Arthur, Beaumont and Houston, Tex., and Shreveport, Baton Rouge, and Lafayette, La.

(5) MoPac-T&P

The Union Pacific with respect to its connections at the Missouri River (MoPac and all others) is the stronger carrier. This position is evidenced by the fact that it delivers far more cars to its connections than it receives (such interchanges are detailed in Volume I, Part B). MoPac also emphasizes the competition existing for Union Pacific traffic; among the MoPac, N&W, Frisco, Santa Fe, KCS and GM&O at Kansas City and at Nebraska gateways between the North Western, Burlington, Milwaukee, Rock Island, and Illinois Central.

Southern Pacific is the dominant carrier in California on transcontinental traffic, and this is so, according to the MoPac, because Southern Pacific handles a large number of cars in Oregon and Arizona and is the only carrier having single-line service between those States and the three Mississippi gateways of St. Louis, Memphis and New Orleans. Southern Pacific's acquisition of Rock Island's Tucumcari-Memphis line would give it a second single-line route to Memphis which is 165 miles shorter than its present one.

Reviewing Union Pacific's expressed desire to reach the Chicago and St. Louis gateways and its complaint that fragmentation of transcontinental traffic between these gateways and the Missouri River gateways prevents the efficient practice of pre-blocking of trains, MoPac argues that approval of Union Pacific's application will enable the railroad to accomplish both of these ends, but only through diversion of traffic from the roads which presently operate between Chicago and Omaha and between St. Louis and Kansas City.

MoPac's opposition to these proposals is based primarily on its inability to sustain the anticipated losses. MoPac estimates that the MoPac system (MP, T&P, and KO&G) will suffer an annual post-tax net income loss of over \$6.5 million if the Union Pacific and Southern Pacific proposals are approved. Since the MoPac system's average post-tax net income for the period 1962-1967 was just over \$26.1 million, it feels the impact upon it of these anticipated losses becomes self-evident, since the anticipated losses would approximate 25.0 percent of its 1962-1967 average post-tax net income.

MoPac was in bankruptcy for 23 years until 1956, and which it believes is a longer period than for any other railroad. The reorganization was the subject of four successive plans, nine extensive Commission reports and numerous court reviews. As a direct result of the reorganization, MoPac finds its debt structure is onerous, and thus it will be adversely affected by any substantial loss in revenues.

A new management took over the carrier in 1961, and, from then to 1966, the MoPac system spent \$266.1 million for the purchase of equipment, including \$49.9 million for new locomotives, and \$78.6 million for improvements to roadbeds. This is an annual average of \$57.4 million spent for capital improvements and has allowed the carrier to take care of the needs of its present and prospective shippers as well as retain and expand its business. A loss of \$9 million or \$10 million of annual net income, as estimated by the MoPac, would force it to substantially curtail these expenditures and vitally impair not only its ability to locate new industries, but also maintain its present service to existing shippers.

Many large and important industries, including those basic to the economy and national defense, are local to MoPac's lines, and are dependent upon the railroad for equipment needs, frequently involving specialized and expensive equipment. In many instances these companies have located on MoPac's lines, or have expanded their facilities, in reliance on the carrier's assurance that it would have the necessary equipment available. Even when no such explicit promise was made, MoPac points out that it is implicit in a satisfactory shipper-carrier relationship that the carrier have adequate and suitable equipment for the shipper's needs, otherwise they would be unable to function. In addition, MoPac is the sole railroad in a number of towns and areas where the annual railroad revenues exceed \$200,000, and are, therefore, entirely dependent on MoPac's ability to furnish the necessary equipment in order for their economy to operate.

In order for MoPac to continue its present standard of service, it must maintain its present traffic levels. Such standards of service will be adversely affected and levels of traffic substantially diminished if the diversion losses anticipated are actually experienced as a result of the Union Pacific and Southern Pacific proposals. As an example, there are presently three trains operated from Houston to East St. Louis, including a non-stop chemical products train. A substantial reduction in traffic volume would require the elimination of one of these trains, and the chemical train would slow down to take care of intermediate stops. MoPac claims that a deterioration in service would have a snowballing effect, causing an additional loss of business, which in turn would adversely affect the railroad's ability to continue making necessary capital improvements, further affect aggravating MoPac's capability to provide service and attract new business.

As noted in Part G, Volume I, of this report the MoPac operates in a territory laced with waterways and faces not only formidable water carrier competition, but also intraterritorial motor carrier competition. A substantial reduction of MoPac's traffic volume would compound its problems in maintaining a continuing ability to provide service and remain financially sound.

MoPac opposes Rio Grande's proposed acquisition of Rock Island Western. Rio Grande estimates such a purchase would cost MoPac \$4.6 million in gross revenues, but MoPac estimates a system loss of \$7.1 million in gross revenue and \$3.4 million in net income, which would be superimposed upon an equally damaging loss from the Union Pacific and Southern Pacific proposals. MoPac estimates a system reduction in net income of \$9.9 million if Rock Island is partitioned among these three railroads.

MoPac points out that, while Rio Grande claims it will suffer a reduction of around \$2.5 million in net income after taxes if the Union Pacific-Rock Island merger is effectuated, it will, by its own claim, gain \$2.3 million in net income from acquisition of Rock Island's western lines. MoPac contends that the acquisition would not compensate Rio Grande by gaining new traffic from Union Pacific, but would gain traffic from MoPac, merely shifting the burden caused by Union Pacific from Rio Grande to MoPac.

MoPac and KCS-L&A serve a considerable amount of territory in common, as discussed in Volume I, Part G. MoPac asserts that the affirmative relief sought by KCS would extend the KCS system into additional MoPac system territory, including Chicago, Ft. Worth, and Houston. MoPac and T&P jointly participate with KCS-L&A on traffic moving to and beyond those cities. The various interchanges between the MoPac and KCS systems are shown in Volume I, Part B. MoPac claims that it will lose much of this traffic to KCS-L&A if the latter's affirmative relief is granted. Other traffic presently handled by MoPac and T&P with other connections would also, in MoPac's view, be diverted to KCS.

MoPac opposes the conditions sought, by KCS, claiming estimated gross revenue losses of \$356,737 from KCS trackage rights over Rock Island between Kansas City and Chicago, and gross revenue losses of \$490,680 to itself and \$156,520 to T&P in the event KCS acquires Rock Island lines at and between Ft. Worth and Dallas and Southern Pacific's Houston-Shreveport line. The total MP-T&P estimated losses would be slightly over \$1 million gross revenue.

Missouri Pacific presented or was supported by 24 shipper and public witnesses. All of the shipper witnesses expressed satisfaction with the carrier's service. Based on their own estimates or on information given them by MoPac, the shippers fear that approval of the applications pending in these proceedings might cause sufficient diversion of traffic and revenues as to cause a curtailment in the service and car supply presently provided by MoPac. Such result would cause significant harm to the shippers and, in some cases, cause the shippers to seek other rail carriers or other modes of transportation. The shippers also

fear elimination of competition as a result of Rock Island's elimination as an individual carrier and the reduction of MoPac's effectiveness as a rail competitor.

Several of the witnesses expressed a similar concern as to the effects of these proposed transactions on Frisco and Kansas City Southern. The shippers are all substantial users of MoPac service, and one shipper shipped approximately 56,000 carloads over MoPac-T&P in 1966, representing a major portion of the system's total tonnage. One group of shippers utilizes MoPac's LCL service heavily and is dependent on this service because other rail carriers have downgraded, or eliminated service entirely.

The shippers appearing in support of MoPac were comprised of six lumber and building supply companies and their affiliates, with sales offices and plants in Missouri, Kansas, Oklahoma, and Arkansas; the City of Hesston, Kans., and a farm equipment manufacturer in Hesston; two grain elevator companies with 12 facilities in Colorado and Kansas; a Midland, Mich., chemical company with nationwide operations and facilities including four plants served exclusively by MoPac in Texas, Louisiana, and Missouri; a brick manufacturer at Henderson, Tex.; a Monroe, La., traffic consultant representing 30 manufacturers and suppliers of a wide variety of goods, located in Louisiana, Arkansas and Mississippi; a lumber and lumber products manufacturer at Hot Springs, Ark., with plants in Arkansas and Oklahoma; a traffic manager and consultant for an association of 20 Mexican glass and enamelware manufacturers and for several private clients in various industries; a vice president and general manager of an Austin, Tex., lumber company, representing also a cotton oil producer and a grain company, both at Taylor, Tex.; a San Antonio shippers' association; a meat packing company at Wichita, Kans.; a producer of crushed stone and related products at Ogden, Tex.; a Terre Haute, Ind., chemical and fertilizer company with plants throughout the United States; a producer of salt and salt products with facilities in Ohio, Michigan, and Louisiana; three affiliated companies, the parent a distributor of natural gas and gas appliances in Arkansas, Kansas, Louisiana, Oklahoma, and Texas, and its two subsidiaries, one, a producer of Portland cement with its main plant at Foreman, Ark., and the other, a producer of agricultural and industrial chemicals and forest products at various points in Arkansas; an Atlanta, Ga., soft drink company with plants throughout the United States; a Ft. Smith, Ark., shipper association manager representing a poultry and feed company, a silica sand company, and a furniture manufacturer, all with facilities at various points in Arkansas and the poultry and feed company with mills also in Idaho and Mississippi; the owner and manager of a farm implement company

and a grain company at Leoti, Kans., representing also the City of Tribune, Kans., the Cities and Chambers of Commerce of Leoti and Scott City, Kans., and Eads, Colo., and 26 firms comprised of a bank, farm supply and implement sales companies, grain elevator companies, and farm cooperative associations; and a nation-wide manufacturer of foods, chemicals and toys, headquartered at Minneapolis.

The City and Chamber of Commerce of Oakdale, La., and the Parish of Allen, La., appeared in support of MoPac. Oakdale is located on the main MoPac line between Alexandria and Kinder, La., and is also served by Santa Fe. The community and business therein depends heavily on rail transportation. In 1966, MoPac carried 3,860 carloads to and from Oakdale. The community feels that its growth depends on continued good service from MoPac, and that a cutback in such service would be a very serious blow to the City, causing a stagnation in its industrial growth. The City is of the view that it might not survive a substantial reduction in MoPac's service.

The Arkansas Commerce Commission supports MoPac's opposition to the applications in these proceedings. The State is served by MoPac, Rock Island, Cotton Belt, Frisco and KCS. MoPac has around 47 percent of the Class I railroad miles and, in 1966, paid 48 percent of the railroad taxes received by the State. MoPac's 1966 payroll for 3,728 people in the State was over \$32.8 million. MoPac serves many Arkansas industries and communities and has been very helpful to the State in locating new industry. The State is concerned about the adverse affects MoPac asserts will result to it from approval of the applications.

In Texas & Pacific's view, Southern Pacific's ability to dominate and control the transportation markets of the west rests in SP's "pervasive coverage", much of it exclusive of the West Coast rail markets. In addition, Texas & Pacific alleges that Southern Pacific has controlled the flow of traffic off its lines through preferential solicitation agreements with Union Pacific (no longer in effect, as discussed earlier) through the central corridor, with Rock Island via the Tucumcari route, and with its own subsidiary, Cotton Belt.

It is Texas & Pacific's position that Southern Pacific's acquisition of the southern portion of Rock Island will greatly increase the already dominant position Southern Pacific enjoys in the Southwest; that the competitive forces in the area will be reduced; and that the Rock Island's present single-line service will obviously be disrupted and made less efficient by the proposed dismemberment of the carrier, particularly with respect to the complex interchanges which it will be necessary for Southern Pacific to accomplish at Kansas City.

Texas & Pacific asserts that Southern Pacific overstated the estimated costs of upgrading Rock Island's Tucumcari-Memphis line by showing unneeded improvements and ignoring present Rock Island efforts, and that Southern Pacific understated expected savings from the line. Texas & Pacific claims that, despite Southern Pacific's evidence that the Southern Pacific-Cotton Belt route via Corsicana will continue to be used as the main service route for Memphis and St. Louis traffic (see Volume I, Part J), Southern Pacific has a "latent intent" to use the Tucumcari-Memphis line when deemed necessary by its management.

In connection with the above, Texas & Pacific compares Southern Pacific's estimates of savings made during the negotiations for trackage rights, discussed below, over Texas & Pacific between Sierra Blanca and Ft. Worth, with the Southern Pacific savings estimates for the Tucumcari-Memphis line. Texas & Pacific claims that for the latter route only, Southern Pacific omitted to take into account a number of specified items of savings. In short, Texas & Pacific estimates the probable Southern Pacific savings to be about \$6 million annually. On the other hand, Southern Pacific, as indicated by the discussion in Part J, did not break down the estimated savings as a result of the proposed purchase by route segments, such as for the Tucumcari-Memphis route. Texas & Pacific further claims that the cost of upgrading the Tucumcari-Memphis line should be no more than \$24 million. Southern Pacific estimates from \$30 to \$35 million to upgrade such line to its first class, 70 mile-per-hour standards, and which it has no intention of doing immediately upon consummation of the purchase. Interveners have divergent views as to Southern Pacific's use of the discussed line; i.e.: Southern Pacific will downgrade the line; it will put the line to immediate use; or, as Texas & Pacific asserts, Southern Pacific has a latent intent to use the line. In the final analysis, the record here made, dictates the conclusion that Southern Pacific will utilize the line to the best advantage as dictated by traffic demands; servicewise, competitionwise, or by any other factor.

With further respect to the negotiations conducted between Southern Pacific and Texas & Pacific for operations under trackage rights by the former over the latter's Sierra Blanca-Fort Worth route and which proved fruitless, the Southern Pacific, in its brief, renews its motion to strike certain of the evidence. The legal precedents and arguments made by Southern Pacific have been carefully considered. At the time of hearing, counsel for Texas & Pacific successfully argued that the evidence in question was submitted solely to establish that prior statements of Southern Pacific were inconsistent with its present stand. For clarity of

understanding it should be pointed out that such prior statements were involved in negotiations between the parties, begun in 1958, and never were presented as evidence in any proceeding before this Commission or any judicial body. Moreover, upon reconsideration of the matter, it is clear that the evidence objected to does not at all bear upon any matter of inconsistency. The examiner confesses error, and, accordingly, the motion to strike from Exhibit No. 407 of the Texas & Pacific, the portion of evidence objected to, as described in detail at page 26498 of the transcript of testimony, be, and it is hereby, granted. Of course, all remaining evidence pertinent to the described subject matter will be considered herein.

With further respect to Southern Pacific's proposed operations to and from Memphis, Texas & Pacific itself raises another factor. Texas & Pacific's lines run east from El Paso and connect at Whitesboro, Tex., for movement to Kansas City, and at Texarkana, Tex., for movement to Memphis and St. Louis. Southern Pacific has two lines from El Paso; one connects at Corsicana, Tex., with Cotton Belt, and the other connects with Rock Island at Tucumcari (see Map A, appended to Volume I). The Texas & Pacific route from El Paso to Memphis is 223 miles shorter than the Southern Pacific-Cotton Belt route, whereas the Rock Island's Tucumcari-Memphis route is 168 miles shorter than the Southern Pacific-Cotton Belt route.

Southern Pacific must absorb higher costs related to its longer haul in order to remain competitive with the shorter Texas & Pacific route. Southern Pacific has, with Texas & Pacific's cooperation, negotiated toward acquiring trackage rights over T&P's lines between Sierra Blanca and Ft. Worth. Such an arrangement would permit Southern Pacific to utilize, in conjunction with Cotton Belt at Ft. Worth, the shortest route for Southern Pacific between El Paso and Memphis. As seen, such negotiations have not been successful, and as an alternative the acquisition of the Tucumcari-Memphis route as here proposed would be less desirable, but would still enable Southern Pacific to shorten its existing route between El Paso and Memphis by 168 miles and operate on a more economical basis. T&P fears that if Southern Pacific so utilizes the Tucumcari-Memphis route, the result will be that Texas & Pacific will suffer a decrease in its participation in bridge traffic between the two points. Forty percent of T&P's carloads and tons handled is derived from this freight, and, in terms of revenue, El Paso is the most significant point for T&P's participation in transcontinental traffic.

T&P also has made an issue of the agreement under which T&P and Southern Pacific were to operate as a through route via El Paso. Following the special Congressional Act of March 3, 1871, construction of T&P proceeded westward through Texas until December 16, 1881. On this date, T&P construction crews met the eastward-building crews of the Galveston, Harrisburg and San Antonio Railroad (GH&SA) now part of SP, at Sierra Blanca, Tex., 90 miles east of El Paso. T&P was being built by Jay Gould, and the SP by Collis P. Huntington. Texas & Pacific alleged that the Southern Pacific (i.e., GH&SA) had been constructed in some instances on right-of-way granted by charter to T&P. Litigation ensued between T&P and SP, and led to a court decision subsequent to which the two carriers reached the so-called Gould-Huntington Agreement, on November 26, 1881. The agreement, among other things, provided that Southern Pacific was granted title to all franchises and land grants west of El Paso, and also that T&P and SP were to be operated as one through continuous line via El Paso. All of the foregoing is discussed in the St. Louis S.W. Ry. Co. Control case.

The agreement also provided that gross revenues were to be divided between Southern Pacific and Texas & Pacific based on arrangements agreed to for the pooling of traffic and the division of earnings, but these agreements were invalidated by court action.

T&P claims that it suffered a "severe blow" in 1932, when this Commission approved Southern Pacific's acquisition of Cotton Belt over the protests of T&P, MoPac, and the Rock Island, among "other Southwestern railroads". Allegedly, as a result of the Cotton Belt acquisition, T&P points to the decline in interchange volume between SP and T&P at El Paso as contrasted to the increase between SP and Cotton Belt at Corsicana (both detailed in Volume I, Part B) as evidence of a Southern Pacific practice of holding traffic to its own lines to the exclusion of T&P. There are other means also by which T&P claims Southern Pacific works intensely against T&P's competitive route via El Paso. In addition to the preferential solicitation agreement Southern Pacific has with Rock Island (but no unlawful discrimination has been established), T&P claims Southern Pacific has other operating practices working against T&P. At El Paso, for example, the Southern Pacific switching practices are such that T&P is at a four-hour disadvantage in receiving interline freight from SP, neutralizing T&P's competitive effectiveness vis-a-vis the SP-Cotton Belt and SP-RI routes. T&P contends that Southern Pacific does not cooperate with it in the area of scheduling. When perishable freight schedules via Chicago were shortened in the middle 1950's and Southern Pacific announced

shorter schedules via Rock Island and Tucumcari, T&P and MoPac attempted to form competitive schedules via El Paso. Allegedly, the only schedules that Southern Pacific would agree to were such that T&P would be required to run off an inordinate percentage of the shortened schedules east of El Paso rather than Southern Pacific taking a fair percentage of that decrease on its own line.

As a result of the above-described historical developments, T&P alleges a continuous loss of competitive strength against Southern Pacific. T&P attempted to document this loss of strength by showing that eastbound deliveries of loaded cars by Southern Pacific to T&P at El Paso had declined from 35,585 in 1955, to 17,543 in 1965, and that, on the jointly used line between El Paso and Sierra Blanca, Southern Pacific's share of total tonnage handled increased from about 75 percent in 1961, to 80 percent in 1966. Cross-examination of T&P's witness, however, revealed that the decline in carloads interchanged between SP and T&P was the result not of a loss of traffic, but of the use of higher capacity cars; and the tonnage interchanged remained nearly the same throughout the 1955-1965 period. It is clear then, that over such period while T&P has not suffered a deterioration of traffic moving via El Paso neither has it enjoyed any traffic growth over the route.

T&P points out that Katy and Frisco gave up their perishable schedules with T&P via Ft. Worth, and, when MoPac did the same in 1958, T&P was therefore largely out of the Chicago perishable business, allegedly because of the non-cooperation of SP. Southern Pacific's evidence, however, is convincing in that SP itself can not compete for Chicago perishable traffic in cooperation with its own subsidiary, Cotton Belt, rather, SP must utilize the Tucumcari gateway with Rock Island, or the Overland route via Ogden. Even prior to the St. Louis S.W. Ry. Control case, the Southern Pacific was interchanging Chicago traffic at Tucumcari with the Rock Island. It is abundantly clear that the above-discussed evidence further substantiates the findings set forth in Volume I, Part G; and particularly findings Nos. 28, 31, and 32 with respect to the MoPac-T&P, and that in further connection with the findings specifically enumerated, T&P has been able to obtain the traffic interchanged with Southern Pacific at El Paso exclusively through T&P's own intensive solicitation efforts.

T&P estimates that the Southern Pacific transaction would result in the diversion of over \$4.2 million in gross revenue and over \$2.1 million in net revenue from T&P. T&P claims this diversion loss would ultimately require T&P to cut costs in three principle areas: maintenance of way, maintenance of equipment and transportation. Since the basic loss of revenue is anticipated from the loss of overhead transcontinental freight, T&P would make its greatest adjustment in this area, since a failure to do so would, in the long run, be an unwarranted abdication of obligations to the shippers and receivers of freight who continue to need the carrier's services.

Basically, T&P's services between Ft. Worth and El Paso consist of two through expedited schedules in each direction as well as a daily expedited merchandise schedule between Ft. Worth and Big Spring, Tex. Additionally, the territory is afforded local service in direct relationship to the needs of shippers and consignees. Highly expedited handling of traffic both east-bound and westbound is afforded on one of the through schedules between Southern Pacific points west of El Paso on the one hand, and points on T&P and MoPac and their connections on the other. This service is advertised by the three named carriers. T&P believes that the traffic diversion by Southern Pacific would not cause elimination of such service altogether, nor would it render the handling of the remaining traffic undesirable from a profit standpoint. Service curtailment would come from train-miles generated in other service, resulting in the inability to sustain both through schedules between Ft. Worth and El Paso. The logical recourse, says T&P, is to eliminate one through schedule, and increase local train service to assume a portion of the eliminated train's functions. This service reduction, however, would result in longer transit time on certain movements and prevent the use of scheduling as a means of meeting the specialized demands and problems that arise daily from shippers.

Texas & Pacific says that reduction in cost will be effected also in the elimination of certain services. For example, savings can be realized by the elimination of some station forces. This, the carrier points out, will result in delays in customers receiving rate quotations, inspection of freight loss and damage, ordering service, etc. Required maintenance will also tend to be delayed. In T&P's opinion, all of this points to a gradual and certain deterioration in T&P's service.

Texas & Pacific's request for trackage rights over Southern Pacific lines in the States of New Mexico, Arizona, and California,

with initial operations between El Paso and Los Angeles, is designed generally to remove the previously discussed competitive imbalance now facing T&P from Southern Pacific, and mitigate the anticipated increase of that imbalance should Southern Pacific's proposed acquisition of the southern portion of Rock Island be approved.

The Texas & Pacific proposal contemplates a 52 hour westbound schedule from St. Louis to Southern Pacific's Aurant Yard in Los Angeles, including 19.5 hours between El Paso and Aurant Yard. Eastbound, the overall schedule will be 57 hours. This, Texas & Pacific states, is an improvement over the present eastbound schedule, resulting from having control over the entire run, offsetting the present alleged interchange difficulties with Southern Pacific at El Paso.

Texas & Pacific asserts that its proposed operation takes into consideration the need for additional motive power of the type necessary to operate over Southern Pacific and four new cabooses which would meet the requirements in the States through which T&P would operate. Texas & Pacific plans to interchange loads on the West Coast destined to Santa Fe, Union Pacific and Los Angeles Junction Railway industries. T&P proposes to perform its own switching services in the area between Alhambra and Colton, which will create an entirely new single-line service from industry to industry between that area and points on the T&P-MoPac System.

Texas & Pacific's future plans project the expanded switching services to other Southern Pacific industries so that these businesses will have such advantages as will accrue from the direct competition by T&P. Texas & Pacific's ultimate goal is to extend line-haul operations over Southern Pacific from Colton and Los Angeles to San Francisco with connection at Stockton with Western Pacific for interchange with Western Pacific's Bieber Route.

In Los Angeles, Texas & Pacific seeks the use of Southern Pacific's Aurant Yard. Texas & Pacific feels that a minimum use is now being made of the yard, and T&P would be able to erect locomotive servicing facilities, track for light repairs for freight cars, piggyback facilities and appropriate buildings to house the station forces, yard office facilities, employees' locker rooms, etc. If this proposal is realized, Texas & Pacific expects to deliver freight to Southern Pacific's Taylor Yard in two hours, or perhaps to SP's Bull Ring Yard, which is closer. Texas & Pacific expects to deliver to Union Pacific's East Los Angeles Yard in three hours, to Santa Fe's Hobart Yard in four hours and to the Los Angeles Junction Yard in five hours. Placement to T&P industries between Alhambra and Colton will be completed within twelve hours.

To effectuate these proposals, Texas & Pacific says it would need the joint use of all main trackage utilized by Southern Pacific, including sidings and auxillary tracks; joint use of industry tracks on Southern Pacific and joint use of team tracks. It would also require the joint use of Southern Pacific's Colton Avenue and Alfalfa Yard in El Paso; the joint use of yard tracks at any Southern Pacific point west of El Paso, more specifically, the yards at Tucson, Nyland, Indio and Colton; and exclusive use of the Aurant Yard.

On westbound traffic, Texas & Pacific feels its ability to offer through service to destination, including delivery to switching carriers, will enable it to provide competitive service, reduce interchange delays, protect itself against back-haul operation, and improve its chances of continued operation into El Paso, rather than lose business to Southern Pacific. On east-bound traffic, Texas & Pacific contends that it will be able to afford more competitive service, at least from industries which it will be able to serve either directly or through a switching carrier, and that it will be able to exert a greater influence in the placing of its equipment, reduce interchange delays, and be more persuasive in the solicitation of traffic.

After estimating that revenues of about \$11.1 million could be gained from the acquisition of the requested trackage rights, T&P applied various cost elements (traffic and cost studies are discussed in Part O) and arrived at a net income of approximately \$4.7 million. Also to counter its estimated diversion losses to SP, T&P's second condition requests that the Commission fix a floor, in the form of minimum revenues as provided under item 9(A)(2) in Part C of Volume I.

Texas & Pacific's third condition, described in item 9(A)(3) in Volume I, Part C, has been agreed to in these proceedings by Southern Pacific (Exhibit SP 31, at page 12).

Texas & Pacific's main concern with the conditions sought by Kansas City Southern-L&A is the already competitive nature of that system to its own. L&A parallels Texas & Pacific between Dallas and New Orleans, via Shreveport and Alexandria. Other than Southern Pacific, L&A is the only single-line service competing with T&P between Dallas and New Orleans. Although it seeks to extend its western terminus from Dallas to Ft. Worth over Rock Island's line, L&A interchanges little of its Dallas traffic with Rock Island. Also, Texas & Pacific contends, there is no evidence from KCS-L&A that it would be foreclosed from Ft. Worth traffic if the southern portion of Rock Island was acquired by any of the applicants. Further, T&P alleges that none of KCS' shipper testimony indicates a specific use to be made of the carrier's entry into Ft. Worth.

According to Texas & Pacific, the substitution of KCS-L&A for Southern Pacific between Dallas and Ft. Worth will not avoid any of the traffic losses anticipated by T&P. To the contrary, Texas & Pacific claims there will be an additional competitive force with which T&P will have to contend, and KCS' anticipated gross revenue gains will be derived from T&P as well as from the applicants.

MoPac and T&P presently form a single-system service between Kansas City and Houston. If KCS is granted entry into Houston, Texas & Pacific says there will be another single-line route where there are already too many. Although it is true that Southern Pacific's access into Kansas City will divert traffic from the Southern Pacific-KCS route, Texas & Pacific feels the remedy for KCS is not formation of another single-line service, but denial of Southern Pacific's application. T&P's estimated losses to KCS were discussed earlier in connection with MoPac.

Texas & Pacific contends that both of Fort Worth & Denver's conditions as they relate to Ft. Worth and Dallas will result in changed competitive conditions at the Great Southwest Industrial District. This area lies between Rock Island on the north and T&P on the south and is served by a switching line, Great Southwest Railroad. Great Southwest owns 10 percent of its own stock and Rock Island and Texas & Pacific each own half of the remaining stock. Presently, this switching line interchanges only with Rock Island and T&P, and Texas & Pacific points out that granting FW&D's conditions would add another interchanging carrier. Texas & Pacific made no estimate of losses resulting from the FW&D's proposed conditions.

Texas & Pacific presented 19 shipper and public witnesses, most of which were served exclusively by T&P or a subsidiary branch line. The witnesses, who generally oppose Southern Pacific's acquisition, state that they have been advised by Texas & Pacific representatives or are aware of T&P's testimony that an approval of Southern Pacific's acquisition will result in substantial revenue losses to T&P, which will require certain service or maintenance curtailments by T&P. The witnesses fear that such curtailments will have an adverse affect on the service they receive, or in some instances, lead to abandonment of branch lines on which some of the shippers are located. Most of the witnesses support the Texas & Pacific's request for trackage rights over Southern Pacific, should Southern Pacific's application be approved, seeing this as the creation of a new competitive system to the West Coast and/or as a means of protecting T&P's existing levels of service.

Texas & Pacific's shipper witnesses represented the following firms: two wholesalers and retailers of lumber and building materials with offices in Ft. Worth with a wholesale facility in Benbrook, Tex.; a lumber retailer at Mineral Wells, Tex.; a distributor of lumber and building supplies at Arlington, Tex.; two Ft. Worth retail and wholesale distributors of lumber and building materials; a manufacturer of ceramic tile at Mineral Wells; an oil well servicing and supply company with facilities at Jal, and Lovington, N. Mex.; a Ft. Worth manufacturer of carbon black with plants at several Texas locations; an agent for shippers of TOFC freight from the Chicago area; an El Paso brick manufacturer; two livestock and livestock feeding companies at Clint, Tex.; a Milwaukee and St. Joseph (Mo.) corn and milo milling company; a wholesale grocer at Church Point, La.; a Grand Prairie, Tex., plywood distributor; a Midland, Tex., lumber and building materials distributor; two companies with plants at various points in Texas, producing petroleum and petroleum products; a Dallas lumber broker; two brick companies, headquartered at Dallas; and an Odessa, Tex., petroleum and chemical company.

The Greater Baton Rouge Port Commission (Port of Baton Rouge) appeared on behalf of Texas & Pacific through its Executive Director. The Port of Baton Rouge owns and operates all of the public port facilities within the parishes of West Baton Rouge, East Baton Rouge, Iberville, and Ascension, La., including terminals, a grain elevator and a warehouse. In 1966 approximately 7 million tons moved through its facilities. Some 700 ships call at the public facilities annually. The port relies heavily on rail transportation for service, equipment and rates and is served by Illinois Central, MoPac, T&P, and L&A. Any change in the competitive situation of the rail carriers which has a substantial adverse effect upon the continued level of service to the port or in the continuation of the policy of rate equalization both to and from the port is very important.

The Port of Baton Rouge fears that, if Southern Pacific acquires Rock Island south, SP will not participate in a policy of equalization of rates to the port as Rock Island presently does on most commodities.

Further, in the event that Southern Pacific's application is granted, the Port of Baton Rouge has been advised by MoPac, T&P, and KCS that adverse economic affects might cause a curtailment in their service to the port. The dependability of rail service governs the amount of traffic moving through the port, and any decrease in such dependability of service can adversely affect the port. The Port of Baton Rouge thus asks that the SP application be denied.

(6) Katy

The vast and comprehensive experience and knowledge of Katy's president in railroad operations and finance extends over more than a 45-year period and is well known throughout the railroad industry. He sees the problems of the Katy as they relate to the considered transactions in the following light:

"I am in favor of railroad consolidations and have long favored them. By use of the term 'consolidation', I am referring to any form of corporate or physical unification of railroad systems, regardless of whether such form may be technically received as a consolidation, merger, acquisition of control, or purchase. My prior statements in reference to the inclusion requested by the M-K-T are in no wise inconsistent with my well-known strong advocacy of railroad consolidations over a long span of years and my identity with several consolidation proposals. Everyone of my numerous papers and addresses and specific appearances on behalf of consolidation proposals have given recognition to the fact that important consolidations gave such commanding advantages to the corporate beneficiaries of such projects that other railroads must be given the same benefits by inclusion. Unless the excluded railroads, or ones remaining in voluntary exile, possess exceptional advantages of location giving them control over the organization and/or termination of self-sustaining volumes of traffic, which few do, they will become 'orphans of the storm' doomed at best to an inferior and declining status, with probable bankruptcy and possible liquidation as almost inevitable consequences.

The vast competitive advantages that important consolidations between major companies will produce, whether of the end to end, or paralleling and duplicating, or 'mixed' pattern, necessitates proceeding with major consolidations on the basis of regional planning. Fortunately the geographical coverage of the west by its many railroads, large and small, and their various competitive and cooperative relationships with their neighbors and their connections permits the formation of competitively well balanced systems in respect to geographic coverage, traffic access and potential operating efficiency. It would

unduly extend my remarks and trespass on the province and authority of the Commission to analyze the advantages that the proposed acquisition of parts of Rock Island by Union Pacific and Southern Pacific, or by Chicago and North Western and Santa Fe, would bring to the acquiring lines and I will, therefore, forego such analysis. Such advantages should be made equally available to all railroads adversely affected thereby, if they desire such protection."

In connection with the above stated position of the Katy, its evidence relates to (A) rehabilitation and improvements, in plant and equipment and operations, (B) impact upon its operations as a result of the unifications proposed and (C) its view of the value of the Katy properties in any inclusion.

(A) When the present management took control of the Katy in 1965, the railroad's freight revenues had fallen from \$74 million in 1953 and \$65 million in 1956 to \$46 million in 1964. Its 1956 net income of almost \$2 million had given way to a deficit of nearly \$9 million in 1964. While the average freight revenues of other railroads in the Western District had increased 6 percent during that period, Katy had experienced a 28 percent decline.

During the period 1956-1964, amounts appropriated for annual maintenance of way were about \$15.5 million short of the amount required for the annual restoration of Katy's roadway, tracks, structures and facilities. Considering that deferred maintenance aggravates physical deterioration and wages and material prices had increasingly advanced during that period, it was estimated, at the time of hearing early in 1967, more than \$23 million would be required to cure the deferred maintenance of the prior years. However, this sum would not include the maintenance allowances necessary to offset the service life losses of 1965 and subsequent years.

For the same study period (1956-1964) it was estimated that approximately an additional \$12 million should have been appropriated for deferred equipment maintenance. Part of this deficiency would have to be taken care of by maintenance expenditures in 1965, and in subsequent years much larger sums than normally required as a result of current operations.

During the years 1965 and 1966, Katy laid new ties, applied large amounts of ballast and resurfaced entire lines, enabling the speed limits to be raised. The greatest amount of rehabilitation was performed on the line extending from Kansas City to

San Antonio and to Houston, with a suitable increase in permissible speeds. The line between Parson, Kans., and St. Louis was improved to some extent; however, planned improvements for 1967 were designed to raise the permissible speed on this line to the maximum allowable. During 1965 and 1966 aggregate maintenance of way and equipment expenses totaled almost \$40 million. Although the work done during 1965 and 1966 cured half of the deferred maintenance on track, in doing so, Katy incurred very large deficits of nearly \$8 million in each of those years. Those deficits, along with other liabilities, exhausted all of Katy's borrowing power and miscellaneous assets that were convertible into cash. Thus, Katy concluded that in the future deferred maintenance can be taken care of only as rapidly as increased traffic and improving operating efficiency will permit.

In addition to these current operating expenses incurred in correcting deferred maintenance in tracks and fixed property, Katy was faced with certain capital expenditures for replacement of properties in order to improve standards. Studies in 1966 indicated that \$44 million was necessary to bring its primary main lines and its Joplin Branch up to modern competitive standards, at least equal to the lines of its surrounding competitors.

Katy's investment in land with good potential for industrial development along its lines had been only \$2,000,000 for the ten years following 1956. It was unable to increase its investments in industrial development because of its lack of funds. Katy believes that restrictions on the acquisition of industrial properties have adversely affected its revenues and income, and will have a similar effect in the future unless additional funds are made available for this purpose.

During 1965, 1966 and part of 1967, Katy acquired, by lease, approximately 3,000 revenue freight cars, valued at \$50 million. It needs an additional 2,000 new freight cars, at an estimated total cost of almost \$30 million, so as to avoid recurrent traffic losses through car deficiencies or actual shortages. With respect to motive power, except for twelve units placed in service in 1966, all other Katy diesel power units as of January 1, 1967, had been put into service between 1946 and 1957, in other words, the units are from a minimum of 10 years to a maximum of 21 years old. A seven year replacement program was developed in 1967 and would represent a total investment of \$18 million up to the end of the seventh year.

Again, at the time of hearing in early 1967, it was estimated that the combined cost of additional cars, replacement of locomotives and essential improvements to tracks and fixed properties

would approach \$100 million. Adding to such amount (\$100 million) the cost of eliminating the remaining deferred maintenance (\$15 million), the railroad would need a complete total of \$115 million to restore itself to an effective competitive position in its territory. However, Katy's president calculated that to immediately make the Katy a safe, viable road would require an expenditure of \$35 million. To bring the Katy up to the operating standards of the Santa Fe or the Southern Pacific or the Union Pacific, it would require estimated expenditures aggregating \$177.8 million. Thus, a total expenditure of about \$212.8 million would allow freight trains to operate at a speed of 70 m.p.h. over all of the primary main lines.

About a year later following the foregoing record made, or in early 1968, Katy's president testified as to the improved nature of Katy's operating condition. At this later date the Katy represented that the previously-mentioned figure of \$23 million needed to cure the past deferred maintenance had been reduced to \$9 million. Katy further estimated that by the end of 1968, rehabilitation of Katy's entire main line would be close to completion and the work on the Joplin, Denton, and the major portion of the Piqua branches would have been finished. Remaining branch line rehabilitation was expected to be under \$2.5 million. It was anticipated that concurrently the entire car acquisition and rebuilding program and the replacement of one-third of the locomotive capacity would have been accomplished. Giving effect to all of the foregoing and as of early 1968, only an additional \$23.5 million will have been required to upgrade and rehabilitate the Katy's facilities and equipment to meet its own standards and an additional \$121.3 million to meet applicants' standards. Future requirements for new cars will be minimal except to meet traffic growth. Consequently, Katy states that if necessary, its rehabilitation expense can be decreased in future years, and the greater efficiency of train operations because of the new and rebuilt equipment and rehabilitated track will reflect itself in substantially lower operating costs.

Significantly, in 1968, Katy's gross revenues totaled just under \$65 million, which it stated was needed to reach the break-even point, but such sum will not provide the funds necessary for major capital improvements. The railroad hopes to regain the business that it lost in the past 12 years, ultimately attaining its 1953 peak of \$73 million. Katy's evaluation is that this must be accomplished if it is to regain its financial strength and carry on successful competitive operations. However, such required growth and even the amount needed to only meet expenses are endangered, in Katy's view, by the applications filed in these proceedings.

(B) While the Rock Island is a major competitor of Katy for traffic to and from points beyond their many common points of service, on the other hand, Union Pacific does not operate in Katy territory. Katy fears that the acquisition of the Kansas City to St. Louis line of Rock Island by Union Pacific would decrease Katy's effectiveness as a bridge carrier.

The Southern Pacific system is presently a competitor of Katy between points in eastern Texas and the Gulf Coast, on the one hand, and St. Louis, on the other; however, it does not have lines in the upper part of Katy's territory. Acquisition of the southern portion of Rock Island by Southern Pacific would make it fully competitive with Katy throughout Katy's territory. Southern Pacific intends, following the proposed purchase, to protect its long-haul and single-line service via Kansas City and via the Gulf points. This, Katy claims, will adversely affect the Katy.

The actual traffic interchanged between Katy and the applicants and the resultant traffic diversion losses to applicants, estimated by Katy to be in excess of \$3.0 million, are discussed in Parts B and O, respectively. Katy suffers from several elements of traffic weakness, as detailed in Part B and as set forth in findings 28, 29 and 32 in Part G.

Katy reaches Kansas City and St. Louis by trackage rights over other lines. Its principal areas of industrial development are in Dallas, Ft. Worth, Houston, Tex., and Pryor, Okla., but it serves a very few industries in Kansas City and none in St. Louis, except through the Terminal Railroad Association of St. Louis. For this reason also the Katy is competitively weak and it must rely to a great extent on traffic received from other connections. In connection with the latter matter, the ability to create and control rates is a very important factor in influencing shipper routing of traffic, and Katy, because of its small size and location, has relatively little independent rate-making power. At its Kansas City, St. Louis and Texas junctions, Katy needs the concurrence of other railroads to participate in long-haul movements originating or terminating off its lines. Katy fears that Southern Pacific extension into Katy territory north from the Texas junctions would substantially diminish the very little power Katy now has to control or influence rate changes. Thus, Katy feels its only avenue to survival is through inclusion in the system acquiring the southern portion of Rock Island, and which inclusion would bring substantial benefits to the acquiring carrier.

(C) Katy points out that, in proceedings of this nature, conditions have been imposed upon the resulting stronger system

for the protection of weaker carriers in positions similar to Katy's. In essence, Katy says, these conditions provide that existing routes, channels of trade, gateways, tariffs, divisional agreements, application of rates and joint facilities will not be disturbed; and the applicants here have stated that they would not object to the imposition of such conditions. It is Katy's position, however, that conditions such as these are ineffectual in preventing the impact that solicitation for systemwide single-line, long-haul routes would have in altering previously-existing competitive routes utilizing connecting carriers. Katy contends that all these conditions can do is to protect the status quo at the time of the consolidation, but that they will give no protection from, or participation in, the improved future service patterns that the consolidation will eventually bring.

Although Katy is a small carrier in relation to applicants, it suggests that its size, location and service is sufficiently large that it be allowed to continue to perform its service to the public. It has almost 2,800 miles of road, serves over 500 points in four States and handles well over 300,000 carloads of freight per year. This produces 4 billion ton-miles of freight service annually and grosses more than \$56 million per year, based on 1967 figures. The carrier says that its shippers, as later discussed, indicate a need for the railroad's continued service.

Katy contends that its inclusion in the rail system acquiring the southern portion of Rock Island would be of substantial benefit to that consolidated system. Katy notes that many of its lines, though not in superior condition, are strategically located as to be the best, shortest or among the shortest routes between various important points (see Volume I, Part B).

Katy also points out the favorable characteristics of the grades and curves of its track. Although the physical characteristics of these grades and curves on Katy's primary routes exceed the desirable maximum of 0.5 percent grade and 3 degree curves, they are consistent, in Katy's view, with the standards prevailing on much southwestern main line mileage. Katy feels that these characteristics, where undesirable, could readily be improved at reasonable expense by its acquiring line, and, as noted earlier, Katy's main lines have been materially upgraded.

Of importance, also, would be the ability of the acquiring system to eliminate unnecessary duplications of lines south of Kansas City. In some cases, elimination of services and facilities would involve a reduction of operations and preclude certain expenditures necessary to Katy as an independent carrier. As an

example, Southern Pacific's acquisition of Katy would obviate, in Katy's opinion, laying of 432 miles of heavy rail, if that line is not used for main line, heavy duty operations.

Katy's routes interlace Rock Island trackage, crossing each other at Windsor, Mo.; McAlester, Hooker, Baker, Elk City, Mangum and Oklahoma City, Okla.; and Ringgold, Ft. Worth, Dallas, Houston and Galveston, Tex. Katy feels these junctions would be useful if it were included in the system acquiring Rock Island. Also, Kansas City, St. Louis, Oklahoma City, Dallas and Ft. Worth provide potentials for coordinations of facilities and services. The carrier estimates that coordination of Katy and Rock Island terminals and yards, and elimination of overhead expense would result in savings of over \$6.9 million to Southern Pacific. These savings represent the aggregate wages and other direct expenses incurred in performing the station, yard, mechanical and switching services at the points of coordination. Further, Katy claims that additional savings of \$6.2 million would result from the coordination of car and locomotive shops, line abandonments, elimination of interchange and duplicate train operation in Texas, monetary equivalent of more effective utilization of cars and locomotives on the larger system, estimated proceeds from sale of lands released, and various other savings which normally flow from unified operations.

Katy points out that, although its equipment rental obligation may seem somewhat burdensome to the rail system into which it is included, these cars were acquired at times and prices which will serve as a hedge against further price increases and thus may become a valuable asset. The first 1,000 cars that Katy acquired as a part of its equipment program represented an investment of \$17 million. These were purchased by an affiliate of Southern Pacific and leased to Katy, with Southern Pacific guaranteeing Katy's performance on its rental obligations. If Katy defaults on its rental payments, Southern Pacific will take over the cars. The cars were built to Southern Pacific's specifications and are, therefore, fitted for use by Southern Pacific if Katy were to lose them or if Katy is included in its system.

Industrial development is an important factor to be considered, with respect to the access to new, and the expansion of, existing industrial traffic to be gained by the system into which Katy is included. Katy's evidence in connection with its supporting shippers shows that it serves many national companies, large local concerns, and other businesses who made no appearance in this proceeding. Many of these shippers are served solely by Katy and others are served jointly by Katy and one or more other rail carriers, but, in any event, it is Katy's opinion that the acquiring system will gain additional traffic from its present operations. Due to the strength of the larger system, Katy feels that the acquiring carrier may even gain some traffic from the other rail carriers serving these industries.

Additionally, Katy claims it will bring to the system into which it is included, its proprietary interests in certain terminal carriers and facilities (previously cited in Part B, Volume I), as well as the industrial area served by these terminal carriers. The privileges and advantages of access to jointly owned terminals and industrial areas represent great potential value to the acquiring carrier.

With respect to the valuation of Katy's properties, it was initially indicated that it would be a useless and futile endeavor to estimate the proper valuation of Katy's properties to an unknown applicant and it should be the subject of a subsequent hearing. Later, in its rebuttal, Katy claimed that based on the market valuation of its assets and business as of March 1, 1968, a fair selling price of the Katy for merger purposes is \$115,000,000. Finally, in its brief Katy states that the intricacies involved in working out the precise inclusion terms, where consideration must be given to such factors as detailed indenture and security provisions, complexities of the Federal income tax laws, development of operating plans and savings achievable on inclusion of Katy in a specific system, the burden of showing a specific financial plan is therefore impractical in this proceeding and should be determined in a subsequent hearing. Applicants urge that a subsequent hearing would be desirable in order to arrive at a fair and equitable valuation of the lines seeking inclusion.

Twenty shipper and three public witnesses presented testimony in support of Katy. The shippers are highly dependent, and in some instances, totally dependent on Katy service. All of the shipper witnesses expressed fears that the unification of Rock Island with Southern Pacific or Santa Fe would result in a deterioration of Katy's service, which in recent years has begun to show improvement. Such fears are based on a general knowledge of Katy's poor financial condition as well as publicly available information and discussion with Katy personnel.

Several of the witnesses submitted testimony exclusively stating that if Katy's service deteriorates below its existing quality, their shipments, wherever practical, would be diverted to railroads competitive to Katy, or to carriers by other modes. These witnesses represented a Ft. Worth brick company with two plants at Denton, Tex.; a national food product company, headquartered at Chicago and having one of its largest plants at Garland, Tex.; a San Antonio producer of sawdust; an oil company with offices at Bartlesville, Okla.; a national textile and textile products manufacturer headquartered at Burlington, N. C., and having plants at West, and Sherman, Tex.; a San Antonio beer producer having a brewery in Galveston; an iron works at Waco, Tex.; and a Ft. Worth milling company.

One shipper, a sand producer headquartered at Pittsburgh, Pa., with a plant at Klondike, Mo., requests that Katy be protected to the extent necessary to maintain its services. The remaining shippers specifically support the inclusion of Katy in whichever applicant acquires the southern portion of Rock Island. These shippers are comprised of the following: a company with oil refineries at Cushing, and Cleveland, Okla., and a subsidiary fertilizer blending plant at Durant, Okla.; a Tulsa cement company with a plant at Pryor, Okla.; a national manufacturer, headquartered at Ardmore, Pa., with 18 plants including one producing wood products at Waco and one at Hillsboro, Tex. (products not specified); a national glass and glass products producer headquartered at Toledo, Ohio, with one of its plants at Service, Tex.; a Kansas City, Mo., flour miller; a Hillsboro, Tex., merchandiser of grain, seeds and fertilizer, also involved in grain storage; a Wichita Falls, Tex., merchandiser of appliances, accessories and other consumer goods, with stores at Remount and Farmers Branch, Tex.; a Kansas City, Mo., coal mining company, with one of its largest mines, served exclusively by Katy, at West Mineral, Kans.; a chemical and fertilizer company and an affiliated grain storage company at West, Tex.; and a Hillsboro, Tex., cotton oil company.

The Oklahoma Ordnance Works Authority has been concerned by Katy's worsening financial condition for fear that it will affect rail service. Since the location and construction of the Oklahoma Ordnance Works, the area has been developed into a major industrial park, with five industries located there with facilities valued at over \$10 million. More development is anticipated. Katy was an instrumental factor in the park's creation, guaranteeing the initial \$2 million loan, and now furnishes the only rail service to the Authority. A deterioration or termination of Katy service would irreparably impair the growth of the industrial park, threaten the solvency of many of the concerns located there and would seriously curtail attempts at reduction of unemployment in the area.

The City and Chamber of Commerce of Rotan, Tex., which had a 1960 population of 3,160, relies on Katy. Rotan is a farm and ranch market and shipping point for farm products. Its major industry is a plant owned by a nation-wide gypsum company, and it has three large cotton gins and a cottonseed oil mill. It is the western terminus of a portion of the Katy lines and originated 2,263 carloads in 1965. Katy's tracks to Rotan had deteriorated to such a point in 1964 and 1965 that derailments were almost a daily occurrence seriously affecting delivery times. This has been improved recently through capital investment and a trackage agreement with FW&D.

If Katy is forced to compete with Rock Island, with the latter under the control and operation of a well-financed organization, then the city feels Katy cannot exist, unless it is included in the resulting system, thereby being able to improve the rail service to Rotan, which will be of benefit to the industries located there.

The City and Chamber of Commerce of Parsons, Kans., also appeared. Parsons has a population of over 13,000 and serves a trade area of many more thousands. It is a terminal of Katy and has "occasional regular service" by Frisco. As a shipping center for the surrounding agricultural area, the City is dependent on rail service for its economic welfare. If the business of Katy is diminished by its competitors or any merger or acquisition which affects carload traffic and revenue, the continuance of the railroad's services are in jeopardy, and the City believes the only way this can be avoided is for Katy to be included in such a new competing system.

(7) Western Pacific

Western Pacific, in movements of traffic through the central corridor, suffers in competition with Union Pacific and Southern Pacific due to its comparatively small size as well as its location and financial structure. Its Salt Lake City-Oakland route is 144 miles longer than Southern Pacific's Ogden-Oakland route and its car fleet is far smaller than Union Pacific's and Southern Pacific's. Western Pacific contends that even a relatively minor increase in the power of those seeking the Rock Island could have an extremely adverse affect upon the WP. Southern Pacific is the strongest competitor of Western Pacific both on their parallel east-west routes between the San Francisco area and the Utah gateways, and on north-south traffic between California and the Pacific Northwest, where SP's single-line route parallels the Inside Gateway, or Bieber Route, where Western Pacific forms the link between Santa Fe and Great Northern. If Southern Pacific extends its southern route through acquisition of the southern portion of Rock Island, Western Pacific fears an intensification of competition.

Western Pacific connects with Union Pacific and Rio Grande at Salt Lake City and depends on those carriers for its traffic to and from points east of its lines. Although Western Pacific does not connect with Rock Island, Western Pacific's 1964 traffic study shows that it handled 11,500 carloads of Rock Island traffic which through an intermediate carrier was interlined with Western Pacific and which included traffic routed over Rio Grande via Denver. Such Rio Grande interchange brought Western Pacific over \$3.5 million in gross revenue.

Western Pacific states that it has been adversely affected by various preferential solicitation agreements involving both Southern Pacific and Union Pacific. It cites the agreement between Southern Pacific and Cotton Belt, the agreement between Southern Pacific and Rock Island, and two agreements between Southern Pacific and Union Pacific--the Oregon agreement and the Central Pacific agreement. Western Pacific says that the latter two are of prime importance, here, for, although they have been eliminated, the carrier contends that, after more than forty years of dealing with each other in this manner, Union Pacific and Southern Pacific are not likely to completely disregard this working arrangement without a specific mandate from this Commission. Western Pacific contends that in fact neither Union Pacific nor Southern Pacific have informed their shipper customers of the cancellation of these agreements. The impact of these solicitation agreements at the time they were in effect is seen by the examples of traffic interchanged at the Utah gateways (shown in detail in Volume I, Part B). It is Western Pacific's concern that, if these practices in effect under the agreements continue, coupled with the Union Pacific-Rock Island merger, there will be a likely siphoning of traffic from Rio Grande and its eastern connections, the adverse effects on Western Pacific will be greatly increased. Accordingly, it is the position of Western Pacific that its survival depends upon the Commission imposing a condition requiring Union Pacific to be neutral between Southern Pacific and Western Pacific in the solicitation and routing of traffic in the areas designated in Western Pacific's first condition.

Western Pacific finds that another problem it faces is the relationship of its freight schedules with those of Union Pacific and Southern Pacific. Union Pacific's westbound arrival time at Salt Lake City is conditioned upon its delivery commitments to Southern Pacific at Ogden for delivery to San Francisco and upon its own departure time from Salt Lake City for movement via its own lines to Los Angeles, with no consideration given to Western Pacific schedules. Also, Union Pacific delivers pre-blocked trains to Southern Pacific, which can then move them out immediately after interchange. Although Western Pacific has requested Union Pacific to pre-block its few cars, usually ten or twelve in number, Union Pacific has not done so, even though it has pre-blocked as few as twelve to fifteen cars for Rock Island eastbound. On eastbound traffic, Union Pacific's schedules from Los Angeles, through Salt Lake City, to Ogden are set for the convenience of Southern Pacific, whereas Western Pacific is told when to deliver to Union Pacific at Salt Lake City and must do so to remain competitive with Southern Pacific.

Western Pacific also claims a competitive disability resulting from Southern Pacific's refusal to join Western Pacific in providing joint rates and through routes on traffic moving transcontinentally via Salt Lake City, on the one hand, and points on Southern Pacific lines and the lines of Southern Pacific's connections, on the other. These points generally are in Oregon, Northern California, and in the area of the former Pacific Electric Railway in Southern California. Western Pacific alleges that such refusal is the result of Southern Pacific's desire to handle the traffic over its own lines to Ogden.

This same problem exists with respect to traffic moving between points on Western Pacific lines, even exclusive Western Pacific traffic, on the one hand, and Southern Pacific points in Oregon, California, Arizona and western New Mexico, on the other. In some instances, Southern Pacific has joined Western Pacific in one-factor joint rates between the points referred to, but the general policy has been that in such instances the joint rate arbitrarily must be higher than the single-factor rates.

Western Pacific charges that Southern Pacific has recently embarked on a program of restricting transit privileges at points on its lines for transcontinental traffic, which has the net effect of barring Western Pacific's participation in traffic via Salt Lake City despite the fact that the rates themselves are otherwise competitive. This is accomplished by permitting transit privileges only when the Southern Pacific secures its haul from or to Ogden or some other Southern Pacific long-haul gateway, or by charging more for transit if Western Pacific handles the shipment via Salt Lake City.

Although Western Pacific has the same voting power in the freight bureaus to which it and Southern Pacific belong, it alleges that Southern Pacific can effectually defeat joint rates established by the bureaus by establishing a lower local rate, since its territory is so extensive.

If Southern Pacific now acquires new territory, new personnel, new freight cars, new revenues, new single-line service and all the other advantages it claims from its proposal, Western Pacific reasons that this will increase the weight it will feel in its already disadvantageous position in dealing with Southern Pacific.

Western Pacific estimates the granting of the Union Pacific and Southern Pacific applications would result in an annual revenue loss of over \$4.7 million and net railway operating income loss of almost \$2.9 million. This, it is alleged, would

have such a damaging effect on Western Pacific as to impair its ability to compete. The protective conditions proposed by Western Pacific are sought on the basis that, in the carrier's words, ". . . as the price of approval of applicants' proposals to improve their own competitive positions, both intermodally and intramodally, they should be required to eliminate some of the many restraints which deprive the shipping and receiving public of a free choice between two or more competing routes and services."

Western Pacific presented 20 shipper witnesses in support of its position. The shippers are: a Stockton, Calif., shipper of fresh produce, served by WP, SP and AT&SF. A shipper of melons, served at Turlock, Calif., by a Western Pacific subsidiary. A produce shipper and a fruit shipper at Lodi, Calif., served by the Central California Traction Co., which is owned by WP, SP and AT&SF, and, in addition, the fruit shipper is served by an SP spur track. A canned food company in Modesto, Calif., served by a WP subsidiary as well as SP and AT&SF. A winery in Manteca, Calif., served by a WP subsidiary. A plywood company in Sacramento, served by WP and SP. A shipper of poultry, eggs and feed, served by a WP subsidiary and SP. Two San Jose manufacturers, under common management, served by WP and SP. An Oakland company, engaged in the manufacture, sale and distribution of business forms, served by WP and SP. A St. Louis salt company, served by Western Pacific at its Spray, Utah facility. A Portland, Oreg., ship construction and repair company which utilizes Western Pacific on shipments from Fontana, Calif. A Culver, Oreg., shipper of potatoes, served by the UP system, uses WP and SP on its routings. A Eugene, Oreg., lumber company served by Oregon Electric and SP, using Western Pacific as a destination carrier. A Salt Lake City chemical company served by Rio Grande, and a substantial shipper over Western Pacific. A Salem, Oreg., paint and varnish company, served by Oregon Electric, and a Lebanon, Oreg., lumber company. A bakery in Downers Grove, Ill. A St. Louis furniture manufacturer and a Rochester, N. Y., germicide company.

Generally, the shippers are very satisfied with the service provided by Western Pacific. Two of the witnesses cited examples of faster service provided by Western Pacific than by Southern Pacific, and one shipper, at St. Louis, has received its best service from WP even though other carriers (no specific name) providing service to the shipper are larger. Many of the shippers expect their businesses to grow and would rely on Western Pacific to meet the increased demands for car supply and other service. Should the carrier be unable to maintain its present level of service, the shippers are fearful that they will not be able to continue their own competitive position in the market. The shippers also feel that the existence of Western Pacific has

fostered competition between the rail carriers with resulting benefits to the shippers in the areas of car supply, rates and expeditious deliveries. One shipper, which deals primarily with Southern Pacific, gives 25 percent of its business to Western Pacific for the purpose of fostering this competition. Were Western Pacific to be unable to continue its present position as a competitive carrier, the shippers fear that the high level of service provided by the railroads would diminish.

The California Department of Agriculture and the Public Utilities Commission contend that rail competition is as indispensable to maintaining modern rail service and responsive rate schedules as is intermodal competition. The State's view is that it needs all of its transcontinental railroads to provide its rail needs and support its economy and that Western Pacific must be maintained as a strong competitive force through the central transcontinental corridor. The record made establishes that Western Pacific is dependent on interchange traffic, and that if the present Rock Island traffic is diverted to Union Pacific from Rio Grande, such traffic will not reach Western Pacific.

The State bodies urge conditions to a Union Pacific-Rock Island merger which will preserve Western Pacific as an independent carrier and Western Pacific and Rio Grande as a competitive route.

As stated previously in Part I, Volume I, the Public Utility Commission of Oregon supports strong conditions to protect Western Pacific's share of transcontinental traffic through the Utah gateway.

(8) Milwaukee

As indicated earlier, there is no need to consider the Milwaukee evidence bearing upon a combined North Western-Milwaukee-Rock Island system. Also, while the previously referred to order of May 15, 1970 (for details of the order see Volume I, Part C, item (13) Milwaukee), has reopened these proceedings limited to the issue of a Milwaukee inclusion, it is the present record which contains the evidence of any likely impact upon the Milwaukee as a result of the considered proposals. Accordingly, such an impact will be considered in this report leaving for the further proceedings the determination of what relief, if any, is required.

While the Milwaukee's lines extend from Chicago to the Pacific Coast, it is not engaged in the hauling over such lines of a large volume of transcontinental traffic. Its principal transcontinental volume moves over its relatively short route between Chicago and Council Bluffs. Such operations are conducted to a great extent in conjunction with Union Pacific.

The heavy dependency of the Milwaukee upon the Union Pacific interchange in movements of transcontinental traffic is demonstrated by the analysis contained in Table 112 and also by comparison with Tables 110 and 111 together with the explanatory discussion preceding the three tables.

The large proportion of Milwaukee traffic handled in connection with Union Pacific and having origination or termination on Southern Pacific has resulted in a close cooperation and communication between the three carriers in the matter of rates, car supply, train operations, schedules and service to shippers. The three railroads operate daily scheduled through train service in both directions between Chicago and West Coast terminals.

Union Pacific has recently established through train operations with Norfolk & Western via Kansas City in competition with the Council Bluffs route. Milwaukee anticipates that the Union Pacific under an acquisition of the Rock Island will operate its principal transcontinental trains to and from Chicago and Twin Cities via Council Bluffs and to and from Chicago and St. Louis via Kansas City on schedules that would not permit interchange of competing through trains in connection with Milwaukee to continue on an equal basis. Further, the carrier contends that the sheer volume moving via Union Pacific and its east end connections will gradually be diverted to the Union Pacific-Rock Island lines, which will, itself, attract additional traffic to Union Pacific lines from and to all coast points. The end result feared by the Milwaukee is that a major part of all traffic which it interchanges with transcontinental lines, particularly Union Pacific, will be lost.

According to Milwaukee, a Union Pacific-Rock Island merger would force it to abandon its cooperation with Union Pacific and Southern Pacific in the solicitation of freight via Council Bluffs. Thus, all solicitation would be via Milwaukee's northern route and the Marengo gateway to and from Portland and Oregon points taking Portland rates. Even in the event of a Northern Lines merger, which has since occurred, and under the so-called Portland Condition, Milwaukee would solicit Oregon and California traffic for its northern route, but this, the Milwaukee feels, would not be very successful in the face of Southern Pacific competition.

It is Milwaukee's position that, if Southern Pacific acquires the southern portion of Rock Island, SP will probably work very closely with Norfolk & Western on eastern traffic moving via Kansas City and will also move all possible traffic via St. Louis over its own system lines. This, Milwaukee alleges, will have a tendency to attract traffic from the Chicago gateway to the St. Louis and Kansas City gateways going to or from the Southwest and the Pacific Coast.

Milwaukee contends the Union Pacific-Rock Island merger would require it to make operational changes in its service between Chicago and Council Bluffs. The Savanna, Ill., yard is an accumulation point for traffic arriving from all directions. Present service between Council Bluffs and Savanna consists of three trains daily in each direction. There are additional trains being run between Savanna and Chicago, sometimes as many as five in each direction. Milwaukee contends that the lost tonnage to a merged Union Pacific-Rock Island will require the elimination of trains; however, too great an elimination of service will result in less competitive operations and increased traffic loss. Thus, Milwaukee proposes to operate two trains daily between Council Bluffs and Savanna with a third train being operated on an alternate day basis in order to continue service for intermediate local service on the line. Also one daily train in each direction will be eliminated between Chicago and Savanna. It is estimated that these reduced operations will require the furloughing of 51 employees.

A Union Pacific-Rock Island merger and sale of the southern half of Rock Island to Southern Pacific, would result, in Milwaukee's estimation, in a revenue loss of over \$6.5 million and a net loss of almost \$3.7 million.

With respect to the condition sought by Kansas City Southern, Milwaukee points out that its implementation would require Milwaukee consent, since Rock Island and Milwaukee jointly own the 47-mile stretch of Rock Island line between Polo, Mo., to Airplane Junction in Kansas City, where Kansas City Southern connects with the jointly-owned line. Milwaukee opposes Kansas City Southern's requested trackage rights to Chicago on the basis that Kansas City Southern's single-line service would not provide the equivalent of the present Milwaukee-Kansas City Southern joint-line service on the traffic moved by Kansas City Southern. It would, Milwaukee reasons, only increase Kansas City Southern revenues while diluting those of other connecting lines, including Milwaukee.

Milwaukee opposes the conditions proposed by Great Northern and Northern Pacific to achieve entry into exclusive industrial areas near Spokane and Seattle which would strengthen them in relationship to Milwaukee. It also opposes the Northern Line's conditions proposing operating rights over the jointly owned trackage of Union Pacific and Milwaukee south of Black River Junction to Kent, Wash., and to the industrial area south of Seattle served thereby or the placing of this area into the Seattle switching district. Milwaukee says that GN and NP and

and their subsidiary, SP&S, do not make a practice of opening up their exclusive industrial areas outside of established switching districts to Milwaukee, and granting these conditions would severely affect Milwaukee because of the parallel nature of its lines with those of Great Northern and Northern Pacific. Thus, unless these two roads will open up their respective exclusive industrial areas in the vicinity of terminals common with Milwaukee, Milwaukee will oppose their being allowed such privileges.

(9) Frisco

The Frisco emphasizes that situated as it is in the center of the country, it is substantially dependent upon traffic which it neither originates nor terminates. The extent to which the Frisco's existence is dependent upon other lines is clearly demonstrated by the discussion of the Frisco's traffic movements in Part B and which discloses that total carloads hauled during 1965-1968 ranged from 767,542 to 812,457 of which in 1966 it interchanged a total of 643,001 carloads. As the discussion in Part B discloses, Frisco interchanges with Union Pacific, Southern Pacific system and Rock Island account for approximately 22.5 percent (bearing in mind, of course, the likelihood of duplication of carloads) of Frisco's systemwide traffic volume of carloads hauled annually. Also for 1966, about 29.2 percent of Frisco's carloads and 27.9 percent of its tonnage were derived from overhead operations.

Frisco serves 19 points in common with Rock Island; located ten in Oklahoma, three in Texas, two each in Kansas and Missouri, and one each in Arkansas and Tennessee. Major metropolitan areas served by both include the Dallas-Ft. Worth area, Kansas City, St. Louis and Memphis, with Kansas City and Memphis being the two principal interchanges between the carriers. Table 134 shows the interchanges between the Frisco and Rock Island. At Kansas City the Frisco received 9,261 carloads and delivered 8,363 carloads and at Memphis the Frisco received 8,352 carloads and delivered 9,631 carloads. While Frisco and Rock Island serve a number of points in common and they interchange a volume of traffic, as the Frisco's chairman of its board and president indicated, the Frisco's competition with the Rock Island is relatively small in total.

Table 134 and the supplementary discussion thereto also details the interchanges between the Frisco and the Union Pacific, Southern Pacific and Santa Fe, among others. As seen, the Frisco and Union Pacific serve in common Ellsworth and Kansas City and Frisco's largest single carrier interchange is with the Union Pacific at Kansas City. Such volume (a total of 75,383 carloads in 1966) consists largely of traffic to and from

the Southeast on which Frisco receives a substantial haul. Frisco and Union Pacific operate one train daily, in each direction, in through service at Kansas City, in which operations the engines along with the trains are interchanged. Frisco also operates eight other trains into and out of Kansas City daily, all of which are involved in interchange with Union Pacific. Frisco feels that traffic brought to Kansas City and interchanged with it is attracted to Frisco because of its short mileage to Memphis and Birmingham and the connections at those points. However, the Frisco anticipates that if Union Pacific acquires Rock Island's line to St. Louis and to obtain Union Pacific's own long haul, it will divert much interchange traffic from Frisco.

Frisco and Southern Pacific each serve Dallas, Ft. Worth, Denison, Paris and Sherman. Through the years a volume of traffic has been interchanged at those Texas junctions, primarily of traffic to and from Western Trunk Line territory hauled by Frisco between Kansas City and North Texas interchange with Southern Pacific, but not on transcontinental traffic moving through the Kansas City-St. Louis gateways. In connection with the latter movement, i.e., Frisco participation with Southern Pacific on transcontinental traffic via North Texas junctions and the St. Louis gateway, only a small amount of traffic is involved. Frisco claims that as a result of the acquisition by Southern Pacific of its own direct line to Kansas City it would naturally attempt to obtain its own long haul to Kansas City and thus threaten a sizable portion of Frisco's interchange traffic with Southern Pacific.

Frisco has 16 common points in Missouri, Arkansas, Texas and Tennessee with Cotton Belt, and those carriers also interchange a volume of traffic. The principal interchanges are at Memphis, Sherman and Jonesboro, and generally comprises traffic to and from points east of the Mississippi River beyond the scope of Cotton Belt service. Southern Pacific's acquisition of the southern portion of Rock Island will put the Southern Pacific system in direct competition with Frisco in Oklahoma. However, the transaction will not affect the lack of competition between the Frisco and Cotton Belt within the southeast area or their interchange at Memphis on traffic hauled by the Cotton Belt to and from Memphis and by the Frisco in the Southeast.

Viewing the Southern Pacific and its subsidiary Cotton Belt as a single system, and properly so, the Frisco argues that the acquisition by Southern Pacific of connections with the Union Pacific at Salina, Abilene and Topeka, Kans., would afford Southern Pacific the opportunity to establish new routes on

traffic between California Preferential Solicitation Territory (see that portion in Part G of Volume I which discusses the Southern Corridor), North Coast-Transcontinental Territory, and Southern Kansas, Oklahoma, Texas, Arkansas, Louisiana and to the southern connections at New Orleans and Memphis to the end of eliminating or drastically curtailing Frisco's present participation in such traffic which it is now interchanging with the Rock Island and Union Pacific at Kansas City.

Frisco estimates that it will lose \$6.5 million in gross revenues and \$3.0 million in net revenues if the Union Pacific and Southern Pacific applications are approved.

If Katy is included in the Southern Pacific system, Frisco alleges it will lose traffic moving between Texas points and Kansas City, since Katy mileage from Dallas to Kansas City is a shorter route than Rock Island's route.

Frisco thus opposes a blanket approval of Katy's inclusion in Southern Pacific, since this would undoubtedly lead to the expenditure of vast sums to improve Katy lines to Frisco's detriment. A second objection of Frisco is that Katy's inclusion in Southern Pacific will place Southern Pacific in the position to serve new areas which it does not presently serve. Thus, rather than approving Katy's inclusion in this proceeding, Frisco contends the inclusion should be after formal application and proposal with an opportunity to determine at a hearing the effect of the proposal on Frisco.

According to Frisco, it would be adversely affected by almost all of the conditions requested by Kansas City Southern. It alleges that if Kansas City Southern were to be permitted to extend its line to Chicago, no new business would be created thereby, but, rather, there would be a new single-line route in competition with existing lines, such as the Frisco forms in connection with other carriers. For the same reason, Frisco also objects to Kansas City Southern entering Houston. Again, the Frisco argues that the Kansas City Southern's acquisition of trackage rights between Dallas and Ft. Worth and entry into Ft. Worth, with full rights to serve shippers and receivers and the purchase of Rock Island's interest in Great Southwest Railroad would not create new business but would merely add to the available service for existing business, and that here too, Frisco also fears a loss of interchange traffic being engaged in with Kansas City Southern, if the latter expands its area of operations.

Extending T&P's line from El Paso to Los Angeles and San Francisco would establish a new transcontinental single-system

service into the Midwest and East via Kansas City, St. Louis and Chicago gateways and would, according to Frisco, allow a redistribution of traffic and eliminate Frisco from traffic it now handles.

The Frisco opposes the FW&D request for unlimited switching rights embracing all industries on the Rock Island line between Dallas and Ft. Worth to the extent that it covers industries now served by Frisco.

The Frisco urges denial of all applications on the ground that they are not in the public interest. It principally argues that the proposals are designed to strengthen the successful applicant at the expense of at least 10 other railroads by reason of substantial anticipated diversions of traffic, including several railroads who are not parties to these proceedings and have presented no evidence. Such expected result, the Frisco asserts, has caused the affected carriers to engage in "desperate, even approaching the ludicrous counterproposals to preserve their economic ability to survive." Specific reference is made to the desire of the Missouri Pacific-TP to extend operation from El Paso to Los Angeles; of the KCS trying to go from Kansas City to Chicago and of the Denver & Rio Grande to come from Colorado into Kansas City. Such efforts are characterized by the Frisco as the preservation of economic waste and in direct contravention of what railroads should be trying to do in mergers. As the Frisco sees the solution to the problems of the railroad industry, "There is no valid reason why the western railroads cannot voluntarily work out an over-all plan of merger into a limited number of strong competing systems." Such a suggestion has great merit - in theory only.

For more than 50 years Congress, the Commission and the public have patiently awaited, to no avail, for the railroad industry to eliminate through merger the vast surplusage and duplicating services which the midwestern carriers in these proceedings themselves so bitterly decry. Following Federal experience with the operation of the Nation's system of railroads during World War I, Congress by the transportation act of 1920, amending the original act to regulate commerce enacted February 4, 1887, provided that the Commission should adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems. The later amendment of 1940 placed the initiative of effecting unifications in the hands of the carriers. Particularly with respect to the carriers whose operations are grounded in the Central States (as defined in Volume I, Part G), the critical conditions of oversupply and duplicating services have remained substantially unchanged from those in existence at the time of the 1920 amendment. Moreover, such of those midwestern carriers as are parties to these proceedings find themselves

in either a marginal or critical financial condition, with the exception of the Frisco. Certainly the clarion call to the Commission is for responsive action in the public interest to the challenges presented by these proposals. The foregoing will suffice for the moment; the numerous factors of consideration involved in the final determination will be discussed in the concluding part dealing with the findings and conclusions.

The efforts expended in the recitation of the enormous volume of evidence here presented has been aimed at the presentation of all such evidence which has indirect bearing upon, and is determinative of, the issues presented.

(10) North Western

For more than a hundred years, North Western has been Union Pacific's chief connection at the Missouri River. The interchange with Union Pacific at the Missouri River gateways is North Western's largest interchange with any carrier (see Volume I, Part B). In 1964, and excluding Great Western traffic, approximately 85 percent of the eastbound traffic delivered to North Western by Union Pacific originated on Union Pacific and Southern Pacific lines, and 88 percent of the westbound traffic delivered to the Union Pacific by North Western terminated on Union Pacific and Southern Pacific lines. Of all the traffic interchanged between North Western (excluding CGW) and Union Pacific in 1964 (accounting for \$22.8 million in North Western gross revenue), over 52 percent, representing \$11.9 million in gross revenue, was bridge traffic for North Western; nearly 28 percent terminated on North Western; and the remainder was originated on North Western. Thus, there is ample support for North Western's conclusion that the Union Pacific has overwhelming power over the traffic which Union Pacific handles jointly with the North Western.

The combined studies of 1964 traffic made individually by Great Western and North Western show an estimated combined gross revenue loss from the Union Pacific and Southern Pacific transactions of approximately \$13.9 million. Studies limited to North Western's own operations show anticipated losses on traffic interchanged between North Western and Union Pacific at the Missouri River, and which moves over the North Western's Chicago-Omaha line of approximately \$10 million and of which \$7.3 million represents bridge movements over the North Western line. No breakdown of the foregoing losses are allocated between the Union Pacific merger and Southern Pacific purchase. Indeed, North Western's president and chief executive officer freely admitted that he could see no traffic losses to North Western as

a result of Southern Pacific's acquisition of the Rock Island Tucumcari-Kansas City line. Otherwise, as to the remainder of the Rock Island lines to be purchased by Southern Pacific, there is no probative evidence of record establishing a diversion of traffic from North Western lines.

North Western contends that Union Pacific's influence over the traffic interchanged with North Western is enhanced by Union Pacific's extensive supply of special equipment and half ownership in PFE. With respect to PFE cars, Union Pacific agrees that it receives the longest possible haul. North Western claims that traffic hauled in PFE cars, after merger, would largely be rerouted to Union Pacific lines east of the Missouri River away from all the carriers, North Western included, presently sharing in this traffic as eastern connections of Union Pacific. Finally, North Western argues that the volume of Union Pacific traffic in general will be unaffected by the modification of condition 'e' in the Central Pacific case since Union Pacific and Southern Pacific will continue their long standing cooperation. In other words, North Western is saying that following the merger and Union Pacific's single-line service to Chicago, the traffic estimated by North Western to be diverted from its lines will not be lessened by the modification of condition 'e'.

North Western claims that Union Pacific and its midwestern connections, including North Western, are interdependent and that extension of Union Pacific's lines through the midwestern area would deprive existing carriers serving the area of whatever long-haul, high-density traffic they now possess. For its own part, North Western has been required to make massive capital expenditures in the past to achieve its present earnings level, and in the future, it will be required to make even more massive ones. To successfully finance and carry such investments will require increased earning levels. North Western contends that a Union Pacific-Rock Island merger would make those necessary expenditures impossible by preventing North Western from attaining the required level of earnings; that North Western is a marginal carrier now; and that a reduction in its net income due to the Union Pacific and Southern Pacific transactions will place it in the submarginal category and would mean insufficient future capital outlays, further losses, and the inability to maintain adequate railroad operations.

North Western claims that Union Pacific's proposed merger with Rock Island is inspired purely by strategic considerations, designed both to forestall the creation of a strong regional midwestern carrier, as advocated by North Western, and, at the same time, to increase Union Pacific's revenues by concentrating

on its own extended lines the traffic now handled by its midwestern connections and other carriers. Further, the North Western argues that Union Pacific proposal represents an attempt by Union Pacific to strengthen an already dominant economic position. Such increased dominance, North Western argues, would only serve to threaten other Western District carriers with as much as \$100 million in claimed lost revenues. Of course, North Western's above-reference to a "strong regional midwestern carrier" has in mind the extension of lines to the West Coast under the denied Milwaukee proceeding.

North Western contends that the proposed partition of Rock Island between Union Pacific and Southern Pacific will add to the fortunes of those two carriers but will add nothing to the efficiency of railroad operations and produce almost no advantages for the public. North Western urges that, in certain instances, the single-line service to result from the applications will produce no more benefits than exist under the present joint-line service and the simplified and expedited interchanges each carrier has with its Missouri River connections. According to North Western, the presently-existing interchange of full train loads between Union Pacific and Southern Pacific on the one hand, and their eastern connections on the other hand, is the practical equivalent of single-line service. North Western contends that the proposed Union Pacific-Rock Island single-line service between Los Angeles and Chicago would save only about 10 minutes over the present Union Pacific-North Western joint-line service via Fremont. The 10 minutes could be saved in the joint-line operations, North Western claims, if the carriers pooled locomotives, as they do cabooses. In the case of Burlington-Union Pacific through-train service, North Western says that single-line service would not even result in a ten-minute saving in time, since those two carriers already run motive power through the interchange point.

North Western notes the Union Pacific claim that, on trans-continental traffic moving through the St. Louis gateway, it would be able to produce a substantial improvement in service if it acquired Rock Island. However, North Western contends that the Norfolk & Western and Frisco through-train operations being conducted in conjunction with Union Pacific, through the Kansas City gateway, are so expeditious as to eliminate the need to move traffic through the St. Louis terminal area. Such operations avoid the possibility of terminal delays and the routes utilized to the East and South are shorter than the route through St. Louis which Union Pacific would utilize after merger.

North Western views the future of Union Pacific's special interchange arrangements at the Missouri River as dim if the UP-RI merger is consummated because the large volume of traffic necessary to maintain the interchanges will have shifted to Union Pacific lines exclusively. The Union Pacific's former connections, such as North Western, would, in the latter's view, find it impossible to offer the present levels of service to their shippers. This, North Western asserts, would particularly affect shippers located on the lines of North Western in Wisconsin, Upper Michigan, and Illinois. These shippers would be required to route traffic over North Western to and from Chicago, where a time-consuming interchange with Union Pacific would be necessary, as opposed to the fast through-train interchanges at Fremont. North Western notes that Chicago interchanges typically require a full day or more, and such an arrangement, North Western asserts, would amount to a penalty on the carrier's customers in the above-named areas.

North Western claims Union Pacific's criticism of operations of its Missouri River connections (detailed in Volume I, Part I), are baseless. Similarly, North Western contends that Union Pacific's charge that Norfolk & Western would occasionally "run away" from late UP deliveries has presumably been rendered moot with the establishment of run-through trains between Union Pacific and Norfolk & Western at Kansas City. At the same time, North Western argues that "runaways by connecting lines" are "to be expected occasionally in the railroad business". On westbound traffic, North Western rejects Union Pacific's claim that its Missouri River connections often deliver traffic late to Union Pacific.

North Western conducted a study to compare its own operations with those of Union Pacific in order to assess the Union Pacific claims regarding traffic moving in each direction. The study covered the joint-line operations of the two carriers for the period, 1960-1966, and showed that during those seven years, Union Pacific's average speed on westbound trains was lower than North Western's; Union Pacific was consistently behind schedule while North Western was on or ahead of schedule; and that Union Pacific was late over 96 percent of the time in meeting scheduled arrival times at Los Angeles.

With regard to Union Pacific's claim that it "overpowers" westbound trains in order to make up lost time for its eastern connections, North Western asserts that much of the over-powering results from an imbalance of Union Pacific motive power at the Missouri River and merely represents a normal returning of extra locomotives, or at best, utilization of whatever motive power was available at the Missouri River when North Western trains were

delivered to Union Pacific. Union Pacific's alleged overpowering has not, on the basis of North Western's study, enabled Union Pacific to arrive on time at the West Coast even when North Western delivered trains to Union Pacific on, or nearly on time. North Western also points out that it has held trains at Chicago for traffic arriving from its eastern connections. Without doing so, North Western states, neither it nor Union Pacific could continue to share in the traffic.

North Western also says that Union Pacific's performance eastbound has been disappointing. On perishable schedules, North Western's study shows that Union Pacific's on-time performance deteriorated during the course of the hearings from 52 percent on-time to 27 percent. North Western, during the same period, delivered this traffic at Chicago on-time 78.5 percent of the time.

After discussing the operating evidence set forth above, North Western states on brief, that

"The foregoing is not intended to deprecate the Union Pacific's performance. The Union Pacific does an adequate job in handling traffic over its lines. However, the Union Pacific criticized, without basis or justification, the performance of its eastern connections, and these connections sought to set the record straight."

The presentation of evidence on this issue by both Union Pacific and North Western makes abundantly clear that the very nature of the joint-line service makes for a poor operating performance, and that such joint-line service complicates and frustrates the expeditious movement of transcontinental freight traffic. On the record here made, the single-line services proposed in place of joint-line services would remove the problems incident to interchange.

Of the 20 shipper and public witnesses who testified in support of North Western's position in these proceedings, 15 testified specifically in opposition to the UP-RI merger. Among the 15 witnesses, opposition to the Southern Pacific acquisition was voiced primarily because the Union Pacific and Southern Pacific transactions are interdependent and the real basis of opposition goes to the Union Pacific transaction. However, two witnesses, one representing a farm grain dealers association headquartered at Des Moines, and with 112 elevators local to C&NW in Iowa, and the other, representing a Granite City, Ill., steel producer, opposed a Union Pacific-Southern Pacific split of Rock Island which would result in two-line hauls for their organizations.

Cross-examination revealed that the steel producer's witness was not aware that, under the Southern Pacific proposal, he would have available single-line service via Cotton Belt and the acquired Rock Island lines from his plant in Granite City. Both witnesses expressed a fear that the UP-RI merger would so weaken the North Western and other midwestern lines serving the shippers that their rail service would deteriorate to the substantial detriment of their firms. This position was held also by the remaining witnesses, who represented the following firms or public bodies:

A bentonite clay producer at Casper, Wyo.; a manufacturer of dry cell batteries with plants in Wisconsin, Pennsylvania, Massachusetts, and Ohio; a producer of malt at Jefferson Junction, Wis.; a manufacturer of mining and construction machinery with plants in Wisconsin, Pennsylvania, Indiana, and foreign countries; a coal producer with mines in Kansas, Colorado, and New Mexico; a soybean processor at Fort Wayne, Ind.; the Waukegan-North Chicago, Ill., Chamber of Commerce; the City of Fort Dodge, Iowa; the City of Milwaukee and the Milwaukee Board of Harbor Commissioners; the South Dakota Public Utilities Commission; a grain company and three affiliated companies having facilities in Minnesota, Illinois, New York, and Wisconsin; a Milwaukee corn processor with a plant also at St. Joseph, Mo.; and a Granite City corn processor.

The two corn processors last-mentioned also expressed the fear that a Union Pacific-Rock Island merger would result in a contraction of the corn supply available to them because Union Pacific would make attractive rates available for corn shipments to the West Coast, in effect bypassing midwest corn processors. The Des Moines farm grain dealers association's opposition to a split of Rock Island, mentioned earlier, was based on its opinion that such a split would preclude the movement of Iowa grain to both the Great Lake ports and the Gulf ports as is presently possible.

(11) Santa Fe

Santa Fe disputes the Union Pacific claim that it suffers competition disadvantages in not having single-line service to Chicago and St. Louis. Santa Fe asserts that the single-line competitors of Union Pacific are Northern Pacific, Great Northern, Milwaukee, Santa Fe and Southern Pacific, and that for 1966, Union Pacific's net railway operating income exceeded those of each of its competitors, and, even though 1967 was not a good year for railroads, Union Pacific fared considerably better than the rest. Such result, Santa Fe submits, does not indicate a competitive disadvantage from a traffic standpoint.

Santa Fe contends that there are a number of reasons for Union Pacific's enviable traffic position. Union Pacific has extensive and superior geographical coverage of the West; serving over its own lines the major urban complexes of Los Angeles, Portland, Seattle and Spokane and it has access to San Francisco-Oakland through Southern Pacific. Santa Fe asserts that another reason for Union Pacific's strength is that it is essentially a non-competitive transcontinental connection for most midwestern railroads at Missouri River gateways, and the combined solicitation efforts of many of these roads give a substantial boost to Union Pacific's participation in trans-continental traffic. While Santa Fe concedes that its single-line route between Chicago and the West Coast is a factor contributing to its financial strength, at the same time, it points out that it competes with North Western, Burlington, Milwaukee, Rock Island, and Illinois Central for traffic moving via Chicago. Such competitors have a community of interest in routing traffic away from Santa Fe in favor of their connections with Union Pacific at the Missouri River and, of course, they participate in joint-line service with Union Pacific which is completely competitive to the Santa Fe single-line route.

Santa Fe points out that neither it nor Union Pacific reaches St. Louis, and, it claims, that neither of them is fully competitive with Southern Pacific single-line on traffic moving to and from points in Southern California. Santa Fe claims, however, that Union Pacific, in connection with Norfolk and Western, and sometimes Southern Pacific, offers the fastest schedules from St. Louis to Northern California and the fastest schedules in both directions between St. Louis and the Pacific Northwest.

Santa Fe shares Union Pacific's concern that the eastern carriers, being formed through consolidations, will shift traffic from Chicago to St. Louis. Santa Fe fears the shift to St. Louis will be more disadvantageous to it than to Union Pacific, because Santa Fe's service is not fully competitive with that of Southern Pacific for that gateway's traffic moving to Southern California and also it is not on a competitive par with Union Pacific for traffic moving to Northern California and to and from the Pacific Northwest. The Santa Fe asserts that the Union Pacific could provide some competition to Southern Pacific on traffic originating and terminating in the Los Angeles area and moving via St. Louis but not the degree of competition Santa Fe could provide because Union Pacific does not serve New Mexico, Arizona, or Northern California.

Southern Pacific also has extensive coverage of the West Coast, serving Los Angeles, San Francisco-Oakland and Portland. Santa Fe claims that Southern Pacific enjoys a monopoly rail market in all of southern Oregon south of Eugene, in substantial areas of Northern California, all of the area on Southern Pacific's Coast Line of some 400 miles between San Jose and Los Angeles, the industrial area on the Peninsula of San Francisco, and a substantial portion of the San Joaquin and Sacramento Valleys.

Southern Pacific participates in three transcontinental routes, one with Union Pacific, via Ogden, which Santa Fe claims is fully competitive with available service between Chicago and Northern California. A second route is between St. Louis, Memphis and New Orleans and the West, and the third route is the Golden State Route. Santa Fe contends the Golden State Route is fully competitive with its own route between Chicago and the West, and the recent run-through operation at Tucumcari eliminates any delay. The carrier concludes that Southern Pacific's participation in routes serving all important eastern gateways, Chicago and the South is unparalleled. Santa Fe points out that one reason for Southern Pacific's proposal, in addition to its objection to Union Pacific, is its dependence upon Rock Island at Tucumcari; however, the Santa Fe contends that the Southern Pacific acknowledges that Rock Island is doing more than its share of maintaining the flow of traffic over the route.

The observation which is pertinent at this point is that the Santa Fe is in the position of "the pot calling the kettle black". At the outset of this discussion concerning Santa Fe-Southern Pacific competition, the Santa Fe would have the Commission believe that the carrier with its shorter and highly efficient route to Kansas City and the number of connecting carriers operating over the relatively short distance to St. Louis is disadvantaged at the latter point by the single-line service of Southern Pacific albeit over a more highly circuitous route. On the other hand, Santa Fe which has its own direct single-line routes to Chicago, reverses the thesis and urges the Commission to find that the Southern Pacific, with its dependence upon interchange with the Rock Island-Tucumcari route, is fully competitive with the Santa Fe.

In any event, Santa Fe contends that approval of the applications of Union Pacific and Southern Pacific will increase the dominance of those carriers in their areas. It feels that concentration of more power in those two carriers would weaken the potential of all carriers oriented to the same transcontinental routes to provide effective competition with these already dominant carriers. While Santa Fe cannot translate this inevitable result into specific revenue losses it will suffer,

the carrier says it is possible to foresee a general decline in the ability of other railroads, many of which interchange traffic with Santa Fe, to handle traffic efficiently with and in cooperation with eastern and southeastern railroads, which would be inclined to favor interchanges with Union Pacific and Southern Pacific primarily because of the high traffic volume involved. The result, the carrier reasons, would be to foreclose Santa Fe and other carriers bridging transcontinental traffic from competing effectively for this important business.

Santa Fe states that approval of the Union Pacific and Southern Pacific applications would result in its being encircled by its transcontinental competitors. Union Pacific would have direct access to Chicago and St. Louis, and Southern Pacific would acquire two routes to the Kansas City gateway - one via the Golden State Route and the other through the overcrowded North-South corridor between Kansas City and the Gulf. Further, acquisition of Rock Island's Memphis line would give Southern Pacific a substantially shorter transcontinental route via both St. Louis and Memphis. The foregoing argument, as to Memphis, should be contrasted with the previously discussed evidence of protestant T&P bearing upon Southern Pacific's own efforts to operate over more efficient and economical routes to Memphis. However, Santa Fe claims that its encirclement by these already dominant railroads would cause its service and competitive capabilities to immediately suffer a serious relative decline, and, in the long run, would cause Santa Fe a serious absolute decline.

Approval of the Union Pacific and Southern Pacific proposals would give those carriers service to every major eastern gateway for transcontinental traffic, while Santa Fe asserts that it would be compelled to compete with relatively ineffective joint-line service through every one of those gateways, except Chicago, which itself is declining in importance relative to St. Louis due to the increased ability of the Eastern railroads to secure their long haul through St. Louis.

In short, Santa Fe feels that approval of the Union Pacific and Southern Pacific applications would seriously jeopardize its position as a major transcontinental carrier and severely undermine, if not destroy, its status as one of the country's future, enlarged rail systems. Specifically, it estimates a loss of \$9.5 million in gross revenues if both applications are approved. Stated separately, Santa Fe expects to lose \$5,368,200 under the UP transaction, and \$4,572,700 under the SP transaction. The total of the two separate estimates do not, of course, agree with the \$9,500,000 figure and the discrepancy is apparently due to the sampling procedures utilized to arrive at the estimates.

The shipper and public witnesses who support Santa Fe's position in these proceedings have already been discussed to the extent of their support of Santa Fe's petition for inclusion (Volume I, Part K, Section (3)). Several of these witnesses appeared also specifically in opposition to the Southern Pacific acquisition of the southern lines of Rock Island. As detailed in Part K, certain of these shippers expressed fears as to the possible downgrading, or at the most, lack of upgrading of the Tucumcari-Memphis line. Other than to note here that these fears were based on either Southern Pacific's evidence of record at the time these shipper witnesses appeared, or on generally available information concerning Southern Pacific's transaction, it is not necessary to discuss the issue further.

The witness appearing for the Richmond, Calif., consolidator of household goods shipments, opposes the Union Pacific transaction on the ground that Union Pacific presently restricts shipments from the Northwest moving eastward to the Missouri River gateways in order to insure a long-haul for itself, and that those restrictions would remain in effect after merger. The witness representing a rice cooperative and grain cooperative, both in Arkansas, opposes Southern Pacific's application because some of the cooperatives' facilities are located at points served by Cotton Belt and Rock Island and which would become non-competitive points following the Southern Pacific's acquisition.

(12) Port of Beaumont, Texas

The Port of Beaumont, Tex., appeared in opposition to the division of Rock Island as proposed in these proceedings. The Port of Beaumont is located 83 rail miles east of Houston and 268 rail miles west of New Orleans and is situated in a deep-water channel 48 miles inland from the Gulf of Mexico. The Port is served by Santa Fe, Southern Pacific, MoPac and Kansas City Southern. In 1966, the Port facilities served 522 ships, handling about 3.1 million tons of freight. This freight was accommodated by 44,489 rail cars, 6,433 trucks and 218 intra-coastal barges.

Rock Island serves the Port, indirectly through connections with other carriers serving the Port. The Port believes that the incentive to maintain those connections, particularly those south of Kansas City, would be severely affected by a partitioning of Rock Island with Southern Pacific or Santa Fe receiving the southern portion, even though these two carriers already serve the Port. The Port's view is that the acquisition of Rock Island's southern lines by either of those two applicants would

unduly strengthen the acquiring carrier and weaken competing carriers serving the Port from the standpoint that mainline operations on transcontinental traffic would be over the Tucumcari-Kansas City, or Amarillo-Memphis lines and service over the Rock Island line to Beaumont would be reduced to branch line status. In addition, the Port fears that under Union Pacific's acquisition of the northern Rock Island routes, the carrier would have a more direct interest in routing midwest export-import traffic through West Coast or Great Lakes ports. Also, Rock Island has extensive single-line service from Western Trunk Line territory to the Texas Gulf Coast ports of Houston and Galveston. Although Rock Island does not reach the Port of Beaumont, the presence of the carrier at the other named Texas ports has benefited the Port of Beaumont in that certain rate adjustments resulting from direct service to those other Texas ports have been extended to the Port of Beaumont. Partition of Rock Island, it is argued, would eliminate those rate adjustments.

(13) City of Kansas City, Missouri

The City of Kansas City, Mo., states that it is now served by twelve trunk line railroads and one local terminal road. The City opposes all of the proposed transactions in these proceedings. One fear of the City is that traffic now passing through the City will be diverted to other routes preferred by the successful applicants. This will also weaken the other carriers which serve the City and diminish the quality of their service. The City also anticipates a transfer of Rock Island employees from the Kansas City area and claims that the result of all applications will provide no benefits to the City nor strengthen the rail network serving the City, but, on the other hand, may well cause it harm.

(14) The Houston Port Bureau, Inc. and the Texas Gulf Ports Association

The Houston Port Bureau, Inc., and the Texas Gulf Ports Association described in detail the various facilities at and surrounding the Port of Houston. The 1966 population of the Houston metropolitan area was 1,765,000.

The Port of Houston ranks third in the nation in the handling of import, export, coast-wise and intercoastal cargo. It is served by Rock Island, Southern Pacific, MoPac, Santa Fe, FW&D and Katy, and also has two terminal railroads, one of which is operated under lease by the six carriers and the other by four of them. Grain and grain products are major commodities at the Port of Houston, and, in 1965, Rock Island handled about 17 percent of the whole-grain shipments.

The Houston Port Bureau opposes the division of Rock Island between Union Pacific and Southern Pacific. It believes that Rock Island should not be split up but should be kept intact, since the carrier is a strong north-south rail line and is vital to the welfare and economy of the Port of Houston. Presently, Rock Island serves the Great Lake ports and the Port of Houston directly on export and import traffic. If Rock Island is partitioned between Union Pacific and Southern Pacific, the Houston Port Bureau contends that this traffic, as well as other traffic originating north and northwest of Kansas and presently moving to Houston, would tend to move to the West Coast. Secondly, the Houston Port Bureau expects indirect affects in the service from other carriers serving it. Bridge carriers, such as MoPac, provide transportation service between St. Louis and Memphis on the east and Denver and El Paso on the west. The Houston Bureau fears the partition of Rock Island between Union Pacific and Southern Pacific will result in traffic diversion losses to those bridge carriers which will adversely affect the service those carriers will be able to provide the Port of Houston.

(15) The Galveston, Tex., Chamber of Commerce and the Board of Trustees of the Galveston Wharves

The Galveston, Tex., Chamber of Commerce and the Board of Trustees of the Galveston Wharves appeared in opposition to the Union Pacific-Southern Pacific. The City of Galveston had a 1966 population of 71,800. Its 121 wholesale establishments had annual sales of \$100 million and its 1,867 retail firms had annual sales of \$85.8 million. In 1966, the Port of Galveston handled almost 3.3 million net tons of cargo. Galveston is served by MoPac, Southern Pacific, Katy, FW&D, Santa Fe and Rock Island.

Galveston feels that it benefits from being at the southern terminus of Rock Island and opposes the Union Pacific and Southern Pacific proposals which would divide the carrier. In 1966, Rock Island handled a substantial portion of Galveston's 48,354 carloads of exported grain. Interveners argue that since Rock Island's line serves only the Gulf ports of Galveston, Texas City and Houston, the carrier channels as much traffic as possible to those ports; however, if Southern Pacific acquires Rock Island, those Texas Gulf ports would probably suffer, as Southern Pacific has other ports on its line. Galveston also fears that traffic diversion suffered by other carriers serving it might weaken those carriers and affect the service they render to Galveston.

Galveston also feels that it cannot benefit, but only be hindered, by the elimination of Rock Island as a competing carrier.

(16) The Missouri Public Service Commission

The Missouri Public Service Commission opposes the granting of any of the applications in these proceedings, as the proposals would result in a material decrease in the ability of railroads operating in the State to maintain their present standard of service. The Commission anticipates that present traffic moving over such bridge carriers as MoPac and Frisco would be diverted by Union Pacific and Southern Pacific to present Rock Island lines, thus reducing revenues of the bridge carriers.

On a mileage scale, MoPac and Frisco are the two principal railroads in Missouri. MoPac employed 6,409 persons in the State in 1966, with a payroll of over \$56.4 million. Frisco employs 4,052 people in the State, with a payroll of over \$33.7 million. The MP and SLSF paid taxes of \$2.4 million and over \$1.4 million, respectively.

Both carriers serve the State's communities and industries well and have played an important role in the growth of the State.

(17) The Port of Lake Charles, La.

The Port of Lake Charles, La., had a 1960 population of 63,392, while the metropolitan area contained 145,475 people. In 1966, there was a total of 815,190.8 tons exported through the Port of Lake Charles, of which almost 85 percent moved by rail. That year 286,093.2 tons were imported, of which over 63 percent moved via rail. Local tonnage amounted to 75,288.3 tons, of which over 10 percent moved by rail. The railroad serving the Port is owned by the Lake Charles Harbor and Terminal District. MoPac performs all operations over the railroad and performs reciprocal switching for KCS and Southern Pacific. MoPac has rendered dependable service to the Port and has been very helpful to the Port in keeping rates on a competitive basis. Generally, the Port has also received cooperation from KCS and Southern Pacific.

The Port of Lake Charles is concerned about any change in the railroad competitive situation which will have any substantial adverse affect on the ability of MoPac or KCS to provide the present reliable service and equipment. Therefore, the Port opposes the applications to acquire Rock Island if either would adversely affect MoPac or KCS. It particularly opposes any division of Rock Island on a north-south basis.

(18) Union Pacific Rebuttal

Union Pacific urges that its proposed traffic conditions (see Volume I, Part C), which modify the DT&I conditions, obviate the need for the specific traffic conditions proposed by the Northern Lines, KCS-L&A, Rio Grande and Western Pacific. The examiner agrees with the position of Union Pacific that Rio Grande's conditions go beyond the Union Pacific's proposal to the extent that Rio Grande's conditions are designed to contravene the decision in the Ogden Gateway case, and, in fact, simply represent a second attempt by Rio Grande to gain routes and rates it sought in the Ogden Gateway case, and which were not granted with but a few exceptions, and that the proposed merger with Rock Island in no way alters the rationale of the Ogden Gateway decision. However, the examiner does not agree that the conditions Rio Grande here seeks are extraneous to the issues in this proceeding. There is no requirement upon the Commission limiting the relief it may grant on behalf of an effected carrier to the imposition of conditions which are directly and exclusively related to the traffic likely to be diverted from the relieved carrier as a result of the transaction proposed. In section 5(2) proceedings the concern of the Commission is whether the proposed conditions are just and reasonable and necessary in the public interest for the protection of rail carriers who are likely to be adversely affected as a result of the proposed unification. See the Northern Lines cases, 328 I.C.C. 460, at 498 - 500 and 331 I.C.C. 228 at 280 -283.

Union Pacific acknowledges that Rio Grande would lose traffic as a result of the merger, although not as much, in Union Pacific's view, as Rio Grande predicts. Accordingly, Union Pacific is willing to accept Rio Grande's proposed acquisition of the western Rock Island lines, provided that a later hearing is held to determine the precise properties and trackage rights to be conveyed to Rio Grande, and the terms and conditions of such conveyance. Not all of the Rock Island lines between the Colorado and Missouri River gateways are necessary to accomplish the single-line operations under the UP-RI merger. The parties attempted to negotiate for the sale of certain of the subject lines together with trackage rights over several Rock Island line segments Union Pacific wishes to retain, but no agreement was reached.

While the acquisition of the Rock Island lines requested by Rio Grande would leave the basic Union Pacific single-line operations intact, there would be a resulting elimination of many of the benefits and increased efficiencies estimated to accrue under merger and other major impacts upon the operating plan and economic studies (shown in Volume I) as follows:

Study No. 1 Consolidation of Stations and Terminals

None of the benefits resulting from consolidation of forces and facilities would be achieved at the common points of Colby, Fairbury, Lincoln, Omaha, Council Bluffs, Beatrice, Topeka and Manhattan.

Study No. 2 Elimination of Duplicate Lines

None of the benefits resulting from the elimination of duplicate line would be realized.

Study No. 3 Effect of Merger on Lines Retained

None of the economies on the segments Lincoln-Limon and Oakley-Cheyenne Wells would be realized and it would not be necessary to upgrade the Union Pacific line between Oakley and Colby. Some of the benefits resulting from changes in roadway maintenance would not be achieved and the number of diesels released would be reduced from a total of 18 to 5 units.

Study No. 4 Utilization of Shorter or More Economical Joint Routes

None of the shorter or more economical routes would be available to the merged company.

Study No. 6 Consolidation of General Offices, Departments and Divisions

The estimated benefits from consolidating general offices, districts and divisions would be decreased because the basic Rock Island forces would be reduced by those employees allocated to the Rio Grande. There would also be some increase in work units on traffic interchanged between the extended Rio Grande and the merged company which is presently handled by Rock Island.

Study No. 7 Duplicate Freight Train Service

None of the benefits from consolidating duplicate freight train service would be available to the merged company.

Study No. 8 Traffic

Traffic studies not considered herein.
(See: Volume I, Section I, page 605)

Study No. 10 Cost of Labor Protection

The cost of labor protection would be reduced in some proportion to the reduction in the number of jobs estimated to be eliminated.

The estimated reduction in merger benefits at January 1, 1968 levels by study are shown below:

<u>Study</u>	<u>Reduced Net Income</u>	<u>Net Cash</u>
1	\$ 1,004,000	\$ 1,117,000-G
2	1,175,000	3,504,000-L
3	215,000	829,000-G
4	140,000	-
6	364,000	-
7	554,000	-
8*	-	-
10	(21,000)	419,000-G
Total	<u>\$ 3,431,000</u>	<u>\$ 1,139,000-L</u>

G - Realized

L - Required

*See study No. 8 in the foregoing portion of this section.

An additional loss to the merged company would be the annual net income assignable to the Rock Island segment which Rio Grande proposes to acquire. However, Union Pacific has not estimated the amount involved.

In the event the Commission determines that the Rio Grande should reach the Missouri River, as a condition to an approval of the merger, the Union Pacific is confident that it could still retain most of the above-described benefits by a grant to the Rio Grande of the following:

1. Trackage rights over the merged company from Belt Junction at Denver (RI M.P. 3.99) to proposed new connection at Colby (RI M.P. 386.96).

2. Purchase of present Rock Island line from proposed new connection at Colby (RI M.P. 386.96) to proposed new connection at Lincoln (RI M.P. 566.50).
3. Trackage rights over the merged company from proposed new connection at Lincoln to entrance to present Rock Island Bluffs yard at Council Bluffs (RI M.P. 498.97).
4. Purchase of present Rock Island line from Limon to end of the line at Colorado Springs.
5. Purchase of present Rock Island line from Belleville to connection with Union Pacific-Rock Island interchange track at Manhattan (RI M.P. 143.31).
6. Trackage rights over the merged company from Manhattan to connection of Union Pacific with the Kansas City Railway Terminal Company at Kansas City (U.P. 2.61).

With respect to the relation of Union Pacific to PFE, the latter has been owned and operated jointly by Union Pacific and Southern Pacific since 1906. PFE functions as an extension of the carriers' car supply for specialized equipment just as if the carriers had directly made the investment in specialized equipment. The establishment of PFE is the result of substantial expenditures and management efforts. As of June 30, 1967, Union Pacific owned \$12 million worth of PFE stock and has contributed to its capital to the extent of 50 percent of its retained income of \$44.4 million. As of the same date Union Pacific had leases with PFE covering 7,941 units of equipment costing \$113.4 million, of which more than 99 percent was purchased in years subsequent to 1962.

Union Pacific's position is that if the existence of PFE is one of the advantages Union Pacific enjoys, "it is an advantage derived from its own business judgment and risk of capital", and UP is therefore entitled to it. Union Pacific claims that Rio Grande has ignored the foregoing facts in attempting to have a condition imposed (described in Part C; item (c) of Volume I) which, in Rio Grande's words, would "get the PFE Company to operate as a car line", and, further, which is "extraneous" and unfair to both UP and SP.

With respect to the affirmative relief sought by the former Great Northern and Northern Pacific railroads, Union Pacific's principal claim is that, "Consummation of the Northern Lines merger would make the granting of these conditions wholly unwarranted", and that ". . . there is no evidence in this record that such a merged system would experience any net loss as a result of a RI-UP merger." Further, Union Pacific asserts that the Northern Lines conditions requesting access, as earlier described, to industries presently served by Union Pacific or Spokane International constitute attempts to "raid" industries using the UP-RI merger as an excuse. Many of these industries are in areas in which Union Pacific has spent substantial funds to develop the properties, e.g., the Tukwila-Kent area. The Milwaukee owns the lines over which Union Pacific operates to serve the Tukwila-Kent area and Union Pacific cannot grant trackage rights under its contract with Milwaukee. Union Pacific, therefore, states that the Tukwila-Kent conditions proposed by the Northern Lines must be reduced strictly to requests to extend the switching limits of Seattle by some 10.3 miles. Extension of these switching limits and the switching operations of GN and NP would possibly increase Union Pacific's operating costs in the area.

With respect to the Northern Lines conditions proposed for points in Oregon, Union Pacific states that the Northern Lines already have complete access to the St. Johns industrial district. The Northern Line's claim of a handicap in the area, resulting from shippers being required to pay both a switching and a line-haul charge on non-competitive traffic, is without substance, Union Pacific argues, since the Northern Lines elect not to absorb switching charges. Union Pacific opposes the proposed conditions on the ground that they are attempts to substitute joint facility costs for switching charges and gain the benefits of ownership without sharing in the capital expenditures necessary to develop the district.

In the Portland area, Union Pacific correctly notes that inclusion of Fir Station in the Portland switching tariff has already been accomplished, and that the condition relating to the station is therefore moot. Rockwood and Troutdale are also points at which Union Pacific has invested substantial funds for development. Further, Troutdale is ten miles east of the Portland switching limits and in no way can be considered part of the Portland terminal area.

As to the Northern Lines condition pertaining to trackage rights over Spokane International between Sandpoint and Eastport,

Idaho, Union Pacific asserts that the UP-RI merger would have no competitive impact on traffic interchanged between Spokane International and the Northern Lines because the bulk of such traffic originates on the Northern Lines. Operations over Spokane International is therefore merely an attempt, in Union Pacific's view, to compensate the Northern Lines for traffic lost elsewhere. Further, the Spokane International line is non-signalled, and is in mountainous territory requiring heavy curvature, numerous bridges, and three tunnels. Operation is often hampered by bad weather conditions. Siding capacity is limited, and additional trains would result in delays. Union Pacific's evidence is that Northern Lines operations over the line would be difficult, if not hazardous.

Union Pacific claims that Western Pacific's proposed condition (requiring that through freight train schedules and service via Salt Lake City shall be equal in all respects to that maintained by UP in connection with Southern Pacific at Ogden) is "impractical" and would foster "inefficient transportation". Western Pacific also seeks to gain trackage rights over the Union Pacific between Salt Lake City and Ogden, if Western Pacific found that the service and schedules via Salt Lake City had not been made equal.

Union Pacific and Western Pacific tested through-train operations during 1963. No regular service of this sort had been instituted between that time and the filing of briefs in these proceedings. Operation of such service on a regular basis would require physical changes to track and facilities on both roads and adjustment of transcontinental schedules by Western Pacific. Further, the volume of traffic, based on traffic interchanged at Salt Lake City during the first 15 days of June, 1967, is insufficient to make practical a regular run-through operation.

In view of the foregoing attempts Union Pacific has made to improve service in connection with Western Pacific, the Union Pacific concludes that the Western Pacific condition is unrealistic. The Western Pacific route from Salt Lake City to Oakland is 144 miles longer than Southern Pacific's Ogden-Oakland route. Union Pacific's westbound trains connect first with Southern Pacific at Ogden, and then travel 36 miles south to Salt Lake City and connection with Western Pacific, making a total difference of 180 miles between the UP-SP and the UP-WP routes. Accordingly, Union Pacific would be obligated, by Western Pacific's proposed condition, to overcome the physical disadvantage possessed by Western Pacific.

Union Pacific argues that Western Pacific has not presented sufficient justification for inclusion in Union Pacific, and that the WP condition requesting Commission retention of jurisdiction for five years for inclusion is not justified, and is unnecessary because a UP-RI merger would have only a "remote effect" on Western Pacific.

It is Union Pacific's position that Western Pacific is a well-established transcontinental route; that Western Pacific will benefit as a result of (a) cancellation of the Oregon and Central Pacific agreements and (b) conditions imposed in the Northern Lines case; and that Union Pacific's offer of protection to Rio Grande will in turn prevent injury to Western Pacific.

Of the three Kansas City Southern conditions involving trackage rights or purchase, only the Kansas City-Chicago trackage rights condition is applicable to Union Pacific and appropriate for discussion here. This condition alone would result, in KCS' estimate, in around \$6.9 million increased gross revenues for the Kansas City Southern system. This is far in excess of the half million dollars that Union Pacific contends Kansas City Southern will lose if the Union Pacific and Southern Pacific applications are granted, and exceeds the \$5.9 million that Kansas City Southern itself estimates it will lose through diversion by both UP and SP without regard to gains estimated by KCS-L&A to accrue from its other proposed conditions.

Union Pacific contends that the Kansas City Southern condition is designed to take the most profitable traffic moving on Rock Island's Kansas City-Chicago line, but without Kansas City Southern's taking over any of the burdens which are contributing to Rock Island's critical financial condition. As a result, Union Pacific, although financially able to do so, would be faced with additional difficulties in preserving Rock Island's lines and services as contemplated in these proceedings.

Granting the Kansas City Southern condition would increase that carrier's longest haul by more than 50 percent. Although Kansas City Southern would derive substantial revenues from these trackage rights, since the area traversed would be completely new territory, Union Pacific alleges that there would be little improvement in the quality of overall Kansas City Southern service, which KCS claims will be affected adversely by approval of the Union Pacific and Southern Pacific applications. Union Pacific feels the trackage rights condition would do little to protect Kansas City Southern from the traffic diversion it expects to suffer from the applicants.

Union Pacific alleges that, if the KCS condition is imposed, the result will be that Union Pacific will compensate Kansas City Southern in part for losses suffered at the hands of Southern Pacific. Kansas City Southern did not break down its loss estimates as between the Union Pacific and Southern Pacific transactions. Since, however, there is presently no competition between Union Pacific and Kansas City Southern, Union Pacific feels Kansas City Southern will suffer only a minimal loss to Union Pacific if Union Pacific does not retain the southern Rock Island, but the granting of trackage rights over Rock Island lines between Kansas City and Chicago will divert traffic primarily from those lines and not lines of Southern Pacific.

A portion of the Rock Island's Kansas City-Chicago route is owned jointly by Rock Island and Milwaukee, and Milwaukee is opposed to Kansas City Southern obtaining these trackage rights since the Milwaukee anticipates a loss of \$500,000 from this condition. Milwaukee has stated that trackage rights for KCS would require Milwaukee's consent. Union Pacific also notes that MoPac estimated a loss of \$350,000 to KCS.

Union Pacific states that Kansas City Southern evidence falls short of supporting its requested Chicago condition. Only one of its 18 shipper witnesses indicated a need for or probable use of a Kansas City Southern service between Kansas City and Chicago. There are already eight carriers (counting the former Great Western) providing single-line or single-system service between those points, and, as stated by Union Pacific, Kansas City Southern failed to show the effect of the condition on these carriers.

As indicated at the outset of this part, all factors dealing with the traffic studies of the parties will be handled in a separate part. Otherwise there here remains for consideration only the Union Pacific "traffic guarantee" to the North Western.

The "Traffic Guarantee" proposed by Union Pacific would run for seven years and is a formula involving a number of complex and involved provisions which, in view of the Examiner's conclusions, do not require a detailed discussion. The basis for some of the factors are not clear. As Union Pacific itself describes the formula,

"The formula was prepared in the abstract and, obviously, nobody knows what some of the factors in the formula are, but they seem to be the factors that would be pertinent to this type of formula."

Aside from the extreme difficulty of applying the formula and the mechanical and practical working of which even the Union Pacific itself was unable to clearly explain, there are serious built-in penalty factors to the North Western. First, the formula, based on Union Pacific's own estimate would ignore and provide no reimbursement for North Western's diverted revenues as a result of the merger up to Union Pacific's estimated gross revenue losses for C&NW of \$3,477,940. Secondly, under certain circumstances, notwithstanding that North Western may suffer revenue diversion in excess of the amount estimated by the Union Pacific, the amount payable to North Western would be reduced or offset by certain traffic and revenues which embrace movements entirely unrelated to operations attributable to operations under the merger transaction. Union Pacific concedes (Transcript page 45,091) that such payments by North Western would occur. This was determined following a somewhat complicated example of movement and an overnight change in the formula by Union Pacific to effect a reduction in the amounts payable by North Western but not to change the fact that the North Western under certain circumstances would be obligated to pay Union Pacific.

A further possible example of payment by North Western is set forth at T 45,178-45,179, which assumed that the Rio Grande acquired the Rock Island line from Denver to Council Bluffs.

The foregoing is not intended to be all inclusive of the "Traffic Guarantee" which has not been shown to be workable and beneficial to North Western and which the latter entirely rejects.

To put the "Traffic Guarantee" in the light of its true design and purpose, it is not an "indemnity" to North Western as the Union Pacific witness so characterized the matter. Rather, the proposal would have as its end result to bind North Western and Union Pacific, one to the other, in the reciprocal sharing of traffic and revenues. Aside from all other impediments and undesirable features, the "Traffic Guarantee" clearly would not fall within the purposes of an indemnity as set forth by the Commission in Pennsylvania R. Co. - Merger - New York Central R. Co., 330 I.C.C. 328, and affirmed in Erie-Lackawanna Railroad Co. v. United States, 259 F. Supp. 964, and, on appeal of the latter, in B.&O. R. Co. v. United States, 386 U.S. 372; and in Penn Central Merger Cases, 389 U.S. 486. Alternatively, if the "Traffic Guarantee" could be found to be a pooling arrangement within the purview of section 5(1), the required statutory findings could not properly be made. See the cases cited immediately above and in particular the Penn Central Merger Cases at pages 513 - 514.

Finally, North Western itself is unalterably opposed to any form of indemnity. As stated by North Western, it is in the railroad business for the purpose of providing a transportation service and not in the business of being paid for refraining from performing such service. It points out further that the "Traffic Guarantee" would only run for a 7-year period and at the end of which North Western would be entirely out of the movement of "transcontinental" traffic with no further relief as a result of such losses.

The examiner agrees with the position of the North Western. No matter whether it be called a "Traffic Guarantee", indemnity, or by any other name, payment to a rail carrier for the drying up of its traffic is not in accordance with the National Transportation Policy or with the public interest. Moreover the total cost of the merger must in the final analysis be borne by the users of the service. Such user should not be requested to pay "welfare" to encourage idle transportation service which otherwise could be penalized by an active operation. Assuming, but not concluding at this point, that North Western would most likely suffer a severe adverse impact as a result of the merger transaction, relief other than financial reimbursement would be required in the public interest. It will be unnecessary to further discuss Union Pacific's "Traffic Guarantee" and, in such connection, Union Pacific's requested finding number 18 made in its brief, is rejected.⁸²

(19) Southern Pacific Rebuttal

Southern Pacific objects to the requested condition of Ft. Worth & Denver which would require the sale to it of all of Rock Island's one-half ownership in the Joint Texas Division (JTD) representing a book value of \$1,875,000. Southern Pacific plans to use its own line between Dallas and Houston, discontinuing the Rock Island's trackage rights over Katy and withdrawing from joint operation between Waxahachie and Teague. It would, however, continue to participate in the Joint Texas Division between Mexia and Houston for local traffic only, with

⁸² Requested finding number 18 of the Union Pacific reads:

The proposed guarantee against excessive traffic diversions offered by the Union Pacific adequately protects the North Western (as merged with the CGW) against any threat of impairment of their continued viability and capability of providing adequate transportation service.

interchange at Mexia and Houston. Principal industries on the line are at Waxahachie and Corsicana, whereas the line between Corsicana and Teague traverses sparsely-settled territory (there are no open stations on the line). This situation raises a possibility of abandonment of that portion of the line, with FW&D utilizing Southern Pacific's line between Dallas and Houston, to the benefit of both carriers. The joint line between Mexia and Houston provides opportunity for future industrial development, and Southern Pacific feels that joint operations with FW&D over that segment could be retained, benefiting both of the carriers and the shipping public. To the foregoing extent only, is the Southern Pacific willing to meet a portion of the FW&D's condition (1).

Southern Pacific contends that Ft. Worth & Denver's estimates of the operating costs for full ownership of the Joint Texas Division are misleading when compared to FW&D's estimates of operating costs for the line under joint ownership with Southern Pacific. Southern Pacific computation shows that FW&D eliminated tri-weekly local service between Mexia and Houston under full ownership, but provided for that service when studying joint FW&D-SP service. Southern Pacific claims that the local service would not disappear by virtue of FW&D sole ownership, and the costs of providing the service therefore must be included. Further, Southern Pacific argues that there would be no reduction in maintenance costs under full ownership as claimed by FW&D. In view of the foregoing, Southern Pacific reasons that total operating expenses for the JTD would be exactly the same for either full FW&D or joint FW&D-SP ownership.

Under Southern Pacific's proposals for operation of the JTD, including the offer to FW&D for trackage rights over Southern Pacific between Dallas and Houston, Ft. Worth & Denver would experience, in SP's view, a reduction of \$230,000 in operating expense. This reduction would result because FW&D would be operating over Southern Pacific's higher density line, and operating expenses would be spread over considerably more gross tonnage, thereby reducing FW&D's proportionate share of the expense. In addition, Southern Pacific's offer would preclude the necessity for FW&D to purchase Rock Island's interest in the JTD; allow FW&D to continue to serve industry at Corsicana and Waxahachie; avoid FW&D trackage rights payments to Katy between Dallas and Waxahachie; and permit joint FW&D-SP local service between Houston and Teague.

Southern Pacific is also in disagreement with FW&D's request that Rock Island's interest in the Houston Belt & Terminal be transferred to FW&D. Ft. Worth & Denver's only

reason for this request is its claim that Southern Pacific's ownership of the Houston Belt & Terminal would upset the competitive balance now existing between Southern Pacific and the railroads which own HB&T. Southern Pacific states that it now reaches each of the HB&T industries through reciprocal switching and FW&D reaches each of the Southern Pacific industries in the same manner. Thus, Southern Pacific claims, the only difference would be Ft. Worth & Denver's ability to reach the HB&T team tracks. In addition, Southern Pacific claims that FW&D would incur additional ownership costs of approximately \$50,000 by acquiring RI's interest in HB&T.

FW&D now has bridge trackage rights over Rock Island's line between Dallas and Fort Worth without the right to receive or deliver traffic except for its interchange with Frisco at Irving. Its request for perpetual trackage rights over this line would give it full trackage rights, including the right to serve industries on the line and to interchange with the Great Southwest Railroad Co. In opposing this request, Southern Pacific points out that FW&D acknowledged that the request was made in the erroneous belief that Southern Pacific would not use the Rock Island Dallas-Fort Worth line. Secondly, the price of \$1.75 per mile suggested by FW&D is the prevailing rate for bridge traffic rights rather than the full trackage rights sought here.

With respect to Kansas City Southern's condition proposing purchase of Southern Pacific's Houston-Shreveport line, Southern Pacific notes that the line is part of one of the three single-system routes offering fast competitive service between Houston and the St. Louis and Memphis gateways. The other competitive service is offered by the MoPac system which has two routes, one all-MoPac line and the other via a MoPac-T&P route. Single-line service is provided by Rock Island between Houston and the two gateways, and Katy has a line between Houston and St. Louis, but Southern Pacific states that all of these routes are more circuitous than its own route, the Rock Island route to St. Louis by 43 percent, and the Katy route by 35 percent. The Rock Island route to Memphis is 81 percent more circuitous than that of Southern Pacific. The Southern Pacific alternate route between Houston and these gateways via Corsicana is 148 miles longer than the Houston-Shreveport route and is 130 miles and 88 miles longer, respectively, than the MoPac routes to St. Louis and Memphis. After acquisition of Rock Island, Southern Pacific would have another route available via Alexandria; however, this route would be 114 miles longer than the Houston-Shreveport route and exceeds the MoPac route to St. Louis by 54 miles and to Memphis by 96 miles. Without the Houston-Shreveport route,

Southern Pacific would utilize the Corsicana main line route rather than the combination main line and branch line route via Alexandria, and states that this would add approximately \$29 to the cost per car handled. Further, even though Southern Pacific would do everything possible to overcome the mileage disadvantage via either Corsicana or Alexandria, it does not believe it would be able to maintain a schedule competitive with the MoPac system's schedules.

Southern Pacific, which maintains three through schedules (two daily and one six days per week) in each direction and local service six days per week between Houston and Shreveport, points out that this would be decreased under the KCS proposal to operate only one train per day. The bulk of Southern Pacific's traffic over the line moves between Houston and either St. Louis or Memphis. Southern Pacific claims that KCS would utilize the line for Houston-Kansas City traffic. Southern Pacific's schedules to St. Louis and Memphis include a delay of only 30 to 60 minutes at Shreveport, whereas the KCS proposes a delay at Shreveport of 10 hours and 30 minutes, northbound, and 3 hours, southbound.

With respect to the portion of Rock Island lines and facilities between Dallas and Fort Worth sought by KCS, Southern Pacific's proposal of operations includes this portion of Rock Island as an integral part of the principal freight route between Houston and Kansas City. Southern Pacific's studies forecast substantial operating benefits at both Fort Worth and Dallas resulting from more extensive utilization of those facilities than is presently being made by an independent Rock Island. Such benefits could not be realized without those facilities. Further, the Southern Pacific and Cotton Belt each operate one yard at Fort Worth, neither of which is large enough to handle the additional Rock Island traffic. Southern Pacific's own yard cannot be suitably enlarged as it is surrounded by the yards of other rail carriers, and expansion of the Cotton Belt yard would require a major investment. The two yards are the only ones at SP-Cotton Belt common points that could not and have not been consolidated. Thus, Southern Pacific finds that it will require the use of the present Rock Island yard facilities.

Southern Pacific notes, and such is the examiner's analysis, that although T&P requested full trackage rights over Southern Pacific's line between El Paso and Los Angeles, the T&P's evidence indicates that it will not pick up or deliver any traffic in New Mexico or Arizona. It would serve, with its own power and crews, only shippers and receivers on the 52 miles of line between Colton, Calif., and Los Angeles; or, in other words, points on only 52 out of 1,938 miles of line between El Paso and Los Angeles. T&P would therefore serve only 19 out of the 374 stations handling carload freight along the line. Finally, of the 73 daily west-bound loads projected by T&P, only 5 would be directly handled by T&P to the consignee. T&P plans to run one train per day in

each direction, and in Southern Pacific's view the planned annual operation is unbalanced, with 21,414 cars anticipated to be handled westbound and only 4,085 cars eastbound. T&P estimated revenues from this operation to be under \$11.2 million and expenses to be \$6.4 million, for net income, before provision for income taxes, of \$4.9 million. Southern Pacific calculated that the foregoing would produce an operating ratio of about 56.7 percent, which is well below the ratio enjoyed by all major railroads in the country and T&P's operating ratio of 78.0 percent in 1966 when the estimate was made.

Southern Pacific also claims that the operation of T&P's daily train over this line will cause a delay on the line, which has an authorized speed of 70 m.p.h., and a minimum daily average of 25 trains over each segment, with higher averages on segments near Los Angeles. Southern Pacific claims the Texas & Pacific could give no assurance that their train would maintain that speed, and in fact, the evidence shows MoPac-T&P trains operate at a maximum of 60 m.p.h. Since a slower train must give way to a faster train and enter a siding, the slower train is thus delayed. In turn, delays occur in all opposing trains which must then be held back to permit the passing of the two trains operating in the same direction. The alternative of allowing the slower train to delay the following faster train is similarly unacceptable. Southern Pacific claims further that the proposed T&P schedules from Los Angeles to El Paso is such as to require priority over westbound traffic. In addition, Southern Pacific's own scheduled performance will suffer delays by reason of delay of an advance T&P train. The argument as to delays is not convincing. There is merit in SP's contention that T&P trains will impose additional demands on terminal and service facilities en route. Thus, Southern Pacific contends, the addition of one train by T&P can adversely affect the service of both T&P and Southern Pacific.

Southern Pacific also alleges that T&P's proposed operation of one train daily will not allow compensation for fluctuations in traffic volume. Under present Southern Pacific operations, fluctuations in traffic volume have no drastic effect since the flexibility afforded by its own multi-schedule operation allows compensation in these variations. However, Southern Pacific contends that, if, on a given day, there were too few cars to justify operation of a T&P train, the continuing equipment and crew requirements at the other end of the line would necessitate the operation anyway. If there were too many cars for one T&P train, and the operation of a second train was required, the provision of crews, power and cabooses for a second run would not be feasible for an operation which is geared for only one train daily. For example, if the need for a second run arises in Los Angeles, the necessary motive power and cabooses might be located over 800 miles away.

Under the T&P proposal, Southern Pacific crews would perform the setouts, pickups or fills of cars for T&P and then remake the T&P train. Switching would be handled by Southern Pacific, but the T&P traffic would be separated from that of Southern Pacific, therefore requiring additional switching and separate trackage to accommodate the T&P cars. Southern Pacific states that the facilities, which T&P assumed could be separated or expanded for these purposes, are not susceptible of such modification.

Of the present large volume of westbound traffic interchanged between T&P and Southern Pacific, Texas & Pacific estimates that only about 2,800 cars would continue to be interchanged. The cars presently receive expedited handling. However, under the T&P proposal, Southern Pacific claims that the interchanged car would experience a delay while the individual cars were removed from T&P's train and placed in a Southern Pacific train. Further, Southern Pacific claims that the introduction of T&P crews into Southern Pacific's El Paso yards would adversely affect the operation at those yards and create various labor problems.

With respect to T&P's proposal for use of Southern Pacific's Aurant yard in Los Angeles, this yard currently plays a vital part in Southern Pacific's present terminal operations. In particular the yard is indispensable as an overflow storage facility for TOFC equipment that cannot be stored in the main TOFC yard in Los Angeles. Further, Southern Pacific plans to use the Aurant yard for handling its Plans I and II TOFC traffic. This would facilitate the handling of this traffic without depriving it of critically needed storage space, and Southern Pacific has no other yard in the Los Angeles area which could be used for this purpose. The yard is also important in avoiding both rail and motor vehicle congestion because of road crossings and heavy rail traffic density.

With respect to the effects of the T&P proposal on the flow of traffic in and around Los Angeles, Southern Pacific argues that most of this traffic will be subjected to delays of as much as 24 hours and, in some cases, increased costs resulting from added engine time and application of crew overtime rates.

Southern Pacific presently interchanges traffic at Los Angeles with Union Pacific, Santa Fe and the Los Angeles Junction Railroad. Some of this traffic is that which T&P itself proposes to carry from El Paso to Los Angeles. Its proposed interchanges with Union Pacific, Santa Fe and the Los Angeles

Junction are located at points ranging from 1 to 5 miles from the present Southern Pacific interchange points. This means that, for the small amount of business T&P will deliver, the Los Angeles interchange carriers will have to establish new interchange points. In Southern Pacific's opinion, this will place an added operating and service burden upon those carriers since, in addition to the present Southern Pacific interchange, they will have another interchange service at increased expense and probably at increased delay to the cars involved. Southern Pacific doubts the willingness of these other carriers to accept such a proposition.

In summary of the operational and service aspects of T&P's proposal, Southern Pacific asserts that the proposal is not simply for the addition of one train in each direction to the present Southern Pacific operation. Rather, it constitutes a super-imposing of a completely new and separate operation upon the one already existing. This would include separate trains, power, cabooses, switching, yards, interchange, repairs, derailments, solicitation, accounting, supervision, loss and damage, inspections, fueling facilities, casualty accounts, etc. Thus, Southern Pacific contends, instead of offering better service to the public, the T&P proposal would result in a limited new service, a decrease of efficiency and a general downgrading of service on the Los Angeles-El Paso route.

Southern Pacific contends that one factor controlling the Southern Pacific-T&P interchange at El Paso is the solicitation practices of MoPac, which controls T&P. MoPac can either solicit via the El Paso gateway or through the Pueblo gateway with interchange between MoPac and Rio Grande. A larger amount of traffic moves via Pueblo than through El Paso, as detailed in Volume I, Part B. According to Southern Pacific, one factor for this is the strong solicitation of competing carriers through the Pueblo junction, and another is the solicitation operations of the MoPac which, in recent years, merged T&P solicitation forces with its own. Southern Pacific argues that the MoPac-T&P could route more traffic over the El Paso gateway if they wanted to, and Texas & Pacific therefore should not rely on the alleged decline of the SP-T&P El Paso interchange as a reason for a guaranteed minimum revenue.

To test Western Pacific's contention that it seeks conditions principally as protection against losses it will suffer from approval of the applications, Southern Pacific introduced into evidence a confidential report to Western Pacific made by its outside counsel at the early stages of the proceeding and prior to the hearing and submission of applicant's evidence. The document contains a discussion and recommendations as to the various positions and conditions which Western Pacific

could possibly take in opposition to the several applications. One of the recommendations was that the "single goal" of Western Pacific should be to improve substantially its financial and competitive position. The unrefuted examination of Western Pacific's president and also its assistant to vice-president of marketing-pricing establishes that the foregoing recommended aim was rejected. Moreover, the record made clearly justifies Western Pacific's fears of an adverse impact upon its operations as a result of the proposed transactions. The above-discussed documents will not be considered further.

With respect to Western Pacific's first condition which requests cancellation of certain preferential solicitation agreements, Southern Pacific, like Union Pacific, claims that this condition has been rendered moot by the cancellation of these agreements, effective July 7, 1968. Southern Pacific also contends that Western Pacific's need for the requested condition is also mitigated by the fact that it may share in new sources of traffic, for example, where Union Pacific is not obligated to solicit for Southern Pacific at Ogden, but for Ogden itself, and where Rock Island's former solicitation for Tucumcari is changed by virtue of its northern portion being merged into Union Pacific and southern portion being acquired by Southern Pacific. Thus, there will be additional traffic available for Western Pacific at Ogden, estimated by Southern Pacific to be worth around \$1.6 million.

Southern Pacific alleges that Western Pacific's third condition would require Southern Pacific to short-haul itself without its consent. Southern Pacific denies that a showing of need has been made for new through routes for the performance of adequate service or that the existing routes are providing inadequate service. Southern Pacific characterizes the condition as a blanket demand for through routes disregarding any standard of efficiency, any requirements for a showing of shipper needs or any impact upon car utilization. It points out that the condition has very broad application and would take in all points west of transcontinental territory including former Pacific Electric points, Northwestern Pacific points, and rates to and from Oregon. The condition would also require that Southern Pacific join rates via the Bieber route; rates to and from Idaho; and rates between points on Western Pacific and points on Southern Pacific in Oregon, California, Arizona, and western New Mexico.

At Northwestern Pacific points, shippers already have through routes and joint rates via both Southern Pacific and Santa Fe. Southern Pacific points out that the Commission has already rejected an attempt by Western Pacific to obtain routes and rates from these points, that Northwestern Pacific is a heavy burden to it, and every dollar the carrier can get from

traffic originating or terminating at these points is needed to justify continued support of that line, that Northwestern Pacific owes Southern Pacific about \$37 million on an open account, and that none of this burden is borne by Western Pacific.

There are through rates and competitive routes in connection with Southern Pacific, Santa Fe and Union Pacific to and from former Pacific Electric points. Southern Pacific argues that there is no need for Western Pacific to acquire a similar position.

From or to Oregon points local on Southern Pacific on trans-continental traffic, Southern Pacific's Oregon shippers and receivers have available, in addition to the Southern Pacific long-haul routes, competitive routes through the Portland gateway in connection with all of the Northern Lines and also a competitive route via Southern Pacific to Stockton and Santa Fe. Southern Pacific's existing route between Oregon points and the Utah gateways is 262 miles shorter than the SP-WP route requested by Western Pacific.

Southern Pacific opposes the inclusion into its system of the Katy as it is presently constituted. Southern Pacific points to Katy's poor earnings position, its physical properties which require large expenditures to meet Southern Pacific standards, and its extremely heavy debt structure. Thus, Southern Pacific takes the position that before Katy properties are sold or merged with another carrier, it is essential that Katy's financial structure be drastically revised so that the road can be offered at realistic terms. Also, a substantial element of any inclusion is the fact that the major and significant portion of Katy's traffic and revenue is derived from operation over its Houston-St. Louis and Kansas City route segments. In short, the Southern Pacific's position is that any inclusion must entail substantial abandonment west of Wichita Falls, and Waco, Tex.

PART M: EVIDENCE IN SUPPORT OF PROTESTANTS' OPPOSITION TO SANTA FE'S PETITION FOR INCLUSION

(1) In General

In connection with the evidence of protestants properly for consideration, it follows that where pertinent, protestants' evidence in opposition to the application of the Santa Fe will be applied to the Santa Fe's requested inclusion, just as the evidence of the Santa Fe in support of its application was applied to its inclusion case.

2) Burlington Northern-C&S-FW&D

Among the Northern Lines, only the former Burlington and the Ft. Worth & Denver presented evidence in opposition to Santa Fe's petition for inclusion. Burlington's evidence was limited to traffic diversion, and, as stated earlier, such evidence will be detailed in Part N. Burlington estimates a gross revenue loss to Santa Fe of \$1,263,190.

Ft. Worth & Denver's evidence is that the adverse impact it would suffer from acquisition of the southern portion of Rock Island by Santa Fe is not as great as would be felt under the Southern Pacific proposal. FW&D estimates diversion of 277,329 gross revenue to Santa Fe. A small loss is estimated by the Colorado & Southern to Santa Fe of \$7,364.

Santa Fe intends to route its through traffic over the Point Texas Division, which, in its view, should not adversely affect FW&D. Therefore, instead of desiring a purchase of the Rock Island portion of that line, as in the case of the Southern Pacific proposal, FW&D requests that Santa Fe be required to contribute at least 50 percent of all maintenance and operational expenses.

With respect to Rock Island properties in and around Dallas and Ft. Worth, FW&D requests the same conditions be imposed on Santa Fe as are requested for approval of the Southern Pacific application. It seeks perpetual trackage rights over the Rock Island line between Dallas and Ft. Worth at a cost of \$1.75 per train-mile, with the right to serve all industries presently closed to it on that line, together with any switching lines presently interchanging with Rock Island. In addition, FW&D requests that Santa Fe be required to provide FW&D open and unobstructed main line through the Peach Street Yard, a continued right for FW&D to interchange traffic with Frisco at Irving, Tex., and a continued right of FW&D to pick up and set out traffic at the Cadiz Street Yard.

The shipper witnesses presented by FW&D have been discussed in Part L. Their support for FW&D in connection with the Santa Fe application is the same as previously discussed in that part with respect to Southern Pacific.

3) Kansas City Southern-L&A

The Kansas City Southern-L&A system has an end-to-end connection with Santa Fe at Dallas, which is the point where the largest volume of traffic is interchanged between the two carriers. A significant amount of this traffic (no actual

figures were furnished) moves in an east-west direction, mostly between Santa Fe points west and north of Dallas, on the one hand, and points in the Southern Freight Association Territory, on the other hand. Kansas City Southern handles most of this traffic between Dallas and New Orleans, Pacton or Shreveport, La. Kansas City Southern points out that Santa Fe's acquisition of the southern portion of Rock Island would give that carrier direct access to St. Louis and Memphis and the eastern and southern carriers interchanging at those points. Consequently, KCS concludes that Santa Fe would find its own self-interest best served by diverting traffic, having a worth of \$1,601,476 in gross revenue and \$1,122,146 in net revenue, from KCS to Santa Fe's own east-west lines.

With respect to the Rock Island properties between Dallas and Ft. Worth, including the lines and terminals and the Great Southwest Railroad, Inc., Kansas City Southern makes basically the same request in connection with the Santa Fe application as it does with the Southern Pacific proposal. Its stated need for, and estimated revenue gain from the granting of this condition are set forth in Part L and need not be repeated here. L&A has a line from Shreveport, La., to Farmersville, Tex., the latter an intermediate point on the Santa Fe branch line between Dallas and Paris, Tex. L&A enters Dallas over that Santa Fe line from Farmersville. KCS requests that L&A be allowed to purchase the entire Dallas-Paris line. Santa Fe's retention of the Farmersville-Paris segment will leave it with a line disconnected from the remainder of its system. Presently, the operating agreement with Santa Fe allowing L&A to operate over the Farmersville-Dallas segment places a limitation on train size, limited to not more than 100 cars and including not more than 75 loads per day. An overage, i.e., traffic in addition to the 100 cars, is treated as a second train, with a rate of \$1.75 per train-mile charged. KCS is faced with the alternative of (1) running more than one train and paying the cost of the extra train and extra crew, (2) running the overage on the train which meets the limitation and paying the cost of an extra train, or (3) holding the overage cars until the next day. KCS says that it has unsuccessfully tried to have the restriction eliminate or the limit increased. This problem would be solved by KCS' purchase of the Dallas-Paris line.

The Dallas-Paris line connects with the tracks of the Dallas Union Terminal at the southern tip of Santa Fe's East Dallas Yard. Since L&A is seeking acquisition of Rock Island's yards and facilities at Dallas, it will not need to acquire this yard with the Dallas-Paris line, and, in order not to interfere with Santa Fe's use of the yard, KCS is agreeable to permitting full operations by Santa Fe over as much of the line as is necessary for that carrier's continued use of the yard. Further, KCS is

agreeable to Santa Fe's continued use of the line in connection with its full and complete use of all other Santa Fe terminal facilities at Dallas. Finally, KCS will grant Santa Fe operating rights between Zecha Junction and the East Dallas Yard. KCS estimates that acquisition of the Dallas-Paris line together with acquisition of Rock Island's lines and properties between Dallas and Ft. Worth would result in a gross revenue gain of \$5,310,725.

Under Kansas City Southern's requested conditions, Nos. (C)(1), (2), (5), and (6), and involving the Houston area, the result sought is to provide for the first time a single-line expedited service between Houston and Kansas City. In addition to through trains operating between those points, KCS plans to institute a through train operation in each direction daily between Shreveport and Houston. Further, local trains will be operated in sufficient number and frequency to adequately serve shippers located on the lines between Beaumont and Dobbin, Tex., between Silsbee and High Island, Tex., and between Silsbee, on the one hand, and, Longview, Tex., and Oakdale, La., on the other.

Presently, Santa Fe delivers a substantial number of car-loads of grain to Kansas City Southern at Beaumont and which KCS moves to either Beaumont or Port Arthur. Upon acquisition of the Santa Fe line between Dobbin and Beaumont, KCS anticipates that such grain traffic will be received from Santa Fe at Dobbin, with through turn-around trains operated between Dobbin and Port Arthur to facilitate the movement of this traffic. KCS feels that the elimination of the interchange at Beaumont would improve the handling of this traffic to shipside at Beaumont and Port Arthur.

Kansas City Southern points out that, upon its acquisition of these lines around the Houston area, it would need to acquire Rock Island's interest in HB&T in order to have access to terminal facilities at Houston. KCS would agree to Santa Fe's trackage rights over the Houston-Dobbin line. KCS estimates a revenue gain from its proposed Houston-Beaumont conditions totaling \$10,386,824.

The shipper and public witnesses supporting Kansas City Southern have been discussed in Part L. Their support of KCS in relation to the Santa Fe application is similar to that with respect to the Southern Pacific application.

(4) MoPac-T&P

MoPac primarily opposes the Santa Fe reaching the Memphis and St. Louis gateways and direct connection with carriers serving markets in the Southeast. While MoPac argues that Santa Fe does not need single-line service in order to secure its fair share of the traffic, the MoPac does agree that one of the requisites for efficient service is rapid and dependable schedules and that the Santa Fe, under its proposed inclusion, would be well able to provide rapid and dependable single-line schedules to and from Memphis and St. Louis.

MoPac contends that Santa Fe's proposed schedules between St. Louis or Memphis and Los Angeles do not show any improvement in the present single-line schedules of Southern Pacific or the joint-line schedules in which MoPac or Norfolk & Western participate. MoPac points out that Santa Fe interpreted "competitive" schedules to mean those equal to, but not faster than, existing schedules.

The Santa Fe proposal would, in MoPac's view, eliminate Santa Fe's only single-line competition between Chicago, on the one hand, and, on the other hand, Wichita, Kans., Oklahoma City, Enid and Ponca City, Okla., and Amarillo, Tex. Santa Fe is the only carrier with single-line service between Southern California and Chicago. To grant its proposal would make that carrier the only one competing from Southern California with access to the gateways of Chicago, St. Louis and Memphis.

One of the Santa Fe's contentions is that eastern carriers are beginning to favor the St. Louis gateway over the Chicago gateway. A study made by MoPac in November 1967, shows more than twice the number of scheduled freight trains arriving at Chicago from the East than at St. Louis, and almost three times the number departing Chicago to the East than from St. Louis. It is here noted that the number of unscheduled operations to and from Chicago and St. Louis are not of record. Neither does the record disclose the volume of traffic originated and terminated at Chicago and St. Louis and having a line-haul exclusively east of the two gateways.

MoPac and Santa Fe interchange traffic at 51 points, primarily in Kansas and Texas. MoPac interchanges traffic with Rock Island at 32 points, twelve of which are also served by Santa Fe and four of which are located on lines not to be acquired by Santa Fe. Thus, Santa Fe's proposal will extend its competitive influence to the remaining 16 points served by MoPac, including the St. Louis gateway from Kansas City. MoPac fears that

this extension of Santa Fe's lines will enable that carrier to influence traffic away from MoPac between points served by both lines in the midwestern States, on the one hand, and St. Louis and Memphis, and points beyond, on the other, as well as between all points served jointly by both lines. Not only does MoPac foresee a vulnerability to Santa Fe's solicitation strength on this traffic, but it feels that Santa Fe will be able to attract local traffic MoPac handles between the mentioned points as well as traffic it interchanges with other carriers.

MoPac claims that it is most vulnerable to diversion to Santa Fe at Kansas City and at Coffeyville and Independence, Kans., where 46.3 percent of the 1964 Santa Fe-MoPac traffic interchange occurred, amounting to 40.6 percent of the 1964 MoPac revenues earned from traffic interchanged with Santa Fe. The Kansas City interchange itself represents 37.2 percent of the cars interchanged between Santa Fe and MoPac and accounts for 35 percent of MoPac's revenue derived from traffic interlined with Santa Fe.

MoPac fears that Beaumont, Houston and Ft. Worth are also points vulnerable to loss to Santa Fe, since Santa Fe's service will be improved through Oklahoma to the Southeast via Memphis and St. Louis, if its proposal is approved.

MoPac estimates that it will suffer a gross revenue loss of just over \$4.0 million and a net revenue loss of a little less than \$2.5 million if Santa Fe acquires the southern portion of Rock Island.

Texas & Pacific recognizes that Santa Fe's acquisition of Rock Island's Amarillo-Memphis line will give Santa Fe a direct interchange at Memphis with carriers serving the Southeastern States and will eliminate the need for Santa Fe to utilize connecting carriers, including T&P, in the Southwest. At the present, there is a mutual dependency between Santa Fe and its connections, such as T&P. In reply to Santa Fe's claim of an "imbalance in service capabilities" since Santa Fe is the only major Southwestern railroad not reaching either St. Louis, Memphis or New Orleans, T&P replies that Santa Fe's reaching Memphis and being able to by-pass its bridge connections will result in a new type of "imbalance", since those bridge carriers depend upon overhead transcontinental traffic.

Texas & Pacific contends that the "imbalance" that concerns Santa Fe is partially one of its own making, and that Santa Fe maintains a very narrow and restricted routing policy, whereby large numbers of its tariffs contain routings which are designed to guarantee the longest haul to Santa Fe regardless of other

routes that would both better serve the public and be more equitable or reciprocal so far as connections of Santa Fe are concerned. In connection with the foregoing arguments, Texas & Pacific complains because rather than short-haul itself on trans-continental and other traffic by interlining with Texas & Pacific at such gateways as El Paso, Pecos, and Sweetwater, Santa Fe elects a longer haul for itself by hauling the traffic to easternmost gateways.

Texas & Pacific points out that there are 54 points served in common by Santa Fe and Rock Island, and of these common points, 27 are served only by these carriers. T&P condemns the resulting Santa Fe exclusive service at the 27 points as being anti-competitive. At a number of Santa Fe-Rock Island common points, Texas & Pacific agrees that there are other serving railroads, but it claims that because of the "territorial distribution of lines" of the Santa Fe and Rock Island, their transportation functions are of greater similarity and are more nearly competitive than are the functions of the other serving carriers. The examples cited by the Texas & Pacific are the Rock Island Chicago-Amarillo route via Liberal which in the hands of Santa Fe would eliminate the only functional rail competition to Santa Fe between such points as Chicago, Kansas City and Amarillo, and Santa Fe's single-line service between Enid, Okla., and Lubbock, Tex., which is presently competitive with the joint-line service on fertilizer offered by Rock Island and FW&D between these points via Amarillo. After Santa Fe acquires the Memphis-Amarillo line, this competition will be eliminated. A third example cited is the movement of freight between Indio, Calif., and Phoenix, Ariz., destined for Lubbock. The route competitive with Santa Fe moves Southern Pacific to Tucumcari, Rock Island to Amarillo, and FW&D to Lubbock. Santa Fe's purchase of the Amarillo line will remove this route from competition. And finally, Texas & Pacific says another area of consideration is grain traffic moving from Kansas, Oklahoma and Texas points to the Gulf ports. Rock Island is Santa Fe's most direct competition in those movements, and Santa Fe's purchase of these lines will eliminate that competition to Santa Fe.

Potash deposits of eastern New Mexico are located about 35 miles east of Carlsbad and Loving and about 35 miles west of Eunice and Hobbs, N. Mex. Loving and Carlsbad, the railheads for this traffic, are served by Santa Fe, and are located 79 and 90 miles north of Pecos, respectively. Pecos is on the main T&P line. Eunice and Hobbs are served by T&P's subsidiary, the Texas-New Mexico Railway, and, Santa Fe has access to the mines through its own spur tracks, but the Texas-New Mexico does not.

Texas & Pacific claims that Santa Fe refuses to provide rates on potash from Carlsbad to Southern Territory via T&P at Pecos; that Santa Fe's virtual monopoly over this traffic has caused dissatisfaction on the part of shippers; and that, as a result of the foregoing, nearly every one of the major producers and the Carlsbad Chamber of Commerce has approached T&P at one time or another to build lines into the producing area. Allegedly, such approaches have been to help provide additional equipment, assist in securing better rates, and to provide better service by virtue of T&P's shorter and more direct route. Texas & Pacific has declined these overtures, because it wishes to avoid a conflict with Santa Fe over "invasion of its territory". Thus, argues T&P, movement of potash traffic over T&P lines via Pecos, would benefit T&P through a larger share of the traffic and would benefit the shipping public, producers and receivers, in shorter, faster and more direct service. Evidence of the one shipper concerned with, the above-described movement of potash is later discussed in this part.

Texas & Pacific estimates that Santa Fe's acquisition of the southern portion of Rock Island will result in a gross revenue loss to T&P of over \$2,450,000, which, after application of a 50 percent cost of handling, will produce a decrease in net railway operating revenue of over \$1,225,000.

Texas & Pacific concludes from its traffic study that the greatest loss of traffic would occur in the shipments of potash moving from Carlsbad and Loving, N. Mex., to Southern Territory, and, to prevent the loss of such traffic, T&P seeks trackage rights over Santa Fe to Carlsbad from Pecos.

Texas & Pacific's proposed operations over the Santa Fe line would consist of a daily turn around train from Pecos to Loving hauling empties from T&P's main line and returning with loads to Pecos. This operation would be coordinated with another operation which would begin at Carlsbad City Yard and move to Huerta, where it would pick up the empties stored there and service the branch east of Carlsbad, returning to Huerta and then moving its loads to Loving. At Loving, the train would set out its loads, pick up empties, and then service the Loving branch. It would then return to Loving and coordinate with the Pecos run. Texas & Pacific anticipates that this service would soon be supplemented with additional switching assignments as its participation in freight increased, which it believes will not be long in coming.

Texas & Pacific assumes that the Carlsbad area industries could best be serviced by Santa Fe and T&P under an arrangement whereby equipment is pooled and furnished the industries. Texas & Pacific feels that a pooling arrangement would prevent excessive switching by both the industries and the carriers but would not deny the public the advantages of competition in the area of furnishing equipment. The participation in this pooling could be based on the proportion of outbound business handled by each railroad, computed on a weekly or monthly basis. T&P also suggests the use of a road switcher operating on pooled storage tracks.

Since Texas & Pacific feels that the Loving-Pecos portion of the line is not in adequate condition for the carrier to utilize as it proposes, this line would have to undergo improvements. Also tracks would have to be added at Loving. T&P proposes that Santa Fe perform the required track improvements and construction, with reimbursement from increased trackage payments by T&P.

Texas & Pacific anticipates that it would haul almost 12,000 cars annually out of the Carlsbad area if it were granted operating rights over the Santa Fe trackage. T&P estimates a gain in gross revenue as a result of the proposed conditions amounting to \$5,167,566. T&P estimates that operating costs would reduce the figure to \$3,142,835 in net revenue.

Three of Texas & Pacific's shipper witnesses supported the requested trackage rights over Santa Fe into the Carlsbad-Loving area. A fertilizer producer makes a large number of shipments of potash from Carlsbad to its plant at East St. Louis and also movements into plants in Wisconsin and Iowa. It favors T&P gaining access to the potash producing area because the shipper will then have a choice of carriers from which to select the most efficient. A wholesale grocer in Church Point, La., and a petroleum and chemical company at Odessa, Tex., who support T&P's requested trackage rights over Southern Pacific (see Part L), also support T&P's trackage rights over Santa Fe. Texas & Pacific has told the shippers that it will have to institute certain economies in its operations if the Santa Fe proposal is granted, hence the shippers support T&P's acquisition of these trackage rights as a means of strengthening the carrier.

(5) Katy and Western Pacific

No extended discussion is required with respect to the record made by the Western Pacific and Katy in connection with the Santa Fe's request for inclusion. For all practical purposes,

such interveners' evidence is limited to their estimated losses of traffic and revenues, discussed in Part O, as a result of the proposed transactions. It suffices to point out that the Santa Fe is willing to accept the Western Pacific's requested condition for inclusion; and also that the examiner's findings, as later discussed, will provide for inclusion of the Katy, albeit in a system other than the Santa Fe.

(6) Frisco

Frisco's dependency upon interline traffic has been earlier described in various prior parts, including the immediately preceding Part L. The Frisco and Santa Fe serve in common 33 points in the States of Oklahoma (14 points), Kansas (13 points), Texas (4 points), and Missouri (2 points), including their principal interchange points of Kansas City, Fredonia, Cherryvale, Avarad, and Floydada, as detailed in Table 134 of Volume I.

Of particular significance to the Frisco is its hauling of a substantial volume of transcontinental traffic in conjunction with the Santa Fe. Such traffic moves over Frisco's routes from Floydada predominantly to the Memphis gateway with a small percentage of the total traffic also hauled to the St. Louis gateway. The traffic moving through the Memphis and St. Louis gateways is comprised primarily of movements to and from the Southeast. In conducting the described interchange, the Frisco delivers two trains daily to the Santa Fe at Floydada, one train containing traffic for Southern California and the other train for Northern California and other Santa Fe points. In the reverse direction, the Santa Fe also interchanges two trains daily with the Frisco.

As indicated by Table 134, in Volume I, Part B, Floydada is the Frisco's most important point of interchange with the Santa Fe as well as the largest single point of interchange of West Coast traffic on the Frisco system. It is largely as a result of Frisco's sales efforts that traffic moves via Floydada and it fears that its interchange with the Santa Fe would suffer in the event the latter is permitted to extend its lines to St. Louis and Memphis. Frisco estimates that the traffic diverted by Santa Fe would amount to 49,300 cars and a gross revenue loss of \$11,047,600.

Directly related to, and entirely dependent upon, the Santa Fe's requested trackage rights between Kansas City and St. Louis, is the Santa Fe application (in Finance Docket No. 24154) for the use of Frisco trackage. For clarity of the

authority sought by the Santa Fe for use of Frisco trackage, it should be pointed out that the Rock Island line between Kansas City and St. Louis terminates at Leeds Junction in Kansas City. Under an existing agreement between the Rock Island and the Frisco, approved on October 30, 1961, in Finance Docket No. 21684, the Rock Island operates over trackage of the Frisco between Leeds Junction and Sheffield Junction, a distance of approximately 2.5 miles. At Sheffield Junction, a Rock Island turnout and connecting track on the north connects the Frisco trackage with trackage of the Kansas City Terminal Railway and such connecting track is used jointly by Rock Island and Frisco.

Rock Island's operations under the trackage rights are restricted to through trains except for service provided to the carrier's creosoting plant at Una, Mo. The agreement provides that Rock Island, its successor or successors and assigns shall be subject to the terms of the agreement, provided that Rock Island shall have no right to assign or transfer the agreement or the rights therein without the written consent of Frisco.

Frisco's evidence reveals that of the two passing tracks discussed in Santa Fe's evidence (see Volume I, Part K, item 4), one has been retired, and the other has been partially retired and can no longer be used as a passing track.

It is Frisco's position that Santa Fe's request for trackage rights is an attempt to operate over Frisco's main line, and, in effect, would require Frisco to provide facilities to a new competitor. Several other issues relative to Santa Fe's request were raised by Frisco and are discussed in Part N.

(7) Union Pacific and Southern Pacific

Both the Union Pacific and Southern Pacific oppose the Santa Fe's request for inclusion. It will be recalled, that the Santa Fe's request for inclusion includes that portion of the Rock Island lines as generally set forth in the previously described agreement with the North Western, and detailed in Part E of Volume I. In short, Santa Fe seeks to acquire the southern Rock Island lines, except the Santa Rosa-Herington line, and also to acquire trackage rights or a one-half interest in that portion of the northern Rock Island lines between Kansas City and St. Louis, including the use of all industrial, spur and side tracks and the use of Rock Island's Carrie Avenue yard at St. Louis.

In opposition to the Santa Fe request for inclusion, the Union Pacific has presented no probative evidence of its own, but rather refers to the record made by the Southern Pacific. The arguments of Union Pacific made in its brief will be discussed in Part N of this volume.

The Rock Island and Southern Pacific evidence set forth in Part B, and Table 9, showing Rock Island interchanges together with the appurtenant discussion, establishes that the Rock Island's historic and strongest partner is the Southern Pacific system; not the Santa Fe. In particular, the interchange at Tucumcari, firmly establishes the dependency of the Southern Pacific upon the Rock Island Tucumcari-Kansas City route. Table 9 illustrates in the Rock Island north-south operations the close working arrangements with Southern Pacific system at the gateways of Dallas, Ft. Worth, Houston, Alexandria, and Fordyce. At the same time, and, as Southern Pacific points out, the Santa Fe's north-south line between Kansas City and Galveston parallels the lines of the Rock Island between the same points. In short, as later set forth in the part dealing with the briefs of the parties, Southern Pacific contends that the record fails to establish that the Santa Fe's principal purpose to reach the Memphis and St. Louis gateways would be consistent with the public interest.

(8) Santa Fe Rebuttal

Santa Fe points out that Kansas City Southern estimates a loss of \$472,000 in traffic diverted under the Santa Fe proposal and a gain, under its proposed conditions, of \$22.7 million in annual gross traffic revenues. However, Santa Fe contends that Kansas City Southern has understated its expected gains. Part of the carrier's gain would consist of revenue on traffic originating and terminating at Santa Fe industries located on the lines east of Somerville, Tex., and the line between Paris, Tex., and Dallas. In 1966, Santa Fe's revenues from these sources amounted to almost \$16.8 million. If Santa Fe is forced to sell to Kansas City Southern the lines sought, it feels that it will lose a substantial portion of that revenue. While Kansas City Southern estimates a gain of just over \$6.2 million from these lines, Santa Fe feels that its loss could be as much as twice that amount.

Santa Fe indicates that a large portion of Kansas City Southern's anticipated revenue gains from Dallas-Ft. Worth traffic, Houston traffic and Kansas City-Chicago traffic would be at AT&SF's expense. Santa Fe is of the view that the imposition of the Kansas City Southern conditions could easily eliminate the financial benefits Santa Fe might expect to derive from the

purchase of Rock Island's southern lines, and it would be doubtful if \$100 million is an equitable amount to pay for those properties.

Moreover, Santa Fe feels that imposition of the Kansas City Southern conditions would nullify the most important advantages the public would derive from coordination of Santa Fe and Rock Island operations in the north-south corridor. For example, Santa Fe's consolidation of terminal facilities at Fort Worth and Dallas and coordination of train operations between the two cities would not be possible. Also, coordination of train operations between Kansas City and Dallas and between Kansas City and Houston would be substantially impaired. Santa Fe's analysis is that its operations south of Dallas would be made hopelessly complex under the conditions. As part of its proposals, Kansas City Southern would allow Santa Fe trackage rights between Dobbin, Tex., and Houston and between Fort Worth and Dallas. Under such an arrangement, if Santa Fe were to attempt to operate through trains over the Joint Texas Division, it would be a tenant of Kansas City Southern between Fort Worth and Dallas, a tenant of Katy between Dallas and Waxahachie, a half owner with FW&D of the line between Waxahachie and Dobbin, and a tenant of KCS-FW&D between Dobbin and Houston.

Santa Fe points to the existing supply of railroads between Kansas City and Houston and to the fact that the Kansas City Southern proposals would merely add another carrier in that corridor. Further, the Kansas City Southern proposals are admittedly aimed primarily at enhancing its own competitive position rather than fulfilling a shown public need for more adequate service. On this point, Santa Fe states that its own proposal will not jeopardize the competitive position of Kansas City Southern. Santa Fe finds that none of the Kansas City Southern shipper witnesses express a strong desire for that carrier to reach Houston. Rather, they are chiefly concerned with the maintenance of the same satisfactory service they now enjoy from the carrier.

Kansas City Southern presently operates into Dallas over Santa Fe's line under a trackage rights agreement, which Kansas City Southern claims results in operating inefficiencies and car detention. Kansas City Southern feels that these problems would be solved if it owned that line and Santa Fe were given trackage rights. Santa Fe, on the other hand, states that whatever operating inefficiencies Kansas City Southern experiences at Dallas are of its own making and would be relieved if the carrier provided more scheduled trains to and from Dallas. Further, Santa Fe contends Kansas City Southern has always had problems because of its policy of running long heavy trains. Kansas City Southern has studied the advantages of running more frequent, lighter trains and intends to adopt that policy, which, according to Santa Fe, should solve its problems.

Santa Fe is of the view that Texas & Pacific's acquisition of trackage rights over Santa Fe from Pecos, Tex., to Carlsbad, N. Mex., would place a very serious and unreasonable financial burden on Santa Fe and would substantially disrupt and impair the efficient rail service presently provided to the potash industry.

Although the Santa Fe line from Pecos to Loving, N. Mex., is entirely satisfactory for Santa Fe's use, it would have to be upgraded at an estimated cost of \$7.5 million to be adequate for T&P's use. Texas & Pacific proposes that the cost of such upgrading be borne by Santa Fe, which would recover such costs and obtain a return on the capital outlay from increased trackage payments by T&P. Santa Fe computes that the suggested rental of \$4 per mile would produce around \$190,000 annually, which would not even cover the 5 percent interest on the original outlay of capital, much less contribute to the recovery of the capital investment or even to operating expenses. Santa Fe contends that even this small amount of compensation would depend upon T&P's ability to divert traffic revenues from Santa Fe itself. Such loss, based on Texas & Pacific's carload diversion estimates, would cost Santa Fe approximately \$7.1 million annually.

In addition to the cost of rebuilding the Pecos-Loving line, extensive additional facilities would be necessary at the La Huerta yard in Carlsbad, or on T&P at Pecos, and at the tracks serving mines and refineries. The La Huerta yard is presently used as a flow-through facility and, contrary to Texas & Pacific's understanding, not for storage or classification, since that is done by Santa Fe at Clovis, N. Mex.

In addition to the yards at La Huerta and downtown Carlsbad, the physical plant in the 1,000-square mile switching area consists of customer service trackage for seven refineries and four separate mines interconnected by lead track segments. Santa Fe's operations on this trackage are already very tight and highly complex, and Texas & Pacific operations could not be superimposed on them without having major expenses incurred by the railroad or shippers for additional facilities.

Santa Fe finds that its present operations in the Carlsbad area are such that Texas & Pacific's entrance into the area will not be easily effected. There is a heavy volume of traffic moving outbound and there is also an extensive shuttle movement of raw ore from mines to refineries. These movements are performed at night over the same tracks that are used at other times by switchers to place empties and remove loads. It is not

possible for a switcher to collect outbound traffic over these tracks at night while these shuttle operations are being conducted. Thus, Santa Fe urges that Texas & Pacific's plan to conduct its transportation operations at night will be impractical, if not impossible.

Another point of criticism by Santa Fe is of Texas & Pacific's plan to use one switch engine to switch the seven plants in the area and run 150 miles in a night. Even if there were no shuttle operations and there were adequate tracks on which T&P could operate, Santa Fe is of the view that such a planned operation is impossible. In Santa Fe's analysis neither railroad could reduce the time spent switching each plant because, although each road would be handling less than the total number of cars, additional time would be required to separate the cars to be handled by each road. Accordingly, the total time spend by both carriers at each plant actually would be increased, causing delays in the movement of traffic from the shipper's facilities.

Santa Fe claims that even if new tracks were added, and Texas & Pacific increased its motive power and crews, there still would be delays caused by the necessity of separating outbound cars. Presently, Santa Fe carries all cars to Clovis, where they are classified as to routing and destination. This reduces the time the cars sit on the shippers' switching track and eliminates yard delays at La Huerta. Santa Fe believes this advantage will be lost if it becomes necessary to classify the cars by origin carrier before they leave the Carlsbad area.

Santa Fe notes that most of Texas & Pacific's shipper witnesses expressed no interest in the Carlsbad area. Santa Fe urges, therefore, that no need has been shown by the carrier. Further, Texas & Pacific estimates it will suffer a traffic loss of \$2.5 million to Santa Fe, which Santa Fe contends is an overstatement. Santa Fe contends that even if the estimate is accurate, it is not comparable to the \$7.1 million loss Santa Fe will suffer from the approval of the Texas & Pacific condition, plus the cost of \$7.5 million to upgrade the line for use by T&P.

Santa Fe's primary concern with respect to the inclusion of Katy into its system is the expense involved. Katy stated that one of the potential advantages to Santa Fe of its inclusion with that carrier would result from the construction of 50 miles of main line from Santa Fe at Bosworth, Mo., to Katy's line at Boonville, Mo., thus allowing Santa Fe entry into St. Louis over the Katy line. This, in Santa Fe's view, would be an expensive proposition.

Santa Fe points out that its inclusion of Katy could take one of two forms: outright merger or stock control. Under merger, Santa Fe would have to make provision for acquiring Katy's equity and debt, and upgrading Katy's properties to Santa Fe standards. Further, Santa Fe estimates that extensive new construction would be required in order to integrate the routes of the two companies, and it concludes the cost of Katy's inclusion could amount to \$300 million.

Santa Fe urges that under stock control, Katy would still have to be rebuilt; that the cost of acquiring 80 percent of Katy's stock would be around \$33 million at 1967-1968 prices; and that Katy would have to have net earnings of over \$50 million before dividends could be paid on the stock because of outstanding senior obligations. In short, Santa Fe believes it would be compelled to make an enormous investment with little hope of receiving a return or even recovering the investment itself.

Santa Fe opposes the three FW&D conditions under (B)(1) and (2) as described in Part C of Volume I.

FW&D claims it will suffer a loss of \$277,000 from approval of Santa Fe's application, but Santa Fe's study showed this figure to be overstated. Santa Fe also contends that FW&D will benefit substantially from approval of Santa Fe's application, as next described, thus negating the need for the proposed conditions.

Under the Santa Fe proposal, Santa Fe and Rock Island traffic will be consolidated on the Joint Texas Division, resulting in a reduction of FW&D's share of operating expenses. A Santa Fe study estimated that the annual savings to FW&D under this proposed operation would be \$220,000. Santa Fe also proposes operating changes at Galveston which will inure to the benefit of FW&D. Presently, FW&D and Rock Island jointly own the Galveston Terminal Railway Co., which provides terminal facilities at that port. Switching is performed by Galveston Wharves Co. On the other hand, Santa Fe owns and operates extensive terminal facilities at Galveston. After Santa Fe acquires Rock Island's southern lines, Santa Fe would operate trains between Houston and Galveston jointly with FW&D. In order for both carriers to benefit from the efficiencies and economies of fully coordinated operations, Santa Fe proposes that the Galveston terminal operations be transferred to the Santa Fe facilities, thereby, in Santa Fe's view, reducing operating expenses with benefits to both FW&D and Santa Fe.

Under the FW&D-Rock Island joint agreement, FW&D has the right to move its cars in any of the trains operated between Fort Worth and Houston. There are currently two such trains in each direction. Under the Santa Fe proposal, there would be three, and Santa Fe states, the increase in frequency of freight train services would permit FW&D to improve its overall performance and provide savings in per diem payments.

Santa Fe argues that in addition to the above benefits to be gained by FW&D, Santa Fe's planned operations will result in its incurring more than 50 percent of the operating expenses, thus rendering academic the FW&D condition proposing a minimum 50 percent payment by Santa Fe.

Santa Fe estimates that approval of the FW&D condition for a reduction in its train-mile payments for use of Rock Island's Fort Worth-Dallas line would cost Santa Fe \$130,000 annually. Although FW&D states that the reason for such a request is to enable it "to come out whole in this merger", Santa Fe points out that FW&D's financial condition will be significantly improved as a result of Santa Fe's acquisition, and a downward negotiation of the rate would result in a windfall for FW&D. Also, Santa Fe views as a windfall to FW&D the right for that carrier to begin serving the Rock Island industries between Fort Worth and Dallas.

PART N: BRIEFS OF THE PARTIES(1) In General

Earlier, at the outset of Volume I of this report, a full discussion was had concerning the briefs filed by the various parties. It is here appropriate to summarize the handling of the matters and things contained in the briefs. The essential and pertinent matters comprising the joint brief of the carrier parties have been previously incorporated in this report and no further discussion of the joint brief is required. Two sets of separate briefs were filed by certain parties following each of the further limited hearings held November 18 - 19, 1969⁸³ and April 15 - 16, 1970. The brief filed by the North Western on December 4, 1969, was comprised almost entirely of procedural matters and which were disposed of in Part A of Volume I. Otherwise, such portions of the brief which dealt with the merits of the issue were embraced in the further hearing of April 15 - 16, 1970, and are reflected in the discussion and conclusions set out in Volume I. With respect to the briefs filed following the further hearing during April 1970, all procedural matters also are disposed of in Part A of Volume I. The remaining portions of the brief bearing upon the merits of a highly specialized issue, and for which limited purpose the further hearing was held, will be discussed and handled in a separate part dealing with Non-transportation Holding Companies.

The brief of the North Western in support of its proposed control of the Rock Island has been fully disposed of in the considered disposition of the application, as set forth in Part H of Volume I. The essential matters and things set forth in interveners' briefs in opposition to the North Western control application, including the various requested findings that such proposal has not been shown to be consistent with the public interest, are reflected or incorporated in the examiner's recommended denial of the application. Only one other aspect of such briefs requires consideration at this point.

There will not be discussed and considered herein the arguments made by Union Pacific and Southern Pacific that their applications are superior to that of the North Western, and in such connection the requested finding 4⁸⁴ of the Union Pacific be,

⁸³ A typographical error has occurred in Volume I, page 30, line 5 of the first paragraph, in showing the November limited hearing as having been held in the year 1970 rather than in 1969.

⁸⁴ "The CNW applications would be far less consistent with the public interest than the UP, RI, SP applications."

and it is hereby, rejected. Among other things discussed at the end of Part A of Volume I with respect to the competitive relationship between the involved basic applications, it was pointed out that it did not follow that a denial of one required an approval of the other. Rather, each application must be considered on its own merits and in accordance with the established requirements under section 5(2). The foregoing has already been fully adhered to in the discussion and conclusions on the North Western application as set out in Volume I. The applicable standards applied to the North Western application will be the same tests utilized in evaluating all remaining applications and to be applied with an even hand. In view of the conclusions and recommendations herein, the applicable standards will be set out in specific detail in the concluding part of the report containing the examiner's General Discussion And Conclusions. Clearly, the recommended denial of the North Western control is in no sense a factor of consideration and determination of the remaining applications and appurtenant issues.

There remains for discussion the treatment to be afforded the briefs as they bear upon the Union Pacific and Southern Pacific applications, the Santa Fe's request for inclusion, and with respect to the foregoing, interveners' briefs. As seen, procedural matters have been handled in Part A of Volume I; appropriate portions of the briefs were previously discussed in connection with certain preliminary findings; and for the reasons hereafter detailed, such portions of the briefs dealing with traffic studies, including the reply briefs on such subject, are set forth in Part O. It also should be borne in mind that, as discussed at length in the preliminary discussion in Part F of Volume I, the discussion and conclusions herein are predicated upon a Union Pacific merger and Southern Pacific purchase of the Rock Island with no consideration to a Union Pacific merger of the entire Rock Island. It follows that the same view will be adhered to in the consideration of the parties' briefs.

The handling of the Santa Fe brief requires some preliminary clarifying discussion. As fully explained in Volume I, the Santa Fe application falls because of the denial of the North Western application, but the Santa Fe request for inclusion remains an issue. The evidence pertinent to the inclusion is discussed in Part K. As is natural under the circumstances, the brief of Santa Fe sets forth facts and argument in support of the Santa Fe's acquisition of Rock Island lines predicated upon the North Western control application. Consistent with all the previous handling of the various applications, no discussion of the North Western factors is now necessary. It should be clearly understood

that hereafter all discussion of the Santa Fe's brief will be as directly pertinent to its requested inclusion. Interveners in opposition to the Santa Fe application will be treated in a like manner; i.e.: their opposition to the denied Santa Fe application will now be viewed, where pertinent, as opposition to the Santa Fe petition for inclusion.

The Santa Fe argues against the Union Pacific-Southern Pacific proposals vis-a-vis the North Western-Santa Fe. Such an evaluation is unnecessary, for the reasons stated several times before. Santa Fe's brief, as has its evidence as a protestant, will be discussed and considered in the light of all essential elements of the Santa Fe's opposition to the Union Pacific merger with the northern lines of the Rock Island and Southern Pacific's proposed purchase of the southern lines which bear upon all factors of public interest, and in particular the total carrier interest as it relates to the requested Santa Fe inclusion.

Finally, at various prior parts of this report there was found appropriate for discussion and disposition certain matters and things raised in the parties brief, and which have not been summarized above. All of such previously handled factors of consideration have been clearly set forth and certainly it would serve no purpose to recapitulate the previously determined elements, except where necessary for clarity of understanding. Here it may be pointed out, for example, that all pertinent matters raised by Mr. Kendall Laughlin have been disposed of at various points of the report, and in particular at Part I (Stockholders' Views) of Volume I and no discussion of Mr. Laughlin's brief is required or necessary. Due to the tremendous scope of interests, carrier and otherwise, and the complexity and interplay of the numerous issues, the greatest of care has been taken to herein set out all facts of record and issue of law bearing upon the total public interest. In the huge record made and among the more than 5,500 pages of the parties' briefs, there have been raised matters of fact and law which are completely barren of value in the determination of the issues presented in these proceedings. Such matters, having been thoroughly reviewed, will not be discussed and considered.

Again, the Commission has gone to the most unusual lengths to afford all participants every opportunity to make a full and complete record with respect to their interests. In the procedural scheme of the lengthy hearings (involving evidence in opposition, reply, rebuttal and the like) many of the parties limited their "evidence" to basically a series of arguments on

the evidence previously presented. As seen, such arguments have been discussed as part of the parties' case so as to afford the maximum weight and force to their position. However, in many instances the very same arguments are restated in the parties' briefs. Here, too, and except to a most limited extent, it would serve no purpose to repeat the previously set out arguments, but they will be considered and determined in the final volume of this report which will be devoted to the examiner's discussion, conclusions, and findings on all pertinent issues.

(2) Rock Island

The Rock Island urges approval of the proposed merger with the Union Pacific and purchase by the Southern Pacific of the southern Rock Island lines. All of the essential factors relating to the Rock Island as set forth in its brief have been previously detailed in Part B, and also Part G of Volume I and incorporated in the preliminary economic and financial findings of such Parts. The preliminary findings made as herein directly pertinent to the Rock Island arguments and contentions are that the carrier is an essential transportation facility and the public interest requires the preservation of its operations and services. The Rock Island is in immediate need of substantial expenditures for maintenance and capital improvements but it possesses no funds (or credit) for such purposes since it is in a highly adverse and rapidly deteriorating financial condition. The Rock Island, located in an area plagued by an oversupply of rail services, is further beset by numerous other competitive disadvantages. Accordingly, even if funds were available to make the necessary upgrading in plant and operations, the Rock Island has no reasonable chance to stand alone as an independent carrier.

The Rock Island asserts that the Union Pacific has the obvious ability to provide all the funds necessary for full rehabilitation of the Rock Island and has unconditionally pledged itself to such task. The Rock Island argues that by its very nature the essentially end-to-end combination of the lines would extend the advantages of a single-line trans-continental service to numerous midwestern shippers. In connection with the foregoing, Rock Island refers to the evidence of a number of public and other witnesses, as a strengthening of applicants' evidence, that the connecting line services at the Missouri River gateways cause delays and other serious problems to shippers and receivers. Limited solely to a need for improvement in Rock Island's service over its own system, the carrier points to the evidence of various shippers and communities who are dependent upon the carrier's services for

their growth and viability. Finally, Rock Island argues that since the proposed merger is an end-to-end unification, competition will thereby be enhanced and preserved and no serious harm will be caused to other carriers if the approval is properly conditioned.

(3) Union Pacific

Union Pacific's principal thrust throughout the entire proceedings is that if it is to continue as an effective transportation system it needs the extension of its lines to the major eastern gateways of Chicago, Peoria, and St. Louis, and it needs to be able to provide single-line service to such major industrial areas as the Twin Cities, the Quad Cities and Des Moines. Union Pacific is honest and to the point in its proposed unified operations; namely, to make direct connections with the major eastern and southern lines, such as the Penn-Central, B&O-C&O system, Grand Trunk Western, L&N, and Southern, among others. Certainly it should by this time be crystal clear, from the discussion of the great mass of the carrier parties' evidence, arguments and positions, that the pivotal issue in the proposed merger is whether the public interest requires that the dominant carrier in the Central Corridor shall be permitted to break through its Missouri River gateways and thereby eliminate its carrier connections located in the central states. All of the Union Pacific evidence and arguments pertinent to such crucial issue set forth in its brief have already been discussed in Part I of Volume I. Its arguments and contentions on the various collateral issues are discussed below.

As seen, in Part I (under the discussion of Reasonableness Of The Consideration) of Volume I, the examiner has found that the proposed Union Pacific exchange of its debentures for its preferred stock, a matter approved by the preferred stockholders as part of their vote on the merger transaction, would be beneficial to the preferred stockholders, and the exchange is fair and reasonable. The examiner is further of the view that the Commission proceedings cited by Union Pacific on brief are pertinent precedents. See: Missouri-K.-T.R. Co. Securities Modification, 295 I.C.C. 759 (1958); Monon R. Securities, 295 I.C.C. 643 (1957); and MaineCentral R. Co. Debentures, 307 I.C.C. 47 (1959).

In Part F of Volume I and in connection with the Union Pacific application under section 20(a), in Finance Docket No. 23287, there was described in detail the proposed assumption of various Rock Island obligations, including its Series A First

Mortgage Bonds and Forty Year 4½ percent income debentures, by Union Pacific in connection with the proposed merger transaction under section 5. With respect to the foregoing two specifically identified obligations, there was also detailed Union Pacific's plan, following the merger, of establishing a net income account, under supplemental indentures, for the purpose of meeting the financial requirements of the obligations assumed. In its brief, Union Pacific considers appropriate its proposal for apportioning net income to avoid the necessity for the merged companies to maintain separate income accounts. It asserts that its proposal herein is almost identical to that approved in Duluth, S.S.&A.R. Co. Merger, 312 I.C.C. 341, 351 (1960). Union Pacific points out that no holder of Rock Island bonds or debentures intervened herein or registered dissatisfaction with the Commission in respect of the merger and that neither the trustees under the Mortgage nor the trustee under the Indenture (to the Debentures) intervened or expressed dissatisfaction although the proposed supplemental indentures were submitted to them for review. Additionally, the examiner notes that the foregoing is not an issue raised by the one intervening, minority stockholder of the Rock Island. As seen, the foregoing issue is ripe for determination at this point of the proceeding and to do so would aid clarity of understanding and practical continuity.

As stated several times before, the applications are being considered on the basis of a merger of the Rock Island into the Union Pacific and concurrent sale of what has been defined as the Rock Island Southern to the Southern Pacific. Under such circumstances, the properties would be conveyed to Southern Pacific free of lien and it would be necessary for Union Pacific to first redeem the Series A First Mortgage Bonds. Accordingly, only the supplemental indenture to the Income Debentures need be considered, and not the supplemental indenture to the First Mortgage Bond; the latter supplemental indenture, incidentally, is almost identical to the one supplemental of the Income Debentures. In any event, the proceeding in Duluth, S.S.&A.R. Co. Merger, cited immediately above, is a pertinent and applicable precedent to the issue involved. Properly, it may be found that the proposed provisions set forth in the proposed supplemental indenture of the Union Pacific in its assumption of obligation and liability for the Forty Year 4½ percent Income Debentures of the Rock Island, are equitable, practical, and reasonable for the purposes described and that no material alteration of the rights of the Bondholders will be affected thereby.

As indicated in Part I (Study No. 10 - Cost of Labor Protection) of Volume I, following the close of the record herein, there was submitted and received into evidence a copy of the employee protective agreement entered into between Union Pacific and RLEA (Exhibit No. 1375). The details of such protective agreement have not been described up to this time. Neither has the examiner discussed the applicants' estimates concerning the number of Rock Island employees involved and affected as a result of consummation of the merger and of the purchase. One of the reasons for the foregoing omissions, has already been discussed in Parts I, above referred to, and J (Study No. 8 - Cost of Labor Protection); namely, the lack of reliable cost estimates as a result of the execution of the protective agreement. The significance of the foregoing will be dealt with in the examiner's final discussion and conclusions to be embraced in the subsequent and last volume of this report. Also, the evidence of Union Pacific and Southern Pacific relating to the employee issue has been comingled and it would serve no purpose to tear such evidence apart. All in all, it was determined that it would best serve all purposes, and particularly as Union Pacific is concerned, to here set forth the evidence bearing upon the estimated number of Rock Island employees affected.

There are a number of important questions arising under the protective agreement and a complete description of its provisions are best left for discussion in the examiner's final discussion and conclusions. It will suffice at this stage to point out that the protective agreement entered into with about one-half of the labor organizations representing Rock Island and Union Pacific employees,⁸⁵ is basically of the "attrition" type and extends

⁸⁵ The signatory operating employee labor organization is the Brotherhood Of Locomotive Firemen And Enginemen and the signatory nonoperating employee labor organizations are the Transportation-Communication Employees Union, Brotherhood of Maintenance of Way Employees, Brotherhood of Sleeping Car Porters, Hotel and Restaurant Employees and Bartenders' International Union, International Association of Machinists & Aerospace Workers, International Brotherhood of Boilermakers and Blacksmiths, International Brotherhood of Electrical Workers, International Brotherhood of Firemen and Oilers, Sheet Metal Workers' International Association, Railway Employees' Department, AFL-CIO, and Brotherhood Railway Carmen of America.

to all Rock Island employees, except those located on Rock Island lines not acquired and retained by Union Pacific in the proposed merger, and all Union Pacific employees located on that carrier's Eastern Division which extends from Council Bluffs and Kansas City to Ogden, including such employees at Ogden. Also under the agreement, all other affected Union Pacific employees, and which for all practical purposes are located west of Ogden, would be afforded protection under the provisions of the so-called Washington Job Protection Agreement of 1936, the Washington Agreement,⁸⁶ with the exception of a single type of circumstance. Such exception is that Rock Island employees or their work will not be transferred to points on the Union Pacific outside its present Eastern District without extending all protective benefits of the attrition provisions to any Union Pacific employee adversely affected thereby.

As already detailed in the agreement between Union Pacific and Southern Pacific embracing the latter's proposed purchase of the southern half of the Rock Island (Part F of Volume I), Union Pacific will be responsible for the Rock Island employees directly attributable to the northern portion of Rock Island and Southern Pacific will be responsible for the Rock Island employees directly attributable to the southern portion of Rock Island. Also, as to Rock Island employees whose work is not directly assignable to either the northern or southern portions of the Rock Island (sometimes referred to as "joint" employees), Union Pacific itself would be responsible for such joint employees but Southern Pacific would be required to contribute 45 percent of the employee costs and Union Pacific the balance, including the same allocation for employee protection costs.

The effect upon Rock Island employees is shown in Table 147 following. The table reflects estimated totals at the end of each of the first five years based on the merger and sale transactions using employment totals as of October 1964 as a basis. In assessing the impact on Rock Island employees, applicants' consultant made a study of normal attrition due to deaths, retirements, dismissals and resignations. It is anticipated that from 70 to 90 percent of the available jobs created by such normal attrition could be effectively used to offer reemployment to employees whose jobs are abolished.

⁸⁶ The agreement of May 21, 1936, entered into by labor organizations and most railroads, provided specific protection for employees thereafter adversely affected by any "joint action by two or more carriers whereby they unify, consolidate, merge, or pool, in whole or in part, their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities".

Union Pacific will have 135 new jobs created in the northern portion of Rock Island. However, there will be a reduction of 874 jobs for joint employees, resulting in a net reduction of 739 positions. It is contemplated that a large portion of these employees will be employable locally and, after considering jobs created by attrition, only an estimated 49 employees will actually be deprived of jobs. This will occur within the first two years after merger.

Southern Pacific will have 158 jobs abolished on the southern segment. However, the table shows these employees may be reemployable locally and none of these employees, Southern Pacific represents, will be deprived of their jobs.

While the table indicates 1,115 jobs transferred in addition to the 897 jobs abolished, the affect of the merger upon individual communities would be minimal. In fact, the Chicago area, the Kansas City area; the Quad City area; Little Rock, Ark.; Goodland and Topeka, Kans.; Fairbury, Nebr.; El Reno, Okla.; and Ft. Worth, Tex., are the only localities which would lose more than 25 positions while the Omaha-Council Bluffs area would gain nearly 375 positions. Pine Bluff, Ark.; Los Angeles and San Francisco, Calif.; Houston, Tex.; and Cheyenne, Wyo., would each gain more than 25 positions.

TABLE 147ESTIMATED IMPACT OF MERGER AND PURCHASE ON EMPLOYEESYEARS AFTER MERGER AND SALE

	<u>First</u>	<u>Second</u>	<u>Third</u>	<u>Fourth</u>	<u>Fifth</u>	<u>Total</u>
<u>Total Employees</u>						
Northern Segment-U.P.	44314	43941	43923	43973	44031	-----
Southern Segment-S.P.	<u>40692</u>	<u>40599</u>	<u>40600</u>	<u>40603</u>	<u>40607</u>	-----
Total	85006	84540	84523	84576	84638	
<u>Jobs Abolished</u>						
Northern Segment-U.P.	456	373	18	(50)	(58)	739
Southern Segment-S.P.	<u>73</u>	<u>93</u>	<u>(1)</u>	<u>(3)</u>	<u>(4)</u>	<u>158</u>
Total	529	466	17	(53)	(62)	897
<u>Reemployable Locally</u>						
Northern Segment-U.P.	322	329	26	-	-	677
Southern Segment-S.P.	<u>73</u>	<u>93</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>166</u>
Total	395	422	26	-	-	843
<u>Jobs Transferred</u>						
Northern Segment-U.P.	629	361	21	7	-	1018
Southern Segment-S.P.	<u>51</u>	<u>46</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>97</u>
Total	680	407	21	7	-	1115
<u>Deprived of Employment</u>						
Northern Segment-U.P.	39	10	-	-	-	49
Southern Segment-S.P.	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total	39	10	-	-	-	49
<u>Employees Electing Separation</u>						
Northern Segment-U.P.	120	59	-	-	-	179
Southern Segment-S.P.	<u>9</u>	<u>3</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>12</u>
Total	129	62	-	-	-	191
<u>Jobs Created by Normal Attrition</u>						
Northern Segment-U.P.	2654	2631	2611	2611	2613	13120
Southern Segment-S.P.	<u>2011</u>	<u>2008</u>	<u>2003</u>	<u>2003</u>	<u>2003</u>	<u>10028</u>
Total	4665	4639	4614	4614	4616	23148
<u>Attrition Jobs Unused</u>						
Northern Segment-U.P.	2311	2343	2584	2660	2670	12568
Southern Segment-S.P.	<u>1946</u>	<u>1917</u>	<u>2004</u>	<u>2006</u>	<u>2007</u>	<u>9880</u>
Total	4257	4260	4588	4666	4677	22448

() = Jobs Added

The northern segment shown in the first item embraces a total of both Union Pacific systemwide and Rock Island employees on the northern segment and joint employees; and similarly the southern segment combines Southern Pacific and Rock Island employees. With further reference to the northern segment, there is included 6,202 Rock Island employees directly assignable thereto and 4,677 joint Rock Island employees. In other words a total of 10,879 Rock Island employees plus an undisclosed number of Union Pacific employees in its Eastern District would fall within the protective agreements. The point being made is that, in the public interest, the Commission should have of record a reasonably accurate estimate of the total number of carrier employees entitled to job retention rights (or attrition) under the protective agreements.

In the preliminary explanation to Table 147, applicants pointed out that of the total 1,115 jobs transferred over the 5-year period (the fourth item, last column of the Table) it was indicated that changes of jobs would be involved in a carrier's western district at Los Angeles and San Francisco. Clearly, such fourth item reflects a systemwide factor, but the record does not disclose whether Rock Island, Union Pacific or Southern Pacific would be involved. Of course, which carrier employees would be involved has a substantial bearing upon the conditions to be imposed responsive to the statutory requirements, as later discussed.

In its brief the Union Pacific contends that the attrition agreements entered into with the labor organizations are of the attrition type approved in the Pennsylvania R. Co.--Merger--New York Central R. Co., 327 I.C.C. 475, 543 - 545, herein called the Penn-Central case, and in the Northern Lines case, on reconsideration and further hearing, 331 I.C.C. 228, 276 - 279 and that, in fact, most of the agreement provisions are virtually identical to their counterparts in the Northern Lines case. However, the Union Pacific explains the reason for the differences in the limited scope of employee coverage provided for by the protective agreements in the instant proposed merger transaction as contrasted to the broader protective employee coverage imposed in the two above-cited proceedings.

As seen, the protective agreements herein do not extend to apply to the benefit of affected Union Pacific employees on the carrier's lines west of its defined Eastern District, except under the circumstances previously noted. Union Pacific asserts that the cited proceedings involved unifications and coordinations

of duplicating facilities and attrition protection, accordingly, was applied to all employees on all parts of the merged system. The instant merger proposal, Union Pacific asserts, is essentially an end-to-end unification with the principal area of overlap which would directly involve Union Pacific employees being the Rock Island lines between the Missouri River and Denver. Incidentally, the foregoing Rock Island lines are those which the Rio Grande seek to acquire under its request for affirmative relief and conditions, and, also, which Union Pacific is willing to dispose of to the Rio Grande. In any event, Union Pacific asserts that the signatory parties to the protective agreements were of the view that the broad type of attrition protection provided for in the Northern Lines and Penn-Central cases were not necessary or appropriate for protection of Union Pacific employees located "beyond the potential effect of the merger".

Union Pacific is willing to enter into similar agreements (its attrition type agreements) with other labor organizations representing Union Pacific and Rock Island employees, and Union Pacific is hopeful that such agreements could be concluded prior to final determination of these proceedings. As to any labor organization which declines to enter into such agreements, Union Pacific suggests the imposition of conditions as prescribed by the Commission in New Orleans Union Passenger Terminal Case, 282 I.C.C. 271, as modified by substitution of the new arbitration provision in the Great Western proceeding, 330 I.C.C. 13 at 62.

Finally, Union Pacific argues that the proposed end-to-end merger should have little effect, if any, on Union Pacific employees, that the protective benefits proposed should strongly enhance the position of such employees, that the Rock Island employees are already in a precarious position by reason of the carrier's economic difficulties and without the merger their position could further deteriorate in the future, and that as a result of the merger all protected employees "will have what is a virtually life-time guarantee of employment."

As far as the traffic of intervening carriers is concerned, Union Pacific asserts that its modification of the so-called "standard conditions" for the protection of gateways and connections (detailed in Volume I, Part C) originally set forth in Detroit, T. & I. R. Co. Control, 275 I.C.C. 455, represents a consolidation of expressions from various railroads in other merger proceedings as to what they wish imposed as traffic conditions. Thus, Union Pacific argues, the proposed traffic conditions are more inclusive than ever presented in any other proceeding and will be acceptable to Union Pacific, whether the merger of all, or only part, of Rock Island is approved. These conditions, Union Pacific argues, assure that no intervening railroad will be disadvantaged from a rate and route standpoint as a result of the proposed merger.

In connection with traffic protective conditions, Union Pacific contends that such conditions should not be imposed merely to compensate an opposing carrier for losses from diverted traffic. Nor should conditions be imposed except upon a showing that the proposed conditions relate to the merger and that the need for such conditions arise from the merger and are themselves in the public interest.

In connection with the six conditions requested by Rio Grande, Union Pacific in general is willing to accept a condition designed to enable Rio Grande to operate over a line of its own to the Missouri River. However, Union Pacific does object to various specific proposals of Rio Grande for attaining that objective.

Union Pacific offers to sell approximately 740 miles of acquired Rock Island railroad to Rio Grande and also grant the latter trackage rights over approximately 275 miles of road (except for 56 miles of Rock Island line) owned by Union Pacific.

The lines Union Pacific agrees to sell extend from

1. Belt, Colo., to Sandown, Colo., (3.72 miles);
2. Colorado Springs, Colo., to Lincoln, Nebr., (567.87 miles);
3. Belleville, Kans., to Manhattan, Kans., (86.76 miles); and
4. Topeka, Kans., to Blair, Kans., (81.99 miles).

The trackage rights Union Pacific would grant Rio Grande would extend over lines from

1. Sandown to Limon, Colo., (89.42 miles);
2. Manhattan to Kansas City, Kans., (116.16 miles);
3. Blair, Mo., to St. Joseph, Mo., (7.10 miles); and
4. Lincoln, Nebr., to Council Bluffs, Iowa, (62.70 miles).

Union Pacific concedes that the foregoing sales and grants would be acceptable even though they would permit Rio Grande to own the Limon-Colby segment of Rock Island's Colorado Springs to Lincoln line with a consequent reduction in the merger benefits Union Pacific would otherwise realize if it would continue to

hold ownership of that segment and only grant trackage rights thereover to Rio Grande. (Union Pacific's rebuttal, already set forth, details its estimated reduction in merger benefits.)

Union Pacific would also have no objection to granting, after a further hearing to set terms, Rio Grande joint ownership of Rock Island's industrial properties at East Denver, but at other common points, Union Pacific believes that industrial properties should belong to the carrier to which the properties are adjacent.

Union Pacific has reduced the price it is willing to accept for the lines it would convey to Rio Grande from its original asking price of \$32,254,581 to \$22,500,000. This latter figure includes the prices for the 740 miles of line it would sell, as well as the joint ownership of industrial properties and certain motor carrier properties, elsewhere discussed. Union Pacific arrived at its new selling price by adding to its original price of \$32,254,581, the offer made by Rio Grande of \$13,645,657 and then dividing by two. Union Pacific's original price is asserted to represent cost of reproduction new, less depreciation at 1910-1914 prices. Rio Grande's figure, according to Union Pacific, is based on original cost less depreciation to which is applied a ratio factor derived from comparing the negotiated sales price of the Rock Island lines in which Rio Grande is interested with the original cost thereof less depreciation as developed by the Coverdale & Colpitts study.

Union Pacific offers no objection to Rio Grande's request that the Rock Island motor carrier rights be sold to it in the areas where the Rock Island rail lines are sold to Rio Grande, provided that Rio Grande establishes the public interest for such sale and the reasonableness of the terms therefor. Union Pacific contends that a separate hearing would be necessary for these purposes because the present record is not adequate to determine these questions.

Union Pacific objects to granting the remaining requests of Rio Grande. It considers Rio Grande's request for through routes and joint rates via the Ogden gateway to be extraneous to the instant transactions; Rio Grande's request that the Commission's order of January 6, 1966, in Central Pac. Ry. Co. Control, 328 I.C.C. 345, be made final, to be mooted since the order became final and fully effective on July 7, 1968; Rio Grande's request generally for a condition with respect to rates and routes to be satisfied by the conditions with Union Pacific has already agreed to accept; and Rio Grande's request for a condition

that would change the relationship between Pacific Fruit Express Company and its two parent companies, Union Pacific and Southern Pacific, to be irrelevant to the issues in this case concerning the merger of Rock Island into Union Pacific.

With respect to the conditions requested by Western Pacific, Union Pacific claims that the condition requiring Union Pacific and Southern Pacific to cancel preferential agreements and understandings and the condition requiring Union Pacific to maintain neutrality between Western Pacific and Southern Pacific in solicitation and routing traffic have been satisfied, since the date of Western Pacific's request, by the cancellation of the agreements to which Western Pacific objects, and by the becoming effective of the Central Pacific order, supra, on July 7, 1968. Accordingly, Union Pacific argues, developments subsequent to Western Pacific's request for these two conditions have fully satisfied the requests.

Union Pacific contends that the conditions which it proposes will afford adequate protection to Western Pacific and will thus obviate the latter's request for a special condition with respect to establishment and maintenance of through rates and routes on freight traffic moving from a Northern California territory described by Western Pacific. It also contends that the Western Pacific request for establishment of through rates and routes between points on Southern Pacific is unnecessary and unrelated to Union Pacific's merger with Rock Island. It doubts the practicability of the condition requested by Western Pacific regarding schedule and service guarantees and holds Western Pacific's request that it be afforded an opportunity for a period of five years to be included in the Union Pacific system to be unwarranted inasmuch as Western Pacific has not presented sufficient justification for its request. Union Pacific argues that Western Pacific has taken the position that it would support the Union Pacific-Southern Pacific applications if its six requested conditions were imposed, but that since the first two of the requested conditions have been fully satisfied and the last four are demonstrably not in the public interest, the opposition of Western Pacific is effectively neutralized.

Union Pacific contends that the various traffic conditions requested by the individual carriers now embraced within the Burlington Northern system would accrue benefits to the requesting carriers substantially in excess of the losses such carriers would experience from the Rock Island-Union Pacific merger, and that the conditions would, in fact, bear no relationship at all to any merger-caused losses to the Burlington Northern system. Accordingly, the necessity for such conditions has not been demonstrated and at least one of them, the first, could actually

divert traffic from Milwaukee. In addition, the condition requested by Northern Pacific for trackage rights over Spokane International between Sand Point and Eastport, Idaho, would result in difficult and even hazardous operating conditions because of exceedingly heavy curvature, numerous bridges and tunnels and sidings insufficient to accommodate the meeting and passing of additional trains without encountering delays.

Union Pacific considers that the traffic conditions it has indicated to be acceptable fully answer the request of Kansas City Southern for protective conditions in general. It considers to be an effort to obtain an undeserved windfall, the request by Kansas City Southern for its so-called "Chicago" condition. Union Pacific claims that the disparity, which it contends that Kansas City Southern's own figures establish, between the \$10 million gains in revenues that Kansas City Southern would realize from the condition and the \$2 million revenue losses it would incur as a result of the merger, is so great as to make the granting of all Kansas City Southern's requested conditions unsupportable.

Specifically, Union Pacific contends that the "Chicago" condition would (1) provide benefits to Kansas City Southern greatly in excess of any loss that carrier might suffer from approval of the Union Pacific and Southern Pacific proposals; (2) not be reasonably related to any injury that would result to Kansas City Southern from approval of the proposals; (3) require consent of Milwaukee which consent, in Union Pacific's opinion, does not appear to be available; (4) skim the cream from an already hard pressed Rock Island property; and (5) not prove to be in the public interest.

With respect to the Santa Fe applications in general, Union Pacific has adopted the criticism set forth in Southern Pacific's brief, hereinafter discussed. However, it specifically objects to the application of Santa Fe for trackage rights over

All lines of Rock Island between St. Louis and Kansas City, Missouri, including the use of all industrial, spur and side tracks and the use of Rock Island's Carrie Avenue yard at St. Louis.

According to Union Pacific, Santa Fe intends to use these proceedings as the vehicle for acquiring rights it has unsuccessfully sought for at least 80 years. In this connection, Union Pacific refers to the Commission's finding in Chicago, B. & Q. R. Co. Control, 271 I.C.C. 63 to the effect that there was no substantial need of further railroad service to St. Louis and that "Unless justified by future developments, additional rail service would be wasteful and unwarranted (page 164)". Union Pacific claims that no justifying "future developments" have been alleged or proven in these proceedings.

Union Pacific requests 21 specific findings. Its requested finding 3 is reflected in the recommended denial of the North Western applications. Findings 4 and 18 were rejected. It is unnecessary to detail findings 6, 7, 8, 9, and 17 which are adopted as clearly reflected in the examiner's previously made findings and conclusions. Consistent with the later discussion regarding traffic studies, requested findings 19, 20, and 21 are set forth in Part O. The remaining requested findings (as numbered by Union Pacific) follow:

1. The applications of Union Pacific and Rock Island in Finance Dockets Nos. 23286, 23287, 24128, and 24129 are consistent with the public interest and meet the tests prescribed by Sections 5(2)(b) and 20a of the Interstate Commerce Act, 49 U.S.C. Sections 5(2)(b), and 20a.

2. The applications of Southern Pacific in Finance Dockets Nos. 23595 and 23596 are consistent with the public interest.

5. The applications of Santa Fe in Finance Dockets Nos. 23919, 23920 and 24154 have not been shown to be consistent with the public interest.

10. The merger proposed in Finance Docket No. 23286 and the sale of the southern line of Rock Island proposed in Finance Docket No. 23595 will insure the continuance and improvement of service over the Rock Island lines, and provide adequate funds for the rehabilitation and continued operation of those lines in conformity with the high standards of the applicants.

11. The proposed merger and sale would conform in all respects with the national policy with respect to mergers and with the national transportation policy.

12. All affected railroads will be adequately protected by the traffic conditions proposed by Union Pacific.

13. The interests of affected employees will be fully protected by the contracts already entered into by Union Pacific and by the proposals of Union Pacific to extend similar protection to all other employees.

14. The affirmative relief and special conditions sought by Rio Grande, with the exception of its request to purchase certain lines of Rock Island and certain trackage rights over others, have not been shown to be necessary or in the public interest.

15. The affirmative relief and special conditions sought by Santa Fe, Great Northern, Western Pacific, MKT, Northern Pacific, Spokane, Portland and Seattle, and KCS have not been shown to be necessary or in the public interest.

16. The request of Santa Fe that the Rock Island-Union Pacific merger be conditioned on the grant of trackage rights over the line from Kansas City to St. Louis has not been supported by any substantial evidence showing a need for the operation of an additional railroad between those cities, especially in view of the improvement of that line and the improvement of service over it which will result from the merger of Rock Island into Union Pacific.

(4) Southern Pacific

Much of Southern Pacific's brief is directed to the already detailed service improvements it would institute on the various Rock Island southern lines, discussed in Part J of Volume I, and no reiteration of the subject matter is necessary. Similarly detailed were the anticipated improvements and benefits of the proposed single-line services and operations of Southern Pacific, including blocking of cars on a systemwide basis, faster schedules, improved utilization of power and car equipment, savings in per diem costs, improved communication systems, and better car tracing. The detailed anticipated economies of \$7,625,000 plus expected earnings of \$6,892,000 result in total improvement in net income of \$14,517,000 and which Southern Pacific believes may lessen the need for future rate increases.

Southern Pacific contends that the proposed purchase will preserve the maximum benefits of the existing "partnership" of Southern Pacific and Rock Island over the routes they presently operate jointly. This is particularly true with respect to the "Golden State" route between southern California and Kansas City and Chicago via Tucumcari. Southern Pacific argues that the Golden State route has benefited the public by affording a route competitive to the single-line routes of Santa Fe between Los Angeles and San Diego and Kansas City and Chicago and of Union Pacific between Los Angeles and Kansas City. Southern Pacific maintains that its single-line ownership of the Golden State route will thus preserve the competitive benefits.

Southern Pacific also maintains that consummation of its proposed purchases will increase its ability to meet the keen motor carrier competition and the equally keen market competition with which it is faced. Its studies of intermodal competition are already embraced in the Examiner's discussion and conclusions set forth in Part G of Volume I.

Southern Pacific lays equal stress on market competition. It claims that a substantial portion of its revenues comes from the long distance movement of agricultural products and lumber products from the Pacific Coast to markets in the midwest and the east. In order to permit Pacific Coast producers to compete in these distant markets, it contends that transcontinental rates on the products have been established and must be continued on the lowest possible basis. It asserts that many of the producers for whose benefit depressed transcontinental rates have been established are located in areas served by Southern Pacific and by no other railroad. To the shippers and producers in these areas, Southern Pacific feels its greatest responsibility; not only with respect to rates but also with respect to furnishing equipment and other services. To meet these responsibilities, Southern Pacific contends that it must have the advantage of all possible economies and efficiencies, such as the economies and efficiencies it believes will result from consummation of the purchases it proposes here.

Southern Pacific contends that railway employees will benefit in the long run from its proposed acquisition because the increased efficiency and financial capacity which the purchase will bring to the Rock Island lines will significantly stabilize employment on the lines. It considers adequate for the 97 Rock Island employees and 912 joint employees who would be transferred to other locations and the 49 joint employees it asserts would be deprived of employment, the protection afforded by the New Orleans Passenger Terminal Case, with the described modification of arbitration provisions.

Southern Pacific refers to the points which it serves in common with Rock Island and the rail services which would be available following consummation of the proposed purchase (See Volume I, Part J at pages 640 - 641). Southern Pacific traffic originated at these common points constitutes only 6.32 percent of its system carloads while terminated traffic constitutes only 10.94 percent. Rock Island's traffic originating at the common points amounts to only 4.98 percent of its system carloads and its terminated traffic to only 13.35 percent. Southern Pacific contends that much of the traffic constituting these relatively small percentages is not subject to any competition at all between it and Rock Island. According to Southern Pacific, the only instances where its lines and those of Rock Island are in direct competition, because they directly parallel, is between Fort Worth and Galveston where the eight common points in Texas are served.

In view of the foregoing, Southern Pacific contends that its purchases of Rock Island lines will result in minimal diminution of railroad competition and that the purchase will generally be nondestructive to the traffic of other carriers.

The motor carrier operating rights of Rock Island which Southern Pacific seeks to acquire serve generally the same territory served by the Rock Island rail lines that Southern Pacific requests authority to purchase. Southern Pacific claims that if it acquires the motor carrier rights it will offer services which are in the public's interest and would provide service over routes which the shipping public would find to be dependable.

Southern Pacific asserts that the record herein establishes that the Santa Fe application is not in the public interest. Southern Pacific's principal arguments are that the Rock Island is not the natural partner of Santa Fe but rather of Southern Pacific, and with the Santa Fe having made no move to purchase the Rock Island lines until Southern Pacific commenced doing so; that Santa Fe's applications would cause greater traffic diversions from other railroads than would the Southern Pacific application, or a total net loss for all railroads of \$508,003 under the Southern Pacific proposal and \$10,770,300 under the Santa Fe application; that Santa Fe is not dependent upon the Rock Island southern lines in the same sense that Southern Pacific is; that Santa Fe's sole interest in the lines is for the purpose of extending its system to new gateways; and that to grant the Santa Fe applications would replace a long established Southern Pacific-Rock Island partnership, evidenced by a large interchange and a preferential solicitation agreement between competitors, break up existing routes of proven importance to the public, and prevent the further improvement of these routes resulting from their integration into the Southern Pacific system.

The implication of the Southern Pacific that the examiner should here reach the same conclusion as was arrived at on the basis of the record made in an entirely unrelated proceeding and involving unrelated questions to those here involved, Akron, C. & Y. R. Co. v. Atchison, T. & S. F. Ry. Co., 321 I.C.C. 17, and which record was not in this proceeding subjected to test by affected or interested parties, is rejected.

The Southern Pacific's position with respect to the affirmative and other relief sought by interveners follows immediately. However, to avoid the oftentimes lengthy and altogether unnecessary restatement of interveners' proposed relief there will be only a most general reference to the requested conditions since the discussion will adhere to the same numerical sequence set out in the Position of The Parties in Part C of Volume I.

With respect to the Fort Worth & Denver condition No. (A)(1), the full ownership of the Waxahachie-Houston and Teague-Mexia lines, Southern Pacific asserts that it has no objection to permitting Fort Worth and Denver to jointly operate the line involved and that such joint operation would enable Fort Worth & Denver to avoid paying for Rock Island's interest in the line, for which the book investment alone is shown as \$1,875,000. Such joint operation, Southern Pacific claims, would afford Fort Worth & Denver the additional advantages of operation over a high-speed main line at lower unit cost; the opportunity to participate in abandonment of the line between Teague and Waxahachie where little or no industry or shippers are located; the right to continue serving industries at Corsicana and Waxahachie; avoidance of trackage rights payments to MKT between Dallas and Waxahachie; and joint participation with Southern Pacific in providing local service between Houston and Teague.

With respect to condition (A)(2), the Fort Worth & Denver ownership of Houston Belt and Terminal stock, Southern Pacific alleges that there is no evidence its ownership of the Houston Belt & Terminal will destroy the balance of competition in the Houston area since Southern Pacific can already serve most of the industries served by the terminal railroad, and Fort Worth & Denver would incur additional ownership costs of approximately \$50,000 annually by acquiring Houston Belt & Terminal.

With respect to condition No. (A)(3), trackage rights between Ft. Worth and Dallas, Southern Pacific asserts no objection to Fort Worth & Denver continuing (a) unrestricted interchange with Frisco at Irving, (b) to pick up and set out cars at Rock Island's Cadiz Street Yard in Dallas, and (c) to have the Cotton Belt continue to perform switching for Fort Worth & Denver in Dallas as at present. However, Southern Pacific asserts that the condition itself is actually an attempt by Fort Worth & Denver to obtain full trackage rights over the Ft. Worth-Dallas line for one-half the rental it is now paying for bridge rights only, and that the requests for all three of the special conditions, (A)(1), (2), and (3), should be denied.

Southern Pacific also contends that the conditions proposed by Kansas City Southern under (B)(1) through (4) have little connection with Southern Pacific's applications, that the reasons for such conditions were overstated by Kansas City Southern, and that the requested conditions have been thoroughly discredited.

Southern Pacific argues that Kansas City Southern's request to purchase the Southern Pacific line between Shreveport and Houston would nullify one of the two competitive routes serving

Houston, St. Louis and Memphis, and that Southern Pacific's alternate route would be substantially longer than its Shreveport-Houston line and would, consequently, involve added costs. It asserts that Kansas City Southern by seeking to acquire the Shreveport-Houston line is seeking to exchange one of the two competitive services between Houston, St. Louis and Memphis, for an unneeded sixth single-line service between Houston and Kansas City. It contends that the proposed Kansas City Southern service will delay southbound traffic at Houston for an additional 12-15 hours; result in less local service; result in less through service; and not be competitive for Louisiana traffic.

Southern Pacific alleges that the condition proposed by Kansas City Southern for purchase of the lines and terminal facilities of Rock Island between and at Dallas and Fort Worth were designed (1) to obtain direct access to Rock Island industrial properties, and (2) to relieve an alleged disability at Dallas under a joint-facility operation with Santa Fe. Southern Pacific's view is that all of the properties sought by Kansas City Southern under the foregoing condition are necessary for efficient operation of the Rock Island properties Southern Pacific seeks to acquire. In Southern Pacific's judgment it would be impossible to integrate its operations with those of Rock Island by use of the present Southern Pacific facilities at Fort Worth and it would be inefficient to attempt such operations at Cotton Belt's facilities. Kansas City Southern's conditions, according to Southern Pacific actually amount to an attempt to expedite the movement of Kansas City Southern's seven cars which it presently handles daily, on the average, at Fort Worth at the expense of the 102 cars handled by Rock Island which would be required, under Kansas City Southern's plan, to move a distance of 81 miles as compared to the present 35 miles resulting in a minimum additional cost per carload of \$16.00.

Southern Pacific objects to the condition requested by Kansas City Southern for the purchase of Rock Island's interest in Great Southwest Railroad Company, Houston Belt & Terminal and the Union Terminal Company of Dallas. Southern Pacific points out that on the basis of KCS' own estimations, the latter, from the granting of the three conditions, would gain additional gross revenues approximately three times greater than the anticipated gross revenue losses as a result of the Union Pacific merger and Southern Pacific purchase transactions, and which anticipated losses, Southern Pacific contends, are grossly overstated.

Southern Pacific's final contention that Kansas City Southern Industries, Inc., the parent non-carrier holding company of Kansas City Southern, is a necessary party to the conditions, is premature. Should any condition be imposed herein which has the result of a carrier acquiring control of another carrier, through purchase or otherwise, the filing of an appropriate application under section 5 would be required together with the joinder of all necessary party applicants.

Southern Pacific contends that the Texas & Pacific requested condition (A)(1), to the effect that it be given operating rights over the Southern Pacific lines west of El Paso, is not supported by the evidence; that Texas & Pacific has completely overlooked or ignored the operating difficulties involved; that the Texas & Pacific proposal would result in an uneconomic operation; and that there is no showing of a public need for the proposed new service.

With respect to Texas & Pacific's condition (A)(2), covering the requested indemnity provisions in the movement of trans-continental traffic via El Paso, Southern Pacific contends that Texas & Pacific has offered no evidence to show that it will not continue to be a strong and viable railroad following the Southern Pacific purchase.

Southern Pacific contends that there is nothing in the record upon which a finding could be made to impose condition (A)(3) requested by Texas & Pacific.

Southern Pacific adopts the position, previously referred to, of Union Pacific with respect to the conditions sought herein by Western Pacific and considers there to be no justification for any of the conditions.

With respect to the condition requested by MKT that it be included in system of whichever applicant is authorized to acquire the Rock Island properties south of Kansas City, Southern Pacific contends that MKT's earnings have been poor for many years; its physical properties undermaintained and in a "desperate" condition prior to 1965; its \$31 million tax loss carry-forward is of little value to an acquiring railroad; its capital structure is characterized by an extremely heavy indebtedness; and its properties are overvalued. Southern Pacific asserts that for the properties of MKT to be sold to or merged with another carrier, it is essential that its financial structure be drastically revised so that realistic terms may be offered for the carrier. Until this is done it cannot be expected that another carrier will acquire, or become obligated to acquire the MKT properties by purchase or merger. It would not, according to Southern Pacific, be prudent for another carrier to do so.

Southern Pacific asserts that since Missouri Pacific is one of the stronger systems in the Midwest and Southwest, consummation of the transactions proposed by Southern Pacific and Union Pacific would have no effect whatsoever on Missouri Pacific's ability to attract new industries to its line. It also asserts that the transactions will have such a minimal effect on Missouri Pacific's subsidiary, Texas & Pacific, that they could not possibly affect Texas & Pacific's ability to provide common-carrier service to its patrons.

Southern Pacific contends that the merger of the various carriers constituting the so-called Northern Lines will clearly enhance the ability of those carriers to provide common-carrier service and that Southern Pacific's purchase of the Rock Island lines it seeks will have no effect on that ability. It also considers the Kansas City Southern to be one of the most prosperous carriers in the United States and well able to absorb any loss resulting from Southern Pacific's purchase of Rock Island's lines. It does not consider the losses which will be realized by Kansas City Southern to have any effect on that railroad's ability to continue to provide common-carrier service. It holds the same opinion with respect to any loss that may be suffered by Frisco.

As far as railway labor is concerned, Southern Pacific contends that the transactions proposed by Union Pacific and Southern Pacific would result in only about half as many abolished jobs as the various other proposals for control of Rock Island.

Southern Pacific asserts that the traffic conditions it has suggested (detailed in Part C) will provide all the traffic protection necessary for rail carriers affected by its proposed acquisition.

Southern Pacific proposes that the previously described condition (in Part C) be imposed giving effect to the stipulation among Southern Pacific, Union Pacific and the Kansas-Missouri River Mills.

Southern Pacific contends that no conditions concerning the operation of passenger service should be prescribed in connection with its proposed purchase of the Rock Island southern lines.

The ultimate findings requested by Southern Pacific are:

1. The merger of the properties and franchises of Rock Island into Union Pacific is a transaction within the scope of

section 5(2) of the Interstate Commerce Act, the terms and conditions proposed by Union Pacific and Rock Island are just and reasonable and the transaction is consistent with the public interest; the applications in Finance Dockets Nos. 23286, 23287, 24128 and 24129 should be granted.

2. The purchase by Southern Pacific of the properties and franchises of Rock Island, pursuant to the agreement of March 17, 1965, is a transaction within the scope of section 5(2) of the Interstate Commerce Act, the terms and conditions proposed by Southern Pacific are just and reasonable and the transaction is consistent with the public interest; the applications in Finance Dockets Nos. 23595 and 23596 and Docket No. MC-F-9222 should be granted.

4. The purchase by Santa Fe of certain portions of the properties of Rock Island has not been shown to be in the public interest and Finance Dockets Nos. 23919, 23920 and 24154 and Docket No. MC-F-9668 should be denied.

(5) Santa Fe

The Santa Fe argues that the two areas of the West which are plagued with excess rail capacity and intense intermodal competition are the Midwest, where North Western and Rock Island have extensive duplicate facilities, and the territory between Kansas and the Gulf of Mexico, where Santa Fe and Rock Island have extensive duplicate facilities. It claims that its purchase of Rock Island's lines south of Kansas City and its acquisition of trackage rights between Kansas City and St. Louis would promote more effective competition over the southern transcontinental route by correcting a substantial imbalance of relative service capabilities with respect to the principal traffic flows oriented to that route. Santa Fe and Southern Pacific are, and will continue to be major competitors in the West and in the Southwest. Yet, so Santa Fe asserts, the service and competitive capabilities of Santa Fe cannot be fully realized when Southern Pacific reaches every major gateway for southern transcontinental routes and southwestern traffic from St. Louis to New Orleans while Santa Fe reaches none of those gateways with its own lines.

Since Santa Fe and Southern Pacific, Santa Fe argues, will each form the nucleus of a future major rail system operating within the Southwest and over the southern transcontinental route, the development of a sound base for effective competition demands that Santa Fe's service capabilities with respect to the principal gateways for traffic moving to and from the Southwest and over the southern transcontinental route be as nearly on a

parity with those of Southern Pacific as history and geography will allow. Santa Fe considers that its proposal herein affords an opportunity to take a significant step towards providing a sound base for developing effective competition by extending Santa Fe service to the critical St. Louis and Memphis gateways.

As seen, Santa Fe's proposal has two major aims: One is the extension of its single-line service to the St. Louis and Memphis gateways, and the other is the coordination of essentially duplicate facilities within the Southwest along Santa Fe and Rock Island routes between Kansas City and the Gulf of Mexico.

According to Santa Fe, the St. Louis gateway is of major strategic importance for virtually every rail traffic movement between the eastern and western portions of the country, as was emphasized in St. Louis SW Ry.--Purchase--Alton & S.R.R., 331 I.C.C. 515 at page 518. St. Louis is served by every major rail system serving the Southeast, including Southern, Louisville & Nashville, Gulf, Mobile & Ohio and Illinois Central. Santa Fe argues that the eastern railroads have a natural preference for routing via St. Louis because of the larger revenues they receive there; that the importance of this economic incentive to favor St. Louis has been greatly enlarged as a result of current consolidations of eastern railroads which have resulted in greater traffic power for the larger rail systems that can be expected to be increasingly successful in achieving routing via St. Louis; and that the existence of a shift in traffic from Chicago to St. Louis has been recognized but that the precise measurement of the shift from Illinois gateways to St. Louis is not possible on this record. This shift, according to Santa Fe, has jeopardized its position as a major trans-continental railroad.

Santa Fe also considers that Memphis is a natural gateway between the Southeast and the West. It is served by all the major railroad systems in the Southeast including Southern, Louisville & Nashville, Gulf, Mobile & Ohio and Illinois Central, and its position of central access to the entire South, according to Santa Fe, is unequalled by any other gateway city. Santa Fe contends that the special importance of the Memphis gateway lies in the growing economies of the Southeast and the West and the growing rail traffic flow between those regions.

Santa Fe takes the position that its single-line service via Chicago and other northern Illinois gateways is not equivalent to service via St. Louis or Memphis for transcontinental traffic originating and terminating in and south of the Ohio

River Valley. However, service via the northern Illinois gateways for Southern California and Arizona traffic originating and terminating north of the Ohio is, according to Santa Fe, equivalent to the service available via St. Louis, but the enlarged eastern systems do not favor routing via the short-haul northern Illinois gateways. As a consequence, Santa Fe claims that its ability to compete effectively with Southern Pacific for southern transcontinental route traffic is contingent upon its ability to provide equivalent service via St. Louis and Memphis. Santa Fe does not consider its joint-line service via those gateways to be effectively competitive with Southern Pacific's single-line service despite its continued efforts to improve joint-line operations.

Santa Fe considers that the failure of the Frisco-Santa Fe route via Floydada to provide a fully competitive service is evidenced by the fact that only 5,184 cars moved by this route from or via St. Louis in 1966, or only about 14 cars a day. Further, Santa Fe claims that its connection with Norfolk & Western is relatively ineffective with respect to traffic moving via the St. Louis gateway because Norfolk & Western is in competition with the eastern roads which terminate at East St. Louis, and they do not favor Norfolk & Western as an overhead transcontinental connection. The fact that the Norfolk & Western-Santa Fe route does not originate in East St. Louis where the eastern lines terminate aggravates the problem. In summary, Santa Fe asserts that its attempts to make its joint-line service equivalent to Southern Pacific's single-line service have been generally unsuccessful but that by gaining entry into St. Louis and Memphis it will be able to establish schedules that are at least equal to those of Southern Pacific.

Santa Fe contends that the adverse effects on the public interest that result from the lack of effective competition for Southern Pacific's southern transcontinental routes are magnified by the fact that intermodal competition is not a significant factor in most transcontinental traffic movements. Santa Fe sets forth in detail a number of transportation economic factors and contentions, the essential elements of which are contained in the facts and preliminary findings embraced in Part G of Volume I. From such economic factors, Santa Fe draws the conclusions that other modes do not afford a significant service alternative and, hence, intermodal competition is not a substitute for effective rail competition through the St. Louis and Memphis gateways; that traffic flows between West and Southeast constitute a major segment of the nation's economic activity, and that these traffic flows can be expected to expand enormously in the coming decade.

Santa Fe contends that the transportation market can well support the more effective level of rail competition over the southern transcontinental route for traffic oriented to the St. Louis and Memphis gateways that Santa Fe is capable of providing, and for which there is substantial public support. According to Santa Fe, approval of its application would produce immediate transportation benefits of a substantial nature with respect to both southern route transcontinental traffic and Southwest traffic, and would bring about a desirable balance of competitive capabilities between Santa Fe and Southern Pacific which would afford a rational basis upon which future rail alignments in Santa Fe and Southern Pacific territory could be construed if and when they appear to be in the public interest.

The second major aim of Santa Fe is the coordination of the duplicate facilities of Santa Fe and Rock Island between Kansas City and the Gulf of Mexico through the purchase of Rock Island's southern lines. It details in its brief the factual proposals and contentions already set forth in Part K of Volume I.

Santa Fe contends that its proposals here are consistent with and will further the policies of the Commission declared in the current restructuring of railroads. It refers to three recent cases involving the transcontinental freight market. Central Pacific Ry. Co. Control, 328 I.C.C. 345, according to Santa Fe, holds that effective rail competition is essential in the transcontinental freight market, and that the same proposition was the basis for the decision in Southern Pac. Co.--Control--Western Pac. R. Co., 327 I.C.C. 387. In the third case, Great Northern Pac.--Merger--Great Northern, 331 I.C.C. 228, Santa Fe argues that the Commission went further than merely rejecting proposals for impairing competition, as in the Western Pacific case, when it exercised its regulatory authority to correct competitive imbalances in the northern corridor as it had in the central corridor in the Central Pacific case. Santa Fe considers that the present case affords an opportunity to further the latter policy by correcting the existing competitive imbalance in the southern transcontinental route.

Another case cited by Santa Fe in support of its application is Missouri Pac. R. Co.--Control--Chicago & E. I. R. Co., 327 I.C.C. 279, where it argues that the Commission created a new single-line service between the South and Chicago in competition with an existing line. The creation of balanced competitive lines was also the motive for the various eastern and south-eastern consolidations approved by the Commission, Santa Fe argues. Santa Fe also considers the recent decisions in Pennsylvania R. Co.--Merger--New York Central R. Co., 327 I.C.C. 475, and Chicago & N.W. Ry. Co.--Merger, 330 I.C.C. 13, to

support its plans for coordination of its lines and facilities with the paralleling lines and facilities of Rock Island.

Santa Fe does not consider that the probable traffic diversion from other carriers resulting from its purchases of the Rock Island line would impair the service capabilities of those other carriers or result in any disadvantages to the public sufficient to offset the substantial transportation benefits of the Santa Fe proposals.

Santa Fe opposes the conditions sought by Kansas City Southern (set forth in Part C of Volume I) in the event Santa Fe's application is approved. It contends that the requested conditions bear absolutely no relation to the effect of the applications of North Western and Santa Fe on the Kansas City Southern system.

Kansas City Southern estimates that it would gain \$22.7 million in annual gross revenue if its conditions are imposed. This, according to Santa Fe, is fourteen times the \$1,601,476 that Kansas City Southern predicts it will lose under the proposals. Santa Fe contends that it would lose most of the gains it anticipates from the Rock Island purchases if Kansas City Southern's conditions are granted and most of the public benefits of such purchases would be nullified.

Santa Fe objects to MKT's position for inclusion in the Rock Island purchase on the ground that under the terms sought by MKT, Santa Fe would be compelled to make an investment of \$300 million with little hope of receiving a return therefrom and even less of recovering the investment itself.

Santa Fe is also opposed to the condition requested by Texas & Pacific which would grant that carrier trackage rights from Pecos, Tex., to the potash industrial complex in the Carlsbad, N. Mex., area. Santa Fe considers that such a condition would impair existing service on the line and would constitute merely a windfall to the Texas & Pacific-Missouri Pacific system which has improved its competitive position markedly through recent consolidation transactions.

Santa Fe asserts that it is opposed to the three conditions sought by the Fort Worth & Denver. Santa Fe considers that Fort Worth & Denver will benefit substantially from approval of Santa Fe's application and that, therefore, the conditions it seeks are unnecessary.

For the protection of labor, Santa Fe reiterates the protective condition set out in its position under Part C of Volume I.

Santa Fe points out that some of its opponents in this case claim that the Commission decision denying Santa Fe access to St. Louis in 1948, reported in Chicago, B. & Q. R. Co. Control, 271 I.C.C. 63, is determinative of the issues involved here. However, according to Santa Fe, that case was radically different from the transactions proposed here. It contends that its entry into St. Louis in 1948 was denied because of the precarious financial situation of the protestants in that case who, among them, had a deficit of \$154,258,424 in their combined surplus accounts and had demonstrated their inability to pay dividends or even fixed charges. The Commission in the Control case was also doubtful that service would be improved under Santa Fe's proposal in that case.

Santa Fe alleges that conditions are entirely different in the instant case. The other railroads objecting to its entry into St. Louis are now in a prosperous condition and any traffic diversion caused by such entry would not endanger the other railroads' abilities to perform their common carrier functions, and Santa Fe believes that transportation conditions have evolved since 1948 in such a way as to underscore the merits of its present applications.

With respect to Union Pacific's application, Santa Fe asserts that even if Union Pacific's evidence is to be taken at face value, the proposed merger of Rock Island with Union Pacific offers no remedy for Union Pacific's imagined disabilities, and if the evidence of other railroads is even approximately correct, Union Pacific's proposal would cause such egregious injury to the nation's rail transportation system that the proposal ought not to be seriously entertained.

With respect to Union Pacific's contention that it has not kept pace with economic growth, Santa Fe asserts that if there is any significance to be attached to a railroad's inability to keep pace with general economic indicators, that significance would militate against approval of a transaction designed to advance the fortunes of one of the strongest railroads in the country at the expense of other railroads whose performance in relation to general economic growth lags well behind Union Pacific's supposed "short-fall".

Santa Fe regards as frivolous Union Pacific's claim that it needs merger with Rock Island to withstand intermodal and intramodal competition. Santa Fe claims that intermodal competition is not significant in the transcontinental freight market, and that Union Pacific derives more revenue from this market than any other railroad. It claims that Union Pacific's earnings per mile exceeded those of every railroad in the Western District in 1965; Union Pacific has a more favorable rate of return on investment than either Santa Fe or Southern Pacific, its strongest competitors; and Union Pacific enjoyed an increase in ton-miles handled between 1960 and 1964 greater than any other western railroad except Southern Pacific. Santa Fe contends that there is no factual support for Union Pacific's claim that its participation in transcontinental traffic has been impaired by its lack of single-line service to Chicago and St. Louis. The fact of the matter is, according to Santa Fe, Union Pacific derives more revenue from transcontinental traffic than any other railroad, and the proportion of its total freight revenues accounted for by transcontinental traffic has not diminished since 1953.

Santa Fe contends that Union Pacific already has the equivalent of single-line service via Chicago and St. Louis because of its closely coordinated joint-line service. Accordingly, Santa Fe contends, the new single-line service Union Pacific proposes will offer no improvement over existing service.

Santa Fe contends that the adverse impact of Union Pacific's proposal on competition over the central route would completely undermine the Commission's decision in the Central Pacific case, the basic aim of which was to promote more balanced competition by putting an end to the preferential solicitation pact of Union Pacific and Southern Pacific. It also contends that Union Pacific's reliance on the Transcontinental Divisions case, as supporting its merger proposal is misplaced. Although that case will undeniably cost Union Pacific several million dollars, it will also have a similar and serious impact on every other transcontinental railroad.

Santa Fe contends that although Union Pacific argues that its proposals would cause a relatively insignificant amount of traffic diversion from other carriers, about \$17,330,000, the studies of protestants show that the Union Pacific-Southern Pacific proposals would cause diversion amounting to approximately \$100 million in revenue, \$74 million of which would be attributable to Union Pacific. Accordingly, Santa Fe contends, it would be contrary to sound transportation policy to take the

substantial risk of materially injuring most western railroads by transferring important revenues to the richest of them all, particularly when no tangible public benefit, other than the solution to Rock Island's financial ills can be claimed and when other "Rock Islands" inevitably will be created thereby.

Santa Fe does not consider its petition for inclusion in Union Pacific's application as a request for affirmative relief. It considers this petition which would require Union Pacific to sell the Rock Island southern lines to Santa Fe and grant Santa Fe full trackage rights over Rock Island's line between St. Louis and Kansas City, to have intrinsic merit independent of the Union Pacific application; and that the substantial transportation benefits to be derived from the Santa Fe's proposals should be made available to the public irrespective of the injury Santa Fe would have to face as a result of the approval of Union Pacific's application.

Santa Fe contends that Southern Pacific's application for authority to purchase the Rock Island southern lines is only a defensive maneuver by Southern Pacific in order to protect itself against the Union Pacific's proposals. It argues that the Southern Pacific applications have no merit in themselves and that denial of Union Pacific's application would completely eliminate any color of validity Southern Pacific's applications might have.

Santa Fe contends that Southern Pacific actually contemplates no tangible service improvements over the Kansas City-Tucumcari line which is already an efficient run-through operation as part of the Golden State route. Santa Fe asserts that service over the Golden State route would actually be impaired by Southern Pacific's proposal to replace the present fast, efficient interchange at Tucumcari with an interchange at the complex Kansas City terminal. It contends that Southern Pacific, at the hearing, conceded, and offered to stipulate, that interchange of cars at Kansas City would take longer than the present interchange at Tucumcari.

Santa Fe also contends that other carriers serving Kansas City would have no incentive to work with Southern Pacific except under duress. Neither Union Pacific nor Santa Fe would have any desire to promote the Golden State route. Other Kansas City lines, including Burlington Northern, Frisco, Missouri Pacific, Norfolk & Western, Gulf, Mobile & Ohio and MKT, serve St. Louis and compete with Southern Pacific at that point. Southern Pacific

would not solicit traffic capable of moving via St. Louis in any way except via St. Louis. In this respect, according to Santa Fe, Southern Pacific would be working against the Golden State route and its proposed Kansas City connections which themselves serve St. Louis.

Santa Fe contends that the record here firmly establishes that:

1. As presently constituted, the Golden State route, far from being a blind alley, is a fully competitive, efficient joint-line route and has been well developed by Rock Island;
2. Acquisition of the Kansas City-Tucumcari line by Southern Pacific would not improve service but would impair it by shifting the large, efficient Tucumcari interchange to the complex Kansas City terminal;
3. According to Southern Pacific's own testimony acquisition of the line under the Union Pacific-Southern Pacific proposals would impair the flow of traffic over the Golden State route; and
4. Acquisition of the line by Southern Pacific would destroy the competition between the Golden State route and Southern Pacific's route via St. Louis.

With respect to Rock Island's line between Memphis and Amarillo, Santa Fe contends that this line is one of the shortest available routes between the Memphis gateway and the West. It claims that the potential transportation importance of this line in the development of a sound rail transportation system cannot be overstated, and that the public benefits Santa Fe could achieve with the line are clearly established on the record. It argues that Southern Pacific's case is built on the proposition that the Memphis line is of no use to Southern Pacific except to the extent necessary to handle traffic originating and terminating at points on the line west of Little Rock. According to Santa Fe, Southern Pacific proposes to route all transcontinental traffic over its own Cotton Belt route, thus foreclosing development of the primary, potential transportation function of this strategic route.

With regard to the Memphis-Amarillo line, Santa Fe believes the record herein establishes that:

1. Southern Pacific already has single-line service via the Memphis gateway and therefore has no need for Rock Island's Memphis line;

2. Acquisition of the Memphis line would enhance Southern Pacific's domination over transcontinental traffic moving between the Southeast and the West, foreclosing development of this efficient strategic route as a competitive alternative to the only existing single-line route via the Memphis gateway;

3. Southern Pacific does not propose to upgrade the line and does not propose to improve schedules over the line;

4. Southern Pacific, if it acquired the line, would have a blank check to use the line in a manner the effect of which has not been disclosed to the Commission;

5. Santa Fe would develop the competitive capabilities of the Memphis line by upgrading it and improving service; and

6. There is a substantial public demand for Santa Fe's proposals to develop the competitive capabilities of the Memphis line.

Santa Fe contends that to Southern Pacific, the line of Rock Island between Alexandria, La., and Little Rock, is of little significance except for the portion between Eunice, La., and Little Rock. According to Santa Fe, Southern Pacific does not intend to upgrade the line, and its use would be limited to the handling of present Southern Pacific traffic moving between Louisiana and Memphis and St. Louis.

With reference to this line, Santa Fe believes that the record establishes:

1. The character of the Alexandria line and the service to shippers on the line itself would not be changed under Southern Pacific ownership;

2. Southern Pacific already has single-line service between Louisiana and Memphis-St. Louis which is superior to that of other railroads except to and from New Orleans;

3. Southern Pacific's proposed service improvements would not match the service of the Illinois Central between New Orleans and Memphis;

4. The service improvements proposed by Southern Pacific have already been instituted and would remain possible under Santa Fe ownership of the Alexandria line;

5. The Alexandria line should be controlled and owned by the railroad which owns and controls the Memphis line; and

6. The best use of transportation facilities within the meaning of Section 5(2). therefore, would be provided by single ownership and management of the Alexandria and Memphis lines by Santa Fe.

Santa Fe contends that there is already an abundance of railroad competition between Kansas City and Houston, and Southern Pacific is a partner in three of the seven competitive routes. Therefore, according to Santa Fe, there is no claim on Southern Pacific's part that it needs to acquire Rock Island's Kansas City-Houston line in order to compete for north-south traffic moving via Kansas City. Furthermore, according to Santa Fe, Southern Pacific proposes no service improvement as a result of acquiring this line, and the only purpose of its acquisition is to enable Southern Pacific to obtain a longer haul by diverting traffic which Southern Pacific presently interchanges with other railroads at North Texas junctions.

Santa Fe believes, that with regard to the Kansas City-Houston line, the record establishes that:

1. Southern Pacific proposes no improvement in service by virtue of owning the line except with regard to the very minor Rock Island-Southern Pacific interchange at Fort Worth;

2. Santa Fe proposes service improvements involving the entire flow of traffic on both Rock Island and Santa Fe between the Gulf Coast and Chicago and intermediate points;

3. Southern Pacific's joint-line routes to and from Houston via Kansas City are fully competitive today;

4. There is an oversupply of competitive routes in this North-South corridor which would be alleviated by Santa Fe ownership of the Rock Island line leaving a number of alternative, fully competitive routes;

5. Southern Pacific would use the line simply to extend its haul at the expense of its North Texas connections with no offsetting public advantage;

6. Southern Pacific ownership would adversely affect the Fort Worth & Denver operation of the Rock Island-Fort Worth & Denver Joint Texas Division while Santa Fe ownership would benefit that operation;

7. Ownership of Rock Island's interest in Houston Belt & Terminal would enable Southern Pacific to enhance its dominance over industry location in Houston, adversely affecting the ability of other railroads to compete effectively on anything like equal terms with Southern Pacific at that important traffic center; and

8. The best use of transportation facilities would be provided by assigning the Kansas City-Houston line to Santa Fe.

Santa Fe contends that Southern Pacific will lose substantial traffic now moving over the Golden State route under the Union Pacific-Southern Pacific proposals and that this loss will be offset principally by diverting traffic from railroads operating in the North-South corridor between Kansas and the Gulf of Mexico. According to Santa Fe, the protestants to Southern Pacific's application estimate that approval of the application would result in a diversion of \$26 million in addition to the \$74 million they estimate will be diverted by Union Pacific. It asserts that the principal traffic effect of Southern Pacific's proposals would be to add new rail competition to a territory already overburdened with competition. This, according to Santa Fe, would be a giant step backward in the current process of rationalizing the nation's rail plant, and the health of railroads dependent upon traffic moving in the North-South corridor between Kansas and the Gulf of Mexico would certainly be jeopardized by granting Southern Pacific's application.

In Santa Fe's view, the effects of the transactions involved here on competition is the single most important issue in the case. It contends that there are two distinct market areas involved here where transportation conditions are comparable to those in recent consolidation cases in which the Commission has recognized the public benefits of coordinating duplicate facilities. These market areas are the Midwest and the North-South corridor between Kansas and the Gulf of Mexico.

According to Santa Fe, the Union Pacific-Southern Pacific proposals are clearly not responsive to the transportation conditions in these areas. Union Pacific, so Santa Fe asserts, offers to thwart the rationalization of the midwestern rail plant proposed by North Western and bring bankruptcy to that system. At the same time Union Pacific can do nothing to reduce the excess rail capacity in the Midwest since it has no lines east of the Missouri River. Southern Pacific is not only incapable of bringing about a desirable coordination of duplicate facilities in the North-South corridor but actually intends to increase rail competition in the corridor. According to

Santa Fe, its own application is the only one capable of achieving coordinations between Kansas City and the Gulf of Mexico and of better adapting the rail plant in the area to present and future demands for rail transportation.

Santa Fe asserts that each of the applicants here relies upon the production of economies in varying amounts. These economies, it contends, are directly related to the ability and incentive of the railroads to improve their service and physical plant.

Santa Fe contends that the claims of Union Pacific and Southern Pacific with regard to economies must be regarded with skepticism. It contends that Union Pacific's own evidence shows that it will lose net income from the transactions and that the rates of return of both Southern Pacific and Union Pacific would be reduced.

Santa Fe claims that neither Union Pacific nor Southern Pacific can improve transit time or schedules as a result of their proposals. While it, on the other hand, can achieve substantial improvements for transcontinental traffic moving via St. Louis and Memphis and to, from and within the Southwest. It also claims that its own proposals have much more to offer the public in shorter and more economical routes than can either of the other two applicants and provide more dependable service and a better car supply. It also contends that its proposals would have far less adverse effect on other railroads. It asserts that Union Pacific-Southern Pacific could divert traffic representing revenues of approximately \$100 million annually, while its own proposals would divert only \$10.7 million.

Santa Fe requests the following findings (excluding requested finding 2, which is denied consistent with the Examiner's recommended denial of North Western's application):

1. The applications of Union Pacific Railroad Company in Finance Dockets 23285-7 and of Southern Pacific Company in Finance Dockets 23595-6 have not been shown to be consistent with the public interest.

3. Subject to conditions for the maintenance of routes and channels of trade, and for the protection of affected employees, acquisition by The Atchison, Topeka and Santa Fe Railway Company of the southern lines and properties of Chicago, Rock Island and Pacific Railroad Company and of trackage rights

over Rock Island's line between St. Louis and Kansas City as set forth in Santa Fe's application in Finance Docket 23919, and acquisition of indirect control of those rights and properties by Santa Fe Industries, Inc., constitutes a transaction within the scope of Section 5(2) of the Interstate Commerce Act; the proposed terms and conditions are just and reasonable; and the transaction will be consistent with the public interest and will provide for the best use of Rock Island's lines and properties which are the subject of Santa Fe's applications.

4. Assumption of certain contingent obligations of Rock Island by Santa Fe as set forth in Santa Fe's application in Finance Docket 23920 will be for a lawful object within Santa Fe's corporate purposes, will be compatible with the public interest and will have no adverse effect on Santa Fe's proper performance of service to the public as a common carrier.

5. Affected railroads will be adequately protected by the conditions for maintenance of existing routes and channels of trade set forth in Detroit, T. & R. Control, 275 I.C.C. 455, 492-493 (1950).

6. The affirmative relief and special conditions sought with respect to Santa Fe's applications by Kansas City Southern, Katy, Texas & Pacific, Fort Worth & Denver and Rio Grande have not been shown to be necessary or to be consistent with the public interest.

7. The interests of affected employees will be fully protected by the provisions for the protection of affected employees set forth in Appendix A of Santa Fe's Brief.

8. Approval of Santa Fe's petition in Finance Docket 24154 for an order under Section 3(5) of the Interstate Commerce Act acquiring joint use of certain terminal facilities of St. Louis-San Francisco Railway Company will be consistent with the public interest, will be practicable and will not impair Frisco's use.

9. Acquisition by The Santa Fe Trail Transportation Company of certain rights and properties of Rock Island Motor Transit Company as set forth in Santa Fe Trail's application in MC-F-9668 will be consistent with the public interest.

10. The fixed charges of Rock Island will be reduced through retirement of its bonded indebtedness, and any increase in Santa Fe's fixed charges that may result from the final method used by Santa Fe to finance the transaction would not be

contrary to the public interest or have any adverse effect on Santa Fe's ability to continue to perform its common carrier service to the public.

11. It would not be necessary or desirable to consider Santa Fe Industries, Inc., as a carrier under Section 5(3) of the Interstate Commerce Act except to the extent of subjecting Santa Fe Industries, Inc., to the reporting requirements of Sections 20(1) and 20(2) of the Act.

(6) North Western

North Western's present operations and financial and competitive health have been fully discussed in Volume I, Parts B and G. In general, the preliminary findings made in such parts, and without regard to the results likely to flow from consummation of the considered applications, pointed out a number of specific disabilities which North Western is unable to overcome. Such factors have caused North Western's marginal status and, as a presently constituted rail system, it will remain a marginal operation at best. It is in the context of the foregoing that North Western argues against the Union Pacific and Southern Pacific proposals, claiming in short, that North Western is in no position to withstand the losses it estimates will be suffered as a result of the transaction.

North Western labels the Union Pacific-Southern Pacific proposal as the "most aggressive and destructive merger proposal to be born of the present merger movement". North Western states that diversion estimates of the Western District carriers total almost \$100 million yearly. Such a loss, argues North Western, would be highly injurious to carriers which cannot afford it and a wholly unjustified annual gain to railroads which do not need it.

According to North Western, the \$100 million diversion to be suffered by the Western District carriers is only the first stage of diversion. North Western asserts that the magnitude of traffic loss will be increased substantially as the effect of the initial losses is felt by the carriers and the shipping public dependent on them. North Western feels that there will be a gradual deterioration in service, which will inevitably lead to more lost revenues. As revenues continue to decrease, the amounts available for capital improvements will also diminish, thus depriving the shipping public of these beneficial improvements. In addition, the amounts available to meet fixed expenses will also decrease, which can be extremely detrimental to the well-being of a railroad. Finally, as the affected railroads decline in their financial health, their ability to borrow

to meet these fixed costs and improvement expenditures also will be affected. Thus, the diversion from the Western District carriers caused by the Union Pacific-Southern Pacific proposals will have a far-reaching effect on those carriers over and above a mere initial dollar loss. The examiner notes North Western's rather extensive discussions of other intervening carrier claims of losses and other adverse impacts as a result of the proposed merger. However, each carrier's evidence has been separately set forth. Of course, the cumulative effects is a matter to be considered, but it serves no purpose to repeat through North Western the evidence of another carrier.

Union Pacific claims that it operates under a competitive handicap, but North Western argues that this is not true and that even if it were, this would not justify Union Pacific's substantial enrichment at the expense of connecting carriers. Union Pacific's claimed handicap is that it does not get to Chicago or St. Louis, as do its "major" competitors - Santa Fe, Southern Pacific, Great Northern, Northern Pacific and Milwaukee; however, North Western points out that this situation has existed for years, but it has not prevented Union Pacific's earnings from rail operations from being greater than any other Western District carrier.

North Western contends that Union Pacific and Southern Pacific dominate the Western District in terms of revenues and earnings. Further, it says that Union Pacific has shown a steady profit for the past 70 years and has not missed a dividend since 1900. In 1966, Union Pacific ranked second only to Norfolk & Western with respect to its net railway operating income before taxes. Thus, North Western argues, that comparatively speaking Union Pacific is not disadvantaged against any carrier in the country.

North Western asserts that while Union Pacific's evidence seems to indicate a problem combating intermodal competition, acquisition of Rock Island will not help in this area of competition. On the other hand, North Western believes that acquisition of Rock Island would benefit Union Pacific in the transportation of transcontinental traffic, but such traffic is relatively immune from intermodal competition.

North Western argues that the massive traffic diversion would follow from Union Pacific's proposals as a matter of practical business economics due to Union Pacific's ability to use specialized equipment and the sales advantages its single-line services would afford. It alleges that if the Union Pacific proposal is approved, North Western will be destroyed and the hope of creating a strong and efficient railroad in the Middle West would be ended once and for all.

As only a secondary basis in support of the proposed merger, Union Pacific is of the view that the results of three proceedings; i.e.: the Transcontinental Divisions case, the Per Diem case, and the Central Pacific case, will have an adverse impact on its revenues and ability to continue successful operations. The foregoing was detailed in Part I of Volume I. In its brief, North Western principally contends that Union Pacific is thoroughly entrenched in the flow of traffic through the central corridor and, accordingly, will not feel any great effects from the decision in the Central Pacific case; that Union Pacific's earnings record for 1966 which reflects operations following the Transcontinental Divisions case does not disclose a deleterious impact on Union Pacific as a result of such decision; and that with respect to the results of the decision in the Per Diem case, the Union Pacific seeks an opportunity through the proposed merger to siphon traffic and revenues from other carriers to compensate for a possible reduction in its earnings.

Union Pacific states that it fears the effects of several mergers or proposed mergers; and North Western points out that several of these proposals never reached fruition, and several others, it argues, will have little or no effect on Union Pacific. Mainly North Western contends that the failure of Union Pacific to appear at merger proceedings in the East and South disputes the carrier's claim of concern. Apparently, argues North Western, Union Pacific is worried about the larger eastern systems seeking to exchange large blocks of traffic at the Mississippi River whereas Union Pacific's traffic is diffused between several Missouri River carriers. North Western asserts that Union Pacific overlooks its present large-block exchange with Norfolk & Western at Kansas City, and which, in North Western's view, would undoubtedly be jeopardized if Union Pacific extends its lines to Chicago and St. Louis.

North Western opposes the Southern Pacific purchase application but there is no argument by North Western that it would suffer any adverse impact as a result of consummation of such transaction. In any event, North Western contends that Southern Pacific's application would (1) increase the total damage of the carriers which would lose traffic to Union Pacific; (2) harm Texas & Pacific and FW&D; (3) destroy the independence of the Golden State route; and (4) eliminate important single-line service presently provided by Rock Island. North Western feels that the application has no substantial merit, but is only designed to protect Southern Pacific against invasion of its territory by Union Pacific. This, North Western says, was generally acknowledged by Southern Pacific witnesses. Southern Pacific is not concerned with its Tucumcari interchange with Rock Island, having described it as "an excellent operation". Its concern is with future operations over that route, particularly if Union Pacific should gain control of it.

North Western asserts that, if the Southern Pacific application is analyzed independently of the damage to Southern Pacific from the Union Pacific proposal, there are no significant public benefits to be derived. North Western contends that there will be no benefit to the public from moving Southern Pacific's Tucumcari interchange to the already-congested Kansas City area, especially in view of the expeditious run-through arrangement Southern Pacific and Rock Island have at Tucumcari.

Although Southern Pacific contends that it could achieve improvements and economies from combining its operations with Rock Island in Texas, Arkansas and Louisiana, North Western argues that these benefits are not of major significance. There will be, North Western says, an improvement between certain Louisiana points and Memphis or St. Louis; however, this would be a savings of one day in the schedules in each direction, and Illinois Central already publishes a superior schedule to Memphis. These coordinations will also result in economies, as estimated by Southern Pacific, of \$5.4 million, which, argues North Western, would be very insignificant to a wealthy carrier like Southern Pacific, with 1966 net earnings of \$102 million, and does not justify Southern Pacific's acquisition of the southern lines of Rock Island at the huge expense to other carriers in terms of lost traffic and revenues.

North Western also points out that if Southern Pacific acquires the southern lines of Rock Island, then the applicant would control the Golden State route as well as the Southern Pacific-Cotton Belt route. Currently, a preferential solicitation agreement between Rock Island and Southern Pacific over the Golden State route keeps these two routes competitive. However, control of both by Southern Pacific would diminish that competitiveness or cause it to cease. Further, North Western notes that Southern Pacific's proposal would terminate the present Rock Island north-south single-line service enjoyed by shippers, and the evidence of the Texas ports indicates that they especially would be hurt.

North Western claims that the Union Pacific and Southern Pacific proposals offer no substantial service improvements to the public beyond those which are already being implemented in joint-line service, particularly the institution of preblocked or run-through train operations as discussed earlier in this report. Such improvements, in North Western's view, obviate the need for extension of Union Pacific and Southern Pacific routes. If the transactions are granted, these service improvements which have been instituted by applicants and their connections would be cancelled because of the traffic diversion from the connections. What few benefits that may result from the

transactions, says North Western, would be overwhelmingly outweighed by the adverse effects to other carriers and the shipping public.

Certain of North Western's requested findings, Nos. 7, 14, 16, 17, 23 and 27, were previously specifically rejected for the reasons set forth in Part H of Volume I. A number of others are reflected in the denial of the North Western applications, i.e.: 1, 2, 6; 8 through 13 inclusive; 15; and 18 through 21 inclusive. Requested findings Nos. 3, 4 and 5 are reflected in Parts B and G. Its remaining requested findings are:

22. The Union Pacific and Southern Pacific are prosperous rail carriers. No convincing evidence has been adduced that the acquisition by the Union Pacific of all or part of the Rock Island properties, or that the acquisition by the Southern Pacific of part of such properties, is important to the continued economic health of either or both of these carriers.

24. The extension of the Union Pacific's lines from the Missouri River to Chicago, St. Louis, the Twin Cities and other centers in the Middle West would not in itself give rise to significant improvements in the service already available to the shipping public. Similarly, the Southern Pacific's extension of its lines beyond Santa Rosa (Tucumcari) would not give rise to any significant service improvements to the shipping public.

25. The Union Pacific proposal, or the Union Pacific-Southern Pacific proposal, if consummated, would deprive the public of the benefits incident to the creation of a strong and effective Middle Western rail carrier:

- (i) It would deprive a regional carrier of lines which are essential to obtaining the most efficient use of the rail plant in the Middle West and the most effective pattern of operations in that area;
- (ii) It would deprive a regional carrier of lines to the West, Southwest and South which are vital to the regional carrier for the future development of long-haul traffic and revenues and essential to assure its economic health;
- (iii) It would deprive the North Western and Milwaukee of a significant part of the high-density, relatively long-haul traffic which they now handle and thus inflict upon them substantial immediate losses.

In addition, it would restrict their participation in the future growth in this important high-density, relatively long-haul traffic. The immediate traffic losses to these carriers would actually offset much of the benefits to be gained from a North Western-Milwaukee merger and would place the CM&NW in a submarginal category;

- (iv) As a result of all of these factors, the Union Pacific proposal, or the Union Pacific-Southern Pacific proposal, if consummated, would make impossible the formation of a strong, Midwestern regional carrier.

26. The Union Pacific proposal, or the Union Pacific-Southern Pacific proposal, if consummated, would inflict serious financial injury on other important segments of the railroad industry.

- 27c. It would be prejudicial to the public interest to grant the proposal of either the Union Pacific or the Union Pacific-Southern Pacific.

(7) Rio Grande

In Volume I, Parts B and G, it was found that Rio Grande, having evolved from a local carrier into an active participant in interline traffic, has become highly dependent on connecting carriers which extend far beyond Rio Grande's service territory (much of which is served exclusively by Rio Grande). It was also found that Rio Grande, although financially healthy and a carrier of substantial volumes of local and interline originated traffic, much of it products of mines, has managed to participate to only a small degree in the movement of transcontinental traffic and then only as a bridge carrier for a relatively short segment of the central corridor route. Further, it was found that in spite of the modification of Condition 'e', Union Pacific and Southern Pacific will continue in their own interests to work together and which cooperation could well be contrary to the interests of the Rio Grande.

Rio Grande's arguments generally are predicated on the above factual matters. In essence, Rio Grande argues that the development and improvement it has achieved since World War II will be nullified through approval of the Union Pacific transaction unless Rio Grande's proposed conditions are imposed. Rio Grande's opposition to the UP-RI merger would not be reduced by virtue of the sale of southern Rock Island lines to either Southern Pacific or Santa Fe.

Rio Grande contends that Union Pacific has failed to meet the burden of showing that its application is consistent with the public interest. According to Rio Grande, the competing applications of Union Pacific and North Western for acquisition of Rock Island were the result of a power struggle between the two carriers, brought about by their desire to protect themselves from the adverse affects of the progressive pattern of railroad mergers. Rio Grande argues that the policy was one of an aggressive rather than a defensive nature, with each carrier seeking to improve its ability to compete with other modes of transportation and to increase their length of haul and ability to provide single-line service to shippers, while denying these same benefits to other carriers. Rio Grande refers to a 1962 report to Union Pacific from its traffic consultant, William Wyer, of which a pertinent portion is as follows:

"The best strategy to protect Union Pacific against this potential loss would appear to be to extend its lines to Chicago and St. Louis through merger with the line or lines which would appear to offer the greatest opportunity of influencing business away from existing routes to the Union Pacific."

* * * * *

Rio Grande points out that its Denver route with Rock Island is one of the existing routes to be affected. The report went on to say that Rock Island "offers by far the largest potential gain in Mountain Pacific traffic". Rock Island was favored over Missouri Pacific, which was "barred by its large debt", and North Western, which offered no entry into St. Louis and whose acquisition would "represent a defensive rather than an aggressive policy".

While seeking to insure to themselves certain benefits from consolidation, Rio Grande says the applicants would attempt to force other carriers, such as Rio Grande, to maintain the status quo, which is tantamount to condemnation to serious decline and deterioration in these times of large consolidations. Even the sale of the southern portion of Rock Island to Southern Pacific or Santa Fe, states Rio Grande, would benefit only these purchasers.

Rio Grande claims the rerouting of traffic which will accompany the disruptions in traffic patterns will cause a significant loss of revenues to it, while providing a financial gain to the larger carriers. The revenue and traffic losses would be "progressive and cumulative", which, in addition to causing financial damage to Rio Grande and its numerous stockholders, would have a stifling effect on its ability to provide

high quality, competitive service as an alternative transcontinental railroad in the central corridor. In effect, Rio Grande fears it will be reduced to the status of a secondary carrier, while Union Pacific's dominance of the central corridor grows to monopolistic proportions. Rio Grande contends that such a situation would be contrary to the public interest. It cites Control of Central Pacific By Southern Pacific, 328 I.C.C. 345, 356 (1968); aff'd in Southern Pacific Co. v. United States, 390 U.S. 744 (1968), in which this Commission found that the intent of Congress, reflected in the Pacific Railroad acts, has been fulfilled by the existence of several central transcontinental routes and that Rio Grande is an important segment of one such route. The Commission went on to say, "The national defense and the public welfare of the country will not now be served by favoring one of these central transcontinental routes at the expense of another under present-day circumstance". According to Rio Grande, this language constitutes a requirement that Rio Grande be maintained as a viable transcontinental railroad in the central corridor.

Rio Grande asserts that Union Pacific bears the burden of proving by convincing evidence that its merger would be in accord with the public interest, citing Penn-Central Merger and N. & W. Inclusion Cases, 389 U.S. 486 (1968), and that Union Pacific, in failing to produce such convincing evidence, has failed the statutory tests.

A basic contention of the Rio Grande is that Union Pacific does not suffer from a competitive disability relative to such railroads as Southern Pacific, Santa Fe and the Northern Lines combination, because in 1966 Union Pacific had the highest gross revenue and net income in its history and was the most profitable railroad in the country, grossing over \$642 million with a net income of almost \$115.5 million. Rio Grande further argues that Union Pacific recognized that a showing to the Commission of the benefits it would receive from traffic diversion to it by its acquisition of Rock Island might be detrimental to the approval of its application; therefore, Union Pacific directed its argument to the savings resulting from such a merger and to the benefits to the public resulting from better service, faster schedules, and the financial ability to rehabilitate Rock Island's physical plant. Rio Grande questions Union Pacific's arguments that single-line service would be quicker and more efficient and cites Union Pacific's present record for late arrivals as disputing the claim of

faster service. Further, Rio Grande claims that only ten minutes to a half hour could be saved over the present time of Union Pacific and its interchange connections. Although Union Pacific claims the merger with Rock Island will result in benefits to the public in savings resulting from the consolidation of repair facilities, reductions in employment levels and a greatly improved competitive position for Union Pacific, Rio Grande argues that the benefits enumerated will accrue, not to the public, but to Union Pacific, and that the improved competitive position for UP will result from the removal of the Rock Island as a competitor.

Rio Grande alleges that it is ready, financially and otherwise, to acquire the western lines of Rock Island and to provide service thereon as it presently provides over its own lines. Rio Grande states that, of the five applicants, only North Western offered any substantive objection to the Rio Grande condition. Rock Island's objection will exist only as long as it remains a separate, although controlled, entity and Union Pacific has expressed a willingness to sell the line to Rio Grande.

With respect to the joint ownership of Union Pacific and Southern Pacific of Pacific Fruit Express, Rio Grande contends that the arrangement is a combination, not approved by this Commission, restraining trade in interstate commerce among competing carriers; that the substantial investment both carriers have in PFE does not warrant the continued joint ownership, and is no excuse for the anti-competitive use Union Pacific makes of PFE; and that the existence of financial power sufficient to build a combination restraining trade should constitute evidence supporting an indictment against such power, not evidence of its justification.

As discussed in Part L, Burlington and Missouri Pacific also object to the Rio Grande acquisition of the western Rock Island line. Burlington and MoPac contend that the desirability of the purchase should be evaluated on the basis of the impact it would have on each of their incomes. Rio Grande counters this argument by stating that its position is defensive rather than aggressive in nature. Rio Grande urges that it is not responsible for the applications being considered in these proceedings, nor for the adverse affects that may be caused to other carriers as a result of approval of them. Rio Grande has requested conditions in its own self-defense; in order to provide effective rail competition in the central corridor; to protect its continued financial vitality and ability to serve the public in its own territory; and to provide an opportunity for it to participate constructively in the proposed realignment of western railroads. Further, Rio Grande contends that, if Burlington and MoPac experience revenue

losses from the Union Pacific-Rock Island merger, their appeals for redress should be directed to the successful applicants rather than to Rio Grande's attempt to protect itself.

Rio Grande also requests that the Commission retain jurisdiction over the transaction.

Rio Grande requests the following findings be made:

1. The applicants and each of them have failed to meet the burden of showing that the rail consolidations they propose are consistent with the public interest.

3. Approval of the competing applications, requires granting of the conditions precedent requested by Rio Grande, in order to protect it, in part, from such severe traffic losses. Such conditions will assist in preserving the Rio Grande as a viable transcontinental railroad and, hence, are in the public interest and in accordance with the National Transportation policy.

5. Acquisition of Rock Island Western by Rio Grande will permit Rio Grande to maintain adequate rail service in the area it presently serves, as well as in the area served by Rock Island Western; will protect Rio Grande from major financial losses, and will allow Rio Grande to provide strong intramodal competition in the central corridor - all in the public interest.

6. Rio Grande's requested conditions are just and reasonable, and will promote the free flow of rail traffic in interstate commerce, in the public interest and in furtherance of the National Transportation Policy.

(8) Western Pacific

Western Pacific opposes the granting of any of the applications without imposition of its proposed conditions. Western Pacific argues that these conditions are necessary because of its existing competitive handicaps in relation to Southern Pacific and Santa Fe, and by virtue of the changes in competitive relationships which would result from approval of the applications.⁸⁷ Western Pacific states that approval of the applications would give WP's principal competitors an additional opportunity to

⁸⁷ Findings bearing upon Western Pacific's intramodal competitive position were made in Volume I, Part G, findings 1, 5, 6, 7, 9, 10, 11, 12, and 14.

improve their competitive positions. Because of this, Western Pacific urges that,

" . . . these proceedings also should be used as the vehicle for assuring to the public the opportunity of choice between at least two truly competitive rail services in and through the areas involved in or affected by the unification. In other words, as the price of approval of the applicants' proposals to improve their own competitive positions, both intermodally and intramodally, they should be required to eliminate some of the many restraints which deprive the shipping and receiving public of a free choice between two or more competing routes and services."

At the outset, Western Pacific states that it will not press its original first condition (Volume I, Part C, item 11 (A)(1)), since it has been mooted by the cancellation of the so-called "Central Pacific Agreement." See Southern Pacific Co. v. United States, 390 U.S. 744.

Although the applicants herein are larger than Western Pacific, Western Pacific says that it is not seeking to prevent their further growth, but only to protect its own interests through conditions; and that it is not seeking an assured volume of traffic, but is seeking only a fair and equal opportunity to compete without artificial restraints. Western Pacific believes its goals can be accomplished only if the Commission conditions the approval of the Union Pacific and Southern Pacific applications in the affirmative language sought.

Western Pacific points out that Union Pacific considers, in general, that a loss of \$4.0 million would be a serious threat, even though representing less than one percent of UP operating revenues.⁸⁸ Santa Fe states that its estimated loss to UP-SP of \$9.5 million would be a "serious blow" to that carrier. Western Pacific argues that the impact of losses such as these does not approach that faced by Western Pacific. A decrease in WP revenues of approximately \$5.0 million would represent a loss of almost 10 percent of Western Pacific's 1967 freight revenues, and a reduction in net railway operating income of \$3.0 million would be a loss of almost half of Western Pacific's entire 1967 net railway operating income.

⁸⁸ The Examiner notes that the Union Pacific statement to which WP refers actually was stated in weaker language: "Well, it would at least be a concern", - Transcript 1073, line 6.

Western Pacific alleged inconsistencies in Southern Pacific's testimony. Western Pacific's summary of a rather lengthy discussion is that Southern Pacific cannot claim, on the one hand, that the improvements it will bring to the Rock Island southern lines are so great as to warrant Southern Pacific's acquisition of same, and yet claim, on the other hand, that no traffic will follow those improvements, referring in the latter instance to the statement of Southern Pacific that it must still solicit via the central route (under the condition 'e' in the Central Pacific case), so that no traffic will be diverted to the improved southern lines.

Western Pacific's position on brief is the same as set forth in Part C, item 11, of Volume I, i.e.: Western Pacific opposes the Union Pacific merger, the Southern Pacific purchase, and the acquisition by the Santa Fe of any portion of the Rock Island unless the Western Pacific's requested conditions are granted, in which event it either supports the proposals or withdraws its opposition. It is here noted, that one of such conditions makes provision for inclusion of the Western Pacific into either Union Pacific or Santa Fe.

(9) Burlington Northern-C&S-FW&D

As mentioned previously, each of the several Northern Lines carriers separately presented its evidence and position and each filed separate briefs, with the exception of SP&S joining with Great Northern on brief and FW&D and Colorado & Southern joining together on brief. Great Northern-SP&S and Northern Pacific state in their briefs that consummation of the Northern Lines transaction would necessitate a substantial, if not entire modification of their position in these proceedings, and that such new position will be made clear under a separate filing upon consummation. The transaction was consummated March 2, 1970; however, the Northern Lines carriers to date have not submitted any new position with respect to the applications herein. Accordingly and notwithstanding the many obvious changed circumstances resulting from the unification of the Northern Lines carriers, all that the Commission has before it for consideration are the arguments and contentions of the Northern Lines carriers made on an individual entity basis.

Great Northern (including SP&S in this discussion) and Northern Pacific argue that the UP-RI merger would provide single-line service between Chicago and the Pacific Northwest, thus offering formidable new competition to the GN and NP, which must rely on connections at the Twin Cities for Chicago traffic. Great Northern and Northern Pacific assert that the new Union Pacific service would result in substantial losses for the two Northern Lines, and which losses would accelerate a trend of declining net income and inadequate rates of return.

Both Great Northern and Northern Pacific complain of various operating and competitive problems. These factors have been discussed and findings made on the supporting evidence in Parts B and G. The two carriers argue that their proposed conditions are modest in scope and that their anticipated losses exceed the revenue value of the conditions. Great Northern and Northern Pacific assert that their proposed conditions are designed to prevent undue erosion of their competitive strength and to assure that areas and industries which would otherwise become dependent on a single carrier (Union Pacific) will be afforded the benefits of rail competition.

Northern Pacific urges that its conditions will not prevent Union Pacific from realizing the full benefits of merger with Rock Island. Great Northern asserts that it is unnecessary for the Commission to make precise findings on traffic or revenue losses in excess of those which would be met by the conditions imposed at Great Northern's request.

As has been shown in Part B of this report, a large portion of Burlington's traffic is interlined. Burlington asserts that, not only has it become increasingly dependent over the years upon revenue from interchange traffic, but it has also suffered an overall decline in its share of total rail traffic handled - from 8 percent to 5.9 percent of the total revenue ton-miles in the Western District. Further, it says, this has all taken place without the consummation of any major consolidations among the western carriers, and, it contends that granting the proposals for acquisition of Rock Island will result in a further decline in its competitive position.

Burlington indicates that in recent years it has participated in handling a substantial amount of forwarder traffic between the West Coast and Chicago, much of which moves via the Grand Island interchange with Union Pacific. This type of traffic requires a great deal of specialized equipment, which Burlington has sought to provide. Burlington anticipates a loss of a substantial portion of that traffic if Union Pacific extends its line to Chicago. If Burlington suffers losses to the extent expected, it contends that it will have to reduce the service on that route, thus forcing some of its customers to consider the availability and use of competing service, thereby resulting in a further loss of remaining traffic. Burlington's competitive, financial and operational problems have been discussed in Parts B and G.

Burlington contends that Union Pacific's proposed single-line service will not produce controlling benefits to the public. With respect to the contention that one of the benefits of

single-line service would be the improvement of the car tracing service, Burlington points out that the increased use of computerization will more than satisfy the requirements in this area for single or joint-line routes. Burlington indicates that Union Pacific represents that it could add to or build up the Rock Island car supply. Burlington recognizes that the results of the merger will benefit the present Rock Island shippers, but argues that the diversion losses to other carriers will reduce their earnings, thus affecting the ability of those carriers, such as Burlington, to continue to provide the improvements necessary to serve their shippers. Finally, Burlington points out that Union Pacific has indicated that it does not even intend to make a change in the existing trans-continental schedule.

Burlington states that it does not wish to see Rock Island go into bankruptcy but argues that the proposals before the Commission are not in the public interest, because of the serious impact on other midwestern carriers, and that, based on the Commission's tests in prior cases, the applications should be denied, citing Missouri Pac. R. Co.--Control--Chicago & E. I. R. Co., 327 I.C.C. 279 at 294:

"If Missouri Pacific's proposed operation would substantially endanger or impair others in the performance of their common carrier functions, approval would probably not be warranted. See Chicago B. & Q. R. Co.--Control, 271 I.C.C. 63, 157 and Minneapolis, St. P. & S. S. M. R. Co., Acquisition, 295 I.C.C. 787, 802."

Burlington contends that the present applications -- to a greater extent than any prior merger proposals before the Commission -- would endanger or impair the common carrier functions of other railroads.

In opposing Rio Grande's proposed purchase of Rock Island's western lines, Burlington points out that Rio Grande concedes that its acquisition of those lines will not result in any particular service improvements of benefit to the public. Burlington argues that the purchase would compensate Rio Grande at the expense of other already-injured midwestern carriers. Further, Burlington contends that Rio Grande did not submit information as to what benefit it would receive if the Union Pacific advantages from the Ogden gateway arrangements, restrictive routings, and preferential handling of equipment and services, or any of them, could be eliminated. Thus, Burlington concludes, it is possible that Rio Grande would be

substantially made whole on any losses from the Union Pacific-Rock Island merger through the granting of its gateway conditions and the removal of routing restrictions. In that case, benefits to Rio Grande from acquisition of the western Rock Island lines could result in an over-compensation for Rio Grande.

The Burlington urges that in the event the Commission is not satisfied that the Rio Grande's requested condition for extension of its lines is unnecessary and inequitable, a determination of the issues raised by the Rio Grande condition should be made in a separate proceeding, and which would be held not earlier than 3 years nor later than 5 years from the effective date of a Union Pacific-Rock Island merger. Of course, the merger approval would be appropriately conditioned.

Burlington argues that such a condition would make possible a much more realistic evaluation of the traffic effects of the UP-RI merger on Rio Grande and roads such as Burlington, and the extent to which the competitive route via Rio Grande actually would be affected after such a merger. Burlington believes there are factors present which may tend to build up the competitive central route via Rio Grande more than Rio Grande now projects. After such a three year period of operation, Burlington contends, the need for providing indemnity or additional revenues to Rio Grande at the expense of Burlington, Colorado & Southern, FW&D and others could be given a much more realistic and valid consideration. Thus, Burlington says, the Commission could avoid what is now a real possibility of placing a new intolerable burden on certain important railroads for the benefit of Rio Grande, when, in fact, the need to rescue or provide such additional revenues to Rio Grande might well be shown by experience not to exist, or be relatively far less than the needs of Burlington and others. Burlington says that during this time also, the effects of the Northern Lines merger on Rio Grande could be ascertained. Burlington asserts that there is precedent for such a requested action and cites Condition 33 in the Northern Lines case, 331 I.C.C. 228, 359.

Burlington takes the position that the proposal by Kansas City Southern to acquire trackage rights from Kansas City to Chicago adopts an inequitable approach, contrary to the public interest, that losses from the Union Pacific proposal may be recouped from other railroads, already seriously hurt by that principal proposal.

In short, Burlington requests that the Commission find that the merger of Rock Island as proposed in these proceedings would not be consistent with the public interest and that the extension of the lines of Rio Grande and KCS would compound the damage to Burlington and likewise not be in the public interest.

The Southern Pacific proposal to acquire the southern portion of Rock Island will include the Rock Island interest in the Joint Texas Division, and Ft. Worth & Denver contends that such a situation will seriously threaten, if not totally destroy, the concept of its operations between Ft. Worth and Houston. Instead of the present two small roads in Texas, combining to provide reasonable service to the public, FW&D says there will be one small road, itself, and one very large road, Southern Pacific. FW&D states that it will be totally dependent on the present Joint Texas Division route for its very existence, while Southern Pacific will have its own separate and parallel line, actually competing with the joint line between Ft. Worth and Houston, with the option to add or remove large quantities of traffic. FW&D says this will completely undermine the stability and operations of the present joint line, with tragic consequences to FW&D.

Ft. Worth & Denver contends that these consequences would arise because Southern Pacific will cease to be a friendly connection of FW&D. FW&D argues that, instead of providing substantial interchange for movement to and from Colorado points, Southern Pacific will have its own direct route to the north and, via the Kansas City gateway, will be in a position to divert large amounts of traffic presently operating over FW&D to the north. Such a reduction, FW&D states, will be a serious blow to it.

Ft. Worth & Denver says that its ability to provide service and compete for traffic depends on the continued reasonable use of Rock Island tracks and facilities between Ft. Worth and Dallas. At present, because Rock Island is a partner of FW&D in Texas, FW&D asserts that the necessary common and mutual interests in their joint operations to the Gulf Coast has made it possible for the existing arrangement in the Ft. Worth-Dallas area to work satisfactorily. The acquisition of those lines by a new large carrier with parallel and competing facilities and interests quite different from those of FW&D, however, would present a different situation, and FW&D therefore requests that the Commission, in the public interest, should make reasonable minimum requirements to assure that FW&D will be able to continue operations on its through route between northwest Texas and the Gulf.

Although Southern Pacific feels that a reasonable solution for the FW&D problems could be achieved through negotiation, FW&D argues that it can be protected only by action of the Commission in requiring the proposed conditions. As noted earlier, Colorado & Southern, sole owner of FW&D's stock, joins FW&D in its position.

Ft. Worth & Denver points out the Commission's responsibility to consider the competitive consequences of section 5 proposals, arguing that it is one of the important factors to be weighed in considering the public interest. FW&D contends that its relatively small size will not allow it to absorb the anticipated heavy traffic losses and increased operating costs and that it should be granted the protective conditions it seeks, thereby enabling it to survive.

Ft. Worth & Denver argues that even if the Santa Fe proposal is granted and conditioned as requested by FW&D, such proposal is not in the public interest because of the "overall uncertainties for the future", and because the adverse effect on FW&D cannot be offset by the conditions requested. Such admission leaves one in a quandary as to just what the conditions requested by FW&D were intended to accomplish.

FW&D and C&S request that the "principal proposal to merge with the Rock Island" be denied, but that, in the event either SP or Santa Fe acquires the Rock Island properties in Texas, then the FW&D conditions should be imposed.

(10) Milwaukee

In Volume I, Parts B and G, there is detailed the Milwaukee's weaknesses as a bridge carrier in the Central States. Milwaukee's arguments against Union Pacific and Southern Pacific are premised on the evidence discussed in Parts B and G.

In general, Milwaukee contends that Union Pacific's primary motive in joining with Southern Pacific to acquire Rock Island was two-fold: First, Union Pacific sought to forestall the creation of a strong midwestern rail system made up of Milwaukee, North Western and Rock Island; second, Union Pacific sought to circumvent the Commission's decisions in the Transcontinental Divisions case and the modification of Condition 'e' in the Central Pacific case.

Milwaukee argues that Union Pacific proceeded with the merger proposal knowing that there would be little or no opportunity to reduce operating costs by combining the two systems and that it would have to spend \$250 million or more to bring Rock Island up to standard. Milwaukee believes that Union Pacific felt that it could gain enough traffic from other carriers to make up for Rock Island's deficiencies; however, Milwaukee is of the view that Union Pacific decided to minimize traffic diversions in presenting its case to the Commission. Thus, claims the Milwaukee, the case presented by Union Pacific is deficient, and shows that without massive traffic diversions from other carriers the proposal is an economic waste, and coupled with such diversions, the cost of excess capacity is intensified by forcing uneconomical and less efficient operations upon already under-utilized lines.

Further, Milwaukee contends that Union Pacific is engaging in pure speculation in the expectation that the increased revenues necessary to make its proposal workable will come from an increasing transportation market through increasing gross national product and from recapturing a larger share of traffic from other modes of transportation.

The Milwaukee agrees that the gross national product is continually expanding and is reflected in the total transportation of intercity traffic; however, its view is that while the volume of rail transportation has increased, the percentage of rail participation in total traffic has decreased. Milwaukee asserts further that the greatest beneficiaries of the absolute increase in rail traffic have been the western railroads with their longer hauls; whereas the shorter hauls of the midwestern carriers have been more vulnerable to competition from other transportation modes. Thus, says Milwaukee, the merger of Rock Island into Union Pacific will not add traffic to that system without taking it from other midwestern carriers. Further, Milwaukee says, intercity traffic will not be recaptured from other transportation modes by the merged Union Pacific-Rock Island system since there is nothing offered in the way of substantially improved schedules or service that would not otherwise take place.

Milwaukee argues that Union Pacific fails to justify its reaching the Chicago and St. Louis gateways and direct connection with carriers east of the Mississippi River. Instead of showing a competitive disadvantage by its dependence on unreliable service provided by the Midwestern railroads, Milwaukee says that the evidence shows that these bridge carriers provide excellent overall service in connection with Union Pacific and that the proposed single-line service would be no improvement over the present joint-line service. Milwaukee says that Union Pacific acknowledged that its proposed single-line service might not result in faster service and that any supposed benefits would be in the area of better car tracing, reconsignments in route, the handling of damage claims, and other minor matters. Milwaukee argues that these matters are not of significant importance to be grounds for a merger of this magnitude.

Milwaukee contends that one of the usual benefits of a rail merger is a reduction in the interchanges between the merged carriers as well as interchanges between those carriers and their mutual connecting carriers. This, of course, results in a cost savings to all concerned. That result, however, generally occurs in a merger of parallel carriers with duplicating lines, whereas the Union Pacific-Rock Island proposal involves an end-to-end merger. This merger, argues Milwaukee, will produce

such benefits to the merging carriers and their connecting carriers only at major gateways common to the merging carriers, such as Omaha-Council Bluffs, Kansas City and Denver. Extension of Union Pacific's line to Chicago, St. Louis and the Twin Cities is merely a substitution of Union Pacific for Rock Island and will not result in the savings from the reduction of interchanges.

Milwaukee contends that the proposed division of R. I. Transit by Southern Pacific's purchase of the southern portion indicates the lack of thought or concern for the public interest on the part of Union Pacific and Southern Pacific. Milwaukee says that there was presented no evidence as to the type and kind of shipments handled by R. I. Transit and the extent of the through movements between points north and south of Kansas City; no evidence as to the extent, if any, of the dormancy of any of the operating rights; and the extent of R. I. Transit's interline shipments with other common carriers. Finally, Milwaukee points out that there is no point of joinder of the operating rights of Southern Pacific Transport and those of R. I. Transit to be acquired by Southern Pacific Transport, that is, the purchased operations would have to stand alone as a separate and independent motor carrier operation, presently having a deficit operation. Milwaukee argues that, based upon the evidence presented, the Commission may not find the disposition of R. I. Transit's motor carrier rights consistent with the public interest.

While Milwaukee neither opposes nor supports Rio Grande's requested condition allowing it to reach the Missouri River, Milwaukee claims that such an action will not alleviate the burden Milwaukee faces from the Union Pacific proposal. Milwaukee asserts that Rio Grande, as a bridge carrier of transcontinental traffic, has the least influence on the routing of such traffic, and extension of Rio Grande's lines thus would have little, if any, benefit for Rio Grande's connections. In fact, Milwaukee argues, Southern Pacific will be Milwaukee's best connection at Kansas City for transcontinental traffic, and at Portland (by virtue of Milwaukee's Northern Lines conditions) for north-south traffic.

Milwaukee argues that Kansas City Southern did not introduce evidence that would justify its proposed trackage rights between Kansas City and Chicago. Milwaukee asserts that KCS is merely seeking liquidated damages far in excess of any real or imagined injury as a result of the various proposals at the expense of Milwaukee and others. That trackage rights condition, contends Milwaukee, is completely unrelated to any problems created by these proposals.

Milwaukee points out that between Airline Junction, Mo., the point of connection with KCS, north to Polo, Mo., the Rock Island line is jointly owned with Milwaukee. Thus, Milwaukee argues that its consent and that of Rock Island's successor would be necessary for the acquisition of these trackage rights, and this Commission.

Milwaukee contends that the proposed single-line service of KCS will not result in better service for the public. KCS' proposed schedule shows the train destined for Chicago would have to be pre-blocked in Shreveport, La. The northbound train is not presently pre-blocked at Shreveport and, Milwaukee says, arrives about 12 hours late on its schedule. Milwaukee argues that the proposed pre-blocking would add to the present delay. Finally, Milwaukee argues that KCS' train to Chicago has no planned objective such as connection with eastern carriers, and that, without a planned arrival time at Chicago, there would be a substantial delay in interchange service.

Milwaukee further contends that one train a day will not provide as good service on all traffic handled beyond a junction as the present service of existing interchange carriers at that junction. Kansas City Southern and Milwaukee operate out of the same yard under joint operations and interchange, thus avoiding the Kansas City Terminal. Milwaukee claims that the joint operation of these two carriers provides better all around service than would the service proposed by KCS.

Milwaukee also opposes the condition of the Northern Lines carriers for trackage rights and full joint access to the Tukwila and Kent Valley or, in the alternative, publication of a switching tariff to gain traffic from the merged Union Pacific-Rock Island system. This area, outside of Seattle, is jointly served by Milwaukee and Union Pacific, and Milwaukee argues that granting this request would benefit the Northern Lines carriers at the expense of Milwaukee rather than Union Pacific. The Northern Lines maintain an exclusive industrial area outside of Seattle which cannot be served by Milwaukee. If that area were made accessible to Milwaukee, it would be agreeable to the publication of switching changes for the benefit of those Northern Lines. Otherwise, granting their condition is, in Milwaukee's opinion, vastly unfair.

Milwaukee urges that the Commission find Union Pacific's proposed merger with Rock Island not to be consistent with the public interest.

(11) Soo Line

Although Soo Line takes no position with respect to the Union Pacific application, it does state in its brief that a Union Pacific-Rock Island merger, coupled with the restructuring of the western railroads in the manner sought by other carriers whose applications are presently pending before the Commission or the Courts, would be contrary to the public interest and would severely jeopardize Soo's ability to render competitive transportation services in the areas it serves, unless, as a part of said restructuring, all of the conditions sought by Soo in this proceeding and in the North Western-Milwaukee merger case are imposed on Soo's behalf. However, the Soo presented no evidence in support of its arguments.

The Soo submitted 33 requested findings. Its first three requested findings and Nos. 17 and 18 concern various economic factors already reflected in Part G of Volume I. Part B of Volume I already incorporates findings Nos. 5 and 6, except that the report updates to 1968 from the year of 1966 embraced in requested finding 6. Almost all of the remaining requested findings deal with the denied North Western control application. The few remaining either have no bearing upon the Union Pacific proposed merger with the northern Rock Island or in such respect are far afield to a determination of the moving issues. No further discussion of the Soo requested findings is required in the public interest.

(12) MN&S

As stated earlier in Volume I, the MN&S supports the UP-RI merger. In its brief, MN&S deals exclusively with the denied North Western transaction. Similarly with the handling of other parties requested findings which were reflected in the discussion denying the North Western applications, the requested findings of MN&S need not be detailed herein in the public interest.

(13) Kansas City Southern-L&A

Kansas City Southern contends that while Rock Island may need financial assistance to continue operations, the motives of Union Pacific and Southern Pacific are not so much for that purpose but are guided by their desire for increased profits and increased strategic competitive advantage over other railroads, and that the proposals will result in the creation of two huge corporate spheres of influence which will be immune to competitive challenge. KCS argues that Union Pacific's application represents an aggressive approach which provides it with the greatest opportunity for influencing business away from existing routes.

Kansas City Southern claims that Southern Pacific's transaction will make Southern Pacific a gigantic rail empire without effective competition in many of its service areas. KCS anticipates that Southern Pacific will become an increasingly friendly connection with carriers north and east of Kansas City, while, at the same time, these Kansas City carriers will become less cooperative with Southern Pacific competitors, such as KCS, reducing the amount of traffic handled by Kansas City Southern and the other carriers similarly affected. Another problem Kansas City Southern expects as a result of the Southern Pacific proposal is Southern Pacific's planned downgrading of four of the eight service routes between Houston and Kansas City, one of which is the SP-KCS route.

Kansas City Southern recognizes that Santa Fe's main interest in acquiring the southern portion of Rock Island is entry into St. Louis and Memphis to complement its present access to Chicago. KCS contends that Santa Fe's interest in acquiring the remaining southern lines of Rock Island is to prevent their falling under control of a competitor. KCS argues that Santa Fe has shown no cogent reason why its corporate interest or the public interests require that it should be allowed to add a new large southwestern rail complex to its present system.

Kansas City Southern alleges that in approving recent western rail consolidations, this Commission has imposed conditions designed to maximize the service and competitive potential of all railroads serving the region involved; to preserve the financial vitality of competing lines; and to prevent ownership of parallel, competing lines by a single system, when feasible. KCS contends that its requested conditions fit within these principles.

Kansas City Southern claims that acquisition of trackage rights between Kansas City and Chicago will improve its service to shippers and probably increase competition in the event of approval of the Union Pacific application. KCS also claims that the trackage rights will enable it to haul to Chicago many of the 47,000 cars it now interchanges with Chicago carriers at Kansas City and reduce the interchange congestion at Kansas City. The carrier argues that its utilization of this Rock Island line would serve to increase that line's profitability to Union Pacific through payments for the rights. KCS asserts that it will not compete with Union Pacific for traffic at intermediate points on the line but will use it only as part of its single-line service between Chicago and points it now serves in the south-central region.

Kansas City Southern argues that although Union Pacific attempts to minimize the effect of its merger on KCS, Union Pacific will certainly seek its own long-haul between Kansas City and St. Louis, not only by-passing the present UP-KCS interchange, but also creating new interchange arrangements with St. Louis carriers now competing with KCS-L&A. Principal among these is Illinois Central, in which Union Pacific has a substantial investment. KCS claims that since Union Pacific receives a substantial share of Illinois Central dividends, UP's own interest is served by favoring that carrier at St. Louis for New Orleans traffic.

Kansas City Southern, as noted in Part L, contends that the public interest would be better served if it were to acquire Southern Pacific's line between Shreveport, La., and Houston, Tex. Arguments in support of KCS' acquisition of this line were set forth in Part L, and it is sufficient here to note that Southern Pacific says it "needs" to retain that line. Kansas City Southern states, therefore, that it is willing to grant Southern Pacific trackage rights over the Houston-Shreveport line.

In the event either of the applications are approved, KCS argues that its acquisition of the Rock Island lines and facilities at and between Dallas and Ft. Worth would enhance the service and competitive potential of KCS-L&A, and if Santa Fe's application is approved, purchase of that carrier's line between Dallas and Paris, Tex., similarly would benefit KCS-L&A. KCS anticipates these conditions will offset serious revenue losses from its system as a result of the applicant's proposals.

With respect to Southern Pacific's opposition to the KCS' Ft. Worth-Dallas conditions (Part L, section 19), KCS says that Southern Pacific already has plans for a large investment with the enlargement of the Peach Street Yard and, thus, is already committed to a large expenditure. KCS feels that the public interest is best served by negotiations between it and Southern Pacific as to where this investment will occur, rather than by Southern Pacific's unilateral decision. Although Southern Pacific says that L&A does not have sufficient traffic to fully utilize these Rock Island trackage and facilities, KCS points out that, in addition to its own traffic, it will be handling Rock Island traffic presently moving over these lines.

Kansas City Southern makes similar arguments in connection with its acquisition of these properties from Santa Fe. Although Santa Fe claims this purchase by KCS will interfere with its own planned coordinations at Dallas and Ft. Worth (Part M, section 8), Kansas City Southern argues that Santa Fe has no such plans.

It says Santa Fe will continue the operation of its East Dallas Yard and the two small Rock Island yards at Dallas. KCS argues that granting this condition will allow it to remove its operations from the East Dallas Yard and allow Santa Fe to consolidate its operations with those of Rock Island in a reduced number of yards. At Ft. Worth, KCS asserts, purchase by L&A of Rock Island's Peach Street Yard would allow Santa Fe to combine all operations at its 17th Street Yard, rather than its planned transfer of principal operations from 17th Street to Peach Street.

If Santa Fe's application is approved, KCS claims that its service potential and competitive strength between Houston and Kansas City would be increased by purchase of Rock Island's interest in the so-called Burlington-Rock Island line between Houston and Dobbin, Tex., and of the Santa Fe lines between Dobbin and Oakdale, La., and between Longview and High Island, Tex. Kansas City Southern argues that these lines do not lead to major gateways, are seldom used by Santa Fe and are considered branch lines by Santa Fe. Further, the Burlington-Rock Island segment sought by KCS runs parallel to existing Santa Fe lines; "nevertheless", KCS is agreeable to retention of trackage rights over the line between Dobbin and Houston, if Santa Fe so desires.

Although Santa Fe claims that the KCS conditions would "nullify" many of the operational advantages Santa Fe would gain from acquisition of the southern portion of Rock Island, KCS argues that Santa Fe never specified which "operational advantages" would be so affected. The Santa Fe did specify such factors, as set forth in Part M, section 8. Further, asserts KCS, the Santa Fe lines east of Dobbin, Tex., do not connect with Rock Island nor do they include the duplicate facilities proposed to be consolidated by Santa Fe.

Kansas City Southern notes that the proposed Kansas City-Chicago trackage rights would require its use of the joint Milwaukee-Rock Island line between Kansas City and Polo, Mo.; and that purchase of Rock Island's interest in the Burlington-Rock Island line between Dobbin and Houston and Rock Island's interest in Houston Belt & Terminal, Great Southwest Railroad and the Dallas Union Terminal would all require permission for KCS to use these facilities jointly with other carriers. In this connection, KCS contends that this Commission, and Section 3(5) of the Act, may require such usage, City of Milwaukee v. Chicago & N.W. Ry. Co., 283 I.C.C. 311, 314 (1951). Further, KCS argues that "terminal facilities" include main line track outside the terminal, since the use to be made of the track governs the situation, Florida E. C. Ry. Co. v. United States, 256 F. Supp. 986, 989 (M.D. Fla. 1966) aff'd 386 U.S. 8 (1966).

Kansas City Southern dismisses the objections to its conditions by FW&D, T&P, Burlington and Frisco, stating that these carriers offered no evidence as to what injury or hardship will be suffered. With respect to MoPac, KCS says that the injury claimed by MoPac is inconsequential to a carrier of that size, and also MoPac's acquisition of control over Chicago & Eastern Illinois will add more revenues to that system.

As herein pertinent, the Kansas City Southern-L&A requested findings are:

1. The applicants and each of them have failed to meet the burden of showing that the rail consolidations they propose are consistent with the public interest.

3. In order to protect the Kansas City Southern Lines against serious revenue losses and to assist it in achieving its full service and competitive potential in the public interest, the conditions requested by Kansas City Southern Lines are required.

4. The conditions requested by Kansas City Southern Lines will allow it substantially to improve its service to the public; will eliminate and avoid wasteful transport; will not materially neutralize the benefits that applicants otherwise will receive from the consolidation approved, and will not have any significant adverse effect on any other railroad.

5. Consideration of the various rail consolidations proposed in this proceeding, indicates that the public interest will be served best by allowing the Kansas City Southern Lines to participate in the consequent restructured rail system, through imposition of its requested conditions.

6. Kansas City Southern Lines' requested conditions are just and reasonable, will promote the free flow of rail traffic in interstate commerce, and are in the public interest and in furtherance of the National Transportation Policy.

(14) Katy

Katy argues that its financial weakness, its susceptibility to losses of traffic to the carriers acquiring Rock Island, its value to a carrier into which it may be included, and the necessity of Katy's continued service, have been established on the record. Katy notes that even Union Pacific's chief executive officer recognized that Katy needs to be included in a larger rail system. Under paragraphs (c) and (d) of section 5, the requirement upon the Commission to consider, and

to require where consistent with the public interest, the inclusion into a proposed unification of an adversely affected carrier is firmly fixed. No discussion of the Katy's supporting argument and of its numerous citations of Commission proceedings and Court decisions is necessary.

As seen, the Santa Fe and Southern Pacific are concerned with the possibility of being burdened with Katy's large debt, but the Katy contends that the Commission's decisions indicate that a weak financial condition is not necessarily a bar to working out terms for inclusion, and that its position is similar to that of the New Haven in the Penn-Central proceedings and Erie Lackawanna in the Norfolk and Western proceedings. Katy does not agree that a reorganization is necessary before it can be included in another system. As noted in Part L, Katy believes that the burden of showing a specific financial plan for inclusion is impractical in this proceeding, and should be determined in a subsequent hearing.

With respect to the position of Southern Pacific that certain of Katy's low density branch lines be abandoned prior to inclusion in another system, Katy is willing to condition its inclusion upon the filing of these abandonment applications, contending, however, that the inclusion should not be conditioned upon the Commission's approval of these abandonment applications.

As herein directly pertinent, Katy requests the following findings:

2. The operations and service of Katy are essential in the public interest and must be preserved.

3. Inclusion of Katy in the system of the applicant which acquires the lines of Rock Island in Katy's territory would assure the preservation of Katy's essential operations and service and would thus not only be consistent with, but would affirmatively promote, the public interest in a sound transportation system.

4. If any application or applications herein shall be approved, the applicant which succeeds in acquiring the lines of Rock Island in Katy's territory should be obligated to include Katy in its system on such terms as the Commission shall find equitable. To this end, a condition should be imposed in the order approving such application, requiring such successful applicant to negotiate in good faith with Katy as to the terms for the latter's inclusion in such applicant's system and to cooperate with Katy in the compilation of an adequate record to provide a basis for the required determination by the Commission as to the terms of such inclusion. The condition should provide that within a period of one year from the date of consummation of such successful applicant's acquisition of those Rock Island lines there may be filed with the Commission a plan for the inclusion of Katy as agreed upon by such successful applicant and Katy, or, in the absence of such agreement, a petition by MKT requesting the Commission to fix the terms for such inclusion, and that jurisdiction shall be retained in the Commission for disposition of said plan or petition. The foregoing condition should be subject to the proviso that, in the event at the effective date of the Commission's order approving such application some other rail carrier acceptable to Katy has filed and is prosecuting diligently and in good faith its voluntary application to acquire Katy by stock control, merger or otherwise, the aforesaid period of one year shall not commence to run until 90 days after the date of any final order of the Commission denying said voluntary application.

(15) MoPac - T&P

Missouri Pacific claims that Union Pacific and Southern Pacific are each opposed to the other acquiring control of Rock Island because each deems the injury to its own competitive position by the strengthening of the other to be inconsistent with the public interest. Yet the two applicants ask the Commission to find it consistent with the public interest to have Rock Island divided between them, although such a division would result in even greater injury to their weaker competitors who are infinitely less able to withstand the resultant loss of revenues.

Missouri Pacific asserts that the total annual pre-tax net revenue losses claimed by protestants in these proceedings would be \$61.5 million if the Union Pacific-Southern Pacific acquire Rock Island. MoPac claims that balancing the \$13.9 million in savings forecast by Union Pacific-Southern Pacific against these losses will emphasize the startling contrast between the instant proceedings and other mergers of comparable size which the Commission has found consistent with the public interest. MoPac points out that Union Pacific and Southern Pacific would not be justified in paying the agreed upon purchase price for Rock Island if they anticipated only approximately \$14 millions in savings. Instead, according to MoPac, it is reasonable to conclude that Union Pacific and Southern Pacific are pursuing their applications so tenaciously because they confidently expect that their revenue gains will be much closer to the loss estimates of the protestants. MoPac states that the two applicant carriers have not sustained the burden of establishing that their acquisition of Rock Island is necessary to insure their "continued financial integrity and viability" nor "to protect those who rely upon Union Pacific and Southern Pacific for services".

According to MoPac, the main thrust of the shipper and public testimony supporting the Union Pacific-Rock Island merger was that it would remedy Rock Island's deficiencies in car supply and motive power and give them single-line service to and from Chicago and St. Louis. MoPac contends that Union Pacific concedes that its proposed single-line service would be no faster than present Union Pacific-North Western two-line service through Fremont or the present Union Pacific-Burlington two-line service through Grand Island. The only improvements that Missouri Pacific claims to find in the service proposed by Union Pacific are in schedules between St. Louis, Denver, Seattle and Los Angeles. But, according to Missouri Pacific, these improvements could be effectuated today if Union Pacific would presently operate the schedules it proposes here between Kansas City and destinations.

According to Missouri Pacific, the main thrust of the shipper and public testimony supporting the Southern Pacific application was that it would give them single-line service to Kansas City and eliminate the interchange at Tucumcari. But even if Southern Pacific obtains the Tucumcari-Kansas City line, Southern Pacific proposes to continue moving St. Louis traffic via its existing Cotton Belt route, despite its 19 percent circuitry. The granting of Southern Pacific's proposals would merely move the interchange point from Tucumcari, where the interchange takes 15 to 30 minutes, to Kansas City, which Missouri Pacific asserts, is a very difficult interchange.

As far as the projected Santa Fe single-line service is concerned, Missouri Pacific contends, as it does in the case of Southern Pacific's proposed single-line services, that the Santa Fe proposals would not justify the resulting detriment to shippers served by competing carriers since the traffic losses of such other carriers might be so great as to result in curtailment of their service or abandonment of substantial portions of their lines.

In any event, according to MoPac, shippers in Kansas City, Colorado, Texas and California now have excellent fast service to and from St. Louis available to them, both single-line and joint-line, which will not be improved by Santa Fe's proposals. Neither, MoPac asserts, would the Santa Fe proposal give Memphis shippers any faster service to or from Colorado or Southern California.

Missouri Pacific argues that Rio Grande's conditions would result in losses for MoPac superimposed on those suffered as a result of the basic applications, and that Rio Grande's remedy for its own losses should not be provided at the expense of MoPac. MoPac therefore urges that Rio Grande's proposed acquisition of Rock Island's western lines be found not to be consistent with the public interest.

According to Missouri Pacific, if Union Pacific's claimed loss of 13.3 percent of its post-tax net income threatens that applicant's "ability to provide its quality of service to the public", if Southern Pacific's loss of less than one percent of its post-tax net income "would result in an impossible situation for Southern Pacific", and if Santa Fe's loss of 5.3 percent of its net income would cause it "irreparable injury", it is apparent that Missouri Pacific's loss of many times those percentages would vitally impair, if not destroy, its ability to discharge its common carrier function, particularly in view of MoPac's heavy debt structure carried from its 23-year reorganization period.

Missouri Pacific argues that it must earn its revenues by serving a less productive territory than any of the applicants, and unless it can generate sufficient revenues, as it does at present, it cannot furnish the suitable equipment and provide the adequate service necessary to perform its common carrier function.

An important segment of Missouri Pacific's business is, according to that carrier, less-than-carload traffic. Missouri Pacific asserts that it is one of the few rail systems which continues to transport and develop less-carload small shipments traffic. MoPac claims that numerous railroads, including Union Pacific and Rock Island, have curtailed or eliminated entirely less-than-carload traffic. Missouri Pacific is of the opinion that less-than-carload traffic is its most marginal operation and that if there is any substantial reduction in system earnings, this traffic will probably be the first to suffer. Missouri Pacific also asserts that its service is necessary in the national defense and alleges that during World War II a total of 164 war projects were served by Missouri Pacific lines or by terminal railroads served by Missouri Pacific lines.

Missouri Pacific contends that it will not be consistent with the public interest for the strongest (Union Pacific), the second strongest (Southern Pacific), or the fourth strongest (Santa Fe) railroad in the United States to aggrandize itself at the expense of its weaker competitors. MoPac contends that the public interest, reflected by the decision in the Transcontinental Divisions case would be frustrated by awarding all or part of Rock Island to any of the Mountain-Pacific carriers; Union Pacific, Southern Pacific or Santa Fe, which would strengthen them in relation to their weaker Midwestern competitors.

The MoPac requested that the Commission:

1. Disapprove, as not being consistent with the public interest: merger into the Union Pacific of the Rock Island and sale of the southern Rock Island to the Southern Pacific;
2. The application of Santa Fe for approval of its purchase of southern Rock Island, and for acquisition of trackage rights over Rock Island between Kansas City and St. Louis; and
3. The application of Rio Grande for approval of its purchase or, acquisition of trackage rights over, western Rock Island.

Texas & Pacific views the Union Pacific-Southern Pacific proposals as a conspiracy to divide the western territory between them. T&P contends that Southern Pacific and Union Pacific have adopted identical approaches to

achieve this objective. Texas & Pacific argues that these identical approaches are:

(1) An attempt to appear "weak" competitively so as to require the additional strength to be gained from a portion of the Rock Island, and yet, a simultaneous attempt to appear "strong" so that the "weaker Rock Island" would gain strength by association with them;

(2) A false and misleading premise for dismemberment of the Rock Island: that Union Pacific ownership threatens Southern Pacific with an unfriendly connection at Tucumcari, New Mex.;

(3) A description of the dismemberment of the Rock Island as being "along functional lines" when a more complete and accurate disclosure would have portrayed the transaction as being "destructive of existing Rock Island functions"; and

(4) Arguments advancing public advantages purportedly to accrue from new single-line services were made without disclosing how the partition of the Rock Island would be disruptive of existing Rock Island single-line service.

Texas & Pacific agrees that Southern Pacific will be able to establish single-line service via the Rock Island southern lines between some points where joint Southern Pacific-Rock Island service is now offered, but, according to Texas & Pacific, most of these points now receive single-line service from other carriers and the establishment of Southern Pacific single-line service will only break up the Rock Island system to the point that many shippers would be deprived of the single-line Rock Island service they are now receiving.

The market access already enjoyed by Southern Pacific on the West Coast will, according to Texas & Pacific, tend to control access to markets in the Southwest and the Midwest. The new market to which Southern Pacific gains access will in turn give it additional leverage on even greater control of the West Coast market. This added strength of Southern Pacific will, according to Texas & Pacific, reduce the latter's net income to a point which will eventually effect T&P's ability to continue service to its remaining customers.

Texas & Pacific feels that neither the Southern Pacific nor the Santa Fe proposal is consistent with the interest of the public that has grown dependent upon the present level of Texas & Pacific services. Although opposed to the Southern Pacific and Santa Fe proposals, Texas & Pacific urges that, if either of those transactions are approved, the conditions sought by T&P would be necessary and in the public interest for the protection of Texas & Pacific and its continuing ability to provide effective participation in the transportation service.

Texas & Pacific contends that the competitive imbalance about which Santa Fe complains, as the basis for its applications herein, is not a competitive imbalance between Santa Fe and its eastern connections if an imbalance exists at all, but between Santa Fe and Southern Pacific. Actually, according to Texas & Pacific, Santa Fe is really complaining about Southern Pacific's ability to compete more effectively than Santa Fe between the West and the Southeast.

Texas & Pacific's arguments with respect to the affirmative relief sought by KCS-L&A and FW&D under either the Southern Pacific or Santa Fe proposals have been set forth to the extent necessary in Parts L and M herein.

In summary, Texas & Pacific considers that the threat to Kansas City Southern arises from the dismemberment of Rock Island and if the applications of Santa Fe and Southern Pacific are denied there is no justification for any conditions in the Dallas-Fort Worth-Houston area.

Texas & Pacific asserts that it is not insisting on the status quo in this case and that it is not suggesting that Rock Island does not need association with some other railroad. However, T&P's position is that Rock Island is not so weak as to require its dismemberment. Rock Island, according to Texas & Pacific, serves transportation functions as a single unit which have a high degree of public acceptance, and the destruction of these functions would be a necessary result of its dismemberment; a result not shown to be necessitated by the record in this case.

Texas & Pacific requests that the Union Pacific and Southern Pacific transactions should be found not consistent with the public interest and be denied. In connection therewith, the pertinent T&P requested findings are:

(A) 1. The agreement entered into by UP and SP whereby UP agreed to sell and SP agreed to buy the south half of RI is a Division of Market arrangement as evidenced by CNW CX 2 and, for this reason alone, the transactions proposed by UP and SP are not found to be consistent with the public interest;

2. The RI presently provides transportation functions relied upon by the public as shown by the following examples;

a. Manufacturers located on the north half of the RI who ship products to points on the south half of the RI utilizing RI single line service.

b. Elevator operators located on the north half of the RI who utilize RI single line service for movements of grain to the Gulf ports.

c. Investments on the part of the public in warehousing operations on both the north and south half of the RI who presently utilize RI single line service and who were induced at least in part to locate on the RI because of north-south single line service.

3. The present transportation functions performed by the RI will be seriously impaired if the RI is dismembered pursuant to the UP-SP proposals. Examples of this impairment are:

a. The split up of the RI would destroy existing single line service between the north and south half of the RI;

b. Well over one hundred thousand new and additional interchanges will be required of traffic moving between the north and south half of the RI;

c. The existing efficient and economical interchange between SP and RI at Tucumcari will be eliminated, and it will be replaced or shifted to an interchange at Kansas City, Missouri, which has been characterized as "one of the most difficult";

4. The UP-SP premise that UP would be "an unfriendly connection" for SP at Tucumcari advanced by UP and SP as a justification for splitting the RI is not supported by the record; to the contrary, the evidence shows that UP would be a friendly SP connection at Tucumcari.

7. The adverse consequences of a dismembered RI and acquisition of the south half of RI by SP as set forth above far outweigh the public benefits which may result from the proposed transactions.

In the event the Commission approves the Union Pacific and Southern Pacific transactions, T&P requests the findings below (requested finding 1 is reflected in Volume I, Part G):

(B) 1. The SP is the dominant rail carrier in California and as such handles approximately three-fourths of all rail traffic originating and terminating in California.

2. The SP acquisition of the RI south will extend and enhance SP competitive strength in the Midwest and South, resulting in increased market access in the Northeast and

Southeast by virtue of additional access to connections serving those areas, and, as a result of this additional strength, the acquisition will further enhance SP's dominance in California.

3. The additional strengthening of the SP as a result of the acquisition will further decrease rail competition in the West.

4. Decreased rail competition in the West will decrease the benefits to the public resulting from competition including: freight car supply; shipper utilization of cost reducing and lading protecting cars of modern size; the shortening of transcontinental and other railroad freight schedules; rate and service innovations; rate adjustments for key markets and establishing new industries; and lower competitive rates to meet other railroad competition.

5. The TP has inherent geographical advantages as a participant in the southern transcontinental route which were recognized by the Congress of the United States and the need to perpetuate these advantages has been recognized in United States District Court actions and in conditions imposed by the Commission in prior merger proceedings.

6. Neither the court actions nor the conditions imposed by the Commission has been sufficient to enable the TP and the public relying upon its transportation function to enjoy and receive the full benefits of TP's inherent geographical advantages.

7. The self-interest of a strengthened SP is not compatible with the prospect of the public deriving the benefits of TP's geographical advantages.

8. The strengthening of SP's competitive ability as a result of the acquisition not only will prevent the public from enjoying the benefits of TP's geographical advantages but will also endanger TP's present competitive position.

9. The effect of the SP acquisition upon TP's competitive ability will be such as to cause TP to reduce the transportation services presently offered to the public.

10. The imposition of the usual traffic conditions will not be sufficient to enable TP to maintain its competitive position in the face of the increased power and ability to compete which will inure to the SP as a result of the acquisition.

11. In order for the TP to maintain its competitive position and, at the same time, enable the public to enjoy the advantages of TP's geographical position, it is necessary to resort to an alternative to the usual traffic conditions in the form of creating an ability on the part of the TP to help itself.

12. The TP's proposal wherein trackage rights to the West Coast are requested over the SP lines will enable TP to remain competitive on transcontinental traffic, to continue its service functions to its local points, and will enable the public to enjoy the inherent geographical advantages of the TP.

13. The TP trackage rights proposal presents a workable and realistic procedure for instituting and expanding a new rail service to the West Coast.

14. The TP trackage rights proposal will introduce a new competitor in an area dominated by the SP and will result in the public deriving the benefits of increased competition as set forth above.

On the basis of the above requested findings, T&P requests that its affirmative relief be found consistent with the public interest.

With regard to the Santa Fe petition for inclusion, T&P requests the following findings:

- (C)
1. An integral part of the transaction proposed by ATSF is the split up of the RI and the attendant disruption of RI's transportation function and destruction of RI services offered to the public.
 2. In order to satisfy its burden of proof and show its application to be consistent with the public interest, ATSF necessarily had to assume and satisfy the burden of showing that the dismemberment of the RI is consistent with the public interest.
 3. ATSF failed to present any evidence of the disruption of RI's transportation function, presently relied upon by the public, which will result from the proposed ATSF acquisition.
 4. ATSF failed to disclose the unique monopolistic advantages which will accrue to the benefit of ATSF as a result of the proposed acquisition and destruction of a competition.

5. ATSF introduced no evidence nor made any attempt to show that the split up of the RI and attendant disruption of present function and destruction of present services would be consistent with the public interest.

6. The total failure of ATSF to assume and satisfy the burden of showing that the dismemberment of the RI would be consistent with the public interest requires denial of the ATSF applications.

In the event the Santa Fe transactions are not denied upon the basis set forth above, T&P requests the following additional findings:

7. The ATSF acquisition of the RI south will not affect nor change in any way the competitive disability on the part of ATSF which results from SP dominance of rail traffic in California.

8. An integral part of the ATSF transaction is its agreement with the CNW whereby ATSF gains entry into St. Louis by trackage rights over the present RI line, but, under the terms of the agreement, ATSF's competitor, a controlled RI, can reasonably subordinate ATSF interests to its own.

9. The reasonable subordination provision of the ATSF-CNW agreement eliminates substantially all of the advantages which might have accrued to the public as a result of the ATSF entry into St. Louis.

10. ATSF could accomplish the greater part of its stated goals by entering into closer working relationship with its eastern connections and, at the same time, modifying its insatiable desire for its long haul at any price as an alternative to the destruction of existing competition by elimination of a competitor.

12. The financial loss resulting from traffic diverted from TP as a result of the ATSF acquisition will force TP to make a reduction of services from those presently offered the public.

13. The adverse consequences of a dismembered RI and acquisition of the south half of RI by ATSF as set forth above far outweigh the public benefits which may result from the proposed transactions.

On the basis of the foregoing, T&P requests that the Santa Fe petition for inclusion be found not consistent with the public interest and be in all things denied.

In the event Santa Fe's inclusion is granted, T&P requests that the Commission make the following findings (requested finding 1 is reflected in Volume I, Parts B and G):

1. One of the principal functions performed by T&P is that of a bridge carrier in the southern trans-continental route.
2. The ATSF acquisition of the RI south will extend and enhance ATSF competitive strength in the following areas: (1) north of Kansas City by disrupting existing RI functions; (2) south of Kansas City by eliminating RI as a competitor at numerous points which will become local points to ATSF; and (3) in the southeast by virtue of ATSF obtaining new direct connections to the southeast.
3. The ATSF presently enjoys a monopoly of potash traffic originating at Carlsbad, New Mexico.
4. The ATSF has utilized its monopoly power over the movement of potash from the Carlsbad area to effectuate its inflexible long haul policies resulting in inefficient routes, inflexible rate making, and failure to encourage industry to locate in the area by withholding transit privileges all to the detriment of the public.
5. At the present time, there is a mutual dependency between ATSF and its bridge lines on the movement of potash to the southeast because of the lack of ATSF direct access to the southeast.
6. The new direct connections in the southeast will afford ATSF new long haul possibilities on a large percentage of traffic presently interchanged with its eastern bridge line connections and particularly on the movement of potash destined to the southeast.
7. Direct access to the southeast coupled with ATSF's pursuance of its long haul policies to the detriment of service, schedules, and rates will eliminate the TP as bridge carrier on the vast majority of potash moving to the southeast and on material amounts of other traffic presently interchanged between TP and ATSF.

8. The elimination of the need for bridge carriers resulting from the acquisition of the RI south will cause decreased cooperation between ATSF and its present eastern connections including TP to the detriment of the public which has relied upon these bridge carriers for adequate transportation services.

9. The imposition of the Detroit T & I traffic conditions as proposed by ATSF are inadequate because they do not sufficiently strengthen the TP to enable TP to meet the increased competitive strength which will ensure to ATSF, they will not enable TP to maintain its present competitive position and they will not enable TP to continue to furnish an adequate transportation service to the public.

10. The TP's proposal wherein trackage rights are sought over ATSF's Pecos—having in order for TP to gain access to the potash traffic originating in the Carlsbad area will enable TP to meet the increased competitive ability of ATSF, maintain its present competitive position and enable TP to continue its service functions to its local points.

11. The TP proposal to serve the potash industry at Carlsbad will introduce a new competitor into an area presently monopolized by ATSF and will result in the public deriving the benefits of increased competition including: increased car supply; shipper utilization of cost reducing and lading protection cars of modern size; the shortening of railroad freight schedules and routes; rate and service innovations; rate adjustments for key markets and establishing new industries; and lower competitive rates to meet other railroad competition.

12. The TP proposal presents a workable and realistic procedure for instituting a new rail service to the potash production in the Carlsbad area.

On the basis of the foregoing requested findings, T&P requests that its affirmative relief be found consistent with the public interest and be, in all things, granted upon the following conditions: (a) that the affirmative relief requested by TP be the subject of a final TP—ATSF agreement within six months after the effective date of any certificate or order of the ICC in this matter or that the ICC propagate the terms and conditions upon TP—ATSF failure to reach such an agreement within such time. (b) That the ICC retain jurisdiction in these proceedings for the purpose of making such further order or orders as may be necessary or appropriate to accomplish the objectives of this affirmative relief.

With respect to Ft. Worth & Denver's request for affirmative relief under both the Southern Pacific and Santa Fe transactions as such relief relates to conditions sought in the Ft. Worth-Dallas area, T&P requests the following findings in support of a requested finding that FW&D's affirmative relief be found not consistent with the public interest and be in all things denied:

1. The record fails to demonstrate the substantial change in any competitive circumstances as between the SP and ATSF on the one hand and the FW&D on the other in relation to traffic moving to and from the Great Southwest Industrial District;
2. There is no indication that there is any dissatisfaction with or inadequacy in the present rail services to and from the Great Southwest Industrial District;
3. The record fails to justify the increasing of the number of railroads connecting with Great Southwest Industrial Railroad from two to three.

With respect to Kansas City Southern's requests for affirmative relief seeking access to Ft. Worth, Dallas, the Great Southwest Industrial District, Paris, and Houston, T&P requests that the KCS' affirmative relief be found not consistent with the public interest and be in all things denied, based on the following requested findings:

1. KCS requests for affirmative relief insofar as they relate to access to Ft. Worth, Dallas, Great Southwest Industrial District, and Paris are proposals to change the competitive situation as between KCS and TP more than they are a reaction to the transactions before the Commission;
2. There is no showing of any improved service arising to the public by virtue of KCS access into the Ft. Worth, Great Southwest Industrial District, or Paris transportation markets;
3. There is no indication of any insufficiency in or dissatisfaction with rail service to and from Ft. Worth, Texas, Great Southwest Industrial District or Paris, Texas which would justify entry of KCS into the area;
4. KCS proposals to extend their operations into Houston represent a duplication of single line services in an area where there is already a super abundance of such service.
5. There is no indication of any inadequacy in the present service between Kansas City and Houston, nor is there any public support for KCS proposals to enter that area.

(16) Frisco

Frisco's strategic situation as a bridge carrier, its operations, and its dependence on connections including applicants Union Pacific, Rock Island, Southern Pacific and Santa Fe, were discussed in depth in Volume I, Part B. Frisco's reliance on the applicants for large volumes of traffic is the basis for Frisco's arguments that extension of (1) Union Pacific lines to St. Louis; (2) Santa Fe lines to St. Louis and Memphis; and (3) Southern Pacific lines to Kansas City, would permit those applicants to by-pass Frisco to and from the named gateways, thus diverting substantial amounts of revenue from Frisco.

Frisco asserts that its relationship with Santa Fe is by far the most extensive of any of its relationships with the various applicants. Santa Fe and Frisco serve 33 points in common, mostly in Oklahoma and Kansas, and together operate over one-half of the rail mileage in Oklahoma. Frisco urges that increasing Santa Fe's mileage in these two States will undoubtedly increase Santa Fe's ability to divert traffic from Frisco.

Frisco asserts that it will lose relatively more than any other railroad if any of the applications or various combinations of applications are approved. This situation would result, Frisco contends, primarily from its singularly vulnerable status as a bridge carrier over several routes in connection with applicants. Ultimately, Frisco argues, the high level of service offered shippers by the Frisco would deteriorate. Frisco notes that it does not seek affirmative relief, arguing that there is no affirmative relief which would effectively insulate it against losses resulting from the basic transactions.

With respect to other carrier parties' requests for such relief, Frisco characterizes them as merely attempts to meet the "patchwork nature" of present merger and acquisition proposals in the West. Further, Frisco argues that there are so many potential combinations possible under the affirmative relief sought that orderly procedure requires that all of them be denied at this stage of the proceedings, and that if any one of the basic applications is granted herein, requests for affirmative relief should be considered after the decision had been reached, and in a separate proceeding. As it stands, Frisco argues, some of the requests for affirmative relief would merely compound Frisco's losses to applicants.

Frisco contends that Santa Fe is actually seeking, under the guise of a section 3(5) petition, trackage rights over Frisco's main track to link up two segments of trackage rights Santa Fe hopes to acquire over Rock Island, ultimately affording Santa Fe entry into St. Louis, via Kansas City, for the first time.

Frisco contends that in past instances where the Commission has granted rights under section 3(5) to a trunk line carrier over the main-line tracks of a second trunk line carrier to reach the facilities of an independent terminal carrier, the acquiring carrier has historically provided service to the terminal sought to be served, or to terminals in the immediate vicinity of such terminal over the route sought to be used. The section 3(5) rights have been to perpetuate a service already available to the public, or to provide additional service to an area already within the acquiring carrier's holding out, or undertaking. In support of this contention, Frisco cites City of Milwaukee v. Chicago & N. W. Ry. Co., 283 I.C.C. 311, 313-14; Missouri-K.-T. R. Co. v. Kansas City Term. Ry. Co., 104 I.C.C. 203; Chicago & Alton R. Co. v. Toledo P. & W. Ry. Co., 146 I.C.C. 171; Use by Erie of Niagara Junction Ry. Co. Terminals, 269 I.C.C. 493; and Florida East Coast Ry. Co. v. U.S., 256 F. Supp. 986 (1966).

Frisco claims that the facts in this case differ sharply from the usual section 3(5) case. Frisco contends that the use rights Santa Fe is seeking are for the purpose of filling an essential gap in its scheme to extend the Santa Fe lines to St. Louis by use of trackage rights over Rock Island. In Frisco's opinion, no carrier can be forced to grant trackage rights to a competitor to enable the competitor to extend its lines and invade the territory of the granting carrier. In support of its opinion, Frisco cites Toledo, Peoria & Western Railroad Co. Control, 295 I.C.C. 523, 541; Baltimore & O. R. Co. Operation, 261 I.C.C. 535, 544; and Construction by Alabama, Tennessee & Northern R. R., 124 I.C.C. 114, 115. Frisco contends that section 3(5) was never intended to be used as a vehicle to effect the invasion of new territory (citing Texas & Pacific Railway Company v. Gulf, Colorado & Santa Fe Railway Company, 270 U.S. 266, 278; and Use of Northern Pac. Tracks at Seattle by Great Northern, 161 I.C.C. 699, 704) but, rather, was intended to provide the means to foster the joint use of terminals in congested areas where carriers and shippers alike have the right to expect full enjoyment of all rail service in the area.

In the event the Commission assumes jurisdiction of the section 3(5) petition of Santa Fe, Frisco states that it is preserving all of its legal remedies. It contends that if the Commission does assume jurisdiction, a further hearing will be necessary to determine just compensation for the use of the terminal facilities unless the parties are able to voluntarily agree on such terms, which they have not been able to do up to this time. Under the terms of the Frisco-Rock Island trackage rights agreement, Rock Island is alleged by Frisco to have no right to assign or transfer the agreement or the rights herein granted, without first obtaining the written consent of Frisco.

Frisco argues that the trackage involved in Santa Fe's petition is not a "terminal facility" within the meaning of section 3(5) of the act and any order requiring Frisco to allow its use by Santa Fe would be a mandatory order requiring Frisco to grant trackage rights to Santa Fe. Such an order, according to Frisco, is beyond the Commission's power. For this reason, Frisco asserts, Santa Fe's petition under section 3(5) should be denied.

Of the Frisco's requested findings of fact, its Nos. 1,⁸⁹ 19, 20, 21, 22, 23, and 24, and its requested findings of law, Nos. 5, 6, and 7 are reflected in Parts B, G and H. Its remaining requested findings are:

A. Facts

2. Because of Frisco's extensive interchange with all of the applicants and because a large percentage of its traffic is intermediate, it would be particularly vulnerable to diversion of traffic in the event of approval of the Union Pacific, Southern Pacific, or Santa Fe proposals.

3. Competition between applicants Union Pacific, Southern Pacific and Santa Fe and Frisco as a competitor would be materially changed and altered under the proposals and, therefore, the traffic to be diverted from Frisco would be substantial and would not be limited to the traffic in which Frisco has heretofore participated with these carriers to, from or via St. Louis, Memphis or Kansas City.

⁸⁹ Frisco's first requested finding of fact is reflected in Volume I, Part B. It is noted however, that the financial data discussed therein is shown on a corporate entity basis. On a system basis Frisco's total operating revenue was \$152,356,785 and \$154,984,962 for 1966 and 1967, respectively, and net income of \$12,384,377 and \$11,733,493 for the same respective periods.

6. Frisco and other existing carriers serving St. Louis, Memphis and Kansas City are providing adequate and efficient railroad transportation service for the commerce moving to, from or via those cities, on the one hand, and all territory reached by the Union Pacific, Southern Pacific or Santa Fe, on the other hand.

7. The diversion of traffic from the routes of the existing carriers to the proposed routes of the Union Pacific, Southern Pacific or Santa Fe would deprive important communities and states served by Frisco of adequate and efficient railroad transportation service.

8. The diversion of revenue from existing carriers now serving St. Louis, Memphis and Kansas City will impair the protesting railroads' ability to render safe, adequate, economical and efficient transportation service.

9. Union Pacific, Southern Pacific and Santa Fe have shown no need for revenue which would be diverted away from protesting railroads presently serving St. Louis, Memphis and Kansas City.

10. The evidence indicates that the Kansas City-St. Louis line of the Rock Island, when rehabilitated and improved as proposed, will not be as suitable for, as efficient and as economical as, some of the other lines now operating between those cities.

11. Diversion of traffic from the Frisco and other protestants, unless they are able to curtail their service sufficiently to overcome their losses, would increase their unit cost of handling the remaining traffic.

12. The merger and acquisition proposals of Union Pacific, Southern Pacific and Santa Fe, while improving service on some traffic, will cause deterioration of service on other traffic.

13. By making some railroads stronger, these proposals will weaken and might ultimately destroy other railroads.

14. These proposals will cause a weakening of protesting railroads brought about by traffic diversions.

15. Instead of engendering healthy competition, these proposals will reduce competition among the railroads west of the Mississippi River to the detriment of the public.

16. Instead of eliminating duplicate and wasteful facilities, including thousands of miles of unneeded track, these proposals will preserve such waste and even compound it by proposing to spend millions of dollars to preserve facilities not needed adequately to perform all of the rail transportation needed in the foreseeable future. Such money could be better spent to improve mileage and facilities actually needed.

17. These proposals will not create new rail traffic through healthy competition but will merely redistribute existing rail traffic among a few railroads at the expense of many.

18. Investment by thousands of individuals and institutions in rail securities will be adversely affected.

25. Any merger plan which takes traffic from one railroad and places it on another will obviously weaken the losing railroad and impair its ability to serve adequately its remaining traffic, unless other traffic can be found to replace that which it loses.

26. If Southern Pacific gets into Kansas City, Missouri Pacific, Katy, Frisco and Kansas City Southern will lose traffic they are presently handling to and from the Southern Pacific in Texas and Louisiana. If the Santa Fe gets into St. Louis and Memphis, Missouri Pacific and Frisco will lose the Santa Fe traffic they presently handle through such gateways. Others, such as the Norfolk and Western and Gulf, Mobile and Ohio would undoubtedly lose traffic, but since their primary interest apparently lies in other areas, they did not take part in these proceedings.

27. Only three railroads can ultimately benefit from the proposals under consideration, viz., the Rock Island, the Union Pacific and either the Southern Pacific or Santa Fe. The public benefits, if any, resulting from the proposals would be at the expense of ten other railroads:

MoPac-T&P
North Western
KCS
Frisco
Katy

GM&O
Illinois Central
Rio Grande
Western Pacific
Burlington

28. The Santa Fe in its petition under Section 3(5) of the Act is requesting authority to operate over the main track of the Frisco at Kansas City.

B. Law

1. Applicants have failed to show that the applications are in the public interest.
2. The record shows that all of the proposals in the applications would be contrary to the public interest.
3. Applicants failed to meet the burden of proof and did not sustain the proposals contained in the applications.
4. It would be contrary to the public interest to approve the agreement between the Union Pacific and Southern Pacific to dismember the Rock Island and for the Southern Pacific to acquire the south portion of the Rock Island.
8. It would be contrary to the public interest to approve the affirmative relief sought by the Santa Fe to be placed upon the granting of control of Rock Island by the Union Pacific which would authorize Santa Fe's acquisition of the south portion of the Rock Island.
9. It would be contrary to the public interest to approve the affirmative relief sought by the Kansas City Southern and the Texas and Pacific which would place those railroads in a position to serve new areas which have shown no public need for such service.
10. It would be contrary to the public interest to approve the inclusion of the Katy into the Union Pacific, Southern Pacific or Santa Fe.
11. The Commission does not have jurisdiction of Santa Fe's petition under Section 3(5) of the Act for an order requiring common use of certain main track of the Frisco at Kansas City, Missouri.
12. It would not be consistent with the public interest to authorize trackage rights for the Santa Fe over the Rock Island between Kansas City and St. Louis.
13. It would not be consistent with the public interest to authorize the Ft. Worth and Denver to have unlimited switching rights with respect to industries on the Rock Island line between Ft. Worth and Dallas.

(17) The Bureau of Enforcement-ICC

The Bureau refers to Union Pacific's holding over 24 percent of the outstanding capital stock of IC Industries and the latter's ownership of 98 percent of ICRR stock. Union Pacific has placed its IC Industries stock in three voting trusts. The life of each trust expires on March 21, 1978 (at which time the stock would be returned to Union Pacific) unless terminated sooner by other provisions. The Bureau asserts that the three trusts are of the type required by this Commission in Norfolk & W. Ry. Co. And New York C. & St. L. Co. Merger, 324 I.C.C. 1, 46 and 49, and that, in such proceeding, divestiture of stock interest was required with the voting trusts effective during the period of divestiture.

The Bureau asserts that ICRR and Rock Island have competing service lines between Chicago and Council Bluffs and that as a result of the proposed merger, the Union Pacific would own and operate one of such lines in competition with the ICRR, in which the Union Pacific would have a 24 percent stock interest. The Bureau urges that the foregoing circumstances are not consistent with the public interest and that the Union Pacific should be required to divest itself of its IC Industries stock. As the examiner understands the Bureau's position, the trusteeship of the IC Industries stock has not eliminated the Bureau's view of objectionable relationships between Union Pacific and ICRR. In any event, the Bureau urges that any approval of the Union Pacific-Rock Island merger be subject to conditions requiring Union Pacific

(1) To dispose of its IC Industries stock to persons not affiliated in any way with Union Pacific or its affiliates, and

(2) To keep the stock in trust until the complete divestiture is accomplished.

In addition to the above, the Bureau expresses concern with the trend of diversifications in the rail industry and establishment of noncarrier holding companies. In such connection, the Bureau urges that should any applicant herein be involved in diversification similar to Northwest Industries, the parent non-holding company in control of the carrier applicant should be required to join in the application as a party applicant and made subject to the reporting requirements of the act.

In connection with the Bureau's recommended condition of divestiture by Union Pacific of its IC Industries stock, the examiner takes official notice of certain changed matters and things relating to such stock. An examiner's recommended report in Finance Docket No. 25103, Illinois Central Gulf Railroad Co.-- Acquisition--Gulf, Mobile & Ohio Railroad Co., Illinois Central Railroad Co., Et Al., suggests that Union Pacific and/or Brown Brothers (Harriman) "voluntarily" consent to terminate their stock ownership in IC Industries and its related carriers. However, the examiner's ultimate findings and conclusions are subject to final Commission determination, among other things, of whether Union Pacific and Brown Brothers Harriman should be required to join in the proceedings as party applicants. In Finance Docket No. 25426, Missouri Pacific Railroad v. Union Pacific Railroad Company Et Al., the Union Pacific has filed a plan for divestiture of its IC Industries stock, and which plan is not of record in the herein considered Rock Island proceedings. With respect to the instant proceedings; it will be recalled that early in Volume I, at Part B - Union Pacific System, the examiner expressed the view that Union Pacific and ICRR are affiliated within the meaning of section 5(5). All of the foregoing will be disposed of in the final discussion and conclusions herein. In the meantime and until final determination by the Commission of all issues, Union Pacific is hereby admonished not to dispose of any of its IC Industries stock without ample notification to the Commission so that it may take whatever action it deems appropriate prior to such disposition.

(18) U. S. Department of Justice

The primary theme of Justice is that rail competition has considerable value for the public and that it is desirable to preserve and enhance such competition for its contribution to efficient and adequate railroad service. Justice contends that the necessity for maintenance of rail competition is emphasized by the dominance of railroads on long-haul, high-volume and bulk traffic, for which other transportation modes, principally motor carriers, do not provide adequate substitute services and that the future will show an increase in the rail dominance in these areas. During the past decade the total rail, motor, and water carrier ton-miles increased with the rail ton-mile increase being greater than the total for motor and water carriers. The Department believes that, as the national economy continues to grow, such trend will continue, and that the public will continue its heavy reliance on the railroads.

Justice asserts that, also in the past decade, the railroads have made significant gains in the continuing race for technical and managerial improvement of existing technologies, and it anticipates that this, too, will continue. The areas of opportunity for the railroads to realize these productivity gains are the rationalization of labor use, improved car management, extension of computers to rail system control functions, locomotive and other equipment improvements, switch yard improvements, and the host of small changes in management and technical practice which cannot easily be detailed but which contribute to the long run productivity gains experienced in all major industries.

Although other modes have opportunities for productivity gains, Justice contends that it is unlikely that they will be able to outstep the railroads and, further, that they may not even be as great as those opportunities of the railroads. For example, Justice says that, in the past, railroads have demonstrated an ability to make significantly greater labor productivity increases than motor or water carriers. It reasons that, since labor costs are such a large part of the total costs for all modes, except pipelines, the higher rate of gain in labor productivity increase as railroads have accomplished is a major advantage. This cost advantage can be translated, Justice continues, into rate advantage and, on competitive traffic that is sensitive to cost changes, into increased traffic and revenue. Further, Justice asserts that as traffic levels increase, railroad unit costs fall, whereas the unit costs of other modes remain relatively constant or at least do not fall as much as rail unit costs. It argues that such cost advantage translates into a competitive advantage.

Justice also feels that railroad management seemed to advance a great deal in the 1960's, as evidenced, it says, by more competitive rate making, more aggressive marketing, and numerous improvements in the rail plant and in rail operations. The agency believes it more reasonable to expect this advance to continue, rather than to expect a reversion to less perceptive and less effective management practices.

The Department argues that in these proceedings the difference in projected savings as shown by the applicants are not so great as to be a significant factor in favor of any single proposal and would not furnish a major justification for dividing up Rock Island, or constitute a consideration of primary importance in deciding how it should be divided. Rather, Justice argues that the issue of most significance is competition among rail carriers.

In all unifications of rail carriers, Justice asserts that there will be a reduction of competition at commonly served points and along major routes. However, Justice strongly urges that the reorganization of rail facilities into competitive long-haul systems conforms with the major railroad function of providing long-haul interregional transportation. At the same time, Justice asserts rail competition within regions must be preserved in order to provide competitive access to the region for the long-haul carriers. It contends this is necessary because railroads provide important and unique services intra-regionally with respect to heavy-loading and bulk commodities.

Justice urges that the preservation of competition is basic to the purpose of fostering appropriate price-cost relationships, and the adaptability of production, innovation and efficiency to the overall American economy and that these goals are those to which this Commission is directed by the National Transportation Policy. Thus, in this proceeding, Justice believes that competition must be preserved and used to the public benefit, sacrificing it only where and to the minimum extent needed to obtain clear and permanent public advantages by other means.

Justice asserts that the railroads, when unified into fewer but stronger long-haul systems, i.e., an oligopolistic market structure, would have greater incentive to compete more effectively in providing new and better service and other non-price innovations, since railroads have the opportunity for collective rate making. Nonetheless, Justice contends that unifications resulting in fewer but stronger long-haul systems would tend to force the prices for their services closer to the cost of providing the services because the unified carriers would have similar cost and service characteristics.

Justice's position in these proceedings, set forth in Volume I, Part C, is based on its overall views as above-detailed, and Justice contends that the competitive goals it urges would best be served by its recommended division of Rock Island lines. Recognizing Rock Island's financial and operating difficulties, Justice contends that, rather than allowing Rock Island to remain independent, the public interest would be best served by a realignment of the carrier's routes which would allow more efficient utilization of the property provided there results no substantial reduction in competition:

Justice asserts that the Union Pacific and Southern Pacific transactions, properly conditioned, would best serve this end.⁹⁰

The DOT study may be easily and quickly disposed of. DOT states that: "This staff study does not necessarily represent the views of the Department or of the Executive Branch"; and the composers of the document are unidentified. Accordingly, official notice may not properly be taken of the DOT study. Even if such finding were to be overlooked, the expertise of the study is not at all apparent. The study consists of 37 pages of text and to which is appended, among other things, six separate plans of dividing the Rock Island lines together with unifications of the various carriers here involved. The criteria for measuring such mergers are, of course, not in issue in these proceedings and unsupported by the evidence adduced. Neither does the study reflect a competent study and analysis of the essential element in the record here made. DOT, had it desired, could have intervened and fully participated in these proceedings. Clearly, the DOT study has nothing to offer as a guide or aid in a determination of the herein considered proposals.

In any event, Justice opposes any acquisition of Rock Island, such as North Western's proposal, which in the Department's view, would reduce rail competition in the mid-western region to unacceptably low levels, create a dominant single carrier in the region, and reorganize Rock Island facilities into a short-haul regional mold.

Justice concedes that the Union Pacific and Southern Pacific proposals, conditioned as the Department proposes, to some extent would alter traffic patterns to the disadvantage of some railroads, most importantly North Western, Milwaukee, Burlington and Frisco. However, Justice believes the resulting traffic alteration would not be of sufficient magnitude to impair the service of these companies and thus would not adversely affect the public.

⁹⁰ Justice states "Although reallocation of Rock Island facilities other than those proposed in this case might serve the public better than those which may be devised within the framework of applications made in this case, some choices available in this case are not without significant potential for more effective use of Rock Island properties". The Department, in making this assertion, refers to a staff study, entitled "Western Railroad Mergers," published by the U.S. Department of Transportation and which suggests several realignments of western railroads (The DOT Study).

Justice notes that the UP-RI merger will reduce competition at 24 points served in common by Union Pacific and Rock Island, including 10 points at which all competition will be eliminated. The Department also notes that the merger will reduce by one the five single-line competing carriers between Kansas City and the Colorado gateways and also reduce by one the three single-line carriers between Council Bluffs and Denver.

Justice is not completely satisfied, however, with the Union Pacific transaction as proposed, since the Department seeks the maximum of competition. Justice states that all of the reduction or elimination of competition will occur on the western lines of Rock Island that are sought by Rio Grande. Thus, Justice favors Rio Grande's purchase of those lines, with the result that Rio Grande will replace Rock Island as a competing carrier at those points and along the routes.

Justice claims Southern Pacific's proposal will affect 15 communities, only two of which will be left without rail competition, whereas Santa Fe's proposal would affect 26 communities, leaving eleven without rail competition. Under the Southern Pacific proposal, the agency asserts that six single-line competitors between the Dallas-Ft. Worth area and Houston will be reduced by one, while competition between Rock Island's Tucumcari-Memphis route and the Southern Pacific-Cotton Belt route to Memphis will be foreclosed. On the other hand, the agency claims that the Santa Fe proposal would affect more single-line routes. There are six single-line competitors each between Houston and the Dallas-Ft. Worth area, Houston and Kansas City, and Dallas-Ft. Worth and Kansas. In each case, the number will be reduced to five. Between Oklahoma City and Kansas City, the four single-line competitors will be reduced to three, and between Houston and Oklahoma City, there will be but one carrier. Justice therefore favors the Southern Pacific acquisition of the southern portion of Rock Island, arguing that the transaction will have less of an effect on competition than the Santa Fe proposal.

Justice contends that although the Union Pacific and Southern Pacific proposals will have less of a direct impact on competition, than would a regional unification, both carriers will, under their proposals, enhance their dominant positions in their respective areas. The Department notes that both carriers will gain access to Rock Island points of traffic origination and termination; Union Pacific will be able to reach the important eastern gateways of Chicago and St. Louis, giving it access to the Northeast and Southeast; and Southern Pacific will acquire a second route to Memphis as well as the route to Kansas City.

Justice contends that Union Pacific presently participates in 75 percent of the traffic moving through the central corridor, as compared to 25 percent for Rio Grande, which Justice claims is Union Pacific's sole competitor. Although Justice does not necessarily accept Rio Grande's figures as to the extent of increase, Justice agrees that Union Pacific will be in a position to greatly strengthen its present status by virtue of its excellent access to major West Coast traffic originating and terminating points, the new ability to draw from Rock Island's points of traffic origination and termination, and access to eastern gateways.

Similarly, Justice argues that Southern Pacific, the dominant carrier in large areas of California and Oregon, particularly for traffic originations, would gain access to (1) Rock Island points of traffic origination and termination, (2) Kansas City, and (3) Memphis via an additional route. Thus, Justice contends, in much the same manner as Union Pacific, Southern Pacific will become more dominant on traffic moving to and from the West Coast. To offset the alleged increase in dominance of Union Pacific and Southern Pacific, Justice favors the Rio Grande purchase of the western Rock Island line and Santa Fe's gaining access to St. Louis and Memphis.

Justice reasons that allowing Rio Grande to extend its lines to the Missouri River gateways will offset Union Pacific's dominance, by permitting Rio Grande to offer single-line service to and from the Missouri River thus strengthening Rio Grande's competitive ability in the central corridor. Justice similarly argues that granting Santa Fe access to St. Louis will also tend to offset the dominance of Union Pacific in the central corridor, as well as the Southern Pacific dominance in the southern corridor. Justice argues that Santa Fe's entry into Memphis also will offer competition to Southern Pacific and will further offset Southern Pacific's area dominance.

As previously mentioned, Justice points out that the Union Pacific and Southern Pacific proposals will affect other carriers through the diversion of traffic. Recognizing that the protesting carriers have the same incentive to maximize their estimated loss as the applicants have to minimize their gains, Justice contends that even considering the outer boundaries of protestants' estimates leads to the conclusion that these sums fall within the range of relatively short-run income variation for many carriers. Justice reasons that if traffic levels continue to rise and rate increases yield anticipated revenues, these revenue increases should substantially cushion such diversion losses.

Justice says that, while a merged North Western-Milwaukee would provide a stronger front to diversion from a combined Union Pacific-Rock Island, even a failure of those carriers to merge would not put them in a position of being unable to provide efficient and progressive service.

Justice asserts that Burlington is a large and relatively prosperous system which should not suffer any impairment of service from traffic diversion resulting from the UP-RI merger. Justice believes that Burlington expects to maintain its profitable traffic interchange at Grand Island.

Justice asserts that MoPac, also claiming affects from the Union Pacific proposal, is a large, vigorous, and profitable system, with growing revenues. MoPac recently was strengthened by gaining access to Chicago and improving its interchange arrangements at St. Louis, and Justice feels that MoPac should be able to withstand any probable diversion from the applicants.

Although Frisco is a smaller carrier, with diversion estimates amounting to a larger percentage of its revenues than many other carriers, Justice contends that Frisco could not judge this diversion prospect as a serious threat to the carrier, given its recent substantial growth in revenue and its access to Southeastern regional traffic.

Justice contends that the diversion prospects for Rio Grande and Western Pacific present a different problem. In the central corridor, Rio Grande is Union Pacific's only competitor and Western Pacific is Southern Pacific's only competitor. Justice feels that, although the anticipated traffic diversion should not necessarily interfere with the ability of Rio Grande or Western Pacific to survive, it will affect their ability to offer aggressive competition to the dominant Union Pacific through the central corridor. Justice again stresses that the purchase of the western Rock Island lines by Rio Grande will enable Rio Grande to offer stronger competition to Union Pacific in the central corridor which will strengthen not only Rio Grande but also Western Pacific, its working partner.

Justice argues that the Southern Pacific proposal would have less effect on Frisco, MoPac and Texas & Pacific than would the Santa Fe proposal, but more of an effect on Kansas City Southern and Katy. Again, Justice feels that the harm to Katy would be felt in its service.

Justice asserts that Union Pacific's acquisition of the Rock Island line between Council Bluffs and Chicago would give that carrier a major route paralleling Illinois Central, a railroad in which Union Pacific has a substantial stock interest. Further, Justice asserts that when Union Pacific extends its line from Kansas City to St. Louis, both Union Pacific and Illinois Central will be feeding traffic into and gathering traffic from that major interchange. Justice feels that the community of interest created by this stock ownership would be detrimental to the rivalry of these carriers between Omaha-Council Bluffs and Chicago and to the interchange of Union Pacific and Illinois Central traffic solely on the competitive merits of the various railway interchange partners at St. Louis. Justice contends that, to avoid these adverse effects, Union Pacific should be required to divest itself of its stock ownership in Illinois Central as a condition to approval of its application.

Justice does not specifically comment on the many other conditions sought in these proceedings, although it does point out that in the past, in similar proceedings, it has favored the opening of gateways, the creation of through routes and joint rates, and the creation of competitive access to important traffic generating and terminating points. Justice asserts that, in view of its usual position, it is constrained to note that if rail competition is to be preserved in the division of Rock Island, it recommends that such competition should not at the same time be hampered by conditions preventing competitors from taking independent rate and service action.

Justice says that with respect to Katy's weak condition, some stringent conditions might be justified to protect it until a permanent resolution of its problems can be reached. Although Justice makes no specific recommendation with respect to Katy, it suggests that if inclusion of Katy in a large system is recommended, the Commission should schedule separate hearings for that purpose after a determination is made as to which applicant carrier would be authorized to acquire Rock Island properties.

(19) The State of Kansas

The State of Kansas, through its State Corporation Commission, originally filed a petition to intervene in support of the Union Pacific applications. Later, however, the State withdrew its support, and indicated it would make a comprehensive review of all applications before taking a definite position.

The State submitted no evidence, and its position is stated wholly on brief. Also, as stated in that portion of Part A of Volume I, dealing with the filing of briefs, the Examiner construes the Commission's acceptance of the State's late-filed brief as extending basically to the State's statement of its position, and statements made in the brief which are not in evidence will not be considered.

The position of the State of Kansas is in accord with that of the Department of Justice, namely; the State has no objection to the acquisition by Union Pacific of Rock Island, provided that the western lines of Rock Island between the Colorado points and the Missouri River are sold to Rio Grande; that the southern portion of Rock Island is sold to Southern Pacific, with the exception of the Amarillo to Memphis line, which should be sold to Santa Fe; and that Santa Fe receive full trackage rights over the Rock Island line between Kansas City and St. Louis, with complete use of facilities at St. Louis. In addition, the State feels that special arrangements should be made for MoPac and the other smaller carriers that will be adversely affected by the Union Pacific and Southern Pacific proposals.

- (20) State of Colorado
- (21) City and County of Denver, Colo.
- (22) Denver Chamber of Commerce

The State of Colorado ex rel Colorado Public Utilities Commission; the City and County of Denver and Denver Chamber of Commerce, having the same interests in these proceedings, filed a joint and consolidated brief stating their position.

The basic position of these Colorado parties is that the merger of Rock Island into Union Pacific would divert traffic which normally flows through the central corridor via Denver to the Pacific Coast, thereby resulting in a reduction in employment, tax revenue and retail trade. This situation in turn would adversely affect the overall economy of Denver and eastern Colorado, with a corresponding reduction in the area's status as a commercial, industrial and distribution center, possibly negating any continued economic growth.

The Colorado parties fear that detrimental effects will occur which will weaken Rio Grande's competitive position vis-a-vis carriers operating through the northern and southern routes, and Rio Grande's ability to serve Colorado, much of it exclusively.

With respect to the estimates of traffic diversion loss that Rio Grande will suffer from the Union Pacific proposal, the Colorado parties argue that the Rio Grande estimate of

of \$11.6 million should be given more weight than the Union Pacific estimate of \$600,000. The Colorado parties point out that they have had the experience of disputing the financial results of passenger trains with both carriers and have found the Rio Grande estimates of operating expenses and resultant financial gain or loss from certain passenger train operations to be more on the conservative side than the Union Pacific estimates under the same circumstances.

The Colorado parties state that, because of the terrain, central corridor rail traffic is not as susceptible to carriage by other modes of transportation as is traffic in other regions. In the opinion of the Colorado parties, the other modes could not absorb rail traffic since in the central corridor region, these modes are geared to railroads, particularly Rio Grande, for primary movement. While in many areas, certain commodities may be moved by air without concern with connection to railroad facilities, the Colorado parties assert that this is not the case in the central corridor.

The Colorado parties state that the importance of the central corridor was clearly emphasized by the Rio Grande shipper and public witnesses. The Colorado parties urge that one of the factors indicating the importance of the central east-west routes via Cheyenne, Denver and Pueblo, is that these routes are generally the shortest for many transcontinental movements. Another factor that the Colorado parties mention is that the central routes are less vulnerable to enemy military attack than the northern and southern routes and thus the National Defense Policy would be furthered by retaining the strength in the central corridor.

In summary, the Colorado parties contend that the Union Pacific-Rock Island merger would result in a lessening of competition in the central corridor areas; that other central corridor carriers would suffer serious financial losses; and that there would be significantly adverse effects on the economic well-being of Colorado. In the alternative, however, the Colorado parties argue that if the Commission determines that the overall good would be better enhanced by permitting the merger, then Rio Grande must be allowed to purchase the western Rock Island lines in order to maintain Rio Grande as a viable and competitive carrier.

(23) The California Parties

As stated earlier in this report, Volume I, Part C, the State of California, the California Department of Agriculture and the California Public Utilities Commission, referred to herein as the California parties, oppose a unification of the Rock Island with any of the applicants.

The California parties contend that the evidence in these proceedings show that Western Pacific and Rio Grande handle a substantial amount of traffic jointly with Rock Island, that any acquisition of Rock Island by the applicants would effectively shut off access by Western Pacific to a substantial portion of its bridge traffic, and that this would be detrimental to Western Pacific's position over the central corridor.

Further, the California parties represent that there are five major railroads serving California in transcontinental service. The bulk of this service is performed by the Santa Fe, Southern Pacific and the Union Pacific, serving the Southern California area, while the San Francisco Bay area and the Central Valley area are served by Santa Fe, Southern Pacific and the Western Pacific. The California parties maintain that for the good of the State's economy it needs all of these railroads in competition with each other and they point out that the Commission has agreed with this position in the Southern Pacific Co.--Control--Western Pacific Railroad Co., 327 I.C.C. 387, decided January 27, 1965, the Western Pacific Control case.

The California parties contend that applicants have failed to meet the burden of showing that the proposed rail consolidations are consistent with the public interest of the people of California or the National Transportation Policy.

It requests that the applications be denied unless conditions are imposed to preserve or enhance existing competition between Western Pacific, Union Pacific and Southern Pacific.

(24) The Southeastern Association of Railroad and Utilities Commissioners

On brief The Southeastern Association of Railroad and Utilities Commissioners reasserts its support for Santa Fe's acquisition of the Memphis-Tucumcari line. It argues that the public interest consideration should extend beyond the region in which the carrier to be acquired operates. In connection with the foregoing, the Association further argues that not only should consideration be given to the effect of the various proposals on cities and towns directly served by Rock Island, but a division of that carrier should be so effected as to

afford those other areas better transportation facilities for the movement of their commodities between territorial gateways and points served by Rock Island and by the applicants.

The Association claims that the South has always been dependent upon rail transportation and only recently has gained freight rate equality with other sections of the country, and that the State Commissions in the South, both individually and through the Association, have participated in merger and acquisition proceedings in support of the interests of their area. The Association suggests that this Commission, in recognizing that current economic conditions and transportation patterns would no longer support a multiplicity of small railroads, has approved proposals which were soundly conceived and would offer improved services. These proceedings are along the same lines, the Association contends, in that Santa Fe's affirmative program of development of Rock Island's Memphis line and coordination of that line with its own into a faster, more dependable transcontinental route would greatly improve the availability to the South of the rail service being needed to transport the products of its industry.

Although Southern Pacific has provided adequate service through New Orleans, with less attractive service through Memphis, the Association feels that this service has suffered from lack of competitive stimulus. The Association contends that Southern Pacific's proposal is a defensive measure designed to preserve or even enhance its dominant position at the New Orleans and Memphis gateways, and offers to the South no improvement in facilities or service competition.

The Association says that the South has experienced substantial economic growth in recent years and that the railroads have shared in this growth through increased tonnage in spite of the national trend to the contrary. The Association thus wishes to avoid any handicap to continued improvement in the South's economic health and transportation services. It requests that the Commission find that the Santa Fe application to acquire the southern lines of Rock Island is consistent with the public interest and would better serve the public interest than any other disposition of those lines; and should be approved.

(25) The Golden State Route Committee

In its brief, the Committee reiterates its position that Southern Pacific's ownership of the Tucumcari-Kansas City line

would permit improved and expedited through railroad transportation between points on the present lines of Southern Pacific and points on the present lines of Rock Island and eastward. The Committee further contends that the public interest will be served by the availability of the strong financial resources of Southern Pacific for the improvement of Rock Island's plant and car supply. The Committee argues that these advantages will not accrue if this line is left with Rock Island or acquired by another carrier.

(26) RLEA

RLEA, in its brief, continues to maintain its policy of opposition to mergers as contrary to the interests of employees. However, as reflected by Exhibit No. 1375, RLEA organizations and Union Pacific have entered into protective agreements in the event of an approval by the Commission of the Union Pacific-Rock Island merger. RLEA contends that it would be manifestly inequitable for the Commission to impose protective conditions differing from those set forth in the RLEA-Union Pacific protective agreements for other employees of Rock Island acquired by other carriers and that such a divergence from the agreed-upon protective conditions would create chaotic disruptions in employer-employee relationships obviously contrary to the public interest. RLEA urges that the provisions of the mutually entered into agreement should be extended to all employees involved in the event any portion of the Rock Island is acquired by one or more of the other rail carriers involved, in the same manner as employee protective conditions agreed upon in the Penn-Central case, 327 I.C.C. 475, 544-545, were extended to unorganized or non-represented employees.

(27) Brotherhood of Locomotive Engineers (BLE)

BLE originally opposed all of the applications in this transaction. BLE withdrew its opposition to North Western's proposal upon entering into a labor protective agreement with that carrier similar to that into which these parties had entered after merger of Great Western into North Western. The original agreement is attached as Exhibit A to BLE's brief. Certain provisions of such agreement will be later detailed and discussed, but for the moment it suffices to point out that in general, the agreement guarantees to the affected employees full employment and minimum compensation, among other things, and further contains rules governing working conditions. BLE feels that the conditions in this agreement provide a fair and equitable

arrangement for the protection of employees as required by Section 5(2)(f) of the Act, and it requests that the Commission impose these conditions upon approval of the transactions or "relief" proposed by Union Pacific, Southern Pacific, and Santa Fe.

BLE contends that approval of one or more of these transactions would cause extensive and irreparable injury to a large number of employees represented by BLE. Assuming overriding public interest factors, BLE argues that the Commission must then evaluate the nature of the adverse impact on employees in order to be able to determine the conditions best suited for their protection. In connection with the foregoing, BLE claims "it is well recognized" that in the instant case the overall loss to employees would be tremendous because of the amount of displacement throughout the seniority ranks, which, in turn, would cause every affected engineer a loss in earnings, changed working conditions and, in many instances, changing of residence.

The BLE asserts that the present body of conditions normally imposed by the Commission in unification proceedings for the benefit of employees are those set forth in the New Orleans Terminal Passenger Case and that such conditions would not here provide adequate or satisfactory protection. BLE accurately describes the "New Orleans" conditions as generally consisting of the provisions of the Washington Job Protection Agreement, upon which has been superimposed the provisions of the so-called "Oklahoma" conditions. It contends that the provisions of the Washington Job Protection Agreement were fashioned for piecemeal coordination of rail facilities, that such unifications are not comparable to unifications of entire rail systems in scope and effects upon employees, that many transactions presently before the Commission are of such magnitude and affect employees in a manner never concerned by the parties to the Washington Agreement or by the Commission when it adopted the "Oklahoma" and "New Orleans" conditions, and that it is necessary for the Commission to now consider and adopt a new and modernized formula of employee conditions which will meet problems which were never considered in 1936, 1944, or in 1952.

The BLE criticizes the Commission at some length for having failed in the past, in BLE's view, to have provided adequate protection for affected employees in operating crafts. In particular BLE charges that:

"The Commission unwittingly, through the failure to understand working conditions and the maze of rules and terms of bargaining agreements pertaining to the operating employees, has failed to

see the shortcomings of these conditions when applied to actual situations. Furthermore, it has failed to modify these conditions to meet existing economic facts".

BLE contends that there are various reasons why existing protective agreements do not meet the test of fair and equitable protection as required under section 5(2)(f) of the act. It asserts that the present labor force is only about one-half of the size it was when the New Orleans case was decided and only 20 percent of its size in 1936 when the Washington Agreement was executed. It claims that much of such reduction has been the result of improved mechanization and technology in the rail industry and that any future savings will have to come through mergers and consolidations, and at the expense of employees. BLE asserts that most of the present labor force is comprised of employees that have retained their positions through higher seniority and are now middle aged or older, that not only do few of these employees possess a salable nonrailroad skill, but their age is generally unattractive to prospective nonrailroad employers, and that as the ranks of the older employees are depleted through retirements, etc., the carriers will have a need for the skills and experience of these employees. Thus, says BLE, the presently-used conditions in merger cases fail to effectively protect the stability of the labor force and the investment of the employee in his seniority and skill.

Furthermore, BLE asserts, employees in the locomotive engineers craft suffer adversities which are not effectively protected by existing protective conditions and which adversities result from the nature of their employment, seniority provisions, rules upon which their employment is based and their wages are computed and the application of the so-called ebb and flow doctrine. The examples of the foregoing cited by the BLE are that low standing engineers on the engineer seniority roster would flow into the ranks of the firemen when they are unable to maintain a job as an engineer or be forced to take a job on the extra boards, that others will not be able to retain any employment, that some will be forced to take inferior jobs from the standpoint of wages and working conditions, and that actual adverse affects are often not ascertainable for a long period of time. BLE points out that in cases where an employee is unable to hold employment, the adversities are clearly defined at consummation so that the individual may receive the benefits flowing from the protective conditions. Others, who may be moved around due to seniority rights may initially suffer no adversity or only minor affects but at a future date when the severity becomes clear, the employee, due to the passage of time and continuing changes in normal rail operations, faces the

difficult burden of proving that the adverse affect upon him resulted from the transaction.

BLE has two other criticisms of the "New Orleans" conditions; namely that the conditions do not protect an employee in all incidents of employment, such as Railroad Retirement benefits, supplemental pension benefits, hospitalization, medical-surgical care, life insurance, free transportation, vacation rights, and the extra expense for travel and meals occurring as a result of the transaction, if the employee is forced back to an extra board with its attendant additional expenses,⁹¹ and that the arbitration procedures are conflicting and totally inadequate. BLE urges adoption of the conditions it proposes.

The conditions suggested by BLE for adoption by the Commission will be next discussed. Before such discussion, however, the various grave charges and totally unsupported claims made by BLE in its brief demand an immediate reply and review of the true factual situation of record. As seen, the Commission exercised the greatest of care to afford all interested and participating parties the maximum full and fair opportunity for the presentation of evidence, both written and oral, and the cross-examination of witnesses at the lengthy public hearings.

As BLE itself concedes, at page six of its brief, it had a "limited" participation at the hearings. Actually, BLE engaged in a miniscule of cross examination and while the examiner has gleaned the enormous record he finds no evidence which BLE presented in connection with the issue concerning any anticipated adverse impact on the members of its craft as a result of the proposed transactions, and BLE suggested conditions necessary to protect against such adverse affects.

91 BLE asserts:

"But the 'New Orleans' Conditions do not protect these fringe benefits, for the 'New Orleans' Conditions contain only the specific protection specified in the Washington Agreement." The thrust of BLE's argument is not clear, as seen, BLE itself has earlier agreed that the "Oklahoma Conditions" are also included, and in such connection see New Orleans Union Passenger Terminal case, at page 281 which in part provides:

(a) That employees adversely affected * * * shall receive as a minimum the protection afforded by conditions 4 to 9, inclusive, in Oklahoma Ry. Co. Trustees Abandonment, 257 I.C.C. 177 (197-201) * * *.

Neither does BLE claim in its brief that it has made such presentations. On the other hand, each of the proposed acquiring carriers, through well qualified witnesses, presented its best estimates of anticipated changes or modifications in the numerous areas of railroad operations, including employee effects. Such evidence is generally summarized in various parts of Volume I; the numerous and highly detailed explanations are embraced in many exhibits in evidence and the oral testimony of the witnesses, including as here involved anticipated eliminations, displacements, and the like, of employees, and, of course, those of the BLE craft. Having permitted such evidence to be received without serious challenge as to the accuracy of the carriers' estimates of modifications and effects, and with no opposing evidence of its own, BLE, long after the close of the record, now charges in its brief that:

"Testimony regarding the adverse effects which will result to employees as a result of the transaction and/or transactions would merely be theoretical. Any testimony by the applicants of operational changes, abandonments or changes in trackage rights is pure conjecture. What physical changes will occur after the transactions will depend upon management decision at that time. Obviously, no one could testify as to what would occur in so far as employees are concerned because physical changes would be solely within the knowledge of the applicants and exercise of seniority rights by employees in protecting themselves would be solely within the knowledge of those employees."

As stated, BLE failed completely to establish, through evidence of its own or cross-examination, that the carriers' evidence dealing with possible adverse impact upon employees is purely "theoretical". BLE's charge that: "the abolishment of only one job could result in serious dislocation of many engineers and their families" (underscoring supplied), is itself unsupported, conjectural, and unconvincing.

BLE also charges that past protective conditions imposed by the Commission have been ineffectual because of the Commission's failure to understand working conditions, and the maze of rules and terms of bargaining agreements pertaining to the operating employees. In a further attack upon existing protective conditions, BLE claims that locomotive engineers suffer adversities which are not contemplated to be effectively protected by existing conditions and that such adversities result

from the nature of their employment, seniority provisions, rules upon which their employment is based and their wages are computed, and the application of the so-called ebb and flow doctrine.

Assuredly, none of the above has been placed in evidence in these proceedings by BLE, or for that matter, by any other party. BLE urges that the Commission become involved in the described matters for the purpose of sections 5(2)(c)(4) which require Commission consideration of employee interests affected and 5(2)(f), which requires Commission imposition of protective employee conditions, in transactions such as herein under consideration. The protective conditions suggested by BLE, as next summarized, does contain such matters; embracing new seniority districts, new seniority rosters, consolidation of terminal services, the establishment of zones, transfer of work, and the like. Provisions of similar impact are contained in the voluntarily entered into agreement, previously described between Union Pacific and certain non-operating and operating labor organizations. However, no matter whether the described conditions are in one form or another, the result is that the conditions apply to the "protected" employees in their day-to-day employment. Such type of protection, in the examiner's view, goes far beyond the reaches of section 5(2)(f) and clearly embrace, under section 5(2)(a) such public interest factors as the adequacy, efficiency, and economy of the proposed unified operations and services. To the examiner's knowledge, such factors of consideration are passed upon by no other Federal Agency or Board in the type of section 5 proceedings here presented for determination. The foregoing will be passed upon in the final discussion and conclusions.

The events leading to the development of the protective conditions urged by BLE, are important to a number of issues involved herein. Following Commission approval of the Great Western proceeding (employee protective conditions prescribed by the Commission are embraced in the initial report in 330 I.C.C. 13) and of the proceeding in Finance Docket No. 24471, Chicago And North Western Railway Company--Control--Des Moines And Central Iowa Railway Company And Fort Dodge, Des Moines And Southern Railway Company, (protective conditions prescribed by the Commission are those set forth in the New Orleans Passenger Terminal case), approved by Decision and Order of the Commission, Division 3, on January 2, 1968; the North Western and BLE executed on July 26, 1968, and which was after consummation of the two above-described proceedings, an "implementing" agreement to the protective conditions prescribed in the approved proceedings.

The agreement is comprised of 17 articles, and a general summary of the more significant provisions follows:

Article 1 recites that the scope and purposes of the agreement is to assure employment and/or earnings as subsequently prescribed, to define employees involved in the merger and control proceedings; to provide for consolidation of work and operations necessitated by the control and merger; and to prescribed procedures by which existing agreements between the parties shall be modified and consolidated.

Article 2 provides that North Western will take into its employment all locomotive engineer employees (including all employees having seniority and equity as such) of the Great Western and FDDM&S as of the date of the agreement and none of such protected employees will be deprived of their employment status or placed in a worse position with respect to compensation, rules governing working conditions, fringe benefits or rights and privileges pertaining thereto at any time during such employment. The term "protected employees" means all engine service employees of the North Western former Great Western and FDDM&S who have engineers' seniority or who are eligible for promotion to engineer and who rendered any compensated service between May 1, 1968 and the effective date of the agreement.

An employee shall not be regarded as deprived of his employment status or placed in a worse position with respect to his compensation, rules governing working conditions, fringe benefits, or appurtenant rights and privileges in case of his resignation, death, retirement, temporary absence in case of suspension or dismissal for cause, failure to work due to disability or discipline, failure to accept a position available to him in a consolidated seniority district or in his prior rights zone, a part of said consolidated seniority district as established by Article 6.

Article 3 provides that each "protected employee" shall receive a "monthly allowance" determined by a described formula so as to produce the average monthly compensation and average monthly time paid for, which shall be the amounts used as guarantees for the "protected employee". If the employee's compensation is less in any month in which he performs railroad service than his average compensation, he shall be paid the difference, subject to decreases in compensation when work is not performed for certain specified reasons and increases in compensation for time worked in excess of the average monthly time.

The North Western and FDDM&S are required to promptly establish the "monthly allowance" for each "protected employee" and such allowance will always remain a "protected employee's" guarantee, except that the percentage of future general wage increases will be added to the said "monthly allowance" beginning with the date and the month in which such wage increase becomes effective.

Article 4 provides for the same protection above-recited for officials, supervisory, or fully excepted personnel and organization representatives who exercise seniority rights at a later date.

Article 5 provides for reduction in "monthly allowance" to protected employees in the event of a business decline. The decline in volume is to be determined in accordance with a described formula. Any decline in excess of 5 percent in any calendar month would act to reduce "monthly allowance" to the extent of 1 percent for each 1 percent the decline exceeds 5 percent. Upon restoration of the carrier's business, the original earnings guarantee is to be restored.

The "protective allowance" is also subject to reduction for each day lost under specified emergency conditions, provided that operations are suspended in whole or in part and as a result thereof the work cannot be, and is not, performed.

If traffic is rerouted outside of a consolidated seniority district due to trackage obstruction lasting for more than 30 days, affected employees will be permitted to temporarily transfer to the district over which traffic is rerouted and supplement the engineers' list to the extent needed. At the end of the 30 day period "protective allowances" will be resumed, except that no allowances shall be made for engineers who decline temporary transfer to the district over which traffic is rerouted.

Article 6 provides for the cancelling of all pre-existing seniority districts and the establishment of new seniority districts and new seniority rosters.

Article 7 and 8 set out a number of provisions for the consolidation of terminals (yard engine points and non-yard engine points) and of the work and services performed therein, and, also, provisions relating to switching limits and service.

Article 9 establishes zones and Article 10 designates terminals in the consolidated seniority districts and a number of employee working arrangements.

Article 11 provides for payment and relocation expense; Article 12 for the consolidation of rules, rates of pay, and the employment of locomotive engineers of North Western and FDDM&S; Article 13 for optional retirement allowances to eligible engineers, who are not compelled to retire; Article 14 for arbitration of disputes; Article 15 for implementing agreements covering changes in operations which cannot be made effective immediately or situations which have been overlooked; and Article 16 is designed to preserve the effectiveness of the Agreement of June 25, 1968 between the Carrier's Conference Committees and the Brotherhood of Locomotive Engineers and any Memorandum Agreement entered into by the parties interpreting and applying the provisions of the foregoing articles.

The effect of the final Article 17 is to note that the protection afforded by such agreement exceeds the protection to which the employees would be entitled to under the employee protective conditions imposed by the Commission in the merger (the Great Western proceeding) and control proceedings and, accordingly, such agreement supersedes the protection granted by the Commission in such proceedings. The agreement in its several articles also refers to various "Attachments", none of which were appended to the agreement.

In connection with the suggested conditions, above-set forth, BLE makes clear in its brief that, "Furthermore, a basic premise carried throughout the proposed conditions is for the incorporation of compensatory allowances in the form of income protection with the retention of seniority rights which makes employment for the individual in his customary railroad occupation when such becomes available through the process of attrition". BLE understands that under the decision in Brotherhood of Maintenance of Way Employees v. United States, 366 U.S. 169, Section 5(2)(f) does not require the protection of the actual jobs of the employees affected. However, BLE argues that its proposed conditions do not maintain jobs. In the examiner's opinion and which follows the views expressed by the Commission, as later detailed, the practical effect and real result of the proposed conditions is to accomplish a job freeze. Aside from the foregoing, BLE discusses the purposes and designs of the various articles of its proposed conditions.

With respect to Articles 6, 9, and 17, BLE asserts that the Commission in the instant proceeding should require the acquiring carrier to set forth guide lines for making implementing agreements which provide for the use of employees, allocation and rearrangement of forces, rearrangements and changes in seniority districts, terminals and other matters involved in a merged operation. Such a requirement, BLE contends, would prevent

management from engaging in a "helter-skelter" campaign (following the merger) and would afford disposition of many preliminary matters. Secondly, the employee representatives would have their say in providing a meaningful changeover accommodated to the employee interest, which includes such important elements as mileage regulations, seniority provisions and seniority districts in the collective bargaining agreements, and BLE's obligation, as the crafts representative, to allocate work. It asserts that Article 2 upgrades the definition of a protected employee (as set forth in sections 7 and 8 of the Washington Agreement) and also guarantees protection of all incidents of employment among other things. Without reciting the specific BLE explanation, it is also asserted that all or portions of Articles 2, 4, 5, 11 and 14, modernize, update, or liberalize the complementary conditions as set forth in the Washington Agreement, and the "New Orleans" and "Oklahoma" Conditions.

Careful consideration has been given BLE's arguments in support of its proposed conditions. The essence of such arguments are that the Commission has the necessary authority to impose such conditions and that there is every reason to believe that the compensatory protective allowances and retention of seniority rights provisions would be found acceptable to the United States Supreme Court should those issues be presented for determination. No further discussion of BLE's arguments is necessary in view of the conclusion herein.

APPENDIX

Map B attached hereto shows the principal systemwide freight routes of the Union Pacific, Southern Pacific, Santa Fe and Burlington Northern following the unifications recommended by the examiner. It is indispensable to a complete and intelligible understanding of such unified routes that the map be considered in conjunction with the examiner's general discussion and conclusions and which will be embraced in a final volume of this report. In particular, the final discussion will explain the reason for the showing of the Milwaukee and Frisco as independent lines. The purpose of serving Map B at this time is to afford all interested and effected parties an early opportunity to study in graphic form the final recommendations of the examiner. Again, the rationale supporting the recommendations, and also the appropriate terms and conditions will be detailed in the examiner's general discussion and conclusions.