

2040 Examiner Burchmore: Do you object to this company being heard at this time instead of immediately after your company?

Mr. Riddell: We would like to get ourselves before the Commission as soon as possible.

Examiner Burchmore: It would simply mean a postponement of half an hour, or so.

Mr. Riddell: All right.

Mr. Greer: In what manner are you going to take those up, in alphabetical order?

Examiner Burchmore: As announced by the Commissioner two or three days ago, we are taking up in alphabetical order, or substantially in alphabetical order, the connections of these systems, and we are now dealing with roads that are connected with the Cotton Belt.

Mr. Greer: Regardless of states?

Examiner Burchmore: Yes.

Mr. Greer: There are a good many in Texas on the Cotton Belt that are earlier than that.

Examiner Burchmore: The Angelina & Neches River Railroad.

2041 *Angelina & Neches River Railroad.*

ELI WIENER, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: Are you an officer of the Angelina & Neches River Railroad?

Mr. Weiner: I am secretary and treasurer and auditor.

Examiner Burchmore: Are you also an officer of the Angelina County Lumber Company?

Mr. Wiener: Secretary and treasurer.

Examiner Burchmore: I understand that the Angelina & Neches River Railroad is controlled by the Angelina County Lumber Company through the ownership of the entire capital stock?

Mr. Weiner: The stockholders of the Angelina County Lumber Company own the stock of the Angelina & Neches River Railroad in substantially the same proportion, about ninety-five per cent of the stockholders of the lumber company own about ninety-eight per cent of the stock of the railroad company.

Examiner Burchmore: And five per cent in the case of one company and two per cent in the other is in the hands of the 2042 directors?

Mr. Wiener: In the lumber company it is not; in the railroad company it is.

Examiner Burchmore: Who are these stockholders, the five per cent, in the lumber company?

Mr. Wiener: One of them is a son of the president of the company and the other one is a sister of mine.

Examiner Burchmore: Then they are in the family, the principal ones?

Mr. Wiener: Yes, sir; as I say, the ownership is substantially the same.

Examiner Burchmore: The Angelina County Lumber Company has but one saw mill?

Mr. Wiener: But one.

Examiner Burchmore: A planing mill in connection therewith.

Mr. Wiener: A planing mill in connection therewith.

Examiner Burchmore: I understand that this railroad connects with the Houston East and West Texas at Prosser, Texas?

Mr. Wiener: That is correct.

Examiner Burchmore: And with the St. Louis, Southwestern Railway of Texas at Keltys, Texas?

2043 Mr. Wiener: That is correct.

Examiner Burchmore: Are those the two terminii of the line?

Mr. Wiener: No, the present terminus of the railroad is Naclina, which is in Nacogdoches County, 19.98 miles from Keltys.

Examiner Burchmore: And 19.89 miles is the total main line mileage of the road?

Mr. Wiener: Is the total main mileage of the road.

Examiner Burchmore: It also has about one mile of side tracks.

Mr. Wiener: It has, on June 30, 1910, 2.43 miles I think is the exact figure. Just one second, I will give them to you exact. (Witness refers to papers.) 2.43 miles.

Examiner Burchmore: Now, the mill of the Angelina County Lumber Company is located at the junction with the Cotton Belt system?

Mr. Wiener: Located at Keltys, yes, sir.

Examiner Burchmore: And it joins the right of way of that company as well as being on the line of the rails of the Angelina?

2044 Mr. Wiener: The saw mill is situated some little distance from the Cotton Belt right of way. The planing mill is off the right of way, but very close to it.

Examiner Burchmore: Most of the lumber from that mill is shipped out of the planing mill?

Mr. Wiener: The majority of it is, yes, sir.

Examiner Burchmore: The loading platform near this planing mill is reached by the private side track directly connecting with the Cotton Belt, is it not?

Mr. Wiener: The Cotton Belt has connection with that side track.

Examiner Burchmore: It can reach that side track without actually moving over the rails of the Angelina & Neches River Railroad?

Mr. Wiener: It can; yes, sir.

Examiner Burchmore: And does?

Mr. Wiener: It does in some instances.

Examiner Burchmore: The distance from this mill plant to the junction with the Houston East & West Texas is about three miles?

Mr. Wiener: Approximately; three miles.

Examiner Burchmore: Does any considerable volume of lumber move out over the Houston East & West Texas?

2045 Mr. Wiener: During this year there has been a considerable volume, according to car supply. There have been some months when the volume has been fairly heavy, and for the last month or two the Southern Pacific system seem to have been short of empty cars and the tonnage has not been so heavy that way.

Examiner Burchmore: Are there any other saw mill operations on this line of railroad?

Mr. Wiener: None.

Examiner Burchmore: What is the character of the country through which it runs, is it a timber country?

Mr. Wiener: The twenty miles of road is through a section from which the larger portion of the pine timber has been cut in the past.

Examiner Burchmore: Was that land formerly owned by this lumber company?

Mr. Wiener: Some portions of it, a very small percentage of the entire twenty miles.

Examiner Burchmore: But this lumber company had the timber rights on most of that land, did it not?

Mr. Wiener: On the greater portion of it; yes; on a good deal of it, there have been some portions of it that have been 2046 cut by other mills, but nearly all has been cut by this lumber company, and there is a good deal of it in cultivation now.

Examiner Burchmore: When was the mill at Keltys opened for operation?

Mr. Wiener: I have been there since 1890; I think the mill was built early in the 80's, I do not know exactly, it was before my time.

Examiner Burchmore: When was this railroad first begun?

Mr. Wiener: That I cannot say. The Angelina & Neches River Railroad dates to 1900.

Examiner Burchmore: What was the date of the incorporation of this company?

Mr. Wiener: In August, 1900.

Examiner Burchmore: There had been a railroad there previous to that time?

Mr. Wiener: Yes, there was a railroad there previous to that time.

Examiner Burchmore: That railroad was originally built, was it not, in order to haul logs to this saw mill in the beginning?

Mr. Wiener: Yes, sir; it was originally built as a logging 2047 railroad.

Examiner Burchmore: And what was the length of the line in 1900?

Mr. Wiener: Approximately ten miles.

Examiner Burchmore: Then it ran from Keltys, crossing the Houston East & West Texas and on into some woods?

Mr. Wiener: Well, it ran to—I do not know whether the Texas & New Orleans was there at the time it ran to the point where the

Texas & New Orleans now is; I do not know whether the Texas & New Orleans was built there or not.

Examiner Burchmore: This railroad crosses or joins the Texas & New Orleans?

Mr. Wiener: Crosses the T. & N. O. approximately nine miles from Kelty's.

Examiner Burchmore: What is the name of that junction?

Mr. Wiener: McCoy.

Examiner Burchmore: Do you interchange any lumber traffic with the T. & N. O.?

Mr. Wiener: We do not.

Examiner Burchmore: Then that is merely a crossing and not an interchange point?

Mr. Wiener: The T. & N. O., and the H. E. & W. T. interests are practically identical, and for that reason we have never interchanged with them.

Examiner Burchmore: No particular object in interchanging with them?

Mr. Wiener: They reach the same territory that we can reach by the T. & N. O.

Examiner Burchmore: It simply involves a longer haul without opening up any new territory or giving you any better rate?

Mr. Wiener: That is correct.

Examiner Burchmore: When was the present main line approximately twenty miles completed?

Mr. Wiener: Completed some time this year, in 1910.

Examiner Burchmore: This railroad company was incorporated in 1900. Were the articles of incorporation entered into in accordance with the state laws governing the incorporation of railroad companies?

Mr. Wiener: General railroad law of Texas.

Examiner Burchmore: Then this is incorporated as a common carrier railroad?

Mr. Wiener: It is incorporated as a common carrier railroad.

Examiner Burchmore: Has it held itself out in that capacity to the public from the beginning?

Mr. Wiener: It did.

Examiner Burchmore: When did it first begin to receive divisions out of joint through rates on lumber?

Mr. Wiener: I think at the time of its incorporation or very shortly thereafter. I don't remember exactly, it is a long time ago.

Examiner Burchmore: Were those divisions substantially the same as the present divisions it receives?

Mr. Wiener: I think they are identically the same via the Cotton Belt as they are today. I do not think there have been any changes.

Examiner Burchmore: Did you receive any divisions at that time from the Houston East & West Texas.

Mr. Wiener: We did not.

Examiner Burchmore: When were the Houston East & West Texas Divisions established?

Mr. Wiener: Some years ago, I don't remember.

Examiner Burchmore: Was it in 1905?

Mr. Wiener: Oh, long about 1895 or 1896, I don't remember the exact date.

2050 Examiner Burchmore: What was the total capital stock of this road when incorporated?

Mr. Wiener: Authorized \$75,000; issued \$55,000.

Examiner Burchmore: Has there been any issuance of capital stock since the organization?

Mr. Wiener: There has not.

Examiner Burchmore: So that the present outstanding stock holdings aggregate \$55,000?

Mr. Wiener: That is correct.

Examiner Burchmore: Now was that \$55,000 of stock issued for cash?

Mr. Wiener: There was no actual exchange of cash. We considered it a cash transaction. It was a bookkeeping transaction in fact.

Examiner Burchmore: Did not that amount as a matter of fact to a dividend on the stock of the lumber company stockholders, in substance?

Mr. Wiener: In substance it did. It was handled as a payment and repaid to the lumber company for the railroad.

Examiner Burchmore: The stockholders of the lumber company received shares of stock in the lumber company for which they did not actually pay in any cash?

2051 Mr. Wiener: Well it came—they had a surplus there to their credit with the lumber company and it was handled through the books of the lumber company.

Examiner Burchmore: Then the financing of this road was somewhat similar to that of a number of others which we have already examined?

Mr. Wiener: I presume so.

Examiner Burchmore: The president of the lumber company and the president of the railroad company are the same person?

Mr. Wiener: They are.

Examiner Burchmore: The same is true of the vice-president?

Mr. Wiener: That is true.

Examiner Burchmore: And the general manager?

Mr. Wiener: The vice-president and general manager are the same; one person in each instance.

Examiner Burchmore: The secretary and treasurer of each company is the same?

Mr. Wiener: That is correct.

Examiner Burchmore: And the auditor of the railroad company is the auditor of the lumber company?

2052 Mr. Wiener: No, we have no auditor for the lumber company, but the secretary and treasurer and auditor of the railroad company is secretary and treasurer of the lumber company.

Examiner Burchmore: Has either company any additional officers?

Mr. Wiener: The general attorney is all.

Examiner Burchmore: Well, the general attorney is not paid an annual salary, is he, by either company?

Mr. Wiener: He is paid an annual salary, yes.

Examiner Burchmore: Which of these officers of the railroad company receives salaries from that company?

Mr. Wiener: All of them.

Examiner Burchmore: What are those salaries?

Mr. Wiener: Fifty dollars a month each, the president, vice-president, general manager, and secretary-treasurer.

Examiner Burchmore: Do they all render the same service to the railroad company?

Mr. Wiener: That is supposed to be approximately for the proportion of their time that is taken. The time for the last six months or so in some instances, the railroad company has got more than its share of their time, but it is supposed to average the time they employ for the railroad company.

2053 Examiner Burchmore: Those salaries are not excessive for the services rendered, however?

Mr. Wiener: I do not think so.

Examiner Burchmore: As a matter of fact the services rendered by the president are almost nominal, are they not?

Mr. Wiener: Why, nominal; he is present at conferences and discussions of railway policy and things of that kind, but the actual work that he does is very nominal.

Examiner Burchmore: Do the stockholders of the lumber company actually convene in annual meetings?

Mr. Wiener: Yes, sir; we are all right there, in daily meeting you might say; we all live right there, or the majority of us.

Examiner Burchmore: This is a standard gauge line?

Mr. Wiener: It is.

Examiner Burchmore: What is the weight of the rail?

Mr. Wiener: Principally 35 pounds; there is a very little 30 pound and some 40 pound, but it is principally 35 pound rail.

Examiner Burchmore: Is it ballasted?

Mr. Wiener: Just in natural dirt ballast, well surfaced.

2054 Examiner Burchmore: Any cuts and fills on the line?

Mr. Wiener: Yes, a good many.

Examiner Burchmore: Does this road run uphill and down dale or is the country level?

Mr. Wiener: To a certain extent it is level. The first few miles built before its incorporation there was not so much of that work done, but in the last eight or ten months we have changed some of the old cuts and fills and spent \$5,600.

Examiner Burchmore: Do you cross any streams?

Mr. Wiener: Yes, quite a number of them.

Examiner Burchmore: The bridges are substantial?

Mr. Wiener: We have one bridge approximately 2,000 feet which is the best bridge crossing the river. There are four, the H. E. & W. T., and the T. & N. O., and ours, and we have as good a bridge as any one.

Examiner Burchmore: The road is constructed in substantially the same way that the main or branch lines of the longer carriers in Texas are constructed?

Mr. Wiener: Yes, sir, it is. There may be some differences, some of them may have a bigger percentage of grading and some less, but the general character, there are no rock ballasted roads 2055 through there, and they are all about the same manner of construction.

Examiner Burchmore: But on the whole the construction of this road is good?

Mr. Wiener: Yes, sir; we so consider it.

Examiner Burchmore: Have you any station buildings?

Mr. Wiener: Not completed except a freight warehouse at Keltys.

Examiner Burchmore: That is a small warehouse?

Mr. Wiener: That is a small warehouse for handling freight.

Examiner Burchmore: That warehouse as a matter of fact is in a building owned by the lumber company, is it not?

Mr. Wiener: Well, it is a building built on the right of way of the railroad company and belongs to it.

Examiner Burchmore: What do you store in that warehouse?

Mr. Wiener: We store any outbound freight that may be tendered the railroad company, and if the railroad company has anything they store in it; they store different materials in it at different times.

Examiner Burchmore: As a matter of fact there is not very much freight stored in that, is there?

2056 Mr. Wiener: If there is a shipment of freight to go out it is usually taken down in the evening to that warehouse and loaded on the train next morning.

Examiner Burchmore: Do you use the station buildings of the Houston East & West Texas or the Cotton Belt system for any purpose?

Mr. Wiener: The Cotton Belt has no station at Keltys. We have up with them now the question of a joint passenger and freight depot at Keltys. They have none there and we have asked them if it would suit them to avoid doubling expense to build a joint station.

Examiner Burchmore: Have you any track scales on the road?

Mr. Wiener: No track scales on the road.

Examiner Burchmore: You have no means of weighing carload freight?

Mr. Wiener: We have no means of weighing carload freight; we take connection weight.

Examiner Burchmore: How many locomotives have you on this road?

Mr. Wiener: One.

Examiner Burchmore: Is that all?

2057 Mr. Wiener: That is all now. There have been some changes since the report of your Special Examiner.

Examiner Burchmore: You formerly had four locomotives?

Mr. Wiener: We formerly had four locomotives.

Examiner Burchmore: What became of the other three?

Mr. Wiener: We sold them to the lumber company.

Examiner Burchmore: How many cars do you own and operate?

Mr. Wiener: We own now one passenger car and three box cars and have bought one standard caboose, and have under lease one flat car.

Examiner Burchmore: When did you purchase that passenger car?

Mr. Wiener: We made a deal for its purchase some time in the spring or early summer; it was actually delivered to us about, I think, the 1st of October.

Examiner Burchmore: Is that passenger car a regular passenger car, or is it a freight car with windows cut in it?

Mr. Wiener: It is a regular passenger car. The reason we were delayed, the railroad we bought it from said they could not take it out of their passenger service and they delayed us for two months. It was in the T. & N. O. or the H. & T. C. passenger service.

Examiner Burchmore: What use is made of that?

Mr. Wiener: It is used in daily operation of a mixed passenger and freight train.

Examiner Burchmore: Have you any other rolling stock besides that referred to?

Mr. Wiener: I think of nothing else.

Examiner Burchmore: No motor cars?

Mr. Wiener: No.

Examiner Burchmore: No hand cars?

Mr. Wiener: Yes.

Examiner Burchmore: Are they used by the lumber company at any time?

Mr. Wiener: I think not; not to my knowledge; they are not supposed to be.

Examiner Burchmore: Is your equipment supplied with the proper and necessary couplers and air brakes?

Mr. Wiener: The railroad company's equipment is supplied with the equipment prescribed by the Safety Appliance Acts, so far as we know them.

Examiner Burchmore: Mr. Walter, in connection with this last company it was stated, and I neglected to amplify it after wards, then it was not necessary to equip those logging cars with safety couplers because the Act makes an exception in favor of logging cars. That is not true, however of the locomotives. As I understand it, locomotives must be equipped with airbrakes and couplers, unless they are used solely for the hauling of log cars containing only logs.

Mr. Walter: That is right.

Examiner Burchmore: And the statements made by the witness for that company indicate that they sometimes haul other kinds of freight in their trains besides logs, so it would appear their locomotive ought to have some safety device.

Mr. Walter: I think as to the locomotive it has driving wheel brakes and proper couplers itself, but so far as the train line is concerned, it has not any.

Examiner Burchmore: The locomotive then is properly equipped?

Mr. Walter: I think it is. I will find out later and let you know.

Examiner Burchmore: I suggest you look into it. It is not necessary to inform us in this record.

Mr. Wiener: I would state that the safety appliance 2060 inspector of the Commission has been over our line at one time inspecting our equipment.

Examiner Burchmore: And the result of that inspection was not any prosecution for violation of law?

Mr. Wiener: No, so far as his statement to me, I think he found us satisfactory at that time.

Examiner Burchmore: Are there any private train lines or logging roads connecting with this road not owned or operated by it?

Mr. Wiener: There are logging lines connecting at Naclina.

Examiner Burchmore: Are those lines owned by the railroad company or by the lumber company?

Mr. Wiener: By the Angelina County Lumber Company.

Examiner Burchmore: What is the extent of those lines?

Mr. Wiener: They only have at the present time I think fifteen miles of rail, or possibly more; sometimes it is all down and sometimes only a portion is in operation.

Examiner Burchmore: Who owns the steel?

Mr. Wiener: The Angelina County Lumber Company.

Examiner Burchmore: Did they buy that steel from this railroad company?

Mr. Wiener: No.

2061 Examiner Burchmore: How many section gangs has the Angelina & Neches River Railroad at work?

Mr. Wiener: They have really three. They have been operating under one foreman and a sub-foreman, two gangs, and we call it one, and they have another gang.

Examiner Burchmore: Do they work at any time on the tracks of the lumber company?

Mr. Wiener: Not to my knowledge. If they do a bill would be rendered against the lumber company for the time they spent on those tracks.

Examiner Burchmore: What would be the basis of the bill?

Mr. Wiener: The cost of the service. However, I have no recollection of any such transaction.

Examiner Burchmore: Has the railroad any station employees?

Mr. Wiener: It has one agent.

Examiner Burchmore: At Kelty's?

Mr. Wiener: At Kelty's.

Examiner Burchmore: He is also employed by the lumber company?

Mr. Wiener: He is an employee of the lumber company. In the past his railroad service has been nominal.

2062 Examiner Burchmore: And when he works for the railroad company he does not leave his lumber company desk?

Mr. Wiener: No, the office has been, I will state for your benefit possibly, or for your records, there have been some changes in those

matters lately on account of the increased mileage and so forth, and we are changing those matters considerably.

Examiner Burchmore: You say three of those locomotives formerly owned by the railroad company were sold to the lumber company. What was the payment?

Mr. Wiener: We sold them the three locomotives and all of the logging equipment, at a price based upon cost less depreciation.

Examiner Burchmore: How did you figure depreciation?

Mr. Wiener: Upon the basis of our report to the Interstate Commerce Commission.

Examiner Burchmore: Well, does this railroad now own no logging cars?

Mr. Wiener: It owns no logging cars.

Examiner Burchmore: The lumber company operates its own private spur tracks?

Mr. Wiener: It does.

2063 Examiner Burchmore: They are not operated by the railroad company?

Mr. Wiener: They are not operated by the railroad company.

Examiner Burchmore: Where do they keep the locomotives at night?

Mr. Wiener: They keep them in the woods, the spur locomotives in the woods.

Examiner Burchmore: Do these locomotives run back and forth over the line of the railroad company?

Mr. Wiener: Sometimes. One of those now hauls logging trains.

Examiner Burchmore: Do you refer to the locomotive still owned by the railroad company?

Mr. Wiener: No.

Examiner Burchmore: One of the other three?

Mr. Wiener: One of the other three.

Examiner Burchmore: How long has this lumber company been operating its own rails?

Mr. Wiener: It has been operating its own logging spurs always, except a portion of the main line spur, as they call it, and there was one time during the last fiscal year it was discontinued, 2064 when the railroad company operated for the lumber company a portion of its logging spur.

Examiner Burchmore: About seven miles?

Mr. Wiener: About seven miles.

Examiner Burchmore: When did they discontinue that operation?

Mr. Wiener: With the purchase of that seven miles of the additional track.

Examiner Burchmore: The railroad company purchased the seven miles?

Mr. Wiener: The railroad purchased the seven miles; yes, sir.

Examiner Burchmore: What did they pay for the seven miles?

Mr. Wiener: They purchased seven and a fraction miles and paid fifty thousand dollars for it.

Examiner Burchmore: Did the road cost but fifty thousand dollars to build, seven miles?

Mr. Wiener: I think it cost considerably more. There is one mile that represents over eighteen thousand dollars.

Examiner Burchmore: Then the lumber company sold this mileage for less than cost?

2065 Mr. Wiener: I think so. We attempted to make an estimate as close as we could and we arrived as near as we could at fifty thousand dollars, but there were several years' upkeep of that track, that improved the track and was not included in that estimate.

Examiner Burchmore: Did the railroad company pay for that seven miles of the track at the time, or did it assume an indebtedness to cover the purchase price?

Mr. Wiener: They executed an indebtedness; they did not assume an indebtedness; they executed an indebtedness.

Examiner Burchmore: In the form of bonds or notes?

Mr. Wiener: In the form of a vendor's lien note.

Examiner Burchmore: What is the amount of that note?

Mr. Wiener: Fifty thousand dollars.

Examiner Burchmore: Any other indebtedness between the lumber company and the railroad company except current liabilities?

Mr. Wiener: There is a current account; I do not know the exact figures; I think around twenty thousand dollars today that the railroad company owes the lumber company.

Examiner Burchmore: In addition to the fifty thousand dollars?

2066 Mr. Wiener: In addition to the fifty thousand dollars.

Examiner Burchmore: They have not paid any part of that fifty thousand dollars?

Mr. Wiener: No, it is not due yet.

Examiner Burchmore: It is the intention however to pay that out of net earnings?

Mr. Wiener: Either out of net earnings or bonded indebtedness or increased capital stock.

Examiner Burchmore: Has the railroad any bonds?

Mr. Wiener: It has not, except that fifty thousand dollars reported as bonded indebtedness.

Examiner Burchmore: Has this railroad any passenger or mail train service?

Mr. Wiener: It has.

Examiner Burchmore: Give the particulars of that service and state whether it is under a published schedule.

Mr. Wiener: Yes, sir; we are operating a mixed passenger and freight schedule under a published schedule.

Examiner Burchmore: That only operates between Keltys and \_\_\_\_\_

Mr. Wiener: There is our published schedule.

(Handing paper.)

2067 (The paper so offered and identified was received in evidence and thereupon marked Angelina & Neches River Rail-

road Exhibit No. 1, Witness Wiener, received in evidence December 15, 1910, and is attached hereto.)

Mr. Wiener: It operates through to the end of the line over the entire mileage, 19.89 miles. We operate one train each way a day.

Examiner Burchmore: Does that train make any connection with the passenger trains of other companies?

Mr. Wiener: It leaves Keltys in the morning about fifteen minutes after the arrival of the Cotton Belt train and returns about ten minutes before the arrival of the Cotton Belt train going in the opposite direction.

Examiner Burchmore: It does not connect with the Houston East & West Texas trains?

Mr. Wiener: No, it does not.

Examiner Burchmore: Or the Texas & New Orleans train?

Mr. Wiener: It does not.

Examiner Burchmore: In addition to this mixed train do you run any freight train service?

Mr. Wiener: None.

Examiner Burchmore: How many cars are there in this 2068 mixed train?

Mr. Wiener: There is a passenger car and we expect to have a caboose in that service as soon as it arrives, and we use whatever freight cars are necessary for the handling of the business.

Examiner Burchmore: And logging cars?

Mr. Wiener: No logging cars.

Examiner Burchmore: How do the logging cars get down to the mill?

Mr. Wiener: At the present time they are operated by the lumber company.

Examiner Burchmore: That is under some form of trackage agreement?

Mr. Wiener: That is under a trackage agreement.

Examiner Burchmore: Then as I understand the logs which are cut up in the woods are loaded on logging cars belonging to the lumber company?

Mr. Wiener: That is correct.

Examiner Burchmore: And hauled by the lumber company engines, operated by its employees, down to the mill?

Mr. Wiener: They are hauled by the lumber company's engines first to the connection with the railroad, and there another 2069 lumber company engine operated by the lumber company's employees brings those log cars into Keltys.

Examiner Burchmore: Is there any written agreement covering this trackage?

Mr. Wiener: There is a written agreement covering this trackage?

Examiner Burchmore: Is it filed with the Commission?

Mr. Wiener: I think not.

Examiner Burchmore: Will you file it in connection with your testimony in this case?

Mr. Wiener: Yes, I will file a copy. You want a copy of our trackage agreement?

Examiner Burchmore: What is the basis of the computation for that trackage right?

Mr. Wiener: It is based upon 50 cents per thousand feet log scale for the logs handled over the road.

Examiner Burchmore: That I assume amounts to about one cent per hundred pounds on the lumber out?

Mr. Wiener: Fifty cents per thousand feet log scale I expect will amount to a fraction over it.

Examiner Burchmore: About one and one-half cents per 2070 hundred pounds.

Mr. Wiener: It would average one and a half to two cents.

Examiner Burchmore: That has not been paid, though, only for the last few months.

Mr. Wiener: Prior to that time the railroad company brought the logs to the mill.

Examiner Burchmore: From the junction of the small spur track?

Mr. Wiener: Well, they operated, I should say, between five and six miles of the track owned at that time by the lumber company. They ran their engine over it and their logging trains and brought the logs over that track and the twelve and a half miles then belonging to the railroad company into Keltys.

Examiner Burchmore: How did the logs get from the tree up to the point where the railroad company took them?

Mr. Wiener: Over tracks belonging to the lumber company.

Examiner Burchmore: But they were hauled by engines 2071 belonging to the railroad company?

Mr. Wiener: Owned by the railroad company but operated by employees of the lumber company.

Examiner Burchmore: And what payment was made for the use of those locomotives?

Mr. Wiener: We made one payment to cover the use of the locomotives in the operation of that track for one dollar per thousand feet.

Examiner Burchmore: That was one dollar from the tree to the mill?

Mr. Wiener: To the connection with the main line at Aleo.

Examiner Burchmore: What did you charge from Aleo to the mill?

Mr. Wiener: Our tariff provided that the outbound division should cover that charge.

Examiner Burchmore: Then you formerly received one dollar per thousand feet plus a certain part of your division that was received from the Cotton Belt Railroad Company?

Mr. Wiener: That is correct.

Examiner Burchmore: At the present time you do not touch the logs to the mill at all?

2072 Mr. Wiener: At present we are not.

Examiner Burchmore: But you receive fifty cents per thousand for the use of your tracks?

Mr. Wiener: Yes, sir.

Examiner Burchmore: Is any other use made of those tracks?

Mr. Wiener: Only for the operation of the railroad company's train.

Examiner Burchmore: What are your earnings from the operation of that train?

Mr. Wiener: Of the railroad company's train?

Examiner Burchmore: Yes. Are they considerable in amount?

Mr. Wiener: It seems to me they are going to be very much more than we first thought. I have the figures here for the first twenty-one day's operation of that train and the passenger earnings were \$114.60.

Examiner Burchmore: Well, everybody was curious to ride on the passenger trains?

Mr. Wiener: No, there was no particular curiosity, but the country we are opening up is pretty well settled; we are into a thickly settled farming section. The freight earnings were \$214.97.

2073 Examiner Burchmore: What was the date of that twenty-one days?

Mr. Wiener: From November 7th to November 30th, that is twenty-one days' operation. We operate every day except Sunday.

Examiner Burchmore: That train has only been running about a month.

Mr. Wiener: After the 7th of November.

Examiner Burchmore: Before that you had no passenger service?

Mr. Wiener: We had no passenger service previous to that day.

Examiner Burchmore: Do you handle the United States mail?

Mr. Wiener: Not at present.

Examiner Burchmore: You are negotiating for that with the government?

Mr. Wiener: We are figuring and have been requested to make application. I have been requested personally to write up a form for some of the citizens whose post office is about a mile from the end of our track for the location of the post office on our road at Nacina, and they expect us to handle the mail when they get the post office established.

2074 Examiner Burchmore: Any express companies operating over your line?

Mr. Wiener: No.

Examiner Burchmore: Is it contemplated?

Mr. Wiener: If any one of them will make us a proposition that they want the business we will be glad to make an arrangement with them. I do not know whether the express company will consider it worth while or not. We handle it as a freight proposition now.

Examiner Burchmore: Do these passengers pay cash fare on the train or do they have tickets?

Mr. Wiener: The conductor carries a regular cash slip.

Examiner Burchmore: But you will sell tickets?

Mr. Wiener: We have tickets in stock and are awaiting the erection of station facilities.

Examiner Burchmore: You are going to erect some stations?

Mr. Wiener: As I have stated, we have proposed to operate a joint

station with the Cotton Belt at Keltys and we have requested the Houston East & West Texas to give us trackage privileges into the town of Lufkin with our trains.

2075 Examiner Burchmore: How far is Lufkin from the junction?

Mr. Wiener: I think one and three-quarter to two miles.

Examiner Burchmore: There are some other tap lines which run into Lufkin, are there not?

Mr. Wiener: There are three or two of them.

Examiner Burchmore: Do you propose to make joint traffic arrangements for passenger traffic with these other lines?

Mr. Wiener: We do not figure to have joint arrangements. We only expect to sell local tickets.

Examiner Burchmore: You do not expect to run your trains down beyond Lufkin?

Mr. Wiener: No, not at the present time.

Examiner Burchmore: Lufkin is the county seat?

Mr. Wiener: Lufkin is the county seat.

Examiner Burchmore: And quite a city?

Mr. Wiener: Yes, we figure five or six thousand.

Examiner Burchmore: Are there any towns on your present line?

Mr. Wiener: Outside of Keltys we have a station known as Aleo which was the terminus of the road for some time. That has a small population and some farming settlement around the town, 2076 and the store there at present is owned by the lumber company but that is not expected to be continued. There is quite a settlement there, and at Naclina we have a town which is primarily a lumber company town but it is close into the river bottom where there are quite a number of farms.

Examiner Burchmore: What was your total freight tonnage for the last fiscal year?

Mr. Wiener: I have got that, Mr. Examiner, only approximately.

Examiner Burchmore: Well, the approximation will do.

Mr. Wiener: The approximate tonnage of lumber and logs—do you want them separately or together?

Examiner Burchmore: Separately and together.

Mr. Wiener: The approximate lumber tonnage was about 26,000 tons and the approximate log tonnage I believe 50,000 tons, and there was some other tonnage, very nominal, of other commodities.

Examiner Burchmore: Less than one per cent of your tonnage was other than lumber and logs?

Mr. Wiener: Less than one per cent of the interstate tonnage was, yes, sir.

2077 Examiner Burchmore: How much of that one per cent was handled on account of your company stores?

Mr. Wiener: I suppose at that time practically all of it was on account of the lumber company's business, the greater portion of it anyhow.

Examiner Burchmore: Is it not a fact that so far, or at least until recently your entire traffic was supplied by these controlling interstate?

Mr. Wiener: Approximately all of it.

Examiner Burchmore: Well, there was not enough other traffic to be counted?

Mr. Wiener: Not enough freight traffic to cut any figure in the operation of the road.

Examiner Burchmore: An officer of your company stated to ~~me~~ Examiner when in the field that you did not handle anything except for the lumber company. Is that so?

Mr. Wiener: Possibly. I think I talked to the Examiner myself.

Examiner Burchmore: Well, you made some such admission?

Mr. Wiener: Well, we handled some other stuff, yes, but very nominal, not worth taking into account at that time. We handled anything that was tendered us, but until the extension of the 2078 line there was nothing else tendered to us.

Examiner Burchmore: And that was very recently?

Mr. Wiener: We acquired the additional mileage, I think on June 30th.

Examiner Burchmore: What is the explanation for this change in the practices and methods with respect to handling the logs into the mill?

Mr. Wiener: There are two or three explanations. One is with the increased mileage of our road and the increased business, we expected, we considered that an easier way to handle it.

Examiner Burchmore: Is the Mississippi Valley Railroad present?

Mr. Ziebold: Yes.

Examiner Burchmore: What are your connections?

Mr. Ziebold: The Frisco.

Examiner Burchmore: Through a misunderstanding yesterday, the Commissioner being under the impression that the Mississippi Valley Railway was identical with the Mississippi Valley Railroad, the latter being an Iron Mountain connection, he agreed that the case should be heard this morning. In view of that agreement it will now be called for hearing before Examiner Boyle in 2079 the adjoining room in a few minutes.

Mr. Jeffery: Did you say that is an Iron Mountain connection?

Examiner Burchmore: No, that is a Frisco connection.

What are the other reasons, Mr. Wiener?

Mr. Wiener: One thing that had some little effect on the matter was that the state passed a safety appliance law which copied the Federal law except it did not exempt logging equipment, and while we were advised that possibly as we were in both state and interstate business we would not have to comply with that law, we did not care to disobey it, and that required us to handle logs in standard flat cars equipped with safety appliances. We leased some of those cars and tried the operation and found it very unsatisfactory and the lumber company stated it was unsatisfactory to handle those cars over spurs, therefore it would be more satisfactory for them to purchase our equipment and handle it themselves.

Examiner Burchmore: Why did you buy the seven miles of railroad?

Mr. Wiener: Because they were opening up new settlements of farming country, and we thought it was a piece of track 2080 that would add to the ability of the railroad company to make money.

Examiner Burchmore: Why don't you buy the rest of it?

Mr. Wiener: We have some more road surveyed ahead of us that will be permanent road. The other road is being taken up and laid down. It is not permanent.

Examiner Burchmore: Do you contemplate any extension in the immediate future?

Mr. Wiener: Yes, sir.

Examiner Burchmore: Where are you going?

Mr. Wiener: We have a preliminary survey covering about twenty-eight miles. We have ten miles that we expect to build in the next ten or twelve months, if the arrangements which we have with the people ahead are put through.

Examiner Burchmore: What will it open up?

Mr. Wiener: That will afford a market for the town of Chireno and give a market outlet for five thousand bales of cotton.

Examiner Burchmore: Where will the twenty-eight miles run?

Mr. Wiener: To the Santa Fe, at San Augustine.

Examiner Burchmore: Is this lumber company negotiating 2081 for the acquisition of any timber rights along that section?

Mr. Wiener: No, the lumber company own a very small proportion of the timber in that direction. They expect to develop some timber, but on the particular ten miles a very small portion of it is on land owned or controlled by the lumber company.

Examiner Burchmore: That may be true, but how about the stumpage right?

Mr. Wiener: On that particular line, the stumpage rights, only a very small proportion belong to the lumber company.

Examiner Burchmore: Have you stated the extent of timber holdings or stumpage rights of this lumber company in this territory?

Mr. Wiener: At Nacogdoches County, the lumber company owns approximately 12,000 acres of land and about 28,000 acres additional timber rights.

Examiner Burchmore: Have you any questions you desire to ask in this particular connection, Judge Cowan, as to timber lands and timber rights?

Mr. Cowan: No.

Mr. Wiener: I will state in connection with that, however, 2082 that that is only a portion, considerably less than half of the timber in that immediate section.

Examiner Burchmore: The rest of the timber is not being cut?

Mr. Wiener: Some of it is owned by another lumber company and considerable of it is owned by small farmers and settlers in there.

Examiner Burchmore: What is this other lumber company?

Mr. Wiener: The Frost-Johnson Lumber Company of Nacogdoches.

Examiner Burchmore: Do they have any mills in that vicinity?

Mr. Wiener: Their mill in Nacogdoches is twenty miles from the end of our track.

Examiner Burchmore: How do they get logs from that timber?

Mr. Wiener: Within a few miles of us there they are operating a road from Nacogdoches south into that territory.

Examiner Burchmore: What is the name of that road?

Mr. Wiener: The Nacogdoches & Southeastern.

Examiner Burchmore: Is there any further statement you wish to make with respect to the nature and extent of your freight traffic?

2083 Mr. Wiener: Only as to the future possibilities of it, as we see them.

Examiner Burchmore: I presume Mr. Walter can bring that out more fully than I could. Now, with respect to the rate, have you any joint rates with these connecting lines covering class traffic?

Mr. Wiener: We are concurring or participating carriers in practically every southwestern line tariff I believe issued by Mr. Leland, and we are also a concurring carrier in some tariffs issued by some other agent or lines of roads.

Examiner Burchmore: Do the Texas common point rates apply to stations on your line?

Mr. Wiener: We think they do.

Examiner Burchmore: You are in Texas?

Mr. Wiener: We are in Texas, and we think the Texas Commission rates should apply.

Examiner Burchmore: From St. Louis—

Mr. Wiener: The Texas common point rates apply. I do not think there is an exception. I think every rate is the same to points on our line that it is to our connection with the main line.

2084 Examiner Burchmore: You have on file with the Commission an index of all your tariffs?

Mr. Wiener: We have.

Examiner Burchmore: I have a copy of that before me dated February 1, 1910, bearing your I. C. C. No. 3.

Mr. Wiener: Here is one—

Examiner Burchmore: There may be a subsequent issue of a new one, but if so it would be substantially the same?

Mr. Wiener: There may be some changes. Here is one issued November 1st, and we have a still later one issued December 1st.

Examiner Burchmore: Those are on file with the Commission?

Mr. Wiener: Those are on file with the Commission.

Examiner Burchmore: It will not be necessary to refer to them further. How about joint rates on lumber?

Mr. Wiener: We have joint rates on lumber with both the Cotton Belt and Southern Pacific system, the Houston East & West Texas.

Examiner Burchmore: To points all over the country?

Mr. Wiener: To points all over the country.

Examiner Burchmore: I mean to any territory to which you might wish to carry shipments.

2085 Mr. Wiener: I think they cover practically the entire country with the exception of some individual exceptions, points in New Mexico on the Santa Fe and some individual exceptions in other portions of the country.

Examiner Burchmore: You do not have any rates to Santa Fe local points, do you?

Mr. Wiener: We have rates from points on our lines to nothing on the Santa Fe.

Examiner Burchmore: What are your divisions in connection with the Cotton Belt system on lumber?

Mr. Wiener: Two and four cents.

Examiner Burchmore: The highest division you receive is four cents from the Cotton Belt?

Mr. Wiener: The highest division we receive is four cents.

Examiner Burchmore: Two cents is the lowest division?

Mr. Wiener: Via the Cotton Belt, yes, sir.

Examiner Burchmore: Have you ever received a higher division than four cents from the Cotton Belt?

Mr. Wiener: I do not think so, in my recollection.

Examiner Burchmore: Is there any traffic that you interchange with the Cotton Belt on which you receive no division 2086 of a joint rate? For example, where the Cotton Belt takes the whole rate or where there are no joint rates on your line, so you charge the local?

Mr. Wiener: I think about the only application of that would be the Santa Fe.

Examiner Burchmore: You have some traffic to Santa Fe local points?

Mr. Wiener: No, I do not think we ever have any to Santa Fe local points.

Examiner Burchmore: I am not talking about points to which you have no divisions, but about traffic which actually moves on which you earn no division.

Mr. Wiener: Speaking of an interstate basis?

Examiner Burchmore: Yes.

Mr. Wiener: I do not recollect. There might have been an exceptional car, but I do not remember.

Examiner Burchmore: You get divisions out of joint rates on shipments of lumber to points in Texas?

Mr. Wiener: We are not getting them, no.

Examiner Burchmore: Why not.

Mr. Wiener: Well, on account of a little misunderstanding with the Texas Railroad Commission of some long standing.

2087 Examiner Burchmore: Have you ever had any application on file with the Texas Railroad Commission to give you the necessary status which would entitle you to such a division?

Mr. Wiener: Yes, sir; and they at that time stated there were certain requirements, they seemed to require certain physical facts

which would cause the expenditure of more money than we had or could borrow.

Examiner Burchmore: When did you make that application?

Mr. Wiener: One application was made several years ago; I do not remember the date.

Examiner Burchmore: When was the other made?

Mr. Wiener: I was just going to explain. The Commission changed its status or rather made a public declaration that it believed it had the authority to regulate railroads and did not intend to recognize any more.

Mr. Mantooth: That is, formally recognize them.

Mr. Wiener: That is, formally recognize them. The majority of the Commission made the statement they did not expect to recognize a railroad, but when one was chartered they expected to see it obey the law. Following that opinion we equipped ourselves as we thought in compliance with the law and so stated to the 2088 Commission and some of our connections we made applications for some joint rates which were not covered by railroad commission tariffs, and in reply to that the Commission notified us to be there on the 10th of next month, apparently to overrule their former opinion, and stated that on January 10th they would take up the matter.

Mr. Walter: That is a joint application by you with other lines?

Mr. Wiener: That is a joint application for some special rate.

Examiner Burchmore: Did you have any difficulty in getting the Cotton Belt to join in that application?

Mr. Wiener: The application was made with the St. Louis Southwestern system. The Cotton Belt rates did not require any application. There was some special joint rates with the St. Louis Southwestern which required a special order of the Commission to make it effective.

Examiner Burchmore: You make one statement as to the Cotton Belt and another as to the St. Louis Southwestern—

Mr. Wiener: I mean the Southern Pacific. The application was made with the Southern Pacific system.

2089 Mr. Walter: Let me suggest that a copy of that application be put in the record now.

Examiner Burchmore: Has it a material bearing on the case?

Mr. Walter: Yes, it shows the joint action of the Southern Pacific system and the Angelina & Neches River Railroad.

Examiner Burchmore: Have you a copy of it?

Mr. Wiener: I have an unsigned copy.

(The paper so offered and identified was received in evidence and thereupon marked Angelina & Neches River Exhibit No. 2. Witness Wiener, December 15, 1910, and is attached hereto.)

Examiner Burchmore: But as a matter of fact, speaking of the present date and without regard to the possibility of any different action or position in the future, the Texas Railroad Commission does not recognize and has not recognized so far the Angelina & Neches River Railroad as being a common carrier railroad?

Mr. Wiener: It has not issued any public order to that effect.

Examiner Burchmore: Well, whether its action is correct or not is another matter, but as a matter of fact it has not recognized 2090 it as a common carrier.

Mr. Wiener: It has not recognized it.

Examiner Burchmore: Are there any other short timber roads in that vicinity which have been recognized by the Texas Railroad Commission?

Mr. Wiener: I think there are a number which have been recognized; there are some short railroads in Texas which are doing business without any such formal recognition.

Examiner Burchmore: Is this action of the Texas Railroad Commissioner apparently an arbitrary one or do they assign reasons for their position?

Mr. Wiener: I cannot answer that question.

2091 Examiner Burchmore: You never heard any reasons assigned?

Mr. Wiener: As I stated, at one time several years ago they requested that we get our road in as good shape as the big systems like the Katy which have been in operation with heavy traffic, and we could not spend the money.

Mr. Garwood: Your Honor, would you permit me to make a statement with relation to that matter at this time?

Examiner Burchmore: Certainly.

Mr. Garwood: For a long time, quite a number of years, the Railroad Commission pursued the formal policy of issuing a formal order recognizing some and not recognizing others. There was, so far as I am advised, no special statutory authority conferring upon them the right or power to recognize or not to recognize, but they pursued that policy for a number of years. Within the last few years they have concluded it was not their province to pass upon the question whether a railway was or was not a common carrier in so far as issuing a formal order to that effect, and they have discontinued that policy and have done so for the past year or two, and they are not now issuing any formal orders to that effect. But I understand that they will pass upon and undertake to determine 2092 whether joint rates shall be made as in the case indicated by the witness, his own application having been set down for a formal hearing on an order.

Examiner Burchmore: What divisions do you receive from the Houston, East & West Texas?

Mr. Wiener: I think the minimum is about one cent; it is a percentage basis; and the maximum is four cents.

Examiner Burchmore: How long have you been receiving as much as four cents from the Houston, East & West Texas?

Mr. Wiener: Since some time last February.

Examiner Burchmore: What prompted the Houston, East & West Texas to increase their maximum divisions from three to four cents?

Mr. Wiener: That particular division applies on traffic routed only through one gateway, one way, and was, I understand, caused

by their making favorable traffic arrangements with one of their connections which would permit them to pay that division.

Examiner Burchmore: That increase in division was not the result of any negotiation that you initiated with them?

Mr. Wiener: I had talked to them, and had talked to their connections. I think though that the same division was put in with 2093 some of their other connections which had not mentioned the matter to them. It was the result of some very favorable arrangements with some of their connections.

Examiner Burchmore: You interchanged the major portion of your lumber with the Cotton Belt?

Mr. Wiener: There have been some months when the car supply from the Southern Pacific was short, I believe they have received the major portion; it is simply now depending solely upon the question of car supply.

Examiner Burchmore: Does it not depend largely upon markets in which you happen to sell your lumber?

Mr. Wiener: Yes, sir, it depends upon the routings applicable and their tariffs; when we turn over a car, the intermediate routing is usually left to the railroad company and they naturally route it via the route paying the best rates, paying them the best revenue.

Examiner Burchmore: When lumber does move out over the Houston, East & West Texas for inter-state destinations which could be reached by the St. Louis Southwestern and its connections, you are really receiving a less division and rendering a greater service?

Mr. Wiener: In a good many instances we receive the same division from either line.

2094 Examiner Burchmore: But you render a very much greater service?

Mr. Wiener: Yes, we render a greater service on the finished product.

Examiner Burchmore: You do not render any service at all on the finished product when it moves over the Cotton Belt?

Mr. Wiener: Yes, sir, some we do and some we do not.

Examiner Burchmore: What instances?

Mr. Wiener: In the movement of rough lumber from the sawmills, we do some switching service on handling a portion of the Cotton Belt shipments.

Examiner Burchmore: I questioned you with respect to the manner the lumber moved out, did I not?

Mr. Wiener: Somewhat.

Examiner Burchmore: The empty car is set at the mill by the St. Louis Southwestern?

Mr. Wiener: It is partially set in on the loading track by the Cotton Belt. The Cotton Belt refused to build a foot of their track off the right of way. They own the track so far as their right of way extends.

Examiner Burchmore: Their engine sets the car and takes the loaded car away?

2095 Mr. Wiener: If the loading tracks happen to be so full with cars they may set them and sometimes our engine goes up and switches the track.

Examiner Burchmore: Are the rates published from your line on lumber on a milling in transit basis?

Mr. Wiener: With the Cotton Belt the rate provides that the rate covers movement of the log to the mill and the lumber from the mill.

Examiner Burchmore: But the movement of the log is not performed by your company at all?

Mr. Wiener: Not now, but this has been the Cotton Belt milling in transit tariff, and we have taken it up and notified them we want to change it for that reason.

Examiner Burchmore: Has this company paid any dividends?

Mr. Wiener: It has not.

Examiner Burchmore: Accumulated any surplus?

Mr. Wiener: It has not. It has accumulated a deficit.

Examiner Burchmore: Losing money every year?

Mr. Wiener: No, it made some last year. For the year ending June 30th, 1910, it made about \$700.

Examiner Burchmore: On the whole, however, it has been a losing venture?

2096 Mr. Wiener. For the ten years' operation it shows some thing like \$7,000 or something over \$7,000 loss.

Examiner Burchmore: Then the sum of the annual deficits has exceeded the sum of the annual balances?

Mr. Wiener: By something over \$7,000, yes, sir.

Examiner Burchmore: Who has paid that \$7,000?

Mr. Wiener: It is an indebtedness of the railroad company.

Examiner Burchmore: To the lumber company?

Mr. Wiener: Part of it, yes. It stands as an indebtedness. All of the indebtedness of the railroad company, today however, is not to the lumber company.

Examiner Burchmore: Examiner Boyle will take up at this point the Zwelle & Eastern Railway in the adjoining room. Do the officers of this railroad receive any interstate passes?

Mr. Wiener: Yes, sir.

Examiner Burchmore: Do they use those passes?

Mr. Wiener: I do mine, yes, sir.

Examiner Burchmore: Do the other officers of the railroad company receive passes?

Mr. Wiener: I think we receive three annuals.

Examiner Burchmore: And they are used?

2097 Mr. Wiener: I presume so.

Examiner Burchmore: Well, you do not think those gentlemen pay fare when they have passes?

Mr. Wiener: No, when they travel they use their passes unless there is something seriously the matter with their minds.

Examiner Burchmore: I think that is all.

Mr. Walter: This line of railroad of yours is a permanent railroad?

Mr. Wiener: Yes, sir.

Mr. Walter: Intended to remain there indefinitely?

Mr. Wiener: Intended to remain there indefinitely.

Mr. Walter: You serve anybody and everybody that offers you business?

Mr. Wiener: Yes, sir.

Mr. Walter: This proposed extension to Chereno, what sort of a country is that?

Mr. Wiener: That is going into a country, we expect for several miles to traverse a country on which there is no timber. It is going into one of the oldest settled farming communities of East Texas.

Mr. Walter: How does it rank in quality as to a farming 2098 community?

Mr. Wiener: Very high. The quality of the soil is very good.

Mr. Walter: Their agricultural and farming products rank with any part of Texas?

Mr. Wiener: With any part of the State, I think.

Mr. Walter: That railroad is under process of contract to the people along the line?

Mr. Wiener: You mean the building of it?

Mr. Walter: Yes.

Mr. Wiener: It has not been contracted yet.

Mr. Walter: But you have an arrangement with the people in process of arrangement so you expect to build the railroad?

Mr. Wiener: We expect to build the railroad, yes, sir.

Mr. Walter: That railroad is to be built whether it goes to Chereno or not?

Mr. Wiener: It will be built either near or to Chereno, yes, whether it goes to Chereno or not it will be built.

Mr. Walter: That is, in the immediate future?

Mr. Wiener: That is in the immediate future. We expect to complete about ten miles of it.

Mr. Walter: Has action been taken toward an amendment 2099 of your charter?

Mr. Wiener: The charter has been amended to include that extension.

Mr. Walter: Very recently?

Mr. Wiener: This year.

Mr. Walter: About how many people now live in the immediate territory along your line, what is the population?

Mr. Wiener: That is a hard question to answer. The immediate territory along our line has considerable farming territory. Some of the oldest farms in the county are along the line, and there is one tract of about 90,000 acres which is being colonized, owned by colonization people, and we go something like two or three miles through that particular tract.

Mr. Walter: Would you say there are as many as 3000 or 4000 people who could use your railroad?

Mr. Wiener: I would consider it at least that many.

Mr. Walter: All this land after the timber is removed is agricultural land, is it not?

Mr. Wiener: Yes, sir, very good agricultural land, some of it.

Mr. Walter: If you reach Chereno or near enough for 2100 them to use your line that will aid several thousand more people.

Mr. Wiener: That will aid several thousand more people. There

are, I presume, 20,000 acres or more in cultivation in that immediate neighborhood, and quite a heavy population, several thousand people.

Mr. Walter: The railroad company furnishes the railroad for all logs that come out, under a contract arrangement with the lumber company?

Mr. Wiener: It furnishes the railroad, yes.

Mr. Walter: You spoke a moment ago of the requirement by the Texas State Commission made some years ago. I would ask you if your railroad now in the condition in which it is meets all that requirement?

Mr. Wiener: I think it does. We so consider it. We are complying with all the laws and orders of the Texas Commission today.

Mr. Walter: That is all.

Mr. Cowan: Just one question. As I understand the result of your situation, you were handling simply the logs and lumber of the Angelina County Lumber Company until you began to make these improvements and changed your relations as to the manner of hauling the logs, operating the cars and getting a passenger car 2101 and the like, and that since the rejuvenation of this road, you are now in a position to speak to the public that you are going to operate a railroad for public purposes, and are doing it now?

Mr. Wiener: We are operating a railroad every day.

Mr. Cowan: And doing it now?

Mr. Wiener: And doing it now.

Mr. Cowan: And the object of operating that railroad is for the compensation you get out of doing it?

Mr. Wiener: Yes, sir.

Mr. Cowan: And that compensation will come for the present, at least, mostly and almost altogether from the lumber business?

Mr. Wiener: I think that our total compensation for the entire month of November on lumber was only about 80 per cent of the total revenues received, and the other revenues were only received for part of the month.

Mr. Cowan: The revenues for the other traffic than lumber, however, are on traffic that is handled for the lumber company?

Mr. Wiener: Only a portion of it.

Mr. Cowan: Well, a portion of it is.

2102 Mr. Wiener: A portion of it is.

Mr. Cowan: You cannot operate and could not operate that railroad as a railroad for the public unless you operated it by getting the divisions on the rates on the lumber?

Mr. Wiener: We could not operate it except at a loss without getting a part of the revenue on all the traffic we handle.

Mr. Cowan: My friend, Mr. Henderson, the President of Angelina County, is the president of this railroad company?

Mr. Wiener: He is Vice-President of the railroad company.

Mr. Cowan: Well, he is the financial end of the company?

Mr. Wiener: Yes, sir.

Mr. Cowan: And he is not in the habit of doing business at a loss if he can help it?

Mr. Wiener: Well, he has done it, to my personal knowledge, in a good many instances.

Mr. Cowan: Well, that may have been on account of his employés or something like that. What is the object in going to San Augustine?

Mr. Wiener: The opening up of a section of country that will give our railroad tonnage in the days when the lumber business is a thing of the past in Texas.

2103 Mr. Cowan: San Augustine is the place which Governor Roberts mentioned in his book as being the centre of the surrounding country.

Mr. Wiener: I do not know, but it is.

Mr. Andrews: That is Nacogdoches.

Mr. Garwood: And it is, is it not?

Mr. Wiener: It is. I have been there.

Examiner Burchmore: What is the total movement of logs into your mill at the present time?

Mr. Wiener: Expressed in what terms?

Examiner Burchmore: Any terms you can express it.

Mr. Wiener: The total movement at the present time, I suppose, would be about 100,000 feet per day.

Examiner Burchmore: What does it cost the lumber company to move that 100,000 feet into the mill?

Mr. Wiener: I could not answer that question, because I have not the statement detailed that close, but it cost, the service of the train crew and the operation of that train, and the maintenance of their equipment besides the trackage they pay us.

Mr. Garwood: If you get to San Augustine, what railway system will you reach then?

2104 Mr. Wiener: The Santa Fe.

Mr. Garwood: Then the Santa Fe penetrates through and reached the lumber district in East Texas?

Mr. Wiener: It does.

Mr. Garwood: How far northward from Beaumont does it go?

Mr. Wiener: I do not know the mileage. It goes through San Augustine to Center and across up to Longview which I believe is the northern terminus at present.

Mr. Garwood: The general tendency of railroad construction in East Texas is eastward toward the pine forests now served by the Santa Fe, is it not?

Mr. Wiener: I do think the general tendency is in that direction.

Mr. Garwood: Yes. The Texas railroads are pointing in that direction. Now if through routes and joint rates are not afforded to the railroads that are thus penetrating that section of Texas, is it not a fact that that tonnage will be tied up to the Santa Fe and it will move it throughout its entire length.

Mr. Wiener: I think so. That is my understanding.

2105 Mr. Garwood: Is it not also the fact that the forest products of that section of Texas will be denied the right and privilege of moving to the markets of the world out through the northern Texas gateways via these roads that are now penetrating

that section and will be compelled to move over the entire route of the Santa Fe in that section?

Mr. Wiener: That is correct.

Mr. Garwood: Then I will ask you the question if if it is not directly to the interests of East Texas and the citizens and inhabitants thereof that through routes and joint rates be provided by the carriers that are now penetrating that section?

Mr. Wiener: It is.

Examiner Burchmore: That is your judgment. Do you think other people might have a different opinion?

Mr. Wiener: I do not think there are very many of the citizens of East Texas but would consider the building of railroads through that section is opening up the country that is at present undeveloped and which will stay undeveloped until that country is penetrated by some system of railroads.

Examiner Burchmore: Are not the trunk lines rather thick in that country?

Mr. Wiener: *There* are not—there is not a main trunk line within 19 miles of the town of Chereno which we are 2106 going to.

Mr. Walter: Have not the trunk lines been pretty generally made up of the small lines which were originally constructed to carry lumber?

Mr. Wiener: The trunk lines to a great extent have been made up by the acquisition and extension of short lines of railroads in recent years. The Cotton Belt extension from Lufkin south has been by the acquisition of roads built and operated and connected with lumber companies; and other systems have been extended on the same basis.

Mr. Garwood: Was not the Santa Fe a road made up from the Kirby Road which the Santa Fe bought from Mr. Kirby, the intervenor in this case?

Mr. Wiener: That is my understanding, that the present Santa Fe Road in East Texas was built out of Beaumont by Mr. Kirby, and afterwards acquired by the Santa Fe.

Mr. Garwood: Is it not a fact that the Houston, East & West Texas which runs from Houston to Logansport and then in connection with the Houston & Shreveport to Shreveport, was originally a narrow gauge road built into the pine forests for the main purpose of accommodating that lumber tonnage, and was it not afterwards changed to a standard gauge road?

2107 Mr. Wiener: When I first came to Texas it was a narrow gauge road, and the principal tonnage of which was lumber, and a sawmill every few miles on the road, and very little else moving. Since that time it has been broadened to standard gauge.

Mr. Garwood: And it is not part of the Sunset Central System?

Mr. Wiener: It is now part of the Sunset Central System.

Examiner Burchmore: Was it formerly owned by lumber people?

Mr. Wiener: I do not know. I have been there 20 years and it was there before I was.

Mr. Garwood: It was projected by private citizens in Houston.

Whether they owned any timber or not I do not know. It was before my day. You will have to ask Mr. Bonner as to that question.

Mr. Cowan: It is your understanding that that road was projected by parties who were not the owners of timber?

Mr. Garwood: I do not know. Paul Dumont was one of the original movers in that enterprise. As to whether he was interested in lumber I do not know.

Mr. Cowan: Old man Bonner says he never heard of his being interested in lumber.

2108 Mr. Garwood: Mr. Bonner is one of our oldest inhabitants, and if he says so, it is no doubt correct.

Mr. Greer: Is it not your information that the present Santa Fe out of Beaumont reaching northward to San Augustine was built primarily and largely subscribed to by four mills at Beaumont, Mr. Kirby projecting it, and these mills assisting him in it to serve those mills?

Mr. Wiener: My understanding was it served the mills at Beaumont, that its original traffic was the service of those mills and logs.

Mr. Greer: When it extended up to Jasper, a distance of about seven miles, was not its tonnage entirely of lumber and logs?

Mr. Wiener: That would be a presumption. I presume so, from my general knowledge.

Mr. Greer: That does actually penetrate the best pine forest in East Texas, or did at that day?

Mr. Wiener: It did at that day.

Examiner Burchmore: Did it receive any divisions out of joint rates at that time?

Mr. Wiener: My understanding is it did.

Mr. Greer: I do not know about the question of divisions. 2109 but as a matter of fact do you know whether the owners of that mill contributed largely by way of contributing stock or other assistance to build that road for the purpose of getting logs to their mills and serving the mills of Beaumont?

Mr. Wiener: I do not know that. That was out of my immediate vicinity at that time, and I know nothing of the details of the building of that road.

Mr. Greer: Do you know whether the Commissioner authorized a logging rate of about \$4.00 into Beaumont for a number of years for the benefit of those mills over that road?

Mr. Wiener: My understanding is there was a logging rate authorized by the Commission.

Examiner Burchmore: This may be applicable to this case, but I do not see its application unless the road received tap line divisions. If it was an expense to build the road and an expense to the builders and they received no compensation from the railroads to partially take care of that expense, what is the application to this particular case, unless to show that the Santa Fe was originally constructed in that manner.

Mr. Greer: My understanding is that a mill man's money can build a railroad the same as anybody's else money, and if it is a fair compensation it is immaterial who owns it, and 2110 if these mill men did build this railroad at a considerable expense—

Examiner Burchmore: At their own expense?

Mr. Greer: Well, Mr. Kirby was not the original owner, but he contributed largely to it.

Examiner Burchmore: Do you mean the Santa Fe paid for this road?

Mr. Greer: The Santa Fe had nothing in the world to do with it, the object being to show that these roads grow into real trunk line railroads.

Examiner Burchmore: The Commission understands that that is a fact, that short lines of lumber roads have in very many instances become integral parts of these great systems.

Mr. Walter: Let us have the information furnished us by the Santa Fe whether there was divisions paid when the line was originally constructed?

Mr. Cowan: The Santa Fe had nothing to do with it. The Southern Pacific would know if there were any divisions.

Examiner Burchmore: Does anyone know?

Mr. Coleman: There has not been any proof to indicate that the sawmill men at Beaumont owned the road. The Santa Fe bought the road from John H. Kirby.

2111 Mr. Greer: Is Mr. Kirby here?

Mr. Coleman: My remembrance is that when the Santa Fe acquired the road, John H. Kirby had no sawmills on the line. Now it seems to me—

Examiner Burchmore: We are dealing with the distant past, and this investigation concerns primarily the present, and if this past history of the Santa Fe's present line has a direct bearing on the issues in this case, I should be glad to hear any questions that would bring it out.

Mr. Greer: As to the Santa Fe's practices, I am sure since they got the road this division has not existed. I am a citizen of Beaumont, and it is my understanding the road was originally built in the interests of those men and the Texas Commission authorized rates on which the logs came in, of the character of a milling in transit proposition, a certain amount of refund on the number of cars. I may be mistaken about it, but if Mr. Kirby is here he can inform us.

Mr. Andrews: He is not here today.

Examiner Burchmore: Is it your thought that a part of the present Santa Fe main line used to be made up of tap lines which received divisions in about the same manner that these tap lines today receive divisions?

2112 Mr. Greer: I just stated the extent of my information. It is the extent of my information that the logs were hauled into Beaumont on a milling in transit rate, and that a certain amount was refunded on the milling in transit basis. I do not know the exact terms, but to that extent it was similar in character.

Mr. Cowan: That information can be obtained.

Mr. Bonner: I was associated with Mr. Kirby in a way. I was not actively connected with the road. I happen to know that Boston capital put up most of the building of that road and developed what was then a very much undeveloped country. I believe one or two

lumber companies in Beaumont or some of their officers held some bonds, very few and only for a short period, but I cannot state positively; but it is my recollection they did not own a dollar of stock in the road, unless perhaps a qualifying share as a director. Boston capital put up the money for the construction of that road.

Mr. Greer: Didn't they have a milling in transit rate?

Mr. Bonner: They put in a milling in transit rate later on, but Mr. Kirby did not own any sawmill or any interest in a sawmill when he built the road, and the Kirby Lumber Company was organized after he sold the road.

Mr. Greer: Did he own any timber?

2113 Mr. Bonner: He owned some interest in timber at that time, but he bought most of it after that.

Examiner Burchmore: Does not this discussion relate more particularly to the whole question, if it has any bearing? It has no bearing on the Angelina & Neches River Railroad.

Mr. Greer: No.

Mr. Bonner: I merely wanted to tell what I knew.

Mr. Garwood: In that connection I intended to make the inquiry at a later point. I would like to be advised as to when the intervenor's case and that branch of the case will be taken up. Our witnesses are leaving, and we would like to be advised definitely as to whether they will be put on their case at this time, and whether in case they do not intend to put on their case, we will be expected to take up that branch of the inquiry ourselves at this hearing, and in that event we wish to be advised as to whether the intervenors, Mr. Kirby and Mr. Bonner and Mr. Hancock—and I would also like to ask if Mr. Coleman, of the Santa Fe, will remain here until the end of this hearing. I would request that information through counsel.

Mr. Cowan: Well, I have very little information on the subject to communicate, but I will say that whatever information I have I will be glad to communicate.

2114 The understanding was that it was going to take all the time that the Commission could devote to the matter to hear the tap line side of the case here. I asked Judge Harlan about that, and spoke to counsel in regard to it. It seems that the progress that is being made would require all the time that could be devoted to this hearing to hearing the tap line side of the case, and on that account it was understood that we would not be expected, and in fact the opportunity would not exist for us to undertake to put in our side of the case nor for the trunk lines to undertake to put in their side of it. I do not know whether Judge Harlan communicated that to the Examiner or not, but I suppose he did. And therefore I notified you, Judge Garwood, at the request of Judge Harlan, that such would be the case, according to the way the matter appeared to me then.

Mr. Garwood: That is correct, that was probably the case at that time.

Mr. Cowan: And it was by his authority, and I presume the Examiner understands it as I understood it. That is all the information I have about it, and on that account I supposed we would not at

tempt to put in any testimony at this hearing, hoping we can  
2115 even get through with the tap lines at this hearing.

Mr. Walter: Do you expect to put in testimony?

Mr. Cowan: Hereafter?

Mr. Walter: Yes.

Mr. Cowan: Certainly.

Mr. Garwood: That is the point we want to be definitely advised about. We have testimony we wish to put in this record. Some of this testimony we will expect our friends upon the other side to furnish us, which I have no doubt they will gladly do. We also have independent testimony that ought to go into the record, and from our standpoint we wish to have it placed in the record. We do not wish to be placed in the attitude of having this hearing closed with that expectation, confining ourselves merely to the salient points involved in each individual tap line case and not have these general features go into the record. We wish to be absolutely certain that there will be at an early date and in time for it to be thoroughly considered by the Commission this general line of testimony which we assume will be taken up by the intervenors in the case. If they do not take it up, we want our own testimony in the record. And

2116 that is now, that we wish to be definitely advised about whether there will be at an early date another hearing and in full time to give the Commission time to investigate the testimony adduced prior to the final hearing upon all these matters.

Examiner Burchmore: It is my understanding that at the present session each and every tap line that is a party to this whole record will be given the fullest opportunity to present any facts that it has to present, and the effort will be made to develop all the facts that will shed any light on the methods and practices of these so-called tap lines or on the question of their status as common carriers. I have not received any instructions to go farther than to call all the tap lines and hear each case presented. I do not think the Commission would enter any final order in a matter of this importance without affording every party in interest the fullest opportunity to present their case and bring out all the testimony; and so it is my general understanding that the Commission will hold a further hearing in this matter at which the intervenors, perhaps, will put in their case, if they have one to put in, and if the Southern Pacific or any other interests in this case have further facts they want to bring out. I understand they have an opportunity to bring out those facts. All

2117 I can say authoritatively is that I understand that at the present sessions this week we will take up only the case of each individual tap line and go no further. If when we go that far, any one wishes to present further facts immediately, I will wire the Commission and find out whether I can hear it. But I have an idea we will not complete this phase of the investigation before Saturday night, and we will be doing very well if we do that.

Mr. Garwood: It appears now to be likely—

Examiner Burchmore: It can be noted in the record, however, that the interests you represent desire to have a further hearing in connection with this case, in some relation.

Mr. Garwood: We wish to be advised definitely whether there will be another hearing. I have understood from the intervenors that they expected to—

Mr. Cowan: I have stated that Judge Harlan told me that and told me to tell you so.

Examiner Burchmore: It is my impression there will be a further hearing.

Mr. Cowan: But he did not care at that time to make any public announcement about it, because he did not know how far some of the individual parties might want to call some of the witnesses who might leave upon making such an announcement.

2118 But so far as the subsequent hearing is concerned, there was no question at all that he told me there would be a subsequent hearing at which the intervenors and trunk lines would be accorded the opportunity to put in whatever evidence they pleased; but he wanted to try to close the tap line end of it here if he could. That hearing to be at as nearly a convenient date as would suit the business of the Commission and yet expedite the proceeding. That was the definite understanding, and I not only told you gentlemen but some other lawyers when they asked me about it, that that was my understanding.

Mr. Garwood: I had not understood that testimony at such further hearing would be limited to the intervenors and trunk lines.

Mr. Cowan: He did not so state. I said they would be given an opportunity.

Examiner Burchmore: But I do understand at that further hearing no opportunity will be given to any tap line that appears at this hearing and states its case here, to present any further facts in relation to its particular case. We are supposed to clean up this part of the investigation at this session.

2119 Mr. Garwood: No. One reason why I am raising this inquiry now, in addition to being certain that will be the case, is to confine this inquiry as closely as possible to that.

Examiner Burchmore: I think this inquiry should be confined to the investigation as closely as possible, of the particular lines before us.

Mr. Jeffrey: I wish to call attention to this. I have a list of 20 Iron Mountain tap lines which have not been called yet.

Examiner Burchmore: Do they all receive divisions?

Mr. Jeffrey: Unfortunately they do. Suppose I hand this list up to you.

Examiner Burchmore: I wish you would. I have seven or eight, but the rest have been called and have not answered.

Mr. Cowen: There have been a good many called while you have been out.

Examiner Burchmore: Is this all with the Angelina & Neches River?

Mr. Walter: We want to make one reservation, as to the necessity for rebuttal in some particular lines.

Examiner Burchmore: Your request will be noted.

2120 Mr. Cowan: The law gives you that, I think.

Mr. Walter: Yes, and I know we will get it.