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Office of Chief Counsel

April 14, 2022

Part of

Public Record

Date: April 14, 2022

Case: Public Evidentiary Hearing



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SURFACE TRANSPORTATION BOARD

REMOTE PUBLIC EVIDENTIARY HEARING FOR
"Application of the National Railroad
Passenger Corporation Under 49 U.S.C. Section
24308(e) CSX Transportation, Inc., and Norfolk
Southern Railway Company."

Volume VI

Thursday, April 14, 2022

9:34 a.m.

Via Zoom Government

The above-titled matter came on, pursuant to
notice, at 9:34 a.m., Chairman Martin Oberman,
presiding.

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1 P R O C E E D I N G S

2 CHAIRMAN OBERMAN: All right. Is
3 everyone here? I see four board members. Robert,
4 are you on?

5 MEMBER PRIMUS: I'm here.

6 CHAIRMAN OBERMAN: Okay. Good. All
7 right, there you are. Somehow you hadn't shown up
8 on my screen.

9 All right, if counsel is ready, we are
10 going to resume the hearing into Amtrak's
11 application under 24308(e).

12 (Mr. Dingler returns to the witness
13 stand.)

14 CHAIRMAN OBERMAN: I believe Mr.
15 Dingler is still on. Mr. Dingler, are you there?

16 THE WITNESS: I am.

17 CHAIRMAN OBERMAN: All right. You
18 understand you remain sworn?

19 THE WITNESS: I do.

20 CHAIRMAN OBERMAN: And under oath?

21 THE WITNESS: I do.

22 CHAIRMAN OBERMAN: All right. Ray, I

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1 think you were -- thank you, I think you were
2 about to -- sorry, I think, yes, Ray, you were
3 still about to finish up your direct, if I recall
4 correctly.

5 MR. ATKINS: Yes, Chairman. So let me
6 just --

7 CHAIRMAN OBERMAN: Okay.

8 MR. ATKINS: Before I ask any more
9 questions, let me just advise the board that
10 yesterday counsel for all the parties conferred
11 regarding Amtrak's objection to certain questions
12 posed to Mr. Dingler regarding his analysis of
13 one, remote controlled bridges and the removal of
14 bridge tenders, and second the impact of running
15 more but shorter -- more but shorter trains
16 between Mobile and New Orleans.

17 I'm pleased to report the parties have
18 agreed to a joint stipulation, which I'm going to
19 read into the record, just so I get it right...

20 That "Absent contrary instructions from
21 the Board, a party may not through its expert
22 witnesses present testimony about analyses that

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1 were not previously disclosed in the parties'
2 written evidence," end quote.

3 So in light of this stipulation, CSX
4 and Norfolk Southern will withdraw the two pending
5 questions posed to Mr. Dingler on those two
6 subjects and I'll proceed along with some -- some
7 additional direct.

8 CHAIRMAN OBERMAN: You know what, Ray,
9 your -- I don't know what the issue is, but you're
10 in and out in terms of the audio.

11 MEMBER PRIMUS: Sorry, Ray. Marty,
12 that may be you, because you're kind of going in
13 and out on my side.

14 CHAIRMAN OBERMAN: All right, well hold
15 on, let me see. No, that's not the problem.

16 Okay. All right, well let's proceed.
17 I had problems last week. I did not have
18 problems when I was plugged in in DC. Let me
19 check one other thing. I may have to go out and
20 come back in. Let me check one other thing.

21 All right, am I still going in and out?
22 Could people hear me clearly?

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1 MR. ATKINS: So -- so -- I -- I could
2 hear you, Chairman. We'll I'll -- I'll flag for
3 you I -- if we have any difficulties.

4 CHAIRMAN OBERMAN: All right, and now
5 you're coming through a little better. All right.
6 Well, unless there is any objection from the
7 board, we will accept your stipulation. It may be
8 the board itself will have some questions about
9 further studies sometime before this proceeding is
10 completed but that is not something I would
11 comment on at this point. Obviously there have
12 been a lot of questions about other RTC models
13 that might be able to be run, and so forth. So at
14 least between the parties we will accept your
15 stipulation.

16 DIRECT EXAMINATION

17 BY MR. ATKINS:

18 Q. So Mr. Dingler, welcome back. So
19 I'd -- I'd like to return back to the 14 projects
20 that you have identified and proposed for 2039.
21 Could you please describe which of those projects
22 you are recommending in order to address the

1 impact to freight service.

2 A. For 2019 that's 11 projects. In 2039
3 that's 14.

4 Q. And is it all of the projects that are
5 necessary to address the -- the impact on freight?

6 A. Yes.

7 Q. Could you please describe which of
8 those 14 projects is -- is necessary to -- to meet
9 the schedule -- the Amtrak proposed schedules?

10 A. None of them.

11 Q. If you had addressed the freight impact
12 with the 14 projects and you were still seeing a
13 degradation to the -- Amtrak's hitting its
14 schedules, what might you have recommended?

15 A. I might -- I might have recommended
16 additional infrastructure to improve that OTP.

17 Q. And why -- but why wasn't that
18 necessary in this case?

19 A. The OTP was sufficient before we added
20 in the projects.

21 MR. ATKINS: Okay, Mr. Chairman, with
22 that line of questioning, I'm going to end my

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1 direct of Mr. Dingler and turn him over for
2 potential cross-examination.

3 Mr. Chairman, you're muted.

4 CHAIRMAN OBERMAN: I am having trouble
5 hearing. So, if everybody will just stand by for
6 two or three minutes, I'm going to try to reboot
7 and get going here, because this -- because I
8 couldn't hear all the -- I think I got the gist of
9 what he said, but just give me a couple of minutes
10 and I'm going to go in and out of this and reboot
11 my computer and I'll be right back.

12 (Brief pause.)

13 CHAIRMAN OBERMAN: All right, I am back
14 on. Can everybody hear me?

15 MR. ATKINS: Chairman, this is Ray.
16 We -- I can hear you.

17 CHAIRMAN OBERMAN: All right. I did
18 not catch the last two questions of Mr. Dingler.
19 I got the essence but I really didn't get a clear
20 answer. So, I'd like to ask the court reporter to
21 read them back before we go ahead because it
22 sounds to me like they were of some significant

1 import, so I want to -- I want to make sure I
2 heard them clearly. I beg your indulgence
3 everyone. But hopefully I have solved this
4 problem.

5 THE COURT REPORTER: "Question: If you
6 had addressed the freight impact with the 14
7 projects and you were still seeing a degradation
8 to the -- Amtrak's hitting its schedules, what
9 might you have recommended?

10 "Answer: I might -- I might have
11 recommended additional infrastructure to prevent
12 (sic) OTP.

13 "Question: Why wasn't that necessary
14 in this case?

15 "Answer: The OTP was sufficient before
16 we added in the projects."

17 CHAIRMAN OBERMAN: I would like to
18 answer one question here.

19 When you say the 14 projects were
20 sufficient, you're talking about the 14 projects
21 in your November 3rd report that you authored?

22 THE WITNESS: That is correct.

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1 CHAIRMAN OBERMAN: All right. Thank
2 you. All right, Ray, you have finished your
3 direct?

4 THE WITNESS: Yes, I have, your Honor.
5 I'm turning it over to -- to cross. I don't --
6 I'm not sure which one goes first, the Port or the
7 Amtrak.

8 CHAIRMAN OBERMAN: I think the Port
9 goes next.

10 MR. HELENHOUSE: All right, thank you,
11 Mr. Chairman.

12 CROSS-EXAMINATION

13 BY MR. HELENHOUSE:

14 Q. Mr. Dingler, do you know which
15 railroads interchange with TASD?

16 A. I do not.

17 Q. Did you consider any TASD interchange
18 traffic growth with those railroads in your
19 modeling?

20 A. We assumed a -- a two-percent year over
21 year growth on the four -- five TSAD trains we had
22 in the model.

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1 Q. Did you assume anything about the
2 growth of the carriers with whom TASD interchanges
3 beyond CSX?

4 A. I did not.

5 Q. What is your understanding of the
6 operations of TASD's customers which require TASD
7 to occupy CSX main line track?

8 A. I'm aware of the -- of the movements
9 between the three yards. There's movements
10 between Riverfront Yard and at McDuffie Riverfront
11 Yard and Interchange Yard and then Interchange
12 Yard and McDuffie. Anything more detailed than
13 that I am unaware of.

14 Q. So would it be fair to say you're
15 unaware of what the operations beyond rail
16 operations are at the Riverfront Yard?

17 A. I'm aware of the movements onto the
18 main line, the best I was able to gather that
19 information, but any -- any movements inside those
20 yards or impacts in those yards I am not aware of.

21 Q. So, do you know any of the customers
22 that TASD services in the Riverfront Yard?

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1 A. I do not. Similarly, I don't know the
2 customers on NS or CSX.

3 Q. Do you know how many rail cars TASD
4 brings into Garrows Bend, also known as ICTF?

5 A. I do not.

6 Q. Do you know who interchanges container
7 traffic with TASD?

8 A. I -- I do not.

9 Q. Do you know which rail carriers
10 interchange coal traffic to TASD for handling at
11 the McDuffie coal terminal?

12 A. I'm aware of the movements to and from
13 CSX. Any movements beyond that I don't know.

14 Q. Did you do any analysis of the Port's
15 intermodal operations at the intermodal facility
16 and how that business impacts rail traffic?

17 A. Most of those movements are inside
18 yards. I did not do that kind of analysis on CSX
19 or NS or -- or TASD.

20 Q. Do you understand that other carriers
21 than CSX bring intermodal cars into the Port?

22 A. I'm familiar generally with some of the

1 other railroads in Mobile but nothing specific.

2 Q. How many daily T ASD train movements
3 across CSXT's main line in Mobile did you include
4 in your model?

5 A. We included four main line movements.
6 We included two per day between McDuffie Coal Pier
7 and Interchange Yard and two per day that -- that
8 go from Interchange Yard to Riverfront Yard.
9 Additionally we had one head-in movement coming
10 out of Riverfront Yard.

11 Q. When you say the two to McDuffie,
12 you're talking about the CSX trains, coal trains?

13 A. No. They came from -- we transferred
14 them from McDuffie Coal Pier, or Choctaw, across
15 the main lines to Interchange Yard.

16 Q. Are those T ASD train movements?

17 A. To the best of my ability, that was
18 what I was seeing in the data were the movements.
19 Sometimes it was difficult to parse out what
20 exactly was a T ASD movement and a CSX yard
21 movement, as, you know -- as sometimes in terminal
22 areas the data can be unclear. But that was the

1 best of my ability to represent the operations in
2 that area.

3 Q. And now why or how did you settle upon
4 those numbers?

5 A. Initially there were four trains
6 provided by CSX in the initial TRAIN file. Upon
7 my review and looking at those movements, looking
8 at the dispatch data, we added in a subsequent
9 train.

10 Q. Are you aware that TASD's train
11 movements vary by time of year?

12 A. That would make sense.

13 Q. And what you looked at, a two- or
14 three-month time period in 2019?

15 A. Yes, fall of 2019.

16 Q. So would you agree with me that that's
17 only a small snapshot of TASD's operations?

18 A. That is correct.

19 Q. Are you aware that it is not uncommon
20 for TASD itself to run seven trains a day instead
21 of the four you assumed?

22 A. I -- I did not see that in the time

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1 period we looked at.

2 Q. So you did not take that into account?

3 A. That is correct.

4 Q. Had you increased the amount of T ASD
5 train movements to seven in your model, how would
6 that impact your study with respect to
7 interference in the Mobile area?

8 A. I'm always careful talking about the
9 model not to speculate too much. You know, you
10 generally know as a modeler what -- what's going
11 to happen, but the model will occasionally
12 surprise me. But what that would do is it would
13 definitely increase sort of the congestion in
14 Mobile.

15 Q. Do you know if T ASD has the option to
16 service its customers when it uses CSX's line to
17 different times of day? Do you understand what
18 I'm getting at there?

19 A. Can you rephrase the question?

20 Q. Well, do you know -- so suppose they
21 have to serve a -- they're serving a customer now
22 between 9:00 and -- 9:00 a.m. and 1:00 p.m. Do

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1 you know if they're -- did you do any analysis of
2 any of those time frames and whether there's any
3 flexibility within those time frames?

4 A. I did not. Similarly, I did do the
5 same analysis for, you know, customers along the
6 line.

7 Q. Now for purposes of the RTC model, did
8 you assume a two-percent growth rate?

9 A. That is my recollection.

10 Q. And is that for T ASD traffic, as well?

11 A. For those four trains we included in
12 the model.

13 Q. Okay. In -- on the two-percent growth
14 rate as it applied to the T ASD trains, at what
15 point, if you -- if you know, do you get to adding
16 an additional train?

17 A. We sort of use a general length but I
18 don't know what the limits are in the -- in the
19 yards at T ASD.

20 Q. Did you do an analysis of what the
21 length of the average T ASD cross corridor train
22 is?

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1 A. We did not. Again, in that area the --
2 the dispatch data is basically the best source of
3 information and it doesn't have clean sort of
4 train lengths. So we based -- based on the
5 information that was provided by CSX, we used sort
6 of a general number.

7 Q. When you say "general number," are you
8 talking about -- well, what was that general
9 number?

10 A. I don't recall unfortunately.

11 Q. Okay. And you did not do anything
12 independently to check if that was accurate with
13 respect to TAD trains did you?

14 A. We did not talk to TAD directly about
15 that, no. I looked into the data that best I
16 could. Generally we saw that at least the trains
17 going from Interchange Yard to -- the Z trains
18 going from Interchange Yard to McDuffie are longer
19 than the trains that are going from Interchange to
20 Riverfront, but the -- the data was difficult to
21 work through.

22 Q. Are you aware that the Port in its

1 evidence provided a five-year traffic volume
2 forecast in its opening evidence on November 3rd,
3 2021 and that that forecast projected
4 significantly higher traffic growth year over year
5 than was assumed in your RTC model?

6 A. I am aware of that.

7 Q. Did you take that into account in your
8 RTC model?

9 A. We did not.

10 Q. Had you done so, how would that have
11 affected the results?

12 A. It would have resulted in -- in likely
13 additional trains or increased train lengths.

14 Q. And that would have a negative impact
15 on -- on traffic?

16 A. Likely.

17 Q. Does your model consider how much time
18 the T ASD trains currently wait to gain access to
19 CSX line?

20 A. When you put the trains in the model,
21 the dispatching logic of the model will include
22 some of that delay, but I -- I couldn't tell you

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1 how that compares to what you actually observe on
2 a day-to-day basis as I did not have data from the
3 TASD specifically.

4 Q. So what is that assumption on the
5 dispatching or wait time?

6 A. That was an output from the model. I
7 couldn't tell you specifically what it was.

8 Q. Is that something that was programmed
9 into the model?

10 A. No. So that's the dispatching logic.
11 So how I programmed these trains is for the -- the
12 transfer from the Interchange Yard do the
13 Riverfront Yard, that train will come out of one
14 of those yards, it will sit on the main line -- I
15 said I wish I remember the exact period of time --
16 and then it will shove back into the other yard.
17 That -- that logic of the model will then -- you
18 know, if they can't find a gap to bring that train
19 out, it will -- you know, those trains will
20 experience a delay. What that delay specifically
21 was on average, I do not -- do not remember, do
22 not know.

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1 Q. Okay. And -- and did you do anything
2 to find out what the average delay is for T ASD to
3 access CSX main line?

4 A. So our metrics, if you go to our
5 tables, we include a line for those four T ASD sort
6 of trains, transfer trains. That includes delay
7 sort of getting on the system and getting through
8 the system.

9 Q. But what is that delay in getting on
10 the system?

11 A. I -- I don't know. I didn't break it
12 out. The delay is for the entire trip but you
13 would -- you know, it served to be likely that the
14 majority of that delay would be getting on the
15 system.

16 Q. And where did you get those numbers
17 from?

18 A. That is an output from the model.

19 Q. I -- I guess I don't understand. What
20 do you mean it's an output for the model? How do
21 you -- there's got to be some information put in,
22 right, to determine delay?

1 A. So, no. So, what you put into an RTC
2 model is a departure time, and so we randomize
3 that, and then a -- a -- its route and dwells
4 along the route. The model itself will then
5 determine how long that train has to sit to
6 resolve any dispatching conflicts.

7 So any delay for that train waiting to
8 get out of the yard would be a delay which would
9 be a model output, you know.

10 Q. All right, is that based on real life
11 experience that T ASD has in waiting to access CSX
12 main line or is it just something that's generated
13 by the model?

14 A. That is something generated by the
15 model.

16 Q. You discussed some infrastructure
17 during your testimony. I want to ask you about
18 that a little bit.

19 Do you know that CSX does not own
20 sufficient property to install a third track to
21 run up to -- I think you called it the Amtrak
22 line, the one that actually goes to the station,

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1 the third -- third line?

2 A. You're talking about the -- the
3 station, 3,000 foot station track --

4 Q. Yes, yes.

5 A. -- in Choctaw? I am not aware of
6 anything specifically about that.

7 Q. Did you account for any of the TASD's
8 recommended freight service protecting
9 infrastructure as discussed in the opening
10 evidence report filed on November 3rd, 2021 in
11 your RTC model?

12 A. I am aware. There were four projects
13 considered and subsequent to those being released
14 as part of the -- our initial report, I did look
15 at -- at three of them.

16 Q. Which three did you look at?

17 A. The Virginia Avenue Lead of the Bob
18 Hope Extension and there's the Flyover is the
19 third one. I can't remember the fourth, to be
20 honest.

21 Q. Okay. And how did that -- did you take
22 that into account in your modeling?

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1 A. No. We -- we did not include those --
2 those projects are not part of our 14 recommended
3 projects.

4 Q. And why didn't you include those in
5 your projects?

6 A. The projects weren't on my radar until,
7 you know, they were proposed by the Port.

8 Q. Did you do any analysis of any
9 scenarios of -- of what would happen if the Port
10 ran shorter trains?

11 A. I did not.

12 Q. Did you do any analysis of what would
13 happen if CSX ran shorter trains?

14 A. I did.

15 Q. What did that find? What were the
16 results of that analysis?

17 Did you hear my question?

18 (Witness nods head in the affirmative.)

19 MR. ATKINS: I'm sorry, Mark's looking
20 at me to make sure he can answer that question.
21 Chairman, can he -- can he answer that question?
22 Or I'm asking if there's any objections from --

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1 from any -- from any party?

2 MR. HELENHOUSE: You're muted, Mr.
3 Chairman.

4 MS. BRACEY: Amtrak has an objection.

5 MR. HELENHOUSE: This is
6 cross-examination. It's not our witness. I've
7 obviously been impeaching him and I think this
8 goes to impeachment.

9 MS. BRACEY: We believe --

10 CHAIRMAN OBERMAN: What's the
11 objection?

12 MS. BRACEY: That it goes to new
13 analysis.

14 MR. HELENHOUSE: I'm underlining -- I'm
15 undermining the analysis he did.

16 CHAIRMAN OBERMAN: Can I hear the
17 question again? I understand. Could I just hear
18 the question again.

19 MR. HELENHOUSE: "Did you model any
20 scenarios in which CSX would reduce the length of
21 trains?" He answered that yes. And I said, "what
22 was the effect of that analysis," was my question.

1 CHAIRMAN OBERMAN: Has that not been
2 disclosed, the effect of that analysis? Somewhere
3 along the lines isn't it in the work papers? Ray?

4 MR. ATKINS: No -- no, it has not,
5 Chairman, that's the additional analysis that
6 we -- that I was just addressing on direct but now
7 Mr. -- Jim's raising it on -- as part of cross,
8 so.

9 CHAIRMAN OBERMAN: Well, without the
10 stipulation it might have been an appropriate
11 cross question, but given the stipulation, I'm
12 going to sustain the objection.

13 MR. HELENHOUSE: Well, Amtrak has been
14 asking a lot of questions to all of these
15 witnesses about what they did not consider and I
16 think these are along the same lines of -- of
17 those sorts of questions. So I ask that you
18 reconsider your position.

19 CHAIRMAN OBERMAN: Well, you asked --
20 in this case you asked the question of what he did
21 consider but the results haven't been reported.
22 So the -- it's a -- it's a different point and

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1 there haven't been any objections to previous
2 questions by Amtrak. You've already established
3 what he did and did not consider. But in light of
4 the stipulation, I don't think there's any choice
5 at this stage but to sustain the objection.

6 It may be, Mr. Helenhouse, before this
7 case is over, that we're all going to get more
8 information.

9 MR. HELENHOUSE: May I --

10 CHAIRMAN OBERMAN: If -- if so, then
11 you'll have an opportunity to pursue it. But at
12 this point there's a stipulation entered into by
13 everybody this morning.

14 MR. HELENHOUSE: May I make the offer
15 of proof on this issue?

16 CHAIRMAN OBERMAN: It's up -- does
17 anybody object to him bringing an offer of proof,
18 subject to the answer being stricken?

19 Ms. Bracey?

20 MS. BRACEY: We object. We object to
21 the offer of proof, particularly in --

22 CHAIRMAN OBERMAN: Well, I'm going to

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1 sustain the objection, in light of the
2 stipulation. So proceed.

3 BY MR. HELENHOUSE:

4 Q. Are you aware that the Riverfront Yard
5 recently developed a car unloading facility?

6 A. I am not.

7 Q. Are you aware that the ferry operations
8 that run from Mobile to Mexico have recently
9 purchased substantially more cars than the Port
10 and the TASP handles?

11 A. I am not.

12 Q. In doing your analysis, did you ever
13 consult with anyone from the Port about its
14 operations or growth?

15 A. No.

16 Q. Would you agree with me that your
17 analysis would have been more complete if all the
18 parties to this proceeding had participated in the
19 modeling, including Amtrak and the Port?

20 A. It is always best practice to have all
21 the players involved.

22 MR. HELENHOUSE: Okay. Thank you, Mr.

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1 Dingler. That's all I have.

2 CHAIRMAN OBERMAN: All right, Ms.
3 Bracey, your witness.

4 MS. BRACEY: Just one housekeeping
5 matter. We have a large document. It's Mr.
6 Dingler's master's thesis that we're going to
7 email right now, so that -- it's about -- it's
8 over a hundred pages and we want to make sure that
9 the members have enough time to receive the email
10 with the document within it.

11 CHAIRMAN OBERMAN: I -- I trust, Ms.
12 Bracey, you're not also asking us to read the
13 entire hundred pages before you proceed?

14 MS. BRACEY: We will not be doing that.

15 CHAIRMAN OBERMAN: All right.
16 Hopefully the size of the file that comes into my
17 computer will not throw me off of Zoom.

18 So, it is on its way. Is that what
19 you're saying?

20 MS. BRACEY: Yes.

21 CHAIRMAN OBERMAN: Okay. We'll take --
22 wait patiently, we're not going to leave the

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1 hearing, while that's coming through.

2 MS. BRACEY: I think you're frozen, Mr.
3 Chairman. Or you froze right back up.

4 CHAIRMAN OBERMAN: No, I think I'm
5 okay.

6 MS. BRACEY: Okay.

7 CROSS-EXAMINATION

8 BY MS. BRACEY:

9 Q. So, Mr. Dingler, you used to work for
10 CSX. Is that right?

11 A. That is correct.

12 Q. Okay. And what portion of your current
13 consulting business is for CSX?

14 A. This is the only task I am working with
15 CSX on.

16 Q. And you completed the 2021 model in
17 this case. Is that right?

18 A. Yes.

19 Q. And what was the relationship between
20 you and Mr. Banks in preparing the 2021 model?

21 A. So Mr. Banks did not do any of the
22 modeling. He was oversight. He did a lot of sort

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1 of asked a lot of questions, he poked, and he
2 provided a lot of sort of review of the report for
3 clarity. He provided excellent comments in terms
4 of trying to improve the clarity and understanding
5 of the report.

6 Q. Do you recall what comments he
7 provided?

8 A. There were a lot of comments from a lot
9 of people. You know, he -- one I do remember from
10 him is he helped us make sure we were very clear
11 about which cases we -- we used in all our -- our
12 tables.

13 Q. And when you said there were a lot of
14 comments from a lot of people, who else provided
15 comments?

16 A. Counsel, people from CSX, NS, members
17 of the Clean Team. I don't know all specifically.

18 Q. What was the relationship between you
19 and Mr. Guthrie on the 2021 model?

20 A. So Mr. Guthrie was -- was more
21 intimately involved. He came two occasions to sit
22 and look over my shoulder with the model. He --

1 yeah, again asked me a lot of questions. Some of
2 them came from Mr. Banks and he relayed some of
3 that back to him. But he sort of made sure I was
4 following standard practice. He looked at inputs.
5 He looked at outputs. And making sure there were,
6 you know -- the -- the model was valid and -- and
7 made sense.

8 Q. What was the relationship between you
9 and the Clean Team?

10 A. So the Clean Team, as has been well
11 discussed, was members from CSX, NS and counsel.
12 What they provided for me was a sort of a sounding
13 board to ask through questions I had and -- and to
14 review my final report.

15 Q. And you were also part of the Clean
16 Team. Is that right?

17 A. I think technically I was not, because
18 I was an outside consultant, but I attended all
19 the Clean Team meetings.

20 Q. And who had final say in what you
21 modeled?

22 A. I did.

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1 Q. And what specific areas of your
2 modeling effort were influenced by the Clean Team?

3 A. So, there were a couple items I can
4 remember that were discussed by the Clean Team.
5 One of those that's very clear in my mind was
6 grade crossings. So, on NS they had 15 minutes,
7 on CSX they had 20, the state of Mississippi, if I
8 recall correctly, has a five-minute limit. So
9 there were discussions about how best -- what is
10 the sort of the most valid way for us to include
11 it in the model.

12 Q. And so you ultimately landed on 20
13 minutes. Is that right?

14 A. That is correct.

15 Q. Okay. And what specific areas of your
16 model were altered by your discussions with the
17 Clean Team, besides the 20 minutes?

18 A. I -- I honestly can't remember. There
19 were sort of a lot of items changing at the time,
20 some of those through the Clean Team, some of that
21 through additional analysis I was performing. As
22 I said, it's an iterative process. I'm trying --

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1 I'm trying -- yeah, I honestly can't remember.

2 Q. Who provided you with the inputs for
3 the model?

4 A. CSX and NS.

5 Q. And who -- to whom did you report your
6 outputs?

7 A. To the Clean Team, to counsel and to
8 the railroads.

9 Q. And who decided not to model a 20 --
10 the 2019 case with the Gulf Coast working group
11 report projects?

12 A. That was me. You know, you don't
13 typically model a 2019 case in studies like this.
14 That is not standard practice. And so, the only
15 reason 2019 was added because it was requested by
16 this board.

17 Q. And are there other cases that you
18 modeled that did not make it into your report?

19 A. Most certainly. There is, you know,
20 iterations when you're going through and studying
21 this, you know, as you look through and try and
22 sort of develop the -- the correct set of

1 infrastructure.

2 Q. Anything else?

3 A. I don't think so, no.

4 Q. And what do you mean by "the correct
5 set of infrastructure"?

6 A. Well, the -- a -- a set of
7 infrastructure that mitigates the impact to
8 freight and is also constructable.

9 Q. Are there other infrastructure
10 solutions you considered that -- that did not make
11 it into your report?

12 A. Certainly.

13 Q. And what sort of infrastructure
14 solutions were those?

15 A. There were a couple of other siding
16 extensions we looked at. I think Orange Grove we
17 looked at. We looked at I said extending Lake
18 Catherine. I looked at the freight lead on
19 Norfolk Southern and I looked at a -- a new bridge
20 at the north end of Mobile, or the ones I can
21 remember.

22 Q. And why were those rejected?

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1 A. For a variety of reasons. Some of it I
2 didn't need the project to mitigate the freight.
3 You know, the other projects I had developed were
4 sufficient to do that. Some of them, there were
5 concerns about constructability for the projects.

6 Q. Are there any prior drafts of your RTC
7 report that reflect different conclusions than the
8 one you -- the ones you reported?

9 A. Likely.

10 Q. And do you recall what those different
11 conclusions were?

12 CHAIRMAN OBERMAN: I -- I did not hear
13 the answer -- I did not hear the answer to the
14 last question. Could you say it again, Mr.
15 Dingler.

16 THE WITNESS: I said likely. There
17 were lots of versions of drafts of the report.

18 CHAIRMAN OBERMAN: Okay. Sorry, go
19 ahead, Ms. Bracey. I'm sorry.

20 BY MS. BRACEY:

21 Q. Can you -- do you recall what those
22 conclusions were?

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1 A. Without seeing the specific draft that
2 you have in front of you, I said there were lots
3 of changes, lots of drafts. I --I wouldn't be
4 able to.

5 Q. Okay.

6 CHAIRMAN OBERMAN: Ms. Bracey, I'd just
7 like to ask a quick question here.

8 Are those drafts still in existence and
9 could they be produced if somehow they became a --
10 a request?

11 MR. ATKINS: So Chairman, I would
12 object to asking an expert to produce drafts of
13 reports. That's -- that's work product. That's
14 not -- unless it's --

15 CHAIRMAN OBERMAN: I'm sorry, Ray, I --
16 I couldn't hear you. Can you say that again?

17 MR. ATKINS: So I just want to put on
18 the record that we would object to asking an
19 expert to produce drafts of -- of reports. That's
20 never done in board practice. It's -- it's work
21 product. It's privileged. There's no -- that --
22 that -- we would brief that. So, even asking

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1 questions about, yeah, there's drafts, but whether
2 there's copies, it's -- it's -- it's not
3 appropriate to be asking the -- Mark Dingler to be
4 producing work product.

5 MR. HELENHOUSE: The Port joins in that
6 objection.

7 CHAIRMAN OBERMAN: I'm sorry, I didn't
8 hear that, Mr. Helenhouse.

9 MR. HELENHOUSE: The Port joins in that
10 objection and I would also note that the federal
11 rules were recently changed to specifically grant
12 work product protection over draft reports.

13 CHAIRMAN OBERMAN: Well, my question
14 was only do they exist and could they -- are
15 they -- what I meant to say was not could they
16 legally be produced but are they physically
17 producible and do they exist.

18 As to whether anybody can and will ask
19 to produce them and whether the board would order
20 them to be produced, it's an open question. I
21 haven't suggested it. I just want to know if they
22 exist.

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1 MR. ATKINS: Understood.

2 Go ahead and answer the question, Mr.
3 Dingler.

4 THE WITNESS: Likely. They're probably
5 in email or in a folder somewhere.

6 CHAIRMAN OBERMAN: All right. Well, as
7 to the objections, there is no request pending.
8 If anybody asks, including the board, for them to
9 be produced, then we'll entertain the arguments
10 about whether they're producible at that time.
11 But for the moment it's -- there's no request
12 pending.

13 I'm sorry, Ms. Bracey, to have
14 interrupted. Go -- go ahead.

15 BY MS. BRACEY:

16 Q. Have you reviewed the prior RTC study
17 from the Gulf Coast working group?

18 A. Which year was that?

19 Q. I believe that was 2020 -- 2017, my
20 apologies.

21 A. Okay. I am aware of it, yes. I have
22 reviewed it.

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1 Q. Okay. And that study indicated that
2 \$1.1B in infrastructure was warranted. Is that
3 right?

4 A. I don't believe that's true.

5 Q. Well, your study came out with \$440M in
6 infrastructure. Is that right?

7 A. That is correct.

8 Q. And now it's \$440M or 520M -- \$524M,
9 now that NS had said that the freight lead
10 extension must be added as a 15th project.

11 Is that right?

12 A. I will have to defer to you on that
13 one.

14 Q. Do you know what a -- withdrawn.
15 Let's look at page six of your RTC
16 modeling report.

17 MS. BRACEY: So Mr. Peterson, can you
18 please pull up page six of -- of your joint
19 verified statement.

20 CHAIRMAN OBERMAN: Is this the -- Ms.
21 Bracey, can you just identify the exhibit by
22 number for the record, please.

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1 MS. BRACEY: Sure. It is Joint Exhibit
2 23D.

3 CHAIRMAN OBERMAN: D as in David?

4 MS. BRACEY: Yes.

5 CHAIRMAN OBERMAN: Thank you.

6 MS. BRACEY: Mr. Peterson, would you --
7 I don't know if you have the capability of blowing
8 up the middle part. Perfect.

9 BY MS. BRACEY:

10 Q. So, you say there's a fourteenth
11 project that you recommended or selected "to
12 provide capacity to achieve about 95% OTP for
13 Amtrak restore freight performance of at least --
14 to at least the same level as before Amtrak was
15 added and ensure no schedule changes at all for
16 in-freight railroad or Amtrak".

17 Those were the parameters for your
18 study. Is that right?

19 A. That's what that says.

20 Q. But it's your report. Is that right?

21 A. As we described in the rebuttal report
22 and -- and through my direct, that 95% is somewhat

1 unclear.

2 Q. Who decided that freights would be
3 unreasonably impaired without enough
4 infrastructure to reach 95% OTP?

5 A. The 95% was never used as criteria. It
6 was put there as, you know, what was achieved in
7 the model.

8 Q. And who decided that freights would be
9 unreasonably impaired without enough
10 infrastructure to keep their status quo?

11 A. The -- what we followed in this case
12 was followed standard practice. Standard practice
13 in these cases is to restore freight back
14 basically to what it says in number two, "restore
15 performance back to at least the same level as
16 before".

17 Q. And who considered the model would not
18 consider any schedule changes?

19 A. I believe that was a scope provided by
20 CSX but that is also -- tends to be standard
21 practice.

22 Q. And when you say "standard practice,"

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1 can you quote an article or is there some sort of
2 support for that?

3 A. That -- there have been reports out
4 there that -- that follow the same practice. I --
5 I can't specifically know them off the top of my
6 head, no.

7 Q. Who -- did you run any models that
8 resulted in less aggregate delay?

9 A. Can -- can you clarify? Aggregate
10 delay to who?

11 Q. To the -- to the freights.

12 A. Likely. As part of, you know, the
13 iteration of the model, you will end up with -- I
14 probably ended up with a case that was better and
15 then you remove a project.

16 Q. Your model allowed the freights to be
17 as inefficient as they've always been. Is that
18 right?

19 A. I -- I don't -- can -- can you clarify
20 that question?

21 Q. Well, you didn't recommend any
22 operational changes. Is that right?

1 A. And by operational changes, can you be
2 specific?

3 Q. Sure. You did not model any changes
4 to -- in operations such as moving a freight
5 strain from noon to midnight.

6 Is that right?

7 A. No, we did not change any freight train
8 schedules.

9 Q. Okay. And you did not change any
10 Amtrak schedules. Is that right?

11 A. That is correct. That was outside the
12 control of CSX and NS and therefore outside the
13 scope of what we were looking at.

14 Q. So CSS -- CSX and NS instructed you not
15 to change any of the freight train schedules for
16 the Amtrak train schedules. Is that right?

17 A. I said, it was -- I can't remember
18 specifically. That was -- is likely part of the
19 scope.

20 Q. So the only thing you were instructed
21 to do was to add more infrastructure until you
22 reached the objectives set out on page six. Is

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1 that right?

2 A. Well, I was given a -- a pretty wide
3 berth. If there had been a specific -- I think as
4 I mentioned previously, if there had been a
5 specific schedule that, you know, was -- it was
6 clearly that train getting delayed at the exact
7 same place at the exact -- every single day, you
8 know, and I provided an example previously of one
9 of those we started to have discussions around.

10 Q. Your conclusion was to add more
11 infrastructure. Is that right?

12 A. Yes. We recommended 14 projects.

13 Q. And that conclusion was based on not
14 moving a single freight train and not moving a
15 proposed schedule of a single Amtrak train.

16 Is that right?

17 A. That is correct.

18 One thing to keep in mind is, you have
19 to be careful when talking about freight train
20 schedules. There is a lot of variability in
21 freight train operations. Again these things
22 don't run at the exact same time every single day,

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1 you know.

2 Q. But they're scheduled to run at
3 specific times. Is that right?

4 A. That is the intention of the railroad.

5 Q. Okay.

6 MS. BRACEY: You can take that down,
7 Mr. Peterson. Thank you.

8 BY MS. BRACEY:

9 Q. So you reported your output statistics
10 as percentages. Is that right?

11 CHAIRMAN OBERMAN: I'm sorry. I did
12 not hear that question. Could you say it again.

13 MS. BRACEY: Of course.

14 BY MS. BRACEY:

15 Q. You reported your output statistics as
16 percentages. Is that right?

17 A. Yes.

18 Q. Okay. And for instance, for the 2019
19 case with passenger service added, you reported
20 that delay in freight train per one hundred miles
21 was a 22.7% increase in the passenger base case.

22 Is that right?

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1 A. Well, let me check against the report,
2 but that sounds correct.

3 Q. Okay. Would it be helpful to pull up
4 table 19 of your report, Exhibit 23D?

5 A. I have it in front of me now. There
6 you go.

7 Q. Okay. So you wrote that the delay in
8 freight train -- freight trains per one hundred
9 miles was a 22.7% increase in the passenger base
10 case?

11 A. That is what it says, yes.

12 Q. Okay. But that's what you wrote. Is
13 that right?

14 A. Yes.

15 Q. Okay. And that translates from 83.1
16 minutes to 102 minutes per 30 simulations. Is
17 that right?

18 A. I'd have to go back to my work papers
19 but that sounds generally correct.

20 Q. And for every 30 times you run the
21 model, that means a delay per hundred miles goes
22 up from 83 minutes to 102 minutes. Is that right?

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1 A. That is the change in delay per hundred
2 train miles.

3 As Holly, you know, clarified, there is
4 thousands and thousands of miles in the model, you
5 know, for these train movements. That works out
6 to be 13 hours of delay per day. Yes.

7 Q. And that's about -- it's about 19
8 minutes, is that right, the difference between 102
9 and 83?

10 A. Nineteen minutes per hundred train
11 miles.

12 Q. Right. And that's less than one minute
13 per 20 miles. Is that right?

14 A. Per train mile. Again, there's
15 thousands and thousands of train miles in the
16 model.

17 Q. You also reported that there was a
18 four-and-a-half percent decrease in modeled
19 freight train speed. Is that right?

20 A. Yes.

21 Q. Okay. And that translates to an
22 average decrease of point seven miles per hour

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1 from 14.8 to 14.1 per hour?

2 A. Again, you'd have -- again you'd have
3 to go back to the work papers, look at that.
4 That's not in the report specifically but that
5 sounds correct.

6 Q. Okay. And then you also reported a
7 38.1% change in dispatching conflicts. Is that
8 right?

9 A. Yes.

10 Q. And that translates from seven -- 7,803
11 to 10,776 delay in minutes per average 30 RTC
12 simulations. Is that right?

13 A. I -- I don't know that one. I -- you'd
14 have to look at what's in my work papers.

15 Q. And you also report -- you reported a
16 33.6% delay, change in delay to other New Orleans
17 railroads. Is that right?

18 A. Yes.

19 Q. And that translates to an increase
20 of -- from 29,727 minutes to 39,701 minutes per 30
21 simulations. Is that right?

22 A. That'd be in my work papers. I didn't

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1 memorize every single number represented in my
2 report.

3 Q. And the 33.7% increase in re-crews. Is
4 that right?

5 A. That is correct.

6 Q. And that translates to 2.4 re-crews per
7 week?

8 A. Again, I think that one we actually
9 called out in the report. Let me -- what was the
10 number you gave?

11 Q. Two point four re-crews per week?

12 A. That is correct.

13 Q. Okay. And that's a new crew once every
14 few days. Is that right?

15 A. That sounds about right.

16 CHAIRMAN OBERMAN: What -- what page in
17 the report is that 2.4 per week on?

18 THE WITNESS: Page 47.

19 CHAIRMAN OBERMAN: Thank you. I'm
20 sorry, Ms. Bracey, go ahead.

21 BY MS BRACEY:

22 Q. You said that you used RTC modeling in

1 your current role. Is that right?

2 A. That is correct.

3 Q. And in your current role you have used
4 RTC to model the introduction of additional
5 freight trains. Is that right?

6 A. In -- in another study, yes.

7 Q. Okay. And the metrics that you provide
8 in table 19 of your report, are those the same
9 metrics that you would use to determine when the
10 addition of new freight trains would require new
11 infrastructure?

12 A. Very similar, not the exact same, you
13 know. If we're not looking at New Orleans, I
14 wouldn't report on the delay in New Orleans, but
15 we often look at a lot of these metrics.

16 Q. And so what is the threshold for how
17 high those percentages needed to be in order to
18 decide new infrastructure was required?

19 A. That is case by case. There is no set
20 sort of industry standard about what is exactly
21 acceptable. That is something you, with working
22 through the case, you -- you work with the

1 railroads and determine.

2 Q. So hypothetically, if you were doing a
3 different model and you were asked to model the
4 effects of two primary -- two priority intermodal
5 trains on the Gulf Coast line and imagine that the
6 model told you that adding those trains would
7 cause an overall increase in freight delays of
8 22.7% and a decrease in freight speeds of 4.5%...

9 Do you understand my hypothetical?

10 A. So what are you specifically asking?

11 Q. I'm just telling you what the
12 hypothetical is.

13 A. Okay. Yes I understand the
14 hypothetical.

15 Q. Okay. If the model showed that adding
16 two priority intermodal trains caused an increase
17 in freight delays of 22.7%, would you recommend
18 anything to mitigate that effect?

19 A. Again, there is -- there is a lot of
20 factors. It's an understanding of the congestion
21 on the line and the ability that that corridor to
22 operate. In a case like this, yes, you would

1 likely be asking for additional infrastructure.

2 Q. So the addition of two priority
3 intermodal trains generated -- if they generated
4 the impacts in table 19 of your report, your first
5 recommendation would be to add half a billion
6 dollars in new infrastructure?

7 A. Again, the -- the priority afforded to
8 Amtrak is significantly higher than that afforded
9 to an intermodal train. The -- the acceptability
10 of delays is very different. To equate one
11 intermodal train to one passenger train is just an
12 incorrect comparison.

13 Q. The 2021 model ran about 328 cases. Is
14 that right?

15 A. There were 300 cases per -- wait, three
16 hundred. Over -- can you specify?

17 Q. Three hundred and twenty-eight cases.

18 A. Over how many different scenarios, or?

19 Q. I believe your work papers indicated
20 that you ran the model of 300 -- 328 cases.

21 A. You'd have to look at my work papers.
22 For each case we ran it 30 times and so -- and

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1 there were ten different cases we looked at in one
2 way, shape or form, so.

3 Q. So that's about 300. Is that right?

4 A. That sounds about right.

5 Q. You multiplied it ten times by 30. Is
6 that right?

7 A. Yes.

8 Q. Okay. And many of those cases failed
9 to successfully dispatch. Is that right?

10 A. That is not correct. But -- you know.

11 Q. How many failed to successfully
12 dispatch?

13 A. It was case by case. So, as you
14 increase the congestion of the line, your -- your
15 failures in RTC increase. It is more difficult
16 for the model to resolve.

17 Q. And by failing to successfully
18 dispatch, that means the case did not run to
19 conclusion. Is that right?

20 A. That is correct.

21 Q. Okay. And one of the reasons the cases
22 did not run to conclusion is because you used a

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1 20-minute time for blocked grade -- grade
2 crossings. Is that right?

3 A. Amongst many different factors that
4 limit the -- the capability of the corridor, yes.

5 Q. And the 20-minute time for blocked
6 grade crossings is programmed into your RTC model.
7 Is that right?

8 A. Yes.

9 Q. And -- but in the real world, trains
10 often block grade crossings for at least 30
11 minutes. Is that right?

12 A. Let's be very careful here. So, this
13 is a planning case, you know. We had 20 minutes
14 in there that is sort of public statements by FRA
15 and that's how we determined those.

16 This is not to say in reality the
17 railroads will not block crossings for longer, but
18 it is my, you know, standard that you should not
19 plan for failures for blockages of crossings.

20 Q. But if the train is going to be sitting
21 for more than 30 minutes, then the train crew
22 could possibly uncouple the cars and clear the

1 highway crossing which would eliminate the issue
2 in the model.

3 Is that right?

4 A. Typically it has to be much more than
5 30 minutes. You know, that -- that movement
6 requires the train to stop and decouple. To
7 reconnect it you're going to have to re-walk the
8 train. There's a whole host of operations that
9 will take significantly more than 30 minutes when
10 you do that. It's not the general practice of any
11 railroad I am aware of to do that in normal meet
12 and pass operations, which is what we're modeling
13 in this case.

14 Q. Okay. By setting the 20-minute time
15 limit for blocked grade crossings, you constrain
16 the running of the model. Is that right?

17 A. I wouldn't consider it that way. It is
18 to protect the public and best represent the
19 operations on the corridor.

20 Q. So what's the average time for blocked
21 crossings on the line now?

22 A. I do not know.

1 Q. So when the RTC case is run to
2 conclusion, it creates an output of train
3 statistics. Is that right?

4 A. Amongst many statistics, yes.

5 Q. And if an RTC case fails to run to
6 conclusion, it does not create an output of train
7 statistics. Is that right?

8 A. That is correct.

9 Q. Okay. And the statistics include total
10 delay time, total transit time and origin delay
11 time. Is that right?

12 A. If the model doesn't complete, it
13 doesn't have, you know, a full set of data. So,
14 yeah, it wouldn't have the information.

15 Q. Okay. And in the delays of trains to
16 New Orleans, delay time is counted twice and
17 total -- total delay time, origin delay time.

18 Is that right?

19 A. Can you specify which metrics you're
20 talking about?

21 Q. In the delays to New Orleans.

22 A. On -- in which table?

1 Q. In table 19.

2 A. So there are two categories of delays
3 to make sure we account for that. There is the
4 delay of that train sitting on the network. It
5 goes -- RTC appears that train and it's waiting to
6 get onto NS. Additionally we counted delay of
7 before that train appears in the model. So the
8 model will -- will occasionally hold that train
9 from ever appearing in the model due to
10 congestion.

11 So to best represent the impact at that
12 area, we included both those sets of delay.

13 Q. Let's talk for a minute about movable
14 bridges. We've heard testimony in this proceeding
15 that three bridges along the Amtrak route are now
16 automated.

17 How did your model incorporate that
18 information?

19 A. I believe there were two that our --
20 our model included four bridges that required
21 high-rail movements. My understanding from
22 testimony is that there had been two of those, had

1 been automated, but those are not yet in the
2 federal record. Whether those can be permanent is
3 outside the control of CSX and therefore was not
4 included in the model.

5 Q. And your model just assumed that no
6 bridges on the route would be automated before
7 2039. Is that right?

8 A. As it is outside the control of CSX,
9 that was the case.

10 Q. Okay. And your model ignored that one
11 of the bridges now has scheduled opening times?

12 A. My understanding is that's not yet in
13 the federal record. We were aware of it and
14 because that is not a -- is outside the control of
15 CSX, it was not included.

16 Q. How much of the delay in the model is
17 due to high-rail vehicles that are not necessary
18 now that the bridges are automated?

19 A. I -- I can't talk specifically about
20 that. It will be a little bit of speculation. I
21 could reference the cases we have since run.

22 Q. I don't think we want you to do that.

1 Okay.

2 How much delay in the model is due to
3 the way you treated movable bridges generally?

4 A. I never isolated the impact.

5 Q. Okay.

6 A. Actually, let me correct that.

7 I -- I looked at the impact to OTP but
8 I never looked at it to the impact to freight.

9 Q. Okay. Throughout the day a train may
10 switch cars. Is that right?

11 A. Yes.

12 Q. And it may change crews? The train may
13 change crews. Is that right?

14 A. Of course.

15 Q. And the switching of cars can happen on
16 a siding. Is that right?

17 A. Typically not. That is actually pretty
18 rare. Switching of cars occurs in yards or
19 storage tracks, not in sidings.

20 Q. The changing of crews can also happen
21 on a siding. Is that right?

22 A. It depends on the agreements with

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1 the -- the labor unions. That is not typical
2 operation except in sidings that are immediately
3 adjacent to the yard. To my understanding there's
4 only one location on this corridor where that
5 occurs and that's at Brookley siding.

6 Q. And the switching of cars can also
7 happen in an industrial complex. Is that right?

8 A. That is correct.

9 Q. And the changing of crews can happen in
10 an industrial complex. Is that right?

11 A. No. That is not a crew origination
12 point. A local may re-crew at that location, but
13 that is -- you know, very rarely if ever am I
14 aware of that in -- in scheduled operations.

15 Q. So in the RTC cases you submitted into
16 evidence the crew changes always happen on the
17 main line. Is that right?

18 A. What I put in the RTC reflects the
19 current operations of the corridor.

20 Q. So that means it was -- they were
21 always took place on the main line?

22 A. Not always. And -- and can you

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1 specifically refer to what location?

2 Q. In the RTC cases you submitted into
3 evidence, the crew changes happened on the main
4 line, even when there was industrial complex
5 available?

6 Is that right?

7 A. Are you talking about main line through
8 trains or are you talking about locals?

9 Can you -- can you be little more
10 specific.

11 Q. Discussing local trains.

12 A. Locals are not scheduled to change
13 crews in a -- in industrial tracks.

14 Q. When you tie up the main line with crew
15 changes or switching of cars, it reduces the
16 capacity of the line. Is that right?

17 A. That -- that is typically -- you know,
18 sometimes there's operations that do those things.

19 Q. And that makes it more difficult for
20 freight traffic to get through in the model. Is
21 that right?

22 A. That represents the actual operations

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1 on the corridor.

2 Q. But it also makes it more difficult for
3 freight traffic to get through the model. Is that
4 right?

5 A. Well, it's also, that's how they
6 operate it. You know, they might -- I don't know.
7 They may not be able to operate in the yard.
8 That is very typical. You don't pull a train into
9 a yard to do crew changes. You do switching off
10 the main line. That is, you know, the operations
11 I -- I've seen on CSX, NS and other railroads.

12 Q. About by extension it makes it more
13 difficult for passenger traffic to get through.
14 Is that right?

15 A. That is not meant to make it harder for
16 passenger traffic. That is how the railroads
17 operate their corridors.

18 Q. So let's talk a little bit about the
19 .PERMIT file. The RTC model allows the user to
20 program maintenance windows at certain locations.

21 Is that right?

22 A. Yes. That is one of the purposes of a

1 .PERMIT file.

2 Q. Okay. And programming maintenance
3 windows is done in one type of .PERMIT file?

4 A. Yeah. I use one type of .PERMIT file
5 in this case.

6 Q. And one type of PERMIT file, .PERMIT
7 file includes bridge openings?

8 A. Yes. So the -- the PERMIT file
9 included -- included three types of -- sure, four
10 different things. We included maintenance of way;
11 we included the bridge openings; we included
12 interchange delay and then a -- sort of a -- a
13 passenger permit for, you know, train 20.

14 Q. And in your model maintenance permits
15 freight trains from using the traffic. Is that
16 correct?

17 A. That is an unsafe operation for freight
18 and maintenance of way to operate. So, yes, when
19 maintenance away is occurring on a corridor, yeah,
20 freight trains can operation.

21 Q. But it allows passenger trains to
22 proceed. Is that right?

1 A. As I described earlier, so, when their
2 passenger trains were introduced on a corridor,
3 the railroads make their best effort to not
4 schedule maintenance of way at the same time as
5 passenger. And that was what was done in this
6 case. However, occasionally a -- a passenger
7 train, you know, is running late or I -- you know,
8 the random variability I put into where those
9 maintenance of way windows occur and when they occur
10 would result in them occurring when a passenger
11 window was out there.

12 It was a very few number of cases to
13 prevent those trains, those passenger trains from
14 being stopped, as would not be the practice in --
15 if in reality I allowed the passenger trains to
16 pass through those.

17 Q. There is no maintenance project in the
18 real world that shuts down the track for -- for
19 freight but also allows passenger trains through.

20 Is that right?

21 A. That was not what was represented. The
22 reason we did allow passenger trains to pass

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1 through was to make sure that we didn't
2 artificially delay the passenger trains, as would
3 not be the practice of any railroad.

4 Q. Forcing trains to stop while allowing
5 passenger trains to proceed constrains the model.
6 Is that right?

7 A. These are actual operations that happen
8 on a day-to-day basis. These are included in the
9 base case. These were included in all our cases.

10 Q. But this demonstrates that there is
11 little room for freight traffic. Is that right?

12 A. I'm not -- I don't think that's true.

13 Q. So you counted a single train making
14 multiple movements as multiple different trains in
15 the model.

16 Is that right?

17 A. Multiple trains in the .TRAIN file,
18 yes.

19 Q. And there you identified 174 yard train
20 movements as individual trains?

21 A. Yes. We did it different in different
22 locations to best represent the operations at

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1 those -- those locations. If you often tie those
2 into a single train, as that train gets delayed,
3 as it typical with some of those yard movements,
4 it ends up, you know, blocking additional things
5 that was not realistic. So we -- we broke them up
6 and did them as individual movements to best
7 represent the operations.

8 Q. And the more trains that are in the
9 model the more congestion there appears to be. Is
10 that right?

11 A. That is not true.

12 Q. The more delay the model produces. Is
13 that right?

14 A. If I had been able to put it as one
15 train, you know, and if they were the same in
16 modeling, whether I broke it into ten movements or
17 I put it as one train with ten movements, the
18 effect should be the same in the model.

19 Q. An addition of 174 trains does not
20 produce more delay?

21 A. No. The -- the yard trains were not
22 included in the metrics and also the -- the --

1 whether that train is one train with ten movements
2 or ten movements is ten trains, the effect would
3 be similar. It -- it was just the decision was
4 how best to represent those operations at those
5 specific locations.

6 Q. So the original RTC model recommended
7 14 projects that were to mitigate the alleged
8 delay in freight service caused by additional
9 passenger trains?

10 A. No. I take exception with the word
11 "alleged" but we -- we recommended 14 projects in
12 2039.

13 Q. And in recommending these 14 projects,
14 the RTC model did consider whether CSX or NS could
15 operate more efficiently?

16 A. I -- I've always been somewhat confused
17 by that. Can you describe what you mean by how
18 railroads run more efficiently or how they decide
19 not to run efficiently today?

20 Q. You didn't model any operational
21 changes. Is that right?

22 A. We did not model any operational plan

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1 changes to be changes in schedules.

2 Q. So the 14 projects didn't differentiate
3 between projects that would mitigate serious
4 adverse impact on CSX and NS and projects that
5 would just ensure the status quo for CSX and NS.

6 Is that right?

7 A. These projects are to mitigate the
8 impact to freight. I -- you would have to, you
9 know, tell me what those different words mean you
10 just told me. These -- these -- or 14 projects
11 mitigate the impact to freight.

12 Q. But in your report you stated that one
13 of your goals was not to impact the status quo.
14 Is that right?

15 A. I don't think we used the words "status
16 quo." What we said was to mitigate the impact to
17 freight. And I -- we can look up the specific
18 language, but. I think it was -- we used the word
19 "restore": "restore freight traffic performance to
20 at least the same level as the four passenger
21 trains that were added to the corridor".

22 Q. Which of the projects recommended will

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1 mitigate the 19 minutes of delay that the RTC
2 model stated was necessary?

3 A. So these projects are selected as a
4 suite. They have, you know, specific purposes.
5 So, you know, we -- we put projects in New Orleans
6 and Gentilly and Mobile to fix terminal congestion
7 and we -- we added sidings to mitigate, you know,
8 the impact along the liner road and the limiting
9 ability to use the sidings once passenger is
10 introduced.

11 Q. And which of the projects recommended
12 will mitigate the change in freight speed from
13 14.8 to 14.1 miles per hour?

14 A. These projects are -- are selected as a
15 suite of projects. They were -- they were never
16 considered in -- in a piece-wise form.

17 Q. And which of the projects recommended
18 will mitigate the need to re-crew once more every
19 three days?

20 A. Can you -- can you rephrase the
21 question?

22 Q. Sure. You mentioned in your report

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1 that -- that you would have to re-crew -- is it --
2 I believe it was a 2.4 -- give me a second. A
3 33.7% increase in re-crews. Is that right?

4 A. That is correct.

5 Q. And that's 2.4 re-crews per week?

6 A. One thing to be careful with is I
7 always like to present percentages and it better
8 contextualizes the impact. There are -- you know,
9 the RTC is inherently, as we've talked about,
10 somewhat optimistic. While it's a fantastic tool
11 for thinking through the best projects to select,
12 there are other factors that aren't included in
13 the model which will increase congestion, increase
14 variability along the corridor.

15 And so, you know, to -- to -- I would
16 state that it would increase the re-crews by 33%.
17 That's a better way to describe the impact.

18 Q. Well, which of those projects would
19 mitigate the increase of re-crews by 33.7%?

20 A. The projects selected were to mitigate
21 the impact to freight.

22 Q. And you didn't perform any cost-benefit

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1 analysis for your proposed projects, right?

2 A. No.

3 Q. And Mr. Hunt testified that you were
4 the person who came up with these projects. Is
5 that right?

6 A. That is correct.

7 Q. How many of the projects were
8 extensions of sidings?

9 A. Let me look at my report.

10 (Witness peruses document.)

11 A. It looks like six of them: Claiborne,
12 Nicholson, Harbin, Belvoir, Fountainbleu and St.
13 Elmo -- oh and Brookley, however many that is.

14 Q. And are these sidings -- sidings needed
15 to -- because CSX is planning to run longer
16 trains?

17 A. Well, we recommended them in 2019. The
18 reason for that is -- let's -- let's be careful
19 when thinking about these sidings. If you go into
20 the timetable, there is a list. You know, one
21 siding may say 8,500 feet but there is crossings
22 all throughout it. It functionally -- that limits

1 its functionality, especially with the
2 introduction of passenger trains.

3 So these sidings were lengthened to a
4 length for 2039 but you still need an extension in
5 2019 because you need to be able to fully clear
6 the freight trains for the passenger traffic in
7 2019.

8 Q. How many of the projects were involved
9 in installing double track?

10 A. So we extended double track with
11 Michoud. You could consider Belvoir double
12 track -- that was effectively a siding extension
13 to double track -- and we added double track at
14 Mobile.

15 Q. How many projects is that?

16 A. What, three.

17 Q. Three, okay. And again, that will help
18 CSX with longer trains. Is that right?

19 A. What it will do is it will allow a
20 passenger and freight train to meet without that
21 freight train stopping and blocking grade
22 crossings.

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1 Q. And now the freight lead extension on
2 NSR, that includes extending the existing freight
3 lead track to create space for all 12,000 foot
4 trains.

5 Is that right?

6 A. Well, yeah, it allows -- basically what
7 it does is it allows the trains working at Oliver
8 Yard to now not be on the two existing main lines.
9 Right now that train works. The different trains
10 that work there is a fairly significant part of
11 the day. Once you have a -- an Amtrak train
12 coming through there, there is sort of between
13 that train working and the -- the -- keeping the
14 track clear for Amtrak, there is no track to store
15 trains for interchange, you know, as they wait to
16 get from -- to CSX and waiting towards UP, KCS,
17 BNSF.

18 What that freight lead does is it -- it
19 moves that train off those two main lines and
20 provides now a space to hold those trains waiting
21 to interchange in either direction.

22 Q. And Amtrak trains are not 12,000 feet

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1 long. Is that correct?

2 A. That is correct.

3 Q. Okay. You testified that at Brookley
4 you recommended a siding extension and a section
5 of double track at Mobile. Is that right?

6 A. That is correct.

7 Q. And you indicated that that's -- this
8 would help alleviate crew changes and congestion
9 ahead. Is that right?

10 A. Yes. So there -- there is a lot of
11 work going on in Mobile. There is at least one
12 train that -- that occasionally crew changes at
13 that location. It is a place to clear up. Right
14 now that train can sit on the main line. You
15 know, if you introduce a passenger train, that
16 train can no longer sit on the main line. It has
17 to clear up into the siding when that passenger --
18 passenger train goes through. So we need to
19 extend that siding so that freight train can sit
20 like it does today without blocking the train
21 movements, the passenger train movements.

22 Q. Whose crew changes are you referring to

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1 and what congestion are you referring to?

2 A. CSX train movements and their -- their
3 trains crew changing and picking up and setting up
4 cars at Mobile.

5 Q. And these are conditions that exist
6 today at this location?

7 A. Yes.

8 Q. So your report says that these projects
9 are necessary to avoid degradation of freight
10 service. Which projects -- projects are necessary
11 to avoid an unreasonable impairment of freight
12 service?

13 A. To me that's a legal term. I will
14 stick with the word "degradation".

15 What I see is severe degradation on --
16 on the service. You know, there's a 45 -- in 2019
17 there would be a 45% increase in -- in delays to
18 locals. There is, you know, a 22% increase in
19 delay overall.

20 To me that's severe degradation.

21 Q. In your report you recommend the
22 Nicholson siding. Is that right?

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1 A. That is correct.

2 Q. And according to Mr. Niemeyer's report
3 the Nicholson siding would cost between \$33.3- and
4 \$33.6M to build?

5 A. I -- I'm not familiar with his numbers,
6 but -- yeah, I can't speak to that specifically.

7 Q. But Mr. Niemeyer's report was an
8 exhibit to your verified statement. Is that
9 right?

10 A. No. It is to the -- the Banks-Guthrie
11 verified statement. My -- what happened was I
12 wrote the report, they took those projects and
13 then costed them. I -- I am not aware of the
14 specific cost of these projects except what people
15 have said.

16 Q. Okay. But the extended siding of
17 12,600 feet could not be used to hold freight
18 trains because it would still have 3,900 usable
19 feet due to the grade crossings?

20 A. Yes. So, as I described previously,
21 what that does is it moves that -- that meet
22 between two passenger trains. It allows that to

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1 occur, not on single track. Previously you would
2 be holding a train at Claiborne or -- or for a
3 sizable period of time in Nicholson. So it helps
4 the freight to get that passenger train off -- off
5 the network. It is not to help, you know, Amtrak
6 but it was to -- by helping Amtrak, I helped the
7 freight.

8 Q. So the Nicholson siding is based on the
9 model's assumption that the Amtrak trains will
10 never be delayed by freight trains. Is that
11 right?

12 A. It -- we weren't able to achieve 100%
13 OTP in the model. So there are delays to Amtrak.

14 Q. And the model's assumption that the
15 Amtrak trains will arrive -- arrive early at Bay
16 Street -- Bay St. Louis station, excuse me, just
17 each -- east of the siding for scheduled departure
18 times.

19 Is that right?

20 A. Yeah. So we extended that siding north
21 and to the south. To the north those trains were
22 occasionally showing up early and so it allowed

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1 those trains to -- and also the train coming from
2 Mobile could be showing up late occasionally. And
3 so what it did, it just allowed those two trains
4 to both be at the station at the same time.

5 Q. And you could solve this problem by
6 doing a slight tweak in the Amtrak schedule. Is
7 that right?

8 A. You might be able to.

9 Q. Your other justification for the \$30M
10 Nicholson project is that there will be fewer
11 delays during scheduled meets near Nicholson
12 between both pairs of Amtrak trains.

13 Is that right?

14 A. Yes.

15 Q. And the existing 85-foot siding --
16 8,500 foot siding was more than long enough for
17 running meets. Is that right?

18 A. Well, the problem is that that meet is
19 basically equidistance between Claiborne and
20 Nicholson, so it was -- it was using Claiborne, it
21 uses Nicholson and a limited ability to use either
22 of those sidings during that meet.

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1 Q. So these are meets without either train
2 stopping. Is that right?

3 A. That is the -- the hope, but yeah. In
4 practice trains are -- are being stopping there.
5 We just reduce the duration of it so that train
6 can get off the network quicker.

7 Q. And these are meets between short
8 Amtrak trains, or both trains arrive at opposite
9 ends of the siding within a few minutes of one
10 another?

11 Is that right?

12 A. But, yeah, short, long, I would -- it's
13 a 400-foot foot Amtrak train, yes.

14 Q. And if one was late, only about three
15 minutes delay to one of the Amtrak trains would be
16 avoided by having the 2.4M -- 2.4 mile long
17 siding.

18 Is that right?

19 A. I don't know off the top of my head.

20 Q. The Belvoir double track would cost
21 over \$50M and would add 5.4 miles of second main
22 line track. Is that right?

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1 A. I'm not familiar with the cost but I'm
2 familiar with the project.

3 Q. And it would increase the usable length
4 between grade crossings only from 4,900 to 5,200
5 feet?

6 A. That's exactly why I recommended double
7 track. There are significant crossings through
8 there. I -- there is no place to extend a siding.
9 And so, I -- I recommended a six miles of double
10 track. The reason for that was so that a -- a
11 dispatcher can schedule two trains from the north
12 and south and meet them without those trains
13 sitting and blocking grade crossings.

14 Q. The existing 7,930 foot siding is more
15 than adequate for that purpose. Is that right?

16 A. That is not correct. At Belvoir there
17 are two grade crossings -- well, there is a grade
18 crossing right at the immediate south end, Belvoir
19 Road, and there's Iris Road in the middle of the
20 crossing. It is -- its functional length is much
21 less than that. It makes it -- it difficult for
22 that siding to be used in -- in normal operation.

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1 Q. And your recommended infrastructure
2 would create seven places between New Orleans and
3 Mobile versus zero today where 12,000 foot trains,
4 freight trains could meet without blocking grade
5 crossings?

6 Is that right?

7 A. That's not true.

8 So when there's only freight on a
9 corridor, railroads are able to do something
10 called a "saw-by". So basically that -- that long
11 freight train is able to sit on the main line and
12 wait. You know, so it's able to sit on the main
13 line, not blocking crossings, waiting for a
14 smaller train to come in the other direction.
15 Once that train arrives and enters the siding,
16 it'll only be there a short period of time, and so
17 it won't block crossings for long. That long rain
18 can continue.

19 This is one of the many reasons, you
20 know, you need to have longer sidings and
21 additional sidings on the corridor, is that
22 movement is able to be done today without

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1 passenger. When you introduce passenger, that
2 movement is no longer available to dispatchers.

3 Q. Currently the only siding longer than
4 9,000 feet is Brookley siding. Is that right?

5 A. That sounds correct.

6 Q. Okay. And that is just west of Mobile.
7 Is that right?

8 A. Yes.

9 Q. If the majority of freight trains
10 currently operating on the CSX line are less than
11 12,000 feet long, why were most of your
12 recommended siding extensions proposed to be
13 12,000 feet long?

14 A. This goes to the methodology we used.
15 You are not -- I'm not -- we -- we developed our
16 projects in 2039 and then used those to recommend
17 in 2019.

18 It does not make sense for a railroad
19 to extend a siding to then have to subsequently
20 extend it again in a short period in the future.

21 MS. BRACEY: So at this point we're
22 going to ask Mr. Dingler about his master's

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1 thesis. So I don't know if you -- if the board
2 members have had a chance to at least receive that
3 document. We only have about a few questions.

4 CHAIRMAN OBERMAN: I -- I have received
5 it. I don't know if all the board members have
6 received it.

7 MEMBER SCHULTZ: I've received it.

8 MEMBER FUCHS: Got it.

9 CHAIRMAN OBERMAN: Okay. Proceed.

10 MR. ATKINS: Chairman, just -- just
11 real quickly, we've been going here for -- it's
12 almost 11:00 o'clock. Can we get a ten-minute
13 break just so Mark can use the bathroom and then
14 this seems like a good -- a good point to break.

15 Ms. Bracey, if you -- if you don't
16 object, just to a short break for the witness.

17 MS. BRACEY: I have no objection.

18 CHAIRMAN OBERMAN: All right. We will
19 break. It's 10:57 and we'll resume at 11:10
20 Eastern.

21 THE WITNESS: Thank you.

22 (Recess taken.)

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1 CHAIRMAN OBERMAN: All right. Mr.

2 Dingler, are you ready?

3 THE WITNESS: I am.

4 CHAIRMAN OBERMAN: All right. Ms.

5 Bracey, proceed.

6 BY MS. BRACEY:

7 Q. So during direct examination you
8 mentioned your master's thesis. Is that right?

9 A. That is correct.

10 Q. And the title of your thesis is "The
11 Impact of Operational Strategies and New
12 Technologies on Railroad Capacity".

13 Is that right?

14 A. That is correct.

15 Q. And in chapter seven you conducted a
16 cost-benefit analysis to see what the best
17 approach to mitigate train type heterogeneity on a
18 single track line.

19 Is that right?

20 A. That is correct.

21 Q. And specifically simulations were
22 conducted in order to determine the -- the

1 comparative benefit of changing operations as
2 opposed to modifying or expanding infrastructure.

3 Is that right?

4 A. That sounds accurate. Yes.

5 Q. Okay. You used the RTC software to run
6 the simulations. Is that right?

7 A. That is correct.

8 Q. And on page 80 of your thesis you
9 wrote, "Although infrastructure expansion is an
10 effective method of increasing capacity, it's also
11 expensive. One of the objectives of the analyses
12 described here is to better understand -- is to
13 develop a better understanding of how operational
14 changes compare to infrastructure in terms of
15 capacity".

16 Is that right?

17 A. Can you show me where that is on that
18 page?

19 Q. Sure. It's at the bottom of the page,
20 beginning with "although," the bottom of that
21 large paragraph.

22 A. Yes.

1 Q. Okay. And based on the cost-benefit
2 analysis, including considering the cost of
3 building infrastructure, you ultimately concluded
4 that for some scenarios building infrastructure is
5 not the most cost-effective way to reduce delay.

6 Is that right?

7 A. When you can -- you control both the
8 operating costs and the infrastructure costs, that
9 is the case.

10 Q. In your overall conclusion, as outlined
11 in the abstract of your thesis, is that "In order
12 to meet the forecasted demands, railroads must
13 efficiently use existing capacity and efficiently
14 plan new capacity.

15 "Infrastructure to provide this
16 capacity is capital intensive so careful
17 consideration of alternatives to infrastructure
18 expansion must be considered.

19 "Consequently, railroads need to
20 understand how operational practices and new
21 technologies may affect rail lines and network
22 capacity".

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1 Is that what your abstract says?

2 A. That is correct.

3 Q. Okay. You testified that the
4 infrastructure proposed based on your RTC model
5 mitigates any effects of restoring passenger
6 service. Is that right?

7 A. Can you repeat the question?

8 Q. You testified that the infrastructure
9 proposed based on your RTC model mitigates any
10 effects of restoring passenger and freight
11 service. Is that right?

12 A. For the 2021 modeling report you're
13 referencing?

14 Q. Yes.

15 A. Okay.

16 Q. Yes.

17 A. Yes.

18 Q. And based on your RTC model, the Port's
19 proposed infrastructure is not necessary to
20 mitigate any effects of restoring passenger
21 service. Is that right?

22 A. Our final proposed set of projects was

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1 focused on mitigating CSX and NS. What we found
2 was that it didn't mitigate the interchange
3 partners in New Orleans. It also led to increased
4 delays to TASD and the coal trains arriving and
5 departing from the -- to the Port.

6 Q. You testified that you validated the
7 inputs provided by the carriers. Is that right?

8 A. Yeah, I --I reviewed the inputs against
9 my experience, against the data they provided.
10 Yes.

11 Q. And those inputs included failed
12 narratives from CSX and NS? Is that right?

13 A. Yes.

14 Q. Okay. What did you do to validate the
15 field narratives?

16 A. Some of them I had data to look at it.
17 The other is I used my experience on, you know,
18 from modeling at CSX, from modeling other
19 railroads, modeling -- you know, and my
20 understanding of railroad operations to confirm
21 those are things I have seen in other locations
22 across the country.

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1 Q. Did you actually look at the field
2 narratives?

3 A. I have the -- the -- the narratives
4 provided by NS and CSX.

5 Q. In what form are those narratives?

6 A. They're part of the input. So, you
7 know, the report -- the information provided by
8 Holly and Hannah.

9 Q. In what form are the narratives?

10 A. Some of it is written. Some of it is
11 provided verbally. Some of it likely through
12 email.

13 Q. How did you validate the frequency and
14 timing of train counts and timings they provided
15 to you?

16 A. Accept it -- so there was only really
17 one location that really we didn't have some type
18 of data for and that was the south end of
19 Gentilly. The rest of them, we were able to look
20 into the data or, looking at, I said, you know, my
21 understanding of -- of corridors like these, of
22 terminal operations, I -- I reviewed it against my

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1 own experience.

2 Q. How did you validate the data that was
3 provided to you from the summaries prepared by Ms.
4 Sinkkanen?

5 A. At -- at some point you have to choose
6 someone to trust. I've been given no reason to
7 not trust any of the information provided to me by
8 CSX or NS.

9 Q. And how did you validate the data that
10 was provided to you from the summaries prepared by
11 Ms. Rosse?

12 A. In both cases against my own
13 experiences.

14 Q. And the field narratives from CSX came
15 from Ms. Rosse. Is that right?

16 A. Yes.

17 Q. And the field narratives from NS came
18 from Ms. Sinkkanen. Is that right?

19 A. Yes.

20 Q. Did you ask for a list of the field
21 personnel that Ms. Rosse interviewed?

22 A. No.

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1 Q. And did you ask for the positions held
2 by the field personnel that Ms. Rosse interviewed?

3 A. No.

4 Q. Did you ask for a list of the positions
5 held by field personnel Ms. Rosse interviewed?

6 A. No.

7 Q. Did you ask for a list of the questions
8 that Ms. Rosse put to field personnel during the
9 interviews?

10 A. No.

11 Q. Did you ask for the dates on which Ms.
12 Rosse interviewed field personnel?

13 A. You know, the information she provided
14 me is typical that I receive from other railroads
15 in other projects. I don't ask for, you know,
16 word for word verbatim or the dates. It is
17 information provided to me by the railroad.

18 Q. Is that consistent with what you
19 recommended in your thesis or what your thesis --
20 the theory of your thesis was?

21 A. Can you be more specific?

22 Q. Were there any discussions of field

1 narratives in your thesis?

2 A. I don't believe so. You know, my
3 thesis was an academic paper. You know, I -- I
4 was dealing with sort of a theory. I was looking
5 at specific train characteristics. In -- in that
6 thesis I was looking specifically at train mix.

7 One interesting thing about this
8 corridor on -- on CSX, it is entirely merchandise
9 trains. There is very little mix in trains today,
10 if at all. It is all a same type of train with --
11 with the same priorities. Some of those
12 characteristics that I was looking at in my report
13 or my master's thesis are not the case here.

14 Q. Did you ask for a time of day in which
15 Ms. Rosse identified -- interviewed field
16 personnel?

17 A. No.

18 Q. And did you ask whether Ms. Rosse
19 reviewed dispatch tapes?

20 A. No.

21 Q. Did you review any dispatch tapes?

22 A. What I received was a data output from

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1 the -- the dispatch records. So, that's included
2 in my work papers. They provided me screenshots
3 of the dispatching screens and I was able to go in
4 there and understand the individual train
5 movements by looking at the data.

6 Q. And it's safe to say that you don't
7 have a list of who Ms. Rosse spoke to?

8 A. No.

9 Q. And you didn't personally speak to any
10 of those field personnel?

11 A. No.

12 Q. And you -- same question for Ms.
13 Sinkkanen, that you did not personally -- you did
14 not personally talk to any of the NS personnel?

15 A. No.

16 Q. And did you ask for a list of field
17 personnel that Ms. Sinkkanen interviewed?

18 A. I was given her -- her information. I
19 didn't need to know where it came from.

20 Q. And what sort of information was that?

21 A. Her narratives about the operations of
22 those trains.

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1 Q. You testified that the biggest impact
2 on delay per hundred miles was from local trains.
3 Is that right?

4 A. I believe the train -- what I was at
5 least trying to convey there is that the train
6 that has the biggest impact due to passenger, the
7 biggest degradation of service is the local
8 trains.

9 Q. And the average local train in your
10 model travels less than 35 miles. Is that right?

11 A. I'd have to look at my work papers.

12 Q. Okay. And the longest local train --
13 the longest local trains in your model traveled
14 less than a hundred miles. Is that right?

15 A. I'd have to look at the work papers.

16 One thing to keep in mind is, while
17 locals, you know, operate short distances, they're
18 going to multiple customers. They're -- they can
19 be easily delayed due to passenger traffic, you
20 know, waiting in those locations because they take
21 our main line capacity to switch cars and do their
22 various operations.

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1 Q. On page 13 of your initial report RTC,
2 you said that you modeled 13 through trains for
3 CSX on the line. Is that right?

4 A. I don't specify that's through trains.

5 Q. But you modeled 13 trains per CSX line?

6 A. That is an average over the length of
7 the corridor. So what I did was I looked at sort
8 of each pair of -- of OS points and, you know, a
9 local train may only have -- you know, traverse
10 the -- the top northern part and another one may
11 do the southern part. So there is sort of an
12 average to give a general sense of the number of
13 trains in the corridor.

14 Q. And did you listen to Mr. Johnson's
15 testimony?

16 A. I did.

17 Q. And he testified that CSX currently
18 runs eight to ten trains on that line. Is that
19 right?

20 A. You're -- you're comparing a little bit
21 of apples and oranges there. He is talking about
22 through trains. Those are the trains that go all

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1 the way from, you know, Montgomery to Mobile to
2 New Orleans, and this count includes local
3 movements, as well.

4 Q. Is it the case that CSX has both
5 signals and controlled sidings?

6 A. Yes.

7 Q. And signal sidings have freight speeds
8 of about thirty miles an hour?

9 A. That makes sense, yes.

10 Q. And controlled sidings have freight
11 speeds of about 25 miles an hour?

12 A. That is the -- the maximum allowable
13 speed, yes. It might not be the functional speed.

14 Q. Do you know if CSX has any plans to
15 operate controlled sidings to signaled sidings?

16 A. I do not know.

17 Q. And controlled sidings can be upgraded
18 to signal sidings without changing to a faster
19 turnout. Is that right?

20 A. It -- it might. So you'd have to redo
21 the signaling. I don't know all the specifics.
22 But, you know, you might have to -- the -- the

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1 turnouts out there may be smaller. I -- I don't
2 know. But it often requires a fair bit of signal
3 work.

4 Q. And how much of the identified freight
5 delay impacts that you reported in your analysis
6 were associated with the two 12,000 foot trains
7 that CSX operates on their line between New
8 Orleans and Mobile?

9 A. I didn't break out delay by, you
10 know -- of the total by train, or the impact --

11 Q. Go ahead.

12 A. Or their impact of it. You know,
13 there -- there is no way in RTC to isolate, you
14 know, one train causes this delay.

15 Q. Did the freight train delay impact you
16 reported in your analysis ever actually cause a
17 freight train to miss connection with another
18 train?

19 A. So your connections, that's --
20 that's -- you're thinking about, you know, blocks
21 of cars. This is a -- a train-based model, so
22 that was not something that was considered.

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1 Q. And in the RTC modeling you conducted
2 on behalf of CSX and NS, were the infrastructure
3 improvements you identified such as the longer
4 sidings actually used by the freight trains in the
5 model, to meet and pass other freight trains?

6 A. I believe so.

7 Q. So, switching gears for a second, OTP
8 is on-time performance. Is that right?

9 A. Yes. That's what that stands for.

10 Q. And per the FRA's regulation, Amtrak
11 trains have to meet the metric of 80% of on-time
12 performance. Is that right?

13 A. That is my understanding.

14 Q. And you modeled enough infrastructure
15 to achieve a 95% on-time performance. Is that
16 right?

17 A. I -- I -- I didn't need the
18 infrastructure to do that. As we, you know,
19 talked about in my direct, the OTPs were -- were
20 quite high, like even without the infrastructure,
21 due to the preference we provided to Amtrak.

22 Q. But 95% is about 15% higher than the

1 80% OTP required by the FRA regulation?

2 A. So the -- the OTP we achieved in the
3 model is -- is due to the result of the preference
4 we provided the Amtrak trains, not due to the
5 infrastructure.

6 Q. And the model assumed that the 95% OTP
7 and the RTC simulation equaled an 80% real-world
8 customer OTP. Is that right?

9 A. I don't think we imply that at all.

10 You know, you -- what I -- I can't tell
11 you exactly what OTP -- you know, an RTC OTP would
12 equal in reality, and then I think as I stated
13 earlier, I do know, though, that if you have an
14 80% OTP in RTC it is highly likely -- unlikely to
15 impossible to actually achieve that in the real
16 world.

17 Q. Isn't it true that in the original 2019
18 passenger case that you modeled, which was the
19 introduction of passenger trains with no new
20 infrastructure, three of the four Amtrak trains
21 were achieving at least 80% OTP?

22 A. That was -- yes, that was what we -- is

1 in my rebuttal report. That was due to the
2 preference provided to those trains.

3 Q. You testified that adding
4 infrastructure -- you added infrastructure until
5 you reached 95%.

6 A. I did not.

7 What I testified was we added
8 infrastructure to mitigate the freight. We then
9 looked at the OTP. We saw it was, you know,
10 roughly 95%. That -- that told us that we didn't
11 need to look at additional projects to improve
12 that OTP and so we stopped there.

13 Q. And that excluded the freight lead
14 extension. Is that right?

15 A. The original or report did not include
16 the freight lead extension.

17 Q. Did you pause the addition of
18 infrastructure when you reached 80 -- when you
19 reached 80% OTP?

20 A. No.

21 Again, if you look, as we -- we -- I've
22 already said, we achieved a higher than 80% OTP

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1 through the -- through the preference we provided
2 to Amtrak.

3 Q. How many additional projects did you
4 add after you had reached 80% all-station OTP?

5 A. I've already answered that.

6 Q. Can you please answer it again.

7 A. We did not need to add any
8 infrastructure to achieve that OTP. In the base
9 case or with the passenger case, with the
10 preference provided to those trains, we were able
11 to achieve a high OTP. There was no
12 infrastructure required to improve that.

13 Q. And in what order did you add the
14 selected projects?

15 A. It was an iterative process, I said,
16 lots of iterations looking at different things.
17 There was no set order.

18 Q. And do you recall which one you added
19 first and what the results were?

20 A. I just answered that. You know, there
21 was no set order. There were multiple iterations.
22 I -- I couldn't tell you what the first projects

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1 were.

2 Q. And in your previous RTC analyses, did
3 you always recommend -- recommend building
4 infrastructure based on a 20-year volume forecast?

5 A. For passenger cases, that is standard
6 practice.

7 Q. And for the FDOT projects cited in your
8 testimony on Tuesday, how were your -- how were
9 your infrastructure recommended -- recommendations
10 different than CSXT's recommended projects?

11 A. Are you talking about the -- which --
12 which CSXT recommended projects?

13 Q. Can I have just a minute?

14 CHAIRMAN OBERMAN: Take -- take your
15 time.

16 (Brief pause.)

17 MS. BRACEY: Can I have another minute?
18 I'm sorry.

19 CHAIRMAN OBERMAN: Go ahead.

20 (Further pause.)

21 BY MS. BRACEY:

22 Q. So for HNTB you did a study as part of

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1 the Gulf Coast working group? Is that right?

2 A. Not as part of the Gulf Coast working
3 group. I was hired by FDOT to look at the -- the
4 HDR projects from 2016 and the Gulf Coast working
5 group set of projects.

6 Q. Okay. And how were your
7 recommendations different than the CSXT's
8 recommendation -- recommended projects?

9 A. I'd have to pull up to get the exact
10 changes, but what we found was, in our opinion,
11 based on some of the costing and based on some of
12 the selection of projects, we could come up with
13 a -- a lesser amount.

14 Q. Okay. Did you recommend any changes to
15 operations in that analysis?

16 A. No.

17 Q. Did you rely on any studies or analyses
18 showing a 95% OTP equals an 80% real-world OTP?

19 A. No.

20 Q. And you did not perform your own
21 analysis that compares real-world OTP with RTC
22 simulated OTP. Is that right?

1 A. It is different corridor by corridor
2 but I -- I'm not, you know, familiar with any
3 studies on that.

4 Q. Okay. Did you ever run the model to
5 less than 95% OTP?

6 A. As I stated, the -- the passenger case
7 had a very high OTP. I don't know what that was
8 on average, but again we didn't need to add any
9 infrastructure. There was -- you know, based on
10 the preference we provided to Amtrak, there --
11 there wasn't any lower OTP.

12 Q. And you were the -- you were the person
13 who came up with the 95% OTP as an output. Is
14 that right?

15 A. It was an output but it wasn't
16 necessarily something to come up with. It was,
17 you know, after we created the projects, it was a
18 number we -- I pulled from the model.

19 Q. But the 95% OTP was arbitrary. Is that
20 right?

21 A. It was based on what we had achieved
22 after we had mitigated freight.

1 Q. And you stated in our report that the
2 95% OTP was a performance target and not a goal?
3 Is that right?

4 A. Yeah, that was somewhat unclear.

5 As we -- we mentioned in our rebuttal
6 report, that was -- it -- it was not an input. It
7 was sort of we put that in there after we had
8 achieved that in the model.

9 Q. And running the RTC model you used the
10 95% OTP as a basis for your conclusion that the 14
11 and 15 infrastructure -- infrastructure projects
12 were required. Is that right?

13 A. The only basis it served was that we
14 didn't need any projects to mitigate -- you know,
15 to improve the OTP of Amtrak.

16 Q. And you reported the 95% customer OTP
17 for the RTC cases where you added the 14
18 infrastructure projects. Is that right?

19 A. Yeah. We -- I think we only presented
20 it from the 2039 case.

21 Q. And you did not report what the OTP was
22 when -- in the absence of adding the

1 infrastructure projects. Is that right?

2 A. We did in the rebuttal report. In the
3 rebuttal report we have the OTP in the 2019
4 passenger case as -- as part of the what-if
5 analysis that we looked at if we removed the --
6 the preference to Amtrak.

7 Similar, in 2039, again we couldn't get
8 that case to run without increasing the blockages
9 of -- of sidings -- or of the grade crossings,
10 sorry, so we did not present that result, because
11 it was not a feasible solution.

12 Q. And the OTP without the infrastructure
13 projects could have been 80%. Is that right?

14 A. No. As -- as reported in the rebuttal
15 report, that number was -- you know, three of them
16 were -- were in high 90s. One was lower. But,
17 yes, it was higher than 80%.

18 MS. BRACEY: So I think I'm done but
19 can I have just a minute?

20 CHAIRMAN OBERMAN: Yes.

21 MS. BRACEY: Thank you.

22 CHAIRMAN OBERMAN: Go ahead. Yes,

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1 sure, take a moment.

2 (Brief pause.)

3 MS. BRACEY: We have no further
4 questions.

5 CHAIRMAN OBERMAN: All right. Mr.
6 Dingler, I -- I have a few questions for you.
7 Other board members may as well.

8 By the way, I am trying to do this
9 through my phone, which seems to have less
10 interruption than my computer. But if somebody
11 finds that you can't hear me, let me know, or if
12 I'm going in and out. But I take it you can hear
13 me okay?

14 THE WITNESS: Yes, I can.

15 CHAIRMAN OBERMAN: Mr. Dingler, I -- I
16 want to explore a little more the preparation of
17 the original report filed with the board dated
18 November 3, that says on its face that it was
19 prepared for Sidley & Austin and Baker & Miller.
20 This is 23D.

21 THE WITNESS: Yes.

22 CHAIRMAN OBERMAN: So, do I understand

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1 that you are the author of this report?

2 THE WITNESS: I was -- I -- I did most
3 of the writing. It was a -- a collaborative
4 effort for the final product.

5 CHAIRMAN OBERMAN: And just to try to
6 put this all together, the collaboration included
7 oversight by Mr. Banks, correct?

8 THE WITNESS: And Mr. -- and Mr.
9 Guthrie and counsel and the Clean Team.

10 CHAIRMAN OBERMAN: Well, I'm going
11 to -- I'm going to take them one at a time, all
12 right, Mr. Dingler?

13 THE WITNESS: Okay.

14 CHAIRMAN OBERMAN: If you'll bear with
15 me.

16 THE WITNESS: Certainly.

17 CHAIRMAN OBERMAN: Mr. Banks read the
18 drafts, made comments and suggestions for edits,
19 some of which you have included. Would that be --
20 is that the way it worked?

21 THE WITNESS: Yes.

22 CHAIRMAN OBERMAN: And Mr. Guthrie I

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1 think you said was more involved in the detail of
2 the preparation of the -- the report?

3 THE WITNESS: He was more involved with
4 the preparation of the model, is that he looked
5 over my shoulder, he gave me someone I could talk
6 to, ask a lot of questions and just to ensure I
7 was following best practices.

8 CHAIRMAN OBERMAN: And did he also
9 review the -- the language in the report as Mr.
10 Banks did for editing and so forth?

11 THE WITNESS: I believe so.

12 CHAIRMAN OBERMAN: Did he also make
13 suggested wording changes or edits to you?

14 THE WITNESS: I -- I believe so. I
15 said there are a whole of sort of comments and
16 I -- I don't know the source of all of them.

17 CHAIRMAN OBERMAN: Well, was Mr.
18 Guthrie at least one of those sources?

19 THE WITNESS: That is my understanding.

20 CHAIRMAN OBERMAN: Well, it would be
21 more than an understanding. I mean, the source
22 would be a communication to you, would it not?

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1 THE WITNESS: There were drafts that
2 were distributed and comments collected. I -- I
3 don't -- you know, in that collection sometimes
4 the originator of that comment was lost.

5 CHAIRMAN OBERMAN: All right. And were
6 drafts also -- who else were drafts submitted to
7 for comments because Messrs Bank -- Messrs Bank
8 and Guthrie?

9 THE WITNESS: To the Clean Team, to
10 counsel.

11 CHAIRMAN OBERMAN: And when you say to
12 counsel, who -- who are you talking about?

13 THE WITNESS: Members of Sidley Austin
14 and Baker & Miller.

15 CHAIRMAN OBERMAN: And they reviewed
16 the draft before it was finalized?

17 THE WITNESS: Yes.

18 CHAIRMAN OBERMAN: And did counsel make
19 suggested changes in the writing?

20 MR. ATKINS: Chairman, I'm going to
21 object. You're asking about privileged
22 conversations between Mark Dingler and ourselves.

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1 I -- I'm objecting to him disclosing anything
2 about those conversations.

3 CHAIRMAN OBERMAN: Well, if Mr.
4 Dingler --

5 MR. ATKINS: If you want to know -- if
6 you want to know whether they took place, he can
7 answer that, but anything substantive I'm going to
8 object.

9 CHAIRMAN OBERMAN: Was -- were you
10 representing Mr. Dingler as a client?

11 MR. ATKINS: Mr. -- we retained Mr.
12 Dingler as an expert. It's work product,
13 Chairman.

14 CHAIRMAN OBERMAN: Well, I'm going
15 to -- I won't pursue it now. I'm not sure it
16 covers the drafting of the report.

17 But I take it there were
18 communications, Mr. Dingler, between you and
19 counsel, as you said, concerning the drafts that
20 were circulated, correct?

21 THE WITNESS: Yes.

22 CHAIRMAN OBERMAN: You understood in

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1 the preparation of this report that its purpose
2 was to be submitted to this board in support of
3 the position asserted by CSX and NS in this case,
4 correct?

5 THE WITNESS: That was my
6 understanding.

7 CHAIRMAN OBERMAN: All right. And you
8 understood that the board was going to be asked to
9 rely on this report in determining whether the
10 infrastructure recommended here would be required
11 before we resolved this case. You understood that
12 as well, did you not?

13 THE WITNESS: My understanding is it
14 was to be submitted as evidence. How the board
15 would use it is -- is beyond my understanding.

16 CHAIRMAN OBERMAN: Well you understood
17 from your point of view the purpose of the report
18 was to support a request being made of this board
19 to require the 14 projects to be built if
20 passenger trains were going to be introduced.

21 Is that your understanding?

22 THE WITNESS: That's my --

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1 CHAIRMAN OBERMAN: Pardon -- I'm sorry.

2 THE WITNESS: Yeah, the details I'm --
3 yeah, on what you guys can and cannot rule on
4 is -- is beyond the scope of what I was involved
5 with.

6 CHAIRMAN OBERMAN: I'm not asking you,
7 sir, about the details of what we can rule on. I
8 am asking you about your understanding of the
9 purpose of the report.

10 You understood, did you not, that the
11 purpose of the report was in support of a request
12 that this board order these 14 infrastructure
13 projects if passenger service was going to be
14 introduced, didn't you?

15 MR. ATKINS: But, Chairman, I'm going
16 to object here. You're not characterizing what we
17 put in. As -- we -- we made no such request in
18 our -- in our proceedings.

19 If you want to ask him an open-ended
20 question, what was the purpose of the report, then
21 Mr. Dingler can tell you what his understanding of
22 the purpose of the report was.

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1 CHAIRMAN OBERMAN: With all respect,
2 I'll ask the questions the way I want to ask it.

3 Can you answer the question that I've
4 asked you, Mr. Dingler?

5 THE WITNESS: Can you ask it again.

6 CHAIRMAN OBERMAN: Could the court
7 reporter read it back, please.

8 THE COURT REPORTER: Yes, one moment,
9 please.

10 "I'm not asking you, sir, about the
11 details of what we can rule on. I am asking you
12 about your understanding of the purpose of the
13 report.

14 "You understood, did you not, that the
15 purpose of the report was in support of a request
16 that this board order these 14 infrastructure
17 projects if passenger service was going to be
18 introduced, didn't you?"

19 THE WITNESS: What I was asked to do
20 was to submit a report based following standard
21 practices on the projects required to mitigate the
22 impact to freight.

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1 CHAIRMAN OBERMAN: And you understood
2 that it was the railroad's position that, unless
3 the projects were -- were -- were to be built and
4 funded, you're -- the railroads did not want us to
5 order passenger service to run on these lines.

6 Didn't you understand that? That's why
7 you were writing a report?

8 THE WITNESS: My -- I know what my
9 scope was and what was asked to do. That sounds
10 accurate, but I -- I said --

11 CHAIRMAN OBERMAN: All right. Well,
12 one of the things I'm trying to determine -- the
13 other board members can speak for themselves -- is
14 whether we can rely on this report and to what
15 degree, which is why I'm asking you these
16 questions.

17 So I'd like to go back to page 27 of
18 the original report, Exhibit 23D. Are you with
19 me?

20 THE WITNESS: Yes.

21 CHAIRMAN OBERMAN: And this is section
22 3.5 entitled "Build Cases" and the second sentence

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1 on the page reads, "The project selection" --
2 let's stop there. That's the 14 projects that
3 ended up being selected, correct?

4 THE WITNESS: Yes.

5 CHAIRMAN OBERMAN: It reads, "The
6 project selection must meet the following
7 criteria: criteria one is provide capacity to
8 achieve above 95% on-time performance for
9 passenger trains and limit the need for a
10 passenger train to enter and be delayed in a
11 siding."

12 Does it -- I read that correctly?

13 THE WITNESS: Yes.

14 CHAIRMAN OBERMAN: I take it when you
15 submitted this report on November 3rd, this was
16 one of the pieces of information you wanted this
17 board to rely on, or you wouldn't have written it
18 that way.

19 Would that be right?

20 THE WITNESS: And that -- that
21 statement is accurate. We just didn't --

22 CHAIRMAN OBERMAN: Now just answer the

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1 question I put, Mr. Dingler. Mr. Atkins will have
2 plenty of opportunity when I'm finished to ask you
3 any questions he wants.

4 THE WITNESS: Can you ask the question
5 again?

6 CHAIRMAN OBERMAN: Sure, would you read
7 it back, please.

8 THE COURT REPORTER: Yes. One moment,
9 please.

10 "I take it when you submitted this
11 report on November 3rd, this was one of the pieces
12 of information you wanted this board to rely on,
13 or you wouldn't have written it that way.

14 "Would that be right?"

15 THE WITNESS: Yes. This -- this report
16 describes the modeling effort. It is -- you know,
17 there is a -- a whole host of models that back
18 this up. This just describes that effort.

19 CHAIRMAN OBERMAN: My question, Mr.
20 Dingler, if you could answer it, please, as asked,
21 is that this subparagraph one that I just read was
22 one of the pieces of information you wanted --

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1 wanted this board to rely on when you submitted
2 it, or you wouldn't have written it that way.

3 Is that a yes or no answer? Can you
4 give it?

5 THE WITNESS: Yes.

6 CHAIRMAN OBERMAN: All right. And
7 paragraph two, or subparagraph two reads, "Restore
8 freight performance to at least the same as before
9 passenger trains were added to the corridor".
10 That's another piece of information you wanted us
11 to rely on?

12 THE WITNESS: Yes.

13 CHAIRMAN OBERMAN: And subparagraph
14 three says, "Cause no passenger or freight train
15 schedule changes".

16 That's also, you wanted us to rely on
17 that information --

18 THE WITNESS: That's all --

19 CHAIRMAN OBERMAN: Correct?

20 THE WITNESS: Yes.

21 CHAIRMAN OBERMAN: All right. Now, I
22 think you've told us that you didn't consider

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1 costs when you recommended your various projects.

2 THE WITNESS: Not directly, not dollars
3 and cents, but in reviewing projects I used my own
4 engineering judgment not to place, you know, a
5 project in the middle of a bridge, for instance.
6 So there -- there was some judgment on
7 constructability and thinking through, you know --
8 constructability, buildability and indirectly
9 costs.

10 But, no, I -- the cost, specific
11 dollars and cents, were calculated independent of
12 my report.

13 CHAIRMAN OBERMAN: And whatever those
14 costs were were not pieces of information that you
15 took into account in deciding whether to recommend
16 a project is I understand the way this worked.

17 THE WITNESS: The dollars and cents,
18 that'd be correct.

19 Again, we -- we looked through the
20 projects. I used my engineering judgment to make
21 sure we weren't recommending something that was,
22 you know, a siding in the middle of a bridge.

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1 CHAIRMAN OBERMAN: When you say a
2 siding in the middle of a bridge, even a person
3 like me can understand that that doesn't make
4 sense, as little as I know about railroads. But
5 let me ask this question...

6 We've had a very helpful drone
7 presentation by your counsel of places on this
8 line. Were any of the sidings that are part of
9 the 14 projects built in a swamp? Would they be
10 built in a swamp?

11 THE WITNESS: So actually a great
12 example of that is I originally had proposed Lake
13 Catherine. That project is in the middle of a
14 swamp. And as Mr. Johnson sort of described, it
15 often gets washed out of hurricanes. And so CSX
16 advised me that it would, you know, be expensive
17 to build and difficult to maintain. And so
18 subsequently we removed it from the project list.

19 CHAIRMAN OBERMAN: Well, I'd like to
20 focus on the 14 that are in for the moment. We'll
21 get to the others.

22 Were any of the 14 projects that you

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1 recommended to be built here to be built in a
2 swamp?

3 THE WITNESS: I'm thinking. Yeah, it's
4 hard to define "swamp". It's a -- a challenging
5 terrain down there but I don't believe so.

6 CHAIRMAN OBERMAN: Well, challenging
7 terrain, let's just take a few of them.

8 THE WITNESS: Mm-hmm.

9 CHAIRMAN OBERMAN: The one I saw in the
10 drone on the Gentilly Yard was just built right
11 next to the yard, which is all on solid ground,
12 right?

13 THE WITNESS: That is my understanding.

14 CHAIRMAN OBERMAN: And the -- the
15 bypass, or whatever it's called, would also be
16 built on solid ground. It's right next to the
17 other tracks in the yard, right?

18 THE WITNESS: Yes.

19 CHAIRMAN OBERMAN: And the -- so that's
20 one example. The Mobile station track, that's on
21 solid ground. It's right in downtown Mobile,
22 right?

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1 THE WITNESS: Yes.

2 CHAIRMAN OBERMAN: When you said the
3 terrain was challenging, could you point to any of
4 the places that you recommended of a project be
5 built that are challenging in terms of the ground,
6 the water or the swampiness, whatever, however you
7 describe it? Any -- any of those places that are
8 challenging like that?

9 THE WITNESS: No.

10 So what was challenging was, in
11 selecting projects, due to the number of grade
12 crossings, due to, as you described, bridges and
13 waterways and swampy areas, the number of places I
14 could choose and locate projects was -- was
15 limited. You know, it wasn't a clear open route
16 in the middle of a cornfield. And so it was every
17 best effort to choose projects that were not at
18 those locations. I said I'd have to double check
19 all of them but it was part of the project
20 selection process.

21 CHAIRMAN OBERMAN: Well, I'm talking
22 about now the ones that were selected that may

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1 have been -- when you say "challenging," I gather
2 you mean not very many suitable locations.

3 Is that what we're talking about?

4 THE WITNESS: That is correct.

5 CHAIRMAN OBERMAN: The ones that were
6 selected, however, are on suitable locations?

7 THE WITNESS: Yes.

8 CHAIRMAN OBERMAN: All right. So, in
9 reading your report -- well, let me -- let me ask
10 this question...

11 You also drafted the rebuttal report,
12 right, which is Exhibit 40B as in boy, right?

13 THE WITNESS: I was the primary author.
14 A similar process was used in that report.

15 CHAIRMAN OBERMAN: So we had, without
16 asking all the same questions, Mr. Banks, Mr.
17 Guthrie, counsel, Clean Team. They all played the
18 similar role or same role in preparing the
19 December 23 report as the November 3rd report?

20 THE WITNESS: Yes. I was the primary
21 author and others sort of, you know, reviewed it.

22 CHAIRMAN OBERMAN: Did somebody tell

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1 you what the purpose was of preparing a rebuttal
2 report?

3 THE WITNESS: It was to respond to the
4 reply evidence of -- of Amtrak -- Amtrak's counsel
5 or consultant.

6 CHAIRMAN OBERMAN: My question was did
7 someone tell you that.

8 THE WITNESS: I believe -- yeah, had to
9 have.

10 CHAIRMAN OBERMAN: Yeah. Who was that?

11 MR. ATKINS: So, Chairman, that would
12 be direction from counsel and we're getting into
13 the substance of the discussion. I don't -- I'm
14 not objecting, I'm just telling you if you go much
15 further I am going to object.

16 CHAIRMAN OBERMAN: Well, I'm just
17 trying to find out, Ray, how this rebuttal report
18 was instigated. I take it it was a request from
19 counsel to prepare a rebuttal report. Would that
20 be right?

21 MR. ATKINS: That is correct, Chairman.

22 CHAIRMAN OBERMAN: And did someone tell

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1 you, Mr. Dingler, what you were rebutting in
2 preparing this report?

3 THE WITNESS: I reviewed Messrs Crowley
4 and Fapp evidence and I went through it and -- and
5 I responded to all -- all their accusations.

6 CHAIRMAN OBERMAN: Did someone tell you
7 to do that?

8 THE WITNESS: As part of creating a
9 rebuttal report.

10 CHAIRMAN OBERMAN: Well, did someone
11 say to you, "What we want you to do is go through
12 the Crowley and Fapp statements and prepare
13 responses to everything they said"?

14 THE WITNESS: I don't remember any
15 specific conversations.

16 CHAIRMAN OBERMAN: Well, was that --
17 well, was it your -- however you learned it...

18 THE WITNESS: Mm-hmm.

19 CHAIRMAN OBERMAN: In preparing the
20 rebuttal report, was that your understanding of
21 what you were supposed to do, go through the
22 Crowley and -- I think I'm pronouncing it -- and

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1 Fapp statements and respond to everything they
2 said?

3 THE WITNESS: Yes.

4 CHAIRMAN OBERMAN: All right. Well,
5 I'm looking at page 39 of the rebuttal report,
6 section 5.3.3. Are you with me?

7 THE WITNESS: Yes.

8 CHAIRMAN OBERMAN: That is where you
9 recommend now -- when I say "now" I mean as of
10 December 23 -- the inclusion of the freight lead
11 extension.

12 THE WITNESS: I don't know if we
13 recommend it. But in this report, basically what
14 we outlined was the only solution that we could
15 find that mitigated the interchange delays.

16 CHAIRMAN OBERMAN: Well, did you want
17 us to understand and read -- us the board, in
18 reading your rebuttal report, that you came to the
19 conclusion that the freight lead extension should
20 be built?

21 THE WITNESS: I believe so, yes.

22 CHAIRMAN OBERMAN: So I have gone

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1 through Amtrak's case and I'm stumped at trying to
2 find what you were rebutting, Mr. Dingler, when
3 you wrote section three of your rebuttal report.
4 What were you rebutting in Amtrak's case at that
5 point?

6 THE WITNESS: I cannot remember the
7 origin of that section.

8 CHAIRMAN OBERMAN: Well is there
9 anything in the Crowley and Fapp statements that
10 says the freight lead extension is not needed?

11 THE WITNESS: I -- I believe in their
12 statements -- I don't know. I don't remember.

13 CHAIRMAN OBERMAN: Well, rebuttal is
14 rebuttal. I'd like to find out sometime during
15 this case what you were rebutting when you came to
16 the conclusion of recommending the freight --
17 freight lead extension so we can weigh that when
18 we consider how to decide this case.

19 I want to go back --

20 MR. ATKINS: Mr. Chairman, you've
21 frozen for us. We can't hear you or see you.

22 I don't know if he's frozen for others?

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1 Is this a CSX problem?

2 MEMBER FUCHS: No, Ray, he's frozen for
3 me as well.

4 MR. ATKINS: Thank you.

5 CHAIRMAN OBERMAN: All right. You know
6 what, I'm going --

7 MEMBER FUCHS: Marty, if you can hear
8 us, you're --

9 CHAIRMAN OBERMAN: Maybe I should go
10 back into my -- can -- can anybody hear me? No.

11 MR. ATKINS: So Chairman, we could now
12 hear you.

13 CHAIRMAN OBERMAN: You can. Okay. All
14 right. Well, I don't know what you heard and what
15 you didn't hear, so could the court reporter read
16 back whatever the last thing was people heard.

17 THE COURT REPORTER: Yes. Let me see.

18 "Well, rebuttal is rebuttal. I'd like
19 to find out sometime during this case what you
20 were rebutting when you came to the conclusion of
21 recommending the freight -- freight lead extension
22 so we can weigh that when we consider how to

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1 decide this case.

2 "I want to go back" --

3 CHAIRMAN OBERMAN: So I'd like to go
4 back now to your original report of November 3 to
5 page 54. That's Exhibit 23D. Are you with me?

6 THE WITNESS: Yes.

7 CHAIRMAN OBERMAN: In the -- roughly in
8 the middle of the page, in the paragraph that
9 begins "To help mitigate"...

10 You see that paragraph?

11 THE WITNESS: Yes.

12 CHAIRMAN OBERMAN: Around a little over
13 50% of the way down there's a sentence that reads,
14 "The project," referring to the freight lead
15 extension, "estimated to cost on the order of 80M
16 was not ultimately recommended for funding due to
17 the high cost".

18 So in this case, Mr. Dingler, you did
19 take costs into account in not recommending this
20 project, at least as of November 3. That's the
21 way I read the report. That's a fair reading of
22 it? Go ahead.

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1 THE WITNESS: So when I was directed to
2 remove it, initially it was constructability. The
3 corollary for constructability is costs. With
4 enough money, you can pretty much build anything.
5 And so, you know, you could call it cost.

6 CHAIRMAN OBERMAN: Well you call it
7 costs?

8 THE WITNESS: Yeah, I do.

9 CHAIRMAN OBERMAN: You call it costs.
10 I'm not calling it costs. You're calling it
11 costs, are you not?

12 THE WITNESS: Yeah, this was -- this
13 was added, yes.

14 CHAIRMAN OBERMAN: Yes. And it was
15 added by you. You're the writer?

16 THE WITNESS: Yes.

17 CHAIRMAN OBERMAN: And approved by
18 Banks, Guthrie, reviewed by counsel, correct?

19 THE WITNESS: Yes.

20 CHAIRMAN OBERMAN: So, if you
21 considered the high cost for this project as a
22 reason not to include it in what you wanted us to

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1 rely on at the time, I'm uncertain as to why cost,
2 some of which is quite substantial for individual
3 projects, was not considered in the other
4 projects. Why the difference?

5 THE WITNESS: So, I said, the -- the
6 dollars and cents cost was not considered but part
7 of the vetting process for these projects was
8 again constructability, which was again I said is
9 corollary for cost.

10 One of the projects I had recommended
11 to CSX, they basically told me it would be
12 horribly expensive and so we removed it.

13 There was, you know, to make sure these
14 projects are constructable, you could build, you
15 know a --a siding in the middle of swamp. It'd
16 just be expensive.

17 And so, no, I did not look at the
18 dollars and cents or ever try and hit a certain
19 number, but we were looking at constructability
20 and buildability, which are -- are all corollaries
21 for cost.

22 CHAIRMAN OBERMAN: Mr. Dingler, my

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1 question is -- and please listen to my question so
2 I can get an answer to it -- why the difference?
3 Eighty million dollars was not ultimately
4 remanded. I read \$80M as dollars and cents, plain
5 English. You tell me if I'm wrong. Why the
6 difference between considering costs for the
7 freight lead extension and not considering dollars
8 and cents for any of the other projects?

9 THE WITNESS: When it was removed we
10 did not have a dollars and cents for it. So as
11 part of an initial sort of engineering review by
12 Norfolk Southern and we've removed it. It was
13 subsequent to Ted Niemeyer going out and
14 putting -- coming up with a cost. And we ended up
15 taking that cost from Ted Niemeyer's report and
16 putting it into this report. The same process was
17 used with this as with every project.

18 CHAIRMAN OBERMAN: Well, I -- I'm not
19 following you. Ted Niemeyer's report is dated
20 November 3, the same date as your report. And you
21 said you had the cost. You say right on page 54,
22 "The estimated cost was on the order of \$80M."

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1 Let me find Mr. Niemeyer. I just had it here.

2 (Brief pause.)

3 CHAIRMAN OBERMAN: Mr. Niemeyer's
4 report at page 11 says the cost is seventy-seven
5 million six hundred and seventy- -- between
6 77.672M and 84.426M, the same way he costs out
7 every one of the other projects giving it a range,
8 and you say it's on the order of 80M, which is the
9 mid point roughly of Mr. Niemeyer's report... why
10 didn't you consider the cost for any of the other
11 projects in Mr. Niemeyer's report and only in this
12 case did you consider costs? That's what I want
13 to know. Why the difference in how you've
14 prepared your report.

15 THE WITNESS: Let me try and -- sort of
16 try and clear this up.

17 So I developed the 14 projects. After
18 developing those projects they were taken by Ted,
19 Ted Niemeyer, and he -- he costed them. As part
20 of that he also costed the freight lead and
21 actually I -- I believe a couple of projects that
22 were not included in my report.

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1 During that time this report was being
2 written, so we included that cost in here. Just,
3 they were submitted on the same date, but
4 they're -- they're completions were done, you
5 know, in parallel and in sequence.

6 CHAIRMAN OBERMAN: How does that answer
7 my question of the difference in treatment of cost
8 for this project than the other projects?

9 THE WITNESS: It -- it was removed --

10 CHAIRMAN OBERMAN: That's what my
11 question is.

12 THE WITNESS: It was removed before we
13 ever had the \$80M cost.

14 CHAIRMAN OBERMAN: Well your report
15 says it was removed because of the \$80M cost.

16 THE WITNESS: It -- it was removed
17 because of the cost but we did not have a dollar
18 number to that. We added in the dollar number
19 into the report once we achieved it -- received
20 it.

21 CHAIRMAN OBERMAN: Well, you would
22 understand my confusion, if I can't find in your

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1 report of November 3rd any reference to saying you
2 removed the project before you knew the cost and
3 then you say it was removed because of the cost.

4 You see the confusion there, do you?

5 THE WITNESS: But we -- to clarify, we
6 did consider cost in corollary. We were looking
7 at constructability and buildability. Those were
8 all cost factors. We never applied a dollars and
9 cents to it. So you can remove a project because
10 you know it's going to be expensive without
11 revealing its -- its ultimate cost.

12 CHAIRMAN OBERMAN: Did you know any of
13 the other projects were going to be expensive?

14 THE WITNESS: I did not. That was part
15 of the review to try and ensure these projects
16 were -- were constructable, buildable and made
17 sense.

18 CHAIRMAN OBERMAN: Well, let me just
19 ask you about a couple of them.

20 MEMBER FUCHS: Marty?

21 CHAIRMAN OBERMAN: Yes?

22 MEMBER FUCHS: Can -- can I ask -- I do

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1 not want to interrupt you. Can I ask Mr. Dingler
2 for a definition of "constructable"?

3 CHAIRMAN OBERMAN: Sure. Go ahead.

4 MEMBER FUCHS: Can you define -- can
5 you define constructable?

6 THE WITNESS: So, if you're building in
7 the middle of a swamp, you're going to have to use
8 a ship, you know, a barge to take all the material
9 out there. That to me would be very difficult to
10 construct. Other examples would be if you
11 don't -- you know, there probably isn't sufficient
12 right-of-way. So, for instance, you know, some of
13 the options at Mobile were not possible because
14 there is not sufficient right-of-way. There's the
15 other tracks everywhere.

16 MEMBER FUCHS: Is the \$80M project that
17 the chairman's referring to not constructable or
18 is it constructable?

19 THE WITNESS: Upon initial review, I
20 was informed there was concerns about
21 constructability. When people went -- and that
22 was due to a high-level review. Once people went

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1 into the field and did that review, their opinion
2 changed on that.

3 MEMBER FUCHS: So it is constructable?

4 THE WITNESS: Yes.

5 MEMBER FUCHS: So I thought you said
6 that you removed things for constructability. Why
7 did you remove it if it's constructable?

8 THE WITNESS: Because initially they
9 thought it wasn't.

10 MEMBER FUCHS: And then once it was
11 constructable you kept it out because of the
12 initial assessment?

13 THE WITNESS: We didn't need it as part
14 of our -- our 14 projects to mitigate NS and CSX.
15 The reason it -- it's still there was, after we
16 mitigated CSX and NS, we observed there was still
17 very high interchange delays that we did not
18 mitigate. So we were able to achieve, mitigate
19 the impact to CSX and NS by shifting that traffic
20 onto other foreign carriers.

21 MEMBER FUCHS: All right, Marty, one
22 more question. All right, thanks for your --

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1 thanks for your indulgence.

2 CHAIRMAN OBERMAN: Sure.

3 MEMBER FUCHS: When you received the
4 cost estimates of each of the projects, including
5 the one the chairman's referring to, you did not
6 look at the delay costs avoided for each project?

7 THE WITNESS: No.

8 MEMBER FUCHS: So you -- you would
9 have -- there's nothing -- to us, there's nothing
10 in the record that would allow us to make a
11 judgment as to whether or not, two things, one is
12 the delay costs avoided, the benefits, are greater
13 than the cost of any of the projects? We have
14 nothing to -- to make that determination?

15 THE WITNESS: No.

16 One thing to be careful, you know, is
17 where those costs are allocated. You know, delay
18 cost is a cost, you know, theoretically --

19 MEMBER FUCHS: Sure, but it's a
20 societal delay cost, right?

21 THE WITNESS: Yes.

22 CHAIRMAN OBERMAN: Okay. And is

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1 nothing in the record that would allow us to make
2 a determination that the \$80M project would have
3 had a better cost effectiveness than any of the
4 projects you recommended?

5 THE WITNESS: I don't believe so.

6 MEMBER FUCHS: So we have no way of
7 determining whether or not what CSX has put
8 forward represents the best value proposition for
9 the money?

10 THE WITNESS: I think that's -- that's
11 consistent with our statements. You know, these
12 are one set of projects. You know, the -- the
13 advantage of RTC is you can go back and look. We
14 think these are the -- the most constructable,
15 that -- that can serve -- serve to mitigate --

16 MEMBER FUCHS: Wait, no, no, no --

17 THE WITNESS: But it's not end-all
18 be-all. You know, you could, with these
19 sidings --

20 MEMBER FUCHS: What makes something
21 more constructable than another project?

22 THE WITNESS: I said, you'd have to --

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1 MEMBER FUCHS: They're all
2 constructable.

3 THE WITNESS: Yeah. A big one on this
4 corridor was grade crossings and bridges. So if
5 I'm putting a siding where there's already
6 existing grade crossings, it doesn't do me much
7 good because you'd be blocking crossings through
8 that siding.

9 MEMBER FUCHS: Right. I thought you
10 said you selected the most -- sorry, Marty.

11 You constructed the most constructable
12 projects, (sic) but you didn't look at the cost
13 effectiveness of any of the projects and they're
14 all constructable. So what makes one project more
15 constructable than another project?

16 THE WITNESS: We --

17 MEMBER FUCHS: Contextualize it for me.

18 THE WITNESS: I -- I don't know. I
19 wouldn't rank them as more constructable or less
20 constructable. The question was --

21 MEMBER FUCHS: Then how do you know the
22 14 projects are the most constructable?

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1 THE WITNESS: This is one set of
2 projects we came up with based on my analysis of
3 the corridor.

4 MEMBER FUCHS: All right, thanks,
5 Marty. Thanks for your indulgence.

6 CHAIRMAN OBERMAN: Mr. Dingler -- just
7 to finish up and then I think other board members
8 have some questions -- I'm just looking at Mr.
9 Niemeyer's report, on page nine -- so let me see
10 if I understand the process here...

11 Mr. Niemeyer's report is dated November
12 3, which is the same -- that's the date it was
13 submitted to us. Do I understand you to say you
14 actually had his report prior to finishing your
15 initial RTC report also dated November 3, Exhibit
16 23D?

17 THE WITNESS: I did not have it but the
18 members of the team did. The -- the work was done
19 in parallel.

20 CHAIRMAN OBERMAN: So you had the
21 cost -- did you know what the cost figures were in
22 Mr. Niemeyer's report?

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1 THE WITNESS: I did not.

2 CHAIRMAN OBERMAN: Well, where did you
3 get that \$80M figure on page 54 for the freight
4 lead extension?

5 THE WITNESS: It was given to me.

6 CHAIRMAN OBERMAN: Was that the only
7 one that was given to you?

8 THE WITNESS: Yes.

9 CHAIRMAN OBERMAN: Well, I'm a little
10 confused here of how you went about your business
11 here. It didn't occur to you after finding out
12 this one project was 80M to say, well, how much
13 are the other projects, to see if they're really
14 worth it to put in here?

15 THE WITNESS: That was not -- the scope
16 of this study was to figure out which projects
17 would be needed to mitigate the impact to freight.
18 Whether -- you know, any cost benefit analysis was
19 outside the scope.

20 CHAIRMAN OBERMAN: Well, you included
21 the 80M about the freight lead. That wasn't
22 outside your scope, or you wouldn't have put it in

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1 your report, would you?

2 THE WITNESS: Can you clarify?

3 CHAIRMAN OBERMAN: You know what, my
4 connection is fading out again. I -- I couldn't
5 hear you. I'm not even sure if you heard my
6 question.

7 MR. ATKINS: So Chairman, he heard the
8 question. He just asked you if you could clarify.

9 THE WITNESS: Yeah.

10 CHAIRMAN OBERMAN: Did the court
11 reporter hear my question?

12 THE COURT REPORTER: I think I did,
13 yes. Let me -- let me go back.

14 CHAIRMAN OBERMAN: Could you read it
15 back, please.

16 THE COURT REPORTER: "Well, you
17 included the 80M about the freight lead. That
18 wasn't outside your scope, or you wouldn't have
19 put it in your report, would you?"

20 Then the witness asked, "Can you
21 clarify?"

22 CHAIRMAN OBERMAN: When you wrote on

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1 page 54 that the freight lead was not recommended
2 because of the high \$80M cost --

3 THE WITNESS: Mm-hmm.

4 CHAIRMAN OBERMAN: -- you're making
5 that statement to this board it wasn't outside the
6 scope of your work or you wouldn't have put it in
7 the report?

8 THE WITNESS: Mm-hmm.

9 CHAIRMAN OBERMAN: Fair enough?

10 THE WITNESS: Yeah, that -- that number
11 was included to contextualize the information
12 we're providing. If we, you know, just said it
13 was expensive or not buildable, that -- we didn't
14 feel that provided enough context, so we included
15 the cost there.

16 CHAIRMAN OBERMAN: The question I asked
17 you is it wasn't outside the scope of your
18 assignment to include that statement to us,
19 correct?

20 THE WITNESS: No. It was -- it was
21 clarifying language. You are correct.

22 CHAIRMAN OBERMAN: Well, why was it

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1 outside the scope of your assignment to not even
2 be aware of -- apparently you weren't even aware
3 of the cost of the other projects, if I understand
4 what you're telling me.

5 THE WITNESS: I -- I'm not sure how the
6 cost of these projects is important in the project
7 selection. We were choosing projects based on
8 looking at it and trying to determine the best
9 projects that were constructable and buildable
10 and, you know -- and there's an attempt to come up
11 with least cost. But the exact dollars and cents
12 was never looked at.

13 CHAIRMAN OBERMAN: Well, Mr. Dingler,
14 I'm having a hard time following here. If you say
15 you're not sure how the cost was related to the
16 projects but you explained that you didn't
17 recommend the freight lead because of the cost, my
18 conclusion from what you say is that cost was
19 relevant, at least for one project. And I -- I'm
20 just trying to understand why it wasn't relevant
21 for any other project.

22 THE WITNESS: It was. And let -- let

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1 me just sort of make this clear. As an engineer
2 and -- and having worked for the railroad, I
3 generally know what's expensive and what's not
4 when constructing projects. In developing these
5 projects we've reviewed them, we looked at them.
6 I -- I was -- I said I was determining projects
7 that made sense and -- and weren't, you know, out
8 of the realm of ordinary.

9 But, again, if you're getting to the
10 exact dollars and cents, that is where I -- I was
11 not aware of. But the general cost of what might
12 be expensive and what might not be, oh, no, I was
13 well aware of that.

14 CHAIRMAN OBERMAN: Well you said I
15 believe on page 54 in the order of 80M. So you
16 weren't talking about exact dollars and cents but
17 you did have an idea of the midpoint between Mr.
18 Niemeyer's cost estimates, correct?

19 THE WITNESS: Because that was provided
20 to me at that time.

21 CHAIRMAN OBERMAN: Is the ground
22 between the Brookley Yard or siding and the Mobile

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1 Station track where you recommended double track,
2 is that -- that's not a swamp, is it.

3 THE WITNESS: No, that's in downtown
4 Mobile.

5 CHAIRMAN OBERMAN: Well, it's south --
6 south of downtown Mobile or west, however you're
7 calling the directions, correct? It goes out --
8 but Brookley's not in downtown, is it?

9 THE WITNESS: It's in an urban area.
10 Let me clarify.

11 CHAIRMAN OBERMAN: You recommended a
12 double siding -- just a double track, the main
13 track of 14,000 feet. It's a little under 3,000
14 miles, right?

15 THE WITNESS: Can you -- can you repeat
16 that?

17 CHAIRMAN OBERMAN: The Mobile double
18 track project's a little under 14,000 -- I'm
19 sorry, is 14,000 feet, a little under three miles.

20 THE WITNESS: That is correct.

21 CHAIRMAN OBERMAN: Mr. Niemeyer's cost
22 for that under three miles of track is between 66-

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1 and 71M or more than \$22M a mile, correct?

2 THE WITNESS: That -- that math sounds
3 correct.

4 CHAIRMAN OBERMAN: You didn't consider
5 whether that might be too much, just like the
6 freight lead of 80M might be too much? You didn't
7 think about that when you wrote your report?

8 THE WITNESS: Well, keep in mind on the
9 NS as well we were able to come up with
10 alternative projects that were able to mitigate
11 the impact. They weren't able to mitigate the
12 impact to interchange but were able to mitigate
13 the impact to NS. But that project was selected
14 to mitigate the impact on CSX and NS.

15 You know, keep in mind it's a terminal
16 area. There's a lot of sort of special track
17 work. There's grade crossings. You know, and --
18 and unfortunately you can't move Mobile yard, so
19 building any track in that area was going to be
20 difficult. But it's -- it's critically important
21 to the fluidity of that terminal.

22 CHAIRMAN OBERMAN: Is that an answer to

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1 my question of whether you considered \$22M a mile
2 to be too much?

3 THE WITNESS: It's -- I -- I don't have
4 a number in my head of what's too much or too
5 little. It's -- it's very location specific. You
6 know, a -- a track in a terminal area is going to
7 of course be more expensive than a new siding in
8 the middle of a cornfield.

9 MEMBER FUCHS: Marty?

10 CHAIRMAN OBERMAN: Let me just finish
11 up here, Patrick, if I could and then I'll -- I'm
12 almost done and then I'll turn it back to you.

13 One of the things I've tried to
14 understand about this, the way you report your
15 data, and I'm just going to pick out one example
16 that has been referred to. It's in the briefs and
17 I think you've referred to it here in your
18 testimony, that without these projects there'd be
19 13 additional hours of delay per day to freight
20 trains.

21 Remember that point?

22 THE WITNESS: Yes.

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1 CHAIRMAN OBERMAN: So I take it -- and
2 I'm not seeing any information as to what this
3 means on a particular train. So we're not talking
4 about one train delayed for 13 hours, are we?

5 THE WITNESS: No. So it is the -- a
6 summation of the increased delay per day. So
7 it's -- it's -- that 22.7 equals 13 hours per day
8 increase.

9 CHAIRMAN OBERMAN: Well -- well how
10 many trains are cumulatively delayed 13 hours?

11 THE WITNESS: It is the summation of
12 all the trains in the model. It is not
13 necessarily linearly or spread evenly between
14 these trains. That's what -- I said, that chart
15 in table 20 showed, is where those delays are
16 showing up, but it is spread amongst all the
17 traffic.

18 CHAIRMAN OBERMAN: Well, there's 1,265
19 alleged ghost trains or however -- you know, when
20 we're talking about that number. Does any of the
21 13 hours apply to them?

22 THE WITNESS: So that -- the totals on

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1 these charts do not include the -- the yard trains
2 and the CN cross traffic. So, that is not a
3 narrative inclusive of the locals and inclusive of
4 the through trains, the interchange trains, all
5 that traffic.

6 CHAIRMAN OBERMAN: How many double
7 trains are there, approximately?

8 THE WITNESS: I'd have to -- I'd have
9 to look.

10 CHAIRMAN OBERMAN: Could you put a --
11 give me a range?

12 THE WITNESS: I'd have to look. And to
13 be careful, I've -- I've noticed this. A train is
14 not a train. So let's just be careful -- you
15 know, a train that goes, you know, for a tenth of
16 a mile in the model is not the equivalent of a
17 train that goes 200 miles. And so that's why, you
18 know, you just have to be careful of when looking
19 at the metrics and -- and thinking about this that
20 you don't just look at train count, because that
21 could be misleading.

22 CHAIRMAN OBERMAN: Well, I -- I'm

1 trying to get the understanding of what this means
2 to an actual train. Because just telling me
3 there's 13 hours of delay is to me -- I'm just --
4 so you know where I'm coming from, I want you to
5 educate me here -- it's not helpful. It tells me
6 nothing.

7 Can you give me an example of any
8 particular train and how long it's been delayed or
9 would -- would be delayed as part of the 13 hours?
10 Could you put some -- some real-world information
11 here?

12 THE WITNESS: So if you go to table 20,
13 you can see, you know, some of those locals are,
14 you know, experiencing over a 100% increase in
15 delay.

16 CHAIRMAN OBERMAN: What page are you --
17 I'm sorry, what page are we on?

18 THE WITNESS: Table 20, page 46.

19 CHAIRMAN OBERMAN: Okay, I see what
20 you're saying here. So CSXT-4 is 100% increase in
21 delay. Is that what you're -- you're saying?

22 THE WITNESS: That is correct.

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1 CHAIRMAN OBERMAN: All right, so how
2 many minutes is that?

3 THE WITNESS: I'd have to go into the
4 work papers.

5 CHAIRMAN OBERMAN: I mean, if the train
6 is already delayed ten minutes and it gets delayed
7 100%, that'd just be ten more minutes, right?

8 THE WITNESS: In that scenario, that
9 would be true.

10 CHAIRMAN OBERMAN: Yeah. So this
11 doesn't really tell me how many minutes or hours a
12 particular train is delayed. I can't tell that
13 from this page, can I?

14 THE WITNESS: Well -- and that's where
15 I said, the reason we do percentages is because,
16 if you're trying to compare the results of RTC, as
17 I mentioned it's -- it's somewhat optimistic.
18 The -- that's why percentages are a better way to
19 contextualize this impact.

20 So you're thinking about if a train,
21 you know, is doubling, you know, the amount of
22 delay it has, that's better to understand than

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1 what exactly that number is. And that's a better
2 way to, you know, even -- you know, and compare it
3 to reality than the actual minutes.

4 CHAIRMAN OBERMAN: Well, it may be
5 better for some way that you've produced studies,
6 but our assignment is to decide what's
7 unreasonable impairment. And just the percentage,
8 without knowing how much the delay is, I'm just
9 telling you, it's not very useful to me. Because
10 if a train is already delayed two hours and now
11 it's going to be delayed four hours and therefore
12 the customer can't run their plant that day,
13 that's one thing. If the train is already delayed
14 ten minutes and now it's going to be delayed 20
15 minutes and the customer doesn't care, because
16 they've got a four-hour window, that's another
17 thing.

18 So the hundred percent, in terms of the
19 way I am thinking about how to interpret this
20 statute, does not help me. I'm just telling you.
21 So if you've got some other way to give us that
22 information, I'd like to hear it for the moment.

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1 If you can only do that by going outside of the
2 stipulation, I don't want you to do that.

3 But I take it other than --

4 THE WITNESS: You mean --

5 CHAIRMAN OBERMAN: -- other than the
6 percentages, you can't help me out on this at this
7 point?

8 THE WITNESS: Unfortunately I don't
9 have every number that's -- that's in my report
10 memorized. It'd be in the work papers.

11 CHAIRMAN OBERMAN: Let me ask this
12 question. If 56 customers were told on this
13 line -- does any part of your work on this case
14 result in obtaining information of how any delays
15 impact any particular customer? In other words, I
16 just gave an example, a customer may have a
17 certain window where they're expecting their
18 deliveries or their pickups. That's common in the
19 freight world, right?

20 THE WITNESS: Mm-hmm.

21 CHAIRMAN OBERMAN: Yes?

22 THE WITNESS: Yes.

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1 CHAIRMAN OBERMAN: You're -- you're
2 nodding. The court reporter can't -- can't hear
3 that. Thank you.

4 The -- does any part of the RTC study
5 evaluate what these 13 hours of delay mean for any
6 particular shipper or receiver?

7 THE WITNESS: That is not typically
8 part of the scope of an RTC analysis.

9 CHAIRMAN OBERMAN: Well, and it wasn't
10 part of this analysis either?

11 THE WITNESS: That is correct.

12 CHAIRMAN OBERMAN: So it could be,
13 could it not, Mr. Dingler, that some of the delays
14 are not really meaningful to the business
15 operations of any particular customer? You'd have
16 to almost go customer by customer to figure that
17 out? Would that be right?

18 THE WITNESS: Yes. So that's why I --
19 I included the variability metric. That is very
20 relevant to the customers. That's why I think
21 it's a very important metric. That tells you, you
22 know, it was scheduled -- you know, if you

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1 increase the variability of operations, as is
2 readily apparent in the data, it becomes hard
3 to -- to serve those customers, it becomes hard to
4 plan. It because a -- a whole host of things for
5 a railroad to operate.

6 CHAIRMAN OBERMAN: But in terms of the
7 impact on a particular customer, it's customer by
8 customer as to whether the -- there's an
9 unreasonable impairment of that customer's freight
10 service, correct?

11 THE WITNESS: Yeah, and also to keep in
12 mind, we're -- we're sort of modeling typical
13 operations. You know, and so we -- we don't look
14 at it sort of customer by customer.

15 CHAIRMAN OBERMAN: I'm not asking you
16 that now. I'm asking you, in terms of measuring
17 unreasonable impairment of freight service, it
18 would be different customer by customer depending
19 on how that customer uses the railroad?

20 THE WITNESS: Likely.

21 CHAIRMAN OBERMAN: So some customers
22 may get all their shipments on Monday and they

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1 don't really need it until Wednesday, so if
2 there's variability that delays the train getting
3 there 'till Tuesday, it makes no difference to
4 that kind of customer, correct?

5 THE WITNESS: All I can say is that the
6 introduction of passenger service will increase
7 that variability.

8 CHAIRMAN OBERMAN: But you -- you can't
9 say -- you can't say whether it will increase it
10 to the point of impairing that customer's use of
11 freight, because you didn't measure it customer by
12 customer, correct?

13 THE WITNESS: No.

14 CHAIRMAN OBERMAN: No, you didn't; yes,
15 that's correct?

16 THE WITNESS: That is -- yes. No I
17 didn't; yes, you're correct.

18 CHAIRMAN OBERMAN: All right.

19 THE WITNESS: Sorry.

20 CHAIRMAN OBERMAN: Just to sort of wrap
21 this up, and then I'll -- I know Patrick has a
22 question and then Karen. When you submitted your

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1 November 3rd report, you've talked about it
2 recommending a suite of projects and as I
3 understand your position in this case, the suite
4 of projects are a package, a whole package needed
5 to achieve the results that you say were the goal
6 of this report, correct?

7 THE WITNESS: Yes. These projects work
8 together. That is not to say a -- a different set
9 of projects could be used to achieve, you know,
10 the same outcome, but these projects were selected
11 as a package.

12 CHAIRMAN OBERMAN: All right. And they
13 did achieve the outcome that you stated in the
14 report?

15 THE WITNESS: Yes.

16 CHAIRMAN OBERMAN: And one of those
17 outcomes was the one I read at subparagraph two on
18 page 27 was to restore freight traffic performance
19 to at least the same as before passenger trains
20 were added to the corridor.

21 That's what these 14 projects do,
22 correct.

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1 THE WITNESS: It doesn't do it for
2 every train as -- as is apparent in the data, but,
3 yeah, generally that is the case.

4 CHAIRMAN OBERMAN: Well, the conclusion
5 you wrote was to restore freight traffic
6 performance to at least the same as before
7 passenger trains. That's on page 27. That's what
8 the 14 projects do, in your opinion?

9 THE WITNESS: Yeah, as an aggregate, I
10 believe -- that is true.

11 CHAIRMAN OBERMAN: And that was true at
12 the time you filed your report in your opinion as
13 of November 3, correct?

14 THE WITNESS: Yes.

15 CHAIRMAN OBERMAN: Okay. I may have
16 some others, depending on what the others ask, but
17 that's all very helpful, Mr. Dingler. I
18 appreciate it.

19 Patrick, I'm sorry, you said you had --
20 you wanted to jump in there, but I just wanted to
21 finish.

22 MEMBER FUCHS: Yeah, I'll limit -- I've

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1 got questions. I'll limit my questions to yours,
2 understanding Karen may have some also, but I'm
3 circling back.

4 Mr. Dingler, you said you looked and
5 tried to determine the best projects and
6 previously you said you didn't rank what was most
7 constructable. When I think invest, I think of
8 return on investment --

9 THE WITNESS: Mm-hmm.

10 MEMBER FUCHS: -- however calculated,
11 you know, whether it's broad or social return, or
12 return to a pick a railroad, et cetera. How did
13 you determine "best"? What is -- what is your
14 metric for "best"?

15 THE WITNESS: So let me sort of
16 describe my process and hopefully this will
17 provide clarity.

18 So in looking at the model, I would
19 look at where the delays were occurring. So this
20 was evaluated sort of root causes. You may be
21 seeing for instance delays at Claiborne due to
22 some congestion up at Gautier. And so it was --

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1 you know, we identified the root causes of those
2 delays and identified projects.

3 When I say "best," it was to, you know,
4 try and determine the -- the project that -- that
5 mitigated the delays we saw in the model.

6 MEMBER FUCHS: But -- so you did not --
7 for each project you didn't quantify the delay
8 mitigation?

9 THE WITNESS: No.

10 MEMBER FUCHS: And for each project you
11 didn't -- and I think this is well established --
12 you didn't look at the cost for each project?

13 THE WITNESS: Not in dollars and cents.

14 MEMBER FUCHS: So -- so "best" was sort
15 of kind of a feel sort of thing?

16 THE WITNESS: That is correct.

17 MEMBER FUCHS: Okay. And then, to
18 clarify on Marty's point, so the way we -- you
19 know, when we think about delays for local trains,
20 it's often did they -- you know, did you miss a
21 window from what the customer was experiencing?
22 That's how I have typically heard delays being

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1 talked about for local trains.

2 So to be clear, you -- you can't say
3 whether any customer missed their window with the
4 local trains?

5 THE WITNESS: I think the best
6 corollary for that would be the re-crews metric.
7 Often a railroad has two options: they can re-crew
8 a local or they can finish up its route --

9 MEMBER FUCHS: Mm-hmm.

10 THE WITNESS: -- and not finish
11 servicing the customers. So if you look on page
12 47, table 21 --

13 MEMBER FUCHS: Mm-hmm.

14 THE WITNESS: -- we see a 41.5%
15 increase in re-crews on CSX locals. So that could
16 either show up as re-crews or that be would 41,
17 you know, percent increase in failures to serve
18 the customer.

19 MEMBER FUCHS: Well, "failure to
20 serve".

21 So are you saying that if we were to
22 look at the re-crew percentage, that would be an

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1 accurate proxy for whether or not a customer was
2 not served by the train in their particular
3 window?

4 THE WITNESS: Yeah, that is the case.

5 So RTC can't, you know, stop a route
6 early. You sort of put the -- a route into the
7 model. But in -- in practice, that is one of the
8 options a railroad has, is they'll service the
9 next day, because that crew doesn't have --

10 MEMBER FUCHS: Are -- are you able to
11 mount to any evidence or point to any evidence
12 that would sit -- that would correlate the re-crew
13 percentage with the percent that a railroad would
14 newly -- because of changes, would no longer be
15 able to meet their expected delivery window?

16 THE WITNESS: No, I cannot.

17 MEMBER FUCHS: Okay. And then I guess
18 for -- and then I guess the same would be true for
19 through trains: you can't necessarily point to any
20 customer that has their freight arriving say a day
21 later than their car trip planned?

22 THE WITNESS: Yeah, so that starts

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1 getting into car level information. This was
2 looked at --

3 MEMBER FUCHS: Right.

4 THE WITNESS: -- a train level. I
5 can't tell you which cars and which trains missed
6 their connections.

7 MEMBER FUCHS: Could you -- could you
8 say what trains are even in a general area a day
9 later?

10 THE WITNESS: Well, we have the -- we
11 have the information in the model by train ID. If
12 you want -- I said, it's in the work papers, the
13 specific train IDs. We generalize those in the
14 report so it can be public.

15 MEMBER FUCHS: I have some other
16 questions but I'll -- I'll yield to Karen.

17 CHAIRMAN OBERMAN: All right, Karen,
18 you're on.

19 MEMBER HEDLUND: Yeah, thank you.

20 Some of my questions were actually
21 answered by Patrick's questions, but I want to go
22 back to confirm that you did not do a cost benefit

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1 analysis on any particular project, setting aside
2 the conclusion that the freight lead was -- cost
3 too much?

4 THE WITNESS: That is correct. We did
5 no individual cost-benefit analysis.

6 MEMBER HEDLUND: Right, and if you did
7 a cost-benefit analysis, what would you measure?

8 THE WITNESS: That's outside the scope
9 of the things I do. You know, I've been involved
10 with projects where cost benefit has been done,
11 but that -- that is not the scope I -- I -- I am
12 involved with.

13 MEMBER HEDLUND: But as an aggregate,
14 you did look at the amount of delays that, as an
15 aggregate, the package would mitigate?

16 THE WITNESS: Yes. So we were, you
17 know, looking at, you know, if -- if no projects
18 were built, the impact, and then the impact once
19 we added these projects.

20 MEMBER HEDLUND: Could you -- would it
21 be possible for you to look at the amount of delay
22 that any individual project mitigated?

1 THE WITNESS: Not really. You know,
2 these -- these projects work together. You could
3 theoretically remove one. And, but again they
4 work in sort of -- in -- in coordination, in
5 combination. These aren't designed to work
6 individually, you know, yeah.

7 MEMBER HEDLUND: I'm not sure I
8 understand what you mean by they "worked
9 together". Could you give me an example?

10 THE WITNESS: Yeah, certainly.

11 So, you know one siding, if I just put
12 one sort of longer siding out there, it -- it --
13 it works, but if I add another one or I do a
14 project in a terminal, that improves the
15 useability. You know, so the trains can now --
16 are not being held up somewhere else. They can
17 more take use of this additional infrastructure I
18 built.

19 So you know, these projects aren't in
20 isolation. They don't -- you know, they -- I
21 guess they work together. So, you know,
22 potentially one project may -- may help, you know,

1 another project.

2 MEMBER HEDLUND: And how do you
3 determine that one project's going to help another
4 project?

5 THE WITNESS: You don't necessarily
6 look. So, when you're going through, you're
7 adding the projects to mitigate everything.
8 Generally, you know, you say, okay, these projects
9 together make sense.

10 You know, for instance, in Mobile, we
11 have a sort of suite of projects there. You know,
12 the station track and Brookley individually, those
13 don't solve the problem, but in combination they
14 work to sort of help each other.

15 MEMBER HEDLUND: And when you say
16 projects make sense, you're not evaluating the
17 cost of the project, only the result to delay?

18 THE WITNESS: Well, I -- I said, I'm
19 evaluating it in terms of, you know, my
20 engineering experience, but again not for dollars
21 and cents. You know, I -- I was making sure I was
22 not putting out projects that were, again, in the

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1 middle of a swamp, you know, using a bridge. That
2 is cost. But it was not direct dollars and cents.

3 MEMBER HEDLUND: When you said the
4 freight lead was not recommended due to high cost,
5 did you mean \$80M is a lot of money or \$80M
6 relative to the benefit was a lot of money?

7 THE WITNESS: Well, when we initially
8 removed it as part of this report, there was no
9 specific cost, you know. It was concerns about
10 whether you could build it. So, it was -- it
11 was -- and again we found other projects to
12 mitigate the impact to CSX and NS. So that --
13 that type of analysis was not considered.

14 MEMBER HEDLUND: So what you were
15 looking at was the fact that the freight lead
16 would have to be built in a series of bridges.

17 THE WITNESS: And it's next to a canal.
18 There was concerns about sort of -- sort of the
19 environmental. As an expert who was able to then
20 put their foot -- boots on the ground, Ted
21 Niemeyer, he had a different opinion than what I
22 was told people doing a basically a Google Earth

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1 review and Norfolk Southern.

2 MEMBER HEDLUND: So it wasn't the \$80M
3 in cost that was the issue. It was the
4 constructability?

5 THE WITNESS: No, I think, you know,
6 the statement I tend to tell people is with enough
7 dynamite and money you can do anything. So, when
8 we have constructability concerns, you can build
9 anything. It's just -- it's -- it's a corollary
10 for cost. So, yes, it probably could have been
11 built but it was concerns about the overall cost.

12 I -- I use those terms sort of
13 interchangeably. A project that's difficult to
14 construct will have a high cost. Sorry for any
15 confusion.

16 MEMBER HEDLUND: But you didn't
17 consider costs relative to any of the other
18 projects? I think you said that.

19 THE WITNESS: Correct.

20 MEMBER HEDLUND: Thank you.

21 CHAIRMAN OBERMAN: Mr. Dingler, I just
22 have one question on the point that Karen just

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1 raised. Is there one word in your November 3rd
2 report about constructability as it relates to the
3 freight lead?

4 THE WITNESS: I think we -- we
5 described it as cost because I get some confusion
6 around that, yeah. Again I -- I --I apologize, I
7 use those terms interchangeably, because it's
8 something that is not constructable has a high
9 cost. So it --

10 CHAIRMAN OBERMAN: Is the answer to my
11 question there is no mention of constructability
12 in your report?

13 THE WITNESS: I'd have to go back and
14 look word for word. I don't remember.

15 CHAIRMAN OBERMAN: Well, before this
16 case is over, if you can find it, I'd like you to
17 let me know.

18 MEMBER HEDLUND: Can I ask some
19 follow-up questions?

20 CHAIRMAN OBERMAN: Go ahead, Karen, and
21 then we'll go to other board members.

22 MEMBER HEDLUND: So when you say a high

1 cost, because something is difficult to construct,
2 your conclusion of high cost must be with respect
3 to something and that something is the amount of
4 delay that's being mitigated?

5 THE WITNESS: Sorry, I'm -- I'm
6 thinking, you know, try to make sure I give you
7 a -- a clear answer.

8 I think that would be a fair statement.
9 You know, or as compared to potentially other
10 projects. We recommended a number of crossovers.
11 Crossovers tend to be cheaper. But again, it
12 didn't necessarily solve all of the problems we
13 are looking to solve. And -- and, you know -- you
14 know, and thinking about cost per distance.
15 There's a whole host of factors when -- when I
16 think about cost.

17 MEMBER FUCHS: Very, very quick --
18 Robert, I'm sorry. This is directly related to
19 one of Karen's questions.

20 THE WITNESS: Mm-hmm.

21 MEMBER FUCHS: It's not usual in an
22 impact analysis to have projects or interventions

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1 that have cumulative benefits or cumulative costs.
2 And so what is typically done, as I understand it,
3 is there is various ordering in order to isolate
4 the incremental impact and then the cumulative
5 benefits with different -- you know, with
6 different incremental additions.

7 So when Karen is asking about isolating
8 the benefits of particular projects, you know, in
9 terms of how much delay, that can all be done
10 through incremental analysis with various
11 ordering.

12 Is that correct.

13 THE WITNESS: You could do a lot of
14 things with RTC. You could isolate those projects
15 and remove them and -- at look at that incremental
16 change. That was not standard practice in these
17 cases, so it was not done.

18 MEMBER FUCHS: Got it, thank you.

19 CHAIRMAN OBERMAN: All right, I don't
20 know who had their hand up first, so -- Robert?

21 MEMBER PRIMUS: Michelle did.

22 CHAIRMAN OBERMAN: Oh, Michelle did?

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1 All right.

2 MEMBER PRIMUS: Yeah.

3 CHAIRMAN OBERMAN: Ever a gentleman.
4 Michelle.

5 MEMBER SCHULTZ: Just a -- just a
6 clarifying question, Mr. Dingler.

7 I believe you stated that a
8 cost-benefit analysis was not performed in this --
9 in this case. Is that correct?

10 THE WITNESS: It was not performed
11 formally. You know, when you're -- an RTC modeler
12 is doing some sort of that in their head, you
13 know, trying to, you know, determine sort of,
14 quote unquote, the best projects. But there is no
15 formal cost-benefit analysis done.

16 MEMBER SCHULTZ: In -- in other
17 instances where you've done RTC modeling, have
18 clients come back to you to ask, you know, you to
19 further analyze the infrastructure and to
20 determine what in fact might be appropriate?

21 THE WITNESS: Every case is iterative.
22 You know, there have been some cases -- my

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1 "text.study" I recently performed was -- we looked
2 at cost benefit to look at for public benefits.
3 You know -- you know, avoiding grade crossing
4 blockages, you know, the benefits of freight
5 separations, that sort of freight benefits by, you
6 know, moving trucks off the road.

7 So there was -- I said, there has been
8 cost benefit. Generally it's, I said, an
9 iterative nature. I -- I can't think of, you
10 know, specifics beyond that.

11 MEMBER SCHULTZ: In other words, in
12 your experience you -- you haven't been asked
13 to -- to look at a list of projects, look at
14 the -- the cost of those projects and then
15 determine, for lack of a better term, which ones
16 would give you the best bang for your buck?

17 THE WITNESS: You -- you do that
18 informally whenever you do RTC. You know, I said,
19 in my head, you know, and any RTC modeler, if --
20 if they're doing it right, will be looking at, you
21 know, what is the -- you know, you're -- you're
22 selecting the best project to mitigate it. You

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1 know, I -- I'm not going to recommend a project,
2 putting it in the model that doesn't do what I --
3 you know, that doesn't solve or try and solve the
4 root causes.

5 So, no, there's normally not a formal
6 cost benefit but every decision you make is sort
7 of that informal, trying to decide, you know, what
8 projects can I build, you know, that makes sense
9 and -- and solve -- sort of provide the biggest
10 benefit.

11 MEMBER SCHULTZ: And did you do an
12 informal in-your-head assessment in this instance?

13 THE WITNESS: Of course, yes.

14 MEMBER SCHULTZ: And did -- does it
15 differ from the list of -- of -- of projects as
16 recommended?

17 THE WITNESS: No. That's how I came up
18 with the 14 projects.

19 MEMBER SCHULTZ: Okay, thank you.

20 CHAIRMAN OBERMAN: Robert?

21 MEMBER PRIMUS: Thanks, Marty.

22 Mr. Dingler, sort of actually following

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1 up on that last question to clarify. So, how
2 exactly -- you -- you came with the -- the 14
3 projects and they all came together to -- to
4 basically say if they were all implemented they
5 would bring the service basically back to -- to
6 that zero, that freight service back to that net
7 zero which you had mentioned earlier, in terms of
8 delays?

9 THE WITNESS: Yes.

10 MEMBER PRIMUS: Okay. And all 14, they
11 were constructable. Were they ever challenged
12 as -- as not being constructable?

13 THE WITNESS: It was an iterative
14 process. There were projects -- that was of
15 course one of the -- the results -- sorry, with
16 the Clean Team. One of the -- Will Roseborough
17 was on the Clean Team and he did -- you know, as I
18 recommended projects, he'd review them. I said at
19 one point I recommended a siding at Lake
20 Claiborne -- Lake Catherine that they -- they
21 basically said was -- was going to be very
22 difficult to construct and maintain.

1 So, yes, there -- there was a process
2 going through this and, if I had any questions,
3 they listened to me and -- and we sort of came to
4 an understanding as developing these projects.

5 MEMBER PRIMUS: And the Lake Catherine
6 project, what reason did they give? Was it -- was
7 it cost?

8 THE WITNESS: I don't remember. So if
9 you remember Mr. Johnson's testimony, that
10 location they have to replace every few years due
11 to hurricanes.

12 MEMBER PRIMUS: Right.

13 THE WITNESS: And so I remember
14 correctly it was, you're going to have to take a
15 barge out there to build it and you would have to
16 replace it every few years. And so they didn't
17 necessarily think it was a -- a great project in
18 that scheme, but I --

19 MEMBER PRIMUS: Yeah, I'm just trying
20 to get at was -- was that removed because of cost,
21 do you believe?

22 THE WITNESS: I don't know.

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1 MEMBER PRIMUS: Okay. And the reason
2 why I ask that because we talked about adding the
3 freight lead later. If -- if you say that the 14
4 projects had to operate as one, had to -- had to
5 come to that conclusion, for clarification, then
6 why -- why was that added later if it was
7 before -- it was talked about before and not
8 included? So -- so in my estimation that means
9 it's not necessary to make the network run to get
10 to that zero. So why add it later?

11 THE WITNESS: Great question.

12 So it comes down to how you define the
13 network. We were looking at sort of the -- the
14 run times of, you know, and all those metrics of
15 the CSX and NS trains. It was as part of our
16 analysis we realized some of the way the model was
17 reaching that ability was to limit the number of
18 trains on the -- in the network onto interchange
19 carriers. And so, you know, as -- as part of the
20 scope I was -- you know, mitigate CSX and NS. But
21 through our analysis -- similarly with TSAD, to be
22 honest, that, you know, we -- we -- there was

1 concern about, you know, people outside this --
2 you know, outside parties.

3 MEMBER PRIMUS: And -- and the reason
4 why I bring it up, I'm trying to get clear --
5 clarity on what I'm hearing before that was the
6 cost of -- the actual cost of the freight lead was
7 why it was left off, not because of the -- of
8 looking at the network or -- or the overall
9 network. It was the cost. And -- and I'm trying
10 to figure out then how did we -- we basically
11 erase the cost, because someone went out -- I
12 think you said it was Niemeyer went out to see it
13 in person and said, oh, no, we can do that.

14 To me I'm trying to figure out how
15 that -- that -- if you can explain how all of --
16 it wasn't deemed an important part, but then after
17 looking -- and one because of cost, but now
18 looking at it it's like it can be done because of
19 cost, even with the cost. I'm trying to get clear
20 on the structure of that -- that part of it.

21 THE WITNESS: So, I said, so we
22 developed those crossover projects. They were

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1 able to do that. Again those are -- you know,
2 tend to be a lower cost. The challenge was I
3 never was able to come up with any project besides
4 the freight lead that mitigated that impact to the
5 interchange partners. And so it was, you know,
6 that was the only -- you know, regardless of cost,
7 that was the only project we could come up with
8 that, you know, could be put at that location that
9 would solve that problem.

10 MEMBER PRIMUS: You just said -- but
11 you said to mitigate that problem. But you
12 also -- you said that you submitted the 14
13 projects as a whole that would solve the problem,
14 bringing it back to zero. So, is it the 14
15 would -- would bring it back to zero or not,
16 because you added this extra project and now
17 you're saying you're at zero. So, was it zero
18 before or zero after?

19 THE WITNESS: It brought it to zero,
20 but what it -- how it does that is it shifts where
21 the delays are occurring. So the aggregate, yes,
22 it brings it back to zero but it does that by sort

1 of moving some of those delays onto the foreign
2 interchange partners.

3 MEMBER PRIMUS: Okay. One of the other
4 things that I just wanted to sort of be clear on
5 is -- is, throughout this, again you didn't talk
6 about the cost or -- especially in the freight
7 lead there was talk about cost. What was the
8 understanding, just for clarity, what was the
9 understanding of who was going to pay for this?

10 THE WITNESS: That was not the scope of
11 what I was asked to do. I was asked to develop a
12 set of projects to mitigate --

13 MEMBER PRIMUS: I understand, I
14 understand, I understand. But -- but, you know,
15 you were asked, but was there an understanding,
16 because again the freight lead was not included --

17 THE WITNESS: Mm-hmm.

18 MEMBER PRIMUS: -- in the cost.

19 THE WITNESS: I don't -- I don't know.

20 MEMBER PRIMUS: Okay. And -- and just
21 like you said before, with -- with the idea of --
22 of the St. Catherine or lake -- or Lake Catherine,

1 you said it was -- they went back and said, well,
2 hurricanes and it would take a lot to do that.
3 Was that, you know -- was -- was -- do you -- do
4 you -- and again this is your own opinion, but do
5 you think that there was a -- a -- a thought that
6 CSX or NS would have to absorb that cost?

7 THE WITNESS: Well, you know, these
8 projects or the maintenance and renewal costs of
9 these will be absorbed to my understanding for the
10 railroads into the future. And so --

11 MEMBER PRIMUS: But the construction --
12 yeah, the construction of it, though. I mean,
13 we're talking about \$80M for a freight lead,
14 talking about all the others, you know, that did
15 not factor in the -- the, you know, long-term cost
16 or after the effect, so you're talking about 80M
17 of building that. So was that something that was
18 assumed by -- that you believe was going to be
19 assumed by the -- by NS and CSX?

20 THE WITNESS: I think as taxpayers, all
21 of us, you know, don't want to recommend a whole
22 bunch of projects that don't make sense. You

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1 know, I -- I'm not -- wasn't going out of my way
2 to choose projects that were expensive. So I -- I
3 don't --

4 MEMBER PRIMUS: To be clear --

5 THE WITNESS: Yeah.

6 MEMBER PRIMUS: I am sorry. I don't
7 mean to talk over you. I'm just saying -- but
8 you're -- so -- you're saying as a taxpayer that
9 you -- your -- your belief was that it was going
10 to be that the taxpayers were going to pay for all
11 these projects when you were doing them, or did
12 you believe -- was -- was the understanding that
13 CSX and NS may be paying for the -- for these
14 projects?

15 THE WITNESS: I -- I honestly don't
16 know. It was -- I said, I was scoped to develop
17 the list of projects. How those are funded is --
18 is beyond my scope.

19 MEMBER PRIMUS: Okay. And -- and
20 you -- you get -- your report was finished on
21 November 30th, correct?

22 THE WITNESS: That sounds about right.

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1 MEMBER PRIMUS: Okay. And -- and
2 you -- and just clarify -- you were asked to -- to
3 produce the rebuttal when? I know maybe -- I'm
4 just -- I'm just again --

5 THE WITNESS: Yeah.

6 MEMBER PRIMUS: You know.

7 THE WITNESS: Whenever the -- the --
8 the reply evidence came out.

9 MEMBER PRIMUS: Okay. Okay.

10 THE WITNESS: I think I have those
11 things right.

12 MEMBER PRIMUS: And -- and during the
13 rebuttal, that's what the -- the freight lead
14 became a -- a topic of conversation again?

15 THE WITNESS: Yes.

16 CHAIRMAN OBERMAN: Okay. Do you
17 remember -- do you remember or do you know when
18 the president's infrastructure bill was passed
19 that provided additional money for Amtrak?

20 THE WITNESS: I do not know the -- that
21 timeline of events.

22 MEMBER PRIMUS: Okay. Okay. I believe

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1 it was before that report, that rebuttal came out.

2 But that -- that's all I have. Thank you.

3 CHAIRMAN OBERMAN: All right. It's
4 12:47. I have a few more questions but we're past
5 the time when we normally break for lunch. So
6 unless the board has a different preference, I
7 would suggest we break for lunch and come back.
8 I'll finish up with a few more questions. You may
9 all have some more too and then we'll proceed.

10 That agreeable? All right.

11 And Ray, maybe it's too early to ask
12 you, do you have any way of anticipating how much
13 redirect you'll have?

14 MR. ATKINS: I'll -- I'll why don't I
15 come back to you on that after lunch. But I --
16 I'm very optimistic that the remaining questions
17 are short, we'll get Mr. Guthrie up shortly after
18 lunch.

19 CHAIRMAN OBERMAN: Okay. Very good.
20 You -- you know, I don't want to cut you off.

21 MR. ATKINS: No, I -- I appreciate it,
22 chairman. I -- I -- I just need -- I need to

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1 coalesce with my others but I don't think there's
2 going to be a lot of redirect.

3 CHAIRMAN OBERMAN: Thank you. It's
4 11 -- 12:48. We'll recess until 1:20 -- well, why
5 don't we make it 1:30. We've been going a long
6 time. We'll recess 'till 1:30.

7 (Whereupon at 12:48 p.m. a luncheon
8 recess was taken.)
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1 A F T E R N O O N S E S S I O N

2 (Whereupon at 1:34 p.m. the hearing
3 resumed.)

4 CHAIRMAN OBERMAN: Mr. Dingler, you
5 understand you remain sworn?

6 THE WITNESS: I do.

7 CHAIRMAN OBERMAN: All right. Sir, a
8 few questions. First, I wanted to make sure I
9 understood if the T ASD trains, as you understood
10 it, were included in the data that went into your
11 RTC model.

12 THE WITNESS: Yes. So we had four
13 trains that -- that crossed traffic and one train
14 that used -- used it for head room. I -- you
15 know, in -- in other statements there is some --
16 and even the field people said there were more
17 than that, but that's all I could confirm in the
18 data.

19 CHAIRMAN OBERMAN: Well, and did you
20 have the times that those trains run?

21 THE WITNESS: From what I saw it was
22 highly random. So I -- I can't remember exactly

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1 how we have in the model. But I -- I believe I
2 had it highly random, as well.

3 CHAIRMAN OBERMAN: All right, I'm a
4 little unclear about what you just said here that
5 the field people said there were more than four
6 trains? What field people are you talking about?

7 THE WITNESS: Through Hannah I was told
8 there were six. It was just one of those
9 instances I -- I couldn't quite verify that and --
10 and, from what I was seeing in the data, and --
11 and so I kept the original four.

12 CHAIRMAN OBERMAN: Well, when you said
13 from what you could see in the data, was this in
14 a, whatever it's called, the .TRAIN file you got
15 from CSX?

16 THE WITNESS: That's where the original
17 four trains are, is in the dispatch data, which is
18 a highly granular bit of information. We
19 described its use to parse out those trains in the
20 rebuttal report.

21 CHAIRMAN OBERMAN: I'm a little
22 unclear. You used the -- you knew, you were using

1 field reports for the yard trains, and so forth.
2 Why wouldn't you use the field reports for the
3 Port as well?

4 THE WITNESS: So it depends on where it
5 was on the network. There are some places where
6 there is no data, and so I had to rely solely
7 on -- on yard or where the data was going to be
8 very difficult to parse through.

9 This is one instance where I had the
10 dispatch data. It likely might not be fully
11 representing all the traffic but we left it at a
12 lower number.

13 CHAIRMAN OBERMAN: All right. You --
14 is it your -- part of your RTC recommendation
15 that, as -- as I understand it it's part of the
16 recommendation that all -- originally the
17 recommendation was that all 14 projects be built
18 before any Amtrak trains start running and then it
19 switched to only 11.

20 Is that right.

21 THE WITNESS: There are 14 recommended
22 in 2039 and 11 in 2019. As to what CSX and NS

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1 want to require for service is -- is not within my
2 scope.

3 CHAIRMAN OBERMAN: Well, did the -- did
4 the -- was it the original report that recommended
5 that only 11, or was that in the rebuttal report?
6 Do you remember, for '29 (sic)?

7 THE WITNESS: That was in the original
8 report: 11 projects in 2019 and 14 projects in
9 2039.

10 CHAIRMAN OBERMAN: And where did the
11 idea of modeling 20 years out come from for
12 this -- for this case?

13 THE WITNESS: That is standard practice
14 and has been for as long as I know for cases like
15 this. We cited in my report an FRA guidance from
16 2005 that said you should look at 20 years.
17 There's a TRB, sort of technical report that
18 describes sort of best practices when it comes to
19 passenger and freight and including modeling
20 and -- and they state 20 years as well.

21 This -- I said, this is the way it has
22 been to the best of my knowledge.

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1 CHAIRMAN OBERMAN: Did anybody talk to
2 you about whether under the statute that Amtrak is
3 seeking service, any indication in the statute
4 that we should be looking at what's needed for 20
5 years out?

6 THE WITNESS: My -- my scope was to use
7 standard practices to determine what would be
8 needed and that was standard practice.

9 CHAIRMAN OBERMAN: Well, my question
10 was if anybody talked to you about whether the
11 statute we're operating under required it.

12 THE WITNESS: No.

13 CHAIRMAN OBERMAN: So I want to try to
14 relate your report to how infrastructure projects
15 actually get funded and built in -- in the real
16 world. You've talked about that. In this case
17 you are aware that there is some reasonable
18 potential for some of these drawbridges to become
19 remotely operated in the very near future. I
20 think somebody said it in the next two or three
21 years these are under consideration.

22 You're aware of that, are you not.

1 THE WITNESS: I have become aware of
2 that.

3 CHAIRMAN OBERMAN: So if this were a
4 project being funded by CSX and NS, would you
5 recommend to them that, before they build the 2039
6 projects, that you explore with all those projects
7 would really be needed if three years out we get
8 rid of whatever the number is in these high-rail
9 movements, to at least look at that?

10 Is that -- would you -- would you
11 recommend that they look at it before they spend
12 all their 2039 money?

13 THE WITNESS: Internal projects have
14 sort of different levers and under -- you know,
15 things you're looking at. Again, so, you know, as
16 a railroad, you are looking at their own operating
17 costs and their own capital expenditure. This
18 case is somewhat different. The 20 years out is
19 the best practice to protect the passenger and the
20 freight into the future.

21 CHAIRMAN OBERMAN: Why is this case
22 different from how railroads would spend their own

1 money?

2 THE WITNESS: The -- I'm trying to
3 think.

4 Railroads typically don't look out that
5 far. They -- they are considering that in
6 thinking about their infrastructure investments.
7 They -- you know, any -- any infrastructure
8 investment, you're thinking about it being in the
9 ground for 30, 40, 50 years and so railroads are
10 very careful about where they put in
11 infrastructure.

12 But again, you know, there's different
13 levers, you know, that the railroads can pull when
14 considering those cases.

15 CHAIRMAN OBERMAN: Should we be any
16 less careful that a railroad in determining how
17 much infrastructure should be built and how much
18 it should cost?

19 THE WITNESS: That's outside the scope
20 of what I can comment on.

21 CHAIRMAN OBERMAN: Well, your -- your
22 report is what we're being asked to rely on, Mr.

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1 Dingler, and I -- I'm trying to figure out a
2 real-world solution because I would like to think
3 that the STB operates in the real world. I know
4 there's some controversy about that but that's
5 certainly been my aim since I've been on the board
6 and I think I can speak for all the four other
7 members when I say that.

8 So I want to go back to the question I
9 asked. Let me phrase it this way: if the railroad
10 came to you and said, "We see your 2039 \$440M in
11 projects, but if we can get those bridges
12 operating remotely, do we really need all those
13 2039 projects?" That would be a practical way to
14 go about saying -- to giving that advice to the
15 railroad one way or the other, wouldn't it?

16 THE WITNESS: So this is one of the
17 wonders of RTC. We could -- we could look at
18 those things. Some of those changes have happened
19 since we filed the initial report. You know, you
20 can always look at those things and consider those
21 things and the probability that will happen.

22 CHAIRMAN OBERMAN: Let me put it to you

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1 this way...

2 Suppose the railroad came to you and
3 said, "Before we put all \$440M into the ground,
4 can you think of any way, Mr. Dingler, that we
5 might be able to fix the, you know, the time delay
6 problems that you've found other than spending
7 infrastructure?"

8 Would you say to them, "Well, one thing
9 you could do is you could ask me to run the study
10 to see what happens if the bridges become remotely
11 operated," and if that saves any projects,
12 you'd -- you'd give that advice to the railroad,
13 wouldn't you, if you were asked?

14 THE WITNESS: Yes, with the
15 consideration that, you know, that could not
16 happen, and so thinking about sort of projects
17 within the control of the railroads, yeah, that
18 might be something you'd want to look at.

19 CHAIRMAN OBERMAN: Well, it's outside
20 your scope I imagine as to what the likelihood is
21 of whether the bridges do become remote, right?

22 THE WITNESS: That is correct.

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1 CHAIRMAN OBERMAN: But if the railroad
2 says, "We're seriously considering spending the
3 money to make these remote directly with the Coast
4 Guard. Should we consider that before we put
5 \$440M into the ground," would you give them the
6 advice and say "Yes, you ought to consider that"?

7 THE WITNESS: You consider a lot of
8 things in situations. You know -- you know, our
9 set of projects is -- is one set of things. I
10 said, you know, honestly, conditions will change,
11 even, you know, as you do design. And so
12 you're -- you're continually trying to improve
13 sort of the projects.

14 CHAIRMAN OBERMAN: The question I asked
15 is would you advise them to consider whether
16 making those bridges remote will save any of this
17 infrastructure projects. Would you say "Yes, I'd
18 advise you to take a look at that before you spend
19 the money"? That's all I'm asking.

20 THE WITNESS: I think it would be one
21 thing to consider, sure.

22 CHAIRMAN OBERMAN: Well, you say "one

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1 thing to consider". Would you advise it? Can you
2 answer that question? It's a simple question.

3 THE WITNESS: Well, the reason my
4 hesitancy is again, I don't like advising the
5 railroads on things they don't control. But if
6 they're absolutely certain it will happen, yes,
7 you would consider it.

8 CHAIRMAN OBERMAN: Well, I didn't ask
9 you if that you were absolutely concerned. Let me
10 try to make my question clear.

11 Pretend that I'm the railroad. "Mr.
12 Dingler, I'm asking for your advice. Do you have
13 any advice on this subject about whether we should
14 take a look at whether we can save infrastructure
15 money if we make those bridges remote?"

16 Would you say, "Yes" --

17 THE WITNESS: Mm-hmm.

18 CHAIRMAN OBERMAN: -- "that is my
19 advice. You ought to look at it."

20 That's my question.

21 THE WITNESS: And you should compare it
22 against the cost of remote controlling those

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1 bridges. Sure, yes.

2 CHAIRMAN OBERMAN: Is the answer to my
3 question yes?

4 THE WITNESS: Yes.

5 CHAIRMAN OBERMAN: Would you -- and if
6 I were the railroad and I came and said, "Look,
7 I'm looking at this \$440M in infrastructure. Is
8 there any operational change that you could model
9 that could give us that money before we put it
10 into the ground today or 20 years from now?"

11 Would you also advise, "Yes, we should
12 look at the operational possibilities here before
13 you spend that infrastructure money to make sure
14 the infrastructure is needed".

15 Would you give them that advice, too,
16 if you were asked for it?

17 THE WITNESS: Yeah, I said -- I don't
18 like "yes" answers, you can tell. You have to be
19 very careful. You want to develop a robust answer
20 because, you know, schedules are going to change
21 in the future. You know, operations change.

22 And so, if the question is is this a

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1 robust solution over a wide range of operations,
2 and you'd -- you'd consider a whole host of
3 things.

4 CHAIRMAN OBERMAN: All right. I'm
5 going to ask the question again, Mr. Dingler,
6 because I'd like to get an answer.

7 If the railroad came to you -- and
8 being a railroad, I'm going to ask you to assume
9 that the person asking you the question is aware
10 that there's a wide variety of things that can
11 happen with operations, not some person walking in
12 off the street -- and they say, "Mr. Dingler,
13 before we spend 440M today, are there any
14 operational changes you would recommend that we
15 should look at to see if that improves freight
16 running times and reduces delay without all of
17 that infrastructure," would you say -- would you
18 give them the advice and say, "Yes, we at least
19 ought to look at it and then you can make a
20 decision, Mr. Railroad, as to whether you want to
21 undertake those operations," would you give that
22 advice?

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1 THE WITNESS: If there was a clear and
2 obvious operating solution, yeah, sure.

3 MR. ATKINS: So Chairman Oberman, I --
4 I just --

5 CHAIRMAN OBERMAN: Yeah?

6 MR. ATKINS: I just would not need to
7 put on the record our standing objection to lines
8 of inquiry that we think might exceed the
9 parameters of what's -- what's -- what is
10 permissible in an evidentiary hearing. So I just
11 would like to indicate that I -- I think you're
12 approaching -- usurping the role of Amtrak's
13 counsel with these lines of questions. And I just
14 want to put on the record. I know -- it's a
15 standing objection. I know you overruled us. I
16 just want to put it on the record again.

17 CHAIRMAN OBERMAN: I will note it and
18 I'm going to ask the question 'till I get a direct
19 answer, Ray. So it would be helpful if the
20 witness would just answer these questions and we
21 could move on.

22 So I didn't ask you, Mr. Dingler, if

1 there was an obvious solution. I asked if you
2 were advised to explore what the solutions are,
3 obvious or otherwise, before spending \$440M.

4 Would you advise to at least look at
5 it?

6 THE WITNESS: Operating changes always
7 get me uncomfortable because of the complexities
8 of them. And that's basically the answer. You
9 know, it's because of, you know, car loads. And
10 so as a modeler, I get very uncomfortable
11 suggesting serious operational changes because I
12 don't know the effect that will have anywhere
13 else. So typically in an RTC case I am not
14 recommending operational changes.

15 CHAIRMAN OBERMAN: I understand what's
16 typical. So is the answer to my question, when
17 the railroad comes to you and says, "Mr. Dingler,
18 before I spend \$440M, is it advisable to explore
19 operational changes?"

20 I take it your answer would be to say,
21 "No, Mr. Railroad, that is completely worthless,
22 waste of my time, waste of your time. No need to

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1 do it".

2 Is that your answer?

3 MR. AKINS: Mr. Chairman, I'm going to
4 object again. You've putting all kinds of words
5 into Mr. Dingler's mouth. You've asked the
6 question a dozen times and he's given you an
7 answer.

8 CHAIRMAN OBERMAN: All nonresponsive.
9 Can you answer the question I put, Mr.
10 Dingler?

11 THE WITNESS: You know, by -- by the
12 nature of -- of adding trains you're changing the
13 operations. I said, sure, you know, you can look
14 at operational changes but they may not all be
15 possible.

16 CHAIRMAN OBERMAN: Whether -- you don't
17 know they're possible until you look at them.
18 Would that be fair?

19 THE WITNESS: Sure, yeah.

20 CHAIRMAN OBERMAN: And again, would you
21 advise it's at least worth looking to find out
22 whether they could -- are practical. Would you

1 give that advice, "Yes, let's look". Then -- then
2 once we know what the operational changes are, you
3 can evaluate whether they're worth doing. But if
4 you don't even know what they are, you can't
5 evaluate them.

6 Would you give that advice.

7 THE WITNESS: Depends on the
8 operational changes considered. You know, a --

9 CHAIRMAN OBERMAN: I'm positing an open
10 question. Are there any? "Would you look at the
11 whole range of operational changes to see if any
12 of them are practical and would save us
13 infrastructure money?" That's the only question
14 I'm asking.

15 THE WITNESS: You know, within a range,
16 yes. You would -- you would look at those things.

17 CHAIRMAN OBERMAN: In fact, that is
18 what your master's thesis discussed: whether
19 operational changes should be explored vis-a-vie
20 infrastructure, isn't it?

21 THE WITNESS: Yes. When the railroads
22 control the operating and infrastructure cost,

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1 yeah, that -- that is always a consideration.

2 CHAIRMAN OBERMAN: Right. And you also
3 actually -- well, did you actually do that? I
4 know you said you worked at CSX and you were doing
5 these projects. You actually approached it that
6 way wouldn't you or didn't you, when you were at
7 CSX, to look at both operational and
8 infrastructure, weigh them against each other?

9 THE WITNESS: Typically by the point
10 they reached our network planning group, those
11 decisions had already been made. Any of those --
12 if -- if any operational changes had been
13 attempted, they would have been done before our
14 group would have been consulted on where best to
15 place projects.

16 CHAIRMAN OBERMAN: So somebody
17 considered operational changes in connection with
18 asking you to look at infrastructure. Is that
19 what you're saying, at CSX?

20 THE WITNESS: Yeah, railroads are
21 always trying to optimize the use of their assets.

22 CHAIRMAN OBERMAN: Is the answer to my

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1 question that when you were considering
2 infrastructure when you worked at CSX, if not you
3 somebody considered operational changes as an
4 alternative?

5 THE WITNESS: Probably.

6 CHAIRMAN OBERMAN: You're -- you're
7 unknowing about it?

8 THE WITNESS: I said, by the time the
9 had reached our group, you know, we were looking
10 at infrastructure. We weren't proposing
11 operational changes.

12 CHAIRMAN OBERMAN: Well, did somebody
13 ask you to put an operational change into your
14 study that they were proposing --

15 THE WITNESS: So --

16 CHAIRMAN OBERMAN: -- that hadn't been
17 made yet, so you could evaluate it? Was that done
18 when you worked at CSX?

19 THE WITNESS: It depends how you define
20 operational change. So yeah, looking at longer
21 train lengths. You know, you looking at, you
22 know, potentially distributive power. There --

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1 there's a whole host of things that are part of --
2 you know, and that you need the infrastructure to
3 support those changes that would be considered.

4 CHAIRMAN OBERMAN: You said it depends
5 on how I define operational changes. How do you
6 define operational changes? So I'll ask the
7 question that you can understand. How do you
8 define it?

9 THE WITNESS: Typically in a context
10 like this I -- I'm thinking about as a change in
11 schedule. So, shifting one train from, you know,
12 time 2:00 o'clock in the morning to 2:00 o'clock
13 in the afternoon. That's what I think of as an
14 operational change.

15 CHAIRMAN OBERMAN: And when you were at
16 CSX, were you asked to model operational changes
17 vis-a-vis infrastructure to improve the system?

18 THE WITNESS: No.

19 MEMBER FUCHS: Marty?

20 CHAIRMAN OBERMAN: Yeah, yeah -- all
21 right, I'm going to -- yeah --

22 MEMBER FUCHS: Marty?

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1 CHAIRMAN OBERMAN: Patrick?

2 MEMBER FUCHS: Just two -- two notes.

3 CHAIRMAN OBERMAN: Go -- go ahead,
4 Patrick.

5 MEMBER FUCHS: Mr. Dinger, when you
6 discussed operational changes in the literature,
7 you -- you list other operational changes besides
8 what you just mentioned?

9 THE WITNESS: That's correct.

10 MEMBER FUCHS: All right. So there's a
11 broader range. And second of all, you'll be able
12 to see when you get -- when you're doing modeling,
13 you'll be able to see whether or not what you're
14 being provided to model infrastructure is
15 different than the real world so you will have
16 data to show whether or not the service design
17 team made operational changes?

18 THE WITNESS: Yeah. I'm not familiar
19 with all their changes, but generally, yeah.

20 MEMBER FUCHS: Okay. All right.

21 THE WITNESS: The service design time
22 is trying to optimize the use of that -- that

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1 infrastructure.

2 MEMBER FUCHS: So it's a -- it's a
3 knowable answer?

4 THE WITNESS: Yeah.

5 MEMBER FUCHS: All right. Marty,
6 please.

7 CHAIRMAN OBERMAN: Well, I think you
8 finished that line of questions, Patrick. So I
9 appreciate it. You articulated it better than I
10 could.

11 And I take it in this project, just
12 to -- I think it's pretty clear, but just to draw
13 a full circle here, no operational changes were
14 considered as alternative to any of the
15 infrastructure projects that ended up being in the
16 November 3rd report, correct?

17 THE WITNESS: No schedules were
18 changed.

19 CHAIRMAN OBERMAN: My question was were
20 any operational questions considered in running
21 the model?

22 THE WITNESS: The reason I provide that

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1 distinction is, you know, when you run the model
2 of course it's going to change the operations. So
3 for instance, sidings that used to be able to be
4 used, where you could set a freight train on main
5 line no longer -- is no longer possible once you
6 add passengers. You know that -- that
7 introduction of passenger service fundamentally
8 changes the operations on the corridor. That's
9 what the model is, you know, simulating. But it
10 was -- no inputs were changed.

11 MEMBER FUCHS: Marty --

12 CHAIRMAN OBERMAN: I -- I just -- let
13 me just ask this.

14 No operational inputs were changed
15 going into the model, correct?

16 THE WITNESS: Yes, that is an accurate
17 statement.

18 CHAIRMAN OBERMAN: All right. Go
19 ahead, Patrick.

20 MEMBER FUCHS: That's what I was going
21 to ask, thank you.

22 CHAIRMAN OBERMAN: Okay. All right,

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1 you know, Mr. Dingler, I think that's the only
2 follow-up questions I have. Are there others,
3 other board members?

4 MEMBER PRIMUS: Yeah, I -- I got one,
5 Marty. But -- but Patrick if you want to follow
6 up, I have a different sort of clarifying
7 question.

8 MEMBER FUCHS: Okay. Well, just to
9 follow up, Mr. Dingler, you said you relied on the
10 FRA user manual to guide you in picking 20 years.

11 THE WITNESS: It -- I was aware of it
12 before then but it's -- it's been listed in that
13 guidance manual that we cite. As along with --
14 you know, you look at other, you know, projects,
15 20 years is -- is very common.

16 MEMBER FUCHS: Are -- are you -- are
17 you aware that the guidance manual seems to also
18 suggest that delays should be measured associated
19 with each train, that revisions to train schedules
20 should be considered, that cost estimates for each
21 project should be arrived at and -- and in
22 prioritizing projects, executives often demand the

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1 cost per minutes saved?

2 THE WITNESS: I don't remember the full
3 report.

4 MEMBER FUCHS: Was any of -- so -- so
5 you didn't -- you didn't look to the guidance
6 manual for any of those suggestions?

7 THE WITNESS: No.

8 MEMBER FUCHS: Okay.

9 CHAIRMAN OBERMAN: All right. Robert?

10 MEMBER PRIMUS: Thanks, Marty.

11 Mr. Dingler, I'm -- I'm, going to ask
12 -- go back to something different, the projects,
13 the 14 projects, if I might. You said that the --
14 you also submitted Lake Catherine as a potential
15 project and that was withdrawn because CSX had an
16 issue with whether it was constructable, correct?

17 THE WITNESS: Yeah, and long-term
18 maintenance. Yeah, there's -- I said, the
19 iterative nature of developing projects, it was
20 one that we looked at at one time.

21 MEMBER PRIMUS: So -- so when you --
22 did you submit like Lake Catherine with your

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1 initial set of projects or was that an individual
2 project that you submitted?

3 So what -- so basically what I'm saying
4 is did you submit 15 projects to begin with or --
5 or -- or how many projects did you come up with
6 before they whittled it down to 14?

7 THE WITNESS: It was not whittled down
8 to 14. You know, in the course of developing
9 projects, you know, in doing some simulations, I'm
10 like, oh, it looks like it may make sense to put a
11 project there. I would -- you know, and then was
12 discussed about constructability. There is --
13 because of the concerns we looked at alternative
14 projects. It was -- at that location there was
15 easily to extend Claiborne alternatively.

16 MEMBER PRIMUS: Okay. Well, how -- how
17 many projects were -- were reviewed and -- and
18 subsequently rejected like Lake Catherine? Did
19 you -- do you recall how many projects those --
20 there were?

21 THE WITNESS: I said, I went up and
22 down that corridor looking for just about anything

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1 that could be built. As I said, there are some
2 challenges there. There were some projects that
3 we thought were buildable we didn't include. You
4 know, Orange Grove siding I believe, you know, was
5 one of them.

6 MEMBER PRIMUS: Now was that -- was the
7 Orange Grove, was that constructability or was
8 it -- what was the determining factor for that?

9 THE WITNESS: It wasn't required to
10 mitigate the impact to freight.

11 MEMBER PRIMUS: I guess -- sort of
12 clarifying, but the projects, neither of up to you
13 to sort of choose the projects to mitigate freight
14 and as the modeler I would assume that you're the
15 expert on what would mitigate and what wouldn't.
16 So who -- did -- did you make the decision that it
17 wouldn't mitigate or did someone else make that
18 decision?

19 THE WITNESS: Oh, it -- it would have
20 mitigated delay. It just -- we didn't need it.
21 That would have given more benefit or a benefit
22 that we weren't going to, you know, propose.

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1 So there was, I said, a whole host of
2 projects. You know, it's just part of the
3 iterative nature of, you know, trying to find the
4 right set so that we weren't -- we were just
5 mitigating the impact to passengers.

6 MEMBER PRIMUS: And -- and so, who made
7 that determination ultimately to that -- to those
8 14? Was it you or was it someone above or -- you
9 know -- and said how to figure that out?

10 THE WITNESS: It was me.

11 MEMBER PRIMUS: So but the Lake
12 Catherine, it wasn't you. It was -- it was CSX
13 who said it was too costly and -- and too much to
14 maintain, correct?

15 THE WITNESS: Yeah, we were -- I said,
16 I -- I consulted as part of it, consulted with the
17 railroads and just determined, yes, that reviewing
18 the projects. So I -- you know, I proposed some
19 projects, they reviewed them, and -- and, you
20 know, and some cases they said that that's not
21 constructable; you can't build that or do -- you
22 know. So, it was part of the iterative nature.

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1 MEMBER PRIMUS: Right. I'm just trying
2 to figure out. Do -- do you recall how many they
3 said were not constructable?

4 THE WITNESS: I don't remember.

5 MEMBER PRIMUS: Was it more than just
6 the Lake Catherine one? Do you recall.

7 THE WITNESS: Yeah. Honestly, one of
8 my favorite projects was to add a bridge at
9 Mobile, you know, a three-track bridge, and I got
10 told that was not constructable either.

11 MEMBER PRIMUS: Do you recall the cost
12 of that bridge?

13 THE WITNESS: It was never costed.

14 MEMBER PRIMUS: Okay. And -- and so,
15 when they say it was unconstructable, what did
16 they -- how did they describe -- how did they tell
17 you that it was not constructable?

18 THE WITNESS: I'm not sure. I -- I
19 think there -- there aren't many three-track
20 drawbridges. So, I -- I don't remember the all
21 the details.

22 MEMBER PRIMUS: Okay. I'm trying to

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1 figure out how -- you know, who made the decisions
2 in terms of ultimately those -- the -- you know
3 the construction or the infrastructure projects.
4 Because I know you said that you submitted the 14
5 that were approved but was it 14 that -- that
6 someone else approved, you know, once they
7 reviewed yours, or was it 14 that you said that
8 they approved once you said -- you gave the okay
9 on?

10 I'm just trying to figure out what the
11 process was. Was it CSX who approved the
12 bridge -- ultimately approved them or was it you
13 who ultimately approved -- approved the bridges?

14 THE WITNESS: So, I guess the --

15 MEMBER PRIMUS: I'm sorry,
16 infrastructure projects. I'm sorry.

17 THE WITNESS: Yeah. So it's an
18 iterative process. I'm said, we're developing
19 projects. I'm -- I'm asking, you know, "Can you
20 build this?" and they say yes or no. Ultimately
21 I've put forward the 14 projects. I believe these
22 were reviewed by the Clean Team and they felt

1 comfortable that they were -- they were
2 constructable.

3 So, I said, I put forward the projects
4 but there was a layer of review to ensure that,
5 you know, they could build these.

6 MEMBER PRIMUS: Okay. I guess I -- and
7 I don't want to belabor this, but so the -- were
8 the 14 sort of the final or was it -- was it you
9 gave some and they gave it back to you and said,
10 "No, we can't -- these are unconstructable -- not
11 constructable," and then you went back and did it
12 again, and then they said, "Okay, I'll take two
13 more of these, but the others weren't"? Is that
14 how the process was or did you just give them, you
15 know, a whole host and then they just whittled it
16 down to 14?

17 THE WITNESS: No. It was -- I said --
18 it was that first sort of way you described it.
19 You know, I -- I put forward, "You know, I think
20 there's an issue here. Can we build this?" And
21 so, yeah, then I -- I would develop alternative
22 projects.

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1 So it was again, I keep -- you know, I
2 said, I keep driving it was iterative. There
3 wasn't a clear-cut, yeah, I developed this set and
4 they said no. We were -- we were working as a
5 team.

6 MEMBER PRIMUS: So -- so and my -- my
7 final sort of is -- is who is -- when you say
8 "they," who are they?

9 THE WITNESS: People at CSX and NS.
10 I'm not -- Will Roseborough was part of the Clean
11 Team. He was the one I talked to a lot about
12 that.

13 MEMBER PRIMUS: Okay.

14 THE WITNESS: Beyond that I'm not sure.

15 MEMBER PRIMUS: You're not sure who --
16 who approved or disapproved of those projects?

17 THE WITNESS: That I do not know.

18 MEMBER PRIMUS: So -- so how did you
19 find out who approved -- how -- how they were
20 approved or not? Who -- who told you?

21 THE WITNESS: Typically it would come
22 through Will Roseborough on the Clean Team.

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1 MEMBER PRIMUS: Okay. Okay, thank you.

2 CHAIRMAN OBERMAN: Patrick?

3 MEMBER FUCHS: Marty, I'll just have
4 some really quick technical questions -- well
5 hopefully quick technical questions.

6 Just reflecting, Mr. Dingler, on your
7 testimony from earlier about -- I think, you know,
8 you had provided some useful information about a
9 TRAIN profile versus dispatcher files.

10 THE WITNESS: Mm-hmm.

11 MEMBER FUCHS: Could you just make
12 sure -- to make sure I'm absolutely tracking, are
13 the RTC departure times for trains that go from
14 say Gentilly Yard derived from the dispatch file
15 or from the TRAIN profile file?

16 THE WITNESS: The TRAIN profile.

17 MEMBER FUCHS: Okay. And -- and if
18 there are discrepancies between the dispatch and
19 TRAIN profile, what would be the most likely
20 causes?

21 THE WITNESS: I'm thinking. Yeah, I'd
22 have to know -- you know, often times -- sometimes

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1 those trains are working inside the yard and start
2 seeing it ping, you know, that first, you know,
3 circuit. My understanding is that TRAIN profile
4 is typically populated based on when it hits the
5 main line.

6 MEMBER FUCHS: Would a --

7 THE WITNESS: So.

8 MEMBER FUCHS: Would a TRAIN profile --
9 would the TRAIN profile entry ever be before
10 the -- the -- the first ping from a dispatching
11 log?

12 THE WITNESS: Getting very technical.
13 Sometimes -- there are sometimes an offset applied
14 to it, based on where that -- that data is pulled
15 in from. But again I'd have to look at location
16 by location, and so --

17 MEMBER FUCHS: Okay.

18 THE WITNESS: -- and specific data.

19 And so just what -- you know, the -- the
20 information is randomized. It's in my work
21 papers. You can look at sort of the distributions
22 I used and -- and compare that against actuals.

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1 MEMBER FUCHS: That's helpful. Thank
2 you.

3 And then you had said that the way that
4 priority works for intermodal and Amtrak is
5 totally different?

6 THE WITNESS: No. The -- I said,
7 preference is sort of in the model. It's similar.
8 But how you would operate and you're -- you're
9 amount of delay you can accept and the -- you
10 know, the control the railroads have over it is
11 very different.

12 You know, you are holding intermodal
13 trains to a 15-minute standard.

14 MEMBER FUCHS: So, in -- in practice,
15 if you look at, you know, an RTC model run and if
16 you were to swap an Amtrak train or an intermodal
17 train, what in practice would look different in
18 terms of how that intermodal train would virtually
19 run through the system? You know, does it take
20 sidings different -- does it take different
21 sidings? Does it take different sidings for
22 longer? You know, help me understand that so I --

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1 I can kind of understand the distinction you're
2 referring to.

3 THE WITNESS: Yeah, it's level of
4 preference to be less. So it would, you know, be
5 able to -- it -- it'd be more likely to take a
6 siding. It still would be higher than the general
7 merchandise train typically, because they have
8 tighter schedules. But its -- its impact to be
9 less. So it takes --

10 MEMBER FUCHS: How do you -- how do
11 you -- how do you program a -- in layman's terms,
12 program a lower level of preference?

13 So I -- I had read in your work that
14 was listed in -- in -- in one of the appendices
15 that intermodal has the highest level of priority.

16 THE WITNESS: Amongst freight
17 typically.

18 MEMBER FUCHS: I'm sorry?

19 THE WITNESS: Amongst freight
20 typically.

21 MEMBER FUCHS: And so how -- how do you
22 program that Amtrak has a higher level of priority

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1 than intermodal within the RTC model?

2 THE WITNESS: So there's a -- sort of
3 a -- a range -- yeah, there's a range of numbers
4 between zero and 10,000.

5 MEMBER FUCHS: I see.

6 THE WITNESS: And you can get sort of a
7 range there. And so, yeah, you serve -- it
8 depends on each railroad as they have evaluated
9 it. With CSX we met with, you know, our -- our
10 operating people and -- and tried to sort of set
11 those at the right number.

12 MEMBER FUCHS: What is -- number does
13 Amtrak have?

14 THE WITNESS: It's -- it's close to
15 the -- you know, close to 10,000. So it's --

16 MEMBER FUCHS: Okay.

17 THE WITNESS: -- you know, and you can
18 arrange that, you know, so when that train runs a
19 little bit early, its -- its preference will go
20 down; when it runs late, its preference or
21 priority to go up. And so there is a range --

22 MEMBER FUCHS: What -- what number does

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1 intermodal have, typically?

2 THE WITNESS: I would have -- I'd have
3 to go into the model. You can open up the work
4 papers and go to the Option file --

5 MEMBER FUCHS: So we would be able to
6 see -- we would be able to see what number was
7 used for intermodal?

8 THE WITNESS: Yes. And that would be a
9 default provided by CSX. There were no intermodal
10 trains in -- in this case and so, yeah, you'd have
11 to look back at standard.

12 MEMBER FUCHS: If we were to look at
13 other studies, would those numbers be the same?

14 THE WITNESS: Maybe. Each railroad
15 sets those -- sort of dials in RTC for their own
16 studies. So I -- I would imagine in the same
17 ballpark but I doubt they'd be identical.

18 MEMBER FUCHS: Okay, and last question
19 from me is, over time, reasonable to assume that
20 railroad productivity schedules and infrastructure
21 would change on a given segment?

22 THE WITNESS: How do you define

1 "productivity"?

2 MEMBER FUCHS: You know, a number of
3 ways you could define productivity. You could --
4 you could do it, you know, ten miles per
5 locomotive. You could do it ten miles per crew.
6 You know, there's -- there's a number of different
7 measures of productivity. You -- you could -- you
8 know, you could even do it, you know, speed,
9 maintenance problems, etc. You know, but -- but,
10 you know, I wouldn't say there's one hard and fast
11 measure but, you know, the -- the general suite of
12 that railroad operations improve over time.

13 THE WITNESS: Yeah, well, I said,
14 that's why I ask a little bit. Because the
15 productivity and railroad operations are not
16 necessarily one to one correlated.

17 MEMBER FUCHS: Mm-hmm.

18 THE WITNESS: You know, it's talk about
19 long trains and, you know, and everything else.

20 So, yeah, you know, generally that's --
21 that's the railroad's a company. You know,
22 they're trying to improve their productivity. So

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1 yes, it would be safe to say they're trying to
2 improve the productivity on a day-to-day basis.

3 MEMBER FUCHS: Is there -- I mean, is
4 there -- is there anything that showed that
5 railroads' operation schedules -- you know, I
6 think you had mentioned schedules get optimized
7 over time, you know productivity enhanced over
8 time, railroad operations improve over time,
9 infrastructure might change over time, you know,
10 there might be better engineering practices, you
11 know -- you know.

12 Is there anything, you know, that
13 within your modeling of 2039 versus 2019 that
14 captures, for lack of a better term, railroading
15 progress over 20 years? I mean, heck, even
16 technology, right? You -- you -- you've written
17 about dynamic block. You've written about new
18 braking technologies. You know, over 20 years in
19 the real world, things are going to change.

20 Is there anything besides lengthening
21 trains which is just a way to allocate growth that
22 changes between 2019 and 2039?

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1 THE WITNESS: Like I said, there was
2 one local that there was a Chrissy project near
3 Pascagoula that actually allowed for some -- you
4 know, you didn't -- that -- that one train that
5 got talked about that had to store their cars in
6 Grotier --

7 MEMBER FUCHS: Right.

8 THE WITNESS: -- it no longer has to do
9 that because of a project that was built.

10 MEMBER FUCHS: Right.

11 THE WITNESS: You know, so, but not --
12 not anything fundamental, like technology wise.

13 MEMBER FUCHS: Or -- okay, that's -- I
14 hear you. Okay, thank you.

15 CHAIRMAN OBERMAN: Any other questions
16 from board members?

17 Ray, redirect?

18 MR. ATKINS: Thank -- thank you,
19 Chairman. I really only have two questions and
20 then I'll be done.

21

22

1 REDIRECT EXAMINATION

2 BY MR. ATKINS:

3 Q. Mr. Dingler, what if any specific
4 alternative infrastructure projects has Amtrak or
5 its witnesses offered that might be more cost
6 effective than the 14 projects you proposed in
7 your report?

8 A. Are you talking about the EB and
9 Peabody or the workforce working group.

10 Q. No, just -- in this case Amtrak and
11 Crowley and Fapp.

12 A. I am unaware of any infrastructure they
13 recommended.

14 Q. What if any specific operating changes
15 has Amtrak or its witnesses -- Mr. Crowley or Mr.
16 Fapp -- proposed that might reduce the need for
17 any of the proposed projects?

18 A. I'm not aware of any operation changes
19 they recommend.

20 MR. ATKINS: Chairman, we have no more
21 questions for this witness.

22 MS. BRACEY: Mr. Chairman, I have one

1 question.

2 CHAIRMAN OBERMAN: Go ahead.

3 RECROSS-EXAMINATION

4 BY MS. BRACEY:

5 Q. You testified that these are different
6 levers -- that there are different levers that
7 railroads might pull before spending their own
8 money on infrastructure. What --

9 MR ATKINS: So Mr. Chairman, can I
10 object for a moment? Her -- her cross should be
11 in response to my redirect.

12 MS. BRACEY: I'm asking --

13 MR. ATKINS: It's outside the scope of
14 my redirect.

15 CHAIRMAN OBERMAN: Hold on a minute.

16 MR. ATKINS: There's no -- there's no
17 way she gets to -- I don't think it's appropriate
18 to have redirect on any of the questions that he
19 got from you over in past hour and a half. It
20 should be within the scope of my redirect. I had
21 two questions. That should be the full scope of
22 her re-examination.

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1 CHAIRMAN OBERMAN: I'm going to

2 overrule that objection because of --

3 (Network feedback.)

4 CHAIRMAN OBERMAN: All right. Hold on.

5 All right. Now that's better.

6 I'm going to overrule that objection.

7 The questioning from the board members went -- was
8 very wide ranging and I think all parties should
9 have an opportunity to clarify, redirect, recross
10 on anything that came up. So, given that, I am
11 going to permit Ms. Bracey to ask --

12 Do you want to re-ask the question
13 because I've lost it.

14 MS. BRACEY: Yes, I -- I can re-ask the
15 question.

16 BY MS. BRACEY:

17 Q. So you testified that there are
18 different levers that railroads might pull before
19 spending their own money on infrastructure. What
20 are those different levers?

21 A. You know, longer trains is a great
22 example of that, distributive power. Yeah. Those

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1 are two of the -- you know, the common levers that
2 are used. You're -- you're trying to, you know,
3 lengthen trains instead of adding more trains.

4 MS. BRACEY: I don't have any further
5 questions.

6 CHAIRMAN OBERMAN: Port, do you have
7 any questions?

8 MR. WIMBISH: No, sir, we do not.

9 CHAIRMAN OBERMAN: I just have one.

10 Ray asked you if there was anything
11 that Amtrak had suggested by way of infrastructure
12 that was more cost effective. Did you do an
13 analysis to -- about the Amtrak projects in terms
14 of their cost as related to the cost of the
15 projects in your report? Can you answer?

16 THE WITNESS: Yeah, I -- I did not see
17 any alternative projects recommended in -- by
18 Messers Crowley and Fapp.

19 CHAIRMAN OBERMAN: Oh, I see. So you
20 weren't talking about the projects that were in
21 the FRA working group report that was filed by
22 Amtrak I take it?

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1 MR. ATKINS: That's correct, Mr.

2 Chairman. That was not my question.

3 CHAIRMAN OBERMAN: Oh, I -- I took that
4 to be your question.

5 MR. ATKINS: Mm-hmm.

6 CHAIRMAN OBERMAN: So you're -- you're
7 saying you didn't do a -- see any cost
8 effectiveness because you didn't see any projects
9 to measure the cost effectiveness? Is that what
10 you were saying in answer to Mr. Atkins' question?

11 THE WITNESS: That is -- that is
12 correct.

13 CHAIRMAN OBERMAN: Okay. All right.
14 I -- I -- sorry. I thought you were being more
15 inclusive, Ray, when you asked the question. I
16 didn't take it that way.

17 MR. ATKINS: Understood.

18 CHAIRMAN OBERMAN: That was all I --
19 that was all I -- well, on that subject, did --
20 did you do an analysis of the FRA recommended
21 projects that were in the working group?

22 MR. ATKINS: Mr. Chairman, we've

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1 gone -- we've gone through that on direct for
2 hours. We went on -- on it on cross. I mean,
3 if -- if your question -- how much longer are we
4 going to -- are we going to cross-examine Mr.
5 Dingler?

6 CHAIRMAN OBERMAN: As long as it takes.
7 Did you do a -- a cost-effective
8 comparison between the FRA projects and the ones
9 in your report? I don't think that question has
10 been asked.

11 THE WITNESS: We modeled the -- the FRA
12 projects in 2039. There was no cost-benefit
13 analysis done for any project.

14 CHAIRMAN OBERMAN: Well, you certainly
15 didn't measure the cost then against -- of the FRA
16 projects against the ones in your report. Fair
17 enough?

18 THE WITNESS: No. Yeah, and -- and be
19 careful with those. Those costs are from 2016.
20 And so to provide a fair comparison they'd have to
21 be re-costed.

22 CHAIRMAN OBERMAN: You didn't compare

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1 them in any way?

2 THE WITNESS: No.

3 CHAIRMAN OBERMAN: Okay, that was all I
4 had. Anybody -- anybody else?

5 Mr. Dingler, you're excused. Thank you
6 for your patience.

7 THE WITNESS: You're welcome. Thank
8 you so much.

9 (Witness is excused.)

10 MR. ATKINS: So Mr. Chairman, I'm going
11 to be turning it over to Mr. Donahoe for the next
12 witness.

13 CHAIRMAN OBERMAN: All right.

14 MR. DONAHOE: Mr. Chairman, with your
15 permission, Norfolk Southern and CSX calls Mr.
16 Larry Guthrie to the stand.

17 (Larry Guthrie on the witness stand.)

18 CHAIRMAN OBERMAN: All right. Is
19 this -- is this the last witness on your list?

20 MR. DONAHOE: Yes, it is.

21 CHAIRMAN OBERMAN: All right, Mr.
22 Guthrie, please raise your hand, right hand. Do

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1 you swear or affirm that the testimony you are
2 about to give in this proceeding is the truth, the
3 whole truth and nothing but the truth?

4 THE WITNESS: Yes, sir.

5 CHAIRMAN OBERMAN: Would you please
6 state your name. You're not -- your microphone
7 isn't on.

8 THE WITNESS: My name is Larry R.
9 Guthrie.

10 CHAIRMAN OBERMAN: All right, and I
11 assume the court reporter took down that you
12 answered yes that you would swear to tell the
13 truth. We couldn't hear him.

14 THE COURT REPORTER: Yes, I did. I
15 could read his lips.

16 CHAIRMAN OBERMAN: All right. All
17 right, thank you.

18 Mr. Donahoe, proceed.

19 MR. DONAHOE: Thank you.

20

21

22

1 Whereupon,

2 LARRY GUTHRIE

3 called as a witness by counsel for Norfolk
4 Southern and CSX, and after having been first duly
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. DONAHOE:

8 Q. Mr. Guthrie, how are you currently
9 employed?

10 A. I am employed by R.L. Banks and
11 Associates.

12 Q. And -- and before we get into that a
13 little bit more, could you describe your
14 educational background?

15 A. I -- I have a -- excuse me, a bachelor
16 of applied science from Southern Polytechnic
17 State -- State University in Marietta, Georgia. I
18 graduated in 2001.

19 Q. Did you have any after-college
20 educational experiences?

21 A. Yeah, while I was at Norfolk Southern,
22 I -- I'm Six Sigma certified, supply chain

1 management certified, as well as, excuse me, Lean
2 and the last of course would be I was formally a
3 certified FRA instructor of locomotive engineers,
4 designated instructor of locomotive engineers.

5 Q. I'm not sure we've heard any testimony
6 on that previously. Could you describe to the
7 board what an FRA designated supervisor of
8 locomotive engineers does?

9 A. It's responsible for making sure that
10 the locomotive engineers -- on this case Norfolk
11 Southern -- comply with the FRA 240 -- 240 and CFR
12 240 rules and make sure that the -- the company is
13 performing a proper -- proper audit or efficiency
14 checks.

15 Q. During your time in that position,
16 would you have -- would there have been Amtrak
17 passenger lines or passenger trains on Norfolk
18 Southern lines?

19 A. The ones I was responsible for was
20 number 19 and number 20 to Crescent.

21 Q. And -- and what do you mean you were
22 responsible for them?

1 A. Responsible for the locomotive
2 engineer's performance and making sure that he
3 adhered to the schedule.

4 Q. So even though you worked for Norfolk,
5 the fact that Amtrak engineers are on our lines,
6 that responsibility fell to you?

7 A. That's correct.

8 Q. Could you please explain to the board
9 your background, the extent of your work with
10 Norfolk Southern.

11 A. Well, excuse me, I -- I spent 42 years
12 before I retired in 2010. Thirty-four years of
13 that was in management in the various departments
14 of mechanical transportation. I served in the
15 treasurer -- for the treasurer for a while,
16 strategic IT and strategic planning.

17 Q. In your railroad experience in Norfolk
18 Southern, did you ever utilize RTC modeling?

19 A. Yes. When I went to strategic planning
20 I became manager of industrial engineering
21 operations research and circa 2010 we used RTC to
22 test all of our infrastructure projects on the

1 system.

2 Q. So is it fair that, beginning in around
3 2010, sometime in that time frame, that's when you
4 were involved with RTC modeling at Norfolk?

5 A. That's correct.

6 Q. Okay. Were there any projects that you
7 were involved in at Norfolk Southern that involved
8 RTC modeling?

9 A. There were many projects, primarily on
10 three corridors: the Heartland Corridor, the North
11 Carolina Railway Passenger Corridor, which has
12 been referred to earlier as the Piedmont
13 Improvement Corridor or project, and -- and
14 finally the Crescent Corridor.

15 Q. If we can just briefly go through those
16 projects, why don't you talk a little bit about
17 the Heartland project and what was involved in
18 that.

19 A. The Heartland project was a project to
20 heighten the tunnels between Norfolk, Virginia and
21 Chicago and particularly in West Virginia,
22 Virginia and Kentucky. It's to allow us to run

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1 double stack containers and increase our
2 performance and our speed in that corridor.

3 Q. Let -- let me stop you there. So in
4 that project did that involve the addition for new
5 passengers service on that line?

6 A. It involved passenger service between
7 Belleview, Ohio and Chicago.

8 Q. And I think you answered the question
9 but did it involve some infrastructure since there
10 had to be changes in the tunnels?

11 Is that correct?

12 A. That's correct. As also -- also there
13 was terminal, a terminal built in West Virginia.

14 Q. Can you tell the board a little --

15 CHAIRMAN OBERMAN: Mr. Donahoe, there's
16 a little something I'm confused. I think you
17 asked the question if there was "new" passenger
18 service and I'm not sure if Mr. Guthrie said
19 whether it was new or not.

20 So I just wondered if he --

21 MR. DONAHOE: Chairman, I'll clarify.
22 I thought I said "new or existing" but I'll ask

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1 the question again to get a clarification.

2 CHAIRMAN OBERMAN: All right, thank
3 you.

4 MR. DONAHOE: Sure.

5 BY MR. DONAHOE:

6 Q. So let me -- that was probably my
7 fault, Mr. Guthrie.

8 On the -- on the Heartland project was
9 there new or -- new passenger service put on that
10 line during that project?

11 A. Existing passenger service, not new.

12 Q. Okay. Thank you.

13 MR. DONAHOE: Does that clear it up,
14 Chair?

15 CHAIRMAN OBERMAN: Thank you.

16 MR. DONAHOE: Sure.

17 BY MR. DONAHOE:

18 Q. Can you tell the board a little bit
19 about the Crescent Corridor project?

20 A. The Crescent Corridor project was from
21 Harrisburg -- actually, I'm sorry, from DC area to
22 New Orleans and that particular project, what we

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1 did was we straightened curves, we added -- added
2 sidings, we changed signal spacing and increased
3 the speed of the track in order to improve the
4 performance of our -- of all of our trains in our
5 corridor.

6 Q. And on the Crescent Corridor project,
7 did that involve the introduction of any Amtrak
8 passenger service?

9 A. Not at -- not that particular project,
10 no. It was number 19, number 20 Amtrak.

11 Q. Okay. Fair enough. And RTC modeling
12 was both used by you on the -- the Heartland and
13 the Crescent projects, correct?

14 A. Yes, that's correct.

15 Q. Let's talk for a minute about the NC,
16 North Carolina Railroad Corridor project. Can you
17 tell the board something about that?

18 A. It was a state-funded project between
19 Raleigh and Charlotte to provide new service for
20 the North Carolina railroad passenger and which
21 we -- we added sidings and again signal -- changed
22 signal spacing so forth to improve or increase the

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1 speed on that corridor.

2 Q. So was there existing passenger service
3 on that line at the start of the project?

4 A. When -- when I started the project
5 there was I think two trains on that, but the --
6 the objective was to increase the corridor
7 passenger service.

8 Q. I'm sorry. And who ran those passenger
9 lines?

10 A. Amtrak.

11 Q. Okay. Was there infrastructure
12 required for that project?

13 A. Yes.

14 MEMBER PRIMUS: May I ask a quick
15 question? I'm sorry.

16 MR. DONAHOE: No, go ahead.

17 MEMBER PRIMUS: Just -- just for
18 clarification, when was that? Do -- do you recall
19 the year that was -- that was done?

20 MR. DONAHOE: The year of the North
21 Carolina Railroad Corridor project, Mr. Primus?

22 MEMBER PRIMUS: Yes, sir.

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1 MR. DONAHOE: Okay. Go ahead, Larry.

2 THE WITNESS: I don't recall the year.
3 Mr. Hunt I think alluded to that earlier in his
4 testimony.

5 MEMBER PRIMUS: Okay, thank you.

6 MR. DONAHOE: Sure.

7 BY MR. DONAHOE:

8 Q. On these three projects that you were
9 involved in, did -- did they require site visits?

10 A. All, all of them involved site visits,
11 yes.

12 Q. And in all three of these projects in
13 which you used RTC modeling, was there some type
14 of validation process to the model?

15 A. Every -- every project had a validation
16 process.

17 Q. And -- and I know the validation
18 process used in the Gulf Coast that we'll get to
19 involved different -- different individuals
20 obviously, but was it analogous to the Clean Team?

21 A. Very much so. Very much, they were one
22 in the same.

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1 Q. Can you ballpark how many RTC
2 simulation projects you participated in in your
3 career?

4 A. Myself and my team, well over 50.

5 Q. When you did RTC modeling, did it
6 typically account for other movements on the line
7 other than freight trains?

8 A. Yes, light engine moves in particular,
9 high-rail movements or maintenance of way, we're
10 doing track inspections most -- was the most
11 frequent.

12 Q. And when you did RTC modeling at
13 Norfolk Southern, why would you account for those
14 other movements on the line?

15 A. Because they consume capacity just
16 like -- just like a freight train would. You're
17 operating on CTC signal territory so, although
18 they're small movements, they still occupy
19 capacity.

20 Q. And what year did you retire from
21 Norfolk Southern?

22 A. 2010, February 1st, 2010.

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1 Q. And -- and where did you go or what job
2 did you hold after 2010?

3 A. I went to consulting for a company
4 called TUV Rheinland Mobility. They had -- they
5 were a German company wanting to extend their
6 footprint in the United States. They already had
7 a footprint in -- in Detroit and so they opened up
8 a satellite office in Tucker, Georgia, which is a
9 suburb of Atlanta.

10 Q. How long did you --

11 CHAIRMAN OBERMAN: Mr. Donahoe, I've
12 had a request to ask Mr. Guthrie to move his
13 microphone a little bit closer. He's not coming
14 through to some of the members.

15 MR. DONAHOE: Sure.

16 THE WITNESS: Test, test, test.

17 MR. DONAHOE: Testing one, two, three,
18 just to see if it's any better.

19 THE WITNESS: Test one, two, three,
20 four.

21 CHAIRMAN OBERMAN: Okay.

22 MR. DONAHOE: That work?

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1 CHAIRMAN OBERMAN: Sounds like it to
2 me. It was somebody else who was having trouble
3 hearing. So let's -- let's proceed and see if
4 that works.

5 MR. DONAHOE: Okay.

6 BY MR. DONAHOE:

7 Q. How long did you work at TUV Rheinland?

8 A. I worked at TUV Rheinland until 2019.

9 Q. So from 2010 to 2019 you worked there,
10 correct?

11 A. That -- that's correct.

12 Q. And what was your job at TUV Rheinland?

13 A. I was a general director of operations
14 and -- and service design.

15 Q. During the time that you were -- were
16 at TUV Rheinland, did they use RTC modeling?

17 A. They had a proprietary model which had
18 been used prior to my time coming there. I
19 attempted at that point to get the management to
20 purchase RTC, a model that I was very much
21 familiar with, but the German company would not
22 allow me to purchase it, lack of cost

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1 justification.

2 Q. So you recommended that TUV Rheinland
3 use RTC modeling?

4 A. Yes, I did.

5 Q. If I can take a minute, let's discuss
6 your work at R.L. Banks & Associates, okay? When
7 did you start there?

8 A. I started at R.L. Banks in September I
9 think of 2019 I believe it was.

10 Q. And what do you see your job there at
11 R.L. Banks and Associates?

12 A. Very similar in title, director of
13 operations and service planning. My -- my job
14 functions were planning, financial analysis,
15 capacity analysis, et cetera.

16 Q. Can you describe to the board any
17 projects that you have worked on since you've been
18 at R.L. Banks?

19 A. RTC projects?

20 Q. Yes, please.

21 A. Currently working on a project in
22 Chicago, Chicago to Aurora. The Metro -- I'm

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1 sorry, the Metra Kendall Extension Project. Part
2 of that project is to analyze 14th Street Yard and
3 of course the main crux of the project is an
4 extension to Sandwich, Illinois -- Illinois.
5 There's three stations that are planned to be
6 built and the infrastructure that's needed to do
7 that. There is RTC plan for that but it hasn't
8 started yet.

9 Q. So it -- it is planned on doing RTC
10 modeling?

11 A. That's correct.

12 Q. And who retained you in that case,
13 "you" meaning R.L. Banks?

14 A. R.L. Banks was retained by Alfred
15 Benesch in Chicago, an engineering design firm.

16 Q. Could you describe any other projects
17 you've been involved in since you've been at R.L.
18 Banks, not including the current one, we'll get to
19 this?

20 A. Um --

21 Q. Were you involved in Marta at all?

22 A. Oh, yes, excuse me. We are currently

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1 involved with Marta, a strategic planning project
2 for us; two projects involving Norfolk Southern as
3 well as CSX. The Marta would like to use their
4 right-of-way to offer new passenger service.

5 Q. Has RTC modeling been done in that case
6 yet?

7 A. Not -- not in any of the case, no.

8 Q. Okay. Has it been projected that it
9 will be used?

10 A. Quite possible, yes.

11 Q. Who retained you, "you" meaning R.L.
12 Banks, in the Marta project?

13 A. Marta did.

14 Q. Okay. And both of those projects, even
15 though RTC modeling hasn't been done, it's
16 contemplated that it will be a tool that's used?

17 A. Yes, it's contemplated. Yes. The
18 answer is yes.

19 Q. And I -- I think I forgot to ask you,
20 in both of those projects, the Marta and the
21 Metra, is it likely that infrastructure is going
22 to be needed?

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1 A. In both cases infrastructure will be
2 needed.

3 MS. BRACEY: I ask that the answer be
4 stricken as -- as being a prediction.

5 MR. DONAHOE: I'm sorry -- I'm sorry,
6 counsel, you broke up. I didn't really get the
7 objection.

8 THE WITNESS: As speculation, objection
9 as to speculation.

10 CHAIRMAN OBERMAN: Can you lay a
11 foundation?

12 MR. DONAHOE: I can. I can. I can,
13 Chair.

14 CHAIRMAN OBERMAN: Why don't you -- let
15 me withhold the ruling on the objection, see if
16 you can lay a foundation for his statement about
17 infrastructure.

18 MR. DONAHOE: Sure.

19 BY MR. DONAHOE:

20 Q. Let -- let's talk about -- why don't we
21 try and lay a foundation for the Metra project
22 first. Have you been involved in any

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1 conversations, your work in that project where the
2 possibility of infrastructure has been discussed?

3 A. Yes.

4 MS. BRACEY: Same objection.

5 CHAIRMAN OBERMAN: Well, is -- is that
6 your -- is that your complete foundation?

7 MR. DONAHOE: That is my complete
8 foundation. He has firsthand knowledge. He was
9 part of the conversations.

10 CHAIRMAN OBERMAN: Well, he didn't --
11 he didn't say whether the conversation consisted
12 of to support his prediction. I mean, I'm going
13 to sustain it unless you can give some basis on
14 which he can predict now that infrastructure will
15 be needed. I'm -- I'm inviting you to do it but I
16 haven't heard it yet.

17 BY MR. DONAHOE:

18 Q. Mr. Guthrie, when were those
19 discussions about the likelihood of infrastructure
20 being needed on the Metra protect?

21 A. Certainly prior to the pandemic Alfred
22 Benesch's plans with three stations as well as

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1 support tracks on the BNSF right-of-way that would
2 be I guess west of Aurora.

3 Q. So there were specific infrastructure
4 projects discussed?

5 A. That's correct, as well as additional
6 tracks in Chicago itself and currently they're
7 expanding the scope to -- to look at the
8 probability or the need for additional tracks in
9 the Aurora yard itself.

10 CHAIRMAN OBERMAN: Let me -- let see if
11 I can -- can move this along.

12 You said that they discussed that they
13 are planning it. As I understand it the previous
14 question was is it going to be needed. What is
15 the basis of your saying that the infrastructure
16 you've heard about will be needed if you haven't
17 done the study yet? So maybe you could answer
18 that question.

19 THE WITNESS: Well, the -- the plan --
20 the plan is to add three stations west of Aurora.
21 That is the plan and that requires infrastructure,
22 Chairman.

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1 CHAIRMAN OBERMAN: I don't mean to tell
2 you how to do it. Why don't you just ask him if
3 he's aware of plans for it and not when it's
4 needed, because that sounds to me like a
5 determination which is what he's studying, what
6 the need is.

7 THE WITNESS: May -- may I add --

8 MR. DONAHOE: Hold on. Let the
9 chairman finish.

10 CHAIRMAN OBERMAN: So, just to be
11 clear, Mr. Guthrie, their plans for
12 infrastructure, is one of the things that you
13 anticipate your work will do will be to measure
14 the need for it?

15 THE WITNESS: One of the things that a
16 we believe that the RTC simulation would show how
17 effective -- I'm sorry, not how effective, but the
18 need for either single or double track at the
19 location to handle it. As I said the RTC
20 simulation has not been done yet.

21 CHAIRMAN OBERMAN: Yeah, so would a
22 more accurate way to ask you the question be that

1 you're going to measure the need for the planned
2 infrastructure -- infrastructure, that that's the
3 work you're going to do?

4 THE WITNESS: That's correct, sir.

5 CHAIRMAN OBERMAN: All right, Ms.
6 Bracey, if -- I would allow that answer to stand.
7 I would sustain the objection to his already
8 knowing whether it's needed. He's made it clear
9 what his role -- role is.

10 Do you have anything further to add?

11 MS. BRACEY: Nothing further.

12 CHAIRMAN OBERMAN: All right. Proceed,
13 Mr. Donahoe.

14 BY MR. DONAHOE:

15 Q. Mr -- Mr. Guthrie, in the Marta
16 project, have there been any discussions about
17 plans for infrastructure?

18 A. Yes, there has.

19 Q. Were you involved in any of those
20 conversations?

21 A. Yes, I was.

22 Q. Can you tell us what some of those

1 plans were discussing for infrastructure.

2 A. Basically R.L. Banks was advising Marta
3 on the strategies to deal with CSX and NS in
4 the -- in the corridor, in Atlanta -- a corridor
5 in Atlanta, in CSX's right-of-way as well as in
6 Clayton County.

7 Q. How did you become involved in this
8 project or in this proceeding?

9 A. Metra retained us.

10 Q. No, I'm sorry, I switched gears on you.

11 In this proceeding, how did you first
12 get involved in this proceeding, the Gulf Coast
13 project?

14 A. Yes. R.L. Banks was retained by
15 Norfolk Southern and CSXT.

16 Q. What did you see your role as in this
17 proceeding?

18 A. Initially we were asked to take a look
19 at a proposed -- I'm sorry, a draft report and to
20 provide feedback on that report. But that -- that
21 was expanded to include the Clean Team, which has
22 been mentioned where we would look -- where we

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1 would provide input as far as modeling inputs,
2 methodologies and other factors that might -- that
3 might result in the RTC output.

4 Q. And you were part of the Clean Team?

5 A. Yes.

6 Q. And you worked with Mr. Banks on this
7 project?

8 A. Yes.

9 Q. Could you describe to the board kind of
10 the differentiation in the roles between what Mr.
11 Banks did and what you yourself did for R.L.
12 Banks.

13 A. I think Mr. Banks provided a -- a
14 higher-level role in advising strategies and so
15 forth, whereas my role was more of a technical
16 nature where I was involved in more or less
17 auditing the -- the RTC effort.

18 Q. You mentioned auditing. Have you
19 audited other RTC models other than the current
20 one?

21 A. Yes. I -- when I -- when I first went
22 to Banks, we modeled -- I audited a -- a Facebook

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1 project that's been mentioned I believe earlier by
2 Mr. Banks in -- across the San Francisco Bay, the
3 Dumbarton Bridge Project, which included
4 infrastructure and equipment as well as
5 operational design.

6 Q. When you were at Norfolk Southern, did
7 you ever have the responsibility for auditing or
8 verifying an RTC project?

9 A. Yes. All of the projects that -- that
10 Norfolk Southern did while I was manager of
11 investor auditing research I audited for them.

12 Q. If we can --

13 MEMBER PRIMUS: Counsel, can I just ask
14 a quick question, just -- just real quick?

15 MR. DONAHOE: Certainly.

16 MEMBER PRIMUS: Mr. Guthrie, Mr. Banks
17 in his testimony, when -- when he was asked about
18 auditing, he stated that he didn't really audit
19 the --the model or -- or the project.

20 Can you just sort of clarify what you
21 believe "audit" to be or what your definition of
22 audit when you say you audited the program?

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1 THE WITNESS: Basically I worked with
2 Mr. Dingler to verify -- and I verified the inputs
3 that Hannah and Holly provided. I looked at the
4 train movements and animation to determine if the
5 infrastructure and the operations appeared to be
6 proper, the methodology that Mr. Dingler used, and
7 of course we looked at the outputs and indeed, so,
8 if I found something that was irregular, we went
9 through a process of having him explain to me why
10 the discrepancy that I saw was occurring.

11 MEMBER PRIMUS: Okay. Thank you.
12 And -- and Mr. -- Mr. Banks was included on those
13 discussions?

14 THE WITNESS: No, sir he was not. This
15 was in my area of responsibility. Mr. Banks was
16 not involved.

17 MEMBER PRIMUS: Okay, thank you.

18 MR. DONAHOE: Okay?

19 BY MR. DONAHOE:

20 Q. So I do want to maybe drill down a
21 little bit. I think you gave kind of a -- a broad
22 overview of that. But I -- I want to ask you

1 specifically what your role was. And so if you
2 can kind of just take us through what you just
3 kind of outlined to Mr. Primus there, what your
4 role was in the Gulf Coast model.

5 A. Well, first of all, with Mr. Dingler,
6 he provided the TRAIN files as well as the
7 infrastructure files. I -- I reviewed all of the
8 TRAIN files on the -- for CSX as well as NS that
9 was melded together into one TRAIN file as well as
10 all of the summary field interviews to determine
11 that the train movement itself was correct. And
12 what I mean by that is, particularly in the yards
13 where you're creating head moves with trains that
14 are switching in the yard, you occupy the main
15 line. We had a lot of discussion about initial
16 trains in -- in the files. There are no
17 additional trains but there are a lot of
18 additional movements which are not necessarily
19 considered trains or blocked cars that are left on
20 the main line as well as, of course, the same is
21 true with -- in -- in Mobile.

22 So, my purpose there was to validate --

1 to validate all of the inputs to make sure that
2 those inputs were consistent with generally
3 accepted modeling or industry rules, which I'm
4 very much familiar with.

5 Q. Well, let me -- let me interrupt you
6 there and I apologize. But with respect to the
7 inputs, that's the information that Holly and
8 Hannah provided?

9 A. That's correct.

10 Q. Did you find them to be reliable based
11 on your experience in the railroad industry?

12 A. Very much so. Very much -- the -- the
13 inputs were very detailed and appeared to be very
14 accurate.

15 Q. After -- after your work on the inputs,
16 what was -- chronologically what was your role
17 next?

18 A. Well next of course I did verify the
19 infrastructure because Mr. Dingler had to meld
20 Norfolk Southern Terminal to the CSX main line
21 operations between Gentilly and Mobile. I
22 verified that -- that -- that the track layout was

1 correct. Indeed, I did find one discrepancy at
2 what would be the south end of Gentilly yard and
3 we discussed and Mr. Dingler made changes there.
4 But everything else appeared to be appropriate and
5 proper.

6 We discussed this methodology, the way
7 he modeled, every modeler has certain things that
8 they do that may be a little different from others
9 and most of the time that -- that has to do with
10 the way they model locals and -- and yard trains.
11 A modeler can take a simplified approach for a
12 local and in doing so they pull up to a location
13 and just wait on the main line for an amount of
14 time that would necessarily be required to serve a
15 plant. In other cases, a modeler may take a block
16 of cars physically from the main line into the
17 industry, spend an X amount of time in that
18 industry, pick up a set of cars -- set off and
19 pick up a set of cars back to the main line, do a
20 brake test and then they go to the next location.

21 So it's a much more detailed -- there
22 is much more detail necessary when you are

1 modeling yard and -- and local operations then
2 there would be for main line trains, because RTC
3 model generally takes care of all of the movements
4 from new -- New Orleans to Mobile.

5 Q. Let me ask a question here. Did you
6 actually sit with Mr. Dingler on occasions and --
7 and see the model being run?

8 A. Yeah. One of the -- one of the -- the
9 best -- the best way for me, and I suspect most
10 modelers, to identify improper train movements or
11 bottlenecks where trains are -- are backing up in
12 the system, is to observe the animation function.
13 And I spent two days prior to going to the site
14 visit between Mobile and New Orleans and --

15 Q. But let me stop you there, okay, and
16 again I don't mean to interrupt, but I think it's
17 some information...

18 Who did you go on the site visits with?

19 A. I went on the site visits with Mr. Ted
20 Niemeyer and his associate as well as Randy Hunt
21 for NS and Will Rosenberg (sic) for CSX.

22 Q. And how long were these site visits or

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1 how many times did you go on these site visits?

2 A. Well, we spent two days out there where
3 we observed every potential location for the new
4 infrastructure as well as Mobile and New Orleans.

5 Q. Let me ask you this: did -- did your
6 site visit include the entire line from A to Z or
7 were there just certain areas that you looked at
8 on your site visit?

9 A. Well, of course we couldn't -- we
10 originally planned a hi-rail, but they -- that
11 wasn't possible due to the traffic. But we did go
12 to every location that was -- there was a plan to
13 change, as I said, as well as Mobile and New
14 Orleans.

15 Q. And -- and again, is that typical in --
16 in other RTC modeling you've been involved in to
17 do these site visits?

18 A. Yes, you need a -- a modeler needs to
19 understand, not only the infrastructure
20 improvements but what -- what may be the
21 constraints to operations. I'm talking about
22 train operations with the current track

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1 infrastructure versus what the new track

2 infrastructure will provide.

3 Q. And you said Mr. Niemeyer was there?

4 A. Yes, he was.

5 Q. Did you personally discuss with Mr.

6 Niemeyer the cost of any proposed infrastructure
7 projects?

8 A. No, sir. At that time his -- his
9 purpose was to identify what track changes need to
10 be made, the dimensions of those changes and
11 whether they were, you know, feasible to be made
12 in the first place. He later went back and used
13 a -- he has a software program I'm sure, to
14 determine the cost per unit for track for an
15 ounce, and that sort of thing, to come up with a
16 complete estimate at each location.

17 MEMBER PRIMUS: Counsel, can I -- can I
18 just get a clarification.

19 Again, the dates -- do you know -- do
20 you recall when those site visits took place?

21 THE WITNESS: I believe it was early
22 October of -- of 2021.

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1 MEMBER PRIMUS: Do you recall how many
2 site visits -- how many sites you visited?

3 THE WITNESS: We visited -- we visited
4 all 14 locations.

5 MR. DONAHOE: No, how many days.

6 THE WITNESS: Oh, how many days.

7 MEMBER PRIMUS: No, no, visits. I'm
8 sorry, counselor I did mean the sites.

9 MR. DONAHOE: Oh, I apologize, Mr.
10 Primus.

11 THE WITNESS: Yeah, we -- we -- we
12 looked at all -- all 14 locations.

13 MEMBER PRIMUS: So -- so -- so the --
14 the freight lead in -- in -- in New Orleans was
15 not one of the site visits?

16 THE WITNESS: Well, actually it was.
17 It was the last thing we looked at.

18 MEMBER PRIMUS: So -- so that --

19 THE WITNESS: It was the original 14
20 plus -- plus the freight lead extension.

21 MEMBER PRIMUS: Okay, so -- so you
22 visited 15 in October.

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1 THE WITNESS: That's correct. Fifteen
2 is the correct number, yes.

3 MEMBER PRIMUS: Okay, thank you.

4 CHAIRMAN OBERMAN: I -- I just have a
5 question, Mr. Donahoe, if you don't mind, while
6 we're on this topic. Mr. Guthrie just testified
7 what it is that Mr. Niemeyer did. I don't know
8 how he knows what Mr. Niemeyer did. So I didn't
9 hear an objection but I would like to know what
10 the basis of it is.

11 THE WITNESS: Chairman, the answer is I
12 was with him. I saw him measure, he and his
13 colleague, measure distances, discuss the need for
14 turnouts, crossovers and -- and bridges, bridge --
15 bridge locations and that sort of thing.

16 CHAIRMAN OBERMAN: Well, but your
17 answer said that he went back and used some
18 software and so forth and so on. You weren't with
19 him when he went back do his office, were you?

20 THE WITNESS: No, but he -- of course
21 he later provided an estimate and I -- I -- I'm
22 familiar with his process.

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1 CHAIRMAN OBERMAN: Well, I just want to
2 know if you know exactly what process he went
3 through after he left your presence. That's all.
4 All you know is what you -- it sounds like all you
5 know is what you saw in his final -- you saw his
6 final product, but you weren't with him when he
7 went through the process to create the product.
8 Would that be an accurate understanding?

9 THE WITNESS: I was not with -- I was
10 not with him when he -- he actually costed out
11 back in his office. You're correct.

12 CHAIRMAN OBERMAN: Yes, okay. All
13 right, thank you.

14 THE WITNESS: Mm-hmm.

15 MEMBER PRIMUS: Mr. Guthrie, and just
16 to follow up, so -- so Mr. Niemeyer was with you
17 when you -- on the couple of days that you did --
18 visited the 15?

19 THE WITNESS: That's correct.

20 MEMBER PRIMUS: Okay, thank you.

21 BY MR. DONAHOE:

22 Q. After your sight visits what was the

1 next step that you were involved in?

2 A. After the site visits I -- I -- I went
3 back to Jacksonville from Atlanta where I live and
4 met with Mr. Dingler and we continued to go
5 through the various solutions that he had come up
6 with and of course we had lots of questions -- I
7 had lots of questions about those and he
8 answered -- basically he answered all my questions
9 to satisfaction.

10 Q. Was your role to suggest infrastructure
11 projects to Mr. Dingler?

12 A. No.

13 Q. So let -- let me step back a second.

14 When you first got involved in this
15 project, was there already, for lack of a better
16 term, an existing model that Mr. Dingler had done?

17 A. Yes, there was.

18 Q. And then at the end of the project, the
19 final model, okay, how much change could you
20 estimate there was from that initial model that
21 you saw to the final model?

22 A. Well the final model was about 95% of

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1 the initial model, very little change from the
2 initial model.

3 Q. Can you -- I -- I -- there -- there
4 were some changes, right, from the initial model
5 and the final model --

6 A. That's correct.

7 Q. -- that you were involved in?

8 A. That's correct.

9 Q. Can you -- I think you mentioned it,
10 but I -- I want to ask a couple questions about
11 it. Can give the board an example of a change or
12 a suggestion that you made from the initial model
13 to the final model?

14 A. When we -- when Mr. Dingler and I were
15 going through the animation, and that's -- as I
16 said that's what highlighted the questions that I
17 had -- I noticed that there were -- there was a --
18 a backup at the west end or the south end of
19 Gentilly Yard and I pointed that out to him and I
20 said, "Well, what's going on there, Mark?" And he
21 scratched his head basically and said, "Well, I
22 think I've got a crossover here that's improperly

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1 located". And so he -- he fixed that in his
2 model.

3 Q. So there was still a need for a
4 crossover but it -- it wasn't in the best
5 location?

6 A. It was improperly oriented is what it
7 was.

8 Q. Were there any other suggestions or
9 changes that you can recall making?

10 CHAIRMAN OBERMAN: Can I just ask a
11 question here, Mr. Donahoe. Has this initial
12 model been produced? Is it the one we've been
13 talking about with HDR? Or what -- what model is
14 he comparing this to? I don't know if that's in
15 the record and I can't follow the questioning
16 here.

17 THE WITNESS: This would have been the
18 base case model.

19 MR. DONAHOE: I'm -- I'm sorry, did
20 you -- did you hear that answer, Chairman?

21 CHAIRMAN OBERMAN: I'm still not sure
22 if that model has been produced. I don't know

1 what he's talking about here that was changed.
2 We've only seen the November 3rd report. So I
3 don't know what model he's talking about.

4 BY MR. DONAHOE:

5 Q. Mr. Guthrie, when you refer to the
6 initial model, what are you referring -- what are
7 you talking about?

8 A. I looked at the 2019 model prior to
9 adding passengers or infrastructure.

10 Q. Is -- is another name for that the 2019
11 base case?

12 A. Yes.

13 Q. And -- and that was part of the
14 filings, the base case model?

15 A. Yes, sir.

16 MR. DONAHOE: Okay.

17 CHAIRMAN OBERMAN: Is the -- because he
18 said he made changes in it, so is the base case
19 model that we have in the report the same model
20 that was done before Mr. Guthrie got into the case
21 that he was referring to? That's all I'm trying
22 to understand for the record. Or is it some other

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1 document?

2 THE WITNESS: I'm not sure I understand
3 the question, sir.

4 CHAIRMAN OBERMAN: You -- you said that
5 there was a model already in existence before you
6 were hired into this case that Mr. Dingler had
7 done.

8 THE WITNESS: Yes.

9 CHAIRMAN OBERMAN: All right. Where
10 is -- where -- where is that? Do we have that?
11 Whatever you saw that Mr. Dingler had done, which
12 you've been commenting on here, do we have that
13 piece of paper in the record?

14 THE WITNESS: I believe you do. He
15 enhanced the model. It was a very simple change
16 to make in the model. He did that almost on the
17 spot when I was with him. So what you have is of
18 course the enhanced version with my correction, if
19 you will.

20 CHAIRMAN OBERMAN: Well, so we
21 haven't -- we don't have in the record then what
22 you saw before he enhanced it. Is that right?

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1 THE WITNESS: I -- I'm not sure what's
2 in the record, sir.

3 CHAIRMAN OBERMAN: All right, well, can
4 counsel, enlighten us on this, so we know?

5 MR. DONAHOE: Yeah, that's why I
6 asked -- that's why I asked the question.

7 BY MR. DONAHOE:

8 Q. I -- I thought you -- you just answered
9 that what you saw initially was the 2019 base case
10 model.

11 A. Yes.

12 MR. DONAHOE: That is in the record,
13 Chair.

14 CHAIRMAN OBERMAN: Well, is -- is it --
15 to my knowledge it's -- it would have to be part
16 of the November 3rd report. There's nothing else
17 in the record that I'm aware of.

18 MR. DONAHOE: That -- that is correct.

19 CHAIRMAN OBERMAN: Okay, well, I guess
20 if you could ask him to clarify what it was he was
21 enhancing and what that looks like or is he just
22 talking about different runs of the same model.

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1 That's where I'm confused.

2 MR. DONAHOE: Okay, I -- I that's where
3 we're going with it but let me try and make it
4 more clear to the board, okay?

5 CHAIRMAN OBERMAN: Yeah, just my
6 concern here is that we have a record that we know
7 about what we're talking about.

8 MR. DONAHOE: Understood.

9 BY MR. DONAHOE:

10 Q. So Mr. Guthrie, let me step back a
11 second, okay?

12 A. Yes.

13 Q. So when you got involved you looked at
14 the 2019 base case model?

15 A. Yes.

16 Q. And the 2019 base case model, that
17 doesn't include the addition of passenger service?

18 A. That's correct.

19 Q. And the 2019 base case model doesn't
20 include the infrastructure projects?

21 A. That's correct.

22 Q. Sometime during your involvement were

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1 there other models made -- I think you used the
2 term enhancements -- coming off of that 2019 base
3 case model?

4 A. Yes.

5 Q. Was one of those models a 2019
6 passenger model?

7 A. Yes.

8 Q. Was one of those a 2019 base passenger
9 and infrastructure model?

10 A. Yes.

11 Q. And did you also -- were you also
12 involved in the modeling that looked at 2039 base
13 case model, no passenger, no infrastructure?

14 A. Yes.

15 Q. Were you also involved with the 2019
16 base case just passenger service?

17 A. Yes.

18 Q. And were you also involved with the
19 2039 base case passenger service and
20 infrastructure projects?

21 A. Yes.

22 CHAIRMAN OBERMAN: So I guess the one

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1 thing I'm missing here is that I thought he said
2 he saw a model where the -- there was a problem,
3 something about a switch at the Gentilly Yard
4 which had to be redone. So have we seen that
5 model that had to be corrected?

6 MR. DONAHOE: Let -- can I ask him a
7 couple questions to see if I can clarify that?

8 CHAIRMAN OBERMAN: Please do.

9 BY MR. DONAHOE:

10 Q. What model -- we've just gone through
11 six models and I realize there's changes in all of
12 them, but those were the final results. In what
13 model did you see that there might be this issue
14 at Gentilly Yard?

15 A. It was the base case model, the 2019
16 base case.

17 Q. Just so we're clear the 2019 base case
18 model?

19 A. That's correct.

20 Q. So that -- that was without passenger
21 service, that was without infrastructure, but just
22 looking at that base case model you thought there

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1 might be a problem here?

2 A. That -- that's correct.

3 CHAIRMAN OBERMAN: So we don't -- it
4 sounds like, Mr. Donahoe, we don't have the
5 version that he saw before that correction was
6 made. Is that right? Just so I know what's in
7 the record here, or is that in the record
8 somewhere?

9 MR. DONAHOE: I believe it is in the
10 record, chair. I will certainly confirm or -- or
11 look at that. I don't know right now, I got to be
12 honest with you.

13 CHAIRMAN OBERMAN: Fair enough. I -- I
14 just see there is a potential, either for board or
15 other counsel, to ask some questions about. He's
16 talking about one change but of course it comes to
17 mind there were others and if it's in the record,
18 fine, if it's not in the record then I don't know
19 how we can hear this testimony. But I'm not
20 saying don't proceed here, but if maybe before Mr.
21 Guthrie leaves the stand, one of the members of
22 your team --

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1 MR. DONAHOE: Yeah.

2 CHAIRMAN OBERMAN: -- can find out
3 whether it's in the record and tell us an exhibit
4 number or something like that.

5 MR. DONAHOE: Chairman, when -- when we
6 take an afternoon break, I'll -- I'll verify
7 whether it is or not, okay?

8 CHAIRMAN OBERMAN: All right. Thank
9 you very much.

10 MR. DONAHOE: Thank you.

11 BY MR. DONAHOE:

12 Q. Let me see where I'm at here. So we've
13 talked about all the final models, those final six
14 models, correct?

15 A. Yes.

16 Q. And -- and are they in the verified
17 papers that were submitted?

18 A. Yes.

19 Q. How did the data provided by Norfolk
20 and CSX compare to data used in typical RTC
21 modeling?

22 A. Well, first of all the data was split

1 between two entities obviously, with CSX and NS,
2 and that data had to be melded together. Because
3 of that, that's one of the reasons that the data
4 input file is much more complex than what normally
5 would occur either at CSX or -- or NS during
6 modeling of the corridor with infrastructure
7 needs.

8 What I'm saying by that is, normally
9 in -- in that type of simulation, you're not
10 modeling yard operations at either end. You're
11 operating -- you're modeling main line and looking
12 for the improvement in the -- by adding
13 infrastructure.

14 With this particular case of course,
15 you have to be able to model in detail the
16 intricate movements within a terminal like New
17 Orleans which has all of the interchange traffic
18 and also a yard, Oliver Yard, that is constantly
19 building trains. The building of those trains in
20 the -- in the Oliver Yard, for example, requires
21 trains to get what's known as bid way or -- or
22 lead on the main line itself. In other words you

1 pull trains out on the main line while you're
2 switching and -- and back and forth and sorting or
3 classifying cars as you know in the railroad
4 industry. So while you're doing that you can't
5 operate -- you can't operate main line trains in
6 signal territory while that's happening. So there
7 is a -- there's typically high consumption of main
8 line track time because of that. In addition to
9 that, you go across the canal over into Gentilly
10 Yard and you have the same situation. And
11 those -- those type of movements are a part of a
12 yard move. A yard may have ten separate movements
13 which make up the entire total of its train time
14 out on the main line and so all of that has to
15 be -- and all of that has to be manually input
16 into the model.

17 So anyway, that's -- the -- the
18 complexity -- that's the complexity of the
19 operations and that's very much true with
20 Mobile -- Mobile as well.

21 Q. One of the models you reviewed was the
22 2039 base case, correct?

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1 A. Yes.

2 Q. From your review or I should say your
3 audit of that model, can CSX and NS handle traffic
4 without passenger service and without
5 infrastructure?

6 A. Yes.

7 Q. And -- and that's based on what the
8 model showed?

9 A. That's correct.

10 Q. And what -- what does that tell us --

11 A. It tells us --

12 Q. -- that fact?

13 A. That tells us there is sufficient
14 infrastructure available to handle the 2039
15 forecasted volume of freight trains.

16 Q. And what occurred -- I'm going to jump
17 back to 2019. So we had the 2019 base model.

18 A. Right.

19 Q. And what occurred when passenger
20 service was added to the 2019 base model?

21 A. Impairment, impairment to operations.
22 It increased delay.

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1 Q. What occurred to the 2039 base model
2 when passenger service was added?

3 A. With the -- with the 2039
4 infrastructure?

5 Q. Yes.

6 A. It -- it did not run. The model did
7 not run.

8 Q. One of the claims in this is that
9 Norfolk Southern and CSX manipulated the data to
10 drive up infrastructure. Could you comment on
11 that?

12 A. In my opinion that's absurd.

13 Q. Why is that?

14 A. Because first of all there is no --
15 there is no reason that either Holly or Hannah or
16 the NS and CSX folks would -- would do that.

17 There's no -- there's no value --

18 MS. BRACEY: Objection.

19 THE WITNESS: -- in -- in doing that.

20 MS. BRACEY: Objection to Ms. Rosse and
21 Ms. Sinkkanen --

22 CHAIRMAN OBERMAN: I'm sorry?

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1 MS. BRACEY: Objection as to Ms.
2 Sinkkanen's and Ms. Rosse's reason for doing
3 anything.

4 CHAIRMAN OBERMAN: Sustained. That
5 testimony will be stricken.

6 BY MR. DONAHOE:

7 Q. Was your answer finished?

8 A. Ask the question again, please.

9 Q. Sure. There is a claim that Norfolk
10 southern and CSX manipulated the data to drive up
11 the infrastructure necessary for this project.
12 How do you respond to that?

13 A. Basically there is no evidence to
14 support that.

15 Q. And you mentioned Holly and Hannah and
16 you've worked with them on this project?

17 A. Yes.

18 Q. And you found them to be reliable and
19 knowledgeable?

20 A. Very much so.

21 MS. BRACEY: Objection to the leading.
22 Objection to the leading.

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1 CHAIRMAN OBERMAN: Sustained. Can
2 you -- can you rephrase your question, Mr.
3 Donahoe?

4 MR. DONAHOE: I -- I simply asked him
5 if they found -- he -- he found them to be
6 reliable. I don't know how that's a leading
7 question but I'll try and rephrase it.

8 CHAIRMAN OBERMAN: You -- you asked
9 that question at the beginning of his testimony.
10 So that's asked and answered.

11 MR. DONAHOE: Well that wasn't the
12 objection.

13 CHAIRMAN OBERMAN: I understand that
14 but I don't know why we're going over the same
15 turf.

16 MR. DONAHOE: Because you sustained the
17 other objection by counsel on Holly and Hannah. I
18 was trying to correct it.

19 CHAIRMAN OBERMAN: All right. Well,
20 what -- what is the pending question?

21 MR. DONAHOE: That's a good question.

22 CHAIRMAN OBERMAN: Fair enough.

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1 MR. DONAHOE: Chair, could I take a
2 break now and we'll run down that-- I'm -- I'm
3 about to get in another area and if it's okay with
4 the board, this seems like a good spot to take a
5 ten-minute or whatever and we'll run down that
6 information you requested.

7 THE WITNESS: Fair enough.

8 MR. DONAHOE: Thank you.

9 CHAIRMAN OBERMAN: It's 3:03. We'll
10 recess 'till 3:15.

11 (Recess taken.)

12 CHAIRMAN OBERMAN: All right, is
13 everybody back? Counsel's there and the board
14 members are here.

15 Hold on a second. Okay, could
16 everybody hear me?

17 MR. DONAHOE: Yes, Mr. Chair.

18 CHAIRMAN OBERMAN: You know what, the
19 problem is I can't hear you. Now I can, okay.

20 Before we proceed with the questioning,
21 did you have -- did you want to address this issue
22 of that first report that Mr. Guthrie was

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1 testifying about?

2 MR. DONAHOE: Yes, Mr. Chairman. I'm
3 going to have Mr. Mullins do it. He's -- he's
4 well-versed in it, more so than I am.

5 MR. MULLINS: The -- the simple answer
6 to your question, Mr. Chairman, is the initial
7 draft that -- that you -- he was referring to and
8 that you were speaking of is not in the record.
9 And the reason why it's not in the record is it
10 was a draft.

11 Mr. Dingler had been retained way
12 before R.L. Banks and way before Mr. Guthrie had a
13 chance to review it, so when Mr. Guthrie came on
14 he reviewed a draft, one of many, many drafts and
15 it was on the basis of that draft that he reviewed
16 that he saw the fallacy that needed correction and
17 that's when he corrected it, but the final report,
18 the final study that was put in the record is
19 obviously the product of many, many, many drafts,
20 one of which Mr. Guthrie saw and -- and added
21 input and corrections.

22 CHAIRMAN OBERMAN: Well, Ray has raised

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1 an objection to production of prior reports and I
2 am reserving discussion on that in terms of the
3 federal rules and what should apply here. I'm not
4 making any ruling that any such thing has to be
5 produced.

6 But if the witness starts talking about
7 a report that he read and he recommended changes
8 in, I think we're in a different ballpark in terms
9 of the board being able to follow along and
10 opposing counsel, if -- if they're interested,
11 being able to follow along.

12 So I think if -- if -- since Mr.
13 Guthrie has already testified about a problem with
14 a draft, whichever draft he has testified about
15 should be produced.

16 MR. MULLINS: Well, Mr. Chairman, I
17 would say that you would be breaking probably 50
18 years of precedent at the ICC and the STB. It has
19 always been precedent that drafts are work product
20 of the attorneys and their experts and when people
21 have asked for drafts before it has consistently
22 been ruled that drafts not be produced by

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1 administrative law judges. And it is attorney
2 work product. The law has actually changed,
3 gotten more favorable to the fact over in -- in
4 federal court that you do not produce attorney
5 work product. So you would be sitting here
6 producing 10,000 drafts if you added --

7 CHAIRMAN OBERMAN: I didn't ask for
8 10,000 drafts, Bill, and let me just say this, I
9 think that the bar should have understood by now
10 that at least this chairman is not necessarily
11 afraid to change precedent when it's warranted.
12 But all I am talking about here is not asking you
13 to break precedent or produce 10,000 drafts. This
14 witness said, "I looked at a draft and I
15 determined that it needed to be changed". Once
16 that was brought into evidence, I don't know how
17 it's fair to anybody, including the board, to not
18 see what the witness is talking about.

19 MR. MULLINS: Because the witness
20 already testified to you what he recommended be
21 changed so you know what was recommended to be
22 changed and it was attorney work product.

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1 By the way, Amtrak did not produce any
2 attorney work product either, and so to the extent
3 an Amtrak witness has -- did previous drafts and
4 the Amtrak counsel did previous drafts they didn't
5 produce those either and that was consistent with
6 precedent. So --

7 CHAIRMAN OBERMAN: Well, Bill --

8 MR. MULLINS: So, we would -- we
9 would -- so I -- I actually agree with Mr. Atkins'
10 objection and -- and would make that same
11 objection for Norfolk Southern.

12 CHAIRMAN OBERMAN: Well, here -- here
13 is where we're going to go with this for the
14 moment: if any witness starts talking about a
15 document on direct, invited by the witness'
16 lawyer, as Mr. Donahoe did here, I think we're in
17 different territory. But I will reserve any
18 ruling on whether Mr. Guthrie or whoever has the
19 document has to produce only the piece of paper
20 that the witness was talking about. That's all
21 we're talking about here. I will reserve ruling
22 on it. If anybody wants to be heard further, they

1 can. We'll -- I'll do some -- our lawyers will do
2 some homework on that as well. No one is saying
3 produce every draft that came into existence.
4 They're talking about, you know, a -- a -- a
5 subject that this witness opened the door on.
6 I -- I didn't open the door.

7 MR. MULLINS: I think it's a great
8 clarification that you did going forward and we
9 will -- we will take that absolutely in advisement
10 that we should -- you know, if you open the door,
11 I get that. That was not -- that was not and has
12 not been the practice. So and -- and would be a
13 violation of the privileges and the -- and the
14 precedents in the past. But I get it and so we -
15 we appreciate that -- we appreciate that
16 admonition going forward.

17 CHAIRMAN OBERMAN: Bill you will --
18 well, but the door has already been opened. It
19 can't be closed now. There's testimony in the
20 record. You'll have to show me the 50 years of
21 precedent that you're talking about that involved
22 a witness in a hearing on the record who testified

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1 about a document that wasn't produced. That is a
2 limit -- limited fact situation we're talking
3 about here.

4 MR. MULLINS: Well, since there hasn't
5 been a hearing on the record in front of the board
6 members, that would be impossible to produce a
7 precedent on that. There's federal law precedent
8 on it that Mr. Donahoe and -- we can -- we can
9 actually produce for you.

10 CHAIRMAN OBERMAN: Well, you said I was
11 changing 50 years of precedent. So I just want to
12 be shown what it is you think I'm changing in a
13 case where a witness talks about a document.
14 That's all.

15 Let's not dwell on it. If the parties
16 want to be heard further -- we're not going to
17 resolve it now. I'm not going to make any ruling
18 or order any production. We'll see if the other
19 parties want to see any production and I -- I, for
20 one, just so the record is complete, and so the
21 board members can follow this witness' testimony
22 as to what he was looking at and what he corrected

1 in a piece of paper, I think to have a complete
2 record we ought to see the document. But without
3 ordering it, we'll take a look at the law.

4 MR. MULLINS: Okay, thank you, Mr.
5 Chair.

6 CHAIRMAN OBERMAN: And I -- I invite
7 you and other counsel to educate us on this. It
8 may require Mr. Guthrie to come back. That's the
9 only reason I wanted to resolve it.

10 MR. MULLINS: We'd be -- we -- we'd be
11 happy to brief it for you, Mr. Chairman. The --
12 again an on-the-record, in front of the board
13 numbers has never been done in anybody's 60-year
14 history, so that -- that precedent won't be able
15 to be found. I presume that there is a lot of
16 precedent in federal law about -- and since the
17 federal court rules are supposed to provide
18 guidance here, we could provide that precedent,
19 and I believe we can look for precedent where ALJs
20 have refused to produce this. Because these types
21 of hearings used to be in front of administrative
22 law judges. I suspect there's decisions where

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1 where the ALJs have refused to require the
2 production of such materials.

3 CHAIRMAN OBERMAN: Just in order not to
4 burden us with briefs that are not relevant, if
5 you confine your research to -- the only situation
6 I'm interested in is where on direct examination a
7 witness has been asked to testify about a document
8 that hasn't been produced. That's the limited
9 question I'm interested in. I don't want to hear
10 about anything else because we're not talking
11 about anything else.

12 MR. MULLINS: I -- I will absolutely
13 look for that, Mr. Chairman.

14 CHAIRMAN OBERMAN: All right. I
15 appreciate that. Does anybody else want to be
16 heard on this subject while we're talking about
17 it?

18 Ms. Bracey, did you -- or I'm sorry, I
19 thought you were raising your hand.

20 MS. BRACEY: No, sorry. I was just
21 adjusting my glasses.

22 CHAIRMAN OBERMAN: Yeah, I'm sorry.

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1 All right. With that, we will -- Mr. Donahoe, why
2 don't you proceed.

3 MR. MULLINS: Thank you.

4 BY MR. DONAHOE:

5 Q. Mr. Guthrie, could you explain the
6 difference between theoretical and practical
7 capacity modeling?

8 A. Theoretical capacity is basically the
9 upper limit of a -- a mathematical calculation
10 which indicates what capacity is, and capacity of
11 course is analogous to throughput, which means
12 the -- the number of trains that can operate from
13 A to B in a given amount of time, such as a week,
14 a month, two weeks, whatever...

15 And of course theoretical capacity
16 is -- is something that's rarely ever attained
17 because it doesn't take into account the
18 variability and train operations in the railroad
19 industry, which is great in particular with
20 freight operations.

21 Q. From your review of the verified
22 statements, did DB Engineering use theoretical

1 capacity?

2 A. Yes, they did.

3 Q. Does a model such as that reflect the
4 capacity specifically to the areas of New Orleans
5 and Mobile?

6 A. In the case -- would you repeat the
7 question, please.

8 Q. Sure. Would using a theoretical model,
9 would that reflect the capacity that's limited to
10 bottleneck points and restrictive locations such
11 as Mobile and New Orleans?

12 A. No, it would not.

13 Q. Are there any other additional
14 weaknesses related to theoretical capacity used by
15 DB Engineering?

16 A. Basically their analysis was a static
17 analysis rather than a dynamic analysis like RTC
18 produces. It does -- the limitations there is it
19 doesn't indicate any locations where delays occur
20 as well as -- as well as -- as well as other
21 factors of variability in the operation. And I'm
22 talking about it doesn't reflect train mix, it

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1 doesn't reflect train size, frequency of operation
2 and -- and factors of -- of that -- that kind.

3 Q. From your review of the evidence
4 submitted by Amtrak, what train size did they use?

5 A. They -- they settled on a -- what they
6 call a standard train, which was 11,000 feet,
7 17,000 tons and -- and four high horsepower
8 locomotives for freight trains, and one locomotive
9 and four coaches for the Amtrak passenger trains.

10 Amtrak in this particular case has a
11 locomotive on either end of the four coaches but
12 they -- they had two locomotives on the head end.
13 So for all intents and purposes, the performance
14 of that train didn't suffer.

15 Q. What issue do you have with them using
16 11,000 feet as a standard train?

17 A. Well, one issue is that there were no
18 sidings between Mobile and New Orleans which can
19 handle 11,000 foot trains. In other words they're
20 shorter than 11,000 feet.

21 Q. From your review of the papers, did DB
22 Engineering include some form of streamline

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1 modeling?

2 A. Yes, they did.

3 Q. Can you generally describe what
4 streamline modeling is and what it's used for?

5 A. Streamline modeling is typically
6 used for -- in Europe is where it originated -- to
7 model passenger operations which are timetable
8 based and uniform in operation. What I mean by
9 that is, is the trains are uniformly departed
10 during the -- during the simulation, if you will,
11 and it's a closed loop situation where you don't
12 have any freight trains and everything is -- is
13 consistent with the -- with the schedule. There's
14 very little variability in the modeled line.

15 Q. And you mentioned variability. From
16 your review of the D B Engineering verified
17 papers, did they consider variability?

18 A. They considered variability in a
19 strange way. In our marketplace capacity
20 modeling, they -- they basically try to compare
21 supply and demand, but by that what I'm saying is
22 that they -- they determined -- they determined

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1 the maximum number of -- the maximum capacity
2 based on the standard train that I just mentioned
3 in the corridor, which was typically 48 and which
4 means to the modeler you can run 24 trains a day
5 from Mobile to New Orleans and vice versa. So
6 that's -- that's the first thing that they did.
7 And of course again that -- that would be based on
8 trains departing with a -- a 15-minute headway
9 between the trains. And then no operation --
10 freight train operation that I'm aware of, can
11 that ever happen because of the variability.

12 They attempt to -- they attempt to
13 calculate that variability uniformly across the
14 system, from New Orleans to Mobile, and apply
15 standard capacity for each train that operates.
16 In this particular case it was 1.4 capacity units.
17 And if this sounds strange, it -- it certainly
18 appeared to be strange to me as well.

19 By that -- by that it -- it assumes
20 that the variability along the corridor, at every
21 location between sidings, is the same regardless
22 of the train operation itself. In other words

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1 variability no longer is variable based on the way
2 they -- way they assumed.

3 Q. So this variability metric that they
4 used, the 1.4, they applied that across the entire
5 line?

6 A. That's correct.

7 Q. So whether -- by the way, have you been
8 to Bay St. Louis?

9 A. Yes.

10 Q. And you've been to Mobile?

11 A. Yes.

12 Q. And you've been to New Orleans?

13 A. Yes.

14 Q. Would you consider the variability at
15 Bay St. Louis to be similar to Mobile and New
16 Orleans?

17 A. No.

18 Q. And why is that?

19 A. Well Mobile and New Orleans have --
20 have more trains that are operating in and out of
21 the location and because of the major yards there,
22 Sibert as well as Oliver Yard. The -- the

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1 variability at those locations is much more -- is
2 much higher than what you would find at St. -- Bay
3 St. Louis.

4 Q. When you were at Norfolk Southern
5 during RTC modeling, did you ever analyze
6 theoretical capacity?

7 A. No, I didn't because I didn't find any
8 need for it. We were going to do RTC, which was a
9 detailed model that will show -- indicate where
10 the delays along the system occurred, which is
11 what I'm looking for when I do an RTC modeling.

12 Q. So to sum up, what would the three --
13 or two or three major criticisms you have of DB
14 Engineering?

15 A. I think the first -- the first is what
16 I mentioned earlier. They use a standard train
17 which isn't -- there's only two trains on the
18 whole -- in the whole TRAIN file that operate
19 close to 11,000 feet, and again of course there is
20 no sidings large enough to fit that.

21 The second thing is it's a static
22 model. I -- I failed to mention that -- you asked

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1 about streamlines. Streamlines are good for
2 determining how level operations where trains
3 might intersect and the -- and of course at those
4 locations you would expect to see a -- a siding or
5 some -- some means to pass. However, as I said
6 it's static, so any change in -- in a train
7 operation will not be reflected in a streamline.
8 So it's of very -- very little use when you're
9 trying to meld passenger and freight train
10 operations together.

11 Q. Based on your five decades of
12 professional experience, what do you believe is
13 the best way to capture the variability of rail
14 traffic on a corridor?

15 A. The only way to truly know
16 accurately is -- accurately compare it to use RTC.

17 Q. Do you believe the use of RTC submitted
18 by NS and CSX is the best model to try and
19 accommodate Amtrak passenger service?

20 A. Yes.

21 Q. You're aware of the board's August 6th,
22 2021 decision directing the parties to do so?

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1 A. Yes.

2 Q. And do you believe that NS and CSX
3 complied with the board's directive?

4 A. Both complied, yes.

5 MS. BRACEY: Objection, objection.
6 He's not a lawyer.

7 CHAIRMAN OBERMAN: Can I hear the
8 question again?

9 MR. DONAHOE: Sure. "Are you aware of
10 the board's August 6th, 2021 decision which
11 directed the parties to provide studies or
12 modeling to accommodate Amtrak passenger service?"
13 And he said -- he said, "Yes," Chair.

14 And then my next follow-up was, "In
15 your opinion did NS/CSX comply with the Board's
16 directive?"

17 CHAIRMAN OBERMAN: Well, I think that
18 the first question is totally appropriate, if he's
19 aware of it. I think you are asking for a legal
20 conclusion. Why don't you ask him what NS -- if
21 he knows, what NS and CSX did in -- in response to
22 that order, rather than asking him if it's

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1 compliant. That's a legal a question.

2 MR. DONAHOE: Chair, I'll withdraw the
3 question.

4 CHAIRMAN OBERMAN: All right.

5 BY MR. DONAHOE:

6 Q. Mr. Guthrie, do you keep up to date on
7 industry trends?

8 A. Yes.

9 Q. Do you know what an NEC future is?

10 A. Yes.

11 Q. Could you tell the board what that is?

12 A. Basically it was an -- it's an effort
13 to determine the future needs on the northeast
14 corridor, I'm talking about infrastructure and
15 equipment needs as well as maintenance.

16 Q. Was the FRA involved in that?

17 A. Yes.

18 Q. Do you know what type of modeling the
19 FRA did on that project?

20 (Brief cellphone interruption.)

21 A. Excuse me, I thought I turned it off.
22 I apologize.

1 What type of modeling they did? They
2 did a high -- they did a spreadsheet analysis
3 which -- to determine needs based on the Variato
4 model which looks at high-level schedules and then
5 they verified the Variato results with the RTC
6 model.

7 Q. So they did begin with the Variato
8 model?

9 A. That's correct.

10 Q. But then they -- further in the process
11 they used the RTC modeling?

12 A. Yes. The Variato model was used for
13 high-level planning and the RTC model was used for
14 detailed analysis.

15 Q. How far in the future did they consider
16 impacts or infrastructure?

17 A. They -- they looked at a 25-year
18 horizon to the year 2040.

19 Q. Are you aware that the Kansas City
20 Southern and Canadian Pacific are actively
21 involved in a merger?

22 A. Yes, I am.

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1 Q. Was Metra involved in that merger?

2 A. Yes, they are.

3 Q. What was Metra's main complaint?

4 A. That they did not use RTC to model the
5 Metra --

6 MS. BRACEY: Objection.

7 THE WITNESS: -- passenger trains.

8 MS. BRACEY: Relevance, relevance.

9 MR. DONAHOE: I'm getting to it.

10 CHAIRMAN OBERMAN: What is the -- what
11 is the objection?

12 MS. BRACEY: Relevance, sir.

13 CHAIRMAN OBERMAN: Sustained.

14 BY MR. DONAHOE:

15 Q. Were you aware who Metra's expert was
16 in that matter?

17 A. Mr. Trowley (sic).

18 Q. I'm sorry?

19 A. Mr. -- Mr. Trowley (sic).

20 Q. And who is he employed by?

21 A. Peabody.

22 Q. And what type of modeling did he use in

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1 that project?

2 A. He used RTC.

3 Q. I'd like to ask you a couple of
4 questions. I know it's been discussed a lot with
5 Mr. Dingler, but were you involved in discussions
6 about the freight lead extension?

7 A. Yes.

8 Q. And what was your role or how did --
9 explain what your role was with respect to the
10 freight lead inspection (sic).

11 A. When we did our site visit in New
12 Orleans, we looked at the three projects including
13 the freight train -- freight train extension and
14 after having observed congestion in the main one
15 and main two tracks, it became very clear that the
16 freight train extension was an important project
17 in order to get foreign interchange traffic into
18 Oliver Yard without delays.

19 Q. Is it fair to say though, before you
20 went down there, the freight lead extension was
21 not one of the projects proposed by the railroads?

22 A. That's correct.

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1 Q. Okay. And then you went down and in
2 person saw that area?

3 A. Yes.

4 Q. And that's when you and others got
5 involved in discussing the need for the freight
6 lead extension?

7 A. Yeah, particularly the terminal manager
8 which we interviewed while we were there.

9 Q. What in particular occurred or that you
10 saw that you and whoever else was there but
11 particularly you thought the freight lead
12 extension should be a proposed project?

13 A. We observed -- observed interchange
14 traffic that was not able to move because the main
15 one and main two were blocked.

16 Q. The modeling that you were involved in,
17 Mr. Dingler's model, does it show or reveal any
18 impacts on the other freight railroads?

19 A. Yes.

20 Q. Specifically what -- what type of
21 impacts would that be?

22 A. The -- the foreign interchange traffic

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1 would be held out of -- out of New Orleans
2 Terminal because of the tracks were -- the tracks
3 were obstructed.

4 MEMBER PRIMUS: Mr. Donahoe, just a
5 clarification.

6 MR. DONAHOE: Sure.

7 MEMBER PRIMUS: This -- this visit
8 or -- or this was based on the October visit?

9 THE WITNESS: Yes.

10 MR. DONAHOE: You can you answer it.

11 THE WITNESS: Yes.

12 MR. DONAHOE: Go ahead.

13 THE WITNESS: Yes, yes.

14 MR. DONAHOE: And Mr. Primus, I'm not
15 sure he's -- and we can probably track it down,
16 I'm not sure he was exactly sure of that day, but
17 that is what he estimated it was. But if you --
18 if you need the date we'll try and track it down.

19 MEMBER PRIMUS: I just need to know if
20 it was in October before the report.

21 MR. DONAHOE: Okay.

22 MEMBER PRIMUS: So he said -- he said

1 October. Okay, thank you.

2 MR. DONAHOE: Okay.

3 BY MR. DONAHOE:

4 Q. From your review of the Amtrak
5 modeling, did they consider impacts to the other
6 freight railroads other than CSX and Norfolk
7 Southern?

8 A. They did not.

9 Q. From your review of the Amtrak model,
10 did they consider impacts on block grade crossings
11 that could impact vehicular traffic?

12 A. No, they did not.

13 Q. From your review of the Amtrak model,
14 did they consider the impact on shippers?

15 A. Not to my knowledge.

16 Q. From your review of DB Engineering's
17 verified statements, did they express any concerns
18 about capacity on the Gulf Coast corridor, such as
19 the Choctaw Yard?

20 A. Yes. DB Engineering did indicate
21 that -- that there was lack of capacity.

22 Q. So despite all, as you've testified to,

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1 the -- the limitations you believe were in the
2 Amtrak modeling, why do you believe a theoretical
3 capacity analysis was used?

4 CHAIRMAN OBERMAN: Well, are you -- are
5 you asking him to get into the minds of the
6 modelers? Is that the question?

7 MR. DONAHOE: Well, if you phrase it
8 that way.

9 CHAIRMAN OBERMAN: Well, I don't know
10 how else to understand it. I haven't heard an
11 objection. But it --

12 MR. DONAHOE: No, we haven't had an
13 objection.

14 CHAIRMAN OBERMAN: I understand but I'd
15 like to lay a foundation before the witness talks
16 about why somebody else did what they did.

17 MR. DONAHOE: Well, Mr. Chairman --
18 and -- and I don't mean to be difficult -- you're
19 really usurping the role of counsel. If they
20 don't object to it, I don't think it's proper for
21 the chair to place an objection for them. But
22 with that being said, I'll try and lay a

1 foundation.

2 CHAIRMAN OBERMAN: I'd just like to
3 have a record that we can rely on, Mr. Donahoe,
4 and not a lot of guess work.

5 MR. DONAHOE: No, I realize that and
6 that's why I don't think it's proper to place an
7 objection for Amtrak's counsel.

8 CHAIRMAN OBERMAN: All right. Well, I
9 haven't objected. I just asked you to lay a
10 foundation.

11 BY MR. DONAHOE:

12 Q. Why do you believe a theoretical
13 capacity model was used by Amtrak? Why do you
14 believe?

15 A. I think that they used the model to
16 indicate a preconceived solution.

17 Q. One last question: in your five decades
18 of railroad experience, if Amtrak is allowed to
19 start service as it's proposed, without any
20 infrastructure investment, what do you believe the
21 result will be?

22 A. Severe -- well, frankly, quite frankly

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1 I would say gridlock, gridlock is what I
2 believe it'll be.

3 Q. And why do you believe that?

4 A. Because I don't think -- I -- I do not
5 believe without the freight train lead, the model
6 shows this and -- and the infrastructure needs
7 that have been indicated, the 14 or 15 that we've
8 talked about, that -- that the freight -- that the
9 freight trains will be able to be -- the operation
10 will be fluid. Let's put it that way.

11 Q. Is that based on the modeling that you
12 were involved in?

13 A. Yes.

14 Q. Is that based on the field interviews
15 and the site visits that you were a part of?

16 A. Yes.

17 Q. Is that based on your five decades of
18 railroad experience --

19 MS. BRACEY: Objection.

20 THE WITNESS: Yes.

21 MS. BRACEY: Objection. Mr. Guthrie
22 never testified that he was a part of any field

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1 interviews.

2 MR. DONAHOE: I beg to differ. He said
3 he talked to the train master about five minutes
4 ago when they were down there but --

5 CHAIRMAN OBERMAN: Objection is
6 overruled.

7 MR. DONAHOE: Thank you. I have no
8 further questions, Chair.

9 CHAIRMAN OBERMAN: Mr. Donahoe, let me
10 just ask you this, and I think it's appropriate,
11 there weren't any objections. You obviously went
12 into great length to responding to Amtrak, which
13 would normally be in a rebuttal case, assuming
14 Amtrak puts those witnesses on, but in the
15 interest of efficiency, having Mr. Guthrie testify
16 one time I think was appropriate, but I do want to
17 ask you for the record if that was your plan so we
18 don't have to expect that Mr. Guthrie will be
19 called back after Amtrak's witnesses testify.

20 MR. DONAHOE: That would be accurate.

21 CHAIRMAN OBERMAN: All right. I
22 think -- I think it's fine but I think, for our

1 record we should know -- we should just make it
2 clear and I assume that's why Amtrak didn't --
3 didn't object --

4 MR. DONAHOE: Chair, I don't want to
5 guarantee, but, yes, that's -- that's the --
6 that's the plan.

7 CHAIRMAN OBERMAN: All right. Does the
8 Port have any questions for Mr. Guthrie?

9 MR. WIMBISH: No, we do not.

10 CHAIRMAN OBERMAN: Okay. Amtrak, Ms.
11 Bracey.

12 CROSS-EXAMINATION

13 BY MS. BRACEY:

14 Q. So you completed or you have to
15 complete the 2021 model in this case. Is that
16 right?

17 A. Yes.

18 Q. And what was the relationship between
19 you and Mr. Banks in preparing the 2021 RTC model?

20 A. The relationship of course is he's my
21 boss. With that being said, I informed him of the
22 technical aspects of the modeling and that he was

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1 unaware of. He's -- on a high level he understood
2 what occurs, the inputs and outputs, but on a more
3 detailed level he didn't understand certain
4 specific moves that occurred and -- and certain
5 methodologies that we were using.

6 Q. And similarly, what was the
7 relationship between you and Mr. Guthrie?

8 MR. DONAHOE: Objection. That is Mr.
9 Guthrie.

10 MS. BRACEY: I'm sorry.

11 MR. DONAHOE: No problem.

12 MS. BRACEY: Sorry, my apologies.

13 MR. DONAHOE: I withdraw the objection.

14 THE WITNESS: The question again,
15 please.

16 BY MS. BRACEY:

17 Q. Between you and Mr. Dingler, the
18 relation between you and Mr. Dingler.

19 A. Well Mr. Dingler was a modeler. As I
20 said before, my function as I viewed it, based on
21 what I understood, was to -- was spot check,
22 validate his -- his inputs, outputs and the

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1 methodologies that he used as far as random start
2 times, randomization of start times on draw
3 bridges. The methodology that he employed in
4 modeling yard movements as well as local train
5 switching industries, and -- and -- and things
6 like that. When I say "things like that," things
7 that are more of a technical nature to make sure
8 that -- that the model itself was industry --
9 based on industry standards and -- and best
10 practices, if you will.

11 Q. And what sorts of -- what do you --
12 what do you mean by doing a spot check? What does
13 that mean to you?

14 A. Well, obviously when you're doing an
15 audit you don't check every document that's in
16 front of you. The TRAIN files in particular are
17 quite extensive but it was important to me as an
18 example to take a look at the TRAIN files in a
19 detailed manner. As -- as I mentioned before,
20 Holly and Hannah provided that. Also to make sure
21 that the field -- the -- the input that was -- the
22 result of field summaries looked reasonable and

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1 practical and actually worked in -- in -- in the
2 real world. And so I -- so I spot checked
3 everything that was field -- as a result of field
4 summaries that they provided. I didn't check
5 every -- every train operating from New Orleans
6 to -- to Mobile because it's pretty much standard.
7 All you do there is you -- you put the train in
8 the -- in the file and you have a start time and
9 let -- and let RTC decide the movement and the
10 meet passes on that. So that's what I mean by
11 spot check.

12 Q. Okay. And were you on the Clean Team?

13 A. Yes, I was.

14 Q. And --

15 A. Yes.

16 Q. Who did the Clean Team consist of?

17 A. Well -- well, generally the Clean
18 Team -- I disagree with Mr. Dingler, he was part
19 of the -- the Clean Team, Hannah Rosse, Holly
20 Sinkkanen, Mr. Banks, myself, Mr. Hunt, Mr.
21 Rosenberg (sic), and let's see. There were
22 assorted attorneys from NS and CSX. Let's see,

1 whom did I miss. I think I -- I think I've
2 covered everyone.

3 Q. Okay. And who had final say about what
4 you modeled?

5 A. Who has final say?

6 Q. Who had final say, yes, sir?

7 A. As far as inputs are concerned, I think
8 the Clean Team had the final say. The -- the --
9 that was gone over extensively during our
10 meetings. If there was any questions about a
11 particular train, how it operated and so forth, we
12 discussed that, and there was a consensus that it
13 was -- it was modeled correctly -- it was input
14 correctly, not modeled, input correctly and so
15 forth. But -- but ultimately Mr. Dingler had
16 the -- the final say on -- on these sorts of
17 things.

18 Q. And what specific areas of your
19 modeling effort were influenced by the Clean Team?

20 A. I'm sorry, where not what?

21 Q. What specific areas of your modeling
22 efforts were influenced by the Clean Team?

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1 A. The -- the -- the area of accuracy --
2 let me put accuracy was influenced by the Clean
3 Team.

4 Q. Were there any areas of your model that
5 were altered by discussions with the Clean Team?

6 A. Yes, yes there was -- there was areas.
7 I can't be specific about what they were, but in
8 general, if one person had a question it was -- it
9 was discussed and determined how we might input it
10 correctly. If they -- if it was actually an
11 incorrect input.

12 Q. And who decided which cases to model?

13 A. Mr. Dingler.

14 Q. And who decided not to model the 20 --
15 2019 case with the Gulf Coast working group
16 reports -- with the Gulf Coast working group
17 projects, my apologies?

18 A. I'm not sure. I -- I really don't
19 remember if that was even discussed in our Clean
20 Team meeting.

21 CHAIRMAN OBERMAN: Could I hear the
22 question -- could I hear the question again? I'm

1 sorry, Ms. Bracey.

2 MS. BRACEY: Sure. "Who decided not to
3 model a 2019 case with the Gulf Coast working
4 group projects?"

5 CHAIRMAN OBERMAN: Okay. I thought
6 that was it. Sorry, go ahead.

7 MS. BRACEY: No worries.

8 BY MS. BRACEY:

9 Q. Are there other cases you modeled that
10 did not make it into your report?

11 A. There were iterations of -- of the
12 modeling -- of the models that we talked about
13 earlier, but as far as other -- other things that
14 didn't make it into the report, there were quite a
15 few that didn't if the model itself didn't run.
16 Mr. Dingler ran 30 quote seeds of each one and --
17 and out of that some -- some of those modelings --
18 model runs, simulations didn't run, and of course
19 those didn't make it. But generally speaking,
20 the -- the six that we talked about were the --
21 were the ones that we focused on.

22 CHAIRMAN OBERMAN: Could I hear that

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1 word -- seeds? Is that what you said?

2 THE WITNESS: Yes.

3 CHAIRMAN OBERMAN: S-e-e-d-s? Yes?

4 THE WITNESS: Yeah, seeds.

5 CHAIRMAN OBERMAN: I haven't heard that
6 word before. What does that mean?

7 THE WITNESS: Well, what's that -- what
8 that means is that, in order to get a
9 significantly statistical number of runs to be
10 assured that -- that your model is -- is producing
11 accurate results, you need to run 30 iterations
12 that actually run and then you take that -- the 30
13 iterations and -- and see what the average of that
14 is, and that produces the numbers, the results
15 which you've already looked at.

16 So basically a seed, when you -- when
17 you have randomization of departure times from
18 a -- from a yard like New Orleans or -- or, excuse
19 me, Mobile, the -- the randomization will pick a
20 little -- a time based on the uniform
21 distribution -- and I know I'm getting into the
22 weeds here -- uniform distribution or triangular

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1 distribution and make the run. And because of the
2 randomization of start times there are -- are
3 times when the -- the model actually will not run.
4 So, those are excluded and you run the model based
5 on -- 'till you get 30 seeds that are acceptable
6 and --

7 CHAIRMAN OBERMAN: What does the word
8 "seed" mean? What does that mean? What are you
9 referring to?

10 THE WITNESS: It -- it means an
11 iteration of -- of a model.

12 CHAIRMAN OBERMAN: Okay.

13 THE WITNESS: It's a run. It's a
14 simulation run based on a -- a change in the input
15 due to randomization.

16 CHAIRMAN OBERMAN: All right. I just
17 hadn't heard the term before and so I didn't know
18 what you were talking about. Thank you.

19 Sorry, Ms. Bracey.

20 BY MS. BRACEY:

21 Q. Are there other infrastructure
22 solutions you considered that did not make it into

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1 your report?

2 A. Well, yes. Mr. Dingler did model some
3 other infrastructure solutions that proved not to
4 be beneficial.

5 Q. Do you remember what those
6 infrastructure solutions were?

7 A. I do -- I not have a list of those, no.

8 Q. Okay. And do you have prior drafts of
9 your report that reflect different conclusions?

10 A. Do I have brief draft? Is that what
11 you said?

12 Q. Yes, yes.

13 A. No, I do not. No.

14 Q. Okay. And CSX determined the inputs
15 for the RTC model. Is that right?

16 A. They -- they determined the -- the
17 TRAIN file inputs for their piece of the model and
18 of course Norfolk Southern presented its own
19 inputs for the New Orleans terminal.

20 Q. So can we take a look at page six of
21 your report.

22 CHAIRMAN OBERMAN: Which -- at exhibit,

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1 Ms. Bracey?

2 MS. BRACEY: It's Joint Exhibit 23D.

3 CHAIRMAN OBERMAN: That's the RTC
4 report?

5 MS. BRACEY: Yes, sir.

6 CHAIRMAN OBERMAN: Thank you.

7 MR. DONAHOE: If you can give us one
8 moment, I think we have two versions and we want
9 to make sure we're working off the same version as
10 counsel.

11 (Brief pause.)

12 MS. BRACEY: We're also going to put it
13 up on the screen, if that would be helpful.

14 THE WITNESS: Would that be the
15 November version, November 3 report? It would be,
16 I believe.

17 MS. BRACEY: Yes.

18 MR. DONAHOE: Let's see. Counsel,
19 did -- I'm -- I'm sorry, or Chair or counsel, did
20 you say Joint Exhibit 23C?

21 MS. BRACEY: My apologies. I said D as
22 in --

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1 MR. DONAHOE: Oh, okay, I misheard you.

2 You know, to expedite things, if he can
3 see it on the screen -- can you, Larry -- we're --
4 we're fine with that, Chair.

5 THE WITNESS: I think I have it -- I
6 think I have it here. I believe this is correct.
7 Page six.

8 MS. BRACEY: Yes.

9 CHAIRMAN OBERMAN: I just want to make
10 sure that the witness is looking at the piece of
11 paper he's going to be questioned on.

12 THE WITNESS: What is your question? I
13 have it in front of me.

14 BY MS. BRACEY:

15 Q. Okay. So you say that the 14 -- you
16 write there that the 14 projects were selected to
17 provide capacity to achieve above 95% OTP for
18 Amtrak, restore freight performance to at least
19 the same level as before Amtrak was added, and
20 ensure no schedule changes at all for any freight,
21 railroad of Amtrak?

22 Were those the parameters for your

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1 study?

2 A. Yes, they were.

3 Q. Okay. And who decided that freights
4 would be unreasonably impaired without enough
5 infrastructure to reach 95% OTP?

6 A. They decided that?

7 Q. Yes, sir.

8 A. I'm not sure the decision was made. I
9 think -- I think the modeling results indicate --
10 would indicate that. But no one decided that.

11 Q. And who decided that freight -- go
12 ahead.

13 A. Are -- are you referring to one, two or
14 three here, bullet points, or one of those bullet
15 points?

16 Q. To the first bullet point.

17 A. Actually, I think this has been
18 discussed earlier and this was -- by Mr. Dingler,
19 "provide capacity to achieve above 95% on-time
20 performance, OTP, by passenger trains and limit
21 the need for passenger trains to enter and be
22 delayed in a siding".

1 I -- I don't believe that infers what
2 you -- the question that you're asking. Would
3 you -- would repeat your question or rephrase it.

4 Q. Who decided that freights would be
5 unreasonably impaired without enough
6 infrastructure to reach 95% OTP?

7 A. I don't think that anyone decided. I
8 think it's an output, output of the modeling
9 exercise.

10 Q. Okay. Who decided that freights would
11 be unreasonably impaired without enough
12 infrastructure to keep freight performance at the
13 same level, and is this is point two?

14 A. Same -- same answer. The -- the
15 modeling analysis or the modeling results
16 determined that.

17 Q. And the model did not consider any
18 schedule changes. Is that right?

19 A. That is correct.

20 Q. Okay. And your model allowed the
21 freights to be as efficient or inefficient as
22 they've always been. Is that right?

1 A. The model allowed the freight trains to
2 run as they would in the real world I think is
3 the -- the correct answer. I'm not sure that the
4 model itself would determine whether it was
5 efficient or less efficient. It -- it run the --
6 it ran the trains based on the meet/pass logic
7 that the model uses.

8 Q. And you were instructed to not even
9 move the freight schedule five minutes. Is that
10 right?

11 A. Were instructed? The decision was --
12 the decision was made not to change the freight
13 train schedules.

14 Q. And who made that decision?

15 A. Well, Mr. Dingler and I believe -- I
16 believe it was a consensus of the Clean Team that
17 that was appropriate.

18 Q. Okay. And the same with Amtrak trains.
19 You were instructed not to alter the proposed
20 Amtrak train schedule?

21 A. I don't know whether we were instructed
22 to. I don't recall that. But we -- we used the

1 same standard there. We didn't change the
2 provided Amtrak schedules.

3 Q. And you didn't model any operational
4 changes. Is that right?

5 A. That depends on how you define
6 "operational changes". We certainly modeled
7 drawbridge randomization, which might be
8 considered an operational change. But as far as
9 changing the departure times or the lengths of
10 trains or - or any of that, train mix, no, we did
11 not. We didn't alter that.

12 Q. And the only thing you were instructed
13 to do was to add more infrastructure until you
14 reached those objectives set out on this page,
15 page six?

16 A. No, we weren't instructed to add more
17 infrastructure. What we were instructed to do was
18 to mitigate the delay in order it bring the
19 freight train operations back to what has been
20 referred to as the status quo.

21 Q. Okay. But your conclusion was to add
22 more infrastructure. Is that right?

1 A. That's correct, yes.

2 MS. BRACEY: Mr. Peterson is going to
3 take down the demonstrative.

4 BY MS. BRACEY:

5 Q. Mr. Guthrie, you testified that you
6 audited the RTC model. Is that right?

7 A. Yes -- yes, I did.

8 Q. And have you audited RTC models before?

9 A. Every -- every RTC modeling effort that
10 we did at Norfolk Southern when I was there was
11 audited, yes. Basically that's -- basically
12 that's a peer review.

13 Q. Okay. And when you -- when you audit
14 RTC models, do you follow a prescribed
15 methodology?

16 A. Yes, we do.

17 Q. And did you develop that methodology?

18 A. Develop might be a -- we -- we
19 certainly found -- we -- the answer is -- the
20 answer is that methodology was one that is -- that
21 evolved from the beginning of our -- or our
22 efforts. At that time it was very few RTC users

1 in the industry and of course every RTC user,
2 which normally meant a class I railroad, was
3 developing their process needs and so forth.

4 Q. Is the methodology vetted by any
5 professional organizations?

6 A. Is it vetted?

7 Q. Yes.

8 A. The FRA has done so.

9 Q. Okay. Has vetted in -- in a
10 publication? Where has the FRA vetted that?

11 A. There is a -- there is a -- there is a
12 modeling, capacity modeling guide book I believe
13 that describes the process.

14 Q. And that includes the auditing?

15 A. Yes.

16 Q. And does it describe what took place
17 here, which is that people drafting the report
18 were also auditing the report?

19 A. I'm sorry, would you repeat the
20 question, please.

21 Q. Sure. Does it include the process of
22 what was described here in which people who

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1 drafted the report were also auditing the report?

2 A. I'm not sure. I'm not sure about that.

3 I'm not sure. I don't recall.

4 Q. Okay. Now you were brought in before
5 the RTC model was finalized. Is that right?

6 A. Yes, it was a draft -- it was a draft
7 version when I was brought in, yes.

8 Q. And in fact you contributed to the
9 process of developing a final RTC model. Is that
10 right?

11 A. In the sense that I made suggestions
12 and questioned the modeler to determine what he
13 was doing, yes.

14 Q. And so, for example, you mentioned that
15 you provided Mr. Dingle with feedback on at least
16 one draft of the model. Is that right?

17 A. Yes, there -- there was one, but there
18 may have been more because we were looking at lots
19 of different modeling efforts and the conversation
20 was frequent. But that's the one that strikes me
21 as -- as an important example.

22 Q. Did you ever review a draft that

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1 incorporated feedback you had previously provided?

2 MR. DONAHOE: Objection, work product.

3 CHAIRMAN OBERMAN: No, I'll let her --

4 I'll let him answer the question of what he
5 reviewed.

6 THE WITNESS: Would you -- would you
7 repeat the question, please.

8 BY MS. BRACEY:

9 Q. Yes. Did you ever review a draft that
10 incorporated feedback you had previously provided?

11 A. From a previous what?

12 Q. That you had previously provided.

13 A. Oh, that I previously provided. One
14 more time, please. I apologize.

15 Q. Did you ever review a draft that
16 incorporated feedback you had previously provided?

17 A. A draft of the report?

18 Q. Yes, sir.

19 A. Yes.

20 Q. And you participated in at least some
21 Clean Team discussions. Is that right?

22 A. Yes.

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1 Q. And as you testified those discussions
2 included what inputs to use?

3 A. What to use, ma'am?

4 Q. What inputs to use.

5 A. Yes.

6 Q. And also include what outputs to
7 evaluate?

8 A. Yes, yes.

9 Q. All right. So it's fair to say you
10 were involved in a number of discussions about how
11 to build the model. Is that right?

12 A. That's fair.

13 Q. And was the model evaluated by anyone
14 not involved in these discussions?

15 A. Not to my knowledge.

16 Q. And I think you said that, as between
17 you and Mr. Banks, you were -- you were
18 responsible for the auditing. Is that right?

19 A. That's correct.

20 Q. And so Mr. Banks was not responsible
21 for auditing?

22 A. No, sir -- no, ma'am.

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1 Q. Has Mr. Banks ever worked for CSX or
2 NS?

3 A. You mean -- when you say "worked for"
4 them, as a -- as a client?

5 Q. As an employee.

6 A. To my knowledge he's not been an
7 employee of CSX and NS.

8 Q. And you worked at NS for more than 40
9 years. Is that right?

10 A. That's correct.

11 Q. Okay. And one final question: are you
12 offering an opinion to the board on whether the
13 position of CSX and NS should be adopted in this
14 proceeding?

15 A. The answer is yes.

16 Q. Does Norfolk Southern do cost-benefit
17 analyses when deciding whether to make investments
18 to increase capacity?

19 A. Yes.

20 Q. Does Norfolk Southern calculate the
21 return on investments before making them?

22 A. Yes.

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1 Q. And do you know why cost-benefit
2 analyses weren't performed and return on
3 investment wasn't calculated for the projects your
4 verified statement recommended?

5 A. The only thing I know is that financial
6 analysis was not part of the scope of the project
7 when we -- when we entered the project.

8 Q. When Norfolk Southern projects --
9 projects it will need additional sidings or double
10 track in 20 years, does it build the projects now
11 if it is paying for them itself or does it wait
12 'till they are needed?

13 A. All of our projects that I was
14 responsible for were built prior to Amtrak or
15 passenger service, with the exception of the North
16 Carolina Passenger Corridor which already had I
17 believe two or four trains operating on it.

18 Q. And so were those projects needed
19 immediately or were they needed in 20 years?

20 A. They were needed -- they were needed
21 immediately.

22 Q. Okay. You testified that the DB -- DB

1 model used a variability factor?

2 A. That is correct.

3 Q. My apologies for interrupting. Does
4 RTC also use a variability factor?

5 A. No, RTC does not use a variability -- a
6 variability factor. It -- it actually is
7 intrinsic in the modeling itself in the meet/pass
8 algorithm. The -- the variability is a -- is a
9 result of the way trains -- trains meet and/or the
10 way the trains are -- are defined in the model.
11 It does not use an average.

12 Variability -- variability in the DB
13 model is uniform from one end of the corridor to
14 the other. RTC does not make that assumption
15 because it's an incorrect assumption.

16 Q. So you've testified that you validated
17 the inputs provided by the carriers. Is that
18 right?

19 A. Yes.

20 Q. And those inputs included field
21 narratives from CSX and NS, right?

22 A. They did. They did, yes.

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1 Q. And what did you do to validate those
2 field narratives?

3 A. I looked -- I looked at the summaries,
4 the actual detailed movement data at -- at the
5 location in which they were designated and
6 determined from my knowledge and experience in 40
7 years and having worked in transportation as well
8 at particular yards and on the road as to -- as to
9 the validity of the -- of the movements
10 themselves.

11 Q. In what form were those field summaries
12 in?

13 A. They were in summaries provided by both
14 Holly and Hannah, Holly Sinkkanen and Hannah --
15 Hannah Rosse.

16 Q. In what form were the summaries in?

17 A. They were a narrative, written
18 narrative, written narrative.

19 Q. So they were a Word document or
20 something of the sort?

21 A. What I received from Mr. Dingler, he
22 provided them, were, yes.

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1 Q. Okay.

2 CHAIRMAN OBERMAN: Let me just ask
3 counsel, are those documents in the record?

4 MR. DONAHOE: Yes, Mr. Chair.

5 CHAIRMAN OBERMAN: Okay.

6 MS. BRACEY: I -- I don't believe the
7 field narratives are in the record.

8 MR. DONAHOE: I believe they are.
9 Again I can double check, but I -- I believe they
10 are, counsel.

11 CHAIRMAN OBERMAN: At some point --
12 let -- let's get an exhibit number or a Bates
13 number or something so we know what we're talking
14 about.

15 MR. DONAHOE: Sure.

16 CHAIRMAN OBERMAN: Okay, thank you.

17 BY MS. BRACEY:

18 Q. How did you validate the frequency and
19 timing of the train counts?

20 A. The frequency and timing of the train
21 counts were actually provided in the raw data that
22 Mr. Dingler had, the -- the particular dispatching

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1 as well as the OS data that -- that they used.

2 Q. Did you ask for a list of the field
3 personnel that Ms. Rosse or Ms. Sinkkanen
4 interviewed?

5 A. Did I ask for a list? No, I did not.

6 Q. Okay. Did you ask for the list -- list
7 of positions held by the field personnel Ms. Rosse
8 or Ms. Sinkkanen interviewed?

9 A. The -- the positions did you say?

10 Q. I did, yes, the positions.

11 A. The -- there was only one that I'm
12 aware of and that was the terminal manager in New
13 Orleans when we did our -- did our site visit.

14 Q. Did you ask for a list of the questions
15 that Ms. Rosse or Ms. Sinkkanen put to field
16 personnel during the interviews?

17 A. No, I did not ask for a list.

18 Q. Was a list of questions reflected in
19 the Word document you received?

20 A. Yes, they were, actually.

21 Q. And did you ask for the dates on which
22 Ms. Rosse or Ms. Sinkkanen interviewed field

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1 personnel?

2 A. I didn't ask for one but I believe the
3 dates are on the summary documents.

4 Q. Did you ask for a time of day at which
5 Ms. Rosse and Ms. Sinkkanen interviewed field
6 personnel?

7 A. No, I didn't because I didn't feel like
8 the time of day was relevant. The time of day
9 varies as far as train switching operations and
10 departure times for the entire 24-hour period. So
11 I -- I thought it was irrelevant.

12 Q. Did you ask whether Ms. Rosse or Ms.
13 Sinkkanen reviewed dispatch tapes?

14 A. They did, both did. I'm not sure I
15 asked but it came up in our conversation
16 certainly.

17 Q. Did you review the CSX dispatch tapes?

18 A. No, I did not personally review the
19 dispatch tapes. No.

20 Q. Okay, and you didn't -- the same for
21 NS, you did not review the NS dispatch tapes?

22 A. No -- no, I did not.

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1 Q. And you did not personally speak with
2 the field personnel that Ms. Rosse or Ms.
3 Sinkkanen spoke with?

4 A. The -- the only -- the only field
5 personnel was the terminal manager at New Orleans.
6 I did speak with him personally.

7 Q. So what's -- so I have a couple of
8 questions about the .TRAIN file.

9 A. Yes.

10 Q. So NS didn't have a .TRAIN file when
11 you began this process. Is that right?

12 A. Yes, NS had a dot -- had -- wait a
13 minute. I may be incorrect here. NS I believe
14 provided input to Mr. Dingler to create the dot
15 file, .TRAIN file.

16 Q. Okay.

17 A. CS -- CSX had a .TRAIN file already.

18 Q. And you mentioned that you're working
19 on this Chicago Metra case?

20 A. Yes.

21 Q. Is that correct? And there is also
22 capacity marketplace modeling that's also going to

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1 happen in that a case. Is that right?

2 A. The Metra BNSF extension, the Kendall
3 extension?

4 Q. Yes, sir.

5 A. Not to my knowledge. I didn't -- I
6 don't know of -- any -- any effort to -- to do
7 anything other than RTC.

8 Q. You mentioned about the Metra metro in
9 Atlanta?

10 A. Actually -- actually -- actually Marta.
11 Marta, yes.

12 Q. And you're advising CSX and NS in that
13 case. Is that right?

14 A. Myself and Mr. Banks were advising
15 Marta on the strategies to uses with CSX and NS.

16 Q. Okay.

17 MS. BRACEY: If I can just have like a
18 seven-minute break. I'm almost done.

19 CHAIRMAN OBERMAN: Well, we don't have
20 seven-minute breaks but I'm happy to give you one.

21 MS. BRACEY: I'll take five. I'll take
22 a five-minute break.

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1 CHAIRMAN OBERMAN: Why don't we make --
2 why don't we make it 4:25.

3 MS. BRACEY: Okay.

4 MR. DONAHOE: Mr. Chairman, can I ask
5 just the scheduling. It's travel day for a lot of
6 people, not me, but for others. I guess my
7 question -- we're more than happy to bring Mr.
8 Guthrie back Monday if the board doesn't think
9 they'll get through their questions, so I'm
10 just -- are we hard stopping at 5:00? Are we
11 going to try and get him done? If we can get any
12 guidance.

13 CHAIRMAN OBERMAN: Good question. I
14 don't know if any board members have a hard stop
15 at 5:00. I do not. Is that a problem for any
16 board members?

17 MS. SCHULTZ: Not at 5:00. I have a
18 hard stop at 6:00 tonight.

19 CHAIRMAN OBERMAN: Well, hopefully we
20 don't go 'till 6:00. Let me ask -- what about
21 counsel or other people who have to -- you know,
22 clients who are observing the witness? Does

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1 anybody else have a hard stop at 5:00?

2 MS. BRACEY: Amtrak does not have a
3 hard stop.

4 MR. DONAHOE: I'm sorry, go ahead, Ms.
5 Bracey, sorry.

6 MS. BRACEY: Thank you. Amtrak does to
7 have a hard stop.

8 MR. WIMBISH: No hard stop for the
9 Port.

10 MR. DONAHOE: I -- I guess we don't --
11 we don't either, Chair, it's just there's people
12 catching flights and I'm sure they could
13 probably -- I shouldn't say that, given it's the
14 weekend -- they could probably move them. But I
15 know I have some people getting on 7:00 o'clock,
16 7:15 flights, so.

17 CHAIRMAN OBERMAN: What time -- well, I
18 promised Bill Mullins I wouldn't make him miss his
19 flights any more, if -- if he behaved, so I -- I
20 don't want to do that. Do you -- so what time
21 would people have to leave to catch those flights,
22 Mr. Donahoe?

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1 MR. DONAHOE: Let me -- one second,
2 okay?

3 CHAIRMAN OBERMAN: All right. Well,
4 why don't -- why don't we do this. Let's take the
5 break. We come back at 4:25. We'll figure out
6 the scheduling.

7 MR. DONAHOE: Okay.

8 CHAIRMAN OBERMAN: All right.

9 (Recess taken.)

10 CHAIRMAN OBERMAN: All right. Are we
11 back? Is Mr. Donahoe back?

12 MR. DONAHOE: Yes, I'm back.

13 CHAIRMAN OBERMAN: Okay. Do you want
14 to talk about the scheduling point first and then
15 we'll finish with Ms. Bracey.

16 MR. DONAHOE: Sure. I think this is
17 kind of the consensus I got with people. Most of
18 them are on flights back to DC. I think it's
19 around 7:30. But I think the overall feeling,
20 Chair and the board, is that if we're able to get
21 this done with Mr. Guthrie tonight, they're
22 willing to stay and make different arrangements.

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1 But if he's going to have to come back Monday --
2 and I'm not trying to, you know, block you in to a
3 set time of questions, but if he has to come back
4 Monday, I think everyone's kind of like, could we
5 put a hard stop around 5:15 or so. Does that make
6 sense?

7 CHAIRMAN OBERMAN: Well, yeah, why
8 don't we aim for 5:15 so he doesn't have to come
9 back, subject to the possible production of
10 documents and so forth which we can't deal with
11 today.

12 MR. DONAHOE: I understand.

13 CHAIRMAN OBERMAN: Yeah, why don't we
14 aim for that, for everybody's convenience, and see
15 where we are. I'm confused. I thought you were
16 in DC, Mr. Donahoe.

17 MR. DONAHOE: No, I'm from -- I'm from
18 Pittsburgh.

19 CHAIRMAN OBERMAN: Yeah, is that where
20 you are now in this case?

21 MR. DONAHOE: Oh, no. I'm in -- I'm in
22 Jacksonville but I live in Pittsburgh.

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1 CHAIRMAN OBERMAN: Oh, I see. All
2 right. You're all in Jacksonville.

3 MR. DONAHOE: But I'm actually staying
4 here for the weekend because trying to get from
5 here to Pittsburgh is not an easy trip.

6 CHAIRMAN OBERMAN: All right. I
7 gotcha. I -- I just thought your team was in DC,
8 because that's where Ray's --

9 MR. DONAHOE: No, no.

10 CHAIRMAN OBERMAN: Okay.

11 MR. DONAHOE: Chairman, one other quick
12 housekeeping matter. The exhibits regarding the
13 field summaries --

14 CHAIRMAN OBERMAN: Yeah.

15 MR. DONAHOE: They were produced in
16 discovery and they were also made Exhibits 80, 95,
17 96 and 98. They are joint exhibits, Joint CSX/NS.
18 So that's 80, 95, 96 and 98.

19 CHAIRMAN OBERMAN: And -- and those are
20 the documents that Mr. Guthrie was referring to?

21 MR. DONAHOE: Yes, the field summaries,
22 field narratives I think they've been called.

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1 CHAIRMAN OBERMAN: All right. Very
2 helpful. Thank you.

3 All right, Ms. Bracey, you want -- you
4 want to proceed?

5 MS. BRACEY: Yes, just two questions.

6 BY MS. BRACEY:

7 Q. Are the auditing, the FRA auditing
8 procedures you mentioned, are those in the record?

9 MR. DONAHOE: I don't --

10 THE WITNESS: I'm not sure.

11 CHAIRMAN OBERMAN: Yeah, I don't know
12 if Mr. Guthrie would know the answer to that.

13 Do you know, Mr. Donahoe?

14 MR. DONAHOE: I do not but again I
15 will -- I don't believe so. In fact cocounsel is
16 nodding her head no. So we're going to say no on
17 that, that it's not in the record.

18 CHAIRMAN OBERMAN: Okay.

19 BY MS. BRACEY:

20 Q. And the second question, for freight
21 projects, does NS build 20 years in advance?

22 A. The answer is -- is yes and maybe even

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1 a longer horizon than 20 years, at least we did
2 when I was there.

3 Q. Are the auditing procedures -- one last
4 question. Are the auditing procedures you
5 mentioned in the record?

6 A. I --

7 MR. DONAHOE: Counsel, I'll -- I'll --
8 I'll submit that they are not.

9 MS. BRACEY: Okay.

10 MR. DONAHOE: You mean like a -- a
11 handbook or printout of an auditing procedure?

12 MS. BRACEY: Yes.

13 MR. DONAHOE: They are not. They are
14 not.

15 MS. BRACEY: Okay. I don't have
16 anything else.

17 CHAIRMAN OBERMAN: All right, I -- I
18 have just a couple at this point.

19 Mr. Guthrie, you -- earlier on in your
20 testimony, I -- I made a note, I think I got it
21 accurately, said that every modeler that uses RTC
22 does things a little differently.

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1 Do you recall that --

2 THE WITNESS: Yes sir.

3 CHAIRMAN OBERMAN: -- observation you
4 made?

5 THE WITNESS: Yes, sir.

6 CHAIRMAN OBERMAN: But then later you
7 said there's a prescribed methodology that is
8 followed using RTC.

9 THE WITNESS: Yes, sir.

10 CHAIRMAN OBERMAN: So I'm trying to --
11 I'm trying to reconcile how everybody does things
12 a little differently but there's a prescribed
13 methodology. Can you enlighten us on that?

14 THE WITNESS: Well, now we're talking
15 about details on how the model -- modeler presents
16 certain types of movements in the model. And I
17 think I mentioned before, a modeler may model the
18 way they -- a local serves a plant a little
19 differently than another modeler would. The
20 important thing in -- in being able to have that
21 flexibility is -- is to be able to make sure that
22 you capture the capacity that's being consumed on

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1 the main line. That's the key, the main line. So
2 the modeler may take a simple approach and pull
3 the train up to an industry switch and let his
4 train sit there for 35 minutes because he knows
5 that it takes 35 minutes to switch that plant
6 without doing any specific additional moves, and
7 then he'll move on out. At other locations the
8 modeler, like in a yard situation, he may
9 replicate something similar to in two or three
10 moves by actually -- by actually showing the
11 movement of light engines or light engines and
12 blocks of cars moving into a location, dropping
13 those cars off, coming back and coupling up to the
14 train and then moving on.

15 So -- so there's singular or multiple
16 type moves that can be deployed when you -- with
17 a -- with a modeler. As long as a modeler
18 captures the amount of time or delay that's
19 consumed on the main line, then he's satisfied the
20 criteria as far as the simulation is concerned.

21 CHAIRMAN OBERMAN: So -- so which
22 practice -- when you talked about a prescribed

1 methodology, I -- I took that to mean, tell me if
2 it's wrong, that everybody does what's prescribed.
3 So what's the -- what parts are prescribed as
4 distinguished from what you just described about
5 how modelers do things differently?

6 THE WITNESS: The general -- the
7 general -- the general topics of collecting the
8 data, making sure that you create the TRAIN files
9 and the infrastructure files more on a high level
10 and being able to take your -- actually, not take
11 your, determine the delays, take those delays and
12 do the analysis to determine locations where
13 infrastructure or operational changes need to be
14 made. It's -- it's more of a high-level process
15 or methodology than it is a detailed methodology.
16 There's leeway in those steps for the modeler to
17 take, as long as he -- as long as his model
18 replicates the operation in real life, the
19 real-life operation.

20 CHAIRMAN OBERMAN: All right. That --
21 that's helpful. Just one other area. Were you --
22 did you participate or listen in during Mr. Banks'

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1 testimony?

2 THE WITNESS: Did you say did I listen
3 in? Yes, I did listen in.

4 CHAIRMAN OBERMAN: Yeah, yeah. So you
5 recall that Mr. Banks said that he -- his role was
6 to audit this study and then I asked him what did
7 that mean, what did he do in his audit and he told
8 us -- I don't want to repeat it all -- but now
9 today you're saying he didn't do the audit.

10 So I'm a little confused. Did Mr.
11 Banks just get it wrong as to what his role was or
12 how are we supposed to interpret that?

13 THE WITNESS: I would say that -- I
14 would say that he -- "audit" might be a word that
15 I wouldn't use. He oversaw what was going on in
16 the Clean Team and provided a lot of input into
17 the Clean Team and suggestions and so forth.

18 As far as the technical side of -- of
19 things, the auditing of the TRAIN files or the
20 infrastructure or the animation, he wasn't
21 involved in that side of it. It was more -- it
22 was more qualitative in nature with the Clean

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1 Teams.

2 CHAIRMAN OBERMAN: Well, without going
3 through all of that he described what he did when
4 I asked him what audit meant. Would you endorse
5 that, your understanding as to what he did during
6 this study?

7 THE WITNESS: I don't -- I don't --
8 sir, I don't recall what he said.

9 CHAIRMAN OBERMAN: All right.

10 THE WITNESS: So that I could answer
11 that correctly.

12 CHAIRMAN OBERMAN: All right. But you
13 would disagree that what he did was an audit.

14 THE WITNESS: I would disagree?

15 CHAIRMAN OBERMAN: Yes.

16 THE WITNESS: Yes, I would disagree.

17 CHAIRMAN OBERMAN: Okay, I got
18 everybody's hands up and I don't know what order
19 they started in, so I'm going to start with Karen
20 and then Michelle and then Robert.

21 Go ahead, Karen.

22 MEMBER HEDLUND: Thank you, I think I

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1 was the third up.

2 But Mr. Guthrie, would you go back to
3 what you told us about your site visit to New
4 Orleans.

5 THE WITNESS: Okay, yes.

6 MEMBER HEDLUND: And I believe you said
7 you observed congestion on the back belt or
8 getting into the back belt. I -- I just didn't
9 get it quite clear what it is you observed down
10 there.

11 THE WITNESS: I observed congestion on
12 main one and main two on the back belt, both --
13 both -- both tracks, simultaneously.

14 MEMBER HEDLUND: Simultaneously.

15 THE WITNESS: Yes.

16 MS. HEDLUND: And setting aside
17 additional Amtrak trains, would the lead
18 extension, the freight train lead extension serve
19 to relieve existing congestion on the back belt?

20 THE WITNESS: The answer is yes, it
21 would.

22 MEMBER HEDLUND: Thank you.

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1 CHAIRMAN OBERMAN: Was that all you
2 had, Karen?

3 MEMBER HEDLUND: That's all I had.

4 CHAIRMAN OBERMAN: All right, Michelle?

5 MEMBER SCHULTZ: You indicated that
6 steam -- streamline modeling does not consider
7 many of the limitations that RTC modeling does. I
8 was wondering if you could speak to what benefit
9 or what result streamline modeling might provide
10 that RTC modeling does not.

11 THE WITNESS: Actually I do not believe
12 that streamline modeling offers any advantage over
13 RTC. RTC is so detailed. It's data intensive.
14 And the -- and variability and the trains, all of
15 that is -- is intrinsic or integral in the model,
16 whereas there's no averages, you don't assume
17 averages. These are -- these are real
18 replications of train movements in everyday life.

19 So the bottom line is I -- I don't
20 think that -- that the streamline offers any
21 advantage over RTC and that's why I didn't use it
22 when I was doing modeling. And -- and most of --

1 I don't know of any of my modelers during the day
2 actually used streamlines.

3 Now I have used streamlines in
4 reporting data and I've also used streamlines in
5 another proprietary model that wasn't near as --
6 didn't have the efficacy if you will of RTC.

7 MEMBER SCHULTZ: In -- in the instances
8 that you actually chose to use streamline
9 modeling, what -- what were the reasons or what
10 were the circumstances that led you to actually
11 choose streamline modeling?

12 THE WITNESS: I used it to demonstrate
13 output rather than inputs. Output, I -- we did
14 the modeling, and in order to show the client what
15 the operation would look like, we would produce
16 streamline outputs. Rather than, rather than use
17 them as -- as an input into the modeling exercise,
18 we would use them as an output to show the results
19 of a -- of a -- a similar type of -- a similar
20 type of simulation. Like I said, it was a
21 proprietary model and it wasn't near as complete
22 as -- as the RTC model is.

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1 MEMBER SCHULTZ: Thank you.

2 CHAIRMAN OBERMAN: All right. Was
3 that -- was that it, Michelle? Yes.

4 Okay, Robert.

5 MEMBER PRIMUS: Thanks, Marty.

6 Mr. Guthrie, you said in your testimony
7 that you've been involved in over 50 RTC models.
8 Is that -- that correct?

9 THE WITNESS: Yes, yes.

10 MEMBER PRIMUS: And you also said
11 there -- there is a type of RTC methodology and
12 part of it you were saying validation is -- is
13 part of that methodology?

14 THE WITNESS: Yes.

15 MEMBER PRIMUS: Would that -- would
16 that include financial analysis?

17 THE WITNESS: It may or may not. We --
18 we at NS, while I was there, most of our capital
19 improvement projects used financial analysis to --
20 to demonstrate to our senior management that the
21 project was worth or not worth doing.

22 MEMBER PRIMUS: Right. And so like a

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1 cost-benefit analysis would -- would be in order
2 to validate that, using the models?

3 THE WITNESS: It was in my day, yes.

4 MEMBER PRIMUS: Okay, thank you.

5 And -- and so to fast forward to -- to
6 your time now with Banks and -- and you said that
7 you provide financial analysis when -- when called
8 upon. Is that -- is that correct?

9 THE WITNESS: Yes.

10 MEMBER PRIMUS: Okay. And you're --
11 you're involved currently with the Marta CSX/NS I
12 guess issue currently. Is that correct?

13 THE WITNESS: Yes, yes.

14 MEMBER PRIMUS: Okay. Are you
15 providing financial analysis with respect to that,
16 for -- for Marta in terms of their -- their RTC
17 modeling?

18 THE WITNESS: No -- no -- no, we're
19 not. We're doing more strategic guidance, if you
20 will.

21 MEMBER PRIMUS: Okay. Is there -- is
22 there any time or any -- in previous sort of RTC

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1 modeling involving passenger rail where you have
2 done financial analysis?

3 THE WITNESS: I mentioned the North
4 Carolina Railroad Corridor, yes.

5 MEMBER PRIMUS: Okay. Okay. So -- so
6 sort of fast -- going ahead to the -- to Gulf
7 Coast, do you recall, was there any directive
8 given to -- to you going into -- of -- of this RTC
9 modeling of the Gulf Coast by the railroads
10 concerning financial analysis?

11 THE WITNESS: To my knowledge there
12 were -- there was no directive.

13 MEMBER PRIMUS: Okay. Okay, did --
14 did -- was that -- is that unusual that you were
15 not called upon to provide any financial analysis
16 or cost benefit? You said you -- you used under
17 NS, but this -- is that considered unusual now?

18 THE WITNESS: No, I don't necessarily
19 consider it unusual. Each -- each of the
20 railroads have its own -- has its own departments
21 that do that sort of thing. They could do that
22 internally.

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1 MEMBER PRIMUS: Okay, but at some point
2 there's some sort of financial -- you would expect
3 that there's some sort of financial analysis done
4 when modeling -- when performing an RTC model?

5 THE WITNESS: I -- I would anticipate
6 that that be would the case.

7 MEMBER PRIMUS: Okay, thank you. I --
8 I want to turn my attention back to the freight --
9 freight lead, if I could.

10 So you -- you -- you recall, and I just
11 want to make sure I was correct, you had
12 visited -- it doesn't have to be an exact date --
13 you visited all of the projects in October, 15
14 projects?

15 THE WITNESS: I -- I visited all the
16 proposed locations of the projects, that's
17 correct.

18 MEMBER PRIMUS: Yes, sir. So that --
19 that would be 15 proposed projects at the time?

20 THE WITNESS: Yes.

21 MEMBER PRIMUS: Okay. And Mr. Niemeyer
22 was with you in -- in Louisiana, New Orleans to

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1 visit projects there, the three projects there?

2 THE WITNESS: In Alabama.

3 MEMBER PRIMUS: And Alabama, okay.

4 Thank -- thank you. And -- and the -- the -- the
5 final report -- well, the November 3rd report only
6 included the 14 projects, not the freight lead.
7 Was that based on Mr. Niemeyer or -- or the team's
8 analysis that it shouldn't be included? How was
9 that justification for that -- for that -- for
10 that one not included?

11 THE WITNESS: It was -- it was my
12 understanding that initially there were concerns
13 about, not so much the cost but the -- the
14 construct -- the term constructability -- I'm not
15 sure that's the correct term -- but the ability
16 for that freight lead to be constructed at that
17 location. It's near -- it's near a canal and I
18 can see where there was considerable concerns
19 about the ability to construct the freight lead
20 with sufficient clearances. I think that was a
21 real -- real concern.

22 Obviously people talked about they knew

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1 that it was going to cost a lot of money because
2 there would be bridges involved and the reason for
3 that is because the track is not at grade or
4 wouldn't be at grade. So anyway, it was -- it was
5 purposefully left out.

6 I think in my -- in my view, once Mr.
7 Niemeyer and myself, as well as the Norfolk
8 Southern representative, Randy Hunt, got to the
9 site and of course I saw operationally that it
10 was -- it was a very important project in order to
11 make sure that New Orleans terminal remained
12 fluid, I think it -- I think it somewhat elevated
13 it. I'm not saying that I myself there was a
14 reason for that, but I think it became apparent
15 that -- that it was an important project, and of
16 course Mr. Niemeyer determined that it was
17 buildable, you could construct it, if you will.

18 So that's -- that my recollection of --
19 of the reason that it wasn't included in the
20 November 3rd report but later on it was included.

21 MEMBER PRIMUS: I -- I appreciate your
22 confusion on constructability, because I'm --

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1 I'm -- I'm right there with you.

2 But -- so -- but when Mr. Niemeyer and
3 you visited in October he thought that the project
4 should go forward?

5 THE WITNESS: I'm not sure he -- I'm
6 not sure he expressed an opinion that the project
7 should go forward. I think his opinion was
8 that -- that you could construct it without a
9 negative environmental impact. You could -- you
10 could do that.

11 MEMBER PRIMUS: So -- so, I just want
12 to be clear. Did he perform a second visit to
13 confirm that it could be constructed?

14 THE WITNESS: No, he did not. He -- he
15 determined that while we were there at the
16 first -- the first site visit, yes.

17 MEMBER PRIMUS: Okay. So he determined
18 it in -- in October but they still -- the powers
19 that be said that it wasn't constructable and
20 didn't include it as part of the 14?

21 THE WITNESS: I'm not sure I can answer
22 that, when you say the powers that be. I'm not

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1 sure --

2 MEMBER PRIMUS: Well, who -- who -- who
3 gave the final -- I should say, who do you
4 understand gave the final signoff on -- on the
5 projects?

6 Of the 14 projects that were in the
7 November 3rd, do you know as part of the Clean
8 Team, as part of sort of the team that helps to
9 advise Mr. Dingler and others, do you know who --
10 who dropped that -- who approved the 15 and who
11 may have dropped the freight lead?

12 THE WITNESS: Actually I do not know.
13 I do not know that.

14 MEMBER PRIMUS: Okay. So -- so, now we
15 can sort of fast forward. I'm trying to get --
16 because I'm trying to figure out where that
17 project sort of dropped off and why it dropped
18 off. Because under the rebuttal it automatically
19 shows up. And -- and according to Mr. Dingler and
20 others that, upon further review by Mr. Niemeyer,
21 it made it sound like he visited this site visit
22 on his own afterwards and said, "No, wait, this

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1 project is good and we should". And so I'm trying
2 to figure out where the disconnect from why it
3 wasn't needed to make -- to go to zero sum in --
4 in this November 3rd report to the rebuttal in
5 December, why all of a sudden this 80M project --
6 million dollar project actually meets the merit
7 and should be in.

8 THE WITNESS: Well all I can say about
9 that is it became very apparent when doing the RTC
10 modeling and it was I guess elevated at maybe a
11 later date that the degradation in service for the
12 foreign interchange traffic was extreme. I
13 mentioned before -- I mentioned bottlenecks, that
14 sort of thing, gridlock. And -- and once we were
15 there we-- we saw that occur, and of course the
16 RTC simulation mirrored that, and in -- in looking
17 at that, that it became very apparent that if, you
18 know, if we don't do something to mitigate the
19 delays to the interchange traffic, we're going to
20 have back-ups back to Houston. Who knows how far
21 that will be. I mean, it's not just a local
22 problem. It becomes an industrywide problem.

1 Because the interchange traffic is -- is a
2 systemwide product and -- and it's necessary -- it
3 would be necessary to make sure that that remains
4 fluid, particularly at New Orleans operation -- at
5 New Orleans Terminal.

6 MEMBER PRIMUS: Right, and I completely
7 agree, which is kind of why I'm so confused. If
8 that assessment was made in October, how could
9 then it be left off the November 3rd -- I mean,
10 again I'm just offering -- if you could offer that
11 based on, you know, your background and -- and
12 your -- your assessment that something so vital,
13 you know -- you know, and -- and again I want to
14 pull into your background, you know, that
15 financial analysis. If you made it clear that
16 operationally it needs to be, but they're saying
17 that constructability, i.e. cost -- was it -- did
18 you believe that it may have been cost prohibitive
19 to -- to take that off?

20 THE WITNESS: First of all I don't know
21 when the cost estimates were actually submitted to
22 the -- to the team. I think the date is possibly

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1 November the 3rd, the same date that's on the
2 report, but that's a final product. I'm just --
3 I'm not sure when Mr. Niemeyer actually produced
4 those estimates. And so, you know, the estimates
5 may -- may have shown that the cost was actually
6 less expensive than originally thought. I don't
7 know. I just don't know. I'm speculating.

8 MEMBER PRIMUS: No, I understand and
9 I'm going to come to the end soon.

10 So but your -- your understanding is
11 that this lead was vital because, as you say, it
12 could have backed up traffic all the way to
13 Houston, you know, if it -- if it was not
14 considered.

15 THE WITNESS: Yeah.

16 MEMBER PRIMUS: How then -- if -- if it
17 was left off, how then do we get to that zero sum?
18 Because to me it sounds like that was a pretty big
19 and substantial part of -- of the equation that --
20 that somehow Mr. Dingler and others missed or --
21 or did not include but they still got to zero, and
22 then they're saying, no, like to your point, it's

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1 vital, and in the rebuttal, now it gets put in and
2 it's still at zero? I -- I don't -- I don't
3 understand how that -- how that was missed.

4 THE WITNESS: Well, I can't answer -- I
5 really can't answer the question, but I will say
6 that we had already provided infrastructure
7 recommendations on main one -- the St. John's
8 Bayou is a good example -- to mitigate some --
9 some of the delay that was occurring on -- on --
10 occurring and reflected in the back-ups by the
11 interchange traffic.

12 But -- but again the freight -- freight
13 lead offers a superior solution to that and I
14 think, you know, as a team, we -- we decided -- or
15 it was decided -- I won't say we decided -- it was
16 decided it was an important issue that needed to
17 be brought up, in addition if you will.

18 MEMBER PRIMUS: I appreciate that. And
19 I -- I just have one other -- one last question
20 of -- of the -- how many of the RTC models in the
21 past you've done of the 50 plus involved Amtrak?

22 THE WITNESS: Well, you know --

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1 you're -- you're looking for a number?

2 MEMBER PRIMUS: Yeah, just a ballpark,
3 if you can. How many do you think involved
4 Amtrak?

5 THE WITNESS: Well the -- the Heartland
6 Corridor certainly did but I don't have a number
7 there.

8 MEMBER PRIMUS: Okay.

9 THE WITNESS: It's -- it's difficult
10 for me to quantify because when you talk about a
11 project are you about a single location or you're
12 talking about the entire --

13 MEMBER PRIMUS: Just a model, a model,
14 an RTC model. And -- and again, I don't need to
15 qualify that, but you just said that you have
16 involved -- Amtrak has been engaged before with --
17 with your RTC models.

18 And my follow-up question is, during --
19 in those models, has -- has Amtrak ever objected
20 to the model?

21 THE WITNESS: The answer is no.

22 MEMBER PRIMUS: Okay.

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1 THE WITNESS: And I'm speaking
2 specifically of the North Carolina passenger
3 corridor.

4 MEMBER PRIMUS: Okay. Thank you, Mr.
5 Guthrie. I appreciate your time.

6 CHAIRMAN OBERMAN: I -- I have a couple
7 more questions I'd like to follow up on with Mr.
8 Guthrie.

9 Mr. Guthrie, you -- you said you
10 weren't sure when the Niemeyer cost estimates came
11 out and you are right that his report is dated
12 November 3, but the report that you audited, the
13 November 3 RTC report, at page 54, which you may
14 have heard me ask Mr. Dingler about, specifically
15 references the \$80M cost for the freight lead. So
16 you must have known about it before November 3, or
17 it wouldn't be in here. Wouldn't that be fair to
18 say?

19 THE WITNESS: Well, Chairman, I didn't
20 say I didn't know about it. I -- I -- I'm just
21 thinking that -- just saying that I wasn't sure
22 about whether or not we would -- that was a -- a

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1 viable project at that time.

2 CHAIRMAN OBERMAN: Well, but the -- the
3 cost of it being in the quote, order of \$80M, that
4 was something that was available to you prior to
5 finalizing the November 3 report, because that's
6 what the report says, correct?

7 THE WITNESS: Yeah, before -- but
8 before that time when I did the site visit, I
9 obviously had a sense of what the cost may be but
10 I did not have a sense of what the benefit would
11 be.

12 CHAIRMAN OBERMAN: All right. Let me
13 just ask you a couple questions. You have I
14 believe told us that the RTC model is supposed to
15 replicate the real world? Do I understand that?

16 THE WITNESS: Yeah, I used that.
17 That's correct. As close as you can come. Any
18 simulation -- the validity of any simulation is
19 how -- is a function of how close it approaches
20 real life.

21 CHAIRMAN OBERMAN: Because other
22 witnesses talked about it being a representative

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1 model and I just wondered, are we talking about
2 two different things here?

3 THE WITNESS: No, sir, we're not. I
4 think when Mark Dingler talks about a
5 representative model he's talking about comparing
6 to the base case and using randomization to make
7 sure that you cover all the -- the variance in
8 particularly train departures, train size and some
9 other factors like drawbridges and things like
10 that that impact delays on the line.

11 CHAIRMAN OBERMAN: All right. You said
12 that if passenger trains were started in 2019
13 without infrastructure, that that would be the
14 2019 passenger case in your RTC modeling, right?

15 THE WITNESS: Yes, it would.

16 CHAIRMAN OBERMAN: And you used the
17 term that gridlock would ensue.

18 THE WITNESS: No, sir, I -- if I -- if
19 I used the term "gridlock," I wasn't -- I
20 wasn't -- I wasn't referring to that particular
21 case. You can operate passenger trains without
22 infrastructure in a 2019, but you would have a

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1 serious degradation of service based on the output
2 metrics.

3 CHAIRMAN OBERMAN: But it wouldn't be
4 gridlock?

5 THE WITNESS: No, it wouldn't be
6 gridlock. I was referring -- when I said gridlock
7 I was referring more to the -- the freight train
8 extension, that -- that operation in -- in New
9 Orleans terminal. If you're going to add four
10 more passenger trains to that and of course you're
11 going to have a variance in your -- in your
12 interchange traffic, that's going to basically
13 block main one and main two to the point of where
14 trains will back up. Say -- I used the example of
15 Houston, for example. There's -- it'll be blocked
16 up in the other direction as well, based on my --
17 my knowledge of that.

18 So I think it's -- I think it's
19 important to know that I was referring to New
20 Orleans terminal when I used the term gridlock.

21 CHAIRMAN OBERMAN: Didn't the RTC
22 passenger -- 2019 passenger case and model include

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1 the entire route from New Orleans to Mobile?

2 THE WITNESS: Yes -- yes, it did, but
3 of course the freight train extension was -- was a
4 project, so having -- that -- that wasn't
5 applicable to that particular thing.

6 CHAIRMAN OBERMAN: Well, no, that's why
7 I'm asking, that the 2019 passenger case, which is
8 passenger trains with no infrastructure, was
9 modeled from New Orleans to Mobile and it -- to
10 use the terminology I've come to use here, it
11 runs. It doesn't gridlock like the 2039 case,
12 correct?

13 THE WITNESS: That's correct. It does
14 run.

15 CHAIRMAN OBERMAN: All right. So, let
16 me -- let me ask you this question: if the
17 passenger trains were going to start today, let's
18 say without any infrastructure, are there
19 operational changes that you would recommend the
20 railroads to consider to minimize what we've
21 talked about in terms of degradation?

22 THE WITNESS: I believe we recommended

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1 11, 11 projects, but if you're asking me to cherry
2 pick the projects, I don't think I can do that
3 because --

4 CHAIRMAN OBERMAN: No, I'm not -- I'm
5 sorry, Mr. Guthrie. I'm not asking you about the
6 projects.

7 I'm saying if the trains started
8 without any projects being built, are there
9 operational changes that you would explore, if
10 asked by the railroads, to try to ameliorate the
11 degradation, either without projects or until the
12 projects could be built?

13 THE WITNESS: Well certainly -- there
14 certainly -- you could -- you explore that, but I
15 can't certainly -- I don't have enough information
16 to -- to -- to say how that exploration -- what
17 the results of that exploration would -- would be.

18 THE WITNESS: Yeah, no, I'm not -- I'm
19 not -- I'm not asking you to give us results
20 because it hasn't been done, that exploration,
21 correct?

22 THE WITNESS: I'm sorry, Chairman?

1 THE WITNESS: The -- the idea of
2 exploring operational changes, you know, I think
3 you've told -- everybody's told us that hasn't
4 been done, so I'm not asking you tell us what the
5 outcome would be, but there is -- there are -- I
6 take it there are operational changes that you
7 would recommend be explored and then figure out
8 what the results would be? Would that be a fair
9 way to understand it?

10 THE WITNESS: The -- the answer is yes
11 you could explore operational changes and -- and
12 schedule changes would be something that -- that
13 you could explore. But you have to look at
14 schedules changes, the impact, outside of Mobile
15 and -- and New Orleans. You have to look at the
16 holistic problem and -- at Norfolk Southern, when
17 I was there, we -- we had modules that -- and
18 service design that -- that looked at that. I'm
19 sure CSX has it -- has those as well.

20 CHAIRMAN OBERMAN: So that could --
21 that's part of what could be explored, the whole
22 picture?

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1 THE WITNESS: The answer is yes. The
2 answer is yes.

3 CHAIRMAN OBERMAN: Yeah, and what --
4 all right, what -- do you have any idea how
5 complex a process that is? Is that something that
6 would take a day a month? Can you give us some
7 idea of how you'd go about it?

8 THE WITNESS: I'm not sure I'm
9 qualified to say how long it will take but I'm
10 sure it's not a day. I'm reasonably sure it would
11 take longer than a month, but after that I'm --
12 I'm not -- I'm just not sure.

13 There may be software, Chairman, that
14 could expedite that. Keep in mind it's 12 years
15 since I've been there.

16 CHAIRMAN OBERMAN: All right.

17 THE WITNESS: So I'm not sure the time
18 frame.

19 CHAIRMAN OBERMAN: Yeah, I don't -- I
20 don't want to ask you a question that you're not
21 qualified to answer. Is there a software program
22 called "MultiRail" that deals with this?

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1 THE WITNESS: There is a -- a software
2 program called MultiRail, correct.

3 CHAIRMAN OBERMAN: All right. Is that
4 something the freight railroads use to your
5 knowledge to forward operational changes?

6 THE WITNESS: I can say that we
7 rejected it at Norfolk Southern when I was there.

8 CHAIRMAN OBERMAN: Okay. Well, that
9 was 12 years ago, right?

10 THE WITNESS: That's correct but I do
11 not believe that MultiRail has been enhanced to
12 the point that we would -- that we would use that
13 product in -- in lieu of RTC.

14 CHAIRMAN OBERMAN: All right, well I --
15 all right, are there other software programs that
16 you would use to explore operational changes?

17 THE WITNESS: There -- there -- there
18 are other programs. SYSTRA I think has -- SYSTRA
19 has a program. You mentioned Rail Sim. There --
20 there may be one or two others.

21 The -- the reality is, Chairman,
22 that -- that no other model that's out in the

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1 market today has the proprietary meet/pass
2 algorithm which replicates the logic that a train
3 dispatcher uses. That's why all the class I
4 railroads use it because it does replicate the
5 thinking and the -- and decision making of a
6 dispatcher, a real-life dispatcher. It has been
7 proven in -- I don't want to say hundreds,
8 probably thousands of simulations.

9 Now, so, it's been mentioned it's a
10 Gold's standard -- and that's not just a marketing
11 term. It really is that when it comes to making
12 decisions.

13 CHAIRMAN OBERMAN: Well that's --
14 that's -- that's very helpful. I -- I guess the
15 question is, getting back to what we were
16 exploring here of whether if you started the
17 trains before any infrastructure was built, would
18 you use the RTC software then to explore
19 operational possibilities to ameliorate any
20 delays?

21 THE WITNESS: Yes, sir. Yes, sir.

22 CHAIRMAN OBERMAN: Okay, so that -- and

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1 is that what the -- is that what the freight
2 railroads use currently to explore these
3 operational -- operational changes when they do,
4 the RTC software?

5 THE WITNESS: I -- I can't speak to the
6 class is but to my knowledge that's exactly what
7 they use.

8 CHAIRMAN OBERMAN: Well, the ones you
9 know about are NS anyway?

10 THE WITNESS: Well I know about BNSF
11 and UP and -- and CN and CP. All of those I've
12 worked for them in the past.

13 CHAIRMAN OBERMAN: All right. And they
14 use the RTC model to explore operational changes?

15 THE WITNESS: Yes, sir.

16 CHAIRMAN OBERMAN: Okay. So I guess,
17 when you're saying it's a Gold's standard, it's a
18 Gold's standard for infrastructure and a Gold's
19 standard for operations, it sounds like. Is that
20 a fair understanding for us?

21 THE WITNESS: That's correct. I
22 believe -- I believe that's a true statement,

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1 yeah.

2 CHAIRMAN OBERMAN: Okay, it is 5:03, so
3 I think we're doing pretty well. I don't have
4 anything further? Does anybody else? Any counsel
5 have any follow-up questions?

6 MR. DONAHOE: I have one question,
7 Chair.

8 CHAIRMAN OBERMAN: All right, are
9 there -- just to see, are the board members
10 finished? It sounds like they are, so that maybe
11 we can -- and Ms. Bracey, so just so I know what's
12 coming here, do you -- will you have any questions
13 or just Mr. Donahoe here?

14 MS. BRACEY: I don't believe I'll have
15 any questions. It will depend on Mr. Donahoe's
16 question.

17 CHAIRMAN OBERMAN: Sure, okay.
18 Mr. Donahoe.

19 MR. DONAHOE: Chair, I'd like to
20 refer -- and this exhibit's been used already --
21 joint Exhibit 023D as in Dan, page 60.

22 CHAIRMAN OBERMAN: Where is this -- is

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1 this from one of the RTC models, Mr. Donahoe?

2 THE WITNESS: There is from the Gulf
3 Coast Passenger RTC Modeling Report prepared by
4 R.L. Banks and HNTB.

5 CHAIRMAN OBERMAN: All right, so it's
6 the one we've been using all along, right?

7 MR. DONAHOE: Yes.

8 CHAIRMAN OBERMAN: Yeah, when you said
9 023 it threw me off.

10 MR. DONAHOE: Okay.

11 CHAIRMAN OBERMAN: But it's just -- I
12 have it as 23. I've got it.

13 REDIRECT EXAMINATION

14 BY MR. DONAHOE:

15 Q. Mr. Guthrie, do you see that?

16 A. Are you using the rebuttal modeling or
17 the --

18 Q. Why don't you just look at the screen.
19 It's going to be two questions. Do you see that?

20 A. Yes, sir.

21 Q. Okay. My question to you is do you see
22 St. John's?

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1 A. Yes, I do.

2 Q. Okay. Was the St. John's crossover a
3 proposed project initially?

4 A. Yes.

5 Q. And what was the purpose of the St.
6 John's crossover project?

7 A. It was -- the purpose was to allow
8 passenger trains to run around freight trains that
9 were holding either main one or main two.

10 Q. And is that a solution to the problem
11 that the freight lead extension was also trying to
12 solve?

13 A. It is a solution but it is not -- not
14 as effective as a freight --

15 MR. DONAHOE: I have no further
16 questions.

17 THE WITNESS: -- extension.

18 CHAIRMAN OBERMAN: All right, any
19 further questions of anyone for Mr. Guthrie?

20 MS. BRACEY: No, sir.

21 CHAIRMAN OBERMAN: Okay. Mr.
22 Guthrie --

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1 THE WITNESS: Yes, sir.

2 CHAIRMAN OBERMAN: Thank you for your
3 patience and your appearance here and you are
4 excused.

5 THE WITNESS: Thank you, Chairman, and
6 the board and thank you very much for allowing me
7 to testify.

8 CHAIRMAN OBERMAN: No, no, very
9 helpful.

10 I will say this, I don't know the
11 outcome of what we're -- this discussion we had
12 about this earlier draft you testified about,
13 depending on it, we may ask counsel to ask you to
14 come back, but let's see if we can avoid that.
15 But it depends on the outcome.

16 THE WITNESS: Understood.

17 CHAIRMAN OBERMAN: Other than that, you
18 are -- you are excused.

19 THE WITNESS: Thank you.

20 (Witness is excused.)

21 CHAIRMAN OBERMAN: All right. I think
22 we got everybody to their planes on time. It

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1 is --

2 MR. DONAHOE: Thank you. Appreciate
3 that.

4 CHAIRMAN OBERMAN: No, no, I was happy
5 to do it when we can. So we are going to
6 reconvene on Monday and Tuesday of next week and
7 we have May 9th and 11th and I know Ray asked us
8 to find another date. I'm really optimistic that
9 we're going to get done, but we'll try to get into
10 a discussion Monday or Tuesday about other
11 possible dates. It's getting hard to find them,
12 but we -- I want to underscore that I'm intent on
13 not cutting off anybody's -- any parties' need to
14 present their case as fully as they need to
15 present, so -- in terms of time. So we'll --
16 we'll get there.

17 All right thank you all. Have a good
18 weekend, happy Easter, happy Passover. We'll see
19 you Monday morning at 9:30 Eastern.

20 (Whereupon at 5:07 p.m. the hearing
21 stood in recess until Monday, April 18, at 9:30
22 a.m.)

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1 C O N T E N T S

2 WITNESSES

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3 MARK DINGLER

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5 Cross-examination by Mr. Helenhouse 1936

6 Cross-examination by Ms. Bracey 1955

7 Redirect examination by Mr. Atkins 2155

8 Recross-examination by Ms. Bracey 2156

9 LARRY GUTHRIE

10 Direct examination by Mr. Donahoe 2163

11 Cross-examination by Ms. Bracey 2242

12 Redirect examination by Mr. Donahoe 2312

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, KIM M. BRANTLEY, C.S.R., the officer
3 before whom the foregoing hearing was taken, do
4 hereby, certify that the proceedings were taken by
5 me in stenotype and thereafter reduced to
6 typewriting under my direction; that said hearing
7 is a true record of the proceedings; that I am
8 neither counsel for, related to, nor employed by
9 any of the parties to the action in which this
10 hearing was taken; and, further, that I am not a
11 relative or employee of any counsel or attorney
12 employed by the parties hereto, nor financially or
13 otherwise interested in the outcome of this
14 action.

15

16

KIM M. BRANTLEY, C.S.R.

17

Notary Public in and for
the District of Columbia

18

19

20

21 My commission expires: October 31, 2024

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