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Date: April 19, 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 VIII

Tuesday, April 19, 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: Good morning
3 everyone. We are reconvening the hearing on
4 Amtrak's application under 24308(e). I believe we
5 are ready to begin Amtrak's case.

6 Ms. Bracey, are you the person in
7 charge this morning?

8 MS. BRACEY: Yes, sir, I am.

9 CHAIRMAN OBERMAN: All right. Proceed.

10 MS. BRACEY: Amtrak calls Mr. Thomas
11 Crowley. State your -- I guess he needs to be
12 sworn.

13 CHAIRMAN OBERMAN: Mr. Crowley. Yes.
14 I couldn't see him. There, I see him now.

15 Mr. Crowley, please raise your hand.
16 Do you swear or affirm that the testimony you are
17 about to give in this proceeding is the truth, the
18 whole truth and nothing but the truth?

19 THE WITNESS: I do.

20 CHAIRMAN OBERMAN: Please proceed.
21 State your name.

22 THE WITNESS: Thomas Crowley,

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1 C-r-o-w-l-e-y.

2 CHAIRMAN OBERMAN: All right. Proceed,
3 Ms. Bracey.

4 Whereupon,

5 THOMAS CROWLEY

6 called as a witness by counsel for Amtrak, and
7 after having been first duly sworn, was examined
8 and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. BRACEY:

11 Q. Tell us about your education and
12 background.

13 A. I received a Bachelor of Science degree
14 from the University of Maine in 1968. I have
15 taken graduate courses in transportation from GW
16 University.

17 Q. And where do you work?

18 A. I work with L.E. Peabody and
19 Associates.

20 MR. WARREN: Mr. -- Mr. Chairman, I'm
21 sorry -- sorry to interject. I see some documents
22 in front of Mr. Crowley. Could Kali ask him what

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1 those documents are.

2 MS. BRACEY: Sure --

3 CHAIRMAN OBERMAN: Well -- well, if she
4 doesn't mind. He hasn't referred to any documents
5 but go ahead.

6 MS. BRACEY: It's just a notebook of
7 his verified statements.

8 MR. WARREN: Okay. We -- we have no
9 objection. I just wanted -- wanted to know what
10 they are. Thank you.

11 MS. BRACEY: Sure.

12 BY MS. BRACEY:

13 Q. Where do you work, sir?

14 A. L.E. Peabody and Associates.

15 Q. And what is L.E. Peabody and
16 Associates?

17 A. L.E. Peabody and Associates is an
18 economic consulting firm specializing in
19 transportation and field supply issues.

20 Q. And how long have you worked there?

21 A. Fifty-one years.

22 Q. And where did you work before that?

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1 A. I was in the United States Army for
2 three years.

3 Q. Do your clients at L.E. Peapod include
4 both the freights and Amtrak?

5 A. Yes. We have clients in the railroad
6 industry, both class one railroads and short line
7 railroads, as well as a -- a number of passenger
8 operations around the country, including Amtrak.
9 We represent shippers, federal government, state
10 governments, all different sorts of things related
11 to transportation and energy.

12 Q. What were you asked to do in this case?

13 A. We were asked to review, verify and
14 audit the -- the testimony of Mr. Banks and Mr.
15 Guthrie and of the Port witness -- Port witness.

16 Q. Did you work with anyone else on your
17 verified statement?

18 A. I filed a joint verified statement with
19 Dan Fapp, who is senior vice president of L.E.
20 Peapod and Associates.

21 Q. And what was the division of labor
22 between you and Mr. Fapp?

1 A. We really didn't have a division of
2 labor. We both participated in all aspects of our
3 review.

4 Q. What is RTC modeling?

5 A. RTC modeling are rail traffic control
6 models, is a capacity model. It's electronic,
7 mathematical model that requires a series of
8 inputs and other developed outputs that measure
9 operations -- operations, operating changes,
10 capacity, capacity enhancements, things that make
11 the evaluated rail line run better.

12 Q. Is RTC modeling a valid way to
13 determine rail capacity, rail line capacity?

14 A. Yes, it is.

15 Q. And how many RTC models have you
16 submitted to the STB?

17 A. Over the past 15 or 20 years probably
18 20, 15, 20, 25, in that neighborhood.

19 Q. And what data are those models based
20 on?

21 A. They're based on the actual data that
22 we request from the rail carriers, the rail

1 carrier that's involved in the litigation. That
2 includes train movement files, car movement files,
3 dispatcher reports, track charts, all of the
4 things that we need to create the inputs to put
5 into the model.

6 Q. And have you reviewed the RTC model
7 submitted in this case?

8 A. I have.

9 Q. And when did you receive the model?

10 A. We received the model that was in the
11 Banks-Guthrie statement after they filed their
12 statement on November 3rd.

13 Q. And why do you call it the
14 Banks-Guthrie statement?

15 A. They're the only ones that verified
16 the -- the model and they attached a report that
17 arguably was authored by somebody else. But they
18 did not verify that report. Only Banks-Guthrie
19 verified the evidence.

20 Q. Did you have everything you needed in
21 the RTC model in order to conduct your own RTC
22 model?

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1 A. No.

2 Q. Did you -- well what was missing?

3 A. There were a number of things that --
4 that were missing: trains that were developed by
5 Banks and -- and Guthrie are the railroads that
6 were not tied to any specific documents, a number
7 of the randomized Excel files, the proprietary
8 files that Banks-Guthrie or whoever created that
9 model could use to develop trains. While they
10 mentioned it they used a proprietary model to
11 convert one Excel file to another Excel file,
12 which they called the TRAIN file or the PERMIT
13 file. They never provided that linking software
14 so we were unable, not only to test how they
15 developed the trains, but test how they input them
16 into the model.

17 MEMBER PRIMUS: Excuse me. I'm sorry,
18 Ms. Bracey. There seems to be a knocking noise.
19 That I don't know about anybody else here's that.

20 MS. BRACEY: Our building is under
21 construction.

22 MEMBER PRIMUS: Okay, all right.

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1 MS. BRACEY: We can see if we can do
2 something about that. My apologies but we can see
3 if we can do something about the knocking.

4 MEMBER PRIMUS: Thank you. I
5 appreciate that. Thank you.

6 BY MS. BRACEY:

7 Q. Did you follow up on what was missing?

8 A. Yes, we -- counsel for Amtrak sent a
9 number of letters to the railroads requesting data
10 in the course of our review of the Banks-Guthrie,
11 you know, opening verified statement.

12 Q. And what were you told?

13 A. Well, for some -- for some of the train
14 developments we were told there were no records,
15 that they were rather based on conversations or
16 the expertise of some unnamed people in the field.

17 THE COURT REPORTER: Pardon, this is --
18 excuse me. Sorry, this is Kim, the court
19 reporter. The -- the knocking, it's intermittent,
20 but maybe if the witness could move -- move the
21 microphone closer to him. He's the only one I'm
22 having trouble hearing. Is that possible?

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1 THE WITNESS: Where's the microphone?

2 MS. BRACEY: Where is the microphone?

3 I'm sorry, can you mute for a second.

4 I'll have Mr. Crowley speak up because

5 our -- our microphone and our camera don't move.

6 They are stationary. So we're sorry about that.

7 BY MS. BRACEY:

8 Q. In your expert opinion what conclusions
9 have you drawn about the Banks-Guthrie model?

10 A. Well it's not in my opinion usable for
11 what it was presented to be and that is an
12 indication of what capacity enhancements are
13 needed to function properly with freight service
14 and passenger service on the New Orleans to Mobile
15 rail line.

16 Q. Is your testimony today going -- going
17 to address all of the problems you had with the
18 model?

19 A. No.

20 Q. Is there anyone else who is going to
21 address any other problems with the model?

22 A. Yeah, Dan Fapp will be testifying in a

1 couple of weeks I guess and he will address a
2 number of issues as well.

3 Q. Let's talk for a minute about trains
4 and the data. Describe how the Banks and Guthrie
5 model address the use of train -- train movement
6 data.

7 A. Train movement data is generally the --
8 one of the key ingredients to developing the TRAIN
9 input file. What Banks and Guthrie did was they
10 took two months worth of 2019 data and created
11 some randomized values associated with the actual
12 trains that they identified in the TRAIN movement
13 file that moved over these rail lines. They then
14 created an Excel file and applied this proprietary
15 model that created the TRAIN file, and all of
16 those steps I've just described, we were not able
17 to review or verify. In addition, they added a
18 lot of trains into the model that did not appear
19 in the data that they provided.

20 Q. How is train movement data normally
21 addressed, in your experience?

22 A. When you develop an RTC model, the

1 first thing -- one of the first things you do is
2 create a base case in order to demonstrate to the
3 other side, the opposition and to the party
4 reviewing the RTC model that the simulation that
5 you're presenting replicates actual real-world
6 operations. In order to do that, you have to put
7 in railroad trains and all the associated things
8 that happen to those trains as they move between
9 origin and destination on the rail line in order
10 to replicate and represent that what you are
11 presenting is in fact a representation of what
12 happened in the real world.

13 Q. Describe how train departure times are
14 addressed in the Banks and Guthrie model.

15 A. Train departure times are one of the
16 inputs that Banks and Guthrie used a -- a random
17 distribution method to develop rather than using
18 the actual departure times identified in the -- in
19 their own records. As I -- as I stated a few
20 moments ago, they looked at two months' worth of
21 data to identify these specific inputs. They
22 created an Excel file, they applied their

1 proprietary software to that file and created a
2 TRAIN input file, and that's what went into their
3 RTC model.

4 Q. What does it mean to link and document
5 the data?

6 A. Well one of the things that the board
7 in the past has insisted that parties present to
8 them, when they're using a model such as RTC, is
9 to be able to demonstrate the process from the raw
10 data, step by step, through the answer. In this
11 case, Banks-Guthrie did not provide the data
12 necessary to link the actual data to what they
13 modeled.

14 Q. And what did they provide instead?

15 A. They provided randomized values for
16 trains and the linking or the tying to actual data
17 was not provided.

18 Q. And why is that insufficient?

19 A. It's insufficient because the parties
20 reviewing the data are unable to verify and/or
21 audit the accuracy of the data.

22 Q. Let's talk for a moment about the

1 inputs and the setting.

2 Banks and Guthrie claim that their RTC
3 simulations were -- they submitted were
4 conservative and reflected typical operations. In
5 your opinion was that the case?

6 A. Well, as -- as I've noted, it was not
7 possible to tell whether they were typical of
8 railroad operations because Banks and Guthrie used
9 or did not use the actual data in their model.
10 Rather they used data that they developed through
11 this randomization process that they followed.

12 Q. Let's talk about the use of the 95%
13 on-time performance metric. What is the 80%
14 on-time performance metric?

15 A. The 80% that's been talked about is the
16 FRA's metric that FRA identifies and it represents
17 on-time performance for two consecutive quarters.
18 In other words, if the 80% on-time performance by
19 passenger trains or passenger service is not met
20 for two consecutive months, then the STB can step
21 in and evaluate what's causing those problems and
22 offer solutions.

1 Q. And how does the Banks-Guthrie model
2 hope to achieve 80% OTP?

3 A. They -- they equated 95% on-time
4 performance in the RTC model to the 80% real-world
5 on-time performance factor.

6 Q. And would you have used a 95% OTP to
7 yield an 80% real-world OTP?

8 A. No.

9 Q. Why not?

10 A. There's -- there's no tie between those
11 two values. The experience that we have seen and
12 that we recognize in our verified statement is
13 that the 80% on-time performance calculated by the
14 RTC model is a reasonable proxy for the 80% factor
15 in the FRA document.

16 Q. And what is that experience based on?

17 A. This were two -- two studies that we
18 cited in our -- our statement that actually
19 evaluated the difference between the RTC model and
20 a real-world experience and the differential was
21 very small.

22 Q. And how did Banks and Guthrie use the

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1 95% customer OTP?

2 A. They -- it appears they added
3 infrastructure until that 95% factor was achieved
4 or was an output of the formula.

5 Q. And how do you know that that --

6 MEMBER FUCHS: Ms. Bracey, Ms. Bracey?

7 MS. BRACEY: Yes.

8 MEMBER FUCHS: I'm sorry to interrupt.
9 You said "customer OTP". I didn't -- I don't
10 recall -- could you all clarify whether or not you
11 were referring to OTP by train by station or
12 actually by customer, as in weighted by customer.

13 THE WITNESS: The on-time performance
14 is measured at the destination of the arriving
15 train.

16 MEMBER FUCHS: So -- so -- it -- it
17 would not be in this instance customer OTP?

18 THE WITNESS: Depending on how you
19 define "customer," if your customer is Amtrak, if
20 you're a railroad and your customer's Amtrak, then
21 you would measure Amtrak's on-time performance
22 based on the arrival of that train at its

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1 destination.

2 MEMBER FUCHS: I -- I only ask because,
3 you know, the FRA regulation differentiates
4 customer OTP to have a specific meaning, which
5 weights by customer. Sorry, I just wanted to make
6 sure that I -- I -- I'm tracking what is being
7 claimed as the terminology. But thank you.

8 CHAIRMAN OBERMAN: Patrick, when it --
9 maybe it -- what would be more accurate is talking
10 about passenger rather than customer, since Mr.
11 Crowley points out you could consider Amtrak as an
12 entity of the customer.

13 Isn't it passenger OTP we're talking
14 about.

15 THE WITNESS: Yes.

16 CHAIRMAN OBERMAN: Patrick, I didn't
17 want to step on your point but --

18 MEMBER FUCHS: Well, but you could --
19 you could consider it. I -- I just would -- I
20 would just say that in the nomenclature of FRA
21 that's not what is customer OTP.

22 CHAIRMAN OBERMAN: Yeah, okay. Thank

1 you.

2 BY MS. BRACEY:

3 Q. And how do you know that Banks and
4 Guthrie used a 95% customer OTP for infrastructure
5 purposes?

6 A. Well I would -- that's I think what
7 their verified statements say and that's what they
8 testified to.

9 Q. And did you hear Mr. Guthrie and Mr.
10 Dingler testify in this case?

11 A. I did.

12 Q. And what are they saying now about how
13 they used the 95% customer OTP?

14 A. Well, that was less than clear to me.
15 It seemed like they were -- were saying that --
16 that it wasn't really a big deal for them.
17 Ninety-five percent just happened to be the result
18 and they kind of backed away from linking it to
19 the 80% FRA factor.

20 Q. And how was that different from what
21 they said in their report?

22 A. My reading of their report was that

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1 there was a -- a link between the 95% and the 80%.
2 In other words they were saying in their report
3 that you had to achieve a 95% on-time performance
4 metric in the model in order to replicate the 80%
5 on-time factor in the FRA standards.

6 Q. Is there any evidence in the record
7 that 95% OTP is a necessary performance target to
8 lead to 80% OTP?

9 A. No.

10 Q. And would you have started adding
11 infrastructure as a first step?

12 A. No.

13 Q. What would you have done?

14 A. If I were asked to model this traffic,
15 I would have first evaluated the rail operations
16 to see if -- if they could be modified, changed or
17 improved to add this passenger business and not
18 interfere with the freight business. After that
19 evaluation, assume it didn't solve the problem, I
20 would look to the model to identify locations
21 where there was a lot of congestion, a lot of
22 operating problems, and I would then look to solve

1 each of those problems individually and I would do
2 the addition of infrastructure on a
3 location-by-location basis in order to see what
4 improvement each location -- infrastructure in
5 each location provided and therefore be able to
6 present to them, to the client or whoever was
7 asking me to evaluate it, what would be needed and
8 what would be achieved with the addition of each
9 potential infrastructure change.

10 Q. Would you have conducted a cost-benefit
11 analysis?

12 A. Generally when we do RTC analyses for
13 our industry clients, that's a necessary outcome
14 of the model. But the thing that most clients
15 are -- are interested in is the cost of providing
16 the infrastructure. Is the cost worth
17 incorporating not only changes but additions to
18 the system as someone is going to have to pay for
19 it.

20 Q. Let's talk for a moment about inputs.
21 What are inputs to the RTC model?

22 A. Inputs are the pieces that -- that go

1 into any model, any model that we're using to
2 identify, in this case capacity changes requires
3 the identification of what you are actually
4 attempting to evaluate and, to be more specific,
5 in this case when we're evaluating, or what
6 Banks-Guthrie was evaluating, what are the
7 movements of trains over the rail lines between
8 Mobile and New Orleans, and all of the things that
9 happened to that train en route need to be
10 identified, quantified and put into the model.
11 Each one of those elements is an input to the
12 model.

13 Q. And what impact do they have on the
14 models and simulation results?

15 A. They identify -- the bottom line is
16 they identify the result. They tell you where the
17 problem areas are and they actually highlight the
18 areas that need to be fixed in order to
19 accommodate the additional traffic. All of this
20 is after you have demonstrated that your base
21 case, your base traffic level that you're modeling
22 actually performs as it did in the real world.

1 Q. So I'm -- let's talk about track
2 outages for a minute. What are track outages?

3 A. Track outages are situations where the
4 track is -- is taken out of service for a number
5 of reasons. Track outages can occur during
6 roadway maintenance. Track outages can occur when
7 you're lifting a drawbridge. Track outages impact
8 traffic in different ways. They can preclude
9 traffic from running over the line to -- they can
10 slow the speed of the traffic down.

11 Q. And how are they modeled?

12 A. In -- in the RTC model, they have what
13 they call you PERMIT file and PERMIT files are
14 developed to identify on a location-by-location
15 basis the track outages that are needed in order
16 to have your traffic run.

17 In the Banks-Guthrie RTC model, the
18 PERMIT file was another area where they used these
19 randomized values and their proprietary software
20 to create their PERMIT files.

21 Let me say that a different way. If
22 you have TRAIN movement files, you can identify in

1 real time when a bridge is opening or when a line
2 is taken out of service for roadway maintenance or
3 any other cause and they will tell you specific
4 times, specific locations that those tracks are
5 down and what the condition of that PERMIT is.

6 What Banks-Guthrie did is, they started
7 with this two months of 2019 of actual data, they
8 created an Excel file, they applied their
9 proprietary software to that Excel file and
10 created a PERMIT file that they put into the RTC
11 model.

12 Our problem, coming behind them to
13 evaluate and verify and audit what they did, is we
14 cannot see how they did any of those steps in
15 developing the PERMIT file. We can see the
16 results of the PERMIT file and we can see it run
17 in the model, but we cannot check or audit
18 anything down stream from that PERMIT file.

19 Q. And how does that affect the model?

20 A. Well, it -- it -- the model will still
21 run, obviously, because it did run, and -- but
22 the -- the results are suspect. The results are

1 nonverifiable. The results are, in my mind,
2 not -- not able to be used for what they're
3 talking about if they cannot be verified.

4 Q. Let's talk for a minute about train
5 delays. In your experience how do you account for
6 train delays?

7 A. Train delays are a function of actual
8 data, like any other component of the movement of
9 a train in the RTC modeling. If you have the
10 railroad records and you're modeling actual
11 trains, you can actually see the train delays as
12 it -- as the trains traverse the modeled territory.

13 Q. And so what did Banks and Guthrie do to
14 account for train delays?

15 A. Train delays again was another one of
16 these randomized values that they developed and
17 included into -- into the model and -- and they
18 followed the same process of starting with the
19 actual data, we think -- that's what they claim --
20 and creating a file, applying this proprietary
21 software or this proprietary model that they have
22 to create what they call an input file, a TRAIN

1 input file, and that's the process they used on --
2 on that value as well.

3 Q. And how did this affect the output of
4 the model?

5 A. It affects it from the standpoint of we
6 cannot evaluate the legitimacy of the model.

7 Q. You mentioned in your report that Banks
8 and Guthrie modeled 257% more trains than actually
9 moved during the peak period. How do you know
10 that they modeled 257% more trains?

11 A. We took the same two months that they
12 used in 2019 and compared it and -- and counted
13 the trains by type of train that appeared in the
14 data and compared that to the number of trains
15 that were included in the Banks-Guthrie model.

16 "I" type of train -- I believe that was
17 the first table that we presented in our reply
18 verified statement and identified by train type
19 the difference in that train count -- the bottom
20 line was that there were 257% more trains in the
21 model than appeared in the data.

22 Q. And you have reviewed the Banks and

1 Guthrie rebuttal verified statement?

2 A. Yes.

3 Q. And it states that the RTC modelers
4 assumed that 1,265 trains had no counterpart in
5 the train data.

6 A. That's correct.

7 Q. And what does that mean?

8 A. That means that that is the count of
9 trains that we could not audit or verify.

10 Q. And the verified statement, the
11 Banks-Guthrie rebuttal verified statement, also
12 mentions that there are many -- many data of the
13 data sources were provided through narratives.

14 A. That's correct.

15 Q. And what does that mean?

16 A. Well that means first -- first and
17 foremost they didn't have an actual data source
18 file. Secondly, in listening to the statements or
19 the testimony of CSX and NS witnesses, it
20 developed a number of trains, quite a few trains
21 based on telephone interviews or conversations
22 between parties, the parties weren't identified.

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1 There were no records of these -- of these
2 conversations. And more importantly it was never
3 explained why they didn't use their actual data if
4 in fact these trains did exist.

5 Q. It also states that certain yard
6 trains, light engines and bridge tenders also had
7 no counterparts in the train data. What does that
8 mean?

9 CHAIRMAN OBERMAN: I'm sorry, Ms.
10 Bracey, when you say "it" says, what are you
11 referring to? Mr. Crowley's statement?

12 MS. BRACEY: The Banks-Guthrie rebuttal
13 verified statement.

14 CHAIRMAN OBERMAN: Okay. It would just
15 be more helpful when you're asking a question
16 about a document, to tell us which document it is?
17 Thank you.

18 MS. BRACEY: My -- my apologies.

19 THE WITNESS: The -- the yard -- the
20 yard locals and --

21 MS. BRACEY: I can repeat the question.

22 THE WITNESS: Please.

1 BY MS. BRACEY:

2 Q. What does the -- having no yard trains,
3 light engines and bridge tenders mean that have no
4 counterpart in the train data mean?

5 A. That means that another source of data
6 is needed to identify those movements as they
7 traverse the main lines. Railroads keep records
8 of all movements on their lines. They don't
9 necessarily result in a TRAIN file movement, but
10 when a yard train or a light engine is on the main
11 line, it's -- it's absorbing a space on the line,
12 it's absorbing rail capacity, and more importantly
13 the dispatchers have to keep track of this in
14 order to safely run and dispatch their railroad.

15 Q. How does having no yard trains, light
16 engines and bridge tenders impact the
17 Banks-Guthrie RTC model?

18 A. Well, what it does is increase the
19 total count of trains that they modeled and
20 results in the absorption of capacity and that
21 capacity could be used for other trains, other
22 trains that are actually running on the tracks,

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1 but unless they are identified properly and
2 accounted for properly --

3 Q. Does the rebuttal verified statement
4 give you any doubt that the Banks-Guthrie model --
5 that Banks and Guthrie modeled 257% more trains?

6 A. No, it does not.

7 Q. CSX and NS have submitted for the
8 Board's consideration your verified statement in
9 the Metra case. What is that?

10 A. Currently there is a document before
11 the STB where Canadian Pacific and the Kansas City
12 Southern railroads are asking to merge. Canadian
13 Pacific has a huge presence in Chicago where Metra
14 runs passenger trains. Metra asked Peabody &
15 Associates to evaluate the application and to
16 develop an RTC model to demonstrate the impact on
17 its service of this proposed merger.

18 Q. And what was your role in the Metra
19 case? Or was your role in the Metra case?

20 A. We were asked to review the application
21 and concentrate on the impacts this proposed
22 merger will have on Metra's operations.

1 Q. And who worked on the verified
2 statement in the Metra case with you?

3 A. Well, like the -- like the case we're
4 talking about here for Amtrak, our -- our staff
5 worked on it. There was not a particular person
6 or set of persons assigned to the task, but two of
7 us verified the data and presented a -- a verified
8 statement, myself and Robert Mulholland, a senior
9 vice president of our company.

10 Q. Did you complete an RTC model in the
11 Metra case?

12 A. We did.

13 Q. And how were you able to do so?

14 A. We requested data that was not in the
15 application and received that data from CP, the
16 Canadian Pacific, and Metra. We were provided
17 data by Metra as Metra owns some of these rail
18 lines that we evaluated. And using that data, we
19 created an RTC model.

20 Q. And how you were you able to do so?

21 A. The data was complete. The data
22 included all of the inputs that we needed to

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1 calculate a base case and then the alternate cases
2 that we presented in that merger case.

3 Q. Was there any narrative data in the
4 Metra case?

5 A. No.

6 Q. Why didn't you create an RTC model in
7 this case when you did for the Metra case?

8 A. I guess two primary reasons come to
9 mind. One would be, as we've been talking about
10 this morning, the data was not sufficient. We --
11 we ran into the dilemma of having to speculate as
12 to what data we would use and how we would use it.
13 We would get into a -- a quandary as to whose
14 speculation was better, our speculation or the
15 railroad's. And the other, and if -- as important
16 or more important reason was timing. We got the
17 data that we needed after counsel requested it in
18 mid October. We saw the railroads' evidence on
19 November 3rd and we had to file a reply on
20 December 3rd. To do a model, an RTC model of this
21 scale, would require much more time than we had
22 available.

1 Q. Do you agree that RTC modeling is the
2 best way to an analyze and measure the capacity of
3 a rail line and the impact of added service to
4 existing operation?

5 A. It's an acceptable way and it's a way
6 that the STB has used in the recent past in
7 evaluating operations, rail operations.

8 Q. Is RTC modeling the standard for
9 proceedings before the STB?

10 A. I don't know that I would go that far.
11 I think the STB would evaluate any model that was
12 presented to them. The RTC model has been used
13 and has been accepted. And because that has been
14 accepted, I assume that's why the parties use that
15 model in these kinds of cases.

16 Q. In the CP/KCS, the Metra case, did you
17 also criticize the use of a mathematical formula
18 to determine theoretical capacity on a rail line?

19 A. I did. What I criticized was the
20 simplicity of the model or the use of the model.
21 Let me see if I can't explain that.

22 In the Metra case, we were modeling

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1 double track and triple track territory, very
2 complicated operations. A simple mathematical
3 model would be a tool that you could use
4 effectively on a single track railroad but when
5 you get into double track and triple track you
6 need a more complicated or sophisticated model
7 like the RTC model. Both are mathematical models
8 but one is more suited for more complicated
9 operations, and that would be what the RTC model
10 is.

11 MS. BRACEY: I don't have anything
12 further.

13 CHAIRMAN OBERMAN: I have a few
14 questions, Mr. Crowley. I'm really trying to
15 follow the work that you did here in this case.
16 I'm sure that CSX will have some questions but I'd
17 really like to get in a couple of the basic points
18 here.

19 Ms. Bracey asked you why -- why you did
20 not create an RTC model. Were you asked to create
21 an RTC model by Amtrak?

22 THE WITNESS: I don't know as -- as the

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1 discussions having got that far. We were asked
2 initially to critique, evaluate and audit what was
3 done and, by the time we got an understanding of
4 what was done, it was the middle of October and I
5 don't think a discussion of restating the RTC was
6 even on the board.

7 CHAIRMAN OBERMAN: Well, did you
8 suggest to Amtrak that it would be helpful if you
9 could create an RTC model to come up with your own
10 views of delays that might have come from the
11 passenger service?

12 THE WITNESS: I did not and I did not
13 because of the timing. We were -- we were middle
14 October. We had two weeks to file and it just was
15 not time to do that.

16 CHAIRMAN OBERMAN: Well, as I
17 understand it, Mr. Crowley, you said you have
18 submitted many RTC studies to the STB, so I take
19 it you've been involved in other cases before the
20 STB?

21 THE WITNESS: That's correct.

22 CHAIRMAN OBERMAN: And you're not a

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1 lawyer, I take, correct?

2 THE WITNESS: That's correct.

3 CHAIRMAN OBERMAN: But you are aware
4 that the STB has discovery processes akin to those
5 in court, are you not?

6 THE WITNESS: Yes.

7 CHAIRMAN OBERMAN: And aren't you also
8 aware that the STB can be asked to extend a
9 discovery schedule if there's good reason for it?

10 THE WITNESS: I suppose that's so. I
11 mean, I don't know that. I mean, I know discovery
12 was closed --

13 CHAIRMAN OBERMAN: Well --

14 THE WITNESS: I know that we --

15 CHAIRMAN OBERMAN: -- did you ask
16 anybody if discovery could be opened so you could
17 get the data you felt you needed?

18 THE WITNESS: No.

19 CHAIRMAN OBERMAN: Did the lawyers tell
20 you it was possible to extend discovery to get
21 that?

22 THE WITNESS: No.

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1 CHAIRMAN OBERMAN: You -- you just
2 thought you were stuck, I take it?

3 THE WITNESS: Yes.

4 CHAIRMAN OBERMAN: The -- when you said
5 that -- well, in -- in your statement, I'm a
6 little confused by this. In your rebuttal
7 statement, or I guess it's surrebuttal statement,
8 you said that, on page four --

9 MS. BRACEY: Sorry, is it okay if he
10 turns to page four?

11 CHAIRMAN OBERMAN: Surely.

12 You -- you say that, without the
13 detailed and linked supporting files that you
14 referred to, quote, "any restatement on our part
15 would be pure speculation".

16 Do you -- do you recall making that
17 statement? And I think you talked this morning
18 about it would be speculation for you to try to
19 restate the RTC study.

20 THE WITNESS: That's correct.

21 CHAIRMAN OBERMAN: I'm trying to figure
22 out, if you don't have the data, how your

1 criticism of the data is anything but speculation
2 as well. All you've said is what you don't have
3 but how can you say it's wrong if you don't have
4 it without speculating that it's wrong?

5 THE WITNESS: Well, we -- I didn't --
6 we wrote the statement in the context of what's
7 normally done in presenting RTC's models, and
8 whenever -- whenever in the past that we have
9 presented RTC models, it was very clear to us that
10 the board required us to provide a very specific
11 data trail in order to demonstrate to the board
12 what we were doing. And these conversations that
13 we're talking about here did not have that data
14 trail.

15 Now we could have said they're wrong,
16 we could have said why they were wrong, if we
17 could come up with a reason, and we could have
18 modeled that. The model was there. We could have
19 done that but what would we have had? What kind
20 of result would we have? We'd be sitting here
21 talking about whose speculation is better, theirs
22 or ours.

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1 CHAIRMAN OBERMAN: Well, Mr. Crowley, I
2 understand why you said you couldn't create your
3 own model but that wasn't the question I posed.

4 My question is, how can you criticize
5 their data without just speculating on it since
6 you say you haven't seen the actual data? Isn't
7 it -- isn't your criticism as much speculation as
8 your own RTC model would have been, unless you had
9 gotten access to the actual data? What's the
10 difference?

11 THE WITNESS: Okay. Well probably
12 there isn't a -- a large difference at all.

13 CHAIRMAN OBERMAN: And particularly,
14 I -- I wanted to get at, just in terms of how you
15 reached your conclusions. This -- this isn't the
16 first time you've been -- interacted with the
17 Banks-Guthrie firm, is it? I mean, you know them
18 to be in the business similar to yours of
19 consulting with railroads and doing these kinds of
20 studies?

21 THE WITNESS: Yes.

22 CHAIRMAN OBERMAN: Well I -- I'm a

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1 little nonplussed as to your approach here.
2 You've asked us to accept your statement that they
3 had 1,265 more trains than actually existed. Did
4 you think that Banks -- the Guthrie firm was just
5 lying about it and making up numbers on the whole
6 cloth? Is that what you want us to accept?

7 THE WITNESS: No, I wasn't suggesting
8 that they were lying. I was suggesting that the
9 way they modeled these trains resulted in many
10 more trains than actually existed.

11 CHAIRMAN OBERMAN: Well, if they --
12 they put in their model more trains than you
13 believe actually existed, they'd have to be lying
14 about it, wouldn't they? I mean, they either
15 existed or they don't exist.

16 THE WITNESS: Well, let me give you --
17 I can give you an example if you'd like.

18 CHAIRMAN OBERMAN: Well I'd like to
19 understand where you're coming from here, because
20 one of the reasons we're having this proceeding is
21 for the board to determine credibility of the
22 cases presented by all the parties. So, when you

1 tell me that they put in 257% more trains, that's
2 not a rounding error. So I don't know how that
3 could happen unless in your mind they were just
4 making it up. Can you explain that?

5 THE WITNESS: Yes. I'll give you a
6 couple of examples. One example is what we were
7 just talking about in that these foreign trains
8 that were based on discussions, there were no
9 records to show that these trains moved. Now
10 whether they moved or not, we were not in a
11 position to say one way or the other. But those
12 are trains that don't appear in the data that were
13 modeled. Another example is the way they modeled,
14 yard trains as an example. A yard train has
15 multiple moves every shift. The Banks-Guthrie
16 folks -- let's say a train, a yard train has five
17 blocks of cars in the moves during the course of
18 its shift. That is one train in the data that
19 moves. And the way the RTC model accounts for
20 that train is that it links each one of those
21 blocks together. So only one train appears in the
22 modeling.

1 What Banks-Guthrie did in their model
2 is they looked at each one of those blocks in a
3 separate train and a separate train takes up
4 additional capacity. It has to be considered in
5 the model for dispatch purposes differently than
6 one train doing its business one block at a time.

7 CHAIRMAN OBERMAN: Well, I'm still
8 trying to find out. Did -- did those movements
9 take up space on the track or not? Isn't that
10 what we're trying to figure out here?

11 THE WITNESS: That's exactly -- that's
12 exactly the point. Those trains did take up space
13 on the track but not the way that Banks and
14 Guthrie modeled them. Banks and Guthrie modeled
15 them in a way that it took up way more time than
16 they actually did.

17 CHAIRMAN OBERMAN: How do you know that
18 since you haven't seen the data? You're just
19 speculating, aren't you?

20 THE WITNESS: No, not on -- not on that
21 part of the example. That part of the example is
22 based on actual movements in their records that

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1 they provided, the way they modeled these trains.

2 CHAIRMAN OBERMAN: Well you -- you've
3 told us -- I think we heard from their witnesses
4 that they gathered this data through field
5 interviews, which you say there is no record of.

6 THE WITNESS: That's the first example
7 I gave you.

8 CHAIRMAN OBERMAN: Yeah, all right, but
9 in fact whether -- whether the records exist or
10 not doesn't really tell us whether those field
11 interviews provided actual, real-life data. We --
12 right? We can't really reject it all just based
13 on your saying there's no records. They may well
14 exist, those movements. Isn't that right?

15 THE WITNESS: You -- you don't have to
16 reject the base just on my statement. Your staff
17 can look at the data and see exactly what we saw:
18 that the data was not there for those trains.

19 CHAIRMAN OBERMAN: Well the fact that
20 the data wasn't supplied doesn't mean that the
21 trains didn't exist, does it? We just don't know.
22 And any conclusion to the contrary would be

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1 speculation, on your part and our part at this
2 point, wouldn't it?

3 THE WITNESS: Well if -- if your
4 assignment is to verify what was done, to audit
5 what was done, you have to have a trail back to
6 the actual data to make that demonstration.

7 CHAIRMAN OBERMAN: All right. Why is
8 there some reason to challenge the -- and a
9 verification needed in the first place?

10 THE WITNESS: I'm sorry?

11 CHAIRMAN OBERMAN: Why can't we just
12 accept the RTC model? Why do you have to verify
13 it?

14 THE WITNESS: What if it's not
15 accurate?

16 CHAIRMAN OBERMAN: Yeah, what if it's
17 not? I can't find -- I can't figure that out from
18 your testimony. That's all I'm trying to get at.
19 It may not be accurate but I don't know how you
20 have a basis to say it's not accurate because you
21 said, without the data, it's all speculation.

22 THE WITNESS: We said -- we said we

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1 were unable to verify and audit the data because
2 it was not provided, did not exist.

3 CHAIRMAN OBERMAN: Well, is there some
4 reason for us to just throw out the data then
5 because you couldn't audit it?

6 THE WITNESS: Well if we present
7 evidence to the STB and we don't have any basis
8 for that evidence, I would think you would throw
9 it out.

10 CHAIRMAN OBERMAN: Well, we had the
11 sworn testimony of two witnesses who gathered the
12 facts. Is that a basis?

13 THE WITNESS: I guess if that's
14 sufficient to you, then that would be a basis.

15 CHAIRMAN OBERMAN: You don't think it's
16 sufficient?

17 THE WITNESS: I do not.

18 CHAIRMAN OBERMAN: Well, in order to
19 reject sworn testimony, don't we have to have some
20 reason to think the people are lying? That's all
21 I'm trying to get at.

22 THE WITNESS: Well I'm not in a

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1 position to say somebody's lying or not. I'm in a
2 position to tell you what we found or did not
3 find, and we did not find a basis to verify and
4 audit this analysis that was presented.

5 CHAIRMAN OBERMAN: Well, when you do
6 RTC studies, do you take into account movements
7 that aren't in the .TRAIN file?

8 THE WITNESS: Yes.

9 CHAIRMAN OBERMAN: So in fact, this RTC
10 model, trying to take these movements into
11 account, that would be normal?

12 THE WITNESS: Yes, as long as -- as
13 long as there's a trail back to the data you did
14 rely on.

15 CHAIRMAN OBERMAN: All right. You
16 realize, do you not, that you could have asked the
17 lawyers to go and find out that trail and you did
18 not, I take it -- ask -- make that request?

19 THE WITNESS: We -- we asked for data
20 and we got data but it didn't go any further than
21 that.

22 CHAIRMAN OBERMAN: All right. Well

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1 that's all I have for the moment. I don't know if
2 any of the other board members have any questions.

3 MEMBER PRIMUS: I -- I have a couple,
4 if -- if you don't mind, Mr. Crowley.

5 THE WITNESS: Sure.

6 MEMBER PRIMUS: I -- I just, if you
7 could, sort of clarify the timeline. So from the
8 time that you began to work on -- on -- on this --
9 this model or you were hired by Amtrak, how -- how
10 long did it take? What was that -- that timeline
11 until that -- until you -- until you submitted
12 your statement or -- or you said you -- you
13 verified or -- or couldn't audit the -- the
14 report?

15 THE WITNESS: We were -- we were
16 retained in -- in October. We received and we
17 reviewed the data that was available at that time.
18 We received the opening evidence of the railroad
19 on November 3rd. We asked for a bunch of
20 supporting data which the -- which the Amtrak
21 lawyers requested of the railroads. We reviewed
22 that data in order to understand as best we could

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1 what was presented and we presented our reply
2 evidence on December 3rd.

3 MEMBER PRIMUS: Do you -- do you
4 recall -- thank you. Do you recall when you
5 submitted the letter to the railroads for more
6 data?

7 THE WITNESS: It would have been after
8 the November 3rd filing.

9 MEMBER PRIMUS: And -- and you -- your
10 report in December, do you remember when that came
11 out?

12 THE WITNESS: December 3rd.

13 MEMBER PRIMUS: So is it safe to assume
14 that -- that there was probably less than a couple
15 weeks between that letter and -- and your report?

16 THE WITNESS: There's multiple letters
17 but, yes, there was still time after we received
18 the data.

19 MEMBER PRIMUS: And -- and again,
20 clarification for those letters. What sort of
21 data were you looking for?

22 THE WITNESS: I don't -- I don't recall

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1 all the specifics but it would have been the
2 information to support the assumptions that
3 were -- that were made in the Banks-Guthrie
4 statements.

5 MEMBER PRIMUS: Was -- was there any
6 set key? I mean, you -- you don't recall them all
7 but was there one specific data point that -- that
8 you felt was absolutely necessary in order for you
9 to completely or -- or confidently audit or verify
10 that?

11 THE WITNESS: Well, it would have been
12 the missing data, the data that was based on
13 speculation or interviews or however you want to
14 characterize those trains. We asked for data
15 supporting that type of analysis.

16 MEMBER PRIMUS: And -- and -- and
17 again, in your -- in your, you know, your reply
18 earlier, you -- you mentioned that, especially
19 with train delays, the randomized values. How did
20 you -- you come to that conclusion, for the
21 randomized values?

22 I -- I -- sorry, I mean, sorry, sorry,

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1 you know, especially when you don't -- you -- you
2 did not have the information to accurately say
3 whether it was randomized or it was too low or too
4 high?

5 THE WITNESS: That was a process
6 that -- the railroads' fault. They used a
7 randomized process in their development of the
8 TRAIN file and in their development of the PERMIT
9 file. And the steps that they followed to develop
10 these values that were inputs into these TRAIN
11 files or input files was based on a randomized
12 process and proprietary software that they didn't
13 provide in order to develop these metrics.

14 MEMBER PRIMUS: Okay, but I -- I guess
15 what I'm getting back to a little bit what -- what
16 the chairman said, but because you don't the --
17 you didn't have -- you didn't have the data, is
18 that why you're -- you're characterizing it as
19 randomized?

20 THE WITNESS: No. I was just
21 explaining what they did. The process we would
22 have followed would have been to use the data that

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1 was their step one that they did not use, the
2 actual data. They -- they took the actual data
3 and went through this process to get a TRAIN file,
4 rather than taking the actual data and creating a
5 TRAIN file.

6 MEMBER PRIMUS: So -- so -- well, in --
7 in the -- the CSX and NS, their witnesses actually
8 laid out where those trains and how those trains
9 were accounted for. Were -- were -- did you --
10 were you listening to that -- to their testimony
11 when they did that?

12 THE WITNESS: I was.

13 MEMBER PRIMUS: And -- and so how do
14 you justify sort of that answer to -- to your
15 randomization statement?

16 THE WITNESS: Well -- well, my
17 characterization of the randomization is what they
18 did, not what we did.

19 MEMBER PRIMUS: Right.

20 THE WITNESS: It's the process that
21 followed. I mean, they -- they articulated that
22 in their work papers. They explained specifically

1 that they -- that they followed that process.
2 They started with the actual data and they went
3 through all these steps that I've articulated to
4 get a TRAIN file. That was their doing, not our
5 doing. All I'm doing is explaining that to you.
6 Because I -- I never heard that explained by the
7 railroads. They just said, "Oh, we got a TRAIN
8 file. Oh, we use actual data". So they started
9 with actual data and got a TRAIN file. They never
10 explained those steps in the middle that they went
11 through or why they used them, rather than just
12 relying on the actual data.

13 MEMBER PRIMUS: I -- I -- I'm just
14 trying to figure out -- that's why I was asking,
15 my initial question, like what data were you
16 looking for? Is that the data that was missing?
17 I mean, that -- that's -- you said, you know, when
18 you asked for the data and those letters, I'm
19 trying to find out who data is missing that --
20 that you need to -- to adequately verify or audit
21 the report. And that's why I'm trying to ask you,
22 you know, you were saying things were randomized,

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1 you know, things were proprietary. And I don't
2 even understand, like, you know, if an RTC model,
3 like, what's the -- what's the proprietary
4 software that you're -- that you're alluding to?
5 Is that part of the model -- the RTC modeling or
6 is it -- what --

7 THE WITNESS: No. No. No. This is a
8 step that they in their process of developing a
9 TRAIN file -- TRAIN file, let's -- let's go
10 backwards from the TRAIN file. A TRAIN file is
11 what you input into the model to -- so the model
12 can take the trains that you input and run them
13 through the model. So that's kind of the first or
14 second step in this process. If you go back from
15 there, they did a number of steps in between the
16 raw data, the actual train movement files and
17 associated data in the development of that TRAIN
18 file. What they did in between those two things
19 is they created an Excel file, they applied a
20 proprietary model or a proprietary software to
21 that Excel file, created another Excel file that
22 they put into the TRAIN file. The stuff between

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1 the raw data and the actual TRAIN file was not
2 provided. We -- we don't know what the
3 proprietary model did. We don't know what their
4 randomization process was. We just know that they
5 felt that this randomized approach was better than
6 using actual data. And we would question that as
7 being an accurate way of doing an RTC model.

8 MEMBER PRIMUS: Okay. And I -- I guess
9 I'm still a little confused because it says -- I'm
10 trying to figure out what -- then what the data --
11 still what data you're requesting. If you -- is
12 it is the proprietary data? Is it the Excel
13 spreadsheets? Is it -- you know, what -- what
14 would you -- what were you looking for?

15 THE WITNESS: All of that. All of
16 that. Show me your process.

17 MEMBER PRIMUS: Okay. Last question
18 is -- is just, you said they -- they compiled two
19 months worth of data and you thought that was
20 inadequate. Is it inadequate because it's only
21 two months and have you seen RTC models that have
22 been modeled on two month's worth of information,

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1 two month's of -- two month's data?

2 THE WITNESS: I did not mean to imply
3 that two months of data is -- is not adequate.
4 Yeah, I don't believe I said that, and if I did, I
5 didn't mean to say that.

6 They used to two months of data to
7 create 14 days of data through this randomized
8 process, rather than taking a peak week out of
9 that two months of data and using that process.
10 So they just did a -- a different approach.
11 That's -- their approach was all part of this
12 process that they followed rather than modeling
13 the actual trains.

14 MEMBER PRIMUS: Thank you.

15 CHAIRMAN OBERMAN: Karen, I just want
16 to have a quick follow-up and then I'll call you.

17 Mr. Crowley, when you do an RTC study,
18 such as you did on the Metra case where you got
19 the data from the other side, how long does it
20 take you to do such a study?

21 THE WITNESS: The Metra case, it
22 probably took us, oh, three, three and a half

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1 months.

2 CHAIRMAN OBERMAN: Is that typical?

3 THE WITNESS: It depends on how complex
4 the line is. The Metra -- the Metra lines were
5 very complicated.

6 CHAIRMAN OBERMAN: Well it sounds like
7 if you had gotten every piece of data you wanted
8 in the November 3rd filing by CSX and NS, you
9 would have been hard pressed to get an RTC study
10 done by what you understood was your drop-dead
11 date of December 3rd.

12 THE WITNESS: That would not have been
13 possible.

14 CHAIRMAN OBERMAN: So, no matter how
15 much data you had gotten, if they -- if CSX and NS
16 had supplied you with every jot and tittle of
17 every piece of information you could have asked
18 for on November 3rd, you could not have gotten the
19 RTC study done by December 3?

20 THE WITNESS: Probably not.

21 CHAIRMAN OBERMAN: So the reason it
22 seems to me that you didn't do the RTC study is

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1 not only the lack of data, but that apparently
2 Amtrak asked for a discovery schedule which you
3 thought you couldn't move and which wouldn't allow
4 you to do the job that you think you should have
5 done.

6 That be a fair way to understand it?

7 THE WITNESS: Well...

8 CHAIRMAN OBERMAN: That's okay. You
9 don't need to answer.

10 Karen, go ahead.

11 MEMBER HEDLUND: Mr. Crowley, the
12 randomization process that they used, is this the
13 first time in your experience you have seen such a
14 process used in connection with an RTC study?

15 THE WITNESS: Yes.

16 MEMBER HEDLUND: Thank you.

17 MEMBER FUCHS: Marty?

18 CHAIRMAN OBERMAN: Patrick?

19 MEMBER FUCHS: Thank you.

20 Mr. Crowley, I recall you mentioned
21 that CSX did not perform a cost-benefit analysis
22 for any of its infrastructure projects. Should I

1 take it that you find cost-benefit useful for
2 judging reasonableness of an action?

3 THE WITNESS: What I said was
4 cost-benefit analyses are an integral part of the
5 RTC analysis that we perform for our commercial
6 customers. What -- what somebody does in
7 litigation is dependent on what the assignments
8 are. But I personally believe that cost-benefit
9 analyses are an integral part of evaluating the
10 infrastructure.

11 MEMBER FUCHS: They're basically for
12 determining whether or not ordering infrastructure
13 would be a good idea?

14 THE WITNESS: That's correct.

15 MEMBER FUCHS: Okay. Did you or are
16 you aware of anything in the record that looks at
17 the benefits of passenger rail in this case?

18 THE WITNESS: No.

19 CHAIRMAN OBERMAN: And is there
20 anything in the record to judge how any -- any
21 benefits of passenger rail stack up against any
22 costs imposed on the freight network?

1 THE WITNESS: No.

2 MEMBER FUCHS: Is it your contention
3 that there aren't any costs imposed on the freight
4 network or are there costs imposed and if so what
5 do you think they are based on your review of the
6 evidence?

7 THE WITNESS: Well I think that's what
8 the RTC model was designed -- designed to present
9 in this case and we could never get to a
10 conclusion on that question.

11 MEMBER FUCHS: But -- but based on your
12 reflections on totality of what was presented,
13 what you can verify and what you can't, are you
14 able to fashion an opinion as to whether there are
15 any costs or are you contending that you can't
16 even establish that there's a -- any cost
17 whatsoever?

18 THE WITNESS: The latter. We -- we
19 have not had enough information to draw any
20 conclusions.

21 MEMBER FUCHS: And -- and I -- I take
22 it that if the -- you know, similar to how if the

1 board were to evaluate whether or not
2 infrastructure was a good idea and cost benefit
3 would be useful, suppose that the board were to
4 find that there is some cost on the freight
5 network. Would it also be useful to take a look
6 at whether or not the benefits of passenger rail
7 justify those costs?

8 THE WITNESS: Absolutely.

9 MEMBER FUCHS: Okay, all right. Thank
10 you. And then switching to 95% OTP, there has
11 been some debate about whether 95% was an input or
12 an output. Did I hear you correctly to say that
13 you believe that 95% was an input?

14 THE WITNESS: No. No, no. It is an
15 output.

16 MEMBER FUCHS: Okay. So talk me
17 through how you believe the most likely way that
18 CSX designed in RTC to achieve that output.

19 THE WITNESS: Well, after they created
20 their randomized base case, they added
21 infrastructure. I believe they added 11 projects
22 to the system and one of the outputs of rerunning

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1 the RTC model with those 11 projects and the
2 Amtrak trains was a 95% OTP.

3 MEMBER FUCHS: Well there -- there was
4 some evidence that was presented that suggested
5 that the Amtrak OTP, the high Amtrak OTP was
6 achieved prior to infrastructure and that the
7 infrastructure products were then added to
8 mitigate whatever freight delivery costs were
9 outputted by the model. Is it your view that the
10 RTC model without infrastructure did -- would not
11 have achieved that high of an RTC -- or that high
12 of an OTP?

13 CHAIRMAN OBERMAN: I think if the model
14 were done properly, I'd be in a position to answer
15 that question but --

16 MEMBER FUCHS: So how do you know
17 that -- how do you know that the infrastructure
18 was added to achieve a 95% OTP if you don't know
19 whether or not the model achieved a 95% OTP
20 without infrastructure?

21 THE WITNESS: The two are independent
22 calculations. You run the model and one of the

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1 outputs is on-time performance. And you run it
2 with or without the infrastructure, you're going
3 to get an on-time performance factor and you can
4 compare --

5 MEMBER FUCHS: I thought -- I had
6 thought you had just testified that they added
7 infrastructure until they achieved a 95% OTP.
8 Is -- is that not the case?

9 THE WITNESS: They -- they achieved 95%
10 when they added the infrastructure. They
11 didn't -- they didn't add the infrastructure in
12 steps. They just added the infrastructure.

13 MEMBER FUCHS: If the model were to be
14 run with -- in the 2019 base case, if the model
15 were to be run without infrastructure, what would
16 have been the OPT at Amtrak?

17 THE WITNESS: I don't know.

18 MEMBER FUCHS: So how do you know
19 whether or not the infrastructure was key to 95%
20 OTP?

21 THE WITNESS: Because the model that
22 they ran with the infrastructure produced a 95% --

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1 MEMBER FUCHS: But that doesn't prove
2 that the infrastructure is what itself produced a
3 95% OTP is it -- does it?

4 THE WITNESS: Well if -- if they ran it
5 out of the case that didn't have the 95%, then it
6 would. They didn't -- I -- I don't recall some
7 running a case that achieved 95% without the
8 infrastructure. Maybe they did and I missed it.
9 I -- I don't know.

10 MEMBER FUCHS: Okay. And then -- so,
11 as I understand it, the actual input as it
12 pertains to preference for Amtrak trains are
13 controlled by the -- the -- conflict rank and the
14 delay minimum and maximum imputed for each train in
15 a model, not just Amtrak, but all trains. And
16 then that's what governs the degree of preference
17 that a particular train gets in the model.

18 Is that basically right.

19 CHAIRMAN OBERMAN: Yes.

20 MEMBER FUCHS: Was there anything --
21 now suppose some of Amtrak's rank and delay in the
22 minimum/maximum were higher in the Gulf Coast

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1 model than they maybe were in say rate cases? Is
2 there anything to suggest that the rank and the
3 delay minimum/maximum selected by CSX in this case
4 would afford Amtrak a higher degree of preference
5 than is reflected in past cases, materially, a
6 higher degree of preference that would lead to
7 material different outcomes, compared to say past
8 cases or what is reasonable?

9 THE WITNESS: Well, that is something
10 that you can test but it's not something that we
11 tested and I don't believe the Banks-Guthrie
12 models tested that theory either. So I guess the
13 short answer is I don't know.

14 MEMBER FUCHS: Okay. All right, so
15 then just my last question is, if -- if the
16 board -- if the board did have preference that the
17 Amtrak trains without infrastructure achieved say
18 over a 90- or 95% OTP, would that change your
19 assessment of whether or not the 95% OTP should be
20 regarded as something that was the target of the
21 infrastructure?

22 THE WITNESS: No.

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1 MEMBER FUCHS: Why not?

2 THE WITNESS: It -- it's a result.

3 MEMBER FUCHS: Well, what I mean to say
4 is caused by the infrastructure.

5 If -- if without the infrastructure the
6 board had evidence that you'd achieved let's say
7 over a 90- or 95%, would that change your
8 assessment of whether or not that particular
9 output was caused by the infrastructure?

10 THE WITNESS: No. If you -- if you ran
11 the model and -- and your first run was 95% OTP, I
12 don't think you would need the infrastructure.

13 MEMBER FUCHS: Well, if you wanted the
14 infrastructure to mitigate freight costs,
15 wouldn't -- wouldn't that be a reason to add it?

16 THE WITNESS: Well, you'd have to make
17 a demonstration that it's impacting the freight
18 operations.

19 MEMBER FUCHS: Okay, okay. I
20 appreciate it. Thank you so much.

21 MEMBER HEDLUND: Can I ask a
22 clarification --

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1 CHAIRMAN OBERMAN: Sure, go ahead.

2 MEMBER HEDLUND: -- with Patrick's
3 line.

4 They did a model of 2019 with Amtrak
5 and without infrastructure. Is that correct?

6 THE WITNESS: "They" being Banks and
7 Guthrie?

8 MEMBER HEDLUND: Yes.

9 THE WITNESS: Yes, that's correct.

10 MEMBER HEDLUND: And was there an OTP
11 output from that model?

12 THE WITNESS: I'm sure there was.

13 MEMBER HEDLUND: Do you recall what it
14 was?

15 THE WITNESS: I do not.

16 MEMBER HEDLUND: Okay. I think that
17 would help maybe answer that other question that
18 he had, but we'll go back and look at that. Thank
19 you.

20 MEMBER FUCHS: I totally agree.

21 Thanks, Karen.

22 CHAIRMAN OBERMAN: Any other board

1 members have questions?

2 Matt, are you the designated hitter for
3 the moment?

4 MR. WARREN: I am.

5 CHAIRMAN OBERMAN: All right. Why
6 don't you proceed if you have some cross.

7 CROSS-EXAMINATION

8 BY MR. WARREN:

9 Q. Good morning Mr. Crowley.

10 A. Morning.

11 Q. So Mr. Crowley, it -- it's fair to say
12 that you have extensive experience with the RTC
13 model, right?

14 A. Yes.

15 Q. And so you know what a -- a -- a .INFRA
16 file is, I-N-F-R-A?

17 A. It's one of the -- one of the files
18 that is used in the model.

19 Q. Yeah, but and am -- am I right that
20 the -- the .INFRA file is the file that reflects
21 the physical rail layouts that you're going to use
22 in the model?

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1 Is that right?

2 A. That's short for infrastructure. Yes,
3 that would be correct.

4 Q. Yeah, so that's where you would put in
5 your rail lines, your sidings, whether it's single
6 or double track, that -- that that would go in the
7 .INFRA file?

8 A. Yes.

9 Q. Have you ever worked -- in the RTC
10 models you've worked on, have you ever worked to
11 build a .INFRA file from scratch based on track
12 charts or other information you have available?

13 A. Yes.

14 Q. And do you know how to adjust the
15 .INFRA file to add infrastructure or take
16 infrastructure away?

17 A. Yes.

18 Q. So if you wanted to add a siding, you
19 know how to add a siding to the .INFRA file,
20 right?

21 A. That's correct.

22 Q. And if you want to take away a siding,

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1 you know how to take away a siding from the .INFRA
2 file? Okay.

3 A. That's correct.

4 Q. And you -- you know what a .TRAIN file
5 is, right? Right.

6 A. Right.

7 Q. And you've obviously worked with .TRAIN
8 files extensively?

9 A. Yes.

10 Q. Have you ever developed to do .TRAIN
11 files from scratch to use in an -- an RTC model?

12 A. Yes.

13 Q. Okay. And -- and when you're working
14 with a .TRAIN file, do you know how to add a train
15 to the .TRAIN file?

16 A. I do.

17 Q. And you know how to take trains away
18 from the .TRAIN file, correct?

19 A. Correct.

20 Q. And you know how to change the
21 characteristics of trains in the .TRAIN file,
22 right? If you -- if you don't understand my

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1 question, let me know.

2 A. No, I know how to change
3 characteristics. Yes.

4 Q. And if I were to ask you the same
5 questions about other RTC input files like .PERMIT
6 files or .OPTION files, you would have the same
7 answer, right, that you understand how to make
8 changes to those files?

9 A. That's correct.

10 Q. Okay. Just so I understand your --
11 your testimony, because I'm still a -- a little
12 clear -- still a little unclear, I -- I -- I know
13 that you did not develop an independent RTC model,
14 but did you ever make changes to the input files,
15 into the 2021 Gulf Coast RTC model and run the
16 model to see what changes -- what effect those
17 changes would -- would have?

18 A. No.

19 Q. Did you ever suggest to Amtrak that
20 that would be something you could do?

21 MS. BRACEY: Objection. That calls for
22 a privileged answer.

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1 CHAIRMAN OBERMAN: What is the basis of
2 your privilege contention?

3 MS. BRACEY: That he -- that Mr. Warren
4 is asking what he told Amtrak, what Mr. Crowley
5 told Amtrak.

6 CHAIRMAN OBERMAN: Well, I don't know
7 where that's privileged. It -- what -- what --
8 what privilege are you claiming?

9 MS. BRACEY: The attorney/client and
10 the work product privilege, sir.

11 CHAIRMAN OBERMAN: Well the Peabody
12 firm is not your client, was it?

13 THE WITNESS: No, but the work product
14 privilege applies.

15 CHAIRMAN OBERMAN: What Mr. Crowley
16 suggest to you invokes -- how does that invoke the
17 work product privilege?

18 MS. BRACEY: In advance of writing his
19 report, anything in response is subject to the
20 work product privilege.

21 CHAIRMAN OBERMAN: I -- I don't accept
22 that. I'm going to let him answer the question.

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1 MS. BRACEY: You may need to repeat the
2 question.

3 MR. WARREN: Yeah, well, why -- yeah,
4 why -- why don't I repeat the question.

5 BY MR. WARREN:

6 Q. So my -- my question, Mr. Crowley, was
7 whether you ever told -- asked Amtrak whether you
8 should, you know, run the RTC model, you know,
9 change -- change the inputs and run the RTC model.

10 A. I don't recall such a conversation with
11 Amtrak.

12 Q. Okay. So, Mr. Crowley, you -- you've
13 been involved in many cases before the STB where
14 the RTC model was used, right?

15 A. Yes.

16 Q. Yeah, so it's fair -- you testified
17 earlier you'd been involved with, you know, 15,
18 20, 25 RTC models. Were many of those in STB
19 proceedings?

20 A. Those were the ones that were in STB
21 proceedings.

22 Q. Okay. And in particular you used the

1 RTC model in -- in quite a number of standalone
2 cost proceedings? Is that right?

3 A. Yes.

4 Q. So -- and in a standalone cost
5 proceeding the -- the way they work is, in the
6 complainant's opening evidence, typically the
7 complainant will use an RTC model to sort of, you
8 know, test the validity of it's operating plan.

9 Is that right?

10 A. Yes.

11 Q. Yes. Okay. So, and then in the
12 railroad's reply evidence, the railroad will --
13 will often also submit an RTC model, sometimes
14 adjusting inputs into the shippers' model.

15 Is that right?

16 A. Yes.

17 Q. And then the shipper will have rebuttal
18 evidence and that rebuttal evidence often includes
19 another RTC model, which typically will make some
20 adjustments based on the railroad's evidence and
21 will -- will tweak that opening RTC model?

22 A. Correct.

1 Q. And in -- in some proceedings, the STB
2 sometimes asks for supplemental modeling, right,
3 so we have additional rounds of RTC models. Is
4 that right?

5 A. Correct.

6 Q. And is it fair to say that -- that
7 the -- this back and forth between RTC models is
8 typically not with completely new models but is
9 rather back and forth about, you know, particular
10 inputs to the RTC model?

11 A. Well that be would fair if there was no
12 disagreement on the inputs. If there was -- I
13 never had a situation in one of these 15, 20, 25
14 standalone cases where the inputs into the .TRAIN
15 file or the .PERMIT file was based on anything
16 other than actual verifiable railroad-provided
17 data.

18 So, the situation here and the
19 situation in the standalone case are totally
20 different.

21 MR. WARREN: All right. Mr. Chairman,
22 I'd move to strike that response -- that answer as

1 not responsive to my question.

2 MS. BRACEY: Mr. Chairman, we object
3 about it. It was responsive to his question.

4 CHAIRMAN OBERMAN: Can I hear the
5 question and answer again, please.

6 THE COURT REPORTER: Yes, one moment,
7 please.

8 "Question: And is it fair to say
9 that -- that the -- this back and forth between
10 RTC models is typically not with completely new
11 models but is rather back and forth about, you
12 know, particular inputs to the RTC model?

13 "Answer: Well that be would fair if
14 there was no disagreement on the inputs. If there
15 was -- I never had a situation in one of these 15,
16 20, 25 standalone cases where the inputs into the
17 .TRAIN file or the .PERMIT file was based on
18 anything other than actual, verifiable
19 railroad-provided data.

20 "So, the situation here and the
21 situation in the standalone case are totally
22 different."

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1 CHAIRMAN OBERMAN: He actually answered
2 the question in his first phrase when he said that
3 will be fair. I'll let that stand. The rest of
4 it went way beyond the question so I'll ask the --
5 I will order it stricken.

6 Go ahead.

7 MR. WARREN: Thank you.

8 BY MR. WARREN:

9 Q. So, Mr. Crowley, it's fair to say that
10 in -- in sale and cost cases there are often
11 pretty substantial disputes about what inputs
12 should be made to the RTC model.

13 Is that right?

14 A. Yes.

15 Q. So, you know, inputs about, for
16 example, how many trains should go in the model,
17 right?

18 A. That could be an issue.

19 Q. Yeah. You -- you worked on the Dupont
20 case, right?

21 A. I did.

22 Q. Yeah, and I -- I guess I should be

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1 specific. The -- the Dupont being the Norfolk
2 Southern case. Is that what you're referring to?

3 A. If that's what you're referring to,
4 that's what I'm referring to.

5 Q. Yes. I -- I think that there -- there
6 have been a few, but I think that that was the
7 only, you know, SAC case that -- that went to a
8 final decision.

9 And -- and -- so, but in the Dupont
10 case, if you recall, was -- was that not a case in
11 which, you know, sort of the basis of the
12 board's -- one -- one of the prime bases of the
13 board's final decision was, you know, disputes
14 about how many trains to be input into the RTC
15 model?

16 A. That was sometime ago and I don't
17 really recall all of the short stokes in that
18 case.

19 Q. Okay.

20 A. So I'm not able to answer that.

21 Q. Okay, that -- that -- that's fine.

22 So do you recall any case in the many

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1 standalone cost cases that you've been involved in
2 in which, after the shipper put it in the RTC
3 model with its opening evidence, the railroad
4 said, "That RTC model is no good so I'm not even
5 going to bother putting in my own"?

6 A. No.

7 Q. Well, Mr. Crowley, you --

8 CHAIRMAN OBERMAN: Matt, I have to ask
9 you, what is the relevance of what -- how people
10 try the SAC case under a different statute than
11 we're operating in here? Is there some relevance
12 to that point?

13 MR. WARREN: So -- so, Mr. Chairman,
14 I -- I -- I do think I was getting ready to move
15 on if you're concerned about the relevance, but --
16 but I do think that this is a witness that
17 actually has offered some testimony in his
18 verified statement about how he thinks things, you
19 know, typically proceed in STB cases, citing a
20 bunch of SAC cases, and I think it's relevant
21 that, in the board's typical litigation process,
22 the board has actually made it clear in several

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1 SAC cases that, you know, when a party puts in
2 evidence on opening, that the party that is in the
3 reply position believes is flawed, it is on that
4 party to -- to respond to that evidence and
5 correct it and not simply to say, "No burden of
6 proof. We're not going to put in our own
7 evidence".

8 CHAIRMAN OBERMAN: Well --

9 MR. WARREN: And this is --

10 CHAIRMAN OBERMAN: -- you know, the --

11 MS. BRACEY: I'm going to object to
12 that. I'm going to object to that as counsel was
13 testifying.

14 CHAIRMAN OBERMAN: Well I've -- I've
15 asked a question, Ms. Bracey. I think it's fair
16 for him to respond when I ask a question. But
17 we're operating under a statute which everybody in
18 this proceeding has made clear is a case of first
19 impression in which the burden of proof is
20 expressly stated in the statute and there is no
21 similar language to my knowledge in SAC cases, so
22 I'm not -- that's all the reason I think we have

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1 to figure out how things are done in a case like
2 this and it's a case of first impression.

3 MR. WARREN: Yeah.

4 CHAIRMAN OBERMAN: So I -- I'm not
5 saying you can't ask the question. You asked it
6 but I just think to me -- it seems to me we're
7 getting off into another world here that doesn't
8 relate to our resolving this case. But why don't
9 you --

10 MR. WARREN: Yeah, I will. We could --
11 whenever we get to closing we -- we -- we -- we
12 can talk about that a little more --

13 CHAIRMAN OBERMAN: Yes.

14 MR. WARREN: -- at that time.

15 CHAIRMAN OBERMAN: And I think --

16 MR. WARREN: But I am moving on.

17 CHAIRMAN OBERMAN: I think the legal
18 argument at that point would be appropriate.

19 MR. WARREN: All right.

20 BY MR. WARREN:

21 Q. So Mr. Crowley, you talked a fair
22 amount in your direct testimony about the

1 information you had access to when you -- when you
2 started working for Amtrak. So, is -- is it --
3 when you were retained by Amtrak, I believe you
4 said that was in mid October. Do I have -- do I
5 have that right?

6 A. Sometime in October, yes.

7 Q. Okay. All right, sometime in October.

8 So, at that time did -- did -- did you
9 ask Amtrak for -- or, I won't ask what you asked.
10 Were you given access to all of the information
11 that had been produced in discovery to that point?

12 MS. BRACEY: I'm going to object, your
13 Honor -- I mean, Mr. Oberman, on the same grounds,
14 the privilege grounds.

15 MR. WARREN: I -- I believe the witness
16 talked extensively in his direct testimony about
17 the information that he had and did not have. So
18 I'm not actually asking about his communications
19 with counsel. I've tried to phrase my question
20 that way. I'm just asking the witness if -- what
21 he had.

22 CHAIRMAN OBERMAN: Well, can you just

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1 state the question again, Matt?

2 MR. WARREN: Sure, sure.

3 BY MR. WARREN:

4 Q. When -- when you were retained by -- by
5 Amtrak, were you given access to the information
6 that had been produced in discovery?

7 CHAIRMAN OBERMAN: He can answer that
8 question.

9 THE WITNESS: I believe so.

10 BY MR. WARREN:

11 Q. Did -- did you review for example
12 responses to interrogatories or responses to
13 requests for admission, documents like that?

14 A. We reviewed the data that was provided.
15 We never tied it back to the -- we were not
16 involved in that part of the process of drafting
17 questions or requests for production but we did
18 review the data that we were provided by Amtrak.

19 Q. Right. And -- and understanding
20 that -- that you weren't retained but those
21 questions were being drafted, did -- were you --
22 did you see the -- the final documents, the final

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1 interrogatory responses that --

2 A. Well we saw the data. I'm not sure we
3 saw the responses.

4 Q. Okay.

5 A. We might have. I -- I just don't
6 recall.

7 MR. WARREN: All right. Well, let's --
8 let -- all right, so -- so at this point, Mr.
9 Chairman, I'm going to sort of walk -- walk
10 through a few documents and I -- I am going to ask
11 to start with CSXNS 65. And I believe we have --
12 just to try to keep things moving, we have I think
13 already emailed documents. We -- we-- we've
14 emailed a couple of additional exhibits that we're
15 going to be showing Mr. Crowley, so that should be
16 popping into everybody's inboxes soon.

17 CHAIRMAN OBERMAN: Are -- are these --
18 are these in the voluminous and weighty books that
19 were shipped to us?

20 MR. WARREN: This -- this -- this --
21 this one is, Mr. Chairman. This in the voluminous
22 and weighty CSXNS joint exhibits and this is --

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1 CHAIRMAN OBERMAN: Well, I have mine
2 sitting here.

3 MR. WARREN: -- Exhibit 65.

4 CHAIRMAN OBERMAN: I have mine sitting
5 here. Give me thirty seconds and I'll have it.

6 MR. WARREN: Okay, just let me know
7 when you're ready.

8 MS. BRACEY: I'm just going to object
9 to asking him about documents he's never -- he
10 just testified he's never seen before.

11 MR. WARREN: I'm going to show him a
12 couple of things in the document and -- and if he
13 establishes that he's never seen it before, after
14 I show him the things I'm going to show, then I'll
15 accept that answer.

16 CHAIRMAN OBERMAN: Well, it's perfectly
17 proper on cross-examination to use a document to
18 show him if he can't answer the questions about
19 it. I can't find -- I can't find it. Hold on.

20 (Brief pause.)

21 CHAIRMAN OBERMAN: This -- this is in
22 the -- not the overall joint book but the CSXNS

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1 joint book?

2 MR. WARREN: Yes -- yes -- yes, that's
3 right, Mr. Chairman.

4 CHAIRMAN OBERMAN: Do the other board
5 members have this document?

6 MEMBER PRIMUS: I'm -- I'm pulling it
7 up right now. I'm getting my workout.

8 MEMBER FUCHS: One of -- it's in volume
9 one of two.

10 CHAIRMAN OBERMAN: Yeah, I got it.

11 MR. WARREN: Okay, does everybody --
12 does everybody have it? Does Mr. Crowley have it?

13 MS. BRACEY: Yeah, I will give Mr.
14 Crowley a copy.

15 BY MR. WARREN:

16 Q. Mr. Crowley, let me know when you're
17 ready.

18 A. Okay, I'm ready.

19 Q. All right. Mr. Crowley, have you seen
20 this document before?

21 A. I don't believe so.

22 Q. Okay. And these are -- these are

1 interrogatory responses. Is that right?

2 A. These are -- these are both
3 interrogatories and responses.

4 Q. All right. If -- if -- if we -- if we
5 could take a look at -- at page 12 of 13. It's
6 near -- near the back, Mr. Crowley. So these --
7 these are -- these are dated on September 2nd,
8 2021. Is that right?

9 A. Yes.

10 Q. Okay. And -- and now I'm going to ask
11 you -- sorry for making you flip back and forth --
12 now I'm going to ask you to take a look at page
13 four, the response to interrogatory number one.

14 Do you see that?

15 A. I do.

16 Q. All right, and then the response to
17 interrogatory number one, there is a listing of
18 persons that CSX has identified in request -- in
19 response to Amtrak's request to identify persons
20 who assisted in the preparation of these
21 interrogatories or have knowledge related to the
22 topics of these interrogatories.

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1 Is that right?

2 A. I guess so.

3 Q. Did -- did you -- did -- at any point,
4 even if you didn't see this document, did Amtrak,
5 you know, give you this list of individuals who --
6 who were knowledgeable about the case?

7 A. No.

8 Q. No?

9 A. Not that I recall.

10 Q. Okay. And this includes, you know,
11 five -- five individuals, including Hannah Rosse
12 and Will Roseborough. Is that right?

13 A. Yes, it does.

14 Q. Okay. But Amtrak -- you never --
15 you've never seen this before today, right?

16 MS. BRACEY: Objection, asked and
17 answered.

18 CHAIRMAN OBERMAN: It's
19 cross-examination. It's okay. You can answer.

20 THE WITNESS: I -- I certainly don't
21 recall seeing this document.

22 BY MR. WARREN:

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1 Q. Okay. Well -- well, let -- let's --
2 let's move on then.

3 So the next document that I'm going to
4 show you is -- is a document that is -- is not
5 going to be in -- in the big binders. It's CSXNS
6 312 and that is the document that was emailed
7 around a couple minutes ago. So, let me know if
8 everybody's gotten it. It is a letter dated
9 September 9th, 2021.

10 CHAIRMAN OBERMAN: Which one, 312?

11 MR. WARREN: Yes, 312.

12 CHAIRMAN OBERMAN: I seem to have it
13 but it won't open.

14 MS. BRACEY: Chairman Oberman, if we
15 can wait until we have printed copies for the
16 witness.

17 CHAIRMAN OBERMAN: That's okay with me
18 because I can't open this. I don't know why. It
19 says it's a ZIP file, but it -- it shows up on
20 the -- when I open the emails a Adobe file. Is
21 that right?

22 MR. WARREN: It should -- it should be

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1 an Adobe file that shouldn't be too long. Would
2 it --

3 MEMBER PRIMUS: It should be -- Marty,
4 I -- I think the one I opened it up it had -- it
5 said "preview" and I was able to open it up. Is
6 there a place you can preview it?

7 CHAIRMAN OBERMAN: No.

8 MEMBER PRIMUS: Because I'm not --

9 CHAIRMAN OBERMAN: All right. When I
10 open the attachment, I get a thing that shows
11 three exhibit numbers. Yeah, I -- I'm a limited
12 test person.

13 MS. BRACEY: Your Honor, I was able
14 to open it by just clicking on exhibit number 032
15 or whatever it was.

16 CHAIRMAN OBERMAN: Yeah, well I click
17 on it, nothing happens.

18 MS. BRACEY: Nothing happens, okay.

19 MR. WARREN: Yeah, so would -- would
20 this be a good time for a break so that we can
21 get -- get this out and Kali can get them printed,
22 or everybody can get them open?

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1 CHAIRMAN OBERMAN: Well, it's on the
2 screen, so I can just read it on the screen.

3 MS. BRACEY: Chairman Oberman, it would
4 be great if we can have printed copies for Mr.
5 Crowley.

6 CHAIRMAN OBERMAN: Okay. Are we
7 getting that for him?

8 MS. BRACEY: Yes. So we don't object
9 to a break at this time. It shouldn't take us
10 terribly long.

11 CHAIRMAN OBERMAN: All right. It's --

12 MEMBER FUCHS: May I ask -- may I
13 ask we knock all the --

14 CHAIRMAN OBERMAN: Go ahead, Patrick.

15 MEMBER FUCHS: Unless it -- Matt,
16 unless it interrupts your questioning and the
17 pattern of your questioning, et cetera, does it
18 make sense to use the break to make all printouts
19 that you're planning to reference or --

20 MR. WARREN: Yes, so -- so I -- I -- I
21 will -- I will double check. I -- I believe that
22 the only new documents that I am planning on using

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1 are the ones that just got emailed. So -- so we
2 tried to do -- we tried to do them all at once.

3 MEMBER FUCHS: Okay, great. Thank you.

4 MR. WARREN: I -- I -- I won't promise
5 that but that I -- that I -- that's -- that's my
6 current plan, unless I think of something.

7 CHAIRMAN OBERMAN: All right. We'll
8 break -- it's 11:17. We'll break until 11:30.

9 MR. WARREN: Okay, thank you.

10 (Recess taken.)

11 CHAIRMAN OBERMAN: All right, does
12 everybody have the documents we need now? Ms.
13 Bracey, does your witness have the documents you
14 wanted to show him?

15 MS. BRACEY: Yes, I'm ready to hand
16 them to him.

17 CHAIRMAN OBERMAN: All right. Yes,
18 Matt, is that where you are in your examination?

19 MR. WARREN: Yes, yes, I am.

20 CHAIRMAN OBERMAN: All right. Why
21 don't you provide Mr. Crowley with the documents
22 and then we'll proceed. We're back on the record.

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1

2 BY MR. WARREN:

3 Q. Okay, Mr. Crowley, do you have what's
4 been marked as CSXNS 312 in front of you?

5 A. Is that what this is? Oh, yeah, right
6 down there. Yes, I -- I have it.

7 Q. Okay. And this -- and this is a letter
8 from Amtrak's counsel, Kali Bracey, dated
9 Thursday, September 9th, 2021?

10 A. Yes.

11 Q. All right, have you seen this letter
12 before?

13 A. I do not believe so.

14 Q. Okay. And -- and we won't spend a lot
15 of time here but in -- in that -- that first
16 paragraph of the letter, indicates that this is a,
17 you know, a discovery follow-up letter, you know,
18 asking about, you know, what documents CSX plans
19 to provide and, you know, and -- and places where
20 Amtrak is asking CSX to provide more information.

21 Is that right?

22 A. Yes.

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1 Q. Yes. And in your experience and, you
2 know, litigation of the STB and in other forums,
3 you know -- you know, follow-up discovery letters
4 like this are -- are a pretty common way for
5 parties to get the information they want.

6 Is that right?

7 MS. BRACEY: Objection, foundation.

8 CHAIRMAN OBERMAN: Can you rephrase the
9 question, Matt.

10 BY MR. WARREN:

11 Q. In -- in -- in your experience in
12 litigation for the STB, which you testified to on
13 direct, is it your experience the parties will
14 often in the discovery process send follow-up
15 letters like this where they don't feel like
16 they've gotten the information they need or if
17 they want to make sure that they're going to get
18 the information that they want?

19 MS. BRACEY: I also object on the
20 grounds it's compound.

21 CHAIRMAN OBERMAN: He -- he can answer,
22 if he can.

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1 THE WITNESS: I can -- I would say it's
2 not unusual for follow-up letters.

3 BY MR. WARREN:

4 Q. You -- you've often contributed to
5 follow-up letters in other cases, right?

6 A. I don't -- I don't recall any specific
7 examples, but it's possible for sure.

8 Q. Okay. All right. So -- and so that --
9 so that, CSXNS 312, you -- you can -- you can set
10 that aside. I'm going to ask you to look at, if
11 you've got it in front of you, CSXNS 313, and let
12 me know when you have that.

13 A. I have it.

14 Q. And -- and -- and this letter is dated
15 Monday -- or no -- it doesn't say "Monday". This
16 letter is dated September 13th, 2021. Is that
17 right?

18 A. Yes.

19 Q. And -- and you can see in that first
20 paragraph that this letter is in response to the
21 September 9th, 2021 letter that we were just
22 looking at.

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1 Is that right?

2 A. It's in response to a September 9th
3 letter.

4 Q. Yes. Do we need to flip back to 312 to
5 see that that -- that is a September 9th letter?

6 A. It is a September 9th letter.

7 Q. Okay, all right. So let's -- let's go
8 back to 313 and I'm going to direct your attention
9 to the interrogatory section that starts at the
10 bottom of page one.

11 A. Okay.

12 Q. Okay. And -- and -- and am I right
13 that that reads -- I -- I guess one question I
14 should ask you, Mr. Crowley. Did -- did you -- do
15 you recall ever seeing this -- this explanatory
16 letter before?

17 A. No.

18 Q. No. Okay. So, that -- that bottom
19 paragraph on page one indicates that today,
20 September 13th, CSX produced the rail traffic
21 file -- RTC files in its possession, custody or
22 control associated with the incomplete 2020/2021

1 RTC study performance by HDR.

2 Is that right?

3 A. Yes.

4 Q. Were -- were -- were you -- were you
5 given all -- all of this -- all of these RTC files
6 by Amtrak?

7 A. I believe so.

8 Q. All right. Were -- were you aware that
9 they were all produced to Amtrak on September
10 13th?

11 A. I don't -- I don't recall.

12 Q. Okay, let -- let's -- let's turn to the
13 next page, Mr. Crowley, and in the section on
14 interrogatory number eight, I would direct your
15 attention towards that. Let's see, it's the
16 second sentence starting about four lines down
17 indicating that on September 2nd, 2021, CSXT
18 produced track charts covering its rail lines
19 between New Orleans and Mobile for the years 2015
20 and 2021.

21 Do you see that?

22 A. I do.

1 Q. And did Amtrak give you access to those
2 track charts that were produced?

3 A. We had some -- we have some track
4 charts but I don't know if they were these. But
5 we got some track charts from Amtrak.

6 Q. Okay. And then I'd also direct your
7 attention to that last sentence of the paragraph
8 indicating that "Today, September 13th, CSXT
9 produced the files from HDR's 2020/'21 RTC study
10 as well as base case files located with respect to
11 HDR's 2016 RTC study".

12 Do you see that?

13 A. I do.

14 Q. Were you given access to those files by
15 Amtrak?

16 A. I believe so.

17 Q. Okay. And did Amtrak explain to you
18 when it gave you the RTC files that CSX had
19 pointed out, you know, which files were for --
20 from the '20/21 HDR study and which files were for
21 the 2016 RTC study?

22 MS. BRACEY: Objection, communications

1 between counsel and the expert.

2 CHAIRMAN OBERMAN: He may -- he may --
3 he may answer that question.

4 THE WITNESS: I think the files were
5 self-explanatory if I recall properly but I'm not
6 sure exactly what the exchange was with counsel.

7 BY MR. WARREN:

8 Q. Okay, but you -- you were able --
9 this -- this letter identifies, you know,
10 particular Bates number ranges associated, you
11 know, with these studies. Is that right?

12 A. Yes.

13 Q. And -- and -- and you were aware that
14 those -- those particular files and those
15 particular Bates ranges were associated with these
16 studies?

17 A. I assume so. I -- I don't really
18 recall any of this, so.

19 Q. Okay. So all right. Well, let's --
20 let's go down to interrogatory number nine. I'll
21 direct your attention to that first paragraph. We
22 got a little too far in our -- our screen there.

1 So you see in that first paragraph that
2 indicates that in CSXT's first production from,
3 you know, Bates number one to ten were data on
4 train schedules and actual train movements.

5 Do you see that?

6 A. Sorry, no, I don't see that.

7 Q. Okay. Well I'll -- I'll -- I'll --
8 maybe I shouldn't paraphrase. I'll read exactly.

9 In response to interrogatory number
10 nine, CSXT stated that it "would provide Amtrak
11 with data on train schedules and actual train
12 movements. As promised, these documents were
13 produced at CSX, Amtrak GC-" lots of zeros one "to
14 CSX Amtrak GC-" lots of zeros ten. "This data
15 covers the time period of January 1st, 2015 to
16 August 29th, 2021 and will enable Amtrak to view
17 how train schedules did or did not change over
18 time as well as how actual train movements
19 departed for the corresponding operating plants".

20 Did -- did I read that correctly?

21 A. Yes.

22 Q. All right. And we -- and is -- were --

1 were you -- was the data described in that
2 paragraph provided to you?

3 A. I believe so.

4 Q. Okay. All right. Let's -- let's flip
5 to the next page and skip a couple of these and --
6 and I'd like to direct your attention to the --
7 the explanation for request number six. And
8 again, this -- this request number six again, you
9 know, indicates that it was on September 2nd, 2021
10 that CSX produced train operating plans and data
11 on actual train movements as well as track charts
12 for 2015 and 2021.

13 Is that right?

14 A. That's what it says.

15 Q. Okay. And you were given access to all
16 that information, right?

17 A. I believe so.

18 Q. Okay. And -- and would you agree that
19 that middle sentence, in request number six which
20 indicates that "The TRAIN data includes
21 substantial detail regarding CSXT's traffic
22 volumes with respect to the number of loads in

1 empty rail cars in each departure and arrival
2 point as well as the length and weight of
3 departing rail cars".

4 A. I don't remember what the data actually
5 showed.

6 Q. Okay. And if we could just turn to the
7 last page, Mr. Crowley, page four, request number
8 ten, CSX indicated in its letter that -- that "The
9 track charts and RTC files from past studies
10 provide Amtrak with the necessary information to
11 model the proposed Gulf Coast passenger service
12 and ascertain any historical alterations to the
13 line over the discovery period".

14 Do you see that?

15 A. I do.

16 Q. Were you aware that as of the date of
17 this letter, September 13th, 2021, CSX had
18 produced sufficient data that in CSX's view gave
19 Amtrak the necessary information to model the
20 proposed Gulf Coast passenger service?

21 MS. BRACEY: Objection as to what CSX
22 viewed and whether or not Mr. Crowley can testify

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1 to that.

2 CHAIRMAN OBERMAN: Can you rephrase the
3 question, Matt.

4 MR. WARREN: Sure.

5 BY MR. WARREN:

6 Q. You were not -- were you aware --
7 excuse me. Let me get a drink of water.

8 Were you aware that -- that CSX had
9 indicated to Amtrak that it believes that as of
10 September 13th it had provided Amtrak with the
11 necessary information to model the Gulf Coast
12 passenger service?

13 A. Well that's what this says but I can't
14 tie that to anything that I know.

15 Q. Okay. So the -- the answer is you --
16 you were not aware?

17 A. I'm not --

18 Q. All right, then this letter was not
19 shared with you?

20 A. Not that I recall.

21 Q. Okay. Thank you. I -- I'm -- I'm
22 now -- the -- the next document I'm going to show

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1 you, Mr. Crowley, is one that -- that is in those
2 big CSXNS binders. It is CSXNS 072.

3 CHAIRMAN OBERMAN: Well what is the
4 document? What is the document?

5 MR. WARREN: So the document is, it's
6 CSXNS 072. It's a November 1st, 2021 letter.

7 CHAIRMAN OBERMAN: Hold on a minute.

8 MR. WARREN: Sure. And just --
9 everyone, there's a few documents in a row there
10 that I'm going to be asking about, 73, 74, 76.
11 Because we're skipping --

12 MS. BRACEY: May I inquire of Mr.
13 Warren through Chairman Oberman whether or not
14 this was included in the email?

15 MR. WARREN: I -- this was not included
16 in the email. So this is -- this is a -- this and
17 I believe, let me just confirm, I believe every
18 other document I'm going to use is a document that
19 was -- that should be in those -- that should be
20 in those binders that was previously provided.

21 Do we have the documents or are we
22 still -- we're still pulling them up? I'm happy

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1 to wait.

2 CHAIRMAN OBERMAN: I have mine. Ms.
3 Bracey, have you located the document?

4 MS. BRACEY: Yes, sir, we have.

5 CHAIRMAN OBERMAN: And does Mr. Crowley
6 have it?

7 MS. BRACEY: Yes, Mr. Crowley has it.

8 CHAIRMAN OBERMAN: And the other board
9 members, are you all on board here.

10 (Board members give thumb's up.)

11 MEMBER PRIMUS: I have mine.

12 CHAIRMAN OBERMAN: Okay.

13 BY MR. WARREN:

14 Q. All right, Mr. Crowley, directing your
15 attention to CSXNS 072, this is a letter dated
16 November 1st, 2021 from Amtrak's counsel, Kali
17 Bracey. Is that right?

18 A. Yes.

19 Q. Have you seen this document before?

20 A. I don't believe so.

21 Q. All right. Do you -- this -- and this
22 document is dated November 1st. Is that right?

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1 A. Yes.

2 Q. And so that -- that is about six weeks
3 after the September 13th production of RTC files,
4 correct?

5 A. Yes.

6 Q. Okay. And even if you haven't seen
7 this letter, did you -- does -- does this letter
8 reflect any input from you, who at that point had
9 been hired as Amtrak's RTC expert?

10 A. I don't recall.

11 Q. Okay. Did you -- you testified in
12 direct that -- that there were letters that you
13 believe that -- that were sent to ask -- ask for
14 data.

15 Is that right?

16 A. Yes.

17 Q. Is this -- is this one of those letters
18 to which you were referring?

19 A. Could be.

20 Q. Okay. All right. Well, let's -- you
21 don't recall. Let's -- let's move to CSXNS 073,
22 which should be the next document in the binders.

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1 Mr. Crowley, do you have that in front of you?

2 A. Yes.

3 Q. And this -- have you seen this document
4 before?

5 A. I don't recall.

6 Q. Okay. And -- and this -- this is a
7 November 8th, 2021 letter from me back to Kali
8 Bracey responding to the letter that was sent on
9 November 1st. Is that right?

10 A. Yes.

11 Q. And -- and Mr. Crowley, do you want to
12 take a look at the second page of the letter to
13 see if that jogs your memory?

14 A. Yeah, I -- I recall seeing this data.

15 Q. Okay. You -- okay good. So you
16 recall -- recall seeing this -- you recall seeing
17 this data, okay.

18 So -- so after you saw this data from
19 Amtrak, did you, you know, indicate that this
20 answered your question?

21 A. I don't think -- I'm sorry, Mr. Warren,
22 but my memory I guess is not that good. I

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1 don't -- I don't recall exactly what we did with
2 this. We partly analyzed it but I don't -- I
3 don't recall any specific response.

4 Q. Okay, fair -- fair enough. Well
5 let's -- let's move on to CSXNS 74. And just to
6 orient on -- on timeline, and I believe you
7 testified to this on direct -- but, you know,
8 November 3rd, 2021 is -- is the date on which
9 CSXNS, you know, submitted their evidence.

10 Is that right?

11 A. November 3rd? Yes.

12 Q. Yes. So, this -- so have you seen
13 this -- this document before, CSXNS 74?

14 A. I don't believe so.

15 Q. Okay. Could I -- could I ask you to
16 flip through the -- the whole document, see if you
17 recognize pages two and three?

18 A. Yeah, that would have been -- that
19 looks familiar.

20 Q. Okay. Good. So -- so let's --
21 let's -- let's turn back -- turn back to the first
22 page, and -- and so this is -- this is another

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1 letter from -- from -- you know, from Ms. Bracey
2 to -- to counsel for CSX.

3 MR. WARREN: Could we -- could we
4 actually open up that -- the image we're showing,
5 to show the date on the top of the letter, please.

6 BY MR. WARREN:

7 Q. And that was sent November 17th, 2021.
8 Is that right?

9 A. Yes.

10 Q. And -- and -- and -- and this -- this
11 document is essentially a -- a request for
12 additional work papers. Is that right?

13 A. Yes, correct -- well --

14 Q. Okay.

15 A. It was asking for a subset that was
16 provided before that wasn't correct.

17 Q. And -- and did you provide to -- to
18 Amtrak the list of questions that they were going
19 to ask about the work papers?

20 A. Are you talking about the information
21 on pages two --

22 MS. BRACEY: Objection. I'm going to

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1 object to communications between counsel and the
2 expert.

3 CHAIRMAN OBERMAN: Read the question --
4 state the question again, Matt.

5 MR. WARREN: The -- the -- the -- the
6 question is whether Mr. Crowley, you know,
7 provided Amtrak with a list of questions about the
8 work papers that were proposed in this letter.

9 CHAIRMAN OBERMAN: He may answer.

10 (Brief interruption.)

11 CHAIRMAN OBERMAN: Matt restated the
12 question. He may answer that question.

13 THE WITNESS: This looks likes
14 something we put together.

15 BY MR. WARREN:

16 Q. Thank you. So, just directing your
17 attention to page -- to pages two and three, this
18 is the -- this is the list of questions that --
19 that you provided?

20 MS. BRACEY: Asked and answered.

21 MR. WARREN: Okay. I'll -- I'll --
22 I'll withdraw it.

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1 CHAIRMAN OBERMAN: Okay.

2 BY MR. WARREN:

3 Q. Let -- let me ask you this, Mr.
4 Crowley. Is there -- is there any other requests
5 that you made -- any other -- any other request
6 that you made of Amtrak's counsel of work paper
7 clarifications that did not get included in this
8 list?

9 A. I don't recall.

10 Q. Okay. Did you ask for example for
11 field personnel interviews?

12 MS. BRACEY: Objection, foundation.

13 CHAIRMAN OBERMAN: You may answer.

14 THE WITNESS: I don't recall.

15 BY MR. WARREN:

16 Q. Did you ask for more information on the
17 randomizer process you were talking about on
18 direct by which the trains were compiled --
19 compiled for the RTC model?

20 A. I don't recall.

21 Q. But those aren't reflected on this
22 document, right?

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1 A. I do --

2 MS. BRACEY: Objection, foundation. He
3 says he didn't recall.

4 CHAIRMAN OBERMAN: He can answer
5 whether the information he testified to was
6 reflected on this document.

7 MS. BRACEY: If he testified that he
8 didn't recall.

9 CHAIRMAN OBERMAN: No, he didn't
10 testify. He hasn't answered that question. He
11 may answer it.

12 THE WITNESS: I don't see those
13 questions here or those requests here, so.

14 BY MR. WARREN:

15 Q. Okay, thank -- thank you. We -- we can
16 move on to CSXNS 76.

17 A. Seventy-six?

18 Q. Yeah, 76. Let me know when you have
19 that.

20 A. I have that.

21 Q. Okay. So have you seen this document
22 before?

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1 A. Yes.

2 Q. All right. And -- and -- and this is a
3 November 19th, 2021 letter from -- letter from me
4 to Kali Bracey. Is that right?

5 A. Yes.

6 Q. And just directing your attention to
7 that first paragraph, the letter indicates that,
8 "We are writing in response to your November 17th,
9 2021 letter asking questions about certain work
10 papers for the opening evidence filed by CSXT and
11 NSR on November 3rd, 2021. We respond to each of
12 your questions below".

13 Is that right?

14 A. That's what it says.

15 Q. Were -- and were you -- were you
16 provided this -- this response?

17 A. I believe so.

18 Q. Okay. And just -- just turning to, you
19 know -- we have the -- we have the written
20 response there with a few formulas that I won't go
21 through, and then there's an -- an appendix A,
22 "Work Papers Index," correct? This is starting on

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1 page four of the document?

2 A. Yes.

3 Q. And you were provided that as well,
4 correct?

5 A. Yes.

6 Q. After you got this response, did you
7 ask for any additional work paper requests to be
8 posed?

9 A. I don't recall.

10 Q. At any point in this -- during your
11 retention by Amtrak, did you suggest that more
12 discovery needed to be taken?

13 A. I don't recall that either.

14 Q. You don't recall if there was any point
15 where you suggested that might need to be some
16 depositions of CSX or NS witnesses?

17 MS. BRACEY: Objection. That was
18 not -- I -- Mr. Crowley, I mean, that was just not
19 in the schedule. Mr. Crowley cannot testify.

20 CHAIRMAN OBERMAN: He may answer.

21 THE WITNESS: No.

22 BY MR. WARREN:

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1 Q. Mr. Crowley, were you aware that CSX
2 and NS had actually proposed a schedule extension
3 which would have provided more time for discovery
4 and more time for the parties to provide -- to put
5 their evidence together?

6 MS. BRACEY: Objection, foundation.

7 CHAIRMAN OBERMAN: The question is did
8 he have a foundation. He can answer. Was he
9 aware of it.

10 THE WITNESS: No.

11 BY MR. WARREN:

12 Q. Did you suggest that more time would be
13 needed in the schedule?

14 A. No.

15 Q. So, Mr. Crowley, are you aware that as
16 part of this proceeding Amtrak personnel were --
17 given access to, you know, enter CSX's Choctaw
18 Yard and do some -- you know, do a site visit?

19 Are you aware of that?

20 A. No.

21 Q. I think I know the answer to this
22 question. Did you -- did you attend that site

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1 visit?

2 A. No.

3 Q. No, right. Did anyone from your team
4 go?

5 A. No.

6 Q. Did you ask Amtrak to have you or -- or
7 somebody else from your team high rail the line?

8 A. No.

9 Q. No. Did -- did you ask Amtrak to allow
10 you or somebody else from your team to visit New
11 Orleans, to visit the New Orleans operations?

12 A. No.

13 Q. How about the Mobile operations?

14 A. No.

15 Q. So, Mr. Crowley, I -- I -- I think we
16 covered this earlier, but you're aware that the
17 information, all of the information that was
18 provided by CSX to HDR for the joint RTC model
19 that HDR was preparing was included in the
20 discovery that Amtrak received.

21 A. I don't know that.

22 Q. You're aware that HDR was able to build

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1 a base case about in 2020 for its RTC model?

2 A. Yes, that's what they presented, I
3 believe.

4 Q. Okay. And you're aware that they were
5 able to build a passenger case as well, correct?

6 A. I believe so, yes.

7 Q. And that was based on the -- the data
8 that they had received from CSX and NS and Amtrak,
9 right?

10 MS. BRACEY: Objection, foundation.

11 CHAIRMAN OBERMAN: Ask him if he knows.

12 BY MR. WARREN:

13 Q. If -- if you know.

14 A. No, I don't know.

15 Q. So I'm going to switch gears, Mr.
16 Crowley. In your reply verified statement you and
17 Mr. Fapp identified I think 582 trains in the Gulf
18 Coast RTC model .TRAIN file that, according to
19 you, shouldn't have been included.

20 Is that right?

21 A. No, I didn't say they shouldn't be
22 included. I said they weren't in the

1 documentation that was provided.

2 Q. So are you not sure whether they should
3 have been included or not?

4 A. I have no idea what the basis for them
5 is. That was what our testimony is about:
6 unverifiable data.

7 Q. Did you -- did you watch the -- the --
8 have you been watching the testimony in this case?

9 A. Yes.

10 Q. And you read all of the evidence,
11 right?

12 A. Yes.

13 Q. Okay, including the -- the -- the
14 rebuttal RTC reports?

15 A. Yes.

16 Q. And the -- the rebuttal statements
17 from, you know, Hannah Rosse and Holly Sinkkanen?
18 You read that?

19 A. Yes.

20 Q. But you in your reply evidence -- now
21 you're testifying that you're not sure -- but in
22 your reply evidence you said that these trains

1 didn't belong.

2 Isn't that right?

3 A. Yes.

4 Q. And -- and you provided a -- a detailed
5 list of all of the trains that in your view didn't
6 belong, correct?

7 A. Correct.

8 Q. Okay. But you didn't run the RTC model
9 without those trains, right?

10 A. Correct.

11 Q. So you haven't actually presented any
12 evidence about what removing those trains would do
13 to the RTC results, right?

14 A. Correct.

15 Q. So -- and you're aware that -- the --
16 the -- when we talked about the RTC model, we were
17 actually talking about multiple RTC runs, correct?

18 A. Yes.

19 Q. Okay, just to orient you a little bit.
20 One of those runs is of course the 2019 base case,
21 right?

22 A. The base case that you characterized,

1 yes.

2 Q. Yes. The -- the base case that was --
3 that presented in opening evidence is what I'm
4 talking about?

5 A. Correct.

6 Q. All right. And in that base case --
7 it -- it is modeled -- it -- it assumes no
8 passengers and adds no additional infrastructure,
9 right?

10 A. Correct.

11 Q. All right. And you're aware that RTC
12 was able to dispatch the 2019 base case?

13 A. Yes.

14 Q. Okay. Even though it contains the
15 trains that you say shouldn't be there?

16 A. Yes.

17 Q. Right. And the only difference between
18 the 2019 base case and the 2019 passenger case is
19 the addition of passenger trains, right?

20 A. Yes.

21 Q. Right. And for the 2039 base case,
22 which assumes the 2039 growth and, you know, no

1 new passenger trains and no infrastructure other
2 than what's already been planned, the 2039 base
3 case also dispatches without incident, right?

4 A. Well, it dispatches, yes.

5 Q. Okay. Even though the 2039 base case
6 also includes the trains that you say shouldn't be
7 there?

8 A. Yes.

9 Q. So like -- just like with the 2019
10 case, the only difference between the 2039 base
11 case and the 2039 passenger case is the addition
12 of the Amtrak trains, right?

13 A. And the gross trains.

14 Q. Yes, but for the 2039 base case
15 includes the growth trains. You know, I apologize
16 if my question was confusing.

17 The 2039 base case includes the growth
18 trains, right?

19 A. Correct.

20 Q. Right. So the only difference between
21 the 2039 base case and the 2039 passenger case
22 are -- is the addition of the four Amtrak

1 passenger trains, right?

2 A. And the growth trains. That's the
3 difference between the two.

4 Q. But the growth -- the growth trains --
5 let me ask again. So -- and -- maybe we -- we --
6 maybe I'm not being clear.

7 The 2039 base case includes the growth
8 trains, right?

9 A. Yes.

10 Q. And so the 2039 passenger case doesn't
11 include new growth trains, right?

12 A. That's correct.

13 Q. The only difference is the new
14 passenger trains?

15 A. If you're comparing it to the 2019
16 case, that would not be correct.

17 Q. That -- that -- that's -- that is --
18 that is true, Mr. Crowley. I -- I wasn't and I
19 apologize if I misspoke. But I was comparing 2039
20 to 2039.

21 A. Okay.

22 Q. So Mr. Crowley, you're aware that there

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1 are several movable bridges on the line, right?

2 A. Yes.

3 Q. And several of those bridges are -- are
4 currently manned by bridge tenders, correct?

5 A. Correct.

6 Q. And for a couple of those bridges -- I
7 think four of those bridges -- the bridge tenders
8 have to get to their assignments on a high rail
9 truck.

10 Is that right?

11 A. That's correct.

12 Q. And so, when that's happening in the
13 real world, you know, the dispatcher has to make
14 sure that the line is clear for the high rail
15 truck to get on, take -- take the -- the crew to
16 their station and -- and get off, correct?

17 A. Correct.

18 Q. So the fact that we've got these high
19 rail trucks that have to get on and off the line
20 is going to affect the -- the way that the line
21 has to be dispatched to the real word, right?

22 A. Yes.

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1 Q. And it's important for RTC to account
2 for that, correct?

3 A. Yes.

4 Q. Okay. Are you aware, Mr. Crowley, that
5 there is a crossing diamond in Mobile where CN
6 crosses the CSX tracks?

7 A. Yes.

8 Q. And when CN trains are coming through
9 that diamond, the dispatchers have to make sure
10 that the diamond is clear, correct?

11 A. When the CN trains?

12 Q. I'm sorry -- sorry for going too fast.
13 Let me ask again.

14 Would a -- if a CN train is going to be
15 crossing through the diamonds, it's important for
16 the -- for the dispatcher to understand that to
17 make sure that, you know, a CSX train doesn't --
18 doesn't -- doesn't move onto the diamond at the
19 same time, right?

20 A. That's correct.

21 Q. And it's important for the RTC model to
22 account for that, right?

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1 A. Yes.

2 Q. But in your accounting of all the
3 trains that you say shouldn't be on the line or
4 that you couldn't verify, you said that there
5 should be no bridge tender high rail movements and
6 no CN foreign trains, right?

7 A. I think the high rail movements are
8 different than the -- the CN train, but, yes,
9 that's what we said.

10 Q. Mr. Crowley, how many CSX and NS yards
11 are on the Gulf Coast routes that Amtrak wants to
12 use?

13 A. There would be the Sibert, Choctaw and
14 then the one down in -- adjacent to New Orleans.

15 Q. All right. So Sibert and Choctaw.
16 Gentilly, is that what you're referencing?

17 A. Right.

18 Q. And Oliver Yard too, right?

19 A. Right.

20 Q. Okay. So it's pretty common -- so
21 that's -- so four: Sibert, Oliver, Gentilly,
22 Choctaw. It -- it's pretty common for railroads

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1 to have yard trains, right?

2 A. Yes.

3 Q. Yes. Often multiple yard trains per
4 day, correct?

5 A. I guess some yards do, yes.

6 Q. Some yards do. Okay.

7 Now in your verified statements, you
8 said that, out of the 570 yard trains represented
9 in the 2021 Gulf Coast RTC model, you didn't think
10 that 562 of them belonged.

11 Have I got that right?

12 A. Something like that, yeah. It was a
13 high number.

14 Q. All right. So -- and so 570 -- 570
15 minus 562 is eight trains, right?

16 A. Yes.

17 Q. And the RTC study period covered 14
18 days, right?

19 A. Right.

20 Q. So if we've got four yards in two weeks
21 and only eight trains, that averages out to one
22 yard train per yard per week, right?

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1 A. Assuming your math is correct, I'd say
2 yes.

3 Q. Do you think that represents operations
4 in the real world?

5 A. Yes.

6 Q. You believe -- okay. Okay.

7 So just, I want to make sure you
8 understood my question. So you believe that one
9 yard train per yard per week represents operations
10 in the real world?

11 MS. BRACEY: Asked and answered.

12 CHAIRMAN OBERMAN: He can answer.

13 THE WITNESS: Yes.

14 BY MR. WARREN:

15 Q. Okay. So Mr. Crowley, you talked a
16 little bit in your direct testimony about the --
17 your -- your work for Metra in the CP/KCS merger
18 proceeding. So I am going to show you what has
19 been marked as CSXNS 306.

20 MR. WARREN: And let me know if
21 everyone has it. I -- I will say that this --
22 this was a late add to the exhibit list, so it may

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1 not be in the exhibit binder. So please let me
2 know if everybody doesn't have it.

3 Oh, this -- this was actually -- we put
4 this in the email that we sent earlier.

5 MS. BRACEY: Mr. Crowley has a copy.

6 MR. WARREN: Okay, great.

7 CHAIRMAN OBERMAN: I don't have it but
8 I'm going to -- is this just the verified
9 statement?

10 MR. WARREN: This -- this -- this is
11 the verified statement for Metra. Mr. Chairman,
12 this was included in the email that we sent
13 earlier.

14 CHAIRMAN OBERMAN: Well, I'm just going
15 to look on the screen because I couldn't open it
16 and I don't think there's enough time.

17 MR. WARREN: Okay.

18 CHAIRMAN OBERMAN: Well, wait a minute.
19 I'm sorry. Maybe -- I have it. Never mind. I
20 was sent. Okay, go ahead.

21 BY MR. WARREN:

22 Q. Okay. Mr. Crowley, did you review this

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1 verified statement in preparation for your
2 testimony today?

3 A. Is this the highly confidential record?

4 Q. This -- this is the public version. I
5 should say that -- say that on the record. This
6 is the -- this is the public version.

7 A. Okay. Yes, I did.

8 Q. Okay, good.

9 MR. WARREN: Could we flip forward and
10 show page 77 to Mr. Crowley, please.

11 BY MR. WARREN:

12 Q. Mr. Crowley, is this your signature on
13 page 77?

14 A. Yes, it is.

15 Q. And you -- you signed under a
16 verification under penalty of perjury that you've
17 read this verified statement on behalf of Metra,
18 that you know the contents thereof and that the
19 same were true you and correct.

20 Is that right?

21 A. Yes.

22 Q. And this was -- this was signed on

1 March 15th, 2022, correct?

2 A. Yes.

3 Q. So, Mr. Crowley, in -- in your verified
4 statement that you've submitted for Metra, you
5 specifically attack the applicants, CP and KCS,
6 for modeling capacity using what you said was a
7 simple mathematical formula for calculating
8 theoretical maximum capacity.

9 Is that right?

10 A. Right.

11 Q. Okay --

12 CHAIRMAN OBERMAN: Could you -- can you
13 give us a page number where you --

14 MR. WARREN: Yes, I'd be -- yeah,
15 I'd -- I'd be happy to. Let -- let's turn to page
16 43 of the document.

17 BY MR. WARREN:

18 Q. Okay. And that -- that language I
19 was -- I was quoting from, Mr. Crowley, is that --
20 that there the first sentence underneath section B
21 that's talking about a simple mathematical
22 formula?

1 A. That was what CP and KCS stated.

2 Q. Yes, that -- yes, that -- that's right.

3 That was your criticism of them.

4 So let's -- let's turn --

5 CHAIRMAN OBERMAN: That -- that
6 sentence doesn't contain a criticism. It just
7 says what they stated.

8 MR. WARREN: That -- fair enough, Mr.
9 Chairman. Why don't we move forward to the
10 criticisms. Why don't we -- could we turn to
11 page -- maybe I should start this way.

12 BY MR. WARREN:

13 Q. Mr. Crowley, you criticized the -- the
14 applicants in this verified statement for using a
15 simple mathematical formula. Is that right?

16 A. For using MultiRail, yes.

17 Q. Turn to page -- the bottom of page 44,
18 please. So at the bottom of page 44, carrying
19 over to 45, you testified to Metra that the STB
20 long ago moved away from using purely mathematical
21 calculations to determine track capacity and
22 operating requirements and has instead adopted a

1 more sophisticated approach of rail traffic
2 simulation to determine a rail line's capacity.

3 Is that right?

4 A. Yes.

5 Q. Is it fair to say that your opinion is
6 that rail simulation through RTC is superior to
7 purely mathematical calculations?

8 A. Well it's superior to what CP and KCS
9 did in this proceeding.

10 Q. You -- you -- you said that. You --
11 you certainly did testify to that. But in this
12 particular part of your verified statement, you
13 didn't just limit it to what CP and KCS were
14 doing. You said that RTC was -- was superior to
15 using purely mathematical calculations to
16 determine track capacity and operating
17 requirements, right?

18 A. Yes, that's what it says.

19 Q. Okay. And that's -- that's what you
20 verified as true and correct to the best of your
21 knowledge, right?

22 A. You have to put it in the context that

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1 we wrote it, but, yes, that's correct.

2 Q. Well, we'll -- we'll certainly put it
3 in the context, but the context is sworn
4 testimony, right?

5 A. The context is that the MultiRail total
6 is something that the STB has rejected in the past
7 and it is a purely mathematical formula, as is the
8 RTC model a -- a mathematical formula. So I'm not
9 sure where you're going with this.

10 Q. We'll -- we'll -- we'll -- we'll see,
11 Mr. Crowley. MultiRail has been accepted by the
12 STB in multiple cases, hasn't it?

13 A. As an operating tool, not as a capacity
14 tool.

15 Q. Okay. I just wanted to make sure, when
16 you said that MultiRail had been rejected, that
17 wasn't actually right.

18 A. Yes, as a capacity tool, yes, that is
19 exactly right.

20 Q. Turn to page 46, kind of get -- get
21 into your criticisms of what you say is a
22 mathematical rail capacity model, and it's right

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1 that, you know, I'm just -- I'm not going to do a
2 lot of reading of quotes, but just directing your
3 attention to -- to page 46, if you want to follow
4 along, one of the criticisms you made is that
5 there -- you said that their modeled line segment
6 would travel at the same speed, right? And I'm
7 happy to direct your attention to the particular
8 language I'm -- I'm looking at if you'd like. I'm
9 just trying to move things along.

10 MS. BRACEY: I would just ask that Mr.
11 Warren read the entire sentence as opposed
12 to excerpts.

13 MR. WARREN: I would be happy to.

14 BY MR. WARREN:

15 Q. Why don't -- so, just -- "The CP/KCS
16 model assumes that all trains operating over a
17 line segment will travel at the same speed. But
18 CP's own time tables show that this is not the
19 case".

20 A. That's what I wrote.

21 Q. That's right. And that reflects your
22 opinion that one of the problems with this

1 mathematical rail capacity model was that it
2 assumed that all trains should be traveling at the
3 same speed, right?

4 A. It's the model that CP and KCS used.
5 That's correct.

6 Q. So if there were a different
7 mathematical rail capacity model that had trains
8 traveling at the same speed, you wouldn't have the
9 same criticism?

10 A. Not necessarily. You'd have to
11 evaluate the model and you'd have to evaluate the
12 circumstances.

13 Q. Okay. So -- and then at the -- at the
14 bottom of the page, I'll -- I'll -- I'll read
15 again, that -- that -- that bottom paragraph, "The
16 CP/KCS simple mathematical capacity model also
17 assumes average meet factors will be the same for
18 all trains.

19 "However, the time it takes trains to
20 clear into sidings is impacted by numerous factors
21 including train length, train weight and turnout
22 type of configuration that are not included of

1 the -- in the CP/KCS model."

2 Is that right?

3 A. That's what I wrote.

4 Q. That's what -- that's -- that's what
5 you wrote. And do you think that that is a
6 problem with mathematical rail capacity models,
7 that they just assume that the average meet
8 factors will be the same for all trains, right?

9 A. That's the problem with the CP/KCS
10 mathematic model.

11 Q. Okay, would -- and it doesn't apply to
12 other mathematical capacity models?

13 A. Not necessarily.

14 Q. You also, later -- and again, it's page
15 48 to 50. I -- I won't quote unless someone would
16 like me to. You cite the CN/EJ&E proceeding as an
17 example of the superiority of RTC, the theoretical
18 capacity analyses.

19 Is that right?

20 A. Yes.

21 Q. And then you discuss a 2014 study by
22 the TRB that talks about the limitations of

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1 mathematical models used to determine rail line
2 capacity. Is that right?

3 CHAIRMAN OBERMAN: What -- what page
4 are you on now, Matt?

5 MR. WARREN: Yes, I -- my -- my
6 apologies. Let -- let's go to -- here, Steven
7 let -- let's -- maybe I should slow down. Trying
8 to go quickly on day eight of our trial but maybe
9 I should slow down.

10 BY MR. WARREN:

11 Q. On page 49, you -- you talk about the
12 CN/EJ&E proceeding, right, and use that as an
13 example of why RTC is superior, correct?

14 A. Yes.

15 Q. Okay. And so now let's -- let's turn
16 to page 50, all, so we can get there. And page 50
17 is when you discussed -- here we're pointing it
18 out -- you relied in part on a 2014 study by the
19 National Cooperative Highway Research Program
20 under the auspices of the Transportation Research
21 Board, or -- or TRB, that reviewed strictly
22 mathematical models to determine rail line

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1 capacity in these models' limitations, right?

2 A. Yes.

3 Q. And that's -- and that's something that
4 you -- you -- you discuss in this Metra verified
5 statement, correct?

6 A. Yes. And again you have to keep it in
7 context, all in relation to what CP and KCS filed.

8 Q. Right. So it's -- it's not like I can
9 tell, Mr. Crowley, you spent about 12 pages of
10 your Metra verified statement giving example after
11 example of the problems with theoretical capacity
12 analysis.

13 Is that right?

14 A. No. I -- I spent those pages
15 critiquing CP and KCS' models.

16 Q. And isn't it right that you
17 particularly noted that theoretical capacity
18 analyses aren't suited to evaluating lines that
19 have a mix of freight and passenger traffic,
20 right?

21 A. The -- again it's the model that CP and
22 KCS used. That's what we're evaluating.

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1 Q. Well why don't we turn to page 52 and
2 you can see what we're talking about.

3 Now I'm looking at that middle sentence
4 where you say that, "The presence of significant
5 passenger train volumes and the mix of traffic
6 moving over this line make the capacity issue even
7 more complex, given passenger trains contractual
8 priority and significantly different operating
9 characteristics of all the train types that
10 actually use the line segment that's being
11 studied".

12 That was your testimony, right?

13 A. Yes.

14 Q. And -- and the -- the fact that adding
15 significant passenger train -- passenger train
16 volumes into the mix of traffic moving over a
17 line, the fact that that -- let me start again.
18 That was a confusing question.

19 The -- the fact that the presence of
20 significant passenger train volumes of the traffic
21 mix, the fact that that makes capacity more
22 complex wasn't something that you just limited to

1 the CP/KCS theoretical capacity model, right?

2 A. No. It reflects what is actually
3 moving on these Metra lines. It's -- there's a
4 tremendous amount of passenger traffic every day
5 on these Metra lines by comparison to most any
6 other passenger line in the country.

7 Q. But Mr. -- Mr. Crowley, my -- my
8 question is, the principal that, when you have a
9 complex traffic mix already and you're adding
10 passenger trains in, the -- the fact that that
11 creates a situation where a theoretical capacity
12 analysis is less useful, does that principal only
13 apply in your testimony for Metra and it doesn't
14 apply in other contexts?

15 A. When you evaluate passenger service
16 that are averaging 85 passenger trains a day on
17 specific line segments and try to compare that to
18 a freight line that operates four passenger trains
19 a day, you are mixing apples and oranges when you
20 try to make those operating comparisons.

21 You have to read my Metra testimony in
22 the context that it was written, and that is, in

1 evaluating freight service and passenger service
2 in Chicago -- and that doesn't even -- my comments
3 don't even account for the Amtrak trains that are
4 going through there. So this is totally a
5 different set of circumstances that we're
6 critiquing in Metra than we were talking about in
7 Mobile to New Orleans.

8 Q. Mr. Crowley, isn't it actually right
9 that -- that in your Metra statement, when you're
10 talking about all the reasons why RTC is a
11 superior methodology, you actually use this
12 proceeding as an example of parties using RTC to
13 test capacity?

14 A. Well, can you point that out for me?

15 Q. Oh, I'd be happy to. Let's go back a
16 little bit, page 49. It's footnote 71, which I
17 think actually may start on page 48. So we see --
18 that's where it starts and just to -- just to set
19 up the context, this paragraph on page 48 you cite
20 general principals for why the STB now relies upon
21 and endorses more sophisticated train simulation
22 models to evaluate rail line capacity, talk about

1 RTC and then you drop a footnote giving examples
2 of how useful RTC can be for evaluating --
3 evaluating rail line capacity.

4 Do you see that?

5 And then let's turn to the next page,
6 because that footnote carries over --

7 MS. BRACEY: I would ask that Mr.
8 Warren -- I would just ask that Mr. Warren not
9 characterize what's in the paragraph and instead
10 read what's in the paragraph.

11 MR. WARREN: I -- I am happy to read it
12 word for word if that would be helpful but I think
13 we --

14 CHAIRMAN OBERMAN: Well, that would --
15 I think that would be preferable.

16 MR. WARREN: I -- I'd -- I'd be happy
17 to. So the paragraph --

18 CHAIRMAN OBERMAN: What page are we on
19 now?

20 MR. WARREN: We are now at the bottom
21 of page 48 and I -- I'll read -- I'll read the
22 paragraph: "Recognizing the limitations simple

1 mathematical models have in identifying railroad
2 capacity issues, the STB now relies upon and
3 endorses more sophisticated train simulation
4 models to evaluate rail line capacity.

5 "In its decision in STB docket No.
6 42057, the STB noted the existence of several rail
7 simulation tools including the RTC model to
8 evaluate rail line capacity.

9 "The RTC model has since become the
10 dominant rail simulation model used by parties in
11 proceedings before the STB. Users adopted the RTC
12 model because it provides greater levels of
13 granularity for evaluating capacity requirements
14 than simple mathematical models."

15 That was your testimony, right, Mr.
16 Crowley?

17 A. Yes.

18 Q. And you did not limit in this paragraph
19 your analysis to the particular mathematical model
20 you were criticizing in CP/KCS, right?

21 A. I don't use CP/KCS in this sentence,
22 but this whole verified statement is about CP/KCS.

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1 I -- I don't know how you can detach the two.

2 Q. Okay. Well, and now -- now I'm going
3 to read -- I -- I'm going to note that coming off
4 of this paragraph we have footnote 71. I won't
5 read the full case citations but I -- I will do my
6 best to read it accurately. In footnote 71 you
7 say, "See for example Excel Otter Tail, Western
8 Fuels, Dupont". Now we can go to the next page,
9 "Outside of maximum reasonable rate proceedings
10 before the STB, parties have used the RTC model to
11 test rail line capacity in docket No. FD 36496,
12 Application of the National Railroad Passenger
13 Corporation under 49 U.S.C. 24308(e), CSX
14 Transportation Inc. and Norfolk Southern
15 Corporation filed March 16th, 2021".

16 Did I read that accurately?

17 A. Yes.

18 Q. So, I'll -- I'll, again to ask my
19 question, isn't it right that in the Metra case
20 you cited this proceeding as a good example of
21 parties using rail line capacity analyses -- or
22 using -- excuse me, using RTC to test rail line

1 capacity?

2 A. This was a case where the parties used
3 that model, where the party, a party used that
4 model. That's all I'm saying is yes, and here's a
5 case where the party used the model.

6 Q. So, Mr. Crowley, when you -- when you
7 built your RTC model for -- for Metra, and I want
8 to just -- let me start by getting the -- the --
9 the timing right. When you were -- when were you
10 retained?

11 A. I'm not sure I can talk about all that,
12 Mr. Warren.

13 Q. I -- all I want is the date that you
14 were retained by Metra. And it's okay if you
15 don't have an exact date. If you could just
16 estimate.

17 A. We've been working for Metra for years.

18 Q. Well maybe I need to be more specific.

19 When -- when was the date that you were
20 retained by Metra to work in the CP/KCS proposed
21 merger?

22 A. Well actually I think we were retained

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1 by counsel and not by Metra for this particular
2 assignment.

3 Q. Oh, okay. What was the date when you
4 were retained by counsel for Metra?

5 A. I don't recall.

6 Q. You're aware that, you know, Metra
7 requested a number of RTC files from -- from CPS
8 for use in preparing its evidence, right?

9 A. Yes.

10 Q. And you're aware that Metra publicly
11 filed a motion for extension with the STB pointing
12 out that many of those RTC files were not produced
13 until February 15th, correct?

14 A. Something like that, yes.

15 Q. Okay. And then you actually submitted
16 your testimony from Metra on March 15th, right?

17 A. That's correct.

18 Q. Okay. So that's 28 days later, right,
19 four weeks?

20 A. Right.

21 Q. And we had established from some of the
22 earlier letters we looked at that, you know, RTC

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1 modeling files were provided by CSX to Amtrak on
2 September 13th, correct?

3 A. Yes.

4 Q. And you submitted a reply verified
5 statement on December 3rd, right?

6 A. Correct.

7 Q. And you actually were permitted to
8 submit a surrebuttal on February 1st, right?

9 A. That's correct.

10 Q. Okay, February 1st is about
11 four-and-a-half months after mid September, right?

12 A. Yes.

13 Q. And it's about three-and-a-half months
14 after mid October, right?

15 A. Yes.

16 Q. So Mr. Crowley, when you were building
17 your RTC model for Metra, you started by building
18 a base case, right?

19 A. Yes.

20 Q. And to do that, part of -- part of your
21 job there was to create a .TRAIN file, right?

22 A. Yes.

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1 Q. And you did that in part with the data
2 that you got from CP, correct?

3 A. Correct.

4 Q. But the -- the data that you got from
5 CP didn't include foreign trains, did it?

6 A. Correct.

7 Q. But in -- for purposes of your RTC
8 model, you added in some of the foreign trains
9 that you didn't see in the CP data, right?

10 A. We added in two foreign trains based on
11 documents that CP provided.

12 Q. They weren't the event data, though,
13 were they?

14 A. Pardon me?

15 Q. They weren't in the train event data,
16 though, were they?

17 A. They were not.

18 Q. Right. Because in your judgment as an
19 RTC modeler, you know, it -- it was important for
20 you to have the model reflect what was actually
21 happening on the line, right?

22 A. That's based on the data that was

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1 provided by CP. We didn't -- we didn't model a
2 lot of trains that we knew were on the line
3 because we didn't have the data to verify that.

4 Q. Right. But Mr. Crowley, you just
5 testified that you added trains -- and we can
6 do -- look at it in your Metra statement, too --
7 you just testified that you added foreign trains
8 that weren't in the data, right?

9 A. They were not in the train movement
10 files. We added two trains, not the hundred
11 trains that moved over these Metra lines. We did
12 not add those trains because we did not have the
13 data from CP to verify those trains.

14 Q. Why don't we take a look at page 59 of
15 your Metra verified statements. And I'm going to
16 direct your attention. I'll go ahead and read
17 these sentences looking at, you know, at line
18 four. "CP's train event data was missing data" --

19 CHAIRMAN OBERMAN: What -- what page
20 are we on? I'm sorry.

21 MR. WARREN: Oh, I'm sorry. I'm sorry,
22 Mr. Chairman, page 59.

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1 CHAIRMAN OBERMAN: No I just -- you
2 don't have to be sorry. I just was distracted
3 there for a moment.

4 MR. WARREN: That's all right.

5 CHAIRMAN OBERMAN: All right.

6 BY MR. WARREN:

7 Q. So you -- you -- here at -- in your
8 discussion talking about how you developed the
9 .TRAIN file for Metra, you note that, "CP's train
10 event data was missing data for foreign freight
11 trains. We conservatively added two daily foreign
12 freight trains in the form of daily roundtrip
13 local trains, one UP train operating between
14 Proviso Yard and Bensenville Yard over the IHB and
15 one NS train operating between Kalamata and
16 Bensenville Yard over the BRC in accordance with
17 CP/KCS' description of the Chicago Interchange
18 Operations".

19 Did I read that correctly?

20 A. Yes.

21 Q. So you added additional trains that
22 were not in the data based on a narrative

1 description that you thought reflected what was
2 actually happening on the line, right?

3 A. It's -- no, I -- no, that's not right.

4 We added two trains because those are
5 two trains we can verify from data provided by CP.
6 This -- these are not our documents. These are
7 documents from CP. We wanted to include all of
8 the foreign trains. There's a hundred of them or
9 more but we couldn't -- not get that data from CP.

10 Q. All right. So, Mr. Crowley, I'm asking
11 you something different.

12 I do understand that you indicated that
13 there were foreign trains you didn't include but
14 I'm asking you about the foreign trains that you
15 did include and the only thing I'm asking you to
16 acknowledge is what you wrote in your verified
17 statement, which is that you added two foreign
18 trains that were not in the data because you had a
19 description and because you, as an RTC modeler,
20 thought those trains were moving in the real
21 world?

22 A. These two trains were not in the train

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1 data. That is correct. I would agree with that.

2 Q. That -- that -- that -- that is -- that
3 is all I was -- I was asking.

4 A. The witness.

5 Q. So I will say -- did you use a peak
6 week when developing your -- your base case for
7 Metra?

8 A. We used a ten-day peak period: a -- a
9 two-day warm-up, seven-day model, Monday
10 cool-down.

11 Q. All right. But that period wasn't
12 actually the period reflecting peak volumes on the
13 line, right?

14 A. I think it was, yes.

15 Q. Okay. Well let's -- let's -- let's
16 take a look at page 61 of your verified statement.
17 In that last sentence of the first paragraph you
18 say, "However, we were careful to avoid selecting
19 a week in which anomalous events caused unusual
20 volumes and/or train delays," right?

21 A. Yes.

22 Q. And -- and going through --

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1 MS. BRACEY: I'm sorry. I'm sorry.

2 Are you on page 61? Is that --

3 MR. WARREN: I -- I am on -- yes, I'm
4 on page 61. Let -- let me know when you're --
5 when you have it.

6 MS. BRACEY: I'm sorry. I got it.

7 MR. WARREN: Okay.

8 MS. BRACEY: Sorry about that.

9 MR. WARREN: That's all right.

10 BY MR. WARREN:

11 Q. So and then in -- in the next couple
12 paragraphs, you list off several high-volume weeks
13 that you rejected because you believe that there
14 were particular circumstances that made those too
15 high, right? You take -- take a minute to review
16 them if you'd like.

17 A. Yes, yes. We tried to get the peak
18 week reflect normal actual operations. So we --
19 we eliminated the anomalous weeks.

20 Q. Right. So -- so it isn't exactly a
21 peak week then, right?

22 A. It is by our definition.

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1 Q. Okay. But it -- it's -- it's a week
2 that you thought was -- was a good representation
3 of -- of -- of ordinary operations on the line,
4 right?

5 A. It was a peak week representing a
6 normal operations.

7 Q. It wasn't "the" peak week, right,
8 because you rejected the high-volume weeks?

9 A. Well, the testimony stands for itself.
10 It says what we did.

11 Q. Okay.

12 A. Why we did it.

13 Q. All right. Okay. All right, and --
14 and so -- and after you developed the base case,
15 you developed a number of metrics that were -- you
16 were going to use to sort of compare the base case
17 against other cases, right?

18 A. Correct.

19 Q. Let's turn to page 63 of your statement
20 where you list the metrics that you used.

21 CHAIRMAN OBERMAN: Matt, before you
22 move to another page, can you -- can we have some

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1 timing estimates here? We're getting around our
2 lunch break time. How much more time do you
3 anticipate here with Mr. Crowley?

4 MR. WARREN: That is a -- a good
5 question, Mr. Chairman. Give me a minute to
6 think. I -- I -- I suspect that I have at least
7 half an hour and maybe -- maybe 45 minutes or so.
8 So I would not object if the court wants to have a
9 lunch break now. I also don't mind pushing you
10 forward.

11 CHAIRMAN OBERMAN: Well, if you were --
12 if you were on the same train of thought, I didn't
13 want to interrupt it. If you were switching to a
14 new thought, then this might be a place for a
15 break, but I don't think we should wait 'till you
16 finish because that's a little too long.

17 MR. WARREN: Yeah, I -- I -- I --

18 CHAIRMAN OBERMAN: You tell me if it's
19 a convenient time.

20 MR. WARREN: I -- I think now is a
21 convenient time to pause.

22 CHAIRMAN OBERMAN: All right. Does

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1 that meet with the acceptance of the other board
2 members? It's 12:34, which is usually around the
3 time we break. Is that okay with my colleagues?

4 MEMBER FUCHS: Whatever is good with
5 the parties is good with me.

6 CHAIRMAN OBERMAN: Yeah, okay. All
7 right. I don't hear anything else. So we are
8 going to break and it's 25 minutes of 1:00. Why
9 don't we just -- so we're not rushed, there's a
10 lot of things going on here -- come back at 1:10.

11 MR. WARREN: Okay. That -- that
12 makes -- Mr. Chairman, just the standard request
13 that counsel for Amtrak not -- not talk with Mr.
14 Crowley about his testimony during the lunch
15 break.

16 CHAIRMAN OBERMAN: Do you understand
17 that, Mr. Crowley?

18 THE WITNESS: I do.

19 CHAIRMAN OBERMAN: All right. Thank
20 you all.

21 (Whereupon at 12:35 p.m. a luncheon
22 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 1:14 p.m. the hearing
3 resumed.)

4 CHAIRMAN OBERMAN: So with that, we
5 will continue with the cross-examination of Mr.
6 Crowley.

7 Mr. Crowley, you understand you remain
8 under oath?

9 THE WITNESS: I do.

10 CHAIRMAN OBERMAN: Proceed, Matt.

11 MR. WARREN: Thank you, Chairman.

12 BY MR. WARREN:

13 Q. Mr. Crowley, I'm going to pick up where
14 we left off on your Metra verified statement. I
15 was getting ready to ask you about the metrics
16 that you had calculated to use in sort of
17 evaluating those RTC results. And I'll direct
18 your attention to page 63, which is up on the
19 screen now.

20 And is it correct that you developed
21 four metrics that you used to -- to assess the --
22 the RTC model runs you did for Metra?

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1 A. Yeah, we developed these four metrics
2 you see in the middle of that page.

3 Q. Okay. And the first one is average
4 train speed, right?

5 A. Yes.

6 Q. And -- and the second one I'm going to
7 read. "Delay percentage is the delay time
8 represented as a percent of total transit time and
9 is a valuable indicator of congestion on the
10 modeled network, where a delay of ten minutes is
11 less significant for a ten-hour movement than it
12 is for a one-hour movement".

13 Is that right?

14 A. Yes.

15 Q. So it -- it's your opinion that a delay
16 percentage is a -- is a useful metric to use as a
17 RTC model?

18 A. For this particular metric, yes.

19 Q. Okay. And this -- and this explanation
20 that you -- you gave for why percentage was useful
21 for telling the differences between a -- a
22 ten-minute delay and a ten-hour movement and a

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1 one-hour delay -- I -- I apologize. Let me -- let
2 me withdraw that poorly formulated question.

3 This -- your -- your opinion here that
4 delay percentage is a useful metric, isn't this
5 essentially the same thing that Mark Dingler
6 testified to last week?

7 MS. BRACEY: I would just ask for him
8 to -- for Mr. Warren to be a little more specific.

9 MR. WARREN: Sure.

10 BY MR. WARREN:

11 Q. Did -- did -- Mr. Crowley, did you
12 listen to Mark Dingler's testimony last week?

13 A. Yes.

14 Q. Do you recall his testimony on why he
15 believed that using a -- a percentage to measure
16 delays was a useful metric in RTC modeling?

17 A. No.

18 Q. You don't -- you don't recall?

19 A. That's correct.

20 Q. Okay. Your third -- your third metric
21 here is delay per hundred train miles, right?

22 A. Yes.

1 Q. And then total delay hours?

2 A. Correct.

3 Q. Okay. And -- and then just that
4 sentence underneath, your opinion is that, quote,
5 "These metrics are common and recognized
6 approaches to analyzing the results of rail
7 simulations".

8 Is that right?

9 A. Correct.

10 Q. Okay. And so after you developed the
11 base case for Metra, which we talked about before
12 the break, you developed a future case, as well.

13 Is that right?

14 A. Yes.

15 Q. So, and in the future case, you added
16 projected growth and CP -- and CP/KCS trains -- or
17 I guess I should say CP/KC trains, and you added
18 in projected growth in Metra trains and you
19 modeled the additional infrastructure that
20 applicants CP and KCS had proposed to build.

21 Is that right?

22 A. In various simulations, yes.

1 Q. Okay. And then ultimately what you did
2 is you compared the base case metrics with the
3 future case metrics. Is that right?

4 A. Yes.

5 Q. Okay. Well let's flip ahead to -- to
6 where you did that. I'm going to direct your
7 attention to page 72, table seven. And so we've
8 got a table here and then that first full
9 paragraph, "As shown in table seven above, while
10 the future case ran to completion after reducing
11 future train volumes, we found a decline in
12 average train speeds across all train types and
13 increases in delay percentages, delay per hundred
14 train miles and aggregate delay hours.

15 "This indicates that even with fewer
16 trains than CP/KCS and Amtrak proposed to add,
17 service will significantly decline for Metra and
18 all other train operators."

19 Did I read that correctly?

20 A. Yes.

21 Q. And that's your opinion as to what --
22 what the metrics produced by your base case and

1 future case show?

2 A. Yes, for the CPS/KCS study that we did,
3 yes.

4 Q. Okay. All right. So let -- I want to
5 take a look at a couple of these metrics. If --
6 if I could direct your attention to that -- that
7 first column is -- is average speed, right?

8 A. Yes.

9 Q. Or I guess I should say the -- the
10 first column is train crew. The second column is
11 average speed --

12 CHAIRMAN OBERMAN: Just for -- just for
13 the record, we're on --

14 MR. WARREN: We -- we are on page --
15 Mr. Chairman, we are on page 72 of CSXNS 306 and
16 looking at table seven.

17 CHAIRMAN OBERMAN: Okay.

18 MR. WARREN: Okay?

19 CHAIRMAN OBERMAN: Yup.

20 BY MR. WARREN:

21 Q. So in that -- that average speed
22 column, am I right the average speed for Metra is

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1 31.52 miles per hour. Is that right?

2 A. Yes.

3 Q. And that's in the base case. And so if
4 we look down to the future case, the average speed
5 in miles per hour for Metra is 30.83 miles per
6 hour. Is that right?

7 A. Correct.

8 Q. So, the difference between 31.52 and
9 30.83 is a little less than .7 miles per hour.
10 Isn't that right?

11 A. Correct.

12 Q. And in this case, Amtrak has suggested
13 that an aggregate delay of .7 miles per hour --
14 excuse me, an aggregate speed decline of .7 miles
15 per hour is not significant. Isn't that right?

16 A. We -- we are showing the results of the
17 model and you're taking -- you're asking me about
18 one component or one train group within the model.
19 It -- it is what it is, it shows what it shows,
20 but I'm not sure I'm getting the connection.

21 Q. All right, I -- I -- I agree that it
22 shows what it shows. Would you agree that --

1 well, I'd be happy to walk through some other
2 metrics. Maybe we should do that first.

3 Let's look at delay per one hundred
4 train miles. So there in the base case for Metra,
5 you identified that from the base case 1.06
6 minutes delay per one hundred train miles for
7 Metra.

8 Is that right?

9 A. Yes.

10 Q. Okay, and then looking down at the
11 future case, you identified 5.37 minutes of delay
12 per one hundred train miles, right?

13 A. Yes.

14 Q. And so the difference between 5.37 and
15 1.06 is, you know, 4.31 minutes, right?

16 A. Yes.

17 Q. It's about four minutes and 20 seconds,
18 right?

19 A. Right.

20 Q. Okay. And your -- and your opinion
21 that we just read from the paragraph below is that
22 these metrics, .7 miles -- you know a .7 decline

1 in speed and a -- you know, an additional four
2 minutes and 20 seconds of delay equated to, quote,
3 "service will significantly decline for Metra,"
4 right?

5 A. Well, it was not just based on these
6 metrics. These metrics show what the models
7 produced.

8 Q. I -- I'm -- Mr. Crowley, I thought we
9 just did the metrics. Doesn't -- are there other
10 metrics that aren't in table seven?

11 A. Well there are all of these metrics.
12 There are metrics for all train types.

13 Q. You -- you said specifically -- they
14 are metrics for all train types, Mr. Crowley, but
15 you opined and testified to the board that these
16 metrics showed that quote "service will
17 significantly decline from Metra," right?

18 CHAIRMAN OBERMAN: Where -- where are
19 you reading from, Matt?

20 MR. WARREN: Oh, I -- I am -- I am
21 reading from that first paragraph underneath, Mr.
22 Chairman, the second sentence.

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1 THE WITNESS: Yes --

2 CHAIRMAN OBERMAN: The second sentence,
3 "This indicates" --

4 MR. WARREN: "This indicates" -- I'll
5 read the full sentence. "This indicates" --

6 CHAIRMAN OBERMAN: I have it. I have
7 it.

8 Matt, you know, you're in one of the
9 few areas that I know something about. Isn't it
10 fair to understand that a few minutes delay in a
11 commuter service which prides itself on a
12 six-minute window for on-time measurement is a
13 little different than delay to freight trains
14 which don't arguably even have schedules?

15 I mean, what -- what -- what's the
16 merit of this comparison on this particular point?
17 I've been following you up to now but it doesn't
18 seem to me these are apples to apples to what
19 we're focused on in this case and I'm trying to
20 speed this along.

21 MR. WARREN: No, I -- well I --

22 CHAIRMAN OBERMAN: But go ahead.

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1 MR. WARREN: I -- I -- I think that
2 apples to apples are -- are related to, Mr. -- you
3 know, the different positions that Mr. Crowley has
4 taken at this proceeding and the Metra proceeding.

5 CHAIRMAN OBERMAN: Well, I've been
6 following that but a few minutes delay of a Metra
7 train I think we could all agree is a completely
8 different orange than a few minutes delay to a
9 freight train which doesn't even have a schedule.

10 MR. WARREN: Yes, well, maybe -- maybe
11 I can respond to that comment in part by asking
12 Mr. Crowley another question.

13 CHAIRMAN OBERMAN: All right.

14 BY MR. WARREN:

15 Q. Mr. Crowley, what is the average delay
16 per one hundred train miles shown in the
17 comparison between the 2019 base case that -- that
18 CSX and NS presented and the 2019 passenger case?
19 Do you know?

20 A. Are we talking about Metra?

21 Q. No -- no. We're -- we're not talking
22 about Metra. So we -- we -- table seven makes

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1 clear that it -- that it's four point -- 4.3,
2 which you indicate shows the service will
3 significantly decline. I'm asking you if you know
4 the difference -- the delay per one hundred train
5 miles metric from the Gulf Coast model.

6 A. Yeah, I believe those numbers are in
7 our testimony. I -- I don't know them off the top
8 of my head, but I think there's a table in there
9 that shows that.

10 Q. Yeah, was -- was it more than five
11 minutes?

12 A. I don't -- don't recall. Can you point
13 me to that table? I'll --

14 Q. I -- I -- I don't actually -- I believe
15 it's in your work papers, Mr. Crowley, and it's
16 actually in a demonstrative. So but I'm just
17 going to ask you what -- what you remember right
18 now.

19 A. I don't remember.

20 Q. Is it more than -- was it more than ten
21 minutes per hundred train miles?

22 MS. BRACEY: Objection, he says he

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1 doesn't remember.

2 CHAIRMAN OBERMAN: Sustained.

3 BY MR. WARREN:

4 Q. Do you remember if it was more or less
5 than 4.3?

6 MS. BRACEY: Objection. Same
7 objection.

8 CHAIRMAN OBERMAN: Sustained.

9 BY MR. WARREN:

10 Q. Mr. Crowley, did you contribute to the
11 demonstrative exhibits that Amtrak submitted into
12 the record or I -- I withdraw that last phrase.

13 Did you contribute to the demonstrative
14 Peapod exhibits that Amtrak put on its exhibit
15 list?

16 A. If you can show me what you're talking
17 about, I can respond.

18 Q. Well the question is, if you -- the
19 demonstrative exhibits that came in as Amtrak
20 Exhibit 5, demonstrative exhibits, did you look at
21 any demonstrative exhibits that Amtrak was
22 preparing to submit in this case?

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1 A. Yes.

2 Q. And do those demonstrative exhibits,
3 you know, reflect input from you?

4 A. Yes. The ones I looked at, yes, they
5 do.

6 MR. WARREN: Okay. The Board's
7 indulgence for a minute.

8 (Brief pause.)

9 MR. WARREN: You know let -- let -- let
10 me move on, because I think we'll get to this
11 evidence later about the exact time differentials
12 here.

13 BY MR. WARREN:

14 Q. So, Mr. Crowley, in addition to the
15 base case and the future case, did you also do a
16 build case for Metra?

17 A. Yes.

18 Q. Okay, and in that build case you
19 identified 11 additional infrastructure projects
20 that you proposed, correct?

21 A. Correct.

22 Q. In your report did you identify any

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1 potential operational changes that could have
2 made -- been made instead of proposing those
3 infrastructure changes?

4 A. No.

5 Q. Well earlier we talked about -- let
6 me -- let me actually orient you. Let's turn back
7 to -- earlier in your Metra verified statement we
8 talked about the TRB, 2014 TRB study that you
9 referenced. This was on page 50.

10 A. Of the Metra statement?

11 Q. Of your -- of your Metra statement.
12 That's right.

13 A. Page 50?

14 Q. Yeah, page 50, the 2014 TRB report that
15 you referred to in the bottom paragraph.

16 A. Yes.

17 Q. In footnote 79.

18 A. Yes.

19 Q. So you reviewed that TRB study in -- in
20 connection with preparing your Metra testimony?

21 A. Yes, I did.

22 Q. And that TRB study indicates that the

1 ordinary planning timeline was -- for capacity
2 projects was 20 years, right?

3 A. That's what they said, yes.

4 Q. Thank you.

5 MR. WARREN: All right, I'm going to --
6 I'm going to -- we could take down the -- the
7 Metra exhibit.

8 BY MR. WARREN:

9 Q. Mr. Crowley, I'm going to -- I'm
10 wrapping up. I'm -- I'm going to ask you a couple
11 of questions about -- about OTP. It is correct,
12 is it not, that in your surrebuttal testimony you
13 indicated that, you know, OTP was not an input to
14 the Gulf Coast RTC model, right?

15 A. Yes.

16 Q. Right. Because there's not a way to --
17 you can put a lot of stuff into RTC but you can't
18 tell it, like, "I want this train to have a really
19 high, you know, performance," right?

20 A. Not as currently configured. You could
21 certainly program around it but not as it's
22 currently configured.

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1 Q. Right, understood. And -- and Mr.
2 Crowley, I think you testified that among the
3 things you reviewed was the rebuttal RTC report,
4 right?

5 A. Yes.

6 Q. Okay.

7 MR. WARREN: Could -- could we put up
8 the rebuttal RTC report. It has been previously
9 admitted, Mr. Chairman, as Joint Exhibit 41B. And
10 again I think it's JE, so it's all the parties'
11 joint -- joint exhibits.

12 CHAIRMAN OBERMAN: Forty-one E or D?

13 MR. WARREN: Forty-one B, B as in boy,
14 and this will be the public version of the
15 rebuttal RTC modeling report.

16 MS. BRACEY: We're just grabbing it for
17 Mr. Crowley.

18 MR. WARREN: Okay. Let -- let me know
19 when you have.

20 MS. BRACEY: Okay.

21 (Brief pause.)

22 MS. BRACEY: Mr. Crowley has a copy.

1 MR. WARREN: Okay, thank you.

2 BY MR. WARREN:

3 Q. So Mr. Crowley, in -- in earlier
4 questioning from, you know, Member Hedlund I
5 believe in talking -- and Member Fuchs as well,
6 there was some questioning about OTP.

7 Do you recall that?

8 A. Generally, yes.

9 Q. Yes. And do you recall that there were
10 questions about whether or not there was any
11 evidence in the record about what the OTP was of
12 Amtrak trains in the -- in the passenger cases,
13 before any infrastructure was built, right?

14 A. I -- I believe you asked those
15 questions.

16 Q. Yes. Or I -- I didn't but I think some
17 of the members did, so I wanted to try to
18 illuminate that.

19 Could -- could you turn to page 14
20 of -- of the rebuttal report. And we have our
21 previously noted numbering issues here, so I'm
22 actually -- it's 14 on the exhibit numbering at

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1 the bottom but it was 13 when this -- this was
2 originally submitted?

3 CHAIRMAN OBERMAN: This is the RTC
4 rebuttal report?

5 MR. WARREN: Yes, that's right, Mr.
6 Chairman. And we -- we -- we could take that up a
7 little bit.

8 BY MR. WARREN:

9 Q. And Mr. Crowley, I'm going to direct
10 your attention. You indicated already that you
11 viewed this document. I'm going to direct your
12 attention to table two, which is titled "2019
13 Train OTP with Different Passenger Priority
14 Settings".

15 Do you see that first column there for
16 "Original Passenger Case"?

17 A. Middle column?

18 Q. Yes, that middle column.

19 A. Okay.

20 Q. Yes. And -- and does -- and does that
21 column indicate that the OTP in the passenger case
22 before any infrastructure was added?

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1 A. I -- I assume so. I -- I don't know.
2 I'd have to read this document again. But go
3 ahead.

4 Q. Okay. If -- if -- if you'd like a
5 moment, Mr. Crowley, to -- to read around it, you
6 can have it.

7 A. All right. Let me hear your question
8 and I'll let you know if I have to read it.

9 Q. Okay. Let's look -- looking again at
10 that -- at that middle -- middle column you see,
11 you know, four rows for four Amtrak trains, right,
12 and in that middle column the numbers are 96.3,
13 99.2, 79.2 and 88.5.

14 Am I reading that correctly?

15 A. Yes.

16 Q. And does that refresh your recollection
17 about whether there was any evidence in the record
18 about what the OTP was for passenger trains before
19 any infrastructure was added?

20 A. These are for the four -- excuse me,
21 these are for four of the 30 trains that they
22 modeled and they indicate that the OTP is either

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1 right around 80% or higher.

2 Q. Mr. Crowley, what do you mean by four
3 of the 30 trains they modeled?

4 A. The 23 OTP, 24 OTP, 25 OTP, 26 OTP...
5 I assume those are the numbers they assigned to
6 the 30 models that they ran. Am I
7 misunderstanding that?

8 Q. Yeah, I -- I think -- are you talking
9 about the seeds?

10 A. The what?

11 Q. The seeds.

12 A. Seeds?

13 Q. Yes.

14 A. Well, that term has been used and
15 misused a lot. So if you're referring to a seed
16 as a run then, yes, I am talking about that.

17 Q. Right. But these -- these aren't
18 referring to the seeds though. If you look at the
19 table -- and if you want to take some time to look
20 around it, you can. These are the four trains,
21 the two daily roundtrips back and forth -- one
22 two, three four. There's four of them, not 30.

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1 A. Okay. Well, okay, fine.

2 Q. Okay. Right and you would agree --

3 CHAIRMAN OBERMAN: Matt -- Matt, I am
4 thoroughly confused here now. Does this table
5 reflect the average of all 30 runs for these four
6 trains? I -- I can't follow the questioning at
7 all unless I understand that.

8 MR. WARREN: Yes -- yes -- yes -- yes
9 it does. But I think that's -- that -- that's --
10 that's why I indicated it. But, yes, those --
11 those -- those are the -- those are the -- yeah,
12 all of the numbers in the report reflect the --
13 the averages from all of the 30 runs.

14 CHAIRMAN OBERMAN: So these are just
15 the numbers for the four different Amtrak trains
16 today but the OTP percentage is based on an
17 average of 30 times running it through this -- the
18 RTC model. Is that --

19 MR. WARREN: Yeah, I -- I -- I think
20 that -- that -- that's -- that's what the evidence
21 has shown.

22 CHAIRMAN OBERMAN: Okay. Is that the

1 way you understand it, Mr. Crowley.

2 THE WITNESS: I did not understand it
3 that way but it could very well be.

4 BY MR. WARREN:

5 Q. So Mr. Crowley -- Mr. Crowley, I don't
6 want -- I don't want -- I don't want to belabor
7 this but you would agree that the numbers that we
8 see in table two reflect pretty high OTP, right?

9 A. Yes.

10 Q. Yes. And is that -- that's the result
11 in large part of the preference that Amtrak track
12 trains got of the RTC model?

13 A. In the original case I guess that would
14 be what you'd draw if those numbers are correct,
15 yes.

16 Q. Yeah. And you see in -- in table three
17 the 2019 freight train metrics, right?

18 A. Yes.

19 Q. And -- and those -- and those metrics,
20 which I'm sure you're familiar with in the
21 original passenger case, you know, 45 -- 45.4%
22 increase in CSX local trains delay, 22.7 in

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1 overall train delay and 33.6 in interchange
2 traffic delay, right?

3 A. That's what it says, yes.

4 Q. All right. So is -- is it your
5 testimony that the infrastructure projects that
6 were proposed in -- in the RTC modeling were
7 designed to increase the OTP that was already high
8 or to mitigate these freight train metrics?

9 A. My understanding was that the -- the
10 RTC models, the CSXNS RTC models characterized it
11 as needing the 11 projects in order to achieve the
12 95% or maintain or whatever. But it was -- the
13 two were related, it was my understanding.

14 Q. It was your understanding. But you
15 would agree with me that the original passenger
16 case already had -- had -- very high OTP for these
17 four -- for the four Amtrak trains, right?

18 A. Based on what I see on this table but
19 nothing more than that.

20 Q. Mr. Crowley, I -- is it fair to say
21 that you've spent much of your career, you know,
22 representing, you know, freight rail shippers in

1 various contexts?

2 A. As opposed to what -- what, Mr. Warren?

3 Q. I -- I -- I -- I'm not -- not -- not a
4 trick question, Mr. Crowley. Is it -- is it fair
5 to say that in -- in the STB that, you know,
6 amongst your clients have been many -- many
7 consumers of freight rail services -- freight rail
8 service?

9 A. Yes.

10 Q. Okay. So if -- if -- if a freight rail
11 shipper came to you and told you that their first
12 mile last -- first mile/last mile service to their
13 facility, that the delays had increased by 45.4%,
14 would you say that that's not a big deal or that
15 that's something that needed to be addressed?

16 A. I would ask them what that was based on
17 and evaluate the data they provided.

18 Q. And if the data they provided showed a
19 45.4% increase in delays, would you tell them that
20 that wasn't something to worry about?

21 A. You know, it would depend on the
22 service, depend on the -- the traffic they were

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1 moving, depends on their schedules, what they
2 needed.

3 For some people it might not be a big
4 deal and for others it might be a big deal.

5 MR. WARREN: So Mr. Chairman, I -- I
6 don't have any further questions but I believe Mr.
7 Donahoe for Norfolk Southern has just a couple
8 questions for Mr. Crowley.

9 MEMBER FUCHS: Matt, can I ask if Mr.
10 Donahoe's questions are going to be on this
11 particular topic?

12 MR. WARREN: They -- they are not.

13 MEMBER FUCHS: Okay, could we put the
14 table --

15 MR. WARREN: You want me to keep going?

16 MEMBER FUCHS: Yeah, could we put the
17 table. I just -- I think it's worth just spending
18 another minute to get absolute clarity on what Mr.
19 Crowley is or is not saying. I just want clarity.

20 So, the 23 and 24 trains, or the
21 morning trains, are over 95%. The 25 and the 26
22 trains -- I think particularly the 25 trains, or

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1 the 4:30 out of Mobile -- those are below 95%.

2 Mr. Crowley, are you testifying that
3 CSX added the infrastructure to get those two
4 numbers above 95%? Is that your testimony?

5 THE WITNESS: No.

6 MEMBER FUCHS: Okay.

7 THE WITNESS: My testimony is that the
8 railroads achieved the 95% on-time performance
9 factor, according to their presentation, by
10 including the 11 infrastructure projects.

11 MEMBER FUCHS: Okay.

12 THE WITNESS: That's where we stopped.

13 MEMBER FUCHS: But -- so you do not --
14 you do not conclude or you are not testifying that
15 the railroad systematically added infrastructure
16 until they got each of the trains above 95%. That
17 is not what you're testifying.

18 THE WITNESS: I think they said just
19 the opposite, that they included all 11 and
20 calculated -- and calculated an on-time
21 performance and the output was 95%.

22 MEMBER FUCHS: Okay. So the only claim

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1 you're making as far as I understand it is that
2 you observed a relationship between the 2019 -- I
3 guess would be the 2019 build case and the 95%
4 OTP, and you observed that that -- you observed
5 that relationship, but you're not -- you are
6 not -- sorry?

7 THE WITNESS: I just coughed. I'm
8 sorry.

9 MEMBER FUCHS: Oh, I'm sorry.

10 So you're just testifying as to the
11 observation of that relationship. You're not
12 going any further to suggest that anything
13 included in the build case was added for the
14 specific purpose of getting over 95%? You're not
15 testifying to that. You're just observing that
16 there's a -- there -- that there is 95% and
17 there's the build case and they match up?

18 THE WITNESS: Yes, with one qualifier,
19 and that is --

20 MEMBER FUCHS: Uh-huh.

21 THE WITNESS: -- I'm simply repeating
22 what I understood the railroads to be saying.

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1 CHAIRMAN OBERMAN: I -- I understand.

2 I think there -- that there has been some debate
3 about whether or not the railroads had it as an
4 input. We all -- I think everybody has testified
5 that you can't really input it in the model. You
6 can put rank and delay min/max and -- and then I
7 think there was some conflict about whether or not
8 railroads added infrastructure projects until they
9 got to 95%. And I think you're saying you're not
10 testifying to that. You're just saying you looked
11 at the build case, you saw 95%, that's -- that's
12 the testimony.

13 THE WITNESS: After the 11 projects
14 were put in place.

15 MEMBER FUCHS: Right.

16 THE WITNESS: That's correct.

17 MEMBER FUCHS: Right, right. And then
18 looking at the -- I guess the passenger case, two
19 of the four trains are already over 95%. One of
20 them is getting close to 90 and -- and that's --
21 that's as far as you're testifying in terms of
22 that relationship, is that -- that you -- you

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1 confirm that you see that?

2 THE WITNESS: Right.

3 MEMBER FUCHS: Okay. All right. Thank
4 you.

5 BY MR. WARREN:

6 Q. One -- one clarifying question, which
7 you may know the answer to, Mr. Crowley.

8 Do -- do you recall that the train
9 numbers that Amtrak assigned to the trains in
10 their originally proposed schedule?

11 A. No, I don't.

12 Q. No. So you don't recall that those
13 train numbers were 23, 24, 25 and 26?

14 A. No.

15 MS. BRACEY: Asked and answered.

16 THE WITNESS: No.

17 CHAIRMAN OBERMAN: He may -- he may
18 answer.

19 THE WITNESS: No.

20 MR. WARREN: Okay. All right. Well,
21 I -- I don't have any further questions but Mr.
22 Donahoe has -- has -- has just a couple.

1 MR. DONAHOE: Mr. Chairman, if I my
2 proceed.

3 CHAIRMAN OBERMAN: Go ahead.

4 CROSS-EXAMINATION

5 BY MR. DONAHOE:

6 Q. Mr. Crowley, my name is Daniel Donahoe.
7 I'm a lawyer representing the Norfolk Southern.

8 Are you familiar with the term the
9 "back belt"?

10 A. Yes.

11 Q. And have you ever been to the back
12 belt?

13 A. Yes.

14 Q. When were you there last,
15 approximately?

16 A. Ten, 15 years ago.

17 Q. Okay. So for this project that you're
18 involved in the Gulf Coast, you didn't go down
19 there to the back belt at all?

20 A. I did not.

21 Q. Do you think the back belt's the same
22 today as it was ten or 15 years ago?

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1 A. It probably is not.

2 Q. And for that matter did you go to the
3 Port at all in this -- for this proceeding?

4 A. I did not.

5 Q. And I think counsel asked you about
6 high-rail vehicles on the Gulf Coast line. I'm
7 just going to ask you in general, for this
8 proceeding did you go anywhere and perform any
9 type of site visit anywhere on the Gulf Coast
10 line?

11 A. No, sir.

12 Q. And there was drone footage produced in
13 these cases by the parties. Prior to this hearing
14 did you review any of the drone footage?

15 A. Yes, I did.

16 Q. And when did you review that?

17 A. Shortly after we received it and I'm
18 not sure what that date was.

19 Q. Fair enough. Do you know how many
20 freight railroads intersect at the back belt?

21 A. Not off the top of my head, no.

22 Q. Would you agree with me that it's a

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1 major intersection for the freight railroads on
2 the back belt?

3 A. It's a major intersection for Norfolk
4 Southern. I'm not sure I would -- I would
5 characterize it that way for all of the class one
6 railroads, but.

7 Q. Are -- are you aware that that
8 intersection is the gateway to the western
9 railroads, specifically Union Pacific?

10 A. Yes.

11 Q. Do you agree that people who actually
12 went down to the back belt and looked at it are in
13 a better position to talk about capacity and
14 congestion in the back belt than you are?

15 A. No.

16 Q. So you don't believe that people who
17 actually went down there, looked at what was
18 currently going on are in a better position to
19 talk about congestion and capacity than yourself
20 who hasn't been there for 15 years?

21 MS. BRACEY: Objection. Asked and
22 answered.

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1 CHAIRMAN OBERMAN: She can answer.

2 THE WITNESS: What we're measuring is
3 the impact on capacity of the back belt and the
4 rest of the rail lines using a simulation model.
5 One does not have to see the -- the track or
6 traffic on the ground to evaluate what's included
7 in an RTC model.

8 BY MR. DONAHOE:

9 Q. In RTC modeling that you've been
10 involved in, you never did any summaries,
11 interviews or site visits for the RTC model?

12 A. Generally not.

13 Q. Did you hear Mr. Guthrie's testimony?

14 A. I did.

15 Q. Do you agree that capacity issues can
16 result in problems outside of the back belt?

17 A. What kind of problems are we talking
18 about?

19 Q. Back-ups or congestion on other lines,
20 like the Union Pacific line I mentioned or the
21 five other freight railroads that intersect at the
22 back belt.

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1 A. There could be some upstream/downstream
2 impacts.

3 Q. Did you review any data supplied by
4 Norfolk Southern on the back belt?

5 A. Yes.

6 Q. Did you review the summaries produced
7 by Holly Sinkkanen about field interviews she
8 conducted?

9 A. I did.

10 Q. When were you retained in this matter?

11 A. In October, early October, I believe.

12 Q. So you would agree with me that this --
13 this action was brought by Amtrak in February and
14 you were not retained until eight months later?

15 A. That sounds like the proper math.

16 Q. Were you aware of the board's decision
17 on August 5th requesting the parties to -- to
18 conduct modeling?

19 A. No.

20 Q. You were not aware of that?

21 MS. BRACEY: Asked and answered.

22 CHAIRMAN OBERMAN: Yes, it is -- it has

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1 been asked and answered.

2 MR. DONAHOE: Fair enough, fair enough.

3 I'll withdraw it.

4 BY MR. DONAHOE:

5 Q. So you would agree with me that if
6 there was a board decision on August 5th
7 requesting that the parties conduct RTC modeling
8 or some other type of modeling that you were not
9 retained until two months after that board's
10 order?

11 A. That's -- that's correct. I was
12 retained in October.

13 Q. Did I hear your testimony correctly
14 that the Metra model you did was completed in four
15 weeks?

16 A. No.

17 CHAIRMAN OBERMAN: I think he said
18 three and a half months.

19 MR. DONAHOE: Okay, thank you.

20 BY MR. DONAHOE:

21 Q. So if you were retained in October,
22 would you have had three and a half months to

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1 conduct RTC modeling prior to this hearing?

2 CHAIRMAN OBERMAN: I think you're
3 asking him about what the board might order if
4 time was needed. So I -- I think you're asking
5 him a perspective -- a legal question about the
6 board. Maybe you should rephrase --

7 MR. DONAHOE: Sure, let me rephrase.

8 CHAIRMAN OBERMAN: -- phrase it
9 differently.

10 MR. DONAHOE: Let -- let me rephrase.

11 BY MR. DONAHOE:

12 Q. Mr. Crowley, did you request of
13 Amtrak's counsel any type of continuance of any
14 type so that you could do RTC modeling?

15 MS. BRACEY: I'm going to object to
16 this question because it's been asked of the
17 witness about four times at this point.

18 CHAIRMAN OBERMAN: I asked it but Mr.
19 Donahoe didn't. I'll let him ask it again.

20 BY MR. DONAHOE:

21 Q. Sir, did you hear my question?

22 A. Yes. The answer is no.

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1 Q. Last question, sir. Is it your
2 testimony that Mr. Banks and Mr. Guthrie are
3 either lying or fabricating data?

4 A. I -- I've never accused either
5 gentlemen of lying or -- or making anything up.
6 It is my testimony that the data --

7 Q. Sir, I just asked you a yes/ no
8 question. Counsel can come back on redirect but I
9 just asked you yes or no.

10 MS. BRACEY: It's not a yes or no
11 question.

12 MR. DONAHOE: It is a yes or no
13 question.

14 CHAIRMAN OBERMAN: I think he can
15 answer. I'm going to let him answer the way he
16 needs to answer it.

17 So finish your answer, Mr. Crowley.

18 THE WITNESS: My assignment was to
19 evaluate the data and attempt to verify the models
20 that Mr. Banks and Mr. Guthrie presented in this
21 case. And my report or my verified statement
22 demonstrates that a lot of the data that they

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1 relied upon was undocumented, unverifiable, and
2 those are my conclusions, nothing more than that.

3 BY MR. DONAHOE:

4 Q. Are you aware of any allegations by
5 Amtrak that the data was fabricated?

6 A. No.

7 Q. Is it your testimony that Hannah Rosse
8 and Holly Sinkkanen either fabricated data or lied
9 in their testimony?

10 A. It is not.

11 Q. Is it your testimony that Mark Dinger
12 has either lied or fabricated his testimony?

13 A. It is not.

14 MR. DONAHOE: I have no further
15 questions.

16 CHAIRMAN OBERMAN: All right. Are
17 there any -- does the Port have any questions for
18 Mr. Crowley?

19 MR. WIMBISH: Yes, sir. We -- we have
20 just a few questions. I understand that Mr. Fapp
21 is going to be testifying later and we will save
22 the bulk of our questions for his subsequent

1 testimony.

2 CROSS-EXAMINATION

3 BY MR. WIMBISH:

4 Q. Mr. Crowley, I understand that Mr. Fapp
5 and you offered verified written testimony in
6 response to the verified written testimony of the
7 Port's Robert N. Golden. Is that correct?

8 A. Yes.

9 Q. Did you -- did you happen to observe
10 Mr. Golden's trial testimony yesterday?

11 A. Yes, I did.

12 Q. Mr. Crowley, have you ever been
13 employed as a train dispatcher?

14 A. No.

15 Q. Have you ever been employed as a train
16 master?

17 A. No.

18 Q. As a yard master?

19 A. No.

20 Q. As a railroad general manager?

21 A. No.

22 Q. A train and engine servicer?

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1 A. No.

2 Q. Have you ever been employed in any
3 real-world railroad operation capacity?

4 A. Now, on that one, Mr. Wimbish, when you
5 say "employed," you mean where I'd get a W-2 at
6 the end of the year or as a consultant where I
7 would be hired to evaluate operations?

8 Q. Let me rephrase the question.

9 Have you ever been employed in a
10 capacity where you directed railroad operations on
11 an actual railroad?

12 A. No, sir.

13 MR. WIMBISH: That concludes my
14 questions.

15 CHAIRMAN OBERMAN: Any other board
16 member questions, or if not we'll send it back to
17 Ms. Bracey for redirect.

18 Ms. Bracey, your witness.

19 MS. BRACEY: Thank you.

20 REDIRECT EXAMINATION

21 BY MS. BRACEY:

22 Q. So the RTC files provided in September,

1 were those from the 2021 RTC study?

2 A. No. Those were from the attached
3 report we were talking about.

4 Q. And what do you mean by the "attached
5 report"?

6 A. It was a study performed in '19 or
7 earlier time period.

8 Q. Okay. And what did you mean by didn't
9 belong vs. could not verify with respect to the
10 high rails of a yard train?

11 A. The high rails were something that has
12 to be included in the modeling if it's taking up
13 main line rail capacity and the way that's
14 included normally in an RTC simulation is based on
15 actual data. And in this case it was based on a
16 randomized approach that we talked about at length
17 earlier.

18 MS. BRACEY: Mr. Peterson, can you pull
19 up CSXNS 076. This is also for the record Joint
20 Exhibit 31Y.

21 BY MS. BRACEY:

22 Q. So this is a letter that Mr. Warren

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1 asked you a couple of questions about, and this is
2 a letter from Mr. Warren to me. Is that correct?

3 A. Yes.

4 Q. And if you could read --

5 MS. BRACEY: If you could pull up
6 paragraph eight, Mr. Peterson. Okay.

7 BY MS. BRACEY:

8 Q. Can you read that paragraph out loud,
9 please.

10 A. "The development of a .TRAIN file
11 requires an RTC user to condense down several
12 months of train data into two weeks of train data
13 that best represent normal operations on a given
14 route for the purpose of train simulation.

15 "Therefore there is no formula,
16 document or work paper that captures the iterative
17 process between the RTC modelers and CSX with
18 respect to creating the .TRAIN file."

19 Q. And what does this paragraph mean to
20 you?

21 A. This means we could not trace the data
22 trail back to the original documents. There --

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1 there has to be a link between the base data that
2 the railroads keep in the normal course of
3 business and RTC model in order for an analyst to
4 be able to verify, audit that trail. That was not
5 in this case.

6 MR. WARREN: I -- I'm going to object
7 and move to strike. The witness can't testify as
8 to what the paragraph means because he didn't
9 write the letter and he testified earlier that
10 he -- well, because he didn't write the letter.

11 CHAIRMAN OBERMAN: Let me speed this
12 up.

13 If you were asked, "How did you
14 understand the paragraph," would your answer be
15 the same, Mr. Crowley?

16 THE WITNESS: Yes, sir. I thought
17 that's what I was asked.

18 CHAIRMAN OBERMAN: All right. I'll let
19 the answer stand with that clarification.

20 MS. BRACEY: I have no further
21 questions.

22 CHAIRMAN OBERMAN: I just have one

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1 question, Mr. Crowley, which I meant to ask you.
2 Did anyone ask you to evaluate the so-called FRA
3 projects that were in the Gulf Coast working group
4 report in terms of how they would impact service
5 of freighted passenger on this line?

6 THE WITNESS: No, sir.

7 CHAIRMAN OBERMAN: And -- and you have
8 not undertook such an evaluation?

9 THE WITNESS: That's correct.

10 CHAIRMAN OBERMAN: Could you have run
11 an RTC study by using those projects as
12 distinguished from the projects that the -- the
13 Guthrie-Banks model used?

14 THE WITNESS: Yes.

15 CHAIRMAN OBERMAN: All right. And what
16 would be involved with your -- what kind -- how
17 complex is that? How much time would it take?
18 What's involved?

19 THE WITNESS: Well, as -- as I've
20 testified, and I don't mean to repeat myself, but
21 you wouldn't get a legitimate answer to that
22 question using the Banks-Guthrie model. You'd

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1 have to start basically from ground zero and
2 recreate that model to reflect the data that was
3 available. And we don't -- that's not in the
4 record as best I can see.

5 CHAIRMAN OBERMAN: Could -- could you
6 take the Banks-Guthrie model -- just for -- humor
7 me here for a minute --

8 THE WITNESS: Okay.

9 CHAIRMAN OBERMAN: -- based on the data
10 that's in the model, however it got there, and
11 then just run the results by putting in the FRA
12 projects as distinguished from the 14 projects
13 they put in.

14 Could you do that?

15 THE WITNESS: Yes.

16 CHAIRMAN OBERMAN: You're -- I take it
17 you're saying, even you could do that and you
18 could tell us what the results are, it doesn't
19 satisfy your view that you'd like to have the
20 backup data before you relied on the data that's
21 in the model that's been produced.

22 Is that a fair way to understand it?

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1 THE WITNESS: Yes, that's correct, sir.

2 CHAIRMAN OBERMAN: All right. And you
3 know I followed along all the -- tried to follow
4 along all the letters back and forth that Mr.
5 Warren showed you about various requests for data.
6 Could -- could, you in a very simple way -- I
7 don't want you to repeat everything -- tell us
8 what you would need to be -- to get the data that
9 you believe is needed to run a proper RTC model.
10 What -- what -- could you summarize, what is
11 needed that you don't have?

12 THE WITNESS: Well, we need
13 documentation for the trains that were modeled.
14 We have it for some. And we would have to model
15 the trains -- well, if we're going to follow the
16 Banks-Guthrie approach, we don't have to -- we
17 don't have to do that but there is -- there is so
18 many steps along the way that, in our opinion,
19 need to be corrected before you get a legitimate
20 result. So if you start with the assumption the
21 model works, then we would need data to
22 demonstrate that the trains that they put in the

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1 model are in fact trains that ran on the system.

2 CHAIRMAN OBERMAN: Well, I'm -- I'm
3 trying to figure out, not the -- and I understand
4 your concerns. You've stated those clearly, I
5 believe at least to me. But we are -- we're at
6 where we are right now. So the 1,265 trains,
7 which seems to be one of the focal points of your
8 concerns, the -- there's no written record
9 apparently of those, other than what was inputted
10 into the model. Is there any way that you could
11 understand getting the backup data, other than
12 going back out into the field and talking to the
13 same people that Ms. Rosse and Ms. Sinkkanen
14 talked to, and getting the numbers directly from
15 them?

16 Is there any other way to get the
17 backup data, to your knowledge?

18 THE WITNESS: Yes.

19 CHAIRMAN OBERMAN: What would it be?

20 THE WITNESS: Any train that moves over
21 the main line during any day, any hour, is
22 documented somewhere in the railroad records. We

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1 have found that to be true. The historical
2 records in the railroad are quite inclusive. And
3 just for safety reasons you can't have trains
4 running around on your railroad that you don't
5 know where they are. So there -- there is
6 documentation out there.

7 CHAIRMAN OBERMAN: All right. Let
8 me -- bear with me here, because I haven't been in
9 an operations position either on a railroad.

10 So as I understand it, some of these
11 1,265 trains are a yard train that had to move
12 back and forth out onto the main line to make a
13 switch because the yard tracks were too short.

14 Is that an accurate understanding of
15 some of these 1,265 trains?

16 THE WITNESS: Yes.

17 CHAIRMAN OBERMAN: And to -- on your --
18 on your experience, what record would a railroad
19 have of that movement? Would it be in the
20 dispatching records?

21 THE WITNESS: For those yard trains,
22 it's an RTC modeling issue, not a documentation

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1 issue.

2 CHAIRMAN OBERMAN: Well, I'm trying to
3 understand where you said the railroads keep track
4 of every train movement. I thought the issue in
5 your mind was that the yard trains that come out
6 onto the main track are not in the .TRAIN files,
7 so you only know about them through the filed
8 interviews.

9 Did I misunderstand that?

10 THE WITNESS: No, that's correct. But
11 the dispatch --

12 CHAIRMAN OBERMAN: Yeah, so there's
13 some other record other than a field interview
14 which you can look at it to see how many times a
15 yard train had to come out of the main track to
16 make a switch.

17 THE WITNESS: I would think the
18 dispatcher records would show that.

19 CHAIRMAN OBERMAN: So to that degree,
20 would you find it acceptable, in terms of the data
21 you say is missing, if you had those dispatching
22 records in lieu of written documented interviews

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1 with the field personnel?

2 THE WITNESS: To document those trains,
3 I think that that would be a good starting point.

4 CHAIRMAN OBERMAN: All right. What
5 about in the high rail movements? Would they also
6 be in the dispatching records, as you -- as you
7 understand it?

8 THE WITNESS: Right.

9 CHAIRMAN OBERMAN: All right. So
10 dispatching records -- and you don't have those, I
11 take it?

12 THE WITNESS: Right.

13 CHAIRMAN OBERMAN: What other gaps are
14 there if any in the data that you say you don't
15 have?

16 THE WITNESS: Well, it -- it's a bit of
17 an iterative process. You get the documents that
18 you think you need and then compare them, then do
19 your audit and see if you've identified all the
20 trains, and if we've ticked off all the trains and
21 in fact they are there, and they are there at the
22 right time, fine. You end your audit and say we

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1 were able to check everything. If they're not
2 there, we go back and ask for more additional
3 information based on the specific category of
4 trains.

5 CHAIRMAN OBERMAN: Well what else would
6 satisfy in your view a data source other than
7 dispatching records that you don't have? Now what
8 else is there? We know about .TRAINS. Now you've
9 told us about dispatching records. What other
10 kind of data recordings do railroads ordinarily
11 keep, in your experience, that you think would
12 fill in any of the data that you don't have, other
13 than field interviews?

14 THE WITNESS: It would be yard
15 movements, yard files, yard -- the yard master
16 would keep track of his movements and know when
17 his -- his crews were going out on the main line.
18 It's be --

19 CHAIRMAN OBERMAN: In your
20 experience -- just stop there. Are those -- in
21 your experience -- obviously I'm not asking you to
22 guess about something you haven't looked at -- are

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1 those records, kinds of records typically kept by
2 class one railroads?

3 THE WITNESS: Yes.

4 CHAIRMAN OBERMAN: All right. What --
5 what other data sources that you don't have might
6 there be to allow you to verify or audit the
7 numbers that were given?

8 THE WITNESS: Well, the bridge openings
9 would be -- would be an issue, was an issue in
10 this case, the number of bridge openings, the
11 times associated with those openings --

12 CHAIRMAN OBERMAN: Well, wasn't a
13 database supplied to you with those bridge
14 openings?

15 THE WITNESS: Some of them. Not all of
16 them. They had more bridge openings than we had
17 data for.

18 CHAIRMAN OBERMAN: What other data
19 source is there about bridge openings other than
20 the ones you got?

21 THE WITNESS: I don't know. That's one
22 of the issues. We would have to ask specifically

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1 for information that would inform that question.

2 CHAIRMAN OBERMAN: Well on your -- in
3 your experience -- this isn't the first line
4 you've dealt with that has bridge openings, is it?

5 THE WITNESS: No.

6 CHAIRMAN OBERMAN: So what other data
7 is there other than what the railroads supplied
8 you, typically?

9 THE WITNESS: I --

10 CHAIRMAN OBERMAN: What kind of data I
11 mean. I'm sorry, I talked over you. I'm sorry.
12 Pardon?

13 THE WITNESS: I -- I don't have a
14 specific document I can tell you about. And
15 generally when we ask for documents, if we know
16 the document name, we ask for that, but we
17 generally ask for the information that we're
18 looking for and the railroads will -- will provide
19 that information.

20 If you give a railroad a specific name
21 for a document, they may call it something else
22 but have the same information. So I think you

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1 have to be a little more specific in your request
2 for data, so.

3 CHAIRMAN OBERMAN: Well as I understand
4 it the railroads here say they've given you all
5 the data about the bridge openings. So I'm trying
6 to figure out what's missing.

7 THE WITNESS: Well, if -- if that's the
8 case, then there's some bridges -- some bridge
9 openings that are not in the data. I mean, that's
10 how we started this thing. How do we get -- how
11 do we get to verify these missing trains and --

12 CHAIRMAN OBERMAN: Are you saying that
13 there are bridge openings shown in the RTC model
14 that are not in the data that you've been
15 supplied?

16 THE WITNESS: That's correct.

17 MEMBER FUCHS: Marty?

18 CHAIRMAN OBERMAN: Yeah, go ahead,
19 Patrick.

20 MEMBER FUCHS: Can I ask on this topic,
21 unless you have more?

22 CHAIRMAN OBERMAN: No, no. Well, no,

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1 I'm just trying to figure out where -- where we
2 might go from here, Patrick. So I'm happy to --

3 MEMBER FUCHS: I know. I -- I know. I
4 have a couple -- I -- I -- I appreciate that.

5 I -- I had -- I thought the explanation
6 in the record was that there were more bridge
7 openings than might be actual because there were
8 some bridges that are left open. So there was
9 assumed to be a uniform distribution of openings
10 as opposed to blocks where they're left open. So
11 in some hours it'll reduce the impact; in some
12 hours it'll increase the impact.

13 Is -- is there any -- first of all, is
14 that your understanding that the cause of some of
15 the -- you know, what would be planned excess
16 openings, and are there other causes that you're
17 bringing to light?

18 THE WITNESS: Are you still talking to
19 the chairman or are you talking to me?

20 MEMBER FUCHS: No, no, that was a
21 question to you, Mr. Crowley.

22 CHAIRMAN OBERMAN: Yeah, a question to

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1 you, Mr. Crowley. I've deferred to Patrick here.

2 THE WITNESS: Well I'm not sure I
3 remember the question. I'm sorry.

4 MEMBER FUCHS: Well, let me -- let me
5 ask it -- maybe I'll ask it another way.

6 If you account for changes in the
7 bridge openings, like calculating bridge openings
8 to smooth out the distribution of bridges that
9 would otherwise remain open, are there other
10 causes that you can point to for excess bridge
11 openings?

12 In other words, if you removed those,
13 would that solve your excess bridge opening
14 concern? Did you look into that or is there
15 anything else you can tell us on the subject?

16 THE WITNESS: No, we didn't look at
17 that, but bridge openings, like a train
18 identification, is something that should be
19 readily available, readily apparent in
20 the -- in the files. I mean, it shouldn't be
21 something we have to calculate. The time it
22 opens, the time it goes back into service, all

1 that should be readily available.

2 MEMBER FUCHS: Okay, and then coming
3 back to Marty's question about the -- the trains,
4 you know, I -- I think the rebuttal report points
5 out that, you know, there are some errors that you
6 all make or alleges that you all make errors with
7 regard to data sources and counting train symbols
8 as trains and that sort of thing...

9 What is -- do -- do you have -- does
10 that account for some of the 1,200 plus kind of
11 missing trains, as you -- as you call them?

12 THE WITNESS: No. We -- we couldn't
13 link those statements back to those trains. They
14 were -- they were just general statements that we
15 didn't understand what were doing and that's why
16 we got this differential.

17 But we didn't need any additional data
18 to show that we were wrong.

19 MEMBER FUCHS: So you've seen the
20 waterfall chart that freights have submitted into
21 evidence, right?

22 THE WITNESS: Yes.

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1 MEMBER FUCHS: Okay. And so, is it --
2 is it your testimony that -- are -- are any of the
3 five categories that the freights allege bring
4 down that count, do -- are you -- do you find
5 merit in any of those categories?

6 THE WITNESS: No.

7 MEMBER FUCHS: Okay. So could you
8 explain to me why the point about counting yard
9 train symbols, you know, as -- as trains is not a
10 valid point?

11 THE WITNESS: It's not a valid point in
12 what context?

13 MEMBER FUCHS: Is not valid in terms of
14 reducing the 1,200 missing trains and bringing
15 that number down. The freights I think allege
16 that something like around 200 of your 1,200, as I
17 understand it -- this is their allegation -- is --
18 are -- are counting yard train symbols as
19 movements. Is that -- could you -- could you
20 respond to that?

21 THE WITNESS: Sure, sure.

22 In the RTC model a yard train has a

1 symbol, like every other train, but a yard train
2 handles operations differently than a manifest
3 train, for example. And let's assume, for sake of
4 this discussion, that the yard train that we're
5 evaluating has five different blocks of cars that
6 it handles during the course of its shift. It all
7 has the same train symbol but with a different
8 letter after it that's not assigned when the train
9 goes on duty but assigned by the RTC modelers in
10 this case. And what that does in the model is,
11 rather than have one yard train, it has five yard
12 trains. So there are five trains to handle the
13 one train -- yard train's duty that day.

14 Now what -- what does that mean from an
15 RTC perspective? The RTC sees five trains that it
16 has to dispatch, has to slide them in and out of
17 the model. And you get things like the second
18 block of cars being dispatched before the first
19 block of cars or the third before the second, one
20 issue. The other issue is, because it's a
21 separate train that has to be dispatched by the
22 model, it takes up the capacity of five trains

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1 rather than one linked yard train that would just
2 keep performing under the original yard train
3 symbol.

4 Does that help?

5 MEMBER FUCHS: So let me -- let me --
6 may I -- may I explain it back as I heard it and
7 then you could correct me?

8 THE WITNESS: Sure.

9 MEMBER FUCHS: So I could have absolute
10 clarity on this point.

11 So is -- you -- you are saying it is
12 true that freights use the same yard train profile
13 to multiple movements?

14 THE WITNESS: Yes.

15 MEMBER FUCHS: But -- but the
16 movements -- while it's multiple movements, those
17 movements should course -- they should all be part
18 of one movement within the RTC as opposed to
19 multiple movements because you'd be overstating
20 the impact of the movement?

21 Is that -- I mean, that's basically
22 a -- a -- a -- a paraphrasing. That's what you're

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1 saying?

2 THE WITNESS: Yes.

3 MEMBER FUCHS: And then, can you --

4 CHAIRMAN OBERMAN: Can I -- Patrick,
5 let me just ask for clarification here.

6 The -- the five yard train movements
7 that you're hypothesizing here, are -- are they
8 occupying the track at different points of time or
9 is this all within a few minutes?

10 I'm -- I'm trying to understand, if
11 they aren't -- if they're five separate movements,
12 don't they occupy track at five different times?
13 Wouldn't that warrant including five different
14 trains?

15 THE WITNESS: They do occupy it at
16 different times. They occupy it at the times that
17 are assigned in the RTC model.

18 CHAIRMAN OBERMAN: So what difference
19 does it make if you tell them one train or five
20 trains? You've still got to account for five
21 different times the tack is occupied, don't you?

22 THE WITNESS: You have to account for

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1 the movement of the trains as they hit the main
2 line, but the RTC model is keeping track of what
3 is dispatched and when it's dispatched and it's
4 looking -- it sees in its cue these five trains as
5 opposed to one train doing the work of the yard
6 train. So it's looking at five trains, not one
7 train, the way they modeled this thing. And
8 there -- and there's a common toggle in the RTC
9 model to take care of this issue, and that's the
10 linking of these trains together. And -- and they
11 do that sometimes. I think there are some yard
12 trains where they actually linked them properly
13 but then there are others where they don't.

14 CHAIRMAN OBERMAN: But would the
15 linking depend on what -- I -- I thought this was
16 all about occupying tracks so that some other
17 train can't move there. Would -- wouldn't it
18 depend on what the yard train was doing, about how
19 to include it in the model?

20 THE WITNESS: Well, yes, it would. But
21 it -- it still has the model looking to dispatch
22 these trains, and it's going to push it out there

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1 when it has the opportunity. It's not going to
2 necessarily do it in the order that one linked
3 yard train would perform its duty.

4 Now, if you looked at it as one train,
5 they may be on the main line only once during the
6 course of that duty. If you're looking at five,
7 they may have to come back and forth to get the
8 trains or get the blocks of cars and move those on
9 the line.

10 So almost by definition you're going to
11 absorb more capacity with unlinked yard trains
12 than you are with a linked train.

13 CHAIRMAN OBERMAN: Okay, go ahead,
14 Patrick.

15 MEMBER FUCHS: Okay, I -- I was just
16 going to ask generally to -- to respond to the
17 incorrect data set point.

18 THE WITNESS: The -- I'm sorry, what?

19 MEMBER FUCHS: The -- the -- within the
20 waterfall chart there is an allegation that 295
21 trains as -- as you claim are -- are -- that is
22 overstated -- the 295 is an overstatement because

1 of an incorrect data set for actual volumes.
2 And -- and -- and so, you know, basically as I
3 understand it it's because you all didn't --
4 there's allegations that you all didn't use the
5 raw data that was in the work papers. And I was
6 wondering if -- if -- if you used the raw data
7 whether or not you'd have the same finding?

8 THE WITNESS: Well, we used the data
9 that they used to do their randomization process
10 and we were under the impression that was the raw
11 data.

12 MEMBER FUCHS: But -- but you're --
13 you're not able to rule out whether or not there
14 was a different data set in the work papers that
15 would lead to a different result?

16 THE WITNESS: No, I'm not able to rule
17 that out.

18 MEMBER FUCHS: Marty, did you have more
19 on this? I think you had already explored the --
20 the high rail and whether or not there are --

21 Just to make sure I'm absolutely clear,
22 on this middle category, which is the large one

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1 about inclusive of trains that would not be in the
2 data, the chairman asked a number of questions...

3 Is it your view that all of the 582
4 would be in dispatching data? Are there any -- I
5 mean, I'm looking at different categories like
6 light engines and I think, you know, there were
7 high rails that were mentioned and other things --
8 you know, engine switches I think we're going to
9 say for light engines.

10 Is there extent data for all of these
11 582 to be verified?

12 THE WITNESS: There should be. I mean,
13 if the -- if the train, the light engine or high
14 rail, whatever vehicle was on the main line, the
15 dispatchers have to know about this, and they will
16 record that sort of thing, it's been my
17 experience.

18 MEMBER FUCHS: Okay.

19 CHAIRMAN OBERMAN: I -- I just
20 wanted -- I just wanted to see if we could pursue
21 fully what other data sources a railroad typically
22 would have that you have not seen that would allow

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1 you to fill in any if not all of the gaps in the
2 data that you've received other than going back
3 out and interviewing the field people who Ms.
4 Rosse and Ms. Sinkkanen interviewed.

5 MEMBER FUCHS: Right, and before there
6 is a response, just to piggyback on your point,
7 Mr. Chairman, you know, I thought Mr. Crowley said
8 some on the main line -- some of the activities
9 occurred just in the yard, though, right?

10 So maybe, as you respond to the
11 chairman, just work that into your response.

12 CHAIRMAN OBERMAN: Thank you, yes.

13 THE WITNESS: Well, I think the
14 category of trains that we're talking about are
15 these foreign trains and then the question is how
16 does CSX in this case keep track of foreign trains
17 on its line?

18 And as far as the yard train -- and
19 that would be the documents we would be looking
20 for. As far as the yard trains going in and out
21 of the yard, yes, that's -- that's critical in RTC
22 modeling because going in and out of the yard

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1 blocks the main line. It precludes the main line
2 from being used for something else. It takes up
3 capacity in the model.

4 Does that answer your questions?

5 MEMBER FUCHS: Yeah -- yeah. I just --
6 I had just thought that and I had read that some
7 of the alleged trains would not have triggered
8 dispatching controls. So I -- let me -- there are
9 some examples that were provided, for example,
10 switching at the south end of Gentilly, switching
11 CSXT to Sibert yard, in the yard, and there was
12 a -- there was a view put forward that someone not
13 touch the dispatching controls. And I'm trying to
14 make sense of your claim that all that should be
15 in the dispatching data.

16 I agree that -- well I -- I -- I think
17 that there are some that you would think would
18 trigger the dispatching controls and then there
19 are some that wouldn't, and I'm trying to marry
20 that up with your claim that the dispatching data
21 would have all of the 582. And so I'm just trying
22 to work through that.

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1 THE WITNESS: Well I don't know if the
2 dispatching data would have all 582. What -- what
3 I do know is that, if a yard train or any train
4 hits the main line that is a recorded piece of
5 information.

6 Now you can have a lot of yard service
7 these blocks that we were talking about a few
8 minutes ago be delivered without hitting the main
9 line, without blocking any main line. So it
10 really depends on a case-by-case basis what the
11 data shows.

12 MEMBER FUCHS: Thank you Marty. That's
13 it for me.

14 CHAIRMAN OBERMAN: In terms of the
15 foreign trains, Mr. Crowley, are you saying that
16 that data you received did not record all the
17 foreign trains that used to go on this line?

18 THE WITNESS: That's correct. We had
19 to -- we only had -- I don't think we had any
20 documentation. I think that was all based on
21 these interviews.

22 CHAIRMAN OBERMAN: Are foreign trains

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1 not typically put in the .TRAIN file?

2 THE WITNESS: I guess it depends on the
3 railroad.

4 CHAIRMAN OBERMAN: Well based on your
5 experience, what would you expect to find?

6 THE WITNESS: Well, I think it's a
7 little -- it's almost like a 50/50 thing where we
8 have ran in -- we have run into that similar
9 problem elsewhere.

10 CHAIRMAN OBERMAN: Well if they're not
11 in -- in the .TRAIN file, what other kinds of
12 records do railroads typically keep of foreign
13 trains, based on your experience?

14 THE WITNESS: Well, it's the movement
15 over the -- over the rail line so it probably
16 would be in some sort of a dispatch record.

17 CHAIRMAN OBERMAN: And do -- do
18 dispatching records that you reviewed typically
19 distinguish between foreign trains and the host
20 trains?

21 THE WITNESS: Not that we could tell,
22 no.

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1 CHAIRMAN OBERMAN: No, I don't mean in
2 this case, but typically in other rail --
3 railroad records you've seen.

4 THE WITNESS: Yes, they -- they would
5 have initials and numbers on -- on these trains.

6 CHAIRMAN OBERMAN: That would -- that
7 would enable you to determine whether they were
8 foreign or host?

9 THE WITNESS: Yes.

10 CHAIRMAN OBERMAN: All right. So, just
11 to try to wrap this up, you could take the
12 existing RTC model that was produced to you and
13 just input the FRA, so-called FRA projects and run
14 it, get a result. But if you were asked to give
15 us information that we could rely on, in your view
16 you need this other data that we have just gone
17 over at some length here?

18 THE WITNESS: The other data and some
19 changes to the model.

20 CHAIRMAN OBERMAN: What -- what changes
21 to the model.

22 THE WITNESS: Just what -- what we were

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1 talking about on how they -- how they do their
2 permits, how they handle walking speed, how they
3 do some of the things we've criticized them for.

4 CHAIRMAN OBERMAN: But you could make
5 those changes to the model without getting more
6 information from the railroads, right? Those
7 would just be modeling choices that you could make
8 on your own, I take it?

9 THE WITNESS: That's correct.

10 CHAIRMAN OBERMAN: All right --

11 MEMBER HEDLUND: I've got a question,
12 to follow on.

13 CHAIRMAN OBERMAN: Yeah, just to
14 finish, Karen. One second.

15 I -- I'm just trying to explore what
16 would be needed to do the work that you've
17 disclosed here hasn't been done.

18 I think -- sounds like we've covered it
19 all, have we, Mr. Crowley? Have we left anything
20 out?

21 THE WITNESS: I don't think so. I
22 think we're --

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1 CHAIRMAN OBERMAN: Okay. Karen has a
2 question. She's --

3 MEMBER HEDLUND: Yeah --

4 CHAIRMAN OBERMAN: Go ahead.

5 MEMBER HEDLUND: You've talked about
6 the randomization based on proprietary software
7 but you couldn't replicate that. Is that correct?

8 THE WITNESS: That's correct.

9 MEMBER HEDLUND: So even if you had all
10 this additional information, you couldn't verify
11 the model and you couldn't run the -- could you
12 run the model without having the randomization and
13 proprietary software.

14 THE WITNESS: Yes.

15 MEMBER HEDLUND: So you would run it
16 without randomizing the information?

17 THE WITNESS: That we would have to do
18 it that way.

19 MEMBER HEDLUND: Right, and how long
20 would that take.

21 THE WITNESS: "Without randomizing."
22 Wait a minute. Let me go back and answer that

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1 question again.

2 No, we would not to able to
3 un-randomize what they did.

4 MEMBER HEDLUND: Right.

5 THE WITNESS: We would have to start
6 with their .TRAIN file, which is what goes into
7 the model.

8 MEMBER HEDLUND: Right.

9 THE WITNESS: So we would have to
10 accept that as being correct, which is one of the
11 things we have criticized and do not believe it is
12 correct or verifiable at least.

13 MEMBER HEDLUND: Right.

14 THE WITNESS: And -- but from the
15 .TRAIN file going forward to a result, you could
16 do that.

17 MEMBER HEDLUND: So you could -- you
18 could do a new RTC model with their .TRAIN file
19 plus the additional information we've just been
20 discussed -- discussing without randomizing it and
21 get a result?

22 THE WITNESS: Yes.

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1 MEMBER HEDLUND: Okay.

2 CHAIRMAN OBERMAN: Okay, any other
3 board members?

4 Now that we've explored this fully, I
5 think other counsel should have an opportunity to
6 go into it in whatever order.

7 Ms. Bracey, do you have questions for
8 this witness at this point?

9 MR. WARREN: No.

10 CHAIRMAN OBERMAN: Pardon?

11 MR. WARREN: I -- I -- I was --

12 CHAIRMAN OBERMAN: I'd just like to
13 hear Ms. Bracey's response.

14 MS. BRACEY: I may have some based on
15 Mr. Warren's questions but I don't have any
16 additional.

17 CHAIRMAN OBERMAN: All right. Matt, do
18 you have questions?

19 MR. WARREN: I -- I -- I do, I was just
20 going to suggest that -- that I might go first
21 because then, you know, Kali can be able to make a
22 decision if she wants to ask anything.

1 CHAIRMAN OBERMAN: The point is moot.

2 You can go first.

3 MR. WARREN: Okay, thank you.

4 RECROSS-EXAMINATION

5 BY MR. WARREN:

6 Q. So, just a couple of questions, Mr.
7 Crowley. I'm going to bring back what's been a --
8 a popular document today, which is CSXNS 076. And
9 I -- I guess this has another -- another number on
10 it too that I don't recall when -- when Kali put
11 it up. But this is the November 19th, 2021
12 document. Let's go to the first page.

13 So in this document, I'm -- I'm going
14 to draw your attention, Mr. Crowley, to appendix
15 A, which is RTC Work Papers Index.

16 MS. BRACEY: I'm going to object as
17 beyond the scope of the board's questions.

18 MR. WARREN: I -- I -- I think --

19 CHAIRMAN OBERMAN: Well, I'm not sure
20 what the scope of the board's questions were, so
21 I'm going to let him answer.

22 MR. WARREN: I -- I -- I -- I think --

1 I think the relevance will -- will be -- be clear
2 in a moment. One thing I'll say -- you can
3 turn -- turn to the next page. This -- this --
4 this is marked as confidential but this had to be
5 designated. This is on our -- on our public list.

6 BY MR. WARREN:

7 Q. So Mr. Crowley, do you -- or did you --
8 did you see this document when it -- when it came
9 through?

10 A. Yes.

11 Q. Originally. Okay. And this is an
12 index of the RTC modeling work papers that were
13 provided with a November 3rd, 2021 opening
14 evidence, right?

15 A. I've seen that. I don't know when it
16 was provided.

17 Q. Okay. Well, the - the -- the first
18 section of this is, you know, 1.0 CSX and NS
19 Provided Inputs, and then there's a list of CSX
20 input files.

21 A. Right.

22 Q. Is that right?

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1 A. Yes. Right at the top.

2 Q. All right. And we've got a few
3 different files here --

4 MS. BRACEY: Can I just have a minute,
5 Matt, to give him a copy?

6 MR. WARREN: Oh, oh absolutely. Just
7 let me know when he's ready.

8 MS. BRACEY: What page are you on?

9 MR. WARREN: This is page five of 11.
10 It's --it's the first page of Exhibit A.

11 CHAIRMAN OBERMAN: Ok. This -- this is
12 what exhibit number?

13 MR. WARREN: This is Exhibit CS --
14 CSXNS 076.

15 CHAIRMAN OBERMAN: Okay. Is that in
16 the book?

17 MR. WARREN: Yes, it is. I think -- I
18 think we established that it's in volume one.

19 THE WITNESS: Okay.

20 BY MR. WARREN:

21 Q. Okay, Mr. Crowley, you've got it?

22 A. I do.

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1 Q. Okay. And in this list in the CSX
2 input files provided in the work papers, you see
3 that second line -- or the second row, rather,
4 "Descriptions of Nonstandard Train Movements".

5 Is that right?

6 A. Yes.

7 Q. And that includes descriptions of local
8 train movements that might not be clear in the
9 data, right?

10 A. That's what it says.

11 Q. And is that one of the files that you
12 had available you to?

13 A. I believe so. I don't -- I don't
14 recall that specific file, but.

15 Q. Okay. Well reading down and the
16 next -- next -- next level is -- is OS Data:
17 Right, for control -- for control point on station
18 data? Is that one of the files that were
19 available to you?

20 A. Yes.

21 Q. And am I right that that's really the
22 basis of your criticism that there were files that

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1 weren't in the train event data. What you were
2 saying they weren't in -- so you're saying they
3 weren't in the OS data, right?

4 A. That's correct.

5 Q. And you heard the testimony from Ms.
6 Rosse and Sinkkanen about all the reasons why
7 particular kinds of trains and movements wouldn't
8 show up in the OS data, right?

9 A. Right.

10 Q. Right. Because if it doesn't pass a
11 control point, it's not going to be in the OS
12 data, right?

13 A. Right.

14 Q. And that's the reason why, you know,
15 foreign trains going through a crossing aren't
16 going to in the OS data, they don't cross the CSX
17 control point, right?

18 A. I don't -- I don't -- you see, you hit
19 my problem, Mr. Warren. We're not able to verify
20 any of that.

21 Q. Okay.

22 A. I mean, you say that's what happens but

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1 if you're seeing as an auditor with a charge to
2 verify the data and all you have is a statement
3 that somebody says, "Well, it didn't hit
4 something," that's not a frame of endorsement of
5 the data as being valid.

6 Q. Right. And you -- and you just
7 testified a few minutes ago that what you needed
8 was the dispatch data, right?

9 A. That I testified about what?

10 Q. Sorry, I'll slow down. That what you
11 needed was the dispatch data, correct?

12 A. I said that would be where I would
13 start.

14 Q. Okay. Okay. Could -- could I ask you
15 to read, let's see, the one, two, three, four,
16 five -- the sixth row. What's the file name
17 there?

18 A. The "TRAIN Profile Data".

19 Q. One below that one, please.

20 A. "Dispatch Data"?

21 Q. Yes. So the dispatch -- so dispatch
22 data was in fact included in CSXNS work papers,

1 wasn't it?

2 A. I guess there were some.

3 Q. And you have a couple of explanatory
4 files underneath that:

5 "Dispatchscreensfromcsx.doc,"

6 dispatchscreens.pptx, and -- but the main data --
7 the main data file there is that Excel
8 dispatchdatadocs.xlsb file, right?

9 A. I don't know that.

10 Q. Okay. Well, let's turn -- let's turn
11 to the next page just to cover something. So at
12 the top here, and this is again following 11.1,
13 you see a number of fields there for drawbridge
14 input data, various bridge logs. So that -- that
15 was also included, as well?

16 A. Well that's what it says here. These
17 are their inputs. I don't recall seeing this
18 data.

19 Q. Well it -- you -- you -- you recall
20 seeing this list of the work papers, right, at the
21 time it was sent?

22 A. Yes.

1 Q. Did -- did you tell -- at -- at the
2 time did you say, "There's some of this data
3 that's not here and I need it"?

4 A. I don't recall what -- I mean,
5 you're -- you're giving me all these files and
6 saying -- and asking me what's in them. It's
7 difficult to say what we followed up on or what we
8 needed them for.

9 We were unable -- we did not find the
10 source among any of these so-called input files
11 that allowed us to count those trains we were
12 talking about.

13 Q. Okay.

14 A. I mean, we reviewed all of this stuff
15 and we were not able to verify those trains.

16 CHAIRMAN OBERMAN: Matt, I just want to
17 avoid confusion here.

18 Do I understand you to be saying, Mr.
19 Crowley, that whatever these files that were
20 provided for you to you did not account in your
21 view for all the trains that showed up in the RTC
22 study?

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1 THE WITNESS: That's correct, sir.

2 CHAIRMAN OBERMAN: Well I -- I was just
3 asking you, we weren't talking about the dispatch
4 files. To your understanding, are there other
5 dispatch files that would fill in those gaps? I
6 mean, maybe -- maybe they don't have any. That's
7 where I'm puzzled here.

8 THE WITNESS: Well, so am I, and -- and
9 that's part of our problem. We were given a file
10 of trains that moved and modeled -- and they were
11 modeled, but yet they don't have a -- a data trail
12 back to where those trains came from. And you can
13 point to all these files and say, "Lookit, we gave
14 you all these files, but we could find nothing in
15 these files that showed us anything about these
16 trains".

17 CHAIRMAN OBERMAN: So, if you've been
18 given what appear to be the dispatch files and
19 these -- the trains still aren't in there, then it
20 seems to me, either you have to conclude that the
21 trains were made up, or there's some other
22 recordkeeping system.

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1 Would that be a way to understand the
2 dilemma here?

3 THE WITNESS: Yes. I -- I think what
4 you do is you go back to the carrier and ask them
5 to document where they get these specific trains
6 from.

7 CHAIRMAN OBERMAN: Well, that's what I
8 was trying to pursue here, is that where else
9 could you get data if it's not in the data that
10 purportedly is the place where this data should
11 show up? Where -- where else could it be, in
12 your -- based on your experience?

13 THE WITNESS: It's -- it's got to be
14 there somewhere. It's got to be within their
15 system somewhere.

16 I don't know -- I'm sitting here in a
17 quandary because I can't give you a specific name
18 of a file or a model that would generate the data
19 that we're missing. I don't know the proper names
20 clearly because we don't have the data.

21 But there's got to be some trail that
22 allows you to verify that the trains that they put

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1 into their model existed.

2 MEMBER SCHULTZ: Marty, can I ask a
3 question?

4 CHAIRMAN OBERMAN: How would you
5 suggest we go about finding that out?

6 THE WITNESS: I would suggest, if we
7 want to pursue that, to get a list of these
8 trains, the actual trains that they say existed,
9 and have them give you a data trail. Could they
10 get them?

11 CHAIRMAN OBERMAN: Could you -- do you
12 have that list of trains? Could you prepare such
13 a list?

14 THE WITNESS: I'm sure we could.

15 CHAIRMAN OBERMAN: From the data you've
16 been given?

17 THE WITNESS: Yes, because we modeled
18 them.

19 CHAIRMAN OBERMAN: Okay, somebody else
20 had a question. I cut some -- I didn't hear who
21 it was.

22 MEMBER SCHULTZ: It was me.

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1 CHAIRMAN OBERMAN: Oh, Michelle, go --
2 go ahead.

3 MEMBER SCHULTZ: Thank you.

4 Mr. Crowley, upon receipt of all the
5 files that were submitted here and after you
6 completed your review and determined there was
7 missing information, at that point in time did
8 you -- did you create a list of all the missing
9 information and submit that back to CSX requesting
10 it?

11 THE WITNESS: I -- I don't know if it
12 was submitted to CSX exactly that way. We --
13 counsel asked for a number of different things
14 after the November 3rd filing and, as the
15 information trickled in, we evaluated it. But at
16 the end of the day, as we were writing our
17 verified statement, we still had this dilemma of
18 all these trains that were modeled that we
19 couldn't link back to the base period data.

20 MEMBER SCHULTZ: Sure, but -- but I
21 think what -- what you're saying is is that there
22 was no documentation summarizing the deficiencies

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1 in -- in the files that had been submitted to you.

2 Is that -- would -- would that be fair?

3 THE WITNESS: That would be fair.

4 MEMBER SCHULTZ: Okay, thank you.

5 CHAIRMAN OBERMAN: Thank you, Michelle.

6 Any other -- well, I interrupted. Matt, I don't
7 know that you were finished.

8 THE WITNESS: I -- I -- I -- I was
9 getting pretty -- pretty close to being done.

10 BY MR. WARREN:

11 Q. I -- I'd just ask you, Mr. Crowley,
12 you -- you reviewed the -- the rebuttal RTC
13 verified statement of Hannah Rosse and Holly
14 Sinkkanen. Is that right?

15 A. Yes.

16 Q. And is it right that that rebuttal
17 verified statement walks through in great detail
18 the different train categories and what the
19 different data sources show and what they don't
20 show?

21 A. There was -- I'm not sure about great
22 detail but they did have -- they did have

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1 testimony to that effect, but the bottom line, Mr.
2 Warren, is they didn't provide any data trail back
3 to the actual data that shows that these were
4 trains that should have been put in the RTC model.
5 They were definitely in the .TRAIN file but there
6 is no trail going back to the actual data.

7 Q. I -- I -- I think we got a little --
8 little -- little beyond my question there. But
9 they provided sworn testimony explaining, you
10 know, what -- how they -- how they created the --
11 the .TRAIN file and -- an how they identified these
12 trains, right?

13 A. Yes.

14 Q. Yeah, twice in fact. They provided
15 sworn testimony in verified statements and then
16 they provided sworn testimony to the board, right?

17 A. Yes.

18 Q. All right. And I -- and I recall -- in
19 your response to Mr. Donahoe's questions you
20 agreed that you were not accusing them of making
21 anything up, right?

22 A. I think I said I wasn't accusing them

1 of fabricating data. That's correct.

2 MR. WARREN: Okay. Thank you. I -- I
3 don't have anything further.

4 CHAIRMAN OBERMAN: Any other questions
5 for Mr. Crowley?

6 MS. BRACEY: I have a couple --
7 probably one.

8 CHAIRMAN OBERMAN: All right. Go
9 ahead.

10 MS. BRACEY: Mr. Peterson, can you pull
11 up the November 19th letter, CSXNS 076.

12 REDIRECT EXAMINATION

13 BY MS. BRACEY:

14 Q. Mr. Crowley, you were asked a lot of
15 questions about this letter. What's the date on
16 this letter?

17 A. November 19th, 2021.

18 Q. And when was our -- or when was
19 Amtrak's rebuttal evidence due or reply evidence
20 due?

21 A. December 3rd, 2021.

22 MS. BRACEY: Okay. That's all I have.

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1 CHAIRMAN OBERMAN: Any other questions?

2 Mr. Crowley.

3 THE WITNESS: Sir.

4 CHAIRMAN OBERMAN: Thank you for your
5 patience under long circumstances. You are
6 excused.

7 THE WITNESS: Thank you, sir.

8 (Witness is excused.)

9 CHAIRMAN OBERMAN: We're going to break
10 at about 3:30 Eastern, so I'd like to proceed, Ms.
11 Bracey, with your next witness if you can at this
12 point, so we can at least get started.

13 MS. BRACEY: Can I just have a couple
14 minutes to clean up? I have paper everywhere.

15 CHAIRMAN OBERMAN: I think that is a
16 very fair request. Well, I don't think we need to
17 go off the record. We can -- I mean, if it's a
18 couple of minutes, or do you want a -- do you want
19 a five-minute break?

20 MS. BRACEY: I'll take five minutes.

21 CHAIRMAN OBERMAN: All right. We'll
22 take a five-minute break. We'll come back -- it's

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1 2:46. We'll come backs at 2:51. All right?

2 Thank you.

3 (Recess taken.)

4 CHAIRMAN OBERMAN: All right, I
5 apologize. It turns out we had some stuff that
6 had to be done as well.

7 So, Ms. Amunson, I take it you're
8 calling the next witness?

9 MS. AMUNSON: I am, Mr. Chair.
10 Amtrak's next witness is Jim Blair, and before I
11 call him, Mr. Chair, I just wanted to raise
12 something with the board with respect to
13 scheduling.

14 I believe it's highly unlikely that we
15 will finish Mr. Blair's testimony today and so I
16 wanted to get some clarity on the scope of any
17 instruction to Mr. Blair. He is our client and is
18 someone whom I regularly consult with on this
19 matter as well as other matters. We would of
20 course not talk with him about the scope of his
21 testimony, but given the length of time between
22 now and when the -- the proceeding is scheduled to

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1 commence again, May 9th, it would work a hardship
2 on Amtrak not to be able to -- for Mr. Blair to be
3 completely sequestered from doing anything with
4 respect to the Gulf Coast when that's a part of
5 his regular responsibilities.

6 CHAIRMAN OBERMAN: Well, it may depend
7 on whether cross-examination has begun by the time
8 we finish today. If he's still in the middle of
9 direct testimony, I -- I would in my discretion
10 not bar you from talking to him, given the fact
11 that there is a two- or three-week delay.

12 If he's in the middle of
13 cross-examination at the time, we'll have to put
14 some kind of restrictions on it. But, you know,
15 these are not only private clients but public
16 entities with obligations to perform and I don't
17 think we can shut down the system because of the
18 trial schedule. So I'm glad you raised the point.
19 Let's see where we end up at 5:00 o'clock.

20 MR. DONAHOE: Mr. Chair, if I can get a
21 clarification. I thought what counsel was asking
22 for is if she can have discussions with Mr. Blair

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1 not involving this case in the interim. And
2 obviously we're fine with that.

3 CHAIRMAN OBERMAN: Well, I appreciate
4 that, but it sounded like there may be discussions
5 involving the Gulf Coast system, even if it's not
6 in this case, and that might be a hard line to
7 draw.

8 MR. DONAHOE: Okay.

9 CHAIRMAN OBERMAN: So -- but I
10 appreciate your observation there, Mr. Donahoe,
11 and I think that is a good way to think about it.
12 So let's -- let's see where we are at 5:00
13 o'clock.

14 MS. AMUNSON: Thank you, Mr. Chair.
15 Amtrak calls Jim Blair.
16 (Jim Blair on the witness stand.)

17 CHAIRMAN OBERMAN: Mr. Blair, would you
18 raise your right hand. Do you swear or affirm
19 that the testimony you're about to give in the
20 proceeding -- in this proceeding is the truth, the
21 whole truth and nothing but the truth?

22 THE WITNESS: I do.

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1 CHAIRMAN OBERMAN: Please state your
2 name.

3 THE WITNESS: Jim Blair, B-l-a-i-r.

4 CHAIRMAN OBERMAN: All right. Ms.
5 Amunson, proceed.

6 MS. AMUNSON: Thank you.
7 Whereupon,

8 JIM BLAIR
9 called as a witness by counsel for Amtrak, and
10 after having been first duly sworn, was examined
11 and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. AMUNSON:

14 Q. Good afternoon, Mr. Blair. Can you
15 introduce yourself to the board?

16 A. I'm Jim Blair. I'm the assistant vice
17 president of Host Railroads for Amtrak.

18 Q. Can you tell me a little bit about your
19 educational background?

20 A. I received a Bachelor of Science in
21 business logistics from Penn State University with
22 a concentration in transportation management. And

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1 I received an MBA from St. Joseph's University in
2 Philadelphia.

3 Q. And the MBA was also in transportation
4 management?

5 A. No, it was just a general MBA.

6 Q. And can you tell us a little bit about
7 your work experience?

8 A. So, upon leaving college I worked
9 several years at General Motors in a final
10 assembly plant in Linden, New Jersey, after which
11 I joined Consolidated Rail Corporation, better
12 known as Conrail, and was there for about 12
13 years. While at Conrail I worked in the marketing
14 and sales department and then at strategic
15 planning doing network analysis and merger and
16 acquisition work. When I left Conrail, I joined a
17 management consulting firm also doing railroad
18 work, including merger and acquisition support as
19 well as network -- some network analysis for
20 railroads and worked for other clients, as well.
21 I also worked for a second management
22 consulting firm doing general transportation

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1 consulting, including ports, trucking, a variety
2 of consulting projects within the transportation
3 sector.

4 Q. And --

5 A. And then I joined Amtrak.

6 Q. And prior to joining Amtrak, the
7 clients that you worked for, did those include
8 class one railroads?

9 A. Yes.

10 Q. And then you joined Amtrak in -- when?

11 A. 2008 I joined Amtrak. I joined in the
12 Host Railroad Group and have been in that group
13 ever since. I joined as a principal in the group
14 working in contract matters primarily but also
15 on -- on certain performance issues and was later
16 promoted to a senior director in Host Railroads
17 and most recently as an assistant vice president.

18 Q. And can you tell the board what the
19 Host Railroads Group at Amtrak does?

20 A. So we are the liaison department of the
21 30 railroads that Amtrak operates over around the
22 country. We manage the business relationship with

1 those railroads and the contracts that govern
2 those operations, and we also monitor the
3 performance of those -- of our trains on Host
4 Railroad property.

5 Q. And you submitted a verified statement
6 in this proceeding, correct?

7 A. Yes, I did.

8 Q. Just for the record, that verified
9 statement is attached as Exhibit 2 to Amtrak's
10 reply of December 3rd and designated in this
11 proceeding as Joint Exhibit 32C. And you have a
12 copy of that statement in a binder in front of
13 you, correct?

14 A. Yes, I do.

15 Q. Does your current position involve
16 working with Host Railroads on new or expanded
17 Amtrak service?

18 A. Yes, it does.

19 Q. And in general what are Amtrak's plans
20 for new or expanded service?

21 A. So, in April of 2021, Amtrak announced
22 an Amtrak Connects Its Vision, which included new

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1 or expanded service in 64 different corridors
2 around the country and we are working with states
3 to -- to try and implement that vision in the
4 next -- in the next decade or more.

5 Q. Why is Amtrak trying to grow or expand
6 service?

7 A. Amtrak's network is largely unchanged
8 since our 1971 formation and -- but the -- the
9 demographics and the -- the country have changed
10 and the -- and the country's transportation needs
11 have changed. So Amtrak is looking to expand into
12 markets that we have previously served and markets
13 that we have yet to -- so serve -- to provide
14 service in going forward.

15 Q. And does Amtrak have a congressional
16 mandate to grow and expand service?

17 A. Yes, we do. It's a part of our -- it's
18 a part of the goals that Congress has established
19 for Amtrak.

20 Q. How does the Gulf Coast fit into
21 Amtrak's plans to grow and expand service?

22 A. It's one of the corridors that we're

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1 looking to progress in the near term and we have a
2 lot of public support for that and -- as well as
3 congressional interest in progressing this
4 corridor.

5 Q. Are you familiar with Amtrak's efforts
6 to restore inter-city passenger service to the
7 Gulf Coast over the past several years?

8 A. Yes, I am.

9 Q. And are you familiar with Amtrak's
10 prior use of the corridor to run the Sunset
11 Limited and Gulf Coast Limited?

12 A. Yes. Amtrak previously operated on the
13 corridor between New Orleans and Mobile with two
14 services. Amtrak operated at two different times
15 the Gulf Coast Limited, which was a -- a corridor
16 train that operated just between New Orleans and
17 Mobile, and Amtrak also operated the Sunset
18 Limited, which was the first transcontinental
19 train operating from Los Angeles to Miami over
20 this same corridor.

21 Q. And during the times when the Gulf
22 Coast Limited was running, do you recall what the

1 trip time was for the Gulf Coast Limited as
2 compared to the trip time that's proposed for the
3 Gulf Coast service that we're talking about in
4 this proceeding?

5 A. Yes. It was about ten minutes faster
6 in the -- in its prior incarnation than what we've
7 proposed here.

8 Q. And do you recall about how many
9 freight trains ran on the line when Amtrak was
10 previously operating as compared to today?

11 A. Yes. There was a -- there was a
12 document filed in connection with the Conrail
13 case, of which I was a part, that indicated that
14 about 21 trains were operating on this corridor in
15 1995.

16 Q. And do you recall the testimony
17 about -- about how many trains are operating on
18 this corridor now?

19 A. Yes, I believe it's about half of that.

20 Q. And when Amtrak was previously
21 operating on this corridor, did Amtrak work with
22 CSX at that time to make any infrastructure

1 improvements along the corridor?

2 A. Yes. In connection with the -- the
3 Sunset Limited extension of the train from New
4 Orleans to Miami, Amtrak invested about \$5M in the
5 corridor.

6 Q. And who owns and uses those
7 improvements today?

8 A. CSX does.

9 Q. And why was the service stopped?

10 A. In 2005 Hurricane Katrina washed out a
11 significant part of the right-of-way. Amtrak
12 suspended service and we have not returned since.

13 Q. When did Amtrak first try to restore
14 service?

15 A. I have communications in our file that
16 we've reached -- we've reached out to CSX in 2006
17 to engage to restart the service.

18 Q. Did Congress eventually get involved in
19 efforts to restore the service?

20 A. Yes. In 2015 the Fast Act required the
21 Secretary of Transportation and ultimately FRA to
22 form the Gulf Coast Working Group to prepare a

1 plan for the restoration of service to the Gulf
2 Coast.

3 Q. And who were the key members of the
4 Gulf Coast Working Group?

5 A. FRA was the lead, Amtrak was a member,
6 the Southern Rail Commission, which represented
7 the three participating states: Mississippi,
8 Louisiana and Alabama. And there were a number of
9 metropolitan planning organizations and cities
10 that were also involved in the Gulf Coast Working
11 Group process.

12 Q. Were the parties who are in this
13 proceeding today members of the Gulf Coast Working
14 Group?

15 A. CSX was. I don't know to what degree
16 NS was involved.

17 Q. What did the Gulf Coast Working Group
18 do?

19 A. The Gulf Coast Working Group developed
20 a plan for the restoration of service to the Gulf
21 Coast, working with the parties that I just
22 identified and ultimately presented a report to

1 Congress.

2 They also established a demonstration
3 train that ran across the corridor to -- to help
4 generate local interest in the operation and that
5 was -- that was a very successful operation.

6 Q. And you mentioned the Gulf Coast
7 Working Group before. I am - I am going to ask
8 you to take a look at that report, which is
9 designated as Joint Exhibit 32F, and it is
10 attached as I believe appendix C to your
11 statement.

12 And I'm going to ask, first before I
13 direct you there, what -- what did the report
14 recommend as its --

15 CHAIRMAN OBERMAN: Ms. Amunson, is this
16 the one with the cover sheet that says "Final
17 Report July 2017"?

18 MS. AMUNSON: I believe so. Let me --

19 THE WITNESS: Yes.

20 CHAIRMAN OBERMAN: I want to make sure
21 we're looking at the same document. I have a --

22 MS. AMUNSON: Yes, that's correct.

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1 CHAIRMAN OBERMAN: Okay, thank you.

2 MS. AMUNSON: Sure.

3 BY MS. AMUNSON:

4 Q. And what did the report recommend as
5 its preferred option for restoring the Gulf Coast
6 service?

7 A. It recommended to the restart of a
8 daily long-distance service from New Orleans to
9 Orlando with a -- a corridor service from New
10 Orleans to Mobile to follow shortly thereafter.

11 Q. And I'm going to ask you to turn to
12 page ES3 of that report. So executive summary
13 three.

14 A. Okay, I'm there.

15 Q. And do you see the table on that page
16 there?

17 A. Yes.

18 Q. Can you just explain what we're looking
19 at there, specifically with the -- the New Orleans
20 to Mobile corridor?

21 A. So the table presents a capital cost
22 summary for FRA's identified improvements for the

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1 restoration of the Gulf Coast service. The New
2 Orleans to Mobile lists two columns: one is listed
3 as the minimum needed for passenger rail service,
4 which totals \$5.376M. The second lists service
5 level for ongoing and operations, which lists
6 \$94,881,000.

7 Q. Thank you.

8 MS. AMUNSON: Mr. Peterson, you can
9 take that back down.

10 BY MS. AMUNSON:

11 Q. Do you know what that recommendation
12 was based on?

13 A. It was based on FRA's evaluation of
14 the corridor for what was needed to start
15 the service versus what was needed to improve the
16 conditions on the route over time.

17 Q. And -- and what did FRA do to develop
18 that recommendation?

19 A. FRA reviewed data from CSX, including
20 string lines, track charts, aerial photos. I
21 believe there was some on-the-ground survey as
22 well and that was the basis upon which they

1 developed a series of projects that were
2 identified in the appendix to this document that
3 details specifically what investments were -- they
4 were recommending.

5 Q. And did CSX concur with the
6 recommendation that it would take about \$5.3M as
7 the minimum needed to restore service and
8 approximately \$95M needed for operations over
9 time?

10 A. No, they did not.

11 Q. Did CSX come up with its own
12 recommendation about what would be required to
13 restart passenger service on the Gulf Coast
14 corridor?

15 A. Yes. CSX conducted a -- a study along
16 with HDR, an RTC modeling study is my
17 understanding, that identified \$1.1B in capital
18 investments for the restart of service between New
19 Orleans -- just New Orleans and Mobile.

20 Q. And -- and I do just want to clarify
21 for a moment. That was 1.1B between New Orleans
22 and Mobile. We've also heard a \$2.3B number

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1 referred to in these proceedings.

2 Do you recall what that \$2.3B was?

3 A. Yes. My understanding was that 2.3B
4 represented the operation of the long-distance
5 train all the way from New Orleans to Orlando.

6 Q. And after CSX said that it would
7 require at least \$1.1B to restore service between
8 New Orleans and Mobile, did CSX express a
9 willingness to continue to work with members of
10 the Gulf Coast Working Group?

11 A. No. I -- I had heard about that from
12 coworkers but it's also reported in the Gulf Coast
13 Working Group report that they did not want to
14 continue to work with the Gulf Coast Working
15 Group.

16 Q. And did Amtrak nonetheless attempt to
17 continue to engage with CSX on the restoration of
18 service?

19 A. Yes, we did. We still feel this is a
20 corridor that has high potential.

21 Q. And do you recall when Amtrak kind of
22 next sort of reached out and tried to -- to get

1 the restoration of service underway?

2 A. My involvement in that began in -- in
3 2018 with the sending of a letter from our Amtrak
4 CEO, Richard Anderson, to CSX CEO Jim Foot
5 requesting that the parties reengage to -- to
6 progress the Gulf Coast service.

7 Q. And did that outreach eventually result
8 in any agreement about RTC modeling?

9 A. Yes, it did.

10 Q. And before I -- I get into the asking
11 you about that RTC study, just in general, does
12 Amtrak use RTC modeling itself?

13 A. Yes, we do. We have a -- a small group
14 within Amtrak that utilizes RTC modeling for the
15 Northeast Corridor, which is a very high-density
16 corridor operation, and we utilize that model in
17 working with state and commuter agencies in
18 developing new service or making modifications to
19 existing service where those modifications can't
20 be done with models other than RTC.

21 Q. And when Amtrak uses RTC modeling, does
22 it model operational changes?

1 A. Yes, it -- it does. In some
2 circumstances, my understanding, we typically do
3 that in a very transparent fashion. We share
4 data, we share inputs, we share actual files, the
5 RTC files and, you know, try to work out the
6 issues in the high-density corridor using the RTC
7 model.

8 Our -- our thought is fundamentally
9 that the best solution will come about from all
10 the parties providing input to -- to the modeling
11 effort.

12 Q. And returning now to the 2020 Gulf
13 Coast RTC study, was that open and transparent in
14 the way that Amtrak normally does RTC modeling?

15 A. No, it was not.

16 Q. Can you describe a little bit about
17 your -- about your answer there, about why you
18 feel it was not open and transparent in the way
19 that Amtrak normally conducts RTC modeling?

20 A. Well, we had great difficulty getting
21 information from the railroads to validate the --
22 the data that we -- to validate the base case and

1 difficulty getting information to validate the
2 no-build case. In fact it was a very contentious
3 negotiation just to get to the agreements and the
4 discussions were contentious all through the
5 process.

6 Q. And did you ever raise concerns with
7 CSX and NS about a lack of transparency?

8 A. Yes. On two different occasions I had
9 written letters to NS and CSX and it -- it was a
10 regular topic on our weekly phone calls.

11 Q. And just what type of data were you
12 looking for?

13 A. We were looking for data for -- to --
14 to validate the base case, looking for data that
15 would give us another -- a better understanding of
16 their operations on the line, what sorts of
17 service criteria that they might have, did they
18 have premium service, customers that needed to be
19 served, a better understanding of local operations
20 that might be on the line, the -- the -- and a
21 better understanding of the infrastructure, the
22 fundamental infrastructure, what the tracks --

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1 what the condition of the tracks were, the speeds
2 at various locations along the way, the turnout
3 radius, various things that would help us get an
4 understanding for the corridor and how Amtrak's
5 operation could dovetail into their operations.

6 Q. So things like track charts and
7 signals, things like we've seen CSX and NS
8 witnesses talk about in this proceeding, right?

9 A. Yes.

10 Q. And how did they respond when you asked
11 for this data?

12 A. Initially we were asked for a basis for
13 why we wanted it and having supplied that several
14 times they ultimately said no.

15 CHAIRMAN OBERMAN: Could we -- could we
16 put a time frame on when these requests, this back
17 and forth that Mr. Blair is just talking about?

18 THE WITNESS: Sure. Do you want me --
19 would you like me to do that?

20 MS. AMUNSON: Sure.

21 THE WITNESS: So the -- the study
22 started in January of 2020. We had -- I -- I

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1 believe I -- I believe I wrote my first letter in
2 April of 2020 to request more transparency for the
3 analysis going forward. That was during the
4 building of the base case, which would have been
5 the 2019 era traffic flows. The -- the second
6 communication I had with the railroads was in
7 August of 2020 and that was where we had -- we had
8 detailed for them at their request what
9 information specifically we wanted and we provided
10 that in a multipage letter, which I think is
11 attached to my verified statement, and we received
12 a response that we would not be getting that
13 information.

14 CHAIRMAN OBERMAN: Mr. Blair -- if you
15 don't mind, Ms. Amunson, I just think it would
16 help.

17 At this point in time, I think you said
18 a few minutes ago that Amtrak has internal people
19 who work with RTC studies.

20 THE WITNESS: Yes.

21 CHAIRMAN OBERMAN: Is -- were you
22 working with them in terms of knowing what data

1 you wanted?

2 THE WITNESS: Yes.

3 CHAIRMAN OBERMAN: All right. So you
4 were not working with Mr. Crowley or an outside
5 firm at that point?

6 THE WITNESS: No. The - the outside
7 firm was engaged -- we engaged with HDR to run the
8 model but we did use our in-house experts on what
9 data would be most appropriate to validate
10 information that the consultant was developing.

11 CHAIRMAN OBERMAN: Okay, thank you.

12 THE WITNESS: Sure.

13 BY MS. AMUNSON:

14 Q. Mr. Blair, what reason did CSX and NS
15 provide you for not giving the data to Amtrak?

16 A. They indicated that it was commercially
17 sensitive data and security sensitive data.

18 Q. And did Amtrak offer to enter into
19 other agreements to protect the confidentiality of
20 that data?

21 A. Yes. We ventured into many
22 nondisclosure agreements, even with NS and CSX on

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1 data exchange, but we were not allowed to see the
2 data even with that offer.

3 Q. And -- so you said they also said it
4 was commercially sensitive. Is that right?

5 A. Yes.

6 Q. Have you since seen some emails from
7 CSX and NS that have led you to believe there may
8 have been different reasons they didn't want to
9 provide their data to Amtrak?

10 A. Yes, I have.

11 Q. And I'd -- I'd like to avoid going into
12 confidential session, but just generally, those
13 include the emails that we have discussed in this
14 proceeding in the confidential sessions with the
15 witnesses from CSX and NS?

16 A. Yes.

17 Q. And just in general terms, after
18 viewing those emails, do you -- what do you now
19 believe is the reason that CSX and NS would not
20 provide their data to Amtrak?

21 A. I believe they were concerned that
22 Amtrak and/or FRA would have access to the data

1 that would undermine their objective of securing
2 specific infrastructure and perhaps unreasonable
3 infrastructure in the corridor.

4 Q. And this 2020 study, was it governed by
5 any agreements?

6 A. Yes, there were three interconnected
7 agreements that governed the 2020 study.

8 Q. Can you just say what those agreements
9 were.

10 A. We had the RTC study agreement, which
11 was a -- a -- a -- it covered the -- the scope of
12 the study. We had a data sharing agreement that
13 governed the confidentiality of certain data and
14 also dealt with some of the process of data
15 exchange and commitments from the parties to share
16 data, and we had the scope of work with the
17 third-party consultant, HDR, that governed
18 specifically what the consultant was being tasked
19 to do in the RTC study process.

20 MR. WIMBISH: Excuse me, excuse me, if
21 I may. I'm sorry to interrupt but Ms. Amunson I'm
22 not seeing you on the screen. I don't know if

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1 anybody else is having the same issue.

2 MS. AMUNSON: Oh. Apologies. Well,
3 let me try to see if I can address that issue.

4 CHAIRMAN OBERMAN: I don't -- I don't
5 think this is your fault, Ms. Amunson, so. You --
6 you may have disappeared into Narnia.

7 MS. AMUNSON: We're calling our --
8 our -- our tech people are on the way. I'm not
9 sure --

10 CHAIRMAN OBERMAN: Well, I'll tell you
11 what, it is 3:26. We have to break at 3:30 as it
12 is, so we'll do that.

13 I just want to make an observation on
14 the record. We've now had testimony unobjected to
15 about the emails that were discussed in the
16 confidential session. I am still quite concerned
17 about whether those -- the public should
18 understand what's going on in this case. So I'm
19 going to ask counsel, I'm not going to decide it
20 today, but since obviously we're not going to
21 finish with Mr. Blair before May 9th, I'm going to
22 really encourage all the parties to get their

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1 heads together. I -- I think these records should
2 be released to the public. I know there was a
3 pending argument. I won't get into it. But while
4 it's fresh in my mind, I just think this is a
5 matter of significant public interest, this entire
6 case and everything that should be in the public
7 view should be there. So I'll just encourage you
8 all to work this out and if not I think the board
9 will be prepared to make some rulings on it by the
10 time we come back on May 9th.

11 So with that, it is now 3:28. We will
12 reconvene at 4:00 Eastern, and we'll go for an
13 hour. We'll get as far as we can. All right?

14 (Whereupon a recess was taken from 3:28
15 p.m. to 4:04 p.m.)

16 CHAIRMAN OBERMAN: All right, Mr.
17 Blair, you remain sworn. You understand?

18 THE WITNESS: Yes, sir.

19 CHAIRMAN OBERMAN: All right. Ms.
20 Amunson -- Jessie, go ahead.

21 MS. AMUNSON: Thank you.

22 BY MS. AMUNSON:

1 Q. Mr. Blair, where we left off, I believe
2 you were telling us about the -- the agreements
3 that governed the 2020 RTC study.

4 What did Amtrak hope to accomplish with
5 those agreements?

6 A. We had hoped to -- to work through the
7 process that was basically established in the Gulf
8 Coast Working Group to identify the specific
9 infrastructure projects that might be needed in
10 the future for future improvements in the -- in
11 the corridor and come to agreement with the
12 parties on a near-term start of service.

13 Q. And was it -- how was the 2020 RTC
14 study funded?

15 A. The -- the study was funded primarily
16 from FRA, although Amtrak expected to be
17 supplementing that amount for certain of the
18 scenarios that Amtrak may want in excess of the
19 ones that -- that FRA had authorized.

20 Q. And did FRA also want the same sort of
21 data transparency that Amtrak was asking for as
22 part of the 2020 study?

1 A. Yes, they did.

2 Q. And why?

3 A. FRA had indicated that, without the
4 transparency, the data was not usable for purposes
5 of discretionary grant funding and that
6 fundamentally it really wouldn't allow them to
7 validate whether or not the model was accurate in
8 projecting both its current or future cases.

9 Q. And were you here for Mr. Hunt's
10 testimony?

11 A. Yes, I was.

12 Q. And did you hear Mr. Hunt suggest that
13 Amtrak got itself "over its skis" with respect to
14 different data requirements in its funding
15 agreement with the FRA?

16 A. Yes, I did hear that.

17 Q. And how did you react to that
18 statement?

19 A. Well, I would disagree with Mr. Hunt.
20 Both Amtrak and FRA knew that there were
21 differences in the data that Amtrak was -- was
22 seeking and what FRA had requested in -- in the

1 grant agreement and that's partly why the Amtrak
2 supplemental funding was set up, so that we could
3 address any of the discrepancies that might have
4 existed there.

5 Ultimately that didn't turn out to be a
6 problem because, by the time -- the amount of the
7 delay that we experienced in the study and the
8 lack of transparency, we didn't need to continue
9 the study absent FRA funding. We both agreed that
10 the study was not worth progressing.

11 Q. And I believe you testified that HDR
12 was the consultant who conducted the 2020 study.
13 Is that right?

14 A. That's correct.

15 Q. And you may have heard CSX and NS
16 witnesses refer to HDR as "Amtrak's consultant".
17 Did you consider HDR to be Amtrak's consultant
18 with respect to the 2020 study?

19 A. Well HDR was under contract to Amtrak
20 but HDR was selected ultimately by CSX. HDR had
21 access to CSX's data for the infrastructure and
22 the -- the prior data from the 2015 study and CSX

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1 indicated they would not be willing to share that
2 with a consultant other than HDR. So we conceded
3 to utilize HDR for the 2020 study.

4 Q. And what sort of procurement did you
5 have to use in order to -- to engage HDR then?

6 A. Under the federal procurement
7 regulations, we had to justify that as a sole
8 source procurement.

9 Q. What was the duration of the RTC study
10 agreement and the data-sharing agreement that you
11 signed in January 2020?

12 A. It was set up as a one-year agreement
13 for a study that was expected to take six months.

14 Q. And did the study finish in six months?

15 A. No.

16 Q. Did it finish in a year?

17 A. No, it didn't. In fact, when the
18 agreement expired, we were only two -- we had only
19 completed two of the six tasks in the original
20 scope of work.

21 Q. How long did you expect it would take
22 to complete the study?

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1 A. We had conversations with HDR in
2 December and January and expected that the study
3 could last another year.

4 Q. Were you here for the opening
5 statements?

6 A. Yes, I was.

7 Q. And did you hear Mr. Atkins on behalf
8 of CSX open the proceedings by saying that "The
9 process of adding passenger service has two key
10 ingredients: the first is a robust study to
11 examine the impacts on existing freight service
12 and the second is collaboration"?

13 What was your reaction to that
14 statement?

15 A. I thought that was exactly the opposite
16 of what I felt needed to be done and that seemed
17 to be the model that was adopted in the 2020
18 study, where we didn't have the opportunity to
19 collaborate up front, to work on operational
20 solutions or schedule adjustments or things that
21 might minimize the interference to both parties.
22 Instead, we had a model that was done largely

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1 without collaboration and then we were asked to
2 agree to its -- to its -- to its construct.

3 Q. And did you hear Mr. Hunt testify that
4 there had have been other projects involving
5 Amtrak that use RTC modeling? I believe he
6 mentioned the Piedmont Project, the Roanoke
7 Project and the Norfolk Project.

8 Was Amtrak actually a party to the RTC
9 modeling that was conducted in those cases?

10 A. No, we were not. We were not invited
11 to participate in the RTC modeling.

12 Q. So you said that the term of the
13 January 2020 RTC study was for one year. When it
14 expired in January 2021, what happened?

15 A. I notified the railroads on our weekly
16 call that we were not -- we would not extend -- we
17 were not intending to extend the agreement, and
18 just a few days later I sent them a letter asking
19 that they consent to the start of the Gulf Coast
20 service.

21 Q. And when you sent that letter, for whom
22 did Amtrak propose to operate the Gulf Coast

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1 service?

2 A. Proposed to operate the service on
3 behalf of the Southern Rail Commission, which is a
4 multi-state agency.

5 Q. And what states are involved with
6 the -- it's -- it's also been called here the SRC,
7 right?

8 A. SRC.

9 Q. And what states are involved in the
10 SRC?

11 A. Mississippi, Louisiana and Alabama.

12 Q. And are you aware that in this
13 proceeding some officials from Alabama have
14 expressed some reservations about restoration of
15 the Gulf Coast service?

16 A. Yes, I am aware of that.

17 Q. And what is your reaction to the
18 reservations that have been expressed?

19 A. Well, I think we're -- you know, Amtrak
20 is disappointed with the reservation they have
21 expressed. We are hopeful that we'll be able to
22 resolve those issues. But we -- we are comforted

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1 by the fact that there was a lot of individual
2 support letters filed on behalf of Alabama
3 citizens for the service and we think there's a
4 significant value proposition the State of Alabama
5 and for the City of Mobile in particular with the
6 reintroduction of Amtrak service between New
7 Orleans and Mobile.

8 Q. So you testified I think that when the
9 study expired you sent this letter in January of
10 2021 formally requesting an answer by a date
11 certain to upgrade the service, correct?

12 A. Yes. We asked for a response by March
13 15th.

14 Q. And in that letter did you propose
15 payments for the Gulf Coast service that you were
16 seeking to restore?

17 A. Yes, we did. The individual operating
18 agreements with both CSX and NS provide that when
19 we request service we should -- we are to propose
20 specific payment in accordance with that
21 service modification.

22 Q. And just in general, how do your

1 operating agreements with CSX and NS or your
2 operating agreements in general treat Amtrak's
3 payments to Host Railroads for infrastructure
4 costs versus payments for operating service?

5 A. The operating agreements by their
6 nature and by their name fundamentally deal with
7 the regular operations of Amtrak trains on Host
8 Railroad property. When we do capital projects,
9 we typically do them outside of the operating
10 agreement through a -- through a construction
11 agreement or through an authorization that is
12 processed.

13 Q. And the letter that Amtrak sent in
14 January 2021, did that propose a schedule for the
15 Gulf Coast service?

16 A. Yes, it did.

17 Q. And how was that schedule determined?

18 A. So generally schedules start with a --
19 a market assessment, and in the case of the Gulf
20 Coast we had the historic pattern of -- of
21 operations. We looking to wanting -- looking to
22 establish a service that arrived in the respective

1 cities in the morning and would return in the
2 evening, so people could spend an entire day in
3 each of the cities.

4 We had historical operations of the
5 trains that we could work from to -- to determine
6 what an appropriate schedule was on the same
7 corridor. We had ride studies that had been
8 completed in the 1990s that also gave us
9 validation. And once we had a straw man from
10 that, we worked with HDR to try and slot the train
11 into the freight activity in the corridor by the
12 use of a heat map.

13 Q. Can you explain a little bit about
14 these heat maps?

15 A. I believe Hannah Rosse explained that a
16 little bit. It -- it was a picture that
17 represented by color what the level of train
18 activity would be. So it ranged from blues cold,
19 meaning no activity, to reds or whites, meaning
20 higher levels of activity. It was really a
21 substitute for string lines, which was a much more
22 common tool for us to use. And we overlaid our

1 schedule on the heat map and then adjusted it to
2 see if we could get out of the hot zones and
3 into the colder zones so we could minimize the
4 amount of impact we might have on the freight
5 operations.

6 We took six efforts, six times to -- to
7 analyze that schedule and finally decided on a
8 schedule that we thought could be operated
9 effectively in the corridor.

10 Q. Are you aware that the statute that is
11 at issue here requires that the board consider
12 when deciding whether to order service, the
13 statutory goal of Amtrak to implement schedules
14 that attain a systemwide average speed of at least
15 60 miles an hour that can be adhered to with a
16 high degree of reliability and passenger comfort?

17 A. Yes, I am.

18 Q. Will the Gulf Coast service be
19 compatible with that statutory goal?

20 A. We believe it will. The maximum
21 authorized speeds on the line are 79 miles an hour
22 for passenger trains and so that gives us a good

1 opportunity to -- to try and meet that standard.

2 Q. What is Amtrak's basis for believing
3 that it will be able to achieve the 80% on-time
4 performance standard for the schedule that it has
5 proposed?

6 A. So, first of all, we had some data
7 on -- on our prior operations on the corridor and
8 second we have a number of corridors that are
9 similar in nature in terms of length and, you
10 know, single track with passing siding structures.
11 So we looked at those two data -- two sets of
12 data. We also in our work with HDR had them
13 assess what the performance of the train would be
14 and it performed well in their analysis. I believe
15 even the respondents have identified that the trains
16 would perform well in their analysis.

17 Q. There's been a -- a lot of discussion
18 in these proceedings about the 95% on-time
19 performance metric that was in the -- the 2021
20 Banks-Guthrie and Dingler RTC study.

21 You're aware of what I'm referring to
22 there?

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1 A. Yes.

2 Q. And so we saw earlier today I believe a
3 chart that showed that, in the 2019 base case,
4 which is the -- just the existing infrastructure
5 with -- with just passenger service added, that
6 three out of four Amtrak trains were achieving
7 on-time performance in the high -- 95% or over.

8 Do you recall that?

9 A. I recall the chart.

10 Q. And one was achieving almost 100%
11 on-time performance in their model, correct?

12 A. I -- I don't recall the specific number
13 but I do recall that it was high OTP performance.

14 Q. Are you aware of any CSX or NS line
15 that achieves on-time performance numbers like
16 those that were in that chart?

17 A. Not currently, no.

18 Q. And what is the -- what would be the
19 consequence of modeling preference for Amtrak in
20 order to achieve such high on-time performance?

21 A. Well I'm not a -- a modeler, but it
22 would seem to inflate the amount of infrastructure

1 that might be needed or the amount of delay that
2 might be occurred in connection with the operation
3 of the Amtrak trains.

4 Q. Are you aware that the Banks-Guthrie
5 and Dingle RTC study modeled things such that
6 Amtrak would only use a siding when meeting
7 another Amtrak train?

8 A. Yes.

9 Q. Is it Amtrak's position that it can
10 never take a siding when it meets a freight train?

11 A. No. In fact, often that allows us to
12 make better time across a route. Obviously we --
13 on a single track railroad, we would have to meet
14 trains en route and oftentimes a siding can be
15 used for a meet or an overtake that would be an
16 efficient move for a passenger train.

17 Q. And what is the consequence of modeling
18 such that Amtrak can never use a siding when it
19 meets a freight train?

20 MR. DONAHOE: Objection, Chair, this is
21 beyond the scope of his expertise.

22 MS. AMUNSON: Mr. Chair --

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1 CHAIRMAN OBERMAN: Let me just hear the
2 question again, Jessie.

3 MS. AMUNSON: Sure.

4 BY MS. AMUNSON:

5 Q. What is your understanding of the
6 consequence of modeling such that Amtrak can never
7 use a siding when it meets a freight train?

8 CHAIRMAN OBERMAN: He can answer to the
9 extent he has an understanding.

10 THE WITNESS: My belief is that it
11 would cause the delays to be overstated and -- and
12 potentially the infrastructure to also be
13 overstated.

14 BY MS. AMUNSON:

15 Q. Mr. Blair, we -- you heard Mr.
16 Dingler's testimony, correct?

17 A. Yes.

18 Q. And Mr. Dingler said a -- a number of
19 times that he could just rerun the model to change
20 various assumptions.

21 What is Amtrak's view of the utility of
22 rerunning the model that's been presented in this

1 case?

2 A. Well, I guess Amtrak is not sure or
3 certain yet that we can even validate the base
4 case upon which the model is built. I think these
5 other concerns that were raised in Mr. Crowley's
6 testimony today are also concerning and we're also
7 concerned about the 20-year perspective on
8 infrastructure, that infrastructure would be built
9 on the basis of a -- of a 20-year forecast.

10 I mean, I -- I knew when my daughter
11 was born that she would need a car in 20 years but
12 I didn't buy it then.

13 Q. And if we had to rerun the RTC model
14 again, how many RTC models would we be up to for
15 this service?

16 A. Well, I think this would be the third.
17 I think this is probably the most RTC model route
18 we have ever encountered.

19 Q. Are you aware that --

20 A. This would be the report.

21 Q. The report. That's right. That's
22 right. In addition to the FRA study, as well,

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1 right?

2 A. Yes.

3 Q. You're aware that CSX and NS have
4 claimed that the Gulf Coast corridor is unique,
5 right?

6 A. Yes.

7 Q. And one of the bases on which they have
8 made that claim is that there are seven movable
9 bridges along the -- the portion of the route that
10 Amtrak would travel.

11 Does Amtrak travel over other corridors
12 with movable bridges?

13 A. Yes, in fact even higher density
14 corridors with movable bridges, such as the
15 Northeast Corridor.

16 Q. And another reason that they say that
17 the Gulf Coast corridor is unique is that it is
18 primarily single track.

19 Does Amtrak travel over other routes
20 that are primarily single track?

21 A. Yes. I think I cited that in my
22 verified statement as well. Most of Amtrak's

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1 operations off of the Northeast Corridor are on
2 single track.

3 Q. They've also said it's unique because
4 there are 160 grade crossings.

5 Does Amtrak travel over other routes
6 that have comparable numbers of grade crossings?

7 A. I haven't done the counting myself but
8 there are a number of corridors where we have a
9 high percentage or a high incidence of -- of grade
10 crossings and there are other corridors -- I think
11 I cited one in my verified statement -- that has
12 more grade crossings in a shorter distance than
13 the Gulf Coast corridor.

14 Q. They've also said that this is unique
15 in that there are unusually high freight demands
16 along this corridor.

17 In Amtrak's experience operating over
18 other mixed-use corridors, is this a line that has
19 unusually high freight demands?

20 A. I wouldn't consider it to be so. I
21 might think of the Southwest Chief, which
22 navigates a hundred BN Santa Fe freight trains a

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1 day, as being a higher density corridor.

2 Q. They have also said that the corridor
3 is unique because the sidings are too short.

4 Are the sidings too short for an Amtrak
5 train?

6 A. No.

7 Q. For whom are the sidings too short?

8 A. For the size of trains that they're
9 operating today, in some circumstances.

10 Q. And they have said that the corridor is
11 unique because there are some busy ports.

12 Are there other places Amtrak runs
13 where there are busy ports?

14 A. Yes. I could think of Seattle, Tacoma,
15 Oakland, on the east coast Baltimore, Wilmington,
16 Norfolk, as places where we are -- have
17 operations around large port areas -- Newport
18 News.

19 Q. And --

20 CHAIRMAN OBERMAN: Could I just
21 intervene here just a minute.

22 Are those -- any of those ports ones

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1 where there's a setup to the Port of Mobile were
2 there's a short line or a Port operated train that
3 actually has to use the main line of the class
4 one? Do any of those ports have a similar kind of
5 setup?

6 THE WITNESS: Nothing comes to mind
7 exactly like that. We do have a Port short line
8 operation, such as in Baltimore, with Canton
9 Railroad. There are also Port operations with
10 short lines in other areas. But I -- I -- I don't
11 know that there is one identical to the
12 circumstance of Mobile.

13 CHAIRMAN OBERMAN: Well are there --
14 are there ones where the Amtrak trains run on the
15 same tracks as the short line serves the Port, for
16 any length of time?

17 THE WITNESS: I don't know that I can
18 think of one off the top of my head, sir.

19 CHAIRMAN OBERMAN: All right. Thank
20 you.

21 BY MS. AMUNSON:

22 Q. Mr. Blair, they've said -- CSX and NS

1 have said that the Gulf Coast corridor is unique
2 because there's no other route over which Amtrak
3 travels that has all of these things that I've
4 just gone through with you in combination.

5 What is your reaction to that
6 statement?

7 A. Well I -- I -- I think perhaps it's --
8 it's unique, like a snowflake, in the sense that,
9 you know, it -- it has -- it does have certain
10 elements that we don't have elsewhere. I don't have
11 train that operates through Bay St. Louis.
12 But I think that fundamentally, you know, Amtrak's
13 approached each corridor, uses the tools that we
14 have when the train runs, what size the train is
15 and how much recovery time is in the schedule to
16 try and accommodate whatever circumstances are
17 presented to us.

18 Q. In Mr. Hunt's testimony he compared the
19 New Orleans terminal to -- to Chicago. How many
20 Amtrak trains currently use the New Orleans
21 terminal?

22 A. There's five trains daily.

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1 Q. And if the Gulf Coast service were
2 added, how many Amtrak trains would be using the
3 New Orleans terminal daily?

4 A. Nine trains, though less than ten.

5 Q. And how many Amtrak trains are in and
6 out of Chicago every day?

7 A. Fifty trains daily.

8 Q. And how many of those run on NS and CSX
9 lines?

10 A. I believe there are 16 that run on NS
11 and CSX lines out of Chicago.

12 Q. Did you also hear Mr. Hunt say that on
13 the back belt they have to shut down their
14 operations for 45 minutes to an hour prior to
15 Amtrak arrival to ensure on-time performance for
16 the Crescent?

17 A. Yes, I did hear that, but I don't think
18 I had heard that before.

19 Q. Is it Amtrak's experience that the back
20 belt is shut down for an hour every time Amtrak
21 comes into the back belt?

22 A. I would have expected, were that the

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1 case, that we would not experience significant
2 delays on the back belt, so I did check that out
3 and over the past five years we've experienced
4 about 155 hours -- hours of delay in that route
5 and then over in -- in -- in the last month we had
6 three trains that experienced more than 40 minutes
7 of delay on that route each --

8 MR. DONAHOE: Objection, move to
9 strike. This is beyond his verified statement.

10 CHAIRMAN OBERMAN: I'm going to let it
11 stand. I think the board has a -- I would like to
12 know this.

13 I'd actually have a follow-up question,
14 Mr. Blair. Are these delays for the entire route
15 of the Crescent all the way to -- I've forgotten
16 where it goes to -- Virginia?

17 THE WITNESS: No. This is just over
18 the -- the segment that includes the back belt to
19 the next station.

20 CHAIRMAN OBERMAN: I see. And the next
21 station is --

22 THE WITNESS: Slidell.

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1 CHAIRMAN OBERMAN: Thank you.

2

3 BY MS. AMUNSON:

4 Q. Mr. Blair, I'd like to -- to talk to
5 you a little bit about -- about Amtrak's position
6 here. What is Amtrak's position on the need to
7 construct infrastructure prior to starting the
8 Gulf Coast service?

9 A. We really are following the -- the
10 structure of the Gulf Coast Working Group Report
11 in that the only infrastructure that is required
12 for the start of service is that which is
13 associated with the passenger facilities and the
14 layover track for the train in Mobile.

15 Q. If the board were to determine that all
16 14 projects -- well, actually I'm not sure whether
17 it's 14 or 15 now, but, all of the projects that
18 CSX and NS say are necessary to mitigate -- to
19 mitigate Amtrak impacts -- impact must be
20 constructed before the Gulf Coast service can
21 start, how long would that take?

22 MR. DONAHOE: Objection. That's beyond

1 his expertise. He's not an engineer.

2 CHAIRMAN OBERMAN: He has -- if he
3 knows. You can cross-examine him on his
4 foundation. I'll let it --

5 THE WITNESS: I would expect it would
6 take several years to construct.

7 BY MS. AMUNSON:

8 Q. And to what degree is the funding for
9 infrastructure improvements contingent on -- on
10 receiving funds from FRA?

11 A. Do you mean the 14 or 15 projects or
12 just any -- well let me -- I can answer, with
13 respect to the station improvements, those
14 projects are already underway and Amtrak is
15 funding those improvements.

16 With the extent of any future
17 infrastructure that might be needed, Amtrak has
18 received additional monies through the IIJA Law
19 and there are also significant monies available
20 through FRA's discretionary grant, I believe about
21 \$28B available through the discretionary -- or
22 through -- through Amtrak's funds and through the

1 discretionary grant programs available through
2 IIJA.

3 Q. What is the \$66M grant that -- that
4 Amtrak has referred to in its -- in its opinion, I
5 believe it's in your verified statement as well?

6 A. Yes. The SRC, so the rail commission,
7 applies for a KRISI grant, which is a -- a
8 discretionary grant program administered by FRA,
9 and we're awarded a \$33M grant which had \$33M of
10 match monies. Some of those monies came from
11 Amtrak. And those were for high priority projects
12 selected from among the projects supplied by FRA in the
13 Gulf Coast Working Group report.

14 Q. Is -- is one of those projects the
15 layover track at Mobile?

16 A. Yes, it is.

17 Q. And what is the current plan for a
18 layover track.

19 A. Amtrak would like to construct a
20 layover facility adjacent to the current platform
21 in Mobile. That seems to have -- have come up as
22 the common theme through the testimonies here --

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1 through the hearing and we were trying to work
2 with the city who controls that property to -- to
3 do that.

4 Q. And does Amtrak -- if that cannot be
5 constructed in a timely fashion, does Amtrak have
6 a -- an alternative plan for a layover track?

7 A. If that cannot be constructed in a
8 timely fashion, we would like to reconstruct the
9 track that Amtrak used to lay over at in Choctaw
10 Yard where the Gulf Coast Limited used to lay
11 over. It was called the Amtrak track. And we're
12 looking at any other alternatives that we can find
13 in the meantime.

14 CHAIRMAN OBERMAN: Could I, Jessie, ask
15 here...

16 What -- what is a timely fashion that
17 you're referring to in constructing a station
18 track? What do you mean by "timely."

19 THE WITNESS: We hope that we could
20 have the construction in a number of months if --
21 if we were able to secure the property. But I --
22 I don't know what the -- the construction would

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1 be. Our engineers have only estimated -- you
2 know, based on their review they've only estimated
3 what could be done but I don't have the -- the
4 specific timing.

5 CHAIRMAN OBERMAN: So but is it your
6 understanding that construction time would take a
7 few months? Is that the range?

8 THE WITNESS: That -- that is one of
9 the discussions that they had about -- based on
10 the type of construction that they had proposed
11 that could be done. I don't know that they have
12 information, enough information on what condition
13 they -- on what conditions they might find on the
14 railroad. They did conduct a survey in December
15 of the -- the line and did some preliminary
16 drawings on that basis, but I -- I don't think we
17 have been back to evaluate the construction --
18 the -- you know, site further for construction.

19 CHAIRMAN OBERMAN: There was some
20 reference by an earlier witness that the platform
21 in the area where the Amtrak station was was owned
22 by CSX. You said -- you said it was controlled by

1 the city. Can you enlighten us a little more on
2 what's involved to build a station track there.

3 THE WITNESS: I believe it is owned by
4 the city. The -- the platform is -- is -- I -- I
5 believe is owned by CSX. That's typically normal
6 because it was in the right-of-way. So what we've
7 been talking with the city about is a -- is
8 possibly a shared use development at that site
9 that would include both the layover track, a
10 station and other plans that the city has for use
11 at that site.

12 CHAIRMAN OBERMAN: Well on the aerial
13 depictions we've seen -- depending how long this
14 layover track is; we've heard one thousand, two
15 thousand, three thousand -- it seems to run along
16 the CSX right-of-way south of Mobile.

17 Is that all city-owned land too or is
18 that CSX land?

19 THE WITNESS: No, I believe that's
20 CSX-owned land. The only property that we
21 understand to be owned by the city is the former
22 station site, so I -- I assume just a few feet off

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1 of the platform would be city-owned property.

2 CHAIRMAN OBERMAN: All right. And
3 you're -- and you're in discussions with the city
4 now about some kind of an arrangement between
5 Amtrak and the city?

6 THE WITNESS: Yes. I would
7 characterize those as early discussions.

8 CHAIRMAN OBERMAN: Okay, thank you.

9 BY MS. AMUNSON:

10 Q. Mr. Blair, you also testified that
11 there is some work that Amtrak is funding on
12 station rehabilitation. Is that right?

13 A. Yes.

14 Q. And what's the status of that work?

15 A. We are awaiting certain approvals from
16 CSX on making modifications to the stations as
17 we'll be operating -- as we'll be working within
18 the fundamentally safety envelope of CSX's
19 right-of-way. Presuming that we get those
20 approvals quickly, we believe we'll have all of
21 the station improvements completed before the end
22 of the year.

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1 Q. And what -- Amtrak needs to of course
2 qualify crews to operate the Gulf Coast service,
3 correct?

4 A. Yes.

5 Q. And what is happening with Amtrak's
6 plans for crew qualification?

7 A. We had made a request to Norfolk
8 Southern to qualify crews. That request was
9 denied. We brought that issue before the board
10 for their resolution.

11 Q. Does Amtrak have crews sort of ready
12 and waiting?

13 A. Yes. We have hired crews already and
14 they are awaiting the opportunity to qualify, to
15 begin qualifications.

16 Q. Mr. Blair, I'm going to ask you to look
17 back at the Gulf Coast Working Group report once
18 again. Again this is Joint Exhibit 32F and I
19 believe it's your verified statement.

20 I'm going to ask you to look at page 22
21 of that report. It's the section titled "Amtrak
22 Recommendations".

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1 Do you see that?

2 A. Yes, I do.

3 Q. And we have that I believe up on the
4 screen. And I'm going to ask you to look at the
5 last paragraph and just read it aloud for me if
6 you would.

7 A. Okay. "In terms of capacity
8 improvements Amtrak supports a phased approach
9 after service is restored. Initial phases would
10 include improvements that provide routes around
11 major rail yards to increase speed and minimize
12 risk of delays and provide flexibility for meets
13 between opposing Amtrak trains.

14 "Subsequent phases would involve
15 improvements that would facilitate meets and
16 overtakes between Amtrak and freight trains.

17 "After Gulf Coast service is restored,
18 the process of identifying exact infrastructure
19 improvements would involve a more in-depth review
20 of the existing infrastructure and be informed by
21 actual experience.

22 "See Amtrak's November 10th, 2016

1 letter to FRA in appendix A for more details on
2 their recommendation."

3 Q. Thank you. Is that still Amtrak's
4 position?

5 A. Yes.

6 Q. And in this proceeding Amtrak wants an
7 order to start service?

8 A. Yes. I think that would be the most
9 helpful thing that we could get is to have an
10 order to -- that would permit us to start service
11 on a date certain. That would eliminate the delay
12 that we've experienced up to this time.

13 Q. And Amtrak thinks that identifying
14 infrastructure improvements is best informed by
15 the actual experience on the route once the
16 service is up and running?

17 A. Yes. We've had -- there have been many
18 different evaluations of the corridor. Each was
19 slightly different analyses for what the
20 infrastructure would -- would be best for the
21 corridor and our concern is, without a -- without
22 a consensus, in that sense it would be best to --

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1 to get actual experience with the operations
2 train.

3 Q. And based on your experience, how do
4 you feel about Amtrak's ability to operate the
5 service on the Gulf Coast corridor without causing
6 unreasonable interference to freight
7 transportation?

8 A. Based on my experience and the
9 information we have about the corridor, we believe
10 that we can operate the service without
11 unreasonable interference to freight
12 transportation.

13 Q. And on the other corridors on which
14 Amtrak operates, does Amtrak often work with its
15 Host Railroads to identify infrastructure
16 improvements based on the experience of operating
17 on the railroads?

18 A. Yes. We do that regularly on every
19 corridor that we operate on, as we look for ways
20 to reduce delays and improve the efficiency on the
21 corridor, increase safety and reduce drift times.

22 Q. Why did Amtrak bring this proceeding to

1 the STB?

2 A. Because, absent the -- the -- an order
3 from the STB, we've been unable to get the
4 carriers to agree to the start of service, as --
5 in accordance with Amtrak's statutory rights
6 and -- and congressional intent.

7 Q. And you've heard CSX and NS talk about
8 and -- and they've asked for the board to order
9 board-sponsored mediation.

10 What -- what is Amtrak's position on
11 board-sponsored mediation?

12 A. We're concerned that that would just be
13 more delay in -- in the process and we feel as
14 though the Gulf Coast citizens have waited a long
15 time and we'd like to initiate the service as soon
16 as possible.

17 Q. What in your view is the most important
18 thing the board can do in this proceeding?

19 A. I think the most important thing we
20 believe is to have an order that would allow us to
21 start the service on a date certain.

22 MS. AMUNSON: Thank you, Mr. Blair. I

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1 don't have any further questions.

2 Mr. Chair I believe you're on mute.

3 CHAIRMAN OBERMAN: It's almost 4:45, so
4 I think that Ray Atkins' suggestion that we defer
5 cross until you return -- we're not going to lose
6 much by finishing this case in 15 minutes.

7 I actually have a few questions which
8 I'd like to ask and other board members may as
9 well.

10 So, the first question is, is that I
11 understand that Amtrak participated in the Gulf
12 Coast Working Group study and endorsed the
13 conclusions.

14 THE WITNESS: Yes, sir.

15 CHAIRMAN OBERMAN: Which included \$100M
16 roughly of infrastructure. I assume that's based
17 on 2017 dollars, correct?

18 THE WITNESS: Yes.

19 CHAIRMAN OBERMAN: So you must have
20 come to some conclusion that \$100M was needed or
21 you wouldn't have endorsed it.

22 THE WITNESS: Well the -- the Gulf

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1 Coast study report, Mr. Chairman, indicates --
2 indicates that that would be monies that would be
3 spent for improvements to -- - to reduce trip
4 time, to increase liability over time. Those were
5 not the requirements, based on the -- on the Gulf
6 Coast Working Group report, to establish service
7 initially.

8 CHAIRMAN OBERMAN: Well whether it was
9 over time or whenever it was, you -- Amtrak
10 wouldn't have endorsed spending the money if it
11 didn't conclude that at some period of time that
12 kind of investment was needed.

13 THE WITNESS: Yes, sir.

14 CHAIRMAN OBERMAN: So the overtime
15 part, what -- what -- what was the working
16 group's -- did they have a -- they didn't have an
17 RTC study, I take it?

18 THE WITNESS: No, they did not.

19 CHAIRMAN OBERMAN: So how -- how are we
20 supposed to understand what will happen to freight
21 service if all you build before you start
22 operating is a station track and none of these

1 other \$95M projects are built? We don't know, I
2 gather, based upon the information you have, if
3 you don't accept the Banks-Guthrie study, we just
4 don't know what impact it will have on freight.
5 Would that be accurate?

6 THE WITNESS: I -- I wouldn't
7 characterize it that way, sir. I think that the
8 FRA study was -- was a robust study in the sense
9 that it looked at string line data. I know Mr.
10 Guthrie did not provide much support for string
11 line but Amtrak does use them. And so CSX -- so
12 CSX traffic data was viewed and reviewed by the
13 FRA in terms of their assessment of where
14 infrastructure might be needed over a longer term.
15 They also looked at the infrastructure that was
16 extant at the time, bridges. They -- they looked
17 at where siding capacity was, what the signaling
18 and speeds of those sidings were, what the turnout
19 sizings were. So it represented a pretty detailed
20 evaluation of the corridor.

21 Similarly Amtrak, in 2016, was asked by
22 the SRC to do its own evaluation of the corridor

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1 and Amtrak came up with its own conclusions on the
2 corridor. They were similar to the FRA
3 conclusions, not identical, and those were
4 likewise based an evaluation of the corridors.

5 So I think we have two evaluations of
6 the corridor that took place absent an RTC model
7 that both came up with similar results.

8 CHAIRMAN OBERMAN: Well, you -- you
9 would have understood at the time of the Gulf
10 Coast Working Group that the infrastructure
11 recommended there, if it was going to be built,
12 would be funded by the taxpayers, right? Or did
13 you -- right. You weren't assuming CSX was going
14 to pay for it?

15 THE WITNESS: No, we were not assuming
16 CSX was going to pay for it.

17 CHAIRMAN OBERMAN: So here we have a
18 conclusion that \$100M of public money is
19 recommended to be spent and you've talked about
20 the fact that Amtrak uses RTC studies and has
21 internal RTC experts...

22 How could Amtrak as a quasi-public

1 institution, or however we're describing it these
2 days, recommend I guess to the Congress and all
3 the others that \$100M should be spent without
4 running your own RTC study? I mean -- mean,
5 that's a lot of money to spend if -- without an
6 RTC study, isn't it?

7 I mean, we keep hearing the RTC is the
8 Gold's standard. Everybody uses it; you use it.
9 I -- I'm trying to figure out what the
10 decision-making process was at Amtrak when they
11 decided to support the 100M. Maybe that -- you
12 can comment on that.

13 THE WITNESS: Well, I -- I wasn't a
14 part of the team at the time but I -- we -- there
15 are many times that we introduced service without
16 RTC modeling. And, you know, we do that on the
17 basis of looking at other documents, looking at
18 dispatch data, looking at string line data, you
19 know, that represent actual train movements over a
20 corridor.

21 So it -- it -- not every analysis or
22 not every new service is introduced as a result of

1 an RTC study.

2 CHAIRMAN OBERMAN: No, but here it
3 wasn't only introducing the service, it was also
4 the working group's conclusion that \$100M of
5 public money was going to have to be spent at some
6 point and I don't see anything in the Gulf Coast
7 Working Group that says we're not going to spend
8 it without an RTC study.

9 So I'm trying to figure out, from
10 Amtrak's point of view, why it would go along with
11 that approach.

12 THE WITNESS: I -- I'm sorry. I'm not
13 sure I understand the question. You -- you said
14 the Gulf Coast Working Group didn't support the
15 RTC study?

16 CHAIRMAN OBERMAN: As I recall -- I
17 read the report a while back -- there's nothing in
18 the Gulf Coast Working Group report that says, "We
19 recommend \$100M in infrastructure but don't spend
20 it without an RTC study". It just recommends
21 those infrastructure projects that are detailed in
22 the report, Amtrak endorsed the conclusion, and

1 I -- I'm trying to figure out, that's a lot of
2 money to be spent without an RTC study, which
3 appears to be the standard used by everybody,
4 including Amtrak, in -- in other situations. So
5 it's not only introducing service here but it's
6 introducing service with the anticipation of
7 spending \$100M.

8 So I'm trying to understand Amtrak's
9 decision tree I suppose on how it arrived -- could
10 arrive at recommending that much public money
11 without an RTC study to -- to know maybe you need
12 less or maybe you need different projects than the
13 ones that are in there.

14 THE WITNESS: Well I think the -- the
15 projects that were identified in the -- the Gulf
16 Coast Working Group report I -- were -- are -- are
17 not necessarily projects that RTC would identify
18 in and of itself.

19 So, for example, the larger radius
20 turnouts that were identified in the Gulf Coast
21 Working Group report, the improvements in the
22 miter rails for the bridges that would give,

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1 greater speed opportunities there, the
2 changing of the signal system on sidings to allow
3 both passenger and freight trains to move more
4 quickly through sidings. Those are things that
5 could be simulated as -- through an RTC modeling
6 effort but it didn't require an RTC -- RTC
7 modeling effort to identify.

8 CHAIRMAN OBERMAN: No, wouldn't you
9 want to know what the impact of those changes
10 would be before you invested the public's money in
11 making the changes?

12 THE WITNESS: You mean that -- that --
13 that an RTC modeling study would have to -- are --
14 are you suggesting an RTC modeling study would
15 have to be performed to -- to determine that there
16 would be value in increasing in speeds in a -- a
17 siding? I -- I don't know that we would feel that
18 that needs to happen.

19 CHAIRMAN OBERMAN: Well, I think the
20 question is, wouldn't you want to know if in fact
21 you had made the kind of improvements you've
22 talked about it would have enough of a positive

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1 impact on either a passenger or a freight to
2 warrant the expenditure of the money?

3 THE WITNESS: Are -- are you -- are you
4 saying, you know, whether -- whether benefits were
5 measured as a -- with -- with respect to the
6 specific improvement?

7 CHAIRMAN OBERMAN: I'm asking whether you
8 would want to know whether the RTC -- an RTC model
9 would show benefits from such improvements before
10 you went ahead and requested spending that much
11 money. How you else would you know whether it was
12 worth spending the money?

13 THE WITNESS: Well we -- we --
14 improvements to increase speed allow us to
15 increase -- or reduce trip time and -- and again
16 we don't necessarily -- we don't need an RTC model
17 necessarily to determine that.

18 CHAIRMAN OBERMAN: Well you could
19 increase speed at one place and if you needed a
20 siding at some place else, which is going to slow
21 the train down, it might not be enough benefit.

22 You know, we keep hearing that these

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1 projects are all working together, they're a suite of
2 projects. I don't know if you agree with that but
3 it just puzzles me as to how a person who has
4 something to say about spending public money --
5 and I guess we arguably may have something
6 indirectly to say about it -- can figure out
7 whether the money is worth spending unless you
8 model it to see what kind of results you get.
9 That's a -- otherwise you're just guessing about
10 the future.

11 THE WITNESS: I -- I'm not -- I'm not
12 sure that I agree that RTC is the only way to
13 evaluate the benefit or efficacy of making an
14 improvement.

15 CHAIRMAN OBERMAN: Well, while you have
16 the -- you know something, we only have a few
17 minutes and I actually have a few other questions.
18 I'm just going to ask one. Karen Hedlund had a
19 question and I know she's got to run to catch an
20 Amtrak train to get to Washington tomorrow. So
21 I'm -- let me just ask this...

22 Why do you have the RTC experts in

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1 house that you said Amtrak has?

2 THE WITNESS: Well certain -- certain
3 questions are best answered with RTC modeling but
4 not all questions have to be answered with RTC
5 modeling.

6 For example -- I'm sorry, I was going
7 to provide an example.

8 NS approached us several years ago
9 about operating trains during daylight hours in
10 the Northeast Corridor. We did not need to run an
11 RTC model to identify windows of operation during
12 daylight that we could make available to -- to NS
13 to operate oil trains.

14 CHAIRMAN OBERMAN: Well, I'd like to
15 pursue this further. I'm trying to understand
16 where the RTC technology fits in this world we're
17 trying to decide this case in. So I think we'll
18 take time to explore that further when you come
19 back.

20 But Karen had -- had a question she'd
21 like to pose before we recess today.

22 Karen, you're muted.

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1 MEMBER HEDLUND: I think you just said,
2 Mr. Blair, that the FRA projects were designed to
3 reduce trip times and improve Amtrak's
4 reliability. Is that right?

5 THE WITNESS: Those were some of the
6 benefits that they cited but they also indicated
7 that there were secondary benefits to freight
8 operations as well.

9 THE WITNESS: When you say secondary,
10 what does that mean, that -- that they were
11 primarily designed to assist you in running more
12 reliable service and -- and by the way they might
13 help reduce delays to freight trains?

14 THE WITNESS: I don't know that I would
15 be able to characterize specifically what the --
16 how the benefits were assessed or -- I -- I only
17 had the report to go on, which indicates that the
18 projects that FRA identified would have both
19 benefits to freight and -- both freight and
20 passenger benefits.

21 MEMBER HEDLUND: But the FRA study
22 didn't measure the consequences -- the delays to

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1 freight trains that would be the result of adding
2 the Amtrak trains?

3 THE WITNESS: It did not.

4 MEMBER HEDLUND: Thank you.

5 MS. AMUNSON: Mr. Chair, may I ask just
6 one clarifying question.

7 CHAIRMAN OBERMAN: Sure, and then I
8 think it'll be time to recess.

9 BY MS. AMUNSON:

10 Q. Mr. Blair, the -- the \$100M that is
11 recommended in the Gulf Coast Working Group
12 report, what portion of that does the Gulf Coast
13 Working Group report recommend must be sent prior
14 to starting service?

15 A. I'd go back to the table: \$5.376M.

16 MS. AMUNSON: Thank you.

17 CHAIRMAN OBERMAN: And that's for the
18 station track, right?

19 THE WITNESS: That -- that's the
20 station improvements at -- at each of the five --
21 or the five stations on the line and the station
22 track. Yes, sir.

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1 CHAIRMAN OBERMAN: All right. Thank
2 you much, Mr. Blair. So, going forward here,
3 we're not going to limit your ability to discuss
4 needed business with Amtrak's lawyers and you are
5 not on cross-examination yet, so the usual strict
6 restrictions I don't think need to apply.

7 But I do think, in the exercise of
8 discretion, Jessie, you don't want to be talking
9 to this witness about going over the testimony
10 he's already given, other than just bringing him
11 up to date so we can start when we get back.

12 MS. AMUNSON: Understood. Thank you.

13 CHAIRMAN OBERMAN: All right. So we
14 will recess this hearing until 9:30 Eastern time
15 on May 9th and then we will have a session on May
16 11th. And, Jessie, I am counting on Amtrak to
17 finish in those two days.

18 MS. AMUNSON: Hope springs eternal, Mr.
19 Chair.

20 CHAIRMAN OBERMAN: And I -- I only want
21 to put it in the nature of hope. I'm not ordering
22 it but we really need to get this concluded, so.

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1 All right, thank you all.

2 Mr. Blair, thank you for your patience.

3 THE WITNESS: Thank you.

4 CHAIRMAN OBERMAN: And we will see you
5 on May 9th.

6 (Whereupon at 4:58 p.m. the hearing
7 stood in recess until May 9th at 9:30 a.m.)

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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

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19

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21 My commission expires: October 31, 2024

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