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Office of Chief Counsel

May 9, 2022

Part of

Public Record

Date: May 9, 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 IX

Monday, May 9, 2022

9:30 a.m.

395 E Street, S.W.

Washington, DC 20423

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

2 CHAIRMAN OBERMAN: Good morning,
3 everybody. We're certainly happy to be here in
4 person for this hearing, our second venture into
5 our new hearing room. I want to say a special
6 thank you to our IT and facilities staff, along
7 with the -- all the other board staff who have
8 worked so hard to make sure we can switch to an
9 in-person hearing. Oh, okay. We're not recording
10 yet, but I'm not going to repeat all of that.
11 Tell me when we are.

12 We do have a few technical items to
13 mention so we're all on the same page. I was
14 going to say it may be simple to all of you
15 participants, but getting us arranged and the
16 cameras and the mic systems for this kind of
17 hearing, it's a lot of work. And I really -- I
18 think we all really appreciate staff putting this
19 together.

20 First thing is we have a table up front
21 for the witness being questioned and the attorney
22 doing the questioning. This table, along with

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1 each of the board members, has corded microphones
2 that the camera tracks. So when you use the
3 microphones, you have to press the button to turn
4 it on or off. There may be a second of delay, so
5 hit the button, wait just a split second, and then
6 the cameras will focus on the person whose
7 microphone is on.

8 Here's the thing. Only one microphone
9 can be on at a time. So when you ask a question,
10 you have to then turn the microphone off so the
11 witness can answer. Eventually, in a week or two,
12 you'll get used to this. It's taken us a while.
13 But it does work. Or if a board member wants to
14 interject and has a question, then you have to
15 turn your microphone off, so we -- we can be
16 heard. And we may have to ask you to repeat
17 yourself every once in a while, because if you
18 forget -- and you will forget because we all
19 have -- the court reporter can't pick it up.

20 So -- I don't know. Am I -- was I being
21 clear, or was I being obtuse there? Okay.

22 Behind the witness table, there are

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1 three tables for the parties. You obviously found
2 them. They have a microphone there. There should
3 be a microphone there for objections. Do you each
4 have a microphone?

5 Yup. Okay. I think, on those
6 microphones, just turn on, right, if you have an
7 objection? Or does the speaker have to turn off?

8 MR. MULLINS: No. They just test.

9 CHAIRMAN OBERMAN: They just work.

10 VOICE: But the camera won't follow
11 them.

12 CHAIRMAN OBERMAN: Yeah, the camera
13 won't follow you. So when you make an objection,
14 the people out there in television land will say,
15 Who is that? But for the moment, that's the way
16 the system is working.

17 If there's going to be a further
18 discussion, like a debate over an objection, then
19 we're going to ask the lawyer who's involved, the
20 lawyers who are involved to come up to the witness
21 table so that -- if this is going to proceed
22 beyond just making an objection.

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1 Second, if we need to go into a
2 confidential or highly-confidential session, I
3 will ask the members of the public who are here in
4 person to leave the hearing room. And we'll just
5 ask you to leave the room and wait in the lobby or
6 outside the building and monitor the livestream to
7 see when we are back in public session.

8 If -- if the habit of the people who may
9 have to leave is to just congregate out in the
10 lobby, maybe we'll ask a staff person to come out
11 and make sure, you know, we're back in session.
12 Those viewing this on the livestream will see the
13 same placeholder slide as before when we went into
14 a confidential session. We will also place a
15 "confidential session in progress" sign outside
16 the hearing room, and we'll have someone remove
17 the sign when we're back in session.

18 We also have some participants on Zoom.
19 For those participants, we will be using the same
20 breakout rooms that we used before, and the
21 procedures will be the same. When it is necessary
22 to enter a breakout room, our Zoom moderator will

1 place the appropriate participants in the Zoom
2 room. Board staff will be monitoring the
3 participants listed in those sessions, but if you
4 happen to be inadvertently placed in a session for
5 which you have not signed the appropriate
6 undertakings, please remove yourself from the Zoom
7 room.

8 If you have multiple people together in
9 a conference room participating on Zoom, we will
10 rely upon the parties to monitor who is permitted
11 to remain during a confidential or
12 highly-confidential portion. So I think that's
13 important, if we break out, really counting on the
14 attorneys to look at the room, look at the Zoom,
15 and police the confidentiality yourselves because
16 we don't have, by memory, all of the people who
17 are allowed in.

18 Third, we will aim for a lunch break
19 around 12:30 or 1:00, depending on where we are in a
20 witness' testimony. And we'll aim for several
21 short breaks, as we did before, through the day.
22 We will aim to conclude today no later than

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1 6:00 p.m.

2 With that, we are ready to convene,
3 unless anyone has any questions or comments. If
4 not, I believe we were in the middle of the direct
5 examination of Mr. Blair, Jim Blair, who is here.
6 Okay. So whoever is questioning him should come
7 up to the front table. Or were we through with
8 direct and we were ready to start cross? Was that
9 where we were?

10 MR. DONAHOE: Yes.

11 CHAIRMAN OBERMAN: Mr. Donahoe, you are
12 on.

13 MR. DONAHOE: And Chair, one thing. Ray
14 Atkins is by Zoom today. One of his family
15 members got COVID. He's fine, and she's fine
16 also, but he didn't want to come here. He's
17 tested negative, but he's by Zoom.

18 CHAIRMAN OBERMAN: Thank you
19 Mr. Donahoe. I thought maybe after last week,
20 he'd just had enough of us. But go ahead.

21 CROSS-EXAMINATION

22

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1 BY MR. DONAHOE:

2 Q Good morning, Mr. Blair.

3 A Good morning.

4 Q I'll try and do this button right, but
5 it might take a couple minutes to get going here.

6 Mr. Blair, I want to make sure I have
7 your testimony correct, and that is basically that
8 Amtrak is in agreement with the proposed
9 infrastructure projects cited by the Gulf Coast
10 Working Group; is that accurate?

11 A Yes.

12 Q And did you have a chance to review your
13 testimony from a couple weeks ago?

14 MR. ATKINS: Mr. Chairman, this is Ray
15 Atkins. We're not hearing Mr. Donahoe on the live
16 feed.

17 MR. DONAHOE: I didn't start off very
18 well. Can you hear me now, Ray?

19 MEMBER FUCHS: Is the green light on?

20 MR. DONAHOE: Yeah, it is.

21 MEMBER FUCHS: There's a two-second
22 delay.

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1 MR. DONAHOE: Ray, can you hear me?

2 MR. ATKINS: I can hear you now.

3 BY MR. DONAHOE:

4 Q Mr. -- let me repeat my question. Did
5 you have an opportunity to review your testimony
6 from a couple of weeks ago?

7 A No, I did not.

8 Q Can we pull up Joint Exhibit 1B? It's a
9 public document, JE001B.

10 CHAIRMAN OBERMAN: Can you identify it?

11 MR. DONAHOE: Yes, I can. It's the Gulf
12 Coast Working Group report.

13 CHAIRMAN OBERMAN: Zero zero -- well,
14 okay. Thank you.

15 BY MR. DONAHOE:

16 Q And if you could turn to page -- it's
17 actually 32 on the bottom. There's two number --
18 page numbers on there. It's page 32 on the
19 bottom, please.

20 A Okay. I'm there, thank you.

21 Q And do you see where it says Amtrak
22 Recommendations?

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1 A Yes, sir. I do.

2 CHAIRMAN OBERMAN: Mr. Donahoe, I'm
3 sorry. My 32 doesn't have that.

4 MR. DONAHOE: As I said, there's two
5 page numbers, Chair. It's a little bit confusing.
6 I'm going by the bottom page number, which is 32.

7 CHAIRMAN OBERMAN: I'm looking at my
8 version. Okay. Thank you.

9 MR. DONAHOE: Okay.

10 CHAIRMAN OBERMAN: I have a marked-up
11 version from the original filing, which is what
12 I'm working with. So that's why I couldn't see
13 it.

14 BY MR. DONAHOE:

15 Q Okay.

16 Sir, do you see where it says Amtrak
17 Recommendations at the top there?

18 A Yes, I do.

19 Q And the second -- second sentence there
20 that says, "While recognizing the benefits of
21 capital improvements, Amtrak believes the only
22 necessary improvement to CSX's line is the

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1 installation of PTC." Do you see that?

2 A Yes, sir, I do.

3 Q So would you agree with me that, at the
4 time, you didn't feel there was any infrastructure
5 at all needed before putting Amtrak on the Gulf
6 Coast line?

7 A I was not a part of the development of
8 this report, but, yes, that -- that is Amtrak's
9 position.

10 Q And this was back in 2017; correct?

11 A Yes, it was.

12 Q Could you go down a couple paragraphs?
13 And it's on the screen, but the paragraph that
14 says, "In terms of capacity improvements"?

15 A Yes, sir.

16 Q And do you see where it says, "In terms
17 of capacity improvements, Amtrak supports a phased
18 approach after service is restored"?

19 A Yes, I do.

20 Q And is that still Amtrak's position?

21 A Yes, it is.

22 Q And further down in that paragraph --

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1 and, again, it will be highlighted on the screen
2 to make it easier -- you see about midway down, it
3 says "After Gulf Coast service is restored." Do
4 you see that sentence?

5 A Yes, I do.

6 Q "After Gulf Coast service is restored,
7 the process of identifying exact infrastructure
8 improvements would involve a more in-depth review
9 of the existing infrastructure and be informed by
10 actual experience." Do you see that?

11 A Yes, I do.

12 Q And, again, that's Amtrak's position in
13 this -- at this hearing?

14 A Yes, it is.

15 Q And the reason I ask this is because at
16 the time, the Gulf Coast Working Group had already
17 suggested infrastructure projects that are listed
18 in this report. Do you agree with me?

19 A Was that a question?

20 Q Yes. Do you agree with me?

21 A Yes.

22 Q So my question is, if the Gulf Coast

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1 Working Group had already suggested infrastructure
2 projects, why did Amtrak, at the time, believe
3 that more study was needed to see what would
4 happen when the trains were actually on the track?

5 A The recommended projects by FRA closely
6 aligned with the number of projects Amtrak had
7 recommended, but it did not have the input of the
8 railroads. And that's what we were still seeking
9 when the report was published.

10 Q But that sentence actually says, "It
11 would be informed by actual experience." So
12 doesn't that mean that Amtrak thought they should
13 put the trains on the track first and see what
14 occurs?

15 A I wouldn't characterize it that way. I
16 think we believe that the service could operate
17 effectively -- without the infrastructure and,
18 consistent with the report -- be phased in
19 overtime.

20 Q So my question is simply: At this time,
21 back in 2017, did Amtrak agree with the
22 infrastructure suggested by the FRA?

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1 A That -- that the FRA proposed to be
2 phased in, yes.

3 Q I didn't ask the phased-in. I asked did
4 Amtrak, at this time, in 2017, agree with the
5 infrastructure proposed by the FRA?

6 A Yes, that it would be phased in, in
7 accordance with the -- what was outlined in the
8 report.

9 Q And despite this -- the language, it
10 says, "After Gulf Coast service is restored, the
11 process of identifying exact infrastructure
12 improvements would involve a more in-depth
13 review." Do you see that?

14 A Yes, I do.

15 Q And you don't find that to be a
16 contradiction that you were in agreement with the
17 infrastructure recommended by the FRA at that
18 time?

19 A No, I don't.

20 Q And you would agree with me that the
21 Gulf Coast Working Group did not do RTC modeling?

22 A Yes. That's my understanding, they did

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1 not.

2 Q So Amtrak's position is that they agreed
3 to \$99 million in infrastructure improvements
4 without RTC modeling. Would you agree with that?

5 A Yes.

6 Q However, for the purposes of this
7 hearing, when RTC modeling was done and
8 recommended infrastructure projects, Amtrak is in
9 disagreement with that?

10 A Those were different projects and
11 different recommendations.

12 Q But you agree that Amtrak supported
13 spending \$100 million on projects when RTC
14 modeling wasn't done?

15 A Amtrak had conducted its own analysis in
16 2016. We filed a letter in connection with --

17 ZOOM TECH: Unmute your microphone,
18 please.

19 MR. DONAHOE: Sorry.

20 THE WITNESS: Amtrak had done its own
21 analysis in 2016. And we filed a letter in
22 support -- in letter we support -- filed in

1 support of the FRA Gulf Coast Working Group
2 report. And that indicated a number of
3 infrastructure projects, very similar to the ones
4 that are identified by FRA.

5 BY MR. DONAHOE:

6 Q But that wasn't my question. My
7 question was that Amtrak was supportive of a
8 \$99 million project that didn't do RTC modeling?

9 A That is correct.

10 Q If we could turn to page 15. And,
11 again, Chair, I'm referring to the 15 at the
12 bottom of the page of this document.

13 Okay. And specifically, what I'm
14 looking at -- see the Gulf Coast Working Group
15 Structure Membership? Do you see that section,
16 2.4?

17 A Yes, sir.

18 Q And down in the second paragraph, about
19 midway through, it says, "From October 2016 to
20 February 2017, CSX, Amtrak, SRC, and the FRA
21 formed a technical group." Do you see that?

22 A Yes, sir.

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1 Q Would you agree with me that Norfolk
2 Southern was not part of that technical group?

3 A I was not a part of the technical group,
4 but they are not recorded here in the report.

5 Q Well, you had testified on direct
6 examination you weren't sure if Norfolk Southern
7 was a part of the Gulf Coast Working Group; is
8 that accurate?

9 A I don't recall what I said. I'm sorry.

10 Q No problem. The record speaks for
11 itself. There's been testimony from Norfolk
12 Southern that they were not part of the Gulf Coast
13 Working Group. Are you aware of that testimony?

14 A Yes.

15 Q So you would agree with me that the Gulf
16 Coast Working Group didn't take into consideration
17 any possible infrastructure improvements on the
18 so-called Back Belt?

19 A I don't know that I would characterize
20 it that way. The FRA report indicate -- talks
21 about the NS route, and they specifically call it
22 out several times in the analysis. So I don't

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1 know that I would say it was not considered.

2 Q Did you look at the suggested
3 infrastructure projects recommended by the Gulf
4 Coast Working Group?

5 A Yes, I did.

6 Q Do you see any of those projects that
7 were on the Norfolk Southern Back Belt?

8 A No, I did not.

9 Q So the best we can tell right now is
10 that the Gulf Coast Working Group's suggested
11 infrastructure projects did not include anything
12 on the Norfolk Southern Back Belt?

13 A Is that a question?

14 Q Yes.

15 A Yes.

16 Q Would you agree with me that if there
17 was infrastructure or -- strike that.

18 Would you agree with me that if the Back
19 Belt was looked at, that there may have been
20 infrastructure projects that were needed?

21 A Could you ask the question again,
22 please?

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1 Q Sure. I apologize. Would you agree
2 with me that if the Gulf Coast Working Group
3 looked at the Back Belt, there very likely could
4 have been infrastructure projects suggested?

5 A I don't know that I would say "very
6 likely," but -- and I don't know to what degree
7 the technical committee or the working group
8 looked at the Back Belt, so I can't answer that
9 question.

10 Q Were you present -- and I mean by
11 Zoom -- for Mr. Dingler's testimony?

12 A Yes, I was.

13 Q Isn't it true that he suggested
14 infrastructure projects on the Back Belt?

15 A Yes, he did.

16 Q Would you agree with me that if the Gulf
17 Coast Working Group did propose infrastructure
18 projects on the Back Belt, that that cost of
19 \$100 million would have increased?

20 A Presuming they had identified projects
21 on the Back Belt, then I assume the cost would
22 have increased, yes.

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1 Q Also --

2 CHAIRMAN OBERMAN: Just a minute, Mr.
3 Donahoe.

4 MR. DONAHOE: Yes?

5 CHAIRMAN OBERMAN: Turn your mic off.

6 MR. DONAHOE: Oh, I'm sorry.

7 CHAIRMAN OBERMAN: When you say "that
8 hundred million dollars" in your question, which
9 hundred million are you referring to?

10 MR. DONAHOE: I'm sorry. 99 million,
11 the 94 million plus the 5 million.

12 CHAIRMAN OBERMAN: In the Gulf Coast
13 Working Group?

14 MR. DONAHOE: In the Gulf Coast Working
15 Group. I apologize. I rounded it off. I
16 shouldn't have.

17 BY MR. DONAHOE:

18 Q And you're aware that the Gulf Coast
19 Working Group, the \$99 million, that was in 2016
20 dollars; correct?

21 A Yes.

22 Q Would you agree with me that that is

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1 probably -- those projects, if they were to be
2 done now, would likely cost more than \$99 million?

3 A It's possible, yes.

4 Q Can we go to page 33 of this document?

5 And, again, Chair, it's the page number
6 at the bottom of the document.

7 And do you see where it says,
8 "FRA-identified Improvements"?

9 A Yes, sir.

10 Q And I want to ask you about the first
11 section, the first sentence there. "This section
12 outlines the improvements FRA identified for
13 enhancing the operation of passenger trains on the
14 corridor without unreasonably impairing freight
15 operations." Do you see that?

16 A Yes, sir.

17 Q And you would agree with me that that
18 was one of the goals of the FRA, was not to
19 unreasonably impair freight operations?

20 A Yes. It was a stated goal in the
21 report.

22 Q And if you go down a little bit, you see

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1 that the improvements are listed section by
2 section. Do you see that?

3 A Yes.

4 Q And you see that there's a section there
5 on sidings. Do you see where that is in this
6 document?

7 A Yes.

8 Q And the first bullet point there says,
9 "Siding is too short to accommodate most freight
10 trains." Do you see that?

11 A Yes.

12 Q Is there anything in this document
13 suggesting that Amtrak could use those sidings?

14 A Can you rephrase the question? I'm not
15 sure.

16 Q Sure. Let me -- I'll slow down. Maybe
17 I'm going too fast. So the bullet point indicates
18 that the siding is too short to accommodate
19 freight trains; you with me there?

20 A Yes.

21 Q So then -- my question then is, is there
22 anything in this document that says that Amtrak

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1 could use those sidings instead of freight trains?

2 MR. GRIMM: Objection. Are you going to
3 give him the chance to read the entire document?

4 MR. DONAHOE: If he'd like to. I
5 thought he was familiar with it.

6 CHAIRMAN OBERMAN: Let me state,
7 Mr. Blair -- excuse me.

8 Can you answer his question without
9 referring to the entire document? Just tell us
10 one way or the other.

11 THE WITNESS: I'm sorry. I'm trying to
12 understand the question. Are you asking could
13 Amtrak trains use the sidings that are too short
14 for freight trains?

15 BY MR. DONAHOE:

16 Q Let me try it this way. You testified
17 on direct examination that Amtrak was willing to
18 take a siding. Do you recall that testimony?

19 A Yes.

20 Q Was any suggestion made to the Gulf
21 Coast Working Group that Amtrak would take those
22 sidings during this project?

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1 A I don't think it was precluded in any
2 way in the analysis.

3 Q Do you have any knowledge that Amtrak
4 advised the Gulf Coast Working Group that they
5 would be agreeable to taking a siding?

6 A I have no knowledge of -- of that
7 discussion, if it took place.

8 Q When did Amtrak adopt the position that
9 they would take a siding on the Gulf Coast line?

10 A Amtrak trains take sidings every day,
11 all over the country. I don't know why it would
12 be exclusive to the Gulf Coast line.

13 Q Was that ever put in writing to any of
14 the freight railroads, that Amtrak would agree to
15 take a siding on the Gulf Coast line?

16 A When would that have come up? I'm not
17 sure it would have come up in the course of the
18 discussion until -- until we were talking about
19 the service in more detail.

20 Q So the answer to my question is, it was
21 never discussed with the freight railroads that
22 Amtrak would take a siding?

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1 A We have always contemplated that we
2 would be taking a siding to pass our own trains.
3 We didn't talk about the freight -- taking any --
4 taking a siding in the context of a freight
5 operation because we didn't have any data to work
6 with in that analysis.

7 Q So then you agree with me that you never
8 discussed with the freight railroads that Amtrak
9 would be willing to take a siding?

10 A Personally, no, I did not.

11 Q Thank you. Are you aware of the
12 infrastructure recommendations from the Dangler
13 RTC model?

14 A In -- only in some detail. Only --
15 yeah.

16 Q Well, let me ask you this: Are you
17 aware that there are some infrastructure
18 recommendations in the Dangler RTC model that were
19 also part of the FRA infrastructure
20 recommendations?

21 A Yes.

22 Q And if we could go to page 35. And I'm

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1 not going to go one by one, but you can see there
2 one of the suggested improvements by the FRA was
3 Gentilly Yard. Do you see that?

4 A Yes, I do.

5 Q And, specifically, a bypass track was
6 recommended by the FRA. Do you see that?

7 A Yes, I do.

8 Q Do you have a recollection that
9 Mr. Dingler's RTC model also suggested that?

10 A Yes. I understand he did.

11 MR. DONAHOE: I'm sorry. Do I need to
12 wait?

13 CHAIRMAN OBERMAN: Let me just catch up
14 with you.

15 MR. DONAHOE: I'm sorry. Again, it's
16 page 35 at the bottom.

17 CHAIRMAN OBERMAN: Yeah. Yeah. Got it.
18 Okay.

19 BY MR. DONAHOE:

20 Q So I think you answered, but just in
21 case the panel --

22 CHAIRMAN OBERMAN: I heard it.

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1 MR. DONAHOE: Okay. Thank you.

2 BY MR. DONAHOE:

3 Q Are you aware of -- that Gentilly Bypass
4 was estimated at 28 million in 2016? If you're
5 aware.

6 A I don't recall.

7 Q If we could go to page 37 of this
8 document. And, sir, really, my question is: The
9 FRA also considered improvements to the Mobile
10 station; isn't that correct?

11 A Yes, the station track for a layover
12 facility.

13 Q And just so I'm clear, that would be in
14 the same location as where the Mobile train
15 station is now; correct?

16 A That was one proposal, and that was what
17 was advanced in the FRA Gulf Coast Working Group
18 report, yes.

19 Q So you would agree with me that both the
20 Gulf Coast Working Group, the FRA, and Amtrak all
21 believe that the Mobile station should be left
22 where it is; is that fair?

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1 A Yes.

2 Q Contrary to the wishes of the mayor of
3 Mobile?

4 A I can't say what the mayor has said or
5 not said with respect to the downtown station
6 facility.

7 Q Did you listen to the public hearings at
8 all?

9 A Yes, but I don't recall what the mayor
10 said.

11 Q Fair enough. We'll get to that. Would
12 you agree with me that the City of Mobile is a
13 shareholder?

14 A A shareholder?

15 Q A stakeholder.

16 A Yes.

17 Q Okay. If we could go to Public Document
18 Joint Exhibit 32B. And I'll identify this
19 document as Amtrak --

20 CHAIRMAN OBERMAN: Mr. Donahoe, turn
21 your mic off. I am informed that, even though for
22 those of us present, the exchange is going fine,

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1 the people on YouTube are missing the first second
2 and a half of each exchange because there's a
3 delay. So it's not going to work well, but try,
4 after Mr. Donahoe asks a question, put your mic
5 down, give it a second, and vice versa, for the
6 listening audience. Let's see if we can make that
7 work. Do the best you can.

8 MR. DONAHOE: Okay.

9 BY MR. DONAHOE:

10 Q Mr. Blair, we've handed you a document
11 listed as Joint Exhibit 32B. Do you see that?

12 A Yes, I do.

13 Q Are you familiar with this document?

14 A Yes, I am.

15 Q Would you agree with me that this -- the
16 date on this is June 2021?

17 A It says May 2021.

18 Q I was referring to the bottom of the
19 cover sheet. I mean, it's fine, May or June.

20 CHAIRMAN OBERMAN: It says May.

21 Mr. Donahoe, my -- my copy says May 2021 on the
22 cover sheet. Just for the record, when you

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1 say "Joint Exhibit," is this the joint exhibit of
2 all parties, not the joint CSX-NX exhibits?

3 MR. DONAHOE: All parties.

4 CHAIRMAN OBERMAN: Thank you.

5 BY MR. DONAHOE:

6 Q I'll accept May. That's fine. Can we
7 go to page 4, please?

8 A Page 4 at the bottom numbering?

9 Q Yes. In the right-hand corner -- I'm
10 sorry -- left-hand corner.

11 MEMBER PRIMUS: This one, Marty. One
12 page.

13 CHAIRMAN OBERMAN: Okay. I give up.

14 MR. DONAHOE: Do you not have it?

15 CHAIRMAN OBERMAN: No, I have it. But
16 before, you were using your -- you were using your
17 Bates numbers on the other document. Now you're
18 using the document numbers. It's fine with me, as
19 long as I know where we are.

20 BY MR. DONAHOE:

21 Q Okay. So this executive summary came
22 out before the passage of the infrastructure bill?

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1 A I -- yes, before the passage. I believe
2 so. I believe so, yes.

3 Q And at this time, Amtrak was proposing
4 that the federal government invest 75 billion over
5 15 years. Do you see that?

6 A Yes.

7 Q So I heard some testimony in opening
8 statement or some comments in opening statement
9 that Amtrak had five-year plans. But it looks
10 like in this, it's a 15-year plan.

11 A Well, this is not a comprehensive plan
12 of -- of Amtrak. This is a corridor vision that
13 reflects a 15-year vision.

14 Q Does any of the 75 billion -- is it
15 planned on going toward any infrastructure on the
16 freight lines?

17 A There is money available for national
18 network grants through the -- that -- that could
19 go to investments in freight railroads.

20 Q But with respect to the money that
21 Amtrak has received as part of the infrastructure,
22 has any of that money been dedicated or planned on

1 being used for infrastructure on the freight
2 lines?

3 A Some of the money is available for use,
4 even the monies that are -- that were given
5 directly to Amtrak in the bipartisan
6 infrastructure law.

7 Q How much money has Amtrak set or planned
8 on spending out of the 75 billion they proposed
9 for infrastructure improvements on freight lines?

10 A That's still something we're working on
11 developing a plan with FRA to do.

12 CHAIRMAN OBERMAN: Mr. Donahoe, I'm a
13 little confused. I thought Mr. Blair said the
14 75 billion was a vision, not a plan. And then the
15 way you phrased your previous question, it sounded
16 to me like you were referring to whatever billions
17 actually got approved in the infrastructure plan,
18 as distinguished from the sort of wish list in
19 this May document.

20 So I just think the record's a little
21 unclear, even though Mr. Blair answered. When
22 you're asking him about money designated or

1 planned for freight, if you could just be specific
2 whether you're referring to what actually got
3 passed in the infrastructure plan or the
4 75 billion because it seemed to me your questions
5 went back and forth. Thank you.

6 MR. DONAHOE: Sure. I'll clear it up.

7 BY MR. DONAHOE:

8 Q Didn't Amtrak receive 66 billion from
9 the infrastructure bill?

10 A No. The infrastructure bill, or the
11 IIJA, or the bipartisan infrastructure law broke
12 the money up into several categories. So not all
13 of the money comes directly to Amtrak.

14 Q How much money came directly or is to
15 come directly to Amtrak out of the 66 billion?

16 A I don't recall off the top of my head,
17 so I'd rather not speculate what that number is.

18 Q Fair enough. I saw it reported as
19 22 billion. Does that refresh your recollection
20 at all?

21 A I -- I would have to check. I've got
22 kind of a map at home that I use to -- to check

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1 it.

2 Q Fair enough. You would agree that it's
3 in the billions?

4 A I would agree that it is in the
5 billions, yes, sir.

6 Q So back to my original question. And I
7 think you answered it, but just so we're clear:
8 Of that money, Amtrak has not determined yet what
9 infrastructure on freight lines will be done; is
10 that fair?

11 A That's correct.

12 Q Do you have any estimation how long that
13 process will take at Amtrak?

14 A We are working through a process with
15 FRA. In fact, FRA is in the lead on the designation
16 of corridor -- priority corridors through -- as
17 translating this vision into actual
18 implementation. So that process has just begun.
19 I believe FRA is publishing their report, maybe
20 even this week, the preliminary report. So it's a
21 process that will take place over the period of
22 the money awarded. And then, I'm sure, well

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1 beyond.

2 Q Could you turn to page 20 of this
3 document?

4 A Do you mean 20 at the bottom?

5 Q Sorry. The bottom left of what I have.
6 I don't know why I have something different. It's
7 titled as "The Solution is Passenger Rail."

8 A Yes, I have that page.

9 Q Okay. Thank you. So this vision
10 entails, according to this first bullet point, 39
11 new routes; is that accurate?

12 A That's what it says here, yes.

13 Q And enhancements to 25 routes?

14 A Yes, that's what it says here.

15 Q And service to 160 new stations?

16 A Yes, sir.

17 Q And so my question is: Is -- is it
18 Amtrak's intention to do on these new routes what
19 you suggested at this hearing, which is,
20 basically, let's get the trains on the tracks and
21 go from there and see what infrastructure is
22 needed?

1 A Again, I don't think that's a fair
2 characterization. But I might point to the
3 agreement that Amtrak recently signed with
4 Canadian Pacific that allows several services to
5 begin without infrastructure.

6 Q Well, you were asked by your counsel:
7 Was it Amtrak's position in identifying
8 infrastructure improvements is best informed by
9 actual experience on the route, and you agreed
10 with that. Do you still agree with that?

11 A That's the process we go through today
12 with our operations on -- on freight railroads.

13 Q So going forward on these 39 new routes,
14 what is it Amtrak intends on doing, putting the
15 service on and seeing what infrastructure is
16 needed, or doing RTC modeling to determine what
17 infrastructure is needed?

18 A We will probably do both.

19 Q So you would agree with me that RTC
20 modeling is a valid tool?

21 A Yes. Amtrak uses RTC modeling in some
22 of our own analysis.

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1 Q Is it Amtrak's position going forward
2 that infrastructure improvements do not need to be
3 done prior to putting Amtrak trains on the lines?

4 A I don't think that's a fair
5 characterization. I think we look at each route
6 as different and the level of service that may be
7 required, so each one gets evaluated individually.

8 Q But you would agree at this hearing it
9 is Amtrak's position that the trains can go on the
10 line first and then later determine when the
11 infrastructure is needed or required?

12 A The Gulf Coast Working Group actually
13 proposed a schedule of implementation of
14 infrastructure that followed the introduction of
15 the train. And that's a process we're proposing
16 to follow here, as well.

17 Q Is it your testimony that the Gulf Coast
18 Working Group was phasing in the projects they
19 suggested?

20 A That's what's reflected in the report.

21 Q And what's the time line for completion
22 of the phased-in project?

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1 A From the report, it looked like five
2 years following start of service.

3 Q Has any of that taken place so far?

4 A Amtrak has begun the work on the
5 stations, the station improvements. We expect
6 that work to be completed by the end of this
7 calendar year. So that part of the work
8 identified in the Gulf Coast Working Group report
9 is underway.

10 Q When did Amtrak first start working on
11 the passenger station improvements?

12 A In 2017, following the completion of the
13 report, we started working with the communities
14 and the Southern Rail Commission on identifying
15 what needed to be done. Those efforts ramped up
16 as we conducted the -- as we started the 2020 RTC
17 work and study and have continued, even through
18 today.

19 Q So when you say ramped up in 2020, what
20 do you mean by "ramped up"?

21 A Additional design work, additional
22 survey work, direct outreach to the communities,

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1 that type of work.

2 Q How many stations are on the Gulf Coast
3 line?

4 A There are five identified on this route.

5 Q So if I have my math correct, you
6 testified you started this process in 2017, and
7 you expect it to be done by the end of this year?

8 A We started planning in 2017, and we
9 expect construction at this phase -- this phase of
10 construction to be done by the end of this year.

11 Q Has construction started?

12 A I don't know. I believe the call we
13 had -- there was an internal call last week that
14 reported that it was underway. I don't know how -- if I
15 could define whether that means construction has
16 begun.

17 Q So five years after you realized -- or
18 Amtrak realized that the passenger stations needed
19 work, they're just beginning construction on that
20 recently?

21 A Yes.

22 Q Could you turn to page 26?

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1 A Page 26 by the Bates number or by the
2 page?

3 Q By the page.

4 A Okay.

5 Q Do you see the bottom paragraph,
6 "Virginia, North Carolina"?

7 A Yes. I do.

8 Q And according to this Amtrak document,
9 "Virginia and North Carolina are examples of
10 states helping lead the way in partnering with
11 Amtrak to develop successful intercity passenger
12 rail service." Do you see that?

13 A Yes.

14 Q Do you agree with that statement?

15 A Yes.

16 Q And are you aware that in both the
17 Virginia and North Carolina projects, RTC modeling
18 was done prior to passenger service on the lines?

19 A Yes, I am aware.

20 Q And are you aware that, on both of those
21 projects, infrastructure was put in place prior to
22 Amtrak Passenger going on the freight lines?

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1 A Yes. I am aware of that, yes.

2 Q In fact, there was testimony of that at
3 this hearing, wasn't there?

4 A Yes, there was.

5 Q If you could turn -- again, this is the
6 document page number, not the Bates document --
7 page 67. Do you have it? It's a table.

8 A Yes. Table 6?

9 Q Yes, Table 6, correct. And what I
10 wanted to ask you about was -- see at the bottom
11 there, the New Orleans to Mobile? Do you see
12 that?

13 A Yes, I do.

14 Q And there's three dollar signs there.
15 What is -- what do those dollar signs represent?

16 A It's identified as the "Public Operating
17 Funding Per New Passenger," is the column heading,
18 suggesting what the subsidy that the participating
19 states or sponsors might be expected to contribute
20 that is not recovered by the fare box. In
21 other words, what is not recovered by the revenue
22 generated by the passengers directly.

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1 Q And for the New Orleans to Mobile,
2 there's three dollar signs; correct?

3 A That's correct.

4 Q And that would be the highest proportion
5 in this column, the three dollar signs?

6 (Reporter clarification.)

7 A I believe that three dollar signs is the
8 highest, but -- I believe the three signs is the
9 highest but I don't -- I would have to go through
10 the document.

11 Q But on this table, 6, it's the highest,
12 along with two other locations. I don't see four
13 dollar signs or five dollar signs anywhere.

14 A Nor do I. Yes, three dollar signs is
15 the highest on this page.

16 Q And so that would be the highest public
17 operating funding per new passenger, according to
18 this column?

19 A Yes.

20 Q And then the next thing, there's a stick
21 figure under the "New Passengers" column. What --
22 what does that represent?

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1 A It's the estimated ridership in
2 thousands.

3 Q So if I'm reading this table correctly,
4 again, compared to the other trips on here, this
5 would be the lowest amount of new passengers,
6 since there's just one stick figure there?

7 A Yes. On -- on this page, again, yes.

8 Q So is it a fair conclusion that, based
9 on this table, the New Orleans to Mobile route has
10 the highest public operating funding for new
11 passenger for the least amount of passengers?

12 A As compared to what? The -- you mean on
13 this page?

14 Q On this chart.

15 A The -- there are other routes on this
16 chart, and in other places on the table that are
17 similar.

18 CHAIRMAN OBERMAN: Mr. Donahoe, I
19 just -- on this chart, the column that says New
20 Passengers per Thousands, Mr. Blair, a thousand
21 passengers per day, week, month? What are we
22 talking about?

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1 THE WITNESS: I'll have to go back to
2 the document -- to the index.

3 CHAIRMAN OBERMAN: All right. It would
4 be good to get that cleared up. It's kind of just
5 a number out there in a vacuum.

6 THE WITNESS: There's a key listed as
7 Figure 14, which is on page 35 or 36, Bates
8 number.

9 CHAIRMAN OBERMAN: Let me get there for
10 a minute. Yes. But that doesn't have a time
11 period on it, though; does it?

12 THE WITNESS: No, it does not. But at
13 least from what I understand of the forecast for
14 Gulf Coast service, that would be an annual
15 number. So up to 100,000 passengers annually.

16 CHAIRMAN OBERMAN: So on -- so the
17 column on page -- Table 6, the one stick figure
18 is -- each stick figure is a hundred thousand
19 annually; is that what you're saying, as to how to
20 read that?

21 THE WITNESS: Yes. That's what it looks
22 like from the key.

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1 CHAIRMAN OBERMAN: Thank you.

2 BY MR. DONAHOE:

3 Q And you would agree with me that that
4 says "up to 100,000"?

5 A Yes.

6 Q And Amtrak has estimated the amount of
7 passenger -- passengers on the Gulf Coast line if
8 this service is introduced; is that right?

9 A That's correct.

10 Q And have you seen those numbers?

11 A I -- I have not seen them published, but
12 I do -- I know what was reported in the Gulf Coast
13 Working Group report. And there have been some
14 subsequent analyses since then that have been --
15 somewhat higher, but it does fit within this "up
16 to 100,000 new passengers" structure.

17 Q And what is the amount of passengers
18 projected that you have seen?

19 A I think the number was around 60,000.

20 Q Does Amtrak do any type of cost-benefit
21 analysis when they're introducing service on a
22 line?

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1 A Amtrak is really providing a service to
2 states or a state sponsor, and if there is a
3 cost-benefit analysis, we can support their work
4 in that effort. But they -- they're doing that
5 primarily for their interests, and we provide them
6 with the costs of the operation that they can use
7 in their own cost-benefit analysis.

8 They -- many of those analyses also
9 include, not -- not just the direct benefits of
10 the service, but secondary benefits to the
11 economy, travel, transportation, mobility, etc.
12 So we typically support the analysis of agencies
13 such as the Southern Rail Commission in performing
14 their own cost-benefit analysis.

15 Q I understand your explanation, but the
16 question was simply: Does Amtrak themselves do a
17 cost-benefit analysis when they introduce
18 passenger service on freight rail lines?

19 A I'm not aware that we have.

20 Q Thank you. And you did watch some of
21 the proceedings, the public hearing?

22 A Yes.

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1 Q I'd like to introduce document CSX-NS
2 337, which is a transcript of the public hearing.

3 (Off the record.)

4 BY MR. DONAHOE:

5 Q Sir, if you could turn to page 26,
6 please. I think we're good with the page numbers
7 on this one.

8 A I'm sorry. You said 26?

9 Q 26, in the top right corner.

10 CHAIRMAN OBERMAN: Actually,
11 Mr. Donahoe.

12 MR. DONAHOE: I thought I had an easy
13 one.

14 CHAIRMAN OBERMAN: So our record's
15 clear. Turn the microphone off.

16 MR. DONAHOE: Okay.

17 CHAIRMAN OBERMAN: There are Bates
18 numbers at the bottom that are different. 26 at
19 the bottom says it's 27, so just for our record,
20 we need to be clear. That's all.

21 MEMBER PRIMUS: You're getting your
22 exercise this morning.

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1 MR. DONAHOE: Okay. That's what I have.

2 That's what I have.

3 MR. MULLINS: That's what I have.

4 MR. DONAHOE: Oh, I don't have that.

5 Let me keep this, then. I'll try to do it that

6 way. I see what you're saying now, Chair. Okay.

7 So either page 27 at the bottom or the actual

8 page 26 at the top. Okay?

9 BY MR. DONAHOE:

10 Q Do you have that page in front of you?

11 A Yes.

12 Q Are you familiar with who Mac McCutcheon
13 is?

14 A No, I don't believe I've met him.

15 Q If you go down to line 20 -- line 21,
16 you see that he identifies himself as the Speaker
17 of the House for Alabama House of Representatives.

18 Do you see that?

19 A Yes, I do.

20 Q And if you could turn to the next page
21 and, specifically, line 18, do you see the
22 sentence, "The first concern is I believe that the

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1 additional traffic that will be created by these
2 passenger trains will have a significant negative
3 impact on the existing freight rail service upon
4 which our state economy depends"? Do you see
5 that?

6 A Give me a moment. Let me read that.

7 Q Sure. Take your time. Line 18.

8 A Okay. I read it. Thank you.

9 Q Uh-hum. Do you agree with that?

10 I'm sorry. Do you agree with that?

11 A With what, specifically?

12 Q That his concern is that the additional
13 traffic that's created by these passenger trains
14 will have a significant negative impact on the
15 existing freight rail service.

16 MS. AMUNSON: Objection. Mr. Blair
17 can't speak to the -- Representative McCutcheon's
18 state of mind.

19 MR. DONAHOE: I'm simply asking --

20 CHAIRMAN OBERMAN: Mr. Donahoe, let me
21 rule. Somebody's mic is on. There you go.

22 MR. DONAHOE: Mine's off.

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1 CHAIRMAN OBERMAN: The question is
2 whether Mr. Blair agrees with the conclusion. I
3 don't think he's asking for Mr. McCutcheon's state
4 of mind. He's asking for Mr. Blair's own opinion.
5 If that's the question, I'll allow it to stand.

6 MR. DONAHOE: That is the question.

7 BY MR. DONAHOE:

8 Q Do you agree with that or not?

9 A No, I do not agree with his conclusion.

10 Q Do you think that Mac McCutcheon is in a
11 better position than you are to know about the
12 traffic on the lines in his state?

13 A I don't know what Mr. McCutcheon -- or
14 Representative McCutcheon knows about the traffic
15 in the state, and so I can't estimate whether or
16 not he or I has a better sense or Amtrak has a
17 better sense as to the impacts of the service.

18 Q Have you been to the Gulf Coast line?

19 A I've been to parts of it, but not over
20 the entirety of the line.

21 Q How many times have you been to the Gulf
22 Coast line?

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1 A Twice.

2 Q Were they, for lack of a better term,
3 ceremonial visits?

4 A No. I was down to attend various
5 meetings that were in parts of the Gulf Coast
6 line, but I have had my staff and other folks from
7 Amtrak down on the line several times.

8 Q But I'm asking specifically to you, you
9 yourself have never traveled the entire Gulf Coast
10 line?

11 A That's correct.

12 Q In fact, did you hear the testimony from
13 one of your experts, Mr. Crowley?

14 A I heard Mr. Crowley's testimony.

15 Q Did you hear him testify under oath that
16 he hadn't been to the Gulf Coast line in 10 to 15
17 years?

18 A I don't recall if that's what he said.

19 Q Could you turn to page 29, Bates 30?

20 A I'm there. Thank you.

21 Q Sure. The first paragraph, as you know.
22 In there, Mr. McCutcheon testifies about the port.

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1 Do you see that sentence?

2 A Yes.

3 CHAIRMAN OBERMAN: What line,
4 Mr. Donahoe?

5 MR. DONAHOE: Beginning on line 5.

6 CHAIRMAN OBERMAN: Thank you.

7 MR. DONAHOE: Sure.

8 BY MR. DONAHOE:

9 Q Do you see that, sir?

10 A Yeah, I see the sentence.

11 Q And he says to the Port of Mobile, "Our
12 business is booming there in the port." Would you
13 agree with that?

14 A I know business has been growing at the
15 Port of Mobile.

16 Q Do you have any understanding as to any
17 of the projections by the port for the business in
18 the next five, ten years?

19 A Yes, I listened to the port's testimony.

20 Q Would you agree that there is a -- they
21 are projecting a significant increase at the port
22 in the next five to ten years?

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1 A I would agree that they are projecting
2 significant increases in their volume, correct.

3 Q And you would agree that the more the
4 port's business increases, the more freight
5 service they're going to be required to have?

6 A I'm not sure there's -- that's a
7 one-for-one, or I'm not sure that's a direct
8 correlation. Some of the business from the port
9 does not travel by rail.

10 Q Fair enough. But in general, you would
11 agree that if the port is projecting this
12 significant increase, some of that increase is
13 going to spill over on the freight railroad lines?

14 A Some of it may, and the -- the ports had
15 indicated that much of that traffic moved to the
16 north, which is not affected by the Amtrak
17 service.

18 Q Is it your position that congestion or
19 lack of capacity on the Gulf Coast line doesn't
20 affect rail lines going north?

21 A I'm sorry. Could you ask the question
22 again, please?

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1 Q Sure. Sure. Let's start with the
2 hypothetical that there is congestion and
3 diminished capacity on the Gulf Coast line. Okay?
4 You with me there? All right. Then my question
5 is: If that is, in fact, true, could that have a
6 negative or side effect on those lines running
7 north that you just mentioned?

8 A I'm sorry. I'm going to have to ask the
9 question again. Are you suggesting -- are you
10 asking if the traffic south of the port -- is --
11 or if additional traffic south of the port or
12 additional congestion south of the port could
13 impact the operation of rail traffic to the north
14 of the port?

15 Q Yes.

16 A Yes, I think those could be impacted.

17 Q Okay. Thank you. I'm sorry if I didn't
18 phrase that clearly.

19 Could you turn to page 31, please?

20 A Bates?

21 Q And that is 32 at the bottom of the
22 document.

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1 A Yes, sir.

2 Q And, again, this is more testimony from
3 Mr. McCutcheon. And specifically line three, he
4 states or testifies, "Our state has told Amtrak
5 that unless there is federal funding made
6 available to build out the infrastructure
7 necessary to minimize the impacts of our port and
8 the businesses that rely on them, the State of
9 Alabama is not willing to proceed." Do you see
10 that?

11 A Yes, I do.

12 Q Are you aware that that is the position
13 of Alabama?

14 A Well, I -- I see Representative
15 McCutcheon's comments here. We also received a
16 variety of support from both individuals and other
17 agencies that represent Alabama. And we're
18 certainly disappointed that Alabama doesn't,
19 perhaps, embrace Amtrak the way we would like them
20 to, but I do see that's what the representative
21 said here.

22 Q I believe your testimony on direct was

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1 that some of the stakeholders had reservations.

2 Do you remember that testimony?

3 A That could be.

4 Q Well, specifically, it was on page 3,000
5 of your testimony. The fact that -- I'm sorry --
6 that Alabama will not proceed in this project
7 unless federal funding is made available, that
8 seems like a pretty big reservation to me. Does
9 it to you?

10 A The way that Representative McCutcheon
11 has expressed that, yes. It does.

12 Q If you could turn to page 65, and that
13 would be 66 Bates. Were you aware or made aware
14 of the testimony given by Mayor Stimpson, the
15 mayor of the City of Mobile?

16 A I was aware that he had spoken, yes.

17 Q If we could go to line 12.
18 Specifically, he testified, "The question
19 foremost, it's essential that any plan pursued by
20 Amtrak to avoid negative impacts to the Port of
21 Mobile. The port is the economic heart of our
22 city and this region. It supports nearly 161,000

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1 jobs, moves more than 58 million tons of cargo
2 annually, and generates close to 26.8 billion in
3 annual economic output." Do you agree with the
4 statement made by Mayor Stimpson?

5 A Well, I can't -- I have no data to
6 support that. But I certainly believe Mayor
7 Stimpson knows the impact of the Port of Mobile on
8 his city.

9 Q Fair enough. If we can go to the next
10 page, specifically line 16. Mayor Stimpson is
11 still testifying.

12 A And -- I'm sorry. I'm sorry. Page 66
13 at the top?

14 Q Yes, 66 at the top, 67 at the bottom.
15 You good?

16 A And then line --

17 Q Then line 16.

18 A Thank you.

19 Q Sure. And this is Mayor Stimpson still
20 testifying, and he's giving some specific numbers
21 for the projected growth. Do you see that? "In
22 2020 alone, the marine terminal posted a

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1 21 percent growth, the cargo growth grew by
2 50 percent, and the container rail posted
3 139 percent growth." Do you see that?

4 A Yes, I do.

5 Q And you have no reason to disagree with
6 those numbers?

7 A No, I do not.

8 Q And you would agree with me that even
9 though it's not a one-to-one corollary, that
10 increase in 2020 would have some impact on the
11 freight lines?

12 A I don't know that -- that -- I don't
13 know to what degree it would have had impact on
14 the freight lines.

15 Q And if we could go to page -- Bates 68,
16 top page 67, line 1. Do you have that?

17 A Yes.

18 Q And he continues on, on line 1, "These
19 numbers represent incredible growth over the last
20 15 years, but pale in comparison to the potential
21 growth over the next 25, as long as that growth is
22 not impeded by rail congestion." So that's some

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1 of this increase that's projected by the port;
2 would you agree?

3 A Yes.

4 Q And if you look at line 8, Mayor
5 Stimpson continues testifying and says,
6 "Unfortunately, Amtrak's current proposal appears
7 to disregard these facts." Do you agree with his
8 summation there?

9 A Well, again, I would acknowledge that's
10 what Mayor Stimpson said. But I don't think we
11 believed it would be -- that it represents the
12 disruption he may believe it to be.

13 Q And then on line 12, he says, "These
14 four trains would be added to an extraordinary,
15 complex, and tightly-managed schedule of existing
16 freight and rail traffic."

17 Do you agree with that?

18 A I see that Mayor Stimpson said that,
19 yes.

20 Q But my question is: Do you agree with
21 that, that it is an extraordinarily --
22 extraordinary, complex, and tightly-managed

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1 schedule of existing freight and rail traffic?

2 A I don't know that that has been our
3 experience, but that's what Mayor Stimpson
4 reported.

5 Q And then on line 18, he continues, "This
6 adds up to the potential for significant material
7 impacts to the day-to-day workings of the port,
8 potentially impacting the bottom line for many,
9 many companies and customers that depend on
10 reliable scheduling to and from the port." Do you
11 agree with that? And, specifically, I'm referring
12 to significant material impacts on the day-to-day
13 workings of the port.

14 A Again, Amtrak's assessment was that the
15 impacts were not that, but, clearly, this is what
16 Mayor Stimpson stated here.

17 CHAIRMAN OBERMAN: Mr. -- Mr. Donahoe, I
18 don't want to cut you off at this point, but --
19 well, Mayor -- the mayor certainly was an
20 important witness in the public hearing. I don't
21 know that he testified as a railroad operations or
22 modeling expert. We all heard his testimony.

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1 You've now provided us with the transcript,
2 although I think we have it. We can reread it.
3 If you direct our attention during closing
4 arguments to the points you want to emphasize, that
5 would be fine.

6 But Mr. Blair has made it pretty clear
7 that he can read what public officials have said
8 and repeat and regurgitate, Yes, that's what they
9 said. You know, we have a lot of territory to
10 cover, and I'm not sure how this line of
11 questioning -- I've let it go on for a while.
12 There haven't been any objections but it is
13 imposing on the time we have for this hearing.

14 So if you're taking this someplace,
15 that's fine. But if it's just to recite what we
16 already heard, to me, it's just duplicative. It
17 doesn't add anything.

18 MR. DONAHOE: I understand, Chair. But
19 this is cross-examination, and it's fair cross.
20 And I asked him if he agrees or disagrees with
21 what public government officials have said to this
22 panel. I don't have much longer. I have a couple

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1 more, and I will be done with it.

2 CHAIRMAN OBERMAN: Go ahead.

3 MR. DONAHOE: Okay. Thank you.

4 BY MR. DONAHOE:

5 Q On page 69, which is page 70 -- and
6 this -- this was just at the hearing in February
7 of this year, Mayor Stimpson said, "Not locating a
8 passenger terminal at the Brookley facility near
9 downtown in favor of the older legacy platform
10 would not only be a missed opportunity, it would
11 be a mistake."

12 And I'm aware of Amtrak's position, but
13 I guess my question is: Why won't Amtrak agree to
14 move into the station in Brookley?

15 A Amtrak hasn't rejected the idea of the
16 Brookley station. It's just Amtrak's traditional
17 model has been downtown.

18 MR. ATKINS: I'm sorry. Chair, the mic
19 is muted, and I would like to hear this answer.

20 CHAIRMAN OBERMAN: Could you start your
21 answer over again, Mr. Blair?

22 THE WITNESS: Sure. Amtrak has not

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1 rejected the idea of a Brookley --

2 MR. ATKINS: I'm sorry. Chair, the mic
3 is still muted.

4 (Off the record.)

5 THE WITNESS: Testing.

6 Amtrak has not rejected the idea of a
7 station facility at Brookley. In fact, the FRA
8 even recommended a even further-out suburban
9 facility in the Gulf Coast Working Group report.
10 The -- Amtrak's traditional and most successful
11 model of providing intercity passenger rail
12 transportation is downtown-to-downtown service.
13 And the downtown New Orleans terminal that we have
14 and the downtown Mobile terminal that we have
15 provides, we believe, the best opportunity for
16 successful service in this market.

17 BY MR. DONAHOE:

18 Q Well, you testified there was some work
19 being done on some of the passenger stations. Has
20 any work been done on the Mobile station at its
21 current location?

22 A The work is -- the work is scheduled to

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1 begin at the downtown site to renovate the
2 platform for the start of service.

3 Q So the bottom line is -- and it's fair.
4 I understand your point about Amtrak and where
5 they think it should be located. But the bottom
6 line is, you are in disagreement with the mayor on
7 the location of the passenger station in Mobile.

8 A No. I -- no. I think how we would
9 characterize that is we believe a downtown station
10 would be the most successful outcome for Mobile.
11 It's adjacent to the -- their passenger ship
12 terminal and provides opportunities there. Right
13 now, at Brookley, the airport has not relocated to
14 that facility. When the airport is relocated,
15 there will likely be a nexus of travelers that
16 don't exist today.

17 So it may certainly be an attractive
18 opportunity in the future. In fact, Amtrak has
19 several suburban stations or airport-connected
20 stations around the country. Think of on the
21 Hiawatha service on Route 128 in Boston that both
22 provide ready access to airport terminals. It's

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1 just that for the service that we proposed, a
2 downtown-to-downtown model, we think, gives the
3 greatest chance of success.

4 Q Okay. But the -- the question is that
5 you are still in disagreement with the mayor of
6 Mobile, since he doesn't want the passenger
7 station in downtown Mobile, and you're beginning
8 to do work on that very station in downtown
9 Mobile; isn't that accurate?

10 A I read his comments here to say the --
11 the -- not using Brookley would be a missed
12 opportunity. We're not saying Brookley is not --
13 doesn't still represent an opportunity.

14 Q If Amtrak continues with the Mobile
15 station in downtown Mobile, would you have to make
16 that station ADA compliant, or would it be
17 grandfathered in?

18 A It would be made ADA-compliant.

19 Q And you would agree with me that Amtrak
20 has had issues with making their stations
21 ADA-compliant over the years?

22 A What do you mean, "issues"?

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1 Q Well, you just settled a lawsuit for
2 several million dollars for passengers who
3 complained about stations not being ADA-compliant.
4 Are you aware of that?

5 A I'm aware there was a settlement, but I
6 have not been involved in that.

7 Q Are you aware that the Amtrak Inspector
8 General report said that there needs to be 300
9 Amtrak passenger stations that need to be made ADA
10 compliant?

11 A I did not work on -- or I was not asked
12 to address any part of that OIG report or the
13 findings of that OIG report, so I've not read that
14 report.

15 Q And that's fine. I'm just asking if you
16 were aware.

17 A I am aware there was an OIG report.
18 There were certain aspects of that that dealt with
19 host railroad issues that I was asked to address,
20 but that was not one of them.

21 Q Are you aware that the ADA came into law
22 in 1990?

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1 A Yes.

2 Q And are you aware that Amtrak had until
3 2010 to become compliant with ADA at their
4 passenger stations?

5 A I don't remember -- recall whether the
6 deadline was 2010. I know there was an initial
7 deadline that Amtrak did not meet.

8 CHAIRMAN OBERMAN: Mr. Donahoe, you've
9 got to let me in here.

10 MR. DONAHOE: Oh, I'm sorry.

11 CHAIRMAN OBERMAN: Mr. Donahoe, what
12 does Amtrak's record on ADA compliance have to do
13 with congestion on the freight line?

14 MR. DONAHOE: I'm about to get there.

15 BY MR. DONAHOE:

16 Q And, to this day, as we just talked
17 about, there's still 300 passenger stations that
18 need to be made ADA-compliant?

19 A I don't have the number. You know,
20 that's not a number I have available.

21 Q Well, here's the reason I'm asking this,
22 is because in the Gulf Coast project, Amtrak's in

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1 favor of a phased-in approach; do you agree?

2 A A phased-in approach for capital
3 infrastructure on the line?

4 Q Yes.

5 A Yes.

6 Q And what I was wondering is, is this the
7 same phased-in approach Amtrak has taken with
8 making your passenger stations ADA-compliant?

9 A I can't comment on that.

10 CHAIRMAN OBERMAN: There was no
11 testimony, Mr. Donahoe, that Amtrak planned a
12 phased in compliance with ADA. Really -- I really
13 think, to try to move this case along, we should
14 stick to the issues before the board, and ADA
15 compliance is not one of them. Thank you.

16 BY MR. DONAHOE:

17 Q If we could look at document CSX-NS 340.

18 CHAIRMAN OBERMAN: Mr. Donahoe, let me
19 just ask you, in terms of timing, in terms of a
20 break time, where are you in your cross, in terms
21 of how much time you have left?

22 MR. DONAHOE: I probably have an hour

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1 and a half left.

2 CHAIRMAN OBERMAN: All right. So, are
3 we switching a -- well, I think we can go a little
4 while longer, but why don't you tell me when you
5 get to a natural place.

6 MR. DONAHOE: I will, Chair. I think
7 after this document, it's a good spot.

8 CHAIRMAN OBERMAN: All right. Okay.
9 Thank you.

10 MR. DONAHOE: Thank you.

11 MS. AMUNSON: Mr. Chair, I believe this
12 document was one of the documents that Amtrak
13 objected to as hearsay with all of the public
14 letters that were submitted on the CSX and NS
15 exhibit list.

16 CHAIRMAN OBERMAN: Well, it hasn't been
17 admitted. Are you offering it as evidence, Mr.
18 Donahoe? You're just using it as
19 cross-examination?

20 MR. DONAHOE: No, that's all.

21 CHAIRMAN OBERMAN: I'll let him proceed.
22

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1 BY MR. DONAHOE:

2 Q Mr. Blair, have you seen this letter
3 dated April 1st, 2021?

4 A I don't recall seeing it before.

5 Q And it's a letter from Kay Ivey, the
6 governor of Alabama. Would you agree with that?

7 A Yes.

8 Q And I'm not going to go through the
9 whole letter. Why don't we just get down to the
10 last paragraph. And, specifically, I want to ask
11 you about the last sentence. "Without a completed
12 operational modeling study, Alabama will not
13 commit to providing any financial support to new
14 Gulf Coast passenger service." Do you see that?

15 A Yes, I can read that sentence.

16 Q And you're aware that that's the
17 position of the governor of Alabama?

18 A That's what's reflected in this letter.

19 Q Would that be another one of those
20 reservations?

21 A You --

22 MS. AMUNSON: Objection. Badgering the

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1 witness.

2 MR. DONAHOE: It's his testimony.

3 CHAIRMAN OBERMAN: I'll let the question
4 stand.

5 THE WITNESS: I'm not sure I would
6 characterize it as a reservation.

7 BY MR. DONAHOE:

8 Q Thank you.

9 MR. DONAHOE: Chair, I think this is a
10 good time.

11 CHAIRMAN OBERMAN: All right. It is
12 11:00 exactly. We'll break for 10 minutes and
13 resume at 11:10. And while we're on this break,
14 staff tells me they're going to try to do
15 something with these microphones. So we'll
16 explain it when we get back. Thank you.

17 (Off the record.)

18 CHAIRMAN OBERMAN: Mr. Donahoe, you may
19 proceed.

20 MR. DONAHOE: Unfortunately, the next
21 question has to do with confidential documents,
22 Chair.

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1 CHAIRMAN OBERMAN: Let me ask this
2 question: Are we going to go back and forth?

3 MR. DONAHOE: No. I saved them until
4 the end.

5 CHAIRMAN OBERMAN: So we're going to go
6 into confidential, and we're not going to come
7 back out?

8 MR. DONAHOE: Maybe for, like, 10
9 minutes.

10 CHAIRMAN OBERMAN: Yeah. Okay. All
11 right. So, attorneys, I'm going to rely on you to
12 look around the room, and we're going to ask the
13 people who are not part of the confidential group
14 to exit. And I'm going to rely on the attorneys
15 to make sure that everybody who is covered is
16 exiting. I only see two or three people leaving.
17 If you don't go far, we'll come find you. And,
18 Roberta, are you moving the Zoom followers into a
19 confidential room?

20 ZOOM TECH: Hey Marty, this is Matt.
21 I'll be the one doing that.

22 CHAIRMAN OBERMAN: Oh, Matt, you're

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1 here. Oh, good. Okay.

2 ZOOM TECH: Yes, I'm here.

3 CHAIRMAN OBERMAN: All right. So tell
4 me when -- when that's accomplished, and we'll
5 proceed.

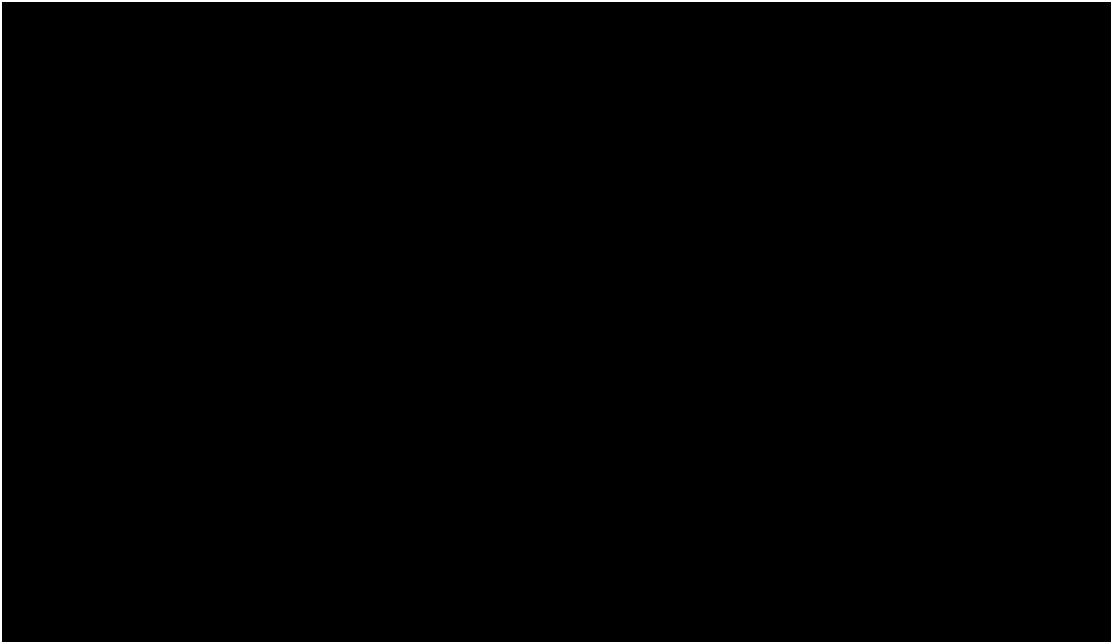
6 ZOOM TECH: Yeah, I'm ready to open
7 them. So if you're ready to go, I'll go ahead and
8 send you guys into the room.

9 CHAIRMAN OBERMAN: Go ahead. We can see
10 this on the -- I don't know why it has Jamie's
11 name on there. Is she the host of the
12 confidential room?

13 All right. I think we can proceed.

14 (Confidential Session.)

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(End of Confidential Session.)

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CHAIRMAN OBERMAN: All right. So for the record, Joint Exhibit 26K, which had been marked confidential by Amtrak, the confidential designation has been waived, and we are back in public session with Amtrak's agreement. And you may proceed, Mr. Donahoe.

13

BY MR. DONAHOE:

14

Q Thank you.

15

16

17

18

Mr. Blair, I was asking you -- this is an Alabama briefing by the Southern Rail Commission dated July 12th, 2019. Are you familiar with this document?

19

A No, I'm not.

20

21

22

Q What I wanted to ask you about, and let me just -- if we can turn to page 5 of this document. And you see, at the 9:10 a.m., "Todd

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1 Stennis." Who is he?

2 A Todd is our government affairs
3 representative for the southeast region.

4 Q Do you have an understanding that he was
5 present at this briefing?

6 A I assume, in 2019, this was an in-person
7 meeting. So I would assume he was probably
8 present for the meeting, but I can't confirm that.

9 Q Okay. What I wanted to ask you about
10 was page 24. Do you see that chart?

11 A The Amtrak ridership history?

12 Q Correct.

13 A Yes.

14 Q And would you agree with me that it was
15 projected at 38,400 in 2019?

16 A Not being familiar with the -- the --
17 this presentation, I don't know what that is tied
18 to. So, yes, I see that number on the page, but I
19 don't know what it's in relationship to.

20 Q Well, the reason I ask is because at the
21 top of the column, it says, "Amtrak Regional
22 Ridership," and then down low, it says, "Gulf

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1 Coast Limited." So do you see that?

2 A Yes, I do.

3 Q And what I'm asking you is, was it
4 projected that there would be 38,400 riders on the
5 Gulf Coast line in 2019?

6 A Again, let me review the document to see
7 what it is talking about. I don't -- I don't know
8 whether this was a single round-trip, multiple
9 round-trips, the service we are proposing now, or
10 something different. I don't know. So hold on a
11 moment.

12 CHAIRMAN OBERMAN: Mr. Donahoe, unless
13 this service that's projected here is -- the
14 ridership is for the kind of service that's at
15 issue in this case, I'm not sure what relevance it
16 has. So I hope you can tie those two together.

17 MR. DONAHOE: That's why I was asking
18 the question, as to what his understanding of this
19 projection is.

20 CHAIRMAN OBERMAN: Well --

21 MR. DONAHOE: If his testimony is it's
22 not the Gulf Coast line, that's fine. Then I'll

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1 move on.

2 CHAIRMAN OBERMAN: Well, let me ask this
3 question: Have we established, A, that Mr. Blair
4 was at this briefing, or, B, that he's read this
5 book report? You just handed it to him, so I'm
6 not sure what foundation he has to answer
7 questions about this book unless you can establish
8 it.

9 MR. DONAHOE: Well, the reason I asked
10 him about Mr. Stennis is Mr. Stennis was with
11 Amtrak at the time. I realize Mr. Blair was not
12 there. He answered that question.

13 CHAIRMAN OBERMAN: Right. But, you
14 know, you can't expect a witness in a large
15 organization to speak on behalf of every other
16 person who works there, unless you establish some
17 foundation. So at this point, I think, unless you
18 tie it up, you're just asking him to guess at what
19 somebody else put in there and what it means. So
20 I'd like you to tie it up, or I don't think you
21 should proceed.

22 Q Sure.

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1 So, Mr. Blair, a briefing was done in
2 Alabama by the Southern Rail Commission that had
3 Amtrak people or person at that, and you have no
4 awareness of that; is that true?

7 Q I'll move on. Confidential room.
8 Unless -- Exhibit 5, has it been determined to be
9 public?

12 (Pause.)

MS. AMUNSON: And, Mr. Chair, if -- if I
can just put on the record the reason it was
designated confidential is because some of the
materials in there were marked, we believe,
confidential by CSX and NS during the -- so
although it was -- it was marked confidential by
Amtrak, it was because Amtrak believed that the
others -- respecting the confidentiality of CSX

1 and NS.

2 CHAIRMAN OBERMAN: Thank you. I take it
3 that CSX and NS validate making this document
4 public?

5 MR. DONAHOE: Yes.

6 CHAIRMAN OBERMAN: Thank you, Counsel.
7 You may proceed.

8 BY MR. DONAHOE:

9 Q Sir, if you could turn to page 3. And
10 you see here that it says, "Amtrak Gulf Coast RTC
11 Study, October 2020 Update."

12 Do you see that?

13 A Yes, I do.

14 Q Are you familiar with this document?

15 A Yes. I believe I was at this update.

16 Q Could you turn to page 4?

17 A Yes.

18 Q And as of October 2020, if you look at
19 the fourth bullet point, Amtrak was reporting that
20 the base case was fully approved July 17. Do you
21 see that?

22 A Yes.

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1 Q And that the no-build case was approved
2 September 2nd?

3 A Yes.

4 Q And I believe you testified on direct
5 that you had concerns -- you, meaning Amtrak --
6 with the base case.

7 Do you recall that testimony?

8 A I recall that we -- that I had
9 identified that we were seeking to validate the
10 base case and were unable to do so due to lack of
11 data.

12 Q But whether or not you were able to
13 validate it, Amtrak was reporting in October of
14 2020 that the base case fully -- was fully
15 approved; would you agree?

16 A That's what it shows here, yes.

17 Q And despite any concerns Amtrak had that
18 the no-build case was approved September 2nd.

19 Do you agree with that?

20 A I -- I don't know what was intended by
21 the word "approved" here, whether that was
22 approved by all parties or approved by NS or CSX.

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1 So I can't speak to that directly, but I do see
2 that it indicates that it was approved
3 September 2nd.

4 Q Well, at least this document, which was
5 in October, is reporting that both the base and
6 the no-build cases were approved. And that's
7 Amtrak reporting that?

8 A Yes.

9 CHAIRMAN OBERMAN: Mr. Donahoe, just for
10 definitional purposes -- it's been a while since I
11 read the RTC documents. Maybe the other board
12 members are up to date on this. The base case is
13 the case done for the existing freight service as
14 of 2019, with no passenger rail, and the no-build
15 case is adding the passenger rail, but having no
16 infrastructure improvements. Is that what those
17 terms mean?

18 MR. DONAHOE: I believe that's true,
19 yes.

20 CHAIRMAN OBERMAN: Thank you. I just
21 wanted to be clear. Thank you.

22

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1 BY MR. DONAHOE:

2 Q If you could go to page 13 --

3 A The no-build case contemplated the
4 20-year look-ahead.

5 Q Can you go to page 13, please?

6 CHAIRMAN OBERMAN: Thank you, Mr. Blair.

7 THE WITNESS: Page 13?

8 BY MR. DONAHOE:

9 Q Yes, page 13.

10 A Yes, I'm there.

11 Q Next Steps and Timeline.

12 A Yes.

13 Q And, specifically, bullet point No. 2.

14 So in October of 2020, Amtrak was
15 reporting that "Amtrak and HDR to investigate and
16 propose, with CSX and NS approval, infrastructure
17 improvements to minimize freight impacts."

18 Do you agree with that?

19 A Yes.

20 Q But wasn't it Amtrak's position by then
21 that the infrastructure improvements would be
22 those from the FRA that was suggested in the Gulf

1 Coast study?

2 A This was the RTC modeling study in the
3 2020 study that we were still undertaking at this
4 point.

5 Q Is there any indication in this report
6 or presentation by Amtrak in October 2020 that
7 there were any concerns by Amtrak with the HDR
8 modeling?

9 MS. AMUNSON: Objection. Are you going
10 to give him an opportunity to read the entire
11 document?

12 MR. DONAHOE: Sure.

13 CHAIRMAN OBERMAN: Well, Mr. Blair, why
14 don't you tell us what you need to read to answer
15 the question. Do you need to read the whole
16 report?

17 THE WITNESS: Could I have the question
18 again, please?

19 BY MR. DONAHOE:

20 Q Sure. Is there any indication in this
21 report -- or presentation, I should call it -- in
22 October of 2020 that Amtrak was concerned with the

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1 RTC modeling done by HDR?

2 A Thank you. Thank you. Yes, I will read
3 the report.

4 CHAIRMAN OBERMAN: All right. Take your
5 time.

6 THE WITNESS: There are several
7 places where there -- there are evidences of the
8 concern that we had.

9 BY MR. DONAHOE:

10 Q Where is that?

11 CHAIRMAN OBERMAN: Before --
12 Mr. Donahoe, before we go further, can you ask --
13 can either you or ask the witness to identify what
14 is this report? To whom it was made? We're in
15 the dark up here as to where this document came
16 from.

17 BY MR. DONAHOE:

18 Q Okay. I believe it came from Amtrak.

19 But where was this presentation made, if
20 you know?

21 A We gave periodic updates to
22 the Southern Rail Commission on the RTC modeling

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1 study, as they were not a direct party to the
2 agreements. So this appears to be one of the
3 updates that we provided to SRC.

4 CHAIRMAN OBERMAN: And was this in a
5 live -- you have to let me in here. Was this in a
6 live meeting? And, if so, who was present?

7 THE WITNESS: In October 2020, I assume
8 this was virtual. And, typically, we met --
9 typically, we met with SRC's executive committee.
10 They also had other members that they would
11 periodically invite, and it would have included
12 several representatives from Amtrak, typically, on
13 those calls.

14 CHAIRMAN OBERMAN: And would the
15 railroad CSX and NS be in those meetings, too?

16 THE WITNESS: No. They traditionally
17 would not be.

18 CHAIRMAN OBERMAN: Oh, okay. Thank you.

19 BY MR. DONAHOE:

20 Q Where in this presentation does it
21 indicate that Amtrak had issues with the modeling?

22 A Starting on page 6, this is an example

1 of the heat map that we've all been talking about
2 to -- to such a degree. This is what we were
3 using as the basis for trying to identify how the
4 trains might operate in the -- in the territory
5 with -- with using this data.

6 What is shown on the next page, page 7,
7 is an example of a string line, which is what we
8 have traditionally used to look at how Amtrak's
9 operation might impact the freight service on the
10 line. We're denied the ability to use string lines
11 or denied access to string lines. And, in lieu of
12 the example on page 8, what we were using was --
13 well, the example on page 6.

14 Q Is there anything written in print in
15 this document that Amtrak had issues with the RTC
16 model?

17 CHAIRMAN OBERMAN: Do you mean written
18 in words, as opposed to diagrams?

19 MR. DONAHOE: Written in words.

20 THE WITNESS: So on page -- on page 12,
21 it says, "Remaining challenges, Infrastructure
22 requirements, TBD." I think the term "challenges"

1 suggests challenges. And the fact that the
2 infrastructure requirement process had not been
3 yet developed for the process in an October
4 update, it would seem to be difficult to make the
5 goal report on page 13 of the report complete by
6 the end of the year.

7 Q Let me expand on my question: Is there
8 anything in print saying that Amtrak is having
9 issues with the HDR modeling, that they're not
10 able to validate the models?

11 A Those were issues that we had
12 communicated in previous updates, perhaps not in
13 this one. But we had started to express that
14 concern back in April -- I'm sorry -- in April and
15 then in August of 2020, which would have been
16 prior to this effort -- or this update.

17 Q So you would agree with me, though, that
18 in October of 2021 (sic), there was nothing in
19 this presentation that Amtrak was having
20 difficulty validating the models?

21 A No, I would not agree. I think both
22 what is reflected on page 12 and what is reflected

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1 on pages 6, 7, and 8 reflect some of the
2 challenges that we worked with in the RTC modeling
3 study.

4 Q Is that mentioned in print anywhere in
5 this presentation?

6 CHAIRMAN OBERMAN: He just referred
7 you --

8 MS. AMUNSON: Objection. Asked and
9 answered.

10 CHAIRMAN OBERMAN: Mr. Donahoe, the
11 questions are vague. When you say "in print,"
12 we're looking at a document that is filled with
13 words and charts and pictures. All of that is
14 printed. If you mean, "Are there words," then if
15 you would phrase the question that way, it would
16 be clearer to us who are listening.

17 BY MR. DONAHOE:

18 Q Fine. I will do so. Are there any
19 words in this document indicating that Amtrak was
20 having trouble validating the model, the HDR
21 model?

22 A I would say the words on page 12,

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1 "remaining challenges," suggest there had been
2 prior challenges. So that, I think is indicative
3 of -- the word "challenges" that appears on
4 page 12 is indicative of the fact that there
5 are -- there were continued challenges.

6 Q Does page 12 have the words, "Amtrak is
7 unable to validate the model"?

8 MS. AMUNSON: Objection. The document
9 speaks for itself.

10 CHAIRMAN OBERMAN: You may answer.

11 THE WITNESS: No, it does not have those
12 words.

13 BY MR. DONAHOE:

14 Q In fact, what you were reporting was
15 that the base case was fully approved, and the
16 no-build case was approved; isn't that correct?

17 A That is shown on page 4.

18 Q And on page 4, there are no words
19 underneath those bullet points that Amtrak
20 couldn't validate the base case. Would you agree
21 with me?

22 A I agree there are no words on the page

1 that indicate that.

2 Q And would you agree with me that there
3 are no words on the page under the "No-Build Case
4 Approved" that said that Amtrak was having
5 difficulty validating the no-build case?

6 A I would -- I would agree with you there
7 are no words that say "Amtrak was having
8 difficulty validating the no-build case."

9 Q And this is what was reported in October
10 of 2021?

11 A It appears, yes, this is what was
12 reported in October of 2020.

13 MR. DONAHOE: We do need to go to the
14 confidential room now, Chair.

15 CHAIRMAN OBERMAN: All right. This --
16 this is not a document that Amtrak agrees to?

17 MR. DONAHOE: I don't think any of the
18 parties -- this has to do with the data-sharing
19 agreements. It's Joint Exhibit 7G.

20 CHAIRMAN OBERMAN: This is one you
21 designated as --

22 MR. DONAHOE: I think all parties agree

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1 this needs to be confidential.

2 CHAIRMAN OBERMAN: All right. And in
3 terms of going in and out of the room, where are
4 we on that score?

5 MR. DONAHOE: We'll be in the room for
6 this, and then there's e-mails, which my
7 understanding is they're confidential.

8 MS. AMUNSON: Correct.

9 MR. DONAHOE: And then we'll come out of
10 the room, and I just have a few follow-up
11 questions.

12 CHAIRMAN OBERMAN: So we don't have to
13 go back and forth?

14 MR. DONAHOE: No. I've tried to avoid
15 that.

16 CHAIRMAN OBERMAN: Okay. Very good.
17 All right. So we're asking the people who are not
18 authorized for confidential documents to leave the
19 hearing room. And, Matt, can you send us?

20 ZOOM TECH: Yup, we are ready to go.

21 CHAIRMAN OBERMAN: All right. Are we
22 ready now? Can we start?

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1 ZOOM TECH: I can go ahead and send you,
2 if you're ready.

3 CHAIRMAN OBERMAN: Yeah. No. Go ahead
4 and send us. We'll see it on the screen, I
5 gather, when it's done; right? (Pause.)

6 Okay. You can proceed.

7 BY MR. DONAHOE:

8 Q Mr. Blair, have you had a chance to look
9 at these documents? Are you familiar with them?

10 A I am familiar with them from the past.
11 I'm reading through them now, if you'd like me to
12 refer to something specifically.

13 Q Well, let's start on page 17.

14 A Yes, sir.

15 Q And you would agree with me that that's
16 your signature?

17 A Yes, such as it is.

18 Q And you would agree it says, "In
19 witness" -- we're above the signing lines -- "the
20 parties intending to be legally bound to the
21 foregoing terms indicate their agreement by
22 affixing their signatures below." And you signed

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1 that and agreed to that; correct?

2 A Yes, I did.

3 Q And then on page 16 --

4 CHAIRMAN OBERMAN: 16.

5 BY MR. DONAHOE:

6 Q At No. 10, it indicates that this
7 data-sharing agreement constitutes the entire
8 agreement between the parties. Do you see that?

9 A Yes.

10 Q And you agreed to that? You affixed
11 your signature to that?

12 A Yes.

13 Q Was the FRA -- did they have any
14 involvement in this -- these agreements or any
15 input on these agreements?

16 A At the point that the agreements were
17 executed, we had been -- we had been having
18 discussions with FRA, but they did not have direct
19 input to the agreements themselves.

20 Q I guess my question is, since the FRA
21 was aware these agreements were out there, right,
22 or were going to be executed; is that fair?

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1 A I don't recall the specific timing of
2 that -- of -- of FRA's engagement and involvement
3 in the process at that point. So I -- I don't
4 know whether they knew in advance the agreements
5 were going to be executed. I don't -- and I don't
6 believe -- and I know that they had seen some
7 early versions of the agreements. So I'm not sure
8 what the -- what their familiarity was with the --
9 with the documents.

10 Q Okay. Well, what -- let me ask you
11 this: Did the FRA present to you any lists of
12 inputs or data or anything that the FRA wanted
13 from this modeling at this time?

14 A We -- we did receive some information
15 from FRA early on about things that they were
16 looking for, general information, that we looked
17 to incorporate in these agreements.

18 Q So then you did take into account what
19 FRA was requesting when you signed these
20 agreements?

21 A I would say FRA's -- the information FRA
22 was interested in -- what they presented to us,

1 initially, was general -- general principles.
2 What they provided to us later on was more
3 detailed information -- detailed information
4 requests.

5 Q So we'll get to that. So you would
6 agree that somewhere after these agreements were
7 signed, that the FRA started requesting more
8 information or inputs or data from the RTC study?

9 A No. I wouldn't -- I wouldn't
10 characterize it that way. We -- FRA, typically,
11 worked through us on any data requests that
12 were -- that were presented to NS or CSX, out of
13 respect to the agreements that we had with NS and
14 CSX directly for these documents.

15 Q Did the FRA, sometime later after these
16 agreements were signed, provide to Amtrak the
17 specific data that they were requesting to
18 validate the model?

19 A Yes, but I don't know that it was --
20 that it was wholly to validate the model. But,
21 yes, they did present us with a detailed list of
22 data requests --

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1 Q And my -- I'm sorry. I interrupted you.

2 A -- that aligned with the grant agreement
3 that we had executed or worked to align with the
4 agreement that we executed with FRA.

5 Q And my question is: Did the FRA present
6 you with this detailed list prior to you executing
7 these agreements?

8 A No. No.

9 Q If you can turn to page 5, specifically,
10 4A.

11 A 4A is not on page 5.

12 Q It is on mine.

13 A Oh, Bates 5.

14 Q Yeah. Bates 5, sorry. Do you have it?

15 A Yes, sir.

16 Q And according to this, under Section A,
17 "The parties agree to share with the FRA and each
18 other nonconfidential summaries of all data
19 inputs, including passenger and freight train
20 volume, schedules, assumptions, parameters, files,
21 and plans." Do you see that?

22 A Yes, I do.

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1 Q And that's what was agreed to at the
2 time?

3 A Yes, it was.

4 Q And on page 4, Bates-stamped.

5 A Okay.

6 Q And under C there, it says, "No future
7 iteration shall include changes to Norfolk
8 Southern railroad freight operations, other than
9 freight traffic growth." Do you see that?

10 A Yes.

11 Q And you agreed to that?

12 A Yes, we did.

13 Q And on page 3, Bates-stamped.

14 CHAIRMAN OBERMAN: Where was that
15 referenced, Mr. Donahoe?

16 MR. DONAHOE: C -- 3C on Bates stamp 4.

17 CHAIRMAN OBERMAN: I have it. Okay.

18 BY MR. DONAHOE:

19 Q And if we can go to Bates stamp 3, and
20 C, Roman numeral II. Do you see that?

21 A Yes.

22 Q And according to this agreement, "A

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1 no-build case, representing CSX and NS freight
2 operations 20 years in the future, together with
3 existing passenger operations, but absent the
4 addition of proposed SRC Amtrak service." Do you
5 see that?

6 A Yes.

7 Q So you would agree with me that when you
8 signed this agreement, that you agreed that a
9 no-build case going out 20 years was part of this
10 modeling?

11 A Yes.

12 Q And on your direct testimony, you said
13 that you didn't think that was necessary; is that
14 correct?

15 A I don't recall saying that, but this
16 was -- it was a base case and a no-build case,
17 which were two perspectives on freight traffic
18 only, for the modeling exercise. That did not --
19 that was not representative of what the iterations
20 would be, which were the various scenarios of
21 passenger operations laid on top of the freight
22 operation.

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1 Q But you did agree that a -- a no-build
2 case 20 years in the future was part of this
3 project?

4 A Yes, we did.

5 Q If we can go to CSX-NS 324. And,
6 actually, Steve, can you just give them all the
7 e-mails, so we don't have to go one by one?

8 CHAIRMAN OBERMAN: That would be
9 helpful.

10 Mr. Donahoe, are you done with --

11 MR. DONAHOE: Yes.

12 CHAIRMAN OBERMAN: -- 7G?

13 MR. DONAHOE: Yes, I am.

14 CHAIRMAN OBERMAN: Thank you.

15 BY MR. DONAHOE:

16 Q Sir, do you have CSX-NS 324 in front of
17 you?

18 A I do.

19 Q And my first question is: Who is
20 Richard Cogswell?

21 A He's a representative of the Federal
22 Railroad Administration.

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1 Q And this was on a string e-mail, of
2 which you were on one of the prior strings. But
3 do you see what his concern is, based on his
4 comments regarding my biggest question? Do you
5 see that?

6 CHAIRMAN OBERMAN: Do we know if the
7 witness has ever seen this before, Mr. Donahoe?
8 Where is he looking?

9 THE WITNESS: Yeah, I'm not sure. What
10 page are you on?

11 MR. DONAHOE: I'm on the -- this page.

12 CHAIRMAN OBERMAN: Can we establish
13 whether the witness has ever seen this before?

14 MR. DONAHOE: Sure.

15 BY MR. DONAHOE:

16 Q Have you seen this before?

17 A The first page that I'm looking at now,
18 Bates No. 1, I do not recall ever seeing it.

19 Q Well, according to this, the FRA had a
20 concern that there was only going to be a
21 projection of 38,400 riders. Were you ever made
22 aware of that by the FRA?

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1 A I'm not seeing that.

2 MS. AMUNSON: Mr. Donahoe, this is not
3 the document we have. CSX-NS 324, that's not what
4 we're --

5 MR. DONAHOE: That's what I have right
6 here.

7 CHAIRMAN OBERMAN: I don't see where
8 you're referring to, 320 -- 324.

9 MEMBER FUCHS: Are you talking about
10 page 4?

11 THE WITNESS: It's what it looks like.

12 MR. DONAHOE: So it's page 6887. It's
13 page 4 of 5.

14 CHAIRMAN OBERMAN: Okay. I don't see
15 Mr. Blair's name on these e-mail chains. So can
16 we establish what familiarity he has, if any, with
17 this document before we proceed?

18 BY MR. DONAHOE:

19 Q Are you familiar with this document? I
20 asked you that, and you said no; correct?

21 A No, and still no.

22 Q Okay. But my question is: Did the FRA

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1 ever express a concern to you that there was only
2 a projection of 38,400 riders on the Gulf Coast
3 line?

4 A Let me read this.

5 Q I'm sorry.

6 A Let me read this before I answer.

7 Q Sure.

8 MS. AMUNSON: Chair, we object. The
9 document is not in evidence. Mr. Blair has
10 testified he's not familiar with it. There's no
11 foundation. So there's no -- counsel can't be
12 questioning the witness about facts that are not
13 in evidence.

14 MR. DONAHOE: This is cross-examination.

15 CHAIRMAN OBERMAN: I think he can -- I
16 think he can ask the question -- the witness if
17 he's ever heard of this before. But this document
18 is not being offered into evidence, is it,
19 Mr. Donahoe?

20 MR. DONAHOE: No, it's not. I simply
21 asked him the question: Did the FRA ever express
22 to you a concern that there would be only 38,400

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1 passengers on this service?

2 CHAIRMAN OBERMAN: You actually could
3 have asked him that question without showing him
4 the document.

5 MR. DONAHOE: I could have.

6 CHAIRMAN OBERMAN: I don't see any
7 problem with proceeding with that question.

8 MR. DONAHOE: I wanted to lay a
9 foundation that it came from the FRA, which is why
10 I used the document.

11 CHAIRMAN OBERMAN: Well, the document
12 isn't in evidence, so I'm not sure you did lay a
13 foundation. Just ask him the question.

14 MR. DONAHOE: I believe I did.

15 THE WITNESS: So I can read
16 Mr. Cogswell's response here, that he's concerned
17 about an Amtrak projection that indicates that it
18 was inconsistent with other projections. And,
19 yes, it does say, you know, Amtrak's projection
20 indicates 38,400 riders per year for Option 2. I
21 don't know whether that's the Option 2 as
22 identified in the Gulf Coast Working Group report.

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1 MS. AMUNSON: Mr. Chair, we're going to
2 move to strike that testimony. That document is
3 not in evidence.

4 CHAIRMAN OBERMAN: Let him finish his
5 answer first.

6 THE WITNESS: And that's really all I
7 can say about what I'm reading here and
8 Mr. Cogswell's comment.

9 MR. DONAHOE: But my question to you --

10 CHAIRMAN OBERMAN: I'll let the question
11 stand.

12 MR. DONAHOE: I'm sorry for
13 interrupting, Chair.

14 BY MR. DONAHOE:

15 Q My question to you is: Did the FRA ever
16 express a concern to you that there would only be
17 38,400 riders per year on the Gulf Coast Project?

18 CHAIRMAN OBERMAN: On which version of
19 it, Mr. Donahoe? I think that's what the witness
20 is having trouble with, talking about Option 2.
21 Are we talking about the four trains per day that
22 are at issue in this case, or are we talking about

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1 some other version of it? That's all we need
2 clarification on.

3 MR. DONAHOE: Well, given that it says
4 nobody is going to be interested in running four
5 trains a day with 26 people on each one, I assume
6 that he's referring to the four trains.

7 CHAIRMAN OBERMAN: Well, you may assume
8 it, but I don't know if those trains are running
9 at 3:00 in the morning or in the middle of the
10 day. So this is from five -- six years ago, long
11 before the application was filed in this case.

12 And I think you've got to tie this up to
13 what we're hearing in this case. If you can,
14 that's fine, but otherwise, I don't see what
15 relevance it has.

16 MR. DONAHOE: Well, I respectfully
17 disagree, Chair. And I already put up a chart
18 having these same numbers on it, which Mr. Blair
19 said he wasn't aware of what those 38,400 people
20 were. Now I'm asking simply: Did the FRA ever
21 express to him a concern about the ridership
22 level? That's all the question is.

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1 CHAIRMAN OBERMAN: I understand that,
2 but if the question isn't related to the trains
3 that are at issue in this case, I don't see where
4 we're going. If you can tie them together, be my
5 guest.

6 MR. DONAHOE: Well, the projection from
7 the chart that I brought up earlier was from 2019
8 projections, so I think that's applicable to the
9 service.

10 CHAIRMAN OBERMAN: Well, the application
11 in this case was filed in March -- February of
12 2021. If this witness can tie these numbers
13 together, that's fine. Why don't you ask him if
14 he can before we proceed?

15 MR. DONAHOE: So let me try and clarify.
16 So I can't ask any questions about anything prior
17 to the application to the board?

18 CHAIRMAN OBERMAN: You can ask any
19 questions that produce relevant testimony in this
20 case. And I'm suggesting if you can tie this up
21 to what we're considering here, it's perfectly
22 appropriate. But you've asked the question in a

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1 vacuum, and you haven't asked this witness if he
2 understands these projections to be related to the
3 service Amtrak has asked this board to order. Why
4 don't you ask him that question, and maybe we'll
5 get somewhere?

6 BY MR. DONAHOE:

7 Q Mr. Blair, do you have an understanding
8 of what this projection was for?

9 A No.

10 Q So despite the fact you saw the table in
11 the one presentation that said 38,400 passengers
12 in 2019, and then this e-mail, you still don't
13 believe that was an Amtrak projection for
14 passenger travel on these four trains?

15 A I agree the numbers are consistent. I
16 don't know that they all have the nexus and the
17 same analysis. I was not involved in the project
18 until 2018, two years after this e-mail was
19 written, and I see that I was not copied. So I
20 don't feel like I'm in a position to comment on
21 the forecast or FRA's comment on the forecast that
22 they're referring to here.

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1 MR. DONAHOE: Well, let me ask you --

2 CHAIRMAN OBERMAN: Mr. Donahoe, just so
3 you can have a full opportunity here, if you can
4 relate that any projection for traffic on this
5 route would be relevant to any kind of trains,
6 then I think you can tie it together. But that's
7 where you -- what you haven't done.

8 So if you want to proceed in that
9 direction, you can go back as far as you want. So
10 it could be that a projection for trains at
11 different times of day do tell us something about
12 the trains at issue here, but you haven't
13 established that yet.

14 MR. DONAHOE: Well, I'm simply asking
15 him: Is he aware that there was ever an Amtrak
16 projection for any option of only 38,400 riders?

17 CHAIRMAN OBERMAN: You may answer that
18 question, sure.

19 THE WITNESS: The only number I recall
20 was the number that was reported in the Gulf Coast
21 Working Group report, which -- and I don't recall
22 what that was versus this 38,400.

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1 MEMBER FUCHS: It's --

2 BY MR. DONAHOE:

3 Q Is that not important to Amtrak, what
4 the projected passengers on that added service
5 would be?

6 A Yes. It is very important that
7 Amtrak -- the ridership projection of the service.
8 That's part of the -- of the information that we
9 provide as -- and a service we provide to the
10 agencies that sponsor our service, what the
11 projected ridership will be of the service that
12 they are proposing to -- they're proposing to have
13 us offer in the marketplace.

14 Q But you don't know what those numbers
15 are? You don't know what those projections are?

16 A That's typically not an area I work with
17 on a day-to-day basis. A different group in
18 Amtrak does that.

19 Q So you're not prepared to testify what
20 Amtrak has projected for the passenger service on
21 this line?

22 A No. I can't provide a current forecast

1 of ridership for the service.

2 MR. DONAHOE: If we could go to CSX-NS
3 322.

4 CHAIRMAN OBERMAN: Where are you?

5 BY MR. DONAHOE:

6 Q And, specifically, I'm referring to
7 page 2.

8 A Let me read it.

9 Thank you. Okay. I've read page 2.

10 Q All right. Specifically I'm asking
11 about the e-mail from you to several others dated
12 Tuesday, August 1st, 2017.

13 Do you see that e-mail?

14 A Yes.

15 Q And my question to you is: At the
16 bottom of that e-mail, it says, "In fact, for
17 several years, we have used the same 95 percent
18 performance assumption for all analyses."

19 Do you see that?

20 A Yes.

21 Q So Amtrak used 95 percent OTP in their
22 analysis?

1 A No. Ninety-five -- the 95 percent
2 number that we use is calculated on the basis of
3 performance payments. So when we're preparing a
4 forecast for an agency or a group of agencies or
5 interstate compact, you know, such as the Southern
6 Rail Commission, we give them a range of outcomes
7 for what performance payments would be under the
8 service that they're promoting to operate under.

9 Under the terms of our operating
10 agreement, we then forecast a range of outcomes
11 typically up to or around 95 percent so that they
12 can estimate the cost-of-performance payments to
13 those railroads that would be paid by Amtrak under
14 the terms of our operating agreements.

15 Q So for that analysis, you did use
16 95 percent performance; correct?

17 A It's not 95 percent performance. It is
18 95 percent of the -- of the available earnings
19 under the performance incentive and penalty system
20 in the railroad's contract.

21 MR. DONAHOE: If we can go to CSX-NS
22 318.

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1 CHAIRMAN OBERMAN: Before you leave
2 this, I'm not sure I understand the answer. Is
3 your answer that, in this e-mail, you're not
4 talking about the train reaching a 95 percent
5 on-time performance measurement, you're talking
6 about the railroad being entitled to 95 percent of
7 all of the monetary incentive payments it could
8 earn? Is that what you're saying?

9 THE WITNESS: That's exactly correct.

10 CHAIRMAN OBERMAN: Thank you.

11 MEMBER FUCHS: Marty, can I use the
12 opportunity to go back to the 38,000 number?
13 Unless, Mr. Donahoe, are you going to?

14 MR. DONAHOE: Sure. Go ahead.

15 MEMBER FUCHS: Stop me if --

16 CHAIRMAN OBERMAN: No. No.

17 MEMBER FUCHS: Because I do want to get
18 the facts on the record here because we've been
19 discussing this. So, Mr. Blair, you're familiar
20 with the December 2015 Amtrak report and the 2016
21 Gulf Coast Report?

22 THE WITNESS: The --

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1 CHAIRMAN OBERMAN: You have to let your
2 finger off the --

3 THE WITNESS: The 2015 report -- I know
4 the 2016 Gulf Coast report. What was the 2015
5 that you cited?

6 CHAIRMAN OBERMAN: I think you have to
7 let your finger off of it.

8 MEMBER FUCHS: We'll get the hang of it.
9 The 2015 December from report Amtrak, that was
10 cited in the Gulf Coast report when the Gulf Coast
11 report was listing alternatives.

12 THE WITNESS: The letter from Amtrak to
13 Administrator Feinberg?

14 MEMBER FUCHS: I think it was a report.

15 THE WITNESS: Yes. The other report to
16 SRC, yes.

17 MEMBER FUCHS: Okay. And so one of the
18 alternatives was Alternative B in that report,
19 which was two state-supported routes between -- or
20 two state-supported route trains between New
21 Orleans and Mobile. And that's -- that's
22 Alternative B in that report; right?

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1 THE WITNESS: I remember the scenario
2 that we are proposing now was nearly identical to
3 one of the scenarios, and there was, like, a B --
4 B line.

5 MEMBER FUCHS: B1, which is the coach.

6 THE WITNESS: Yeah. Yeah.

7 MEMBER FUCHS: And so Alternative B, I
8 think, leaves -- it's got a train leaving Mobile
9 at 7:00 and leaving New Orleans at 5:00. And then
10 I think there's another one the other way, 8:00
11 and 5:45. And so that's, you know, plus or minus
12 an hour of what's being proposed in this case;
13 right?

14 THE WITNESS: Yes. Very similar.

15 MEMBER FUCHS: Okay. And then in the
16 Gulf Coast Working Group report, they actual --
17 there's actually a projection for passengers of
18 38,400 for Alternative B.

19 THE WITNESS: Which they numbered
20 differently, correct, in the Gulf Coast Working
21 Group Report. They were not A, B, C. They were
22 1, 2.

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1 MEMBER FUCHS: Well, there was a table
2 in the Gulf Coast Working Group report that you
3 all provided, on page 22, that is provided by the
4 2015 Amtrak study. And it lists the alternatives
5 of the Amtrak study, A, A1, B, B1, and C, which I
6 think we just were talking about B, which is most
7 similar to the route at issue here, or no -- the
8 proposal at issue here. And in that, there's a
9 38,400 passenger projection for Alternative B.

10 THE WITNESS: Yes. I can see that.

11 MEMBER FUCHS: So, in other words, one
12 could draw the relationship between a service that
13 is similar to one here and a projection of 38,000?

14 THE WITNESS: Yes.

15 MEMBER FUCHS: All right. I just wanted
16 to get the facts on the record, Marty.

17 CHAIRMAN OBERMAN: And do I understand
18 that Alternative B would work for trains leaving
19 at the times you just recited, Patrick?

20 MEMBER FUCHS: Yeah, it cites a 2015
21 Amtrak study, which is in the public domain,
22 prepared for SRC. It's on a public website. And

1 those arrival and departure times are pretty
2 similar to -- as Mr. Blair stated, are pretty
3 similar to what's at issue in this case.

4 CHAIRMAN OBERMAN: All right. Thank
5 you. Mr. Donahoe, you may proceed.

6 MR. DONAHOE: Thank you.

7 BY MR. DONAHOE:

8 Q Have you ever determined what the
9 average passengers per train on a daily basis
10 would be at 38,400 passengers?

11 A No. That's not typically a part of the
12 effort that I participate in at Amtrak.

13 Q So if I told you that averaged to about
14 26 passengers per train per day?

15 A We -- I assume that's just direct
16 math -- you know, that doesn't necessarily reflect
17 what actually happens on -- on the trains. We
18 have different ridership for different times of
19 day.

20 Q No. I understand that's an average, but
21 I'm just saying that average is the 26 passengers
22 per train.

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1 CHAIRMAN OBERMAN: Mr. Donahoe,
2 Mr. Blair has already said this is not even his
3 function at Amtrak. So why are we questioning him
4 about it?

5 MR. DONAHOE: I beg your pardon?

6 CHAIRMAN OBERMAN: Mr. Blair has said
7 that passenger projections and averages are not
8 part of his functions or duties at Amtrak, so
9 you're just asking him to guess about what
10 somebody else is doing at Amtrak. Either call the
11 right witness, or put the evidence in some other
12 way. He said he can't do it.

13 MR. DONAHOE: He just testified from the
14 Gulf Coast Working Group about the 38,400, and he
15 testified earlier that he relied on those numbers
16 from the Gulf Coast Working Group.

17 CHAIRMAN OBERMAN: He testified that a
18 document said something in the document. He's
19 made it clear what his function is. I think
20 you're beyond this witness' ability to answer the
21 question. It's not productive.

22 MR. DONAHOE: Well, I prefer that

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1 counsel objects to my cross-examination, rather
2 than the Chair.

3 CHAIRMAN OBERMAN: Well, I prefer that
4 we proceed in an efficient manner in this hearing
5 so we get it completed for the public interest.

6 Mr. Blair, if you can answer the last
7 question, please do, but let's stick to the
8 subject of the witness' expert- -- knowledge and
9 expertise.

10 THE WITNESS: I cannot comment on how
11 the 38,000 would be distributed by trains. Again,
12 that's not an area that I work in, in Amtrak.

13 BY MR. DONAHOE:

14 Q If we can go to CSX-NS 318. And,
15 specifically, at the bottom, the e-mail from you
16 to others on Tuesday, February 5th, 2019. Do you
17 see that?

18 A Primarily on page 2, Bates number?

19 Q Yeah. We're going to go to the next
20 page. I just wanted to see if you saw your name
21 and the -- and the date. And, specifically, on
22 page 2 of that document, I wanted to ask you about

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1 point No. 6.

2 A Yes, I see it.

3 Q And No. 6 says, "Restart of Gulf Coast
4 service will require infrastructure improvements."
5 Do you see that?

6 A Yes, I do.

7 Q Does that indicate that infrastructure
8 improvements must be done before starting the Gulf
9 Coast service?

10 A It doesn't indicate that. We had the --
11 at this point, we had the benefit of the Gulf
12 Coast Working Group Report. We had the benefit of
13 the Amtrak work that we had done as reflected in
14 the -- in the work to SRC and the letter to
15 Administrator Feinberg. So it doesn't suggest
16 that it has to be done beforehand in this
17 document.

18 Q It just appears to me -- and this may be
19 just me -- that you're saying to restart the Gulf
20 Coast service will require infrastructure
21 improvements. But you're saying -- your
22 interpretation is that the infrastructure could

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1 come later?

2 A Well, I'll call your attention to Item
3 1, where Amtrak "continues to operate on the
4 Southwest Chief Historic Route. We're investing
5 in that every year, so, you know, that is not" --
6 it says "will require significant rebuilding of
7 track and signal systems." Similar language to
8 what is shown in Item 6, and that Amtrak continues
9 to operate on that line today.

10 Q Well, let's stick to No. 6, because
11 that's the question. So restarting the Gulf Coast
12 service will require infrastructure improvements.
13 You did not mean that any infrastructure
14 improvements had to be done before they restarted
15 the Gulf Coast service; is that accurate?

16 A I don't think I had any details, more
17 than what I recorded here, in mind when I wrote
18 that e-mail.

19 Q And this e-mail -- I'm sorry. Let's go
20 to CSX-NS 320.

21 MEMBER PRIMUS: Could I ask a quick
22 question?

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1 MR. DONAHOE: Sure.

2 MEMBER PRIMUS: So I just want to -- I
3 just want to clarify. So was there ever a time
4 when there was a discussion about Gulf Coast
5 service that infrastructure would have to happen
6 before it was restarted? Do you recall?

7 THE WITNESS: In -- in my tenure of the
8 project, basically starting in 2018, we focused on
9 trying to complete an RTC analysis collaboratively
10 between the parties. That process did not work
11 out, as we've talked about here in the testimony.
12 So we didn't have a -- a second discussion on
13 infrastructure, other than what was in the Gulf
14 Coast Working Group report at that time.

15 MEMBER PRIMUS: I guess -- just to
16 follow up. So in the initial discussion about the
17 Gulf Coast Working Group, was there any talk of
18 that construction happening before the start --
19 the restart, or was this all considered, as you
20 say, following the restart?

21 THE WITNESS: Beginning at the time that
22 I was working on the project in 2018, we didn't

1 talk about when infrastructure would be needed
2 because we didn't have a -- other than the Gulf
3 Coast Working Group, we didn't have infrastructure
4 identified or timing of infrastructure identified.
5 That was intended to be part of what the RTC
6 modeling would have identified, had that project
7 been completed and successful, the timing and the
8 need of any infrastructure to -- to re-enforce
9 the -- the work of the Gulf Coast Working Group
10 Report.

11 MEMBER PRIMUS: Okay. Last question:
12 So the infrastructure and the working -- the Gulf
13 Coast Working Group Report -- when that -- when
14 you saw that and the infrastructure
15 recommendations, was that assumed that that would
16 happen because -- notwithstanding the models or
17 anything like that, but taking that report only,
18 was the assumption under Amtrak that that
19 infrastructure was to be done after the start?

20 THE WITNESS: That was my -- that was my
21 assumption, both from the -- the -- Amtrak's
22 endorsement of the Gulf Coast Working Group

1 report, the letter that Amtrak had written to
2 Administrator Feinberg, and the 2015 report that
3 Amtrak provided to SRC, which all pointed to that
4 sequence of events. Start of service with initial
5 investment that would deal with the station's
6 facilities, so we would have safe boarding and
7 deboarding locations for passengers, and then
8 infrastructure phased in over time.

9 MEMBER PRIMUS: Thank you.

10 CHAIRMAN OBERMAN: Go ahead,
11 Mr. Donahoe.

12 BY MR. DONAHOE:

13 Q CSX-NS 320. Do you have that in front
14 of you?

15 A Yes.

16 Q And this was dated June 17, 2020. And,
17 again, it's from Peter Schwartz of the FRA. Do
18 you see that?

19 A Yes.

20 Q And you're copied on that, on the cc
21 line?

22 A Yes.

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1 Q And I think I alluded to this earlier
2 when I questioned you. This is the specific data
3 that the FRA was requiring, the inputs and so
4 forth, that are listed there. Do you see that?

5 A Yes, I do. Yes, I do.

6 Q Okay. And the FRA didn't provide you
7 this specific detailed listing of inputs prior to
8 you signing the data-sharing agreement?

9 A That's correct.

10 Q So the data-sharing agreement took
11 effect in January of 2020; correct?

12 A Yes.

13 Q So it was six months later when the FRA
14 then came to Amtrak and said, Oh, we need a list
15 of all of these other inputs; is that fair?

16 A I'm just -- let me read the e-mail
17 again.

18 Q Sure.

19 A In looking at Peter's e-mail, it
20 indicates that, you know, the comment from "which
21 we think we can all work from here on out"
22 suggests that this list was a reflection, partly

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1 reflected FRA's participation and the work up to
2 this point, and that -- that the list was -- that
3 the list did evolve, based on their participation
4 of the project at this -- up to this point.

5 Q And the FRA funded the project?

6 A The FRA funded the project, although
7 Amtrak would -- anticipated that we would be
8 funding part of the RTC modeling study because FRA
9 had a limited number of scenarios. And we
10 anticipated that we would be conducting additional
11 scenarios.

12 Q But the -- the bottom line is -- and I
13 think it's actually in an e-mail here, was that
14 April, four months after these agreements were
15 signed, the FRA was requesting all of these
16 additional inputs?

17 A These -- we had internal lists -- I'm
18 sorry. We had internal lists, as well, of
19 information that we were looking for. Much of
20 that information, I believe, was reflected in some
21 of my earlier communications to the host where I
22 had asked for information. I had -- so we had --

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1 you know, the FRA put down in great detail here
2 what their request was.

3 But we had other lists that we had
4 developed -- Amtrak folks had developed and our
5 own RTC modeling folks had developed that we had
6 requested, as well. What ultimately happened from
7 list was that we combined lists, so we had a
8 common list of information to present to the host
9 railroads.

10 Q That's fine, and I understand that. My
11 only point is that these lists were created after
12 the agreements were signed in January.

13 A This list was; not all lists were.

14 Q Can you go to page 4 of this document?
15 And, specifically, the paragraph "What FRA Looks
16 To See." Do you see that paragraph?

17 A Yes. Let me read it.

18 Q Take your time.

19 A Okay. Thank you.

20 Q Sure. And, again, this was from Peter
21 Schwartz to the FRA in April of 2001. The
22 sentence I wanted to look at was -- you see where

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1 it starts, about halfway down the paragraph -- let
2 me have it up on the screen -- "As for the
3 commercial sensitivity?" Do you see that?

4 A Yes.

5 Q And then the next sentence after that,
6 he says, "This stuff is all in plain sight, and it
7 would be pretty easy, albeit costly, to
8 independently develop a simulation model of nearly
9 any railroad in the country. I would prefer that
10 we not have to raise this specific point in detail
11 with the larger group, but the railroads are aware
12 of it." Do you see that?

13 A Yes.

14 Q How do you interpret that comment?

15 A Which part of his comment?

16 Q The fact that this could easily be done
17 by anyone because it's all in plain sight?

18 CHAIRMAN OBERMAN: Mr. Donahoe, I don't
19 see that Mr. Blair received this e-mail. So I
20 think you should establish whether he's even
21 familiar with what was being written here at the
22 time.

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1 MR. DONAHOE: Okay. These were on
2 e-mail chains, but that's fine.

3 BY MR. DONAHOE:

4 Q Did you ever receive this e-mail?

5 A Yes, I did.

6 Q So you are familiar with it. Okay.

7 So let me rephrase my question for you.
8 Okay? How do you interpret Mr. Schwartz saying
9 this, that this stuff is all in plain sight, and
10 would be pretty easy to independently develop a
11 simulation model?

12 A Well, as the term is often said that
13 railroading is an outdoor sport -- I think it was
14 cited a couple of times during the testimonies --
15 you can identify a lot of things about railroad
16 operations just from public observation or public
17 sights, in many cases. So you can see how many
18 tracks there are, how many trains have gone by,
19 they can be counted, what the general consensus
20 is. So there's a lot of information that can
21 be gathered just from an observation of railroad
22 operations.

1 Q Did Amtrak ever sit down -- this might
2 have predated your involvement, but, to your
3 knowledge, did Amtrak ever sit down with the FRA,
4 prior to the signing of the agreements, and ask
5 the FRA what data they wanted to see from the
6 modeling?

7 A I know we had communications with --
8 between members of my staff and FRA prior to the
9 execution of the agreements. I don't know what
10 the -- what was complete -- I mean, I don't know
11 the context of all of those conversations.

12 Q But you would agree that, after the
13 agreements were signed, the FRA was requesting a
14 lot of -- more inputs than they previously advised
15 you of, prior to the agreements?

16 A Again, I would say that we had multiple
17 lists. We had an Amtrak list. We had an FRA
18 list. And many of the things on FRA's list were
19 also on Amtrak's list. So FRA was not the only --
20 and, in fact, we invited FRA to -- as the funding
21 agency, to make sure we had their interests in
22 mind in completing the project. So I think there

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1 were a variety of lists, that we ultimately made
2 one list so that we could align all of the
3 parties' interests in progressing the project.

4 Q When you first raised concerns about
5 Amtrak's ability or inability to validate the
6 model, was that because of the requests being made
7 by the FRA?

8 A No. Actually, that happened even before
9 FRA's data request at this communication.

10 Q We can go to CSX-NS 321.

11 CHAIRMAN OBERMAN: Mr. Donahoe, what's
12 your -- it's 12:35. What's your timing here? Can
13 we finish?

14 MR. DONAHOE: Another half an hour in
15 the confidential portion.

16 CHAIRMAN OBERMAN: The pleasure of the
17 board? Karen? Robert? Gang, do you want to go
18 another half an hour before we break for lunch?

19 MR. DONAHOE: And, Chair, probably 10 or
20 15 minutes outside the confidential.

21 CHAIRMAN OBERMAN: I'm just thinking of
22 trying to -- we can come back and do that after

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1 lunch. Do you want to go for another half an
2 hour? I'm just thinking of the public and the
3 other people.

4 MR. DONAHOE: I'm just estimating. I'll
5 try and keep to it.

6 CHAIRMAN OBERMAN: Okay. Thank you very
7 much. What's the -- what number are we on?

8 MR. DONAHOE: 321.

9 CHAIRMAN OBERMAN: All right. Proceed.

10 BY MR. DONAHOE:

11 Q And I want to ask you about the
12 June 29th e-mail from Peter Schwartz on which you
13 were copied. Do you see that e-mail?

14 A Yes. Let me read it, please.

15 Q Sure. I'm going to focus on the second
16 paragraph. I mean, feel free to read the whole
17 thing.

18 A You said you would like to focus on the
19 paragraphs --

20 Q Yeah, in terms of the question.

21 A In terms of the question, yes, sir.

22 Q Okay. Would you agree with me that at

1 this time in June, FRA was indicating to you and
2 Amtrak and others that, unless those data types
3 were included or they had access to, that that was
4 a minimum requirement for the FRA to be able to
5 fund operation simulation work through the grant?

6 A I wouldn't -- I would disagree with
7 that. The e-mail also mentions that we could
8 offer alternative data and the -- ultimately, the
9 grant agreement that we executed with FRA did
10 allow for that, and we had subsequent phone
11 conversations.

12 In fact, I had subsequent phone
13 conversations with Peter Schwartz about this
14 concern, and FRA agreed to try to work with us,
15 based on the data that actually came in. But that
16 was still prospective. The data -- not all the
17 data had arrived at that point.

18 Q Was this the first time that the FRA had
19 advised you that they would discontinue funding
20 unless they received these additional inputs?

21 A I don't know if this was the first time,
22 but we also have regular phone calls with FRA, so

1 they had plenty of opportunity to communicate with
2 us if -- if they had a concern, and, if so, what
3 that concern would be. But, again, as we -- when
4 we executed the grant agreement with FRA, it was
5 an acknowledgment that certain data may not be
6 able to be produced by Amtrak in that grant
7 agreement. And Amtrak recognized that there was a
8 risk of funding loss if FRA deemed the data that
9 was provided to them by us from the host railroads
10 was unacceptable.

11 Q And all of that occurred -- even if you
12 don't know the specific date, but all of that
13 occurred after the agreements were signed?

14 A Yes. All of that occurred after the
15 agreements were signed.

16 Q If we can go to CSX-NS 322.

17 CHAIRMAN OBERMAN: Before you leave
18 this, Mr. Donahoe, I'd like to see if I understand
19 the chronology here, Mr. Blair. Amtrak and the
20 railroads signed an agreement to conduct RTC
21 studies, and each party was to supply confidential
22 data to the -- and that happened in late 2019 or

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1 early 2020; is that correct?

2 THE WITNESS: Yes.

3 CHAIRMAN OBERMAN: And at the time you
4 were supplying the data and preparing to enter
5 into this agreement, did you or the railroads
6 already have an approved grant from FRA to pay for
7 the modeling?

8 THE WITNESS: That is a very good
9 question. No, we did not. The -- originally, the
10 grant monies were going to come through -- to
11 Amtrak through the Southern Rail Commission. FRA
12 then elected to establish a grant agreement
13 directly with Amtrak for the funds, which put us
14 after the other agreements had been executed.
15 Even though we had been keeping FRA apprised of
16 the project, when FRA elected to enter into a
17 grant agreement directly with Amtrak, that all
18 took place after the other grants were executed.

19 So Amtrak -- we recognize that, you
20 know, SRC or Amtrak or FRA ultimately would have
21 funded the project. We were still trying to
22 prosecute the project at that point. And we

1 had -- you know, Amtrak had reserved some of our
2 own money, potentially, to complete the project if
3 any of those other funding options didn't play
4 out.

5 But, ultimately, the FRA -- we did
6 execute the FRA grant agreement, but that's --
7 you're right. That was after the other agreements
8 had been executed.

9 CHAIRMAN OBERMAN: Well, at the time you
10 executed the earlier agreement, the data-sharing
11 agreement and the RTC agreement, at that moment in
12 time, what was the -- was there an identified
13 source for funding to pay for this study at that
14 moment in time?

15 THE WITNESS: Yes. There was grant
16 monies that had been given to SRC -- they were
17 awarded to SRC -- that would have funded the
18 study. But FRA didn't have a grant agreement with
19 SRC for the monies that SRC was awarded. So while
20 SRC had agreed to fund the study, FRA said, Well,
21 why contract with SRC, ultimately, to do the work
22 that Amtrak is under contract with HDR to provide?

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1 So FRA said, Why not -- why not just contract
2 directly with Amtrak and the grant?

3 CHAIRMAN OBERMAN: Well, I guess what
4 I'm trying to understand --

5 MEMBER HEDLUND: I think I can clarify.

6 CHAIRMAN OBERMAN: All right. Well, let
7 me ask this question and, Karen, you can clear me
8 up, too. You said that SRC had the funds, but
9 they didn't have a grant agreement. So how can
10 that happen? How could they have the funds if
11 there was no agreement?

12 THE WITNESS: They had a subsidy -- SRC
13 had a subsidy that they were being given from FRA
14 through -- I think it was a legacy of the FAST
15 Act, where they would continue to advance the Gulf
16 Coast work. So much of the work that SRC was --
17 was conducting, you know, their public outreach
18 and everything else was all funded through FRA
19 monies. It didn't have -- there was not a
20 specific scope of work assigned for the modeling.

21 SRC had approved that, but the money had
22 to come through FRA to SRC to Amtrak. FRA said,

1 Why create this unusual pathway of funding? Why
2 not -- you know, we execute grant agreements with
3 FRA all the time, so why not just execute a grant
4 agreement directly with Amtrak? So we actually
5 started the grant agreement negotiations after the
6 other agreements were signed as a result of that
7 change in pathway of funding.

8 CHAIRMAN OBERMAN: Let me just ask this,
9 and then I'll turn it over to Karen.

10 Wouldn't Amtrak and the railroads want
11 to know, at the moment of the signing of the
12 contract, that the money existed to pay for the
13 work the contract called for? It sounds like you
14 didn't really have authority to spend the money at
15 the moment the contract was signed. Am I missing
16 something here?

17 THE WITNESS: Well, we had Amtrak's
18 money. We -- our group typically has money that
19 we -- that we use for potential services. We had
20 reserved money for the study. SRC had offered to
21 pay for the study using money that they had gotten
22 from FRA. FRA then said they would pay for the

1 study through the grant agreement with Amtrak.

2 So Amtrak then took our money, the
3 Amtrak dollars, put that aside to cover other
4 parts of the analysis that we felt the FRA
5 study -- or the FRA monies wouldn't necessarily
6 complete. FRA contemplated three scenarios. We
7 identified about six scenarios that we would
8 propose.

9 And then, in addition, we agreed to pay
10 for a certain number of CSX scenarios that FRA did
11 not agree to pay for. So Amtrak's money was held
12 in reserve until the FRA money would have been
13 exhausted under the FRA grant agreement. So we
14 had money to -- to complete the study; we had
15 signed the scope with that money in mind, but the
16 funding changed after the agreements were
17 executed.

18 CHAIRMAN OBERMAN: Well, the point
19 that's obviously -- the railroads have been trying
20 to drive here, from their witnesses as well as in
21 your testimony -- which I'd like somebody to make
22 clear for us -- is that their contention seems to

1 be that Amtrak and the railroads signed an
2 agreement that had certain limitations on the data
3 that would be supplied outside of the HDR.

4 In other words, data was going to be
5 submitted to HDR that neither side would get to
6 see. Their contention seems to be that, after you
7 signed this contract, either Amtrak or FRA or both
8 came back and said, Well, now, we want data that
9 the contract said would only be with HDR.

10 In other words, you're trying to change
11 the rules after you signed the contract. It
12 sounds like that's what happened once you went to
13 FRA and said, Well, okay, we'll do the grant with
14 FRA, and FRA said, Fine, but we want certain data.
15 Is that what happened?

16 THE WITNESS: I mean, I wouldn't -- FRA
17 said, Fine, we want certain data, but if you don't
18 get the data, and we don't pay, Amtrak had
19 presumed that we would then pay for the cost of
20 the study. So we had a plan and contingency
21 for -- to complete the study, presuming the study
22 actually went to conclusion. But because we

1 didn't get the level of cooperation that we
2 thought we needed to complete the study, that --
3 you know, the Amtrak money never got spent.

4 CHAIRMAN OBERMAN: Well, that seems to
5 be -- I'm sorry, Karen. Maybe you can really
6 speed this along. But it sounds like what
7 happened here is that you signed a contract,
8 either you or the FRA then went back to the
9 railroads and said, We know we signed a contract,
10 but would you agree to give us this other data
11 anyway, even though it was originally
12 confidential? And they said, No, we won't.

13 So instead of proceeding with it, you
14 decided not to proceed with it because you
15 couldn't get them to give you this additional
16 data; is that what happened?

17 THE WITNESS: No. The -- and, in fact,
18 the three agreements all have slightly -- the
19 three agreements, read together, provide certain
20 levels of cooperation and certain levels of
21 collaboration and data-sharing. The data-sharing
22 agreement deals with several explicit items, but

1 there's other principles that are identified in
2 the RTC modeling study that say they will share
3 inputs and assumptions. We did not receive those
4 inputs and assumptions. That's what we raised,
5 initially, in April and then in August.

6 But in August, we had the benefit of the
7 FRA detailed request for data, which we had
8 incorporated into our request, as well.

9 Ultimately, it turned out that our list and the
10 FRA's list was not that substantially different.
11 And we said -- when the railroads had asked us to
12 provide them with a comprehensive list of all the
13 data that we would want, we compiled one uniform
14 list that we'd sent them, and they elected not to
15 share that data with us.

16 CHAIRMAN OBERMAN: Well, the contention
17 that's being made is that they didn't have to,
18 under their contract. Are you contending that
19 there's some other agreement which did allow you
20 to get this data? Because, if so, I don't think
21 we've seen that agreement.

22 THE WITNESS: There's -- there's three

1 agreements -- there are three agreements in this
2 portfolio. There is the RTC study agreement,
3 there is a data-sharing agreement, and there's the
4 scope of work with HDR. All three of those
5 agreements had different elements of
6 information-sharing in them.

7 And all those -- and then my -- the
8 letter that I sent in August of 2020 really tries
9 to bring all of those elements together to say,
10 This agreement says that you're supposed to share
11 this information with us, and we didn't get it.
12 And this is -- and this is the list of data that
13 we have. That's why it turned out to be a very
14 long letter. But that was how we addressed the
15 various data-sharing commitments that were in the
16 various agreements between the parties. All three
17 agreements interlocked.

18 CHAIRMAN OBERMAN: Well, I think this is
19 more a question for counsel. At some point in
20 this proceeding, I'd like Amtrak's lawyers or the
21 railroad lawyers to show us the agreements,
22 because I think I only focused on the one. Maybe

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1 I missed it. Whatever language it is that Amtrak
2 contends that entitled it to ask for this data
3 that you asked for and didn't get, I'd like to see
4 what agreements we're talking about.

5 Now that I've thoroughly mixed this up,
6 Karen, do you want to clear anything up?

7 MEMBER HEDLUND: No. I'm not sure this
8 is even pertinent at this point, but I just wanted
9 to clarify or have you clarify one thing about the
10 FRA grant-making process. FRA, when it makes
11 grants, will award a grant and let the prospective
12 grantee know that there is money available to them
13 under a certain program. However, that grant is
14 not effectuated until a detailed grant agreement
15 is executed. And, in your experience, how long
16 does that take?

17 THE WITNESS: In this case, the
18 agreement took us two and a half months for this
19 project. Some are longer, some are shorter.

20 MEMBER HEDLUND: So the money was
21 awarded before the data-sharing agreement was
22 signed, but the contract was executed after?

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1 THE WITNESS: Yes. And that's -- that's
2 because the money that SRC was going to use for
3 this was part of their general expenses. FRA then
4 recommended to -- that they establish a grant
5 directly with Amtrak for this specific project
6 because they -- FRA had obligations under the FAST
7 Act themselves to promote the restoration service
8 of the Gulf Coast. So it was FRA's recommendation
9 that they enter into a grant agreement directly
10 with Amtrak with FRA monies, other than not use
11 the monies that they had given for SRC's
12 operations expenses.

13 MEMBER HEDLUND: So at the time you
14 signed the data-sharing agreement and the related
15 agreements, you did not know what the requirements
16 of a separate grant agreement with FRA were going
17 to be?

18 THE WITNESS: That's correct.

19 CHAIRMAN OBERMAN: Well, I would like to
20 see -- when I said I'd like to see what agreements
21 allowed Amtrak to be entitled to get this
22 information, I mean an agreement that the

1 railroads and the parties get. Not just between
2 you and SRC or FRA, one that somehow obligates
3 them. They can certainly contend there isn't one.
4 So if you contend there is one -- and I don't mean
5 you, Mr. Blair, I mean Amtrak, I'm talking to
6 their counsel -- I'd like to see it. I think the
7 board would like to see it. Thank you.

8 THE WITNESS: No. Yes, sir.
9 Mr. Chairman, there were three -- there were three
10 agreements that were all executed on the same
11 date. The data-sharing agreement is one of those,
12 the other two were the RTC study agreement and
13 then the scope-of-work agreement with HDR, the
14 actual consulting agreement with HDR.

15 CHAIRMAN OBERMAN: All right.
16 Mr. Donahoe, I've used up a bunch of your half
17 hour. So proceed.

18 MR. DONAHOE: That's fine.

19 BY MR. DONAHOE:

20 Q Just so I'm clear, so when the study
21 started, okay, in January when the study -- the
22 FRA was funding it at the beginning?

1 A When the study started, Amtrak was -- we
2 did not -- we did not have an agreement with FRA
3 to fund the study when the agreements were
4 executed.

5 Q Okay. That's fine. That's what I was
6 trying to clear up. So, essentially, Amtrak was
7 trying to get reimbursed by the FRA if they
8 approved it?

9 A Yes.

10 Q Okay. So when the study started, Amtrak
11 was funding it?

12 A Amtrak was willing to fund it, in the
13 event that the SRC monies would not be available.
14 So we have three potential funding sources for the
15 study.

16 Q Understood. When was the -- when did
17 the FRA advise you that the money was available
18 from the FRA to fund the study? Ballpark.

19 A Probably early February. Probably right
20 after the execution of the agreements.

21 Q So up until that time, it was either
22 going to be the SRC, Amtrak, or FRA funding the

1 study, one of those three options?

2 A Yes.

3 Q Okay. Was the SRC involved in the
4 process that took place prior to the signing of
5 the various three agreements?

6 A What do you mean by "process"?

7 Q Well, I mean, you signed, you know, the
8 data-sharing, the HDR model. Was SRC consulted on
9 what they would want from the RTC modeling?

10 A Yes. We had regular communications with
11 them, as well, about the status of the
12 negotiations. And I don't recall whether we
13 shared draft documents with them or not, but we
14 do -- we did have regular updates with SRC.

15 Q Okay. That's fine. So the SRC
16 indicated to Amtrak, prior to the agreements, what
17 data they may be interested in; is that accurate?

18 A Yes. Although -- yes, although SRC
19 deferred significantly to Amtrak in that effort.

20 Q And that's my next question: So at the
21 time the agreements were signed, it was still a
22 possibility that Amtrak was going to fund the RTC

1 model?

2 A Yes.

3 Q And did Amtrak raise any issues prior to
4 signing the agreements, laying out specifically
5 what data or inputs would be required?

6 A The negotiations took us many months,
7 specifically over that data -- over that
8 information and that data. And in the interest of
9 trying to move the project along, we felt as
10 though that was the -- the best deal that we could
11 get.

12 Q No, I understand that. I understand
13 it's negotiations. But my -- my question is that
14 since Amtrak was a possibility of funding this
15 study, then you had input on what data you would
16 want to see?

17 A Yes.

18 Q And that data was outlined in the
19 agreements that I went over a little ago, what
20 data would be turned over; correct?

21 A That's what we ultimately agreed on,
22 yes.

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1 Q Okay. Fair enough. Can we go to 322,
2 please? And this is dated July 22, 2020, and it's
3 from Kyle Montgomery to yourself.

4 I guess my first question: Who is Kyle
5 Montgomery?

6 A Kyle is -- works in the group.

7 Q You're his boss?

8 A Yeah.

9 Q And underneath, where it says,
10 "Background, since the 2018 agreement and
11 principle between Amtrak and CSX CEO," what
12 agreement was that referring to?

13 A That was the -- that was the exchange --
14 that was the exchange between the --

15 MR. DONAHOE: I'm sorry. Hold on one
16 second. I'm sorry, Chair. Page 1, underneath
17 "Background."

18 CHAIRMAN OBERMAN: Got it.

19 BY MR. DONAHOE:

20 Q Go ahead. What was that 2018 agreement
21 referring to?

22 A That was the exchange between

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1 then-Amtrak president Richard Anderson -- or CEO
2 and president Richard Anderson and CSX CEO Jim
3 Foote.

4 Q So that agreement had nothing to do with
5 the type of modeling that would be been done, or
6 did it? And I'm not trying to trick you. If you
7 read the next sentence, this is why I'm asking.
8 It talks about how the agreement was constructed.
9 Do you see that -- or structured?

10 A Yes.

11 Q So my question: Is that agreement also
12 contemplating a base case, as well as a model, 20
13 years in the future; right? If you keep
14 reading --

15 A No. I think the way the sentence is
16 constructed is that the predicate here is, Since
17 the 2018 agreement and principle between the CEOs
18 was -- is a conceptual backdrop to what was going
19 on in the 2020 study. But looking at the date of
20 this e-mail, which is July of 2020, we were in the
21 midst of the 2020 study.

22 So I'm interpreting -- I'll interpret

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1 Kyle's e-mail to say -- what he's saying here is
2 that the parties had agreed to a transparent
3 study, but the details after the comma are,
4 fundamentally, details around the study that was
5 being conducted in 2020.

6 Q This e-mail says, "The agreement was
7 structured with three main modeling steps. The
8 first, the base case, and then the second was a
9 model 20 years in the future." Isn't that what it
10 says?

11 A But then none of that were elements of
12 the agreement, in principle, between the Amtrak
13 and CSX CEOs.

14 Q But it was part of the agreement that
15 you signed in the data-sharing agreement -- I'm
16 sorry -- the modeling agreement, the 20 years?

17 A Yes.

18 Q Okay. If we can go to --

19 CHAIRMAN OBERMAN: Before we leave this
20 paragraph -- yeah, is the qualification here that
21 the study for 20 years into the future was done
22 only at the request of CSX and NS, not at Amtrak's

1 request?

2 THE WITNESS: Yes. Amtrak did not
3 request the 20-year study. That was -- or the
4 20-year look-ahead. That was requested by the
5 railroads.

6 CHAIRMAN OBERMAN: And did that remain
7 Amtrak's position through the ultimate signing of
8 the agreements which got signed?

9 THE WITNESS: Well, it -- it is
10 contained as one of the elements of the agreement,
11 so Amtrak agreed to allow the 2020 look-ahead
12 no-build case to be analyzed.

13 CHAIRMAN OBERMAN: That, I understand,
14 but it was never at Amtrak's request, it was only
15 at the railroad's request?

16 THE WITNESS: It was not at Amtrak's
17 request. It was at the railroad's request.

18 CHAIRMAN OBERMAN: Thank you.

19 BY MR. DONAHOE:

20 Q Amtrak didn't request it, but Amtrak
21 agreed to it?

22 CHAIRMAN OBERMAN: That's what he said.

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1 BY MR. DONAHOE:

2 Q I just want to be clear; is that
3 correct?

4 A That's correct.

5 Q And do you recall that -- that COVID was
6 causing some delay problems in the modeling?

7 A Yes. We switched from in-person -- HDR
8 had contemplated meeting in person with each of
9 the railroads for their -- getting their input
10 on the -- on building the base case, and those
11 were converted to virtual meetings. HDR indicated
12 those meetings worked out, actually, pretty well,
13 and they didn't feel they lost time due to that.
14 They lost time due to other -- due to the
15 post-railroad review and repeated reviews of
16 the -- the work that they were doing.

17 MR. DONAHOE: If we can go to CSX-NS
18 319, and, Chair, I have five more e-mails to go
19 through.

20 CHAIRMAN OBERMAN: What's the board's
21 pleasure? It's five after 1:00 now. I think we
22 probably all need a break. So I'm wondering,

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1 Mr. Donahoe -- I know you don't want to show them
2 to the witness in advance, which is fine, but I'm
3 wondering if you can provide us with the other
4 emails to save time in distribution while we're on
5 lunch break?

6 MR. DONAHOE: Sure.

7 CHAIRMAN OBERMAN: Do you know what they
8 are, too?

9 MR. DONAHOE: 319, 317, 323, 326, and
10 361.

11 CHAIRMAN OBERMAN: All right. It is
12 1:05. We will break for 30 minutes, and we'll be
13 back at 1:35.

14 (Off the record.)

15 (Confidential Session.)

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1 (Off the record.)

2 CHAIRMAN OBERMAN: I'm not sure where we
3 are. Are we waiting, are we back in the public
4 session?

5 All right. We can proceed.

6 BY MR. DONAHOE:

7 Q Okay. Mr. Blair, do you recall
8 testifying on your direct examination that the
9 Gulf Coast Corridor was like a snowflake?

10 A In terms of uniqueness?

11 Q Yes.

12 A I said perhaps it could be analogous to
13 a snowflake in the sense that it may look like --
14 I mean, snowflakes, I treat them all the same,
15 with the same shovel in my driveway, but I do
16 recognize that each one is unique in a sense. But
17 I -- the tools that Amtrak has and we bring to
18 bear in each service are similar.

19 Q So you would agree that there is some
20 uniqueness to the Gulf Coast Corridor?

21 A We don't have another train that
22 operates through the Bay of St. Louis, in that

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1 sense. So there -- each corridor has some
2 elements of uniqueness. I think what I tried to
3 reflect in my verified statement is that the
4 characteristics that are presented in the Gulf
5 Coast Corridor, Amtrak has confronted successfully
6 in other corridors.

7 Q One of the other things in your verified
8 statement was the Northeast Corridor, that it has
9 a lot of single track; do you remember that?

10 A The Northeast Corridor, with single
11 track? Don't you mean -- I think the reference in
12 my verified statement to the Northeast Corridor
13 was for the local bridges.

14 Q Does the Northeast Corridor have double,
15 triple, and quadruple track?

16 A Most of it, yes, it does.

17 Q And the Chicago to Los Angeles, I think
18 it was a Burlington Northern. Do you recall that?

19 A Yes. That was an example where I
20 cited -- where the -- the respondents had
21 indicated that it was a substantial amount of
22 freight volume. And I said, between Chicago and

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1 Los Angeles, we regularly confront, with the
2 Southwest Chief, 100 trains a day.

3 Q Is there a lot of double track and
4 triple track segments in that?

5 A On that segment, yes, there is.

6 Q And you cited the Bakersfield to
7 Stockton, another BN route?

8 A Yes. A largely single-track railroad
9 that hosts more passenger trains than the Gulf
10 Coast.

11 Q Isn't it true that there's no movable
12 bridges on the Bakersfield to Stockton?

13 A I don't know.

14 Q Isn't it true that there's 40 percent
15 less grade crossings on the Bakersfield to
16 Stockton?

17 A I don't know.

18 Q And I think you also cited the Florida
19 east coast, the Miami to Palm Beach?

20 A As a place where there were more grade
21 crossings per mile when that was cited as an
22 example of the challenges in the Gulf Coast

1 Corridor.

2 Q And isn't that true that that's a
3 double-track corridor?

4 A The grade crossings and double-track
5 don't necessarily correlate.

6 Q My question is, isn't it true that's a
7 double-track corridor?

8 A I believe most of it is, yes.

9 Q Do you know what the cost of that
10 corridor was when it was built?

11 A Originally or rebuilt?

12 Q Rebuilt.

13 A No, I don't.

14 Q You haven't seen it estimated at
15 \$1 billion?

16 A No.

17 Q As a result of this hearing, Amtrak was
18 in possession of all the data that they had
19 requested for the discovery process in October of
20 last year. Were you aware of that?

21 A I -- I can't validate all -- whether we
22 had received all the information we requested in

1 discovery or not.

2 Q My question to you is, did either Amtrak
3 in-house modelers or did you ask your consultants
4 to run any of that RTC modeling based on that
5 information, if you know?

6 A Did I request?

7 Q Were you aware of any request made on
8 Amtrak's behalf that RTC modeling be done with
9 this information that was given during the
10 discovery process?

11 A I believe counsel requested the -- the
12 analysis to be done by L.E. Peabody.

13 Q Did Peabody do RTC modeling, to your
14 knowledge?

15 A To my knowledge, no, they did not.

16 Q And you were aware of the board's order
17 of August 2021 that requested of the parties that
18 modeling be done?

19 A Yes.

20 MS. AMUNSON: Objection.

21 BY MR. DONAHOE:

22 Q And are you aware --

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1 MS. AMUNSON: Objection.

2 MR. DONAHOE: I'm sorry.

3 CHAIRMAN OBERMAN: There's an objection.

4 MS. AMUNSON: Misstates the document.

5 CHAIRMAN OBERMAN: Mr. Donahoe, if
6 you're going to cite the document, would you read
7 the exact language?

8 MR. DONAHOE: I'll move on. I'll
9 withdraw it.

10 BY MR. DONAHOE:

11 Q Do you know when Peabody was retained?

12 A No.

13 Q And you've testified that the station
14 improvements should be done by the end of the
15 year?

16 A That's our current projection, yes.

17 Q What do you believe could happen if you
18 institute service without any infrastructure, and
19 problems arise due to capacity and congestion?

20 A What do you mean, "What do I think would
21 happen"?

22 Q Do you think it will have an effect on

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1 the communities?

2 A What scenario are you asking me to
3 respond to?

4 Q Do you think there will be any effect on
5 the communities around the Gulf Coast line if
6 problems arise with congestion and capacity with
7 the addition of the Amtrak passenger trains?

8 A I don't know what those circumstances
9 may be, so I'm not -- I'm not in a position to
10 respond to that.

11 Q Do you think there would be any effect
12 on the shippers if Amtrak adds passenger lines and
13 congestion and capacity is affected?

14 A I don't anticipate issues with shippers,
15 but I'm not in a position to respond to that.

16 Q Did you hear the testimony of any of the
17 port witnesses?

18 A Yes, I did.

19 Q Did they express a concern that there
20 would be an effect on the port if there was no
21 infrastructure in place when Amtrak put passenger
22 lines on the Gulf Coast Corridor?

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1 A Yes, they did express that concern.

2 Q And you've also heard the concern with
3 the freight railroads, that they have a concern
4 that if there's no infrastructure in place before
5 the addition of Amtrak passenger line, they have a
6 concern about congestion and capacity?

7 A Yes. I heard them indicate that
8 position, yes.

9 Q Were you -- did you listen to the
10 testimony of Mr. Johnson from CSX?

11 A Yes, I did.

12 Q Did you listen to the testimony of Randy
13 Hunt from Norfolk Southern?

14 A Yes. I did.

15 Q Did you listen to the testimony of Larry
16 Guthrie, one of the experts that was retained in
17 this matter?

18 A Yes, I did.

19 Q And you also heard the testimony from
20 the port's witnesses; correct?

21 A Yes.

22 Q Don't you think those people who've been

1 to that line, who've worked that corridor, who've
2 seen that corridor, are in a better position to
3 talk about the likely effect of adding passenger
4 line without infrastructure than you?

5 A I -- in the scope of my work, that's not
6 something that I do. But I think we -- based on
7 the information that we have about the operations
8 in the corridor, we do not believe that the
9 introduction of Amtrak service would be disruptive
10 to the operations of the corridor in the fashion
11 that CSX, NS, or the port have identified.

12 Q So the fact that Amtrak doesn't run any
13 trains on the majority of this corridor other than
14 the Back Belt, Amtrak, you believe, is in a better
15 position to tell the possible effects on
16 congestion and capacity than all of these people
17 I've just named, who've been there, who've seen
18 it, who've been on the line? That's your
19 position?

20 MS. AMUNSON: Objection. Asked and
21 answered and argumentative.

22 MR. DONAHOE: It's cross-examination.

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1 CHAIRMAN OBERMAN: Sustained.

2 Sustained.

3 MR. DONAHOE: Is the "sustained," Chair,
4 based on repetitive question or argumentative?
5 Because I can clean it up.

6 CHAIRMAN OBERMAN: It's argumentative.
7 Rephrase it.

8 MR. DONAHOE: Okay. Okay.

9 BY MR. DONAHOE:

10 Q Do you believe that individuals who've
11 worked on this line are in a better position to
12 talk about possible congestion and capacity in the
13 future?

14 A Well, I'd say we have individuals who
15 have operated on this line, who believe that this
16 service can be introduced without significant
17 congestion.

18 Q And when was the last time Amtrak had
19 service on that line?

20 A 2005.

21 Q Thank you. I have no further questions.

22 CHAIRMAN OBERMAN: Ray, did you have

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1 some questions?

2 MR. ATKINS: I do, Mr. Chairman. Can
3 everyone hear me okay?

4 CHAIRMAN OBERMAN: Very well.

5 MR. ATKINS: And, Mr. Blair, can you
6 hear me okay?

7 THE WITNESS: Yes, I can.

8 CROSS-EXAMINATION

9 BY MR. ATKINS:

10 Q Okay. So, as you know, my name is Ray
11 Atkins.

12 (Discussion held off the record.)

13 BY MR. ATKINS:

14 Q Okay. So, Mr. Blair, I'd like to go
15 back -- can you still hear me okay? Give me a
16 shout if you can't hear me. I'd like to go back
17 to the Gulf Coast Working report, which was JE
18 Exhibit 1B. And I'm going to just touch on what I
19 think are three -- three points and then move on.
20 Can we move to the page, which is page 2 of the
21 report, page 12 of the exhibit? It's the title,
22 2.12, which is the goals of the Working Group

1 report.

2 So -- well, this is going to be awkward,
3 Mr. Blair, because I can't see you. Looks like
4 there's an empty chair. But can you just take a
5 moment to just refresh your memory of the goals?
6 I think you've been through this document a fair
7 bit, but I just want to give you a chance to
8 review what the Gulf Coast Working Group said was
9 your goal and intent of the report.

10 A Can you point me to the specific page,
11 please?

12 Q It's page 2 of the report, page 12 of
13 the exhibit. It should be the section titled
14 "2.12, Goals."

15 A Okay. I'm there. Thank you.

16 Q Yup. Can you just take a moment to --
17 and, in particular, the first two sentences are
18 the ones I'm going to focus on. So if you could
19 just take a moment just to refresh your memory on
20 those.

21 A 2.12, correct?

22 Q Yeah. Just the first two sentences of

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1 2.12.

2 A Okay. I've read it. Thank you.

3 Q Yup. No problem. So I'd like to
4 make -- the first point I'd like to observe is the
5 objective, the second sentence. "The Gulf Coast
6 Working Group's objective is twofold." Would you
7 agree that it was to ultimately achieve a new
8 schedule with better performance than the historic
9 counterpart, was the first objective?

10 A Yes.

11 Q And then the second objective is to
12 operate without unreasonably impairing CSX freight
13 operations?

14 A Yes.

15 Q Do you recall there was a discussion you
16 had with Mr. Donahoe about whether Norfolk
17 Southern's operations were part of the goals of
18 the group?

19 A Yes.

20 Q Would you agree with me that this --
21 this goal seems to indicate that the focus of the
22 Gulf Coast Working Group was an unreasonable

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1 impairment to CSX freight operations?

2 A As shown here, yes. That's correct.

3 MEMBER PRIMUS: I don't think he heard
4 you.

5 THE WITNESS: As shown here, yes.
6 That's what it states.

7 BY MR. ATKINS:

8 Q Okay. The second point I'd like to make
9 is just to confirm -- so the Gulf Coast Working
10 Group, at the end, recommends a series of projects
11 to accomplish these dual objectives. And those --
12 those infrastructure projects are set forth later
13 in the report; correct?

14 A Yes.

15 Q And it is Amtrak's position now that you
16 agree with the recommendations from this Working
17 Group report?

18 A It is -- it has been -- I mean, Amtrak
19 endorsed the report upon its publication. So it
20 has been Amtrak's position, since the publication
21 of the report, that we've supported this report.

22 Q Okay. I just want confirmation that it

1 remains your -- Amtrak's position at this moment
2 in this litigation that you endorse the
3 recommendations in this report.

4 A Was that a question, or you just wanted
5 to --

6 Q That was a question. I'd just like it
7 on the record.

8 A That we still endorse the conclusions of
9 this report?

10 Q Correct.

11 A Yes, we do.

12 Q Okay. And then, you've made the point
13 several times that the report recommends phasing
14 in or a staging of the infrastructure projects, so
15 I would just like to turn to that portion of the
16 report. Give me a moment to get the page for you.

17 It's towards the end. It's on page 31
18 of the report. It's actually page 41 of the
19 exhibit. It's entitled 5.12.

20 A Okay. That's one statement of that. I
21 was also referring to the table that appears in --
22 Table 5.

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1 Q Got it.

2 A And -- and there's -- and there's
3 another table, as well.

4 Q Okay. But this is the -- this is the
5 summary of FRA's recommendations; correct?

6 A Summary of the station infrastructure
7 and other improvement costs, yes. Correct.

8 Q And can you -- and it indicates in here
9 that the suggested approach is to first implement
10 improvements needed to restore service, to be
11 followed by the other investments as additional
12 funding becomes available; is that correct?

13 A Yes. Yes.

14 Q Thank you. And then you just testified
15 with Mr. Donahoe that Amtrak has received from
16 Congress somewhere in the ballpark of \$66 billion
17 in potential funding for infrastructure projects;
18 isn't that correct?

19 A No. I said Amtrak did not receive the
20 \$66 billion. There's a variety of ways in which
21 the IIJA funds come to Amtrak. Some is
22 Amtrak-controlled, some is FRA-controlled, some is

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1 through discretionary grants. But, as Mr. Donahoe
2 said, the numbers are in the billions.

3 Q And that -- and that funding has been
4 made available by Congress, subject to certain
5 requirements and loopholes -- not loopholes,
6 sorry. That was a Freudian -- by certain
7 requirements and prerequisites and going through
8 the appropriate processes that funding has been
9 made available by Congress for infrastructure
10 projects to promote new passenger service; isn't
11 that correct?

12 A Yes, that is correct.

13 Q Okay. So I want to turn away from
14 this -- the Gulf Coast Working Group and talk a
15 little bit about the HDR study. And before I
16 actually get into the details of that, Mr. Blair,
17 you testified on direct that HDR was imposed on
18 Amtrak by CSX. Do you recall that testimony?

19 A I don't recall those were my exact
20 words, but -- but CSX wanted to use HDR, and we
21 agreed to use HDR.

22 Q So I don't think that was quite your

1 testimony. So you -- so you're testifying now
2 that this was a joint agreement between the two of
3 you, that it was not CSX that imposed HDR on
4 Amtrak?

5 A No. I'm sorry. I didn't want -- I
6 don't want to appear to be contradicting that.
7 CSX indicated that they wanted to use HDR for the
8 study, and Amtrak agreed that CS- -- to use HDR.
9 And in doing so, it required us to sole-source HDR
10 as the consultant for the work because CSX
11 indicated they would not agree to share the
12 information that they had shared with HDR
13 previously with another consultant. So we agreed
14 to utilize HDR for the -- for the 2020 study.

15 Q So, Mr. Blair, are you aware of an
16 e-mail that was written between Mr. Nathan Goldman
17 and your then- -- Stephen Gardner, regarding the
18 use of HDR for this purpose?

19 A No, I'm not aware of such a memo.

20 Q So this is my opportunity to go into
21 confidential, unfortunately, Chairman. I'd like
22 to show Exhibit CSX Norfolk Southern 360, which is

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1 a confidential -- it's been labeled confidential
2 by Amtrak. It's the e-mail to which I was
3 referring?

4 CHAIRMAN OBERMAN: Three what?

5 MEMBER PRIMUS: They're handing it out
6 now.

7 CHAIRMAN OBERMAN: But before we do
8 that, let's see if it's Amtrak's mark. Where do
9 we -- we don't have it yet.

10 MR. ATKINS: Chairman, since I'm not in
11 the room, I would ask if maybe Matt Warren could
12 discuss the confidentiality provisions because I
13 understand there have been discussions amongst the
14 counsel during the lunch break, to which I was not
15 privy.

16 CHAIRMAN OBERMAN: Did either you or
17 Jessie want to see if you can de-designate as
18 confidential?

19 MR. WARREN: So, Mr. Chairman, we did
20 have a conversation with Amtrak. And I think
21 where the parties came out is, at this time, we
22 don't feel like -- or Amtrak didn't feel like they

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1 could make decisions on whether to pull back the
2 confidentiality on these e-mails. We know there's
3 some other e-mails.

4 What we agreed to do is, at the close of
5 the record, we'll have a discreet number of
6 e-mails that have been put in that are
7 confidential, and the parties are going to confer
8 on whether we can withdraw the confidentiality on
9 any of those.

10 CHAIRMAN OBERMAN: But for the moment,
11 we have to go into confidential session. Is
12 that -- Jessie, is that Amtrak's position on this
13 exhibit?

14 MS. AMUNSON: I believe that's correct,
15 Mr. Chair. I have not had the opportunity to
16 fully review this and ensure that -- that there's
17 nothing in there that is not -- that can be
18 de-designated. And we agreed, because there were
19 also similar issues with some of the e-mails that
20 came in from CSX and NS, that the parties would
21 confer on this, and, to the extent that we can,
22 de-designate things.

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1 CHAIRMAN OBERMAN: All right. And, Ray,
2 do you have more confidential documents other than
3 this one?

4 MR. ATKINS: There's one possibility,
5 but it would be at the very end. I wouldn't be
6 able to do them in sequence. So I'll debate; I'll
7 see if, when I get there, I need it.

8 CHAIRMAN OBERMAN: It would be much more
9 efficient to not go back and forth, because it
10 takes time, and it's disruptive to the public. We
11 can't do them together?

12 MR. ATKINS: It's really out of context,
13 Chairman. I'll see if I can get there without
14 actually pulling up that document.

15 CHAIRMAN OBERMAN: All right. It's up
16 to you. I mean, if it's important to your case,
17 proceed as you need to proceed. So we will now go
18 into confidential session. Matt, send us where we
19 need to go. And that's not an open-ended
20 direction.

21 (Confidential Session.)

22

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(End of Confidential Session.)

7

CHAIRMAN OBERMAN: All right. Ray,

8

proceed. Ray, you can proceed.

9

MR. ATKINS: Chairman, are we ready to

10

continue?

11

CHAIRMAN OBERMAN: We are ready.

12

MR. ATKINS: I couldn't hear anything,

13

Chairman. My apologies.

14

CHAIRMAN OBERMAN: You can proceed. Can

15

you hear me now?

16

MR. ATKINS: Yeah. I can. Mr. Blair,

17

can you still hear me?

18

THE WITNESS: Yes, I can.

19

BY MR. ATKINS:

20

Q Okay. Thank you. So I'm going to go to

21

a familiar page, which is page 11 of the -- in the

22

upper right-hand corner. It's actually page 13 of

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1 the exhibit. And it's got -- it's titled "Next
2 Steps and Time Line."

3 A Okay.

4 Q So this was in October of 2020, where
5 you were reporting that Amtrak and HDR were going
6 to investigate and propose infrastructure
7 improvements to minimize freight impacts. It's
8 the second bullet.

9 A Yes. Yes.

10 Q I should have some signal that you can
11 just signal "yes," as opposed to having to tap on
12 the mic. I appreciate the delay.

13 So what I would like to do is explore
14 what actual infrastructure improvements that you
15 and HDR were investigating at the time. So you
16 indicated you agreed to the projects proposed by
17 the Gulf Coast Working Group. Can you tell me if
18 Amtrak and HDR investigated modeling those
19 infrastructure improvements in the RTC model?

20 A There were no improvements identified at
21 this point. This was part of the next steps, as
22 the title slide -- as the title of the slide says.

1 Q My apologies. What I'm asking you is
2 between October, the date of this report, and
3 January, when the project came to an end, did you
4 investigate with HDR the -- the Gulf Coast Working
5 Group suite of projects as potential
6 infrastructure improvements to minimize freight
7 impacts?

8 A No, we did not. We were beginning the
9 evaluation of the first scenario, or the first
10 iteration, as it was termed in the agreements.
11 And we hadn't gotten to the point yet where we
12 were identifying infrastructure, insofar as we
13 hadn't even run the passenger service in that
14 iteration yet. So it wasn't to the point where
15 infrastructure would be recommended, suggested, or
16 analyzed.

17 Q Okay. But your next steps says that one
18 of the next steps is to investigate and propose
19 the infrastructure improvements to minimize
20 freight impacts. Are you saying that at no point
21 in time in the next three months did you and HDR
22 investigate any infrastructure improvements to

1 minimize freight impacts?

2 A I don't -- I don't believe -- I don't
3 believe we had gotten to that point at all during
4 the next three months. What we had in -- in the
5 next three months was we had had a series of
6 iterations, some disagreement over metrics, with
7 the -- with CSX. And we'd -- you know, we had --
8 we were identifying what scenarios or what
9 iterations we might evaluate. Each one of those
10 would have then triggered the discussion of
11 infrastructure.

12 One of those scenarios would have been
13 the suite of projects identified in the Gulf Coast
14 Working Group report. But that was not the -- the
15 starting point of what we did immediately
16 following this, which was to -- to begin the --
17 the evaluation of -- of the first future
18 iteration, which was two round trips between New
19 Orleans and Mobile. So we just had gotten to the
20 point of designing the passenger service that
21 would operate in the -- in the corridor when the
22 agreement expired.

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1 Q So you said, though, that one of the
2 suite of projects that you would have asked them
3 to look at was from the Gulf Coast Working Group;
4 correct?

5 A The agreements indicated that we would
6 look at that as one of the scenarios.

7 Q I'm sorry. I didn't understand that
8 response. Can you restate it?

9 A The suite of agreements that we had
10 with -- with -- between Amtrak and the railroads
11 indicated that the future iterations would look at
12 scenarios that were similar or closely aligned to
13 the Gulf Coast Working Group report's suite of
14 projects.

15 Q So, for example, you would have proposed
16 to investigate the -- the use of a dedicated
17 station track in Mobile as one of the
18 infrastructure improvements to minimize freight
19 impacts?

20 A That was actually going to be a part of
21 the first iteration that contemplated the
22 twice-daily service between New Orleans and

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1 Mobile. We didn't get to that point, though, as
2 identifying that as an infrastructure addition
3 because it -- it -- HDR hadn't gotten that far in
4 the analysis. And then, in January, they
5 identified a software glitch that set the model
6 back even further.

7 Q So I'll get to that in just a second.
8 But -- but another infrastructure improvement that
9 you would have explored would have been the
10 Gentilly Bypass, as was recommended in the Gulf
11 Coast Working Group report?

12 A Again, we did not get -- we didn't get
13 to the point where we were putting infrastructure
14 into the model yet. We were --

15 Q So, Mr. Blair, I appreciate that.
16 That's not my question. I'm asking what you were
17 going to look at. I appreciate -- I understand
18 the answer that you didn't look at anything. I'm
19 asking what infrastructure improvements you were
20 proposing to look at, had you had more time. So I
21 just want to clarify that it would have included,
22 for example, the Gentilly Bypass.

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1 A We didn't work -- we didn't identify any
2 specific -- we all had the copy of the Gulf Coast
3 Working Group report to work with and the suite of
4 projects, all three parties, to the agreements.
5 We didn't go to any iterations. We didn't define
6 any iterations at that point, as to whether they
7 would include, all, some or any -- you know, any
8 possible subset, or even other projects that might
9 be identified at that point. We hadn't gotten to
10 that phase of the process yet.

11 Q Okay. So I'm just -- I wasn't planning
12 on touching on the glitch, but I'll mention it
13 briefly. So you mentioned that there was a
14 glitch, identified by HDR, with the RTC program
15 itself. Can you tell me when that -- was that in
16 January or December of 2020 or 2021?

17 A Yeah. I believe it was in January of
18 2021, very early in January.

19 Q Did you hear the testimony from
20 Ms. Hannah Ross about that technical glitch?

21 A Yes, I did. What --

22 Q Do you recall her -- do you recall her

1 saying that that would be a simple -- maybe no
2 more than a couple days to correct the error that
3 had been detected in the software and then
4 reestablish all of the base cases?

5 A Yes. I do remember her saying that.
6 That is not what we understood from HDR, that they
7 estimated the time to be several weeks, and that
8 was not even a firm estimate.

9 Q But it was -- but their estimate was it
10 would take just a couple of weeks to fix that
11 problem?

12 A Just a couple of weeks to -- to get back
13 to where we had a base case and a no-build case.
14 We still didn't have any of the scenarios or the
15 iterations that we had contemplated doing as part
16 of the analysis. That was the basis of my -- of
17 our estimate -- or Amtrak's estimate, that it
18 would be 36 or more weeks still of work ahead.

19 Q So when you were moving to the next
20 iteration of HDR, that's adding the passenger
21 trains to the no-build case, is that correct --
22 oh, and the base case?

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1 A It would have been that, yes.

2 Q Can you describe what, if any, guidance
3 you gave HDR about the priority that the passenger
4 train should be provided in the RTC model when
5 they added them into the modeling?

6 A I don't recall we ever gave HDR any
7 guidance on -- on how priority would be
8 established. In fact, my recollection was HDR had
9 mentioned to us in our weekly group calls how they
10 would address priorities.

11 Q I'm saying -- did you say they did talk
12 to you on the calls about addressing priority or
13 they did not?

14 A I seem to recall the HDR modeler
15 indicating that they would use their verbal or
16 what -- typical RTC modeling process for
17 addressing passenger service priorities.

18 Q Okay. So I would like to turn to the
19 concerns that you have about the preference that
20 was afforded the Amtrak trains and the RTC model
21 that's been submitted in this case. And so what I
22 heard on your direct is that you object to the

1 limitation that was placed in the RTC model to
2 prevent Amtrak trains from taking sidings in order
3 for the freight trains to traverse over the main
4 line; is that correct?

5 A Yes.

6 Q And are you aware that the model did
7 permit Amtrak trains to pass each other, in
8 accordance with the design of your schedule, so
9 that they could take sidings, as is necessary to
10 pass each other's operations?

11 A Yes. We talked about that with HDR,
12 where the trains would meet, what the meet
13 location would be, and the timing of the trains on
14 the rail.

15 Q And so when you heard that HNTB had done
16 the same thing as HDR was proposing to do, you
17 didn't have any concerns about that feature of the
18 modeling. It was the restriction placed on
19 passenger trains taking sidings so that freight
20 trains could traverse the main lines. That was
21 your objection you stated on direct?

22 A Well, I think I stated in my verified

1 statement that we had, by design, anticipated
2 trains to pass at the Claiborne siding.

3 Q Right. But I'm talking about -- not the
4 passenger trains passing each other, but the
5 freight trains. So I will ask you, Mr. Blair, are
6 you generally familiar with Amtrak's position,
7 that it stated both in Congress and before the
8 STB, about the preference that you're afforded by
9 statute and how that affects the ability of
10 railroads to put passenger trains into sidings?

11 A Can you be more specific?

12 Q I can. Are you aware that Mr. Gardner
13 testified before Congress in 2020 about Amtrak
14 preference and complained to Congress about
15 passenger trains being placed into sidings so that
16 freight lines could operate on the main line
17 track?

18 A I am aware of that testimony, yes.

19 Q And the concern that's being articulated
20 by Mr. Gardner in those circumstances is, is that
21 Amtrak is not getting the preference to which it
22 is entitled because the railroads, in your view,

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1 are prioritizing the facility of the line over the
2 Amtrak trains; correct?

3 A No. I -- no. I would not characterize
4 it that way. Mr. Gardner's -- and I can't speak
5 for Mr. Gardner's comment, but, typically, our
6 concern is we can be placed in sidings for
7 extended periods of time. While multiple trains
8 pass us, they're not moved for -- we're not placed
9 in a siding for a movement of efficiency. We're
10 placed in a siding to favor freight operations.
11 That, I believe, is Mr. Gardner's concern.

12 Q When you say "for efficiency purposes,"
13 are you speaking only of efficiency of the
14 passenger trains, or is it Amtrak's position that
15 you can put trains in a siding if it improves the
16 overall efficiency of the line?

17 A Well, I think that would be a bit of a
18 circumstance-by-circumstance evaluation. The
19 idea, fundamentally, is that Amtrak trains are not
20 delayed by freight operations. There are many
21 ways, I think, to accomplish that in the
22 observation of preference.

1 Sometimes, it could be a faster move for
2 Amtrak to be placed in a siding to -- in order to
3 overtake a freight train or to pass a freight
4 train coming in an opposing direction. So I'm not
5 sure there is one statement that -- that captures
6 that concept.

7 Q So, Mr. Blair, I don't quite understand
8 your overtaking point. If you're overtaking a
9 train, how are you -- how is your waiting in the
10 siding going to help?

11 A For example, in the Gulf Coast Corridor,
12 there is a number of line -- a number of locals
13 that are switching on the main. A siding can be
14 used to pass those trains while they're switching
15 on the main. So, technically, I guess not an
16 overtake, but a pass.

17 Q That's why I was asking you specifically
18 about an overtake. I'm not as much of an expert,
19 but that's when you're approaching a slow-moving
20 train. In that circumstance, standing in the
21 siding is of no use; correct?

22 A Typically -- typically, that would not

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1 be helpful, yes.

2 Q Okay. So are you also aware that Amtrak
3 has filed lawsuits against, for example, Canadian
4 National, before the STB, complaining about the
5 freight trains operating on the main line while
6 the Amtrak trains are located in the sidings?

7 A Yes.

8 Q And do you -- do you think that is at
9 all inconsistent with your position here that we
10 should be modeling the Gulf Coast service to
11 deliberately put passenger trains into the sidings
12 so that freight trains can traverse the main line?

13 A What I think -- my position is that the
14 modeling did not -- it created what I would call
15 an artificial scenario that didn't reflect what
16 was either in the best interest of Amtrak or the
17 freight operation. And that was my concern that I
18 raised in my verified statement.

19 Q Are you aware, Mr. Blair, that the RTC
20 model doesn't optimize a particular movement? It
21 optimizes the whole network. So if we permitted
22 the sidings to move in -- the passenger trains to

1 move into the sidings, they would do so any time
2 it improved the freight performance, not the
3 passenger performance?

4 A I'm sorry. I'm sorry. I'm sorry. Can
5 you state that again? I mean, RTC --

6 Q The RTC model optimizes the whole
7 network, the whole fluidity of the line; it does
8 not optimize a particular movement. And so if we
9 had trains -- if we permitted the Amtrak trains to
10 go into the sidings, then you would see a number
11 of freight trains traversing the line to passenger
12 trains in the sidings in order for the freight
13 trains to move more efficiently, and not the
14 passenger trains. Are you aware of that feature
15 of the RTC model?

16 A Not -- not that specific feature. I
17 mean, I could understand from a dispatch
18 standpoint, the -- the concept, but I'm not
19 familiar with the model enough to know that
20 feature.

21 Q Okay. So -- all right. So I'm going to
22 move off of that, and then I'm going to come to

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1 the Mobile station.

2 So you indicated at the beginning of my
3 little cross that you agreed with the -- the
4 recommendations of the Gulf Coast Working Group
5 without any caveats; correct?

6 A What do you mean by "without any
7 caveats"?

8 Q Well, you said you agreed with their
9 recommendations.

10 A Amtrak has agreed with the
11 recommendations of the Gulf Coast Working Group.

12 Q And one of the recommendations of the
13 Gulf Coast Working Group was that four passenger
14 trains starting; there was a dedicated track at
15 the Mobile station; is that correct?

16 A There was a track -- that's what FRA had
17 recommended as the layover track in the Gulf Coast
18 Working Group report. That's correct.

19 Q And that was considered an essential
20 project?

21 A That was -- that was --

22 Q We'll get there.

1 A That was considered a project that was
2 needed in order to operate twice-daily service, so
3 that you could turn a train back that would lay
4 over in Mobile during the day.

5 Q So have you heard the testimony from
6 Ricky Johnson and the port about the operational
7 complexities of your -- beginning service in
8 Mobile without a dedicated at that -- at the
9 Mobile station?

10 A Yes, I did hear their concerns.

11 Q And their concerns included the fact
12 that you would be blocking the main line, not just
13 four times, as you traversed in and then leave,
14 but you actually have to -- it's eight times a day
15 because the trains have to traverse from Mobile
16 back to the Choctaw Yard, where you're proposing
17 to have layover facilities; is that correct?

18 A We only proposed Choctaw as a temporary
19 layover facility until a downtown layover facility
20 could be constructed. So, yes, we understood that
21 would be a deadhead move away from the station
22 platform to Choctaw Yard. And that really

1 replicates the move that the Gulf Coast Limited
2 performed in its two different operations in 1985
3 and 1997.

4 Q So, Mr. Blair, I just have a
5 recommendation. I don't think you need to lift
6 off your thumb unless it's hurting you because my
7 voice, I think, goes over that mic. Just in case
8 it will help us with the cross.

9 So let me ask you, though, the -- the
10 Gulf Coast Working Group did not recommend Choctaw
11 Yard as a layover facility, it recommended the
12 dedicated subtrack at the Mobile station. So in
13 that regard, you are not comporting with what FRA
14 and the Gulf Coast Working Group recommended to
15 Congress?

16 A On a temporary basis, yes, we would
17 prefer to be -- to utilize Choctaw. We would
18 prefer to be in the downtown location. And to the
19 extent we're able to make that happen quickly, we
20 would -- we would be happy to be there and do that
21 as a -- as a first order of business.

22 Q So you've known about this requirement

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1 since at least what, 2016 -- 2018? When did you
2 first become aware that this was an essential
3 requirement for restarting service?

4 A I only knew it from the reports that had
5 previously been provided, but, obviously, from the
6 publication of the Gulf Coast Working Group
7 report, onward.

8 Q So at least since 2017, you've known
9 that you needed to have a dedicated track here in
10 order to restart service?

11 A To restart service with a layover in
12 Mobile. That's correct.

13 Q And so five years has lapsed. How much
14 longer do you anticipate it's going to lapse until
15 you have that dedicated track at Mobile?

16 A Well, we're working -- we've had some
17 conversations with the City. Again, I would turn
18 to those very early conversations with the City
19 about the development of that -- of a layover
20 track at the location, that that property is
21 currently controlled by the City, although the
22 platform, I believe, is still owned -- or still on

1 CSX property.

2 So we would like to develop that as
3 quickly as we can. The Choctaw Yard is only in
4 the event that we can't construct the layover
5 facility in Mobile more quickly than we could
6 construct a temporary layover facility in Choctaw.

7 Q So you agree, it took you seven years --
8 six years, to begin initial discussions -- five
9 years, I guess. It's 2017 to now. Five years to
10 begin initial discussions with the City over the
11 creation of a dedicated track?

12 A No. The property was not owned by the
13 City. I don't believe -- I don't know what time,
14 they had been transferred to the City
15 post-Katrina. There used to be a CSX station
16 building there. So the property was transferred
17 to the City at some point, I assume, post-Katrina.

18 The discussions we -- we had -- both
19 SRC, I believe, had with the City, for several
20 years, there was actually plans in the document
21 that was shared with me today that had been
22 communicated to SRC and to other -- to the various

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1 parties -- a number of parties about the
2 development of the station at the downtown
3 location. So it has been something that has been
4 talked about for a number of years. We have not
5 been sitting on that request, but it has
6 progressed.

7 Q So just -- and just to clarify, so
8 the -- part of that property is, in fact, owned by
9 CSX, but they've leased that property to you;
10 isn't that correct?

11 A I don't know that we lease it or whether
12 we just use it under the terms of the operating
13 agreement.

14 Q It's my understanding you lease it. Do
15 you know what the actual term amount is that CSX
16 leased that property to you for?

17 CHAIRMAN OBERMAN: You know, just a
18 moment. Ray, would you confine your remarks to
19 questioning and not testifying?

20 BY MR. ATKINS:

21 Q Yup. Yes. Do you know -- I'm sorry.
22 Mr. Blair, do you know what -- the amount of money

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1 that CSX demanded from Amtrak in order to lease
2 that line to you?

3 A No, I do not.

4 Q Okay. So -- so you say that in your
5 initial discussions with the town of Mobile --
6 this is the same town of Mobile where the mayor --
7 you saw his testimony -- objects to the location
8 of the track in downtown Mobile, and would prefer
9 it to be at Brookley Yard; correct?

10 MS. AMUNSON: Objection. Misstates the
11 testimony.

12 MR. ATKINS: Well, this is negotiations
13 with the city's mayor --

14 CHAIRMAN OBERMAN: Hello. Ray, hold on.
15 There's an objection. What is the objection?

16 MR. ATKINS: I'll withdraw and restate
17 the question, Chairman.

18 CHAIRMAN OBERMAN: All right.

19 BY MR. ATKINS:

20 Q So these are negotiations with the same
21 mayor who had submitted testimony in this case
22 about their views on the proper location of the

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1 station track; correct?

2 A These are not discussions with the
3 mayor; they're with the mayor's administration.
4 But -- but, yes, they're -- they're the
5 discussions with the administration of the City of
6 Mobile, yes.

7 Q And what do you propose the board or CSX
8 or Amtrak do if you are unable to secure a
9 dedicated track at the Mobile station?

10 A Do you mean if we're unable to build a
11 layover at the historic station site?

12 Q Correct. As was -- as was indicated
13 by -- as recommended by the Gulf Coast Working
14 Group.

15 A So Amtrak has been willing to store the
16 train at a location of CSX's choosing in Mobile.
17 I think we've identified that. And it was in my
18 several letters to CSX. We would like an order
19 that that be permitted to happen. We're willing
20 to work with CSX as to whether or not that is in
21 Choctaw or some other location, the -- that might
22 be more easily accessible versus what Choctaw is.

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1 But those were two suggestions that -- that we
2 had.

3 Q So your suggestion would be if the
4 Choctaw Yard becomes permanent?

5 A I'm sorry, that the Choctaw Yard --

6 Q That the layover at the Choctaw Yard
7 become a permanent location to lay over the trains
8 in lieu of -- if you cannot secure a dedicated
9 track at Mobile.

10 A Not necessarily. The -- you know, we
11 could relocate to another location. There --
12 there are a number of places where a 400-foot
13 train could be parked. I guess, our --

14 Q But you have a recommendation -- okay.
15 I'm sorry. I didn't mean to interrupt. Please
16 continue.

17 A No, that's fine. Go ahead.

18 Q Okay. There's a little bit of a lag.
19 So under any of those circumstances, you'd be
20 blocking the main line in Mobile eight times a
21 day; isn't that correct?

22 A We wouldn't be blocking the line eight

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1 times a day. It would just change the operations.

2 It wouldn't be blocking the line eight times.

3 Q You wouldn't be occupying the line for
4 eight discrete movements every day?

5 A You're using two terms I think are
6 contradictory. You're saying "blocking" and
7 "moving." If we're on the line, we would be -- if
8 we're moving, once we deboard our passengers, the
9 train would then move to a storage location, move
10 directly to the storage location, and lay over
11 there until the afternoon.

12 Q But for the -- for the totality of the
13 time that you're on the line, there's no freight
14 operation that is going to operate over Main Line
15 1; correct?

16 A Did you say on Main Line 1?

17 Q Yes, the line to which you're going to
18 be coming into and exiting the station.

19 A For however long we are deboarding
20 passengers, and then for however long it takes us
21 to clear Main Line 1, then, presumably, yes.
22 Nothing else is operating on Main Line 1.

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1 Q Did you hear testimony from Ricky
2 Johnson that said that --

3 (Reporter clarification.)

4 (Off-the-record discussion.)

5 THE WITNESS: Please repeat the
6 question.

7 BY MR. ATKINS:

8 Q Thank you. Did you hear the testimony
9 of Mr. Ricky Johnson that, if you're going to lay
10 over at Choctaw Yard, that you're going to need to
11 traverse Main Line 2 to get there?

12 A I don't recall that testimony.

13 Q Okay. So when it became apparent that
14 you were not going to have a dedicated track at
15 Mobile, did you consider any other alternatives to
16 the Choctaw Yard, for example -- well, let me
17 pause there. Did you consider any other
18 alternatives, rather than just moving forward with
19 the project and put the layover station in Choctaw
20 Yard?

21 A In fact, in my correspondence to CSX, I
22 invited CSX to offer something up that might be

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1 feasible if Choctaw was unattractive to them.

2 Q My question is, did you -- did you
3 analyze any other alternative?

4 A Yes, we did.

5 Q What were they?

6 A We looked -- we looked at industrial
7 sidings all in the Mobile area.

8 Q Did you explore the possibility of
9 moving the station temporarily to -- over to
10 Berkeley instead of Mobile so you're not blocking
11 the main line for an extended period of time?

12 A You mean Brookley?

13 Q Yes.

14 A There's no station facility there,
15 there's no platform there, there's no parking
16 there. So, yes, that's -- that, in fact, was one
17 of the iterations that we intended to run as a
18 part of the modeling, but there is no
19 infrastructure there. All of that would have to
20 be built, whereas the current platform merely
21 needed rehabilitation.

22 Q So, Mr. Blair -- and I know you were

1 asked this question about cost-benefit analysis.
2 I couldn't quite hear it previously, but did
3 you -- when you were designing this service and
4 were going to have it land in downtown Mobile, as
5 opposed to at the airport, did you do any
6 cost-benefit analysis of the difference between
7 those two locations to the overall success of the
8 line?

9 A I'm not aware Amtrak ever evaluated
10 the -- a ridership impact related to locating the
11 station at Brookley Field. And we typically don't
12 do cost-benefit analyses ourselves. We may
13 cooperate with our state sponsor of -- of the
14 service for them to do a cost-benefit analysis.

15 Q Okay. And I know there's a lot of
16 testimony previously about ridership studies. So
17 I'm going to ask -- to show you Exhibit Norfolk
18 Southern -- CSX Northfolk Southern 167, which
19 is -- although it says confidential on it, it was
20 redesignated public by Amtrak in the fall of this
21 year. So if you can take a moment to familiarize
22 yourself with that, Mr. Blair. I don't mean to

1 rush you.

2 A I presume -- I presume there was one
3 line in particular you would like me to look at
4 here?

5 Q You'll see that -- you'll see the Gulf
6 Coast one, but, honestly, I'd like you to look at
7 the totality of the document, not just -- it's
8 2022 ridership projections. You'll see it's a
9 five-year. So there's 2003, there's 2004. I
10 think there's a typo. I mean, 2004 is repeated --
11 2025 and 2026.

12 A Okay. Thank you.

13 Q So, Mr. Blair, have you seen this type
14 of document before?

15 A I don't recall. I may have seen -- I
16 have seen Amtrak's five-year plans before, but I
17 don't recall this specific table.

18 Q Right. But does this appear to be an
19 Amtrak five-year ridership projection for all of
20 the services that you offer, both the
21 state-supported routes and the long-distance
22 services?

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1 A Yes, that appears to be what it is.

2 Q Is it customary for Amtrak to do
3 five-year ridership projections as part of its
4 ordinary course of business?

5 A I -- I don't know. I apologize.

6 Q I can't hear you, unfortunately,
7 Mr. Blair. There you go.

8 A I don't know. I'm not sure.

9 Q Have you seen these documents as part of
10 your role at Amtrak?

11 A I don't know that I've seen a five-year
12 ridership projection before, but it wouldn't be
13 something that I would be necessarily looking at
14 in the ordinary course of business.

15 Q Okay. So, Chairman -- so we've been
16 using exhibits just on cross, but I'd like to
17 actually introduce this exhibit into the record.
18 It was a ridership projection provided by Amtrak
19 in discovery, so it's a document they produced in
20 discovery. It shows the ridership for all of
21 their various lines over the course of five years,
22 and we'd like it in the record so that we can

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1 refer to it in closing.

2 CHAIRMAN OBERMAN: Is there any
3 objection?

4 MS. AMUNSON: No objection.

5 CHAIRMAN OBERMAN: It will be received.

6 BY MR. ATKINS:

7 Q And thank you.

8 So, Mr. Blair, just one last question,
9 then. You will see that on 2022 ridership
10 projections, you've got one for Gulf Coast. It
11 is -- it's in the state-supported subsection.
12 It's about fourth from the bottom.

13 A Yes, I see that. Thank you.

14 Q Now, do you have any reason to believe
15 that that's not the Gulf Coast service that we're
16 talking about here today?

17 A I don't know what it refers to, but I --
18 I -- it's entirely possible it refers to the
19 service that we have proposed here today. But I
20 can't confirm that.

21 Q So, Mr. Blair, is there another Gulf
22 Coast service that Amtrak currently operates?

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1 A No. I'm sorry. I don't mean it that
2 way. I mean that I don't know what assumptions
3 were in -- based in this projection. This was --
4 this was a fiscal -- this was a fiscal-year
5 '21 plan, the projected fiscal '22 ridership. So
6 I don't know whether the proposed service that we
7 have brought before the board is consistent with a
8 plan that was developed in 2021.

9 Q Okay. So I understand you don't know.
10 I just want to confirm that there's not multiple
11 Gulf Coast state-supported routes. There's just
12 this one; correct?

13 A This is the route that we refer to as
14 the Gulf Coast service.

15 Q Thank you. And what you're projecting
16 for 2022, is 24,300 riders, per -- per year?

17 A I would assume that's the case since
18 it's the fiscal '22 ridership projection. Each
19 year has its own, all the way up to 2026, where
20 Gulf Coast shows 65,000 riders.

21 Q Yup. Okay. I just want to make sure
22 I've got all the numbers right. And then if you

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1 look off into the very last column, which is the
2 Allocated Contribution or Loss Per Rider, you're
3 projecting that each rider will lose \$336 per
4 rider in the first year; is that correct?

5 A Well, I assume this was the first year
6 of operations. I can't confirm that, again, but I
7 assume this was projected as the first year of
8 operations. But, then, yes, I see it declines
9 over -- over the years.

10 Q Yup. Understood. Mr. Chairman, I have
11 no further questions for this witness.

12 CHAIRMAN OBERMAN: Thank you, Ray. Off
13 the record.

14 (Off-the-record discussion was held.)

15 BY CHAIRMAN OBERMAN:

16 Q In the Gulf Coast Working Group report,
17 which I think we have -- I have to press my
18 button. In the Gulf Coast Working Group report,
19 which was Joint Exhibit 1B, if you turn to page --
20 Bates number 23, page 23 of the report.

21 No better, huh? All right. Are you
22 there?

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1 A Yes, sir. I'm there.

2 Q All right. So the -- in the second full
3 paragraph, it says, "Developing this list into an
4 implementation plan that finalizes how proposed
5 improvements will be advanced will require
6 additional operations analysis and discussions
7 among CSX."

8 Do you have an understanding of what
9 kind of operations analysis this is referring to?

10 A I -- I don't -- I don't know,
11 specifically, what operations analysis was
12 referred to in this context, but I presume it's
13 similar to the kinds of discussions that we have
14 with CSX or any other railroad on a routine basis,
15 where we talk about what may need to be done to
16 improve Amtrak performance.

17 So it would be -- our train is proposed
18 to operate at this point, your train operates at
19 that point. If you move 15 minutes, you move 15
20 minutes. We'll stay out of each other's way.

21 That's a real example that we had with CSX that we
22 worked with. Or we look at, you know, where we

1 have recovery time in the schedule, so that -- so
2 that we can make our trains avoid each other as
3 much as possible.

4 Q Well, is it your understanding that in
5 deciding, you know, on how to move forward with
6 reinstating the Gulf Coast service, that an
7 operations analysis would be undertaken to
8 minimize the interference between passenger and
9 freight?

10 A It -- it was my understanding that
11 that's what we were going to do as our next step,
12 which is why we did the outreach -- or why
13 Mr. Anderson did the outreach in 2018 to try and
14 begin the evaluation with CSX again. So the --
15 that was the next step that we were trying to take
16 was a -- an operations analysis, which, in that
17 case, was utilizing the RTC model.

18 Q Well, the thing I find confusing is
19 that, if I look at Exhibit 7G, which was all three
20 of your agreements involving the RTC study -- let
21 me just identify them. One is the RTC study
22 agreement. You testified about these earlier. I

1 think you were one of the signatories. And then
2 there was the data-sharing agreement, and I think
3 there's a third agreement in there.

4 There's a letter agreement towards the
5 end. You know what I'm looking at? In the RTC
6 study agreement -- it's Paragraph 3 -- it says
7 that -- 3C says, "No future iteration shall
8 include changes to NSR freight operations other
9 than freight traffic growth and, no future
10 iterations shall include changes in projected NSR
11 freight traffic growth. Any changes to CSXT's
12 freight operation shall require the approval of
13 CXST's sole discretion, such approval not to be
14 unreasonably withheld, etc."

15 So it -- it appears that in the RTC
16 study agreement, which Amtrak signed with your
17 signature, you were planning, at least, if not to
18 do operations analyses, there were some hurdles
19 put forward before the RTC study could do
20 operations analyses. Is that the way this
21 contract reads, as you understand it?

22 A Yes. We -- we were limited in what we

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1 were able to analyze, based on the agreements.

2 Q Well, let me ask this question: In the
3 Gulf Coast Working Group study -- and you repeated
4 that language in your verified statement in this
5 case that we just read from the Working Group
6 study about an operations analysis. It was your
7 view then that an operations analysis needed to be
8 done. But then when you got to the RTC study, it
9 appears that the agreement says, No, we're not
10 going to allow an operations analysis; is that
11 correct?

12 A It -- it certainly limited -- it limited
13 what kinds of operations analysis we could
14 conduct. The agreements did limit the amount of
15 types of operations analysis we could conduct.

16 Q Was that limitation something that the
17 railroads requested and you assented to?

18 A It was something that the railroads
19 insisted on that we assented to, yes.

20 Q Well, you said before that Amtrak has
21 used RTC modeling itself. Do you -- when Amtrak
22 does RTC modeling, does it include operational

1 changes to see if you can improve the fluidity of
2 the line with operational changes, as
3 distinguished from infrastructure changes?

4 A Yes. In fact, that's -- that's mostly
5 what we do, where we have the tight tolerances
6 between Amtrak and commuter agencies. It's often
7 a case of moving, you know, a train just a few
8 minutes one way or another to provide a window for
9 another train to operate.

10 So the -- you know, sometimes that
11 requires RTC analysis. Sometimes it can just be
12 done by -- by, you know, utilizing comparative
13 schedules. But most of the work that we do in --
14 in -- on the Northeast Corridor is very tight
15 tolerance work, and most of it is operational in
16 nature.

17 Q When Amtrak -- when Amtrak reached the
18 conclusion that it supported the Working Group
19 recommendation of roughly \$100 million in
20 infrastructure, was it Amtrak's understanding that
21 would be taxpayer money, if that's how these
22 projects were to be built?

1 A Yes. For state-supported services,
2 Amtrak typically works with the states, leveraging
3 federal dollars for infrastructure investment. So
4 when the Gulf Coast Working Group report was
5 developed, even the prior study that Member Fuchs
6 had mentioned earlier, Amtrak contemplated that
7 there would be a series of infrastructure projects
8 phased in over time, each one with a federal cost
9 benefit -- or federal grant -- through a federal
10 grant program or a cost-benefit analysis or some
11 portfolio of projects through a federal grant
12 program with a cost-benefit analysis.

13 That's very similar, again, to what we
14 do in routes all over the country, is identifying
15 improvements that can improve intercity passenger
16 rail service reliability, reduce trip time. It
17 identifies projects that can be candidates for a
18 federal grant program that produce independent
19 benefits.

20 Q But, at least preliminarily, Amtrak
21 supported the idea of \$100 million of expenditures
22 for the Gulf Coast line, even if you were going to

1 wait until your funding, I gather what you're
2 really saying is refining the cost benefits for
3 each project as time went on, is that the way to
4 understand it?

5 A I think both in Amtrak's letter to
6 Administrator Feinberg and his comment, which
7 ultimately became comments to the Gulf Coast
8 Working Group report, it contemplated a phased-in
9 approach, which typically aligns with the federal
10 grant programs that are typically annually
11 authorized or, you know, in the case of IIJA, it's
12 been a little different. It's a five-year
13 authorization.

14 But projects are identified, progressive
15 series of projects are identified, and progressive
16 investments are made on corridors to improve
17 Amtrak intercity performance. The -- the Gulf
18 Coast Working Group aligned with Amtrak's own
19 analysis that also included a phased approach,
20 included many of the same projects that were in
21 the Gulf Coast Working Group report.

22 And again, this is not something I was

1 involved with, but I can track the respondents and
2 the communications. So it didn't seem a -- it
3 seemed as though we had triangulated on a common
4 number and several common investments on the
5 corridor, both between the Amtrak analysis and
6 FRA's analysis in the Gulf Coast Working Group
7 report.

8 Q Well, you wouldn't -- I assume it's fair
9 to say that Amtrak wouldn't have come out with any
10 kind of positive support of spending \$100 million
11 on infrastructure, whether it was immediately or
12 phased in, if you didn't think the line needed
13 that kind of infrastructure investment, or at
14 least in that ballpark. Would that be fair?

15 A That would be fair. Yes, sir.

16 Q And was the reason -- so when you
17 say "phased in," I've never seen a time period,
18 unless I've missed it, over which, other than the
19 initial station track, the rest of the projects
20 would be built. Is that spelled out somewhere,
21 anywhere?

22 A I believe it's in Section 7 of the Gulf

1 Coast Working Group. Or Table -- it's in Table 7
2 on Bates page 42. It was a five-year funding
3 plan, identified with improvements.

4 Q And how is the five-year time frame
5 arrived at?

6 A I assume that -- that work is probably
7 FRA's estimate, based on appropriations for the
8 federal grant program, how much money might be
9 available in each year's worth of a CRISI program
10 or a state partnership program, as far as funding.

11 Q So it has to do with when funding is
12 available, and not when any of the projects that
13 will be built in each of those five years will
14 affect freight or passenger operations?

15 A Well, it's both. We -- we have the
16 opportunity to bundle projects, to recognize
17 high-priority projects. In fact, the SRC's work
18 with Amtrak in identifying high-priority projects
19 was what was the genesis of the \$66 million that
20 was awarded to SRC for infrastructure improvements
21 on the Gulf Coast.

22 So there was an opportunity to bundle

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1 projects, but the larger the portfolio of
2 projects, sometimes the more difficult to get it
3 funded through the federal grant program. You
4 know, you can't have too big a project,
5 representing too much of the -- the grant monies
6 available. So we are always trying to -- to
7 navigate what is the appropriate size of the grant
8 and the need and when those needs would -- would
9 be most effectively implemented.

10 Q I have more questions on that, but I
11 think they may be directed to your capacity study
12 witness who's coming in after you, I think. I
13 want to get to this question about the data.

14 MEMBER FUCHS: Marty, can I follow up on
15 this?

16 CHAIRMAN OBERMAN: Yeah. Sure. Go
17 ahead.

18 BY MEMBER FUCHS:

19 Q Mr. Blair, you mentioned that the
20 scheduled funds are at least partially related to
21 the availability of funds. When the Gulf Coast
22 Working Group report was drafted, how much money

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1 was available within CRISI? And maybe even if you
2 can point to a ballpark of its authorized level,
3 as well.

4 A That's a good question. I don't know
5 what was identified in the -- in Section 5 of the
6 Gulf Coast Working Group report was they
7 identified several programs with amounts that were
8 available as of those dates. So it identifies
9 CRISI as 68 million for fiscal year '17,
10 restoration enhancement grants, which, operating
11 expenses was \$5 million for 2017. The current
12 amount for restoration enhancement is 250 million,
13 so we're dealing with a much bigger opportunity
14 now.

15 Q And how much does the IIJA appropriate
16 and authorize for CRISI?

17 A I believe it's 6 billion.

18 Q And so if the schedule of projects was
19 at least partially affected by the availability of
20 funds, and the availability of funds has
21 substantially changed, does that change your
22 assessment of the schedule of projects?

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1 A That's -- that's possible, if there's a
2 need for the projects, in -- in the near-term,
3 then that does change the opportunity for funding.

4 Q There's nothing about the timing of
5 projects that would suggest that their
6 benefit-to-cost ratio would change substantially
7 in years three, four, or five, compared to before
8 services started?

9 A I'm not sure I would agree with that,
10 but -- because traffic has changed, and CSX's
11 operating practices have changed significantly,
12 even since the period of the Gulf Coast Working
13 Group.

14 Q Would any of the projects here no longer
15 have benefits that exceed cost?

16 A I -- from the list that I recall, I
17 can't think of any that would not still have a
18 positive BCA.

19 Q And, maybe backing out, you -- do you
20 agree with the general assessment that CSX did not
21 evaluate the benefits of any project, benefits
22 say, for example, in terms of mitigating freight

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1 delay, you know, compared to a project's cost?
2 And do you agree with Mr. Crowley's assessment
3 that such an analysis would have been helpful for
4 shedding light on what's reasonable?

5 A I'm sorry to ask you to repeat a
6 complicated question or a two-part question.
7 Could you?

8 Q We'll take it one at a time. So you
9 agree that CSX didn't evaluate the benefits and
10 costs from any of the projects?

11 A Yes, that's my understanding.

12 Q Okay. And Mr. Crowley testified that
13 such an analysis would be helpful, integral. Do
14 you agree that it would shed light on the
15 reasonableness of a project?

16 A Well, I think -- and I can't speak for
17 Mr. Crowley, but I think it's a part of the
18 evaluation as to what is the lowest-cost solution
19 to satisfy the need or to satisfy the condition
20 that is presented in the operation conflict, let's
21 say. I noted in the Gulf Coast Working Group
22 report a number of the issues were speeding up --

1 you know, speeding up operations through sidings.

2 And that was not something that seemed
3 to be given much credibility in the latest RTC
4 modeling. It may be as a result of changes in
5 CSX's operating plan, changes in train length,
6 but, typically, our modelers -- and I'm sure
7 CSX's, as well, and -- if they're looking in their
8 own business -- are looking at what's the
9 lowest-cost solution to solve the problem that I
10 can find.

11 Q But you would agree that it would not be
12 reasonable to order an infrastructure project that
13 has costs that would exceed whatever its benefits
14 are?

15 A Well, I think we do entertain projects
16 like that when they have safety benefits,
17 typically, but not otherwise. We're typically
18 looking for a BCA that's positive.

19 Q But unless there's a safety benefit?
20 Okay. It would be reasonable -- the
21 reasonableness is the benefits that exceed cost.
22 So kind of moving to the matter at hand, you know,

1 you had stated that Amtrak has not conducted a
2 cost-benefit analysis of this service.

3 Bearing in mind your statement prior
4 about reasonableness being tied to benefits and
5 cost, would it be reasonable for the -- or would
6 it be fair for the board to consider the
7 reasonableness of the impediment by comparing the
8 cost to the freight network versus the benefits of
9 the passenger service? Well, the cost overall
10 including the costs on the freight network versus
11 the benefits of the passenger service.

12 A Well, I'm not -- the statutory structure
13 under which the case was brought, I don't know
14 that it really calls for that. But I --
15 certainly, the board has broad powers to consider
16 what it needs to in making a decision in that
17 context.

18 Q Is it your assessment in thinking about,
19 let's say, for example, impediments to Amtrak's
20 network if Amtrak were to add trains that, looking
21 at the cost that are imposed by the service,
22 compared to the benefits that are achieved by the

1 service, broadly speaking, make sense for whether
2 or not causing that impediment is worth whatever
3 you're getting?

4 A And I guess the question is what are you
5 getting? I mean, because if we're talking about
6 the benefits side or the Amtrak in conjunction
7 with the -- the Amtrak Connects US vision
8 published some statistics or some data on the
9 primary and secondary benefits of intercity
10 passenger rail in the various markets that we
11 propose to enter into.

12 That would be, presumably, part of any
13 cost-benefit calculation, as well. And -- you
14 know, and we would probably further refine those
15 as we look at each service. I -- in looking at a
16 cost-benefit analysis, typically, you want to look
17 at all of the costs and all of the benefits in the
18 evaluation.

19 Q Right. Right. So I'll just wrap up
20 here. And that's on the benefit side. And then
21 on the cost side, the board could look at the cost
22 to, say, freight shippers in terms of delayed

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1 transit times, missed switches, and that sort of
2 thing, and look at the cost of freight and compare
3 the two?

4 A I think that's certainly a reasonable
5 way to look at it, but in the same vein as
6 infrastructure, oftentimes, operational changes,
7 just like we do in the Northeast Corridor to
8 adjust for commuter operations, can be done at
9 little or no cost to -- you know, to our
10 passengers or commuter partners.

11 Q Thank you.

12 CHAIRMAN OBERMAN: All right. We're
13 going to take a break. It's 4:05. We'll be back
14 at 4:15.

15 (Off the record.)

16 CHAIRMAN OBERMAN: Okay. Karen Hedlund
17 had questions.

18 BY MEMBER HEDLUND:

19 Q If -- you've requested that the board
20 order the railroads to allow you access to run
21 your four trains a day with -- initially, without
22 any additional infrastructure, other than the

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1 station improvement --

2 (Reporter clarification.)

3 BY MEMBER HEDLUND:

4 Q In this proceeding, Amtrak is asking the
5 board for an order that you be allowed to run on
6 the Gulf Coast initially without any additional
7 infrastructure, other than the improvements to
8 stations that you're already contemplating; is
9 that correct?

10 A Yes.

11 Q What's the run time between New Orleans
12 and Mobile that that contemplates?

13 A We've proposed a schedule of three hours
14 and 23 minutes.

15 Q What priority for Amtrak trains does
16 that contemplate?

17 A Contemplates receiving the statutory
18 preference.

19 Q So if there's any conflict between you
20 and a freight train, the freight trains would have
21 to give way?

22 A I -- I don't want to necessarily

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1 scenario-ize that, I guess, question. So, I
2 guess, you know, we -- we tender our trains to the
3 railroads for dispatching across the railroad. We
4 assume they will honor the statutory preference.
5 And that's what we assume, typically, in designing
6 our schedules. So I think that contemplates that
7 we will not be delayed by schedule versus what we
8 have proposed by freight operations.

9 Q What would your run time be once all the
10 infrastructure is built?

11 A We proposed the 3 hours and 23 minutes.
12 The infrastructure that was contemplated in the
13 Gulf Coast Working Group report that we saw
14 fundamentally only speed up operations in and out
15 of sidings. You have to evaluate how much time we
16 could take out, based on, again, looking at
17 operational analysis, looking at the service over
18 time.

19 That's typically, again, how we do it
20 on -- on routes around the country. If there's
21 time that we find we're waiting excess time in the
22 schedule, we'll propose to take it out to reduce

1 the trip time.

2 Q Why would you be taking sidings?

3 A Well, or -- or if we're not taking a
4 siding, it allows the freight trains to clear up
5 faster. Those were the two identified benefits in
6 the Gulf Coast Working Group report about the
7 speed increases and the larger turnout radius were
8 proposed as -- investments.

9 The third major investment besides the
10 Gentilly Yard Bypass was also the length of the
11 siding to allow certain switching to take place
12 off of the line. And, again, the presumption is
13 that will reduce a conflict that may allow us to
14 reduce trip time over time.

15 Q But are you saying that the -- I mean,
16 you've described the infrastructure improvements
17 as improving Amtrak's service. You haven't
18 described it in terms of reducing delays to the
19 freight railroads.

20 A I guess I'll -- perhaps, to clarify,
21 the -- it allows freight operations, perhaps, to
22 move more quickly when Amtrak's operations are

1 also on the line. So, a -- a, for example,
2 large-radius turnouts or the speeds -- increasing
3 the speeds in sidings allows trains to clear up
4 faster for an Amtrak operation and then allows
5 them to get back on the main line faster.

6 So it, perhaps, speeds up the operation
7 of the freight train that may have otherwise been
8 impacted by the Amtrak operation by going into a
9 siding.

10 Q So it's your position that the delays to
11 the freight network, by having to take sidings to
12 let Amtrak go through from day one, does not
13 constitute a substantial impairment, significant
14 impairment -- whatever the magic words are -- to
15 freight service; is that correct?

16 A I mean, the unreasonable impairment?

17 Q Yes. Unreasonable impairment.

18 A Yes. Our position is that the impact of
19 the trains that we have proposed to operate would
20 not create an unreasonable impairment for the
21 freight operations on the Gulf Coast line.

22 Q So why would you consider asking the

1 taxpayers to pay for the infrastructure
2 improvements if, then, they're not needed for your
3 service?

4 A They -- they would both increase the
5 reliability of the service and potentially reduce
6 the trip time. So those are the two things that
7 we see as potential benefits of the -- of the
8 programs or the program of the -- of improvements
9 that were recommended in the FRA -- in the FRA
10 report. And, again, I think those are two things
11 that FRA specifically cited as the benefits of
12 those investments.

13 Q Why would your service be unreliable or
14 vary in reliability if the freight trains are
15 always getting out of the way?

16 A It's just a function of clearing up.
17 So, for example, a -- if an Amtrak train is
18 approaching, and a freight train is moving into a
19 siding, the speed with which they move into that
20 siding could cause a delay to the Amtrak train as
21 it is approaching. So it might get a restricting
22 signal or a less-than-favorable signal until the

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1 train is cleared up.

2 Q So you are assuming that Amtrak will
3 take delays initially that it won't have to take
4 once the infrastructure is built?

5 A That's our expectation, and we've tried
6 to allow for that in a -- in a longer trip time
7 than Amtrak had previously contemplated on the
8 route, that could then be reduced over time.

9 Q What's the difference between the two?

10 A The current schedule is three hours and
11 23 minutes. The previous schedule was three hours
12 and 10 minutes, I believe, when Amtrak operated
13 the corridor with the Gulf Coast Limited.

14 Q So you're talking about a 10-minute --

15 A Potentially a 10-minute reduction.

16 Q -- reduction?

17 A In trip time.

18 Q In trip time over three hours. Sorry,
19 my fault.

20 A That's okay. Yes, potentially a trip
21 time over three hours. The other things that --
22 other things that were not contemplated in the

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1 FRA's report that we would want to look at would
2 be increased speeds in the corridor. So could we
3 operate something above 79 miles an hour to reduce
4 the trip time further? The -- while the service,
5 three hours and 23 minutes, is competitive
6 vis-a-vis peak service driving time of about two
7 hours and 45 minutes, unobstructed driving time is
8 lower.

9 And so while we're proposing to operate
10 these trains during peak hours, and makes --
11 that's typically our most competitive time versus
12 driving, if we were to add a service over time
13 later, we would be operating at times when the
14 highways are less congested, and we might need a
15 lower trip time in order to be competitive.

16 Q But you're not proposing, at this point,
17 more than four trains a day?

18 A That's correct.

19 Q Thank you.

20 MEMBER HEDLUND: That's all I have,
21 Mr. Chairman.

22

1 BY CHAIRMAN OBERMAN:

2 Q Mr. Blair, just to follow up on that
3 point, and maybe I missed something. The place
4 that we were just looking at, at the Gulf Coast
5 Working Group study, on page 23, in Section
6 4.5.2.3, says the proposed improvements "will help
7 rail freight services as well as accommodate the
8 passenger service."

9 So isn't it the position of the Gulf
10 Coast Working Group, supported by Amtrak, that at
11 least that \$100 million in infrastructure was
12 to "help the freight rail services"?

13 A Yes. That would -- there would be
14 incidental benefits to freight operations if
15 trains are able to meet and pass more quickly than
16 they do today. In addition, the longer sidings
17 are potentially able to meet longer trains that
18 currently can't meet on the route today. So we
19 saw those benefits as being helpful, also, to
20 freight operations.

21 In addition, the speeds that were
22 contemplated on the bridges or the improvements to

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1 the minor rails would also potentially speed up
2 operations across the line for all trains, not
3 just -- not just the passenger trains.

4 Q All right. I'm going to switch down
5 to --

6 MEMBER FUCHS: Before we switch?

7 CHAIRMAN OBERMAN: Go ahead.

8 MEMBER FUCHS: Just on this point.

9 The key point, though, is that it is
10 possible to quantify effects on freight service?

11 THE WITNESS: I believe, yes, it can be
12 quantified.

13 MEMBER FUCHS: Okay. Thanks, Marty.

14 BY CHAIRMAN OBERMAN:

15 Q Bear with me for a moment here. I want
16 to get to this question of Amtrak's access, or
17 lack thereof, to data. And I don't want to go
18 back through all of the -- there's been plenty of
19 discussion and showing the exhibits to you and the
20 railroad's witnesses about the back and forth,
21 about who agreed to what.

22 It was pretty clear, as I understand it,

1 to you, Mr. Blair, by the time Amtrak filed this
2 case, which was a little over a year ago, that, at
3 that time, Amtrak did not have the data it now
4 says it needed to validate and replicate the RTC
5 study, which has been filed in this case. Is
6 that -- is that where you were as of a little over
7 a year ago?

8 A So the data request you're asking about
9 is whether Amtrak received sufficient data to
10 conduct its own RTC modeling ever? Or are you
11 talking about the 2020 study and the data concerns
12 we had there about transparency?

13 Q Well, as I understand it, the data
14 concerns have translated from then all the way up
15 to the present. In other words, you couldn't get
16 the data you wanted, and, therefore, you didn't
17 renew the HDR study at the beginning of 2020.
18 You, Amtrak, then decided to file this case. The
19 railroads then went off and did their own RTC
20 study without Amtrak's participation.

21 And now Amtrak's position in this case
22 has been -- because you didn't get the same data

1 that you were looking for back in 2020, based on
2 the way the data was produced to Amtrak in this
3 case, you don't have enough data to validate -- I
4 think is Mr. Crowley's phraseology -- the RTC
5 study done by Mr. Dingler, nor did it allow you to
6 do your own RTC study in connection with this
7 case. Is that the way to understand Amtrak's
8 position?

9 A Well, under the -- under the -- I mean,
10 I'm not permitted to see that data, as an employee
11 of Amtrak. So I can't speak to whether or not
12 there was sufficient data or not. What my
13 understanding, from outside counsel and from
14 the -- the folks at L.E. Peabody, was that they
15 did not have sufficient data in what -- in the
16 information that they received from NS and CSX to
17 create a -- an RTC model.

18 Q And you accepted that report, and that's
19 the information you've been operating on in
20 preparing this case, that your experts don't have
21 all the data that they need. You don't question
22 that; correct?

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1 A Well, I question that to the extent of
2 asking Amtrak's in-house RTC modeler whether or
3 not -- you know, what information we felt we
4 needed, and then shared that with outside counsel
5 to see whether we had all the pieces in order
6 to -- to conduct that kind of a study. And they
7 both came back to suggest we did not have
8 sufficient data to independently perform an RTC
9 analysis.

10 Q Well, you knew -- that didn't happen
11 after you got the RTC study after this case
12 started; right?

13 A Yes. I believe that's correct.

14 Q But you knew when the case was filed
15 that you were at loggerheads with the railroads by
16 the end of 2020, which led to the termination of
17 the HDR study?

18 A Yes.

19 Q And, based on your dealings and your
20 awareness of the dealings between Amtrak and the
21 railroads at the time the HDR study was going on,
22 would it be fair to conclude that once you filed

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1 this case, without some effort, you didn't think
2 the railroads were going to give you the same
3 access to the same data they refused to give
4 access to you the year earlier? Would that be a
5 fair understanding of what your knowledge was?

6 A Yes. I would -- I presume that. I
7 don't know that I articulated that, but I presumed
8 that we would not miraculously be given all the
9 data, once we had filed, that we never got in the
10 years prior.

11 Q All right. And I understand you're not
12 a lawyer -- maybe you are a lawyer, but you're
13 certainly not a lawyer in this case. Hopefully,
14 you're not a lawyer. There's way too many lawyers
15 in this room, including some up here.

16 But you've been involved enough with
17 Amtrak cases to know that, at least in front of
18 the board, there is a discovery process in which,
19 as a party, through your lawyers, you can ask for
20 data?

21 A Yes, sir.

22 Q So were you any part of a decision as to

1 whether, when this case began, to -- through the
2 discovery process, demand, as you could, or at
3 least ask, for all of this data that you have been
4 deprived of since going back to the HDR study?

5 A Mr. Chairman, I don't know that I can
6 share that without being part of the discussion I
7 had with counsel.

8 MS. AMUNSON: Mr. Chair, may I suggest
9 that these questions might be better directed at
10 counsel, in terms of -- I think things are getting
11 a little bit confused between what was available
12 through the discovery process. And Mr. Blair was,
13 of course, not intimately involved in that.

14 CHAIRMAN OBERMAN: And I don't want to
15 infringe on attorney-client privilege, which I
16 assume you would concur with what Mr. Blair just
17 said.

18 MS. AMUNSON: Yes. And to the extent
19 that -- that we had discussions, I don't think he
20 should be testifying to the substance of
21 attorney-client discussions.

22 CHAIRMAN OBERMAN: Agreed. Well, let me

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1 just say, for the record -- I don't want to divert
2 now, because I want to finish with Mr. Blair's
3 testimony as much as possible. But there's been a
4 lot of discussion in this case about lack of
5 access to data. And a number of witnesses and, in
6 verified statements -- and I thought it was in
7 Mr. Blair's statement, but it might have been one
8 of the other witnesses who said, Well, the
9 discovery schedule that was set by the board after
10 the parties' proposed one was too short to get the
11 discovery that was needed.

12 No one ever came in here and said, We
13 need more time to get the discovery we need. We
14 still don't have the data, and we can't do
15 anything without the data. And that is something
16 I would like somebody to enlighten the board on as
17 to Amtrak's decision-making to not fight for data
18 through discovery and then come in here and said,
19 We don't have the data because we didn't have
20 enough time for discovery.

21 But you don't have to -- I don't want to
22 detract from getting Mr. Blair out of here. It's

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1 something I certainly want to be enlightened on,
2 although I don't know that it ultimately affects
3 the decision in this case; it's been raised so
4 many times that I find it quizzical, at best, as
5 to why we got into this situation.

6 MS. AMUNSON: Certainly, Mr. Chair. I
7 would be happy to address that, either in closing
8 or in a filing with the board to explain exactly
9 how all this transpired.

10 BY CHAIRMAN OBERMAN:

11 Q Well, we'll allow you, at some point, to
12 enlighten us, and the other side, of course, can
13 respond. Here's a couple of questions that may be
14 a little bit out of -- disjointed, but I'm just
15 trying to get through it based on my notes.

16 In the document that was Exhibit 319
17 that you testified about, there was this quote
18 that "FRA has indicated that the lack of
19 transparency in the current Gulf Coast study will
20 make its results unusable for discretionary grant
21 applications."

22 Do you remember that statement?

1 A Yes, sir.

2 Q So do I understand, at least from your
3 understanding of the grant applications, that the
4 very data that CSX and NS have so far declined to
5 provide to Amtrak would disable both Amtrak and
6 the railroads getting their hands on this amount
7 of federal money that everybody's talking about to
8 build these infrastructure projects?

9 A Yes. That's exactly what we were
10 concerned about. Although the -- I must say the
11 IIJA was not contemplated when we were in the
12 midst of the study, but we were concerned that,
13 without the transparency of the data and the
14 transparency of the analysis, the FRA would not be
15 willing to award grant funds for the projects,
16 even the projects that were identified in the Gulf
17 Coast Working Group report.

18 Q Did you ever go back to the railroads at
19 any time, up until this morning, and say, Look,
20 you want \$520 million. We don't know if that's
21 the right amount. We don't agree. But if you
22 want anything, we have to have the data, or there

1 won't be that money.

2 Have you ever said that to the
3 railroads?

4 A Yes, we did. In fact, that was the
5 significant part of the discussion we had in
6 August of 2020 -- or 2021 -- I'm sorry -- 2020,
7 where we said, Unless we have a transparent
8 process that FRA can verify, that -- then we --
9 it's not usable for us in terms of grant funding.

10 So it was a part of the discussion that
11 we had with the railroads and a discussion that we
12 raised several times over the course of the
13 discussion. That didn't seem to be convincing to
14 them that that should cause a change in behavior.

15 Q Who, specifically, at the railroads did
16 you say that to, that, We need to get this data if
17 we're ever going to get the infrastructure you
18 claim is necessary?

19 A So the regular participants at our call
20 for CSX -- I will try and remember their names --
21 John Patelli, Andy Daly, Mark Artura, Hannah Ross,
22 the regular attendees for Norfolk Southern, John

1 Edwards, Holly Sinkkanen, oftentimes Michael
2 Williams, also from the Walden Group. That's
3 about all I can recall from the two -- from those
4 two participants that -- we had participants from
5 Senate Commerce, from FRA, and Amtrak.

6 Q I just -- I'm really just talking about
7 the railroads. They're the ones that had the data
8 or have the data. And you're saying that, in
9 essence, in every step of the way, the railroads
10 said, We don't care if we get the funding or not,
11 we're not giving you the data. Is that what
12 you're saying?

13 A What I'm saying is when we expressed
14 that as a concern, that did not change their
15 behavior to give us the data. But that was
16 really -- that was mostly in that August time
17 frame when the letter -- or the update for the
18 Senator Wicker briefing and my letter went out to
19 the hosts.

20 Q So, without saying it -- they didn't
21 have to say it, they just didn't give you the
22 data, is what you're saying?

1 A Yes.

2 Q I know there was some reference in
3 your -- I can't get back on. There we go. You
4 talk in your verified statement about wanting to
5 model the 2019 case. There were parts of the 2019
6 case that you wanted HDR to model that you
7 couldn't get agreement on.

8 Let me ask this question: You received
9 in this case, in discovery, the so-called
10 Dingler -- I can't remember the name of the firm
11 now -- RTC studies, both the original one and the
12 rebuttal; correct?

13 A Okay. Again, I can't -- I was not able
14 to review that data under the protective order.

15 Q But Amtrak received the -- received the
16 studies?

17 A It's my understanding that Amtrak
18 counsel received the studies and whatever work
19 papers were attendant to that.

20 Q And did I understand you earlier to say
21 that you have worked in the past, in other cases,
22 with the Amtrak RTC modelers?

1 A I had worked with the Amtrak RTC
2 modelers in the application of RTC modeling or RTC
3 knowledge on host railroad properties. We
4 typically -- our group doesn't get involved in a
5 lot of the Northeast Corridor initiatives because
6 we typically work with the Off-Northeast Corridor
7 operations of Amtrak, and only with the freight
8 railroads that operate on the Northeast Corridor.

9 But, yes, we have engaged Amtrak's RTC
10 modelers to look at various aspects of host
11 railroads' infrastructure investments or routes,
12 or even just calculating trip times for new
13 services using RTC modeling.

14 Q So you personally have some idea or some
15 familiarity with what RTC modelers can do with
16 this software; would that be fair?

17 A Yes, some familiarity is fair.

18 Q Well, here's the question: Did you ever
19 go to the RTC modelers at Amtrak after the RTC
20 study was produced in this case -- even though
21 you, personally, couldn't see it -- and suggest to
22 them that they accept, for at least the sake of

1 exploration, the RTC study with all of those
2 inputs that you didn't get the raw data for, and
3 work with that model, for example, to see what
4 would happen if you put in all the FRA
5 infrastructure projects into the 2019 case?

6 They produced a 2039 case with the RTC
7 infrastructure, but they didn't produce a 2019
8 case. And you've talked before about whether you
9 agreed or didn't agree to a 20-year projection.
10 Did you go to the Amtrak RTC modelers and say,
11 Let's put the FRA infrastructure in on the 2019
12 case and see what that \$100 million does for the
13 alleged freight delay that they say has to require
14 \$440 million? Did you ask them to do that?

15 A Mr. Chairman, I believe all of the RTC
16 modeling data was marked as highly confidential,
17 so no Amtrak people were permitted to look at it.

18 Q You're saying even the Amtrak RTC
19 modelers couldn't look at the actual data and
20 study that was produced by the railroads?

21 A They could look at what was published as
22 the reports that were issued as public documents,

1 but they were not permitted to look at
2 highly-confidential information.

3 Q So you're saying they couldn't load the
4 RTC results from Mr. Dingler onto the Amtrak RTC
5 computers and then massage it and change things
6 around?

7 A It's my understanding they could not.

8 Q So then I take it Amtrak couldn't put in
9 operational changes, for example, and see what
10 they would do to the delay times, either?

11 A That's correct. We didn't have a model
12 to run scenarios off of, a live model to run
13 scenarios off of.

14 Q And I'm assuming if I ask if you've
15 entertained the idea of coming to the board and
16 asking to lift some of those restrictions so that
17 RTC could massage it, we're getting into
18 attorney-client again?

19 A Yes.

20 Q All right. Then I won't pursue that,
21 but it's something that maybe Jessie can address
22 later.

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1 MS. AMUNSON: Mr. Chairman, we did file
2 a motion with the board, and the board denied it.

3 CHAIRMAN OBERMAN: Well, okay. I'll
4 have to go back and take a look at that.

5 BY CHAIRMAN OBERMAN:

6 Q On the question of the 80 percent versus
7 95 percent on-time issue that was raised in the
8 RTC study, I wonder if you could explain -- I
9 notice there's a footnote in your statement that
10 says you built in much more recovery time,
11 22 percent and 23 percent of the total run time,
12 as compared to the normal recovery time in your
13 schedules of 8 to 10 percent.

14 Do you recall that footnote?

15 A Yes, sir. I do.

16 Q Could you enlighten us a little bit
17 about how that relates to achieving an 80 percent
18 on-time versus the 95 percent?

19 A Certainly. -- on-time performance
20 measures the number of passengers that deboard at
21 their destinations within 15 minutes of their
22 scheduled arrival. The way in which Amtrak

1 constructs a schedule is typically of -- usually
2 of three primary components.

3 So we have a pure run time, which is the
4 unobstructed running time between two points, A
5 and B, we'll call them. Second is the amount of
6 dwell time that I actually have to spend
7 debarking or loading passengers. But then what's
8 left is recovery time, which is, What time do we
9 add to the schedule for delays that do occur in
10 transit, whether they be Amtrak delays or host
11 delays or third-party delays, and still have the
12 train on time?

13 So, typically, our scheduling folks will
14 consider a train schedule to be efficient if it
15 has between 5, 8, 10 percent of recovery time, and
16 that's a percentage of pure running time. So if
17 it takes 100 minutes to get from A to B,
18 10 percent recovery time is 10 minutes -- or
19 10 percent of that pure running time is 10
20 minutes. So you add 10 minutes to the schedule
21 for recovery time.

22 That, we typically spread out to make

1 the most number of passengers arrive at their
2 destinations on time. So you place the recovery
3 time in advance of where the customers are getting
4 off so that they can get off at their deboarding
5 station on time.

6 In the case of the Gulf Coast analysis,
7 we used 22 percent, which would be 22 minutes or
8 100 minutes, let's say, of schedule as of recovery
9 time, which made the schedule longer, which helped
10 to explain why the difference between the old
11 schedule at three hours and 10 minutes and the
12 current proposed schedule at three hours and 23
13 minutes. So it made the schedule longer, but it
14 also created a potential for more customers to be
15 getting off on time if they incur delays in
16 transit.

17 So we proposed the longer schedule. The
18 railroads had expressed a concern about the
19 numbers of issues that they confronted on this
20 route. And we talked to them about that and tried
21 to determine to what degree those might impact the
22 operation of the train, and they proposed a

1 slightly longer schedule than the historical
2 schedule by adding additional recovery time.

3 Q So to a layman's ears, you're saying
4 Amtrak agreed to allow 3 hours and 23 minutes to
5 go 148 -- 40 miles -- 144 miles. Seems fairly
6 slow to me. But by doing that, it made it much
7 easier to achieve an 80 percent on-time
8 performance from the railroads' point of view.

9 A We hoped that that was going to be the
10 outcome. And when we tested the schedule with
11 HDR, it proved out to be a pretty successful
12 schedule, for purposes of on-time performance.
13 But that was what we proposed, based on the
14 railroads' concerns that they would confront a lot
15 of issues in transporting our train across the
16 line.

17 Q There was a lot of discussion about
18 Amtrak's testimony to Congress and so forth about
19 not moving Amtrak trains onto sidings. To your
20 knowledge, in connection with any of the studies
21 or efforts to reinstate the Gulf Coast service,
22 did Amtrak ever tell either railroad not to do any

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1 study which would put Amtrak into a siding?

2 A I don't recall that instruction ever
3 being given in to HDR or to the railroads.

4 Q Or in connection with the Dingler study?

5 A We had no input to the parameters or
6 assumptions of the Dingler study.

7 Q Well, I want to switch for a moment --
8 and then I think I'm probably finished here for
9 the moment -- to this question of the station
10 track. As I've tried to follow the diagrams and
11 testimony that came in from the port from others,
12 if you have a station track alongside tracks 1 and
13 2 in downtown Mobile, where you could park the
14 train -- it comes into the station, it goes onto
15 the station track, and it sits there for however
16 long it's going to sit there before it goes back,
17 that's one option.

18 If you don't have that station track,
19 once the train unloads, you've got to go back on
20 Line 1, some suggest you have to cross over to
21 Line 2, and get into Choctaw Yard and let the
22 train sit there until it's ready to go back to New

1 Orleans. Then it's got to go back up to Mobile,
2 board the people, and then head south to New
3 Orleans. Are those the two options we're talking
4 about?

5 A That is either the downtown station
6 option or the Choctaw option. We've been willing
7 to explore other options if there are things that
8 CSX would propose, or the port, that might be less
9 disruptive to their operations if they feel that
10 that is. But that's not an unusual operation for
11 us. Most of our layover tracks are not
12 necessarily located at a station. So we often
13 deboard passengers, move to a layover track, move
14 back to board passengers in the afternoon, and
15 then depart.

16 Q Well, in terms of utilizing or using up
17 space on the CSX tracks, which the report says
18 that it also has to use, unless I misunderstand
19 the physical drawings here. It would seem that if
20 you have a station track, you're going to have --
21 the Amtrak trains are going to be on the main
22 lines for much less time than if they have to go

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1 back and forth to Choctaw Yard each time they had
2 a run. Would that be an accurate way to
3 understand it?

4 A Yes. And that's why we favored that
5 approach, as well, not just because it gets us off
6 the -- the main line quicker, but because we don't
7 have the time to reposition the train and our crew
8 costs, as well. So this allows us to just pull
9 off of the main, pull off to the siding, and the
10 train doesn't move then, again, until the
11 afternoon. So it's a more efficient operation for
12 us, and it sounded like both the port and CSX
13 thought it would be a more efficient operation for
14 them, as well.

15 Q I'm trying to understand the concerns of
16 the City of Mobile, as voiced by its mayor in the
17 public session here. I don't want you to get into
18 the mind of the mayor, nor do I, but just trying
19 to understand the logic of it. If you were
20 concerned about minimizing impact on the port,
21 from the point of view of the economy of the City
22 of Mobile -- which we're told the port is very

1 important to -- and the State of Alabama, you
2 would prefer the choice of building the station
3 track on City property, rather than having your
4 trains go back and forth to Choctaw or some other
5 place that required them to use the main line;
6 would you not?

7 A I would think that would be a better
8 alternative for the City's and the port's
9 operation, as well, yes.

10 Q All right. I think that was all I had.
11 I'll check my notes. But thank you, Mr. Blair. I
12 appreciate it. Jessie? Redirect? I'm sorry. Do
13 you have questions? I'm sorry. Robert?

14 BY MEMBER PRIMUS:

15 Q Sorry. Mr. Blair, I'll try to be as
16 brief as possible. So your name is on -- you
17 signed the RTC agreement, is that correct, on
18 behalf of Amtrak? Oh, I'm sorry. I've got to let
19 go.

20 A Yes. I did.

21 Q And can you just tell me your role in --
22 in the study agreement? Were you the chief

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1 negotiator for that -- for that agreement?

2 A Yes. I was the -- I was Amtrak's
3 highest-ranking negotiator. Kyle Montgomery, in
4 my group, also participated in the negotiations,
5 and our Amtrak internal counsel.

6 Q Okay. And so with you signing the
7 agreement, I guess, is it -- would it be my
8 understanding that, at the time, you had no
9 problem with the agreement?

10 A Well, I wouldn't characterize it that
11 way. I guess, I would say that was the best
12 agreement that we thought we could get to address
13 the analysis. The Gulf Coast Working Group report
14 suggested a series of next steps Amtrak undertook
15 to complete all of those next steps on the
16 corridor, and one of those steps was to continue
17 to refine the analysis. So that's what we
18 attempted to do. But it was a very hard and a
19 long negotiation just to get to those agreements.

20 Q What were some of the things that you
21 wanted in the agreement that weren't contained in
22 the agreement?

1 A Well, I think, first of all, we had
2 had -- we thought, even where the language
3 indicated a certain level of good-faith
4 communications and good-faith sharing of
5 information, we didn't get it back. But with
6 respect to the agreements itself, we had a long
7 negotiation over streamlines, which I think is --
8 you know, is evidenced, both in my verified
9 statement where we talked with the heat maps and
10 treatment lines.

11 We did not get track charts to
12 understand grade curvature issues, which CSX had
13 previously shared in the prior study. We --
14 limitations on looking at operation changes to
15 moving trains were things that we thought were --
16 were constraints that were difficult to get
17 with -- or work with.

18 But we did have the ability to look at
19 the lift bridges, and that was one of the things
20 that we contemplated looking at in conjunction
21 with the communications with the Coast Guard. We
22 wanted to look at what timing over bridges would

1 look like. Also, it did give us some opportunity
2 to look at operational issues. Plus, we had the
3 opportunity, potentially, to look at shifting
4 Amtrak trains by a few minutes, even if we
5 couldn't shift a CSX or an NS freight train, to see
6 if the performance would change.

7 But all of that meant that the analysis
8 was going to take longer and be more costly, since
9 we didn't have the transparency. We would have to
10 try various options until we got one that worked.
11 For example, we did six iterations on the -- or
12 six versions of the schedule until we got one that
13 worked really well. And we anticipated having to
14 do that same level of effort for each of the
15 scenarios, run each one multiple times to get to a
16 place where we were satisfied with the results.

17 Q Thank you. So in talking about the
18 modeling and what was laid out within -- within
19 the agreement, did you raise any concerns about
20 the modeling in the agreement, in terms of if you
21 wanted to do more modeling or additional modeling,
22 or even include FRA in, sort of, the base

1 modeling? Was that brought up at all?

2 A The language, with respect to the
3 scenarios, was pretty broad. We could run a
4 variety of iterations, and it was really just the
5 subject of cost and time that was -- that was --
6 out of Amtrak's, you know, pocket or FRA's pocket
7 or, again, based on the reimbursement issues. So
8 that was really the issue we were looking at.

9 So when we started developing our
10 iterations, we tried to develop our best case
11 first so that all of the other ones -- we would
12 take our second, third, fourth issues in order.
13 So we would potentially spend less time and effort
14 to get to successful outcomes. So -- but there
15 was -- there was a lot of freedom within the
16 defining of the iterations.

17 Where that became an issue was when we
18 said we wanted to run an iteration against the
19 2019 base case, and the railroads rejected that.
20 So that -- that, right away, meant to us that we
21 were not, we didn't have the -- even the
22 flexibility the agreements permitted, the

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1 railroads wouldn't allow us to do.

2 Q So even the data-sharing component
3 that's in the agreement, you -- you think it was
4 too constraining?

5 A Well, that -- that particular issue was
6 not constrained by the data sharing. That was
7 just constrained by railroad cooperation. Some of
8 the things that were constrained in the data
9 sharing were the things -- the ability to move an
10 NS train, we -- as it was pointed out by Member
11 Hedlund, CSX had slightly less-restrictive
12 parameters there and the inability to see
13 streamlines.

14 Q So I guess my point for that -- and then
15 I'm going to move to another one -- is knowing all
16 of that, do you feel you've put yourself in a box
17 by signing that the document. I mean, in terms
18 of, putting your name and Amtrak's name on that,
19 did that sort of restrict you, do you feel, going
20 forward, to the data and to the information to the
21 models that were run, if those things weren't
22 available? Did you understand that you were

1 resigned to that?

2 A Well, we had a series of workarounds to
3 address the constraints. Like I said, we were
4 limited -- you know, it was really a function of
5 time and money that we -- gave us opportunities to
6 find ways to navigate the constraints that were in
7 the agreement. So that was always an option for
8 us and -- so we knew that those were ways that we
9 might be able to work around some of those
10 constraints.

11 So I don't think it was -- it was not an
12 Amtrak -- it was not something that we didn't
13 think about. But, again, in order to try and
14 progress the Gulf Coast service from the Working
15 Group Report to the next steps, we thought this
16 was the best way to keep the project moving.

17 Q Okay. Let me just switch -- thank you.
18 Let me just switch real quick. In terms of
19 infrastructure, it's been batted around the room
20 today about infrastructure, whether it's
21 100 million or 400 million or another number. But
22 would you -- would you say that, in the end, any

1 type of infrastructure investment will help,
2 overall, the -- the success of, not just Amtrak,
3 but also freight rail mobility on the network?

4 A Well, I think it -- it certainly depends
5 on what kind of infrastructure is -- that would be
6 invested. Certain things would -- would help
7 the -- you know, would help operations in the
8 corridor. Other things may not help operations in
9 the corridor. Some things may impact only
10 passenger operations, some things may impact
11 passenger and freight, and some things may impact
12 only freight.

13 So I think the collaborative analysis
14 and the collaborative study that we had hoped the
15 2020 study would be, we never had. But we did
16 have the -- and I think it was even in the e-mail
17 that was shared earlier -- the most comprehensive,
18 full study of the corridor that had been done
19 was -- you know, was what was contained in the
20 Gulf Coast Working Group Report. And we had that
21 to work from and a set of infrastructure that was
22 agreed upon by the parties, other than CSX, in

1 that context.

2 Q So even with the Gulf Coast study, if
3 you were to use it as a base -- so even that
4 \$100 million, plus, that they recommended, it
5 is -- would be seen as beneficial to the
6 operations of the -- of Amtrak, as well as
7 potentially for freight rail in the area?

8 A Yeah. We saw those projects as
9 providing benefits to the corridor overall, much
10 like what FRA reported in the report. And
11 those -- like I said, those were similar to the
12 projects that Amtrak had identified independently.
13 So we -- you know, there was some commonality to
14 the projects that we identified.

15 You know, we saw the investments as
16 being helpful to the corridor, much like, as FRA
17 identified in the Working Group Report, as to the
18 ongoing operations on the corridor, continuing to
19 build, as Amtrak does with all of its corridors,
20 ways to improve service, reduce trip time,
21 increase reliability, and increase safety.

22 Q So now that we have the -- the

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1 infrastructure bill being passed and the potential
2 for Amtrak in localities that have access to
3 billions of dollars that will be coming online, do
4 you think it would be better to look at the
5 infrastructure as a lead-in to this? Now, I know
6 when you guys first considered, you know, the
7 Working Group, we didn't have a bill, and funding
8 was, you know, in short supply, even in -- when
9 guys signed the agreement early 2020, same thing.

10 Now, we've got a point where, you know,
11 funding is more available, and the idea of -- of
12 it going towards infrastructure, which we, I think
13 everyone has acknowledged will help, ultimately.
14 Do you think it's something that we should look at
15 as front-loading rather than phasing in?

16 A Well, I think that the infrastructure
17 funds, by the very name of the bill is -- is
18 intended to -- to go for infrastructure. I -- I
19 think we have had a circumstance -- and it's
20 certainly an exciting time to be a part of that.
21 But I think we have experienced a lot of delay and
22 infrastructure being used as a delaying tactic in

1 this circumstance.

2 And what I think we would really like is
3 an order from the board so we can begin the
4 service, and we will commit to the process of
5 continuing to make improvements to the corridor,
6 over time to improve the operation of both freight
7 and passenger in the corridor, as it improves
8 Amtrak service.

9 Q Thank you.

10 CHAIRMAN OBERMAN: Mr. Blair, I do just
11 have a couple more questions.

12 BY CHAIRMAN OBERMAN:

13 Q In your statement, you referred to the
14 installation of bidirectional signals in the
15 Gentilly Yard some years ago. Are those, to your
16 knowledge -- is that installation still operative
17 and useful to CSX; do you know?

18 A I believe that they were, but somebody
19 recently told me that it has no longer been
20 maintained. CSX's operation just used that as a
21 storage track rather than as a main, so to speak,
22 to get through the yard. And I remember

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1 Mr. Johnson's testimony. He talked about all the
2 CSX trains start or stop in Gentilly Yard, so they
3 really don't have through operations.

4 So Amtrak -- you know, the installation
5 of that basically created a main line through a --
6 you know, through the yard. CSX doesn't use it in
7 that fashion today. So I understand that they are
8 no longer maintaining the bidirectional signals.

9 Q Could any of that be utilized to get
10 your signal through the Gentilly Yard area and all
11 the way to New Orleans, or is it useless at this
12 point?

13 A Certainly, we would like to utilize
14 that. That should be able to reduce trip time for
15 us and reduce conflicts at Gentilly Yard. But I
16 don't know the condition of those facilities,
17 whether they could be quickly reactivated or
18 whether that -- you know, or whether that would be
19 more difficult.

20 Q Are you aware of a presentation to the
21 Southern Rail Commission last year, after this
22 case was filed by the railroads, relating to a

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1 proposal of spending only 140 to \$160 million on
2 infrastructure?

3 MR. ATKINS: So, Chairman, I would like
4 to object. Those are settlement discussions,
5 priveleged, not admissible in any proceedings.
6 And so if you want to take it offline -- I'll give
7 the others in the room the opportunity to object,
8 but those discussions were part of efforts to
9 settle the case.

10 CHAIRMAN OBERMAN: Are you saying with
11 the Southern Rail Commission?

12 MR. ATKINS: With all -- with all of the
13 affected parties, Chairman. It was -- it was part
14 of a global effort with CSX and Norfolk Southern
15 to secure a settlement of this case. So it wasn't
16 just them, but those discussions should not be
17 admissible under the Federal Rules of Evidence.

18 CHAIRMAN OBERMAN: Well, I'm not sure
19 that's right if the discussions were with an
20 outside party to this proceeding, which is the
21 Southern Rail Commission, and then were reported
22 in the media. I'm not sure how you can say that

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1 they're not producible. Let me just find out if
2 Mr. Blair was familiar with them, and then if
3 we're going to proceed, we know who we can ask.

4 BY CHAIRMAN OBERMAN:

5 Q Are you familiar with those discussions,
6 without getting into the substance of it,
7 Mr. Blair?

8 A The Southern Rail Commission reported to
9 us that they had had that communication with CSX.

10 Q All right. Do you know who was involved
11 in those meetings?

12 A No, I do not.

13 Q All right. Well, I would -- I'd like to
14 hear from counsel -- not now -- about our
15 consideration of whatever happened in that meeting
16 and whether it's privileged or admissible in this
17 proceeding. I'm not clear, based on what you
18 said, Ray, that it is not admissible, but I'd
19 certainly like to know about it.

20 CHAIRMAN OBERMAN: That was all I had
21 for Mr. Blair. Did anybody else have questions?
22 Jessie? Oh, I'm sorry. I thought you didn't have

1 any questions.

2 MR. HELENHOUSE: We didn't have any
3 questions pertaining to the confidential
4 documents.

5 CHAIRMAN OBERMAN: I see. Okay. Go
6 ahead. I would have called on you first, but I
7 didn't realize you had questions. Go ahead.

8 CROSS-EXAMINATION

9 BY MR. HELENHOUSE:

10 Q Thank you. Why was the port not part of
11 the RTC process?

12 A Which RTC process are you referring to,
13 sir?

14 Q Any RTC process. Why was the port not a
15 party to the RTC process?

16 A The port's operations would have been
17 considered as a part of CSX operations on the
18 line. As we have traditionally done in other RTC
19 modeling, the owning railroad addresses all of the
20 operations on their line, both host and tenant.

21 Q Part of the RTC modeling, though,
22 included projections for growth. Why was the port

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1 not considered -- or why was the port not
2 contacted to find out what it saw as its growth?

3 CHAIRMAN OBERMAN: Mr. Helenhouse, which
4 RTC study are you talking about? The HDR, or the
5 one that was done --

6 MR. HELENHOUSE: The HDR one.

7 CHAIRMAN OBERMAN: Because I don't think
8 Amtrak had anything to do with the one that's
9 before the port now. So I don't know how he could
10 possibly know about that. But if you're talking
11 about HDR, let's be clear.

12 MR. HELENHOUSE: The one involving CSX
13 and Norfolk Southern.

14 CHAIRMAN OBERMAN: There's two studies.

15 MR. HELENHOUSE: They both go into --
16 The one that Amtrak was involved with and then
17 pulled out.

18 MEMBER FUCHS: Mr. Dinger's depo, how
19 about that? Is that what you're referring to?

20 MR. HELENHOUSE: Yes.

21 CHAIRMAN OBERMAN: He's talking about
22 HDR.

1 MR. HELENHOUSE: The one that Amtrak was
2 involved in, and then pulled out. That study.

3 CHAIRMAN OBERMAN: Isn't that HDR? Just
4 so the record's clear, is that HDR, Mr. Blair?

5 THE WITNESS: Yes. Yes. Yes. Amtrak
6 did not pull out. I would like to clarify that.
7 The agreement expired in one year, which was its
8 assigned expiration date. And your question was:
9 Why was the -- I'm sorry. Can you clarify, again,
10 your question?

11 BY MR. HELENHOUSE:

12 Q Why was the port not consulted about its
13 own projections of growth rates?

14 A We did not provide the growth rates in
15 that study. I think Ms. Ross outlines where she
16 had collected data for her forecast, and think Ms.
17 Sinkkanen identified where she collected forecasts
18 for her data.

19 Q Are you aware of anyone in that study
20 contacting the port to get projections from the
21 port itself?

22 A No, but we didn't populate that study.

1 In essence, CSX did. So --

2 Q Would you agree though, it would be a
3 much more complete study if it included
4 projections that the port actually has?

5 A A more complete study than what the
6 railroads had done? Without -- I don't know what
7 their forecasts or their projections were to know
8 whether or not they were more or less aggressive
9 than the port's own projections.

10 Q I want to clarify some testimony, and I
11 may be confused. I think you testified that the
12 traffic that the port moves to the north would not
13 be impacted by Amtrak's operations.

14 Was that your testimony?

15 A I think what -- I'm not sure that's how
16 I -- how I said it, but the Amtrak -- the
17 operations from Sibert Yard to the north, which
18 we -- or from the port's facilities that travels
19 to the north would seemingly have little impact
20 from the Amtrak operation into Mobile.

21 Q I think you're talking about interchange
22 as the TASD's yard.

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1 A Well, there's Interchange, and then
2 the -- I forget what the name of the other yard is
3 on the other side.

4 Q Riverfront.

5 A Riverfront. Thank you.

6 Q But do you understand that whether the
7 cars coming into Interchange to go north --

8 (Reporter clarification.)

9 Q But you understand that the cars that
10 are moving north from Interchange Yard have to
11 cross over the CSX corridor to get into the
12 Interchange Yard before they head north?

13 A I'm sorry. You said the cars that are
14 moving from Interchange to Interchange Yard?

15 Q I'm sorry if I misstated. The cars that
16 are moving from Interchange Yard to the north,
17 they come from other portions of the area. And as
18 part of the move to get to Interchange Yard, they
19 have to go to the CSX corridor.

20 Do you agree with that?

21 A They have to go over the CSX corridor to
22 the north from interchange to get to Sibert?

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1 Q No. They have to -- either they're
2 coming from the Riverfront Yard -- to get to the
3 River -- from Riverfront Yard to get to the
4 Interchange Yard, they have to -- those cars have
5 to cross the CSX corridor; correct?

6 A Yes. That's my understanding. To get
7 from Riverfront to Interchange, you cross the CSX
8 corridor, yes.

9 Q And the intermodal -- intermodal cars
10 coming from the intermodal facility to the
11 south -- the port's intermodal facility to the
12 south had to cross over CSX's tracks to get to the
13 Interchange Yard before they can go north;
14 correct?

15 A Yes. But my understanding is they
16 travel up Track 2.

17 Q I'm just talking about they need to get
18 to Interchange before they head north.

19 A My understanding is they travel up Track
20 2.

21 Q When you say "up track," what do you
22 mean by that?

1 CHAIRMAN OBERMAN: Track 2, he said.

2 MR. HELENHOUSE: Oh, up Track 2. I
3 thought you were saying "T-O-O."

4 BY MR. HELENHOUSE:

5 Q Who were the members of the Gulf Coast
6 Working Group?

7 A You mean the agencies or the
8 individuals?

9 Q Individuals.

10 A I don't know all the individuals, but
11 there is a -- there are several notations here
12 of -- of membership of the agencies that were in
13 the Gulf Coast Working Group, and there's several
14 communications about participants in the study.

15 Q Would you agree with me that neither
16 T ASD nor the port were part of that group?

17 A That -- the -- my understanding from SRC
18 is that they had reached out to the port several
19 times during the -- during the outreach phase of
20 the Gulf Coast Working Group Report, and there
21 were a number of meetings held in Mobile that were
22 open to all parties during the Gulf Coast Working

1 Group Report. So I don't know if the port
2 participated in any of those events or not, or
3 which representatives of the port were present
4 during the SRC's meeting.

5 Q Are you aware of any representative of
6 the port being present at any of those meetings?

7 A My understanding from SRC is that they
8 met with port representatives with the port -- I
9 don't know if he's the general manager or
10 president at the time -- they referred to him to
11 me by name and indicated they had several meetings
12 with the port during the Gulf Coast Working Group
13 process.

14 Q Are you aware of anything in this record
15 that shows that the port actively participated in
16 the Gulf Coast Working Group?

17 A I'm not, but I assume that the
18 information would come from the port itself.

19 Q During this entire process of these
20 proceedings, has Amtrak ever reached out to the
21 port directly to see how the port would be
22 impacted by Amtrak's operations?

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1 A There was a meeting that Amtrak held
2 with port management. I was not a participant in
3 that meeting, but a member of my staff was there
4 at that meeting during this process, yes.

5 Q All right. And do you know that at that
6 meeting there was no discussion of the
7 infrastructure that the port wanted or required to
8 lessen the impact on its operations?

9 A I can't say, since I was not at the
10 meeting.

11 Q So you don't know?

12 A I don't know, but I -- in the recap that
13 I got from two of the individuals there, they did
14 not mention that the port had brought up the issue
15 of infrastructure.

16 Q Well, my question wasn't: Did they
17 bring it up? My question was: Did Amtrak ask
18 them how the port would be affected by the
19 service?

20 MS. AMUNSON: Objection. He said he was
21 not at the meeting.

22 MR. HELENHOUSE: He testified he was

1 briefed by his staff.

2 CHAIRMAN OBERMAN: Well, what was the --
3 can I have the question again?

4 Q My question was: Did Amtrak ask the
5 port at that meeting about how they would be
6 impacted by Amtrak's service?

7 CHAIRMAN OBERMAN: Do you have any
8 knowledge of that, Mr. Blair?

9 THE WITNESS: My -- my -- from the folks
10 that had participated in the meeting that spoke
11 with me, they indicated that Amtrak did ask the
12 port what concerns it may have about Amtrak
13 operations and talked about the port's operations,
14 when they were conducted, what their operations
15 would be. And as the folks came back from the
16 meeting, they had a -- a good -- a much better
17 understanding, I guess, or a good understanding of
18 the port operations in and around Mobile.

19 BY MR. HELENHOUSE:

20 Q And did the -- did Amtrak have any
21 understanding, at that point, of what the port
22 needed, in terms of infrastructure, so they

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1 wouldn't be impacted?

2 A I -- again, I don't -- the briefing I
3 got did not indicate the port brought up the issue
4 of infrastructure at that meeting.

5 Q I thought you just said Amtrak brought
6 it up.

7 A Amtrak brought up the issue of what the
8 port needed -- not infrastructure-wise, but what
9 the port's concerns were with Amtrak's proposed
10 operation. The port provided some concerns that
11 they had. The port talked about their operations,
12 what took place with the port operation. Our
13 folks -- again, the folks that I spoke with, two
14 individuals, said that they had a much better
15 understanding of the port's operations following
16 the meeting and appreciated the port's sharing of
17 information in that meeting. But I did not hear
18 any reports of a discussion about infrastructure.

19 Q Did you hear Mr. Golder's testimony from
20 the port?

21 A Mr. Goldman?

22 Q Yes.

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1 A Yes, I did.

2 Q And he discussed in his testimony, also
3 in his verified statement, some of the
4 infrastructure concerns.

5 Do you recall that?

6 A I recall that he explained the
7 infrastructure that the port was seeking as a
8 result of this case.

9 Q Did Amtrak ever reach out to the port to
10 address any of the concerns that Mr. Goldman
11 raised in his verified statement?

12 A We have had -- my understanding is we
13 have reached out to the port a couple of times
14 since the -- since the case was filed, but I don't
15 know what all of those communications have been.

16 Q Okay. Has Amtrak ever offered to fund
17 any of the infrastructure that the port identified
18 that it needed to minimize the impact of Amtrak's
19 operations?

20 A You mean just now since the case was
21 filed?

22 Q Well, they didn't consult them before,

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1 so, yes. Well, I mean, there was no reason to
2 raise them before, until the case was filed.

3 A All right. So with that context, can
4 you ask your question again, please?

5 Q Did the port ever -- can you read the
6 question back?

7 (Reporter clarification.)

8 Q Did Amtrak ever offer to fund the
9 infrastructure that the port identified it needed
10 to minimize the impact that Amtrak service would
11 have on its operations?

12 A And to that, you're -- you're saying did
13 Amtrak offer to fund the projects that the port
14 identified in this filing --

15 Q Yes.

16 A -- during this case?

17 Q Yes.

18 A I don't know that I can answer that
19 without violating attorney-client privilege.

20 Q You do know that Amtrak opposed the
21 port's participation in this proceeding?

22 A Yes.

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1 Q Do you agree that Amtrak considers CSX's
2 and NS's demand for roughly 440 million in
3 corridor infrastructure improvements as
4 unreasonable?

5 A Yes.

6 Q Well, then isn't it -- isn't it equally
7 unreasonable for Amtrak to seek forced access to
8 the corridor with no funding of infrastructure
9 commitments?

10 MS. AMUNSON: Objection. Argumentative.

11 CHAIRMAN OBERMAN: I'll let the -- I'll
12 let him respond.

13 THE WITNESS: I don't think those are
14 parallel statements, so I -- I'm not -- I don't
15 agree.

16 BY MR. HELENHOUSE:

17 Q Do you recall in your testimony -- I
18 think it was your verified statement -- where you
19 testified "Sub-targeted infrastructure" -- I
20 believe it was along the corridor -- "could
21 benefit restored service after start-up?

22 A Can you -- can you --

1 Q I think it's on page 8, Paragraph 29 of
2 your verified statement, the second-to-last line.

3 A So, yes. That is -- that is reflecting
4 my January 27th letter to the -- to those
5 railroads. That's what I stated in my
6 January 27th letter.

7 Q Which infrastructure did you mean,
8 specifically?

9 A The only portfolio of infrastructure
10 that we had -- that we had acknowledged as -- as
11 reasonable, I guess, was the information of the
12 Gulf Coast Working Group Report. So this sentence
13 specifically says that the only infrastructure
14 were recommended by the Gulf Coast -- "while
15 acknowledging that some targeted infrastructure
16 could benefit the restored service after
17 start-up." So that is consistent with Amtrak's
18 message since the Gulf Coast Working Group report
19 was issued.

20 Q So what do you mean by "benefit the
21 restored service"? Do you mean benefit Amtrak?

22 A Yes, we would be the restored service.

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1 Q But nowhere did Amtrak commit to funding
2 that -- those targeted infrastructure
3 improvements.

4 A The next part of that sentence says,
5 "And committing to working with CSX and NS to
6 secure funding for that purpose."

7 Q But there was never any securing of that
8 funding; is that correct?

9 A I think we're in the midst of the
10 hearing now that is still trying to resolve the
11 issue of access. Amtrak has funding now for
12 corridor development. But I think what we had
13 said here, in the January -- what I had said in my
14 January 27th letter, is that we were committed to
15 working with CSX and NS to secure funding for that
16 purpose.

17 Q If the board granted Amtrak's
18 application, despite a finding of unreasonable
19 impairment to freight transportation, would Amtrak
20 then commit to fund the infrastructure
21 improvements to remedy such impairment?

22 A Could you state the question again,

1 please?

2 Q If the board grants Amtrak's
3 operations -- or Amtrak's request, but finds that
4 improvements need to be made to lessen the impact
5 on freight, would Amtrak commit to funding those
6 improvements?

7 A Well, I think we would have to follow
8 the board's order to -- to -- to whatever the
9 board has ordered. So I -- but I'm not sure I
10 can -- you're basically asking through a
11 hypothetical. I'm not sure I can answer.

12 Q Okay. Mr. Donahoe asked you about the
13 snowflake. I've got a few questions about that.
14 In your verified statement, you criticize CSX's
15 and NS's assertion that the Gulf Coast Corridor
16 has some unique aspects. Do you remember that?

17 A I think you're misstating my statement.
18 I -- I think they defined the corridor as
19 "unique," and what I was saying is we had
20 encountered those -- the aspects that they
21 identified as unique in other circumstances. And
22 we have effectively dealt with those situations in

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1 other circumstances. So that's what I responded
2 to in my verified statement.

3 Q No, we're on the same page. And I think
4 it's beginning on page 12, Paragraph 43. And
5 basically, you're saying, Well, they're
6 identifying these potential problems or real
7 problems, and your rebuttal is, Amtrak has dealt
8 with these in other situations.

9 Is that a fair summary of those?

10 A Yes.

11 Q Okay. And I want to walk through what
12 characteristics you discussed in response to the
13 freight railroads raising them. The first one was
14 multiple bridges; correct?

15 A Movable bridges.

16 Q Movable. Multiple movable bridges.
17 Consisting primarily of single track was another
18 one?

19 A Yes.

20 Q Having approximately 160 grade crosses,
21 that was another one; correct?

22 A Yes.

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1 Q Having unusually high freight demands
2 was another characteristic?

3 A And these were terms that were in the --
4 in the respondents that I was quoting from.

5 Q I understand, but unusually high freight
6 demands is one of the characteristics that you
7 rebutted?

8 A Yes, that's correct.

9 Q Having -- areas which had similar
10 passing siding configurations and similar siding
11 lengths was another characteristic you rebutted?

12 A It was short or insufficient sidings
13 improperly spaced to efficiently pass, was the
14 quote.

15 Q And similar freight train
16 characteristics was another one that you rebutted?

17 A Are you talking about Paragraph 49?

18 Q Yes. Yes.

19 A I'm not sure. I'm not sure I see, so --

20 Q Insufficient -- basically, they're
21 claiming they have insufficient capacity?

22 A Yes.

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1 Q Okay. And in each one of those
2 identified characteristics, you gave examples --
3 or you basically said Amtrak has dealt with this
4 in one location or the other; correct?

5 A Yes.

6 Q But you would agree with me that there's
7 nowhere in your verified statement where you
8 identify a line, which Amtrak operates over, that
9 possesses all of those characteristics; correct?

10 A Yes, that's correct. But I would like
11 to point out that, in many of these cases, we deal
12 with even more extreme conditions, such as what I
13 cited in my example. So it's not -- it's not as
14 though the conditions -- I mean, in many cases we
15 deal with more extreme conditions of each of those
16 conditions.

17 Q But you didn't provide an example where
18 all of those conditions exist?

19 A That's correct. That's correct.

20 Q In your direct testimony, the board
21 asked you about Amtrak operations in and around
22 other ocean ports. Do you recall that?

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1 A In my direct, yes.

2 Q Okay. And your verified statement doesn't
3 contain any analysis of the railroad operations of
4 the Port of Mobile compared to any of those other
5 ports; is that correct?

6 A Railroad operations of the Port of
7 Mobile compared to any of the other ports that
8 Amtrak serves?

9 Q Yes, compared to freight operations
10 around -- port freight operations around any of
11 those other ports.

12 A That's correct.

13 Q Do you recall testifying that in 1996
14 and 1997, CSX was operating more freight trains
15 over the New Orleans/Mobile corridor than it does
16 today?

17 A That was what was reported in their
18 verified testimony in the Conrail case, yes.

19 Q And would you agree with me there's
20 nothing in your written testimony comparing
21 that -- the 1996, '97, TASP traffic levels and
22 train counts to those that exist today?

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1 A No, that's correct.

2 Q In fact, there's not even a mention of
3 the TASD at all in your verified statement, is
4 there?

5 A No. My verified statement, however,
6 was, I think, prior to the port's involvement in
7 the case.

8 Q So you didn't consider, in this verified
9 statement, any affect on the port directly by
10 name?

11 A I could do a word search. I don't know
12 that the port is mentioned in my verified
13 statement.

14 Q You don't recall?

15 A But if you'd like me to read it, I will.

16 Q You can if you need to, but do you
17 recall it?

18 A I don't recall it.

19 Q Okay. Do you want to review it all?

20 A If you'd like me to look for it, I will.

21 Q I can tell you I haven't seen it, but if
22 you don't believe me, feel free to review it.

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1 CHAIRMAN OBERMAN: Well, let's just have
2 a question-and-answer. The gentleman says he
3 doesn't recall. Can we just move on to --

4 MR. HELENHOUSE: Okay. The statement
5 speaks for itself on that. Thank you. That's all
6 I have.

7 CHAIRMAN OBERMAN: All right. It's 20
8 minutes to 6:00, but I think we should get started
9 because we need all the time we have. Jessie, I
10 assume you have more than 20 minutes?

11 MS. AMUNSON: I'll try my best,
12 Mr. Chair.

13 CHAIRMAN OBERMAN: I don't think you
14 should be artificially restricted. So if you need
15 to finish on Wednesday, we certainly want to allow
16 that.

17 MS. AMUNSON: Mr. Chair, I will say the
18 first document that I would like to ask about is
19 marked confidential. So we do need to go into a
20 confidential session.

21 CHAIRMAN OBERMAN: I'm -- I'm sorry.
22 Say that again, please.

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1 MS. AMUNSON: The first document that I
2 would like to ask about is marked confidential, so
3 I would -- so we would need to go into a
4 confidential session.

5 CHAIRMAN OBERMAN: I'm sorry. What you
6 wanted --

7 MS. AMUNSON: We need a confidential
8 session.

9 CHAIRMAN OBERMAN: You want to go there
10 now, is that what you're saying?

11 MS. AMUNSON: Yes, please.

12 CHAIRMAN OBERMAN: Are you going to have
13 more confidential documents?

14 MS. AMUNSON: I have, I believe, three
15 confidential documents that I was going to cover
16 in the confidential session.

17 CHAIRMAN OBERMAN: Well, I wonder if,
18 before we do that, we should tell the viewers here
19 what we're going to do because we'll probably be
20 in confidential until we finish; right?

21 MS. AMUNSON: It's probably about 20
22 minutes -- 15, 20 minutes.

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1 CHAIRMAN OBERMAN: So that's what I
2 think we should do and make some progress. But
3 why don't we -- just for the sake of everybody who
4 is observing these proceedings, we will reconvene
5 at 9:30 on Wednesday. Same rules that we've
6 applied here in person. Before the end of the
7 day, we will find time to determine and inform
8 people how we're going to proceed after Wednesday.

9 I would be really hopeful that we could
10 finish the last two witnesses before the end of
11 the day on Wednesday. But if it can't, we'll have to
12 find some time or -- obviously, we've already
13 informed the parties that we're not going to do
14 closing arguments on Wednesday, so that's another
15 matter.

16 So the proceeding's, unfortunately, not
17 going to end on Wednesday, unless you folks all
18 settle between now and then, which would be
19 advisable. So with that, I think we're going into
20 confidential session. I should have taken this
21 stupid thing off when I was talking. So can you
22 send us to the confidential session?

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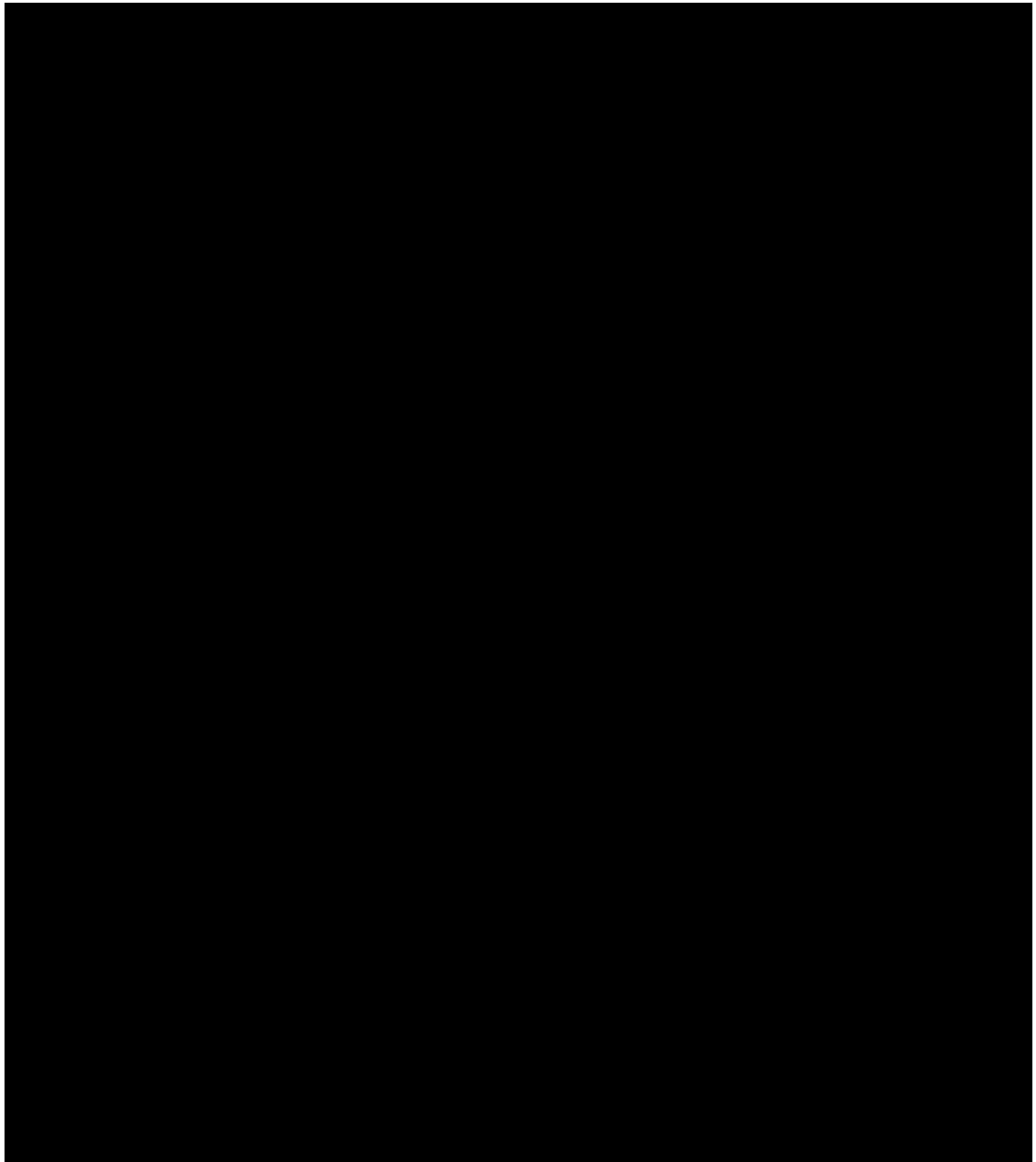
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1 MS. AMUNSON: Alex, can you get Appendix
2 5, Joint Exhibit --

3 CHAIRMAN OBERMAN: All right. Are we
4 there? All right. You may proceed.

5 (Confidential Session.)

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(Whereupon at 6:10 p.m. the hearing
stood in recess until May 11th at 9:30 a.m.)

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C O N T E N T S

WITNESSES:

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1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, Sydney Crawford, the officer

3 before whom the foregoing proceeding was taken, do

4 hereby certify that the foregoing transcript is a

5 true and correct record of the testimony given;

6 that said testimony was taken by me

7 stenographically and thereafter reduced to

8 typewriting under my direction; and that I am

9 neither counsel for related to, nor employed by

10 any of the parties to this case and have no

11 interest, financial or otherwise, in its outcome.

12 IN WITNESS WHEREOF, I have hereunto set

13 hand and affixed my notarial seal this 23rd day of

14 May, 2022.

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21 Sydney Crawford, Shorthand Reporter

22 My commission expires: May 15, 2024

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