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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 X

Wednesday, May 11, 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: All right. Good
3 morning, everyone. We have resumed the hearing
4 and a couple of preliminary matters before we call
5 Mr. Blair back up. One is our crack IT team made
6 a valiant effort to figure out a different way to
7 operate these microphones. The good news is,
8 there is a different way to operate it. The bad
9 news is, it'll take a long time to get it set up.
10 So it's the same system we've been going with, so
11 we'll try to live with it. But if and when this
12 trial has another session or the next one,
13 hopefully, we will avoid some of this delay and
14 back and forth.

15 Secondly, I want to address the CSX
16 attorneys. Is Ray still on remotely?

17 MR. ATKINS: I'm here.

18 CHAIRMAN OBERMAN: Oh, Ray is here.
19 Hey, Ray. Welcome back.

20 MR. ATKINS: Thank you.

21 CHAIRMAN OBERMAN: On the question that
22 you raised concerning the report of a presentation

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1 to the Southern Rail Commission as being an
2 inadmissible settlement discussion, if you want to
3 persist in that position, you need to make a
4 showing to us.

5 I'm going to offer you the opportunity
6 to submit something quickly -- I don't mean in
7 five minutes -- with a factual -- I want to know
8 what -- what happened there. Who was there, what
9 was said. Who had authority to settle. I thought
10 I heard Mr. Blair say he wasn't aware of the
11 meeting. So something more than just your
12 conclusory assertion is going to be needed to
13 determine whether it really qualifies as
14 exclusion -- as settlement discussion. We may
15 have to have an offer of proof on it, and then if
16 you are correct, we will, obviously, determine if
17 it's not admissible. But you need to make a
18 showing. I think it's too important.

19 MR. ATKINS: So, Chairman, what -- what
20 timetable did you have in mind? Is it end of
21 today? Is it end of this week.

22 CHAIRMAN OBERMAN: I would say as fast

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1 as you can. If you could do it, orally, we might
2 accept it. If you have all the facts, if you know
3 the people who have the facts, sometime today. I
4 am pessimistic that we're going to finish all the
5 witnesses today, just to be honest. I'd like to
6 be optimistic, so I'll say I am. But it doesn't
7 seem likely.

8 So we're probably going to have to come
9 back here, which we're working on right now, and
10 we'll let you know, as soon as we figure that out,
11 but sooner rather than later. Before -- because I
12 want to deal this while the evidence -- while
13 we're still hearing evidence.

14 MR. ATKINS: Understood, so perhaps when
15 you -- when we talk about the next steps in terms
16 of when the witnesses will wrap up, we can have
17 a -- I can have a better gauge of when we can
18 actually provide that briefing to you. It will be
19 filed under seal and confidential, for reasons
20 that I think are obvious and apparent, given the
21 nature of what it is that we're talking about.

22 CHAIRMAN OBERMAN: Initially, that's

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1 perfectly fine, but we need to know what the facts
2 are before we can properly rule on it. So I
3 appreciate your openness to making an effort to do
4 this quickly. And, hopefully, by midday, I would
5 hope, we'll be able to talk about scheduling and
6 then tell you what -- when you can file.

7 MR. ATKINS: Understood, Chairman.

8 CHAIRMAN OBERMAN: All right. Thank
9 you. With that, I think we were in the middle of
10 direct, weren't we, Jessie. Redirect, I mean, of
11 Mr. Blair.

12 So, Mr. Blair, do you want to take the
13 microphone again? You know, I am told that was
14 kind of just a -- mythological on my part, but I
15 thought this microphone had less delay when you
16 were sitting there but then they told me it was
17 just the gremlins in my imagination.

18 So let's see what happens here. If we
19 have this problem, we'll scoot over, so we don't
20 have the back and forth.

21 Jessie, your witness.

22 REDIRECT EXAMINATION

1 BY MS. AMUNSON:

2 Q Thank you, Mr. Chair.

3 Good morning, Mr. Blair. Thank you for
4 being here today. I'd like to start with -- you
5 were asked a number of questions about Amtrak's
6 work to -- to rehabilitate the passenger stations
7 along the Gulf Coast route; do you recall that?

8 A Yes. I do.

9 Q And there were some questions about the
10 length of time that it has taken Amtrak to get
11 that project underway since it was identified by
12 the Gulf Coast Working Group Brookley report; do
13 you recall that?

14 A Yes. I do.

15 Q Whose permission and cooperation did
16 Amtrak need to get the repair work at the
17 passenger stations underway?

18 A There -- we actually needed permission
19 from multiple parties to do that. We needed to
20 coordinate with the cities on that effort, since
21 there were certain aspects of the rehabilitation
22 that we had to coordinate with them. We worked

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1 with the Southern Rail Commission, but,
2 ultimately, we needed permission from the
3 railroads to get on the property to make the
4 improvements that we were proposing in connection
5 with the restoration service.

6 Q And when did Amtrak receive permission
7 from CSX?

8 A I believe we received that last week
9 or -- probably, early last week.

10 Q And so Amtrak is now getting the work
11 underway with that permission?

12 A Yes.

13 Q Thank you. Mr. Blair, you were also
14 asked a number of questions about layover track in
15 Mobile; do you recall those?

16 A Yes. I do.

17 Q And I believe you testified that it's
18 your understanding that in this proceeding, CSX
19 and the port had expressed their support for
20 putting a layover track at the downtown Mobile
21 Station site; is that correct?

22 A Yes. That's my understanding.

1 Q Do you understand the support from CSX
2 and the port for the layover track to be a change
3 of position from CSX and the port as compared to
4 prior positions?

5 A I think we've had a couple of different
6 positions from the railroad with respect to that.
7 When we had asked to conduct the survey, at
8 Choctaw Yard, we invited CSX to identify other
9 sites that they thought might be suitable. And,
10 they -- at that point, they had suggested that we
11 look at the site that Amtrak had originally
12 proposed as a legacy station site, so I think
13 there had just been a couple of different
14 perspectives from CSX on what they thought was the
15 most suitable location.

16 Q And if CSX and the port now support
17 putting a layover track at Mobile, what -- what
18 are the next steps, in terms of what Amtrak is
19 waiting on at this point?

20 A Well, it would be helpful if they would
21 express that support publicly and I think with
22 that, we will accelerate our discussions with the

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1 city for the development of the former station
2 site for a -- both a layover facility and a
3 downtown station.

4 Q Thank you. And that was going to be my
5 next question: Do you have any knowledge of
6 whether CSX and the port have communicated to the
7 mayor of Mobile or his administration that they
8 now support a layover track in Mobile?

9 A I do not have any knowledge of that
10 communication.

11 Q I'd like to now turn -- you were shown a
12 letter from the governor of Alabama. That letter
13 was dated April 1st, 2021. And Mr. Donohoe
14 pointed you to a part of that letter stating that,
15 "Without a completed operational modeling study,
16 Alabama will not commit to providing any financial
17 support to new Gulf Coast passenger service"; do
18 you recall that letter?

19 A Yes. I do.

20 Q And was that letter sent before CSX and
21 NS submitted their RTC modeling study in this
22 proceeding?

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1 A Yes.

2 Q And does Amtrak have any state-supported
3 corridors that traverse or stop in states that do
4 not contribute financial operating support to the
5 Amtrak service?

6 A Yes. We have several locations where a
7 state along the route does not contribute
8 financially to the actual operation of the trains.

9 Q Thank you. You were also asked a number
10 of questions about whether Amtrak conducts
11 cost-benefit analyses; do you recall that?

12 A Yes. I do.

13 Q And I believe you testified that
14 typically, it is Amtrak's state partners that
15 conduct those analyses; is that right?

16 A Yes. Oftentimes, with information that
17 Amtrak provides to them about the cost of the
18 operation and the projected ridership.

19 Q And I'd like to -- to have you take a
20 look at a document that Mr. Donohoe showed you,
21 and I hope it's in your pile over there. It was
22 Joint Exhibit 26K. And it was an SRC Alabama

1 Briefing PowerPoint presentation, dated July 12th,
2 2019. It has an "Exhibit K" on the -- on the
3 cover page, if that helps.

4 A Yes. I have it.

5 Q And I was going to direct you to pages
6 48 through 51 of that presentation.

7 A That's the Bates number, or the page
8 number?

9 Q On mine, it's the only number, so at --
10 in the Bates number, I believe.

11 A Starting on page 49?

12 Q Right. Forty-eight is sort of the cover
13 page and then 48 through 51.

14 And can you just take a moment to look
15 through that?

16 A Okay. Thank you. I've got a chance to
17 look through it.

18 Q And is this the type of, kind of,
19 cost-benefit or economic impact analysis that --
20 that you were talking about?

21 A Yes. It is. Including, you know,
22 direct, indirect, and induced benefits, regional

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1 benefits, tourism benefits, etc., very much like
2 the other analyses Amtrak supports with other
3 state partners.

4 Q And this analysis is specifically with
5 respect to Alabama; is that right?

6 A Yes.

7 Q And do you have any knowledge of whether
8 similar analyses were prepared for Louisiana and
9 Mississippi?

10 A I -- I don't know whether similar
11 analyses were prepared, but it does look as though
12 since the service covers a number of states, I
13 would presume that SRC did, indeed, prepare
14 state-by-state evaluations.

15 Q And if I could ask you also to look to
16 page 56 of this document and take a moment to
17 familiarize yourself with that.

18 A Yes. Thank you.

19 Q And do you see the line that says, "Gulf
20 Coast service restoration will be worth at least
21 \$170.7 million to Mississippi, Alabama, and
22 Louisiana"?

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1 A Yes. I do -- yes. I do.

2 Q And, again, is this part of, kind of,
3 the cost-benefit analysis that -- that the state
4 partners normally undertake and that the SRC
5 undertook in this case?

6 A Yes.

7 Q Thank you.

8 CHAIRMAN OBERMAN: Jessie, before you
9 leave the --

10 MS. AMUNSON: Sure.

11 CHAIRMAN OBERMAN: Are you ready to
12 leave this document?

13 MS. AMUNSON: Yes. I am ready to leave
14 this document.

15 CHAIRMAN OBERMAN: Couple of questions,
16 if I can interject, Mr. Blair. The 170.7 million,
17 is that annually, is that forever, or what does
18 that mean?

19 THE WITNESS: Mr. Chairman, not being
20 familiar with the presentation, I don't know what
21 that is for. But, typically, benefits are
22 provided in annual terms.

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1 CHAIRMAN OBERMAN: And you were asked in
2 general, do you make these kinds of cost-benefit
3 analyses, so maybe you don't know exactly how SRC
4 did this, but where do these numbers on tourism
5 and labor come from? Do they come from comparing
6 this to other impacts from other similar Amtrak
7 lines, or how do you put these projections
8 together?

9 THE WITNESS: Typically, those are done
10 by third-party consultants that do economic
11 analysis. One of my former roles, I did these
12 kinds of analyses, not for passenger rail, but for
13 freight operations. And there are ways in which
14 the -- the spend of the construction is
15 incorporated in the analysis and the secondary
16 benefits of that, and then also the ongoing
17 effects of the additional mobility and travel
18 options available to the -- to the citizens of the
19 area.

20 CHAIRMAN OBERMAN: All right. Thank
21 you. Did you have any, Patrick?

22 MEMBER FUCHS: Yeah.

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1 Mr. Blair, I just want to differentiate
2 what can be termed as, say, "economic impact," is
3 different than what are actually benefits of the
4 service; right. Because -- in other words, it's
5 not your contention that whatever spending on
6 labor to build something is just a pure benefit?

7 THE WITNESS: Well, I guess, what would
8 you -- I mean -- what is --

9 MEMBER FUCHS: Here's what I think about
10 it: If Amtrak were to decide or CSX were to
11 decide for people to dig everything with spoons,
12 you would spend a lot of money on construction,
13 and that would not be a higher benefit of the
14 project.

15 THE WITNESS: You mean, a higher benefit
16 by using spoons as opposed to shovels?

17 MEMBER FUCHS: Right.

18 THE WITNESS: I guess, I'm trying to
19 understand the question.

20 MEMBER FUCHS: Exactly. What -- what is
21 in the -- what is being put up as, I guess, there
22 is a difference between economic impact and a

1 benefit, and what I see here is labor cost for
2 railway construction, railway stations and that
3 might be an impact, but that's not a benefit.

4 THE WITNESS: Well, I guess, as I read
5 on page 49, there is -- there are two categories
6 of benefits that are provided here, one related to
7 the first table indicates what an economic benefit
8 to the region as result of the railway
9 construction for the four-year time frame of
10 construction is.

11 But then below that is reported an
12 annual impact of railway operations, which is
13 labor -- you know, which the employment there is
14 listed as eight --

15 MEMBER FUCHS: Right.

16 THE WITNESS: -- employees, presumably,
17 new employees. The labor income, the value added
18 to -- to the regional economy and then direct and
19 indirect benefits and induced benefits just for
20 the railway operations.

21 MEMBER FUCHS: Right. And I guess what
22 I'm suggesting is, is an incremental increase in

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1 business activity could be considered a benefit.
2 I think the mobility claims that you're putting
3 forward if somebody can reduce their transit time
4 or have a better transportation experience, that's
5 a benefit. Spending money on someone to build
6 something is not just a pure benefit, because
7 there's a cost associated with the labor and that,
8 you know, that person has alternative activities
9 that they can do with their time.

10 And so, I guess, all I'm suggesting is
11 that if this is being held up as a cost-benefit
12 analysis, I would -- I would wonder whether or not
13 what is being claimed as a benefit is consistent
14 with the guidance, in, say, the FRA cost-benefit
15 guide or the OMB Circular A-4, in terms of how to
16 properly consider labor and capital cost in the
17 context of the cost-benefit analysis, and what's
18 truly a benefit and what's truly, you know -- and
19 I want it to be properly phrased as a cost. I
20 don't say that all costs can't have benefits, but
21 I would just say that, you know, spending money on
22 construction is not, you know, in and of itself, a

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1 benefit. You know, I think -- I don't think it's
2 generally regarded like that in a cost-benefit
3 literature.

4 THE WITNESS: And I can't comment on how
5 this benefit was -- or how these benefits were
6 established or whether they complied with the
7 federal guidance.

8 MEMBER FUCHS: And one other thing:
9 There's nothing in this, kind of -- there's
10 nothing that I can see that talks about the costs
11 of the service. For example, there's no
12 consideration in the report about potentially --
13 or any type of costs, but costs on the freight
14 network either.

15 THE WITNESS: In -- in this
16 presentation?

17 MEMBER FUCHS: Yeah.

18 CHAIRMAN OBERMAN: Patrick, did they dig
19 the Hiawatha (ph) with spoons?

20 MEMBER FUCHS: No, I'm just saying, the
21 construction costs.

22 CHAIRMAN OBERMAN: I just want to know

1 how they went about it.

2 MEMBER FUCHS: Yeah.

3 THE WITNESS: Well, again, not knowing
4 how the numbers were constructed, I don't know to
5 what -- I don't know what other benefits or costs
6 were incorporated in the analysis.

7 MEMBER FUCHS: I would just kind of
8 conclude saying that, you know, I think there is a
9 difference between, like, regional impact studies
10 and then what are traditionally thought of as
11 cost-benefit analyses, and they're completely
12 different frameworks. And one is kind of an
13 incremental analysis, and, you know, to be fair,
14 like, without trying to, you know, give an opinion
15 from where I sit.

16 But also, you know, like Jimmy mentioned
17 mobility benefits. There's no mobility benefits
18 in this either. So it's very plausible that there
19 are benefits not captured in this, and there's no,
20 as I can tell in this report, no costs included --
21 or at least things that are properly considered
22 costs -- and I just want to make sure I'm not

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1 missing anything.

2 CHAIRMAN OBERMAN: Karen?

3 MEMBER HEDLUND: Jessie, would you look
4 at the page -- Bates page 50.

5 MS. AMUNSON: Yes.

6 MEMBER HEDLUND: And at the bottom of
7 that page, it reads, "The economic benefit report
8 is available through
9 www.southernrailcommission.org."

10 MS. AMUNSON: Yes.

11 MEMBER HEDLUND: Do you know if that
12 report is part of the record in this case?

13 MS. AMUNSON: I do not know Member
14 Hedlund, but we'll find out and supplement, if
15 needed.

16 MEMBER HEDLUND: Thank you.

17 CHAIRMAN OBERMAN: Yes, Jessie, was that
18 all -- Karen was that --

19 MEMBER HEDLUND: That's it.

20 CHAIRMAN OBERMAN: Go ahead. Proceed,
21 Jessie.

22

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1 BY MS. AMUNSON:

2 Q Mr. Blair, you were -- you were also
3 asked a number of questions about the availability
4 of funding for infrastructure projects along the
5 Gulf Coast route; do you recall that?

6 A Yes. I do.

7 Q And I'm paraphrasing here, but did you
8 understand, at least the gist of some of those
9 questions to be that the reason that the Gulf
10 Coast Working Group report recommended phased
11 infrastructure improvements after start of service
12 was because of the availability of funding?

13 MR. DONAHOE: Objection. Leading.

14 CHAIRMAN OBERMAN: I'll let him answer.

15 A I don't know that the report identified
16 the basis for the funding -- or the phased funding
17 that was identified. I surmise that within that,
18 that report did indicate that as funding was
19 available, the projects could be advanced. But
20 I -- I don't -- I can't confirm that the basis of
21 the report's phasing was specifically related to
22 funding.

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1 MS. AMUNSON: And I believe you were
2 asked, sort of, now that more funding is available
3 through the IIJ -- IIJA or otherwise, kind of,
4 wouldn't it make more sense to put the
5 infrastructure in place before a service starts;
6 do you recall that?

7 A Yes.

8 Q What is your view of what would happen
9 if the board ordered that certain infrastructure
10 must be in place prior to starting Gulf Coast
11 service, but the board did not order a date
12 certain by which Amtrak could start service?

13 A I would be concerned that the projects
14 could be delayed or -- or prioritized or not
15 prioritized by the railroads and it might be
16 another decade before the Gulf Coast sees a
17 restoration of service. Without having that date
18 certain, the parties would, perhaps, have no
19 interest or incentive to prosecute each of those
20 projects promptly.

21 MS. AMUNSON: Thank you, Mr. Blair. I
22 don't have anything further.

1 CHAIRMAN OBERMAN: Recross?

2 MR. DONAHOE: Yes. If I can just follow
3 up on a couple -- couple issues and I'll be done;
4 okay, sir.

5 RECROSS-EXAMINATION

6 BY MR. DONAHOE:

7 Q So counsel was just asking you about the
8 infrastructure in place, and I think we
9 established that the Virginia projects and the
10 North Carolina projects that introduced rail
11 service, they did have the infrastructure in
12 place; correct?

13 A It -- it's my understanding that most,
14 if not all, of the infrastructure was in place
15 prior to the start of those services.

16 Q And those have been considered
17 successful projects?

18 A Yes. They've been considered successful
19 projects.

20 Q I mean, we went through a little bit on
21 some documents while Amtrak was even citing them
22 in their presentations about the success of the

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1 North Carolina and Virginia projects; do you
2 recall that?

3 A Yes.

4 Q And if I can, if we can go back to
5 the -- the document about the cost-benefit
6 analysis. Do you have that in front of you?

7 A The exhibit marked Exhibit K?

8 Q Yeah. I guess my only question here --
9 it's kind of following up, the panel is that --
10 the heading of this, on what I have as page 49,
11 the chart that you discussed earlier.

12 Do you see that?

13 A Yes.

14 Q The title of this is "Potential Economic
15 Benefits Daily Mobile to New Orleans Passenger
16 Rail"; do you see that?

17 A Yes.

18 Q So do you still believe this is a
19 cost-benefit analysis, or is this just merely
20 evidencing what they believe the benefits will be?

21 A I don't believe that I represented this
22 as a cost-benefit analysis. I said this is

1 typical of the kinds of analyses that we -- that
2 Amtrak helps support. But when we apply for
3 federal grants, we follow the guidelines that are
4 provided. As a part of those federal grants,
5 we're submitting a cost-benefit analysis in
6 accordance with that process.

7 Q And on redirect, you mentioned the
8 August 4th letter, I believe, that you sent to
9 Norfolk -- I'm sorry, the August 3rd letter, and
10 it's JE03 31L. Do you recall that letter that you
11 sent to Norfolk and CSX?

12 A Yes.

13 Q And the date of that was August 3rd,
14 2020?

15 A Yes.

16 Q So that would be about eight months
17 after you signed the various agreements on the
18 data sharing?

19 A Yes.

20 Q And isn't it true that CSX responded and
21 Norfolk Southern responded to your letter to them?

22 A That's correct.

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1 Q I'm sorry. I didn't hear you.

2 A That's correct.

3 MR. DONAHOE: Mr. Chairman, I'd like to
4 introduce Exhibit JE 70 and CSX-NS 367 as
5 exhibits.

6 CHAIRMAN OBERMAN: You know, I don't
7 have them in front of me, but what are they?

8 MR. DONAHOE: We're going to hand them
9 out. They're the response letters of NS and CSX
10 to Mr. Blair's letter.

11 CHAIRMAN OBERMAN: Are you offering them
12 into evidence or...

13 MR. DONAHOE: I am.

14 CHAIRMAN OBERMAN: Well, let's see if
15 you can lay a foundation for them.

16 MR. DONAHOE: Well, I believe I just
17 did. He said he was familiar with those letters.

18 CHAIRMAN OBERMAN: Well, he wasn't
19 looking. He wasn't looking at them. Let's see
20 what we're looking at here.

21 THE WITNESS: May I have a copy, please?

22 CHAIRMAN OBERMAN: Mr. Donahoe, while he

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1 is looking at this, you said these letters are in
2 response to letters that Mr. Blair sent. Who
3 introduced the letters that Mr. Blair sent? I
4 don't have them in front of me. Was that during
5 your direct or cross?

6 MR. DONAHOE: No. That was during
7 counsel's redirect on Monday.

8 CHAIRMAN OBERMAN: Redirect. Thank you.

9 MR. DONAHOE: And I believe it was JEO
10 31L, Chair.

11 CHAIRMAN OBERMAN: All right.

12 THE WITNESS: I do. I've had a chance
13 to read it.

14 BY MR. DONAHOE:

15 Q Okay. Do you recall these letters?

16 A Yes.

17 Q And you would agree that they were in
18 response to the letter that you sent out on
19 August 3rd, 2020; correct?

20 A Yes.

21 Q And your letter of August 3rd, 2020,
22 that came after the concerns issued by the FRA

1 that unless they received certain types of data,
2 they would no longer fund these types of projects;
3 do you recall that?

4 A From a -- from a timing standpoint, we
5 had those concerns, as I expressed in previous
6 communications to the railroads, about that data,
7 the -- the August 3rd letter, as I previously
8 stated, reflected a combined set of data or a
9 combined list of data requests, which the
10 railroads requested that we provide them, and
11 that's why I detailed them in the August 3rd
12 letter.

13 So, yes, it was after the FRA had
14 communicated to us, but it also reflected Amtrak's
15 ongoing concerns about the transparency of the
16 analysis and the lack of data that we were
17 provided with by the railroads.

18 Q My question was simply: Isn't it true
19 this letter was sent after -- which was, we
20 referred to earlier, CSX-NS 321 -- the June 29,
21 2020, correspondence from the FRA's Peter Schwartz
22 to you, outlining all of the data that the FRA

1 requested?

2 A In terms of timing, yes. This was after
3 receiving the correspondence from FRA.

4 Q And if we can look under No. 1, Amtrak
5 states, "It requires CSX data."

6 Do you see that heading?

7 A You're referring to the CSX letter?

8 Q Yes. I am. Sorry.

9 A Yes.

10 Q And that letter was August 4th. Did you
11 see about midway through that paragraph,
12 "According to HDR." Do you see that?

13 A Yes.

14 Q And this letter states, "According to
15 HDR, the necessary data items remaining are
16 Amtrak's proposed schedules, along with some
17 related data and information about Amtrak's plan
18 for equipment, layover purposes in Mobile.

19 "Being without such, CSX data is not
20 preventing Amtrak from providing those inputs."

21 Do you disagree with that?

22 A Do I disagree with the statement here?

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1 Q Yes.

2 A Yes.

3 Q Do you disagree with CSX's position
4 here?

5 A Yes.

6 Our -- our -- what Amtrak was attempting
7 to do at this point was to develop schedules that
8 were minimally disruptive to existing freight
9 operations. We did not have any understanding of
10 the freight operations at this time, so we asked
11 for that information in the August 3rd letter.
12 CSX's unwillingness to provide that data, although
13 we ultimately worked with the heat maps, was
14 the -- we asked for that information to have in
15 advance of proposing schedules to HDR.

16 Q In the next paragraph, the letter from
17 CSX states, "In addition, CSX has proactively
18 reached out to Amtrak and offered to assist with
19 Amtrak's formulations of schedules."

20 Do you agree that that was done by CSX?

21 A Yes.

22 Q And then under two, Section 2,

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1 "Amtrak" --

2 A Well, let me -- I can clarify that.

3 Q I didn't ask -- I didn't ask for a
4 clarification. I asked yes or no.

5 CHAIRMAN OBERMAN: I would like to give
6 the witness a chance to clarify so we can speed
7 this up.

8 MR. DONAHOE: Fair enough.

9 A So CSX said that they had identified
10 slots during the day when we might be able to
11 operate, and we said, Well, that would be
12 interesting, but we'd like to know what the
13 operations are there in -- in context. So the
14 reason we did not take them up on that offer was
15 that the -- just knowing what slots they wanted us
16 to operate in, didn't let us know what traffic was
17 operating from their perspective, or whether or
18 not that data, whether or not that information was
19 actually supported with data.

20 Q If you can look under heading two.
21 Amtrak states a base case; do you see that?

22 A Yes.

1 Q And CSX is responding to Amtrak's
2 request that there is a two- to five-year outlook;
3 do you recall that?

4 A Yes.

5 Q And would you agree with me, that a two-
6 to five-year outlook was not part of the agreement
7 that Amtrak signed with the freight railroads?

8 A We did not propose to run the analysis
9 against a two- to five-year outlook. We proposed
10 to run the analysis against the 2019 base case.

11 Q In the agreements that you -- you,
12 meaning Amtrak, signed with CSX and NS, did it ask
13 for any type of run for two- to five-year
14 projection?

15 A It didn't -- it did not.

16 Q In fact, the projection was for 20
17 years?

18 A Yes.

19 Q And you signed those documents?

20 A Yes.

21 Q Okay. If we could go to Section 3,
22 Amtrak states that, "all of the information it is

1 seeking." Do you see that section?

2 A Yes.

3 Q And according to Mr. Daly, he responded
4 that, "CSX respectfully disagrees that the CSX
5 data Amtrak is now requesting was covered under
6 the agreement."

7 So is it fair to say there was a
8 disagreement between Amtrak and the freights as to
9 what data was to be shared?

10 A Yes. I think that's very fair to say.

11 Q And according to Mr. Daly, the
12 agreement explicitly identifies stringline
13 diagrams as confidential.

14 Do you agree with that -- that the
15 agreements identified stringlines as confidential?

16 A Stringlines -- stringlines are mentioned
17 in the three agreements with different criteria
18 for each. Mr. Daly was citing one in his letter.
19 Not all three agreements.

20 Q And which agreement was he citing to?

21 A I don't know what he is citing, so I
22 apologize. I believe he is probably referring to

1 the data-sharing agreement.

2 Q And that's what this -- these letters
3 are about, is the data-sharing agreement, so your
4 understanding or recollection is that the
5 data-sharing agreement did not -- did provide that
6 the stringlines were confidential?

7 A I would disagree. The letter that I
8 sent on August 3rd refers to the -- to the three
9 agreements that the parties had executed before
10 completing the study. To respond to only one of
11 those three agreements, I think, doesn't address
12 the full character of those agreements and what
13 data was expected to be shared between the parties
14 as evidenced in all three agreements.

15 Q And Mr. Daly said in the last sentence
16 of the first paragraph that, "The parties agree to
17 designate HDR as a repository of this confidential
18 information so that HDR could ultimately process
19 the data into a new form that was appropriate for
20 sharing as a study." Would you agree that the
21 parties agreed to designate HDR as a repository?

22 A For some of the confidential

1 information, yes, HDR, would be a repository for
2 what was identified in the agreements that HDR --
3 that only HDR would see. But there were similar
4 references in the various agreements to what
5 inputs and assumptions would be shared with Amtrak
6 that were not shared with Amtrak.

7 Q And if you know, wasn't it the vast
8 majority of this data or inputs that you were
9 seeking in this letter, were provided to Amtrak
10 during the discovery process in this particular
11 case?

12 A I was not able to view that information.
13 It was designated "highly confidential," so I
14 can't tell whether all of this information was
15 provided to counsel or not.

16 Q Fair enough. Did you hear Mr. Crowley's
17 testimony that he was retained in October of 2021?

18 A Yes. I did hear that.

19 Q Were you aware that discovery closed in
20 September of 2021?

21 MS. AMUNSON: Objection. This is beyond
22 the scope of redirect.

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1 CHAIRMAN OBERMAN: Where are you going
2 with this, Mr. Donahoe?

3 MR. DONAHOE: That's my last question.

4 CHAIRMAN OBERMAN: I'll let him answer
5 that on the representation that that's his last
6 question. I don't know what the basis of that
7 ruling is, but let's get it over with.

8 A I don't recall when discovery closed.

9 MR. DONAHOE: Fair enough. Thank you.

10 CHAIRMAN OBERMAN: Are there any
11 questions from the board? Mr. Blair --

12 MR. WIMBISH: The port would like an
13 opportunity also.

14 CHAIRMAN OBERMAN: Okay. Go ahead,
15 Mr. Wimbish. This is limited to recross.

16 MR. WIMBISH: Yes.

17 RE CROSS EXAMINATION

18 BY MR. WIMBISH:

19 Q Mr. Blair, do you recall your counsel
20 recently asking you some questions about a
21 supposed change in the port's position on the
22 Mobile station track?

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1 A My recollection -- my recollection of
2 the question was she asked about CSX's position on
3 the Mobile Station track.

4 Q Can we check the record on that to see
5 whether or not counsel did, indeed, attribute a
6 change in position to the port in addition to CSX?
7 (Read back occurred.)

8 Q So did you hear the first part of that
9 when it referred to a change in position by both
10 CSX and the port concerning the Mobile Station
11 track?

12 A Yes.

13 CHAIRMAN OBERMAN: But his answer
14 clearly was limited to CSX, Mr. Wimbish.

15 MR. WIMBISH: I thought his answer was,
16 Yes, but now -- okay. So --

17 CHAIRMAN OBERMAN: I explicitly --
18 BY MR. WIMBISH:

19 Q Mr. Blair, did you state, to be clear,
20 or did you intend to state that you understood
21 that the port had changed its position about the
22 installation of a station track in downtown

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1 Mobile.

2 A I only responded to the position CSX had
3 taken in my response.

4 Q To clarify, is it your understanding
5 that the port does not support the installation of
6 a station track in downtown Mobile?

7 A The port -- I heard the port express
8 that in their testimony.

9 MR. WIMBISH: Okay. Thank you. I have
10 no further questions.

11 CHAIRMAN OBERMAN: Any other questions?

12 Mr. Blair, just before we dismiss you to
13 find out if you might have to come back -- without
14 going into the substance of it, for the moment, I
15 think that Monday, when the subject of the
16 supposed settlement discussion, which Mr. Atkins
17 objected to, I had asked you whether you had any
18 knowledge of it, and I would just like to know
19 without you telling us, what the knowledge is.

20 Are you aware of any presentation of the
21 Southern Rail Commission, in terms -- by CSX last
22 year. And -- and if you are, then depending on

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1 the outcome of this, we may ask you to come back.
2 That's all. I just want to ask you if you know
3 about it.

4 THE WITNESS: I am aware of a
5 presentation that was given to the Southern Rail
6 Commission.

7 CHAIRMAN OBERMAN: All right. That's --
8 you weren't present?

9 THE WITNESS: But I was -- but, no, I
10 was not present.

11 CHAIRMAN OBERMAN: Somehow or another,
12 it was reported to you.

13 THE WITNESS: Yes. It was reported to
14 me by members of the Southern Rail Commission.

15 CHAIRMAN OBERMAN: So you would be in a
16 position to tell us what report you received about
17 what happened there?

18 THE WITNESS: I -- we received very -- I
19 received very little information.

20 CHAIRMAN OBERMAN: Whatever -- whatever
21 you received, you could testify to; correct?

22 THE WITNESS: Okay. Yes.

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1 CHAIRMAN OBERMAN: So depending on the
2 outcome of Mr. Atkins' presentation, we may ask
3 you to come back and fill us in. So with that
4 admonition, unless -- if anybody else has anything
5 else to say to you, you are excused.

6 THE WITNESS: Thank you very much.
7 (Witness excused.)

8 CHAIRMAN OBERMAN: Your next witness is
9 Mr. Fapp; is that correct, Jessie?

10 MS. AMUNSON: Yes, it is, Mr. Chair,
11 Ms. Bracey will be examining.

12 CHAIRMAN OBERMAN: While people are
13 taking their seats, if I can have counsel's
14 attention for a moment. The board is very intent
15 on completing the witness part of this proceeding
16 as expeditiously as possible. As I said, an hour
17 and a half ago, I'm not optimistic we'll finish
18 today, but if we can, that would be our strong
19 preference. And I say that without limiting
20 anyone's ability to question as much as they think
21 they need to question on either side of this
22 issue.

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1 I would admonish counsel to not cover a
2 lot of territory that's already been covered. I
3 just would ask the witness to validate if they
4 heard some other witnesses testimony, but I'm not
5 going to cut you off if the questioning is proper.
6 What I do want to advise the parties is that the
7 board members have all adjusted our schedules.
8 You know that we have been summoned to Congress
9 tomorrow morning at 10:00, which I think, you all
10 will concede, takes precedence, even over this
11 hearing, so we will be at Congress at 10:00.

12 We expect to be done there by noonish.
13 It's the board's view that we should -- if we
14 don't finish today, and we can finish tomorrow,
15 then we reconvene tomorrow at 1:00 and finish. If
16 we don't finish today and we can't even finish
17 tomorrow, then we will pick another day and not
18 convene tomorrow afternoon.

19 So counsel may want to consider their
20 schedules. We should only, at most, have one
21 witness left tomorrow or, maybe even a half of a
22 witness. So I wanted to advise --

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1 We've been very busy up here and last
2 night, trying to adjust our schedules so that we
3 can complete this portion of the hearing.

4 MR. ATKINS: Chairman, can I ask a
5 question?

6 CHAIRMAN OBERMAN: Sure.

7 MR. ATKINS: When you say "finish"?

8 CHAIRMAN OBERMAN: Can you use the --
9 use the mic.

10 MR. ATKINS: I need a mic.

11 Can you hear me through the mask?

12 CHAIRMAN OBERMAN: I can.

13 MR. ATKINS: Just a clarification, when
14 you say finish by Thursday, do you mean finish the
15 witnesses and testimony of counsel, or just the
16 witnesses?

17 CHAIRMAN OBERMAN: Just the witnesses.

18 MR. ATKINS: Is the board in a position
19 to offer any guidance about when it would expect
20 to actually complete the closing testimony by
21 counsel.

22 CHAIRMAN OBERMAN: We will be able to

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1 talk about that when the last witness finishes
2 their last word out of their mouth. So it depends
3 on how the evidence goes and what other further
4 work may need to be done.

5 MR. ATKINS: Okay. Thank you. And it
6 won't be tomorrow, Ray. We won't -- no matter
7 when we finish the testimony of witnesses, the
8 closing arguments will not be tomorrow. Okay.

9 MR. WARREN: And, Mr. Chairman, if I
10 could, apologies. I'm remote today because my son
11 tested positive for COVID this morning.

12 Can the board give us some guidance as
13 to what time it's planning on finishing today and
14 tomorrow to start, because I think that would help
15 the parties understand, you know, whether we need
16 to finish tomorrow?

17 CHAIRMAN OBERMAN: Good question. Sorry
18 about your son, Matt, hope he's feeling okay.

19 MR. WARREN: He's fine.

20 CHAIRMAN OBERMAN: The little ones tend
21 to be luckier. We will go -- the plan was going
22 until 6:00 today, depending on whether we're on

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1 the verge of finishing somebody, if it takes an
2 extra 15 minutes. And if we got to the very last
3 witness and it's -- well, it depends on what time,
4 because there's going to be some discussion of
5 when the last witness is done, and I don't want to
6 be here until 8:00 tonight. So I think we're
7 aiming at 6:00. Tomorrow, we would also aim for
8 6:00. The board --

9 MR. WARREN: Okay.

10 CHAIRMAN OBERMAN: The board has the
11 ability to change their schedules, depending on
12 people up here getting an 8:00 plane. So -- and I
13 don't think it would be safe to bring us back here
14 before 1:00, except I have two congressional
15 experts up here. And if they think we'll make it
16 back before 1:00, we can start at 12:30. But the
17 Congress said we should plan to be there from
18 10:00 to 12:00. But I think whether they actually
19 keep us until 12:00 depends on two things: My
20 verbosity, and that is unpredictable, as you know;
21 and, two, whether they get interrupted for votes,
22 which will have us sitting there while we're

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1 waiting.

2 But I still think it's safe to say we
3 won't be there past noon; at least that's our
4 intel. So 6:00, Matt, tomorrow, tonight roughly.

5 MR. WARREN: That's very helpful. Thank
6 you.

7 CHAIRMAN OBERMAN: But the goal is, and
8 it will depend on where we end today, if we don't
9 think we can finish in five hours tomorrow, we're
10 not going to start and stop a witness tomorrow.
11 We'll just have to pick another day. Rob?

12 MR. WIMBISH: Mr. Chairman, as you
13 probably know, we also, having traveled out from
14 Chicago, we're in a bit of a ticklish situation as
15 well. We could, I think, easily participate and
16 are willing to participate remotely tomorrow, if
17 that's permissible. Otherwise, I think just given
18 what we packed and what we planned for, I would
19 probably need to show up in street clothes
20 tomorrow afternoon. It's just what I've got left.

21 CHAIRMAN OBERMAN: Well, I could use my
22 extraordinary clout as chairman of this board to

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1 open a haberdashery for you somewhere downtown.

2 But --

3 MR. WIMBISH: I'm ready to see you
4 exercise that extreme clout right now for that
5 purpose.

6 CHAIRMAN OBERMAN: If we were in
7 Chicago, we might have a shot.

8 MR. WIMBISH: Well, let's all go back to
9 Chicago.

10 CHAIRMAN OBERMAN: I would be fine if
11 you finished off your participation remotely
12 tomorrow, if that's the only way --

13 MR. WIMBISH: I appreciate your
14 indulgence. That's just -- that's kind of the
15 circumstances we have.

16 CHAIRMAN OBERMAN: Yeah.

17 MR. WIMBISH: I know it's not ideal,
18 having seen that exercise here, but...

19 CHAIRMAN OBERMAN: So you see,
20 anticipating this, I brought an extra shirt, so...

21 MEMBER PRIMUS: Chicago Bear stuff,
22 that's what Patrick --

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1 CHAIRMAN OBERMAN: All right. With
2 that, Ms. Bracey, your witness.

3 MS. BRACEY: Thank you, Mr. Chairman.

4 DIRECT EXAMINATION

5 BY MS. BRACEY:

6 Q I think Mr. Fapp needs to be sworn in.

7 CHAIRMAN OBERMAN: Raise your right
8 hand, please.

9 WHEREUPON,

10 DANIEL L. FAPP,

11 having duly been sworn to tell the truth, the
12 whole truth and nothing but the truth, testifies
13 as follows:

14 A I do.

15 CHAIRMAN OBERMAN: Proceed, thank you,
16 Kali.

17 BY MS. BRACEY:

18 Q State your full name and spell your last
19 name for the court reporter.

20 A Daniel L. Fapp, F as in fire truck, A as
21 in apple, P as in Paul, P as in Paul.

22 Q And tell us a little bit about your

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1 education and background?

2 A I received a bachelor of science in
3 business administration from the California State
4 University of Northridge in 1987. And a master of
5 business administration from the Eller School of
6 Management at the University of Arizona in 1993,
7 with concentrations in finance and operations
8 management.

9 Q And where do you work?

10 A I am currently a senior vice president
11 with L. E. Peabody and Associates.

12 Q And what is L. E. Peabody and
13 Associates?

14 A L. E. Peabody is an economic consulting
15 firm with specialties primarily in the
16 transportation and fuel supply market spaces.

17 Q And how long have you worked there?

18 A I have been with L. E. Peabody for 24
19 years.

20 Q And what did you do before that?

21 A Prior to joining L. E. Peabody, I was a
22 transportation and railroad manager with BHP

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1 Copper in Arizona, where I was responsible for the
2 administration and financial and several operation
3 aspects of our transportation operations,
4 including three of our common carrier shoreline
5 railroads.

6 Q And did you have any positions before
7 that?

8 A Well, immediately before that, right
9 after graduate school, I spent a little time
10 working for a printing company until myself and
11 the owner of the company realized I was allergic
12 to the chemicals in the printing process, so it
13 was a short-lived printing career.

14 Q Do your clients at L. E. Peabody include
15 both the freights and Amtrak?

16 A Yes. Our clients include freight
17 railroads, Amtrak, and other passenger railroads.

18 Q Can you tell me which freights?

19 A We work with Class 1 railroads, regional
20 railroads, shoreline railroads, terminal carriers.

21 Q What were you asked to do in this case?

22 A We were asked to evaluate and audit the

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1 RTC models prepared and verified by a Mr. Banks
2 and Mr. Guthrie in this proceeding.

3 Q And have you reviewed the R.L. Banks and
4 Guthrie model?

5 A Yes.

6 Q And in your expert opinion, what
7 conclusions have you drawn about the Banks and
8 Guthrie model?

9 A In my opinion, I don't believe that the
10 models can realistically reflect the impact of
11 Amtrak introduction or reinstatement of Amtrak
12 operations on the Gulf corridor.

13 Q Can we talk a little bit about training?

14 CHAIRMAN OBERMAN: Can you repeat that,
15 please? I wanted to get those.

16 THE WITNESS: Sure. It's my opinion
17 that the -- the RTC model that was presented by
18 Mr. Banks and Guthrie, just can't reliably reflect
19 the introduction or reinstatement of Amtrak
20 service on the corridor.

21 CHAIRMAN OBERMAN: Thank you.

22

1 BY MS. BRACEY:

2 Q How did the Banks and Guthrie model
3 address the use of train movement data?

4 A What they did, instead of relying upon
5 actual train movements, as is customarily done in
6 RTC cases presented before the board, they used
7 train movement data set to create what they call a
8 "normal operation" across the corridor instead of
9 modeling actual operations.

10 Q And how is train movement data normally
11 addressed?

12 A The RTC models presented before the
13 board, even if the RTC models are used in a
14 commercial practice, usually would reflect actual
15 operations or actual train movements as they
16 operate over the network.

17 Q And what makes the way that Banks and
18 Guthrie addressed the train movement data
19 problematic?

20 A One of the primary issues is you can't
21 tie it back to actual operations, what happens in
22 the real world. Normally, in these STB cases,

1 we're able to follow the flow of information from
2 raw data, raw train movement data, all the way
3 through the input into the RTC model. In this
4 instance, we weren't able to do that.

5 Q Okay. Can you describe how the train
6 departure times are addressed in the Banks and
7 Guthrie model?

8 A Yes. Instead of using actual train
9 departure times from locations, Mr. Banks and
10 Mr. Guthrie used a randomized process to develop
11 their train departure times.

12 Q What does that mean? So, what does it
13 mean to link and document the data?

14 A It's customary in STB proceedings to
15 have a complete flow of data from the base
16 documents, all the way on through to the evidence.
17 That way, the other parties, as well as the board
18 staff, can identify where all the information
19 comes from and to verify that information.

20 Normally, we see, especially when it
21 comes to things such as the RTC model, you'll have
22 detailed flowcharts or outlines or statements

1 showing exactly how all the data fits together and
2 flows through the process.

3 Q What did they provide instead?

4 A Instead of -- instead of providing this,
5 sort of, detailed information, what we received
6 was some disparate work -- electronic work papers,
7 some narratives describing some of the basic
8 functions of -- across the line without a clear
9 road map of how all the data moved from the raw
10 data, up through the RTC model.

11 Q Banks and Guthrie claimed that the RTC
12 simulations they submitted were conservative and
13 reflected typical operations.

14 In your opinion, was that the case?

15 A I would say, it's safe to say it's
16 conservative, because some of the inputs they used
17 are not what we normally see in RTC models.

18 Can you repeat the second part of your
19 question, please?

20 Q Sure. In your opinion, was the -- was
21 the -- was the model conservative and reflected
22 typical operations?

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1 A It's difficult to say it "reflected
2 typical operations," because the data they used
3 wasn't complete. We had some narratives that gave
4 a general description, as well as some disparate
5 work papers.

6 Q Can you give some examples?

7 A Sure. You know, normally, what we'd see
8 in these instances, would be a, as I indicated
9 before, a flow of data moving from raw data, raw
10 train movement data, rail car movement data,
11 log -- yard log, that sort of -- that sort of
12 thing, that shows the actual movement of trains
13 across a network, and that would, then, be
14 summarized. You'd see a complete list of these
15 trains as they would operate. In this instance,
16 that wasn't presented in this case.

17 Q So, Mr. Peterson, who's out there in the
18 world somewhere, can you please pull up Amtrak
19 Exhibit 5 at page 3.

20 CHAIRMAN OBERMAN: Is this the RTC
21 study?

22 MS. BRACEY: It is not. It's a

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1 demonstrative submitted by Amtrak. So it's at
2 Tab 4 of your binder.

3 CHAIRMAN OBERMAN: It's in the binder
4 you handed us?

5 MS. BRACEY: Yes, sir.

6 CHAIRMAN OBERMAN: Okay. Thank you.

7 MS. BRACEY: You're welcome.

8 And it's at page -- it's labeled
9 "page 2," but it's at page 3 of the PDF, if that's
10 helpful.

11 CHAIRMAN OBERMAN: Okay. I note this is
12 marked "highly confidential" in the bottom.

13 MS. BRACEY: It is, but we have consent
14 from CSX and NS to show it in the public setting.

15 CHAIRMAN OBERMAN: Very good. Thank
16 you. Excellent, proceed.

17 MS. BRACEY: They --

18 BY MS. BRACEY:

19 Q So showing you what has been marked as
20 Amtrak Exhibit 5, what is this?

21 A This is a demonstrative we developed for
22 this proceeding based on the information we

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1 received in discovery, as well as information
2 presented by Mr. Banks and Guthrie in their
3 verified statement work papers.

4 Q And what is the number down there in the
5 corner on the left?

6 A Under where it says, "source
7 NSR0604277," that's a Bates number from where this
8 information came from in discovery documents.

9 Q And did you -- then, presumably, that
10 document shows it comes from NS; is that correct?

11 A Yes. This was produced as part of NS's
12 discovery in this case.

13 Q Okay. And what does the left side of
14 the chart show?

15 A The left side of the chart is
16 information from a comparable file produced by
17 Mr. Banks and Guthrie in their work papers,
18 specifically the 2019 P. RTC option file.

19 Q So can you talk a little bit -- I'm
20 sorry, if I -- about the left side of the chart?

21 A Sure. What this shows is an excerpt
22 from the RTC option file. The option file is one

1 of the input files under the RTC, and describes
2 different operating parameters that the RTC model
3 uses. In this instance, what we see here -- it's
4 highlighted in the pale yellow -- is what's called
5 the "crew man walk speed." And it shows 3 miles
6 per hour, which is the default setting for the RTC
7 model.

8 Q And what does the -- what does the
9 document on the right show, or the right part of
10 the chart show?

11 A The right part of the chart is a
12 comparable file from Mr. Banks' and Mr. Guthrie's
13 work papers. Like I indicated before, the 2019 P.
14 option file, showing the crew walk speed being
15 reduced to 2 miles per hour from the default
16 3 miles for hour.

17 Q And what is the impact of reducing crew
18 walking speeds in the model from 3 miles per hour
19 to 2 miles per hour?

20 A Crew walking speed is used by the RTC
21 model when a conductor or a -- someone else has to
22 do the dismount from the locomotive and to, let's

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1 say, throw a switch or, maybe take off, AOPD (ph)
2 rise, but it's used as -- to reflect the time, for
3 that crew person to walk to and from a location.

4 By reducing from 2 to 3 miles per
5 hour -- from 3 miles per hour default speed to the
6 2 miles per hour, that just increases the amount
7 of time a train will be dwelling at a location
8 while the crew member walks.

9 Q Is the 3 mile per hour walking speed the
10 default in the RTC model?

11 A Yes, it is.

12 Q All right. Let's talk a bit about
13 conflicts between trains.

14 How is that handled in the Guthrie-Banks
15 model?

16 A The -- in the RTC, the default setting
17 is that they -- a train, when two trains are
18 meeting, the first train will take a siding.
19 That's the default based on operations across --
20 across different networks as modeled by the -- or
21 indicated by the RTC developers. Mr. Banks' and
22 Mr. Guthrie's model, they changed that default

1 setting to not have the first train take that
2 siding, and said; it would depend upon different
3 factors.

4 What this ends up doing is that you can
5 have -- where in the real world, one train would
6 stop. In the RTC model, you would end up having
7 both trains stopping.

8 Q And what difference does that make in
9 the running of the model?

10 A Once again, changing this -- changing
11 this default setting, just slows the network down,
12 and, basically, consumes whatever capacity is on
13 the line, slowing the trains down and having both
14 trains stop -- just sets up additional capacity.

15 MR. WARREN: So I'm going to object,
16 Chairman, at this stage and maybe Ms. Bracey can
17 make a proffer. I'm not aware that this was an
18 analysis that was in any of Mr. Fapp's -- or an
19 argument that was raised in any of Mr. Fapp's
20 verified statements. Perhaps, I'm incorrect about
21 that. But to the extent that he is making a
22 criticism now that he did not make in either of

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1 his two verified statements, I think that is
2 inappropriate under the parties' stipulation.

3 CHAIRMAN OBERMAN: You want to respond,
4 Ms. Bracey?

5 MS. BRACEY: Yes, it's our understanding
6 that he discussed conflicts between trains. I
7 will have to look up the page number, but I don't
8 believe this is new analysis.

9 CHAIRMAN OBERMAN: All right. Let's --
10 let's proceed with Mr. Fapp's testimony, and we'll
11 call it in the nature of an offer of proof for the
12 moment, and then when you have a chance to cite a
13 responsive argument to Matt's point, we'll decide
14 whether it gets included in the record. So
15 proceed.

16 MS. BRACEY: Thank you, sir.

17 BY MS. BRACEY:

18 Q You stated in your report that the
19 Banks-Guthrie RTC model is forced to handle more
20 than twice the number of trains than it
21 accommodates in the real world, not including the
22 proposed Amtrak passenger train service.

1 Why is that the case?

2 A Well, it's due to a number of factors.
3 First of all, there's the -- a large number of
4 trains that are in the RTC model are just not
5 supported in the evidence that was provided,
6 specifically in the train movement data or any --
7 or that sort of data. Additionally, the way that
8 Mr. Banks and Guthrie modeled -- put trains into
9 the RTC model, led them to overstating the number
10 of trains that actually were in yards on the
11 system.

12 Q And you also mentioned in your report
13 that there was underutilized track in the
14 simulations; is that right?

15 A Yes, we cite instances where there was
16 track that was included in the network, but not
17 being used by any of the trains.

18 Q Mr. Peterson, please pull up Amtrak
19 Exhibit 5, which is at Tab 4 for the board
20 members, and it's slide 6 of 8 and 7 of 8.
21 They're the pictures.

22 Unfortunately, they're not numbered, but

1 they're titled, "Unused Track in the Railroad's
2 RTC model" and "Unused Track."

3 That's what they're titled.

4 CHAIRMAN OBERMAN: Which exhibit is
5 that? Oh, here we are. I got it.

6 THE WITNESS: Does everyone have the
7 page?

8 BY MS. BRACEY:

9 Q So what do these depict?

10 A The first picture shows a schematic or a
11 picture of the CSXT Montgomery Alabama Yard, as
12 was included in Mr. Banks' and Guthrie's RTC
13 model. On the right-hand side, shows a legend,
14 showing color codes for how often those tracks are
15 used during the RTC simulation with the, sort of,
16 magenta color being more than 30 trains traveling
17 over the period, with black being no trains.

18 And what we see here, we see several
19 tracks that are not being used during the RTC
20 model period for this yard, which would indicate
21 there's -- there's capacity in that yard for --
22 for additional traffic.

1 Q And what does the next slide show?

2 CHAIRMAN OBERMAN: Before -- before you
3 leave this, could you tell us what does the
4 Montgomery Yard tracks have to do with this line?

5 THE WITNESS: Mr. Banks and Mr. Guthrie
6 included the Montgomery Yard in their analysis to
7 reflect the downstream and upstream effects of
8 adding passenger traffic. I think they also
9 indicated that the addition of passenger track on
10 the line between Mobile and New Orleans could have
11 downstream impacts. So what this is showing is
12 that even if you add this traffic, there's still
13 capacity on the Montgomery Yard that's not being
14 utilized.

15 CHAIRMAN OBERMAN: Thank you.

16 BY MS. BRACEY:

17 Q Let's talk about the next page.
18 What does that show?

19 A The next page shows a -- on the
20 left-hand side -- a schematic or screenshots -- I
21 called it "schematics." it's actually a screenshot
22 from the Banks' and Guthrie's RTC model of Gulf

1 Port, Mississippi. The horizontal line is the
2 CSXT line that's running between Mobile and New
3 Orleans. The vertical line is KCS track, and then
4 you see the connecting track between the CSXT line
5 and the KCS line.

6 You'll notice at the top, that the KCS
7 line has only one track. On the right-hand side
8 is a satellite photo taken from Google Earth of
9 the same line. You can see in this instance
10 the -- so the slanted line going from the lower
11 left to the right, that's the CSXT line. And then
12 you see a -- the line connecting that line to the
13 KCS line. In that instance, you see the KCS line
14 actually is a double track, whereas you see in the
15 RTC model presented by Mr. Banks and Guthrie, a
16 single-track model.

17 CHAIRMAN OBERMAN: Mr. Fapp, how far
18 does that double track extend? Is that relevant
19 to these drawings?

20 THE WITNESS: Based on the satellite
21 photos it extends quite a ways up, towards the KCS
22 yard.

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1 CHAIRMAN OBERMAN: And you're saying the
2 model didn't include double track for any part of
3 this line?

4 THE WITNESS: The only -- yes, that is
5 correct. The only part of the line we see is that
6 section going north, we have the single track.

7 CHAIRMAN OBERMAN: Okay. Thank you.

8 BY MS. BRACEY:

9 Q Mr. Peterson, if you could please pull
10 up Amtrak Exhibit 5 at page 8 of 8, which is the
11 next page. In Tab 4, for the board members. It's
12 the one with the arrows, if everyone's there.

13 Please describe this table.

14 A This table is a reproduction of
15 Mr. Banks' and Guthrie's Table 19 from the RTC
16 report -- I should say to qualify, the opening RTC
17 report. And what this -- we've done here is that
18 in Mr. Banks' and Guthrie's table, they just
19 showed the percentage change. What we've done is
20 we've included the numbers from their work papers
21 that show the numbers that went into calculating
22 that percentage change.

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1 Q And can you walk us through, from left
2 to right, the percentage change and model freight
3 train delay per 100 miles?

4 A Sure. The first metric we see there,
5 change and model freight to triangulate per 100
6 train miles.

7 That metric reflects a normalized delay
8 value for freight trains or any trains operating
9 on the system. In this case, it's freight trains
10 and yard trains, that sort of thing. The -- one
11 of the issues when you look at things on a
12 normalized basis such as this, it doesn't take
13 into consideration the actual length of the
14 movement. For example, if you have a short-haul
15 movement that was 5 miles and it is delayed for
16 three minutes, that equates to a one-hour delay
17 per 100 train miles. That's how it would be
18 reported in that sort of chain or freight delay
19 per 100 train mile.

20 Even though it is reported as a one-hour
21 delay per 100 miles, that train is actually only
22 delayed three minutes. So showing things in this

1 sort of way, can, you know, sort of distort what
2 the actual impact of the delays are.

3 Q And what's the change -- percent change
4 in model freight.

5 (Off the record.)

6 A The change in model freight speed shows
7 the average, the train speed from the 2019 F. case
8 and the 2019 P. case. And what we show here is
9 Mr. Banks-Guthrie showed there was a decline in
10 train speed of 4.5, I'm sorry, 4.5 percent. But
11 actually that equates to a change in .7 miles per
12 hour. That's one of the issues with knowing
13 things on a percent change basis is, it doesn't
14 give you any sort of context about what's lying
15 behind the actual numbers here. So, here, we're
16 talking about 7/10ths of a mile per hour change
17 after an inclusion of Amtrak passenger traffic.

18 Q Thank you. And what's the percent
19 change in dispatching conflicts?

20 A Mr. Banks and Mr. Guthrie calculated the
21 average number of growth conflicts for the 2019 P.
22 and the 2019 F. RTC cases. In this case, its

1 growth conflicts, the RTC model presents two types
2 of conflicts and reports two types of conflicts,
3 gross conflicts and net conflicts.

4 Gross conflicts occur as the RTC model
5 tries to figure out how to route trains across the
6 network. So the RTC model will try different
7 solutions, different ways to route a train, but
8 once it finds a solution, it will discard the
9 gross conflicts and just report the net conflict.
10 So what we're seeing here, so the impact of that
11 is, the gross conflict can be impacted in a short
12 small area, we might get sort of Gordian knot sort
13 of thing.

14 We have maybe a unique instance of
15 trains that have a lot of conflicts, but once it
16 finds a solution, the actual number of conflicts
17 declines. That's why the RTC model, instead of
18 just reporting gross conflicts, reports net
19 conflicts and statistics called "dispatch
20 difficulty," which does a -- compares those two
21 numbers, gives us some idea what is the actual
22 difficulty of dispatching an RTC case.

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1 CHAIRMAN OBERMAN: Is the net conflict
2 anywhere in this chart? I don't see it.

3 THE WITNESS: No, sir. It was not
4 reported by Mr. Banks or Guthrie.

5 CHAIRMAN OBERMAN: Are you saying it's
6 not anywhere in any of their two RTC reports that
7 are filed in this case?

8 THE WITNESS: It's not -- it's not
9 stated in their report. It is -- you can derive
10 it from their RTC work papers if you rerun the
11 cases.

12 CHAIRMAN OBERMAN: Did you do that?

13 THE WITNESS: We did as much as we
14 could.

15 CHAIRMAN OBERMAN: What's the answer?

16 THE WITNESS: What you see is you have a
17 much lower number of net conflicts than gross
18 conflicts.

19 CHAIRMAN OBERMAN: Do you have that
20 number with you, or can you tell us?

21 THE WITNESS: No. I don't recall what
22 the specific numbers are off the top of my head

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1 across all 30 cases.

2 CHAIRMAN OBERMAN: And that was not
3 anywhere in your verified statements.

4 THE WITNESS: I don't recall if we put
5 that in there. It was indicated it's in their
6 work papers.

7 CHAIRMAN OBERMAN: Thank you.

8 BY MS. BRACEY:

9 Q Can we go back for a minute to percent
10 change in freight train speed.

11 Have you heard the testimony about how
12 this will mean, the percent change and freight
13 train speed would mean 13 hours of delay per day?

14 A Yes.

15 Q And do you agree with that?

16 A Oh, once again, I don't disagree with --
17 pardon me. I don't disagree with the calculation,
18 but I -- I would say it's presented in a way that
19 distorts the actual impact on train operations.

20 Q And why is that?

21 A Mr. Banks and Mr. Guthrie calculated
22 that number by summing the total delay across the

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1 2019 and 2000 F. cases and then determining based
2 on the number of cases, the number of hours or
3 trains -- or I'm sorry -- number of weeks those
4 cases represent, they come up with the 13 hours'
5 delay on average. But what they didn't present
6 was the number of trains that's reflected
7 across -- the 2019 F. and the 2019 P. RTC cases,
8 had approximately 19,700 trains in them. That's
9 presented in their work papers. When you look at
10 that 13-hour delay on a per train basis, it comes
11 to a little over 11 minutes per train.

12 CHAIRMAN OBERMAN: That math doesn't
13 sound right. Nineteen thousand seven hundred into
14 13 hours. You're not dividing all of those
15 trains.

16 THE WITNESS: What they did is that they
17 summed up the aggregate delay across all 30 cases.
18 They then took that aggregate delay, divided it by
19 30 to get an aggregate delay per case, and then
20 divided that number by the number of days in the
21 RTC model to come up with a delay of 13 hours per
22 day.

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1 CHAIRMAN OBERMAN: And then how many --
2 you said there were 19,700 trains; you're saying
3 in the whole 30 runs, there were 19,000 trains?

4 THE WITNESS: That is correct.

5 CHAIRMAN OBERMAN: All right. So you
6 divided the number of trains per day into the 13
7 and get the 11 minutes, is that what you did?

8 THE WITNESS: Yes, you can do it that
9 way. Or you can just take the total delay or,
10 difference in delay hours that they calculated,
11 which was approximately 250,000 seconds, the RTC
12 reports that in seconds, divided by the 19,700
13 trains, you come out at approximately 11 point --
14 I think it's -- six minutes.

15 CHAIRMAN OBERMAN: Thank you.

16 Q So moving onto the percent change in
17 delay to other New Orleans railroads.

18 What does that statistic mean?

19 A This is a rather curious statistic.
20 What Mr. Banks and Guthrie calculated here was
21 what they called the aggregate -- what they show
22 in their report papers was the aggregate what they

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1 call "delay time for foreign trains trying to get
2 into the system." These were trains coming on the
3 very western part, I believe, from the NOPB and
4 the UP BNSF. And they calculated this by adding
5 what is called the "origin and off-network delay
6 time," plus the -- what they call a "modified," or
7 I think they call "run time," which is the actual
8 time, less the dwell statistics and what we see
9 here are the aggregate delay. I believe they
10 converted this to minutes. It's a curious
11 statistic because the majority of these numbers
12 come from a single report in the RTC model called
13 the "report file."

14 And it reflects time that is occurring
15 nowhere on the RTC network itself. It's somewhat
16 analogous to saying that, you know, we have a long
17 delay on 495 due to an accident; therefore, we're
18 going to have a similar delay on 95. It's curious
19 in that way. It's also curious in that, in
20 looking at -- there are other tables in the
21 report -- this statistic seems to be negatively
22 correlated between the amount of time trains are

1 remaining offline and the addition of additional
2 infrastructure, which is counterintuitive.

3 Normally, if we'd see something like
4 that, we'd go back and we investigate the basis of
5 the model and how we network it to try to
6 determine if there's an issue with that part of
7 the modeling.

8 Q And what about the percent change in
9 re crews?

10 A R-E-C-R-E-W-S.

11 Q Thank you, Mr. Fapp.

12 A What we're showing here is the total
13 number of re crews across all 30 simulations for
14 the 2019 P. and the 2019 F. and we see that,
15 Mr. Banks and Guthrie saying, We see re crews
16 increase by 37.7 percent. When you look up on
17 a -- what that means in actual operations,
18 effectively that means this is across all 30
19 simulations. It really comes down to your having
20 one additional re crew every three days across your
21 entire network. So you have the network going
22 from new Orleans, up to Mobile, on to Montgomery.

1 Over that time period, you're going to have one
2 additional crew required every three days.

3 Q And is that a significant change, one
4 additional crew every three days?

5 A In my opinion, it's not -- recrew rates
6 is a -- is a statistic that is not normally
7 presented. It's something that -- it's just not,
8 it's not reported to the STB and to the current
9 filings that railroads are doing, and it's not
10 something that is -- you normally see reported in
11 railroad financial statements or, sort of, filings
12 that way. But based on my experience, I'm not --
13 that's not a significant number.

14 Q Thank you. If we can turn to -- it's
15 Tab 5 at page 47 or 49.

16 So Mr. Peterson, that's Joint
17 Exhibit 423 D. Yes. Perfect.

18 A I'm sorry. What is this on? Page...

19 Q It's Tab 5 at page 47 to 49. It should
20 be labeled as "46," but at the bottom, it's also
21 47 and 49.

22 A Thank you.

1 Q I know it's a bit confusing, so this is
2 also Joint Exhibit 23 D (sic), it's the -- it's
3 the initial RTC report.

4 Are you familiar with this table?

5 A Yes.

6 CHAIRMAN OBERMAN: What -- which table
7 on which page?

8 MS. BRACEY: It's -- there are two
9 numbers, page 46, and page 47 and 49.

10 CHAIRMAN OBERMAN: This is the table
11 you're showing?

12 MS. BRACEY: I believe that's right.

13 CHAIRMAN OBERMAN: Okay. I've got it.
14 I've got it. Thanks, Robert.

15 BY MS. BRACEY:

16 Q Are you familiar with this table?

17 A Yes.

18 Q What is depicted on this table?

19 A This is a table prepared by Mr. Banks
20 and Guthrie in the RTC report that breaks down
21 several statistics that were reported in Table 19,
22 plus the addition of another statistic that wasn't

1 reported in Table 19, specifically what they call
2 "change in variability." This is broken down by
3 train profile from CSXT local trains, through
4 trains, and NS trains.

5 Q And what is the impact of showing
6 percentages?

7 A Oh, once again, showing -- showing a
8 percentage change -- showing a percentage change
9 can hide the actual impact or the real world
10 impact of the metric that's actually being
11 measured. This is giving -- showing a percentage
12 change just doesn't show the context in which the
13 statistic has actually happened -- occurs.

14 Q Okay. If you could turn to -- it's
15 Tab 6. And Mr. Peterson, it's Amtrak's Exhibit 14
16 at the first page. Page 1. So it's labeled
17 "Table 20 from Dingler-Guthrie Report with
18 Detailed Data," for the board members.

19 And what is this table?

20 A This is a reproduction that Mr. Ding --
21 well, we call it "Dingler-Guthrie report," the RTC
22 report that was amended to "Mr. Banks' and

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1 Guthrie's verified statement." What we've done
2 here is that we have shown the columns that were
3 included in Mr. Dingler and Guthrie's Table 20.
4 We've added in the data that was in their work
5 papers that developed these percentage changes.

6 Q And let's turn to page 2, so just flip
7 over to the next page.

8 CHAIRMAN OBERMAN: Just to be clear, on
9 Exhibit 14, the columns in color are the same
10 columns that are at Table 20 in the RTC report?

11 THE WITNESS: Yes, sir.

12 CHAIRMAN OBERMAN: Okay. Thank you.

13 Q Can you describe this table?

14 A Yes. This is -- this is an excerpt from
15 what we -- the expanded Table 20, and what we show
16 here, working from the far right, this is the --
17 the numbers that -- percent change numbers that
18 were included in the Dingler-Guthrie report Table
19 20. Next group, we see the change in delay per
20 100. That is simply the difference between the
21 numbers shown in the 2019 passenger delay per
22 100 miles and the 2019 with passenger delay. The

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1 train profile reflects the different trains to be
2 operated over the CSXT and NS systems, whether
3 they're local, through trains, or the NS trains.

4 Q And what does train delay per 100 miles
5 mean?

6 A As I indicated earlier, it's a
7 normalized value that shows what the train delay
8 would be on average if the train moved 100 miles.

9 Q And what does this chart show for the
10 CSX and local trains?

11 A For the CSXT local trains, it shows a
12 change in 45.4 percent, but when we look at the
13 change in delay on an actual basis, we're actually
14 seeing that in total, approximately 41.63 minutes,
15 per 100 miles.

16 Q And do -- does any CSX local train
17 actually travel 100 miles?

18 A No.

19 Q What does it show for the CSX through
20 trains?

21 A Once again, we're showing a 25.9 percent
22 change in total for through trains, but when we

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1 look at it on an actual -- the actual numbers,
2 we're seeing a delay of 12.52 minutes per
3 100 miles.

4 Q And what does that show for the NS
5 trains?

6 A Once again, we're seeing a 7.4 percent
7 change in total for NS trains, but we're -- what
8 we're seeing is a 32-minute delay per 100 miles
9 for the NS section of the track, which is
10 approximately, I think, anywhere from, these move
11 from 5 to 7 miles.

12 Q And where did you get these numbers?

13 A These numbers were included in Mr. Banks
14 and Mr. Guthrie's work papers.

15 Q Just flipping to the next page that
16 talks about speed.

17 What does this document show?

18 A Once again, this is a reproduction of --

19 CHAIRMAN OBERMAN: Could I just try to
20 understand this chart? I'm sorry to interrupt.
21 If we look at the column, the second from the
22 right that says, "Change in delay per 100 miles."

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1 And if we look down at the CSX local train No. 2,
2 it says the change in delay per 100 miles is 187
3 minutes or three hours.

4 Is that the way to read this?

5 THE WITNESS: Correct, "per 100 miles."

6 CHAIRMAN OBERMAN: But if the train only
7 goes 1 mile, it would be 1 percent of three hours;
8 is that how to read it?

9 THE WITNESS: If the -- if the train
10 only went 1 mile, the delay would be 1.87 minutes.

11 CHAIRMAN OBERMAN: All right.

12 So is there any data that is either in
13 your work or that you found in the Dinger work
14 which tells us how many actual minutes each of the
15 trains are delayed because this doesn't tell us
16 how many miles short of 100, each of these trains
17 travels. On this piece of paper, is there some
18 place that that's been compiled?

19 THE WITNESS: Yes, sir. That's included
20 in Mr. Banks and Mr. Guthrie's work papers. You
21 have a -- included a database, an access database,
22 which contained all the statistics from these

1 runs. In that file, there is a table called
2 "Trains." That table includes all the statistics
3 including delays and train miles, so all those
4 numbers are in that database.

5 CHAIRMAN OBERMAN: All right. Well, I
6 haven't read all the work papers, I will confess.
7 I'm not sure anybody has. But you haven't
8 summarized them in a table like this, where we can
9 just look at one page and say, Oh, Local 2 is
10 delayed 1.8 minutes or 3.6 or whatever the actual
11 delay is? That's not in a table that you're
12 presenting to us?

13 THE WITNESS: No. It's -- no, it's not.

14 CHAIRMAN OBERMAN: Okay. Thank you.

15 BY MS. BRACEY:

16 Q Moving on to the next chart having to do
17 with speed. What does this chart show?

18 A Once again, this is an expansion of
19 Mr. Dingler-Guthrie's RTC report, Table 20.

20 What we showed here are the -- starting
21 on the right, the percentage change in speed, as
22 calculated by, in this case, in the

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1 Dingler-Guthrie RTC report. Next to it, shows the
2 actual change in speed. Then we have the
3 difference between the 2019 passenger case -- I'm
4 sorry, the average speeds from the 2019 passenger
5 and the 2019 freight. And then, once again, the
6 freight, same trains that were reflected for CSX:
7 Through, local, and NS trains.

8 Q And where did these numbers come from?

9 A Once again, these came from -- they're
10 Mr. Banks' and Guthrie's work papers.

11 Q And what does this show for the CSX
12 through trains?

13 A It shows for the through trains that on
14 average, the actual speed is going to decline by
15 0.95 miles per hour.

16 Q And what about the CSX local trains?

17 A Those local trains declined by an
18 average of 0.71 miles percent miles per hour --
19 I'm sorry -- 0.71 miles per hour, not percent.

20 Q And, finally, the NS trains.

21 A The -- this is showing on average that
22 the NS trains are going to decline by a tenth of a

1 mile per hour.

2 Q Let's turn to the last page in this tab,
3 "variability."

4 What does this depict?

5 A Once again, this is a depiction of
6 Mr. -- we call them "Dingler-Guthrie's RTC report,
7 Table 20." On the right, it shows the change in
8 variability, and then we have the change -- the
9 actual change in variability, change -- the
10 variability with the passenger case. Then without
11 passengers, and then, once again, the same trains.

12 Q Can we turn for a second to Tab 4 at
13 page 3, which is Exhibit 5. So for the board
14 members, there's a very faint page 3 at the bottom
15 of this page. It's titled, "The Range and the
16 Change in Average Train Speeds with Amtrak
17 Trains."

18 What does this chart show?

19 A I think the chart on the screen is
20 different than what we're talking about here.

21 Q Oh, you're correct. Mr. Peterson, can
22 we go to page 4 of the PDF?

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1 MR. WARREN: So -- okay. So I am going
2 to object to this as new analysis, and I'm more
3 sure about this than I was previously. I don't
4 believe that at any point in either of Mr. Fapp's
5 prior verified statements -- I mean, I don't know
6 where this 5 and 6 of this chart come from,
7 "system average train speeds." There's a cite
8 there. That's an analysis we haven't seen, and I
9 don't think that's in his verified statements.

10 MS. BRACEY: So we would point out that
11 we're doing math here that came from the work
12 papers.

13 MR. WARREN: So not for -- for one, two,
14 three, four, sure, that's -- no objection. That
15 comes from the work papers. I think five and six,
16 which I think is the comparative you're trying to
17 make, that's not math that's in the work papers.

18 MS. BRACEY: It came from the STB
19 consolidated ex parte monthly train speeds and we
20 think that's a public document that we can draw a
21 comparison from.

22 MR. WARREN: Where -- but that

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1 calculation is not in the work papers. We haven't
2 seen that calculation. We don't -- I don't know
3 where those numbers are from. You say they're
4 from 724, I'm going to take you at your word, but
5 we haven't actually seen that analysis.

6 CHAIRMAN OBERMAN: Are you saying you
7 want us to take judicial notice of our own data?

8 MS. BRACEY: I think that's --

9 MR. WARREN: I don't think there's been
10 any proffer that that's what the data says and I
11 don't think this witness -- I think under party
12 stipulation, this falls within the category of new
13 expert analysis.

14 CHAIRMAN OBERMAN: Let me see if I
15 understand your point. Items 5 and 6 of this
16 page, are you saying, Ms. Bracey, are just
17 mathematical calculations from either the -- from
18 the STB's data?

19 MS. BRACEY: Yes, sir.

20 CHAIRMAN OBERMAN: Are those
21 calculations that anybody could make by just
22 looking at the data?

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1 MS. BRACEY: It's a -- right. Between
2 lines 1 and 4, Mr. Fapp might be a better person
3 to explain this than I am, but one and four is
4 from the work papers and five and six is a
5 comparison between the average reported train
6 speeds versus the range of train speeds in the
7 work papers.

8 CHAIRMAN OBERMAN: Patrick, did you have
9 something.

10 MEMBER FUCHS: Well, I just wanted to
11 note that there have been instances in the past
12 with the board where the calculation of train
13 speeds is a much more nuanced issue than appears
14 at first glance because different railroads can
15 have different methodologies for counting when a
16 train is moving, for example. So I'm sort of
17 wondering if these numbers are backed by a
18 specific methodology that one could take a look
19 at.

20 CHAIRMAN OBERMAN: Well, I'm going to
21 let Ms. Bracey make an offer of proof of how these
22 were arrived at, and then we'll take under

1 advisement whether this is admissible evidence.
2 And -- and, Matt, we may give you an opportunity
3 to show how you may be prejudiced by this before
4 we make a final ruling, but for --

5 MR. WARREN: Okay. And I will say,
6 Mr. Chair, as I -- as I put this issue on the
7 board's plate, I will take one off. You know,
8 after Ms. Bracey's proffer about the train
9 conflict issue, I looked back at the verified
10 statement, that is in Mr. Fapp's verified
11 statement, so I withdraw my objection to that
12 earlier point I made a little while ago.

13 CHAIRMAN OBERMAN: Okay. So that
14 testimony is now admitted. And this testimony
15 we'll -- subject to further argument by the
16 parties -- we'll reserve judgment on whether it's
17 admissible, but I think he's here and for
18 efficiency let's hear the analysis and how he got
19 there.

20 BY MS. BRACEY:

21 Q Okay. So -- and sorry to move back and
22 forth. What does this chart depict?

1 A What we're showing in this chart are the
2 change in speeds as calculated by Mr. Banks and
3 Guthrie between the -- in Line 1, the 2019 freight
4 and the 2019 passenger case. Line 2, the 2019
5 freight and what he calls the 2019 build case,
6 that's the 2019, with the, I believe it's 11
7 additional infrastructure projects.

8 Line 3 is a 2039 freight case, and the
9 2039 passenger case, excluding crossings. That
10 was the one case that they presented actual full
11 data on in their -- for the 2019 with passengers.
12 And Line 4 is the 2039 freight and the 2039 build
13 case. Column 2 shows the difference of range in
14 miles per hour. In other words, these are the
15 absolute values of the differences that Mr. Banks
16 and Mr. Guthrie presented. So we see a range, you
17 know, speeds would change by .6, .25, .6 or
18 .27 miles per hour in the absolute.

19 Lines 5 and 6 are CSX and NS's system
20 average train speeds as reported to the STB in ex
21 parte 724 and what we did here, we looked at the
22 range and change of train speeds reported monthly

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1 from 2019 for both railroads.

2 In other words, you would see for 2019,
3 the reported train speeds changed by a max of 4
4 point miles - 4.1 miles per hour and 4.3 miles per
5 hour. In other words, that's the difference
6 between the max and min reported train speeds by
7 the two railroads for 2019.

8 CHAIRMAN OBERMAN: So I understand the
9 point to be that this chart, just so I understand
10 the import of it, that in items 1 through 4,
11 you're saying in the RTC report, the only change
12 in train speeds, say in item 1, was .67 miles per
13 hour, but you're saying that without any passenger
14 rail back in 2019, the freight trains on this line
15 ranged between a high of 4 point miles per hour
16 higher than their lowest speed, so that they
17 fluctuated? Is that the point of this chart?

18 THE WITNESS: No, sir. What -- the .67
19 would indicate is that is the average difference
20 in train speed between the 2019 and the 2000
21 freight and passenger cases.

22 What Lines 5 and 6 show are the --

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1 basically the variability in or the range in
2 reported system average train speeds for CSX and
3 NS in 2019. So this is across their entire
4 system, you'd see train speeds vary by 4 miles per
5 hour across both networks.

6 CHAIRMAN OBERMAN: In other words, if we
7 looked, we might find trains that ran as slow as
8 20 miles an hour and ones that ran as fast as 24
9 miles an hour, is that what you're saying?

10 THE WITNESS: Are you saying for Lines 5
11 and 6?

12 CHAIRMAN OBERMAN: Yes.

13 THE WITNESS: Correct. I think in one
14 month, it might be reported as, like you said, 24
15 and another month, might have reported a high of
16 28. So the difference and the range of those
17 speeds is 4 miles per hour.

18 CHAIRMAN OBERMAN: Taking Patrick's
19 question: Is it a relevant question to ask
20 whether the way the RTC modelers computed train
21 speeds is the way CSX compiles them for their 724?
22 Is that the issue you raised?

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1 MEMBER FUCHS: Yeah, I believe that's
2 the methodology, because, because --

3 CHAIRMAN OBERMAN: Do you know whether
4 they use the same methodology?

5 THE WITNESS: I do not.

6 MEMBER FUCHS: I could be wrong, but,
7 what -- CSX, for example, itself, has in the past
8 raised to the board, two different velocity
9 calculations. Has, in effect maintained two
10 different velocity calculations to the board, and
11 internally, so, it's -- there are, there are
12 differences. I'm not making up a claim that the
13 methodologies here aren't different than them.

14 CHAIRMAN OBERMAN: Well, what we don't
15 know, it sounds like, Mr. Fapp, is whether we're
16 comparing apples to apples methodologies in the
17 writing of these variability numbers. We don't
18 know that. You don't know that, I take it.

19 THE WITNESS: All I know is that the --
20 we were preparing an average train speed across
21 one portion of the network, as modeled by
22 Mr. Banks and Mr. Guthrie, and average train

1 speeds across their networks are reported by CSX
2 and NS. How they calculate that average, I don't
3 recall how they calculated that for this filing
4 with the board.

5 CHAIRMAN OBERMAN: Well, it would seem
6 to me without that, although, this is interesting
7 and aside from Matt's objections, it has limited
8 that value, but, we'll take it, subject to his
9 objection, for what it's worth.

10 BY MS. BRACEY:

11 Q If we could flip back to Tab 6 at the
12 document about speed, just page 3.

13 How does the document we just discussed,
14 Tab 4 at page 3, relate to this document?

15 A The document we showed in -- before we
16 showed a change in train speed between 2019 and
17 2000 freight case, the overall change speed of
18 approximately, it was right at .7 miles per hour,
19 the bottom line here shows that same number.
20 It's, in this case, .67 rounds to .7 miles per
21 hour.

22 What we're seeing is the actual change

1 in speeds for the different trains across --
2 between New Orleans and Mobile as modeled by
3 Mr. Banks.

4 Q So moving on to the last page in this
5 tab. What is this document?

6 A This documents a -- once again -- a
7 re-creation of the third column or, technically,
8 the fourth column of Mr. Dingler-Guthrie's Table
9 20, showing the change in variability in the far
10 right, the percentage change in the variability.
11 Then we see the change -- the difference or change
12 in variability, is the difference between the 2019
13 passenger variability and the 2019 freight case.
14 Then, once again, for the same CSXT local, through
15 and NS trains.

16 Q And what is "variability"?

17 A Mr. Banks and Guthrie define
18 "variability," in this instance to be the standard
19 deviation of train run times. In other words,
20 standard deviation is a measure of dispersion of
21 data from around the mean or the average. So what
22 we're seeing here is how much the -- these run

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1 times between different trains differ from or vary
2 from the mean or average run time value.

3 Q And where did you get these numbers?

4 A Once again, these came from Mr. Banks'
5 and Mr. Guthrie's work papers.

6 Q I don't know if now is a good time for a
7 break. I'm done with this exhibit. It's 11:35.

8 CHAIRMAN OBERMAN: Let's take a very
9 short break. Ten minutes.

10 (Off the record.)

11 CHAIRMAN OBERMAN: We are back on the
12 record, proceed.

13 BY MS. BRACEY:

14 Q How did the Banks and Guthrie model
15 preference for Amtrak trains?

16 A Mr. Banks-Guthrie used various
17 methodologies to provide Amtrak preference. They
18 increased the priority numbers in the train file
19 to a very high level. They created -- using what
20 they call the "permit file," to create what they
21 indicated are windows or certain sections of track
22 to allow Amtrak to operate over and --

1 Q And what was --

2 MEMBER FUCHS: I'm sorry to interrupt.

3 I just want to make sure that I understand the
4 terminology, because there are two different ways
5 that you can assign preference in the RTC models,
6 as I understand it. Could you, maybe with a
7 little more specificity, clarify what you're
8 referring to?

9 THE WITNESS: Sure. There's -- in the
10 RTC model, each train is -- you can assign a
11 priority or preference value. It's actually a
12 numeric value that can range, I think, up to
13 9,999. It's a four-digit number. The higher the
14 number, the higher the priority that a train is
15 given. Lower priority trains, we'll give lower
16 numbers. You know, maybe 1000 or 2,000, or 3,000.

17 By increasing the number, the higher the
18 number, the RTC model works as sort of an
19 optimization, which try to minimize the overall
20 cost. These costs being these priority numbers.
21 So they increased the priority or the
22 prioritization of this particular trains. In

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1 addition, they also created these windows using
2 the permit file to allow Amtrak trains to operate
3 what they indicate as unopposed across, I think,
4 the Back Belt portion.

5 MEMBER FUCHS: Just to clarify, you're
6 referring to the minimum delay and maximum delay
7 cost, in terms of the values, and not the conflict
8 rank?

9 THE WITNESS: Correct.

10 MEMBER FUCHS: Okay. And the minimum
11 delay and maximum, they increase from what to
12 what?

13 THE WITNESS: I don't recall the -- the
14 minimum value. I know that they can go up to 4
15 digits, so 9,999.

16 MEMBER FUCHS: Right. So -- again, when
17 you say, "increased," what was it at, and then
18 what did it become?

19 THE WITNESS: I'm sorry. The -- the RTC
20 has default values for passenger trains, local
21 trains. That's -- there are different train
22 types. I don't recall what the default value is

1 for passenger trains, but I do recall that looking
2 at the value that was given Amtrak trains is
3 higher than the usual default value for passenger
4 trains.

5 MEMBER FUCHS: Okay. And then just one
6 more question for me. Thank you, Ms. Bracey, just
7 to make sure I'm tracking. The -- it's my
8 understanding that given that there are no
9 commuter trains on this line, that the highest
10 minimum and maximum value would already be for
11 Amtrak regardless of whether or not there was, you
12 know, whether the default setting versus what they
13 selected in this model, Amtrak's always going to
14 have the highest delay cost and it's going to have
15 the most significant, or the highest ranked.

16 So let's say they increase the value by
17 500. I'm just -- for example. And I'm not making
18 a claim, just for example. If you're already the
19 highest maximum and minimum delay cost, and you're
20 already the highest ranked, what impact does that
21 incremental change have if you're already tops.

22 THE WITNESS: My understanding of the

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1 RTC model speaking with the developers is that
2 the -- that number is not static, that that number
3 can change, especially as trains are moving across
4 the system. If you have a -- a train that is
5 close to having its crew expire, the cost for that
6 train can increase above what its normal value is.

7 So that way -- so the RTC model knows to
8 not let crews die on the -- on line. They will
9 increase the cost for particular trains, even
10 non-passenger trains. So you could end up with
11 situations where, just using the default settings,
12 were they have a, let's say maybe a high speed
13 intermodal train, that has a low priority as an
14 input value. As that train gets closer and
15 closer, maybe, to hours of service, that value may
16 go higher than a typical passenger train.

17 MEMBER FUCHS: All right. I have to --
18 is it -- is it your observation on the RTC model
19 that any of the maximum values for an intermodal
20 train exceeded the passenger train?

21 THE WITNESS: Not in this case, I didn't
22 see that. But I don't recall seeing that.

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1 CHAIRMAN OBERMAN: Go ahead, Karen.

2 MEMBER HEDLUND: Do the differences in
3 priority as the RTC models are run, do they result
4 in showing or do they show the impact on the total
5 run time?

6 THE WITNESS: I'm sorry, can you
7 rephrase the question? I don't think I
8 understand.

9 MEMBER HEDLUND: Amtrak's witness
10 indicated that the scheduled run time is
11 approximately three hours and some minutes. When
12 the RTC model is run with different priorities,
13 does that show the impact on the run time?

14 THE WITNESS: The priority indicates
15 what -- what trains are dispatched in what order.
16 So there's -- the scheduled run time, as is in the
17 real world, the way that the model that's set up
18 in this case, would really have no impact in how
19 it operates across in the RTC model.

20 MEMBER FUCHS: Wait. Wait. In other
21 words, if -- because I think it's a significant
22 point that, whether or not something is unique

1 about the preference assigned in this case. In
2 other words, you can't tell us if -- if Amtrak
3 were assigned, say, a rank or two and a minimum
4 delay cost of 7,000, and then a maximum delay cost
5 of 9,000, you can't tell us if that had any
6 impact, compared to if it were assigned a rank of
7 8500 minimum and 9400 max. You can't tell us
8 whether that is -- that actually materially
9 affects the run times.

10 THE WITNESS: We did not run that sort
11 of scenario.

12 MEMBER FUCHS: All right. Thank you.

13 BY MS. BRACEY:

14 Q How did the effect of -- how did the
15 effect of how -- and this may have been covered by
16 the board members, so I apologize.

17 How did the -- what was the effect of
18 how -- Banks and Guthrie model preference on the
19 speed of the model?

20 A Well, the -- the preference basically
21 gave, as you expect, Amtrak priority over all
22 other trains, which means they had a priority and

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1 other trains would go into sidings or be held out
2 for permits, which lower the average train speeds
3 for non-Amtrak trains.

4 Q Mr. Peterson, can you pull up Tables 2
5 and 3, which are at Tab 8 at page 13. That's
6 perfect. So this is at Tab 8 at page 13 or 48 at
7 the bottom in your binders. What does Table 2
8 here show?

9 CHAIRMAN OBERMAN: What page are we on?

10 MS. BRACEY: We're on page -- we're at
11 Tab 8, page 13 or page 14 of 48 at the bottom.

12 CHAIRMAN OBERMAN: Table?

13 MS. BRACEY: Tables 2 and 3.

14 CHAIRMAN OBERMAN: Okay. Thank you.

15 MS. BRACEY: You're welcome.

16 BY MS. BRACEY:

17 Q So what does Table 2 show?

18 A Table 2 is prepared by Mr. Banks and
19 Guthrie in their rebuttal RTC report. The first
20 column shows, under "metrics," shows the first
21 four cases. Those are the Amtrak trains. OTP, as
22 they're described or Amtrak train by number, the

1 four trains that are moving between New Orleans
2 and Mobile, the OTP. Then the passenger minutes
3 of delay prior to train miles, and then the
4 sidings per passenger train. They're how often
5 the passenger trains go into siding.

6 The original passenger cases, they're a
7 reference to the 2019 P. RTC runs and the first
8 four lines show the OTP values for those trains.
9 And then the minutes of delay per hundred train
10 miles of 9.1 and then sidings of 0.7 sidings per
11 train. The equal preference case is the analysis
12 that Mr. Banks and Guthrie ran in their rebuttal,
13 where they relaxed various preferences that Amtrak
14 trains were given, including the removal of the
15 window on the Back Belt NS, the adjusting of the
16 preference values.

17 The cost values to the Amtrak trains,
18 the resetting of the conflict to the default
19 setting of the first train, moving into sidings,
20 and then also some adjustments to the electric
21 locks and then other adjustments to the network to
22 remove the preference shown -- given Amtrak

1 trains.

2 Q Thank you. And what does Table 3
3 demonstrate?

4 A Table 3, I believe, is their way of
5 trying to display the impact of removing the whole
6 preference, under "metric," they talk about CSXT
7 local trains delay, overall change in train delay
8 and change in intertraffic train delay. These
9 are, even though they say "delay."

10 Actually, they're statics for delay per
11 100 train miles, so we have the same -- same
12 issues we were talking about earlier. We were
13 talking about delays per 100 train miles on a
14 normalized basis. The original passenger case
15 came from, I believe it was their -- maybe their
16 Table 20, if I recall, and the equal preference
17 case shows the percentage change in the 100 miles
18 when you remove the Amtrak preferences.

19 Q Do these tables show the addition of
20 infrastructure?

21 A No. They do not.

22 Q Okay. And is the OTP depicted there

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1 consistent with current operations?

2 A The original passenger case and the
3 equal preference case, those OTP values are
4 consistent with what you see, the OTP values that
5 are reported by Amtrak through the FRA or stated
6 differently, what the FRA shows in their reports
7 for Amtrak.

8 CHAIRMAN OBERMAN: And I'm sorry. I
9 didn't follow your question, Ms. Bracey.

10 When you say, Does the OTP relate to
11 current operations? I don't understand that.
12 There is no passenger on the current operations
13 now. So I must be missing something in your
14 question, because Mr. Fapp understood it, but I
15 didn't.

16 MS. BRACEY: If I can -- like, if I ask
17 the next question, that might be helpful.

18 CHAIRMAN OBERMAN: All right. Proceed.

19 BY MS. BRACEY:

20 Q So how do you know that the OTP is
21 consistent with current operations?

22 A When you say "current operations," I

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1 presume you're talking about the operations of
2 what the OTP has reported in the FRA files across
3 the different Amtrak routes across the country.

4 In looking at the reports, the FRA
5 reports, you see that actual OTP ranges anywhere
6 from 50 percent up to 100 percent, depending upon
7 the line.

8 MS. BRACEY: Does that help, sir?

9 CHAIRMAN OBERMAN: Well, I thought you
10 were asking him about the OTP figures in Table 2.

11 MS. BRACEY: Right. We're asking
12 whether -- my question was whether or not it was
13 consistent with OTP on other CSX and NS lines.
14 That was not the -- that was the question I should
15 have been asking.

16 CHAIRMAN OBERMAN: You're saying: Is
17 the -- are the columns in Table 2 consistent with
18 how passenger trains actually run on other CSX
19 lines where passenger trains are now running? Is
20 that what you're saying -- you're asking?

21 MS. BRACEY: Yes.

22 CHAIRMAN OBERMAN: Okay. Now I get it.

1 Thank you.

2 BY MS. BRACEY:

3 Q So, I think, Mr. Peterson, you can -- I
4 think that's our final demonstrative, I believe.
5 Okay.

6 Can we talk about track outages and
7 dwell times? Let's start with track outages.
8 What are track outages?

9 A Track outages in the RTC model reflect
10 times that part of the network is unavailable for
11 train operations that could be due to maintenance
12 windows. It could be due to, in this case,
13 moveable bridges or, as Mr. Banks and Guthrie used
14 them to -- what they claim -- was to plot a window
15 for Amtrak trains over the Back Belt.

16 Q And how are they modeled?

17 A In this -- in this proceeding, what
18 Mr. Banks and Guthrie did, instead of using actual
19 outages to report for maintenance times or for
20 bridge openings, they used a random process to
21 come up with their train outage times for, like I
22 said, bridge openings and maintenance operations.

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1 Q And how did that affect the model?

2 A Well, what that does is it removes it
3 from, sort of, actual operation, you know, removes
4 it from the real-world operations. You know,
5 instead of using it, instead of looking at what
6 actually occurred in the real world, using this
7 randomized process, it reflects something that's
8 not -- you can't tie it back to what actually
9 happened.

10 Q And regarding train dwell times, how do
11 you normally account for train dwell times?

12 A Well, train dwell times are usually an
13 input into the RTC model train. They will put in
14 a dwell time, say, for example, to change crews,
15 to work at an industry, something -- you're
16 telling the train, it's going to stop for a
17 specific amount of time. That's distinct from a
18 delay time, which a delay time is something that's
19 generated by the RTC models that tries to flow
20 trains across the network.

21 Q And what did Banks and Guthrie do to
22 account for train dwells?

1 A Well, it -- in most cases, they -- they
2 included a randomized dwell time at different
3 locations instead of using the actual dwell times
4 as they appear in whatever records were presented.

5 Q And what effect did this have on the
6 output of the model?

7 A Well, anytime you -- you randomize
8 something, you're moving at a -- you're moving it
9 away from the real-world operations, so it could
10 increase the amount of capacity or decrease the
11 amount of capacity that's available on the line.

12 Q Okay. Thank you. So what does it mean
13 when an RTC case does not run to completion?

14 A What it means is that the RTC model
15 could not find a viable dispatch solution. It
16 couldn't find -- in other words, it couldn't find
17 a way to route trains across the network, given
18 the inputs and settings included in the model.

19 Q And what happens when an RTC case that
20 does not run to completion is compared to one that
21 does run to completion?

22 A You really can't, because when an RTC

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1 model doesn't run to completion, you don't get a
2 complete set of statistics that you receive when a
3 model does run to completion.

4 Q And what did you see in the Banks and
5 Guthrie model regarding cases that did not run to
6 completion?

7 A Based on the nomenclature that they used
8 to number their different seeds in the model, and
9 I think Mr. Gingrich discussed this as well, there
10 were numerous cases where they did not have RTC
11 models that ran to completion.

12 Q Do you know how many of the simulations
13 or the cases or the seeds, I think is what they're
14 called, failed to run to completion?

15 A Yeah. But looking at it in their -- in
16 their work papers -- in their work papers, they
17 had included database, access database, that
18 included the max seeds, those indicated the
19 numbers. Those were the RTC cases for each one of
20 the different scenarios that they ran.

21 The minimum was 130, reflecting, since
22 they started their RTC cases at 100, they ran a

1 minimum of 30 cases. That was a case where the
2 scenario, where they just ran passenger trains.
3 As I recall, the maximum number was somewhere, I
4 think, at 167, indicating in the nomenclature
5 there's approximately 37 cases that they
6 dispatched, not run to completion for that
7 particular scenario.

8 Q Okay. And what is the significance of
9 that?

10 A Well, it's difficult to state the
11 significance, because they didn't provide any of
12 the cases that didn't dispatch. We weren't able
13 to evaluate them and figure out why they didn't
14 dispatch, and, also, it's an indication about the
15 way that the inputs and the settings were, I
16 think, had a very fine line on the capacity.

17 Q You mentioned in your report that Banks
18 and Guthrie modeled about 207 -- 257 percent more
19 trains than actually moved during the peak period.

20 How do you know that they modeled
21 257 percent more trains?

22 A Well, we were able to compare the trains

1 they put in the -- their train file to the -- the
2 documentation that they presented in their work
3 papers. And when we say "trains," we're talking
4 about things that take up capacity along the
5 network. There are such things as high-rails,
6 blocks of cars, yard trains, in the generic sense
7 we call them "train," because they're going into
8 the train file.

9 Q And you reviewed the Banks and Guthrie
10 rebuttal verified statement; is that right?

11 A Yes.

12 Q And it states that the RTC model --
13 modelers assumed that 1265 trains had no
14 counterpart in the train data; is that right?

15 A I believe that was a combination of
16 trains found in the train data, as well as trains
17 that maybe move in the real world that were
18 modeled as different trains.

19 Q Okay. And can you verify trains that
20 don't have counterpart in the train data?

21 A No.

22 Q And it -- their rebuttal verified

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1 statement also states that many of the data
2 sources were also provided through narratives; is
3 that right?

4 A Yes.

5 Q And what does that mean?

6 A It means that they -- they were based on
7 conversations that their witnesses had with the
8 railroad employees and were not necessarily
9 reflective of the data as reflected in their
10 actual movement records or other records.

11 Q And how does this impact the
12 Banks-Guthrie RTC model?

13 A Well, it -- it moves it away from what
14 is customarily done in RTC models at the board
15 where you tick and tie all of your data back to
16 your base documents and have support and
17 verification in the sense that you can go back and
18 see where all this data flows from, from the
19 initial data up through the RTC model.

20 Q And does the rebuttal verified statement
21 give you any doubt the Banks and Guthrie modeled
22 257 percent more trains?

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1 A No.

2 Q I'm sorry you're fighting with the mic
3 there.

4 Have you reviewed the port's rebuttal
5 brief and supporting verified statement?

6 CHAIRMAN OBERMAN: You know what, before
7 you leave this matter, I would ask your
8 counterpart, Mr. Fapp: I'm still trying to fathom
9 how this board is trying to address this concern
10 that you and your partner have raised.

11 I believe it was Mr. Guthrie who -- I'm
12 sorry. Do I have the wrong party? Mr. Crowley,
13 who I asked if you are suggesting that CSX is
14 lying about the existence of the 1265 trains, and
15 he disowned any such claim. So would it be
16 accurate to understand that the Banks-Guthrie
17 folks and their witnesses say there are 1265 more
18 "train," movements that are occupying the track.

19 And your position is you didn't see hard
20 data in the -- in the documents you saw, but you
21 don't really know whether there were 1265
22 movements or not. You're just saying you don't

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1 see the data to back it up.

2 THE WITNESS: Yes. That's correct.

3 We -- we could not verify through a process we
4 normally do in presenting these cases to the board
5 that that -- those trains actually moved.

6 CHAIRMAN OBERMAN: Well, here's what I'm
7 trying to understand, because we're now in a
8 trial-like situation, and I've got one set of
9 witnesses who come in here under oath, and say,
10 There were 1265 more trains. Believe us.

11 And I've got another set of witnesses
12 saying, I don't know how they got there. I'm not
13 saying they're lying, but I'm not contradicting
14 them either.

15 Is that, sort of, the state of the
16 record here?

17 THE WITNESS: I would say that's an
18 accurate statement.

19 CHAIRMAN OBERMAN: All right. The only
20 other question I have is that: Based on this
21 point, I have a few more -- when RTC modeling is
22 done that you're -- you've done in your experience

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1 with them; correct?

2 THE WITNESS: Yes. Both in front of the
3 STB and for our commercial customers.

4 CHAIRMAN OBERMAN: As I am coming to
5 learn in this world, whenever you are looking at a
6 train yard, there are always going to be
7 high-rails and yard trains. That's the nature of
8 the railroad business.

9 How do you measure those and how do you
10 account for them when you're doing a study?

11 A We get -- to answer your question, as
12 many sources that we can to identify trains or
13 high-rails or blocks of cars that are moving over
14 a section of line.

15 We'll use, as Mr. Crowley indicated,
16 generally, dispatch data, you know, what some
17 would also call "train movement data." A very key
18 source of data that we use which wasn't supplied
19 in this case is car movement data. Rail car
20 movement data from the railroads is usually used,
21 is usually collected off a different system using
22 AEI readers.

1 So unlike, say, a dispatch record or
2 train movement record where it records a train
3 when it hits a control point, car movement data is
4 hitting AEI readers that are in many cases located
5 at the beginning of yards, within yards, and
6 outside of yards, and between the locations,
7 customer locations. That car movement data can
8 also help identify what trains are moving on the
9 line.

10 We will look at yardmaster logs,
11 conductor wheel reports. We'll look at
12 weigh-build analyses or other weigh-build
13 information, because that will indicate in many
14 cases where cars are going and that allows us to
15 go back and indicate what trains those are moving
16 on. We'll look at -- in the case of moveable
17 bridges, we'll look at moveable -- moveable bridge
18 log. We have bridge tenders that will keep logs.
19 We'll look at that information. We'll look at
20 crew schedules, crew caller schedules. All that
21 information, we will use to create a picture of
22 what is actually moving along those lines.

1 To the railroads' credit, the railroad
2 is a very -- can be a very dangerous industry.
3 And the railroads have done a very good job of
4 instilling a culture of safety and accountability
5 on their networks. And part of that is keeping
6 information about what's operating and what's not
7 operating on the systems and when that's taking
8 place. So we will gather all of that sort of
9 information we can to create the best picture
10 possible about what's moving across that network.

11 CHAIRMAN OBERMAN: Do you, either
12 personally or people who are working with you on
13 an RTC study, do field interviews to get further
14 verification of yard movements and that kind of
15 stuff that's not in the .train file.

16 THE WITNESS: It is usually very rare
17 that we will have to go to that level. Usually,
18 we're able to get that sort of information from
19 this other source I talked about, yardmaster logs,
20 switch reports, that sort of thing.

21 It's much more rare to actually have to
22 go out and talk to people, because not -- people's

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1 memories can be faulty sometimes. But if we
2 actually have hard documents that we can go back
3 and look at the actual -- look at the actual
4 information, we prefer to use that.

5 CHAIRMAN OBERMAN: When you have done
6 field interviews, do you document it in some way
7 that's producible for somebody else reviewing your
8 work?

9 THE WITNESS: Yes. We always -- what we
10 try to maintain is who collected the data, the
11 time, the location, and the experience, especially
12 when we do such things as train -- we're doing
13 field reports or field analysis. We always note
14 what trains we see, what locomotive, where are the
15 locomotive members on the trains. So we can
16 always tie back our observations to some sort of
17 document that we might be able to receive either
18 from a customer or in case of like a litigation or
19 regulatory hearing like this, as through
20 discovery.

21 CHAIRMAN OBERMAN: The -- I don't have a
22 photographic memory of the -- all the testimony of

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1 Ms. Rosse and Ms. Sinkkanen.

2 Did you hear their testimony?

3 THE WITNESS: Yes. I did.

4 CHAIRMAN OBERMAN: I think the
5 impression was being given, I don't want to -- if
6 they didn't say this, I don't want to misstate
7 it -- that their manner of gathering this data was
8 consistent with the way they normally, or the way
9 this -- these studies are normally done or some
10 concept to that effect. I don't recall exactly.

11 From your perspective, your experience
12 with RTC modeling, have you ever seen an RTC model
13 in any context in which data was gathered, just
14 talking about these 1265 trains, the way Ms. Rosse
15 and Ms. Sinkkanen described the way they gather
16 the data.

17 THE WITNESS: No. Not exclusively.

18 CHAIRMAN OBERMAN: What do you mean
19 "exclusively"?

20 THE WITNESS: Where they relied just
21 upon some sort of undocumented conversation.
22 Usually, what we'd see is like I said, we'd see

1 detailed notes about who was spoken to when, what
2 trains were observed, that sort of thing.

3 CHAIRMAN OBERMAN: So -- okay. Thank
4 you. Appreciate that.

5 BY MS. BRACEY:

6 Q Have you -- have you reviewed the port's
7 rebuttal brief and supporting verified statement?

8 A Yes. I have.

9 Q Did you see any response to your
10 critiques of the port's evidence?

11 A We read the rebuttal -- rebuttal
12 verified statement from, I believe, Mr. Golden.

13 Q And did you see any response to your
14 critiques of the port's evidence?

15 A We saw Mr. Golden's response, but we
16 didn't see any additional data or anything we
17 could verify to support what he indicated.

18 Q And do you -- those -- did his response
19 cause you to revise your review of the evidence,
20 the port's evidence?

21 A No.

22 Q And why is that?

1 A Mr. Golden provided some critiques to
2 our reply analysis, but there was no verifiable
3 information or any support, including work papers
4 that we could go back and look at and audit and
5 verify.

6 Q Okay. I don't have anything further.

7 CHAIRMAN OBERMAN: Matt, are you
8 cross-examining Mr. Fapp?

9 MR. WARREN: Thank you, Mr. Chairman.

10 CROSS-EXAMINATION

11 BY MR. WARREN:

12 Q Mr. Fapp, can you hear me okay?

13 A Yes, sir.

14 Q Well, I apologize for having to do this
15 remotely. Let me know if you don't understand the
16 question or it's -- it's hard to hear me. I know
17 this isn't ideal.

18 So, Mr. Fapp, Mr. Crowley testified that
19 L. E. Peabody generally had access to the
20 documents and data that CSX and NS produced in
21 discovery; is that right?

22 A We received a large amount of discovery

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1 data. Whether it was all the data, I don't know.
2 We didn't receive any sort of listing of what was
3 asked for.

4 Q Okay. So you didn't see -- when you say
5 you didn't receive any listing of what was asked
6 for, do you mean that you -- you didn't see the
7 actual discovery requests?

8 A Yes.

9 Q Okay. Yeah. On sec- -- yeah.

10 A No. We didn't see the discovery
11 requests.

12 Q Okay. And so you didn't see the written
13 discovery responses?

14 A No. We did not see the discovery
15 responses.

16 Q Okay. Well, turning to what you did
17 have, the discovery production that you received
18 included track charts for the CSX lines over which
19 Amtrak proposes to operate; right?

20 A I don't recall seeing them in there. I
21 do know they were in Mr. Banks' and Guthrie's work
22 papers.

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1 Q Okay. Do you recall seeing track charts
2 for the Norfolk Southern lines in the -- in the
3 discovery you received?

4 A I don't recall specifically seeing those
5 in discovery.

6 Q Okay. Do you -- do you recall seeing
7 timetables in the discovery that was produced?

8 A Once again, I don't recall seeing the
9 timetables.

10 Q Okay. Mr. Fapp, did you review the
11 discovery that was provided?

12 A Extensively.

13 Q But you don't recall whether it had
14 track charts or timetables in it?

15 A I don't recall those specific documents.
16 I was looking at many things in discovery. I
17 don't recall those specific ones.

18 Q Okay. I'm going to -- I'm going to show
19 you a document that I showed Mr. Crowley. And I
20 think it's there in the room, so we'll have a
21 little -- CSX-NS 313, which I think was a document
22 we already used with Mr. Crowley. Give us a

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1 second to get that up on the screen and make sure
2 we've got a hard copy in front of you. And just
3 let me know once you have it, Mr. Fapp. If you
4 want to take a second to look it over, just tell
5 me when you're ready.

6 A All right. I have reviewed the
7 document.

8 Q Okay. Thank you. Have you seen this
9 document before?

10 A No.

11 Q Okay. Were you -- when you were
12 retained, maybe I should first ask, is it your
13 recollection that you were retained in October of
14 2021?

15 A Yes.

16 Q Okay. When you were retained, were you
17 provided any descriptions of the discovery that
18 had been produced?

19 A Not that I recall.

20 Q Okay. Not, like, any index showing you
21 where -- where the relevant documents were?

22 A No. At one point, we were just provided

1 access to some discovery database.

2 Q Okay. All right. So just directing
3 your attention to the bottom of that first page,
4 page -- page 1 of 4. You know, I'm just going to
5 read it, you know, "Today's September 13. CSXT
6 produced the Rail Traffic Control, RTC, files in
7 its possession, custody, or control associated
8 with the incomplete 2020/2021 RTC study performed
9 by HDR."

10 Were you aware that that was in the
11 discovery that you received?

12 MS. BRACEY: I'm just going to object,
13 because this document is not in evidence, and
14 counsel cannot lay an appropriate foundation given
15 that he said he hasn't seen it.

16 CHAIRMAN OBERMAN: It could be used for
17 cross-examination. You're not offering it into
18 evidence; are you?

19 MR. WARREN: I'm not offering it into
20 evidence at this time, Mr. Chair, but I may, given
21 that -- given that, you know, the witnesses seem
22 to not remember what was produced in discovery.

1 CHAIRMAN OBERMAN: Well, it seems to me
2 you have three options: Either you have to get on
3 the stand or Ms. Bracey has to get on the stand or
4 you could have asked for a request to admit.

5 So I don't know how you're going to get
6 it in if you haven't yet. We'll deal with that
7 when you offer it. I'm going to allow its use for
8 cross-examination.

9 A I'm sorry. Can you repeat the question
10 again?

11 BY MR. WARREN:

12 Q Sure. Were you aware that the discovery
13 that you had access to included the RTC files in
14 CSX's possession associated with the incomplete
15 joint RTC study that was being performed by HDR?

16 A Yes. We saw some of those files in
17 discovery.

18 Q All right. Thank you, and we can turn
19 to the next page, please. I'm going to direct
20 your attention to that first paragraph under
21 Interrogatory 8. And, in particular, the -- I
22 note that second sentence starting on the fourth

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1 line, "Beginning on September 2nd, 2021, CSX
2 produced track charts covering its rail lines
3 between New Orleans, Louisiana and Mobile, Alabama
4 for the years 2015 and 2021."

5 Does -- Mr. Fapp, does that refresh your
6 recollection that you had track charts in the
7 discovery?

8 A No.

9 Q Okay. Did -- okay. You don't remember.

10 Were you, at any point, given any -- I
11 understand you didn't see this letter, and I
12 understand you said you didn't have an index.

13 Were you given any kind of an
14 indication, pointing you in the right direction
15 towards where the relevant documents were in the
16 discovery?

17 MS. BRACEY: I'm just going to object on
18 the grounds that it's communications between an
19 expert and counsel.

20 CHAIRMAN OBERMAN: Well, you know, in my
21 view, those are admissible, but they -- the
22 railroads took the position that that couldn't be

1 disclosed, so I'm going to sustain the objection.

2 BY MR. WARREN:

3 Q Okay. Mr. Fapp, how many documents were
4 the -- did CSX produce in discovery? Do you have
5 somewhat of a ballpark?

6 A No.

7 Q Does 33,000 pages and files sound about
8 right?

9 A I really couldn't say. We -- we were
10 given access to discovery through an electronic
11 Internet interface, so I really don't know how
12 many documents were actually produced in that
13 database.

14 Q Okay. All right. Well, so in addition
15 to -- and I know you don't remember if there were
16 track charts and you don't remember if there were
17 timetables. Do you remember if there were bridge
18 tender logs, you know, in that discovery that you
19 had access to?

20 A No. I do not.

21 Q I couldn't quite hear you. Did you say
22 no? I'm sorry.

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1 CHAIRMAN OBERMAN: Didn't work.

2 A No. I did not.

3 Q So, I'm sorry. No, you don't remember?
4 Or no, you didn't?

5 A Sorry. I don't recall seeing those in
6 the discovery produced.

7 Q You do recall seeing RTC studies; right?

8 A There were various RTC files produced
9 that we saw.

10 Q Okay. And some of those were files that
11 were produced in -- that had been created in
12 conjunction with the 2020/2021 HDR study; right?

13 A Based on the description, that is
14 correct.

15 Q Okay. And there were also files related
16 to the 2016 HDR study of the line; right?

17 A I don't specifically recall the 2016
18 files.

19 CHAIRMAN OBERMAN: Try it again.

20 A Let me try that again. I do not recall
21 seeing any 2016 RTC files.

22 Q So it's fair to -- you do recall seeing

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1 multiple RTC files, correct; right?

2 A Yes.

3 Q Yes. Okay. And that included dot infra
4 files; right?

5 (Reporter clarification.)

6 CHAIRMAN OBERMAN: Matt, would you say
7 the word again? Dot infer?

8 Q Dot -- let me spell it. I-N-F-R-A.

9 A No. I did not see any dot infra files
10 produced in discovery.

11 Q Okay. Do you -- how much time did you
12 spend reviewing the RTC files that were produced
13 in discovery?

14 A Well, we've -- we first were retained in
15 October, and we sent a letter indicating some
16 missing information in mid-October, so probably,
17 about two weeks.

18 Q Okay. Well, let me -- this might
19 refresh your recollection. Just give me a moment
20 to make sure I've got the right --

21 MS. BRACEY: I'm going to object,
22 because he hasn't said that his recollection needs

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1 to be refreshed.

2 CHAIRMAN OBERMAN: Sustained.

3 MR. WARREN: Okay. Okay.

4 BY MR. WARREN:

5 Q So I'm going to show you a letter.

6 Mr. Fapp, you just referenced a letter, you said
7 that was sent. I'm going to -- I'm going to show
8 you a letter, and see if we're talking about the
9 same thing. I'm going to ask us to show Mr. Fapp
10 CSX-NS 072. This was previously used with
11 Mr. Crowley and we should have copies there in the
12 room.

13 CHAIRMAN OBERMAN: Matt, while the
14 copies are being distributed, do you have a
15 ballpark for your cross, sir?

16 MR. WARREN: I probably am get -- I
17 probably have another 90 minutes, so I have to
18 admit that we're going a lot slower at the
19 beginning than I thought we were going to be
20 going.

21 CHAIRMAN OBERMAN: All right. We
22 will -- I think I'd like to keep going for a

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1 little bit, but when you get to a natural breaking
2 point, we'll break for lunch.

3 MR. WARREN: Okay.

4 BY MR. WARREN:

5 Q Mr. Fapp, let me know when you've got
6 that in front of you.

7 CHAIRMAN OBERMAN: Matt, are there other
8 exhibits you're going to use with him that,
9 perhaps, they can at least be all given to the
10 board at the same time?

11 MR. WARREN: There may be. I didn't
12 think that I would need to be using exhibits for
13 questions about what was in discovery or not.
14 So -- so these are not -- these particular ones
15 aren't planned exhibits, but I -- we'll try to be
16 handing them out in advance when we can.

17 CHAIRMAN OBERMAN: All right. We don't
18 have this exhibit. It wasn't handed up to us.

19 MR. WARREN: Well, this -- well, Steven,
20 if you have copies that you can hand up, that
21 would be great. Mr. Chair, these are exhibits
22 that should be in your binders. These were --

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1 these were on the original exhibit list. This is
2 the CSX-NS joint exhibit lists.

3 CHAIRMAN OBERMAN: My hundred-pound
4 binders are on my floor in Chicago. So I'm
5 sure -- I'm sure you're right that we have them.
6 I just don't have them in front of me now. Why
7 don't we proceed.

8 MR. WARREN: And I don't have -- this --
9 very simple questions about this. It's just a
10 one-page letter. You know, there's a signature on
11 the next page, so the screen, hopefully, will
12 be --

13 BY MR. WARREN:

14 Q Mr. Fapp, do you have this in front of
15 you now?

16 A Yes. I do.

17 Q Okay. Is this the letter that you were
18 just referring to?

19 A No. I have not seen this letter.

20 Q Okay. Is there a -- so you said that
21 there was a letter in mid-October asking for
22 additional information. This isn't the letter?

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1 A No. It was a letter that we had sent to
2 counsel asking for additional information.

3 Q Okay. Okay. All right. All right.
4 Well, let's move on. So in your review of the
5 discovery, you're aware that it included OS staff
6 as well?

7 A Yes. We saw some OS data.

8 Q And it included, it was actually
9 complete OS data from CSX for 2019 and 2020; isn't
10 that right?

11 A I don't know if it was complete or not.
12 I did say we did see some OS data.

13 Q You did see that. And OS data, correct
14 me if this description is wrong, OS data is
15 essentially train data that captures when trains
16 are moving through control points; right?

17 A I believe that's how the -- CSX
18 described it, yes.

19 Q Okay. CSX also produced train profile
20 data, didn't it, in discovery?

21 A I don't recall seeing train profile
22 data, I do recall seeing OS data.

1 Q Okay. And as part of the RTC files that
2 had been produced, they were .train files;
3 right?

4 A Yes. We did see some .train files.

5 Q Okay. So let's just assume that you had
6 the track charts that -- that were requested in
7 discovery. If you have the track charts and you
8 had dot infra files and you had timetables, don't
9 you have the basic building blocks you needed to
10 build the infrastructure for an RTC network?

11 A Well, it depends upon what is shown in
12 what you call a "dot infra" file. There are
13 infrastructure files used in the RTC, including
14 such things as rows, links, equations, TOC files.
15 Those can be used to develop an RTC model.

16 Q All right. Mr. Fapp, did you watch the
17 testimony of Mr. Crowley?

18 A No. I was out of the country when
19 Mr. Crowley testified.

20 Q Okay. All right. So you don't know
21 what I'm talking about when I'm talking about a
22 "dot infra file"?

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1 A As I indicated, I've never seen a dot
2 infra file produced in this case. It may be -- it
3 may be an old RTC terminology, but the current RTC
4 doesn't use the dot infra file, they use different
5 infrastructure files.

6 (Interruption.)

7 Q -- just talk to Mr. Crowley about that.

8 CHAIRMAN OBERMAN: Why don't we -- whose
9 phone is ringing?

10 MR. WARREN: I don't believe that's
11 mine. For once, that's not a distraction on my
12 end.

13 (Off the record.)

14 CHAIRMAN OBERMAN: Maybe to save time --
15 Matt, if you're still on, we'll break for lunch
16 and get this problem solved. Matt, are you there?

17 MR. ATKINS: Matt may not be able to
18 hear you.

19 CHAIRMAN OBERMAN: All right. So we're
20 going to come back at 1:10. All right. We'll
21 come back at 1:10, and we'll try to move -- move
22 fast.

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1 Ms. Bracey, do you have any
2 estimation -- I know you don't -- neither am I --
3 for your last witness' direct testimony?

4 MS. BRACEY: That's a question for
5 Ms. Amunson. I'm happy to go ask her.

6 CHAIRMAN OBERMAN: Well, she's right
7 there -- just so we can plan.

8 MS. AMUNSON: I think it's an hour to 90
9 minutes.

10 CHAIRMAN OBERMAN: Okay. All right.
11 We're going to -- we're going to get there, okay.
12 Ten after 1:00, we'll be back. Thank you.

13 (Off the record.)

14 CHAIRMAN OBERMAN: All right. We are
15 back on the record. Roberta, will you tell us
16 when you've started recording. And Matt, I assume
17 you're out there in the ether.

18 MR. WARREN: I'm here, Mr. Chairman.

19 CHAIRMAN OBERMAN: Roberta let us know.

20 VOICE: We're recording.

21 CHAIRMAN OBERMAN: All right. Matt,
22 proceed.

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1 BY MR. WARREN:

2 Q So, Mr. Fapp, after you were retained
3 and you reviewed the discovery, did you think that
4 any additional discovery was needed?

5 A Additional discovery to do what?

6 CHAIRMAN OBERMAN: You know, Mr. Fapp, I
7 think you could just hold down, because I don't
8 think you exclude the Zoom mic. So maybe, if your
9 finger doesn't get tired, you can put it down and
10 hold it down.

11 THE WITNESS: I'll give that a shot.
12 I'll have to try it.

13 A Repeat -- additional discovery to do
14 what?

15 Q Any -- any additional discovery to,
16 let's start with, to do a potential RTC model.

17 A We were asked to, by counsel, to review
18 and comment upon the RTC model prepared by
19 Mr. Banks and Guthrie.

20 Q So if that's all you were doing, why did
21 you review the discovery?

22 A Well, you see what's in there. And you

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1 want to know what's available and what's not. See
2 what they may use, what they may potentially use
3 in their -- in their case.

4 Q Did you think there was anything in
5 there that you didn't see that you would like to
6 have seen to do your work?

7 A To evaluate Mr. Banks' and Guthrie's
8 model? No.

9 Q Okay. Did you think that any
10 depositions should be taken?

11 A In my experience in working in front of
12 the board, I've never heard of a deposition being
13 taken in the 24 years I've been working for the
14 board.

15 Q Okay. Did you ask -- if any, parts of
16 the line to adjust operations?

17 A I don't recall asking for that.

18 Q Okay. So you didn't want to high-rail
19 the line, for example?

20 A I don't know if it was necessary to
21 evaluate Mr. Banks' and Guthrie's model before --
22 before the fact.

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1 Q Okay. Did -- have you ever high-railed
2 any part of the CSX and NS lines we've been
3 talking about in this case?

4 A No.

5 Q Have you ever observed operations on the
6 Back Belt in New Orleans?

7 A Yes.

8 Q When was that?

9 A Oh, it must have been 15 years ago.

10 Q Okay. Have you ever been to CSX in
11 Gentilly Yard?

12 A Yes. Fifteen years ago.

13 Q Okay. And have you been to NS's yard?

14 A I think about the same time frame.

15 Q Busy trip 15 years ago?

16 A To say the least.

17 Q Have you ever been to Choctaw Yard?

18 A No.

19 Q Okay. How about Sibert Yard?

20 A No.

21 Q Okay. So when -- when CSX and NS filed
22 their opening evidence on November 3rd, were you

1 provided with the work papers for that evidence?

2 A Yes. Work papers were provided.

3 Q Okay. All right. So I'm going to show
4 you what has been previously marked as CSX-NS 102,
5 and we'll get that up on the screen. We should
6 have a hard copy there for you.

7 MR. WARREN: And I'll note as this pops
8 up, Mr. Chairman, there is a confidential stamp on
9 this, but I think we previously made this public,
10 and so this document -- we can stay in the public
11 room for this one.

12 CHAIRMAN OBERMAN: Thank you.

13 BY MR. WARREN:

14 Q Mr. Fapp, let me know when you've got
15 this in front of you when you have a chance. I'm
16 not -- we're not going to go through the whole
17 seven pages in detail. I'm just going to ask
18 generally if you recognize it.

19 A Yes. I do have it and I do recognize
20 it.

21 Q Okay. And so this is an index of the
22 RTC modeling work papers provided in the opening

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1 evidence; right?

2 A That's what it appears to be, yes.

3 Q Okay. And there's a section that CSX
4 and NS provided input; correct?

5 A Okay.

6 Q And that list of CSX inputs includes an
7 entry for OS data; right?

8 A Yes.

9 Q And for train profile data?

10 A Yes.

11 Q And for dispatch data?

12 A Yes.

13 Q Okay. You can -- you can set that
14 aside, if you'd like, Mr. Fapp.

15 So, Mr. Fapp, back in December, you
16 wrote in your reply verified statement that you
17 believe that 1,265 trains in the 2019 .train
18 file did not correspond to real-world trains.

19 Do you remember that?

20 A Yes.

21 Q Yes. And, in fact, I think you
22 testified on direct that you believe that those

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1 1,265 trains had no counterpart to the train data.

2 Do I have that right?

3 A We said many of them did not. They
4 were -- I think I also indicated that there were
5 trains that may be in the train data, but were
6 modeled differently than they were in the train
7 data.

8 Q Let's -- let's take a look at what you
9 said. Let's look at -- we can, we can keep it
10 public, so I'm going to ask, maybe, for some help
11 in the room, because I have a highly confidential
12 version of your evidence, which is JE 31X, but I
13 think we can just use the public version.

14 CHAIRMAN OBERMAN: We -- I think we
15 can --

16 MR. WARREN: So we can -- I'm sorry.
17 Can we get that in front of the witness, JE 31X?
18 Here, if you give me a moment, I can tell you what
19 the public number is.

20 CHAIRMAN OBERMAN: Matt, we -- we have
21 it in the booklet that Amtrak was using with
22 Mr. Fapp.

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1 MR. WARREN: Okay. Excellent, okay.

2 Good.

3 CHAIRMAN OBERMAN: It's JE 32X, I
4 believe.

5 MR. WARREN: I should know our numbering
6 conventions one day soon, but I still don't so...

7 BY MR. WARREN:

8 Q But if I could ask you to turn to
9 page 15 of -- of your report, Mr. Fapp, and,
10 again, it's -- it's page 15, in the original
11 numbering and it's page 19 on the Bates numbering
12 at the bottom.

13 A Yes.

14 Q Okay. And just directing your attention
15 to that -- to that top paragraph and -- yeah, I
16 think, we -- we've made the 1265 public, but that
17 second sentence in that top paragraph,
18 "Specifically, Banks-Guthrie modeled, blank, more
19 CSX and NS trains than the actual CSX and NS train
20 data showed moving during the peak period."

21 A Yes. That's what it says.

22 Q Right. And that's -- that's still your

1 opinion; right?

2 A Yes.

3 Q And just looking at that paragraph under
4 that one and -- and I'm -- if I may, I'm just
5 going to -- I can make the blanks in that public,
6 if somebody is looking at the highly confidential
7 version, you can tell me if I'm doing it
8 accurately.

9 "In total, RTC simulations submitted by
10 Banks Guthrie include that a blank is 1758
11 simulated trains in place of the 493 real world
12 peak period trains provided by CSX and NS.
13 Without explanations, Banks Guthrie increased the
14 number of real world freight trains provided to
15 them as supporting evidence by 257 percent."
16 That's still your opinion; right, Mr. Fapp?

17 A Yes.

18 Q When you did this analysis, analysis
19 described on this page and on this paragraph,
20 which purported to compare, you know, identify
21 1265 trains in the model that -- that, quote --
22 you know, that were more than the, "actual, NS --

1 CSXT and NS train data showed moving during the
2 peak period."

3 Again, quoting from that top paragraph.
4 When you did that analysis, the only thing you did
5 was you compared the .train file for the 2019
6 base case with train profile data; right?

7 A Yes.

8 Q Okay. So if it wasn't in the train
9 profile data, you assumed that it was not in the
10 train data; right?

11 A If it wasn't in the profile data, which,
12 Mr. Banks and Guthrie used, we didn't believe it
13 was in the data; correct.

14 Q Okay. And you did that, even if the
15 train was in the OS data; right?

16 A We relied upon the data that Mr. Banks
17 and Guthrie used to develop, as we could tell from
18 their work papers, the train file.

19 Q Okay. So I'm going to ask again,
20 because I don't think you answered me.

21 If it wasn't in the train -- if the
22 train was in the OS data, but not in the train

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1 profile data, you didn't count it; right?

2 A Correct.

3 Q Okay. And if the -- if the train was
4 represented in the dispatch data, but not in the
5 train profile data, you also said that wasn't a
6 real train; right?

7 A If it was not in the work paper that you
8 used, we did not include it; correct.

9 Q Okay. But the -- as we just saw, the
10 work papers had train profile data and OS data and
11 dispatch data; right?

12 A That was included -- that was included
13 in the work papers, but we didn't see where they
14 were using that to develop a train file.

15 Q Okay. So, Mr. Fapp, I know you were out
16 of the country, so you didn't get to see it, but
17 previously, Mr. Crowley testified that he believed
18 that there should be only eight yard trains
19 included in the two-week RTC model period.

20 Is that your opinion as well?

21 A Depending upon how you define "eight
22 trains," yes.

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1 Q Okay. Well, could we take this -- let's
2 actually step back one page in your -- well, I
3 guess -- you know, I'm going to ask you if you can
4 explain your last answer. I'm not sure I
5 understood it, depending on how you define "eight
6 trains."

7 A Sure. The -- yard trains usually
8 operate under a -- a signal, a single-train symbol
9 in this case, for example, Y190 or that sort of
10 thing, and that train symbol or train may operate
11 every day, all day, but it is a single -- single
12 train. So depending, you know, you may have that
13 train, that Y190, operating continuously over
14 months and so you say that's a train that's
15 operating.

16 MR. WARREN: Okay. So, Mr. Chairman, at
17 this time, we're going to look at some work
18 papers, so I'm going to ask to move into the
19 highly confidential room.

20 CHAIRMAN OBERMAN: Are we going to go
21 back and forth or can we do it all in one?

22 MR. WARREN: We are going to do it all

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1 in one. My one caveat is that I'm going to start
2 high confidential and then I have a little bit
3 that's just confidential and then we'll be back to
4 public, but I'm going to try to keep it all
5 together so we don't have to keep going back and
6 forth.

7 CHAIRMAN OBERMAN: Okay. So we're going
8 to shift to the confidential breakout room.

9 MS. AMUNSON: Highly confidential.

10 MR. ATKINS: Excuse me, Chairman, it's
11 highly confidential.

12 CHAIRMAN OBERMAN: Okay, "highly
13 confidential," and I'm going to again rely on
14 counsel to ensure that only the people that are
15 allowed in are in this room or are on the Zoom.
16 So you're on your own to protect yourselves. We
17 don't know who those people are.

18 And, Matt, you'll tell us when we get
19 there; right?

20 (Off the record.)

21

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(Confidential portion concluded.)

17

CHAIRMAN OBERMAN: Proceed. Matt?

18

Matt? You may be muted, but we're ready to

19

proceed. Are you there?

20

MR. WARREN: I am here. I couldn't hear

21

you a moment ago.

22

CHAIRMAN OBERMAN: All right.

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1 MR. WARREN: Maybe you're talking to the
2 other Matt.

3 CHAIRMAN OBERMAN: No. I'm talking to
4 you.

5 MR. WARREN: Okay.

6 BY MR. WARREN:

7 Q All right. So -- so, Mr. Fapp, in your
8 opening testimony, you had a slide, a
9 demonstrative you prepared and I know there's a
10 pending objection for it, where you were comparing
11 the speed degradation shown by the RTC model with
12 what you said was the range of system average
13 train speed differences between CSX and NS.

14 Do you remember that?

15 A Yes.

16 Q So that's -- and I note that that
17 underlying analysis of, for example, 2019 CSX
18 system average train speeds, that there's not a
19 work paper anywhere in your -- either
20 supporting -- either of your verified statements
21 that has that calculation; is there?

22 A I don't recall if we put one in or not.

1 Q Okay. Well -- and I also had a
2 question. You said there, that your Schwartz (ph)
3 was 724 reported monthly train speeds, but 724 is
4 reported as weekly; isn't it?

5 A The data we pulled off from the -- I
6 think from the board's website, it was monthly. I
7 think that's what -- I think that's what's shown
8 on the website.

9 (Reporter clarification.)

10 Q So for 2019, you had calculations here
11 arranged for 2019 CSXT system average train
12 speeds, and my question is: Is that just the
13 difference between the lowest month or week and
14 the highest month or week?

15 A Yes.

16 Q Okay. So what was the lowest -- what
17 was the lowest month or week in CSX 2019?

18 A I don't recall the specific month off
19 the top of my head.

20 Q Okay. So then -- then I can't ask you
21 what was happening on the network in that
22 particular week?

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1 A Yeah. I don't recall the -- I don't
2 recall the specific high-lows.

3 Q Okay. Same question for Norfolk: What
4 was the lowest speed week for Norfolk in 2019?

5 A Once again, I don't recall the specific
6 highs or lows.

7 Q Okay. So, I mean, in the real world, a
8 lot of different factors can affect railroad train
9 speeds; right?

10 A Yes.

11 Q Right. So weather is one of them?

12 A Weather can have an impact?

13 Q Yeah. Congestion on other railroads.

14 A There's multiple factors impacted.

15 Q Yeah. Yeah. So I mean, week to week or
16 month to month, there's a lot of different factors
17 that can affect the railroad's total average
18 velocity; right?

19 A Yes.

20 Q All right. But when you're running an
21 RTC simulation, the only difference between, for
22 example, the 2019 base case and a 2019 passenger

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1 case is adding passenger trains; right?

2 A In this case, not necessarily.

3 Q What do you mean "not necessarily in
4 this case"?

5 A Because Mr. Banks and Guthrie used a
6 randomized process. You can have different
7 dispatch times, different dwell times in the
8 different models. So to compare one model to the
9 other model, they may have different factors
10 coming into play. So you can't -- it's just not a
11 simple addition of passenger trains. It's
12 passenger trains, plus the whole randomized
13 process.

14 Q So -- so you don't think -- I mean, at
15 any point, in your verified statement, did you
16 argue that there wasn't a proper comparison
17 between the 2019 base case, and the 2019 passenger
18 case, because of this -- you know, just the fact
19 that you are running different seeds to run an RTC
20 model?

21 A No. We're just pointing out the fact
22 that there are differences between the cases. You

1 have different dispatch times, different dwell
2 times. So it's not a -- you look in the 2019 P.
3 case, a train may not have the same dispatch time
4 as a 2019 F. case.

5 Q Well, I mean, because the whole point is
6 you're running different seeds and you're taking
7 the average of the 30 seeds; right?

8 A As prelude to running real world data,
9 yes.

10 Q Well, but, fundamentally, you're not
11 going to -- there's not going to be an assumption.
12 You have a 2019 base case and 2019 passenger case.
13 There's not different assumptions in the passenger
14 case about what trains are in the model, or, you
15 know, there's not different weather assumptions.
16 There's not different assumptions about other
17 train congestion, none of the things that actually
18 change things from the real world. That's the
19 whole point of using the RTC simulation; right?

20 A It is to develop, you know, the capacity
21 of the lines, so if you're not changing -- you may
22 not be changing the assumptions, but you're

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1 changing the inputs.

2 Q Right. Well, but the input, the major
3 input that changed between the 2019 base case, and
4 the 2019 passenger trains is adding the 24
5 passenger trains; right?

6 A That is the major change.

7 Q All right. So you also asserted on your
8 direct testimony that you didn't think that the
9 increase in re crews, shown by the RTC model was
10 significant; right?

11 A Yes.

12 Q All right. And whatever happens when
13 the train is delayed to the point -- of service;
14 right?

15 MS. BRACEY: Matt, you're breaking up a
16 bit. You just broke up a bit. Oh, I'm sorry.

17 BY MR. WARREN:

18 Q Let me -- maybe I need to slow down,
19 too, so I'll do my question again. So a re crew
20 happens when a train is delayed to the point that
21 the crew has exceeded lawful hours of service;
22 right?

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1 A Or it may recrew before they've exceeded
2 the hours of service, but yes.

3 Q Yes. Fair enough. So -- at that point,
4 the train has to park, you've got to taxi a new
5 crew, taxi out the old one before the train can
6 move; right?

7 A Generally, that's how it works.

8 Q Okay. So, I mean, a recrew is a
9 situation where the train is first delayed enough
10 to exceed the hours of service, and then massively
11 delayed again during the recrew process; right?

12 A Not necessarily. I've seen situations
13 where dispatch will know crews are going to die,
14 so they will have a recrew positioned.

15 Q Yeah. Sometimes, sometimes they might
16 not be able to handle it sufficiently, but my
17 question is just: A recrew is a situation that
18 has a substantial impact of the fluidity of the
19 line; right?

20 A It depends. It may not.

21 Q Okay. So for -- if there's a local
22 train that gets a recrew, it almost guarantees

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1 that there's going to be a missed or delayed
2 switch; right?

3 A Once again, no.

4 Q So you think that there's -- could you
5 explain that, please? I know that's one of the
6 questions I'm not supposed to ask on cross, but
7 I'm curious.

8 A Sure. You could have a crew that -- a
9 local crew working out of the yard going to switch
10 industries, and maybe there was a delayed industry
11 or something, that finished its switches, but
12 before it can get back to the yard, it may -- they
13 may determine it might die out there. So they may
14 recrew after doing all the switches.

15 Q Correct. But you would agree that in
16 most situations if a local train crew, you know,
17 exceeds hours of service, there's going to be a
18 missed or delayed switch involved in that; right?

19 MS. BRACEY: Objection. Asked and
20 answered.

21 CHAIRMAN OBERMAN: He may answer.

22 A Once again, I -- based on my experience,

1 I haven't seen that happen.

2 Q Okay. So you also complained -- I'm
3 sorry for that characterization.

4 You also noted in your -- in your direct
5 testimony that you thought that the infrastructure
6 and the RTC model wasn't modeled accurately;
7 right? Do you remember that?

8 A Yes. We noticed some instances where
9 the infrastructure in the RTC model differed from
10 what we saw in the real world.

11 Q Okay. So one of those you identified
12 was the Montgomery, Alabama Yard; right?

13 A Actually, in the Montgomery -- in the
14 Montgomery -- am I on?

15 CHAIRMAN OBERMAN: No.

16 A The light's on.

17 In the Montgomery, Alabama Yard, what we
18 note is that you had yard tracks that weren't
19 being utilized, not necessarily that they weren't
20 input properly.

21 Q And I think we established this in your
22 colloquy with the Chair, but Montgomery Yard,

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1 obviously, is not part of the Gulf Coast line
2 under which Amtrak would operate; is it?

3 A No. It's downstream or upstream from
4 that line.

5 (Reporter clarification.)

6 CHAIRMAN OBERMAN: Matt, you have to
7 repeat the question about the mileage. Court
8 reporter didn't get it.

9 BY MR. WARREN:

10 Q All right. How far is Montgomery from
11 the Gulf Coast line?

12 A I don't recall off the top of my head
13 the distance between Montgomery and Mobile.

14 Q Okay. And the other example that you
15 had in your direct testimony was a section of KCS
16 track in Gulf Port; right?

17 A Yeah. That was included in one of our
18 demonstratives.

19 Q Right. And Amtrak doesn't propose to
20 operate under that KCS line in this case; right?

21 A Not that I know of.

22 Q And what you pointed out is you said the

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1 RTC model, through the KCS line is single track
2 rather than double track; right?

3 A Yes.

4 Q Okay. Did you, you know, put a double
5 track into the RTC model and run it to see what
6 impact it might have?

7 A No. We do not.

8 Q Okay. And you know, as an experienced
9 RTC modeler, I mean a KCS track is on the very
10 edge of the model; right?

11 A As it is presently modeled, yes.

12 Q Right. And so that's where trains are
13 going be to leaving the RTC now; correct?

14 A Well, that seems to be an interchange
15 point between CSX and KCS.

16 Q Yeah. And so what that means for RTC
17 modeling purposes is that KCS trains on that track
18 are always going to -- RTC is always going to move
19 them right out of the model to disappear; right?

20 A Yes. That's one of the criticisms of
21 the RTC model, that trains just sort of disappear
22 at the endpoints.

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1 Q Right. But in this scenario, that means
2 there's not going to be a situation where RTC is
3 going to be holding KCS trains on that single
4 track because at the edge of the track, the RTC is
5 just going to let them disappear; right?

6 A Well, I think the issue there is that
7 the -- the trains are dwelling on the CSXT line
8 and not on the KCS track.

9 Q Right. Well, my -- but they're not
10 really going to be dwelling, right, because
11 it's -- the KCS train's on the edge of the model.
12 So once they hit the edge of the model, they're
13 going to disappear; they're not going to be helped
14 (ph); right?

15 A The KCS trains are not, but I believe
16 the CSXT trains dwell on that CSXT line at that
17 location.

18 Q Yeah. That's true, but -- but your
19 criticism is about the modeling of the KCS track;
20 right?

21 A Our criticism was about the interchange
22 between CSX and KCS, and how the trains are

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1 dwelling on the CSXT line, when they could move it
2 up to the KCS line. These are --

3 Q So I'm not sure -- but for K -- so your
4 criticism, and, I'm sorry, this is being
5 demonstrative. I just don't recall from your
6 verified statement that you thought that CSX
7 trains should be moving onto the KCS line?

8 A We have -- there's an interchange there
9 between -- there's an interchange there between
10 CSX and KCS at that location. They're showing the
11 interchange based on information we saw taking
12 place on the CSXT line, instead of the trains
13 moving up or cars moving up to the KCS line.

14 Q Okay. So you think that if you -- if it
15 were a double track with the KCS line, that might
16 be a new place for an interchange to happen?

17 A We can't tell from the information
18 that's presented about how that interchange takes
19 place. It's not in the -- any work papers, but
20 you see in the double track there, that would be
21 the logical thing.

22 Q But you didn't actually model that

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1 change; did you?

2 A No. We did not.

3 Q Okay. And so the two, you know, the two
4 demonstratives that you presented to the board
5 today about infrastructure not being correct, one
6 of them was for Montgomery, Alabama, some distance
7 off the line and the other was KCS track; right?

8 A That's what we talked about today; we
9 also included other instances in our verified
10 statement.

11 Q Right. And all of those, and many of
12 those instances were directly rebutted in to the
13 reply -- I'm sorry -- rebuttal evidence; isn't
14 that right?

15 A I believe, some. I don't recall all of
16 them being rebutted.

17 Q Okay. You did not -- you didn't go back
18 and complain about them either. I'm sorry for the
19 language. You didn't go back, and, you know, say
20 that you disagreed with any of that in your
21 surrebuttal; did you?

22 A No.

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1 Q Okay. All right. You also -- you had
2 one of your demonstratives was a slide where -- I
3 think you -- you represented something from, you
4 know, the Dinger report that had percentages and
5 you put the raw numbers next to that; right?

6 A We --

7 MS. BRACEY: It would be helpful to know
8 which demonstrative, Matt.

9 MR. WARREN: You know, I don't mind if
10 we -- so, let's see, you probably have it in front
11 of you or, it would be -- well, I don't have a
12 good number in here. It's the last page of
13 Exhibit 5. At the top, it's titled "Restated
14 Table 19."

15 CHAIRMAN OBERMAN: It's in your book.
16 Do you have it, Mr. Fapp?

17 THE WITNESS: Thank you.

18 MS. BRACEY: Tab 4.

19 THE WITNESS: Yes. I do.

20 BY MR. WARREN:

21 Q Okay. And am I right that, you know, to
22 make the point of this slide, you thought that the

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1 actual numbers were more informative than
2 percentages; right?

3 A Generally, when reporting percentage
4 change it's usually wise to include the actual
5 numbers you have to put it in some sort of
6 context.

7 Q Right. You're aware that your
8 colleague, Mr. Crowley, used percentages when he
9 conducted an RTC analysis for Methodus(ph)
10 submitted to this board in another proceeding;
11 right?

12 A My recollection is Mr. Crowley did not
13 calculate percentage change, but he actually
14 calculated, I believe it was the 12 percent, which
15 is a different calculation.

16 Q Okay. So you're not aware of
17 Mr. Crowley explaining in that proceeding that he
18 thought that using delayed percentage was a
19 valuable indicator of congestion and better than
20 just looking at the raw numbers; right?

21 MS. BRACEY: Objection. Foundation.

22 CHAIRMAN OBERMAN: I think he said he

1 didn't hear Mr. Crowley's testimony, Matt, so
2 let's proceed.

3 MR. WARREN: Okay. Have you read
4 Mr. Crowley's verified statement that he filed for
5 Metro.

6 A I reviewed parts of it before it was
7 filed, but I don't think I ever reviewed the
8 entire statement.

9 Q Okay. Did you have any role in the
10 preparation of that statement, then?

11 A I was asked by Mr. Mohern and
12 Mr. Crowley to do some small research on the
13 case -- the KCS capacity model, but other than
14 that, I was not involved in that actual
15 proceeding.

16 Q And so is it fair to say that that
17 research you did contributed to the -- you know,
18 the findings that are -- or the discussion that
19 Mr. Crowley or Mr. Mohern had in their verified
20 statement about the -- you know, what you, I
21 think, described as a CP KCS capacity model?

22 A I don't recall what was eventually put

1 in there. They just asked me to look at the
2 simple spreadsheet model that CP and KCS had
3 presented.

4 Q Okay. Did you contribute anything to
5 the criticisms about that capacity model as being
6 the kind of mathematical model that the board
7 typically uses as inferior to RTC?

8 A I don't recall if any criticisms were
9 put in there. I was asked to just evaluate what
10 were the inputs into the model and how -- what
11 were the calculations. I don't recall doing any
12 sort of criticism.

13 Q So I'm going to -- Mr. Fapp, you -- you
14 cosponsored the RTC evidence, the Dupont, the
15 Norfolk Southern Rail case; right?

16 A Yes.

17 Q Okay. And are you aware that in the
18 Dupont -- RTC model in part, because NS used to a
19 representative average week rather than a
20 replicative week.

21 (Interruption.)

22 CHAIRMAN OBERMAN: Matt, you have to

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1 restate the question, part of it blanked out.

2 MR. WARREN: Okay. I will try to
3 remember it.

4 BY MR. WARREN:

5 Q So you are aware that Dupont criticized
6 Norfolk -- Southern in part because NS used a
7 representative average week rather than a
8 replicative week?

9 CHAIRMAN OBERMAN: It's the same
10 problem, Matt. The Zoom doesn't like this
11 question, but try it again.

12 Q Okay. I will try it very slowly.
13 Norfolk Southern versus Dupont case, one
14 of Dupont's criticisms of Norfolk Southern's RTC
15 model was that Norfolk Southern used a
16 representative average week instead of using a
17 replicative peak week?

18 CHAIRMAN OBERMAN: Can you answer that
19 if you understand the question.

20 MS. BRACEY: Sir, I don't think the
21 court reporter has it.

22 CHAIRMAN OBERMAN: All right. Matt,

1 you've got one more chance.

2 MR. WARREN: Mr. Chairman, why don't I
3 make it -- I was going to try to do this without
4 using a document to go faster, but it sounds like
5 maybe it's faster for me to just use a document.

6 CHAIRMAN OBERMAN: No, I think if you
7 just pause for a second before you start asking,
8 then we'll get the whole thing.

9 BY MR. WARREN:

10 Q Okay. All right. I'm pausing now and
11 now I'm starting.

12 Mr. Fapp, are you aware that in the
13 Dupont v. Norfolk Southern case, one of Dupont's
14 criticisms of Norfolk Southern's RTC model was
15 that Norfolk Southern used a representative
16 average week rather than using a replicative peak
17 week?

18 A I don't recall. It was a while ago. I
19 don't recall that specific part.

20 Q All right. So, at this point,
21 Mr. Chairman. I apologize. I am going to -- to
22 use the documents. I think, Steven, you know --

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1 you know what -- if we can just -- if we can just
2 hand out Mr. Fapp's verification from the Dupont
3 case and the Dupont rebuttal operating evidence,
4 Section 2.C, and just for the record, this is
5 marked as -- one of these documents is -- it's
6 going to be CSX-NS 371. Just a one-pager. One is
7 going to be CSX-NS 172, and that's going to be
8 longer.

9 And, Mr. Fapp, I'm going to start you on
10 the short one, if that helps?

11 MS. BRACEY: We don't yet have the short
12 one, Matt.

13 MR. WARREN: Okay. I will be -- I will
14 be patient.

15 CHAIRMAN OBERMAN: We don't have it up
16 here. Please, Matt.

17 A Yes.

18 Q Mr. Fapp, focusing you first on CSX-NS
19 371, is that your signature on this page?

20 A Yes. It is.

21 Q Okay. And this is a -- you know, the
22 verification from -- well, you know, this is

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1 the -- is this the typical verification in the
2 standalone cost case of portions of the evidence?

3 A Yes.

4 Q Okay. And you -- and did you -- and I
5 apologize, I did not realize that this page
6 doesn't say, oh, it does say "Dupont" on it.
7 There you go. I was concerned it didn't say
8 Dupont on it, but this was the verification you
9 signed in conjunction with Dupont's rebuttal
10 evidence?

11 A Yes.

12 Q All right. So now let's look, and I --
13 and I just note there that you sponsored a few
14 different pieces of the evidence, and that
15 included the parts of 3C, the operating plan
16 evidence related to RTC modeling; right?

17 A Yes. The RTC model; correct.

18 Q Okay. All right. So now I'm going to
19 ask if you can set 371 aside, and, let's take a
20 look at 372, which is the -- you know, this is the
21 public version. The public version of Dupont's
22 rebuttal evidence in the Dupont BNSF rate case on

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1 April 15th, 2013. And, obviously, it's very long,
2 Mr. Fapp. I am only going to ask you about page
3 3C 108.

4 A Yes. I have it, thank you.

5 Q Okay. And am I -- my first question --
6 Mr. Fapp, does this refresh your recollection that
7 in the Dupont case, Dupont criticized Norfolk
8 Southern for using an average week in their RTC
9 modeling rather than a replicative peak week?

10 A Yes.

11 Q Right. In fact, you said that this
12 decision alone invalidates NS's RTC, model; right?

13 A That's what the document says.

14 Q Right. Well, this is the evidence that
15 you -- this is the part of the evidence that you
16 sponsored; right?

17 A Yes.

18 Q Okay. And the STB ending up accepting
19 Norfolk Southern's RTC model; right?

20 A I think they accepted the operating
21 plan, therefore, I think they used the RTC model.

22 Q All right. And in doing that, the STB

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1 specifically rejected your argument that NS was
2 wrong to model an average week instead of a peak
3 week; right?

4 A I can't say that. I don't recall any
5 specific language like that from the decision.

6 Q Okay. And your -- is it fair to say
7 that the traffic route in Dupont was largely
8 merchandise traffic?

9 A I don't recall the specific mix. It was
10 modeled, almost virtually, the entire NS system.

11 Q Okay. Does -- does merchandise traffic
12 have the same, you know, sort of peak period
13 variability as, you know, coal only -- star --

14 (Interruption.)

15 A I'm sorry. You broke up.

16 Q Oh, okay. I'm sorry. Okay. Does
17 merchandise traffic typically have the same kind
18 of peak period variability that coal traffic does?

19 A It will depend, I guess, upon the
20 railroad in the system.

21 Q Okay. You would agree that here the
22 traffic on the Gulf Coast line, is largely

1 merchandise traffic; right?

2 A Based on what we've seen so far, I would
3 say most of the traffic is manifest merchandise.
4 Some coal; some grain.

5 Q Okay. Thank you. We can -- we can take
6 that document down. Mr. Fapp, I'm going to ask
7 you to look at another one in one of your exhibits
8 or Amtrak's exhibits, which is Amtrak Exhibit 3E.
9 It should be. Let's get those handed out, if we
10 don't have them already. Just let me know when
11 you're ready.

12 A Yes. I have the document.

13 Q Okay. Can you just review and let me
14 know if you recognize this document?

15 A This appears to be a copy of the
16 transportation sector key indicators forecast from
17 the EIA's AEO '21 reference case.

18 Q Okay. I'm sorry. I think I lost the
19 first sentence of your response.

20 A Let me try again. This appears to be
21 the printout of the transportation sector key
22 indicators and delivered energy consumption

1 forecast from the EIA's AEO 2021 reference case.

2 Q Okay. And in this case, you have
3 already -- I know we've been talking a lot about
4 the 2019 model, not 2039, but you've argued that
5 the EIA data is the best way to -- to project
6 future freight growth; right?

7 A I believe we argued that it was the
8 document that supported that versus the -- the
9 forecast. There were no forecasts produced that
10 we could audit from the Banks-Guthrie model.

11 Q But you argued that the EIA, kind of,
12 data, that the EIA analysis was the right metric
13 to be looking at, or an accurate metric to be
14 looking at to compare it to look at freight
15 growth?

16 A Well, yes, it's -- the board has
17 historically preferred using independently
18 produced forecasts from the EIA in their processes
19 of cases.

20 Q Okay. And then could you just look at
21 this document and could you point out for us, you
22 know, where it is showing, you know, freight --

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1 you know, freight rail growth. That wasn't a
2 great question. So what I'm asking you to do
3 is -- yes, we see a lot of, you know, rows in
4 this -- that's, you know, looking at lots of
5 different metrics. What's the one that we would
6 look at if we wanted to say, what's the EIA
7 predicting for freight transportation growth?

8 A The rail billion ton miles traveled.

9 Q Okay. And it's just that one row;
10 right?

11 A Yes. In -- in this printout, it's one
12 row.

13 Q Okay. So it doesn't -- it's not --
14 there's no breakdown here by different kinds of
15 commodities; right?

16 A Correct. This is --

17 CHAIRMAN OBERMAN: Which row are we --
18 which row are we looking at, please?

19 MR. WARREN: I'll let Mr. Fapp say it,
20 but I think it's that first highlighted one;
21 right? It's the rail one; is that right,
22 Mr. Fapp?

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1 THE WITNESS: If you look at on where --
2 do you see No. 7 "Transportation Sector Key
3 Indicator" -- "Transportation Sector Key
4 Indicator." Deliver energy consumption. It is on
5 the first page with the table.

6 CHAIRMAN OBERMAN: Yes.

7 THE WITNESS: And then you go down the
8 left side, it says, "Key Indicators and
9 Consumption." Then "Key Indicators, Travel
10 Indicators." Then you'll see with "Billion
11 Vehicle Miles Traveled." "Billion Passenger Miles
12 Traveled." "Billion Seat Miles Available." Then,
13 "Billion Ton Miles Traveled." Then after that,
14 they show a number of rail.

15 CHAIRMAN OBERMAN: That's -- that's the
16 only line we're looking at on this page?

17 THE WITNESS: I presume so. It's --
18 it's as Mr. Warren indicated.

19 CHAIRMAN OBERMAN: Okay. Thank you.

20 BY MR. WARREN:

21 Q Question: Well, this, I mean, just to
22 be clear, this is, in fact, your -- one of your

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1 work papers; right? And -- and an Amtrak exhibit?

2 A This -- this was a work paper we
3 included in our evidence, yes.

4 Q Okay. Okay. And so -- and so,
5 Mr. Fapp, you testified that -- that the board has
6 a preference for -- I'm sorry, if I don't get the
7 words exactly right -- I think you said something
8 like independently -- "independently produced
9 forecasts"; right?

10 A Correct.

11 Q Right. And --

12 A Yes.

13 Q But -- yes -- there are independently
14 produced forecasts that do dig in and look at
15 commodity level; aren't there?

16 A There may be some.

17 Q Is the freight analysis framework one of
18 those?

19 A That may be a source.

20 Q Okay. We can -- we can take -- we can
21 take this document down, Mr. Fapp, put it aside.
22 I'm going to refer you, I'd like you to look at

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1 the rebuttal RTC reports. This is exhibit, Joint
2 Exhibit 40B. I don't know if you've got it there
3 in front of you, or if we need to get it there.
4 Just let me know.

5 CHAIRMAN OBERMAN: I've got it. I don't
6 want another one.

7 Q And once you have it, Mr. Fapp, I'm
8 going to ask you to turn to page 21 of the
9 original documents and then page 22 of the Bates
10 number?

11 A I have it. Thank you.

12 Q Okay. And this table, you know,
13 compares the, you know, FAF, you know, growth
14 forecast with the EIA growth forecast; right?

15 A Yes. The -- there's an FAF total line,
16 and an EIA total line.

17 Q Right. And they come out pretty close
18 to the same place; don't they?

19 A You know, about -- I don't know. What
20 is that -- eight basis points.

21 Q Yeah. Fair to say, that that's in the
22 ballpark?

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1 A I can't say. I'm not familiar with FAF
2 forecasts.

3 Q Okay. But, you know, by FAF, you
4 mean -- I mean, you understand that to be the
5 freight analysis forecast; right? I -- and I
6 mis- -- I misspoke. I apologize. I think it's
7 the freightage analysis framework.

8 A Yes. That's how they have it denoted.

9 Q Okay. And if you'd look at the freight
10 analysis -- I'm sorry. Was someone speaking?

11 CHAIRMAN OBERMAN: No. Go ahead.

12 MR. WARREN: Okay. I'm sorry.

13 BY MR. WARREN:

14 Q And the FAF does have that breakdown by
15 commodities and you can see the differences, you
16 know, between, you know, what it's predicting for
17 auto and bulk and intermodal and merchandise;
18 right?

19 A That is correct.

20 Q Right. And you -- and you're aware,
21 Mr. Fapp, that there are projections over the
22 next, you know, 20 years or so, that warrant

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1 future substantial, you know, economy-wide decline
2 in coal transportation; right?

3 A That seems to be the trend, yes.

4 Q All right. And so when you're looking
5 at a line that is primarily manifest traffic, as
6 you testified, you're going to want -- you're
7 going to want to be using a forecast that is
8 looking at merchandise traffic, manifest traffic,
9 not so much coal traffic; right?

10 A I'm sorry. You broke up again. You
11 said...

12 Q I was just saying that we -- if you're
13 trying to forecast traffic on a line that is
14 primarily carrying manifest traffic, you're going
15 to care more about projected growth in merchandise
16 traffic, the kinds of things that's on manifest
17 trains than you are going to be about factoring in
18 a potential decline in coal; right?

19 A Well, depends upon what they're -- what
20 they're forecasting to grow. Like I said, we
21 didn't see anything from NS or CSX specifically
22 about their forecast on this line. They just

1 indicated that they expected to grow. We don't
2 know if that's merchandise, bulk.

3 I think the port indicated they expect
4 to see large increases in auto. Other bulk
5 commodities, maybe not necessarily the coal. So
6 it's difficult to say.

7 Q Okay. And it is fair to say that
8 according to this table, at the end of freight
9 analysis framework, for merchandise growth, the
10 projected growth is an annualized 1.9 percent;
11 right?

12 A That's what the document says.

13 Q Right. And -- and without -- I'm not
14 asking you to disclose the particular numbers, but
15 both CSX's and Norfolk Southern's, you know,
16 forecast for this line that were used in the model
17 were well under 1.9 percent, correct?

18 MS. BRACEY: Objection to the
19 characterization of "well under."

20 MR. WARREN: Under.

21 A Well, since we didn't see any forecast
22 produced, we just saw some statements about

1 expected growth, I can't comment on CSX-NS's
2 forecast.

3 Q Are you aware about the forecast
4 projections that are used in the model?

5 A I don't recall the specifics. I recall
6 that NS and CSX witnesses, I believe, indicated
7 what they believe it would be, but we didn't see
8 any actual documents supporting those numbers.

9 Q All right. We can -- we can take that
10 down. So, Mr. Fapp, you'll have to help me,
11 because I did have trouble following in your -- in
12 your direct testimony where you were doing your
13 calculation of where you said that, forgive me if
14 I've got this wrong. You have 13 hours of delay
15 per day is actually really more like 11 minutes
16 per train.

17 Is that your opinion?

18 A That's what we determined based on
19 the -- Mr. Banks' and Guthrie's work papers.

20 Q Right. And you did that, you took the
21 total delay statistics, right, and you tried to
22 average them out over the total trains; right?

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1 A We took the total -- we took the
2 difference in the delay between the 2019 F. and
3 2019 P. and then divided that by the number of
4 trains indicated in the -- Mr. Banks' and
5 Guthrie's database.

6 Q Right. So you did it for all trains,
7 right -- all the trains?

8 A It was all the 2019 P. and 2019 F.
9 trains that were included in their 13-hour
10 calculation.

11 Q Right. Are you aware that the -- that
12 the delay statistics that were produced in the RTC
13 model excluded yard trains?

14 A I don't recall.

15 Q Okay. Well, let's -- let's take a look
16 at -- I'm going to ask you -- actually, let's --
17 let's move along. If you're not aware; you're not
18 aware.

19 But when you did your math, you included
20 yard trains; right? So you took the total delay
21 numbers and you divided out all trains, including
22 yard trains; right?

1 A It's whatever numbers were included in
2 those delay statistics.

3 Q Right. But if the delay statistics
4 didn't have yard trains, and then you divided them
5 by a total number that included yard trains, you
6 would agree that that wouldn't be an accurate
7 comparison?

8 A We just -- we just were using the data
9 that was used to calculate the total delays.

10 Q But it was -- do you know if it's total
11 delays for all trains where it included yard
12 trains?

13 A I don't recall what -- what that --

14 Q Okay. All right. Mr. -- so, Mr. Fapp,
15 we -- we covered earlier that you obviously worked
16 on the -- on the Dupont standalone cost case.
17 It's fair to say that was a very large and
18 complicated standalone cost case; right?

19 A Yes.

20 Q Yes. Somewhere starting, like -- yeah,
21 7200 constructed route miles and another 800
22 trackage rights miles?

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1 A I don't recall the specifics. It was a
2 fairly large system for a standalone cost case.

3 Q Yeah. And I think you just testified
4 that it -- you know, it replicated, a lot of -- a
5 bunch of Norfolk Southern's core network and
6 traffic group; right?

7 A Yes. That's what I recall.

8 Q In that case, you know, you built an RTC
9 model for the whole Dupont standalone railroad as
10 part of Dupont's opening evidence; right?

11 A Yes.

12 Q Yes. And so to do that, you used
13 traffic data, track charts, other information
14 obtained in discovery; correct?

15 A That's what I recall.

16 Q Okay. And then, you know, as these rate
17 cases go, you know, Norfolk Southern's files reply
18 evidence and then you prepared rebuttal evidence
19 for Dupont and that included a revised RTC model;
20 right?

21 A I believe it did.

22 Q Right. And then for the Dupont rebuttal

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1 RTC model, you took your opening model and you
2 made changes to it; correct?

3 A That's what I recall.

4 Q Okay. Do you recall adding trains?

5 A Yes. I do recall adding some trains.

6 Q Okay. So you have experience both
7 building a large complex RTC model from scratch,
8 as you did for Dupont's opening and experience
9 with modifying an RTC model to reflect changed
10 assumptions as you did for Dupont's rebuttal?

11 A Given the time, yes.

12 Q Okay. But in this case, you haven't
13 either submitted your own independent RTC model,
14 nor have you modified the CSX-NS RTC model to
15 reflect assumptions you think should be different;
16 right?

17 A That is correct, based on the time and
18 information we had.

19 MR. WARREN: Okay. I don't have any
20 further questions.

21 CHAIRMAN OBERMAN: It is 3:11. We're
22 going to take a -- is 10 minutes enough,

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1 Ms. Reporter? Ten-minute break. We'll come back
2 at 3:21. We really have to move this, if we're
3 going to try to get this by tomorrow, and I know
4 the board has some questions. Rob, do you have
5 questions?

6 MR. WIMBISH: Yes, sir. We do.

7 CHAIRMAN OBERMAN: Do you know how long?

8 MR. WIMBISH: Inside of an hour.

9 CHAIRMAN OBERMAN: Hopefully, well
10 inside, but we'll do what we can, okay, 10
11 minutes.

12 MR. WIMBISH: I will crank through them
13 as quickly as I reasonably can.

14 (Off the record.)

15 CHAIRMAN OBERMAN: All right. We are
16 back in session.

17 Mr. Wimbish, your witness to
18 cross-examine.

19 CROSS-EXAMINATION

20 BY MR. WIMBISH:

21 Q Thank you. Mr. Fapp, I'm going to be
22 asking some questions about your testimony in your

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1 reply verified statement, which I see is in the
2 binder. I think you still have that, Tab No. 2,
3 the portion of the testimony addressing the
4 evidence of the port. And am I correct to see
5 that the testimony that you have responsive to the
6 port in your written verified statement begins on
7 page 56 of the reply verified statement and
8 extends midway to page 62 of your reply verified
9 statement?

10 A Yes. That's correct.

11 Q That's roughly six and a half pages?

12 A Roughly that.

13 Q Are you aware of whether or not any
14 other Amtrak witnesses have testified in
15 response -- in writing, excuse me, testified in
16 writing in response to the port's written
17 testimony?

18 A I don't recall any.

19 Q Okay. Ask you a little bit about your
20 experience, professional experience. I know you
21 touched upon this at the beginning of your
22 opening. You have a statement of qualifications

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1 appended to your reply verified statement.

2 You state that you manage the San Manuel
3 Arizona Railroad and VHP Arizona Railroad
4 dispatchers and railroad dispatching functions; is
5 that correct?

6 A Yes. That's correct.

7 Q How do these two short lines -- were
8 there any other short lines, by the way, that you
9 managed?

10 A Yes. The -- eventually VHP and Nevada
11 railroad.

12 Q How do those short line railroads that
13 you managed compare to TSD -- TASD, in terms of
14 annual carloads handled?

15 A I don't recall. Can you give me the
16 annual carloads per capacity?

17 Q I'm afraid I can't right now.

18 A I don't recall. I don't recall the
19 number of carloads TASD says they move.

20 Q Do the short lines that you managed
21 operate within seaport terminal areas?

22 A No. They do not.

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1 Q Do you know whether any of these short
2 lines operate -- or operated across Class 1
3 railroad main lines to access short line
4 facilities on either side of the Class 1's main
5 line, along the lines of what TAS -- T ASD does in
6 the Mobile Terminal area?

7 A We operated some on Class 1s, but not
8 across Class 1, as you described it.

9 Q Could you tell me a little bit more
10 about what your management functions entailed when
11 you were working for the San Manuel Arizona
12 Railroad BHP Arizona and BHP Nevada?

13 A I was the -- responsible for all the
14 administration financial, and then because of
15 that, the dispatching functions. So I was
16 involved with helping establish rates, develop
17 performance, metricize, accounting statements.
18 Also, the administrative and financial and then
19 also overseeing the dispatching functions, so the
20 reports that come out of those areas.

21 Q Did you dispatch trains?

22 A I -- no. I never dispatched the trains.

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1 I was familiar with the dispatching operation
2 procedures, but I never did dispatch the trains.

3 Q When was this particular work
4 experience, roughly between what years?

5 A Roughly, 1993 to 1997.

6 Q So, roughly, four years; is that right?

7 A Correct.

8 Q Were there any other such railroad
9 operation experiences being used besides these
10 with the BHP short lines?

11 A Besides the 24 years we've been working
12 with railroads here?

13 Q Let me rephrase that: Have you worked
14 as an employee of any other railroads?

15 A No. Those were the railroads I was
16 employed -- that I worked for.

17 Q Did you read Mr. Robert Nolan's written
18 testimony on annual cross-corridor carloads
19 handled by TASD?

20 A If it's in his opening verified
21 statement, I did.

22 Q Did you observe Mr. Golden's oral

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1 testimony earlier in this hearing?

2 A Yes. I did.

3 Q Have you read the port's original, that
4 is their November 3rd, 2021, and updated railroad
5 traffic forecasts?

6 A I recall -- I recall seeing them.

7 Q And you also saw that Mr. Golden's
8 written testimony included a discussion of the
9 average daily number of T ASD trains that traverse
10 the CSXT corridor; correct?

11 A Yes. We had a discussion, but we didn't
12 see any work papers.

13 Q Yes. And in response to his testimony
14 on carload numbers and average data and T ASD train
15 movements, you did not counter with information
16 intended to show that Mr. Golden was incorrect
17 about his carload data or average daily train
18 counts; did you?

19 A No. We just noted that there was no
20 support in the record for the numbers.

21 Q In light of the carload data that
22 Mr. Golden supplied, your testimony that

1 Mr. Golden did not provide any supporting evidence
2 on the number of TASD trains operating around
3 Mobile Terminal is not quite correct; is it?

4 A I -- I believe you are correct. Like I
5 indicated, we didn't see any verify -- any sort of
6 verifying numbers of train movement data, carbon
7 data, weigh fill data, switch reports, anything
8 like that, to support the numbers.

9 Q Nothing to support the numbers at all;
10 correct?

11 A We did not see anything besides
12 Mr. Golden's statement.

13 Q But there is other data that has been
14 available to you in this proceeding that would
15 help you ascertain the accuracy of Mr. Golden's
16 testimony with respect to TASD trains operating
17 around Mobile Terminal; right?

18 A Can you be more specific?

19 Q Sure. I'll start with one. Could you
20 have resorted to the use of OS data in this
21 particular case, not necessarily, Mr. Golden's,
22 but OS data supplied by CSX and Norfolk Southern

1 to ascertain the accuracy of Mr. Golden's train
2 count information or statements?

3 A I don't recall -- I don't recall the
4 specificity of the TASD trains in the OS
5 statement.

6 Q You do not know, then, whether or not
7 the OS records contain TASD train movement data?

8 A No. I don't recall seeing the TASD
9 specifically in the OS data.

10 Q So would you -- are you -- would you say
11 that the OS data would not be definitive about
12 TASD cross-corridor operations on any given day
13 for which you had the OS data?

14 A Once again, I can't say.

15 Q I recall Mr. Warren was asking you some
16 questions earlier about dispatching records
17 supplied by CSX Norfolk Southern; do you remember
18 that?

19 A Yes.

20 Q Did you review dispatching records as
21 part of this case?

22 A We reviewed the -- Mr. Banks' and

1 Guthrie's evidence as in the -- in the work
2 papers.

3 Q Wouldn't that document -- that data have
4 offered you some information about T ASD operations
5 between CP state dots and CP Choctaw?

6 A I might have. I don't recall the
7 specific T ASD data in that data.

8 Q Did you compare those dispatching
9 records to Mr. Golden's testimony?

10 A No.

11 Q You are also not -- I understand you're
12 not challenging the honesty of Mr. Golden in his
13 statements; correct?

14 A That's correct. I believe we indicated
15 we're not challenging his experience or honesty.

16 Q Okay. On page 58 of your reply verified
17 statement, you have a section that is entitled,
18 "Mr. Golden overstates the complexity of rail
19 operations in the Mobile Terminal"; do you see
20 that?

21 A Yes.

22 Q And that discussion begins on page 58

1 and extends to page 61; correct?

2 A Yes.

3 Q Okay. So this part of your written
4 testimony challenges the proposition that T ASD's
5 Mobile Terminal operations are not as complicated
6 as Mr. Golden would have the board believe;
7 correct?

8 A Well, we pointed out that the number of
9 trains that the T ASD -- the number of railroad
10 companies T ASD interchanges with is different than
11 the number of railroad companies it seeds the rail
12 cars from.

13 Q But in your view, Dr. Golden overstates
14 the issue because he does not distinguish between
15 physical interchange partners and commercial
16 interchange partners; correct?

17 A That would be correct.

18 Q Do you recall where in Mr. Golden's
19 testimony he points to the number of T ASD
20 interchange partners as evidence of Mobile
21 Terminal's operational complexity?

22 A I don't recall the specific location in

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1 his statement.

2 Q Sure. There is a portion of
3 Mr. Golden's testimony, which is from Joint
4 Exhibit 24B at page 8, which is entitled
5 "Intercarrier Relationships." I have a copy of
6 that page.

7 A Okay.

8 Q I'd like to share that with you, and ask
9 you to read that, if you would, please.

10 CHAIRMAN OBERMAN: Is this from the
11 transcript, or from Mr. Golden's --

12 MR. WIMBISH: No, sir. This is Joint
13 Exhibit 24B, which is page 8 of Mr. Golden's
14 opening verified statement.

15 CHAIRMAN OBERMAN: Thank you.

16 MS. BRACEY: Do you have copies for
17 counsel?

18 MR. WIMBISH: I'm afraid I do not.

19 MS. BRACEY: Oh, okay. You're more
20 important.

21 CHAIRMAN OBERMAN: The exhibit number is
22 what, again?

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1 MR. WIMBISH: That would be exhibit --
2 Joint Exhibit 24B.

3 CHAIRMAN OBERMAN: Thank you.

4 MR. WIMBISH: And the page I'm asking
5 Mr. Fapp to read is page 8, but the discussion
6 continues onto page 9.

7 A Okay.

8 BY MR. WIMBISH:

9 Q Does this appear to you to be the
10 portion of Mr. Golden's testimony to which you are
11 responding, beginning at page 58 of your reply
12 verified statement?

13 A Yes.

14 Q Nowhere in Mr. Golden's testimony that
15 you've just read does he ever refer to operations
16 in major terminals such as Chicago, Memphis, or
17 St. Louis; does he?

18 A No. He discussed -- no. He discusses
19 the Port of New Orleans.

20 Q Okay. Did you know that most of TASD'S
21 interchange operations occur to the west of the
22 CSXT corridor entirely and the actual interchanges

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1 do not depend upon cross-corridor movements?

2 A We are aware that the TASD can't
3 interchange with NS and the other locations
4 without going onto CSX's track.

5 Is that what you're saying?

6 Q No. That's not what I'm saying. What
7 I'm asking is whether or not you understand that
8 the interchange operations, the predominant
9 interchange operations that TASD undertakes do not
10 require cross-corridor operations?

11 A We didn't see any evidence in the record
12 about where the interchanges took place.

13 Q Mr. Golden never used the term "complex"
14 or a synonym of that word to describe TASD's
15 interchange operations in his written testimony;
16 did he?

17 MS. BRACEY: Are you going to give him
18 an opportunity to read the written testimony?

19 MR. WIMBISH: I see that he is.

20 THE WITNESS: Excuse me.

21 CHAIRMAN OBERMAN: With all respect,
22 Rob, I mean, Mr. Golden's statement speaks for

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1 itself. We have it. We can read it. You can
2 read it in closing argument. What -- what -- how
3 does it advance this case at this late hour to ask
4 him what Golden said in his statement? Let's get
5 into the substance of it.

6 MR. WIMBISH: I think I'm getting right
7 to that.

8 A Mr. Golden says that -- references that
9 how eight carriers converged at T ASD's interchange
10 yard.

11 Q So you agree, then, that the port's
12 position in this case, is that Amtrak's service
13 would adversely impact T ASD's cross-corridor
14 operations between T ASD facilities on either
15 side -- excuse me. Let me restate that.

16 You agree, though, that the port's
17 position in this case, that Amtrak's service would
18 adversely impact T ASD's cross corridor operations
19 between T ASD facilities on either side of the CSX
20 mainline in Mobile; correct?

21 A Correct. I understand that's the port's
22 position.

1 Q So your reply verified statement
2 testimony on this supposed issue of TASD's complex
3 interchange operations does not respond to the
4 merits of TASD's case on cross-corridor
5 operational impacts; does it?

6 MS. BRACEY: Objection. Argumentative.

7 CHAIRMAN OBERMAN: Sustained.

8 MR. WIMBISH: I'll withdraw the
9 question.

10 BY MR. WIMBISH:

11 Q Mr. Golden's professional background in
12 railroading is different than your own, in that,
13 Mr. Golden has decades of experience in
14 overseeing, coordinating, and dispatching train
15 movements for Class 1 and terminal railroads.
16 And -- and you do not have that same railroad
17 operating experience; would you agree?

18 A I have not worked for railroads in that
19 time, but we've dealt extensively with rail
20 operations during my time with L. E. Peabody.

21 Q And is it true that you don't have
22 experience operating trains in the Mobile Terminal

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1 area?

2 A I do not recall looking at operations in
3 the Mobile Terminal prior to this proceeding.

4 Q In fact, have you observed in person,
5 Mobile Terminal railroad operations in preparation
6 for your testimony in this case?

7 A No.

8 Q Have you ever observed in person Mobile
9 Terminal railroad operations in preparation for
10 your testimony in this case?

11 A I'm sorry. Can you say that again?

12 Q I'm sorry. I think that's repetitive of
13 the last question. Let me just double-check that.
14 Wouldn't you agree that given his real-life work
15 experience and intimate familiarity with port
16 operations, Mr. Golden is a far better -- is far
17 more qualified than you are to discuss Amtrak
18 train service impacts upon TASP freight service?

19 MS. BRACEY: Objection. Foundation. I
20 don't know that Mr. Fapp can discuss who was a
21 better witness, and I think that's for the board
22 to determine.

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1 CHAIRMAN OBERMAN: Could I have the
2 question again?

3 Q I said, would you agree that given his
4 real-life work experience and intimate familiarity
5 with port operations, Mr. Golden is a far
6 better -- is far better qualified than you are to
7 discuss Amtrak train service impacts upon TASP
8 freight service?

9 CHAIRMAN OBERMAN: I'm going to sustain
10 the objection.

11 Q Would you agree given his real-life work
12 experience and intimate familiarity with port
13 operations that Mr. Golden is far better qualified
14 than you are to discuss TASP operations?

15 MS. BRACEY: Same objection.

16 CHAIRMAN OBERMAN: Sustained.

17 MR. WIMBISH: I have no more questions.

18 BY CHAIRMAN OBERMAN:

19 Q All right. Mr. Fapp, do I understand
20 that, you know, yesterday, Mr. Blair said that
21 he -- that Amtrak was not provided with the actual
22 RTC software product that Banks and Guthrie

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1 provided, but that that was supplied to experts?

2 Are you the -- you and Mr. Crowley the
3 experts of that kind of that software?

4 A Yes, I believe, yes, we are the ones who
5 got that software.

6 Q All right. And I've been trying to
7 understand how these RTC software products, when a
8 report has been run, such as was run by Banks and
9 Guthrie, works. Would it be accurate to
10 understand that you could put the software product
11 that was produced from the other side into a
12 computer and then you can change some of the
13 inputs and see if you get a different result; was
14 that the way it works?

15 A Yes. That's generally how it works. I
16 qualify that with "generally," because the RTC is
17 kind of a finicky model. You have to make sure
18 you're using the same version and the same flavor
19 of that version, but if that's the case, then you
20 can read in the software and make adjustments to
21 it.

22 Q All right. And this is the kind of work

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1 you've done before; right? You have an expertise
2 in your company about running the RTC software?

3 A Yes. That's correct.

4 Q So I understand that you and Mr. Crowley
5 were concerned, have expressed a concern that you
6 didn't have all of the raw data that was inputted
7 by Banks and Guthrie to create their study;
8 correct?

9 A Yes. That is correct.

10 Q But would it have been possible for your
11 firm to accept, for sake of discussion or
12 arguendo, as lawyers like to say, the study you
13 got with all of the input and assume that it was
14 accurate input, but then make some changes to --
15 to the inputs to see if you get a different
16 result? You could -- you could have done that;
17 correct?

18 A Given a sufficient amount of time, we
19 could have made an analysis like that.

20 Q So there's a few questions I have about
21 that. So of all of the RTC reports that we have
22 seen in the -- both the rebuttal and the original

1 report for Banks Guthrie, Mr. -- I guess --
2 so-called Dingler report, one that was not run was
3 putting in the FRA's infrastructure projects into
4 the 2019 case. They did that for the 2039 freight
5 growth case, but not for the 2019 case, that's
6 your understanding; right?

7 A Yes. That's my understanding.

8 Q And your firm could do that? You could
9 take the -- the FRA infrastructure, put it in the
10 RCC (sic) 2019 case and see what kind of result
11 you get?

12 A Presumably, yes. I'm not familiar with
13 the FRA study and the recommendations, but
14 presuming we have the detailed references they
15 include in there, such things as like the type of
16 turnouts, where the turnouts are going to go, that
17 sort of thing, we could make adjustments to the
18 model to put that in there.

19 Q Well, the Guthrie-Banks study included
20 all of those FRA projects for a 2039 case, so you
21 had that input into their study. Couldn't you
22 just take that and run it on the 2019 base case?

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1 A I'm not familiar with the FRAs, but,
2 yes, presumably, if they have that in there, and
3 it's in there correctly, then we could run that.

4 Q How long would it take you to do that?

5 A Depending upon the level of detail and
6 that sort of thing, it could take anywhere from
7 several weeks, maybe, to a month, just -- just
8 thinking off the top of my head.

9 Q Well, let me ask this question: You
10 could also take the Banks-Guthrie-Dingler study,
11 put it on your computer and change, make some
12 operational changes there as to the times of
13 freight trains, the times of the Amtrak trains and
14 see if you get a different result, too, correct?

15 A Yes. That's one of the primary purposes
16 of the RTC is to test operational changes.

17 Q And I think either Mr. Dingler or
18 Mr. Guthrie or Mr. -- one of those witnesses told
19 us that they could do these operational changes in
20 a -- and run them and see what kind of results
21 they get in a day or so.

22 Can you do that, too?

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1 A It depends upon how we get the
2 operational changes. I mean, if we have to go
3 back in the base data and tease out what these
4 operational changes are, or kind of get some sort
5 of testimony. It may take a day; it may take a
6 few weeks, but it's something that can be done.

7 Q And you could also, could you not, put
8 into the -- to the RTC software, you could change
9 some of the inputs, for example, if you've made an
10 assumption that some of the bridges that they say
11 will be automated two or three years out, and that
12 will reduce the number of high-rail trips, you can
13 take out that number of high-rail trips and see
14 what kind of result you get; right?

15 A Yes. Yes. That would be a fair -- that
16 would be an actually fairly simple thing to do.

17 Q All right. And I -- bear with me --
18 bear with me one minute. And you could also just
19 change the walking speeds from 2 miles an hour to
20 3 miles an hour and see if that affects the
21 results, too; right?

22 A Yes. You could make an adjustment like

1 that.

2 Q One of the things we have heard here
3 from Amtrak, from Mr. Blair, particularly, was the
4 idea that Amtrak supported, generally, the FRA
5 projects listed in the Gulf Coast Working Group,
6 the so-called FRA Project. You're aware of that
7 testimony; right?

8 A Yes, sir.

9 Q And he also talked about phasing it in
10 after the trains began running. No one has told
11 us here phased in when, year one, year two, so
12 forth, but you could take those projects, once
13 you've -- assuming you've identified the inputs
14 from the 2039 FRA study, and then you could input
15 some of those projects, say, in one year, and see
16 what kind of result you'd get and then more
17 projects in year two.

18 It's like you could make some
19 assumptions as to when the projects would be built
20 and see what kind of effect that would have on the
21 freight service by running different RTC studies;
22 correct?

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1 A Yes. But just to clarify, you
2 mentioned, you know, put projects in one year, and
3 then more in another year. All we'd have right
4 now in the record is 2019, '20, and 2039. If we
5 were to -- or try to run, let's say, one or two
6 years out, we would have to adjust the train list
7 for the different growth rates between year one
8 and two, and now in 2039. But, yes, that could be
9 done.

10 Q Well, you could -- you could take the
11 growth rates that the railroads project --
12 whatever it was, one and a half percent a year, I
13 think, something like that -- and do it for two
14 years, put in a couple more of the FRA sidings,
15 run the RTC studies, and see what happens, see
16 what kind of result you get. That's all done on a
17 computer; right?

18 A Yes. It's just be -- it would be a
19 matter of trying to go back and take their
20 approach for growth trains, in trying to adjust
21 that for a 20-year approach, down to a two-year
22 approach, three-year approach, four-year approach,

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1 whatever phase you're talking about. That would
2 be possible, presuming we have the data.

3 Q So you were not asked to do any of --
4 any of the things I just asked you about that
5 could be done, you were not asked to do, when you
6 were hired in October?

7 A That is correct. We were asked to
8 review and audit the model.

9 Q And you did not recommend that you do
10 any of those things?

11 A I don't recall us recommending that. I
12 don't think that was -- I think that was outside
13 of the scope of what we were asked to do.

14 Q Well, you weren't muzzled. You could
15 come back, couldn't you, as an expert and say,
16 Would you look -- here's an idea, Mr. Amtrak.
17 Would you like us to test out some other
18 assumptions and see what we get?

19 But you weren't prevented from doing
20 that; were you?

21 A Just by the amount of time that was
22 available in the schedule. We had one month to

1 respond to the -- the railroad's opening evidence,
2 so it wouldn't have been enough time to run that
3 many iterations in a one-month period.

4 Q Were you told that that's it? The world
5 closes in 30 days. Forget it. If you can't do
6 anything in 30 days, don't even try?

7 A I don't recall it being that, that sort
8 of fashion. We were told we had a 30-day window
9 for our -- to prepare our testimony, reply
10 testimony.

11 Q But knowing what you now know, if you
12 were given 30 days, it sounds like you could run
13 these various scenarios and come back with the
14 results, accepting -- I know you say you can't
15 validate it, but if you just assume, for sake of
16 discussion, if you were given 30 days, you could
17 come back with these different scenarios and tell
18 us what kind of delays might -- might result from
19 them; right?

20 A It would dependent upon the number of
21 scenarios involved and the -- putting the
22 information in and developing it. It may be 30

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1 days. It may be 60. I don't have a firm number
2 off the top of my head, but it can be done.

3 Q For the moment, that was all the
4 questions I have. Any other board members have
5 questions?

6 MEMBER FUCHS: I'm okay, Marty.

7 CHAIRMAN OBERMAN: Karen? Let me just
8 double-check, because I thought I had a couple of
9 others, and I was going to look for them while my
10 colleagues were asking the questions.

11 Give me a moment.

12 MEMBER PRIMUS: I had a question.

13 CHAIRMAN OBERMAN: Yeah. Go ahead,
14 Robert.

15 BY MEMBER PRIMUS:

16 Q Mr. Fapp, just real quick. So you said
17 you had a 30-day turnaround; correct?

18 A That's me. That's me. Sorry.

19 Yes. From the time we received the
20 railroads' opening, up until our reply
21 December 3rd.

22 Q In your opinion, do you think you had

1 enough time to -- to truly evaluate? I mean, it
2 seems pretty complex, this RTC model, with all the
3 factors which it has.

4 Do you really believe 30 days was enough
5 time for you to turn it around? Do you, looking
6 back now after spending a whole day with us in
7 hindsight, that it could have been -- could have
8 been -- should have been longer?

9 A Thirty days was a very tight schedule.
10 Usually, what you see in staff cases where we're
11 using RTC, the reply side, usually, I believe, it
12 has a 90-day window to evaluate the model.

13 Thirty days, you know, there was a lot
14 of areas. We had a lot of late nights and lot of
15 people working trying to scramble through,
16 especially since we have 30 different cases across
17 so many different scenarios.

18 Q On that point, have you ever had to
19 audit a case like this within 30 days?

20 A Not of this many number of cases in the
21 RTC model.

22 MEMBER PRIMUS: Thank you.

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1 CHAIRMAN OBERMAN: Actually, thank you,
2 Robert. I think that was a scenario that I had
3 meant to -- that I was interested in. I don't
4 have any further questions.

5 MEMBER PRIMUS: Sorry to take yours.

6 CHAIRMAN OBERMAN: No. No. No. I'm
7 glad you asked because I'm fried. It's 4:00. So
8 we're done up here for the moment. Ms. Bracey, if
9 you have redirect --

10 MS. BRACEY: I do not.

11 CHAIRMAN OBERMAN: Mr. Fapp, you're
12 excused.

13 THE WITNESS: Thank you.

14 CHAIRMAN OBERMAN: So it is -- well, I
15 should have, just, wait. Hold on one second.
16 Matt, you don't have anything more based on my
17 questions; do you?

18 MR. WARREN: I do just have one,
19 Mr. Chair. So I'm sorry to bring you back,
20 Mr. Fapp, for just one.

21 MEMBER FUCHS: He never left.

22 THE WITNESS: I never left.

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RECROSS-EXAMINATION

Q Mr. Fapp, are you aware that on August 6th, 2021, the board served a decision in this docket?

CHAIRMAN OBERMAN: I'll let him answer it. Robert asked him about how much time he had. Go ahead.

Q Okay. So you -- okay. Well, if you weren't aware of it, you weren't aware of it. That's all I have.

MR. WIMBISH: Yes, sir.

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1 THE WITNESS: Thank you. Thank you.

2 CHAIRMAN OBERMAN: All right. It is now
3 4:05. It is still my hope and wish and prayer and
4 I speak for all five of us that we finish this
5 tomorrow. We've got two -- two hours, roughly, to
6 start with the next witness. And we'll go a
7 little bit later, but not much later, and plan to
8 reconvene tomorrow and hope that we'll finish.

9 But who's presenting the next witness?
10 Jessie, is that you?

11 MS. AMUNSON: Yes, it is.

12 CHAIRMAN OBERMAN: And I think you -- I
13 asked you, and I had forgotten. How long do you
14 expect your direct to be?

15 MS. AMUNSON: I think we should be able
16 to finish direct today.

17 CHAIRMAN OBERMAN: And then let me ask:
18 Who is going to cross-examine, Mr. Johanson?

19 MR. ATKINS: That would be me, Chairman.

20 CHAIRMAN OBERMAN: And, Ray, you haven't
21 heard his direct testimony, but you've certainly
22 seen his work. Do you have any estimation of your

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1 cross?

2 MR. ATKINS: So I do think it's half an
3 hour to 45 minutes, but there's a big chunk of
4 evidence that we filed a motion in limine, so that
5 depends on whether you admit that evidence in as
6 his testimony or not.

7 CHAIRMAN OBERMAN: Well, I'm pretty much
8 going to tell you that we probably -- well, you
9 know what, I'll read the motion in limine again
10 tonight. I read it when I came in, but I tried to
11 make sense of it, until I see where this goes, but
12 we sort of found a pattern of letting things in,
13 subject to being stricken later.

14 If -- if you have to cross-examine him
15 on all of the evidence that you would like to bar
16 in your motion, how long do you think you will
17 have?

18 MR. ATKINS: It's hard to say. I don't
19 know what he's actually going to say, because
20 there's no expert report behind -- those
21 demonstratives. So I would actually ask this
22 board, we put that motion in limine in at the

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1 beginning of this case. I think it would be
2 prudent of you to rule on it before we sit here
3 and listen to, it's like 20 slides of additional
4 supplemental evidence that was not in his expert
5 report.

6 CHAIRMAN OBERMAN: I tell you what, I
7 have the motion here. When we get to the first
8 point that you object to, raise it, we'll take a
9 few minutes to take a look at the motion and see
10 if we can deal with it. But it does sound like to
11 me, Jessie, if you think you can finish within the
12 next couple of hours and you only have...

13 MR. ATKINS: We can certainly finish
14 tomorrow, Chairman.

15 CHAIRMAN OBERMAN: You think you can
16 finish tomorrow?

17 MR. ATKINS: Absolutely.

18 CHAIRMAN OBERMAN: Rob, are you going to
19 have much?

20 MR. WIMBISH: Depends on the scope of
21 the testimony as it unfolds, but, right now, I
22 feel confident that if we are able to complete

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1 Mr. Johanson's direct today, that we should be
2 able to fit it within the time frame you're
3 anticipating tomorrow. I anticipate no more than
4 an hour, and, as you can see, I anticipated no
5 more than an hour today, and I was under that.

6 CHAIRMAN OBERMAN: I helped you out.

7 MR. WIMBISH: In a way.

8 CHAIRMAN OBERMAN: Anyway, let's
9 proceed.

10 MS. AMUNSON: Mr. Chair, I would say,
11 that some of the direct testimony also is about
12 the slides that are the subject of the motion in
13 limine. So I think that we will need a ruling on
14 the motion in limine today if we're going to
15 finish with Mr. Johanson's direct testimony today,
16 and we have copies of our response to the motion
17 if the board needs it.

18 CHAIRMAN OBERMAN: Well, let me just
19 take one minute. It's in the stack, so let me
20 just dig it out. I have a copy.

21 MS. AMUNSON: And, Mr. Chair, obviously,
22 I defer to the board, but if the board wanted to

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1 take all of the testimony today and reserve ruling
2 on the motion until tomorrow, we likely could
3 finish the direct today.

4 CHAIRMAN OBERMAN: Well, let's see how
5 long -- let me take a look at the motion. I
6 thought I had brought it down here. Hold on a
7 second.

8 Ray, just taking a look at your motion,
9 if you give us an example of slides 33 through 47
10 and slides 48 through 59, are those the only ones
11 that you're objecting to?

12 MR. ATKINS: Correct. That's correct.

13 CHAIRMAN OBERMAN: Because you say "for
14 example," but it's not for example, that is a
15 real --

16 MR. ATKINS: Can you repeat the numbers?
17 I just want to make sure that we're not -- 33
18 through --

19 CHAIRMAN OBERMAN: Forty-seven and 48
20 through 59.

21 MR. ATKINS: Yeah. That's the totality,
22 from page 33 on, I believe it is the

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1 demonstrative. That's what we are objecting to.
2 If it would be helpful, I can just at a very high
3 level summarize our position on these for you and
4 the rest of the board, and then Jessie can
5 summarize. It's just -- it's not a very
6 complicated argument on our point.

7 CHAIRMAN OBERMAN: Let me just take a
8 quick look. That might be helpful.

9 Ray, could you -- have you had Amtrak's
10 reply brief?

11 MR. ATKINS: Yes, did I --

12 CHAIRMAN OBERMAN: I mean, you've had it
13 for a couple of weeks. All right. So it's not
14 new to you?

15 MR. ATKINS: No.

16 CHAIRMAN OBERMAN: Why don't we take
17 about four or five minutes on each side for this
18 high-level argument. I think I'm going to have to
19 see the exhibits. So why don't you start, Ray,
20 and make your point.

21 MR. ATKINS: So at a high level in a
22 hearing of this sort, it's not supposed to be

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1 litigated by ambush. Right. So -- particularly
2 when it comes to experts. So the experts submit
3 written reports to which we get work papers and we
4 respond with our own experts. And so it is just
5 the normal practice that expert's testimony is
6 confined to the analysis that they performed in
7 those written reports.

8 And we actually have a stipulation
9 between the parties, and you heard me read into
10 the record when there was some question about some
11 additional analysis that Mr. Dinger had done in
12 the RTC modeling, and that stipulation was that a
13 party may not, through its expert witness, present
14 testimony about analyses that were not previously
15 disclosed in the party's written evidence.

16 And just a bare plate point, which is in
17 order for us to cross successfully, I need the
18 underlying work papers. I need to make sure that
19 the calculations are done correctly; whatever
20 inference the expert is trying to draw from that
21 analysis, I need to understand it, so I can
22 actually have another expert who comes in and

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1 offers a different inference to draw, and,
2 perhaps, even from the same calculations.

3 And it is our opinion that starting on
4 page 32 -- 33, and going to the end of that
5 testimony, it's all new. There's nothing of that
6 sort anywhere in either Mr. Johanson's reply
7 testimony, nor, as you may recall, you let
8 Mr. Johanson submit a surrebuttal about two months
9 after the record was closed, and none of this is
10 contained in that surrebuttal either. And I would
11 actually draw your attention -- if you look at the
12 page right before it, which is page 32 of the
13 demonstrative that -- I take it, Jessie, they
14 don't actually have it yet in front of them.

15 MS. AMUNSON: I believe -- I believe
16 that the demonstratives are actually in both the
17 binder that you have in front of you, and are
18 attached to the response.

19 MR. ATKINS: Thank you. So if you look
20 at page --

21 CHAIRMAN OBERMAN: What -- what tab are
22 they in the binder?

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1 MS. AMUNSON: It's the last tab, Tab 8
2 of the binder.

3 CHAIRMAN OBERMAN: All right. So which
4 page are you referring to?

5 MR. ATKINS: So, Chairman, if you go to
6 page 32 of that, I just want you to contrast that
7 to the last page of his opening of his reply
8 testimony, which I'm assuming is in this binder as
9 well. Let me just flip to the front, figure out
10 what page it is.

11 MS. AMUNSON: Tab 2.

12 MR. ATKINS: Tab 2. Okay. Hold on. If
13 you will take a look at Tab 2, which is page 35,
14 that's the end of his expert report. It's
15 basically the same analysis, which, of course, is
16 appropriate for him to represent, but the moment
17 you move off of that analysis of the back date in
18 his testimony with those demonstratives, starting
19 on page 33, and moving forward in the new set,
20 which is back to Tab 6, that's all new. And it
21 gets pretty, in my view, pretty egregious.

22 You're talking about analysis of OS data

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1 and trend lines over time. I'm just going to
2 pause for a second.

3 So it's our position this is new
4 analysis that was not contained in the -- either
5 his reply testimony or the surrebuttal, and,
6 therefore, it's not -- it's not appropriate to
7 raise at this stage of the game.

8 I appreciate that Jessie has a different
9 position. I'll just turn it over to her for
10 Amtrak's perspective.

11 CHAIRMAN OBERMAN: Let me understand
12 what you're saying; you were referring to page 35
13 in Tab 2?

14 MR. ATKINS: Right. So --

15 CHAIRMAN OBERMAN: Is that part of this
16 previous report?

17 MR. ATKINS: That's correct. So if you
18 look at that page, that is -- up until that point,
19 everything he's doing is appropriate. That's his
20 reply testimony that was submitted in writing in
21 November or so. We had a chance to respond to it.
22 We saw all the underlying papers. That's

1 perfectly appropriate. But if you look at the
2 demonstratives they intend on using today, they
3 run all the way up to that -- to that same.

4 CHAIRMAN OBERMAN: Page 32. Page 32.

5 MR. ATKINS: Yup, now we're on page 32.
6 You see it's exactly the same presentation. Maybe
7 it's slightly -- actually, it looks like it's
8 completely identical, but when you move to page 33
9 on, none of that appears in the reply testimony or
10 in the surrebuttal of Mr. Johanson, and I would
11 just respectfully say that it's -- it prejudices
12 us, because we don't have the underlying work
13 papers. We don't know what opinion he's going to
14 draw from that testimony and I'm not in a position
15 to have an expert come in and present conflicting
16 testimony. So it's -- in our view, it's
17 inconsistent with the stipulation, and we think
18 it's inconsistent with the -- sort of the normal
19 parameters of litigation. But, again, I've been
20 talking for a while. I know Jessie has --

21 CHAIRMAN OBERMAN: Let me ask you this:
22 How long have you had these slides that begin on

1 page 33?

2 MR. ATKINS: Oh, we've had them a while.
3 Since March 28. But we've had no work papers. We
4 don't know what analyses he's going to draw from
5 them. We don't know what opinions he's going to
6 draw from it. It doesn't do me any good to have a
7 series of slides and find out what he's going to
8 testify about at this hearing.

9 CHAIRMAN OBERMAN: Jessie, you want to
10 respond?

11 MS. AMUNSON: Yes, thank you, Mr. Chair.
12 The slides essentially fall into two categories:
13 They are either enlarged -- first of all, let me
14 point out that they are demonstrative exhibits.
15 They are essentially mostly visualizations of CSX
16 and NS work papers. So when Mr. Atkins says he
17 doesn't have the work papers behind them, they are
18 their work papers and these are just
19 visualizations of data that CSX and NS have given
20 them, have given us.

21 They are responses to criticisms that
22 have been made of Mr. Johanson's analysis. And --

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1 if the board would like, I can go through each and
2 every slide and point out to you either which work
3 paper the slide is depicting and/or which of
4 Mr. Johanson's earlier slides -- the demonstrative
5 is simply a larger or kind of blowup of his prior
6 representations. And I would also just point out
7 that, as Mr. Atkins just said, they have now had
8 these slides for more than seven weeks, and that
9 is, in fact, a longer amount of time than he had
10 Mr. Johanson's original slides that were presented
11 in our November 3rd -- or December 3rd response
12 evidence.

13 So if the board would like, I would be
14 happy -- it's in our response as well, but I would
15 be happy to walk through each and every slide and
16 point you to exactly which work paper it's
17 depicting.

18 CHAIRMAN OBERMAN: Rather than that, let
19 me ask this question: Are you saying that
20 Mr. Johanson doesn't have any work papers behind
21 these slides, that these slides were based on the
22 work papers produced by CSX and NS?

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1 MS. AMUNSON: Yes.

2 CHAIRMAN OBERMAN: Or their experts?

3 MS. AMUNSON: Yes. They are simply
4 visual depictions of CSX's and NS's work papers.

5 CHAIRMAN OBERMAN: So that if -- and I'm
6 not criticizing opposing counsel for not doing
7 this, but I'm trying to put this in some
8 understanding. Had opposing counsel said, Produce
9 all the work papers behind these additional
10 slides, there aren't any work papers that
11 Mr. Johanson himself created behind these slides?
12 He never created any, is that what you're saying?

13 MS. AMUNSON: I believe that's right.
14 They're simply, as I said, a visual depiction of
15 CSX and NS work papers.

16 CHAIRMAN OBERMAN: Here's how I will do
17 this. I think rather than go through each slide
18 now, I am going to allow questioning on the first
19 slide you choose to come to that's in the list --
20 that Ray has listed in his motion. And I'm going
21 to listen to your direct examination of what it's
22 about, and then I'm going to listen to Ray make

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1 his arguments in response to what is actually
2 being offered into evidence. And then we'll
3 proceed that way, and see if we can get some
4 example of what the rest -- of how the rest of
5 those slides may go. I think it's -- based on
6 your representation, Jessie, it's almost
7 impossible to rule on it in the abstract until I
8 see what your -- the witness is going to talk
9 about, about representing it in some graphic form,
10 data that was produced by the other side. I
11 gather that's what you're suggesting these slides
12 are about.

13 Until I hear what happened to them, and
14 then Ray can hear whether he is or is not able to
15 proceed without being prejudiced, but I don't
16 think we can rule. So I think that's how we will
17 proceed.

18 And, Ray, renew your objection after you
19 hear your testimony, and you're not waiving
20 anything and we're going to, hopefully, not have
21 to argue about every slide, but let's get an idea
22 of just what Mr. Johanson's done here before we

1 decide to question.

2 I will say this, that, you know, we did
3 not set out an expert disclosure order of the type
4 you might get in a -- in a federal district court
5 with very explicit details on who has to disclose
6 what by when, and, generally, we follow the
7 general concepts in the federal rules, but this is
8 an administrative hearing. What I'm interested in
9 hearing is whether there's actual prejudice. And
10 if there is, that is something I would recommend
11 the board take into account in deciding whether to
12 grant your motion. But I think until we hear
13 exactly what he's talking about, it's impossible
14 to make a ruling along those lines.

15 MR. ATKINS: I'm happy to raise it
16 again --

17 (Reporter clarification.)

18 CHAIRMAN OBERMAN: So with that, sort
19 of, preliminary observation, let's proceed and see
20 how far we can get.

21 MS. AMUNSON: Thank you, Mr. Chair.

22 DIRECT EXAMINATION

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1 BY MS. AMUNSON:

2 Q Good afternoon, Mr. Johanson, can you
3 please introduce yourself?

4 Yes. You have to be sworn in. My
5 fault.

6 WHEREUPON,

7 CLAYTON JOHANSON,

8 having duly been sworn to tell the truth, the
9 whole truth and nothing but the truth, testifies
10 as follows:

11 Q Thank you. Can you please introduce
12 yourself to the board, and spell your last name
13 for the court reporter?

14 A Clayton Johanson, principal consultant
15 with DB E.C.O. North America, J-O-H-A-N-S-O-N.

16 Q And can you tell the board a little bit
17 about your educational background?

18 A I have a bachelor of science in
19 transportation in logistics from Iowa State
20 University in Ames, Iowa in December of 2002.

21 Q And a little bit about your employment
22 background.

1 A After college, I started with the
2 company called Hub group as a minimal coordinator,
3 their -- Hub group is called a minimal marketing
4 company. I was involved in the entire intermodal,
5 kind of, supply chain from pickup to delivery
6 of -- of customers whose shipments involve
7 intermodal transportation.

8 After that, I spent 15 years with BNSF
9 Railway. I started out as an assistant
10 trainmaster at Courtyard in Chicago, Illinois.

11 Assistant trainmaster is the equivalent
12 of a yardmaster on the Santa Fe property.
13 Yardmaster directs rail traffic in and out of the
14 railroad yard. I was responsible for developing
15 the inbound plan, executing that plan, developing
16 the plan to get trains out of the yard. So
17 everything that goes, that's involved in executing
18 a plan on the railroad yard, that was my
19 responsibility. I was subsequently promoted to
20 trainmaster with largely the same roles plus some
21 larger planning responsibilities.

22 After that, I was promoted to manager of

1 transportation of Courtyard, where I was
2 responsible in real time for all of BNSF
3 interchange activities within the Chicago
4 terminals, so dealing with all of the -- the
5 terminal roads and the other connecting roads,
6 Class 1s in Chicago to help move BNSF's traffic
7 and trains through the terminal and also received
8 traffic due to us, off of the -- off of the other
9 roads. After that, I became terminal manager of
10 suburban operations for BNSF --

11 I was terminal manager of suburban
12 operations, where BNSF serves as the contract
13 operator for Metro commuter rail service in the
14 Chicago area.

15 In that role, I had responsibility for
16 all of the front-line supervisors, and train
17 crews, service planning, for executing the
18 100-plus commuter trains that we operated a day on
19 that corridor, along with helping manage that and
20 protect the BNSF's freight operations on the line
21 between Chicago and Aurora.

22 Q And after leaving BNSF, what did you do?

1 A I've been with DB now for three years.
2 Engaged in planning projects from very short-term
3 production and train schedules. Essentially, the
4 next train schedule that goes in effect on a
5 particular line, all the way to long-range
6 planning efforts for visioning and other, kind of,
7 service design for -- for either per passenger or
8 mixed passenger freight corridor planning.

9 Q And what types of clients do you work
10 with at DB in doing this planning?

11 A Yeah, we work with passenger operators,
12 state agencies, and Class 1 freight railroads.

13 Q And you were engaged by Amtrak in this
14 case?

15 A Yes.

16 Q And what were you asked to do by Amtrak?

17 A We were asked by Amtrak to assess the --
18 the supply of capacity on the Gulf Coast Corridor
19 and then the demand on capacity in that corridor
20 and then what -- what would be the demand of the
21 proposed Amtrak Gulf Coast service on that
22 corridor.

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1 Q What did you conclude?

2 A We concluded that on the Gulf Coast
3 Corridor that the supply of capacity is sufficient
4 given the -- the current freight demand, and the
5 proposed Amtrak Gulf Coast service is sufficient
6 to allow for initiation of the proposed Amtrak
7 Gulf Coast service without any infrastructure
8 being built prior to the negotiation of service.

9 Q Thank you.

10 MS. AMUNSON: Mr. Chair, did you want us
11 to pause for a moment?

12 CHAIRMAN OBERMAN: No. No. No. Go
13 ahead. I can hear.

14 BY MS. AMUNSON:

15 Q And your conclusions are set forth in
16 the verified statements that you filed in this
17 case?

18 A Yes.

19 Q And just for the record, those are Joint
20 Exhibits 31, ZA, ZB, and ZC and Joint Exhibit 49B,
21 and those are in the witness binders that I
22 believe you have in front of you and the board

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1 has; correct?

2 A Yes.

3 Q Yes.

4 A And I'd like you to -- to turn to the
5 report that you prepared, along with your first
6 verified statement, which is Joint Exhibit 31ZB,
7 it's at Tab 2 of the binder, and I just want to
8 start out by just asking you about this capacity
9 marketplace methodology.

10 CHAIRMAN OBERMAN: Before you go ahead.
11 This is listed in the index as "highly
12 confidential."

13 MS. AMUNSON: Yes, I was about to get to
14 that.

15 CHAIRMAN OBERMAN: Good.

16 MS. AMUNSON: We have discussed with --
17 with CSX and NS, the -- the confidentiality
18 designations. They have agreed to de-designate
19 this, and it can be public.

20 CHAIRMAN OBERMAN: All right.

21 MS. AMUNSON: There will be certain
22 things later that they did not agree to -- to

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1 de-designate; those are, I believe, only in the --
2 as far as the slides that I am going to cover
3 here, those are only in the disputed slides
4 with -- with Mr. Atkins.

5 CHAIRMAN OBERMAN: Okay. Proceed.

6 MS. AMUNSON: Okay.

7 BY MS. AMUNSON:

8 Q So if you can go to page 6 of your -- of
9 the report. And, thankfully, this is both real
10 page 6 and exhibit page 6.

11 And the -- the heading at the top of
12 this page, "Mixed Rail Corridors Present
13 Challenges that can be Mitigated When Cooperative
14 Service Planning With All Partners is Undertaken
15 from the Outset."

16 Can you just talk to that as the
17 philosophy for your methodology?

18 A Yes, so the type of work that we do at
19 DB, we take a, I think, a unique or a different
20 approach to how we tackle capacity -- capacity
21 problems. We -- we try to look at it from a --
22 starting from a kind of a holistic standpoint and

1 looking from a service-planning-first standpoint,
2 where we try to seek to understand the service
3 plans and service needs of all of the operators in
4 a corridor and try to align those service plans as
5 best as possible before moving to discussions on
6 infrastructure mitigations, and other types of
7 things. So we can first try to understand how the
8 corridors can be used, and then design solutions
9 that ultimately support those service plans.

10 Q And if you can go on to page 7, can you
11 explain what we're looking at here?

12 A Yeah. So seven really summarizes this
13 approach that -- that we've developed at -- at DB
14 over the last few years, where we developed a new
15 approach for how we -- how to calculate the
16 capacity of a -- of a rail corridor and then
17 assess kind of the supply and demand on that
18 capacity. And what we did is that we start by
19 terming a -- a capacity unit, capacity unit is
20 really derived from what we call a standard train;
21 once we've derived this capacity unit, we can
22 determine a supply of capacity on a corridor.

1 Then we can look at how the demands placed on the
2 capacity and examples of things that are demands
3 on capacity are passenger trains, freight trains,
4 track work, variability, and train operations.

5 Then we can look at ways to -- we can
6 iterate through how to, essentially, balance
7 supply and demand such that at the end of there,
8 you can find the right -- the right projects or
9 the right initiatives in the right order to -- to
10 introduce the service. And from there, you have
11 a -- an operating plan, and then, can delineate
12 the right, the right projects or the right other
13 types of improvements to make in the right order
14 that can ultimately support that service plan.

15 Q And, Mr. Johanson, I'm just going to ask
16 you to slow down a little bit more for the court
17 reporter.

18 But -- how does your methodology differ
19 from an RTC study?

20 A Yeah. So RTC is a simulation tool which
21 tries to simulate all of the activities on the
22 railroad. Our methodology is not a simulation

1 tool. It is a planning, a planning approach and a
2 planning methodology to understand supply and
3 capacity. The outcomes of our types of work can
4 eventually be used in a simulation package like
5 RTC or other products, but it is the planning work
6 that often -- that can be done on -- that can be
7 done prior to simulation.

8 Q And are there examples of places where
9 this methodology has been used to introduce
10 service, either with or without RTC modeling?

11 A Yeah. So we did work last year with
12 Metro and BNSF in Chicago, where BNSF or, I'm
13 sorry, where Metro wanted to -- we reimagined,
14 realigned their services for a post-, essentially
15 a post-COVID world. And the challenge there was
16 to find ways to allow Metro to simplify their
17 operating plan, expand their operating -- their
18 services to kind of expand more towards an all-day
19 service, while also protecting the BNSF's freight
20 operations on the corridor. As a result of that,
21 our work, that plan was implemented and all
22 operators were able to achieve, achieve their

1 goals and operate the plan with a high degree of
2 reliability.

3 Q And we've heard a lot in this proceeding
4 about RTC modeling and -- and the infrastructure,
5 sort of, recommendations that it has produced, at
6 least in this case.

7 With your methodology, is the solution
8 always just to build more infrastructure?

9 A No. It -- in other places where we've
10 implemented this or deployed this methodology, we
11 have identified either operational improvements or
12 technological improvements, and then we can
13 quantify the value of those -- of those
14 initiatives and mitigations and -- and help
15 stakeholders, maybe, identify those for
16 implementation first, because those can often be
17 implemented more quickly and more cheaply than --
18 than infrastructure.

19 Q And based on your experience at both
20 BNSF and now with DB, can you give some specific
21 examples of how railroad capacity can be increased
22 without building more infrastructure?

1 A Yeah, so two examples from projects we
2 did on the West Coast in one case in Southern
3 California, we were able to identify how,
4 essentially, passenger operators who had an
5 unaligned service plan -- so you essentially had
6 multiple operators in a corridor, who were sort of
7 developing their operating plans in isolation --
8 that once those plans were aligned, they were able
9 to operate the same amount and more service,
10 actually, with less infrastructure, because they
11 finally were aligned and were not developing plans
12 that overcompeted for resource, for track space.

13 In another study, we were able to
14 quantify and demonstrate how changes in the signal
15 system and the deployment of positive train
16 control would allow trains to change their spacing
17 distance between each other, which then allowed
18 for more trains to traverse the corridor on the
19 existing infrastructure without the need to
20 construct additional tracks.

21 Q Thank you. I'd like to turn now to just
22 more specifically how your methodology works, and

1 if -- if we can go to page 8, please.

2 Can you explain, sort of, the first step
3 here?

4 A Yeah. So the first thing we do is we
5 establish a capacity unit, which we call a
6 standard train. And a standard train is simply
7 a -- we're creating a measurement of which we can
8 compare, sort of, operating -- operating or
9 service decisions back. So it certainly doesn't
10 mean that every train has to look like the
11 standard train or adhere to the standard train.
12 We're simply developing a measuring tool that we
13 can compare and contrast certain decisions to, so
14 whether those are operating decisions or
15 infrastructure-type decisions, we have something
16 to make that -- that comparison to.

17 And that standard train is based off
18 of -- of data of the real-world data of the train
19 types that were being operated on in a particular
20 corridor.

21 Q And you say it -- going to the top of
22 page 9, you say that this helps to frame benefit

1 and trade-off discussions.

2 Can you explain what you mean by that?

3 A Yeah. So what we're -- what we're
4 doing -- and we use this analogy. A lot of this
5 is like grid lines on paper -- is we're not
6 changing the structure of the railroad. We're
7 just providing structure for how you understand
8 how to use it. So if you kind of think of that
9 grid line example of a blank piece of paper, and a
10 paper with grid lines on there. You know, just
11 for me, it's easier to write on paper with grid
12 lines because I can structure my thoughts and
13 structure how I write on it more than paper
14 without a grid.

15 And we're -- that's just what we're
16 doing here is providing a structured way of
17 understanding how we measure the capacity on the
18 corridor and structuring how we apply the demand
19 on the use of that corridor.

20 Q Thank you. If we can turn ahead to
21 page 12. On page 12, you say that this
22 methodology provides visibility for operators to

1 consider operation deficiencies that free up
2 capacity and mitigate the need for capital
3 investment. Can you explain what you mean by
4 that?

5 A Yeah. So the -- our methodology
6 provides transparency because of how we calculate
7 and quantify the -- the capacity exhumed by
8 certain, you know, passenger service plans or
9 freight service plans or freight operations.

10 And we have a very simple, you know,
11 essentially, methodology where we develop our
12 capacity units. We calculate the supply capacity.
13 We apply demand on that capacity, and then you
14 iterate between supply and demand to get --
15 essentially, to get those to where they equal out,
16 where the stakeholders on a particular corridor
17 want to get to.

18 And from there, then, we can articulate
19 a service plan, a list of projects -- projects can
20 be infrastructure. They could be, you know,
21 service, other types of service improvements, or
22 we can tie back specific projects, to specific

1 benefits.

2 So rather than having necessarily a
3 whole listing saying you need to use, do all of
4 these, we can say, this project gets you this.
5 And this aligns with this service goal.

6 This project gets you this, which aligns
7 with that service goal.

8 And then at the end, we have this
9 framework for operators, and -- and particularly,
10 variability, we have a metric for measuring, sort
11 of, inefficiencies within a particular corridor.

12 Q Thank you. If we can look at page 13,
13 and you can just -- if you could just explain to
14 us what we're looking at here?

15 A Yeah. So this just kind of illustrates
16 how -- how one of the things that you can sort of
17 get at the end of our -- of our methodology, which
18 is a -- a project list with a phased, a phased
19 approach.

20 So you can say, we need to do, you know,
21 this project, this project, this project. This
22 allows us to reach a certain type of service,

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1 world. So, you know, this is illustrative here.
2 This is a representative of this corridor, so
3 maybe you want to start a corridor where you want
4 to have an hourly passenger service, and you want
5 to have 35 opportunities a day to run -- to run
6 freight trains and this is the level of
7 infrastructure.

8 And maybe other improvements you need to
9 make to reach that level, and maybe you want to
10 expand, maybe you want to run more passenger
11 service or you want to run more freight service
12 then go on to the next, kind of, package of
13 programs, and you can phase in the work, to align
14 the right infrastructure and the right plan with
15 the right, kind of, level of demand.

16 Q And I note on this, is it always
17 infrastructure, or is there sometimes other types
18 of improvements?

19 A Yeah. It doesn't necessarily have to be
20 infrastructure. They can be operating changes.
21 So, like, the ones I talked about with our project
22 in California, where we're able to align -- align

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1 service plans there. There, we -- we essentially
2 worked on the demand side, rather than trying to
3 add supply. And then, as I spoke to the other
4 project, we can -- there's technological changes
5 to increase, kind of, the supply capacity.

6 Q Thank you.

7 CHAIRMAN OBERMAN: Could I -- could you
8 explain that again? In addition to technology
9 changes, what was the first part that you said
10 could be done?

11 THE WITNESS: Yes. Mr. Chairman, the
12 first one could be service plan changes, so the
13 example I spoke about in Southern California that
14 you have a corridor with multiple passenger
15 operators on there, and each operator has their
16 own service plan, their own service goals, and
17 they're not necessarily aligned and so they create
18 service plans that inefficiently use a rail
19 corridor and if you can get those service plans to
20 align, you can essentially with the -- run the
21 same number of trains on the same corridor, but
22 use less overall capacity, because you're

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1 essentially -- because we squeezed out
2 inefficiencies by essentially working together and
3 getting a line.

4 CHAIRMAN OBERMAN: There's been a lot of
5 questioning in this proceeding about operational
6 changes. Are we talking about the same thing,
7 when you say "changing in service plans?"

8 THE WITNESS: It can be. It's a little,
9 you know, this corridor's probably a little bit
10 more challenging just because of the -- the
11 passenger volume isn't as -- as much as they use
12 in the Southern California example.

13 It's also kind of harder in a -- in sort
14 of this challenged environment to be able to
15 identify operational improvements without
16 really -- and an easy ability to collaborate, but,
17 yes, overall, there are opportunities to look at
18 operational changes. It's hard to do that and --
19 and suggest very strong meaningful changes
20 without, in sort of the environment that this case
21 takes place in.

22 CHAIRMAN OBERMAN: I was more -- I

1 appreciate that. I was more focusing on the
2 terminology when you talk about service plans.
3 This is another way of talking about operational
4 changes, sounds like it to me?

5 THE WITNESS: Yes. Absolutely.

6 CHAIRMAN OBERMAN: Okay.

7 MEMBER HEDLUND: Could you identify the
8 corridor in Southern California that you did this
9 work on?

10 THE WITNESS: Yes. It's between Los
11 Angeles and San Bernardino, which includes the
12 Lossan Corridor and Metro lane, and Amtrak long
13 distance and BNSF.

14 CHAIRMAN OBERMAN: Thank you. I'm
15 sorry. Go ahead, Jessie.

16 MS. AMUNSON: Thank you.

17 BY MS. AMUNSON:

18 Q I want to turn now to how you actually
19 applied your methodology in this case. And if we
20 can go to page 16, and if you could just explain
21 to the board what we're looking at there, and this
22 is -- I will say, one of the slides. It was

1 originally designated "highly confidential," that
2 they have now agreed can be public.

3 A So what we did is we took the OS, the
4 signal system data from 2019, September through
5 November, that's aligned. That's aligned with the
6 HNTB study, and we essentially applied every
7 single train that operated in that period. And
8 then we looked at the 95th percentile of the
9 length of a train, and the 95th percentile of the
10 weight of a train, and we picked those 95th
11 percentiles to develop our standard train.

12 And so what that means here is we
13 developed, we chose a very conservative standard
14 of a very long, very heavy train, and this train
15 encompasses the 95 percent, the vast majority of
16 all the types of train events that occurred on the
17 Gulf Coast Corridor in the -- in that data period.

18 Q And then if you go to page 17, can you
19 explain?

20 CHAIRMAN OBERMAN: What are the axis,
21 the length and -- oh, I see, okay. So the -- it
22 looks like most of the density of the dots has

1 turned to the lower end of this 95th percentile;
2 is that right?

3 THE WITNESS: Yeah. And it's -- we
4 chose a very, you know, conservative standard --
5 it's certainly possible -- I don't know, you know,
6 exactly what -- but it's very possible there's
7 many movements of switch engines, and other types
8 of, you know, maybe, yard activities that could
9 certainly populate a lot -- a lot down there, but
10 we still need down to the 95th percentile to --
11 because what we're really trying to achieve is a
12 train operational profile. It's not a minimum
13 criteria for designing sidings or anything else.
14 We just want to choose a very, kind of,
15 conservative level of what the types of trains
16 that will be operated on the corridor might look
17 like.

18 CHAIRMAN OBERMAN: Okay. Thank you.

19 BY MS. AMUNSON:

20 Q And if you can then go to page 17 and
21 explain what we're looking at there.

22 A Yeah. So after we have developed our

1 standard train, we, need the, other, kind of, big
2 component of developing a capacity unit is how
3 frequently can you run the train, and that -- what
4 we're looking for here is really trying to derive
5 how quickly -- how quickly one train, if you're
6 standing in a place and the signal's green and the
7 train goes by, how quickly can that train go by
8 and that signal get back up to green, so two
9 trains can essentially follow each other
10 essentially unimpeded.

11 We looked at the actual data provided
12 for the corridor. Looked for instances of two
13 trains following each other, counted the frequency
14 of events and minutes, the difference between
15 those -- those two events. And then chose -- and
16 then essentially chose the number that came out
17 most frequently, and we arrived at this 15-minute
18 headway parameter. So, essentially, train goes
19 by, 15 minutes later, the next train can go by
20 unimpeded.

21 This is essentially the parameter that
22 allows us to figure out how closely or how far

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1 apart to space the trains included in these
2 capacity units.

3 Q And, again, this is based on actual data
4 and is mapped in the actual, sort of, locations
5 along the line, or locations at the top; is that
6 right?

7 A Yes. That's correct.

8 Q If we can -- can go to page 18, based
9 on, sort of, all of the data, can you just
10 explain, are these the parameters that you
11 developed for your -- for the analysis?

12 A Correct. Yeah. So then these are
13 essentially, become our plan parameters, so we
14 have our standard train, which becomes a four --
15 composed of 4 to 400-horsepower locomotives,
16 1,000 feet, 17,000 tons. We chose that 4 to 400
17 horsepower locomotives, which is a certain
18 horsepower per ton, which is roughly 1.0.

19 So one horsepower locomotive for every
20 tonnage of locomotives. Our separation times are
21 a minimum distance that a train could
22 theoretically follow each other that just sets up

1 our capacity units, separation, at least on the
2 freight side of seven minutes that a train goes by
3 in one direction; maybe you're standing at the end
4 of the siding.

5 How quickly could the train go in the
6 other direction, kind of begin movement and start
7 exiting the siding. And then we also included a
8 10 percent distributed recovery. So it's
9 essentially an extra, kind of, margin to account
10 for kind of more smaller variability of train
11 operations.

12 So some locomotive engineers can run a
13 bit faster, some can run a little bit slower. So
14 we have that 10 percent distributed recovery.
15 10 percent here essentially just means that for
16 every one minute, we have an extra 10 percent of
17 air, so that would be like six seconds, so we add
18 that six seconds and so we have that six seconds.

19 Then we have our passenger parameters,
20 which is based off of a single Amtrak railroad
21 locomotive for Superliner approaches, the headways
22 were a little bit shorter because the passenger

1 trains can move faster. Ultimately, the headways
2 on the passenger's side doesn't affect the
3 development of the capacity units, and then we
4 have 5 percent distributed recovery plus the
5 segment -- segment recovery from segment to
6 segment as provided by -- by Amtrak and the
7 schedules that they provided for this case.

8 Q And when you established these
9 parameters, do these parameters mean that CSX
10 can't run trains that are longer than 11,000 feet
11 or heavier than 17,000 tons?

12 A No. Nothing about this constrains an
13 operator from making -- from operating a railroad
14 however they see fit. It's just a way for them to
15 develop measurements, to compare kind of decisions
16 and data analysis.

17 Q And does this mean that CSX has to
18 robotically dispatch trains every 15 minutes?

19 A No. It doesn't.

20 Q If you can go ahead to page 21 of your
21 report, and just explain to the board what we're
22 looking at here.

1 A So after we developed our units of
2 capacity for the corridor, we laid down the Amtrak
3 schedule, and started, essentially allocating
4 those units of capacity to the proposed Amtrak
5 service, and that's what the -- the diagram on 21
6 visualizes.

7 Q And so based on this, then, you can
8 calculate units of capacity?

9 A Correct. We can then calculate the
10 units of capacity consumed by the proposed Amtrak
11 Gulf Coast service.

12 Q And if you turn to page 22, what did you
13 conclude about capacity consumed by Amtrak trains?

14 A So the -- the proposed Amtrak Gulf Coast
15 service consumed between four to -- in total. So
16 the four proposed Amtrak trains in total consumed
17 four to six units of capacity per section
18 throughout the corridor.

19 In most cases, the proposed Amtrak train
20 did not really run very differently from a
21 standard train, so there was only one unit of
22 capacity. In the cases where it was -- where you

1 see the sixth bars(ph), and no segments, two of
2 the trains consumed two units of capacity, and
3 then may be driven by either meets or -- or
4 accounting for Amtrak's statutory-wide preference
5 so that we never assumed that Am- -- you know, we
6 never tried to, kind of, wedge in the Amtrak
7 train -- could theoretically arrive shortly before
8 a freight train or a capacity unit that somehow,
9 that Amtrak could wait. So we allocated, you
10 know, when there was essentially a tie, we
11 allocated in that capacity consumed to Amtrak.

12 Q And if you turn to page 23, what did you
13 conclude about the capacity consumed by freight
14 trains?

15 A Yes. Then using the CSX OS data, we
16 calculated the average train count per section, so
17 you see those city or station names throughout the
18 corridor, we looked at each single-track to
19 single-track section throughout the corridor,
20 calculated the average train count in that
21 section, and that train count is based on any
22 train movement that -- that was in the -- the

1 provided OS data.

2 Q So that's over a three-month period,
3 that frame -- that train count that you have
4 there?

5 A Yes. That's correct.

6 Q And if we can go to page 23, what did
7 you conclude about the -- or, I'm sorry. 24. How
8 does your methodology account for variability in
9 operations?

10 A Right. So there is -- a lot of
11 variability in freight train operations, and that
12 can be driven by a number of things. Some freight
13 trains may run faster; some freight trains may run
14 slower.

15 Length can sometimes be a factor. There
16 may be speed restrictions. The -- it's always the
17 stuff that happens in the day-to-day operation
18 that causes a train to be -- to be delayed, and
19 what we did was is that we calculate variability
20 for -- for our purposes for our methodology is
21 really just calculation of the -- the difference
22 or the deviation from the standard train.

1 So we can calculate a metric of, if you
2 will, kind of the inefficiencies that are created
3 by trains that are -- that don't adhere to the --
4 to the standard train, not all. Not all those
5 deviations are necessarily bad, but that's just a
6 way to quantify that, and then be able to have an
7 objective discussion on the decisions that lead to
8 that variability. We calculate that across the
9 corridor and came to an average unit of
10 essentially 1.4. So for every train -- freight
11 train that is operated, one freight train would
12 consume one unit of capacity, and then there is an
13 additional 1.4 units of capacity consumed by
14 variability, all of this other stuff that happens
15 in the day-to-day operation of a railroad.

16 Q And one of those variabilities you
17 accounted for was drawbridge openings?

18 A Yes. So any train that is delayed,
19 waiting for a drawbridge, that delay would be
20 accounted for in the variability metric.

21 Q And, again, this variability metric is
22 based on actual data from CSX and NS?

1 A Yes. That's correct.

2 CHAIRMAN OBERMAN: Let me just ask this
3 question: The data is the data that was produced
4 in discovery in this case; is that where you got
5 all your data?

6 THE WITNESS: Yes. That's correct.

7 CHAIRMAN OBERMAN: And compared to what
8 Mr. Crowley and Mr. Fapp have said about their
9 inability to get behind the data, was that a
10 concern of yours, or did you just accept the
11 ultimate numbers that were produced to input into
12 your study?

13 A Yeah. So we -- we looked at the -- the
14 data; there were, I mean, some initial sets that
15 we received that weren't thorough.

16 But we later received other stuff that
17 satisfied our needs. And not an -- you know, an
18 ability to question a train that passed by a
19 signal in real life that somehow doesn't account
20 for in the data, and so we just assumed what was
21 in there was from there, and we did not try to
22 audit it or say that -- if -- if there was

1 something missing.

2 CHAIRMAN OBERMAN: So for your work, if
3 he said there's 1265 trains that there aren't
4 backup data for in that train file -- I think
5 that's the point -- if I get the terminology
6 right -- you just said, Fine, I'm going to put
7 that number of trains into our evaluations without
8 challenging it. Is that our way to understand it.

9 THE WITNESS: There's a couple of
10 things. So any time a train passed by a signal in
11 the corridor, that, therefore, should be recorded
12 and, therefore, should be in the dataset. My,
13 kind of, understanding of a lot of the discussion
14 around various types of train counts is, from what
15 I heard or understand the testimony. It involved
16 train movements that occurred within a yard in a
17 train that never passed the signal on another
18 track.

19 Our methodology is focused on a main
20 track and we calculate anything that consumes in
21 that main track, and that's derived off of -- this
22 OS data should show any time this trains, passed

1 by a signal on the main track. Anything that
2 occurs in a yard, and all those activities that
3 occur in a yard, that, we don't need for our
4 methodology.

5 If a train, essentially, pulls up to the
6 front door of a railroad yard or a terminal and
7 then can't get in, we -- that gets captured in
8 variability, because maybe the train gets --
9 passes the signal 2 miles before the yard. Sets
10 for one hour or two hours, whatever that number
11 is. And then passes the signal -- later that's
12 captured. That's in that loss data, and then we
13 can use that to make our variability calculation
14 so. In short, our methodology doesn't require any
15 of the stuff that occurs within a yard and doesn't
16 touch a main track.

17 CHAIRMAN OBERMAN: I have a hunch that
18 opposing counsel is going to cross-examine you on
19 that aspect. I just wanted to know where you got
20 your data. I wanted you to explain that. Thank
21 you.

22

1 BY MS. AMUNSON:

2 Q If we can turn to page 27. How does
3 your methodology account for events like staging?

4 A Yeah. So staging, in terms of the way
5 this is defined here, staging is when a train, for
6 whatever reason, essentially, is not -- does not
7 move for over three hours. So my experience in --
8 in Chicago -- oftentimes, we would have to, what
9 we call "stage a train," which means the
10 connecting carrier was not ready to receive the
11 train. So we took it to a place. Generally, took
12 the crew off the train, and then at some point
13 later put a new crew on the train and then
14 continued on to the -- to the connecting carrier.
15 And so we wanted to -- in our methodology, we
16 wanted to capture those types of activities
17 because that's, kind of, a very pronounced way of
18 defining the capacity consumed by these types of
19 delays that can happen to the freight trains.
20 And, oftentimes, the solutions could either be,
21 perhaps, infrastructure that doesn't cost as much
22 as -- because you're not building a, you know,

1 main track. You can build a storage track
2 somewhere, or you can actually identify just how
3 much capacity is consumed by -- by that type of
4 activity and then think of ways to -- to drive
5 that out of there.

6 And so for -- for -- in our other
7 studies, and the same as in this one, any train
8 that doesn't record a movement for over three
9 hours gets moved into this staging bucket and is
10 pulled out of the variability bucket.

11 Q And so I'm not going to take you through
12 each one of these slides, but does your
13 methodology also break out and quantify capacity
14 for other activities or events?

15 A Yes. So we also account for track
16 maintenance activity. So how much time, railroad
17 line, is consumed by people needing to work and
18 repair and maintain the tracks. We also account
19 for the additional capacity consumed by a train
20 entering the terminal, what we, kind of, call an
21 onramp, offramp movement, because a train has to
22 enter a rail yard. It has to enter a rail yard.

1 It has to run slower and therefore, it is
2 essentially on that main track, wander -- while it
3 makes that kind of slow movement into a railroad
4 yard.

5 Q And, again, for -- for purposes of -- of
6 quantifying the capacity for those other
7 activities or events, what sorts of data or
8 assumptions did you use?

9 A So for the track maintenance, in our
10 typical other work, we currently get a plan from
11 one of the stakeholders of the railroad.

12 In this case, because we didn't have
13 that, we used the -- I believe it's called the
14 permit file from -- from RTC. We put that into
15 Excel and simulated 30 days of outages, 30 times
16 over all 900 simulated days. Took an average of
17 that, and then we carried that as a maintenance of
18 way outage assumption, which came up to, I
19 believe, two hours of track capacity per day, per
20 segment of the corridor.

21 Q And if we can go ahead to page 30, when
22 you put all of this together, all the capacity

1 that you -- you quantified, what did you conclude
2 about whether the Gulf Coast line has sufficient
3 capacity to handle the reintroduction of Amtrak's
4 Gulf Coast service for two round trips per day?

5 A So our conclusion was -- is that there
6 is sufficient capacity on the Gulf Coast Corridor
7 where no section ever exceeds the demand of
8 capacity in the section. There's no section where
9 demand on capacity exceeds the supply, and,
10 therefore, the Amtrak Gulf Coast service can be
11 initiated without the need for -- without the need
12 to conduct or construct additional infrastructure.

13 Q And can you just -- just get a little
14 bit more granular on the slide? Just take us
15 through, quickly, the, kind of, colored bars, just
16 so the board can really glean what -- what this is
17 showing?

18 A Yes. So, like, I'll look at -- kind of
19 starting with -- with slide -- slide 30, we just
20 simply, we've -- we've calculated the -- the
21 supply of capacity in each section, and that
22 supply number is at the top. So in most cases

1 it's 48. In one case, it's 32 and others, it's
2 96. And then we just build up from there. We
3 just start by allocating the -- out the
4 maintenance of way assumptions, so that's two
5 hours of capacity per segment per day.

6 We then allocated the freight train
7 movements in each section. Then we build on
8 variability from those freight trains. If there
9 were -- not all sections have them, but some
10 sections have train stations. So trains that are
11 waiting to enter -- enter the terminal. Then we
12 accounted for these onramp movements, so these are
13 trains either entering or exiting the yard.

14 And this, like I said, that blue,
15 that's -- that dark blue, that's everything left.
16 We then allocated on the Amtrak, the demand from
17 the proposed Amtrak Gulf Coast service that can be
18 seen on page 31. And so the sections between
19 Orange and Gaute and Gaute and Beauvoir, we
20 reach the -- the maximum, but never exceed it.

21 And in -- then the section between
22 Sibert and Choctaw. Track 2 is fully allocated,

1 but Track 1 still has some capacity remaining.

2 Q So -- so on page 31, then, these are
3 just three areas where you identified additional
4 operational efficiencies, where infrastructure
5 improvements should be explored?

6 A That's correct.

7 Q And if we can go to page 32, and you can
8 just explain for us, what we're -- what we're
9 looking at here.

10 MEMBER SCHULTZ: Can I just ask a quick
11 question? What is the definition of "capacity?"

12 THE WITNESS: Yeah. So, for our
13 purposes, the way that we conduct the study,
14 essentially, the definition of "capacity" is the
15 number of standard train units you can have in a
16 24-hour, a 24-hour day.

17 And so if -- you know, like, referring
18 back to the slide part of page 30, if you look
19 between, like, Choctaw and Brookley, there's 96.
20 There's essentially 96 standard train units
21 available in that section in a 24-hour period.

22 So, if you will, you have, kind of, 96

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1 units and you can spend them however you want and
2 that can be fixing the tracks, running freight
3 trains, running Amtrak, running trains, holding
4 the trains. You now have a way of quantifying how
5 you use that.

6 MEMBER SCHULTZ: Just one followup. And
7 how -- how are those units arrived at? How is
8 that determined?

9 THE WITNESS: Yeah. So it's a function
10 of the standard train. That standard train is
11 derived from the -- taking those 95 percentiles
12 of -- of, kind of, the length and weight of the
13 actual trains operating on the corridor, and then,
14 spacing those units out, essentially, kind of,
15 defining the width of those units based off of
16 what the signal system allows the trains to be
17 safely spaced out.

18 MEMBER SCHULTZ: And those would have
19 been that -- that unit, then, is based upon CSX
20 and NS's determination?

21 THE WITNESS: No. It's a -- we had to
22 determine the standard train, but it's -- it's

1 based off of the type of trains that they operate
2 on the corridor. So it is reflective of -- it's
3 essentially a very conservative reflection on
4 almost the longest and heaviest train they run on
5 the corridor. There are -- 5 percent of trains
6 will be longer or -- or heavier, but, it's
7 essentially, a very conservative representation of
8 the vast majority of the train types that CSX and
9 NS will operate on the corridor.

10 MEMBER SCHULTZ: Thank you.

11 THE WITNESS: You're welcome.

12 BY MS. AMUNSON:

13 Q And if I can just abstract out and
14 follow up on your question; if I could just
15 abstract out for a moment on your methodology.

16 I believe we heard, sort of, a CSX and
17 NS witness, kind of, testify that capacity equals
18 infrastructure is another way of saying that
19 there's sufficient capacity, is saying that the
20 existing infrastructure is sufficient to handle
21 the reintroduction of Amtrak trains?

22 A Yes. That's correct. There's a --

1 there's sufficient -- the current infrastructure
2 and the capacity of that current infrastructure
3 can support demands placed on it with the
4 introduction of the Amtrak Gulf Coast service.

5 Q Thank you. If we can look, then, at
6 page 32, and these are at, I think, the three
7 areas where you, sort of, identified, sort of, the
8 potential to look at additional capacity issues,
9 and if you could just talk the board through
10 those.

11 A Yeah, so we -- we've identified, you
12 know, three -- three locations on the corridor
13 where either the supply or the demand on capacity
14 is just short of the full supply. Or with the
15 Amtrak service, the supply and demand are equal
16 and, therefore, at some point, demand may exceed
17 the supply.

18 And we've identified three sections.
19 One is around Mobile Station and then we
20 identified that the construction of a -- of the
21 layover track near the -- or at the Mobile station
22 that would reduce a demand on the capacity,

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1 because you wouldn't have an Amtrak non-revenue
2 movement from the Mobile Station to Choctaw Yard
3 and back -- station track, that goes away, so
4 that's where we do see the demand on the capacity.

5 The next one is around by Casode (ph)
6 here CSX has a yard that serves a number of local
7 trains. There, in the current state, the track
8 switches there are not powered so anytime a train
9 needs to enter and exit the yard, conductor has to
10 get off, walk over to the switch, unlock the
11 switch, change the switch direction. And that
12 takes time so we propose adding, what we call
13 "power up the switches," such that a train
14 dispatcher can control the switches and that
15 essentially eliminates the need for the train to
16 come to a stop. And the train can enter the yard
17 a little bit, still slow, but eliminates all of
18 that stop time from having to stop, walk, change
19 the switch, all of that.

20 And the last section is between Geaute
21 and Beauvoir, where there's a very long,
22 single-track section. And there, we propose, two

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1 approaches: One is to increase the maximum speed,
2 in that section, and there, essentially, a train
3 can essentially run that long single-track
4 gauntlet faster, and if you can do that faster,
5 you can, kind of, turn that -- turn that over more
6 times throughout the day.

7 Or there's an existing siding in Ocean
8 Springs that is quite short and if you lengthen
9 that, you can now run more trains. Because
10 before, you have this very long single-track
11 section, you have a siding there, and,
12 essentially, you have a place for trains to meet
13 within that long single-track section, that long
14 single-track section goes away.

15 CHAIRMAN OBERMAN: Mr. Johanson, when
16 you say "increase the speeds," what do you have in
17 mind there that would need to be done, improve the
18 quality of the track and the sides and the road
19 work.

20 THE WITNESS: We didn't look at it in
21 sort of a detailed engineering standpoint. We
22 just looked at the subdivision timetable, and the

1 maximum authorized speeds. So there might be,
2 there may be track improvements that can be made
3 to the roadbed and the rail. It can also mean
4 curve changes. It can mean changing grade
5 crossing approach times.

6 We didn't do detailed engineering, so
7 I'm sure we don't know -- just identified, and
8 this is, kind of, the way we approach our work.
9 We identify solutions and then just, kind of,
10 stakeholders can compare and contrast what is the
11 best one that, kind of, meets their needs or makes
12 their, if it's on the infrastructure side, a
13 specific infrastructure cost target.

14 CHAIRMAN OBERMAN: But it would be fair
15 to assume that some physical work has to be done
16 on the tracks. It's not just a question of
17 pushing the throttle forward; right?

18 THE WITNESS: Yeah. That's correct.

19 CHAIRMAN OBERMAN: Okay. Thank you.

20 MEMBER PRIMUS: I just have a quick
21 question to follow up on that. So you -- your
22 firm didn't estimate the cost of these three

1 recommendations?

2 THE WITNESS: That's vague.

3 MEMBER PRIMUS: Yeah, I know. Sorry.

4 THE WITNESS: No. We did not.

5 BY MS. AMUNSON:

6 Q So just to stick with page 32 for a
7 minute, this -- I believe, an earlier slide said,
8 sort of, this helps operators kind of tie the
9 benefits directly to the areas of concern, and
10 identify trade-offs.

11 Is this what you're kind of talking
12 about there?

13 A Yeah. Exactly. So now we have these
14 three sections and we can talk about what benefit
15 is derived from the improvement in each one of
16 these sections. So if we want -- if we need to
17 make improvements in Mobile or drive down demand,
18 we build the station track, and say, all right,
19 we've done this and we get this and so on with --
20 with the second and third areas.

21 Q And what did you conclude about whether
22 these three projects or these three areas that

1 you've identified, whether anything needs to be
2 done prior to Amtrak restarting service?

3 A None of these projects need to be
4 completed before the initiation of service.

5 Q And did you also look at the -- I'm
6 never quite sure whether to say whether it's 14 or
7 15, now that NS has added the freight lead
8 extension to the infrastructure projects, but the
9 projects that CSX and NS has stated must be built
10 before Amtrak can begin running the Gulf Coast
11 service?

12 A We did. We took the 14 projects, or at
13 least the projects -- at least on the CSX portion,
14 and we used the same methodology to calculate the
15 additional supply of capacity created by any one
16 of those -- of those projects.

17 And in most cases, the projects proposed
18 provided a supply of capacity that was greatly
19 high or that was higher than -- than the demand on
20 that portion. One project that was proposed did
21 not provide as much supply of capacity as our --
22 as our proposal did, and that's on slide 30 or

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1 page 33, in that section between Fontainebleau and
2 Beauvoir or I believe, a siding extension was
3 proposed whereas we proposed -- they proposed
4 extending existing siding.

5 We may just have made it longer, one
6 that's already kind of used. We proposed
7 extending Ocean Springs, which is a siding that
8 is, I believe, that is too short for freight
9 trains to meet.

10 Q And so if we can just take a look at
11 slide 33 and you can just explain to the board
12 what -- what this is showing.

13 A Yeah. So the colored bars represent
14 the -- the existing left-sided -- represent the
15 existing side of capacity, and then how they may
16 change with our proposals -- the dashed lines
17 represent the additional supply of capacity that
18 would be created by the projects proposed by
19 the -- the Dinger report.

20 CHAIRMAN OBERMAN: And did -- do I
21 understand this does not include the freight lead,
22 the 15th, the so-called 15th project?

1 THE WITNESS: That's correct. It does
2 not include the freight group.

3 BY MS. AMUNSON:

4 Q So this report was prepared prior to the
5 recommendation, the additional recommendation of
6 the freight lead project, but if we can look at
7 page 34 and 35.

8 What did you conclude about the -- the
9 recommendations for improvements along the Back
10 Belt?

11 A Yes. So for the Back Belt portion,
12 because at least in the opening evidence which was
13 presented there are three different types of
14 crossover projects, so track switches that cross
15 over from one track to another, and so we looked
16 at this from a, really, a service perspective and
17 from a service perspective from an Amtrak side of
18 what does Amtrak -- how does an Amtrak train get
19 from the New Orleans passenger station, you know,
20 when they leave there, and enter on the Norfolk
21 Southern property and then they exit the Norfolk
22 Southern property to get onto the CSX property.

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1 And in the current state, there are
2 really four ways to do it. A train can come on.
3 You can kind of do this on the -- come out of the
4 New Orleans perspective. The train can come out
5 of the Amtrak territory, proceed over to I think
6 what Norfolk Southern calls the "southward track."
7 You proceed on the southward track. You get to a
8 control point, leasing fields, and you make a left
9 turn onto CSX Track 1.

10 Conversely, you can come onto the
11 Norfolk Southern northward track in option 2, and
12 then make a left turn onto CSX Track 3.

13 Option 3, you can come onto it on the
14 Norfolk Southern northward track, make a left turn
15 and go onto CSX Track 1.

16 And the last one and most key one is if
17 you want to go from the Norfolk Southern southward
18 track to CSX 2, you kind of have to make this
19 looping motion, and go south for track, toward the
20 track and make a turn because there's not a track
21 switch that allows you to make that move. And the
22 only project that was proposed that -- that

1 essentially created something that can't already
2 be done by -- by Amtrak is an additional crossover
3 with a control point of leasing fields that would
4 essentially eliminate that kind of looping down
5 motion.

6 But, our recommendation is that is not
7 required prior to the initiation of service
8 because that -- the need for that can be mitigated
9 through communication between the Norfolk Southern
10 train dispatcher and the CSX train dispatcher when
11 it comes to the handling of -- of the Amtrak
12 trains, and they just need to communicate of what
13 track they're on and what track they need to go to
14 on each other's railroad.

15 Q And what was your overall conclusion
16 about the need for any infrastructure improvements
17 before Amtrak can restart the Gulf Coast service?

18 A Our conclusion was that the -- there's a
19 sufficient supply capacity and the existing demand
20 on capacity between CSX's and Norfolk Southern's
21 demand on capacity and the proposed Amtrak Gulf
22 Cost service, that that demand never exceeds the

1 supply capacity anywhere on the corridor, and,
2 therefore, the service can be initiated without
3 the need to construct additional infrastructure.

4 Q Thank you. I would, at this point, like
5 to turn to Amtrak's Exhibit 6, which is the
6 subject of the motion in limine. There -- I was
7 not going to actually take the slides in the order
8 in which they appear in the -- in the document,
9 because I was going to take the slides that CSX
10 and NS have agreed are public first and then the
11 highly confidential and then confidential slides,
12 so...

13 CHAIRMAN OBERMAN: So I take it we have
14 agreement on whether if they're usable, they can
15 be public. We just don't have an agreement on
16 whether they're usable.

17 MS. AMUNSON: Exactly.

18 CHAIRMAN OBERMAN: All right. So could
19 you -- just so I can keep track here, what numbers
20 do we not have to go into a confidential session
21 on?

22 MS. AMUNSON: Pages 47 through 52 of

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1 Amtrak Exhibit 6.

2 CHAIRMAN OBERMAN: Hold on for a moment.
3 Jessie, do I understand that up through page 34,
4 this is the same as the prior exhibit?

5 MS. AMUNSON: It's not exactly the same,
6 but it's very similar up through page 32.

7 CHAIRMAN OBERMAN: Whatever differences
8 there may be in the pages up through 33, there are
9 no objections to those; correct?

10 MS. AMUNSON: Up through 32, that's my
11 understanding, but Mr. Atkins can correct me if
12 I'm wrong.

13 MR. ATKINS: That's correct.

14 CHAIRMAN OBERMAN: Okay. So we're going
15 to jump from 33 for the moment up to 47.

16 MS. AMUNSON: Right. And just bear with
17 me for one minute, because I'm going to go back to
18 your -- and if the board would like, I can
19 identify the exact CSX work papers that these
20 slides are depicting as well as just identify, as
21 you'll see from my questions to Mr. Johanson that
22 they are in response to criticisms of his

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1 methodology that -- that it didn't account for,
2 sort of, actual operations on the corridor and
3 growth.

4 CHAIRMAN OBERMAN: I just want to -- I'm
5 looking at your brief, Jessie at page 7.

6 THE WITNESS: Uh-hum.

7 CHAIRMAN OBERMAN: You identify -- that
8 is where you start discussing these slides.

9 MS. AMUNSON: Right. Yup.

10 CHAIRMAN OBERMAN: So that -- you say
11 these are taken from train profile spreadsheets
12 and you cite footnote 23, and these are citations
13 to CSX exhibits in footnote 23.

14 MS. AMUNSON: These are citations to CSX
15 work papers that were produced by CSX.

16 CHAIRMAN OBERMAN: In footnote 23?

17 MS. AMUNSON: In footnote 23.

18 CHAIRMAN OBERMAN: Okay. And I take it
19 if we just sort of follow through. It looks like
20 you cite other papers that were previously
21 produced in footnotes on this page up to 26 that
22 you contend these exhibits are depictions of; is

1 that right?

2 MS. AMUNSON: That's right.

3 CHAIRMAN OBERMAN: All right. So, Ray,
4 your objection is outstanding. Why don't we
5 proceed. Let's hear what the witness has to say
6 about it. Are we going to take these one at a
7 time?

8 MS. AMUNSON: Yes.

9 CHAIRMAN OBERMAN: All right. I have a
10 thought about how I'm going to deal with this
11 after you finish page 47 so let's see where we end
12 up with that.

13 (Off the record.)

14 CHAIRMAN OBERMAN: All right, Jessie.
15 Proceed.

16 BY MS. AMUNSON:

17 Q So, Mr. Johanson, some of the criticisms
18 that CSX and NS raised about your model were your
19 use of a standard train, and, also, sort of, that
20 you purportedly didn't kind of account for trends
21 on the corridor.

22 Did you take a look at the data that CSX

1 produced about trends on the corridor over the
2 last several years?

3 A Yeah. So looking with the -- with data,
4 I'm going to stretch back to 2015, we looked at
5 changes in length of trains, tonnage of trains,
6 and then frequency of train counts across the --
7 across the Gulf Coast Corridor since 2015.

8 Q And slide 47 is kind of a summary slide
9 that then depicts slides that are broken out
10 later; correct?

11 A Right. That -- that's correct. So we
12 have three slides kind of summarized on here:
13 Length, tonnage, and then train count.

14 Q And if you can take us first to slide 48
15 and just explain what we're looking at there?

16 A So what we did here is just graphed out
17 the average length of train, dating back to the
18 2015 through the end of the data set, which I
19 believe was fairly late, mid to late 2021. And
20 then, you can just, you know, look and see how --
21 well, there are fluctuations that generally trains
22 have increased in length, since 2015, over the

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1 corridor you know, that -- kind of generally by
2 2,000 feet -- between 2015 and -- and 2021.

3 Q And if you can --

4 CHAIRMAN OBERMAN: Jessie, before you
5 move on, I have a suggestion on how to approach
6 this.

7 MS. AMUNSON: Sure.

8 CHAIRMAN OBERMAN: Let me just ask this:
9 In your brief, you cite footnote 23,
10 Bates-numbered documents.

11 MS. AMUNSON: Yes.

12 CHAIRMAN OBERMAN: Do I understand,
13 Mr. Johanson, that if we're just -- I just want to
14 take 47 and 48, and I want to see if we can take
15 these in bite-sized chunks. What's on pages 47
16 and 48 is simply the data. So your contention is
17 it is just the data in the Bates-numbered
18 documents in footnote 23 put into graphic form.

19 Is that your contention?

20 THE WITNESS: It would include taking an
21 average on -- of length, so in that sense, there
22 is a calculation, but, otherwise, it is the data

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1 from that -- that document, that's showing an
2 average and then graphed.

3 CHAIRMAN OBERMAN: Ray, here's my
4 suggestion. You don't have to accept it, you can
5 handle this differently. I'm going to suggest
6 that you come up here and conduct a voir dire of
7 Mr. Johanson on these two slides, aimed at the
8 concerns you have raised about surprise and
9 prejudice to fill us in on what that contention's
10 based on. So we can understand that before I make
11 a ruling on it. If -- if you'd rather wait
12 until --

13 MR. ATKINS: No. I definitely don't
14 want to wait, so I'm happy to come up and ask a
15 few questions if you would like.

16 CHAIRMAN OBERMAN: I think that would be
17 more appropriate, but in the nature of a voir dire
18 as to the issue which you have raised of surprise
19 prejudice.

20 MR. ATKINS: Okay.

21 CHAIRMAN OBERMAN: Mr. Johanson, I don't
22 know if you know what a voir dire is, but the

1 attorney's here to handle the situation for you.

2 Nothing new.

3 THE WITNESS: I've been deposed a few
4 times.

5 CHAIRMAN OBERMAN: Okay.

6 VOIR DIRE EXAMINATION

7 BY MR. ATKINS:

8 Q I actually don't think this will be
9 particularly long. I just want to understand the
10 source and the calculations that you did and what
11 underlying work papers you would actually have to
12 support these calculations. So can you start by
13 describing the source of the data that you used
14 to -- to determine the calculation of the average
15 length of the freight train?

16 A The data file was an Excel file from CSX
17 that listed a train symbol passing by, I believe,
18 at certain stations, so it wasn't as comprehensive
19 as the OS data. It was at major stations. It was
20 train symbol, length, weight. It may have
21 included train, you know, car -- car counts, but
22 this file included a train symbol, length, weight,

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1 and a -- a station on the corridor and it dated
2 back to 2015.

3 Q What computer program did you use to
4 analyze that data?

5 A We used a program called Tableau, which
6 is a very popular data visualization program that
7 thousands of counties across the country used.

8 Q Tableau -- had to input the data into
9 Tableau and then you had to derive the calculations
10 of average train length of the freight trains?

11 A Correct. Yes. So we would import the
12 file, the Excel file or csc file into Tableau.
13 Don't recall right off the top. Oftentimes, you
14 can just, with Tableau, you can pull a field and
15 then just say, give me the average, and then it
16 does the calculations. In other instances, you
17 have to create a calculation, not all that
18 dissimilar from, like, a calculation in Excel and
19 get -- get the result, and then you can create a
20 graph based off of any sort of time frame, and
21 you can make the time frame, based on an
22 individual day, week, month, year.

1 Q Did you provide that Tableau file to CSX
2 and Norfolk Southern when you submitted this
3 demonstrative?

4 A Not that I recall, no.

5 Q And the data that you drew from, was
6 that -- was that one of the work papers of one of
7 the experts submitted in this case, or was it from
8 the raw discovery data that was provided to the
9 parties at the outset of the case?

10 A It came from discovery files that we
11 were provided access to.

12 MR. ATKINS: Thank you, Chairman. I
13 think I have enough to establish a basis for
14 excluding his testimony as new evidence.

15 CHAIRMAN OBERMAN: Do you want to state
16 it now?

17 MR. ATKINS: Yeah, so it's clearly new
18 evidence. It was not actually information in a
19 work paper by one of the parties. But, actually,
20 they went to the original discovery information,
21 pulled it up into a computer program, which we
22 have not been provided.

1 Performed calculations, such as
2 calculating the average length, and then -- and
3 used that program to come up with a depiction of
4 it. You can also see that there is a trend line
5 there, which means you have to do an OLS, which I
6 know that Tableau will do automatically. This is
7 exactly the type of analysis that we're entitled
8 to see. And I will tell you you'll see on my
9 cross in the Tableau files that he has produced,
10 we do have concerns about some of the
11 calculations, some of the filters they applied.
12 Those are the types of things I'm going to cross
13 him on, on the work papers that he actually
14 provided. But I can't assess this calculation. I
15 can't tell if it was done correctly. I can't tell
16 if it was done -- if they filtered out certain
17 information. I can't tell if they excluded
18 outliers. I can't tell anything about what was
19 done, because none of the analysis was provided to
20 us, just -- just this and now his testimony. It
21 is classically inappropriate to have new analysis
22 by an expert done at the last minute without

1 providing us the work papers and an opportunity to
2 respond.

3 So I would suggest that this -- that 47,
4 48, 49, 50, they all fall under exactly the same
5 category, 51, 52. They're all drawn from
6 discovery data where he did analysis in his
7 Tableau-run Excel spreadsheet. That's analyses by
8 an expert to which we were not provided any
9 information on.

10 MS. AMUNSON: Mr. Chair, may I respond?

11 CHAIRMAN OBERMAN: Yes.

12 MS. AMUNSON: Mr. Chair, these
13 demonstrative slides were provided more than seven
14 weeks ago to CSX and NS. This is the first time
15 that I have heard CSX or NS ask for the underlying
16 work papers from Tableau. They had more than
17 ample time to either ask us for the work papers to
18 prepare their experts who then testified in this
19 case to address these -- these slides or these
20 analyses if they had concerns about them. These
21 are similar to Ms. Rosse and Ms. Sinkkanen put on
22 demonstrative exhibits that had, or if the

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1 court -- or if the board will recall -- much more
2 granular data about all of the trains that are
3 missing from the train file than had been actually
4 in their original reports.

5 They sort of broke them all out,
6 presented them visually in those circle graphs,
7 you will recall. This is just a visual depiction
8 of data that exists. We could just put on the
9 Excel spreadsheets if the board would like, but
10 this is obviously much more digestible to see.

11 CHAIRMAN OBERMAN: Jessie, did you
12 object to Ms. Rosse and Ms. Sinkkanen's exhibits?

13 MS. AMUNSON: No. We did not.

14 CHAIRMAN OBERMAN: Bear with me one
15 moment.

16 MEMBER FUCHS: Marty, may I ask a
17 question in the meantime?

18 CHAIRMAN OBERMAN: Sure.

19 MEMBER FUCHS: When you say "discovery
20 data," can you point to the specific source?

21 THE WITNESS: I would need a little bit
22 of time and help, but, yes, I could point to and

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1 say it was this file.

2 MEMBER FUCHS: Does the -- does the
3 board have anything currently by which it can
4 validate your calculations, including the
5 underlying source?

6 THE WITNESS: So the -- I don't know
7 what the board has, in terms of the original
8 discovery files, but I don't believe that we have
9 turned over the Tableau file that I did the --
10 that we created the visual depiction of.

11 CHAIRMAN OBERMAN: But the -- the source
12 of the calculation, do you know if we have that?
13 Do you know?

14 THE WITNESS: Yeah, I don't know what
15 you have.

16 CHAIRMAN OBERMAN: Are you done? Ray,
17 let me ask you this question. Since you have had
18 these documents -- which is how long ago?

19 MS. AMUNSON: I believe we provided them
20 on March 28 or thereabout, it's at least seven
21 weeks.

22 CHAIRMAN OBERMAN: Have you had time and

1 have you sat down with your own experts to at
2 least look at the conclusions -- so far I'm
3 looking at page 47, which the graphs purport to
4 show -- that the trains have become longer and
5 heavier? Have you had a chance to go over those
6 points with our experts?

7 MR. ATKINS: So we certainly have had an
8 opportunity to discuss what's visually depicted
9 but we were not able to asses the validity of
10 these calculations. Where he's coming from. What
11 the data was. How it was calculated. And so --
12 and just keep in mind, the way this process went,
13 we had expert, you know, reports that came in,
14 when this was submitted to us, it was just a list
15 of demonstratives.

16 It was not intended to be a supplemental
17 third round of expert testimony by Mr. Johanson.
18 I mean, at some point, we have to say, This is
19 inappropriate. And we filed a motion in limine
20 saying that this is inappropriate. Now, it's been
21 a long time, because the case has taken a little
22 while for us to process. But we made it clear

1 very quickly that we thought it was inappropriate
2 new testimony that should be stricken.

3 CHAIRMAN OBERMAN: Here's my question:
4 Is there some reason for this board to conclude
5 that what -- and I'm just taking this as an
6 example, page 47 is not true, that the trains have
7 not become longer and heavier?

8 MR. ATKINS: That's the whole point of
9 litigation is, you know, I can't -- I can't assess
10 the validity of his work unless I -- we see the
11 underlying data. You'll have no support for it.
12 He can't even testify to what document it was that
13 the underlying information came from.

14 You don't have the work papers. None of
15 your staff can confirm it. We can't confirm it.
16 I don't understand why we don't adhere to -- the
17 parties all agreed that you're not going to submit
18 new evidence with your experts through direct
19 testimony.

20 MS. AMUNSON: Mr. Chair?

21 CHAIRMAN OBERMAN: Here's my question:
22 My question is, does CSX have some reason to

1 contest what the conclusions are in page 47?

2 Is this a -- a subject matter that's in
3 dispute, about the trains becoming longer and
4 heavier while the overall count has fallen,
5 because I will tell you that's all I get out of
6 that page. The rest of those graphs look like
7 somebody's EKG. I have no idea what they mean,
8 but I get the overall point.

9 Maybe if I study it longer, I can get
10 something out of the graphs. I'm trying to figure
11 out if it's prejudicial to the issue we have to
12 decide in this case. Is it your -- just tell me
13 if you know. Maybe you don't know.

14 Is it CSX and NS's contention that the
15 trains are not longer and heavier while the count
16 has fallen in the last six years?

17 MR. ATKINS: So I don't know what their
18 contention is on the length and heaviness. I do
19 know that you have heard testimony about the
20 growth on this line, so, yes, there's a dispute as
21 to whether or not there has been growth of traffic
22 on this line over the time period. That is

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1 definitely a material dispute between the parties.

2 CHAIRMAN OBERMAN: Well, growth of
3 traffic doesn't answer the -- the question is
4 train and count. You can have growth of traffic
5 with shorter, fewer trains, and longer trains, and
6 still have growth. That's all I'm trying to find
7 out.

8 MR. ATKINS: Train counts as well. Yes.
9 We do not -- this is a point of dispute, I guess.
10 My point is, is that, if they wanted to submit
11 this testimony into the record, it should have
12 been done ages ago through their expert, not at
13 trial now, where I'm not in a position to critique
14 not only the analysis, but whatever inference he's
15 going to ask you to draw from this analysis.

16 CHAIRMAN OBERMAN: Patrick?

17 MEMBER FUCHS: Just looking at this, it
18 goes from 2015 to 2021.

19 Do we know what years were available in
20 the raw data?

21 THE WITNESS: 2015 to 2021, we took the
22 whole -- I believe it was all in one file.

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1 MEMBER FUCHS: So -- so there is not a
2 time period that was excluded from that raw data?

3 THE WITNESS: No.

4 MEMBER FUCHS: Just wanted to know.

5 MEMBER HEDLUND: Ray?

6 CHAIRMAN OBERMAN: I'm sorry, Karen.

7 MEMBER HEDLUND: My understanding is
8 you're objecting because you can't see the source
9 of the data. Isn't that the same as their
10 objection to your expert's work product because
11 they couldn't see the source of the data that went
12 into it.

13 MR. ATKINS: So that's a good question.
14 I would say absolutely not. Because in our case,
15 on opening, we submitted the testimony to support
16 all of those calculations. So we submitted the
17 verified -- the detailed summaries from
18 Ms. Sinkkanen, Holly Rosse submitted, you know --
19 we had her verified statement. So we had -- we
20 had experts who testified to whatever holes there
21 might be, in terms of -- or whatever we needed to
22 support, which gave them a full and fair

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1 opportunity to respond to that. And then we had
2 our reply. So what I'm complaining about, is it's
3 as if tomorrow I decide I'm going to call a
4 rebuttal witness and I'm going to put in an
5 entirely new RTC model that they've never seen
6 before. That type of new analyses has to take
7 place in the written testimony of the expert.

8 So you've seen the written testimony of
9 our experts. You're going to have to gauge the
10 credibility of those witnesses and decide whether
11 you think they were -- you know, that the
12 information was fair and accurate, but everybody
13 had a fair chance to respond to it. They saw all
14 the underlying work papers. We had a chance to
15 respond to their criticisms, and you gave them a
16 surrebuttal opportunity to respond to our rebuttal
17 testimony, which we didn't think was appropriate,
18 but that was fine.

19 But none of this came in, even as late
20 as February, when they put in their surrebuttal
21 testimony responding to our criticisms of this
22 report.

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1 MS. AMUNSON: Mr. Chairman, may I
2 respond?

3 MEMBER HEDLUND: How complicated are
4 these calculations? This isn't like a new RTC
5 study. This is like taking a number and averaging
6 it.

7 MR. ATKINS: I have no idea, Member. We
8 don't have the work papers. We don't have the
9 Tableau. We don't know what was done.

10 CHAIRMAN OBERMAN: I just have one
11 question. And then, Jessie, I will ask you to
12 respond.

13 It does seem to me there's a deference
14 here, Ray, and that is, in theory, you could get
15 the Tableau work papers and look at it. But
16 Amtrak cannot get the underlying data for the 1265
17 trains because both of your witnesses testified
18 they didn't keep records of it. They got off the
19 phone and put it directly into the computer.

20 So if you're talking about being unable
21 to validate or verify something, it seems to me,
22 it goes both ways, but I would like to let Jessie

1 respond.

2 MS. AMUNSON: Yes, Mr. Chair. And I
3 think this is entirely different than presenting a
4 new RTC study. And for Mr. Atkins to say he
5 doesn't have the underlying data is just not
6 correct.

7 This is their data. This is simply a
8 visual depiction of evidence that they produced to
9 us, so to -- to also Member Fuchs' questions about
10 what is the source of this data, it's all -- it's
11 all documented right in our response to their
12 notion in limine. They had that. They could go
13 to those Excel files and actually calculate
14 whether these are done correctly.

15 They could have had their experts done
16 that. They could have asked us for the Tableau
17 files and we would have gladly provided them now,
18 seven weeks ago. They didn't do any of that. And
19 now is the first time that they are sort of
20 complaining that they don't have the underlying
21 data, when the underlying data is theirs.

22 Moreover, I would just point out that

1 throughout this, the parties have reserved the
2 right to respond to each other. I will say that
3 as far as CSX and NS's case that they put on, it
4 certainly went well beyond anything that was
5 submitted in their verified statements,
6 particularly, Mr. Johnson's testimony and
7 Mr. Hunt's testimony, which took us through all
8 sorts of aerial drone footage and maps and things
9 like that, that literally each of them conceded
10 was not remotely part of their verified statements
11 or attached to their verified statements.

12 So this is simply a visual depiction of
13 evidence they produced in this case.

14 CHAIRMAN OBERMAN: Well, I would say,
15 you know, when objections were raised, that would
16 have been a time for us to consider it. Here's
17 how I'm going to suggest we rule, unless the
18 members of the board have a different view, that
19 for these two slides, and I think for the rest,
20 I'm going to take them under advisement until I
21 hear the rest of this witness's case.

22 And what I want to hear is what do any

1 of these slides have to do with the issue we're
2 trying to decide in this case? Because that will
3 affect whether there's been any prejudice in one
4 direction or the other.

5 For the moment, looking at slide 47, it
6 doesn't tell me one thing about whether
7 infrastructure is needed or not needed or how long
8 the delay is. And that's some of the questions I
9 had for Mr. Johanson about his earlier testimony.
10 But until I can hear how this affects the issues
11 that we have to decide, it's very difficult to
12 decide whether this should be allowed in or not.
13 So I'm going to recommend we take this under
14 advisement, at least until the end of
15 Mr. Johanson's testimony in cross-examination.
16 And then I think we can better assess it.

17 MR. ATKINS: So, Chairman, just so I
18 understand, and I might ask if the rest of the
19 board agrees with that decision, because what
20 you're saying is if it's useless, you're going to
21 grant our motion. But if it actually is
22 information that you think is useful to resolving

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1 the outcome of this case, you're going to overrule
2 us?

3 CHAIRMAN OBERMAN: No. You've got it
4 exactly backwards.

5 MR. ATKINS: So if it's useless, it goes
6 in, but if it's actually informative of -- you're
7 going to exclude it.

8 CHAIRMAN OBERMAN: If, in fact, it is
9 prejudicial. However, there's no other way to
10 alleviate the prejudice, which I haven't ruled on
11 yet, so I'm going to suggest to the board that we
12 reserve ruling on it. We may still grant your
13 motion in its entirety when Mr. Johanson finishes.
14 I want to hear what the purpose of all of these
15 slides is. So far I'm just hearing that in the
16 abstract.

17 MR. ATKINS: So, Chairman, I understand
18 that that is the position of the board, I get it.
19 But this will go a lot faster if the stipulations
20 of the parties, that experts cannot submit a new
21 analysis is adhered to. That was a joint
22 stipulation of the parties.

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1 CHAIRMAN OBERMAN: I've heard the
2 argument, Ray. You don't have to state it again.
3 I've heard it. That's my recommendation. If the
4 board wants to have a different approach, we're
5 all here. Be my guest.

6 MEMBER FUCHS: After his testimony,
7 you're going to revisit with all of this?

8 CHAIRMAN OBERMAN: I think we should
9 revisit it and see what is the purpose of all of
10 these additional slides. That's my viewing. It's
11 hard to evaluate the argument of prejudice as
12 appraised in a vacuum.

13 MEMBER FUCHS: One thing that I just
14 want to call attention to, Marty, is the top
15 line -- the top line statements on these lines.
16 Mr. Johanson, those are -- the 2,000 number, for
17 example, on 48, you're deriving that from your
18 regression?

19 THE WITNESS: Yes.

20 MEMBER FUCHS: And there are different
21 ways to calculate increases and conduct analysis
22 in order to derive what the top line statement is;

1 right?

2 THE WITNESS: Yeah. I only got a B in
3 statistics. We just use the trend line in
4 Tableau.

5 MEMBER FUCHS: And especially where
6 whatever the starting point and end points, there
7 are some -- it appears to be some big differences,
8 particularly in the first period of 2015, compared
9 to pretty much every other period, you know, there
10 are -- there are two things, one is to look at
11 what happened in that period. But also, you --
12 when you do a regression analysis, you also know,
13 kind of, the fitness to the data, right how well a
14 trend line represents that data, and is any of
15 that information available?

16 THE WITNESS: So, again, this analysis
17 was really quite simple. It was really just
18 plotting, showing the average, and putting the --
19 the basic trend line from -- from Tableau. It was
20 very -- quite simple analysis to show that, in
21 general, trains are longer, trains are heavier,
22 and there's fewer of -- fewer of them overall.

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1 MEMBER FUCHS: But there -- there are
2 statistical terms like an R square that can be
3 brought to bear that can inform the reader, you
4 know, how well the top line summary actually fits
5 with the data; right? Is any of that available to
6 the board?

7 THE WITNESS: Yeah. It would be from
8 the Tableau. The Tableau file would have it.

9 MEMBER FUCHS: So Marty, I just wanted
10 to point out the top line statements are derived
11 from a particular functional form of the
12 regression analysis. And, typically, you see with
13 regression analysis, you see information that
14 explains its reliability. And before you could
15 accept a conclusion, we don't have any of that.

16 CHAIRMAN OBERMAN: All right. That's a
17 point well taken. Let's see -- let's see where we
18 are when we put all of this together.

19 MEMBER FUCHS: Yeah. Okay.

20 CHAIRMAN OBERMAN: That's fine. Does
21 everybody agree with that approach?

22 MEMBER HEDLUND: Let's keep going.

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1 MR. MULLINS: Mr. Chairman, I just want
2 the record to reflect that Norfolk Southern is
3 joined in all the comments and the objections
4 rated by Mr. Atkins so it is also an objection by
5 Norfolk Southern as well. I just want the record
6 to reflect that. It's not just CSX.

7 CHAIRMAN OBERMAN: I understand. The
8 issue is open. The issue is open. I've not
9 decided yet. I'll decide it when the testimony of
10 this witness is done.

11 MEMBER SCHULTZ: Is it possible to take
12 this under advisement?

13 CHAIRMAN OBERMAN: Yes, that's what I
14 was suggesting and I mean, I'm hoping we could
15 rule on it when Mr. Johanson's testimony is
16 finished. If not, we may hear further argument on
17 it --

18 MEMBER SCHULTZ: I actually meant prior
19 to the inclusion of the slides in question.

20 CHAIRMAN OBERMAN: Well, we haven't seen
21 the rest of them. I think we might be enlightened
22 to what the issues are once we hear them. And

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1 once Ray has a chance to cross-examine him on
2 these slides. He's only had a chance to -- would
3 you prefer to do that? Before we hear
4 Mr. Johanson tell us why we're seeing these
5 slides, that's what I'm trying to get at.

6 MEMBER SCHULTZ: Okay.

7 CHAIRMAN OBERMAN: But I think whether
8 they ultimately are in the record and are anything
9 that we would rely on, we would take them under
10 advisement.

11 MR. ATKINS: So, Chairman, I don't mean
12 to intrude but it sounds like there are at least
13 two members that have reservations about hearing
14 testimony about these two slides.

15 CHAIRMAN OBERMAN: Ray, I've made a
16 ruling. The board can take a vote right now, but
17 I really think it is inappropriate for you to come
18 up here and argue about what the vote is on this
19 board. I'm going to ask the members of the board.

20 MR. ATKINS: Thank you.

21 CHAIRMAN OBERMAN: Do you approve the
22 approach I have suggested, that we hear the rest

1 of Mr. Johanson's testimony and then we will rule
2 on your motion at the end of that, either tomorrow
3 or at some future date.

4 So that's my recommendation and I think
5 the board members agree with proceeding. So I
6 really think it's inappropriate for you to come in
7 here and try to pull this board. That's beyond
8 propriety, in my view, Ray. Enough is enough.

9 Jessie, proceed.

10 BY MS. AMUNSON:

11 Q Mr. Johanson, can you just take us
12 through slides 48 through 52, and explain what
13 we're seeing there?

14 A So starting from -- starting from slide
15 48, we -- and using the -- the data provided by
16 CSX that included train symbol, train length,
17 train weight, we averaged the -- the length of the
18 train throughout the data period, which is
19 2015 through 2021. And as you can see, you know,
20 generally, while there are periods of -- of
21 fluctuation, generally speaking, trains have
22 gotten longer on the Gulf Coast Corridor on the

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1 CSX portion of the Gulf Coast Corridor, and that's
2 on slide 48.

3 Moving to slide 49. You know, we
4 averaged the tonnage of the -- averaged the
5 tonnage of the -- of the trains, again, the same
6 dataset, starting back in 2015. And trains have
7 generally become heavier across the corridor.

8 Moving to slide 50. We looked at the --
9 the daily train counts, we just took a count of
10 number of -- of train movements on the corridor.

11 Every day, the train counts have fallen
12 from an average of 37, to an average of 34 over
13 the period. Moving on to slide 51. You see
14 between 51 and 52, we'll see diversions where
15 daily through freight train counts. And through
16 freight was -- that there were -- in the file,
17 there was a way that CSX defined trains as kind of
18 a through train versus a local. Daily through
19 freight train counts have fallen across the
20 corridor from about -- from an average of 12 to an
21 average of 6 over the period. Though, the local
22 train count has increased over that -- over that

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1 period. So there's fewer, kind of, through trains
2 throughout the corridor, but more local trains.

3 Q Thank you, Mr. Johanson. The next, sort
4 of, two sets of slides that I wanted to go through
5 have been designated as "highly confidential" and
6 CSX and NS have not agreed to waive the
7 confidentiality designation.

8 So, Mr. Chair, I'm not sure if the board
9 wants to go into a highly confidential session
10 now, or what the board would prefer?

11 CHAIRMAN OBERMAN: Let me ask this
12 question: What is the criticism that these slides
13 are responding to? Jessie, if you want to.

14 MS. AMUNSON: Sure. The criticism that
15 these slides are responding to is Mr. Johanson's
16 use of a standard train, and Mr. Johanson's
17 purported or, excuse me, DB's purported failure to
18 consider trends on the corridor over time.
19 Basically, his entire methodology being too
20 simplistic and not actually accounting for what's
21 really happening on the corridor.

22 CHAIRMAN OBERMAN: And your -- your

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1 contention is these slides take the actual data
2 and justify or validate what his original
3 conclusions of what the standard trains were and
4 so forth?

5 THE WITNESS: Yes. That they show that
6 the standard train is well within what -- what
7 occurs on the corridor, and that the trends on the
8 corridor are consistent with his conclusion that
9 there is sufficient capacity for the Amtrak trains
10 to restart without any new infrastructure.

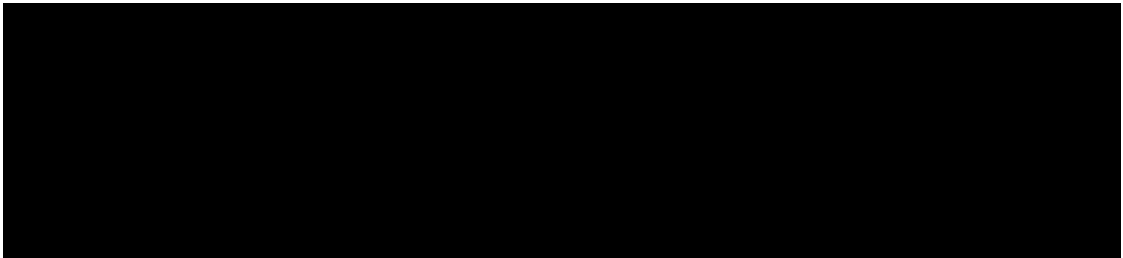
11 CHAIRMAN OBERMAN: Mr. Johanson, had you
12 done all of these calculations before you
13 submitted your initial report?

14 THE WITNESS: No.

15 CHAIRMAN OBERMAN: You know what, I'm
16 going to take a five-minute recess here. Don't
17 anybody leave. I'm going to talk to my board
18 members individually.

19 (Off the record.)

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CHAIRMAN OBERMAN: Okay. Roberta, are

8

we on?

9

VOICE: Yes. We're on.

10

CHAIRMAN OBERMAN: All right. Proceed,

11

Jessie.

12

BY MS. AMUNSON:

13

Q Finally. Mr. Johanson, I just want to

14

give you a chance to address some of the

15

criticisms that we've heard from some of the

16

carriers witnesses during this hearing regarding

17

the capacity model that you used. You -- you

18

listened to the testimony of Mr. Larry Guthrie

19

from R.L. Banks and Associates; correct?

20

A Yes.

21

Q And Mr. Guthrie called your model a

22

"theoretical capacity modeling" and not a

1 practical capacity model.

2 Do you agree with that?

3 A I disagree with that in the sense that
4 we do start by calculating a theoretical capacity,
5 we quantify the capacity of the corridor, we start
6 with that, and then we layer in how that capacity
7 is used by looking at train counts and looking at
8 things like variability in train operations and
9 looking at things like maintenance of way
10 consumption and trains that maybe staged or held
11 out of terminal, so we start by trying to quantify
12 and then work down from there to -- to tie it into
13 the real world.

14 Q And Mr. Guthrie also said that your
15 methodology doesn't take into account the
16 variability of train operations in the railroad
17 industry; do you agree with that?

18 A No. That's why we have the variability
19 metrics that we can compare how trains don't align
20 against that standard train. That is our -- our
21 approach to being able to calculate all of those
22 things that happen in the day-to-day operation of

1 a railroad, whether it's, you know, waiting to
2 meet another train or speed restrictions on the
3 track or waiting for -- for -- for people working
4 on the track to get off of it.

5 Q Mr. Guthrie also criticized your model
6 as not reflecting the capacity that's limited to
7 bottleneck points like, as he said, like New
8 Orleans or Mobile. What's your response to that?

9 A That's why we have things specifically
10 like the train staging metric, which is, you know,
11 based off of my many years of experience working
12 in Chicago and having to figure out how to move
13 trains through a very complex terminal and knowing
14 that that is an activity that goes on every day
15 and being able to identify that, quantify that and
16 then highlight those types of activities that
17 occur in busy terminal locations.

18 Q Mr. Guthrie also testified that your
19 model, doesn't reflect train -- doesn't reflect
20 train size, frequency of operation, and factors of
21 that kind. Do you agree with that criticism?

22 A No. So while we do create a standard

1 train as something to -- to measure and compare
2 back to, we can, you know, account for all of
3 those different types of -- of trains that are
4 operated on -- operated on for by having the
5 variability metric in order to capture that,
6 identify that, and being able to compare that back
7 to, to the standard train.

8 Q And I believe you testified, and we've
9 seen in your report, that the standard train you
10 used in your model is 11,000 feet long. One of
11 Mr. Guthrie's criticisms was that there was no
12 siding along the Gulf Coast to fit the standard
13 train, what's your response to that?

14 So I think I've got two responses: One
15 the development of the standard train is really to
16 generate an operational profile of a train so that
17 we can know how -- essentially, how quickly it can
18 traverse -- it can traverse the corridor so we're
19 really doing it mostly to define operational
20 characteristics.

21 But I think it has also been pointed out
22 there are already trains on this corridor that --

1 that operate, that exceed -- exceed siding length.
2 So having a train that's 11,000 feet long, one,
3 isn't, or a long train that's longer than the
4 sidings isn't -- is not an operational issue
5 today, per se, in the sense that they can't do
6 that or don't do that. So that's one point. The
7 other point is that in the end, we're really don't
8 care about what the train length is, it's just an
9 operational profile to compare, to compare it
10 against.

11 Q Mr. Guthrie also said that your
12 methodology is only suitable for modeling -- or is
13 suitable only for modeling passenger-only
14 operations and can't model a mix of freight and
15 passenger trains; do you agree with that?

16 A No. We've -- this work has been done on
17 a number of mixed freight passenger rail
18 corridors, this methodology was developed for a
19 project involving a -- a mixed-use rail corridor.

20 Q And which corridor was that?

21 A We -- one was the -- the Los Angeles to
22 San Bernadino one that I spoke about earlier.

1 Q Mr. Atkins said in his opening
2 statement, and a number of CSX and NS witnesses
3 have testified, that they agree that there is
4 sufficient capacity along the Gulf Coast Corridor
5 to -- to add the additional Amtrak trains.

6 What's your reaction to that?

7 A You know, so I would -- I would agree.
8 I believe, it was in a reply to surrebuttal that
9 CSX said that there is theoretical capacity
10 available. If there is theoretical sufficient --
11 at the theoretical level, there's a sufficient
12 capacity, then it's really about how do you, with
13 all of this -- how do you make it work and develop
14 a service plan and know that plan and run that
15 plan and execute that plan, which is what -- which
16 is what I was trained when I was a yardmaster and
17 what I did for 15 years in a very complex rail
18 terminal was, know the plan, and run the plan, and
19 within the -- the railroad that we have.

20 BY MS. AMUNSON:

21 Q In summary, in your expert opinion, what
22 did you conclude about whether the Gulf Coast

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1 Corridor can accommodate two round trip passenger
2 trains per day?

3 A We concluded that there is -- that at no
4 point throughout the corridor, that there is
5 sufficient -- or throughout the corridor, there is
6 sufficient supply of capacity and the demand on
7 that capacity never exceeds the supply of capacity
8 available throughout the Gulf Coast Corridor.

9 Q And what did you conclude about whether
10 it is necessary to build infrastructure prior to
11 restoring passenger service?

12 A That no infrastructure needs to be
13 constructed prior to the initiation of service.

14 Q Thank you, Mr. Johanson. I don't have
15 any further questions.

16 CHAIRMAN OBERMAN: All right. So here's
17 where we are. The board members may have
18 questions but I think we should reserve them until
19 tomorrow. Mr. Wimbish, will you have
20 cross-examination.

21 MR. WIMBISH: Yes, sir. We will
22 definitely have cross-examination.

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1 CHAIRMAN OBERMAN: And do you have any
2 estimate of how much time you'll need?

3 MR. WIMBISH: I think I'm going to kind
4 of invoke the Kali Bracey rule on this one, which
5 is, I'm not very good at estimating this, but I
6 would say somewhere between a half and an hour.

7 CHAIRMAN OBERMAN: All right. Here's
8 what -- we're going to recess. So, ray, I am
9 going to make this observation, that you should
10 plan to cross exam minute Mr. Johanson up through
11 the point where he begun to testify about the
12 contested slides, when you've reached that point,
13 so we are taking under advisement all of the
14 slides that are -- are the subject of your motion
15 in limine, and all of the testimony about those
16 slides.

17 And when you have finished your
18 cross-examination, up to the point where we begin
19 to deal with those slides, we'll deal with it
20 then, and we may rule at that point one way or the
21 other. We'll see where your cross-examination
22 goes, but that is more of my refined thinking

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1 about this, after having heard all of the
2 testimony. So with that, unless any other board
3 member -- so we are -- we are going to start at
4 1:00 tomorrow.

5 We should be back well in advance of
6 that. I wouldn't mind starting a little bit
7 earlier, but my congressional experts over here
8 say we should start at 1:00, so be here promptly
9 and we're going to finish. We all have a plane to
10 catch. I will be finished by 5:00-ish.

11 All right. Thank you. All very much
12 for your patience. It's been a long day. See you
13 tomorrow.

14 (Whereupon at 7:10 p.m. the hearing
15 stood in recess until May 12th at 1:00 p.m.)

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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 3rd day of

14 June, 2022.

15

16

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19

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21 Sydney Crawford, Shorthand Reporter

22 My commission expires: May 15, 2024

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