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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 XI

Thursday, May 12, 2022

1:00 p.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, everyone,
3 we are back in session. We apologize for the
4 delay. The T&I Committee kept us much longer than
5 we thought, and I am going to beg the audience's,
6 both remote and present, indulgence because I'm
7 going to eat my lunch while the witness is
8 testifying; otherwise -- although I assume you
9 wouldn't mind, but I may fall over.

10 So with that, before we begin, Ray, do
11 you have anything -- I don't want to hear oral
12 argument now because I want to get through this
13 witness, but do you have anything to submit
14 regarding the question of settlement negotiation?

15 MR. ATKINS: Yes, Chairman. We have
16 been in discussions with Amtrak on this, and so --
17 I mean, I could describe for you what the
18 discussion was with SRC, but both Amtrak and CSX
19 would ask for -- to -- to not go down this line of
20 inquiry because the meeting in question was
21 entirely to discuss the Offer of Settlement that
22 was submitted by CSX to Amtrak.

1 I can -- we can go through the cases and
2 the like, but just, in order to protect the
3 ongoing settlement discussions between the two
4 parties, we would ask that you not ask this line
5 of inquiry of Mr. Blair.

6 CHAIRMAN OBERMAN: Well, here's what
7 we're going to do: I want to actually have more
8 disclosure of the facts of this meeting, but I do
9 not want to do it now because I want to get
10 through this witness, and there will be time to do
11 it.

12 If, in fact, the board were to rule that
13 we are going to question on that matter, we will
14 do it at some later point, but you were saying you
15 were ready to make some kind of an oral
16 presentation about the circumstances.

17 MR. ATKINS: So why don't we -- in order
18 to move things along, and since Mr. Blair is not
19 available today in any event, we'll put together
20 just a short pleading to go in the record for you
21 to rule on, but just understand that both Amtrak
22 and CSX are asking you not to inquire into the

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1 details of that meeting because it was -- it
2 would -- there -- it would disclose settlement
3 discussions.

4 CHAIRMAN OBERMAN: And are you saying
5 the settlement discussions are ongoing?

6 MR. ATKINS: Yes, sir.

7 CHAIRMAN OBERMAN: Well, that's the best
8 news I've heard in a long time. So we'll put that
9 off until later, then, Ray, and I appreciate the
10 report.

11 Can we resume the cross -- well, I guess
12 we finished the direct examination of
13 Mr. Johanson. Johanson; am I saying that right?

14 Ray, he's your witness. And as I do --
15 to remind you, what I'd like you to do is question
16 Mr. Johanson as much as you need to up to the
17 point where he began to discuss the contested
18 exhibits, and at that point, we'll deal with
19 the -- your pending motion in limine.

20 MR. ATKINS: Are we ready to proceed?

21 CHAIRMAN OBERMAN: Proceed.

22 CROSS-EXAMINATION

1 BY MR. ATKINS:

2 Q Mr. Johanson, as you know, my name is
3 Ray Atkins. I represent CSX in this matter. I'll
4 be asking you a few questions. My colleague,
5 Mr. Donahoe, may have -- may have a few when I'm
6 done.

7 Can you tell us when you were retained
8 to work on this matter?

9 A It was summer of '21.

10 Q And as part of the scope of your work,
11 did you or anyone from your team travel to the
12 region to examine the operations on the line?

13 A No.

14 Q So can you describe for me what happens
15 if you add a movement to a line that has
16 insufficient capacity as you've calculated?

17 A As you -- as you would increase the
18 train count, that would add a demand on the line.
19 Eventually, the count of that demand will exceed
20 the count of our supply.

21 Q But my question is, is what happens if
22 you try to add a movement so that the demand

1 exceeded the supply of capacity?

2 A You would -- you would have a demand
3 number that is greater than the supply number.

4 Q And could you provide some context in
5 terms of what that would mean? Would it mean --
6 would it -- would it be gridlock?

7 A Our methodology doesn't look at anything
8 in terms of gridlock or dispatchability. We would
9 just say that there is a demand -- that number for
10 demand would be greater than the supply number.

11 Q Would you agree that adding movements to
12 a line with insufficient capacity is likely to
13 impair the operation of that line?

14 A Having a demand on the line greater than
15 the supply would -- would certainly add a
16 challenge to accommodate all the demand placed on
17 that section of the corridor.

18 Q But would it likely -- would it be
19 likely to impair the operation of the line?

20 A Our methodology doesn't look at it from
21 impair or not, so all I'd be able to say is that
22 the -- the demand number is greater than the

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1 supply and, therefore, you need to start looking
2 at ways to get -- get those -- you've got to get
3 equal or to have more demand -- or more supply
4 than demand.

5 Q But you're not in a position to tell the
6 Board what would happen if you -- if the -- if you
7 added movements to a line where the demand now
8 exceeded the supply of capacity?

9 A In -- I guess, in what way? Like the
10 ability to -- to run a railroad?

11 Q Yes, the ability to run a railroad, to
12 dispatch trains, to have local traffic on the
13 line, the speed of the line, what -- I need to
14 know from your expertise as an operating expert
15 what happens to the line if you add trains in
16 excess of the supply of capacity?

17 A Yeah, so you would -- in -- from a
18 planning standpoint, you would want to look at
19 what are the mitigations to get this to where we
20 can make operational changes or technological
21 changes or infrastructure changes to get -- to get
22 the -- essentially, the demand below the supply.

1 In real life, speaking from my
2 experience running a railroad, a railroad -- there
3 are times where a real railroad, maybe not by
4 plan, but by circumstance, will have a situation
5 where there's a lot of demand on the railroad and
6 you take operational mitigations in that, in that
7 period, to -- to accommodate -- accommodate the
8 traffic.

9 Q Can you describe the types of activities
10 the railroad would need to do to accommodate the
11 traffic?

12 A Yes. You may -- you know --
13 (Off the record.)

14 Q Well, it sounds like the delayed
15 recording may -- but let's continue. Go ahead.

16 A So in real life, things that a railroad
17 might -- might do is you may -- you may pull --
18 pull traffic kind of out and find ways to divert
19 traffic. You may push off a traffic maintenance
20 window by a day until things restore. You may
21 fleet trains in one direction because you can --
22 or rather than trying to run a railroad

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1 bidirectionally.

2 Those are things that can kind of
3 temporarily get you a little bit more -- get you a
4 little bit more on your capacity until the
5 railroad is back to a fluid state.

6 Q Did you review the testimony of
7 Mr. Johnson in the port about how the four
8 passenger trains will consume capacity in Mobile
9 if there is no dedicated passenger track at the
10 station?

11 (Off the record.)

12 MR. ATKINS: If there's someone on the
13 Zoom call that is not on mute, we ask that you
14 mute your microphone.

15 We're good.

16 CHAIRMAN OBERMAN: All right. Why don't
17 you proceed. Let's see how far we can get there.

18 THE WITNESS: Can you repeat your
19 question, please?

20 BY MR. ATKINS:

21 Q Yeah. Did you review the testimony of
22 Mr. Johnson in the Port of Mobile about how the

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1 four passenger trains will consume capacity in
2 Mobile if there's no dedicated passenger track at
3 the station?

4 A I saw the testimony, though I don't
5 recall everything on it.

6 Q Would you agree that Amtrak's proposal
7 to use the Choctaw Yard as a layover location
8 would mean that there will be eight movements to
9 and from the Mobile Station over the mainline
10 track?

11 A Yes.

12 Q And so that -- that would mean that
13 there would be four, what you refer to as
14 "revenue-generating movements," and then four
15 movements per day that would be non-revenue
16 generating; correct?

17 A Yes.

18 Q So if I can turn to page 22 of your
19 report, this is going to be -- I'm going to use
20 Tab 4, which is the public version, although it's
21 also public in the...

22 A Sorry, you said Tab 4?

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1 Q Yeah. It's Tab 4, page 22 -- actually,
2 no, make that -- sorry.

3 It's page 22 of your report. It's
4 page 24 of the -- of the actual exhibit. It's got
5 up at the top corner "Mobile to Brookley."

6 A So for -- the bottom is 24 and our
7 number is 22?

8 Q Correct.

9 A Okay.

10 Q It's just going to take a moment. Let
11 me know when you get there.

12 So, in your report, you concluded that
13 there is "insufficient capacity to handle the
14 non-revenue movements of trains to and from
15 Choctaw Yard (as is currently proposed by
16 Amtrak)."

17 Is that correct?

18 A Yes, that's correct.

19 Q And to remedy that problem, you're
20 recommending the construction of a "station pocket
21 track" to use your terminology; correct?

22 A Yes, that's correct.

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1 Q And you state in this report that it's
2 your opinion that doing so would prevent "the
3 continuous consumption of capacity on the main
4 line" in the Mobile terminal; correct?

5 A That's correct.

6 Q Are you aware that a recommendation for
7 a station pocket track, as you call it, is also
8 recommended by Norfolk Southern and CSX in this
9 case?

10 A That is my understanding, yes.

11 Q Are you further aware that a
12 recommendation for a dedicated station track at
13 the Mobile station was also identified as an
14 essential project from the Gulf Coast Working
15 Group 2017 report to Congress?

16 A I don't recall all the projects in the
17 Gulf Coast Working Group report.

18 Q Okay. Are you aware that there is no
19 station pocket track at the Mobile station at this
20 time?

21 A Yes.

22 Q Are you aware that Amtrak is demanding

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1 the right to begin operations of the line with no
2 station pocket track at the Mobile station?

3 A There is my understanding, yes.

4 Q Given that you concluded "there is
5 insufficient capacity to handle the non-revenue
6 movements each day that will traverse to and from
7 the Choctaw Yard," would you agree that forcing
8 those four daily movements onto the line will
9 impair operations in the Mobile terminal?

10 A I can't make an assessment if it would
11 impair; though, it would certainly be something
12 that would need to be managed through -- until
13 either operational changes could be made or the
14 track is constructed.

15 Q So can you talk to me about what -- is
16 it possible that adding a passenger train to a
17 rail corridor that is almost -- mostly
18 single-track with moveable bridges and limited
19 sidings will slow existing traffic on the line?

20 Is that possible?

21 A Through our methodology, we wouldn't --
22 we don't assess that, so I think the answer is:

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1 No, I don't know if that is possible.

2 Q So let me just clarify.

3 So you're saying your methodology
4 doesn't assess whether adding passenger trains to
5 the line would slow existing traffic?

6 A Whether a passenger train or a freight
7 train, any type of train. Our methodology looks
8 at capacity consumption and quantifies it.

9 Q But my question was -- so I think what
10 you just said, though, is what it doesn't do is
11 assess whether it would slow existing traffic?

12 A Correct.

13 Q Okay. So I -- I'm just asking this
14 question. It's a theoretical question rather
15 than -- as it applies to your work with --

16 Would you agree that as a theoretical
17 matter that adding trains can slow existing
18 traffic over a segment before you hit the, sort
19 of, maximum theoretical capacity of the segment?

20 A Not necessarily, no. I would not agree
21 with that.

22 Q So would be it possible that it would --

1 adding traffic can slow existing traffic over the
2 segment before you hit the maximum theoretical
3 capacity?

4 A It depends on how you manage and operate
5 the railroad. Adding traffic could force the need
6 because you need to manage all the traffic that's
7 on the railroad within limited infrastructure,
8 which is in a real-time scenario. That as you add
9 a train, you're actually forced to figure out ways
10 in a very short time period to run the railroad
11 more efficiently so that you can handle all the
12 demand on the existing infrastructure.

13 Q So I appreciate it might do that, but my
14 question is: Theoretically, when you add traffic
15 to a line, is it possible that doing so will slow
16 traffic on the line?

17 A I think any range of possibilities is
18 theoretically possible.

19 Q Would you agree that congestion on one
20 segment can have a ripple effect and slow traffic
21 on a nearby segment?

22 A It would depend on the scenario.

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1 Possibly.

2 Q So my question was: Can a ripple
3 effect -- can it have a ripple effect and slow
4 down traffic; is your answer yes?

5 A Yes. Again, it would depend on the
6 scenario.

7 Q Would you also agree that the closer you
8 come to hitting the maximum theoretical capacity
9 of the line, the more likely adding trains will
10 slow existing traffic?

11 A Again, not necessarily. Our --
12 actually, our analysis in other corridors, we've
13 actually found that, as train counts increase,
14 variability decreases, which goes back, I think,
15 to my earlier statement about how, when you have
16 more of a demand on a corridor and you have a
17 limited infrastructure, in real time, you have to
18 reconcile that because you have to keep -- or you
19 want to keep a railroad moving, so you actually
20 figure out ways to use the infrastructure as
21 efficiently as possible to accommodate demands.

22 Q So I think I heard you just say, though,

1 that it has been your experience that the
2 variability on the line is a function -- it can be
3 a function of the amount of traffic that's on the
4 line?

5 A What we have found in other places where
6 we've done this type of analysis is actually,
7 where train count increases, variability goes
8 down.

9 Q Right, but -- so, again -- so my
10 question, though, is: You -- in your experience,
11 the variability is not constant; it can change
12 with the amount of traffic that's on the line?

13 A Yes, it could.

14 Q Thank you.

15 Would you agree that the supply of
16 capacity on a line can be limited by a single
17 bottleneck segment?

18 A Depends on how you want to -- to use the
19 corridor. If you don't want to run as much
20 through a -- a constrained section, and your
21 demand there in that constrained section is -- is
22 not necessarily the same demand you have in any

1 other corridors, it's not necessarily a limiting
2 factor.

3 Q Well, let me -- let me give you a
4 hypothetical, see if I can tease that out a little
5 bit. So this might be too long of a hypothetical.
6 I hope you can follow me.

7 So let's assume you've got three
8 segments. The first one's double-tracked and has
9 a capacity of 20 trains per day. The second one
10 is just single-tracked with no siding, so it's got
11 a maximum capacity of five trains per day. And
12 then you've got a third one, which is, again,
13 double-tracked with a maximum capacity of 20
14 trains per day.

15 Wouldn't you agree that the maximum
16 theoretical capacity or throughput for the entire
17 line is five trains per day?

18 A No, I wouldn't agree with that.

19 Q So, in your analysis, you have a section
20 that I'm going to call a "bottleneck," but it's a
21 section right in the middle of the line where the
22 supply of capacity -- capacity is lower than

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1 anywhere else on the line; isn't that correct?

2 A Yes. There is -- there is one section,
3 yes.

4 Q So just for -- to clarify, so I'm going
5 to turn to Tab -- page 28 of Tab 6?

6 MS. AMUNSON: Ray, I don't think it's
7 Tab 6. That's the --

8 MR. ATKINS: Oh, I'm sorry. Tab 8.
9 Tab 8. My apologies. Thanks, Jessie.

10 CHAIRMAN OBERMAN: What page number?

11 MR. ATKINS: Page 28. And, again,
12 although this is highly confidential, it has been
13 redesignated as public.

14 THE WITNESS: All right, I'm on page 28.
15 BY MR. ATKINS:

16 Q Okay. Could you identify for our
17 benefit the segment that I'm referring to?

18 A I believe you're referring to the
19 section between Gautier and Beauvoir.

20 Q And the section before it, also from
21 Orange to Gautier, that -- although it is not a
22 bottleneck, it is fully constrained in your -- in

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1 your analysis; is that correct?

2 A It -- the supply and demand is equal, so
3 it's fully consumed.

4 Q Okay. So I may come back to this
5 particular stretch, but I'm just going to refer to
6 those two together as the "bottleneck segment,"
7 just -- I -- that'll be my language, not your
8 language, just to help you.

9 And just to clarify, and according to
10 your analysis, every scrap of supply of capacity
11 is consumed by demand over those bottleneck
12 segments when you add four passengers per train --
13 four passenger trains; is that correct?

14 A Yes, that's correct.

15 Q Okay. So I'd like to turn to your
16 calculation of variability factor.

17 The variability factor is intended to
18 capture the effect of local traffic on the speed
19 that trains can traverse each segment; is that
20 correct?

21 A Can you repeat that again, please?

22 Q So, as I understand, the variability

1 factor is capturing every -- every feature of the
2 line that might affect the ability of the trains
3 to traverse it from -- from one side to the other.
4 So, for example, if there is local traffic on the
5 line that is impeding the trains, that that's
6 captured in your variability factor?

7 A The variability factor is tied to the
8 train, so it's about performance of the train.
9 It's not about how a train maybe affects another
10 train, so it's tied to the performance of a
11 specific train.

12 Q And so -- but the performance of a train
13 is affected by the amount of local traffic that's
14 on the line?

15 A The performance of a train is -- is
16 affected by anything that causes it -- the -- in
17 our methodology -- to not adhere to the
18 performance profile of -- of a standard train. So
19 it could be waiting for another train, it could be
20 waiting for a local, it could be track work, it
21 could be a whole variety of things that happen
22 every day on a railroad.

1 Q Okay. That -- that's what I'm trying to
2 get at. I'm just trying to tease out some of the
3 specifics from that big bundle that you -- that
4 you're talking about.

5 So, for example, the variability factor
6 is intended to capture the effect of moveable
7 bridges -- moveable bridges, sorry, on the speed
8 that trains can traverse each segment; that's
9 right?

10 A If a train is delayed by a moveable
11 bridge, then that event is captured in
12 variability.

13 Q It's also -- the variability factor
14 captures the effect of congestion around the yards
15 on the speed that a particular train can traverse
16 each segment; is that correct?

17 A Yes. Again, delay -- any delay, and
18 could be delay near terminals, is captured in
19 there; however, we also have a metric, a staging
20 metric, that captures, you know, very long delays
21 anywhere on the corridor, but, my experience, they
22 typically happen near terminals.

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1 Q So I think I've already asked you this,
2 but just to summarize: The single variability
3 factor of 1.4 that you've calculated is intended
4 to capture all the features of the Gulf Coast line
5 that might affect how fast a train can traverse
6 the corridor; is that correct?

7 A That's correct.

8 Q So I just want to do some hypotheticals
9 to understand how the variability factor might
10 move. So would you agree that if all the local
11 traffic were to disappear that this would change
12 the variability factor?

13 A Not necessarily knowing what drives, you
14 know, any -- what drives all the variability
15 factors, I would say I don't know specific to a
16 local, but any train that can get across the
17 railroad consistently against the standard train
18 would have less variability in it.

19 Q So I just want -- I want clarification.
20 So my question's really just, theoretically, if
21 all the local traffic were to disappear, that
22 would change the variability factor; correct?

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1 You don't know -- you don't need to tell
2 me how it would change it or what degree, just
3 that it would change.

4 A The short answer is I don't know because
5 I don't know how any one given train that -- that
6 will -- that is delayed, is delayed by a local
7 train. I guess, theoretically, no train's ever
8 delayed by a local; in which case, the local
9 train's disappearing doesn't have any impact on
10 the variability number.

11 Q So let me pick one that I think is
12 easier.

13 Would you agree that if all the moveable
14 bridges were to disappear that that would change
15 the variability factor?

16 A Yes, that would.

17 Q Now, I'm going to flip it around and --
18 although I may know your answer.

19 If you -- would you agree that if you
20 expected the amount of local traffic to double,
21 would that change the variability factor?

22 A Again, depends on what that looks like,

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1 how it's done. I -- I don't know in -- in, sort
2 of, in -- you know, in -- in theory.

3 Q Okay. Let me ask, instead of would it,
4 how about is it possible that it would change the
5 variability factor, in your expert opinion?

6 A It is possible, again, depending on what
7 the service plan is and how those locals work.
8 Yes, in theory, it could negatively affect the
9 variability number.

10 Q And, well, I think you've actually
11 already said that this has been your experience,
12 but I have it here in my notes.

13 Would you agree that the variability
14 factor, which is, as you define it, the difference
15 between the speed that it actually traverses the
16 line against what you're predicting from your
17 model, that that variability factor is a function
18 of the total amount of traffic on the line?

19 A Yes, that's correct.

20 Q Thank you.

21 So I'm going to turn to your staging and
22 offramp movements. And for various segments of

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1 the line, you calculate the amount of capacity
2 that is consumed by staging and onramp/offramp
3 movements, but you referred to it as "onramp
4 movements."

5 For my benefit, could you start with the
6 staging? Could you explain how you specifically
7 calculated the amount of capacity consumed by
8 staging, taking as an illustration the -- the
9 staging number that you've got for the main line
10 to between Sibert Yard and Choctaw Yard?

11 A Yeah, so if you -- you can imagine a
12 train proceeds down a corridor. Train passes,
13 signals; those events are recorded.

14 Train that's staged will maybe pass --
15 call it illustratively -- pass Point A, comes to a
16 stop. Maybe the crew is taken off. Maybe the
17 crew sits on there. After three hours, the train
18 resumes movement, passes by Point B.

19 And so what we're looking for is a train
20 that went by A, and it was expected to go by B,
21 but didn't go by B for, essentially, over three
22 hours from when it was expected to go by. That

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1 goes into staging, and that number, you know,
2 we -- we pick -- I mean, mostly -- and we've
3 carried that number through our other studies, so
4 it was a number developed for this, this corridor,
5 that is a number that kind of -- you know, sort of
6 a cutoff between what -- is a train being held out
7 just because the terminal's not ready, but we're
8 trying to get the train, you know, someone's
9 trying to get the train in the yard, and a
10 dividing line between, essentially, a conscious
11 activity of we're going to halt this train and
12 we're going to try again later to bring it in. Or
13 we'll have room later to bring it in. Or the
14 connecting carrier will be ready at that time to
15 bring it in.

16 Q And can you explain how you calculated
17 the onramp movement and how that places a demand
18 on -- the actual calculation -- how did you
19 calculate the number, for example -- again,
20 there's a small amount of it shown in the -- on
21 the main line between Sibert and Choctaw Yard.

22 A Yeah, so what we're looking at there is

1 an onramp and offramp. We're using -- we'll use a
2 way to try to, kind of, talk -- we could use the
3 same kind of terminology in our other studies to
4 kind of talk to a non-rail audience -- is thinking
5 of -- is a train has to enter into the rail
6 corridor, it's sort of coming on or off ramp, just
7 like you would within a road. So that's how we
8 come to the term "onramp" or "offramp."

9 The way we calculate it is we -- we look
10 at the number of events of trains entering and
11 exiting our rail yard. Using our planning tool,
12 we have a conservative estimate on the speed of
13 the train coming into the yard because the yard
14 has to -- the trains, you have to enter very
15 slowly, maybe stop and align switches, and we
16 calculate that additional time that it would take
17 for that train to get all the way into the yard
18 and become clear of the main line. We then take
19 that time and we allocate that to additional units
20 of capacity consumed.

21 Q So coming back to this, to the staging,
22 can you describe the data that you used to

1 determine when you were -- when you were going
2 to -- how you calculated the staging calculation?

3 What data did you look at?

4 A We used the CSX OS data from -- I
5 believe it was September through November 2019.
6 So the OS data is signal-system data of a
7 particular train passing a particular point at a
8 particular date and time.

9 Q So you didn't -- you didn't -- and from
10 that -- that data was sufficient for you to
11 calculate the staging; you didn't have to use --
12 I'm going to mispronounce it, but you used a --
13 it's a European model, the Viriato model, or
14 something to that effect.

15 Did you use that model at all to
16 calculate the staging?

17 A No, we did not use Viriato for the
18 calculation of the staging.

19 Q Okay. And -- and so you've got the
20 calculation of the staging and the onramp; were
21 these calculations separate and distinct from your
22 calculations of variability factor?

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1 A Yes, they were.

2 Q Thank you.

3 Okay, so let me turn, again, back to the
4 variability factor. Would you agree that this
5 variability factor is a critically important
6 mathematical input into your model?

7 A Yes.

8 Q So I'm just going to lay out my
9 understanding of how you calculate it, but just,
10 please, you know, obviously, correct me if I'm
11 wrong.

12 So you say that for each movement over
13 the line during a three-month period, you first
14 calculated what I'm calling the predicted transit
15 time of that movement; is that right?

16 A We calculate the standard train. The
17 standard train is our -- you know, the -- the
18 standard train operational profile from one end of
19 the corridor to the other, which provides a -- you
20 know, an operational profile that we can make
21 comparisons to as we go through our process.

22 Q Would it be okay for me to just refer to

1 that shorthand as the "predicted time from your
2 model"?

3 A Yeah, that's fine.

4 Q Great. And so then you take a look at
5 the actual transit time. And the difference, the
6 actual transit timeline is the predictor of a
7 different stage of your variability for each
8 movement; is that right?

9 A Yes, that's correct.

10 Q And then you looked at every movement
11 from September through November 2019?

12 A Yes, that's correct.

13 Q So, in your servo, for example, you
14 say -- look, I don't need to refer to it. Just
15 sounds like this is, you aggregated all historic
16 train run times and compared to the model standard
17 train run times, and the average is then recorded
18 as the variability metric you quote; is that
19 correct?

20 A Yes.

21 Q So did -- you used the mean and not the
22 median; is that correct?

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1 A Yes, we used -- yes, I believe we used
2 the mean.

3 Q Did you exclude outliers in your
4 calculation of the mean?

5 A No, we didn't exclude outliers. The
6 only thing that we excluded is events that would
7 have fallen in that train-staging bucket.

8 Q Okay. So I think that's where we're
9 going because that's not entirely clear from your
10 calculation, so you -- so let me -- let me --
11 we'll get there.

12 But for all these incremental movements,
13 you resulted in a 1.4 factor that you used for
14 both northbound and southbound movements?

15 A Yes, that's correct.

16 Q And this means, on average, it takes a
17 freight train about 140 percent longer to cross
18 the corridor than the model standard train run
19 time; correct?

20 A Yeah. Yes. So for every train that you
21 would run, we would say that a train consumes an
22 additional 1.4 units of capacity.

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1 Q And it's just happenstance that the
2 average factor is the same for both northbound and
3 southbound movements?

4 A Yeah. They weren't exactly the same,
5 but they were very close.

6 Q Okay. If the numbers had been more --
7 had been different to a greater degree, would you
8 have needed to apply a different variability
9 factor for the northbound and southbound
10 movements?

11 A We would have taken the -- we probably
12 would have taken the higher of the two. Yeah, we
13 would have taken the higher of the two.

14 Q Okay. So if the northbound movement had
15 a variability factor of 2.0 and the southbound
16 movement had a variability factor of 1.4, you
17 would have used 2.0 in your analysis?

18 A Yes.

19 Q Okay. So, Mr. Johanson, when we go into
20 your work papers, it is apparent that, before you
21 calculated the average of 1.4, you screened all of
22 the data to throw away any movement with a

1 variability above 0.187; is that correct?

2 A No, I don't believe that is correct.

3 Q Okay. So at this point in time, we're
4 going to need to go into a highly confidential
5 because what we're going to do is we're going to
6 pull up his work papers and we're going to show
7 the filters that were applied and how the mean was
8 calculated.

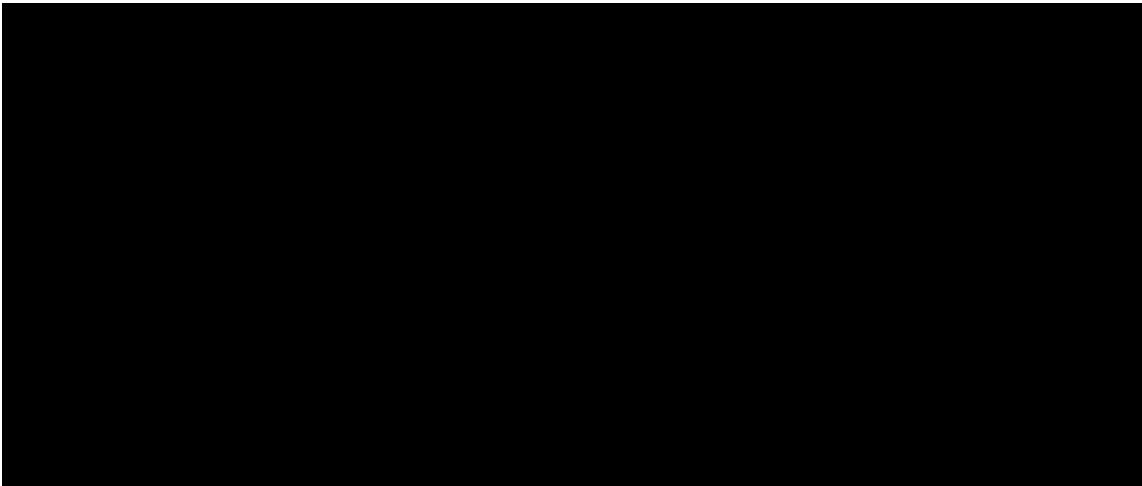
9 CHAIRMAN OBERMAN: Is this -- are we
10 going in back and forth because we don't want --

11 MR. ATKINS: No. No. We're going in
12 once, and then that's it.

13 CHAIRMAN OBERMAN: All right. Lucia,
14 can you -- who -- whoever is sending us to these
15 things, send us to the highly confidential.

16 (Off the record.)

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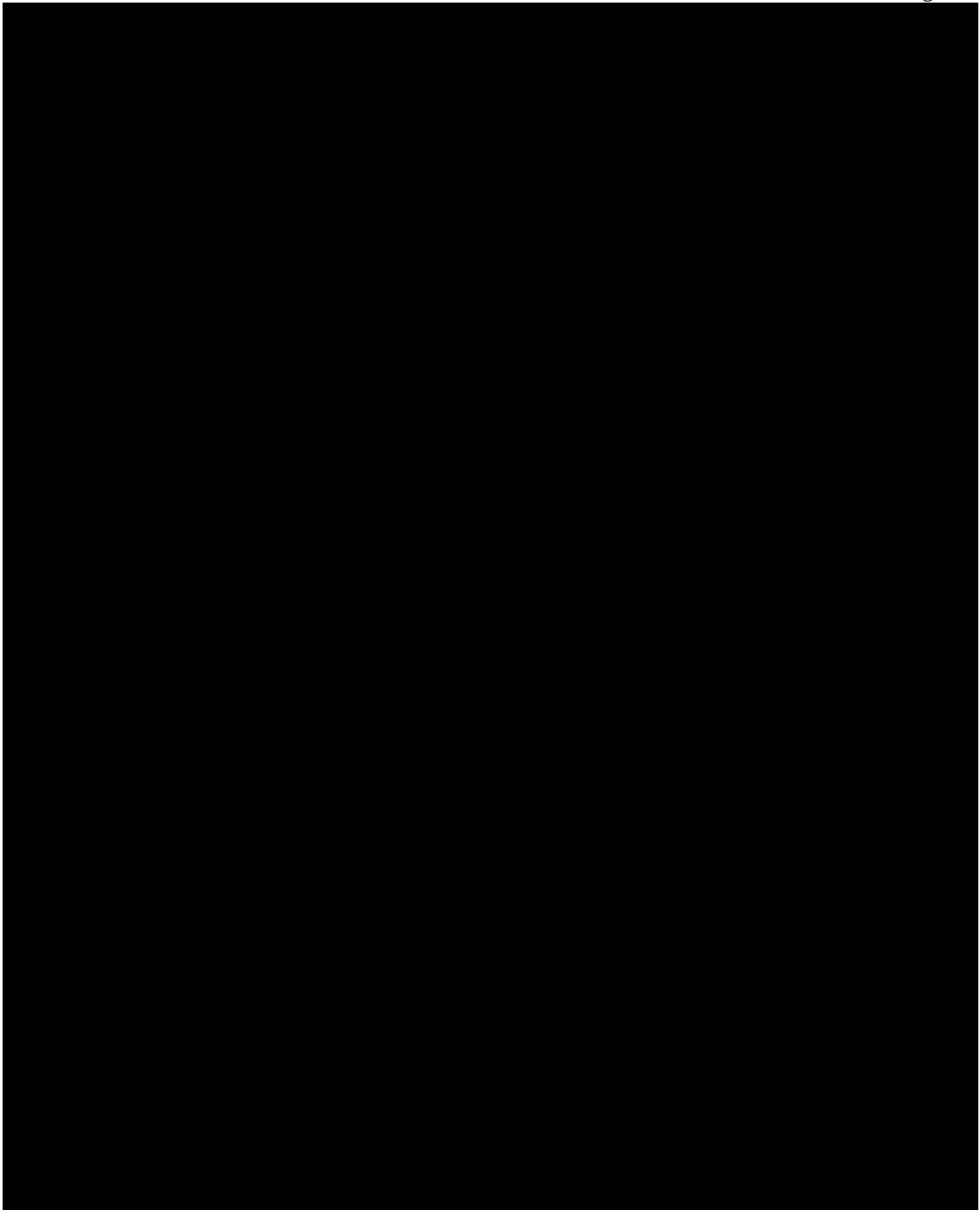


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All right, Ray, you may proceed.

MR. ATKINS: Thank you.

Q Have you explained in your report why

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1 you excluded movements with a high variability,
2 above 0.187, before you calculated these so-called
3 averages?

4 A As I said, that's where that aligns with
5 those trains that were taken out for the station
6 purposes.

7 Q Can you point to me where in your report
8 you indicated an explanation for excluding the
9 variability above 1. -- 0.187 before calculating
10 the average?

11 A No. What we stated in our report was
12 that trains that are three hours or greater is
13 what we took out.

14 Q So there's no discussion of the
15 correlation between three hours and 0.187 in the
16 variability factor?

17 A No.

18 Q Would you agree that truncating the
19 sample to exclude movements with high variability
20 would mean the -- would bias the median downward?

21 A Well, that's why we do things like
22 looking at staging, to take those types of

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1 activities out of a variability.

2 Q So can you point me to -- can you
3 describe where in your work papers you draw a
4 correlation between 0.187 and the three hours of
5 staging that your -- that your -- that you took
6 out of the variability factor?

7 A Not that I recall -- or, no, I cannot.

8 Q So can you point to any support --

9 MEMBER FUCHS: Excuse me. I think we're
10 muted, still, on -- okay. They just unmuted us.
11 Okay. I don't think they heard, but that's okay.

12 MR. ATKINS: Chairman, should I just
13 proceed, or do you want me to -- I don't think
14 I've gone --

15 CHAIRMAN OBERMAN: No, I think you can
16 proceed.

17 MEMBER FUCHS: Yeah.

18 MR. ATKINS: Okay.

19 MEMBER FUCHS: We can.

20 Q I lost my train of thought. Sorry.

21 So you indicated you can't put us to the
22 work paper to support the calculation of 0.187,

1 which is the filter that you applied; is that
2 correct?

3 A No, I can't.

4 Q So, Mr. Johanson, if your calculation
5 for this average is unsupported by a work paper,
6 is the results of your report unreliable given the
7 potential importance of this calculation to the
8 analysis?

9 A No, not at all. As I talked about, we
10 identified trains that were three hours, that were
11 held for three hours or longer, we took those out.
12 The remainder goes into the variability
13 calculation.

14 Q And so can you -- can you explain how
15 three hours corresponds to 0.187 as a filter you
16 applied to variability factor?

17 Can you -- can you do the math for us?
18 How do you get from three hours of staging to
19 1.0 -- 0.187?

20 A Yeah, so that number -- the number
21 aligns with the number-of-units capacity in -- in
22 an hour. And there's, I think, just about -- let

1 me think about how this works again.

2 There's -- since there's only about one
3 unit of capacity per direction per hour, it comes
4 out to just about -- sets you right -- right about
5 two or right under two because we have one that's
6 consumed by the train, plus the additional units
7 consumed for, essentially, the next hour and the
8 following hours. That's where -- and it comes out
9 to right about just under two.

10 Q Well, but there's no -- so I'm not sure
11 I follow the math, but there's no explanation for
12 that in your report, and there's no work paper
13 that you could point us to, to calculate this very
14 specific 0.187 calculation?

15 A Right. Not -- not off the top of my
16 head can I -- can I point to that.

17 Q Okay. So when you calculate the
18 variability for this line, you -- you're looking
19 at -- you have a -- I think I was going to call
20 it, like, a predicted train speed from your model
21 that you compared the actual to.

22 A Yes.

1 Q Did you calculate that predicted train
2 speed for each segment of the line, and then it
3 adds up -- then depending on what -- how many
4 segments the movement hits, that will be the
5 aggregated predicted train speed for the line?

6 A Viriato has a train performance
7 calculator in it, similar to very others --
8 various other types of rail planning tools. We
9 input in train length, weight, number of -- well,
10 locomotive horse -- horsepower. And then it has a
11 train performance calculator that it uses to
12 calculate the travel time between -- between
13 stations on the corridor.

14 Q So what I'm trying to understand is:
15 Did you look at the variability -- could you have
16 looked at -- well, let me ask a good question, so
17 let me withdraw that.

18 Which segment of this line has the
19 highest variability factor?

20 A We didn't look at it in a
21 station-to-station perspective; we looked at it
22 over the entire corridor.

1 Q So you don't know how much higher the
2 variability factor in Mobile is than the average
3 variability of the line?

4 A No, we do not.

5 Q And if it had a higher variability
6 factor, that would -- that would reflect all the
7 difficulties of operations in that region; right?

8 From the crowded yards to the moveable
9 bridges, the foreign trains, the local traffic,
10 that would all be factored in the variability of
11 traversing the Mobile station?

12 A The -- particularly around terminal
13 areas, a lot more of that variability is driven by
14 trains that sit for an extensive, long time, such
15 as over three hours, so a lot of those types of
16 trains sitting, waiting to get into a terminal
17 are -- are captured in staging.

18 So is it, perhaps, a little bit higher
19 around the terminal, yeah, I guess it could be,
20 but we also separately capture a lot of those
21 activities that go on around a terminal in -- in
22 staging.

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1 Q So you -- you probably -- you didn't --
2 you didn't examine the variability factor around
3 the Gentilly Yard and whether it's materially
4 different than the average of the entire line?

5 A We did not.

6 Q So I'm just going to ask you a
7 hypothetical, then, since you didn't do any
8 analysis on this, just to -- I want to understand
9 you.

10 So let's assume you've got two segments
11 again. These are of equal length. Let's just try
12 to hold them constant. And let's assume the first
13 segment has multiple bridges, bridge-tender
14 movements, lots of local traffic and dozens of
15 foreign trains crossing the line every day.

16 And, now, we have the second segment
17 that has no moveable bridges, no bridge tenders,
18 no local traffic, and no foreign trains crossing
19 the line.

20 Would you agree that the first segment
21 is going to have a higher variability factor than
22 the second?

1 A Depending on how -- depending on how the
2 trains operate and what service -- you know, how
3 the service plan is executed, one would -- kind of
4 more challenges could have certainly -- as
5 additional challenges versus a segment that maybe
6 just has to worry about speed restriction or --
7 temporary speed restriction and other things.

8 Q Again, in your analyses, you're using
9 the same average variability factors for all the
10 segments on the line; is that correct?

11 A That's correct.

12 Q So your model's treating a segment with
13 lots of moveable bridges, lots of local traffic,
14 and other features as consuming the same amount of
15 capacity as a stretch of track that might have
16 completely clear sailing?

17 A Yes. We use a consistent value across
18 the corridor.

19 Q Okay. So, now, keeping on this
20 calculation of your variability factor, you --
21 you're using an average variability factor of 1.4;
22 is that correct?

1 A That's correct.

2 Q Yeah, I'm going to try to stop asking
3 you that question because I believe we know what
4 the number is, but -- so tell me what the standard
5 deviation of that calculation was.

6 A I do not know.

7 Q Will there be days where the Gulf Coast
8 Line will experience operating variability that's
9 above the average?

10 A Yes.

11 Q But your entire analysis is premised on
12 using an average variability over three months; is
13 that correct?

14 A Yes, that's correct.

15 Q Did you calculate how frequently the
16 actual variability will exceed the 1.4 variability
17 used in your model?

18 A We did not.

19 Q So we're still -- I think we're on the
20 same slide, which is 21, Tab 2. Just -- if you
21 look at that, you can see a lot of days where the
22 actual is well above the average; isn't that

1 correct?

2 A Yes.

3 Q So since you didn't calculate it, I'm
4 just going to try to -- I'm going to assume a
5 number for conversational purposes.

6 So just to be conservative, let's assume
7 that 25 percent of the days, the line will
8 experience above-average variability that's above
9 the 1.4.

10 A Sorry. Say that one more time.

11 Q So I didn't actually ask a question, but
12 if -- so what I'd like to do is just -- I just
13 want to use a number for simplicity, so let's just
14 assume that about 25 percent of the time the line
15 will experience above-average variability, so
16 about 25 percent of the days, you're going to have
17 variability above 1.4.

18 So my question -- so that's just an
19 assumption I'm asking you to make for my next
20 series of questions since you didn't calculate a
21 number. So let's return to the bottleneck that
22 you detected in the middle of the line, where

1 every scrap of capacity is used from Orange Grove
2 to Beauvoir.

3 That analysis is based on the average
4 variability. So if the actual experience would
5 see the average 25 percent of the time, then your
6 model predicts that adding four trains a day would
7 exceed the maximum theoretical capacity 25 percent
8 of the time; is that correct? Understanding
9 25 percent is just a hypothetical, whatever that
10 number actually is.

11 A Can you -- I'm not following the logic
12 there.

13 Q So, yeah, let me try another line.

14 So you have detected on the bottleneck
15 that you exactly consumed the amount of
16 capacity -- the supply of capacity when you add
17 the four trains based on the average variability
18 of the line of 1.4; is that correct?

19 A Yes.

20 Q So every day, where the actual
21 variability exceeds the average, you're going to
22 exceed the capacity on that portion of the

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1 segment; is that correct?

2 A Yes.

3 Q Okay. So turning to the use of a
4 simulation model, you -- you described in your
5 report that a dynamic simulation model can be used
6 to find locations and occurrences of delay, and
7 then to investigate potential solutions to solve
8 the problem; do you -- is that -- is that
9 statement accurate?

10 MS. AMUNSON: Could you point him to the
11 statement?

12 Q Page 4 of the surrebuttal, which I
13 believe is Tab 7.

14 A Okay. And where am I looking?

15 Q It's the first paragraph.

16 A Of which page again?

17 Q Page 4. Second sentence.

18 A Yes. Looking at it.

19 Q Okay. So I'm just asking you if this --
20 if this -- the -- if you continue to believe that
21 a dynamic simulation model can be used to find
22 locations and occurrences of delay, and then

1 investigate potential solutions and solve the
2 problem?

3 A Yes.

4 Q Is the RTC model considered a dynamic
5 simulation model, in your view?

6 A Yes.

7 Q Okay. So, turning to the last sentence,
8 you say that -- in that first paragraph, sorry,
9 just -- "while the DP methodology may not
10 initially have simulation data behind it."

11 So when you use the word "may not
12 initially," are you -- is that a recognition that
13 using dynamic simulation models like RTC are often
14 added to the DB methodology?

15 A What we're trying to convey is that
16 the -- the work we do can feed a -- a simulation
17 model. It doesn't necessarily have to be a
18 simulation model, but can be used to -- to,
19 essentially, investigate solutions and put it
20 in -- and test it with a simulation model.

21 Q Does your team have expertise in using
22 the RTC model?

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1 A While we do have staff that have RTC
2 experience, we don't do RTC modeling.

3 Q So you don't have a license for the RTC
4 model?

5 A No, we do not.

6 Q Okay. So I'm going to turn to, like,
7 this issue of representative trains.

8 So you testified in your rebuttal
9 report -- I'm going to call it, sorry, the "reply
10 report" -- that it's critical that the capacity is
11 calculated through a process of determining the
12 representative unit of capacity for the rail
13 corridor.

14 MS. AMUNSON: Can you point him to the
15 page again?

16 MR. ATKINS: Yeah. I just want to make
17 sure it's -- if it's...

18 Q Sorry. It's on the same document as --
19 it is the surrebuttal. It's on page 5. Just flip
20 the page. Tab 7. And it's the first full
21 paragraph.

22 I'll just give you a moment to refresh

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1 your memory.

2 A Okay, I've read the first paragraph.

3 Q Okay. So you -- you're testifying -- I
4 think this is your description of what a unit
5 capacity is. It -- it's established -- it's based
6 on a determination of a standard train.

7 The unit of capacity established is
8 based on a determination of a standard train; is
9 that right?

10 A That's correct.

11 Q And then this is your description of a
12 standard train: "The standard train is
13 representative of the type of trains that could
14 potentially be operated on the corridor"?

15 A Yes.

16 Q Okay. The standard train you used in
17 this report is 11,000 feet long; is that correct?

18 A That is correct.

19 Q Are you aware that there's no sidings
20 along this corridor that can fit an 11,000-foot
21 train?

22 A Yes, I am.

1 Q Okay. So if we can flip back to your --
2 back to your demonstrative, which is Tab 8, I'm
3 going to go back to the same -- hold on one
4 second.

5 This is page 28, which is your depiction
6 of the line with all the various demands, demands
7 of the supply?

8 A Okay, I'm there.

9 Q So looking at this from -- all the way
10 from Sibert Yard to Mobile, it certainly would
11 appear that you're representing that this line
12 could handle, say, 10 through-trains, from
13 New Orleans to Sibert Yard within the current
14 capacity of the line; is that -- is that --
15 using -- using 10(b), would you agree with that,
16 that that 10 fits comfortably in your -- in
17 your -- in your analysis?

18 A What we're saying is that this is the
19 current train count on the -- or, yeah, the
20 current train count on the corridor.

21 Q And flowing 10 through is not going to
22 exceed because you've got a little bit of extra

1 room in the places where it's below 10, and -- and
2 then it's actually above 10 elsewhere.

3 So it would appear that this has the
4 capacity to handle 10 trains per day traversing
5 the line; is that correct?

6 A I would say it has the ability to handle
7 the traffic on the line today, and in sections
8 where that count is 10, then, yes, it's handling
9 10 trains.

10 Q Do you see anything in this chart that
11 would suggest it can't handle 10 trains a day?

12 A No.

13 Q Okay. So here's my question for you:
14 Is -- does it have the capacity to handle ten
15 11,000-foot trains per day in each direction?

16 A Well, that's not how the standard train
17 is used. The standard train is not to say that
18 every train is an 11,000-foot train. A standard
19 train is to just define an operational profile.
20 You could run a 4,000-foot train. We're just
21 comparing how that 4,000-foot train compares
22 time-wise across the corridor versus the

1 11,000-foot train.

2 You could run a 13,000-foot-long train,
3 and that's compared back to how the 11,000-foot
4 train would run across the corridor. We're not
5 saying that you could run ten 11,000-foot trains
6 or, you know, any sort of number. We're just
7 talking about an operational comparison to a
8 particular type of train to make our comparisons
9 back to.

10 Q So your statement that the standard
11 train is representative of the type of trains that
12 could potentially be operated on this corridor, is
13 that statement inaccurate?

14 A No. I mean, it's -- it encompasses up
15 to the 95th percentile in which there are many
16 trains that are under that. In fact, 95 percent
17 of trains are at or less than 11,000 feet in
18 length and at or less than 17,000 tons.

19 Q So can you, based on this report, offer
20 an opinion as to whether or not this line has the
21 capacity to handle ten 11,000-foot trains per day
22 in each direction?

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1 A Depending on what a service plan for
2 those trains would be, you know. You'd have to
3 create one, so maybe yes, maybe no. I don't know.

4 Q And do you know where any of those
5 11,000-foot trains would meet and pass each other
6 between North Gentilly -- the North Gentilly Yard
7 and Choctaw Yard?

8 A Again, it depends on a service plan. If
9 there was a service plan that said we want to run
10 ten 10,000-foot trains, then you can make a
11 service plan where you have five 10,000-foot
12 trains that follow each other one way, and then
13 you have five 10,000-foot trains that follow each
14 other the other way and across the corridor.

15 We're not talking about -- we're talking
16 about the capacity of -- of making -- we're -- the
17 standard train doesn't even -- is -- again, this
18 is an operational profile; it's not about whether
19 or not you can run an 11,000-foot train, that
20 every site needs to be 11,000 feet. It's really
21 about the one-time characteristics across the
22 corridor of that train and making comparisons back

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1 to it.

2 Q So, Mr. Johanson, the RTC model, though,
3 could answer the question of whether or not you
4 could run ten 11,000-foot trains across this
5 corridor; isn't that correct?

6 A I don't know if the RTC model could --
7 could do that. I don't know.

8 MR. ATKINS: Mr. Chairman, I need a
9 ruling on the motion in limine.

10 CHAIRMAN OBERMAN: Ray, are you
11 otherwise finished with your cross-examination?

12 MR. ATKINS: No.

13 CHAIRMAN OBERMAN: Well, how much more
14 time do you have outside of those matters?

15 MR. ATKINS: I don't know. Ten minutes
16 maybe. I'm getting there, but I'd like to --

17 CHAIRMAN OBERMAN: Are you saying if you
18 were going to be required to cross-examine him on
19 the matters you're challenging, this would be the
20 flow, this is where you'd like to put it in; is
21 that why you'd like the ruling now rather than
22 finishing?

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1 Is that what you're saying?

2 MR. ATKINS: Yes, sir.

3 CHAIRMAN OBERMAN: Well, I don't think
4 that's an unreasonable request. I will say that I
5 have given this issue a great deal of thought
6 since yesterday and paid as close attention as I
7 could to Mr. Johanson's explanation for these
8 additional exhibits.

9 And just so I have the record clear:
10 What is the number that you are challenging?
11 Which page numbers, Ray?

12 MR. ATKINS: Just one -- one second. I
13 just want to make sure I -- so it would start on
14 page 33 of the demonstrative, and run through 57.

15 CHAIRMAN OBERMAN: And that's Tab 8;
16 correct?

17 MR. ATKINS: Tab 8; correct.

18 CHAIRMAN OBERMAN: And I have found, and
19 I'm going to recommend to the Board, that -- after
20 listening to Mr. Johanson, that these exhibits go
21 beyond simply depicting data that was supplied by
22 the railroads, but required some analysis and use

1 of a software program, the Tableau program, and
2 required some -- and I'm not saying it was done
3 incorrectly or improperly. I assume it was done
4 in good faith, but, nevertheless, it required
5 judgment calls and decision-making by Mr. Johanson
6 as to how to portray this data and, therefore, I
7 think it does constitute actual opinion evidence
8 beyond just depicting.

9 I think had it just been an attempt to
10 depict data in some neutral fashion, then I think
11 that may be different, but I think it does
12 represent additional opinion evidence that was not
13 previously disclosed. Mr. Johanson said he could
14 have done all of these charts before he filed his
15 original opinion and, therefore, I'm going to
16 recommend that the Board grant the motion in
17 limine and bar the admission of -- pages
18 33 through 57?

19 MR. ATKINS: Yes, sir.

20 CHAIRMAN OBERMAN: And all of the
21 testimony in the accompaniment, to -- to strike
22 it.

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1 What is the pleasure of the Board?

2 MS. AMUNSON: Mr. Chair, may I be heard
3 prior to the Board's ruling?

4 CHAIRMAN OBERMAN: Well, you can be, but
5 we've really heard a lot of argument about it.

6 MS. AMUNSON: Okay. I just was going to
7 ask the Board whether the Board would make a
8 ruling slide by slide on whether they actually are
9 new analysis or whether they are just visual
10 depictions; for example, Slide 33.

11 CHAIRMAN OBERMAN: You know, I listened
12 to it as in -- as a whole, and it was my view that
13 it was very hard to separate it out slide by
14 slide. If you think there's some way to separate
15 that out and a showing can be made, we're not
16 going to finish by today, so you could attempt to
17 make such a showing. But based on everything
18 we've heard, I think the proper ruling is to bar
19 all of the slides and the testimony in the
20 accompaniment and, therefore, with the consent of
21 the Board, which it seems to be the Board's view
22 the motion in limine will be granted and all the

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1 testimony will be stricken.

2 Jessie, if you want to demonstrate some
3 reason to reconsider that on a slide-by-slide
4 basis, I suppose you can file anything you want
5 because we're not going to close the record today
6 anyway.

7 MS. AMUNSON: Understood, Mr. Chair. I
8 will just say for the record I think this is
9 inconsistent with how some of CSX and NS's
10 evidence has been presented and allowed in, the
11 very liberal standards that the Board has applied
12 toward their witnesses going well beyond what was
13 in their verified statements. But I understand
14 your ruling, and we will file something if need
15 be. Thank you.

16 CHAIRMAN OBERMAN: And you may even be
17 right, but we don't -- we normally -- for the most
18 part, I would totally have not, you know, have
19 responded to objections, and much if not all of
20 the evidence you're talking about from the other
21 side went in without objection.

22 MS. AMUNSON: Actually, Mr. Chair, I did

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1 object and the Board overruled my objection on the
2 grounds that the Board was interested in hearing
3 the testimony even though it went well beyond what
4 the witnesses had testified to.

5 CHAIRMAN OBERMAN: There were some such
6 instances. I agree with you. But, nevertheless,
7 this evidence doesn't seem to rise to that
8 standard.

9 So, Ray, you should, then, proceed to
10 finish your cross-examination.

11 MR. ATKINS: Okay.

12 Q Mr. Johanson, it appears from your
13 report that you didn't calculate the variability
14 factor or the staging factor or the onramp factor
15 or anything else for the trains running on the
16 Norfolk Southern system in the New Orleans
17 Terminal; is that correct?

18 A That's correct.

19 Q Okay. I'm going to leave any additional
20 questions from -- for my colleague, Mr. Donahoe,
21 so let me -- let me come back to the staging
22 number that you calculated in this case.

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1 So -- and, again, we'll -- we'll
2 probably conclude with coming back to the same
3 slide that we've been on for a while. Hold on a
4 second.

5 It's page 28, again, of Tab 8, which is
6 the slide which shows you the capacity available.

7 A Yup.

8 Q So you've assumed -- you've calculated a
9 level of staging that -- sorry. You calculated a
10 level of staging that would consume capacity in
11 the Mobile station, for example.

12 And can you -- again, can you describe,
13 like, not just how -- not just how the number was
14 calculated, but why these trains are being staged
15 in that area for over three hours, in your
16 opinion?

17 A I -- I don't have an opinion as to why
18 very specifically within Mobile, but, from my
19 experience, trains are held because there's
20 nowhere to go with them.

21 Q So there's nowhere to go with them, so
22 there's congestion on the line that's requiring

1 them to stage the trains for three hours or longer
2 just because of the complexity, the operating
3 complexity, of the Mobile terminal?

4 A I don't know specifically to -- to
5 Mobile terminal. It -- I think to, like, to my
6 Chicago experience: We would often pull trains
7 going to connecting carriers where the underlying
8 issue that resulted in BNSF pulling the train was
9 at a facility far beyond Chicago, such as a, like
10 a power plant in Michigan. So the problem may not
11 be right near -- the problem causing the train to
12 be held or staged may not necessarily be happening
13 right at the point that the train is being stopped
14 at.

15 Q Thank you. That's helpful.

16 So -- but it's -- the staging is a
17 function of the -- the fluidity of the line, the
18 use of the line, the other demands being placed on
19 it. Sometimes it's necessary to stage a train to
20 wait, hold it there, and then you send -- send it
21 along the line when there's room for it to
22 traverse?

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1 A Yes, that's correct.

2 Q Okay. So is the amount of staging that
3 takes place in a terminal like Mobile or
4 New Orleans a function of the amount of traffic,
5 generally, in that terminal?

6 So if the terminal were empty, would you
7 expect to see much staging?

8 A Yeah, so I would say that trains tend to
9 be held near -- near terminals, so you wouldn't,
10 though not always. Trains tend to be held near --
11 near terminals. So I think, going back to my
12 previous answer. It may not always be a problem
13 that is right at the point where that train is
14 being held, but trains do tend to be held near
15 terminals and not in, kind of, places in between
16 major terminals.

17 Q Okay. So all I'm really trying to
18 establish, and it sounds like you're agreeing, is
19 that it may be -- it may be for -- due to
20 something that's far away, but it's -- but if
21 you -- as you add congestion to a line, you're
22 more -- you -- the amount of staging may go up. I

1 guess, in theory, it might go down. But the
2 amount of staging you need is a function of the
3 amount of traffic that's on the line.

4 A I don't want to try to draw any sort of,
5 like, correlation between -- you know, that
6 there's some sort of direct ratio of number of
7 trains on a line to staging. But, often, trains
8 do have to be held for some particular reason
9 because a terminal, whether locally or maybe at a
10 facility or another terminal down the line, maybe,
11 in some, you know, number -- could be hundreds of
12 miles, could be 10 miles -- is not ready to take
13 the train.

14 Q And your staging calculation was based
15 on 2019, where, during which time, there were no
16 passenger trains operating over this line; is that
17 correct?

18 A That is correct.

19 Q And you are holding the amount of
20 staging, the hours of staging, constant when you
21 added four -- four passenger trains per day; is
22 that correct?

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1 A That's correct.

2 Q Does your methodology have any way to
3 actually simulate or predict how much the staging
4 would go up or down when you added the four
5 passenger trains per day?

6 A Our -- no, our methodology doesn't try
7 to -- well, we cannot -- does not try to make a
8 prediction on that.

9 Q I mean, I heard you say it not only does
10 not, but it cannot?

11 A Right. Yes.

12 Q But the RTC model can simulate how much
13 staging would go up or down by adding four
14 passengers per trip per day; is that correct?

15 A I don't know what RTC could or couldn't
16 do.

17 Q You calculated the amount of time that's
18 consumed by these onramp/offramp movements based
19 on 2019 information where there were no passenger
20 trains operating over this line; is that correct?

21 A That's correct.

22 Q In your methodology, you held the amount

1 of time constant when you added four passenger
2 trains per day?

3 A That's correct.

4 Q And, again, is your methodology capable
5 of predicting how much time, onramp/offramp time,
6 would increase or decrease when you add four
7 passenger trains per day?

8 A Well, we wouldn't -- a passenger train,
9 being on a -- on a railroad doesn't affect how
10 long it takes a train, once it starts into a yard,
11 to -- to get in or get out, so it -- from our
12 methodology standpoint, adding -- adding a
13 passenger train to the corridor doesn't change
14 that.

15 Q So it is impossible that a train might
16 have to hold longer because a passenger train is
17 coming down the line and it can't take -- it can't
18 offramp or can't come out on the main line?

19 A Entering a yard, it would -- entering a
20 yard, that goes back to variability. And
21 departing a yard, it doesn't change the ability of
22 the time it takes for the train to depart the yard

1 once the passenger train goes by.

2 Q But if it can't actually get out of the
3 yard because the passenger train -- he needs
4 priority so the passenger train can traverse,
5 isn't he going to have to wait longer in the yard
6 before he comes out?

7 A That's a -- like I said, that's a --
8 there's a theoretical in that. From an
9 operating-plan standpoint, either you know where
10 the passenger trains are at and you know the
11 schedule and you have an operating plan that
12 aligns with -- with the passenger, or that all --
13 I'm not even -- let me say that again.

14 All of the plans, then, align because
15 you have an operating plan for the corridor.

16 Q When you added the passenger trains in
17 this model, and you -- and you consumed units, did
18 you add a variability factor to the passenger
19 trains?

20 A No. In our experience in other places,
21 we've looked at variability of passenger-train
22 movements, and the -- the number was -- was zero.

1 Q So does that assume, sort of, an on-time
2 performance of 100 percent?

3 A It doesn't make any sort of assumption
4 on -- on-time performance other than if the
5 passenger trains do -- done without -- one, they
6 do very well aligning with the -- with their
7 schedule, but we don't make an assumption that the
8 train runs 100 percent across the corridor.

9 Q Okay. And then in returning to the
10 variability factor -- and we touched on this a
11 little bit, but I just want to make sure I get the
12 whole, kind of, list of factors you've identified.

13 So this variability factor captures
14 everything associated with the dynamic nature of
15 operating over the line. You say, basically, in
16 your surrebuttal, page 6 -- but I'm not sure we
17 need to go there. You say, "The variability is
18 introduced through a variety of factors outside of
19 the control of the railroads," and then you list a
20 series of factors, which include -- and I'll
21 just -- I'll run through each one and see if you
22 agree that these affect the variability.

1 The local train work events; that
2 affects the variability?

3 A Yes, it could if a train is delayed by a
4 local train. It would -- that would fall into
5 variability, yes.

6 Q Temporary track restrictions could
7 affect variability?

8 A Yes.

9 Q Work windows and terminal-congestion
10 issues?

11 A Yes.

12 Q Holding trains short for -- for highway
13 railroad crossings?

14 A Yes.

15 Q Trains stopped for moveable bridges?

16 A Yes.

17 Q And a term you referred to as "other
18 varied line-congestion issues"?

19 A Yes.

20 Q But when you added the four passenger
21 trains per day, you assumed the variability factor
22 of 1.4 will not change; isn't that correct?

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1 A That's right.

2 Q Okay. Can you point anywhere in your
3 report where you justify an assumption that the
4 variability of the line will remain constant?

5 A No. Not that I can think of, no.

6 Q In fact, your mod -- your methodology
7 has no way of determining how the variability
8 factor will be changed by any passenger trains
9 because its calculation is based on historical
10 2019 data; is that correct?

11 A That's right. It's based off of -- of
12 actual historical operating data.

13 Q So you can't tell the STB how the
14 variability factor would change if moveable
15 bridges were automated or if all the trains on the
16 line were shortened to fit into all the sidings;
17 can you?

18 A No.

19 Q A dynamic simulation model like RTC can
20 answer those questions, though; correct?

21 A I don't know.

22 Q Mr. Johanson, do you understand that the

1 inquiry in this case is what will happen to the
2 existing railroad operations on a line when you
3 add four passenger trains per day?

4 A That's my general understanding, yes.

5 Q And that inquiry includes determining
6 how train performance on the line will be
7 impacted, such as how it will slow down trains, or
8 local traffic will be affected, and what will
9 happen to interchange partners?

10 A If that's included in there, I don't
11 know, but...

12 Q And the fluidity of this line, the
13 performance of the trains on the particular road,
14 which is the variability factors you calculated,
15 is assumed to remain constant at 1.4 before and
16 after you add the passenger trains?

17 A Yes.

18 Q So, Mr. Johanson, are you familiar with
19 the joke about the economist, the engineer, and
20 the physicist who are trapped on a desert island
21 and a can of tuna fish washes up on shore, and
22 they're asked how to open it, and the economist

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1 says, Let's assume I have an opener?

2 MS. AMUNSON: Objection. I don't even
3 know what to call it.

4 CHAIRMAN OBERMAN: Ray, your question
5 speaks for itself. Ask another question.

6 MR. ATKINS: Thank you.

7 Q Mr. Johanson, haven't you assumed away
8 the very empirical question this hearing is
9 intended to answer?

10 MS. AMUNSON: Objection. Argumentative.

11 CHAIRMAN OBERMAN: I take it as
12 argumentative.

13 MR. ATKINS: I have no more further
14 questions.

15 CHAIRMAN OBERMAN: Mr. Johanson, I've
16 been listening, trying to listen carefully to your
17 very detailed testimony, and it's a very
18 impressive amount of work you've done, but here's
19 where I'm stuck for the moment. And if I've
20 missed it, I want to -- you to tell me.

21 Is there anything in your study that
22 tells us beyond capacity whether the institution

1 of passenger trains will have any impact, for
2 example, on the velocity of the freight trains on
3 this line? I just don't see that in your study.

4 For example, in the RTC study proposed
5 by the other -- by the railroads, for whatever
6 it's worth, says, well, the velocity will be
7 reduced by 4.5 percent. Do you say anything about
8 velocity in your report?

9 THE WITNESS: No, we don't. Our
10 methodology here is -- hold on. Our methodology
11 is about calculating the supply of capacity and
12 calculating the demand on that capacity, and
13 giving you a -- by "you," I mean stakeholders --
14 an idea of what are the need -- what are the needs
15 of the corridor, and then helping stakeholders to
16 step through, how do we -- you know, either, one,
17 do we have enough, or, two, do we need to make a
18 change, and whether that's change from an
19 operating perspective or an infrastructure
20 perspective? And stepping through, answering
21 those questions.

22 Our methodology is not trying to -- you

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1 know, like the simulation model tried to do,
2 simulate all the different types of activities
3 that occur on a railroad and provide metrics based
4 on that. It is a way of quantifying what you have
5 and how you want to use it, and -- and then you
6 can either simulate it, or you can take it and
7 say, you know what, we know we have enough; now,
8 we've just got to figure out how to make the best
9 of these assets and resources we have without
10 necessarily spending money and taking time to
11 construct stuff.

12 CHAIRMAN OBERMAN: Your study doesn't go
13 to the second step, how best to utilize it;
14 correct?

15 THE WITNESS: Not in a -- not in a
16 vacuum. You would need to have engaged
17 stakeholders, which is what we've had in -- in
18 other projects where we have stakeholders, where,
19 then, we can look at this and go, all right,
20 how -- what do we do from here and how do we
21 target this? And we've -- in other studies, then
22 look at operational improvements and all that sort

1 of stuff that I've articulated.

2 CHAIRMAN OBERMAN: And you did say, I
3 believe, that your study doesn't measure
4 impairment, I think, when Mr. Atkins asked you; is
5 that right?

6 THE WITNESS: That's correct; we don't
7 measure impairment.

8 CHAIRMAN OBERMAN: Well, the statute
9 we're operating under says that we are supposed to
10 consider whether the institution of passenger
11 trains will impair unreasonably the freight
12 service, so I'm trying to figure out how we can
13 use all of the testimony you've given us to try to
14 decide this case under the statute, which -- under
15 which we're operating.

16 It may be in other areas that your
17 approach to this is very helpful to a railroad or
18 to other stakeholders, but I'm trying to figure
19 out how it relates to our statutory standard. I
20 wonder if you could explain that as you understand
21 it.

22 THE WITNESS: Yeah, so I think what I

1 would say is that from a Board perspective, you
2 can, you know, look -- or you consider our
3 analysis, is that there is -- there is capacity on
4 the corridor. There are certainly, as we've
5 identified, some places where the capacity is
6 going to be fully allocated or is very close to
7 fully allocated. And a potential short-term step
8 is for the stakeholders on the corridor to see
9 to -- I think, to work in an open, transparent
10 manner where they can figure out, how can we
11 squeeze the most out of the capacity that we have
12 in the short run.

13 Now, whatever comes in the future is
14 what -- you know, when they come down the line,
15 but at least, here, can identify that maybe there
16 are some places where we can -- where stakeholders
17 can work together, technically in the short term,
18 to figure out how to best use the capacity
19 that's -- that's there, but that -- again, based
20 off of experience that we've had in other studies,
21 that requires stakeholders that can -- can be, you
22 know, very -- you know, open dialogue with one

1 another.

2 CHAIRMAN OBERMAN: Well, all that's a
3 good idea, and it might be great if there was a
4 statute that says bring a petition to order
5 everybody to work nicely together. And we -- we
6 may give such an order anyway. But for the
7 moment, we've got a statute to apply. And I can't
8 figure out if just having enough capacity, how
9 that results in how these trains will run,
10 including whether the passenger trains can run at
11 60 miles an hour, which is what the statute says
12 should be at least the target.

13 So let me ask it this way: If I get on
14 the Kennedy Expressway in Chicago and there are
15 only 10 cars there, I can go 70 miles an hour if I
16 want. You can put another 10,000 cars out there
17 and the whole traffic moves, but it moves at
18 30 miles an hour; is that capacity?

19 I mean, how am I supposed to understand
20 this, the results of this study of yours?

21 THE WITNESS: Well, the highway example
22 is -- probably is a good one because it -- or,

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1 yeah, what is -- what is capacity, I think, as
2 I've seen this in my first proceeding like this,
3 is that quantifying capacity is hard, and we're
4 trying to have -- or we've developed a methodology
5 that, you know, we think has merit in being able
6 to actually quantify that, which has been
7 something I have seen through these proceedings.

8 It is hard to say: What is -- what is
9 capacity? What is capacity of -- is it 10 cars?
10 Is it 10,000 cars? This at least gives an idea of
11 I have a -- I have a measurement, I have a
12 yardstick of which to make measurements and
13 comparisons to, and see, Yes, I've got enough, or,
14 you make -- you know, No, I don't have enough, or
15 I'm somewhere in between. And we can at least
16 quantify that, and then we can know, we've got to
17 work in this area and target work in this area
18 because this is where we need to focus our
19 efforts, and it's not as, kind of, nebulous as the
20 Kennedy example you provided.

21 CHAIRMAN OBERMAN: Well, I can't help
22 but wonder. I'm just musing for the moment,

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1 although I may have some observations at the end
2 of the evidence here, that perhaps you've been
3 given an assignment for which your particular
4 expertise was not well suited given the statute
5 we're operating under. It may be suited for other
6 purposes. But I'm just wondering about that.
7 Karen has some questions for you.

8 MEMBER HEDLUND: I think what you said
9 at the beginning is that your methodology is a
10 planning tool, and what your report indicates is
11 that there is sufficient capacity on this line to
12 accommodate all the trains, assuming a perfect
13 service plan.

14 THE WITNESS: Is that a -- do you want
15 me to respond to that? I don't know if I cut you
16 off. I'm sorry.

17 MEMBER HEDLUND: I mean, no, it -- it --
18 you can accommodate the trains assuming a service
19 plan that has the trains leaving at a certain time
20 and running behind each other at certain headways,
21 etc.; is that correct?

22 THE WITNESS: Not necessarily, we don't

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1 define a service plan. We certainly do not, you
2 know, set out to do work or deliver work where we
3 draw up on the table and say, Here's the service
4 plan. Here's our -- work because --

5 MEMBER HEDLUND: No, I understand. This
6 does not produce a service plan.

7 THE WITNESS: It does not produce a
8 service plan. Is certainly can help start
9 pointing you -- it can help define what -- how you
10 use the capacity already in, sort of, that highly
11 variable nature that is freight-railroad
12 operations.

13 It can also help point you down the path
14 of, what if we got a little bit more precise, or
15 what if we knew -- or we can say with certainty
16 that these two trains want to meet at this place
17 every day at this time, and -- and then you don't
18 even have to do our -- this methodology. If you
19 have two trains that want to be at A at the same
20 time every day, then just put a siding at A and --
21 and then run -- run the plan.

22 So, yeah, we're trying to find a way to

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1 quantify how the capacity is used in a -- in an
2 imperfect world.

3 MEMBER HEDLUND: So going back to the
4 highway example, it's my understanding that you
5 can increase the actual operating capacity of a
6 highway by having all the cars or all the trucks
7 in one line run in tandem, and that's what I mean
8 by, you know, you have to assume an operating
9 plan.

10 But your report doesn't result in an
11 operating plan; it simply says, maybe there's a
12 potential for an operating plan that could
13 accommodate all the trains.

14 THE WITNESS: Yes, that's a -- that's a
15 fair understanding, an accurate understanding.

16 CHAIRMAN OBERMAN: All right,
17 Mr. Donahoe, you have some questions. How long at
18 cross-examination?

19 MR. DONAHOE: Twenty.

20 CHAIRMAN OBERMAN: Pardon me?

21 MR. DONAHOE: Twenty minutes.

22 CHAIRMAN OBERMAN: All right. Let's try

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1 to get through it. We -- we're going to -- we've
2 got a hard stop today at 6:00. I hope we'll
3 finish way before then.

4 Mr. Wimbish, you still have some
5 cross-examination?

6 MR. WIMBISH: Yes, we do. And I think
7 it will be -- some of it was territory already
8 covered and raised. I've been listening intently,
9 and I'm going to try to be judicious in the
10 questions I ask. I -- I'm relatively confident at
11 this point that it will be under an hour. Given
12 where we are in the day, I think confidently we
13 can make the target. I, for the same reason as
14 you, want to hit that target.

15 CHAIRMAN OBERMAN: I don't go out of my
16 way to compliment Ray, but I don't know what's
17 left, to be honest with you.

18 And then, Jessie, you've got redirect,
19 obviously. Do you have any idea how long that
20 will be based on what you've heard so far?

21 MS. AMUNSON: Relatively short based on
22 his report.

1 CHAIRMAN OBERMAN: All right,
2 Mr. Donahoe, proceed with speed.

3 CROSS-EXAMINATION

4 BY MR. DONAHOE:

5 Q Mr. Johanson, is it your understanding
6 or belief that it's the position of Norfolk
7 Southern that there's not capacity for passenger
8 rail currently on the black -- Back Belt?

9 A Can you say that one more time?

10 Q Sure.

11 Is it your understanding that it's the
12 position of Norfolk Southern that there's not
13 capacity to add passenger lines on the Back Belt?

14 A I guess I don't completely know what
15 Norfolk Southern's view is, though. And,
16 certainly, they've asked for projects on the Back
17 Belt.

18 Q The capacity marketplace methodology,
19 that was developed by DB Engineering; correct?

20 A Yes.

21 Q And you testified on direct that that
22 was a new approach for measuring capacity;

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1 correct?

2 A Yes.

3 Q Has that new approach ever been used or
4 presented before the STB before this hearing?

5 A No.

6 Q Has this approach ever been accepted by
7 any federal regulatory agency in any type of
8 proceeding?

9 A No.

10 Q Has this methodology been peer-reviewed
11 or published in any manner?

12 A No.

13 Q And you would agree with me that the RTC
14 model has been used many times before the STB?

15 A I don't know what -- how many times, but
16 I do know it has been used before the STB.

17 Q And if I wanted to, I could go and
18 purchase the RTC model; isn't that accurate?

19 A I believe so, yes.

20 Q There's a licensing agreement with the
21 RTC modeling; correct?

22 A I've never tried to buy it, but I won't

1 dispute it.

2 Q Could I purchase your capacity
3 marketplace methodology anywhere?

4 A You could hire me and have our
5 methodology.

6 Q No -- and I understand that. I mean,
7 like, I could go out and purchase the RTC modeling
8 if I wanted to do modeling. Is there anywhere I
9 could purchase your capacity marketplace
10 methodology and use it myself?

11 A It's -- well, we don't have a -- it's
12 not a software product, so it's -- in that sense,
13 there's not a software product that you can
14 purchase. It's a concept, it's a methodology, and
15 it's a way of, kind of, approaching a problem.

16 Q So it's -- since it's not a software
17 project, freight railroads at Amtrak, they don't
18 have modelers inside their companies that use this
19 approach?

20 A Not that I'm aware of.

21 Q And you've heard testimony that both
22 Amtrak and the freight railroads, they do have

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1 people inside their companies that do RTC
2 modeling?

3 A Yes.

4 Q And I think, if I heard your testimony
5 correctly, your verified statement didn't include
6 specifics on how you calculated staging,
7 variability, ramp removal; is that fair?

8 MS. AMUNSON: Objection.
9 Mischaracterizes his testimony.

10 THE WITNESS: Sorry. Could you say that
11 again?

12 BY MR. DONAHOE:

13 Q Sure.

14 CHAIRMAN OBERMAN: It's a fair
15 cross-examination. Go ahead.

16 Q It -- I thought I heard in answers to
17 Mr. Atkins -- because he asked you how you
18 calculated all these things. And my question is,
19 simply: In your verified statement, do you
20 include specifics on how you calculated staging,
21 variability, and ramp movements?

22 A I believe our verified statement, we

1 talked about the approach, but we didn't show,
2 like, an actual formula.

3 Q Okay. So, therefore -- and there's been
4 a lot of talk in this hearing about validation.
5 Since that is not laid out in your verified
6 statement, it would be difficult for our experts
7 to validate your modeling.

8 A I don't know how hard it would be for
9 your -- for your experts. I don't know.

10 Q But you agree that you did not lay out
11 the specifics for how you did your modeling in
12 your verified statement?

13 A I believe we articulated in our verified
14 statement the approach we used, though we did not
15 show a specific formula.

16 Q In any of the projects, the other three
17 projects -- I think it was three that you used
18 this capacity marketplace methodology, was there
19 any of those places that had the same
20 characteristics as the Gulf Coast Line?

21 A Like what kind of characteristics?

22 Q Sure, I'll give them to you.

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1 So the Gulf Coast, there's -- it's
2 approximately 150 miles of single track,
3 13 moveable bridges, 160 grade crossings, and the
4 intersection of six Freight I railroads, along
5 with a port?

6 A Well, we've done analyses on railroads
7 with single track. We've done analyses on
8 railroads with multiple ports. We've done
9 analyses on routes with multiple other connecting
10 railroads. We've done analyses on routes with
11 lots of grade crossings, although I can't quantify
12 the number. And so I don't know if we've done one
13 with a moveable bridge.

14 Q Okay. And just to be fair, my question
15 is: In any of these projects, did it have a
16 combination of all these factors that I just
17 described to you?

18 A With the exception of the moveable
19 bridge, we've done a project where all those other
20 ones were included.

21 Q And in your verified statement, I think
22 you recommended three projects; do you recall

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1 that?

2 A Yes, I do.

3 Q Okay. And to be fair, again, you
4 believe that Amtrak can begin passenger service on
5 the Gulf Coast prior to the installation of those
6 three projects; correct?

7 A Yes.

8 Q Okay. And you've heard testimony about
9 the Gulf Coast Working Group; haven't you?

10 A Yes, I have heard some.

11 Q And your verified statement only
12 recommended three projects, whereas the Gulf Coast
13 Working Group recommended several more than the
14 three projects?

15 A I believe, as I said earlier, I don't
16 recall all the details of the Gulf Coast Working
17 Group.

18 Q Okay. Well, I think --

19 A Railroad Group.

20 Q I think we can take notice, because
21 there's been a lot of testimony about it, that the
22 Gulf Coast project involved more projects than

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1 what your verified statement has recommended, but
2 you're not aware of that?

3 A I am not intimately familiar with all of
4 the -- the number and the details of all the
5 projects in the Gulf Coast.

6 Q Well, one of the projects, and there's
7 been testimony to it from the Gulf Coast Working
8 Group, is the Gentilly Yard; have you heard any
9 testimony about that?

10 A I do recall some testimony about
11 Gentilly Yard.

12 Q And the Gulf Coast Working Group
13 recommended a bypass at the Gentilly Yard; do you
14 recall that?

15 A I do.

16 Q Is that one of the projects you
17 recommended?

18 A No, we did not recommend that.

19 Q Have you heard testimony that Amtrak has
20 agreed and has adopted the projects recommended by
21 the Gulf Coast Working Group?

22 A I -- I don't know what Amtrak has agreed

1 to or not agreed to on any of the Gulf Coast
2 Working Group projects.

3 Q Well, hypothetically, if Amtrak is
4 taking the position that they agree with the
5 infrastructure suggested by the Gulf Coast Working
6 Group, you would agree that's different than the
7 three projects you've recommended?

8 A Can you say that one more time? I'm --

9 Q Sure. I'm sorry. I might be speaking
10 too fast.

11 I think we've established that there
12 were more projects suggested by the Gulf Coast
13 Working Group, more than three projects; are you
14 with me there?

15 A I'm with you.

16 Q Okay. So would you agree with me that
17 if, in fact, Amtrak has taken the position that
18 they are adopting or in agreement with the
19 projects from the Gulf Coast Working Group, that
20 would be different from your recommendations of
21 the three projects, just in numbers alone?

22 A I guess, if -- if anyone has agreed to a

1 project with four or more projects, then, yes,
2 they've agreed to -- to something with more than
3 three.

4 Q Okay. So if, hypothetically, the Gulf
5 Coast Working Group has recommended eight
6 infrastructure projects and you've only
7 recommended three, you would agree there's a
8 difference there?

9 A Yes, I agree three and eight are
10 different.

11 Q And the three projects that you
12 recommended -- and I don't know if this is part
13 of, you know, what you do. Did you give any
14 estimates or cost estimates to what those projects
15 would entail?

16 A We did not.

17 Q In your verified statement, you said
18 that the Back Belt was unoccupied 75 percent of
19 the time; do you recall that?

20 A Yes, I do.

21 Q And did you do any calculations, or did
22 you look at any data as to what was occurring that

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1 other 25 percent of the time?

2 A As I recall, our calculations there were
3 that the Back Belt was not being used 75 percent
4 of the time; therefore, it was being used -- the
5 rest was -- this was a binary thing, so the rest
6 was being used 25 percent of the time.

7 Q No -- and I understand that, but I guess
8 my question, and it was poorly phrased, is more,
9 did you look at what was occurring during that
10 25 percent of the time?

11 A We didn't break it out other than we
12 thought trains were moving or were on the corridor
13 during that time.

14 Q Okay. Now, I -- I heard your testimony
15 that you didn't go down to the Gulf Coast Line for
16 this project; have you ever been to the Back Belt?

17 A When I was about 14, I rode the Crescent
18 Railroad.

19 Q Okay. So that was a long time ago. All
20 right.

21 A But no.

22 Q Okay. Fair enough.

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1 Would you agree with me that individuals
2 such as Mr. Johnson and Mr. Hunt and Mr. Guthrie
3 and people who have been along the Gulf Coast
4 corridor and have been at the Back Belt are in a
5 better position to testify about the capacity and
6 the future projections in adding Amtrak passenger
7 trains to the line?

8 MS. AMUNSON: Objection. It's not for
9 Mr. Johanson to evaluate the --

10 CHAIRMAN OBERMAN: Sustained.
11 Sustained.

12 Q Why is it you never went down to the
13 Back Belt?

14 A I never felt a need to; felt that the
15 information that we had was sufficient to do our
16 analysis.

17 Q And the same response with why you were
18 never on the Gulf Coast Line, the rest of the Gulf
19 Coast Line?

20 A That's correct.

21 MR. DONAHOE: That's all I have. Thank
22 you.

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1 CHAIRMAN OBERMAN: Mr. Wimbish, if you
2 are going to be short, I'd like to do that, and
3 then we'll take a break.

4 MR. WIMBISH: Okay. Yes, let's try to
5 do that.

6 CHAIRMAN OBERMAN: All right. Why don't
7 you come up here. And we'd all like to see your
8 new shirt.

9 MR. WIMBISH: And tie and socks.

10 CHAIRMAN OBERMAN: Whatever it takes.

11 MR. WIMBISH: I didn't know I was really
12 up here for display purposes.

13 CROSS-EXAMINATION

14 BY MR. WIMBISH:

15 Q Mr. Johanson, before I begin, I just
16 want to let you know that there could be some
17 pauses in between my questions. That's simply my
18 attempt -- I've been listening very carefully in
19 your testimony. As a consequence, I'm trying to
20 cull some of the questions that I otherwise would
21 have asked you in the interest of brevity, and
22 accommodating the agency as well, so appreciate

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1 your accommodation with that. If you're patient
2 with me, I'll be patient with you.

3 A Indeed.

4 Q Mr. Johanson, in reading your verified
5 statement and your report, I did not find many
6 references to the Port of Mobile or the Terminal
7 Railway Alabama State Docks, TASD. In fact, I
8 only found one, which was at page 9 of your
9 report; does that seem about right?

10 A Yes, that's about right.

11 Q Why was that?

12 A We had no train -- we had no
13 train-movement data for -- for a couple reasons:
14 One, none of our analysis touched anything that
15 the Terminal Railway may consider a main track
16 because Amtrak did not operate on those tracks.

17 The other thing is that we did not have
18 operational data. And I really mean specifically
19 this, like, OS signal data for movements that
20 occurred on the Terminal Railway property.

21 Q So you know -- in followup to that, you
22 know that from -- from the prior testimony that

1 TASD operates between Sibert Yard -- technically,
2 from Interchange Yard, which is adjacent -- to
3 Interchange Yard, and from Sibert Yard down to --
4 down to the McDuffie facilities, which is a
5 segment that you studied.

6 And then if I'm understanding correctly,
7 you're saying that you don't agree that the tracks
8 the TASD uses are the same tracks that CSX -- that
9 Amtrak's trains would use?

10 A No. To the extent that Port -- that
11 TASD movements operate on the CSX track, and those
12 movements passed by a signal, and that signal
13 recorded that event, and that event was in the OS
14 data provided by CSX, those movements were
15 included in our analysis.

16 Q I see.

17 How many TASD cross-corridor train
18 movements did you include in your mark -- capacity
19 marketplace analysis?

20 A We did not break the movements out by
21 operator.

22 Q So you don't -- you don't know, or you

1 didn't try to segregate them in some way from the
2 other train movements you saw between Sibert and
3 Choctaw?

4 A Yeah, to the extent that any train
5 movements were on the -- in the CSX dataset, that
6 was included, but we didn't try to identify or
7 break out or categorize by operator.

8 Q And, again, you -- I think you've been
9 saying that you were able to -- you determined
10 your -- your freight-train volumes from the OS
11 data; is that correct?

12 A Yes, that's correct.

13 Q And you said that -- I think you just
14 said that the OS data also allowed you to
15 ascertain, however, which of those train movements
16 were T ASD train movements and which ones were not?

17 A No. We weren't able to -- we didn't
18 attempt to say, These movements on CSX property
19 are CSX trains being duly operated by CSX
20 employees, and these trains are T ASD trains
21 operated by TAS- -- T ASD employees. If it was a
22 train movement on their property, it was just

1 counted as a train movement.

2 Q Okay. But you do know that T ASD trains
3 compared to CSXT trains between Sibert and Choctaw
4 function differently; that is, that they take
5 different routes. As an illustration, that you
6 may have a train that exits T ASD's riverfront
7 yard, and then traverses the CSX corridor to get
8 back up to Interchange Yard, something that CSX
9 trains don't do; correct?

10 A Okay. Yeah, so a train takes -- I think
11 what I recall from my experience, a head will move
12 out of one yard and then shoves into the other
13 yard.

14 Q Okay.

15 A Am I -- is that --

16 Q I think so. What I'm trying to get at
17 here is that you -- but you were able to ascertain
18 that from the OS data?

19 A Again, we didn't look -- we weren't
20 looking at a specific move. So, again, whatever
21 those -- to the extent that those movements did
22 exist and were in the data, that was included in

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1 our calculation, but we did not specifically try
2 to look at and say, "a movement," whether it was a
3 TASD movement or a CSX movement, came out of one
4 place, and then backed into another place.

5 Q In light of the written and oral
6 evidence supplied at this point and the direct and
7 cross-examination to this point, is it still your
8 opinion that Amtrak's proposed service can be
9 initiated without any immediate infrastructure
10 improvements?

11 A Yes.

12 Q You seem to recommend the construction
13 and utilization of a station track in downtown
14 Mobile. This is something that's been discussed,
15 but you seem to have recommended that; correct?

16 A Yes, we did offer or suggest the
17 construction -- yes, we suggested the construction
18 of a Mobile station track.

19 Q So if your conclusion is infrastructure
20 is not needed, why recommend that?

21 A Because we did recognize that there were
22 places that were either at or getting very close

1 to -- to capacity and may -- wanted to make
2 recommendations of things that could be -- could
3 be or should be looked at.

4 Q Well, since you recommended it, did you
5 have a time frame in mind for the deliverable for
6 that -- for delivery of that particular project?

7 A No.

8 Q I assume that your analysis assumes that
9 Amtrak will operate -- in fact, I will refer you
10 to Tab 8. Try to get here quickly, Tab 8,
11 page 28.

12 A Yup, I'm there.

13 Q A couple of quick questions about that:
14 Your -- your tab here indicates that Amtrak will
15 operate over CSXT's Main 1 only between CP State
16 Docks and Choctaw; is that correct?

17 A I think we have here on Sibert. I
18 think --

19 Q I'm sorry. I'm sorry. I -- I did
20 state -- I did say "State Docks." I see that
21 your -- your segments are based on Sibert to
22 Choctaw.

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1 So Sibert to Choctaw, your Amtrak trains
2 will operate only on Main 1?

3 A Yeah. I think -- I think State Docks is
4 actually technically south or east of Sibert, but,
5 yes, it would be on Main 1.

6 Q Okay. But you've heard from Ricky
7 Johnson that, in order for these Amtrak trains to
8 move from Main 1 at the station to Choctaw in the
9 absence of the station track in Mobile, that those
10 Amtrak trains will have to cross over onto Main 2
11 in order to access Choctaw Yard; isn't that
12 correct?

13 A At CP Choctaw, double track, the double
14 track ends. It -- the siding ends and you either
15 go into Choctaw Yard or you stay on the -- on the
16 main track, so -- our calculations don't -- it
17 doesn't matter because you're on -- you're at the
18 end of the track, or, you know, we're looking into
19 the single-track section at that point.

20 So, true, whether you're on 2 or 1,
21 you're still going -- you're going from that
22 divergence point down to -- down to a single track

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1 from a main-track perspective.

2 Q So I'm a little confused. So you've got
3 two main tracks to CP Choctaw from the north;
4 right?

5 A Yes.

6 Q And you're contemplating a crossover
7 move that will, at a minimum, block the access to
8 Main 2 through that same control point. So are
9 you not -- why did you not factor in any
10 consumption of capacity on Main 2?

11 Are you saying I can run through that
12 same -- that same crossover on Main 2, even when
13 an Amtrak train is running to Choctaw or from
14 Choctaw?

15 A No. We never -- Main 2 ends there. You
16 go on 1, and then Main 2 ends at CP Choctaw, and
17 then you have either a route into the yard, or you
18 stayed on -- you stayed on the main.

19 Q In your opinion, would your analysis --
20 the analysis have been aided by an RTC analysis?

21 A No. We -- yeah, no.

22 Q Would you agree that the two in tandem,

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1 however, would have been a more effective approach
2 in assessing operational impact of Amtrak
3 operations capacity and potential service
4 adjustments?

5 MS. AMUNSON: Objection. Foundation.

6 CHAIRMAN OBERMAN: Let me hear the
7 question again.

8 MR. WIMBISH: I said, Would you agree
9 that the two in tandem -- that is, a -- an RTC
10 study and this capacity marketplace analysis --
11 would have been a more effective approach to
12 assessing operational -- the operational impact of
13 Amtrak operations capacity and potential service
14 adjustments?

15 CHAIRMAN OBERMAN: He could answer
16 whether he has a foundation to answer the
17 question.

18 THE WITNESS: So what I would say is
19 we -- what we've talked about is -- that our
20 methodology could be taken standalone, or it could
21 be used as an input to an RTC study.

22 Q Under your analysis, how many units of

1 capacity would a TASD cross-corridor train
2 consume?

3 A I'd have -- are we -- I would have to
4 know the specifics of a -- of a specific train,
5 but if it -- if it moved essentially in the -- the
6 same speed as the standard train, it would
7 consume -- and was not delayed along the way, then
8 it would consume one unit of capacity.

9 Q So given what you know and have heard
10 about TASD train operations, is it your -- it --
11 does your study account for TASD trains as a
12 standard train, as you've defined a standard
13 train?

14 A Any -- any movement gets compared back
15 to the standard train, whether it's CSX or a TASD
16 train.

17 Q I'm sorry, is -- is -- yes or no? I'm
18 not trying to be -- but is a TASD train movement
19 between Sibert and Choctaw a standard train for
20 purposes of your analysis?

21 A Any movement from Sibert to Choctaw
22 would be measured the same as any other train

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1 movement, so a T ASD movement could be -- you know,
2 in real life, could turn out to be one. It could
3 be different. I don't know.

4 Q I'm not sure I got the answer to that.

5 Is a T ASD train that operates between
6 Sibert and Choctaw a standard train in your
7 analysis?

8 A Whatever the T ASD train looks like would
9 just be compared back to the standard train, so
10 we're not assuming that a T ASD train is
11 11,000 feet or 1,000 feet. That standard train is
12 certainly an operational profile, so it would
13 be -- we're not making any assumption that a T ASD
14 train would run faster or run slower than a
15 standard train. It would -- however it would
16 actually perform would be compared back to the
17 standard train.

18 Q Okay. So you have, in your analysis, a
19 standard train and a passenger train, and I've
20 asked you whether or not there -- the T ASD trains
21 are standard trains, and I don't know if you've
22 given me that answer, so I'm asking you: Either

1 is the T ASD train a standard train, or is a train
2 not accounted for in your methodology?

3 MS. AMUNSON: Objection. Asked and
4 answered.

5 CHAIRMAN OBERMAN: It is a -- he's
6 answered your question as the only way he's going
7 to answer it, Rob. There's nothing more, so...

8 MR. WIMBISH: Fair enough. Fair enough.

9 Q Are you aware that daily freight-train
10 movement volumes can vary across segments of your
11 corridor?

12 A Yes.

13 Q And you did include train performance
14 variation -- or variability in your analysis;
15 correct?

16 A Yes. That would be the variability.

17 Q So how did you account for train-volume
18 variability in your analysis?

19 A We did -- we didn't escalate high or
20 low; we took the average train count.

21 Q So you took an -- I'm sorry. Say that
22 again. You took an average train count; is that

1 correct?

2 A Yes.

3 Q So looking again at your page 28 in
4 Tab -- yeah, page 28, Tab 8, Amtrak Exhibit 6, and
5 focusing on Sibert to Choctaw, what you're showing
6 me here, as I understand this, so help me to -- if
7 I'm correct on this one, is that what you're
8 showing me is what the capacity would be in your
9 estimation with Amtrak trains on an average day;
10 is that correct?

11 A So the -- the units of capacity is
12 fixed. That doesn't vary at all.

13 Q The units of available capacity, are you
14 talking about?

15 A Yes.

16 Q Okay.

17 A Let me -- and the demand placed on
18 there -- the Amtrak demand is constant. The
19 staging is -- is constant. So whether you have a
20 good day or a bad day, that -- that staging number
21 stays the same, and then we have the average train
22 count, and then the variability that -- that goes

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1 with that train count.

2 Q What would happen to this one column
3 here, Sibert to Choctaw, on an above-average day?

4 Excuse me. Let me rephrase that: On an
5 above-average day in terms of the total number of
6 freight-train movements.

7 A If you had more trains than counted,
8 then you would have an addition -- you would have
9 a greater demand on capacity that day if you had
10 more trains than -- than what's on here.

11 Q So is it possible -- based on some of
12 the variations you may have heard from T ASD
13 testimony, is it possible that, on an
14 above-average day, the capacity between Sibert and
15 Choctaw -- assuming that all of that capacity
16 could be routed to Main 1 -- would still be
17 exhausted or fully consumed?

18 A It is possible that if you had more
19 trains show up with -- regardless of whether it
20 was T ASD or CSX, that you would -- you'd all --
21 you would have all the capacity consumed.

22 Q Thanks.

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1 Looking at that same chart, I'm looking
2 at, again, Sibert to Choctaw, and -- and if I'm
3 looking at this correctly, I see that you have in
4 green -- a green "Onramp Movements on
5 Track Main 2," and it looks like none on Main 1.

6 Why no onramp or, I suppose, offramp
7 movements -- oh, I'll get to that.

8 Why no onramp movements on Main 1?

9 A I believe, as I recall, because that
10 accounts for -- I believe that accounts for trains
11 going into Choctaw Yard.

12 Q Do you know that there are T ASD trains
13 that are neither entering, nor exiting Choctaw
14 Yard, but are entering and exiting from River
15 Front Yard and Interchange Yard?

16 A Well, I -- I believe I've heard that
17 testimony, yes.

18 Q Okay. But you did not attribute any of
19 that onramp or offramp activity to Main 1; is that
20 correct?

21 A We -- I think our analysis went up to
22 but we didn't go past Sibert, so that would be

1 beyond -- beyond there with those -- where
2 those -- those additional yards are.

3 Q So are you assuming, then, for purposes
4 of this operation, that a T ASD train would --
5 would immediately move if they exited because
6 you're saying that Sibert, you think, is south of
7 where we come on, that we would never occupy
8 Main 1 for purposes of our onramp or offramp; we
9 would immediately go onto Main 2?

10 A I don't recall us ever looking at any
11 sort of switching movements at any level of detail
12 by that area because that was past the convention
13 center and past where Amtrak service would end.

14 Q So you -- you have -- did you look at
15 any of the maps that were supplied as part of this
16 proceeding to see where Interchange Yard, T ASD's
17 Interchange Yard, connects into the CSX corridor?

18 A I think we looked at it, but, again,
19 that's just -- because that was beyond the --
20 where the Amtrak -- the proposed Amtrak service
21 would end, our analysis really stopped at the
22 Mobile station.

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1 Q Give -- how -- your standard trains, if
2 I understand correctly, represent a total of 2.4
3 units of capacity?

4 A No. No. A standard train is one.

5 Q A standard train is one, but with a
6 variability factor, how many -- how many units of
7 capacity does a -- in any given segment, how many
8 units of capacity does a freight -- a standard
9 freight train consume?

10 A Any -- so it's any movement, not a -- a
11 standard train. Any freight-train movement is
12 essentially the one for the standard train slot or
13 unit, and then the additional 1.4 in variability.

14 Q Okay. So -- so 2.4 units of capacity,
15 so if I added, for example, another standard
16 freight train operating between Sibert and
17 Choctaw, it would consume -- and I put it on
18 Main 1, under your Amtrak scenario on page 28, it
19 would consume, under your methodology, an
20 additional 2.4 units of capacity?

21 A Yes.

22 Q So how many more trains can I add over

1 your average-day analysis between Sibert and
2 Choctaw before I exceed capacity?

3 Standard freight trains; how many can I
4 add between Sibert and Choctaw in theory before
5 I -- the capacity is, again, to use your term --
6 term, "fully consumed"?

7 A Two.

8 Q I just have a few more questions for
9 you.

10 Are you familiar with a term,
11 "first-mile/last-mile railroad service"?

12 A Yes.

13 Q Would you agree that TASD is involved
14 extensively in first-mile/last-mile service based
15 on your observations of TASD activities or what
16 you know about it?

17 A I don't know -- I can't use the word
18 "extensive," but I know that TASD is involved in
19 first-mile and last-mile service.

20 Q And do you know the TASD service and
21 train operations -- excuse me -- are shaped by the
22 service needs of both its customers and its

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1 inner-lying connections?

2 MS. AMUNSON: Objection. Foundation.

3 CHAIRMAN OBERMAN: If he knows.

4 A Can you say the question one more time?

5 Q I said, "Do you know the T ASD service
6 and train operations are shaped by the service
7 needs by both its customers and its inner-lying
8 connections"?

9 A I think that's -- I think that's
10 applicable for -- for all railroading.

11 Q Fair enough.

12 I think I heard you say yesterday that
13 altering freight service schedules to accommodate
14 other capacity demands can be a challenging
15 undertaking.

16 I may be paraphrasing here, but does
17 that sound about right?

18 A Yeah. That sounds fair.

19 Q And do you think, based on your
20 professional experience with freight
21 railroading -- and I see that you have quite a bit
22 of it -- that that might be especially true for

1 TASD given ship calls, stevedore demands,
2 yard-capacity management, inner-lying
3 coordination.

4 Let me get back to the original question
5 given those circumstances.

6 Do you think that adjusting and
7 accommodating passenger service -- let me
8 rephrase.

9 You said you -- I've asked you about
10 service schedules and accommodating capacity
11 demands, and I've mentioned to you about things
12 like ship calls, stevedore demands, yard capacity.

13 Do you think that the challenges of
14 making the adjustments that you're articulating in
15 your methodology and in your presentation would be
16 especially difficult for TASD?

17 A In my experience, no doubt it is
18 challenging, but that has never, in my experience,
19 kept us from -- from trying and, often, reaping
20 the benefits from when we did try.

21 MR. WIMBISH: I have no further
22 questions.

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1 CHAIRMAN OBERMAN: All right. Jessie,
2 what's your estimation on your redirect?

3 MS. AMUNSON: I'm thinking about 10 to
4 15 minutes, but I would like a short break.

5 (Off the record.)

6 CHAIRMAN OBERMAN: All right, we are
7 ready to go back on the record. Lucia, can you
8 turn us on?

9 Okay. All right, thanks, Lucia.

10 All right, Jessie, proceed.

11 MS. AMUNSON: Thank you.

12 REDIRECT-EXAMINATION

13 BY MS. AMUNSON:

14 Q Mr. Johanson, Mr. Wimbish asked you a
15 number of questions about, kind of, the standard
16 train and how that relates to real-world trains,
17 and I just wanted to give you an opportunity to
18 kind of clear up any confusion about what a
19 standard train is as compared to a real-world
20 train, and if you need to refer to page 15 in
21 Tab 8 in order to do so, feel free.

22 A Yeah, so to clarify: A standard train

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1 is defining a -- an operational profile, so you
2 could have a -- like, there's all sets of trains
3 that -- that operate on any railroad corridor, not
4 even just specifically this one. Like, some are
5 long, some are short, some are heavy, some are
6 long and heavy. There's all -- there's just --
7 you know, it's a -- almost a limitless world of
8 combinations.

9 The standard train is just trying to
10 define -- have a -- create a profile of a train
11 that you can measure back to. In some ways you
12 can think about it, it's like creating an inch.
13 We all know what an inch is, and we can make --
14 you know, we can make comparisons back to that
15 inch. We've just created a measurement -- a
16 measuring unit.

17 Q And the standard train here, can you
18 just tell us what it was based on again?

19 A It was based on actual train events on
20 the CSX portion of the corridor, so any train that
21 passed a signal on the CSX corridor, those are
22 events that were recorded, those events went

1 into -- went into here.

2 Q And you testified -- you were also asked
3 a lot of questions about variability. And can you
4 explain in your experience of both -- of applying
5 your methodology what has happened to variability
6 in other instances in which passenger service has
7 been -- your methodology has been applied or
8 passenger service has been introduced?

9 A So in none of our previous studies did
10 we -- were we asked -- many of them have been
11 planning studies, so they're not quite to
12 implementation. And other ones where there has
13 been some amount of implementation, we were not
14 tasked to calculate variability after the fact,
15 but I can talk about what -- an analysis that we
16 did perform after the implementation of the
17 schedule in one corridor was by creating a much
18 more conservative train profile.

19 This is speaking to Chicago and the
20 Metra BNSF line. Previously, kind of, there was a
21 much less conservative type of train that could be
22 operated through the corridor during the peak --

1 during the peak periods. The train had to be
2 highly powered, generally short, generally pretty
3 light. We went with a conservative train
4 parameter, built the passenger schedule around
5 that. And then BNSF was able to operate longer,
6 heavier trains during the peak period in more
7 places than before, so we were able to create
8 opportunities that -- while we did not calculate
9 it, that -- trains that may have to have been --
10 previously may have been -- maybe were delayed,
11 waiting for a slot in, could now run almost
12 unimpeded into the corridor.

13 Q So when you increase capacity on the
14 line, does variability sometimes decrease -- or,
15 I'm sorry, when you increase the train count on a
16 line, does -- does variability sometimes decrease?

17 A What we have observed in studies is
18 that, when train count increased, variability went
19 down, which seems sort of counterintuitive, but as
20 you think about it, because you have a constrained
21 resource in terms of a railroad, and when you're
22 placing more demand on it, you have to use it more

1 efficiently. And so, thinking back to my
2 experience, when we had busy days, we were much
3 more on top of getting crews out to trains and
4 thinking ahead and being much more technically
5 engaged in the operation of the railroad because,
6 again, we knew we had limited resources and a lot
7 of demand on that.

8 Q And I believe you testified that once
9 you know that you have sufficient capacity on a
10 line, then you just need engaged stakeholders
11 to -- to sort of engage in operational planning;
12 is that correct?

13 A Yes.

14 Q And based on what you've heard of the --
15 the testimony and the positions of -- of the
16 railroads here, of CSX and NS, can you just speak
17 to what you think that would require of CSX and NS
18 in this case?

19 A Yeah. It would -- it would, I mean,
20 require a -- an open, transparent dialogue of
21 service plans and needs and goals, and then -- and
22 then work through them. And from there, you can

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1 generate really good solutions to -- to problems.

2 Q So it will require, for example, the
3 willingness to -- to -- to change an operational
4 plan?

5 A Yes, it might.

6 Q It might require a willingness to model
7 changes to an operational plan?

8 A Yes, it might.

9 Q And it might require not insisting on
10 the status quo?

11 A Yes.

12 MS. AMUNSON: Thank you, sir. I don't
13 have any further questions.

14 CHAIRMAN OBERMAN: Any further recross?

15 MR. ATKINS: No, sir.

16 MR. DONAHOE: No.

17 MR. WIMBISH: No, I do not.

18 CHAIRMAN OBERMAN: All right. Just bear
19 with me for a moment, folks.

20 I -- well, first of all, for the record,
21 Amtrak is finished; correct? With your live
22 testimony?

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1 MS. AMUNSON: Yes, we are, Mr. Chairman.

2 CHAIRMAN OBERMAN: And I think we
3 established at the outset that the railroads were
4 putting on their opening case and rebuttal all at
5 the same time, so you don't have any rebuttal
6 testimony, at least, at this point?

7 MR. ATKINS: That's correct.

8 CHAIRMAN OBERMAN: All right. Well, I'm
9 going to make some observations. I have -- we've
10 had plenty of time during the course of this
11 hearing to receive and weigh and think about what
12 we've been hearing, and, I think, as you might
13 imagine, forming views and then re-forming them
14 and changing them and listening to everything that
15 we've heard. And I am going to make some
16 observations and some requests or suggestions.

17 And I want to emphasize at the outset
18 that the Board has made no rulings.

19 Jessie, you're trying to speak.

20 MS. AMUNSON: I was just going to ask
21 if, prior to that, Mr. Johanson might be excused.

22 CHAIRMAN OBERMAN: Oh, I am sorry.

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1 Thank you.

2 Mr. Johanson, thank you very much for
3 your patience. And, yes, you are excused.

4 THE WITNESS: Thank you for your time.

5 CHAIRMAN OBERMAN: The Board, other than
6 the evidentiary rulings we have made, has made no
7 rulings in this case and is not making any rulings
8 today. I am going to make some observations and
9 some requests on where we are in this case, and --
10 and we will -- and we will move from there.

11 And I have been making a lot of notes,
12 so this may not be the most orderly, and it may
13 not even be as complete as I'd like it to be, but
14 I think I could get my observations out here, and
15 I'm going to ask all the other board members to
16 weigh in with their own views on this and add or
17 detract from anything I may say.

18 Let me say at the outset, this is, as I
19 think all have agreed, an unprecedented hearing.
20 We're implementing a statute which has never
21 before been utilized. And I don't know the long
22 history of the ICC, but I'm told in terms of

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1 hearings on the record, it's been a long time --
2 if there ever was one, it's certainly been a long
3 time. And I see experienced counsel nodding in
4 the -- maybe never, so we are breaking some new
5 ground here.

6 I also want to underscore that while
7 this proceeding has proceeded in the nature of a
8 trial with formal sworn testimony, examination and
9 cross-examination, as I have expressed -- I think
10 others have, too, but I certainly have from the
11 very beginning that there is a -- that the Board
12 has a strong duty to consider the public interest.
13 And this is not like, in my view, simply private
14 litigation between two parties. It is to a large
15 degree, but it's our duty, in my view, to watch
16 out and protect the public interest, and that is
17 why I am going to make these -- these observations
18 if my hand doesn't get tired.

19 I think you can all tell from the
20 questioning that has gone on, really, from day one
21 that the Board members have queried about the
22 exploration by the parties of the issues which we

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1 think we have to deal with and which we have
2 observed may well not have been sufficiently
3 addressed by the parties to date.

4 The statute we're operating on says that
5 "the Board shall consider," and that is very
6 specific language that differs from other
7 language, and whether adding passenger service
8 would "impair, unreasonably, freight
9 transportation." It also tells us to consider
10 whether Amtrak can attain a system-wide average
11 speed of 60 miles an hour, about which, there's
12 been virtually no testimony by anybody in this
13 case so far, the 60-mile-an-hour part.

14 Amtrak has taken the position in its
15 pleadings and in its evidence that if we were to
16 find that the railroads did not meet their burden
17 of proof of showing that the service would cause
18 unreasonable impairment, that that's the end of
19 the case, and they simply could run their trains
20 with no further conditions.

21 The railroads, by contrast -- and
22 they -- and they say that in the face of evidence,

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1 I think any reasonable observer would say, of some
2 impairment if you add four trains to an already
3 existing line.

4 The railroads, if -- by contrast to that
5 approach, have said -- and I know they have tried
6 to modify what's been said in the papers, but
7 we've all read the RTC studies and the briefs.
8 And while there's some back-and-forth, the
9 overwhelming approach of the briefing and the RTC
10 studies submitted to us by the railroads is that
11 they have met their burden of proof because they
12 are entitled to have, if there is to be passenger
13 service, no degradation. That term has been used.
14 And we've been told repeatedly that the
15 infrastructure projects recommended by the RTC
16 modelers are necessary to ensure that freight
17 service is equal to or equivalent to the
18 pre-passenger train service.

19 And I, for one, don't read the statute
20 as requiring no degradation or service that's
21 equal to no -- to had there never been passenger
22 service. The statute talks about unreasonable

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1 impairment; presumably, that Congress expected
2 there might be some impairment when they wrote
3 that language.

4 So I am concerned that the RTC modeling
5 that has been supplied so far doesn't meet the
6 standards of the statute. And there's been a
7 great deal of discussion about other aspects of
8 the RTC reports that have been submitted so far;
9 particularly, not only the no-degradation part,
10 but modeling the -- the addition of infrastructure
11 so that the Amtrak trains would run on a
12 95 percent on-time performance.

13 And I know -- and you've heard me
14 question, very carefully, the witnesses on this --
15 that there were efforts to walk that back, but I
16 could also read the plain language of the opening
17 RTC study, and it clearly said that -- and I don't
18 want to go back and read it now -- that that was
19 one of the requirements of -- of the
20 infrastructure. And I think it may well have
21 skewed the results of what's needed. At best,
22 it's left murky because the witnesses tried to

1 walk it back.

2 There are other aspects of those RTC
3 studies put in by the railroads that I find
4 particularly troublesome.

5 The railroad witnesses -- I think,
6 Mr. Johnson -- I can't remember all of them -- I
7 thought were quite candid in telling us that when
8 they use RTC studies to model improvements of
9 fluidity on other lines, when their infrastructure
10 expenditures are at stake -- and I think, very
11 articulately, one of these witnesses said, I don't
12 want to spend one dollar on rail or hardware if I
13 don't have to because, then, I have to maintain
14 it, and that we always look at operational changes
15 before we move to spend money on infrastructure.
16 And yet the RTC witnesses for the railroads made
17 it very clear that one of their instructions when
18 they were instructed to create their RTC study was
19 to make no operational changes, to not even model
20 them.

21 So to the extent that we are going to
22 consider the case that's been put in by the

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1 railroads, which they have asked us and told us in
2 their position under the statute, we can, in their
3 view, order certain infrastructure as a condition
4 of trains, I, for one, would be quite concerned,
5 based on the evidence in front of us now, entering
6 any order that could result in the expenditure of
7 hundreds of millions of dollars of taxpayers'
8 dollars without knowing whether operational
9 changes could minimize the need for that
10 infrastructure.

11 And my initial thinking about this
12 statute is that when the Congress told us to
13 consider unreasonable impairment, they didn't
14 limit the ways that impairment could be avoided,
15 and so it seems to me that only half a case has
16 been presented to us in terms of whether there
17 will be unreasonable impairment and, if so, how to
18 avoid it. I'm left at this stage not being able
19 to answer in my -- in my own mind whether those
20 operational changes could be made to abrogate the
21 need for virtually all infrastructure. Although,
22 everybody seems to agree on a station track in

1 Mobile, but the rest of it, I can't tell based on
2 the evidence that we have to date.

3 The -- and by the way -- well, let me
4 move -- move on.

5 There's one other aspect of the RTC
6 study which I want to comment on, which I find
7 troubling. And that is, although I thought the
8 witnesses, for the most part, were candid and
9 credible, I was very troubled -- maybe I base this
10 partly on my own experience as a trial lawyer for
11 some 50 years -- that when this case was prepared
12 for litigation, the experts on behalf of the
13 railroads, Ms. -- I'm going to get their names
14 wrong -- Rosse and Sinkkanen; right? Is that
15 right?

16 MEMBER PRIMUS: Sinkkanen.

17 CHAIRMAN OBERMAN: Sinkkanen -- told us
18 that, in gathering field data -- and no one
19 suggested they were lying or making things up, and
20 I have no reason to think that they were and that
21 they were not credible, but, yet, they did not
22 keep any documentation of the data for 1,265

1 trains, which has led to a huge amount of
2 litigation in this case.

3 And it just strikes me that that
4 undermines our ability to rely on the study
5 because I think all parties and lawyers involved
6 in this litigation know that, in our cases, reams
7 of data are presented by both sides, and you have
8 presented thousands of pages of data, but the one
9 piece of data that was not produced in any way
10 that anybody could examine it were these field
11 interviews. And the fact that they weren't
12 instructed to maintain them -- I don't fault
13 them -- is troublesome. It undermines our ability
14 to rely on it.

15 On the other hand, I invited the Amtrak
16 witnesses to tell us that they were lying and
17 making things up, and nobody suggested they were,
18 but I'm left somewhat troubled by the lack of it.
19 And I say this -- and much of what I am saying, by
20 the way, is because everybody has agreed, both in
21 this litigation and outside forces, that this is a
22 case which is going to establish precedent for,

1 presumably, many other intercity routes that
2 Amtrak may bring to us.

3 And I -- I am saying to railroads out
4 there, if you're going to end up in an -- in a
5 contested RTC modeling battle, which is a -- or
6 the half of what we have here, you should be
7 forewarned that data should be maintained so it
8 can be examined. You had a lot of data, but that
9 was one piece that wasn't, and I don't want to see
10 that happen again in the next case.

11 On the other side of the coin, Amtrak
12 has said for years that it supports the Gulf Coast
13 Working Group recommendations, which, at the time,
14 were priced at approximately \$100 million, and we
15 didn't ask Amtrak witnesses about this. And I
16 don't assume that Amtrak supported spending
17 \$100 million of public money if it wasn't needed
18 for some reason. And, yet, they have supplied us
19 with almost no facts on which to judge whether
20 that's the right amount.

21 And while they said they phased it in,
22 which may well be very acceptable under the

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1 unreasonable-impairment concept to phase in
2 infrastructure, I'm not making any ruling because
3 it says we're only supposed to consider it; it
4 doesn't suppose to say we have an absolute bar on
5 any kind of impairment to have passenger service,
6 but they've supplied us with no facts on which to
7 judge whether the impairment will be unreasonable:
8 Will it take a year? Will it take two years?
9 Will it take six months to build whatever
10 infrastructure Amtrak says it supports? I find
11 that to be a very huge gap in the evidence that
12 makes it difficult for us to -- for me, anyway, to
13 reach a decision.

14 Other things that are missing, in my
15 view, from this record are -- and I -- I've
16 expressed this concern in other settings with
17 railroads when they come in to tell us how great
18 they're doing on velocity as well. Those kinds of
19 metrics rarely tell me whether any particular
20 customer is suffering or benefiting from the kind
21 of service they're getting. And we have had no
22 data presented to us that, I guess, could be

1 described as impairment of customer-centric
2 freight service.

3 Now, I know one of the witnesses said,
4 well, we don't go out and interview all 56
5 shippers on the line, and I'm not saying that's
6 required. I'm not sure what's required, but what
7 is missing is any indication on whether the
8 13-hour delay, the 4.5 percent reduction in
9 velocity -- and I'm just picking the many metrics
10 in these RTC studies -- what it really means to a
11 customer.

12 A customer who only gets serviced twice
13 a week and doesn't need it more often may not be
14 hurt at all by a 4.5 percent reduction in
15 velocity. I can't tell, and I think that kind of
16 impact of passenger service is -- is missing.
17 Perhaps a way to get at it would be to not
18 identify 13 hours of delay, which one witness said
19 divided up is, I think, 11 minutes, unless you
20 divide it up in some other way, and maybe there is
21 another way.

22 But I would think some evidence on a

1 train by train -- we know there are through
2 trains, there are local trains, yard trains,
3 trains that make up consists, and we haven't been
4 presented evidence on how to figure out where --
5 where the delay is and whether it
6 is "unreasonable."

7 The other thing we weren't given, either
8 by Amtrak or by the railroads, is what is the
9 benefit and impact of these individual
10 infrastructure projects. If you're going to spend
11 millions of dollars on extending a siding, what
12 does that do for us? I don't know how to measure
13 reasonableness without some understanding of
14 whether, you know, any particular expenditure of
15 millions of dollars is going to actually help the
16 cause. All I got was an overview of what's needed
17 for the cause in -- in 2039.

18 And on that score, by the way, I find
19 nothing in the statute that tells us that when we
20 "consider unreasonable impairment," we're supposed
21 to consider what that impairment might be on
22 projected freight levels 20 years from now, which,

1 while if you were a private business spending your
2 shareholders' money, you might want to consider
3 before you've made an investment. I'm not so sure
4 that the taxpayers are supposed to fund a -- what
5 is really a guess. Nobody knows what freight
6 service is going to be 20 years from now.

7 And the evidence we heard was: These
8 infrastructure projects are needed to have certain
9 amounts of reduction in freight delay 20 years
10 from now. I don't see that in the statute, so it
11 concerns me, about whether we're supposed to make
12 a decision based on current levels of service or
13 maybe in the next two or three years. But 20
14 years out strikes me as a little bit too long to
15 commit public resources to at this stage.

16 Another thing that I have found
17 completely missing from the briefing and the
18 evidence is that there was a round and round of
19 briefing on the meaning of "unreasonable
20 impairment." And when you read through all these
21 briefs, what you got was a very erudite, circular
22 argument based on which dictionary we should look

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1 at. And, ultimately, all we got was "unreasonable
2 impairment" is impairment which is not reasonable,
3 or is excessive or beyond reason, words to that
4 effect.

5 I don't know that that's how this
6 statute should be interpreted. It's a new --
7 newly -- new interpretation. But, to me, if I'm
8 going to decide something is unreasonable, there's
9 a lot of experience in the law about how one
10 measures -- we all learned in law school -- I
11 guess we don't say "reasonable man" anymore, but
12 when I was in law school, we used the
13 reasonable-man standard, and there were ways to
14 get at it.

15 Do we look at, well, what is the
16 velocity on CSX's overall network? What is the
17 velocity on other lines that are similar to this?
18 How do we know whether velocity of whatever it is,
19 20 miles an hour or 14 miles, is or is not
20 reasonable? What do we compare it to? We've been
21 given no guidance as to how to measure
22 reasonableness.

1 I don't know. I haven't used it myself.
2 Is this like pornography; we know it when we see
3 it? That seems to be the issue of the parties, to
4 say, well, we've given you numbers, and those
5 numbers mean, to me, it's unreasonable. I don't
6 find that a very satisfying way to interpret a
7 very far-reaching statute.

8 I just want to -- bear with me. I want
9 to go through my notes here because there's a lot
10 to say.

11 The other thing that has not been
12 modeled by anybody -- and I find it problematic in
13 terms of the railroads' case: You modeled just
14 about everything. You even modeled what the
15 difference is between a delay as of now with no
16 passenger service and delay in 2039 with no
17 passenger service. That wasn't reported in the
18 RTC document, but it was in the work papers. And
19 there's a significant amount of delay that's going
20 to happen on this line if you never see a
21 passenger train, and I don't know how we're
22 supposed to take that into account. But the

1 numbers are there; we just haven't found them in
2 your work papers. I think it would have been more
3 candid to have put that in.

4 More importantly, the RTC modelers for
5 the railroads modeled what the impact of the
6 \$440 million in infrastructure would be on the
7 2039 case, and they modeled what the
8 FRA-infrastructure-recommended projects would be
9 on the 2039 case, but no one modeled what the FRA
10 infrastructure would be on the 2019 case, and I
11 have wondered why. I have wondered whether
12 \$100 million might not do the job. And its
13 absence causes me, for the moment, to be inclined
14 to a negative inference, but I'd rather not draw
15 the inference. I'd rather see the numbers. So I
16 find that a big gap in the -- in the evidence that
17 has been submitted to us.

18 There's been a great deal of testimony
19 about the RTC model being the gold standard. I've
20 always resisted, in all kinds of litigation,
21 anything being "gold standard," because it implies
22 a kind of certainty that just doesn't exist in the

1 real world, whether you're talking about medical
2 treatment or railroad modeling, but the gold --
3 term "gold standard" is used. It was used
4 frequently here.

5 Interestingly enough, no one ever
6 suggested that it isn't the gold standard, and I
7 wondered why Amtrak did not do any RTC modeling.
8 And -- and, to be candid about it, while I
9 appreciate Mr. Johanson's expertise, I can't
10 compare his study to the RTC data that's been
11 presented. I asked that question: How do I
12 compare the two? And it leaves -- it leaves me --
13 and Mr. Johanson even said his study doesn't deal
14 with impairment. The statute tells us to look at
15 impairment, so I'm not sure what use we can make
16 of all the work. And I'm sure it was excellent
17 work and detailed and very credible for some
18 purposes, but it doesn't seem, to me, to address
19 the issues we're dealing with.

20 So I'm sure I'm leaving out some
21 important observations, and I'm going to invite my
22 colleagues to weigh in, but here is the

1 recommendation I am going to make: I am going to
2 recommend that we invite the parties to fill in
3 these gaps in the evidence. And we're going to
4 give you a fairly short time to do so because this
5 case has dragged on far too long.

6 And I'm doing this, in part, because
7 when this case is over and we do issue an order, I
8 want it to not only decide this case, but, because
9 of the importance everybody has set on this being
10 precedent-setting, to set some goals, milestones,
11 and rules for how these cases are to be litigated.
12 And I am quite mindful and I'm quite conscious of
13 the railroads having the burden of proof, but
14 because the railroads have the burden of proof
15 doesn't mean that Amtrak can necessarily prevail
16 by offering virtually no contradictory evidence,
17 and I don't see any evidence which underlines the
18 RTC reports.

19 Now, you may argue that the RTC reports
20 fall on their own weight, and that's an argument
21 I'm willing to entertain. I've expressed my
22 concerns about the status of those RTC reports,

1 but the real concern I have, and the reason that I
2 want to invite the parties to fill in the gaps in
3 the evidence is that there's a huge public
4 interest here.

5 In my view, it doesn't serve the public
6 interest by saying, you know, Amtrak chose a poor
7 litigation strategy, and to quote my early
8 professor, they should "go hence without day," no
9 trains. I think there's a real public-interest
10 need, and Congress has said so, to reintroduce
11 passenger service on the Gulf Coast, but only
12 within the confines of the statute.

13 I also don't think it necessarily serves
14 the public interest by concluding simply that the
15 railroads have failed their standard of proof, so
16 start running four trains a day with no
17 infrastructure. There's been enough testimony to
18 suggest that that would cause some disruption. I
19 can't tell whether it's unreasonable, but there's
20 enough that, particularly, given the current state
21 of affairs in the rail industry, we don't need to
22 make it worse. And so I think, in order to

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1 protect the public interest, we need to nail this
2 down better, and that is another reason why I'm
3 inviting you to provide us with more evidence
4 along the lines of everything that I talked about.

5 Now, you don't have to. You could -- I
6 can't order you to try the case in some way that
7 you choose not to try it. You're entitled to take
8 your stands and proceed at your peril, but I don't
9 think that would be wise, and I don't think it
10 would serve the future of our industry. And I
11 like to think that, although you're all
12 contestants and adversaries, as you should be,
13 that you all have some concern about this
14 proceeding in a constructive fashion.

15 So I am going to recommend to the Board
16 that we give you 30 days to do whatever additional
17 evidence-gathering here as -- and I would like to
18 note a couple of things: Number one, the railroad
19 said in their rebuttal brief -- and I'm partly
20 taking the railroads up -- Amtrak didn't join in
21 this, but the railroads said if the Board wishes
22 to see additional iterations of the 2021 Gulf

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1 Coast RTC model -- in this case, it was to reflect
2 the impact of the Port's proposed projects -- CSX
3 and NS are willing to perform any additional
4 modeling that the Board requests. My request is
5 not so limited, but they've at least partly
6 offered to do it.

7 I would say to Amtrak, I'm quite
8 sympathetic to your experts', Mr. Crowley and
9 Mr. Fapp's, statement that they couldn't duplicate
10 all the evidence, but they can provide us with
11 some additional evidence, and you can qualify it
12 and you can argue about it -- I'm not suggesting
13 how you produce it -- by using the RTC software as
14 produced. And I think Mr. Fapp said he could load
15 that on the computer and he can put in his own
16 modifications and come up with some results, which
17 basically requires you to assume without condoning
18 the 1,265 contested trains -- it will at least
19 give us some better views from Amtrak's point of
20 view on what happens if you model operational
21 changes or -- or the far less infrastructure than
22 the railroads are asking for.

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1 Oh, there was one other point that I
2 wanted to make about the infrastructure. I asked
3 the question during the presentation by the
4 railroads of what the RTC rebuttal report was
5 rebutting. And I will tell you, just speaking for
6 myself, I put far less weight on the -- what is
7 that? Siding? The -- what the NS yard
8 called "the field"? Not the -- what's the name of
9 it?

10 MEMBER PRIMUS: The lead?

11 CHAIRMAN OBERMAN: The what? The lead.
12 The freight lead --

13 MR. ATKINS: The freight lead.

14 CHAIRMAN OBERMAN: -- the freight lead
15 because it wasn't rebutting anything. It was
16 mentioned in the opening RTC study. It wasn't
17 recommended. It wasn't in the price. It said, in
18 fact, it was left out because it was too
19 expensive, and then the railroads came in
20 uninvited, really, and said, Well, we'd like to
21 add another 80 or \$90 million.

22 I put less credibility on the need for

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1 it for that reason: If it was that important, I
2 don't know how these expert RTC modelers could
3 have missed it, or the railroads could have missed
4 it. I'm not ruling that I wouldn't consider it,
5 but I want -- I want you to know how I react as a
6 person hearing the evidence.

7 But I'm not suggesting -- and, as I
8 said, none of these are rulings; they're really
9 observations to try to help the parties figure out
10 how they want to proceed with this case. I'm
11 trying to be helpful to the parties, to the Board,
12 and, most importantly, to the public interest. So
13 I think there is an ability by all the parties to
14 do these modelings, do operational changes, try to
15 provide the insight on the customer-centric issues
16 that we talked about, and fill in these gaps and
17 come back to us.

18 And assuming that you want to do that,
19 once you have submitted the additional evidence,
20 then I think it is essential that we reconvene and
21 give the parties a chance to present that evidence
22 and be cross-examined on it, which is one reason

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1 why we're not having closing argument today,
2 because I don't think the case is over. If you
3 all come back and tell me that the case is over,
4 then we'll schedule a closing argument.

5 So it's up -- it's up to you. I can't
6 tell you how it's going to come out. A part of me
7 wants to say both sides should lose, but that's
8 not possible. And I don't think, however, this --
9 if we ruled on the evidence at present, the case
10 wouldn't be over. If Amtrak were to prevail and
11 start trains, the first thing that railroads would
12 do under the other statutes is to come in here and
13 say we need to stop the trains because they're
14 screwing up the freight service. And if it were
15 the other -- if it were the other way around, you
16 know, if -- if the railroads prevail, Amtrak, I
17 presume, would come back in with a new petition
18 someday because they seem to be committed, as I
19 think they should be, to reinstituting passenger
20 service. So one way or the other, this case is
21 going to go forward. I'd like it to end in this
22 case.

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1 And I would say only one other thing:
2 On the question of settlement, it's more
3 persuasive to me, Ray, and I -- Jessie, I'd like
4 you to -- not that I don't trust Ray, but I'd like
5 to hear it on the record, that both of you think
6 that the discussion last September was in the
7 nature of a settlement discussion. I'd still like
8 some written representation of what happened there
9 in the record, but if there is a chance of
10 settling, I think, based on the observation that I
11 made, it would be a good idea for the parties to
12 get together and settle it.

13 If this were -- if this were an
14 old-fashioned Cook County courtroom, I'd take you
15 both into chambers and get it done, but we don't
16 operate that way, so I'm saying it in public. But
17 this case has every reason to be resolved. And,
18 by the way, one thing that I've heard -- and I
19 would hope maybe you could agree to work it out.
20 I thought that -- again, I think it was
21 Mr. Johnson who talked about, in the normal
22 course, the various parties who were involved,

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1 whether it was two freight railroads or Amtrak and
2 a freight railroad, they get into a room and they
3 all work out these RTC studies by saying, Let's
4 try this, or let's try that. That clearly did not
5 happen here.

6 It would be constructive if you're going
7 to present more evidence to do it that way. I
8 can't make you play nice. I can't even -- I can
9 suggest it, but I think it would be much more
10 productive if you did. If you choose to do it on
11 your own and present us with evidence, that'll be
12 fine, too, but I think I've talked long enough.

13 Let me invite my colleagues to say
14 whether I've put too much in or left something
15 out, or they disagree entirely with this approach,
16 and then we can proceed.

17 Does anybody...

18 MEMBER PRIMUS: Go ahead, Karen, if you
19 want.

20 CHAIRMAN OBERMAN: Karen?

21 Does anybody -- nobody -- I mean, you
22 don't have to say anything.

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1 MEMBER HEDLUND: I do. I have some
2 comments.

3 CHAIRMAN OBERMAN: Okay.

4 MEMBER HEDLUND: I have a somewhat
5 different point of view because of where I came
6 from, because I spent four years at the Federal
7 Railroad Administration. Our chairman has said
8 that he wants the result in this case to let the
9 world know, the railroads and Amtrak or other
10 passenger rail entities, how cases should be
11 litigated.

12 What I would hope is that the result in
13 this case would indicate to the railroad industry
14 how cases like this, how requests for additional
15 service -- and Amtrak is looking for additional
16 service all over the country -- how these matters
17 ought to be negotiated.

18 And one of the things that has really
19 struck me is the just profound lack of -- as --
20 what was said in a movie once, What we have here
21 is a lack of --

22 MEMBER PRIMUS: Failure to communicate.

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1 MEMBER HEDLUND: -- communication.

2 CHAIRMAN OBERMAN: Failure...

3 MEMBER HEDLUND: A year ago, I was asked
4 if I wanted to go back to FRA, and I said: Oh,
5 no, no. I don't want to do that. I've been
6 there, done that. But I will tell you, if I was
7 the administrator of the FRA and Peter Schwartz
8 came to me and said, We're being asked to put
9 money into the Gulf Cost, and there's an RTC study
10 that indicates how much the railroads have said
11 indicates how much additional infrastructure is
12 needed, but they won't give us the information for
13 us to evaluate it, I would have immediately picked
14 up the call -- picked up the phone and called the
15 CEOs of your railroads and said, What the hell is
16 going on? I don't care if you entered into an
17 agreement with Amtrak to keep it confidential, but
18 you certainly need to give that information to the
19 funding partner, and we'll keep it confidential,
20 but that was never -- never explored.

21 I have found the -- the proceedings for
22 the last number of weeks very frustrating. I'm

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1 not a litigator. I'm not -- I'm a deal lawyer. I
2 want to see a deal. And, you know, frankly, we
3 were up before the Congress T & I Committee this
4 morning to talk about what changes need -- needed
5 to be made in the statute, and reauthorization.

6 Had I been asked, I might have been
7 tempted to say, Let's excise the words "after a
8 hearing on the record" out of the statute. I
9 wouldn't have done that. But, clearly, I -- I do
10 agree with the chairman here, that we haven't
11 gotten the information we need to make a decision
12 that's in the public interest. So I hope you will
13 take to heart what he has said, but from my point
14 of view, the big failing in this case -- one of
15 the major failings in this case is simply the lack
16 of the railroads in sharing information on a
17 reasonable basis.

18 I don't think, necessarily, any games
19 were being played when that agreement was entered
20 into, but, certainly, the parties didn't think it
21 through. And if we're to go forward, we've got to
22 go forward on these other corridors with complete

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1 transparency and sharing of information among the
2 parties.

3 CHAIRMAN OBERMAN: Since we were in the
4 Congress this morning, I'm going to borrow their
5 language and say I'm going to associate myself
6 with the remarks of Karen Hedlund. I thought they
7 were well stated. Thank you.

8 Any other members care to speak?

9 Robert?

10 MEMBER PRIMUS: Thanks, Marty.

11 Thanks Marty.

12 First of all, I do want to thank all the
13 parties in the room, number one. It's been a long
14 few weeks. And, again, you guys are obviously
15 truly professional. I mean, I think, you know,
16 I've got to thank all of you guys for, you know,
17 the 100-plus pounds of notebooks that you guys
18 gave us, you know. I have to go back and revisit
19 the Paperwork Reduction Act on that to find out if
20 we actually broke any rules.

21 But, you know, even the witnesses on
22 both sides and -- and, you know, their agreeing to

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1 come before us, you know, day after day and -- and
2 spending the hours that they did with us, you
3 know, it -- it goes to, honestly, the importance
4 and the value of -- of this issue that we have at
5 hand, so -- and I want to -- I wanted to
6 acknowledge everybody in the room for -- for doing
7 what they're doing, representing -- I know
8 everybody's got their sides, but I have to say
9 that, you know, I -- I appreciate, you know -- you
10 know, you guys coming forward and making that
11 argument.

12 And, you know, Marty brought forth -- he
13 said something earlier to one of the witnesses, I
14 mean, when he asked, you know, did he think that
15 one side was lying because of the information they
16 did or did not bring forward, and they said, no,
17 they didn't think they were lying.

18 And I think for me, you know, as summing
19 up this whole endeavor, I don't think either side
20 necessarily brought people up to lie or actually
21 lied or didn't say. I just think that -- that
22 there's still some truths out there that we need

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1 to know. I -- I'm not a lawyer, so I'm not even a
2 litigator, none of that, but, you know, I am, I
3 believe, a keen listener of information and -- and
4 what's going on. And, you know, I do join Marty
5 on some of his -- his comments and that, but I
6 don't think that -- in my opinion, that everything
7 has come to light. I think both sides, I know,
8 want to win.

9 For me, it's not about either side.
10 Honestly, it is the public interest and where the
11 public interest lies in this, in this case, and
12 what we -- and how we decide it. So, for me,
13 it's -- you know, I do agree with -- with Marty,
14 you know, that if we could get a little bit more
15 information, you know, maybe that will make a
16 difference. Maybe it won't, but I'm willing to
17 try that because I'm -- I'm not -- you know, I'm
18 going to go through a lot of the information that
19 you provided for us, a lot of the testimony.

20 I'm not ready to make a decision yet
21 either, and I think, you know -- you know, for me,
22 you know, to be specific, you know, in the RTC

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1 models, you know, there are some that I wish would
2 have been done on behalf of the railroads. From
3 Amtrak's side, I think even trying one, I think,
4 would have been, for me, good. And if they would
5 have pointed out what they couldn't get or how
6 they couldn't complete it, I think that would have
7 been important also to see.

8 I think in terms of the infrastructure,
9 I think either side really has a little -- a bit
10 to go to, sort of, prove, one, with Amtrak, why
11 it's not necessary in the beginning to get
12 started; and from the railroads why that number is
13 sacrosanct and, you know, it -- it's -- you know,
14 if it's not met, you know, the world's going to
15 fall apart from their side.

16 So, I think -- again, you know, I -- I
17 greatly appreciate all that was done, I'll just
18 say. I mean, you know, I want to say that first
19 and foremost. I have utmost respect for all of
20 you. I hope you all are able to take a nice
21 vacation, you know, after this is done. You
22 deserve it. We hope you do. And I probably won't

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1 get one.

2 But, you know, I -- I just hope that you
3 look at the requests that we're asking not as, I
4 guess, more busy work, but really just for us
5 trying to understand better the situation that
6 you're asking us to decide.

7 CHAIRMAN OBERMAN: Michelle, would you
8 like to say something?

9 MS. SCHULTZ: First, thank you all for
10 the incredible amount of work that you put into
11 this hearing. I just can't imagine how much time
12 you've spent. It's been incredibly informative.
13 But I do share many of the views of what the
14 chairman set forth.

15 While I don't specifically support all
16 of his views on the evidence, I do believe that,
17 in this situation, the parties would actually be
18 in the best position to determine what the best
19 outcome would be for the network, and I strongly
20 support his -- his words and encouragement for
21 settlement. Thank you.

22 CHAIRMAN OBERMAN: Patrick?

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1 MEMBER FUCHS: I think Michelle said it
2 perfectly, and I associate myself with everybody's
3 expression of gratitude to the parties for the
4 enormous time and effort that has gone on in the
5 case thus far.

6 And, Mr. Chairman, I agree with giving
7 the parties the opportunity to supplement what
8 we've heard and would say that the work of the
9 board is not stopping. We're continually looking
10 at everything submitted, reviewing everything
11 today and in the days prior. And I think what
12 you're hearing from all of us is we want to get
13 this right, so thank you.

14 CHAIRMAN OBERMAN: Thank you, Patrick.

15 Couple of other points, large and small,
16 that I left out and that I'm prompted to by my
17 colleagues here.

18 One very small point: One of the things
19 that was left out of the modeling was taking into
20 account -- and it may be small, but I think we
21 need to be thorough. Taking into account the
22 future remote operation of additional bridges.

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1 There were -- I can't remember -- two or three,
2 which will reduce the number of high rails.

3 It's a small point, but it was left out,
4 and, yet, you're looking for infrastructure for
5 20 years from now. And I know the modelers said,
6 Well, we don't -- we can't control it. We can't
7 make sure it happens. And, by the way, it's
8 pretty clear to me from what we heard from the
9 Coast Guard, that the Coast Guard is open to
10 working out schedules to some degree, they do it
11 on other lines.

12 And I think you can model it. Even in
13 this hypothetical, I don't think you're all in the
14 dark about how the Coast Guard works with the
15 railroads. And you can put in some reasonable
16 assumptions about what scheduling with the
17 Coast Guard might do to alleviate some of these
18 delays. And we can take it into account if you
19 put it in as a hypothetical.

20 One point I wanted to make, particularly
21 to make to Amtrak, and I -- I'm not -- this sounds
22 like I'm going to tell you how to be lawyers.

1 You're both way more accomplished lawyers than I
2 am. But, as I see it, what the Amtrak strategy
3 has been, has been a very risky one, basically,
4 relying on an argument that they failed in their
5 burden of proof.

6 I would have liked to have seen -- and
7 this is why -- one of the reasons I'm inviting
8 Amtrak to do its own RTC modeling -- an argument
9 which said, in the nature of a Motion to Dismiss,
10 let's assume everything they say is true, they
11 failed. And I'd entertain that argument, if
12 that's an argument that's pending in front of us.
13 But my inclination, having tried a lot of cases,
14 is to say, you know what, I'll rule on that at the
15 end of the case. And whether they met their
16 burden of proof could very much be influenced by
17 what you put into evidence.

18 So, for example, if an RTC model showed
19 that operational changes could avoid the need for
20 the infrastructure, that would be important in --
21 to my way of thinking, of applying the statute of
22 whether the burden of proof has been met of

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1 showing unreasonable impairment because if you can
2 reschedule a train without spending taxpayers'
3 money, maybe you avoid unreasonable impairment.
4 And that evidence wasn't supplied to us, and I
5 think it was Amtrak's job to do it. And I don't
6 want to see Amtrak take that litigation strategy
7 in the future. You can -- you can if you want,
8 but I don't think it's constructive.

9 Having said that, I have said since I
10 got to the Board, and I've said it emphatically
11 since I've been chairman in every setting, and
12 I'll say it in this one and echo what my
13 colleagues have said. I would much rather, in
14 this complex industry, that the parties resolve
15 these matters themselves rather than our weighing
16 in and give orders, because I agree with Michelle,
17 that you are the experts in railroading and you
18 know full well how to best manage it, but you
19 don't seem to want to work together in this case.
20 So that would be the best outcome, for you to
21 figure out how to make this work. And I -- unless
22 anyone thought I was just preaching about

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1 litigation, I'd really rather preach about
2 settlement.

3 I do want to add my appreciation and
4 respect for the lawyers and the witnesses.
5 Everybody's put in a lot of hard work, and I will
6 tell you the Board has worked very hard as well,
7 but you all have. You're professionals. I may
8 disagree with some of the things, but I respect
9 your work, every person's -- witness and lawyers
10 who participated in this case.

11 My trusty chief of staff tells me that
12 30 days is June 11th, so that's a Saturday, so it
13 won't be 30 days; it will be 32 days, Monday,
14 June 13th. And I don't want to invite people to
15 spend more time. We need to get this case over.
16 But if you have some true need for additional
17 time, you can tell -- I'm not ruling anything out.
18 You can tell us anything you want to tell us when
19 you leave here, but I am inclined not to recommend
20 any extensions unless they're absolutely
21 essential. If you're truly going to supply us
22 with the evidence we want, we'd be open to it, but

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1 we have an obligation to get this case decided,
2 and so -- so do all of you.

3 So let me just conclude by saying I
4 invite all of you to get a transcript of this part
5 of the proceeding because I do not want to wait
6 for our staff to try to take into account
7 everything that has been said here since the close
8 of the evidence and put it into an order. They
9 may try to do it, and I -- that would be fine, but
10 I think I have been pretty clear, and so I don't
11 want you to wait for an order before you begin to
12 work to know what it is we expect. If you need
13 clarification, you can obviously ask for it.
14 And -- but there may be some form of order along
15 these lines issued, but don't wait for it; get
16 moving.

17 So, with that, Bill, you want to say
18 something? I'm not going to cut you off.

19 MR. MULLINS: I do, Mr. Chairman, with
20 respect to getting a transcript. Right now, it's
21 been a two-week delay in getting the transcripts
22 because that's just the way they operate business.

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1 And I just -- you know, obviously, two weeks into
2 30 days -- so I don't know if we could -- maybe
3 they could issue us one of those rough transcripts
4 like they did, but then stopped doing that;
5 something like that.

6 CHAIRMAN OBERMAN: I tell you what, I
7 think it's a fair point. There's a couple of ways
8 to skin this cat, you know. You can get a --
9 somebody to transcribe the YouTube tape.

10 MR. MULLINS: We have been doing that.

11 CHAIRMAN OBERMAN: Yeah, so that should
12 give you what you need to know.

13 MR. MULLINS: Okay.

14 CHAIRMAN OBERMAN: But if somebody wants
15 to come back here and says, It took me two days or
16 five days, so could I add that on -- to get the
17 transcript, so can I add that on to the 30, yes, I
18 think that's reasonable. Don't take two weeks --

19 MR. MULLINS: I got you.

20 CHAIRMAN OBERMAN: -- because I have
21 seen YouTube transcripts. I think there's enough
22 in there that you know what I said, and I suspect

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1 even somebody was taking notes on what I was
2 saying, but it's a reasonable observation, Bill.

3 MR. MULLINS: Thank you.

4 CHAIRMAN OBERMAN: So does anybody else
5 have something to say? If not, we will recess.
6 And what I anticipate, if more evidence is
7 submitted, that you will then hear from us in the
8 setting of further hearing dates. What I'd like
9 to hear is that you have settled the case.

10 Thank you, all, again. See you soon.

11 (Whereupon at 4:52 p.m. the hearing
12 concluded.)

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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 31st day of

14 May, 2022.

15

16

17

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21 Sydney Crawford, Shorthand Reporter

22 My commission expires: May 15, 2024

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