

Date: May 9, 2022

Case: Public Evidentiary Hearing



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REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3083

SURFACE TRANSPORTATION BOARD

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

Volume IX

Monday, May 9, 2022

9:30 a.m.

395 E Street, S.W.

Washington, DC 20423

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3084

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

2 CHAIRMAN OBERMAN: Good morning,

3 everybody. We're certainly happy to be here in

4 person for this hearing, our second venture into

5 our new hearing room. I want to say a special

6 thank you to our IT and facilities staff, along

7 with the -- all the other board staff who have

8 worked so hard to make sure we can switch to an

9 in-person hearing. Oh, okay. We're not recording

10 yet, but I'm not going to repeat all of that.

11 Tell me when we are.

12 We do have a few technical items to

13 mention so we're all on the same page. I was

14 going to say it may be simple to all of you

15 participants, but getting us arranged and the

16 cameras and the mic systems for this kind of

17 hearing, it's a lot of work. And I really -- I

18 think we all really appreciate staff putting this

19 together.

20 First thing is we have a table up front

21 for the witness being questioned and the attorney

22 doing the questioning. This table, along with

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3085

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

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

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

22 Behind the witness table, there are

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3086

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

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

8 MR. MULLINS: No. They just test.

9 CHAIRMAN OBERMAN: They just work.

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3087

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3088

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3089

1 6:00 p.m.

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

10 MR. DONAHOE: Yes.

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

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

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

21 CROSS-EXAMINATION

22

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3090

1 BY MR. DONAHOE:

2 Q Good morning, Mr. Blair.

3 A Good morning.

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

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

11 A Yes.

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

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

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

19 MEMBER FUCHS: Is the green light on?

20 MR. DONAHOE: Yeah, it is.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3091

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

2 MR. ATKINS: I can hear you now.

3 BY MR. DONAHOE:

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

7 A No, I did not.

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

10 CHAIRMAN OBERMAN: Can you identify it?

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

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

15 BY MR. DONAHOE:

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3092

1 A Yes, sir. I do.

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

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

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

9 MR. DONAHOE: Okay.

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

14 BY MR. DONAHOE:

15 Q Okay.

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

18 A Yes, I do.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3093

1 installation of PTC." Do you see that?

2 A Yes, sir, I do.

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

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

10 Q And this was back in 2017; correct?

11 A Yes, it was.

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

15 A Yes, sir.

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

19 A Yes, I do.

20 Q And is that still Amtrak's position?

21 A Yes, it is.

22 Q And further down in that paragraph --

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3094

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

5 A Yes, I do.

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

11 A Yes, I do.

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

14 A Yes, it is.

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

19 A Was that a question?

20 Q Yes. Do you agree with me?

21 A Yes.

22 Q So my question is, if the Gulf Coast

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3095

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3096

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

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

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

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

14 A Yes, I do.

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

19 A No, I don't.

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3097

1 not.

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

5 A Yes.

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

10 A Those were different projects and
11 different recommendations.

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

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

17 ZOOM TECH: Unmute your microphone,
18 please.

19 MR. DONAHOE: Sorry.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3098

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

5 BY MR. DONAHOE:

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

9 A That is correct.

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

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

17 A Yes, sir.

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

22 A Yes, sir.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3099

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

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

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

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

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

14 A Yes.

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3100

1 know that I would say it was not considered.

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

5 A Yes, I did.

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

8 A No, I did not.

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

13 A Is that a question?

14 Q Yes.

15 A Yes.

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3101

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

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

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

12 A Yes, I was.

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

15 A Yes, he did.

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3102

1 Q Also --

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

4 MR. DONAHOE: Yes?

5 CHAIRMAN OBERMAN: Turn your mic off.

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

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

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

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

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

17 BY MR. DONAHOE:

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

21 A Yes.

22 Q Would you agree with me that that is

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3103

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

3 A It's possible, yes.

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

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

7 And do you see where it says,

8 "FRA-identified Improvements"?

9 A Yes, sir.

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

16 A Yes, sir.

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3104

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

3 A Yes.

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

7 A Yes.

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

11 A Yes.

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

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

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

20 A Yes.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3105

1 could use those sidings instead of freight trains?

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

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

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

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

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

15 BY MR. DONAHOE:

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

19 A Yes.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3106

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

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

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

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3107

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

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

10 A Personally, no, I did not.

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

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

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

21 A Yes.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3108

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

4 A Yes, I do.

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

7 A Yes, I do.

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

10 A Yes. I understand he did.

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

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

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

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

19 BY MR. DONAHOE:

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

22 CHAIRMAN OBERMAN: I heard it.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3109

1 MR. DONAHOE: Okay. Thank you.

2 BY MR. DONAHOE:

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

6 A I don't recall.

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3110

1 A Yes.

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

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

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

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

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

14 A A shareholder?

15 Q A stakeholder.

16 A Yes.

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3111

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

8 MR. DONAHOE: Okay.

9 BY MR. DONAHOE:

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

12 A Yes, I do.

13 Q Are you familiar with this document?

14 A Yes, I am.

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

17 A It says May 2021.

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

20 CHAIRMAN OBERMAN: It says May.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3112

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

3 MR. DONAHOE: All parties.

4 CHAIRMAN OBERMAN: Thank you.

5 BY MR. DONAHOE:

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

8 A Page 4 at the bottom numbering?

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

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

13 CHAIRMAN OBERMAN: Okay. I give up.

14 MR. DONAHOE: Do you not have it?

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

20 BY MR. DONAHOE:

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3113

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

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

6 A Yes.

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3114

1 being used for infrastructure on the freight
2 lines?

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3115

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

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

7 BY MR. DONAHOE:

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

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3116

1 it.

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

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

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

11 A That's correct.

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3117

1 beyond.

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

4 A Do you mean 20 at the bottom?

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

8 A Yes, I have that page.

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

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

13 Q And enhancements to 25 routes?

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

15 Q And service to 160 new stations?

16 A Yes, sir.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3118

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

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

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

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

18 A We will probably do both.

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3119

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

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

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3120

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

3 Q Has any of that taken place so far?

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3121

1 that type of work.

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

4 A There are five identified on this route.

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

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

11 Q Has construction started?

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

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

21 A Yes.

22 Q Could you turn to page 26?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3122

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

3 Q By the page.

4 A Okay.

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

7 A Yes. I do.

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

13 A Yes.

14 Q Do you agree with that statement?

15 A Yes.

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

19 A Yes, I am aware.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3123

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

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

4 A Yes, there was.

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

8 A Yes. Table 6?

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

13 A Yes, I do.

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3124

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

3 A That's correct.

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

6 (Reporter clarification.)

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

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

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

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

19 A Yes.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3125

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

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

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

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

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

14 Q On this chart.

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3126

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

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

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3127

1 CHAIRMAN OBERMAN: Thank you.

2 BY MR. DONAHOE:

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

5 A Yes.

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

9 A That's correct.

10 Q And have you seen those numbers?

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3128

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

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

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

19 A I'm not aware that we have.

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

22 A Yes.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3129

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

3 (Off the record.)

4 BY MR. DONAHOE:

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

8 A I'm sorry. You said 26?

9 Q 26, in the top right corner.

10 CHAIRMAN OBERMAN: Actually,
11 Mr. Donahoe.

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

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

16 MR. DONAHOE: Okay.

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3130

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

2 That's what I have.

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

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

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

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

7 So either page 27 at the bottom or the actual

8 page 26 at the top. Okay?

9 BY MR. DONAHOE:

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

11 A Yes.

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

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

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

18 Do you see that?

19 A Yes, I do.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3131

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

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

7 Q Sure. Take your time. Line 18.

8 A Okay. I read it. Thank you.

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

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

11 A With what, specifically?

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

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

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

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

22 MR. DONAHOE: Mine's off.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3132

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

6 MR. DONAHOE: That is the question.

7 BY MR. DONAHOE:

8 Q Do you agree with that or not?

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

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

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

18 Q Have you been to the Gulf Coast line?

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3133

1 A Twice.

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

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

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

11 A That's correct.

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

14 A I heard Mr. Crowley's testimony.

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

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

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

20 A I'm there. Thank you.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3134

1 Do you see that sentence?

2 A Yes.

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

5 MR. DONAHOE: Beginning on line 5.

6 CHAIRMAN OBERMAN: Thank you.

7 MR. DONAHOE: Sure.

8 BY MR. DONAHOE:

9 Q Do you see that, sir?

10 A Yeah, I see the sentence.

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3135

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

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

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3136

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

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

15 Q Yes.

16 A Yes, I think those could be impacted.

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

19 Could you turn to page 31, please?

20 A Bates?

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3137

1 A Yes, sir.

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

11 A Yes, I do.

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

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

22 Q I believe your testimony on direct was

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3138

1 that some of the stakeholders had reservations.

2 Do you remember that testimony?

3 A That could be.

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3139

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

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

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

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

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

16 A And then line --

17 Q Then line 16.

18 A Thank you.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3140

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

4 A Yes, I do.

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

7 A No, I do not.

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

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

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

17 A Yes.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3141

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

3 A Yes.

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

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

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

17 Do you agree with that?

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3142

1 schedule of existing freight and rail traffic?

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3143

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3144

1 more, and I will be done with it.

2 CHAIRMAN OBERMAN: Go ahead.

3 MR. DONAHOE: Okay. Thank you.

4 BY MR. DONAHOE:

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

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

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

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

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

22 THE WITNESS: Sure. Amtrak has not

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3145

1 rejected the idea of a Brookley --

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

4 (Off the record.)

5 THE WITNESS: Testing.

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

17 BY MR. DONAHOE:

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3146

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3147

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

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

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

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

18 A It would be made ADA-compliant.

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

22 A What do you mean, "issues"?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3148

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

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

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3149

1 A Yes.

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

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

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

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

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

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

15 BY MR. DONAHOE:

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3150

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

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

4 Q Yes.

5 A Yes.

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

9 A I can't comment on that.

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

16 BY MR. DONAHOE:

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

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

22 MR. DONAHOE: I probably have an hour

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3151

1 and a half left.

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

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

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

10 MR. DONAHOE: Thank you.

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3152

1 BY MR. DONAHOE:

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

4 A I don't recall seeing it before.

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

7 A Yes.

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

15 A Yes, I can read that sentence.

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

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

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

21 A You --

22 MS. AMUNSON: Objection. Badgering the

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3153

1 witness.

2 MR. DONAHOE: It's his testimony.

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

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

7 BY MR. DONAHOE:

8 Q Thank you.

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

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

17 (Off the record.)

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3154

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

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

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

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

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

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

22 CHAIRMAN OBERMAN: Oh, Matt, you're

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3155

1 here. Oh, good. Okay.

2 ZOOM TECH: Yes, I'm here.

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

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

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

13 All right. I think we can proceed.

14 (Confidential Session.)

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REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3159

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(End of Confidential Session.)

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

13

BY MR. DONAHOE:

14

Q Thank you.

15

16

17

18

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

19

A No, I'm not.

20

21

22

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3160

1 Stennis." Who is he?

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

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

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

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

11 A The Amtrak ridership history?

12 Q Correct.

13 A Yes.

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3161

1 Coast Limited." So do you see that?

2 A Yes, I do.

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

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

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

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

20 CHAIRMAN OBERMAN: Well --

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3162

1 move on.

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

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

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

22 Q Sure.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3164

1 and NS.

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

5 MR. DONAHOE: Yes.

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

8 BY MR. DONAHOE:

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

12 Do you see that?

13 A Yes, I do.

14 Q Are you familiar with this document?

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

16 Q Could you turn to page 4?

17 A Yes.

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

22 A Yes.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3165

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

3 A Yes.

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

7 Do you recall that testimony?

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

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

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

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

19 Do you agree with that?

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3166

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

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

8 A Yes.

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

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

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

22

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3167

1 BY MR. DONAHOE:

2 Q If you could go to page 13 --

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

5 Q Can you go to page 13, please?

6 CHAIRMAN OBERMAN: Thank you, Mr. Blair.

7 THE WITNESS: Page 13?

8 BY MR. DONAHOE:

9 Q Yes, page 13.

10 A Yes, I'm there.

11 Q Next Steps and Timeline.

12 A Yes.

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

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

18 Do you agree with that?

19 A Yes.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3168

1 Coast study?

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

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

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

12 MR. DONAHOE: Sure.

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

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

19 BY MR. DONAHOE:

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3169

1 RTC modeling done by HDR?

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

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

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

9 BY MR. DONAHOE:

10 Q Where is that?

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

17 BY MR. DONAHOE:

18 Q Okay. I believe it came from Amtrak.

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3170

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

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

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

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

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

18 CHAIRMAN OBERMAN: Oh, okay. Thank you.

19 BY MR. DONAHOE:

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

22 A Starting on page 6, this is an example

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3171

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

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

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

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

19 MR. DONAHOE: Written in words.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3172

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3173

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

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

6 CHAIRMAN OBERMAN: He just referred
7 you --

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

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

17 BY MR. DONAHOE:

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

22 A I would say the words on page 12,

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3174

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

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

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

10 CHAIRMAN OBERMAN: You may answer.

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

13 BY MR. DONAHOE:

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

17 A That is shown on page 4.

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

22 A I agree there are no words on the page

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3175

1 that indicate that.

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

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

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

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

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

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

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

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

22 MR. DONAHOE: I think all parties agree

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3176

1 this needs to be confidential.

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

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

8 MS. AMUNSON: Correct.

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

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3177

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

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

6 Okay. You can proceed.

7 BY MR. DONAHOE:

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

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

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

14 A Yes, sir.

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

17 A Yes, such as it is.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3178

1 that and agreed to that; correct?

2 A Yes, I did.

3 Q And then on page 16 --

4 CHAIRMAN OBERMAN: 16.

5 BY MR. DONAHOE:

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

9 A Yes.

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

12 A Yes.

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3179

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3180

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3181

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

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

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

8 A No. No.

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

11 A 4A is not on page 5.

12 Q It is on mine.

13 A Oh, Bates 5.

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

15 A Yes, sir.

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

22 A Yes, I do.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3182

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

3 A Yes, it was.

4 Q And on page 4, Bates-stamped.

5 A Okay.

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

10 A Yes.

11 Q And you agreed to that?

12 A Yes, we did.

13 Q And on page 3, Bates-stamped.

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

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

17 CHAIRMAN OBERMAN: I have it. Okay.

18 BY MR. DONAHOE:

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

21 A Yes.

22 Q And according to this agreement, "A

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3183

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

6 A Yes.

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

11 A Yes.

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3184

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

4 A Yes, we did.

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

8 CHAIRMAN OBERMAN: That would be
9 helpful.

10 Mr. Donahoe, are you done with --

11 MR. DONAHOE: Yes.

12 CHAIRMAN OBERMAN: -- 7G?

13 MR. DONAHOE: Yes, I am.

14 CHAIRMAN OBERMAN: Thank you.

15 BY MR. DONAHOE:

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

18 A I do.

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3185

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

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

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

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

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

14 MR. DONAHOE: Sure.

15 BY MR. DONAHOE:

16 Q Have you seen this before?

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3186

1 A I'm not seeing that.

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

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

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

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

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

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

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

18 BY MR. DONAHOE:

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

21 A No, and still no.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3187

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

4 A Let me read this.

5 Q I'm sorry.

6 A Let me read this before I answer.

7 Q Sure.

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

14 MR. DONAHOE: This is cross-examination.

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3188

1 passengers on this service?

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

5 MR. DONAHOE: I could have.

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

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

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

14 MR. DONAHOE: I believe I did.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3189

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

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

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

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

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

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

14 BY MR. DONAHOE:

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3190

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3191

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3192

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

6 BY MR. DONAHOE:

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

9 A No.

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3193

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

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3194

1 MEMBER FUCHS: It's --

2 BY MR. DONAHOE:

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

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3195

1 of ridership for the service.

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

4 CHAIRMAN OBERMAN: Where are you?

5 BY MR. DONAHOE:

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

8 A Let me read it.

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

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

13 Do you see that e-mail?

14 A Yes.

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

19 Do you see that?

20 A Yes.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3196

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3197

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

9 THE WITNESS: That's exactly correct.

10 CHAIRMAN OBERMAN: Thank you.

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

14 MR. DONAHOE: Sure. Go ahead.

15 MEMBER FUCHS: Stop me if --

16 CHAIRMAN OBERMAN: No. No.

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

22 THE WITNESS: The --

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3198

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

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

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

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

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

14 MEMBER FUCHS: I think it was a report.

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3199

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

5 MEMBER FUCHS: B1, which is the coach.

6 THE WITNESS: Yeah. Yeah.

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

14 THE WITNESS: Yes. Very similar.

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3200

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

10 THE WITNESS: Yes. I can see that.

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

14 THE WITNESS: Yes.

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3201

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

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

6 MR. DONAHOE: Thank you.

7 BY MR. DONAHOE:

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3202

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

5 MR. DONAHOE: I beg your pardon?

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

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

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

22 MR. DONAHOE: Well, I prefer that

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3203

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

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

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

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

13 BY MR. DONAHOE:

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

18 A Primarily on page 2, Bates number?

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3204

1 point No. 6.

2 A Yes, I see it.

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

6 A Yes, I do.

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3205

1 come later?

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3206

1 MR. DONAHOE: Sure.

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3207

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3208

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

9 MEMBER PRIMUS: Thank you.

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

12 BY MR. DONAHOE:

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

15 A Yes.

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

19 A Yes.

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

22 A Yes.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3209

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

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

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

9 A That's correct.

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

12 A Yes.

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

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

18 Q Sure.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3210

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

5 Q And the FRA funded the project?

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3211

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

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

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

13 A This list was; not all lists were.

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

17 A Yes. Let me read it.

18 Q Take your time.

19 A Okay. Thank you.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3212

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

4 A Yes.

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

13 A Yes.

14 Q How do you interpret that comment?

15 A Which part of his comment?

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3213

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

3 BY MR. DONAHOE:

4 Q Did you ever receive this e-mail?

5 A Yes, I did.

6 Q So you are familiar with it. Okay.

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3214

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3215

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

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

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

10 Q We can go to CSX-NS 321.

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3216

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

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

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

8 MR. DONAHOE: 321.

9 CHAIRMAN OBERMAN: All right. Proceed.

10 BY MR. DONAHOE:

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

14 A Yes. Let me read it, please.

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

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

20 Q Yeah, in terms of the question.

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

22 Q Okay. Would you agree with me that at

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3217

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3218

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3219

1 early 2020; is that correct?

2 THE WITNESS: Yes.

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3220

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3221

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

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

5 MEMBER HEDLUND: I think I can clarify.

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3222

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3223

1 study through the grant agreement with Amtrak.

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3224

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3225

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3226

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3227

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3228

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3229

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

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

18 THE WITNESS: That's correct.

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3230

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

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

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

18 MR. DONAHOE: That's fine.

19 BY MR. DONAHOE:

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3231

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

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

9 A Yes.

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3232

1 study, one of those three options?

2 A Yes.

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

6 A What do you mean by "process"?

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

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

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

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

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

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3233

1 model?

2 A Yes.

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

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

12 Q No, I understand that. I understand
13 it's negotiations. But my -- my question is that
14 since Amtrak was a possibility of funding this
15 study, then you had input on what data you would
16 want to see?

17 A Yes.

18 Q And that data was outlined in the
19 agreements that I went over a little ago, what
20 data would be turned over; correct?

21 A That's what we ultimately agreed on,
22 yes.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3234

1 Q Okay. Fair enough. Can we go to 322,
2 please? And this is dated July 22, 2020, and it's
3 from Kyle Montgomery to yourself.

4 I guess my first question: Who is Kyle
5 Montgomery?

6 A Kyle is -- works in the group.

7 Q You're his boss?

8 A Yeah.

9 Q And underneath, where it says,
10 "Background, since the 2018 agreement and
11 principle between Amtrak and CSX CEO," what
12 agreement was that referring to?

13 A That was the -- that was the exchange --
14 that was the exchange between the --

15 MR. DONAHOE: I'm sorry. Hold on one
16 second. I'm sorry, Chair. Page 1, underneath
17 "Background."

18 CHAIRMAN OBERMAN: Got it.

19 BY MR. DONAHOE:

20 Q Go ahead. What was that 2018 agreement
21 referring to?

22 A That was the exchange between

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3235

1 then-Amtrak president Richard Anderson -- or CEO
2 and president Richard Anderson and CSX CEO Jim
3 Foote.

4 Q So that agreement had nothing to do with
5 the type of modeling that would be been done, or
6 did it? And I'm not trying to trick you. If you
7 read the next sentence, this is why I'm asking.
8 It talks about how the agreement was constructed.
9 Do you see that -- or structured?

10 A Yes.

11 Q So my question: Is that agreement also
12 contemplating a base case, as well as a model, 20
13 years in the future; right? If you keep
14 reading --

15 A No. I think the way the sentence is
16 constructed is that the predicate here is, Since
17 the 2018 agreement and principle between the CEOs
18 was -- is a conceptual backdrop to what was going
19 on in the 2020 study. But looking at the date of
20 this e-mail, which is July of 2020, we were in the
21 midst of the 2020 study.

22 So I'm interpreting -- I'll interpret

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3236

1 Kyle's e-mail to say -- what he's saying here is
2 that the parties had agreed to a transparent
3 study, but the details after the comma are,
4 fundamentally, details around the study that was
5 being conducted in 2020.

6 Q This e-mail says, "The agreement was
7 structured with three main modeling steps. The
8 first, the base case, and then the second was a
9 model 20 years in the future." Isn't that what it
10 says?

11 A But then none of that were elements of
12 the agreement, in principle, between the Amtrak
13 and CSX CEOs.

14 Q But it was part of the agreement that
15 you signed in the data-sharing agreement -- I'm
16 sorry -- the modeling agreement, the 20 years?

17 A Yes.

18 Q Okay. If we can go to --

19 CHAIRMAN OBERMAN: Before we leave this
20 paragraph -- yeah, is the qualification here that
21 the study for 20 years into the future was done
22 only at the request of CSX and NS, not at Amtrak's

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3237

1 request?

2 THE WITNESS: Yes. Amtrak did not
3 request the 20-year study. That was -- or the
4 20-year look-ahead. That was requested by the
5 railroads.

6 CHAIRMAN OBERMAN: And did that remain
7 Amtrak's position through the ultimate signing of
8 the agreements which got signed?

9 THE WITNESS: Well, it -- it is
10 contained as one of the elements of the agreement,
11 so Amtrak agreed to allow the 2020 look-ahead
12 no-build case to be analyzed.

13 CHAIRMAN OBERMAN: That, I understand,
14 but it was never at Amtrak's request, it was only
15 at the railroad's request?

16 THE WITNESS: It was not at Amtrak's
17 request. It was at the railroad's request.

18 CHAIRMAN OBERMAN: Thank you.

19 BY MR. DONAHOE:

20 Q Amtrak didn't request it, but Amtrak
21 agreed to it?

22 CHAIRMAN OBERMAN: That's what he said.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3238

1 BY MR. DONAHOE:

2 Q I just want to be clear; is that
3 correct?

4 A That's correct.

5 Q And do you recall that -- that COVID was
6 causing some delay problems in the modeling?

7 A Yes. We switched from in-person -- HDR
8 had contemplated meeting in person with each of
9 the railroads for their -- getting their input
10 on the -- on building the base case, and those
11 were converted to virtual meetings. HDR indicated
12 those meetings worked out, actually, pretty well,
13 and they didn't feel they lost time due to that.
14 They lost time due to other -- due to the
15 post-railroad review and repeated reviews of
16 the -- the work that they were doing.

17 MR. DONAHOE: If we can go to CSX-NS
18 319, and, Chair, I have five more e-mails to go
19 through.

20 CHAIRMAN OBERMAN: What's the board's
21 pleasure? It's five after 1:00 now. I think we
22 probably all need a break. So I'm wondering,

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3239

1 Mr. Donahoe -- I know you don't want to show them
2 to the witness in advance, which is fine, but I'm
3 wondering if you can provide us with the other
4 emails to save time in distribution while we're on
5 lunch break?

6 MR. DONAHOE: Sure.

7 CHAIRMAN OBERMAN: Do you know what they
8 are, too?

9 MR. DONAHOE: 319, 317, 323, 326, and
10 361.

11 CHAIRMAN OBERMAN: All right. It is
12 1:05. We will break for 30 minutes, and we'll be
13 back at 1:35.

14 (Off the record.)

15 (Confidential Session.)

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REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3259

1 (Off the record.)

2 CHAIRMAN OBERMAN: I'm not sure where we
3 are. Are we waiting, are we back in the public
4 session?

5 All right. We can proceed.

6 BY MR. DONAHOE:

7 Q Okay. Mr. Blair, do you recall
8 testifying on your direct examination that the
9 Gulf Coast Corridor was like a snowflake?

10 A In terms of uniqueness?

11 Q Yes.

12 A I said perhaps it could be analogous to
13 a snowflake in the sense that it may look like --
14 I mean, snowflakes, I treat them all the same,
15 with the same shovel in my driveway, but I do
16 recognize that each one is unique in a sense. But
17 I -- the tools that Amtrak has and we bring to
18 bear in each service are similar.

19 Q So you would agree that there is some
20 uniqueness to the Gulf Coast Corridor?

21 A We don't have another train that
22 operates through the Bay of St. Louis, in that

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3260

1 sense. So there -- each corridor has some
2 elements of uniqueness. I think what I tried to
3 reflect in my verified statement is that the
4 characteristics that are presented in the Gulf
5 Coast Corridor, Amtrak has confronted successfully
6 in other corridors.

7 Q One of the other things in your verified
8 statement was the Northeast Corridor, that it has
9 a lot of single track; do you remember that?

10 A The Northeast Corridor, with single
11 track? Don't you mean -- I think the reference in
12 my verified statement to the Northeast Corridor
13 was for the local bridges.

14 Q Does the Northeast Corridor have double,
15 triple, and quadruple track?

16 A Most of it, yes, it does.

17 Q And the Chicago to Los Angeles, I think
18 it was a Burlington Northern. Do you recall that?

19 A Yes. That was an example where I
20 cited -- where the -- the respondents had
21 indicated that it was a substantial amount of
22 freight volume. And I said, between Chicago and

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3261

1 Los Angeles, we regularly confront, with the
2 Southwest Chief, 100 trains a day.

3 Q Is there a lot of double track and
4 triple track segments in that?

5 A On that segment, yes, there is.

6 Q And you cited the Bakersfield to
7 Stockton, another BN route?

8 A Yes. A largely single-track railroad
9 that hosts more passenger trains than the Gulf
10 Coast.

11 Q Isn't it true that there's no movable
12 bridges on the Bakersfield to Stockton?

13 A I don't know.

14 Q Isn't it true that there's 40 percent
15 less grade crossings on the Bakersfield to
16 Stockton?

17 A I don't know.

18 Q And I think you also cited the Florida
19 east coast, the Miami to Palm Beach?

20 A As a place where there were more grade
21 crossings per mile when that was cited as an
22 example of the challenges in the Gulf Coast

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3262

1 Corridor.

2 Q And isn't that true that that's a
3 double-track corridor?

4 A The grade crossings and double-track
5 don't necessarily correlate.

6 Q My question is, isn't it true that's a
7 double-track corridor?

8 A I believe most of it is, yes.

9 Q Do you know what the cost of that
10 corridor was when it was built?

11 A Originally or rebuilt?

12 Q Rebuilt.

13 A No, I don't.

14 Q You haven't seen it estimated at
15 \$1 billion?

16 A No.

17 Q As a result of this hearing, Amtrak was
18 in possession of all the data that they had
19 requested for the discovery process in October of
20 last year. Were you aware of that?

21 A I -- I can't validate all -- whether we
22 had received all the information we requested in

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3263

1 discovery or not.

2 Q My question to you is, did either Amtrak
3 in-house modelers or did you ask your consultants
4 to run any of that RTC modeling based on that
5 information, if you know?

6 A Did I request?

7 Q Were you aware of any request made on
8 Amtrak's behalf that RTC modeling be done with
9 this information that was given during the
10 discovery process?

11 A I believe counsel requested the -- the
12 analysis to be done by L.E. Peabody.

13 Q Did Peabody do RTC modeling, to your
14 knowledge?

15 A To my knowledge, no, they did not.

16 Q And you were aware of the board's order
17 of August 2021 that requested of the parties that
18 modeling be done?

19 A Yes.

20 MS. AMUNSON: Objection.

21 BY MR. DONAHOE:

22 Q And are you aware --

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3264

1 MS. AMUNSON: Objection.

2 MR. DONAHOE: I'm sorry.

3 CHAIRMAN OBERMAN: There's an objection.

4 MS. AMUNSON: Misstates the document.

5 CHAIRMAN OBERMAN: Mr. Donahoe, if
6 you're going to cite the document, would you read
7 the exact language?

8 MR. DONAHOE: I'll move on. I'll
9 withdraw it.

10 BY MR. DONAHOE:

11 Q Do you know when Peabody was retained?

12 A No.

13 Q And you've testified that the station
14 improvements should be done by the end of the
15 year?

16 A That's our current projection, yes.

17 Q What do you believe could happen if you
18 institute service without any infrastructure, and
19 problems arise due to capacity and congestion?

20 A What do you mean, "What do I think would
21 happen"?

22 Q Do you think it will have an effect on

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3265

1 the communities?

2 A What scenario are you asking me to
3 respond to?

4 Q Do you think there will be any effect on
5 the communities around the Gulf Coast line if
6 problems arise with congestion and capacity with
7 the addition of the Amtrak passenger trains?

8 A I don't know what those circumstances
9 may be, so I'm not -- I'm not in a position to
10 respond to that.

11 Q Do you think there would be any effect
12 on the shippers if Amtrak adds passenger lines and
13 congestion and capacity is affected?

14 A I don't anticipate issues with shippers,
15 but I'm not in a position to respond to that.

16 Q Did you hear the testimony of any of the
17 port witnesses?

18 A Yes, I did.

19 Q Did they express a concern that there
20 would be an effect on the port if there was no
21 infrastructure in place when Amtrak put passenger
22 lines on the Gulf Coast Corridor?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3266

1 A Yes, they did express that concern.

2 Q And you've also heard the concern with
3 the freight railroads, that they have a concern
4 that if there's no infrastructure in place before
5 the addition of Amtrak passenger line, they have a
6 concern about congestion and capacity?

7 A Yes. I heard them indicate that
8 position, yes.

9 Q Were you -- did you listen to the
10 testimony of Mr. Johnson from CSX?

11 A Yes, I did.

12 Q Did you listen to the testimony of Randy
13 Hunt from Norfolk Southern?

14 A Yes. I did.

15 Q Did you listen to the testimony of Larry
16 Guthrie, one of the experts that was retained in
17 this matter?

18 A Yes, I did.

19 Q And you also heard the testimony from
20 the port's witnesses; correct?

21 A Yes.

22 Q Don't you think those people who've been

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3267

1 to that line, who've worked that corridor, who've
2 seen that corridor, are in a better position to
3 talk about the likely effect of adding passenger
4 line without infrastructure than you?

5 A I -- in the scope of my work, that's not
6 something that I do. But I think we -- based on
7 the information that we have about the operations
8 in the corridor, we do not believe that the
9 introduction of Amtrak service would be disruptive
10 to the operations of the corridor in the fashion
11 that CSX, NS, or the port have identified.

12 Q So the fact that Amtrak doesn't run any
13 trains on the majority of this corridor other than
14 the Back Belt, Amtrak, you believe, is in a better
15 position to tell the possible effects on
16 congestion and capacity than all of these people
17 I've just named, who've been there, who've seen
18 it, who've been on the line? That's your
19 position?

20 MS. AMUNSON: Objection. Asked and
21 answered and argumentative.

22 MR. DONAHOE: It's cross-examination.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3268

1 CHAIRMAN OBERMAN: Sustained.

2 Sustained.

3 MR. DONAHOE: Is the "sustained," Chair,
4 based on repetitive question or argumentative?
5 Because I can clean it up.

6 CHAIRMAN OBERMAN: It's argumentative.
7 Rephrase it.

8 MR. DONAHOE: Okay. Okay.

9 BY MR. DONAHOE:

10 Q Do you believe that individuals who've
11 worked on this line are in a better position to
12 talk about possible congestion and capacity in the
13 future?

14 A Well, I'd say we have individuals who
15 have operated on this line, who believe that this
16 service can be introduced without significant
17 congestion.

18 Q And when was the last time Amtrak had
19 service on that line?

20 A 2005.

21 Q Thank you. I have no further questions.

22 CHAIRMAN OBERMAN: Ray, did you have

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3269

1 some questions?

2 MR. ATKINS: I do, Mr. Chairman. Can
3 everyone hear me okay?

4 CHAIRMAN OBERMAN: Very well.

5 MR. ATKINS: And, Mr. Blair, can you
6 hear me okay?

7 THE WITNESS: Yes, I can.

8 CROSS-EXAMINATION

9 BY MR. ATKINS:

10 Q Okay. So, as you know, my name is Ray
11 Atkins.

12 (Discussion held off the record.)

13 BY MR. ATKINS:

14 Q Okay. So, Mr. Blair, I'd like to go
15 back -- can you still hear me okay? Give me a
16 shout if you can't hear me. I'd like to go back
17 to the Gulf Coast Working report, which was JE
18 Exhibit 1B. And I'm going to just touch on what I
19 think are three -- three points and then move on.
20 Can we move to the page, which is page 2 of the
21 report, page 12 of the exhibit? It's the title,
22 2.12, which is the goals of the Working Group

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3270

1 report.

2 So -- well, this is going to be awkward,
3 Mr. Blair, because I can't see you. Looks like
4 there's an empty chair. But can you just take a
5 moment to just refresh your memory of the goals?
6 I think you've been through this document a fair
7 bit, but I just want to give you a chance to
8 review what the Gulf Coast Working Group said was
9 your goal and intent of the report.

10 A Can you point me to the specific page,
11 please?

12 Q It's page 2 of the report, page 12 of
13 the exhibit. It should be the section titled
14 "2.12, Goals."

15 A Okay. I'm there. Thank you.

16 Q Yup. Can you just take a moment to --
17 and, in particular, the first two sentences are
18 the ones I'm going to focus on. So if you could
19 just take a moment just to refresh your memory on
20 those.

21 A 2.12, correct?

22 Q Yeah. Just the first two sentences of

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3271

1 2.12.

2 A Okay. I've read it. Thank you.

3 Q Yup. No problem. So I'd like to
4 make -- the first point I'd like to observe is the
5 objective, the second sentence. "The Gulf Coast
6 Working Group's objective is twofold." Would you
7 agree that it was to ultimately achieve a new
8 schedule with better performance than the historic
9 counterpart, was the first objective?

10 A Yes.

11 Q And then the second objective is to
12 operate without unreasonably impairing CSX freight
13 operations?

14 A Yes.

15 Q Do you recall there was a discussion you
16 had with Mr. Donahoe about whether Norfolk
17 Southern's operations were part of the goals of
18 the group?

19 A Yes.

20 Q Would you agree with me that this --
21 this goal seems to indicate that the focus of the
22 Gulf Coast Working Group was an unreasonable

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3272

1 impairment to CSX freight operations?

2 A As shown here, yes. That's correct.

3 MEMBER PRIMUS: I don't think he heard
4 you.

5 THE WITNESS: As shown here, yes.
6 That's what it states.

7 BY MR. ATKINS:

8 Q Okay. The second point I'd like to make
9 is just to confirm -- so the Gulf Coast Working
10 Group, at the end, recommends a series of projects
11 to accomplish these dual objectives. And those --
12 those infrastructure projects are set forth later
13 in the report; correct?

14 A Yes.

15 Q And it is Amtrak's position now that you
16 agree with the recommendations from this Working
17 Group report?

18 A It is -- it has been -- I mean, Amtrak
19 endorsed the report upon its publication. So it
20 has been Amtrak's position, since the publication
21 of the report, that we've supported this report.

22 Q Okay. I just want confirmation that it

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3273

1 remains your -- Amtrak's position at this moment
2 in this litigation that you endorse the
3 recommendations in this report.

4 A Was that a question, or you just wanted
5 to --

6 Q That was a question. I'd just like it
7 on the record.

8 A That we still endorse the conclusions of
9 this report?

10 Q Correct.

11 A Yes, we do.

12 Q Okay. And then, you've made the point
13 several times that the report recommends phasing
14 in or a staging of the infrastructure projects, so
15 I would just like to turn to that portion of the
16 report. Give me a moment to get the page for you.

17 It's towards the end. It's on page 31
18 of the report. It's actually page 41 of the
19 exhibit. It's entitled 5.12.

20 A Okay. That's one statement of that. I
21 was also referring to the table that appears in --
22 Table 5.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3274

1 Q Got it.

2 A And -- and there's -- and there's
3 another table, as well.

4 Q Okay. But this is the -- this is the
5 summary of FRA's recommendations; correct?

6 A Summary of the station infrastructure
7 and other improvement costs, yes. Correct.

8 Q And can you -- and it indicates in here
9 that the suggested approach is to first implement
10 improvements needed to restore service, to be
11 followed by the other investments as additional
12 funding becomes available; is that correct?

13 A Yes. Yes.

14 Q Thank you. And then you just testified
15 with Mr. Donahoe that Amtrak has received from
16 Congress somewhere in the ballpark of \$66 billion
17 in potential funding for infrastructure projects;
18 isn't that correct?

19 A No. I said Amtrak did not receive the
20 \$66 billion. There's a variety of ways in which
21 the IIJA funds come to Amtrak. Some is
22 Amtrak-controlled, some is FRA-controlled, some is

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3275

1 through discretionary grants. But, as Mr. Donahoe
2 said, the numbers are in the billions.

3 Q And that -- and that funding has been
4 made available by Congress, subject to certain
5 requirements and loopholes -- not loopholes,
6 sorry. That was a Freudian -- by certain
7 requirements and prerequisites and going through
8 the appropriate processes that funding has been
9 made available by Congress for infrastructure
10 projects to promote new passenger service; isn't
11 that correct?

12 A Yes, that is correct.

13 Q Okay. So I want to turn away from
14 this -- the Gulf Coast Working Group and talk a
15 little bit about the HDR study. And before I
16 actually get into the details of that, Mr. Blair,
17 you testified on direct that HDR was imposed on
18 Amtrak by CSX. Do you recall that testimony?

19 A I don't recall those were my exact
20 words, but -- but CSX wanted to use HDR, and we
21 agreed to use HDR.

22 Q So I don't think that was quite your

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3276

1 testimony. So you -- so you're testifying now
2 that this was a joint agreement between the two of
3 you, that it was not CSX that imposed HDR on
4 Amtrak?

5 A No. I'm sorry. I didn't want -- I
6 don't want to appear to be contradicting that.
7 CSX indicated that they wanted to use HDR for the
8 study, and Amtrak agreed that CS- -- to use HDR.
9 And in doing so, it required us to sole-source HDR
10 as the consultant for the work because CSX
11 indicated they would not agree to share the
12 information that they had shared with HDR
13 previously with another consultant. So we agreed
14 to utilize HDR for the -- for the 2020 study.

15 Q So, Mr. Blair, are you aware of an
16 e-mail that was written between Mr. Nathan Goldman
17 and your then- -- Stephen Gardner, regarding the
18 use of HDR for this purpose?

19 A No, I'm not aware of such a memo.

20 Q So this is my opportunity to go into
21 confidential, unfortunately, Chairman. I'd like
22 to show Exhibit CSX Norfolk Southern 360, which is

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3277

1 a confidential -- it's been labeled confidential
2 by Amtrak. It's the e-mail to which I was
3 referring?

4 CHAIRMAN OBERMAN: Three what?

5 MEMBER PRIMUS: They're handing it out
6 now.

7 CHAIRMAN OBERMAN: But before we do
8 that, let's see if it's Amtrak's mark. Where do
9 we -- we don't have it yet.

10 MR. ATKINS: Chairman, since I'm not in
11 the room, I would ask if maybe Matt Warren could
12 discuss the confidentiality provisions because I
13 understand there have been discussions amongst the
14 counsel during the lunch break, to which I was not
15 privy.

16 CHAIRMAN OBERMAN: Did either you or
17 Jessie want to see if you can de-designate as
18 confidential?

19 MR. WARREN: So, Mr. Chairman, we did
20 have a conversation with Amtrak. And I think
21 where the parties came out is, at this time, we
22 don't feel like -- or Amtrak didn't feel like they

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3278

1 could make decisions on whether to pull back the
2 confidentiality on these e-mails. We know there's
3 some other e-mails.

4 What we agreed to do is, at the close of
5 the record, we'll have a discreet number of
6 e-mails that have been put in that are
7 confidential, and the parties are going to confer
8 on whether we can withdraw the confidentiality on
9 any of those.

10 CHAIRMAN OBERMAN: But for the moment,
11 we have to go into confidential session. Is
12 that -- Jessie, is that Amtrak's position on this
13 exhibit?

14 MS. AMUNSON: I believe that's correct,
15 Mr. Chair. I have not had the opportunity to
16 fully review this and ensure that -- that there's
17 nothing in there that is not -- that can be
18 de-designated. And we agreed, because there were
19 also similar issues with some of the e-mails that
20 came in from CSX and NS, that the parties would
21 confer on this, and, to the extent that we can,
22 de-designate things.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3279

1 CHAIRMAN OBERMAN: All right. And, Ray,
2 do you have more confidential documents other than
3 this one?

4 MR. ATKINS: There's one possibility,
5 but it would be at the very end. I wouldn't be
6 able to do them in sequence. So I'll debate; I'll
7 see if, when I get there, I need it.

8 CHAIRMAN OBERMAN: It would be much more
9 efficient to not go back and forth, because it
10 takes time, and it's disruptive to the public. We
11 can't do them together?

12 MR. ATKINS: It's really out of context,
13 Chairman. I'll see if I can get there without
14 actually pulling up that document.

15 CHAIRMAN OBERMAN: All right. It's up
16 to you. I mean, if it's important to your case,
17 proceed as you need to proceed. So we will now go
18 into confidential session. Matt, send us where we
19 need to go. And that's not an open-ended
20 direction.

21 (Confidential Session.)

22

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3286

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(End of Confidential Session.)

7

CHAIRMAN OBERMAN: All right. Ray,

8

proceed. Ray, you can proceed.

9

MR. ATKINS: Chairman, are we ready to

10

continue?

11

CHAIRMAN OBERMAN: We are ready.

12

MR. ATKINS: I couldn't hear anything,

13

Chairman. My apologies.

14

CHAIRMAN OBERMAN: You can proceed. Can

15

you hear me now?

16

MR. ATKINS: Yeah. I can. Mr. Blair,

17

can you still hear me?

18

THE WITNESS: Yes, I can.

19

BY MR. ATKINS:

20

Q Okay. Thank you. So I'm going to go to

21

a familiar page, which is page 11 of the -- in the

22

upper right-hand corner. It's actually page 13 of

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3287

1 the exhibit. And it's got -- it's titled "Next
2 Steps and Time Line."

3 A Okay.

4 Q So this was in October of 2020, where
5 you were reporting that Amtrak and HDR were going
6 to investigate and propose infrastructure
7 improvements to minimize freight impacts. It's
8 the second bullet.

9 A Yes. Yes.

10 Q I should have some signal that you can
11 just signal "yes," as opposed to having to tap on
12 the mic. I appreciate the delay.

13 So what I would like to do is explore
14 what actual infrastructure improvements that you
15 and HDR were investigating at the time. So you
16 indicated you agreed to the projects proposed by
17 the Gulf Coast Working Group. Can you tell me if
18 Amtrak and HDR investigated modeling those
19 infrastructure improvements in the RTC model?

20 A There were no improvements identified at
21 this point. This was part of the next steps, as
22 the title slide -- as the title of the slide says.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3288

1 Q My apologies. What I'm asking you is
2 between October, the date of this report, and
3 January, when the project came to an end, did you
4 investigate with HDR the -- the Gulf Coast Working
5 Group suite of projects as potential
6 infrastructure improvements to minimize freight
7 impacts?

8 A No, we did not. We were beginning the
9 evaluation of the first scenario, or the first
10 iteration, as it was termed in the agreements.
11 And we hadn't gotten to the point yet where we
12 were identifying infrastructure, insofar as we
13 hadn't even run the passenger service in that
14 iteration yet. So it wasn't to the point where
15 infrastructure would be recommended, suggested, or
16 analyzed.

17 Q Okay. But your next steps says that one
18 of the next steps is to investigate and propose
19 the infrastructure improvements to minimize
20 freight impacts. Are you saying that at no point
21 in time in the next three months did you and HDR
22 investigate any infrastructure improvements to

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3289

1 minimize freight impacts?

2 A I don't -- I don't believe -- I don't
3 believe we had gotten to that point at all during
4 the next three months. What we had in -- in the
5 next three months was we had had a series of
6 iterations, some disagreement over metrics, with
7 the -- with CSX. And we'd -- you know, we had --
8 we were identifying what scenarios or what
9 iterations we might evaluate. Each one of those
10 would have then triggered the discussion of
11 infrastructure.

12 One of those scenarios would have been
13 the suite of projects identified in the Gulf Coast
14 Working Group report. But that was not the -- the
15 starting point of what we did immediately
16 following this, which was to -- to begin the --
17 the evaluation of -- of the first future
18 iteration, which was two round trips between New
19 Orleans and Mobile. So we just had gotten to the
20 point of designing the passenger service that
21 would operate in the -- in the corridor when the
22 agreement expired.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3290

1 Q So you said, though, that one of the
2 suite of projects that you would have asked them
3 to look at was from the Gulf Coast Working Group;
4 correct?

5 A The agreements indicated that we would
6 look at that as one of the scenarios.

7 Q I'm sorry. I didn't understand that
8 response. Can you restate it?

9 A The suite of agreements that we had
10 with -- with -- between Amtrak and the railroads
11 indicated that the future iterations would look at
12 scenarios that were similar or closely aligned to
13 the Gulf Coast Working Group report's suite of
14 projects.

15 Q So, for example, you would have proposed
16 to investigate the -- the use of a dedicated
17 station track in Mobile as one of the
18 infrastructure improvements to minimize freight
19 impacts?

20 A That was actually going to be a part of
21 the first iteration that contemplated the
22 twice-daily service between New Orleans and

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3291

1 Mobile. We didn't get to that point, though, as
2 identifying that as an infrastructure addition
3 because it -- it -- HDR hadn't gotten that far in
4 the analysis. And then, in January, they
5 identified a software glitch that set the model
6 back even further.

7 Q So I'll get to that in just a second.
8 But -- but another infrastructure improvement that
9 you would have explored would have been the
10 Gentilly Bypass, as was recommended in the Gulf
11 Coast Working Group report?

12 A Again, we did not get -- we didn't get
13 to the point where we were putting infrastructure
14 into the model yet. We were --

15 Q So, Mr. Blair, I appreciate that.
16 That's not my question. I'm asking what you were
17 going to look at. I appreciate -- I understand
18 the answer that you didn't look at anything. I'm
19 asking what infrastructure improvements you were
20 proposing to look at, had you had more time. So I
21 just want to clarify that it would have included,
22 for example, the Gentilly Bypass.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3292

1 A We didn't work -- we didn't identify any
2 specific -- we all had the copy of the Gulf Coast
3 Working Group report to work with and the suite of
4 projects, all three parties, to the agreements.
5 We didn't go to any iterations. We didn't define
6 any iterations at that point, as to whether they
7 would include, all, some or any -- you know, any
8 possible subset, or even other projects that might
9 be identified at that point. We hadn't gotten to
10 that phase of the process yet.

11 Q Okay. So I'm just -- I wasn't planning
12 on touching on the glitch, but I'll mention it
13 briefly. So you mentioned that there was a
14 glitch, identified by HDR, with the RTC program
15 itself. Can you tell me when that -- was that in
16 January or December of 2020 or 2021?

17 A Yeah. I believe it was in January of
18 2021, very early in January.

19 Q Did you hear the testimony from
20 Ms. Hannah Ross about that technical glitch?

21 A Yes, I did. What --

22 Q Do you recall her -- do you recall her

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3293

1 saying that that would be a simple -- maybe no
2 more than a couple days to correct the error that
3 had been detected in the software and then
4 reestablish all of the base cases?

5 A Yes. I do remember her saying that.
6 That is not what we understood from HDR, that they
7 estimated the time to be several weeks, and that
8 was not even a firm estimate.

9 Q But it was -- but their estimate was it
10 would take just a couple of weeks to fix that
11 problem?

12 A Just a couple of weeks to -- to get back
13 to where we had a base case and a no-build case.
14 We still didn't have any of the scenarios or the
15 iterations that we had contemplated doing as part
16 of the analysis. That was the basis of my -- of
17 our estimate -- or Amtrak's estimate, that it
18 would be 36 or more weeks still of work ahead.

19 Q So when you were moving to the next
20 iteration of HDR, that's adding the passenger
21 trains to the no-build case, is that correct --
22 oh, and the base case?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3294

1 A It would have been that, yes.

2 Q Can you describe what, if any, guidance
3 you gave HDR about the priority that the passenger
4 train should be provided in the RTC model when
5 they added them into the modeling?

6 A I don't recall we ever gave HDR any
7 guidance on -- on how priority would be
8 established. In fact, my recollection was HDR had
9 mentioned to us in our weekly group calls how they
10 would address priorities.

11 Q I'm saying -- did you say they did talk
12 to you on the calls about addressing priority or
13 they did not?

14 A I seem to recall the HDR modeler
15 indicating that they would use their verbal or
16 what -- typical RTC modeling process for
17 addressing passenger service priorities.

18 Q Okay. So I would like to turn to the
19 concerns that you have about the preference that
20 was afforded the Amtrak trains and the RTC model
21 that's been submitted in this case. And so what I
22 heard on your direct is that you object to the

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3295

1 limitation that was placed in the RTC model to
2 prevent Amtrak trains from taking sidings in order
3 for the freight trains to traverse over the main
4 line; is that correct?

5 A Yes.

6 Q And are you aware that the model did
7 permit Amtrak trains to pass each other, in
8 accordance with the design of your schedule, so
9 that they could take sidings, as is necessary to
10 pass each other's operations?

11 A Yes. We talked about that with HDR,
12 where the trains would meet, what the meet
13 location would be, and the timing of the trains on
14 the rail.

15 Q And so when you heard that HNTB had done
16 the same thing as HDR was proposing to do, you
17 didn't have any concerns about that feature of the
18 modeling. It was the restriction placed on
19 passenger trains taking sidings so that freight
20 trains could traverse the main lines. That was
21 your objection you stated on direct?

22 A Well, I think I stated in my verified

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3296

1 statement that we had, by design, anticipated
2 trains to pass at the Claiborne siding.

3 Q Right. But I'm talking about -- not the
4 passenger trains passing each other, but the
5 freight trains. So I will ask you, Mr. Blair, are
6 you generally familiar with Amtrak's position,
7 that it stated both in Congress and before the
8 STB, about the preference that you're afforded by
9 statute and how that affects the ability of
10 railroads to put passenger trains into sidings?

11 A Can you be more specific?

12 Q I can. Are you aware that Mr. Gardner
13 testified before Congress in 2020 about Amtrak
14 preference and complained to Congress about
15 passenger trains being placed into sidings so that
16 freight lines could operate on the main line
17 track?

18 A I am aware of that testimony, yes.

19 Q And the concern that's being articulated
20 by Mr. Gardner in those circumstances is, is that
21 Amtrak is not getting the preference to which it
22 is entitled because the railroads, in your view,

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3297

1 are prioritizing the facility of the line over the
2 Amtrak trains; correct?

3 A No. I -- no. I would not characterize
4 it that way. Mr. Gardner's -- and I can't speak
5 for Mr. Gardner's comment, but, typically, our
6 concern is we can be placed in sidings for
7 extended periods of time. While multiple trains
8 pass us, they're not moved for -- we're not placed
9 in a siding for a movement of efficiency. We're
10 placed in a siding to favor freight operations.
11 That, I believe, is Mr. Gardner's concern.

12 Q When you say "for efficiency purposes,"
13 are you speaking only of efficiency of the
14 passenger trains, or is it Amtrak's position that
15 you can put trains in a siding if it improves the
16 overall efficiency of the line?

17 A Well, I think that would be a bit of a
18 circumstance-by-circumstance evaluation. The
19 idea, fundamentally, is that Amtrak trains are not
20 delayed by freight operations. There are many
21 ways, I think, to accomplish that in the
22 observation of preference.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3298

1 Sometimes, it could be a faster move for
2 Amtrak to be placed in a siding to -- in order to
3 overtake a freight train or to pass a freight
4 train coming in an opposing direction. So I'm not
5 sure there is one statement that -- that captures
6 that concept.

7 Q So, Mr. Blair, I don't quite understand
8 your overtaking point. If you're overtaking a
9 train, how are you -- how is your waiting in the
10 siding going to help?

11 A For example, in the Gulf Coast Corridor,
12 there is a number of line -- a number of locals
13 that are switching on the main. A siding can be
14 used to pass those trains while they're switching
15 on the main. So, technically, I guess not an
16 overtake, but a pass.

17 Q That's why I was asking you specifically
18 about an overtake. I'm not as much of an expert,
19 but that's when you're approaching a slow-moving
20 train. In that circumstance, standing in the
21 siding is of no use; correct?

22 A Typically -- typically, that would not

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3299

1 be helpful, yes.

2 Q Okay. So are you also aware that Amtrak
3 has filed lawsuits against, for example, Canadian
4 National, before the STB, complaining about the
5 freight trains operating on the main line while
6 the Amtrak trains are located in the sidings?

7 A Yes.

8 Q And do you -- do you think that is at
9 all inconsistent with your position here that we
10 should be modeling the Gulf Coast service to
11 deliberately put passenger trains into the sidings
12 so that freight trains can traverse the main line?

13 A What I think -- my position is that the
14 modeling did not -- it created what I would call
15 an artificial scenario that didn't reflect what
16 was either in the best interest of Amtrak or the
17 freight operation. And that was my concern that I
18 raised in my verified statement.

19 Q Are you aware, Mr. Blair, that the RTC
20 model doesn't optimize a particular movement? It
21 optimizes the whole network. So if we permitted
22 the sidings to move in -- the passenger trains to

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3300

1 move into the sidings, they would do so any time
2 it improved the freight performance, not the
3 passenger performance?

4 A I'm sorry. I'm sorry. I'm sorry. Can
5 you state that again? I mean, RTC --

6 Q The RTC model optimizes the whole
7 network, the whole fluidity of the line; it does
8 not optimize a particular movement. And so if we
9 had trains -- if we permitted the Amtrak trains to
10 go into the sidings, then you would see a number
11 of freight trains traversing the line to passenger
12 trains in the sidings in order for the freight
13 trains to move more efficiently, and not the
14 passenger trains. Are you aware of that feature
15 of the RTC model?

16 A Not -- not that specific feature. I
17 mean, I could understand from a dispatch
18 standpoint, the -- the concept, but I'm not
19 familiar with the model enough to know that
20 feature.

21 Q Okay. So -- all right. So I'm going to
22 move off of that, and then I'm going to come to

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3301

1 the Mobile station.

2 So you indicated at the beginning of my
3 little cross that you agreed with the -- the
4 recommendations of the Gulf Coast Working Group
5 without any caveats; correct?

6 A What do you mean by "without any
7 caveats"?

8 Q Well, you said you agreed with their
9 recommendations.

10 A Amtrak has agreed with the
11 recommendations of the Gulf Coast Working Group.

12 Q And one of the recommendations of the
13 Gulf Coast Working Group was that four passenger
14 trains starting; there was a dedicated track at
15 the Mobile station; is that correct?

16 A There was a track -- that's what FRA had
17 recommended as the layover track in the Gulf Coast
18 Working Group report. That's correct.

19 Q And that was considered an essential
20 project?

21 A That was -- that was --

22 Q We'll get there.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3302

1 A That was considered a project that was
2 needed in order to operate twice-daily service, so
3 that you could turn a train back that would lay
4 over in Mobile during the day.

5 Q So have you heard the testimony from
6 Ricky Johnson and the port about the operational
7 complexities of your -- beginning service in
8 Mobile without a dedicated at that -- at the
9 Mobile station?

10 A Yes, I did hear their concerns.

11 Q And their concerns included the fact
12 that you would be blocking the main line, not just
13 four times, as you traversed in and then leave,
14 but you actually have to -- it's eight times a day
15 because the trains have to traverse from Mobile
16 back to the Choctaw Yard, where you're proposing
17 to have layover facilities; is that correct?

18 A We only proposed Choctaw as a temporary
19 layover facility until a downtown layover facility
20 could be constructed. So, yes, we understood that
21 would be a deadhead move away from the station
22 platform to Choctaw Yard. And that really

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3303

1 replicates the move that the Gulf Coast Limited
2 performed in its two different operations in 1985
3 and 1997.

4 Q So, Mr. Blair, I just have a
5 recommendation. I don't think you need to lift
6 off your thumb unless it's hurting you because my
7 voice, I think, goes over that mic. Just in case
8 it will help us with the cross.

9 So let me ask you, though, the -- the
10 Gulf Coast Working Group did not recommend Choctaw
11 Yard as a layover facility, it recommended the
12 dedicated subtrack at the Mobile station. So in
13 that regard, you are not comporting with what FRA
14 and the Gulf Coast Working Group recommended to
15 Congress?

16 A On a temporary basis, yes, we would
17 prefer to be -- to utilize Choctaw. We would
18 prefer to be in the downtown location. And to the
19 extent we're able to make that happen quickly, we
20 would -- we would be happy to be there and do that
21 as a -- as a first order of business.

22 Q So you've known about this requirement

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3304

1 since at least what, 2016 -- 2018? When did you
2 first become aware that this was an essential
3 requirement for restarting service?

4 A I only knew it from the reports that had
5 previously been provided, but, obviously, from the
6 publication of the Gulf Coast Working Group
7 report, onward.

8 Q So at least since 2017, you've known
9 that you needed to have a dedicated track here in
10 order to restart service?

11 A To restart service with a layover in
12 Mobile. That's correct.

13 Q And so five years has lapsed. How much
14 longer do you anticipate it's going to lapse until
15 you have that dedicated track at Mobile?

16 A Well, we're working -- we've had some
17 conversations with the City. Again, I would turn
18 to those very early conversations with the City
19 about the development of that -- of a layover
20 track at the location, that that property is
21 currently controlled by the City, although the
22 platform, I believe, is still owned -- or still on

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3305

1 CSX property.

2 So we would like to develop that as
3 quickly as we can. The Choctaw Yard is only in
4 the event that we can't construct the layover
5 facility in Mobile more quickly than we could
6 construct a temporary layover facility in Choctaw.

7 Q So you agree, it took you seven years --
8 six years, to begin initial discussions -- five
9 years, I guess. It's 2017 to now. Five years to
10 begin initial discussions with the City over the
11 creation of a dedicated track?

12 A No. The property was not owned by the
13 City. I don't believe -- I don't know what time,
14 they had been transferred to the City
15 post-Katrina. There used to be a CSX station
16 building there. So the property was transferred
17 to the City at some point, I assume, post-Katrina.

18 The discussions we -- we had -- both
19 SRC, I believe, had with the City, for several
20 years, there was actually plans in the document
21 that was shared with me today that had been
22 communicated to SRC and to other -- to the various

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3306

1 parties -- a number of parties about the
2 development of the station at the downtown
3 location. So it has been something that has been
4 talked about for a number of years. We have not
5 been sitting on that request, but it has
6 progressed.

7 Q So just -- and just to clarify, so
8 the -- part of that property is, in fact, owned by
9 CSX, but they've leased that property to you;
10 isn't that correct?

11 A I don't know that we lease it or whether
12 we just use it under the terms of the operating
13 agreement.

14 Q It's my understanding you lease it. Do
15 you know what the actual term amount is that CSX
16 leased that property to you for?

17 CHAIRMAN OBERMAN: You know, just a
18 moment. Ray, would you confine your remarks to
19 questioning and not testifying?

20 BY MR. ATKINS:

21 Q Yup. Yes. Do you know -- I'm sorry.
22 Mr. Blair, do you know what -- the amount of money

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3307

1 that CSX demanded from Amtrak in order to lease
2 that line to you?

3 A No, I do not.

4 Q Okay. So -- so you say that in your
5 initial discussions with the town of Mobile --
6 this is the same town of Mobile where the mayor --
7 you saw his testimony -- objects to the location
8 of the track in downtown Mobile, and would prefer
9 it to be at Brookley Yard; correct?

10 MS. AMUNSON: Objection. Misstates the
11 testimony.

12 MR. ATKINS: Well, this is negotiations
13 with the city's mayor --

14 CHAIRMAN OBERMAN: Hello. Ray, hold on.
15 There's an objection. What is the objection?

16 MR. ATKINS: I'll withdraw and restate
17 the question, Chairman.

18 CHAIRMAN OBERMAN: All right.

19 BY MR. ATKINS:

20 Q So these are negotiations with the same
21 mayor who had submitted testimony in this case
22 about their views on the proper location of the

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3308

1 station track; correct?

2 A These are not discussions with the
3 mayor; they're with the mayor's administration.
4 But -- but, yes, they're -- they're the
5 discussions with the administration of the City of
6 Mobile, yes.

7 Q And what do you propose the board or CSX
8 or Amtrak do if you are unable to secure a
9 dedicated track at the Mobile station?

10 A Do you mean if we're unable to build a
11 layover at the historic station site?

12 Q Correct. As was -- as was indicated
13 by -- as recommended by the Gulf Coast Working
14 Group.

15 A So Amtrak has been willing to store the
16 train at a location of CSX's choosing in Mobile.
17 I think we've identified that. And it was in my
18 several letters to CSX. We would like an order
19 that that be permitted to happen. We're willing
20 to work with CSX as to whether or not that is in
21 Choctaw or some other location, the -- that might
22 be more easily accessible versus what Choctaw is.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3309

1 But those were two suggestions that -- that we
2 had.

3 Q So your suggestion would be if the
4 Choctaw Yard becomes permanent?

5 A I'm sorry, that the Choctaw Yard --

6 Q That the layover at the Choctaw Yard
7 become a permanent location to lay over the trains
8 in lieu of -- if you cannot secure a dedicated
9 track at Mobile.

10 A Not necessarily. The -- you know, we
11 could relocate to another location. There --
12 there are a number of places where a 400-foot
13 train could be parked. I guess, our --

14 Q But you have a recommendation -- okay.
15 I'm sorry. I didn't mean to interrupt. Please
16 continue.

17 A No, that's fine. Go ahead.

18 Q Okay. There's a little bit of a lag.
19 So under any of those circumstances, you'd be
20 blocking the main line in Mobile eight times a
21 day; isn't that correct?

22 A We wouldn't be blocking the line eight

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3310

1 times a day. It would just change the operations.
2 It wouldn't be blocking the line eight times.

3 Q You wouldn't be occupying the line for
4 eight discrete movements every day?

5 A You're using two terms I think are
6 contradictory. You're saying "blocking" and
7 "moving." If we're on the line, we would be -- if
8 we're moving, once we deboard our passengers, the
9 train would then move to a storage location, move
10 directly to the storage location, and lay over
11 there until the afternoon.

12 Q But for the -- for the totality of the
13 time that you're on the line, there's no freight
14 operation that is going to operate over Main Line
15 1; correct?

16 A Did you say on Main Line 1?

17 Q Yes, the line to which you're going to
18 be coming into and exiting the station.

19 A For however long we are deboarding
20 passengers, and then for however long it takes us
21 to clear Main Line 1, then, presumably, yes.
22 Nothing else is operating on Main Line 1.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3311

1 Q Did you hear testimony from Ricky
2 Johnson that said that --

3 (Reporter clarification.)

4 (Off-the-record discussion.)

5 THE WITNESS: Please repeat the
6 question.

7 BY MR. ATKINS:

8 Q Thank you. Did you hear the testimony
9 of Mr. Ricky Johnson that, if you're going to lay
10 over at Choctaw Yard, that you're going to need to
11 traverse Main Line 2 to get there?

12 A I don't recall that testimony.

13 Q Okay. So when it became apparent that
14 you were not going to have a dedicated track at
15 Mobile, did you consider any other alternatives to
16 the Choctaw Yard, for example -- well, let me
17 pause there. Did you consider any other
18 alternatives, rather than just moving forward with
19 the project and put the layover station in Choctaw
20 Yard?

21 A In fact, in my correspondence to CSX, I
22 invited CSX to offer something up that might be

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3312

1 feasible if Choctaw was unattractive to them.

2 Q My question is, did you -- did you
3 analyze any other alternative?

4 A Yes, we did.

5 Q What were they?

6 A We looked -- we looked at industrial
7 sidings all in the Mobile area.

8 Q Did you explore the possibility of
9 moving the station temporarily to -- over to
10 Berkeley instead of Mobile so you're not blocking
11 the main line for an extended period of time?

12 A You mean Brookley?

13 Q Yes.

14 A There's no station facility there,
15 there's no platform there, there's no parking
16 there. So, yes, that's -- that, in fact, was one
17 of the iterations that we intended to run as a
18 part of the modeling, but there is no
19 infrastructure there. All of that would have to
20 be built, whereas the current platform merely
21 needed rehabilitation.

22 Q So, Mr. Blair -- and I know you were

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3313

1 asked this question about cost-benefit analysis.
2 I couldn't quite hear it previously, but did
3 you -- when you were designing this service and
4 were going to have it land in downtown Mobile, as
5 opposed to at the airport, did you do any
6 cost-benefit analysis of the difference between
7 those two locations to the overall success of the
8 line?

9 A I'm not aware Amtrak ever evaluated
10 the -- a ridership impact related to locating the
11 station at Brookley Field. And we typically don't
12 do cost-benefit analyses ourselves. We may
13 cooperate with our state sponsor of -- of the
14 service for them to do a cost-benefit analysis.

15 Q Okay. And I know there's a lot of
16 testimony previously about ridership studies. So
17 I'm going to ask -- to show you Exhibit Norfolk
18 Southern -- CSX Northfolk Southern 167, which
19 is -- although it says confidential on it, it was
20 redesignated public by Amtrak in the fall of this
21 year. So if you can take a moment to familiarize
22 yourself with that, Mr. Blair. I don't mean to

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3314

1 rush you.

2 A I presume -- I presume there was one
3 line in particular you would like me to look at
4 here?

5 Q You'll see that -- you'll see the Gulf
6 Coast one, but, honestly, I'd like you to look at
7 the totality of the document, not just -- it's
8 2022 ridership projections. You'll see it's a
9 five-year. So there's 2003, there's 2004. I
10 think there's a typo. I mean, 2004 is repeated --
11 2025 and 2026.

12 A Okay. Thank you.

13 Q So, Mr. Blair, have you seen this type
14 of document before?

15 A I don't recall. I may have seen -- I
16 have seen Amtrak's five-year plans before, but I
17 don't recall this specific table.

18 Q Right. But does this appear to be an
19 Amtrak five-year ridership projection for all of
20 the services that you offer, both the
21 state-supported routes and the long-distance
22 services?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3315

1 A Yes, that appears to be what it is.

2 Q Is it customary for Amtrak to do
3 five-year ridership projections as part of its
4 ordinary course of business?

5 A I -- I don't know. I apologize.

6 Q I can't hear you, unfortunately,
7 Mr. Blair. There you go.

8 A I don't know. I'm not sure.

9 Q Have you seen these documents as part of
10 your role at Amtrak?

11 A I don't know that I've seen a five-year
12 ridership projection before, but it wouldn't be
13 something that I would be necessarily looking at
14 in the ordinary course of business.

15 Q Okay. So, Chairman -- so we've been
16 using exhibits just on cross, but I'd like to
17 actually introduce this exhibit into the record.
18 It was a ridership projection provided by Amtrak
19 in discovery, so it's a document they produced in
20 discovery. It shows the ridership for all of
21 their various lines over the course of five years,
22 and we'd like it in the record so that we can

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3316

1 refer to it in closing.

2 CHAIRMAN OBERMAN: Is there any
3 objection?

4 MS. AMUNSON: No objection.

5 CHAIRMAN OBERMAN: It will be received.

6 BY MR. ATKINS:

7 Q And thank you.

8 So, Mr. Blair, just one last question,
9 then. You will see that on 2022 ridership
10 projections, you've got one for Gulf Coast. It
11 is -- it's in the state-supported subsection.
12 It's about fourth from the bottom.

13 A Yes, I see that. Thank you.

14 Q Now, do you have any reason to believe
15 that that's not the Gulf Coast service that we're
16 talking about here today?

17 A I don't know what it refers to, but I --
18 I -- it's entirely possible it refers to the
19 service that we have proposed here today. But I
20 can't confirm that.

21 Q So, Mr. Blair, is there another Gulf
22 Coast service that Amtrak currently operates?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3317

1 A No. I'm sorry. I don't mean it that
2 way. I mean that I don't know what assumptions
3 were in -- based in this projection. This was --
4 this was a fiscal -- this was a fiscal-year
5 '21 plan, the projected fiscal '22 ridership. So
6 I don't know whether the proposed service that we
7 have brought before the board is consistent with a
8 plan that was developed in 2021.

9 Q Okay. So I understand you don't know.
10 I just want to confirm that there's not multiple
11 Gulf Coast state-supported routes. There's just
12 this one; correct?

13 A This is the route that we refer to as
14 the Gulf Coast service.

15 Q Thank you. And what you're projecting
16 for 2022, is 24,300 riders, per -- per year?

17 A I would assume that's the case since
18 it's the fiscal '22 ridership projection. Each
19 year has its own, all the way up to 2026, where
20 Gulf Coast shows 65,000 riders.

21 Q Yup. Okay. I just want to make sure
22 I've got all the numbers right. And then if you

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3318

1 look off into the very last column, which is the
2 Allocated Contribution or Loss Per Rider, you're
3 projecting that each rider will lose \$336 per
4 rider in the first year; is that correct?

5 A Well, I assume this was the first year
6 of operations. I can't confirm that, again, but I
7 assume this was projected as the first year of
8 operations. But, then, yes, I see it declines
9 over -- over the years.

10 Q Yup. Understood. Mr. Chairman, I have
11 no further questions for this witness.

12 CHAIRMAN OBERMAN: Thank you, Ray. Off
13 the record.

14 (Off-the-record discussion was held.)

15 BY CHAIRMAN OBERMAN:

16 Q In the Gulf Coast Working Group report,
17 which I think we have -- I have to press my
18 button. In the Gulf Coast Working Group report,
19 which was Joint Exhibit 1B, if you turn to page --
20 Bates number 23, page 23 of the report.

21 No better, huh? All right. Are you
22 there?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3319

1 A Yes, sir. I'm there.

2 Q All right. So the -- in the second full
3 paragraph, it says, "Developing this list into an
4 implementation plan that finalizes how proposed
5 improvements will be advanced will require
6 additional operations analysis and discussions
7 among CSX."

8 Do you have an understanding of what
9 kind of operations analysis this is referring to?

10 A I -- I don't -- I don't know,
11 specifically, what operations analysis was
12 referred to in this context, but I presume it's
13 similar to the kinds of discussions that we have
14 with CSX or any other railroad on a routine basis,
15 where we talk about what may need to be done to
16 improve Amtrak performance.

17 So it would be -- our train is proposed
18 to operate at this point, your train operates at
19 that point. If you move 15 minutes, you move 15
20 minutes. We'll stay out of each other's way.
21 That's a real example that we had with CSX that we
22 worked with. Or we look at, you know, where we

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3320

1 have recovery time in the schedule, so that -- so
2 that we can make our trains avoid each other as
3 much as possible.

4 Q Well, is it your understanding that in
5 deciding, you know, on how to move forward with
6 reinstating the Gulf Coast service, that an
7 operations analysis would be undertaken to
8 minimize the interference between passenger and
9 freight?

10 A It -- it was my understanding that
11 that's what we were going to do as our next step,
12 which is why we did the outreach -- or why
13 Mr. Anderson did the outreach in 2018 to try and
14 begin the evaluation with CSX again. So the --
15 that was the next step that we were trying to take
16 was a -- an operations analysis, which, in that
17 case, was utilizing the RTC model.

18 Q Well, the thing I find confusing is
19 that, if I look at Exhibit 7G, which was all three
20 of your agreements involving the RTC study -- let
21 me just identify them. One is the RTC study
22 agreement. You testified about these earlier. I

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3321

1 think you were one of the signatories. And then
2 there was the data-sharing agreement, and I think
3 there's a third agreement in there.

4 There's a letter agreement towards the
5 end. You know what I'm looking at? In the RTC
6 study agreement -- it's Paragraph 3 -- it says
7 that -- 3C says, "No future iteration shall
8 include changes to NSR freight operations other
9 than freight traffic growth and, no future
10 iterations shall include changes in projected NSR
11 freight traffic growth. Any changes to CSXT's
12 freight operation shall require the approval of
13 CXST's sole discretion, such approval not to be
14 unreasonably withheld, etc."

15 So it -- it appears that in the RTC
16 study agreement, which Amtrak signed with your
17 signature, you were planning, at least, if not to
18 do operations analyses, there were some hurdles
19 put forward before the RTC study could do
20 operations analyses. Is that the way this
21 contract reads, as you understand it?

22 A Yes. We -- we were limited in what we

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3322

1 were able to analyze, based on the agreements.

2 Q Well, let me ask this question: In the
3 Gulf Coast Working Group study -- and you repeated
4 that language in your verified statement in this
5 case that we just read from the Working Group
6 study about an operations analysis. It was your
7 view then that an operations analysis needed to be
8 done. But then when you got to the RTC study, it
9 appears that the agreement says, No, we're not
10 going to allow an operations analysis; is that
11 correct?

12 A It -- it certainly limited -- it limited
13 what kinds of operations analysis we could
14 conduct. The agreements did limit the amount of
15 types of operations analysis we could conduct.

16 Q Was that limitation something that the
17 railroads requested and you assented to?

18 A It was something that the railroads
19 insisted on that we assented to, yes.

20 Q Well, you said before that Amtrak has
21 used RTC modeling itself. Do you -- when Amtrak
22 does RTC modeling, does it include operational

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3323

1 changes to see if you can improve the fluidity of
2 the line with operational changes, as
3 distinguished from infrastructure changes?

4 A Yes. In fact, that's -- that's mostly
5 what we do, where we have the tight tolerances
6 between Amtrak and commuter agencies. It's often
7 a case of moving, you know, a train just a few
8 minutes one way or another to provide a window for
9 another train to operate.

10 So the -- you know, sometimes that
11 requires RTC analysis. Sometimes it can just be
12 done by -- by, you know, utilizing comparative
13 schedules. But most of the work that we do in --
14 in -- on the Northeast Corridor is very tight
15 tolerance work, and most of it is operational in
16 nature.

17 Q When Amtrak -- when Amtrak reached the
18 conclusion that it supported the Working Group
19 recommendation of roughly \$100 million in
20 infrastructure, was it Amtrak's understanding that
21 would be taxpayer money, if that's how these
22 projects were to be built?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3324

1 A Yes. For state-supported services,
2 Amtrak typically works with the states, leveraging
3 federal dollars for infrastructure investment. So
4 when the Gulf Coast Working Group report was
5 developed, even the prior study that Member Fuchs
6 had mentioned earlier, Amtrak contemplated that
7 there would be a series of infrastructure projects
8 phased in over time, each one with a federal cost
9 benefit -- or federal grant -- through a federal
10 grant program or a cost-benefit analysis or some
11 portfolio of projects through a federal grant
12 program with a cost-benefit analysis.

13 That's very similar, again, to what we
14 do in routes all over the country, is identifying
15 improvements that can improve intercity passenger
16 rail service reliability, reduce trip time. It
17 identifies projects that can be candidates for a
18 federal grant program that produce independent
19 benefits.

20 Q But, at least preliminarily, Amtrak
21 supported the idea of \$100 million of expenditures
22 for the Gulf Coast line, even if you were going to

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3325

1 wait until your funding, I gather what you're
2 really saying is refining the cost benefits for
3 each project as time went on, is that the way to
4 understand it?

5 A I think both in Amtrak's letter to
6 Administrator Feinberg and his comment, which
7 ultimately became comments to the Gulf Coast
8 Working Group report, it contemplated a phased-in
9 approach, which typically aligns with the federal
10 grant programs that are typically annually
11 authorized or, you know, in the case of IJJA, it's
12 been a little different. It's a five-year
13 authorization.

14 But projects are identified, progressive
15 series of projects are identified, and progressive
16 investments are made on corridors to improve
17 Amtrak intercity performance. The -- the Gulf
18 Coast Working Group aligned with Amtrak's own
19 analysis that also included a phased approach,
20 included many of the same projects that were in
21 the Gulf Coast Working Group report.

22 And again, this is not something I was

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3326

1 involved with, but I can track the respondents and
2 the communications. So it didn't seem a -- it
3 seemed as though we had triangulated on a common
4 number and several common investments on the
5 corridor, both between the Amtrak analysis and
6 FRA's analysis in the Gulf Coast Working Group
7 report.

8 Q Well, you wouldn't -- I assume it's fair
9 to say that Amtrak wouldn't have come out with any
10 kind of positive support of spending \$100 million
11 on infrastructure, whether it was immediately or
12 phased in, if you didn't think the line needed
13 that kind of infrastructure investment, or at
14 least in that ballpark. Would that be fair?

15 A That would be fair. Yes, sir.

16 Q And was the reason -- so when you
17 say "phased in," I've never seen a time period,
18 unless I've missed it, over which, other than the
19 initial station track, the rest of the projects
20 would be built. Is that spelled out somewhere,
21 anywhere?

22 A I believe it's in Section 7 of the Gulf

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3327

1 Coast Working Group. Or Table -- it's in Table 7
2 on Bates page 42. It was a five-year funding
3 plan, identified with improvements.

4 Q And how is the five-year time frame
5 arrived at?

6 A I assume that -- that work is probably
7 FRA's estimate, based on appropriations for the
8 federal grant program, how much money might be
9 available in each year's worth of a CRISI program
10 or a state partnership program, as far as funding.

11 Q So it has to do with when funding is
12 available, and not when any of the projects that
13 will be built in each of those five years will
14 affect freight or passenger operations?

15 A Well, it's both. We -- we have the
16 opportunity to bundle projects, to recognize
17 high-priority projects. In fact, the SRC's work
18 with Amtrak in identifying high-priority projects
19 was what was the genesis of the \$66 million that
20 was awarded to SRC for infrastructure improvements
21 on the Gulf Coast.

22 So there was an opportunity to bundle

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3328

1 projects, but the larger the portfolio of
2 projects, sometimes the more difficult to get it
3 funded through the federal grant program. You
4 know, you can't have too big a project,
5 representing too much of the -- the grant monies
6 available. So we are always trying to -- to
7 navigate what is the appropriate size of the grant
8 and the need and when those needs would -- would
9 be most effectively implemented.

10 Q I have more questions on that, but I
11 think they may be directed to your capacity study
12 witness who's coming in after you, I think. I
13 want to get to this question about the data.

14 MEMBER FUCHS: Marty, can I follow up on
15 this?

16 CHAIRMAN OBERMAN: Yeah. Sure. Go
17 ahead.

18 BY MEMBER FUCHS:

19 Q Mr. Blair, you mentioned that the
20 scheduled funds are at least partially related to
21 the availability of funds. When the Gulf Coast
22 Working Group report was drafted, how much money

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3329

1 was available within CRISI? And maybe even if you
2 can point to a ballpark of its authorized level,
3 as well.

4 A That's a good question. I don't know
5 what was identified in the -- in Section 5 of the
6 Gulf Coast Working Group report was they
7 identified several programs with amounts that were
8 available as of those dates. So it identifies
9 CRISI as 68 million for fiscal year '17,
10 restoration enhancement grants, which, operating
11 expenses was \$5 million for 2017. The current
12 amount for restoration enhancement is 250 million,
13 so we're dealing with a much bigger opportunity
14 now.

15 Q And how much does the IIJA appropriate
16 and authorize for CRISI?

17 A I believe it's 6 billion.

18 Q And so if the schedule of projects was
19 at least partially affected by the availability of
20 funds, and the availability of funds has
21 substantially changed, does that change your
22 assessment of the schedule of projects?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3330

1 A That's -- that's possible, if there's a
2 need for the projects, in -- in the near-term,
3 then that does change the opportunity for funding.

4 Q There's nothing about the timing of
5 projects that would suggest that their
6 benefit-to-cost ratio would change substantially
7 in years three, four, or five, compared to before
8 services started?

9 A I'm not sure I would agree with that,
10 but -- because traffic has changed, and CSX's
11 operating practices have changed significantly,
12 even since the period of the Gulf Coast Working
13 Group.

14 Q Would any of the projects here no longer
15 have benefits that exceed cost?

16 A I -- from the list that I recall, I
17 can't think of any that would not still have a
18 positive BCA.

19 Q And, maybe backing out, you -- do you
20 agree with the general assessment that CSX did not
21 evaluate the benefits of any project, benefits
22 say, for example, in terms of mitigating freight

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3331

1 delay, you know, compared to a project's cost?
2 And do you agree with Mr. Crowley's assessment
3 that such an analysis would have been helpful for
4 shedding light on what's reasonable?

5 A I'm sorry to ask you to repeat a
6 complicated question or a two-part question.
7 Could you?

8 Q We'll take it one at a time. So you
9 agree that CSX didn't evaluate the benefits and
10 costs from any of the projects?

11 A Yes, that's my understanding.

12 Q Okay. And Mr. Crowley testified that
13 such an analysis would be helpful, integral. Do
14 you agree that it would shed light on the
15 reasonableness of a project?

16 A Well, I think -- and I can't speak for
17 Mr. Crowley, but I think it's a part of the
18 evaluation as to what is the lowest-cost solution
19 to satisfy the need or to satisfy the condition
20 that is presented in the operation conflict, let's
21 say. I noted in the Gulf Coast Working Group
22 report a number of the issues were speeding up --

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3332

1 you know, speeding up operations through sidings.

2 And that was not something that seemed
3 to be given much credibility in the latest RTC
4 modeling. It may be as a result of changes in
5 CSX's operating plan, changes in train length,
6 but, typically, our modelers -- and I'm sure
7 CSX's, as well, and -- if they're looking in their
8 own business -- are looking at what's the
9 lowest-cost solution to solve the problem that I
10 can find.

11 Q But you would agree that it would not be
12 reasonable to order an infrastructure project that
13 has costs that would exceed whatever its benefits
14 are?

15 A Well, I think we do entertain projects
16 like that when they have safety benefits,
17 typically, but not otherwise. We're typically
18 looking for a BCA that's positive.

19 Q But unless there's a safety benefit?
20 Okay. It would be reasonable -- the
21 reasonableness is the benefits that exceed cost.
22 So kind of moving to the matter at hand, you know,

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3333

1 you had stated that Amtrak has not conducted a
2 cost-benefit analysis of this service.

3 Bearing in mind your statement prior
4 about reasonableness being tied to benefits and
5 cost, would it be reasonable for the -- or would
6 it be fair for the board to consider the
7 reasonableness of the impediment by comparing the
8 cost to the freight network versus the benefits of
9 the passenger service? Well, the cost overall
10 including the costs on the freight network versus
11 the benefits of the passenger service.

12 A Well, I'm not -- the statutory structure
13 under which the case was brought, I don't know
14 that it really calls for that. But I --
15 certainly, the board has broad powers to consider
16 what it needs to in making a decision in that
17 context.

18 Q Is it your assessment in thinking about,
19 let's say, for example, impediments to Amtrak's
20 network if Amtrak were to add trains that, looking
21 at the cost that are imposed by the service,
22 compared to the benefits that are achieved by the

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3334

1 service, broadly speaking, make sense for whether
2 or not causing that impediment is worth whatever
3 you're getting?

4 A And I guess the question is what are you
5 getting? I mean, because if we're talking about
6 the benefits side or the Amtrak in conjunction
7 with the -- the Amtrak Connects US vision
8 published some statistics or some data on the
9 primary and secondary benefits of intercity
10 passenger rail in the various markets that we
11 propose to enter into.

12 That would be, presumably, part of any
13 cost-benefit calculation, as well. And -- you
14 know, and we would probably further refine those
15 as we look at each service. I -- in looking at a
16 cost-benefit analysis, typically, you want to look
17 at all of the costs and all of the benefits in the
18 evaluation.

19 Q Right. Right. So I'll just wrap up
20 here. And that's on the benefit side. And then
21 on the cost side, the board could look at the cost
22 to, say, freight shippers in terms of delayed

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3335

1 transit times, missed switches, and that sort of
2 thing, and look at the cost of freight and compare
3 the two?

4 A I think that's certainly a reasonable
5 way to look at it, but in the same vein as
6 infrastructure, oftentimes, operational changes,
7 just like we do in the Northeast Corridor to
8 adjust for commuter operations, can be done at
9 little or no cost to -- you know, to our
10 passengers or commuter partners.

11 Q Thank you.

12 CHAIRMAN OBERMAN: All right. We're
13 going to take a break. It's 4:05. We'll be back
14 at 4:15.

15 (Off the record.)

16 CHAIRMAN OBERMAN: Okay. Karen Hedlund
17 had questions.

18 BY MEMBER HEDLUND:

19 Q If -- you've requested that the board
20 order the railroads to allow you access to run
21 your four trains a day with -- initially, without
22 any additional infrastructure, other than the

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3336

1 station improvement --

2 (Reporter clarification.)

3 BY MEMBER HEDLUND:

4 Q In this proceeding, Amtrak is asking the
5 board for an order that you be allowed to run on
6 the Gulf Coast initially without any additional
7 infrastructure, other than the improvements to
8 stations that you're already contemplating; is
9 that correct?

10 A Yes.

11 Q What's the run time between New Orleans
12 and Mobile that that contemplates?

13 A We've proposed a schedule of three hours
14 and 23 minutes.

15 Q What priority for Amtrak trains does
16 that contemplate?

17 A Contemplates receiving the statutory
18 preference.

19 Q So if there's any conflict between you
20 and a freight train, the freight trains would have
21 to give way?

22 A I -- I don't want to necessarily

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3337

1 scenario-ize that, I guess, question. So, I
2 guess, you know, we -- we tender our trains to the
3 railroads for dispatching across the railroad. We
4 assume they will honor the statutory preference.
5 And that's what we assume, typically, in designing
6 our schedules. So I think that contemplates that
7 we will not be delayed by schedule versus what we
8 have proposed by freight operations.

9 Q What would your run time be once all the
10 infrastructure is built?

11 A We proposed the 3 hours and 23 minutes.
12 The infrastructure that was contemplated in the
13 Gulf Coast Working Group report that we saw
14 fundamentally only speed up operations in and out
15 of sidings. You have to evaluate how much time we
16 could take out, based on, again, looking at
17 operational analysis, looking at the service over
18 time.

19 That's typically, again, how we do it
20 on -- on routes around the country. If there's
21 time that we find we're waiting excess time in the
22 schedule, we'll propose to take it out to reduce

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3338

1 the trip time.

2 Q Why would you be taking sidings?

3 A Well, or -- or if we're not taking a
4 siding, it allows the freight trains to clear up
5 faster. Those were the two identified benefits in
6 the Gulf Coast Working Group report about the
7 speed increases and the larger turnout radius were
8 proposed as -- investments.

9 The third major investment besides the
10 Gentilly Yard Bypass was also the length of the
11 siding to allow certain switching to take place
12 off of the line. And, again, the presumption is
13 that will reduce a conflict that may allow us to
14 reduce trip time over time.

15 Q But are you saying that the -- I mean,
16 you've described the infrastructure improvements
17 as improving Amtrak's service. You haven't
18 described it in terms of reducing delays to the
19 freight railroads.

20 A I guess I'll -- perhaps, to clarify,
21 the -- it allows freight operations, perhaps, to
22 move more quickly when Amtrak's operations are

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3339

1 also on the line. So, a -- a, for example,
2 large-radius turnouts or the speeds -- increasing
3 the speeds in sidings allows trains to clear up
4 faster for an Amtrak operation and then allows
5 them to get back on the main line faster.

6 So it, perhaps, speeds up the operation
7 of the freight train that may have otherwise been
8 impacted by the Amtrak operation by going into a
9 siding.

10 Q So it's your position that the delays to
11 the freight network, by having to take sidings to
12 let Amtrak go through from day one, does not
13 constitute a substantial impairment, significant
14 impairment -- whatever the magic words are -- to
15 freight service; is that correct?

16 A I mean, the unreasonable impairment?

17 Q Yes. Unreasonable impairment.

18 A Yes. Our position is that the impact of
19 the trains that we have proposed to operate would
20 not create an unreasonable impairment for the
21 freight operations on the Gulf Coast line.

22 Q So why would you consider asking the

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3340

1 taxpayers to pay for the infrastructure
2 improvements if, then, they're not needed for your
3 service?

4 A They -- they would both increase the
5 reliability of the service and potentially reduce
6 the trip time. So those are the two things that
7 we see as potential benefits of the -- of the
8 programs or the program of the -- of improvements
9 that were recommended in the FRA -- in the FRA
10 report. And, again, I think those are two things
11 that FRA specifically cited as the benefits of
12 those investments.

13 Q Why would your service be unreliable or
14 vary in reliability if the freight trains are
15 always getting out of the way?

16 A It's just a function of clearing up.
17 So, for example, a -- if an Amtrak train is
18 approaching, and a freight train is moving into a
19 siding, the speed with which they move into that
20 siding could cause a delay to the Amtrak train as
21 it is approaching. So it might get a restricting
22 signal or a less-than-favorable signal until the

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3341

1 train is cleared up.

2 Q So you are assuming that Amtrak will
3 take delays initially that it won't have to take
4 once the infrastructure is built?

5 A That's our expectation, and we've tried
6 to allow for that in a -- in a longer trip time
7 than Amtrak had previously contemplated on the
8 route, that could then be reduced over time.

9 Q What's the difference between the two?

10 A The current schedule is three hours and
11 23 minutes. The previous schedule was three hours
12 and 10 minutes, I believe, when Amtrak operated
13 the corridor with the Gulf Coast Limited.

14 Q So you're talking about a 10-minute --

15 A Potentially a 10-minute reduction.

16 Q -- reduction?

17 A In trip time.

18 Q In trip time over three hours. Sorry,
19 my fault.

20 A That's okay. Yes, potentially a trip
21 time over three hours. The other things that --
22 other things that were not contemplated in the

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3342

1 FRA's report that we would want to look at would
2 be increased speeds in the corridor. So could we
3 operate something above 79 miles an hour to reduce
4 the trip time further? The -- while the service,
5 three hours and 23 minutes, is competitive
6 vis-a-vis peak service driving time of about two
7 hours and 45 minutes, unobstructed driving time is
8 lower.

9 And so while we're proposing to operate
10 these trains during peak hours, and makes --
11 that's typically our most competitive time versus
12 driving, if we were to add a service over time
13 later, we would be operating at times when the
14 highways are less congested, and we might need a
15 lower trip time in order to be competitive.

16 Q But you're not proposing, at this point,
17 more than four trains a day?

18 A That's correct.

19 Q Thank you.

20 MEMBER HEDLUND: That's all I have,
21 Mr. Chairman.

22

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3343

1 BY CHAIRMAN OBERMAN:

2 Q Mr. Blair, just to follow up on that
3 point, and maybe I missed something. The place
4 that we were just looking at, at the Gulf Coast
5 Working Group study, on page 23, in Section
6 4.5.2.3, says the proposed improvements "will help
7 rail freight services as well as accommodate the
8 passenger service."

9 So isn't it the position of the Gulf
10 Coast Working Group, supported by Amtrak, that at
11 least that \$100 million in infrastructure was
12 to "help the freight rail services"?

13 A Yes. That would -- there would be
14 incidental benefits to freight operations if
15 trains are able to meet and pass more quickly than
16 they do today. In addition, the longer sidings
17 are potentially able to meet longer trains that
18 currently can't meet on the route today. So we
19 saw those benefits as being helpful, also, to
20 freight operations.

21 In addition, the speeds that were
22 contemplated on the bridges or the improvements to

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3344

1 the minor rails would also potentially speed up
2 operations across the line for all trains, not
3 just -- not just the passenger trains.

4 Q All right. I'm going to switch down
5 to --

6 MEMBER FUCHS: Before we switch?

7 CHAIRMAN OBERMAN: Go ahead.

8 MEMBER FUCHS: Just on this point.

9 The key point, though, is that it is
10 possible to quantify effects on freight service?

11 THE WITNESS: I believe, yes, it can be
12 quantified.

13 MEMBER FUCHS: Okay. Thanks, Marty.

14 BY CHAIRMAN OBERMAN:

15 Q Bear with me for a moment here. I want
16 to get to this question of Amtrak's access, or
17 lack thereof, to data. And I don't want to go
18 back through all of the -- there's been plenty of
19 discussion and showing the exhibits to you and the
20 railroad's witnesses about the back and forth,
21 about who agreed to what.

22 It was pretty clear, as I understand it,

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3345

1 to you, Mr. Blair, by the time Amtrak filed this
2 case, which was a little over a year ago, that, at
3 that time, Amtrak did not have the data it now
4 says it needed to validate and replicate the RTC
5 study, which has been filed in this case. Is
6 that -- is that where you were as of a little over
7 a year ago?

8 A So the data request you're asking about
9 is whether Amtrak received sufficient data to
10 conduct its own RTC modeling ever? Or are you
11 talking about the 2020 study and the data concerns
12 we had there about transparency?

13 Q Well, as I understand it, the data
14 concerns have translated from then all the way up
15 to the present. In other words, you couldn't get
16 the data you wanted, and, therefore, you didn't
17 renew the HDR study at the beginning of 2020.
18 You, Amtrak, then decided to file this case. The
19 railroads then went off and did their own RTC
20 study without Amtrak's participation.

21 And now Amtrak's position in this case
22 has been -- because you didn't get the same data

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3346

1 that you were looking for back in 2020, based on
2 the way the data was produced to Amtrak in this
3 case, you don't have enough data to validate -- I
4 think is Mr. Crowley's phraseology -- the RTC
5 study done by Mr. Dingler, nor did it allow you to
6 do your own RTC study in connection with this
7 case. Is that the way to understand Amtrak's
8 position?

9 A Well, under the -- under the -- I mean,
10 I'm not permitted to see that data, as an employee
11 of Amtrak. So I can't speak to whether or not
12 there was sufficient data or not. What my
13 understanding, from outside counsel and from
14 the -- the folks at L.E. Peabody, was that they
15 did not have sufficient data in what -- in the
16 information that they received from NS and CSX to
17 create a -- an RTC model.

18 Q And you accepted that report, and that's
19 the information you've been operating on in
20 preparing this case, that your experts don't have
21 all the data that they need. You don't question
22 that; correct?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3347

1 A Well, I question that to the extent of
2 asking Amtrak's in-house RTC modeler whether or
3 not -- you know, what information we felt we
4 needed, and then shared that with outside counsel
5 to see whether we had all the pieces in order
6 to -- to conduct that kind of a study. And they
7 both came back to suggest we did not have
8 sufficient data to independently perform an RTC
9 analysis.

10 Q Well, you knew -- that didn't happen
11 after you got the RTC study after this case
12 started; right?

13 A Yes. I believe that's correct.

14 Q But you knew when the case was filed
15 that you were at loggerheads with the railroads by
16 the end of 2020, which led to the termination of
17 the HDR study?

18 A Yes.

19 Q And, based on your dealings and your
20 awareness of the dealings between Amtrak and the
21 railroads at the time the HDR study was going on,
22 would it be fair to conclude that once you filed

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3348

1 this case, without some effort, you didn't think
2 the railroads were going to give you the same
3 access to the same data they refused to give
4 access to you the year earlier? Would that be a
5 fair understanding of what your knowledge was?

6 A Yes. I would -- I presume that. I
7 don't know that I articulated that, but I presumed
8 that we would not miraculously be given all the
9 data, once we had filed, that we never got in the
10 years prior.

11 Q All right. And I understand you're not
12 a lawyer -- maybe you are a lawyer, but you're
13 certainly not a lawyer in this case. Hopefully,
14 you're not a lawyer. There's way too many lawyers
15 in this room, including some up here.

16 But you've been involved enough with
17 Amtrak cases to know that, at least in front of
18 the board, there is a discovery process in which,
19 as a party, through your lawyers, you can ask for
20 data?

21 A Yes, sir.

22 Q So were you any part of a decision as to

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3349

1 whether, when this case began, to -- through the
2 discovery process, demand, as you could, or at
3 least ask, for all of this data that you have been
4 deprived of since going back to the HDR study?

5 A Mr. Chairman, I don't know that I can
6 share that without being part of the discussion I
7 had with counsel.

8 MS. AMUNSON: Mr. Chair, may I suggest
9 that these questions might be better directed at
10 counsel, in terms of -- I think things are getting
11 a little bit confused between what was available
12 through the discovery process. And Mr. Blair was,
13 of course, not intimately involved in that.

14 CHAIRMAN OBERMAN: And I don't want to
15 infringe on attorney-client privilege, which I
16 assume you would concur with what Mr. Blair just
17 said.

18 MS. AMUNSON: Yes. And to the extent
19 that -- that we had discussions, I don't think he
20 should be testifying to the substance of
21 attorney-client discussions.

22 CHAIRMAN OBERMAN: Agreed. Well, let me

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3350

1 just say, for the record -- I don't want to divert
2 now, because I want to finish with Mr. Blair's
3 testimony as much as possible. But there's been a
4 lot of discussion in this case about lack of
5 access to data. And a number of witnesses and, in
6 verified statements -- and I thought it was in
7 Mr. Blair's statement, but it might have been one
8 of the other witnesses who said, Well, the
9 discovery schedule that was set by the board after
10 the parties' proposed one was too short to get the
11 discovery that was needed.

12 No one ever came in here and said, We
13 need more time to get the discovery we need. We
14 still don't have the data, and we can't do
15 anything without the data. And that is something
16 I would like somebody to enlighten the board on as
17 to Amtrak's decision-making to not fight for data
18 through discovery and then come in here and said,
19 We don't have the data because we didn't have
20 enough time for discovery.

21 But you don't have to -- I don't want to
22 detract from getting Mr. Blair out of here. It's

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3351

1 something I certainly want to be enlightened on,
2 although I don't know that it ultimately affects
3 the decision in this case; it's been raised so
4 many times that I find it quizzical, at best, as
5 to why we got into this situation.

6 MS. AMUNSON: Certainly, Mr. Chair. I
7 would be happy to address that, either in closing
8 or in a filing with the board to explain exactly
9 how all this transpired.

10 BY CHAIRMAN OBERMAN:

11 Q Well, we'll allow you, at some point, to
12 enlighten us, and the other side, of course, can
13 respond. Here's a couple of questions that may be
14 a little bit out of -- disjointed, but I'm just
15 trying to get through it based on my notes.

16 In the document that was Exhibit 319
17 that you testified about, there was this quote
18 that "FRA has indicated that the lack of
19 transparency in the current Gulf Coast study will
20 make its results unusable for discretionary grant
21 applications."

22 Do you remember that statement?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3352

1 A Yes, sir.

2 Q So do I understand, at least from your
3 understanding of the grant applications, that the
4 very data that CSX and NS have so far declined to
5 provide to Amtrak would disable both Amtrak and
6 the railroads getting their hands on this amount
7 of federal money that everybody's talking about to
8 build these infrastructure projects?

9 A Yes. That's exactly what we were
10 concerned about. Although the -- I must say the
11 IIJA was not contemplated when we were in the
12 midst of the study, but we were concerned that,
13 without the transparency of the data and the
14 transparency of the analysis, the FRA would not be
15 willing to award grant funds for the projects,
16 even the projects that were identified in the Gulf
17 Coast Working Group report.

18 Q Did you ever go back to the railroads at
19 any time, up until this morning, and say, Look,
20 you want \$520 million. We don't know if that's
21 the right amount. We don't agree. But if you
22 want anything, we have to have the data, or there

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3353

1 won't be that money.

2 Have you ever said that to the
3 railroads?

4 A Yes, we did. In fact, that was the
5 significant part of the discussion we had in
6 August of 2020 -- or 2021 -- I'm sorry -- 2020,
7 where we said, Unless we have a transparent
8 process that FRA can verify, that -- then we --
9 it's not usable for us in terms of grant funding.

10 So it was a part of the discussion that
11 we had with the railroads and a discussion that we
12 raised several times over the course of the
13 discussion. That didn't seem to be convincing to
14 them that that should cause a change in behavior.

15 Q Who, specifically, at the railroads did
16 you say that to, that, We need to get this data if
17 we're ever going to get the infrastructure you
18 claim is necessary?

19 A So the regular participants at our call
20 for CSX -- I will try and remember their names --
21 John Patelli, Andy Daly, Mark Artura, Hannah Ross,
22 the regular attendees for Norfolk Southern, John

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3354

1 Edwards, Holly Sinkkanen, oftentimes Michael
2 Williams, also from the Walden Group. That's
3 about all I can recall from the two -- from those
4 two participants that -- we had participants from
5 Senate Commerce, from FRA, and Amtrak.

6 Q I just -- I'm really just talking about
7 the railroads. They're the ones that had the data
8 or have the data. And you're saying that, in
9 essence, in every step of the way, the railroads
10 said, We don't care if we get the funding or not,
11 we're not giving you the data. Is that what
12 you're saying?

13 A What I'm saying is when we expressed
14 that as a concern, that did not change their
15 behavior to give us the data. But that was
16 really -- that was mostly in that August time
17 frame when the letter -- or the update for the
18 Senator Wicker briefing and my letter went out to
19 the hosts.

20 Q So, without saying it -- they didn't
21 have to say it, they just didn't give you the
22 data, is what you're saying?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3355

1 A Yes.

2 Q I know there was some reference in
3 your -- I can't get back on. There we go. You
4 talk in your verified statement about wanting to
5 model the 2019 case. There were parts of the 2019
6 case that you wanted HDR to model that you
7 couldn't get agreement on.

8 Let me ask this question: You received
9 in this case, in discovery, the so-called
10 Dingler -- I can't remember the name of the firm
11 now -- RTC studies, both the original one and the
12 rebuttal; correct?

13 A Okay. Again, I can't -- I was not able
14 to review that data under the protective order.

15 Q But Amtrak received the -- received the
16 studies?

17 A It's my understanding that Amtrak
18 counsel received the studies and whatever work
19 papers were attendant to that.

20 Q And did I understand you earlier to say
21 that you have worked in the past, in other cases,
22 with the Amtrak RTC modelers?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3356

1 A I had worked with the Amtrak RTC
2 modelers in the application of RTC modeling or RTC
3 knowledge on host railroad properties. We
4 typically -- our group doesn't get involved in a
5 lot of the Northeast Corridor initiatives because
6 we typically work with the Off-Northeast Corridor
7 operations of Amtrak, and only with the freight
8 railroads that operate on the Northeast Corridor.

9 But, yes, we have engaged Amtrak's RTC
10 modelers to look at various aspects of host
11 railroads' infrastructure investments or routes,
12 or even just calculating trip times for new
13 services using RTC modeling.

14 Q So you personally have some idea or some
15 familiarity with what RTC modelers can do with
16 this software; would that be fair?

17 A Yes, some familiarity is fair.

18 Q Well, here's the question: Did you ever
19 go to the RTC modelers at Amtrak after the RTC
20 study was produced in this case -- even though
21 you, personally, couldn't see it -- and suggest to
22 them that they accept, for at least the sake of

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3357

1 exploration, the RTC study with all of those
2 inputs that you didn't get the raw data for, and
3 work with that model, for example, to see what
4 would happen if you put in all the FRA
5 infrastructure projects into the 2019 case?

6 They produced a 2039 case with the RTC
7 infrastructure, but they didn't produce a 2019
8 case. And you've talked before about whether you
9 agreed or didn't agree to a 20-year projection.
10 Did you go to the Amtrak RTC modelers and say,
11 Let's put the FRA infrastructure in on the 2019
12 case and see what that \$100 million does for the
13 alleged freight delay that they say has to require
14 \$440 million? Did you ask them to do that?

15 A Mr. Chairman, I believe all of the RTC
16 modeling data was marked as highly confidential,
17 so no Amtrak people were permitted to look at it.

18 Q You're saying even the Amtrak RTC
19 modelers couldn't look at the actual data and
20 study that was produced by the railroads?

21 A They could look at what was published as
22 the reports that were issued as public documents,

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3358

1 but they were not permitted to look at
2 highly-confidential information.

3 Q So you're saying they couldn't load the
4 RTC results from Mr. Dingler onto the Amtrak RTC
5 computers and then massage it and change things
6 around?

7 A It's my understanding they could not.

8 Q So then I take it Amtrak couldn't put in
9 operational changes, for example, and see what
10 they would do to the delay times, either?

11 A That's correct. We didn't have a model
12 to run scenarios off of, a live model to run
13 scenarios off of.

14 Q And I'm assuming if I ask if you've
15 entertained the idea of coming to the board and
16 asking to lift some of those restrictions so that
17 RTC could massage it, we're getting into
18 attorney-client again?

19 A Yes.

20 Q All right. Then I won't pursue that,
21 but it's something that maybe Jessie can address
22 later.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3359

1 MS. AMUNSON: Mr. Chairman, we did file
2 a motion with the board, and the board denied it.

3 CHAIRMAN OBERMAN: Well, okay. I'll
4 have to go back and take a look at that.

5 BY CHAIRMAN OBERMAN:

6 Q On the question of the 80 percent versus
7 95 percent on-time issue that was raised in the
8 RTC study, I wonder if you could explain -- I
9 notice there's a footnote in your statement that
10 says you built in much more recovery time,
11 22 percent and 23 percent of the total run time,
12 as compared to the normal recovery time in your
13 schedules of 8 to 10 percent.

14 Do you recall that footnote?

15 A Yes, sir. I do.

16 Q Could you enlighten us a little bit
17 about how that relates to achieving an 80 percent
18 on-time versus the 95 percent?

19 A Certainly. -- on-time performance
20 measures the number of passengers that deboard at
21 their destinations within 15 minutes of their
22 scheduled arrival. The way in which Amtrak

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3360

1 constructs a schedule is typically of -- usually
2 of three primary components.

3 So we have a pure run time, which is the
4 unobstructed running time between two points, A
5 and B, we'll call them. Second is the amount of
6 dwell time that I actually have to spend
7 deboarding or loading passengers. But then what's
8 left is recovery time, which is, What time do we
9 add to the schedule for delays that do occur in
10 transit, whether they be Amtrak delays or host
11 delays or third-party delays, and still have the
12 train on time?

13 So, typically, our scheduling folks will
14 consider a train schedule to be efficient if it
15 has between 5, 8, 10 percent of recovery time, and
16 that's a percentage of pure running time. So if
17 it takes 100 minutes to get from A to B,
18 10 percent recovery time is 10 minutes -- or
19 10 percent of that pure running time is 10
20 minutes. So you add 10 minutes to the schedule
21 for recovery time.

22 That, we typically spread out to make

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3361

1 the most number of passengers arrive at their
2 destinations on time. So you place the recovery
3 time in advance of where the customers are getting
4 off so that they can get off at their deboarding
5 station on time.

6 In the case of the Gulf Coast analysis,
7 we used 22 percent, which would be 22 minutes or
8 100 minutes, let's say, of schedule as of recovery
9 time, which made the schedule longer, which helped
10 to explain why the difference between the old
11 schedule at three hours and 10 minutes and the
12 current proposed schedule at three hours and 23
13 minutes. So it made the schedule longer, but it
14 also created a potential for more customers to be
15 getting off on time if they incur delays in
16 transit.

17 So we proposed the longer schedule. The
18 railroads had expressed a concern about the
19 numbers of issues that they confronted on this
20 route. And we talked to them about that and tried
21 to determine to what degree those might impact the
22 operation of the train, and they proposed a

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3362

1 slightly longer schedule than the historical
2 schedule by adding additional recovery time.

3 Q So to a layman's ears, you're saying
4 Amtrak agreed to allow 3 hours and 23 minutes to
5 go 148 -- 40 miles -- 144 miles. Seems fairly
6 slow to me. But by doing that, it made it much
7 easier to achieve an 80 percent on-time
8 performance from the railroads' point of view.

9 A We hoped that that was going to be the
10 outcome. And when we tested the schedule with
11 HDR, it proved out to be a pretty successful
12 schedule, for purposes of on-time performance.
13 But that was what we proposed, based on the
14 railroads' concerns that they would confront a lot
15 of issues in transporting our train across the
16 line.

17 Q There was a lot of discussion about
18 Amtrak's testimony to Congress and so forth about
19 not moving Amtrak trains onto sidings. To your
20 knowledge, in connection with any of the studies
21 or efforts to reinstate the Gulf Coast service,
22 did Amtrak ever tell either railroad not to do any

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3363

1 study which would put Amtrak into a siding?

2 A I don't recall that instruction ever
3 being given in to HDR or to the railroads.

4 Q Or in connection with the Dingler study?

5 A We had no input to the parameters or
6 assumptions of the Dingler study.

7 Q Well, I want to switch for a moment --
8 and then I think I'm probably finished here for
9 the moment -- to this question of the station
10 track. As I've tried to follow the diagrams and
11 testimony that came in from the port from others,
12 if you have a station track alongside tracks 1 and
13 2 in downtown Mobile, where you could park the
14 train -- it comes into the station, it goes onto
15 the station track, and it sits there for however
16 long it's going to sit there before it goes back,
17 that's one option.

18 If you don't have that station track,
19 once the train unloads, you've got to go back on
20 Line 1, some suggest you have to cross over to
21 Line 2, and get into Choctaw Yard and let the
22 train sit there until it's ready to go back to New

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3364

1 Orleans. Then it's got to go back up to Mobile,
2 board the people, and then head south to New
3 Orleans. Are those the two options we're talking
4 about?

5 A That is either the downtown station
6 option or the Choctaw option. We've been willing
7 to explore other options if there are things that
8 CSX would propose, or the port, that might be less
9 disruptive to their operations if they feel that
10 that is. But that's not an unusual operation for
11 us. Most of our layover tracks are not
12 necessarily located at a station. So we often
13 deboard passengers, move to a layover track, move
14 back to board passengers in the afternoon, and
15 then depart.

16 Q Well, in terms of utilizing or using up
17 space on the CSX tracks, which the report says
18 that it also has to use, unless I misunderstand
19 the physical drawings here. It would seem that if
20 you have a station track, you're going to have --
21 the Amtrak trains are going to be on the main
22 lines for much less time than if they have to go

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3365

1 back and forth to Choctaw Yard each time they had
2 a run. Would that be an accurate way to
3 understand it?

4 A Yes. And that's why we favored that
5 approach, as well, not just because it gets us off
6 the -- the main line quicker, but because we don't
7 have the time to reposition the train and our crew
8 costs, as well. So this allows us to just pull
9 off of the main, pull off to the siding, and the
10 train doesn't move then, again, until the
11 afternoon. So it's a more efficient operation for
12 us, and it sounded like both the port and CSX
13 thought it would be a more efficient operation for
14 them, as well.

15 Q I'm trying to understand the concerns of
16 the City of Mobile, as voiced by its mayor in the
17 public session here. I don't want you to get into
18 the mind of the mayor, nor do I, but just trying
19 to understand the logic of it. If you were
20 concerned about minimizing impact on the port,
21 from the point of view of the economy of the City
22 of Mobile -- which we're told the port is very

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3366

1 important to -- and the State of Alabama, you
2 would prefer the choice of building the station
3 track on City property, rather than having your
4 trains go back and forth to Choctaw or some other
5 place that required them to use the main line;
6 would you not?

7 A I would think that would be a better
8 alternative for the City's and the port's
9 operation, as well, yes.

10 Q All right. I think that was all I had.
11 I'll check my notes. But thank you, Mr. Blair. I
12 appreciate it. Jessie? Redirect? I'm sorry. Do
13 you have questions? I'm sorry. Robert?

14 BY MEMBER PRIMUS:

15 Q Sorry. Mr. Blair, I'll try to be as
16 brief as possible. So your name is on -- you
17 signed the RTC agreement, is that correct, on
18 behalf of Amtrak? Oh, I'm sorry. I've got to let
19 go.

20 A Yes. I did.

21 Q And can you just tell me your role in --
22 in the study agreement? Were you the chief

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3367

1 negotiator for that -- for that agreement?

2 A Yes. I was the -- I was Amtrak's
3 highest-ranking negotiator. Kyle Montgomery, in
4 my group, also participated in the negotiations,
5 and our Amtrak internal counsel.

6 Q Okay. And so with you signing the
7 agreement, I guess, is it -- would it be my
8 understanding that, at the time, you had no
9 problem with the agreement?

10 A Well, I wouldn't characterize it that
11 way. I guess, I would say that was the best
12 agreement that we thought we could get to address
13 the analysis. The Gulf Coast Working Group report
14 suggested a series of next steps Amtrak undertook
15 to complete all of those next steps on the
16 corridor, and one of those steps was to continue
17 to refine the analysis. So that's what we
18 attempted to do. But it was a very hard and a
19 long negotiation just to get to those agreements.

20 Q What were some of the things that you
21 wanted in the agreement that weren't contained in
22 the agreement?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3368

1 A Well, I think, first of all, we had
2 had -- we thought, even where the language
3 indicated a certain level of good-faith
4 communications and good-faith sharing of
5 information, we didn't get it back. But with
6 respect to the agreements itself, we had a long
7 negotiation over streamlines, which I think is --
8 you know, is evidenced, both in my verified
9 statement where we talked with the heat maps and
10 treatment lines.

11 We did not get track charts to
12 understand grade curvature issues, which CSX had
13 previously shared in the prior study. We --
14 limitations on looking at operation changes to
15 moving trains were things that we thought were --
16 were constraints that were difficult to get
17 with -- or work with.

18 But we did have the ability to look at
19 the lift bridges, and that was one of the things
20 that we contemplated looking at in conjunction
21 with the communications with the Coast Guard. We
22 wanted to look at what timing over bridges would

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3369

1 look like. Also, it did give us some opportunity
2 to look at operational issues. Plus, we had the
3 opportunity, potentially, to look at shifting
4 Amtrak trains by a few minutes, even if we
5 couldn't shift a CSX or an NS freight train, to see
6 if the performance would change.

7 But all of that meant that the analysis
8 was going to take longer and be more costly, since
9 we didn't have the transparency. We would have to
10 try various options until we got one that worked.
11 For example, we did six iterations on the -- or
12 six versions of the schedule until we got one that
13 worked really well. And we anticipated having to
14 do that same level of effort for each of the
15 scenarios, run each one multiple times to get to a
16 place where we were satisfied with the results.

17 Q Thank you. So in talking about the
18 modeling and what was laid out within -- within
19 the agreement, did you raise any concerns about
20 the modeling in the agreement, in terms of if you
21 wanted to do more modeling or additional modeling,
22 or even include FRA in, sort of, the base

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3370

1 modeling? Was that brought up at all?

2 A The language, with respect to the
3 scenarios, was pretty broad. We could run a
4 variety of iterations, and it was really just the
5 subject of cost and time that was -- that was --
6 out of Amtrak's, you know, pocket or FRA's pocket
7 or, again, based on the reimbursement issues. So
8 that was really the issue we were looking at.

9 So when we started developing our
10 iterations, we tried to develop our best case
11 first so that all of the other ones -- we would
12 take our second, third, fourth issues in order.
13 So we would potentially spend less time and effort
14 to get to successful outcomes. So -- but there
15 was -- there was a lot of freedom within the
16 defining of the iterations.

17 Where that became an issue was when we
18 said we wanted to run an iteration against the
19 2019 base case, and the railroads rejected that.
20 So that -- that, right away, meant to us that we
21 were not, we didn't have the -- even the
22 flexibility the agreements permitted, the

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3371

1 railroads wouldn't allow us to do.

2 Q So even the data-sharing component
3 that's in the agreement, you -- you think it was
4 too constraining?

5 A Well, that -- that particular issue was
6 not constrained by the data sharing. That was
7 just constrained by railroad cooperation. Some of
8 the things that were constrained in the data
9 sharing were the things -- the ability to move an
10 NS train, we -- as it was pointed out by Member
11 Hedlund, CSX had slightly less-restrictive
12 parameters there and the inability to see
13 streamlines.

14 Q So I guess my point for that -- and then
15 I'm going to move to another one -- is knowing all
16 of that, do you feel you've put yourself in a box
17 by signing that the document. I mean, in terms
18 of, putting your name and Amtrak's name on that,
19 did that sort of restrict you, do you feel, going
20 forward, to the data and to the information to the
21 models that were run, if those things weren't
22 available? Did you understand that you were

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3372

1 resigned to that?

2 A Well, we had a series of workarounds to
3 address the constraints. Like I said, we were
4 limited -- you know, it was really a function of
5 time and money that we -- gave us opportunities to
6 find ways to navigate the constraints that were in
7 the agreement. So that was always an option for
8 us and -- so we knew that those were ways that we
9 might be able to work around some of those
10 constraints.

11 So I don't think it was -- it was not an
12 Amtrak -- it was not something that we didn't
13 think about. But, again, in order to try and
14 progress the Gulf Coast service from the Working
15 Group Report to the next steps, we thought this
16 was the best way to keep the project moving.

17 Q Okay. Let me just switch -- thank you.
18 Let me just switch real quick. In terms of
19 infrastructure, it's been batted around the room
20 today about infrastructure, whether it's
21 100 million or 400 million or another number. But
22 would you -- would you say that, in the end, any

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3373

1 type of infrastructure investment will help,
2 overall, the -- the success of, not just Amtrak,
3 but also freight rail mobility on the network?

4 A Well, I think it -- it certainly depends
5 on what kind of infrastructure is -- that would be
6 invested. Certain things would -- would help
7 the -- you know, would help operations in the
8 corridor. Other things may not help operations in
9 the corridor. Some things may impact only
10 passenger operations, some things may impact
11 passenger and freight, and some things may impact
12 only freight.

13 So I think the collaborative analysis
14 and the collaborative study that we had hoped the
15 2020 study would be, we never had. But we did
16 have the -- and I think it was even in the e-mail
17 that was shared earlier -- the most comprehensive,
18 full study of the corridor that had been done
19 was -- you know, was what was contained in the
20 Gulf Coast Working Group Report. And we had that
21 to work from and a set of infrastructure that was
22 agreed upon by the parties, other than CSX, in

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3374

1 that context.

2 Q So even with the Gulf Coast study, if
3 you were to use it as a base -- so even that
4 \$100 million, plus, that they recommended, it
5 is -- would be seen as beneficial to the
6 operations of the -- of Amtrak, as well as
7 potentially for freight rail in the area?

8 A Yeah. We saw those projects as
9 providing benefits to the corridor overall, much
10 like what FRA reported in the report. And
11 those -- like I said, those were similar to the
12 projects that Amtrak had identified independently.
13 So we -- you know, there was some commonality to
14 the projects that we identified.

15 You know, we saw the investments as
16 being helpful to the corridor, much like, as FRA
17 identified in the Working Group Report, as to the
18 ongoing operations on the corridor, continuing to
19 build, as Amtrak does with all of its corridors,
20 ways to improve service, reduce trip time,
21 increase reliability, and increase safety.

22 Q So now that we have the -- the

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3375

1 infrastructure bill being passed and the potential
2 for Amtrak in localities that have access to
3 billions of dollars that will be coming online, do
4 you think it would be better to look at the
5 infrastructure as a lead-in to this? Now, I know
6 when you guys first considered, you know, the
7 Working Group, we didn't have a bill, and funding
8 was, you know, in short supply, even in -- when
9 guys signed the agreement early 2020, same thing.

10 Now, we've got a point where, you know,
11 funding is more available, and the idea of -- of
12 it going towards infrastructure, which we, I think
13 everyone has acknowledged will help, ultimately.
14 Do you think it's something that we should look at
15 as front-loading rather than phasing in?

16 A Well, I think that the infrastructure
17 funds, by the very name of the bill is -- is
18 intended to -- to go for infrastructure. I -- I
19 think we have had a circumstance -- and it's
20 certainly an exciting time to be a part of that.
21 But I think we have experienced a lot of delay and
22 infrastructure being used as a delaying tactic in

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3376

1 this circumstance.

2 And what I think we would really like is
3 an order from the board so we can begin the
4 service, and we will commit to the process of
5 continuing to make improvements to the corridor,
6 over time to improve the operation of both freight
7 and passenger in the corridor, as it improves
8 Amtrak service.

9 Q Thank you.

10 CHAIRMAN OBERMAN: Mr. Blair, I do just
11 have a couple more questions.

12 BY CHAIRMAN OBERMAN:

13 Q In your statement, you referred to the
14 installation of bidirectional signals in the
15 Gentilly Yard some years ago. Are those, to your
16 knowledge -- is that installation still operative
17 and useful to CSX; do you know?

18 A I believe that they were, but somebody
19 recently told me that it has no longer been
20 maintained. CSX's operation just used that as a
21 storage track rather than as a main, so to speak,
22 to get through the yard. And I remember

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3377

1 Mr. Johnson's testimony. He talked about all the
2 CSX trains start or stop in Gentilly Yard, so they
3 really don't have through operations.

4 So Amtrak -- you know, the installation
5 of that basically created a main line through a --
6 you know, through the yard. CSX doesn't use it in
7 that fashion today. So I understand that they are
8 no longer maintaining the bidirectional signals.

9 Q Could any of that be utilized to get
10 your signal through the Gentilly Yard area and all
11 the way to New Orleans, or is it useless at this
12 point?

13 A Certainly, we would like to utilize
14 that. That should be able to reduce trip time for
15 us and reduce conflicts at Gentilly Yard. But I
16 don't know the condition of those facilities,
17 whether they could be quickly reactivated or
18 whether that -- you know, or whether that would be
19 more difficult.

20 Q Are you aware of a presentation to the
21 Southern Rail Commission last year, after this
22 case was filed by the railroads, relating to a

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3378

1 proposal of spending only 140 to \$160 million on
2 infrastructure?

3 MR. ATKINS: So, Chairman, I would like
4 to object. Those are settlement discussions,
5 priveleged, not admissible in any proceedings.
6 And so if you want to take it offline -- I'll give
7 the others in the room the opportunity to object,
8 but those discussions were part of efforts to
9 settle the case.

10 CHAIRMAN OBERMAN: Are you saying with
11 the Southern Rail Commission?

12 MR. ATKINS: With all -- with all of the
13 affected parties, Chairman. It was -- it was part
14 of a global effort with CSX and Norfolk Southern
15 to secure a settlement of this case. So it wasn't
16 just them, but those discussions should not be
17 admissible under the Federal Rules of Evidence.

18 CHAIRMAN OBERMAN: Well, I'm not sure
19 that's right if the discussions were with an
20 outside party to this proceeding, which is the
21 Southern Rail Commission, and then were reported
22 in the media. I'm not sure how you can say that

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3379

1 they're not producible. Let me just find out if
2 Mr. Blair was familiar with them, and then if
3 we're going to proceed, we know who we can ask.

4 BY CHAIRMAN OBERMAN:

5 Q Are you familiar with those discussions,
6 without getting into the substance of it,
7 Mr. Blair?

8 A The Southern Rail Commission reported to
9 us that they had had that communication with CSX.

10 Q All right. Do you know who was involved
11 in those meetings?

12 A No, I do not.

13 Q All right. Well, I would -- I'd like to
14 hear from counsel -- not now -- about our
15 consideration of whatever happened in that meeting
16 and whether it's privileged or admissible in this
17 proceeding. I'm not clear, based on what you
18 said, Ray, that it is not admissible, but I'd
19 certainly like to know about it.

20 CHAIRMAN OBERMAN: That was all I had
21 for Mr. Blair. Did anybody else have questions?
22 Jessie? Oh, I'm sorry. I thought you didn't have

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3380

1 any questions.

2 MR. HELENHOUSE: We didn't have any
3 questions pertaining to the confidential
4 documents.

5 CHAIRMAN OBERMAN: I see. Okay. Go
6 ahead. I would have called on you first, but I
7 didn't realize you had questions. Go ahead.

8 CROSS-EXAMINATION

9 BY MR. HELENHOUSE:

10 Q Thank you. Why was the port not part of
11 the RTC process?

12 A Which RTC process are you referring to,
13 sir?

14 Q Any RTC process. Why was the port not a
15 party to the RTC process?

16 A The port's operations would have been
17 considered as a part of CSX operations on the
18 line. As we have traditionally done in other RTC
19 modeling, the owning railroad addresses all of the
20 operations on their line, both host and tenant.

21 Q Part of the RTC modeling, though,
22 included projections for growth. Why was the port

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3381

1 not considered -- or why was the port not
2 contacted to find out what it saw as its growth?

3 CHAIRMAN OBERMAN: Mr. Helenhouse, which
4 RTC study are you talking about? The HDR, or the
5 one that was done --

6 MR. HELENHOUSE: The HDR one.

7 CHAIRMAN OBERMAN: Because I don't think
8 Amtrak had anything to do with the one that's
9 before the port now. So I don't know how he could
10 possibly know about that. But if you're talking
11 about HDR, let's be clear.

12 MR. HELENHOUSE: The one involving CSX
13 and Norfolk Southern.

14 CHAIRMAN OBERMAN: There's two studies.

15 MR. HELENHOUSE: They both go into --
16 The one that Amtrak was involved with and then
17 pulled out.

18 MEMBER FUCHS: Mr. Dingler's depo, how
19 about that? Is that what you're referring to?

20 MR. HELENHOUSE: Yes.

21 CHAIRMAN OBERMAN: He's talking about
22 HDR.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3382

1 MR. HELENHOUSE: The one that Amtrak was
2 involved in, and then pulled out. That study.

3 CHAIRMAN OBERMAN: Isn't that HDR? Just
4 so the record's clear, is that HDR, Mr. Blair?

5 THE WITNESS: Yes. Yes. Yes. Amtrak
6 did not pull out. I would like to clarify that.
7 The agreement expired in one year, which was its
8 assigned expiration date. And your question was:
9 Why was the -- I'm sorry. Can you clarify, again,
10 your question?

11 BY MR. HELENHOUSE:

12 Q Why was the port not consulted about its
13 own projections of growth rates?

14 A We did not provide the growth rates in
15 that study. I think Ms. Ross outlines where she
16 had collected data for her forecast, and think Ms.
17 Sinkkanen identified where she collected forecasts
18 for her data.

19 Q Are you aware of anyone in that study
20 contacting the port to get projections from the
21 port itself?

22 A No, but we didn't populate that study.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3383

1 In essence, CSX did. So --

2 Q Would you agree though, it would be a
3 much more complete study if it included
4 projections that the port actually has?

5 A A more complete study than what the
6 railroads had done? Without -- I don't know what
7 their forecasts or their projections were to know
8 whether or not they were more or less aggressive
9 than the port's own projections.

10 Q I want to clarify some testimony, and I
11 may be confused. I think you testified that the
12 traffic that the port moves to the north would not
13 be impacted by Amtrak's operations.

14 Was that your testimony?

15 A I think what -- I'm not sure that's how
16 I -- how I said it, but the Amtrak -- the
17 operations from Sibert Yard to the north, which
18 we -- or from the port's facilities that travels
19 to the north would seemingly have little impact
20 from the Amtrak operation into Mobile.

21 Q I think you're talking about interchange
22 as the T ASD's yard.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3384

1 A Well, there's Interchange, and then
2 the -- I forget what the name of the other yard is
3 on the other side.

4 Q Riverfront.

5 A Riverfront. Thank you.

6 Q But do you understand that whether the
7 cars coming into Interchange to go north --

8 (Reporter clarification.)

9 Q But you understand that the cars that
10 are moving north from Interchange Yard have to
11 cross over the CSX corridor to get into the
12 Interchange Yard before they head north?

13 A I'm sorry. You said the cars that are
14 moving from Interchange to Interchange Yard?

15 Q I'm sorry if I misstated. The cars that
16 are moving from Interchange Yard to the north,
17 they come from other portions of the area. And as
18 part of the move to get to Interchange Yard, they
19 have to go to the CSX corridor.

20 Do you agree with that?

21 A They have to go over the CSX corridor to
22 the north from interchange to get to Sibert?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3385

1 Q No. They have to -- either they're
2 coming from the Riverfront Yard -- to get to the
3 River -- from Riverfront Yard to get to the
4 Interchange Yard, they have to -- those cars have
5 to cross the CSX corridor; correct?

6 A Yes. That's my understanding. To get
7 from Riverfront to Interchange, you cross the CSX
8 corridor, yes.

9 Q And the intermodal -- intermodal cars
10 coming from the intermodal facility to the
11 south -- the port's intermodal facility to the
12 south had to cross over CSX's tracks to get to the
13 Interchange Yard before they can go north;
14 correct?

15 A Yes. But my understanding is they
16 travel up Track 2.

17 Q I'm just talking about they need to get
18 to Interchange before they head north.

19 A My understanding is they travel up Track
20 2.

21 Q When you say "up track," what do you
22 mean by that?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3386

1 CHAIRMAN OBERMAN: Track 2, he said.

2 MR. HELENHOUSE: Oh, up Track 2. I
3 thought you were saying "T-O-O."

4 BY MR. HELENHOUSE:

5 Q Who were the members of the Gulf Coast
6 Working Group?

7 A You mean the agencies or the
8 individuals?

9 Q Individuals.

10 A I don't know all the individuals, but
11 there is a -- there are several notations here
12 of -- of membership of the agencies that were in
13 the Gulf Coast Working Group, and there's several
14 communications about participants in the study.

15 Q Would you agree with me that neither
16 TASD nor the port were part of that group?

17 A That -- the -- my understanding from SRC
18 is that they had reached out to the port several
19 times during the -- during the outreach phase of
20 the Gulf Coast Working Group Report, and there
21 were a number of meetings held in Mobile that were
22 open to all parties during the Gulf Coast Working

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3387

1 Group Report. So I don't know if the port
2 participated in any of those events or not, or
3 which representatives of the port were present
4 during the SRC's meeting.

5 Q Are you aware of any representative of
6 the port being present at any of those meetings?

7 A My understanding from SRC is that they
8 met with port representatives with the port -- I
9 don't know if he's the general manager or
10 president at the time -- they referred to him to
11 me by name and indicated they had several meetings
12 with the port during the Gulf Coast Working Group
13 process.

14 Q Are you aware of anything in this record
15 that shows that the port actively participated in
16 the Gulf Coast Working Group?

17 A I'm not, but I assume that the
18 information would come from the port itself.

19 Q During this entire process of these
20 proceedings, has Amtrak ever reached out to the
21 port directly to see how the port would be
22 impacted by Amtrak's operations?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3388

1 A There was a meeting that Amtrak held
2 with port management. I was not a participant in
3 that meeting, but a member of my staff was there
4 at that meeting during this process, yes.

5 Q All right. And do you know that at that
6 meeting there was no discussion of the
7 infrastructure that the port wanted or required to
8 lessen the impact on its operations?

9 A I can't say, since I was not at the
10 meeting.

11 Q So you don't know?

12 A I don't know, but I -- in the recap that
13 I got from two of the individuals there, they did
14 not mention that the port had brought up the issue
15 of infrastructure.

16 Q Well, my question wasn't: Did they
17 bring it up? My question was: Did Amtrak ask
18 them how the port would be affected by the
19 service?

20 MS. AMUNSON: Objection. He said he was
21 not at the meeting.

22 MR. HELENHOUSE: He testified he was

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3389

1 briefed by his staff.

2 CHAIRMAN OBERMAN: Well, what was the --
3 can I have the question again?

4 Q My question was: Did Amtrak ask the
5 port at that meeting about how they would be
6 impacted by Amtrak's service?

7 CHAIRMAN OBERMAN: Do you have any
8 knowledge of that, Mr. Blair?

9 THE WITNESS: My -- my -- from the folks
10 that had participated in the meeting that spoke
11 with me, they indicated that Amtrak did ask the
12 port what concerns it may have about Amtrak
13 operations and talked about the port's operations,
14 when they were conducted, what their operations
15 would be. And as the folks came back from the
16 meeting, they had a -- a good -- a much better
17 understanding, I guess, or a good understanding of
18 the port operations in and around Mobile.

19 BY MR. HELENHOUSE:

20 Q And did the -- did Amtrak have any
21 understanding, at that point, of what the port
22 needed, in terms of infrastructure, so they

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3390

1 wouldn't be impacted?

2 A I -- again, I don't -- the briefing I
3 got did not indicate the port brought up the issue
4 of infrastructure at that meeting.

5 Q I thought you just said Amtrak brought
6 it up.

7 A Amtrak brought up the issue of what the
8 port needed -- not infrastructure-wise, but what
9 the port's concerns were with Amtrak's proposed
10 operation. The port provided some concerns that
11 they had. The port talked about their operations,
12 what took place with the port operation. Our
13 folks -- again, the folks that I spoke with, two
14 individuals, said that they had a much better
15 understanding of the port's operations following
16 the meeting and appreciated the port's sharing of
17 information in that meeting. But I did not hear
18 any reports of a discussion about infrastructure.

19 Q Did you hear Mr. Golder's testimony from
20 the port?

21 A Mr. Goldman?

22 Q Yes.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3391

1 A Yes, I did.

2 Q And he discussed in his testimony, also
3 in his verified statement, some of the
4 infrastructure concerns.

5 Do you recall that?

6 A I recall that he explained the
7 infrastructure that the port was seeking as a
8 result of this case.

9 Q Did Amtrak ever reach out to the port to
10 address any of the concerns that Mr. Goldman
11 raised in his verified statement?

12 A We have had -- my understanding is we
13 have reached out to the port a couple of times
14 since the -- since the case was filed, but I don't
15 know what all of those communications have been.

16 Q Okay. Has Amtrak ever offered to fund
17 any of the infrastructure that the port identified
18 that it needed to minimize the impact of Amtrak's
19 operations?

20 A You mean just now since the case was
21 filed?

22 Q Well, they didn't consult them before,

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3392

1 so, yes. Well, I mean, there was no reason to
2 raise them before, until the case was filed.

3 A All right. So with that context, can
4 you ask your question again, please?

5 Q Did the port ever -- can you read the
6 question back?

7 (Reporter clarification.)

8 Q Did Amtrak ever offer to fund the
9 infrastructure that the port identified it needed
10 to minimize the impact that Amtrak service would
11 have on its operations?

12 A And to that, you're -- you're saying did
13 Amtrak offer to fund the projects that the port
14 identified in this filing --

15 Q Yes.

16 A -- during this case?

17 Q Yes.

18 A I don't know that I can answer that
19 without violating attorney-client privilege.

20 Q You do know that Amtrak opposed the
21 port's participation in this proceeding?

22 A Yes.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3393

1 Q Do you agree that Amtrak considers CSX's
2 and NS's demand for roughly 440 million in
3 corridor infrastructure improvements as
4 unreasonable?

5 A Yes.

6 Q Well, then isn't it -- isn't it equally
7 unreasonable for Amtrak to seek forced access to
8 the corridor with no funding of infrastructure
9 commitments?

10 MS. AMUNSON: Objection. Argumentative.

11 CHAIRMAN OBERMAN: I'll let the -- I'll
12 let him respond.

13 THE WITNESS: I don't think those are
14 parallel statements, so I -- I'm not -- I don't
15 agree.

16 BY MR. HELENHOUSE:

17 Q Do you recall in your testimony -- I
18 think it was your verified statement -- where you
19 testified "Sub-targeted infrastructure" -- I
20 believe it was along the corridor -- "could
21 benefit restored service after start-up?"

22 A Can you -- can you --

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3394

1 Q I think it's on page 8, Paragraph 29 of
2 your verified statement, the second-to-last line.

3 A So, yes. That is -- that is reflecting
4 my January 27th letter to the -- to those
5 railroads. That's what I stated in my
6 January 27th letter.

7 Q Which infrastructure did you mean,
8 specifically?

9 A The only portfolio of infrastructure
10 that we had -- that we had acknowledged as -- as
11 reasonable, I guess, was the information of the
12 Gulf Coast Working Group Report. So this sentence
13 specifically says that the only infrastructure
14 were recommended by the Gulf Coast -- "while
15 acknowledging that some targeted infrastructure
16 could benefit the restored service after
17 start-up." So that is consistent with Amtrak's
18 message since the Gulf Coast Working Group report
19 was issued.

20 Q So what do you mean by "benefit the
21 restored service"? Do you mean benefit Amtrak?

22 A Yes, we would be the restored service.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3395

1 Q But nowhere did Amtrak commit to funding
2 that -- those targeted infrastructure
3 improvements.

4 A The next part of that sentence says,
5 "And committing to working with CSX and NS to
6 secure funding for that purpose."

7 Q But there was never any securing of that
8 funding; is that correct?

9 A I think we're in the midst of the
10 hearing now that is still trying to resolve the
11 issue of access. Amtrak has funding now for
12 corridor development. But I think what we had
13 said here, in the January -- what I had said in my
14 January 27th letter, is that we were committed to
15 working with CSX and NS to secure funding for that
16 purpose.

17 Q If the board granted Amtrak's
18 application, despite a finding of unreasonable
19 impairment to freight transportation, would Amtrak
20 then commit to fund the infrastructure
21 improvements to remedy such impairment?

22 A Could you state the question again,

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3396

1 please?

2 Q If the board grants Amtrak's
3 operations -- or Amtrak's request, but finds that
4 improvements need to be made to lessen the impact
5 on freight, would Amtrak commit to funding those
6 improvements?

7 A Well, I think we would have to follow
8 the board's order to -- to -- to whatever the
9 board has ordered. So I -- but I'm not sure I
10 can -- you're basically asking through a
11 hypothetical. I'm not sure I can answer.

12 Q Okay. Mr. Donahoe asked you about the
13 snowflake. I've got a few questions about that.
14 In your verified statement, you criticize CSX's
15 and NS's assertion that the Gulf Coast Corridor
16 has some unique aspects. Do you remember that?

17 A I think you're misstating my statement.
18 I -- I think they defined the corridor as
19 "unique," and what I was saying is we had
20 encountered those -- the aspects that they
21 identified as unique in other circumstances. And
22 we have effectively dealt with those situations in

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3397

1 other circumstances. So that's what I responded
2 to in my verified statement.

3 Q No, we're on the same page. And I think
4 it's beginning on page 12, Paragraph 43. And
5 basically, you're saying, Well, they're
6 identifying these potential problems or real
7 problems, and your rebuttal is, Amtrak has dealt
8 with these in other situations.

9 Is that a fair summary of those?

10 A Yes.

11 Q Okay. And I want to walk through what
12 characteristics you discussed in response to the
13 freight railroads raising them. The first one was
14 multiple bridges; correct?

15 A Movable bridges.

16 Q Movable. Multiple movable bridges.
17 Consisting primarily of single track was another
18 one?

19 A Yes.

20 Q Having approximately 160 grade crosses,
21 that was another one; correct?

22 A Yes.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3398

1 Q Having unusually high freight demands
2 was another characteristic?

3 A And these were terms that were in the --
4 in the respondents that I was quoting from.

5 Q I understand, but unusually high freight
6 demands is one of the characteristics that you
7 rebutted?

8 A Yes, that's correct.

9 Q Having -- areas which had similar
10 passing siding configurations and similar siding
11 lengths was another characteristic you rebutted?

12 A It was short or insufficient sidings
13 improperly spaced to efficiently pass, was the
14 quote.

15 Q And similar freight train
16 characteristics was another one that you rebutted?

17 A Are you talking about Paragraph 49?

18 Q Yes. Yes.

19 A I'm not sure. I'm not sure I see, so --

20 Q Insufficient -- basically, they're
21 claiming they have insufficient capacity?

22 A Yes.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3399

1 Q Okay. And in each one of those
2 identified characteristics, you gave examples --
3 or you basically said Amtrak has dealt with this
4 in one location or the other; correct?

5 A Yes.

6 Q But you would agree with me that there's
7 nowhere in your verified statement where you
8 identify a line, which Amtrak operates over, that
9 possesses all of those characteristics; correct?

10 A Yes, that's correct. But I would like
11 to point out that, in many of these cases, we deal
12 with even more extreme conditions, such as what I
13 cited in my example. So it's not -- it's not as
14 though the conditions -- I mean, in many cases we
15 deal with more extreme conditions of each of those
16 conditions.

17 Q But you didn't provide an example where
18 all of those conditions exist?

19 A That's correct. That's correct.

20 Q In your direct testimony, the board
21 asked you about Amtrak operations in and around
22 other ocean ports. Do you recall that?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3400

1 A In my direct, yes.

2 Q Okay. And your verified statement doesn't
3 contain any analysis of the railroad operations of
4 the Port of Mobile compared to any of those other
5 ports; is that correct?

6 A Railroad operations of the Port of
7 Mobile compared to any of the other ports that
8 Amtrak serves?

9 Q Yes, compared to freight operations
10 around -- port freight operations around any of
11 those other ports.

12 A That's correct.

13 Q Do you recall testifying that in 1996
14 and 1997, CSX was operating more freight trains
15 over the New Orleans/Mobile corridor than it does
16 today?

17 A That was what was reported in their
18 verified testimony in the Conrail case, yes.

19 Q And would you agree with me there's
20 nothing in your written testimony comparing
21 that -- the 1996, '97, T ASD traffic levels and
22 train counts to those that exist today?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3401

1 A No, that's correct.

2 Q In fact, there's not even a mention of
3 the T ASD at all in your verified statement, is
4 there?

5 A No. My verified statement, however,
6 was, I think, prior to the port's involvement in
7 the case.

8 Q So you didn't consider, in this verified
9 statement, any affect on the port directly by
10 name?

11 A I could do a word search. I don't know
12 that the port is mentioned in my verified
13 statement.

14 Q You don't recall?

15 A But if you'd like me to read it, I will.

16 Q You can if you need to, but do you
17 recall it?

18 A I don't recall it.

19 Q Okay. Do you want to review it all?

20 A If you'd like me to look for it, I will.

21 Q I can tell you I haven't seen it, but if
22 you don't believe me, feel free to review it.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3402

1 CHAIRMAN OBERMAN: Well, let's just have
2 a question-and-answer. The gentleman says he
3 doesn't recall. Can we just move on to --

4 MR. HELENHOUSE: Okay. The statement
5 speaks for itself on that. Thank you. That's all
6 I have.

7 CHAIRMAN OBERMAN: All right. It's 20
8 minutes to 6:00, but I think we should get started
9 because we need all the time we have. Jessie, I
10 assume you have more than 20 minutes?

11 MS. AMUNSON: I'll try my best,
12 Mr. Chair.

13 CHAIRMAN OBERMAN: I don't think you
14 should be artificially restricted. So if you need
15 to finish on Wednesday, we certainly want to allow
16 that.

17 MS. AMUNSON: Mr. Chair, I will say the
18 first document that I would like to ask about is
19 marked confidential. So we do need to go into a
20 confidential session.

21 CHAIRMAN OBERMAN: I'm -- I'm sorry.
22 Say that again, please.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3403

1 MS. AMUNSON: The first document that I
2 would like to ask about is marked confidential, so
3 I would -- so we would need to go into a
4 confidential session.

5 CHAIRMAN OBERMAN: I'm sorry. What you
6 wanted --

7 MS. AMUNSON: We need a confidential
8 session.

9 CHAIRMAN OBERMAN: You want to go there
10 now, is that what you're saying?

11 MS. AMUNSON: Yes, please.

12 CHAIRMAN OBERMAN: Are you going to have
13 more confidential documents?

14 MS. AMUNSON: I have, I believe, three
15 confidential documents that I was going to cover
16 in the confidential session.

17 CHAIRMAN OBERMAN: Well, I wonder if,
18 before we do that, we should tell the viewers here
19 what we're going to do because we'll probably be
20 in confidential until we finish; right?

21 MS. AMUNSON: It's probably about 20
22 minutes -- 15, 20 minutes.

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3404

1 CHAIRMAN OBERMAN: So that's what I
2 think we should do and make some progress. But
3 why don't we -- just for the sake of everybody who
4 is observing these proceedings, we will reconvene
5 at 9:30 on Wednesday. Same rules that we've
6 applied here in person. Before the end of the
7 day, we will find time to determine and inform
8 people how we're going to proceed after Wednesday.

9 I would be really hopeful that we could
10 finish the last two witnesses before the end of
11 the day on Wednesday. But if it can't, we'll have to
12 find some time or -- obviously, we've already
13 informed the parties that we're not going to do
14 closing arguments on Wednesday, so that's another
15 matter.

16 So the proceeding's, unfortunately, not
17 going to end on Wednesday, unless you folks all
18 settle between now and then, which would be
19 advisable. So with that, I think we're going into
20 confidential session. I should have taken this
21 stupid thing off when I was talking. So can you
22 send us to the confidential session?

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3405

1 MS. AMUNSON: Alex, can you get Appendix
2 5, Joint Exhibit --

3 CHAIRMAN OBERMAN: All right. Are we
4 there? All right. You may proceed.

5 (Confidential Session.)

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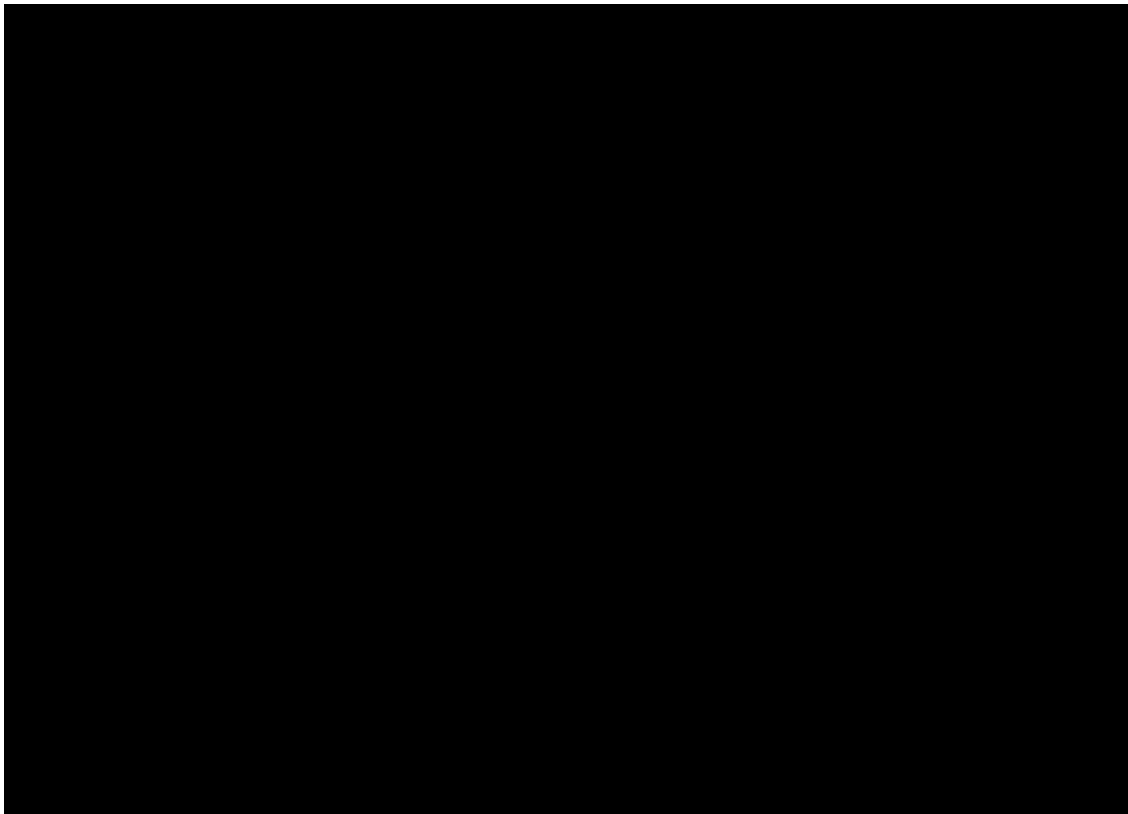
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REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3424

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(Whereupon at 6:10 p.m. the hearing
stood in recess until May 11th at 9:30 a.m.)

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3425

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C O N T E N T S

WITNESSES:

PAGE:

JIM BLAIR

Cross Examination By Mr. Donahue	3090
Cross Examination By Mr. Atkins	3270
Cross Examination By Mr. Helenhouse	3380
Cross Examination By Ms. Amunson	3405

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3426

1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, Sydney Crawford, the officer
3 before whom the foregoing proceeding was taken, do
4 hereby certify that the foregoing transcript is a
5 true and correct record of the testimony given;
6 that said testimony was taken by me
7 stenographically and thereafter reduced to
8 typewriting under my direction; and that I am
9 neither counsel for related to, nor employed by
10 any of the parties to this case and have no
11 interest, financial or otherwise, in its outcome.

12 IN WITNESS WHEREOF, I have hereunto set
13 hand and affixed my notarial seal this 23rd day of
14 May, 2022.

15

16

17

18

19

20

21 Sydney Crawford, Shorthand Reporter

22 My commission expires: May 15, 2024

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3427

A			
<p>a.m 3083:12 3159:22 3424:13</p> <p>A1 3200:5</p> <p>ability 3171:10 3202:20 3215:5 3296:9 3368:18 3371:9</p> <p>able 3158:11 3165:12 3172:10 3217:4 3218:6 3279:6 3303:19 3322:1 3343:15,17 3355:13 3372:9 3377:14 3411:6 3411:7,8 3415:13 3416:3 3422:3</p> <p>ABS 3412:18</p> <p>absent 3183:3 3413:2</p> <p>accept 3112:6 3284:4 3356:22</p> <p>accepted 3346:18</p> <p>access 3146:22 3157:14 3171:11 3217:3 3335:20 3344:16 3348:3,4 3350:5 3375:2 3393:7 3395:11 3417:13 3421:20 3423:2,19</p> <p>accessible 3308:22</p> <p>accommodate 3104:9,18 3343:7</p> <p>accomplish 3272:11 3297:21</p> <p>accomplished 3155:4</p> <p>account 3179:18</p> <p>accurate 3090:10 3099:8 3117:11 3147:9 3205:15 3232:17 3246:9 3365:2</p> <p>achievable 3253:15</p> <p>achieve 3271:7 3362:7</p> <p>achieved 3333:22</p> <p>achieving 3359:17</p> <p>acknowledge 3141:9</p> <p>acknowledged 3375:13 3394:10</p> <p>acknowledging 3394:15</p> <p>acknowledgment 3218:5</p> <p>Act 3221:15 3229:7</p> <p>actions 3246:18</p> <p>actively 3387:15</p> <p>activity 3421:1</p> <p>actual 3094:10 3095:11 3116:17 3118:9 3130:7 3199:16 3230:14 3287:14 3306:15 3357:19 3417:20 3421:20</p>	<p>ADA 3147:16 3148:9,21 3149:3,12 3150:12,14</p> <p>ADA-compliant 3147:18 3147:21 3148:3 3149:18 3150:8</p> <p>add 3143:17 3333:20 3342:12 3360:9,20</p> <p>added 3141:14 3194:4 3294:5</p> <p>adding 3166:15 3267:3 3293:20 3362:2</p> <p>addition 3183:4 3223:9 3265:7 3266:5 3291:2 3343:16,21 3407:20</p> <p>additional 3120:21,21 3131:1,12 3136:11,12 3210:10,16 3217:20 3225:15 3252:2 3253:2 3258:14 3274:11 3319:6 3335:22 3336:6 3362:2 3369:21 3420:22,22</p> <p>address 3148:12,19 3294:10 3351:7 3358:21 3367:12 3372:3 3391:10 3417:22</p> <p>addressed 3227:14</p> <p>addresses 3380:19</p> <p>addressing 3294:12,17</p> <p>adds 3142:6 3265:12</p> <p>adjacent 3146:11</p> <p>adjust 3335:8</p> <p>administration 3184:22 3308:3,5</p> <p>Administrator 3198:13 3204:15 3208:2 3257:5 3257:13 3325:6</p> <p>admissible 3378:5,17 3379:16,18</p> <p>admitted 3151:17</p> <p>adopt 3106:8</p> <p>ADR 3285:1</p> <p>advance 3179:4 3221:15 3239:2 3361:3</p> <p>advanced 3109:17 3319:5</p> <p>advisable 3404:19</p> <p>advise 3231:17</p> <p>advised 3106:4 3214:14 3217:19</p> <p>affairs 3160:2</p> <p>affect 3135:20 3245:8 3327:14 3401:9</p> <p>affixed 3178:10 3426:13</p> <p>affixing 3177:22</p>	<p>afforded 3294:20 3296:8</p> <p>afraid 3421:7</p> <p>afternoon 3310:11 3364:14 3365:11 3405:8</p> <p>agencies 3128:12 3137:17 3194:10 3196:4 3323:6 3386:7 3386:12</p> <p>agency 3196:4 3214:21</p> <p>aggressive 3383:8</p> <p>ago 3090:13 3091:6 3190:10 3233:19 3345:2,7 3376:15</p> <p>agree 3093:3 3094:18,20 3095:21 3096:4,20 3097:4,12 3099:1,15 3100:16,18 3101:1,16 3102:22 3103:17 3106:14 3107:7 3109:19 3110:12 3111:15 3116:2,4 3118:10,19 3119:8 3122:14 3127:3 3131:9 3131:10 3132:8,9 3134:13,20 3135:1,3,11 3139:3 3140:8 3141:2,7 3141:17,20 3142:11 3144:13 3147:19 3150:1 3152:6 3156:1 3160:14 3165:15,19 3167:18 3172:17,21 3174:20,22 3175:2,6,22 3177:15,18 3180:6 3181:7 3183:7 3184:1 3192:15 3214:12 3216:22 3223:11 3225:10 3241:13 3244:4 3250:2 3251:7 3252:22 3253:17 3254:4 3256:21,22 3259:19 3271:7,20 3272:16 3276:11 3284:17 3286:5 3305:7 3330:9,20 3331:2,9,14 3332:11 3352:21 3357:9 3383:2 3384:20 3386:15 3393:1,15 3399:6 3400:19 3420:1</p> <p>agreeable 3106:5</p> <p>agreed 3097:2 3118:9 3163:13 3178:1,10 3182:1,11 3183:8 3217:14 3220:20 3223:9 3233:21 3236:2 3237:11,21 3247:9</p>	<p>3256:19 3275:21 3276:8,13 3278:4,18 3285:2 3287:16 3301:3 3301:8,10 3344:21 3349:22 3357:9 3362:4 3373:22 3420:2</p> <p>agreement 3090:8 3096:16 3118:3 3159:11 3177:21 3178:7,8 3181:2,4 3182:22 3183:8 3196:10 3209:8,10 3217:9 3218:4,7,20 3219:5,12,17 3220:6,10 3220:11,11,18 3221:9 3221:11 3222:4,5 3223:1,13 3224:2 3225:22 3226:19,21 3227:2,3,10 3228:14,18 3228:21 3229:9,14,16 3229:22 3230:11,12,13 3230:14 3231:2 3234:10,12,20 3235:4,8 3235:11,17 3236:6,12 3236:14,15,16 3237:10 3243:5,7 3250:1 3251:1 3252:21 3276:2 3289:22 3306:13 3320:22 3321:2,3,4,6 3321:16 3322:9 3355:7 3366:17,22 3367:1,7,9 3367:12,21,22 3369:19 3369:20 3371:3 3372:7 3375:9 3382:7 3406:19 3407:7,12,17,21 3408:17,19 3409:1,20 3409:22,22 3410:1,10 3410:15,15</p> <p>agreements 3170:2 3175:19 3178:14,15,16 3178:19,21 3179:4,7,17 3179:20 3180:6,13,16 3181:7 3196:14 3210:14 3211:12 3214:4,9,13,15 3218:13 3218:15 3219:14 3220:7 3222:2,6 3223:16 3225:18,19 3227:1,1,5,16,17,21 3228:4 3229:15,20 3230:10 3231:3,20 3232:5,16,21 3233:4,19 3237:8 3251:5 3288:10 3290:5,9 3292:4 3320:20 3322:1,14 3367:19 3368:6</p>

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3428

<p>3370:22 3405:13 3406:20 3407:2 3410:14,20 3414:22 agrees 3132:2 3143:20 3175:16 ahead 3089:20 3144:2 3155:7,9 3158:6,14 3177:1,3 3197:14 3208:10 3234:20 3258:15 3293:18 3309:17 3328:17 3344:7 3380:6,7 3415:18 aim 3088:18,20,22 airport 3146:13,14,22 3313:5 airport-connected 3146:19 Alabama 3130:17 3137:9 3137:13,17,18 3138:6 3152:6,12,17 3155:18 3159:16 3163:2 3366:1 albeit 3212:7 Alex 3405:1 align 3181:3 3215:2 aligned 3095:6 3181:2 3290:12 3325:18 aligns 3325:9 all-clear 3157:19 all-stations 3419:21 alleged 3357:13 Allocated 3318:2 allow 3132:5 3217:10 3226:19 3237:11 3322:10 3335:20 3338:11,13 3341:6 3346:5 3351:11 3362:4 3371:1 3402:15 3414:9 3421:19 3423:11 allowed 3088:17 3229:21 3336:5 3422:11 3423:19 allows 3118:4 3338:4,21 3339:3,4 3365:8 alluded 3209:1 alongside 3363:12 alternative 3198:18,22 3199:7,18 3200:9,18 3217:8 3312:3 3366:8 alternatives 3198:11,18 3200:4 3311:15,18 amount 3125:5,11 3127:6 3127:17 3241:19 3260:21 3306:15,22 3322:14 3329:12 3352:6,21 3360:5</p>	<p>amounts 3329:7 Amtrak 3090:8 3091:21 3092:16,21 3093:5,17 3095:2,6,12,21 3096:4 3097:8,12,15,20 3098:7 3098:20 3104:13,22 3105:13,17,21 3106:3,8 3106:10,14,22 3107:8 3109:20 3110:19 3113:3,9,12,21 3114:5 3114:7 3115:8,13,15 3116:8,13 3118:3,14,21 3119:3 3120:4,10 3121:18 3122:8,11,22 3127:6,20 3128:1,16 3132:16 3133:7 3135:16 3137:4,19 3138:20 3144:13,15,22 3145:6 3146:4,18 3147:14,19 3148:7,9 3149:2,7 3150:7,11 3151:12 3156:7,8 3157:22 3158:11,11 3159:9 3160:11,21 3162:11 3163:3,13,21 3163:21 3164:10,19 3165:5,13,17 3166:7 3167:14,15 3168:6,7,22 3169:18 3170:12,21 3171:15 3172:8,19 3173:19 3174:6,19 3175:4,7,16 3180:16 3183:4 3188:17 3192:3 3192:13 3193:15 3194:3,7,18,20 3195:21 3196:13 3197:20 3198:9,12 3200:4,5,21 3201:12 3202:3,8,10 3203:12 3204:13 3205:3,8 3207:18 3208:1,3 3209:14 3210:7 3211:4 3214:1,3 3214:17 3217:2 3218:6 3218:7,19 3219:11,13 3219:17,19,20 3220:1 3220:22 3221:2,22 3222:4,10 3223:1,2,3 3224:1,7,18 3225:3 3228:1 3229:5,10,21 3230:5 3231:1,6,10,12 3231:22 3232:16,19,22 3233:3,14 3234:11 3236:12 3237:2,11,20 3237:20 3241:20 3242:12,14 3243:13,20 3244:5,12 3245:22</p>	<p>3246:6,19 3247:8 3248:4,13,21 3250:5,14 3250:18 3251:2,3,11,18 3251:21 3253:3,10,12 3254:8,9,21 3255:17 3256:5,11,16,19 3259:17 3260:5 3262:17 3263:2 3265:7 3265:12,21 3266:5 3267:9,12,14 3268:18 3272:18 3274:15,19,21 3275:18 3276:4,8 3277:2,20,22 3281:1 3284:1,7,19,21,22 3285:2 3287:5,18 3290:10 3294:20 3295:2,7 3296:13,21 3297:2,19 3298:2 3299:2,6,16 3300:9 3301:10 3307:1 3308:8 3308:15 3313:9,20 3314:19 3315:2,10,18 3316:22 3319:16 3321:16 3322:20,21 3323:6,17,17 3324:2,6 3324:20 3325:17 3326:5,9 3327:18 3333:1,20 3334:6,7 3336:4,15 3339:4,8,12 3340:17,20 3341:2,7,12 3343:10 3345:1,3,9,18 3346:2,11 3347:20 3348:17 3352:5,5 3354:5 3355:15,17,22 3356:1,7,19 3357:10,17 3357:18 3358:4,8 3359:22 3360:10 3362:4,19,22 3363:1 3364:21 3366:18 3367:5,14 3369:4 3372:12 3373:2 3374:6 3374:12,19 3375:2 3376:8 3377:4 3381:8 3381:16 3382:1,5 3383:16,20 3387:20 3388:1,17 3389:4,11,12 3389:20 3390:5,7 3391:9,16 3392:8,10,13 3392:20 3393:1,7 3394:21 3395:1,11,19 3396:5 3397:7 3399:3,8 3399:21 3400:8 3405:12,14 3406:18 3407:1,4,5,11 3408:13 3408:22 3409:3,13,18 3410:2,7 3411:1,6,21</p>	<p>3413:2,20 3414:4,9 3415:14 3416:2 3417:12 3419:4,14,20 3421:19 3422:3,8 3423:1,11,17 Amtrak's 3093:8,20 3094:12 3097:2 3117:18 3118:7 3119:1 3119:9 3141:6 3142:14 3144:12,16 3145:10 3149:12,22 3159:11 3167:20 3171:8 3188:19 3207:21 3214:19 3215:5 3222:17 3223:11 3227:20 3236:22 3237:7,14,16 3241:5,11 3244:22 3247:11,12 3255:2 3256:4,10,13 3263:8 3272:15,20 3273:1 3277:8 3278:12 3282:16 3293:17 3296:6 3297:14 3314:16 3323:20 3325:5,18 3333:19 3338:17,22 3344:16 3345:20,21 3346:7 3347:2 3350:17 3356:9 3362:18 3367:2 3370:6 3371:18 3383:13 3387:22 3389:6 3390:9 3391:18 3394:17 3395:17 3396:2,3 3411:8 3421:19 Amtrak-controlled 3274:22 Amunson 3131:16 3151:11 3152:22 3156:10,22 3158:19 3163:10,15 3168:9 3173:8 3174:8 3176:8 3186:2 3187:8 3189:1 3249:4,14 3254:17 3255:5 3263:20 3264:1 3264:4 3267:20 3278:14 3307:10 3316:4 3349:8,18 3351:6 3359:1 3388:20 3393:10 3402:11,17 3403:1,7,11,14,21 3405:1,7 3406:9 3416:1 3416:12 3417:6,10 3418:7,11 3421:12 3422:15 3423:5 3424:2 3424:7 3425:7 analogous 3259:12</p>
---	---	---	--

<p>analyses 3127:14 3128:8 3195:18 3313:12 3321:18,20</p> <p>analysis 3097:15,21 3099:22 3106:2 3107:6 3118:22 3127:21 3128:3,7,12,14,17 3192:17 3195:22 3196:15 3206:9 3223:4 3241:12 3244:21 3263:12 3291:4 3293:16 3313:1,6,14 3319:6,9,11 3320:7,16 3322:6,7,10,13,15 3323:11 3324:10,12 3325:19 3326:5,6 3331:3,13 3333:2 3334:16 3337:17 3347:9 3352:14 3361:6 3367:13,17 3369:7 3373:13 3400:3</p> <p>analyze 3312:3 3322:1</p> <p>analyzed 3237:12 3288:16</p> <p>Anderson 3235:1,2 3320:13</p> <p>Andy 3281:21,21 3282:1 3353:21</p> <p>Angeles 3260:17 3261:1</p> <p>annual 3126:14 3139:3</p> <p>annually 3126:15,19 3139:2 3325:10</p> <p>answer 3085:11 3101:8 3105:8 3106:20 3144:19,21 3162:6 3168:14 3174:10 3187:6 3189:5 3193:17 3197:2,3 3202:20 3203:6 3249:6,9,15 3281:22 3291:18 3392:18 3396:11 3415:19 3417:7 3422:11</p> <p>answered 3108:20 3114:21 3116:7 3162:12 3173:9 3267:21</p> <p>answers 3406:8</p> <p>anticipate 3265:14 3304:14 3413:1</p> <p>anticipated 3210:7,10 3296:1 3369:13 3409:16</p> <p>anybody 3379:21</p> <p>anyway 3225:11</p> <p>apologies 3281:18 3286:4</p>	<p>3286:13 3288:1</p> <p>apologize 3101:1 3102:15 3315:5</p> <p>apparent 3311:13</p> <p>appear 3156:10 3276:6 3314:18 3419:13,15</p> <p>appears 3141:6 3170:2 3174:3 3175:11 3204:18 3273:21 3315:1 3321:15 3322:9</p> <p>Appendix 3405:1</p> <p>applicable 3191:8</p> <p>application 3083:4 3190:11 3191:10,17 3244:21 3356:2 3395:18</p> <p>applications 3351:21 3352:3</p> <p>applied 3404:6</p> <p>appreciate 3084:18 3287:12 3291:15,17 3366:12 3424:9</p> <p>appreciated 3390:16</p> <p>apprised 3219:15</p> <p>approach 3093:18 3150:1,2,7 3274:9 3325:9,19 3365:5</p> <p>approaching 3298:19 3340:18,21</p> <p>appropriate 3088:1,5 3191:22 3258:2 3275:8 3328:7 3329:15 3414:7</p> <p>appropriations 3327:7</p> <p>approval 3167:16 3321:12,13</p> <p>approved 3114:17 3164:20 3165:1,15,18 3165:21,22,22 3166:2,6 3174:15,16 3175:4 3219:6 3221:21 3231:8</p> <p>approximately 3397:20</p> <p>April 3152:3 3172:14,14 3210:14 3211:21 3226:5</p> <p>Arbitration 3247:17,21 3248:6,15,22</p> <p>area 3194:16 3203:12 3312:7 3374:7 3377:10 3384:17</p> <p>areas 3398:9</p> <p>argumentative 3267:21 3268:4,6 3393:10</p> <p>arguments 3143:4 3404:14</p> <p>arranged 3084:15</p> <p>Arrangement 3242:6</p>	<p>arrival 3201:1 3359:22 3419:22</p> <p>arrive 3361:1</p> <p>arrived 3217:17 3327:5</p> <p>articulated 3296:19 3348:7</p> <p>artificial 3299:15</p> <p>artificially 3402:14</p> <p>Artura 3353:21</p> <p>aside 3223:3</p> <p>asked 3096:3 3118:6 3143:20 3148:11,19 3162:9 3173:8 3186:20 3187:21 3188:3 3191:22 3192:1,3 3210:22 3226:11 3228:3 3241:3 3256:15 3267:20 3290:2 3313:1 3396:12 3399:21 3405:11 3410:12 3411:10,10 3412:2 3416:15 3422:12</p> <p>asking 3105:12 3114:22 3131:19 3132:3,4 3133:8 3136:10 3148:15 3149:21 3159:15 3161:3,17 3162:18 3176:17 3190:20 3193:14 3195:10 3202:9 3235:7 3258:7 3265:2 3288:1 3291:16,19 3298:17 3336:4 3339:22 3345:8 3347:2 3358:16 3396:10 3413:20 3421:19 3422:6,6</p> <p>asks 3111:4</p> <p>aspects 3148:18 3356:10 3396:16,20 3412:14</p> <p>assented 3322:17,19</p> <p>assertion 3396:15</p> <p>assess 3414:10</p> <p>assessment 3142:14 3256:21 3329:22 3330:20 3331:2 3333:18</p> <p>assigned 3221:20 3382:8</p> <p>assume 3101:21 3160:6,7 3170:7 3190:5,7 3201:15 3305:17 3317:17 3318:5,7 3326:8 3327:6 3337:4,5 3349:16 3387:17 3402:10</p> <p>assumed 3207:15</p> <p>assuming 3341:2 3358:14</p>	<p>3422:9</p> <p>assumption 3195:18 3207:18,21</p> <p>assumptions 3181:20 3226:3,4 3317:2 3363:6 3408:3,13 3409:6,14,18</p> <p>Atkins 3089:14 3090:14 3090:15 3091:2 3144:18 3145:2 3240:13,14,20 3258:12 3269:2,5,9,11,13 3272:7 3277:10 3279:4 3279:12 3280:1 3282:7 3282:11,13 3285:22 3286:4,9,12,16,19 3306:20 3307:12,16,19 3311:7 3316:6 3378:3 3378:12 3425:5</p> <p>attached 3408:9</p> <p>attachment 3406:1</p> <p>attempted 3367:18</p> <p>attend 3133:4</p> <p>attendant 3355:19</p> <p>attendees 3353:22</p> <p>attention 3143:3 3205:2 3284:11 3413:16 3416:8 3418:12 3420:7</p> <p>attorney 3084:21</p> <p>attorney-client 3249:15 3349:15,21 3358:18 3392:19</p> <p>attorneys 3088:14 3154:11,14</p> <p>attractive 3146:17</p> <p>audience 3111:6</p> <p>August 3172:15 3195:12 3226:5,6 3227:8 3241:10 3244:5 3245:11 3246:7 3263:17 3281:7 3353:6 3354:16 3405:18 3406:10 3416:22</p> <p>authority 3222:14</p> <p>authorization 3325:13</p> <p>authorize 3329:16</p> <p>authorized 3176:18 3325:11 3329:2</p> <p>automations 3423:14</p> <p>availability 3328:21 3329:19,20</p> <p>available 3113:17 3114:3 3137:6 3138:7 3149:20 3196:18 3228:12 3231:13,17 3274:12 3275:4,9 3327:9,12 3328:6 3329:1,8</p>
--	--	--	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3430

<p>3349:11 3371:22 3375:11 average 3201:9,20,21 3411:14 averaged 3201:13 averages 3202:7 avoid 3138:20 3176:14 3320:2 award 3228:11 3352:15 awarded 3116:22 3220:17,19 3228:21 3327:20 aware 3099:13 3102:18 3107:11,17 3109:3,5 3122:16,19,20 3123:1 3128:19 3137:12 3138:13,13,16 3144:12 3148:4,5,7,16,17,21 3149:2 3152:16 3178:21 3185:22 3190:19 3193:15 3212:11 3255:2,15,20 3256:1,2,6,9 3262:20 3263:7,16,22 3276:15 3276:19 3295:6 3296:12,18 3299:2,19 3300:14 3304:2 3313:9 3377:20 3382:19 3387:5,14 awareness 3163:4 3347:20 awkward 3270:2</p> <hr/> <p style="text-align: center;">B</p> <p>B 3162:4 3198:18,22 3199:3,4,7,18,21 3200:5,6,9,18 3360:5 3360:17 B1 3199:5 3200:5 back 3087:7,11,17 3093:10 3095:21 3099:18 3100:7,12,18 3101:3,8,14,18,21 3115:5 3116:6 3126:1 3153:16 3154:2,7 3157:6,12,17 3158:2 3159:10 3172:14 3176:13 3193:9 3197:12 3215:22 3224:8 3225:8 3239:13 3240:19 3241:2 3257:17 3258:4,6 3259:3 3267:14 3269:15,16 3278:1 3279:9 3281:17 3282:12,14 3286:3</p>	<p>3291:6 3293:12 3302:3 3302:16 3335:13 3339:5 3344:18,20 3346:1 3347:7 3349:4 3352:18 3355:3 3359:4 3363:16,19,22 3364:1 3364:14 3365:1 3366:4 3368:5 3389:15 3392:6 3414:21 3421:16 backdrop 3235:18 background 3234:10,17 3246:12 backing 3330:19 Badgering 3152:22 Bakersfield 3261:6,12,15 ballpark 3231:18 3274:16 3326:14 3329:2 Banks/Guthrie/Dingler 3419:11 base 3164:20 3165:6,10 3165:14 3166:5,12 3174:15,20 3183:16 3235:12 3236:8 3238:10 3241:14 3242:2 3293:4,13,22 3369:22 3370:19 3374:3 3407:9,15 3409:15 3411:7 3413:7 3413:8 base-case 3408:5 based 3125:8 3185:3 3210:3 3217:15 3245:2 3248:8 3252:12 3253:3 3263:4 3267:6 3268:4 3317:3 3322:1 3327:7 3337:16 3346:1 3347:19 3351:15 3362:13 3370:7 3379:17 3414:3 3417:14 basic 3411:1 3412:3 basically 3090:7 3117:20 3206:8 3377:5 3396:10 3397:5 3398:20 3399:3 3412:4 basis 3171:3 3194:17 3196:2 3201:9 3293:16 3303:16 3319:14 Bates 3112:17 3122:1 3123:6 3126:7 3129:17 3133:19 3136:20 3138:13 3140:15 3156:11 3181:13,14 3182:16,19 3185:18 3203:18 3318:20</p>	<p>3327:2 3406:22 Bates-stamped 3182:4,13 batted 3372:19 Bay 3259:22 BCA 3330:18 3332:18 Beach 3261:19 beam 3258:21 bear 3259:18 3344:15 Bearing 3333:3 beg 3202:5 began 3349:1 beginning 3121:19 3134:5 3147:7 3206:21 3230:22 3280:15 3288:8 3301:2 3302:7 3345:17 3397:4 begins 3242:8 3251:18 3413:17 begun 3116:18 3120:4 3121:16 behalf 3162:15 3263:8 3366:18 behavior 3353:14 3354:15 believe 3089:4 3095:2,16 3109:21 3113:1,2 3116:19 3121:12 3124:7,8 3130:14,22 3137:22 3139:6 3141:12 3145:15 3146:9 3151:11 3156:6 3156:8,22 3158:19 3163:18 3164:15 3165:4 3166:18 3169:18 3179:6 3188:14 3192:13 3210:20 3250:17 3262:8 3263:11 3264:17 3267:8,14 3268:10,15 3278:14 3289:2,3 3292:17 3297:11 3304:22 3305:13,19 3316:14 3326:22 3329:17 3341:12 3344:11 3347:13 3357:15 3376:18 3393:20 3401:22 3403:14 3414:13 3415:1 3417:6 3417:10 believed 3141:11 3163:21 3405:14 3406:18 believes 3092:21 3407:1 Belt 3099:18 3100:7,12 3100:19 3101:3,8,14,18 3101:21 3267:14</p>	<p>beneficial 3374:5 benefit 3204:11,12 3226:6 3281:11 3324:9 3332:19 3334:20 3393:21 3394:16,20,21 benefit-to-cost 3330:6 benefits 3092:20 3128:9 3128:10 3324:19 3325:2 3330:15,21,21 3331:9 3332:13,16,21 3333:4,8,11,22 3334:6 3334:9,17 3338:5 3340:7,11 3343:14,19 3374:9 Berkeley 3312:10 best 3100:9 3111:7 3118:8 3145:15 3233:10 3299:16 3351:4 3367:11 3370:10 3372:16 3402:11 better 3132:11,16,17 3133:2 3245:22 3246:7 3267:2,14 3268:11 3271:8 3318:21 3349:9 3366:7 3375:4 3389:16 3390:14 beyond 3086:22 3117:1 3202:20 3406:3,4 3418:5 bidirectional 3376:14 3377:8 big 3138:8 3328:4 bigger 3329:13 biggest 3185:4 bill 3112:22 3115:9,10 3156:17 3158:22 3241:3,5 3245:12 3375:1,7,17 billion 3113:4,14 3114:8 3114:14 3115:4,8,15,19 3139:2 3262:15 3274:16,20 3329:17 billions 3114:16 3116:3,5 3275:2 3375:3 bipartisan 3114:5 3115:11 bit 3092:5 3103:22 3270:7 3275:15 3297:17 3309:18 3349:11 3351:14 3359:16 Black 3254:7 Blair 3089:5,5 3090:2,6 3105:7 3111:10 3114:13,21 3125:20</p>
---	---	--	---

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3431

<p>3131:16 3132:2 3143:6 3144:21 3152:2 3155:17 3159:15 3162:3,11 3163:1 3167:6 3168:13 3177:8 3187:9 3190:18 3192:7 3197:19 3201:2 3202:2 3202:6 3203:6 3212:19 3218:19 3230:5 3239:18 3240:5 3241:2 3249:8,21 3255:7,18 3259:7 3269:5,14 3270:3 3275:16 3276:15 3280:2 3282:14 3284:17 3286:16 3291:15 3296:5 3298:7 3299:19 3303:4 3306:22 3312:22 3313:22 3314:13 3315:7 3316:8 3316:21 3328:19 3343:2 3345:1 3349:12 3349:16 3350:22 3366:11,15 3376:10 3379:2,7,21 3382:4 3389:8 3405:8 3406:11 3416:21 3418:6 3421:6 3421:15 3422:6 3423:19 3425:3 Blair's 3132:4 3186:15 3350:2,7 blank 3240:1 blocking 3302:12 3309:20,22 3310:2,6 3312:10 BN 3261:7 board 3083:1 3084:7 3085:1,13 3088:2 3150:14 3166:11 3191:17 3192:3 3215:17 3230:7 3308:7 3317:7 3333:6,15 3334:21 3335:19 3336:5 3348:18 3350:9 3350:16 3351:8 3358:15 3359:2,2 3364:2,14 3376:3 3395:17 3396:2,9 3399:20 3406:16 3410:18,19 3413:19 3420:11 3422:20 3424:9 board's 3238:20 3263:16 3396:8 boarding 3208:6 book 3162:5,7</p>	<p>booming 3134:12 boss 3234:7 Boston 3146:21 bottom 3091:17,19 3092:6 3098:12 3103:6 3108:16 3111:18 3112:8 3117:4,5 3122:5 3123:10 3129:18,19 3130:7 3136:21 3139:14 3142:8 3146:3 3146:5 3195:16 3203:15 3210:12 3316:12 bound 3177:20 box 3123:20 3371:16 brand-new 3282:22 3283:12 break 3088:13,18 3150:20 3153:12,13 3158:16,18 3159:3 3215:18 3238:22 3239:5,12 3277:14 3335:13 breakout 3087:20,22 breaks 3088:21 bridge 3423:14 bridges 3260:13 3261:12 3343:22 3368:19,22 3397:14,15,16 brief 3366:16 3422:4 briefed 3389:1 briefing 3155:18 3159:16 3160:5 3162:4 3163:1 3354:18 3390:2 briefly 3292:13 bring 3227:9 3259:17 3388:17 3422:14 broad 3333:15 3370:3 broadly 3334:1 broke 3115:11 broken 3411:12 Brookley 3144:8,14,16 3145:1,7 3146:13 3147:11,12 3307:9 3312:12 3313:11 brought 3191:7 3317:7 3333:13 3370:1 3388:14 3390:3,5,7 build 3137:6 3308:10 3352:8 3374:19 building 3087:6 3238:10 3305:16 3366:2 built 3262:10 3312:20 3323:22 3326:20 3327:13 3337:10 3341:4 3359:10</p>	<p>bullet 3104:8,17 3117:10 3164:19 3167:13 3174:19 3287:8 bunch 3230:16 bundle 3327:16,22 Burlington 3260:18 business 3134:12,14,17 3135:4,8 3303:21 3315:4,14 3332:8 businesses 3137:8 button 3085:3,5 3090:4 3318:18 bypass 3108:5 3109:3 3291:10,22 3338:10</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 3084:1 3182:6,16,20 3199:21 3200:5 3425:1 calculated 3196:2 calculating 3356:12 calculation 3334:13 calculator 3413:4 calendar 3120:7 3243:2 calibrate 3407:9 call 3099:21 3121:12,13 3168:21 3202:10 3205:2 3282:19 3283:9 3299:14 3353:19 3360:5 called 3222:13 3380:6 3416:9 calls 3170:13 3217:22 3249:5,15 3294:9,12 3333:14 camera 3085:2 3086:10 3086:12 cameras 3084:16 3085:6 Canadian 3118:4 3299:3 candidates 3324:17 capacity 3093:14,17 3135:19 3136:3 3254:10 3264:19 3265:6,13 3266:6 3267:16 3268:12 3328:11 3398:21 capital 3092:21 3150:2 3254:22 3256:4,17 captures 3298:5 care 3354:10 cargo 3139:1 3140:1 Carolina 3122:6,9,17 cars 3384:7,9,13,15 3385:4,9 case 3108:21 3150:13 3161:15 3164:20 3165:1,6,10,14,18</p>	<p>3166:12,13,15 3167:3 3174:15,16,20 3175:3,5 3175:8 3183:1,9,16,16 3184:2 3189:22 3190:11,13 3191:3,11 3191:20 3199:12 3201:3 3228:17 3235:12 3236:8 3237:12 3238:10 3241:14,14 3242:2,3 3248:5,14,22 3253:9 3279:16 3293:13,13,21 3293:22 3294:21 3303:7 3307:21 3317:17 3320:17 3322:5 3323:7 3325:11 3333:13 3345:2,5,18,21 3346:3,7,20 3347:11,14 3348:1,13 3349:1 3350:4 3351:3 3355:5,6 3355:9 3356:20 3357:5 3357:6,8,12 3361:6 3370:10,19 3377:22 3378:9,15 3391:8,14,20 3392:2,16 3400:18 3401:7 3407:10,10,15 3407:15 3408:4,5,15 3409:15,17 3411:7 3413:8,9 3416:18 3420:9,13 3426:10 cases 3166:6 3213:17 3293:4 3348:17 3355:21 3399:11,14 catch 3108:13 categories 3115:12 cause 3340:20 3353:14 causing 3238:6 3334:2 caveats 3301:5,7 cc 3208:20 CDC 3412:13,18 CEO 3234:11 3235:1,2 3241:5 3246:10 3248:1 CEOs 3235:17 3236:13 ceremonial 3133:3 certain 3148:18 3218:5 3223:10 3224:2,14,17 3225:19,20 3228:13 3275:4,6 3338:11 3368:3 3373:6 3410:3 3411:19 certainly 3084:3 3137:18 3139:6 3142:19 3146:17 3230:3 3322:12 3333:15 3335:4 3348:13 3351:1 3351:6 3359:19 3373:4</p>
---	--	--	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3432

<p>3375:20 3377:13 3379:19 3402:15 3422:15 CERTIFICATE 3426:1 certify 3426:4 chains 3186:15 3213:2 chair 3089:13 3092:5 3098:11 3103:5 3130:6 3143:18 3144:18 3145:2 3151:6,11 3153:9,22 3156:1 3163:11,13,15 3175:14 3187:8 3189:1,13 3190:17 3203:2 3215:19 3234:16 3238:18 3249:4 3253:20 3255:5 3257:14 3268:3 3270:4 3278:15 3349:8 3351:6 3402:12,17 3405:11 3406:2 3418:8 3421:6 3422:15 chair's 3417:7 Chairman 3084:2 3086:9 3086:12 3089:11,18 3090:14 3091:10,13 3092:2,7,10 3102:2,5,7 3102:12 3105:6 3108:13,17,22 3110:20 3111:20 3112:4,13,15 3114:12 3125:18 3126:3,9,16 3127:1 3129:10,14,17 3131:20 3132:1 3134:3,6 3142:17 3144:2,20 3149:8,11 3150:10,18 3151:2,8,16,21 3153:3 3153:11,18 3154:1,5,10 3154:22 3155:3,9,20 3156:3,6,15 3157:5,9 3157:10,21 3158:1,5,7 3158:8,15,21 3159:7 3161:12,20 3162:2,13 3164:2,6 3166:9,20 3167:6 3168:13 3169:4 3169:11 3170:4,14,18 3171:17 3173:6,10 3174:10 3175:15,20 3176:2,12,16,21 3177:3 3178:4 3182:14,17 3184:8,12,14 3185:6,12 3186:7,14 3187:15 3188:2,6,11 3189:4,10 3189:18 3190:7 3191:1 3191:10,18 3193:2,17 3195:4 3197:1,10,16</p>	<p>3198:1,6 3200:17 3201:4 3202:1,6,17 3203:3 3208:10 3212:18 3215:11,16,21 3216:6,9 3218:17 3219:3 3220:9 3221:3,6 3222:8 3223:18 3225:4 3226:16 3227:18 3229:19 3230:9,15 3234:18 3236:19 3237:6,13,18,22 3238:20 3239:7,11,16 3239:22 3240:3,13,16 3243:17,21 3249:8,12 3249:17 3251:14 3254:1 3255:4,10,14 3256:7 3257:16,19 3258:1,9,12,15,19 3259:2 3264:3,5 3268:1 3268:6,22 3269:2,4 3276:21 3277:4,7,10,16 3277:19 3278:10 3279:1,8,13,15 3285:20 3286:2,4,7,9,11,13,14 3306:17 3307:14,17,18 3315:15 3316:2,5 3318:10,12,15 3328:16 3335:12,16 3342:21 3343:1 3344:7,14 3349:5,14,22 3351:10 3357:15 3359:1,3,5 3376:10,12 3378:3,10 3378:13,18 3379:4,20 3380:5 3381:3,7,14,21 3382:3 3386:1 3389:2,7 3393:11 3402:1,7,13,21 3403:5,9,12,17 3404:1 3405:3 3406:4,7 3415:16,20 3416:10,13 3417:9 3418:1,9 3421:10,14 3423:3,7 3424:3,8 challenges 3171:21,22 3172:1 3173:2 3174:1,2 3174:3,5 3261:22 chance 3090:12 3105:3 3147:3 3177:8 3270:7 3280:3 3284:12 change 3222:7 3224:10 3310:1 3329:21 3330:3 3330:6 3353:14 3354:14 3358:5 3369:6 changed 3223:16 3329:21 3330:10,11 changes 3182:7 3321:8 3321:10,11 3323:1,2,3</p>	<p>3332:4,5 3335:6 3358:9 3368:14 3413:7 3423:15 characteristic 3398:2,11 3414:12 characteristics 3260:4 3397:12 3398:6,16 3399:2,9 3411:14 characterization 3118:2 3119:5 characterize 3095:15 3099:19 3146:9 3153:6 3180:10 3297:3 3367:10 chart 3125:14,16,19 3160:10 3190:17 3191:7 charts 3173:13 3368:11 3412:4 check 3115:21,22 3366:11 Chicago 3260:17,22 chief 3205:4 3261:2 3280:17 3281:1 3366:22 Choctaw 3302:16,18,22 3303:10,17 3305:3,6 3308:21,22 3309:4,5,6 3311:10,16,19 3312:1 3363:21 3364:6 3365:1 3366:4 choice 3366:2 choose 3248:1 choosing 3308:16 chronology 3218:19 3257:6 circuits 3412:6 circumstance 3298:20 3375:19 3376:1 circumstance-by-circu... 3297:18 circumstances 3265:8 3296:20 3309:19 3396:21 3397:1 cite 3264:6 3407:6,16 3410:8 cited 3090:9 3198:5,10 3213:14 3260:20 3261:6,18,21 3340:11 3399:13 cites 3200:20 city 3110:12 3138:15,22 3139:8 3304:17,18,21 3305:10,13,14,17,19 3308:5 3365:16,21 3366:3</p>	<p>city's 3307:13 3366:8 Claiborne 3296:2 claim 3353:18 claiming 3398:21 clarification 3124:6 3190:2 3311:3 3336:2 3384:8 3392:7 clarify 3191:15 3206:3 3221:5 3228:9,9 3291:21 3306:7 3338:20 3382:6,9 3383:10 clean 3268:5 clear 3085:21 3109:13 3115:6 3116:7 3129:15 3129:20 3143:6 3166:21 3202:19 3221:7 3223:22 3228:6 3230:20 3231:6 3238:2 3310:21 3338:4 3339:3 3344:22 3379:17 3381:11 3382:4 3418:10 cleared 3126:4 3341:1 clearer 3173:16 clearing 3340:16 clearly 3136:18 3142:15 3256:13 close 3139:2 3278:4 closely 3095:5 3290:12 closing 3143:3 3316:1 3351:7 3404:14 coach 3199:5 coast 3090:9 3091:12 3093:6 3094:3,6,16,22 3096:10,21 3098:1,14 3099:7,12,16 3100:4,10 3101:2,17 3102:12,14 3102:18 3105:21 3106:4,9,12,15 3109:17 3109:20 3119:12,17 3120:8 3121:2 3126:14 3127:7,12 3132:18,22 3133:5,9,16 3135:19 3136:3 3145:9 3149:22 3152:14 3161:1,5,22 3164:10 3168:1 3187:2 3188:22 3189:17 3193:20 3197:21 3198:4,10,10 3199:16 3199:20 3200:2 3202:14,16 3204:3,9,12 3204:20 3205:11,15 3206:4,14,17 3207:3,9 3207:13,22 3221:16 3229:8 3247:3,5,10,13</p>
---	---	---	---

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3433

<p>3254:13 3255:3 3256:3 3257:3,9 3259:9,20 3260:5 3261:10,19,22 3265:5,22 3269:17 3270:8 3271:5,22 3272:9 3275:14 3284:3 3285:16,17,18 3287:17 3288:4 3289:13 3290:3 3290:13 3291:11 3292:2 3298:11 3299:10 3301:4,11,13 3301:17 3303:1,10,14 3304:6 3308:13 3314:6 3316:10,15,22 3317:11 3317:14,20 3318:16,18 3320:6 3322:3 3324:4 3324:22 3325:7,18,21 3326:6 3327:1,21 3328:21 3329:6 3330:12 3331:21 3336:6 3337:13 3338:6 3339:21 3341:13 3343:4,10 3351:19 3352:17 3361:6 3362:21 3367:13 3368:21 3372:14 3373:20 3374:2 3386:5 3386:13,20,22 3387:12 3387:16 3394:12,14,18 3396:15 3407:2 3419:19 Cogswell 3184:20 Cogswell's 3188:16 3189:8 collaboration 3225:21 collaborative 3373:13,14 collaboratively 3206:9 collected 3382:16,17 column 3123:17 3124:5 3124:18,21 3125:19 3126:17 3160:21 3318:1 combination 3250:15 combined 3211:7 come 3086:20 3087:10 3089:6,16 3106:16,17 3115:15 3154:6,17 3176:9 3205:1 3215:22 3219:10 3221:22 3257:9 3274:21 3300:22 3326:9 3350:18 3384:17 3387:18 3420:21 comes 3115:13 3258:14 3363:14 comfortable 3284:7</p>	<p>coming 3240:15 3282:18 3298:4 3310:18 3328:12 3358:15 3375:3 3384:7 3385:2 3385:10 comma 3236:3 comment 3150:9 3156:4 3189:8 3192:20,21 3203:10 3209:20 3212:14,15 3256:22 3297:5 3325:6 comments 3089:3 3113:8 3137:15 3147:10 3185:4 3325:7 commerce 3242:15 3354:5 commercial 3212:3 3281:1 commission 3120:14 3128:13 3159:17 3163:2 3169:22 3196:6 3219:11 3285:19 3377:21 3378:11,21 3379:8 3426:22 commit 3152:13 3376:4 3395:1,20 3396:5 commitment 3408:18 commitments 3227:15 3393:9 commits 3407:4,5,21 committed 3395:14 committee 3101:7 3170:9 committing 3395:5 common 3211:8 3326:3,4 commonality 3374:13 communicate 3218:1 communicated 3172:12 3285:4 3305:22 communication 3215:9 3379:9 communications 3210:21 3214:7 3232:10 3249:16 3256:11 3326:2 3368:4,21 3386:14 3391:15 3408:11,20 3409:11 communities 3120:13,22 3265:1,5 commuter 3323:6 3335:8 3335:10 compact 3196:5 companies 3142:9 Company 3083:7 comparative 3323:12 compare 3335:2 compared 3125:4,12</p>	<p>3330:7 3331:1 3333:22 3359:12 3400:4,7,9 comparing 3333:7 3400:20 comparison 3140:20 compel 3422:1 competitive 3342:5,11,15 compiled 3226:13 complained 3148:3 3296:14 complaining 3299:4 complaint 3418:2 complete 3172:5 3206:9 3214:10 3220:2 3223:6 3223:14 3224:21 3225:2 3241:14 3242:3 3252:13 3253:7 3367:15 3383:3,5 completed 3120:6 3152:11 3203:5 3207:7 3242:22 3244:6 completing 3214:22 completion 3119:21 3120:12 3243:16 3251:11,22 3252:5,18 complex 3141:15,22 complexities 3302:7 compliance 3149:12 3150:12,15 compliant 3147:16 3148:10 3149:3 complicated 3331:6 component 3371:2 components 3360:2 comporting 3303:13 comprehensive 3113:11 3226:12 3373:17 computers 3358:5 3422:8 concept 3298:6 3300:18 conceptual 3235:18 concern 3130:22 3131:12 3169:8 3172:14 3185:3 3185:20 3187:1,22 3189:16 3190:21 3217:14 3218:2,3 3245:2 3265:19 3266:1 3266:2,3,6 3283:16 3296:19 3297:6,11 3299:17 3354:14 3361:18 concerned 3168:22 3188:16 3244:12 3352:10,12 3365:20 concerns 3165:5,17 3168:7 3215:4 3245:4,8 3280:12 3294:19</p>	<p>3295:17 3302:10,11 3345:11,14 3362:14 3365:15 3369:19 3389:12 3390:9,10 3391:4,10 conclude 3088:22 3252:12 3347:22 conclusion 3125:8 3132:2 3132:9 3224:22 3250:12 3323:18 conclusions 3273:8 3284:4 concur 3349:16 condition 3331:19 3377:16 conditions 3399:12,14,15 3399:16,18 3414:3 conduct 3218:20 3322:14 3322:15 3345:10 3347:6 conducted 3097:15 3120:16 3236:5 3333:1 3389:14 conducting 3210:10 3221:17 confer 3157:22 3278:7,21 conference 3088:9 confidential 3087:2,14,15 3088:11 3153:21 3154:6,13,19 3155:12 3155:14,21 3156:2,8,11 3156:12,19 3158:10 3159:6,9,9 3163:7,17 3163:19,20 3175:14 3176:1,7,18 3215:15,20 3218:21 3225:12 3239:15 3253:20 3257:15,21 3258:5 3276:21 3277:1,1,18 3278:7,11 3279:2,18,21 3285:21 3286:6 3313:19 3357:16 3380:3 3402:19,20 3403:2,4,7,13,15,16,20 3404:20,22 3405:5 3422:22 confidentiality 3088:15 3163:22 3277:12 3278:2,8 3414:16 configuration 3412:3 configurations 3398:10 3413:11 confine 3306:18 confirm 3160:8 3272:9 3280:15 3316:20 3317:10 3318:6</p>
---	---	--	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3434

<p>confirmation 3272:22 conflict 3331:20 3336:19 3338:13 conflicts 3377:15 3414:7 confront 3261:1 3362:14 confronted 3260:5 3361:19 confused 3114:13 3349:11 3383:11 confusing 3092:5 3320:18 congested 3342:14 congestion 3135:18 3136:2,12 3140:22 3149:13 3264:19 3265:6,13 3266:6 3267:16 3268:12,17 congregate 3087:9 Congress 3274:16 3275:4 3325:9 3296:7,13,14 3303:15 3362:18 conjunction 3334:6 3368:20 connection 3097:16 3346:6 3362:20 3363:4 Connects 3334:7 Conrail 3400:18 consensus 3213:19 consented 3284:22 consider 3247:1 3248:5 3248:14,21 3311:15,17 3333:6,15 3339:22 3360:14 3401:8 consideration 3099:16 3379:15 considered 3100:1 3109:9 3206:19 3301:19 3302:1 3375:6 3380:17 3381:1 considering 3191:21 considers 3393:1 consistent 3095:18 3192:15 3317:7 3394:17 Consisting 3397:17 constitute 3339:13 constitutes 3178:7 constrained 3371:6,7,8 constraining 3371:4 constraints 3368:16 3372:3,6,10 construct 3305:4,6 constructed 3235:8,16 3302:20 construction 3121:9,10 3121:11,15,19 3206:18</p>	<p>constructs 3360:1 consult 3391:22 consultant 3276:10,13 3285:5 3407:8,13 3408:12,20 3409:8,12 consultants 3263:3 consulted 3232:8 3382:12 consulting 3230:14 contacted 3381:2 contacting 3281:21 3382:20 contain 3400:3 contained 3237:10 3367:21 3373:19 container 3140:2 contemplate 3336:16 contemplated 3107:1 3167:3 3223:6 3238:8 3290:21 3293:15 3324:6 3325:8 3337:12 3341:7,22 3343:22 3352:11 3368:20 contemplates 3336:12,17 3337:6 contemplating 3235:12 3336:8 contend 3230:3,4 contending 3226:18 contends 3228:2 contention 3223:22 3224:6 3226:16 context 3107:4 3214:11 3279:12 3319:12 3333:17 3374:1 3392:3 contingency 3224:20 continue 3221:15 3286:10 3309:16 3367:16 continued 3120:17 3174:5 3243:2,4,7 continues 3140:18 3141:5 3142:5 3147:14 3205:3 3205:8 continuing 3242:13 3374:18 3376:5 contract 3196:20 3220:21,22 3221:1 3222:12,13,15 3224:7,9 3224:11 3225:7,9 3226:18 3228:22 3321:21 contradicting 3276:6 contradiction 3096:16 contradictory 3310:6 Contrary 3110:2 contribute 3123:19</p>	<p>Contribution 3318:2 control 3412:12 controlled 3304:21 convene 3089:2 3424:11 conversation 3277:20 conversations 3214:11 3217:11,13 3249:10 3304:17,18 converted 3238:11 convincing 3353:13 cooperate 3313:13 cooperation 3225:1,20 3242:14 3371:7 cooperative 3250:1 copied 3192:19 3208:20 3216:13 3255:8 copy 3111:21 3292:2 corded 3085:1 corner 3112:9,10 3129:9 3286:22 corollary 3140:9 Corporation 3083:5 3280:17 correct 3090:7 3093:10 3098:9 3102:20 3109:10,15 3116:11 3121:5 3123:9 3124:2,3 3127:9 3133:11 3135:2 3160:12 3174:16 3176:8 3178:1 3183:14 3186:20 3196:16 3197:9 3199:20 3209:9 3209:11 3219:1 3229:18 3233:20 3238:3,4 3240:11 3241:15,19,21 3245:17 3247:3 3253:10 3266:20 3270:21 3272:2,13 3273:10 3274:5,7,12,18 3275:11 3275:12 3278:14 3280:18 3281:3 3284:8 3285:11 3290:4 3293:2 3293:21 3295:4 3297:2 3298:21 3301:5,15,18 3302:17 3304:12 3306:10 3307:9 3308:1 3308:12 3309:21 3310:15 3317:12 3318:4 3322:11 3336:9 3339:15 3342:18 3346:22 3347:13 3355:12 3358:11 3366:17 3385:5,14 3395:8 3397:14,21 3398:8 3399:4,9,10,19</p>	<p>3399:19 3400:5,12 3401:1 3417:5 3418:7 3419:2,3 3420:4 3423:22 3426:5 correctly 3125:3 correlate 3262:5 correlation 3135:8 correspondence 3281:6 3283:2 3284:21 3311:21 3417:19 corridor 3103:14 3113:12 3116:16 3259:9,20 3260:1,5,8 3260:10,12,14 3262:1,3 3262:7,10 3265:22 3267:1,2,8,10,13 3289:21 3298:11 3323:14 3326:5 3335:7 3341:13 3342:2 3356:5 3356:6,8 3367:16 3373:8,9,18 3374:9,16 3374:18 3376:5,7 3384:11,19,21 3385:5,8 3393:3,8,20 3395:12 3396:15,18 3400:15 corridors 3116:16 3260:6 3325:16 3374:19 cost 3101:18,21 3103:2 3224:19 3262:9 3324:8 3325:2 3330:15 3331:1 3332:21 3333:5,8,9,21 3334:21,21 3335:2,9 3370:5 cost-benefit 3127:20 3128:3,7,14,17 3313:1 3313:6,12,14 3324:10 3324:12 3333:2 3334:13,16 cost-of-performance 3196:12 costly 3212:7 3369:8 costs 3128:6 3274:7 3331:10 3332:13 3333:10 3334:17 3365:8 counsel 3118:6 3157:22 3164:6 3187:11 3203:1 3227:19 3230:6 3243:22 3249:10 3263:11 3277:14 3346:13 3347:4 3349:7 3349:10 3355:18 3367:5 3379:14 3426:9 counted 3213:19 counterpart 3271:9 3282:1</p>
--	--	--	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3435

<p>counting 3088:13 country 3106:11 3146:20 3212:9 3324:14 3337:20 counts 3400:22 couple 3090:5,13 3091:6 3093:12 3143:22 3213:14 3258:13,17 3293:2,10,12 3351:13 3376:11 3391:13 course 3106:17 3315:4,14 3315:21 3349:13 3351:12 3353:12 3420:15 court 3085:19 3156:17 cover 3111:19,22 3143:10 3223:3 3249:22 3403:15 covered 3154:15 COVID 3089:15 3238:5 Crawford 3426:2,21 create 3222:1 3339:20 3346:17 3420:18 3421:3 created 3131:1,13 3211:11 3299:14 3361:14 3377:5 creation 3305:11 credibility 3332:3 crew 3365:7 CRISI 3327:9 3329:1,9 3329:16 criteria 3245:19 3250:22 criticism 3284:2 criticize 3396:14 cross 3089:8 3143:19 3150:20 3255:13 3258:3 3301:3 3303:8 3315:16 3363:20 3384:11 3385:5,7,12 3406:3,6 3425:4,5,6,7 cross-examination 3089:21 3143:19 3151:19 3187:14 3203:1 3239:18 3255:15 3267:22 3269:8 3380:8 3405:11 3410:12 crosses 3397:20 crossings 3261:15,21 3262:4 Crowley 3133:13 3331:12,17 3416:15 3417:1,3,6,11,17 3418:4 Crowley's 3133:14</p>	<p> 3331:2 3346:4 CS- 3276:8 CSX 3083:6 3098:20 3151:14 3163:19,22 3164:3 3165:22 3167:16 3170:15 3180:12,14 3183:1 3223:10 3234:11 3235:2 3236:13,22 3266:10 3267:11 3271:12 3272:1 3275:18,20 3276:3,7,10 3276:22 3278:20 3280:17 3282:1,5 3283:15 3284:19,20 3285:3 3289:7 3305:1 3305:15 3306:9,15 3307:1 3308:7,18,20 3311:21,22 3313:18 3319:7,14,21 3320:14 3330:20 3331:9 3346:16 3352:4 3353:20 3364:8,17 3365:12 3368:12 3369:5 3371:11 3373:22 3376:17 3377:2,6 3378:14 3379:9 3380:17 3381:12 3383:1 3384:11,19,21 3385:5,7 3395:5,15 3400:14 3407:3,5 3409:3,3 3410:7 3411:2 3414:4,6 3414:16,19 3419:22 3420:12 CSX's 3092:22 3308:16 3330:10 3332:5,7 3376:20 3385:12 3393:1 3396:14 CSX-NS 3129:1 3150:17 3184:5,16 3186:3 3195:2 3196:21 3203:14 3205:20 3208:13 3215:10 3218:16 3238:17 3239:21 3249:20 3253:19,22 3416:9 3418:13 CSX-NX 3112:2 CSXT 3409:13,14 CSXT's 3321:11 current 3141:6 3145:21 3194:22 3242:6 3243:13,15 3244:6 3246:15 3264:16 3312:20 3329:11</p>	<p> 3341:10 3351:19 3361:12 3418:16 3419:11,19 currently 3304:21 3316:22 3343:18 curvature 3368:12 customary 3315:2 customers 3142:9 3361:3 3361:14 cut 3142:18 cutoff 3246:8,21 CXST's 3321:13</p> <hr style="width: 50%; margin: 10px auto;"/> <p style="text-align: center;">D</p> <hr style="width: 50%; margin: 10px auto;"/> <p>D 3084:1 daily 3201:9 Daly 3282:1 3353:21 Dan 3254:7 dark 3169:15 data 3107:5 3139:5 3165:11 3171:5 3179:12 3180:8,11,17 3180:22 3181:18 3209:2 3214:5 3215:9 3217:2,8,15,16,17 3218:5,8,22 3219:4 3224:2,4,8,14,17,18 3225:10,16 3226:7,13 3226:15,20 3227:12 3228:2 3232:17 3233:5 3233:7,8,15,18,20 3241:19,19 3253:14 3262:18 3328:13 3334:8 3344:17 3345:3 3345:8,9,11,13,16,22 3346:2,3,10,12,15,21 3347:8 3348:3,9,20 3349:3 3350:5,14,15,17 3350:19 3352:4,13,22 3353:16 3354:7,8,11,15 3354:22 3355:14 3357:2,16,19 3371:6,8 3371:20 3382:16,18 3405:14 3406:18 3407:3 3408:1,17 3409:5 3410:3 3411:1 3414:9,20 3415:2 3416:16,21 3417:1 3418:3,17 3419:17 3421:22 3422:4 data-sharing 3175:18 3178:7 3209:8,10 3220:10 3225:21,21 3227:3,15 3228:21 3229:14 3230:11 3232:8 3236:15 3321:2</p>	<p> 3371:2 3409:1 3410:14 date 3111:16 3166:12 3203:21 3218:12 3230:11 3235:19 3250:2 3254:4 3288:2 3382:8 dated 3152:3 3156:13,13 3156:18 3159:17 3195:11 3208:16 3234:2 3255:17 dates 3329:8 day 3088:21 3106:10 3125:21 3149:16 3189:21 3190:5,10 3193:11 3201:14,19 3261:2 3302:4,14 3309:21 3310:1,4 3335:21 3339:12 3342:17 3404:7,11 3405:9 3413:22 3415:17 3423:6 3424:10 3426:13 day-to-day 3142:7,12 3194:17 days 3293:2 DC 3083:14 de-designate 3277:17 3278:22 de-designated 3278:18 deadhead 3302:21 deadline 3149:6,7 deadlines 3252:10 deal 3208:5 3233:10 3399:11,15 dealing 3329:13 dealings 3347:19,20 deals 3225:22 dealt 3148:18 3396:22 3397:7 3399:3 debate 3086:18 3279:6 deboard 3310:8 3359:20 3364:13 deboarding 3208:7 3310:19 3360:7 3361:4 December 3197:20 3198:9 3292:16 3423:4 decided 3225:14 3345:18 deciding 3320:5 decision 3246:14 3333:16 3348:22 3351:3 decision-making 3350:17 decisions 3248:19 3278:1 declined 3247:21 3249:2 3352:4 declines 3318:8 dedicated 3113:22</p>
--	--	---	---

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3436

<p>3290:16 3301:14 3302:8 3303:12 3304:9 3304:15 3305:11 3308:9 3309:8 3311:14 deemed 3218:8 deferred 3232:19 define 3121:15 3292:5 defined 3396:18 3407:12 defining 3370:16 definitional 3166:10 degree 3101:6 3140:13 3171:2 3245:17 3284:20 3361:21 delay 3085:4 3090:22 3111:3 3238:6 3287:12 3331:1 3340:20 3357:13 3358:10 3375:21 delayed 3297:20 3334:22 3337:7 delaying 3375:22 delays 3338:18 3339:10 3341:3 3360:9,10,11,11 3361:15 deliberately 3299:11 deliverables 3407:14 delivered 3409:18 demand 3349:2 3393:2 demanded 3307:1 demands 3398:1,6 denied 3171:10,11 3359:2 depart 3364:15 department 3254:9 departure 3201:1 depend 3142:9 depending 3088:19 depends 3131:4 3373:4 depicted 3409:19 depo 3381:18 deprived 3349:4 describe 3294:2 3408:16 3411:1 3420:11 described 3338:16,18 describes 3418:21 design 3120:21 3295:8 3296:1 3412:15 designated 3114:22 3156:7,12 3157:1 3163:17 3175:21 3285:22 3422:22 designation 3116:15 3157:9 3159:10 designing 3289:20 3313:3 3337:5 despite 3096:9 3165:17</p>	<p>3192:10 3395:18 destinations 3359:21 3361:2 detail 3106:19 3107:14 3211:1 3212:10 3413:2 detailed 3180:3,3,21 3181:6 3209:7 3226:7 3228:14 details 3205:16 3236:3,4 3275:16 detected 3293:3 determine 3118:16 3119:10 3361:21 3404:7 determined 3116:8 3163:8 3201:8 detract 3350:22 develop 3122:11 3212:8 3213:10 3253:13 3305:2 3370:10 3407:9 3407:14 3414:6 developed 3172:3 3211:4 3211:4,5 3251:1 3252:20 3317:8 3324:5 developing 3114:11 3319:3 3370:9 development 3093:7 3251:5 3304:19 3306:2 3395:12 diagrams 3171:18 3363:10 3408:22 3410:5 difference 3313:6 3341:9 3361:10 3415:10 differ 3097:10,11 3117:6 3119:6 3129:18 3161:10 3193:11 3194:17 3201:18,18 3226:10 3227:5 3303:2 3325:12 3412:19 3421:21 differently 3199:20 difficult 3172:4 3328:2 3368:16 3377:19 difficulty 3172:20 3175:5 3175:8 diminished 3136:3 Dingler 3107:12,18 3346:5 3355:10 3358:4 3363:4,6 3416:18 3421:20 3422:7 Dingler's 3101:11 3108:9 3381:18 direct 3089:4,8 3099:5 3105:17 3120:22 3128:9 3135:7 3137:22</p>	<p>3143:3 3165:4 3170:1 3178:18 3183:12 3201:15 3252:4 3259:8 3275:17 3294:22 3295:21 3399:20 3400:1 3413:15 3418:12 3420:6 directed 3328:11 3349:9 directing 3282:16 3283:7 3284:13 3423:21 direction 3193:9 3279:20 3298:4 3426:8 directly 3114:5 3115:13 3115:14,15 3123:22 3166:1 3180:14 3219:13,17 3221:2 3222:4 3229:5,9 3310:10 3387:21 3401:9 director 3281:14 3282:4 disable 3352:5 disagree 3140:5 3190:17 3217:6 disagreement 3097:9 3146:6 3147:5 3284:18 3289:6 disagrees 3143:20 disappointed 3137:18 discontinue 3217:19 discovery 3262:19 3263:1,10 3315:19,20 3348:18 3349:2,12 3350:9,11,13,18,20 3355:9 discreet 3278:5 discrete 3310:4 discretion 3321:13 discretionary 3244:18 3275:1 3351:20 discuss 3277:12 discussed 3106:21 3107:8 3391:2 3397:12 discussing 3197:19 discussion 3086:18 3106:7,18 3156:16 3206:4,12,16 3241:18 3248:2 3269:12 3271:15 3289:10 3311:4 3318:14 3344:19 3349:6 3350:4 3353:5,10,11,13 3362:17 3388:6 3390:18 3420:16 discussions 3178:18 3277:13 3285:8 3305:8 3305:10,18 3307:5</p>	<p>3308:2,5 3319:6,13 3349:19,21 3378:4,8,16 3378:19 3379:5 disjointed 3351:14 dispatch 3300:17 dispatching 3337:3 disregard 3141:7 disruption 3141:12 disruptive 3267:9 3279:10 3364:9 distinguished 3114:18 3323:3 distributed 3203:11 distribution 3239:4 divert 3350:1 document 3091:9 3098:12 3103:4,6 3104:6,12,22 3105:3,9 3109:8 3110:17,19 3111:10,13 3112:17,18 3114:19 3117:3 3122:8 3123:6,6 3124:10 3126:2 3129:1 3136:22 3150:17 3151:7,12 3155:17,21,22 3159:1 3159:18,22 3161:6 3163:14 3164:3,14 3166:4 3168:11 3169:15 3171:15 3173:12,19 3174:8 3175:16 3186:3,17,19 3187:9,17 3188:4,10,11 3189:2 3202:18,18 3203:22 3204:17 3211:14 3240:6 3241:8 3249:21 3250:18 3252:22 3255:6,7,8,9 3255:11 3264:4,6 3270:6 3279:14 3285:21 3305:20 3314:7,14 3315:19 3351:16 3371:17 3402:18 3403:1 3406:6 3408:10 3416:8 3419:18 3421:11,13 documents 3151:12 3153:21 3158:9 3166:11 3176:18 3177:9 3179:9 3180:14 3232:13 3257:15,21 3279:2 3315:9 3357:22 3380:4 3403:13,15 doing 3084:22 3118:14 3118:16 3128:4 3154:21 3202:10 3238:16 3276:9</p>
---	---	--	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3437

<p>3293:15 3362:6 dollar 3123:14,15 3124:2 3124:5,7,13,13,14 dollars 3102:8,20 3148:2 3223:3 3324:3 3375:3 domain 3200:21 Donahoe 3089:10,11,13 3089:19 3090:1,15,17 3090:20 3091:1,3,11,15 3092:2,4,9,14 3097:19 3098:5 3102:3,4,6,10 3102:14,17 3105:4,15 3108:11,15,19 3109:1,2 3110:20 3111:4,8,9,21 3112:3,5,14,20 3114:12 3115:6,7 3125:18 3127:2 3129:4,11,12,16 3130:1,4,9 3131:19,20 3131:22 3132:6,7 3134:4,5,7,8 3142:17 3143:18 3144:3,4 3145:17 3149:8,10,11 3149:14,15 3150:11,16 3150:18,22 3151:6,10 3151:18,20 3152:1 3153:2,7,9,18,20 3154:3,8 3155:15,20 3156:1 3157:7 3158:9 3159:5,12,13 3161:12 3161:17,21 3162:9 3163:13 3164:5,8 3166:9,18 3167:1,8 3168:12,19 3169:9,12 3169:17 3170:19 3171:19 3173:10,17 3174:13 3175:13,17,22 3176:5,9,14 3177:7 3178:5 3182:15,16,18 3184:10,11,13,15 3185:7,11,14,15 3186:2 3186:5,12,18 3187:14 3187:19,20 3188:5,8,14 3189:9,12,14,19 3190:3 3190:16 3191:6,15 3192:6 3193:1,2,14 3194:2 3195:2,5 3196:21 3197:13,14 3201:5,6,7 3202:1,5,13 3202:22 3203:13 3206:1 3208:11,12 3212:18 3213:1,3 3215:11,14,19 3216:4,8 3216:10 3218:18 3230:16,18,19 3234:15 3234:19 3237:19 3238:1,17 3239:1,6,9</p>	<p>3239:19,20 3240:4 3241:1 3243:19 3244:3 3249:18,19 3251:16,20 3254:2,3,18 3255:12,21 3256:8,14 3257:14,18 3258:7,11,16 3259:6 3263:21 3264:2,5,8,10 3267:22 3268:3,8,9 3271:16 3274:15 3275:1 3396:12 3406:2 3406:5 3410:12 3415:4 3415:15 3416:8 Donahue 3425:4 double 3260:14 3261:3 double-track 3262:3,4,7 doubt 3423:18 downtown 3110:5 3144:9 3144:17 3145:13,14 3146:1,9 3147:7,8,15 3302:19 3303:18 3306:2 3307:8 3313:4 3363:13 3364:5 downtown-to-downtown 3145:12 3147:2 draft 3232:13 3252:19 drafted 3328:22 draw 3200:12 drawings 3364:19 drawn 3412:3 drive 3223:20 drives 3419:6 driveway 3259:15 driving 3342:6,7,12 DTC 3412:18 dual 3272:11 due 3165:10 3238:13,14 3238:14 3246:8 3264:19 3420:19 duplicative 3143:16 dust 3285:10 dusting 3282:20 3283:10 duties 3202:8 dwell 3360:6</p> <hr style="width: 50%; margin: 10px auto;"/> <p style="text-align: center;">E</p> <p>E 3083:13 3084:1,1 3425:1 e-mail 3185:1 3186:15 3192:12,18 3195:11,13 3195:16 3197:3 3203:15 3205:18,19 3209:16,19 3210:13 3212:19 3213:2,4 3216:12,13 3217:7 3235:20 3236:1,6 3276:16 3277:2 3280:3</p>	<p>3280:5,13,15,22 3281:5 3281:20 3282:15 3283:5 3373:16 e-mails 3176:6 3184:7 3238:18 3278:2,3,6,19 earlier 3191:7 3202:15 3209:1 3210:21 3220:10 3251:4 3253:15 3320:22 3324:6 3348:4 3355:20 3373:17 early 3179:7,15 3219:1 3231:19 3292:18 3304:18 3375:9 earn 3197:8 earnings 3196:18 ears 3362:3 easier 3094:2 3362:7 easily 3212:16 3308:22 east 3261:19 easy 3129:12 3212:7 3213:10 economic 3138:21 3139:3 economy 3128:11 3131:4 3365:21 Edwards 3354:1 effect 3136:6 3209:11 3264:22 3265:4,11,20 3267:3 effectively 3095:17 3328:9 3396:22 effects 3267:15 3344:10 effectuated 3228:14 efficiency 3297:9,12,13 3297:16 efficient 3203:4 3279:9 3360:14 3365:11,13 efficiently 3300:13 3398:13 effort 3128:4 3172:16 3201:12 3232:19 3348:1 3369:14 3370:13 3378:14 3418:17 3423:10 efforts 3120:15 3362:21 3378:8 eight 3302:14 3309:20,22 3310:2,4 either 3130:7 3169:13 3202:10 3224:7 3225:8 3231:21 3263:2 3277:16 3299:16 3351:7 3358:10 3362:22 3364:5 3385:1 3413:18 3416:20 elected 3219:12,16</p>	<p>3226:14 electric-lock 3412:13 electronically 3410:7 elements 3227:5,9 3236:11 3237:10 3260:2 3407:14 eligible 3244:18 else's 3423:18 emails 3239:4 embrace 3137:19 emphasize 3143:4 employed 3426:9 employee 3254:8,9 3346:10 empty 3270:4 encountered 3396:20 endorse 3273:2,8 endorsed 3272:19 endorsement 3207:22 engaged 3356:9 engagement 3179:2 enhancement 3329:10,12 enhancements 3117:13 enhancing 3103:13 enlighten 3350:16 3351:12 3359:16 enlightened 3351:1 enlightenment 3416:20 ensure 3278:16 3414:16 ensuring 3419:4 entails 3117:10 enter 3087:22 3219:4,16 3229:9 3334:11 entertain 3332:15 entertained 3358:15 entire 3105:3,9 3133:9 3168:10 3178:7 3387:19 entirely 3316:18 entirety 3132:20 entitled 3197:6 3228:2 3229:21 3273:19 3296:22 3405:15 3406:18 entity's 3155:22 equally 3393:6 equipped 3412:5 error 3293:2 essence 3244:19 3354:9 3383:1 essential 3138:19 3301:19 3304:2 3414:13 essentially 3231:6 establish 3162:7,16 3185:12 3186:16</p>
---	---	--	---

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3438

<p>3212:20 3219:12 3229:4 established 3162:3 3193:13 3252:10 3256:1 3294:8 estimate 3132:15 3196:12 3253:3 3293:8,9,17,17 3327:7 estimated 3109:4 3125:1 3127:6 3252:11,14 3262:14 3293:7 estimates 3251:11,18,21 estimating 3216:4 estimation 3116:12 evaluate 3289:9 3330:21 3331:9 3337:15 evaluated 3119:7 3313:9 evaluation 3288:9 3289:17 3297:18 3320:14 3331:18 3334:18 event 3231:13 3305:4 events 3208:4 3257:6 3387:2 eventually 3085:11 3281:5 everybody 3084:3 3154:15 3258:10 3404:3 everybody's 3352:7 3424:10 evidence 3151:17 3187:9 3187:13,18 3188:12 3189:3 3202:11 3247:12 3255:6,7,11 3378:17 3422:17,19 3423:6,9 evidenced 3368:8 evidences 3169:7 evident 3412:10 EVIDENTIARY 3083:3 evolution 3257:7 evolve 3210:3 EVP 3280:16 exact 3094:7 3096:11 3264:7 3275:19 3410:19 exactly 3153:12 3197:9 3351:8 3352:9 examination 3089:5 3099:6 3105:17 3252:4 3258:8 3259:8 3405:6 3425:4,5,6,7 example 3170:22 3171:7 3171:12,13 3260:19 3261:22 3290:15</p>	<p>3291:22 3298:11 3299:3 3311:16 3319:21 3330:22 3333:19 3339:1 3340:17 3357:3 3358:9 3369:11 3399:13,17 3408:9 3415:8 examples 3122:9 3399:2 exceed 3330:15 3332:13 3332:21 excess 3337:21 exchange 3110:22 3111:2 3234:13,14,22 exchanged 3410:4 exciting 3375:20 exclusive 3106:12 excuse 3105:7 execute 3220:6 3222:2,3 executed 3178:17,22 3179:5 3181:3,4 3217:9 3218:4 3219:14,18 3220:8,10 3223:17 3228:15,22 3230:10 3231:4 executing 3181:6 execution 3214:9 3231:20 executive 3112:21 3170:9 exercise 3129:22 3183:18 exhausted 3223:13 exhibit 3091:8 3110:18 3111:11 3112:1,1 3151:15 3155:16 3159:8 3163:8,14 3175:19 3249:20 3269:18,21 3270:13 3273:19 3276:22 3278:13 3285:15,16 3287:1 3313:17 3315:17 3318:19 3320:19 3351:16 3405:2,22 3408:9 3409:19 3410:13,13,19 3418:13 exhibits 3112:2 3315:16 3344:19 exist 3146:16 3245:19 3399:18 3400:22 existed 3222:12 existing 3094:9 3131:3,15 3141:15 3142:1 3166:13 3183:3 3420:19,20 exit 3154:14 exiting 3154:16 3310:18 expand 3172:7 expect 3120:5 3121:7,9</p>	<p>3162:14 3251:4 expectation 3341:5 expected 3123:19 expenditures 3324:21 expenses 3229:3,12 3329:11 expensive 3244:7 experience 3094:10 3095:11 3118:9 3142:3 3228:15 experienced 3375:21 expert 3142:22 3298:18 expert- 3203:8 expertise 3203:9 experts 3133:13 3266:16 3346:20 expiration 3252:21 3382:8 expired 3243:5 3289:22 3382:7 expires 3426:22 explain 3153:16 3351:8 3359:8 3361:10 explained 3391:6 explanation 3128:15 explicit 3225:22 exploration 3357:1 explore 3287:13 3312:8 3364:7 explored 3291:9 express 3172:13 3187:1 3187:21 3189:16 3190:21 3265:19 3266:1 expressed 3138:11 3284:2 3354:13 3361:18 extended 3297:7 3312:11 extent 3278:21 3303:19 3347:1 3349:18 extraordinarily 3141:21 extraordinary 3141:14 3141:22 extreme 3399:12,15</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>facilities 3084:6 3208:6 3302:17 3377:16 3383:18 facility 3109:12 3110:6 3144:8 3145:7,9 3146:14 3297:1 3302:19,19 3303:11 3305:5,6 3312:14 3385:10,11 fact 3116:15 3123:2</p>	<p>3133:12 3136:5 3138:5 3145:7 3146:18 3172:1 3174:4,14 3192:10 3195:16 3212:16 3214:20 3217:12 3225:17 3267:12 3294:8 3302:11 3306:8 3311:21 3312:16 3323:4 3327:17 3353:4 3401:2 facts 3141:7 3187:12 3197:18 3200:16 fair 3109:22 3110:11 3115:18 3116:2,10 3118:1 3119:4 3125:8 3135:10 3139:9 3143:19 3146:3 3178:22 3209:15 3234:1 3255:16 3270:6 3326:8,14,15 3333:6 3347:22 3348:5 3356:16,17 3397:9 fairly 3362:5 fall 3313:20 familiar 3105:5 3111:13 3130:12 3155:17 3159:18 3160:16 3164:14 3177:9,10 3186:19 3187:10 3197:19 3212:21 3213:6 3280:4,7 3286:21 3296:6 3300:19 3379:2,5 familiarity 3179:8 3186:16 3356:15,17 familiarize 3313:21 family 3089:14 Fapp 3417:21 far 3120:3 3154:17 3158:22 3193:9 3291:3 3327:10 3352:4 fare 3123:20 fashion 3267:10 3377:7 3414:15 fast 3104:17 3221:14 3229:6 faster 3298:1 3338:5 3339:4,5 fault 3341:19 favor 3144:9 3150:1 3297:10 favor 3365:4 feasible 3312:1 feature 3295:17 3300:14 3300:16,20 February 3098:20</p>
---	---	--	---

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3439

<p>3144:6 3191:11 3203:16 3231:19 federal 3113:4 3137:5 3138:7 3184:21 3244:20,20 3245:3,9,16 3245:19 3324:3,8,9,9 3324:11,18 3325:9 3327:8 3328:3 3352:7 3378:17 feed 3090:16 feedback 3253:8 3416:5 feel 3093:4 3192:20 3216:16 3238:13 3277:22,22 3364:9 3371:16,19 3401:22 feels 3254:21 Feinberg 3198:13 3204:15 3208:2 3256:12 3257:5,13 3325:6 felt 3223:4 3233:9 3256:17 3347:3 field 3313:11 3417:14 fight 3350:17 figure 3124:21 3125:6 3126:7,17,18 3411:8 3415:13 3416:3 file 3345:18 3359:1 3422:3,17 3423:9 filed 3097:16,21,22 3190:11 3191:11 3299:3 3345:1,5 3347:14,22 3348:9 3377:22 3391:14,21 3392:2 3423:4,5 files 3181:20 3408:3 3409:6 filing 3092:11 3351:8 3392:14 filled 3173:12 final 3250:7 3252:18 finalizes 3319:4 finance 3254:8 financial 3152:13 3254:11 3426:11 find 3096:15 3154:17 3320:18 3332:10 3337:21 3351:4 3372:6 3379:1 3381:2 3404:7 3404:12 3410:19 3421:18,22 3422:1,12 finding 3395:18 findings 3148:13 finds 3396:3 fine 3089:15,15 3110:22 3111:19 3112:6,18</p>	<p>3143:5,15 3148:15 3156:21 3158:4 3161:22 3173:18 3190:14 3191:13 3211:10 3213:2 3224:14,17 3230:18 3231:5 3232:15 3239:2 3245:7 3309:17 3417:9 finger 3198:2,7 3282:12 finish 3189:4 3215:13 3258:5 3350:2 3402:15 3403:20 3404:10 finished 3363:8 3421:10 3421:12 firm 3293:8 3355:10 first 3084:20 3095:13 3103:10,11 3104:8 3111:1 3117:10 3119:10 3120:10 3130:22 3133:21 3184:19 3185:17 3189:5 3215:4 3217:18 3217:21 3234:4 3236:8 3247:8,12 3254:15,21 3270:17,22 3271:4,9 3274:9 3283:4,8 3288:9 3288:9 3289:17 3290:21 3303:21 3304:2 3318:4,5,7 3368:1 3370:11 3375:6 3380:6 3397:13 3402:18 3403:1 3413:17 3418:18 fiscal 3317:4,5,18 3329:9 fiscal-year 3317:4 fit 3127:15 five 3120:1 3121:4,17 3124:13 3134:18,22 3190:10 3238:18,21 3304:13 3305:8,9 3315:21 3327:13 3330:7 five-year 3113:9 3314:9 3314:16,19 3315:3,11 3325:12 3327:2,4 fix 3293:10 flexibility 3370:22 Florida 3261:18 fluidity 3300:7 3323:1 Flynn 3241:3,5 3242:1 focus 3085:6 3216:15,18 3270:18 3271:21 focused 3206:8 3227:22 folks 3133:6 3211:4,5 3346:14 3360:13 3389:9,15 3390:13,13</p>	<p>3404:17 follow 3086:10,13 3119:16 3206:16 3328:14 3343:2 3363:10 3396:7 follow-up 3176:10 followed 3119:14 3274:11 followers 3154:18 following 3120:2,12 3206:20 3289:16 3390:15 Foote 3235:3 footnote 3359:9,14 forced 3393:7 forcing 3284:21 forecast 3126:13 3192:21 3192:21 3194:22 3196:4,10 3382:16 forecasts 3252:9 3382:17 3383:7 foregoing 3177:21 3426:3,4 foremost 3138:19 forget 3085:18,18 3384:2 forgot 3286:5 format 3408:8 3410:8 formed 3098:21 forth 3115:5 3154:2 3176:13 3209:4 3258:6 3272:12 3279:9 3344:20 3362:18 3365:1 3366:4 forward 3118:13 3119:1 3253:17 3311:18 3320:5 3321:19 3371:20 forwarded 3281:6 found 3086:1 3422:16 foundation 3162:6,17 3187:11 3188:9,13 3255:9 four 3124:12 3141:14 3189:21 3190:4,6 3192:14 3210:14 3252:14 3301:13 3302:13 3330:7 3335:21 3342:17 fourth 3164:19 3316:12 3370:12 Fox 3281:9,10,10,12,13 FRA 3095:5,22 3096:1,5 3096:17 3098:1,4,20 3099:20 3103:12,18 3107:19 3108:2,6 3109:9,17,20 3114:11</p>	<p>3116:15,15,19 3145:7 3167:22 3178:13,18,20 3179:11,12,15,19,21 3180:7,10,15 3181:4,5 3181:17 3185:19,22 3186:22 3187:21 3188:9 3189:15 3190:20 3208:17 3209:3,6,13 3210:5,6,8 3210:15 3211:1,15,21 3214:3,5,8,13,17,19,20 3215:7 3217:1,4,9,14 3217:18,22 3218:4,8 3219:6,11,15,16,20 3220:5,6,18,20 3221:1 3221:13,18,22,22 3222:3,22,22 3223:4,5 3223:6,10,12,13 3224:7 3224:13,14,14,16 3225:8 3226:7 3228:10 3228:10 3229:3,6,10,16 3230:2,22 3231:2,7,17 3231:18,22 3242:11,19 3243:2,4,7 3250:1,6,14 3250:15 3251:2,4 3253:13,15 3301:16 3303:13 3340:9,9,11 3351:18 3352:14 3353:8 3354:5 3357:4 3357:11 3369:22 3374:10,16 3407:22 3408:11,13 3409:4,10 3409:13,18 3423:13 FRA's 3179:2,21 3192:21 3210:1 3214:18 3215:9 3226:10 3229:8 3246:8 3246:20 3274:5 3326:6 3327:7 3342:1 3370:6 FRA-controlled 3274:22 FRA-identified 3103:8 frame 3327:4 3354:17 free 3216:16 3401:22 freedom 3370:15 freight 3103:14,19 3104:9,19 3105:1,14 3106:14,21 3107:3,4,8 3113:16,19 3114:1,9 3115:1 3116:9 3118:12 3122:22 3128:18 3131:3,15 3135:4,13 3140:11,14 3141:16 3142:1 3149:13 3166:13 3167:17 3171:9 3181:19 3182:8 3182:9 3183:1,17,21 3242:14 3260:22</p>
---	---	---	---

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3440

<p>3266:3 3271:12 3272:1 3287:7 3288:6,20 3289:1 3290:18 3295:3 3295:19 3296:5,16 3297:10,20 3298:3,3 3299:5,12,17 3300:2,11 3300:12 3310:13 3320:9 3321:8,9,11,12 3327:14 3330:22 3333:8,10 3334:22 3335:2 3336:20,20 3337:8 3338:4,19,21 3339:7,11,15,21 3340:14,18 3343:7,12 3343:14,20 3344:10 3356:7 3357:13 3369:5 3373:3,11,12 3374:7 3376:6 3395:19 3396:5 3397:13 3398:1,5,15 3400:9,10,14 3408:2,7 3411:18 3412:9,21 3414:6 Freudian 3275:6 Friday 3242:12 front 3084:20 3089:7 3130:10 3184:16 3208:13 3348:17 3406:11 front-loading 3375:15 FTC 3242:20 Fuchs 3090:19,21 3157:4 3186:9 3194:1 3197:11 3197:15,17 3198:8,14 3198:17 3199:5,7,15 3200:1,11,15,20 3324:5 3328:14,18 3344:6,8,13 3381:18 full 3193:3 3319:2 3373:18 3413:17 3418:18 fully 3164:20 3165:14,14 3174:15 3278:16 function 3202:3,19 3340:16 3372:4 functions 3202:8 fund 3217:5 3220:20 3231:3,12,18 3232:22 3243:3,4,7 3391:16 3392:8,13 3395:20 fundamentally 3236:4 3297:19 3337:14 funded 3210:5,6 3219:21 3220:17 3221:18 3328:3 funding 3123:17 3124:17 3125:10 3137:5 3138:7</p>	<p>3210:8 3214:20 3217:19 3218:8 3220:3 3220:13 3222:1,7 3223:16 3230:22 3231:11,14,22 3233:14 3242:20 3244:18 3245:3,9,16 3246:8,20 3274:12,17 3275:3,8 3325:1 3327:2,10,11 3330:3 3353:9 3354:10 3375:7,11 3393:8 3395:1,6,8,11,15 3396:5 funds 3219:13 3221:8,10 3244:20 3274:21 3328:20,21 3329:20,20 3352:15 3375:17 furnished 3410:7 further 3086:17 3093:22 3169:12 3268:21 3283:14 3284:6 3291:6 3318:11 3334:14 3342:4 3414:9 further-out 3145:8 future 3146:18 3182:6 3183:2 3184:2 3235:13 3236:9,21 3251:3 3253:12 3268:13 3289:17 3290:11 3321:7,9 3407:10,15 3408:5 3409:17 3414:2 3420:20</p> <hr style="width: 50%; margin: 10px auto;"/> <p style="text-align: center;">G</p> <p>G 3084:1 Gang 3215:17 Gardner 3241:4 3242:2 3276:17 3280:14,21 3283:3 3285:10 3296:12,20 Gardner's 3284:11 3297:4,5,11 Garner 3241:6 gather 3177:5 3325:1 gathered 3213:21 general 3135:10 3148:8 3179:16 3180:1,1 3213:19 3229:3 3330:20 3387:9 3411:12 generally 3296:6 generated 3123:22 generates 3139:2 genesis 3327:19 Gentilly 3108:3 3109:3 3291:10,22 3338:10</p>	<p>3376:15 3377:2,10,15 gentleman 3402:2 getting 3084:15 3129:21 3238:9 3296:21 3334:3 3334:5 3340:15 3349:10 3350:22 3352:6 3358:17 3361:3 3361:15 3379:6 give 3105:3 3111:5 3112:13 3131:6 3158:3 3163:10 3168:10 3184:6 3196:6 3225:10 3225:15 3269:15 3270:7 3273:16 3280:2 3284:12 3336:21 3348:2,3 3354:15,21 3369:1 3378:6 given 3114:4 3138:14 3190:3 3220:16 3221:13 3229:11 3246:15 3252:12 3263:9 3332:3 3348:8 3363:3 3417:13 3426:5 gives 3147:2 giving 3139:20 3354:11 glitch 3291:5 3292:12,14 3292:20 global 3378:14 go 3087:1 3089:20 3093:12 3103:4,22 3107:22 3108:1 3109:7 3110:17 3112:7 3113:19 3117:21 3118:11 3119:9 3124:9 3126:1 3130:15 3131:21 3138:17 3139:9 3140:15 3143:11 3144:2 3151:3 3152:8 3154:2,5,17 3155:7,7,9 3157:6,18 3158:2,5,13 3167:2,5 3169:12 3175:13 3176:13,20 3177:1,3 3182:19 3184:5,7 3193:9 3195:2 3196:21 3197:12,14 3203:14,19 3205:19 3208:10 3211:14 3215:10,17 3216:1 3218:16 3234:1 3234:20 3236:18 3238:17,18 3241:2 3242:5 3243:11 3249:20 3251:9 3253:19,22 3257:17 3258:4,6,15 3269:14,16 3276:20 3278:11</p>	<p>3279:9,17,19 3282:12 3282:14 3286:3,20 3292:5 3300:10 3309:17 3315:7 3328:16 3339:12 3344:7,17 3352:18 3355:3 3356:19 3357:10 3359:4 3362:5 3363:19,22 3364:1,22 3366:4,19 3375:18 3380:5,7 3381:15 3384:7,19,21 3385:13 3402:19 3403:3,9 3415:18 goal 3103:20 3172:5 3270:9 3271:21 goals 3103:18 3269:22 3270:5,14 3271:17 goes 3284:6 3303:7 3363:14,16 3410:22 going 3084:10,14 3086:17,19,21 3090:5 3092:6 3104:17 3105:2 3108:1 3110:22 3111:3 3113:15 3118:13 3119:1 3122:22 3135:5 3135:13,20 3136:8 3152:8 3153:14 3154:2 3154:5,6,11,12,14 3157:12 3158:15 3168:9 3176:3 3178:22 3179:5 3183:9 3185:20 3189:1 3190:4 3191:4 3197:13 3203:19 3216:15 3219:10 3224:4 3229:2,16 3231:22 3232:22 3235:18 3243:14 3246:11 3249:18 3253:17,21 3257:20 3264:6 3269:18 3270:2 3270:18 3275:7 3278:7 3283:16,21 3285:14 3286:20 3287:5 3290:20 3291:17 3298:10 3300:21,22 3304:14 3310:14,17 3311:9,10,14 3313:4,17 3320:11 3322:10 3324:22 3335:13 3339:8 3344:4 3347:21 3348:2 3349:4 3353:17 3362:9 3363:16 3364:20,21 3369:8 3371:15,19 3375:12 3379:3 3403:12,15,19</p>
---	---	---	--

<p>3404:8,13,17,19 3413:14 3415:16 3418:15 3423:21 3424:5 Golder's 3390:19 Goldman 3276:16 3280:13,16 3283:2,8,16 3285:9 3390:21 3391:10 good 3084:2 3090:2,3 3126:4 3129:6 3139:15 3151:7 3153:10 3155:1 3157:18 3176:16 3219:8 3329:4 3389:16 3389:17 3405:8 3415:17 good-faith 3368:3,4 gotten 3222:21 3288:11 3289:3,19 3291:3 3292:9 governing 3251:5 3407:2 government 3113:4 3143:21 3160:2 governor 3152:6,17 grade 3261:15,20 3262:4 3368:12 3397:20 grade-crossing 3412:16 grandfathered 3147:17 grant 3181:2 3217:5,9 3218:4,6 3219:6,10,12 3219:17 3220:6,15,18 3221:2,9 3222:2,3,5 3223:1,13 3224:13 3228:11,13,14 3229:4,9 3229:16 3244:18,21 3250:1,5,12 3234:9,10 3324:11,18 3325:10 3327:8 3328:3,5,7 3351:20 3352:3,15 3353:9 grant-making 3228:10 granted 3395:17 grantee 3228:12 3253:8,9 grants 3113:18 3219:18 3228:11 3245:19 3250:10 3275:1 3329:10 3396:2 great 3157:4 3211:1 greatest 3147:3 green 3090:19 grew 3140:1 GRIMM 3105:2 group 3090:10 3091:12 3094:16 3095:1 3096:21 3098:1,14,21 3099:2,3,7,13,16</p>	<p>3100:4 3101:2,7,17 3102:13,15,19 3105:21 3106:4 3109:17,20 3119:12,18 3120:8 3127:13 3145:9 3154:13 3188:22 3193:21 3194:17 3196:4 3199:16,21 3200:2 3202:14,16 3204:12 3206:14,17 3207:3,9,13,22 3212:11 3222:18 3234:6 3241:12 3257:3 3269:22 3270:8 3271:18,22 3272:10,17 3275:14 3281:14 3285:18 3287:17 3288:5 3289:14 3290:3 3290:13 3291:11 3292:3 3294:9 3301:4 3301:11,13,18 3303:10 3303:14 3304:6 3308:14 3318:16,18 3322:3,5 3323:18 3324:4 3325:8,18,21 3326:6 3327:1 3328:22 3329:6 3330:13 3331:21 3337:13 3338:6 3343:5,10 3352:17 3354:2 3356:4 3367:4,13 3372:15 3373:20 3374:17 3375:7 3386:6,13,16,20 3387:1,12,16 3394:12 3394:18 Group's 3100:10 3271:6 growing 3134:14 growth 3139:21 3140:1,1 3140:3,19,21,21 3182:9 3321:9,11 3380:22 3381:2 3382:13,14 3408:14 3409:15 3412:21 3420:20 3421:4 Guard 3368:21 guess 3144:13 3162:18 3178:20 3202:9 3206:15 3221:3 3234:4 3298:15 3305:9 3309:13 3334:4 3337:1 3337:2 3338:20 3367:7 3367:11 3371:14 3389:17 3394:11 guest 3191:5 guidance 3294:2,7 Gulf 3090:9 3091:11</p>	<p>3093:5 3094:3,6,16,22 3096:10,21 3098:1,14 3099:7,12,15 3100:3,10 3101:2,16 3102:12,14 3102:18 3105:20 3106:4,9,12,15 3109:17 3109:20 3119:12,17 3120:8 3121:2 3126:14 3127:7,12 3132:18,21 3133:5,9,16 3135:19 3136:3 3145:9 3149:22 3152:14 3160:22 3161:5,22 3164:10 3167:22 3187:2 3188:22 3189:17 3193:20 3197:21 3198:4,10,10 3199:16 3199:20 3200:2 3202:14,16 3204:3,8,11 3204:19 3205:11,15 3206:4,13,17 3207:2,9 3207:12,22 3221:15 3229:8 3247:2,5,9,12 3254:13 3255:3 3256:3 3257:2,9 3259:9,20 3260:4 3261:9,22 3265:5,22 3269:17 3270:8 3271:5,22 3272:9 3275:14 3284:3 3285:16,17,17 3287:17 3288:4 3289:13 3290:3 3290:13 3291:10 3292:2 3298:11 3299:10 3301:4,11,13 3301:17 3303:1,10,14 3304:6 3308:13 3314:5 3316:10,15,21 3317:11 3317:14,20 3318:16,18 3320:6 3322:3 3324:4 3324:22 3325:7,17,21 3326:6,22 3327:21 3328:21 3329:6 3330:12 3331:21 3336:6 3337:13 3338:6 3339:21 3341:13 3343:4,9 3351:19 3352:16 3361:6 3362:21 3367:13 3372:14 3373:20 3374:2 3386:5,13,20,22 3387:12,16 3394:12,14 3394:18 3396:15 3407:2 3419:19 Guthrie 3266:16 guys 3155:8 3375:6,9</p>	<p style="text-align: center;">H</p> <hr/> <p>habit 3087:8 half 3111:2 3151:1 3215:14,18 3216:1 3228:18 3230:16 halfway 3212:1 3242:7 hand 3332:22 3426:13 hand-prong 3412:12 handed 3111:10 3162:5 handing 3277:5 hands 3352:6 hang 3198:8 Hannah 3292:20 3353:21 happen 3088:4 3095:4 3206:5 3207:16 3221:10 3264:17,21 3303:19 3308:19 3347:10 3357:4 happened 3211:6 3215:8 3218:22 3224:12,15 3225:7,16 3379:15 happening 3206:18 happens 3201:17 3423:12 3423:14,15 happy 3084:3 3303:20 3351:7 hard 3084:8 3367:18 3421:7 HDR 3167:15 3168:7 3169:1 3172:9 3173:20 3220:22 3224:3,5,9 3227:4 3230:13,14 3232:8 3238:7,11 3242:16 3252:5,8,12 3253:4,6 3275:15,17,20 3275:21 3276:3,7,8,9 3276:12,14,18 3282:21 3283:11 3284:14,22 3285:1,3,6,11,13 3287:5,15,18 3288:4,21 3291:3 3292:14 3293:6 3293:20 3294:3,6,8,14 3295:11,16 3345:17 3347:17,21 3349:4 3355:6 3362:11 3363:3 3381:4,6,11,22 3382:3 3382:4 3410:3 3416:6 3416:19 HDR's 3284:2,8 head 3115:16 3364:2 3384:12 3385:18 heading 3123:17 3240:6 3241:3,11 3243:13,20 3418:16 hear 3090:18 3091:1,2 3133:12,15 3144:19</p>
--	---	---	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3442

<p>3156:16 3240:20 3265:16 3269:3,6,15,16 3286:12,15,17 3292:19 3302:10 3311:1,8 3313:2 3315:6 3379:14 3390:17,19 3406:8 3417:21 heard 3085:16 3108:22 3113:7 3133:14 3142:22 3143:16 3187:17 3266:2,7,19 3272:3 3294:22 3295:15 3302:5 3416:14 hearing 3083:3 3084:4,5 3084:9,17 3087:4,16 3090:15 3094:13 3097:7 3117:19 3119:8 3123:3 3128:21 3129:2 3142:20 3143:13 3144:6 3176:19 3190:13 3203:4 3240:14 3262:17 3395:10 3424:12 hearings 3110:7 hears 3156:17 hearsay 3151:13 heart 3138:21 heat 3171:1 3368:9 3415:7,11 3416:5 Hedlund 3221:5 3228:7 3228:20 3229:13 3335:16,18 3336:3 3342:20 3371:11 held 3223:11 3269:12 3318:14 3386:21 3388:1 Helenhouse 3380:2,9 3381:3,6,12,15,20 3382:1,11 3386:2,4 3388:22 3389:19 3393:16 3402:4 3425:6 Hello 3307:14 help 3298:10 3303:8 3343:6,12 3373:1,6,7,8 3375:13 helped 3361:9 3411:21 helpful 3184:9 3299:1 3331:3,13 3343:19 3374:16 helping 3122:10 hereto 3408:9 hereunto 3426:12 Hey 3154:20 Hiawatha 3146:21 high 3398:1,5</p>	<p>high-priority 3327:17,18 higher 3127:15 3421:3 highest 3124:4,8,9,11,15 3124:16 3125:10 highest-ranking 3367:3 highlighted 3094:1 highly 3253:20 3357:16 3422:22 highly-confidential 3087:2 3088:12 3358:2 3422:19,21 highways 3342:14 historic 3205:4 3271:8 3308:11 historical 3362:1 history 3160:11 hit 3085:5 HNTB 3295:15 hold 3157:18 3161:10 3234:15 3281:15 3307:14 Holly 3354:1 home 3115:22 honestly 3314:6 honor 3337:4 hope 3161:16 hoped 3362:9 3373:14 hopeful 3404:9 Hopefully 3348:13 horsepower-to-ton 3411:16 host 3148:19 3155:11 3210:21 3211:8 3218:9 3241:11 3251:2 3281:14 3356:3,10 3360:10 3380:20 hosts 3261:9 3354:19 hour 3150:22 3158:16 3199:12 3215:14,18 3216:2 3230:17 3342:3 hours 3336:13 3337:11 3341:10,11,18,21 3342:5,7,10 3361:11,12 3362:4 House 3130:17,17 huh 3318:21 hundred 3102:8,9 3126:18 Hunt 3266:13 hurdles 3321:18 hurting 3303:6 hypothetical 3136:2 3396:11</p> <hr style="width: 20%; margin: 10px auto;"/> <p style="text-align: center;">I</p> <hr style="width: 20%; margin: 10px auto;"/> <p>idea 3144:15 3145:1,6</p>	<p>3297:19 3324:21 3356:14 3358:15 3375:11 identical 3199:2 identified 3098:4 3101:20 3103:12 3120:8 3121:4 3123:16 3165:9 3188:22 3207:4,4,6 3220:12 3223:7 3226:1 3245:6 3248:8,16 3267:11 3287:20 3289:13 3291:5 3292:9 3292:14 3308:17 3325:14,15 3327:3 3329:5,7 3338:5 3352:16 3374:12,14,17 3382:17 3391:17 3392:9,14 3396:21 3399:2 identifies 3130:16 3324:17 3329:8 identify 3091:10 3110:18 3169:13 3171:3 3213:15 3244:10 3292:1 3320:21 3399:8 3411:21 3414:4 identifying 3094:7 3096:11 3118:7 3120:14 3246:14 3288:12 3289:8 3291:2 3324:14 3327:18 3397:6 II 3182:20 IIJA 3115:11 3274:21 3325:11 3329:15 3352:11 immediately 3289:15 3326:11 impact 3131:3,14 3136:13 3139:7 3140:10,13 3171:9 3313:10 3339:18 3361:21 3365:20 3373:9,10,11 3383:19 3388:8 3391:18 3392:10 3396:4 3411:22 3414:6 impacted 3136:16 3339:8 3383:13 3387:22 3389:6 3390:1 impacting 3142:8 impacts 3132:17 3137:7 3138:20 3142:7,12,15 3167:17 3287:7 3288:7 3288:20 3289:1 3290:19</p>	<p>impair 3103:19 impairing 3103:14 3271:12 impairment 3272:1 3339:13,14,16,17,20 3395:19,21 impeded 3140:22 impediment 3333:7 3334:2 impediments 3333:19 implement 3274:9 implementation 3116:18 3119:13 3319:4 implemented 3328:9 implying 3248:17 important 3088:13 3142:20 3194:3,6 3279:16 3366:1 imposed 3275:17 3276:3 3333:21 imposing 3143:13 improperly 3398:13 improve 3319:16 3323:1 3324:15 3325:16 3374:20 3376:6 improved 3300:2 improvement 3092:22 3274:7 3291:8 3336:1 improvements 3092:21 3093:14,17 3094:8 3096:12 3097:3 3099:17 3103:8,12 3104:1 3108:2 3109:9 3114:9 3118:8 3119:2 3120:5,11 3166:16 3167:17,21 3204:4,8,21 3205:12,14 3264:14 3274:10 3287:7,14,19 3287:20 3288:6,19,22 3290:18 3291:19 3319:5 3324:15 3327:3 3327:20 3336:7 3338:16 3340:2,8 3343:6,22 3376:5 3393:3 3395:3,21 3396:4,6 improves 3297:15 3376:7 improving 3338:17 in-depth 3094:8 3096:12 in-house 3263:3 3347:2 in-person 3084:9 3160:6 3238:7 inability 3215:5 3371:12 inadvertently 3088:4 incentive 3196:19 3197:7 incidental 3343:14</p>
---	---	---	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3443

<p>include 3100:11 3128:9 3182:7 3292:7 3321:8 3321:10 3322:22 3369:22 included 3170:11 3217:3 3240:9 3291:21 3302:11 3325:19,20 3380:22 3383:3 including 3181:19 3333:10 3348:15 3408:2 inconsistent 3188:18 3299:9 incorporate 3179:17 incorporated 3226:8 3405:18 increase 3134:21 3135:12 3135:12 3140:10 3141:1 3340:4 3374:21 3374:21 increased 3101:19,22 3342:2 increases 3135:2,4 3338:7 increasing 3339:2 incredible 3140:19 incur 3361:15 independent 3324:18 independently 3212:8 3213:10 3347:8 3374:12 index 3126:2 indicate 3099:20 3170:21 3175:1 3177:21 3204:7 3204:10 3266:7 3271:21 3390:3 indicated 3098:2 3135:15 3232:16 3238:11 3242:12 3244:16 3260:21 3276:7,11 3287:16 3290:5,11 3301:2 3308:12 3351:18 3368:3 3387:11 3389:11 3407:1 3414:20,22 indicates 3104:17 3166:2 3178:6 3188:17,20 3209:20 3274:8 3280:22 3283:15 indicating 3173:19 3217:1 3294:15 indication 3168:5,20 3412:5 indicative 3174:2,4 individually 3119:7 individuals 3137:16</p>	<p>3268:10,14 3386:8,9,10 3388:13 3390:14 industrial 3312:6 inflated 3420:18 inform 3404:7 information 3179:14,16 3179:21 3180:3,3,8 3194:8 3210:19,20,22 3211:8 3213:20 3227:11 3229:22 3233:8 3242:15 3249:6 3253:4 3262:22 3263:5 3263:9 3267:7 3276:12 3285:5 3346:16,19 3347:3 3358:2 3368:5 3371:20 3387:18 3390:17 3394:11 3409:7 3410:9 3413:21 3414:1,14 3423:2 information-sharing 3227:6 informed 3094:9 3095:11 3110:21 3118:8 3404:13 infrastructure 3090:9 3093:4 3094:7,9,17 3095:1,17,22 3096:5,11 3096:17 3097:3,8 3098:3 3099:17 3100:3 3100:11,17,20 3101:4 3101:14,17 3107:12,17 3107:19 3112:22 3113:15,21 3114:1,6,9 3114:17 3115:3,9,10,11 3116:9 3117:21 3118:5 3118:8,15,17 3119:2,11 3119:14 3122:21 3137:6 3150:3 3166:16 3167:16,21 3171:21 3172:2 3204:4,7,20,22 3205:12,13 3206:5,13 3207:1,3,4,8,12,14,19 3208:8 3244:8,9,11 3245:1,12,16 3247:10 3252:19 3256:20 3264:18 3265:21 3266:4 3267:4 3272:12 3273:14 3274:6,17 3275:9 3287:6,14,19 3288:6,12,15,19,22 3289:11 3290:18 3291:2,8,13,19 3312:19 3323:3,20 3324:3,7 3326:11,13 3327:20 3332:12 3335:6,22 3336:7 3337:10,12</p>	<p>3338:16 3340:1 3341:4 3343:11 3352:8 3353:17 3356:11 3357:5,7,11 3372:19,20 3373:1,5,21 3375:1,5 3375:12,16,18,22 3378:2 3388:7,15 3389:22 3390:4,18 3391:4,7,17 3392:9 3393:3,8,19 3394:7,9 3394:13,15 3395:2,20 3412:2,22 3419:7 3420:18,20 3421:3 3423:13 infrastructure-wise 3390:8 infringe 3349:15 initial 3149:6 3206:16 3208:4 3305:8,10 3307:5 3326:19 initially 3180:1 3226:5 3335:21 3336:6 3341:3 initiatives 3356:5 inkblot 3415:7 input 3095:7 3178:15,19 3233:15 3238:9 3363:5 3422:10 inputs 3179:12 3180:8 3181:19 3209:3,7,15 3210:16 3214:14 3217:20 3226:3,4 3233:5 3357:2 3408:1 3409:5 3412:3 3417:4 3417:11 insisted 3322:19 insisting 3420:12 insofar 3288:12 Inspector 3148:7 installation 3093:1 3376:14,16 3377:4 instances 3414:21 institute 3264:18 instruct 3249:5 instructing 3249:14 instruction 3363:2 insufficient 3398:12,20 3398:21 integral 3331:13 intended 3165:20 3207:5 3248:10,20 3312:17 3375:18 intending 3177:20 intends 3118:14 intent 3270:9 intention 3117:18 interchange 3383:21</p>	<p>3384:1,7,10,12,14,14 3384:16,18,22 3385:4,7 3385:13,18 intercity 3122:11 3145:11 3324:15 3325:17 3334:9 interest 3203:5 3233:8 3299:16 3426:11 interested 3179:22 3190:4 3232:17 3282:20 3283:10 interests 3128:5 3214:21 3215:3 3282:16 interference 3320:8 interject 3085:14 interlocked 3227:17 intermodal 3385:9,9,10 3385:11 3411:13 internal 3121:13 3210:17 3210:18 3367:5 interpret 3212:14 3213:8 3235:22 interpretation 3204:22 interpreting 3235:22 interrupt 3309:15 interrupted 3181:1 interrupting 3189:13 interstate 3196:5 interviews 3417:14 intimately 3349:13 introduce 3128:17 3129:1 3239:21 3315:17 introduced 3127:8 3268:16 introducing 3127:21 introduction 3119:14 3267:9 3421:2 invest 3113:4 3413:1 invested 3373:6 investigate 3167:15 3287:6 3288:4,18,22 3290:16 investigated 3287:18 investigating 3287:15 investing 3205:4 investment 3208:5 3324:3 3326:13 3338:9 3373:1 investments 3113:19 3251:17 3254:22 3256:4,17 3274:11 3325:16 3326:4 3338:8 3340:12 3356:11 3374:15 invitation 3248:10</p>
--	---	--	---

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3444

<p>invite 3170:11 invited 3214:20 3311:22 3421:16 involve 3094:8 3096:12 3251:4 involved 3086:19,20 3148:6 3192:17 3232:3 3255:3 3326:1 3348:16 3349:13 3356:4 3379:10 3381:16 3382:2 involvement 3178:14 3179:2 3214:2 3254:13 3256:3 3401:6 involving 3320:20 3381:12 issue 3161:15 3189:22 3191:3 3193:12 3200:7 3200:8 3201:3 3284:15 3359:7 3370:8,17 3371:5 3388:14 3390:3 3390:7 3395:11 3416:17 3417:15,16 issued 3357:22 3394:19 issues 3147:20,22 3148:19 3150:14 3170:21 3171:15 3172:9,11 3233:3 3252:17 3265:14 3278:19 3331:22 3361:19 3362:15 3368:12 3369:2 3370:7 3370:12 3417:22 Item 3205:2,8 3409:9,12 3412:14 itemized 3418:5 items 3084:12 3225:22 3252:20 3408:4 3409:2 iteration 3182:7 3288:10 3288:14 3289:18 3290:21 3293:20 3321:7 3370:18 3407:16 3408:6 iterations 3183:19 3289:6,9 3290:11 3292:5,6 3293:15 3312:17 3321:10 3369:11 3370:4,10,16 3407:11 3409:17 3414:2 Ivey 3152:5 IX 3083:10</p> <hr/> <p style="text-align: center;">J</p> <p>Jamie's 3155:10 January 3209:11</p>	<p>3211:12 3230:21 3243:5 3288:3 3291:4 3292:16,17,18 3394:4,6 3395:13,14 Jay 3281:6,9,10,10,13 JE 3269:17 JE001B 3091:9 Jessie 3249:12 3277:17 3278:12 3358:21 3366:12 3379:22 3402:9 3416:11 3421:16 Jim 3089:5 3235:2 3425:3 jobs 3139:1 John 3353:21,22 Johnson 3266:10 3302:6 3311:2,9 Johnson's 3377:1 joint 3091:8 3110:18 3111:11 3112:1,1,2 3155:16 3159:8 3163:14 3175:19 3276:2 3285:16 3318:19 3405:2,22 3410:13,18 jointly 3252:11 3407:8,13 3407:19 July 3159:17 3164:20 3234:2 3235:20 June 3111:16,19 3208:16 3216:12 3217:1</p> <hr/> <p style="text-align: center;">K</p> <p>Karen 3215:17 3221:7 3222:9 3225:5 3228:6 3335:16 Kay 3152:5 keep 3130:5 3216:5 3235:13 3372:16 keeping 3219:15 key 3126:6,22 3344:9 kind 3084:16 3115:22 3126:4 3161:14 3193:5 3250:6 3319:9 3326:10 3326:13 3332:22 3347:6 3373:5 3411:3,5 3415:6 kinds 3319:13 3322:13 knew 3179:4 3304:4 3347:10,14 3372:8 know 3085:20 3087:11 3099:19 3100:1 3101:5 3101:6 3106:11 3112:19 3117:6 3121:12,14 3127:12</p>	<p>3132:11,13 3133:21 3134:14 3140:12,13 3142:2,21 3143:9 3149:6,19 3155:10 3156:15 3157:16 3158:14 3160:17,19 3161:7,10 3162:14 3163:6 3165:20 3169:20 3179:4,6 3180:19 3185:6 3188:19,21 3190:8 3192:16 3194:14,15 3196:5 3198:3 3199:11 3201:16 3205:5 3209:20 3211:1 3214:7 3214:9,10 3217:21 3218:12 3219:20 3220:1 3221:17 3222:2 3222:11 3225:3,9 3228:12 3229:15 3232:7 3239:1,7 3248:9 3248:10 3250:9,16 3253:20 3254:19,20 3257:1,6,6 3261:13,17 3262:9 3263:5 3264:11 3265:8 3269:10 3278:2 3280:14 3284:11 3285:6 3289:7 3292:7 3300:19 3305:13 3306:11,15,17,21,22 3309:10 3312:22 3313:15 3315:5,8,11 3316:17 3317:2,6,9 3319:10,22 3320:5 3321:5 3323:7,10,12 3325:11 3328:4 3329:4 3331:1 3332:1,22 3333:13 3334:14 3335:9 3337:2 3347:3 3348:7,17 3349:5 3351:2 3352:20 3355:2 3368:8 3370:6 3372:4 3373:7,19 3374:13,15 3375:5,6,8,10 3376:17 3377:4,6,16,18 3379:3 3379:10,19 3381:9,10 3383:6,7 3386:10 3387:1,9 3388:5,11,12 3391:15 3392:18,20 3401:11 3405:9 3412:6 3416:13 3420:21 3421:6 3424:3,6 knowing 3371:15 knowledge 3106:3,6 3203:8 3214:3 3255:9 3263:14,15 3348:5</p>	<p>3356:3 3362:20 3376:16 3389:8 known 3303:22 3304:8 knows 3132:14 3139:7 Kyle 3234:3,4,6 3367:3 Kyle's 3236:1</p> <hr/> <p style="text-align: center;">L</p> <p>L.E 3263:12 3346:14 labeled 3277:1 lack 3133:2 3135:19 3165:10 3242:13 3244:16 3344:17 3350:4 3351:18 lag 3309:18 laid 3183:21 3369:18 land 3086:14 3313:4 language 3096:9 3205:7 3228:1 3264:7 3322:4 3368:2 3370:2 3405:12 3405:19 3406:17 3407:6 lapse 3304:14 lapsed 3304:13 large 3162:14 large-radius 3339:2 largely 3261:8 larger 3212:11 3328:1 3338:7 Larry 3266:15 late 3218:22 3415:17 3416:14 3423:4 latest 3332:3 law 3114:6 3115:11 3148:21 3280:16 lawsuit 3148:1 lawsuits 3299:3 lawyer 3086:19 3348:12 3348:12,13,14 lawyers 3086:20 3156:4 3227:20,21 3348:14,19 lay 3188:8,12 3302:3 3309:7 3310:10 3311:9 laying 3233:4 layman's 3362:3 layover 3109:11 3301:17 3302:17,19,19 3303:11 3304:11,19 3305:4,6 3308:11 3309:6 3311:19 3364:11,13 lead 3116:15 3122:10 lead-in 3375:5 Leading 3415:15 learned 3250:20,21 3251:7 lease 3306:11,14 3307:1</p>
--	--	---	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3445

<p>leased 3306:9,16 leave 3087:4,5,9 3176:18 3197:1 3218:17 3236:19 3302:13 3416:10 leaves 3199:8 leaving 3154:16 3199:8,9 3200:18 led 3347:16 left 3109:21 3117:5 3150:21 3151:1 3157:11 3360:8 left-hand 3112:10 legacy 3144:9 3221:14 legal 3280:17 legally 3177:20 length 3332:5 3338:10 lengths 3398:11 less-restrictive 3371:11 less-than-favorable 3340:22 lessen 3388:8 3396:4 lesson 3251:7 lessons 3250:20,21 let's 3111:6 3117:20 3136:1 3156:16 3157:18 3158:22 3177:13 3203:7 3205:10,19 3277:8 3285:13 3331:20 3333:19 3357:11 3361:8 3381:11 3402:1 letter 3097:16,21,22 3152:2,5,9,18 3198:12 3204:14 3208:1 3227:8 3227:14 3256:12 3257:5,12 3321:4 3325:5 3354:17,18 3394:4,6 3395:14 3405:18 3406:10,13 3410:22 3413:16 3414:19 3416:11,18,22 3417:4 3418:6 letters 3151:14 3308:18 level 3119:6 3190:22 3225:1 3329:2 3368:3 3369:14 levels 3225:20,20 3400:21 3409:15 leveraging 3324:2 lieu 3171:11 3309:8 lift 3303:5 3358:16 3368:19 light 3090:19 3331:4,14 limit 3322:14 limitation 3295:1</p>	<p> 3322:16 limitations 3224:2 3368:14 limited 3161:1 3210:9 3303:1 3321:22 3322:12,12 3341:13 3372:4 limits 3412:20 line 3092:22 3093:6 3106:9,12,15 3119:10 3119:21 3121:3 3127:7 3127:22 3130:15,15,21 3131:7 3132:18,20,22 3133:6,7,10,16 3134:3 3134:5 3135:19 3136:3 3137:3 3138:17 3139:10,16,17 3140:16 3140:18 3141:4,13 3142:5,8 3143:10 3146:3,6 3149:13 3150:3 3161:5,22 3171:7,10 3187:3 3194:21 3199:4 3205:9 3208:21 3210:12 3240:9 3265:5 3266:5 3267:1,4,18 3268:11,15 3268:19 3287:2 3295:4 3296:16 3297:1,16 3298:12 3299:5,12 3300:7,11 3302:12 3307:2 3309:20,22 3310:2,3,7,13,14,16,17 3310:21,22 3311:11 3312:11 3313:8 3314:3 3323:2 3324:22 3326:12 3338:12 3339:1,5,21 3344:2 3362:16 3363:20,21 3365:6 3366:5 3377:5 3380:18,20 3394:2 3399:8 3413:1,11 linear 3412:4 lines 3113:16 3114:2,9 3116:9 3119:3 3122:18 3122:22 3128:18 3132:12 3135:13,20 3136:6 3140:11,14 3171:10,11 3177:19 3265:12,22 3295:20 3296:16 3315:21 3364:22 3368:10 list 3114:18 3151:15 3180:21 3181:6 3209:14,22 3210:2,3 3211:7,8,13 3214:17,18 3214:18,19 3215:2</p>	<p> 3226:9,10,12,14 3227:12 3319:3 3330:16 3409:2 listed 3088:3 3094:17 3104:1 3111:11 3126:6 3209:4 3414:2 3416:22 listen 3110:7 3266:9,12 3266:15 listened 3134:19 listening 3111:6 3173:16 listing 3198:11 3209:7 lists 3179:11 3200:4 3210:17,18 3211:3,7,11 3211:13 3214:17 3215:1 litigation 3247:16 3273:2 little 3092:5 3103:22 3114:13,20 3151:3 3233:19 3275:15 3285:15 3301:3 3309:18 3325:12 3335:9 3345:2,6 3349:11 3351:14 3359:16 3383:19 live 3090:15 3170:5,6 3358:12 livestream 3087:6,12 load 3358:3 3420:19 loading 3360:7 lobby 3087:5,10 local 3260:13 localities 3375:2 locals 3298:12 located 3146:5 3299:6 3364:12 locating 3144:7 3313:10 location 3109:14 3145:21 3146:7 3295:13 3303:18 3304:20 3306:3 3307:7,22 3308:16,21 3309:7,11 3310:9,10 3399:4 3407:16 3412:14,21 locations 3124:12 3208:7 3313:7 3412:16 locking 3410:1 loggerheads 3347:15 logic 3365:19 long 3112:19 3116:12 3140:21 3190:10 3227:14 3228:15 3253:5 3284:19 3310:19,20 3363:16 3367:19 3368:6 3405:9 3411:15 3423:8 3424:10,10</p>	<p>long-distance 3314:21 longer 3143:22 3151:4 3228:19 3304:14 3330:14 3341:6 3343:16,17 3361:9,13 3361:17 3362:1 3369:8 3376:19 3377:8 look 3088:14,14 3100:2 3119:5 3141:4 3150:17 3154:12 3164:18 3171:8 3177:8 3211:22 3245:21 3250:19 3259:13 3280:3,8 3290:3,6,11 3291:17,18 3291:20 3314:3,6 3318:1 3319:22 3320:19 3334:15,16,21 3335:2,5 3342:1 3352:19 3356:10 3357:17,19,21 3358:1 3359:4 3368:18,22 3369:1,2,3 3375:4,14 3401:20 3405:21 3417:2 3418:15 look-ahead 3167:4 3237:4,11 looked 3100:19 3101:3,8 3120:1 3179:16 3312:6 3312:6 3413:12 looking 3092:7 3098:14 3159:2 3173:12 3179:16 3185:8,17 3209:19 3210:19 3235:19 3283:19 3315:13 3321:5 3332:7 3332:8,18 3333:20 3334:15 3337:16,17 3343:4 3346:1 3368:14 3368:20 3370:8 3421:17 looks 3113:9 3126:21 3155:22 3186:11 3211:15 3240:1 3249:22 3270:3 3280:7 3280:22 3415:6 loopholes 3275:5,5 Los 3260:17 3261:1 lose 3318:3 loss 3218:8 3318:2 lost 3238:13,14 lot 3084:17 3143:9 3213:15,20 3214:14 3260:9 3261:3 3313:15 3350:4 3356:5 3362:14 3362:17 3370:15 3375:21 3416:14</p>
---	--	---	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3446

<p>loud 3246:3 Louis 3259:22 low 3160:22 lower 3342:8,15 lowest 3125:5 lowest-cost 3331:18 3332:9 lunch 3088:18 3158:16 3158:17,20 3159:3 3215:18 3216:1 3239:5 3277:14</p> <hr/> <p style="text-align: center;">M</p> <p>Mac 3130:12 3132:10 magic 3339:14 main 3236:7 3295:3,20 3296:16 3298:13,15 3299:5,12 3302:12 3309:20 3310:14,16,21 3310:22 3311:11 3312:11 3339:5 3364:21 3365:6,9 3366:5 3376:21 3377:5 maintained 3376:20 3414:17 maintaining 3377:8 major 3338:9 majority 3267:13 making 3086:22 3147:20 3150:8 3164:3 3248:18 3333:16 management 3388:2 manager 3387:9 manipulated 3419:1 3420:8 manner 3203:4 3409:19 map 3115:22 3171:1 3415:7,11 3416:5 maps 3368:9 March 3191:11 3250:3 marine 3139:22 mark 3277:8 3353:21 marked 3156:19 3158:10 3159:9 3163:18,20 3357:16 3402:19 3403:2 marked-up 3092:10 market 3145:16 marketplace 3194:13 markets 3334:10 markings 3156:11 Marty 3112:11 3154:20 3197:11 3200:16 3328:14 3344:13 massage 3358:5,17 material 3142:6,12</p>	<p> 3409:7 materials 3163:18 math 3121:5 3201:16 Matt 3154:20,22 3157:11 3157:17,17 3176:19 3240:17 3258:21 3277:11 3279:18 matter 3266:17 3332:22 3404:15 maximize 3157:14 Maximizing 3251:16 mayor 3110:2,4,9 3138:14,15 3139:4,6,10 3139:19 3141:4,10,18 3142:3,16,19,19 3144:7 3146:6 3147:5 3307:6 3307:13,21 3308:3 3365:16,18 mayor's 3308:3 McCutcheon 3130:12 3132:10,13,14 3133:22 3137:3 3138:10 McCutcheon's 3131:17 3132:3 3137:15 mean 3095:12 3101:10 3111:19 3117:4 3120:20 3125:12 3147:22 3157:6 3166:17 3171:17 3173:14 3205:13 3214:10 3216:16 3224:16 3229:22 3230:4,5 3232:6,7 3246:3 3259:14 3260:11 3264:20 3272:18 3279:16 3300:5,17 3301:6 3308:10 3309:15 3312:12 3313:22 3314:10 3317:1,2 3334:5 3338:15 3339:16 3346:9 3371:17 3385:22 3386:7 3391:20 3392:1 3394:7,20,21 3399:14 meaning 3165:5 3246:19 means 3121:15 3162:19 3423:1 meant 3257:12 3369:7 3370:20 measurement 3197:5 measures 3359:20 mechanism 3412:12 media 3378:22 meet 3149:7 3295:12,12 3343:15,17,18</p>	<p>meeting 3160:7,8 3163:5 3170:6 3238:8 3246:11 3379:15 3387:4 3388:1 3388:3,4,6,10,21 3389:5,10,16 3390:4,16 3390:17 meetings 3133:5 3170:15 3238:11,12 3379:11 3386:21 3387:6,11 member 3085:13 3090:19 3090:21 3112:11 3129:21 3157:4 3186:9 3194:1 3197:11,15,17 3198:8,14,17 3199:5,7 3199:15 3200:1,11,15 3200:20 3205:21 3206:2,15 3207:11 3208:9 3221:5 3228:7 3228:20 3229:13 3272:3 3277:5 3281:19 3282:2,6,7,9 3324:5 3328:14,18 3335:18 3336:3 3342:20 3344:6 3344:8,13 3366:14 3371:10 3381:18 3388:3 members 3085:1 3087:3 3089:15 3166:12 3170:10 3214:8 3386:5 3424:9 membership 3098:15 3386:12 memo 3245:6 3246:10 3247:11,22 3248:2,19 3255:20 3256:1 3257:10,10 3276:19 3420:14 memorandum 3240:8 3247:6 memory 3088:16 3270:5 3270:19 mention 3084:13 3292:12 3388:14 3401:2 mentioned 3136:7 3173:4 3292:13 3294:9 3324:6 3328:19 3401:12 mentions 3217:7 merchandise 3411:13 merely 3312:20 message 3394:18 met 3130:14 3170:8,9 3252:10 3387:8 3411:19 method 3412:16,17 metric 3419:20 metrics 3289:6 3413:6</p>	<p>Miami 3261:19 mic 3084:16 3102:5 3110:21 3111:4 3131:21 3144:18 3145:2 3287:12 3303:7 Michael 3354:1 microphone 3085:7,8,10 3085:15 3086:2,3,4 3097:17 3129:15 microphones 3085:1,3 3086:6 3153:15 middle 3089:4 3190:9 3258:3 midst 3235:21 3239:17 3352:12 3395:9 midway 3094:2 3098:19 mile 3261:21 miles 3342:3 3362:5,5 million 3097:3,13 3098:8 3101:19 3102:8,9,10,11 3102:11,19 3103:2 3109:4 3139:1 3148:2 3323:19 3324:21 3326:10 3327:19 3329:9,11,12 3343:11 3352:20 3357:12,14 3372:21,21 3374:4 3378:1 3393:2 mind 3131:18 3132:4 3205:17 3214:22 3223:15 3280:8,9 3333:3 3365:18 mine 3181:12 Mine's 3131:22 minimize 3137:7 3167:17 3287:7 3288:6,19 3289:1 3290:18 3320:8 3391:18 3392:10 3411:22 3414:5 minimizing 3365:20 minimum 3217:4 3252:1 3253:1,13 minor 3344:1 minus 3199:11 minute 3102:2 3126:10 minutes 3090:5 3153:12 3154:9 3215:20 3239:12 3319:19,20 3323:8 3336:14 3337:11 3341:11,12 3342:5,7 3359:21 3360:17,18,20,20 3361:7,8,11,13 3362:4 3369:4 3402:8,10 3403:22,22 3419:21 miraculously 3348:8</p>
---	---	---	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3447

<p>missed 3144:10 3147:11 3228:1 3326:18 3335:1 3343:3</p> <p>missing 3111:1 3222:15</p> <p>misstate 3282:18</p> <p>misstated 3384:15</p> <p>Misstates 3264:4 3307:10</p> <p>misstating 3396:17</p> <p>mistake 3144:11</p> <p>misunderstand 3364:18</p> <p>Mitchell 3281:7,9</p> <p>mitigating 3330:22</p> <p>mitigation 3414:7</p> <p>mixed 3228:5</p> <p>Mobile 3109:9,14,21 3110:3,12 3123:11 3124:1 3125:9 3134:11 3134:15 3138:15,21 3139:7 3145:14,20 3146:7,10 3147:6,7,9 3147:14,15 3198:21 3199:8 3289:19 3290:17 3291:1 3301:1 3301:15 3302:4,8,9,15 3303:12 3304:12,15 3305:5 3307:5,6,8 3308:6,9,16 3309:9,20 3311:15 3312:7,10 3313:4 3336:12 3363:13 3364:1 3365:16,22 3383:20 3386:21 3389:18 3400:4,7</p> <p>mobility 3128:11 3373:3</p> <p>model 3107:13,18 3108:9 3144:17 3145:11 3147:2 3171:16 3173:20,21 3174:7 3180:18,20 3212:8 3213:11 3215:6 3232:8 3233:1 3235:12 3236:9 3282:21 3283:11 3285:1 3287:19 3291:5 3291:14 3294:4,20 3295:1,6 3299:20 3300:6,15,19 3320:17 3346:17 3355:5,6 3357:3 3358:11,12 3407:9,19 3409:16 3414:10 3417:17,18,19 3420:18</p> <p>modeled 3419:14 3420:1 3420:3</p> <p>modeler 3294:14 3347:2 3417:14</p> <p>modelers 3263:3 3332:6</p>	<p>3355:22 3356:2,10,15 3356:19 3357:10,19</p> <p>modeling 3096:21 3097:4 3097:7,14 3098:8 3118:16,20,21 3122:17 3142:22 3152:12 3168:2,8 3169:1,22 3170:21 3172:9 3173:2 3179:13 3183:10,18 3207:6 3210:8 3211:5 3214:6 3219:7 3221:20 3226:2 3232:9 3235:5 3236:7,16 3238:6 3241:12 3242:20 3252:6 3263:4,8,13,18 3282:22 3283:12 3284:3 3285:3 3287:18 3294:5,16 3295:18 3299:10,14 3312:18 3322:21,22 3332:4 3345:10 3356:2,13 3357:16 3369:18,20,21 3369:21 3370:1 3380:19,21 3405:13 3408:19 3418:2,17,22 3420:13</p> <p>models 3172:10,20 3207:16 3371:21 3422:9</p> <p>moderator 3087:22</p> <p>moment 3086:15 3131:6 3157:20,22 3158:4 3161:11 3163:11 3220:11,14 3222:11,15 3270:5,16,19 3273:1,16 3278:10 3306:18 3313:21 3344:15 3363:7,9</p> <p>Monday 3083:11</p> <p>monetary 3197:7</p> <p>money 3113:17,20,22 3114:3,7,22 3115:12,13 3115:14 3116:8,22 3220:2 3221:21 3222:12,14,18,18,20,21 3223:2,11,12,14,15 3225:3 3228:12,20 3229:2 3231:17 3306:22 3323:21 3327:8 3328:22 3352:7 3353:1 3372:5</p> <p>monies 3114:4 3219:10 3220:16,19 3221:19 3223:5 3229:10,11 3231:13 3328:5</p> <p>monitor 3087:6 3088:10</p>	<p>monitoring 3088:2</p> <p>Montgomery 3234:3,5 3367:3</p> <p>month 3125:21</p> <p>months 3209:13 3210:14 3228:18 3233:6 3288:21 3289:4,5</p> <p>morning 3084:2 3090:2,3 3129:22 3190:9 3352:19 3424:11</p> <p>motion 3359:2 3422:2,17</p> <p>motions 3421:18 3422:1</p> <p>movable 3261:11 3397:15,16,16</p> <p>move 3144:14 3150:13 3158:14 3162:1 3163:7 3189:2 3233:9 3264:8 3269:19,20 3298:1 3299:22 3300:1,13,22 3302:21 3303:1 3310:9 3310:9 3319:19,19 3320:5 3338:22 3340:19 3364:13,13 3365:10 3371:9,15 3384:18 3402:3 3412:15</p> <p>moved 3135:15 3297:8</p> <p>movement 3297:9 3299:20 3300:8</p> <p>movements 3310:4</p> <p>moves 3139:1 3243:15 3383:12</p> <p>moving 3154:18 3293:19 3310:7,8 3311:18 3312:9 3323:7 3332:22 3340:18 3362:19 3368:15 3372:16 3384:10,14,16</p> <p>MULLINS 3086:8 3130:3 3156:6,13,18 3157:2,8,21 3158:3,7</p> <p>multiparty 3251:1</p> <p>multiple 3088:8 3161:8 3214:16 3244:15 3297:7 3317:10 3369:15 3397:14,16</p> <p>muted 3144:19 3145:3 3240:14</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 3084:1 3425:1,1</p> <p>name 3155:11 3186:15 3203:20 3269:10 3355:10 3366:16 3371:18,18 3375:17 3384:2 3387:11</p>	<p>3401:10</p> <p>named 3267:17</p> <p>names 3353:20</p> <p>narratives 3417:12</p> <p>Nathan 3276:16 3280:13 3280:16 3283:5</p> <p>national 3083:4 3113:17 3247:17,21 3248:5,14 3248:22 3299:4</p> <p>natural 3151:5</p> <p>nature 3323:16</p> <p>navigate 3328:7 3372:6</p> <p>near 3144:8</p> <p>near-term 3330:2 3414:3</p> <p>nearly 3138:22 3199:2 3212:8</p> <p>necessarily 3201:16 3223:5 3262:5 3309:10 3315:13 3336:22 3364:12 3423:1</p> <p>necessary 3087:21 3092:22 3137:7 3183:13 3254:22 3256:5 3295:9 3353:18</p> <p>need 3087:1 3108:11 3119:2 3129:20 3148:9 3149:18 3168:14,15 3175:13 3190:1 3207:8 3209:14 3238:22 3250:22 3258:19,20 3279:7,17,19 3303:5 3311:10 3319:15 3328:8 3330:2 3331:19 3342:14 3346:21 3350:13,13 3353:16 3385:17 3396:4 3401:16 3402:9,14,19 3403:3,7 3411:4 3413:1 3421:3,15</p> <p>needed 3093:5 3095:3 3100:20 3117:22 3118:16,17 3119:11 3120:15 3121:18 3207:1 3225:2 3253:6 3256:17 3274:10 3302:2 3304:9 3312:21 3322:7 3326:12 3340:2 3345:4 3347:4 3350:11 3389:22 3390:8 3391:18 3392:9 3411:6 3418:4</p> <p>needs 3148:8 3176:1 3328:8 3333:16</p> <p>negative 3089:17 3131:2 3131:14 3136:6 3138:20</p>
--	--	--	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3448

<p>negotiating 3251:1 negotiation 3367:19 3368:7 negotiations 3222:5 3232:12 3233:6,13 3307:12,20 3367:4 negotiator 3367:1,3 neither 3224:5 3386:15 3426:9 network 3113:18 3299:21 3300:7 3333:8 3333:10,20 3339:11 3373:3 never 3106:21 3107:7 3133:9 3225:3 3237:14 3326:17 3348:9 3373:15 3395:7 3419:5 3419:14 new 3084:5 3117:11,15 3117:18 3118:13 3123:11,17 3124:1,17 3124:21 3125:5,9,10,19 3127:16 3145:13 3152:13 3198:20 3199:9 3271:7 3275:10 3289:18 3290:22 3336:11 3356:12 3363:22 3364:2 3377:11 3400:15 nexus 3146:15 3192:16 Ninety-five 3196:1 no-build 3165:1,18 3166:6,14 3167:3 3174:16 3175:3,5,8 3183:1,9,16 3184:1 3237:12 3241:14 3242:2 3293:13,21 3407:10,15 3408:5,15 3409:17 3413:9 3420:9 3420:13 noncommercially-sensi... 3414:15 nonconfidential 3181:18 3408:1,19 3409:5,11 3422:3 Norfolk 3083:6 3099:1,6 3099:11 3100:7,12 3182:7 3266:13 3271:16 3276:22 3313:17 3353:22 3378:14 3381:13 normal 3359:12 north 3122:6,9,17 3135:16,20 3136:7,13 3383:12,17,19 3384:7 3384:10,12,16,22</p>	<p>3385:13,18 Northeast 3260:8,10,12 3260:14 3323:14 3335:7 3356:5,8 Northern 3260:18 Northfolk 3313:18 Notably 3407:4 notarial 3426:13 notations 3386:11 noted 3331:21 notes 3351:15 3366:11 notice 3359:9 notify 3157:12 notwithstanding 3207:16 November 3423:10 NS 3099:21 3151:14 3163:19 3164:1,3 3165:22 3167:16 3170:15 3180:12,13 3183:1 3236:22 3267:11 3278:20 3346:16 3352:4 3369:5 3371:10 3395:5,15 3407:3,5 3411:2 3414:4 3414:6,16,19 3420:1,12 NS's 3393:2 3396:15 NSR 3321:8,10 3409:3,13 3409:14 3410:7 number 3091:17 3092:6 3095:6 3098:2 3103:5 3115:17 3122:1 3123:6 3126:5,8,15 3127:19 3149:19,20 3160:18 3193:19,20 3196:2 3197:12 3203:18 3210:9 3216:7 3223:10 3252:17 3253:7 3256:11 3278:5 3298:12,12 3300:10 3306:1,4 3309:12 3318:20 3326:4 3331:22 3350:5 3359:20 3361:1 3372:21 3386:21 3411:11 numbered 3199:19 3406:21 3411:4 numbering 3112:8 numbers 3091:18 3092:5 3112:17,18 3127:10 3129:6,18 3139:20 3140:6,19 3190:18 3191:12 3192:15 3194:14 3202:15 3275:2 3317:22 3361:19</p>	<p>numeral 3182:20</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O 3084:1 3425:1 oath 3133:15 OBERMAN 3084:2 3086:9,12 3089:11,18 3091:10,13 3092:2,7,10 3102:2,5,7,12 3105:6 3108:13,17,22 3110:20 3111:20 3112:4,13,15 3114:12 3125:18 3126:3,9,16 3127:1 3129:10,14,17 3131:20 3132:1 3134:3,6 3142:17 3144:2,20 3149:8,11 3150:10,18 3151:2,8,16,21 3153:3 3153:11,18 3154:1,5,10 3154:22 3155:3,9,20 3156:3,15 3157:5,10 3158:1,5,15,21 3159:7 3161:12,20 3162:2,13 3164:2,6 3166:9,20 3167:6 3168:13 3169:4 3169:11 3170:4,14,18 3171:17 3173:6,10 3174:10 3175:15,20 3176:2,12,16,21 3177:3 3178:4 3182:14,17 3184:8,12,14 3185:6,12 3186:7,14 3187:15 3188:2,6,11 3189:4,10 3189:18 3190:7 3191:1 3191:10,18 3193:2,17 3195:4 3197:1,10,16 3198:1,6 3200:17 3201:4 3202:1,6,17 3203:3 3208:10 3212:18 3215:11,16,21 3216:6,9 3218:17 3219:3 3220:9 3221:3,6 3222:8 3223:18 3225:4 3226:16 3227:18 3229:19 3230:15 3234:18 3236:19 3237:6,13,18,22 3238:20 3239:7,11,16 3239:22 3240:3,16 3243:17,21 3249:8,12 3249:17 3251:14 3254:1 3255:4,10,14 3256:7 3257:16,19 3258:1,9,15,19 3259:2 3264:3,5 3268:1,6,22 3269:4 3277:4,7,16</p>	<p>3278:10 3279:1,8,15 3285:20 3286:2,7,11,14 3306:17 3307:14,18 3316:2,5 3318:12,15 3328:16 3335:12,16 3343:1 3344:7,14 3349:14,22 3351:10 3359:3,5 3376:10,12 3378:10,18 3379:4,20 3380:5 3381:3,7,14,21 3382:3 3386:1 3389:2,7 3393:11 3402:1,7,13,21 3403:5,9,12,17 3404:1 3405:3 3406:4,7 3415:16,20 3416:10,13 3417:9 3418:1,9 3421:10,14 3423:3,7 3424:3,8 object 3187:8 3249:5 3294:22 3378:4,7 objected 3151:13 objecting 3255:5 objection 3086:7,13,18 3086:22 3105:2 3131:16 3152:22 3157:2 3168:9 3173:8 3174:8 3254:17 3255:4 3263:20 3264:1,3 3267:20 3295:21 3307:10,15,15 3316:3,4 3388:20 3393:10 3406:2 3415:15 objections 3086:3 3143:12 objective 3271:5,6,9,11 objectives 3272:11 objects 3203:1 3307:7 obligates 3230:2 obligations 3229:6 observation 3213:16,21 3297:22 observe 3271:4 observed 3411:20 observing 3404:4 obtaining 3415:13 obtuse 3085:21 obviously 3086:1 3223:19 3253:9 3304:5 3404:12 occupying 3310:3 occur 3360:9 occurred 3218:11,13,14 occurs 3095:14 ocean 3399:22 October 3098:19 3164:11 3164:18 3165:13</p>
---	---	--	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3449

<p>3166:5 3167:14 3168:6 3168:22 3170:7 3172:3 3172:18 3175:9,12 3262:19 3287:4 3288:2 Off-Northeast 3356:6 Off-the-record 3311:4 3318:14 3420:16 offer 3194:13 3217:8 3311:22 3314:20 3392:8,13 offered 3187:18 3222:20 3391:16 offering 3151:17 3255:11 officer 3280:17 3281:1 3426:2 officials 3143:7,21 offline 3378:6 oftentimes 3335:6 3354:1 oh 3084:9 3102:6 3130:4 3149:10 3154:22 3155:1 3170:18 3181:13 3209:14 3239:22 3243:18 3251:19 3258:19 3281:18 3282:9 3286:4 3293:22 3366:18 3379:22 3386:2 OIG 3148:12,13,17 okay 3084:9 3085:21 3086:5 3089:6 3091:14 3091:20 3092:8,9,15 3098:13 3108:18 3109:1 3110:17 3111:8 3112:13,21 3117:9 3122:4 3129:16 3130:1 3130:6,8 3131:8 3136:3 3136:17 3144:3 3147:4 3151:8 3154:10 3155:1 3159:5 3160:9 3169:18 3170:18 3176:16 3177:6 3179:10 3182:5 3182:17 3186:14,22 3195:9 3198:17 3199:15 3207:11 3209:6 3211:19 3213:1 3213:6,8 3216:6,22 3224:13 3230:21 3231:5,10 3232:3,15 3234:1 3236:18 3240:8 3243:10 3244:4 3245:7 3246:6 3250:2,5 3253:19,21 3254:12,15 3259:7 3268:8,8 3269:3 3269:6,10,14,15 3270:15 3271:2 3272:8 3272:22 3273:12,20</p>	<p>3274:4 3275:13 3280:11 3281:3,17 3283:6,14 3284:10 3285:13 3286:20 3287:3 3288:17 3292:11 3294:18 3299:2 3300:21 3307:4 3309:14,18 3311:13 3313:15 3314:12 3315:15 3317:9,21 3331:12 3332:20 3335:16 3341:20 3344:13 3355:13 3359:3 3367:6 3372:17 3380:5 3391:16 3396:12 3397:11 3399:1 3400:2 3401:19 3402:4 3406:22 3410:22 3418:21 3420:6 old 3361:10 older 3144:9 on-time 3197:5 3359:7,18 3359:19 3362:7,12 3419:21 once 3085:17 3224:12 3310:8 3337:9 3341:4 3347:22 3348:9 3363:19 one-for-one 3135:7 one-to-one 3140:9 3417:19 ones 3098:3 3258:14 3270:18 3354:7 3370:11 ongoing 3374:18 online 3375:3 onward 3304:7 open 3155:6 3386:22 open-ended 3279:19 opening 3113:7,8 operate 3095:16 3171:4 3196:8 3205:3,9 3271:12 3289:21 3296:16 3302:2 3310:14 3319:18 3323:9 3339:19 3342:3 3342:9 3356:8 3417:20 3421:5 operated 3268:15 3341:12 operates 3259:22 3316:22 3319:18 3399:8 operating 3123:16 3124:17 3125:10</p>	<p>3196:9,14 3299:5 3306:12 3310:22 3329:10 3330:11 3332:5 3342:13 3346:19 3400:14 3411:11,14 3413:10 operation 3103:13 3107:5 3128:6 3136:13 3171:9 3183:22 3217:5 3299:17 3310:14 3321:12 3331:20 3339:4,6,8 3361:22 3364:10 3365:11,13 3366:9 3368:14 3376:6 3376:20 3383:20 3390:10,12 3410:6 3412:17 3413:2,5 operational 3152:12 3302:6 3322:22 3323:2 3323:15 3335:6 3337:17 3358:9 3369:2 3412:19 3423:15 operations 3103:15,19 3118:12 3142:21 3182:8 3183:2,3,21 3213:16,22 3229:12 3267:7,10 3271:13,17 3272:1 3282:5 3295:10 3297:10,20 3303:2 3310:1 3318:6,8 3319:6 3319:9,11 3320:7,16 3321:8,18,20 3322:6,7 3322:10,13,15 3327:14 3332:1 3335:8 3337:8 3337:14 3338:21,22 3339:21 3343:14,20 3344:2 3356:7 3364:9 3373:7,8,10 3374:6,18 3377:3 3380:16,17,20 3383:13,17 3387:22 3388:8 3389:13,13,14 3389:18 3390:11,15 3391:19 3392:11 3396:3 3399:21 3400:3 3400:6,9,10 3411:18 3412:9,18 3413:8 3414:12 operative 3376:16 operator 3423:17 opinion 3132:4 opportunities 3146:12 3372:5 opportunity 3091:5 3144:10 3145:15 3146:18 3147:12,13 3168:10 3193:3</p>	<p>3197:12 3218:1 3246:13 3276:20 3278:15 3327:16,22 3329:13 3330:3 3369:1 3369:3 3378:7 3419:16 opposed 3171:18 3287:11 3313:5 3392:20 opposing 3298:4 opposition 3244:22 optimize 3299:20 3300:8 optimizes 3299:21 3300:6 option 3188:20,21 3189:20 3193:16 3246:22 3247:20 3248:17 3249:2 3363:17 3364:6,6 3372:7 options 3220:3 3232:1 3247:16,18,22 3248:8 3364:3,7 3369:10 order 3192:3 3263:16 3295:2 3298:2 3300:12 3302:2 3303:21 3304:10 3307:1 3308:18 3332:12 3335:20 3336:5 3342:15 3347:5 3355:14 3370:12 3372:13 3376:3 3396:8 3416:16 3423:20 ordered 3396:9 ordinary 3315:4,14 organization 3162:15 original 3092:11 3116:6 3355:11 originally 3219:9 3225:11 3262:11 Orleans 3123:11 3124:1 3125:9 3145:13 3198:21 3199:9 3289:19 3290:22 3336:11 3364:1,3 3377:11 Orleans/Mobile 3400:15 other's 3295:10 3319:20 OTP 3195:21 outcome 3146:10 3362:10 3426:11 outcomes 3196:6,10 3370:14 outdoor 3213:13 outlined 3096:7 3233:18 3256:13 outlines 3103:12 3382:15 output 3139:3 3407:20 outputs 3413:3,4</p>
---	--	--	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3450

<p>outreach 3120:22 3221:17 3320:12,13 3386:19</p> <p>outside 3087:6,15 3215:20 3224:3 3346:13 3347:4 3378:20</p> <p>overall 3297:16 3313:7 3333:9 3373:2 3374:9</p> <p>overtake 3298:3,16,18</p> <p>overtaking 3298:8,8</p> <p>overtime 3095:19</p> <p>owned 3304:22 3305:12 3306:8</p> <p>owning 3380:19</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 3084:1</p> <p>p.m 3089:1 3424:12</p> <p>Pacific 3118:4</p> <p>page 3084:13 3091:16,18 3091:18 3092:5,6 3098:10,12 3103:4,5 3107:22 3108:16 3109:7 3112:7,8,12 3117:2,8 3121:22 3122:1,2,3 3123:6,7 3124:15 3125:7,13 3126:7,17 3129:5,6 3130:7,8,10,20 3133:19 3136:19 3138:4,12 3139:10,12 3140:15,16 3144:5,5 3159:21 3160:10,18 3164:9,16 3167:2,5,7,9 3170:22 3171:6,6,12,13,20,20 3172:5,22 3173:22 3174:4,6,17,18,22 3175:3 3177:13 3178:3 3181:9,11 3182:4,13 3185:10,11,17 3186:10 3186:12,13 3195:7,9 3200:3 3203:18,20,22 3211:14 3234:16 3240:5 3241:7 3243:11 3243:12,17 3245:22 3249:22 3254:15 3269:20,20,21 3270:10 3270:12,12 3273:16,17 3273:18 3283:4 3286:21,21,22 3318:19 3318:20 3327:2 3343:5 3394:1 3397:3,4 3406:21,22 3413:16 3418:16 3425:2</p> <p>pages 3173:1</p>	<p>paid 3196:13</p> <p>pale 3140:20</p> <p>Palm 3261:19</p> <p>panel 3108:21 3143:22 3247:17,21 3248:6,15 3248:22</p> <p>papers 3355:19 3422:20 3422:21</p> <p>paragraph 3093:13,22 3098:18 3122:5 3133:21 3152:10 3211:15,16 3212:1 3216:16 3236:20 3241:17 3242:6 3243:15 3245:21 3283:8,19,20 3284:14 3319:3 3321:6 3394:1 3397:4 3398:17 3413:17 3418:18,21 3420:7</p> <p>paragraphs 3093:12 3216:19 3406:21</p> <p>parallel 3393:14</p> <p>parameter 3420:1,3</p> <p>parameters 3181:20 3363:5 3371:12 3408:3 3409:6 3413:13</p> <p>pardon 3202:5</p> <p>park 3363:13</p> <p>parked 3309:13</p> <p>parking 3312:15</p> <p>part 3093:7 3099:2,3,7 3099:12 3107:19 3113:21 3120:7 3148:12 3154:13 3183:9 3184:2 3194:8 3201:11 3202:8 3207:5 3210:8 3212:15 3229:3 3236:14 3240:6 3271:17 3287:21 3290:20 3293:15 3306:8 3312:18 3315:3 3315:9 3331:17 3334:12 3348:22 3349:6 3353:5,10 3375:20 3378:8,13 3380:10,17,21 3384:18 3386:16 3395:4</p> <p>partially 3328:20 3329:19</p> <p>participant 3388:2</p> <p>participants 3084:15 3087:18,19 3088:1,3 3353:19 3354:4,4 3386:14</p> <p>participate 3201:12</p>	<p>participated 3250:10 3367:4 3387:2,15 3389:10</p> <p>participating 3088:9 3123:18</p> <p>participation 3210:1,3 3345:20 3392:21</p> <p>particular 3270:17 3299:20 3300:8 3314:3 3371:5</p> <p>parties 3086:1 3088:10 3112:2,3 3165:22 3175:18,22 3177:20 3178:8 3181:17 3206:10 3227:16 3230:1 3236:2 3263:17 3277:21 3278:7,20 3292:4 3306:1,1 3373:22 3378:13 3386:22 3404:13 3407:21 3408:18 3410:4 3426:10</p> <p>parties' 3215:3 3350:10</p> <p>partly 3209:22</p> <p>partnering 3122:10</p> <p>partners 3335:10</p> <p>partnership 3327:10</p> <p>parts 3132:19 3133:5 3223:4 3355:5</p> <p>party 3170:1 3218:21 3348:19 3378:20 3380:15</p> <p>pass 3107:2 3253:21 3295:7,10 3296:2 3297:8 3298:3,14,16 3343:15 3398:13</p> <p>passage 3112:22 3113:1</p> <p>passed 3115:3 3245:13 3375:1</p> <p>passenger 3083:5 3103:13 3117:7 3120:11 3121:18 3122:11,18,22 3123:17 3124:17 3125:11 3127:7 3128:18 3131:2 3131:13 3144:8 3145:11,19 3146:7,11 3147:6 3148:9 3149:4 3149:17 3150:8 3152:14 3166:14,15 3181:19 3183:3,21 3192:14 3194:20 3200:9 3202:7 3245:2 3261:9 3265:7,12,21 3266:5 3267:3 3275:10 3282:5 3288:13</p>	<p>3289:20 3293:20 3294:3,17 3295:19 3296:4,10,15 3297:14 3299:11,22 3300:3,11 3300:14 3301:13 3320:8 3324:15 3327:14 3333:9,11 3334:10 3343:8 3344:3 3373:10,11 3376:7 3408:2 3412:9 3414:5 3415:14 3416:4 3420:19 3421:2</p> <p>passengers 3123:22 3124:21 3125:5,11,20 3125:21 3126:15 3127:7,16,17 3148:2 3188:1 3192:11 3194:4 3199:17 3201:9,10,14 3201:21 3208:7 3310:8 3310:20 3335:10 3359:20 3360:7 3361:1 3364:13,14</p> <p>passing 3296:4 3398:10</p> <p>Patelli 3353:21</p> <p>path 3283:17,22</p> <p>pathway 3222:1,7</p> <p>patience 3424:10</p> <p>Patrick 3200:19</p> <p>pause 3163:12 3177:5 3311:17</p> <p>pay 3219:6 3220:13 3222:12,21,22 3223:9 3223:11 3224:18,19 3340:1</p> <p>payments 3196:3,7,12 3197:7</p> <p>Peabody 3263:12,13 3264:11 3346:14</p> <p>peak 3342:6,10</p> <p>penalty 3196:19</p> <p>people 3086:14 3087:8 3088:8,16 3111:1 3154:13,16 3157:11 3163:3 3176:17 3190:5 3190:19 3216:3 3266:22 3267:16 3357:17 3364:2 3404:8 3415:9 3421:19 3423:1</p> <p>perceived 3417:8</p> <p>percent 3140:1,2,3 3195:17,21 3196:1,11 3196:16,17,18 3197:4,6 3261:14 3359:6,7,11,11 3359:13,17,18 3360:15 3360:18,19 3361:7 3362:7 3419:5,20</p>
--	---	---	---

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3451

<p>percentage 3360:16 perfectly 3191:21 perform 3347:8 performance 3195:18 3196:3,7,16,17,19 3197:5 3250:7,14 3271:8 3300:2,3 3319:16 3325:17 3359:19 3362:8,12 3369:6 3413:3,5 3419:21 performed 3303:2 performing 3128:13 period 3116:21 3126:11 3242:21 3248:13 3256:18 3312:11 3326:17 3330:12 3408:15 3409:16 periodic 3169:21 periodically 3170:11 periods 3297:7 permanent 3309:4,7 3412:20 permit 3295:7 3414:4 permitted 3088:10 3299:21 3300:9 3308:19 3346:10 3357:17 3358:1 3370:22 person 3084:4 3085:6 3087:4,10 3162:16 3163:3 3238:8 3404:6 person's 3257:8 personally 3107:10 3356:14,21 personnel 3417:15 perspectives 3183:17 pertaining 3380:3 pertinent 3228:8 Peter 3208:17 3211:20 3216:12 3217:13 Peter's 3209:19 ph 3156:18 phase 3121:9,9 3292:10 3386:19 phased 3093:17 3095:18 3096:2,6 3150:12 3208:8 3256:20 3324:8 3325:19 3326:12,17 phased-in 3096:3 3119:22 3150:1,2,7 3325:8 phasing 3119:18 3273:13 3375:15 phone 3217:10,12,22 phrase 3136:18 3173:15</p>	<p>phrased 3114:15 phraseology 3346:4 physical 3364:19 pick 3085:19 pictures 3173:13 pieces 3347:5 place 3087:14 3088:1 3106:7 3116:21 3120:3 3122:21 3151:5 3219:18 3232:4 3245:17 3261:20 3265:21 3266:4 3338:11 3343:3 3361:2 3366:5 3369:16 3390:12 placed 3088:4 3295:1,18 3296:15 3297:6,8,10 3298:2 placeholder 3087:13 places 3125:16 3169:7 3309:12 plain 3212:6,17 3213:9 plan 3113:10,11 3114:11 3114:14,17 3115:3 3138:19 3224:20 3317:5,8 3319:4 3327:3 3332:5 planned 3113:15,22 3114:7 3115:1 3150:11 planning 3121:8 3254:11 3292:11 3321:17 plans 3113:9 3181:21 3305:20 3314:16 3408:4 3409:6 platform 3144:9 3146:2 3302:22 3304:22 3312:15,20 plausible 3414:11 play 3220:3 3421:21 pleadings 3421:18 please 3088:6 3091:19 3097:18 3100:22 3112:7 3129:6 3135:22 3136:19 3167:5 3168:18 3203:7 3216:14 3234:2 3250:19 3253:19,22 3270:11 3280:9 3309:15 3311:5 3392:4 3396:1 3402:22 3403:11 3405:22 pleasure 3215:16 3238:21 plenty 3218:1 3344:18 plus 3102:11 3199:11 3252:17 3369:2 3374:4</p>	<p>pocket 3370:6,6 point 3104:8,17 3117:10 3118:2 3142:18 3146:4 3162:17 3164:19 3167:13 3168:4 3178:16 3179:3 3204:1 3204:11 3210:2,4 3211:11 3212:10 3217:17 3219:22 3223:18 3227:19 3228:8 3270:10 3271:4 3272:8 3273:12 3287:21 3288:11,14,20 3289:3,15,20 3291:1,13 3292:6,9 3298:8 3305:17 3319:18,19 3329:2 3342:16 3343:3 3344:8,9 3351:11 3362:8 3365:21 3371:14 3375:10 3377:12 3389:21 3399:11 pointed 3208:3 3371:10 3414:21 points 3143:4 3174:19 3269:19 3360:4 police 3088:15 populate 3382:22 port 3133:22 3134:11,12 3134:15,17,21 3135:8 3135:11 3136:10,11,12 3136:14 3137:7 3138:20,21 3139:7 3141:1 3142:7,10,13 3265:17,20 3267:11 3302:6 3363:11 3364:8 3365:12,20,22 3380:10 3380:14,22 3381:1,9 3382:12,20,21 3383:4 3383:12 3386:16,18 3387:1,3,6,8,8,12,15,18 3387:21,21 3388:2,7,14 3388:18 3389:5,12,18 3389:21 3390:3,8,10,11 3390:12,20 3391:7,9,13 3391:17 3392:5,9,13 3400:4,6,10 3401:9,12 3411:19 port's 3134:19 3135:4 3266:20 3366:8 3380:16 3383:9,18 3385:11 3389:13 3390:9,15,16 3392:21 3401:6 portfolio 3227:2 3324:11 3328:1 3394:9</p>	<p>portion 3088:12 3215:15 3273:15 portions 3384:17 ports 3135:14 3399:22 3400:5,7,11 position 3093:9,20 3094:12 3097:2 3106:8 3118:7 3119:1,9 3132:11 3135:18 3137:12 3144:12 3152:17 3167:20 3192:20 3237:7 3246:6 3249:18 3255:2 3256:4 3256:10,13 3257:8 3265:9,15 3266:8 3267:2,15,19 3268:11 3272:15,20 3273:1 3278:12 3281:15,15 3296:6 3297:14 3299:9 3299:13 3339:10,18 3343:9 3345:21 3346:8 positions 3257:7 positive 3326:10 3330:18 3332:18 possesses 3399:9 possession 3262:18 possibility 3232:22 3233:14 3279:4 3312:8 possible 3099:17 3103:3 3267:15 3268:12 3292:8 3316:18 3320:3 3330:1 3344:10 3350:3 3366:16 possibly 3381:10 post-Katrina 3305:15,17 post-railroad 3238:15 posted 3139:22 3140:2 potential 3140:20 3142:6 3222:19 3231:14 3274:17 3288:5 3340:7 3361:14 3375:1 3397:6 potentially 3142:8 3220:2 3340:5 3341:15 3341:20 3343:17 3344:1 3369:3 3370:13 3374:7 3418:22 power-operated 3412:13 PowerPoint 3410:8 powers 3333:15 PPC 3412:17 practices 3330:11 precluded 3106:1 predated 3214:2 3254:20 predicate 3235:16 prefer 3202:22 3203:3 3212:9 3303:17,18</p>
--	---	--	---

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3452

<p>3307:8 3366:2 preference 3157:14 3294:19 3296:8,14,21 3297:22 3336:18 3337:4 3419:1 preliminarily 3324:20 preliminary 3116:20 prepared 3194:19 3200:22 preparing 3196:3 3219:4 3248:2 3346:20 prerequisites 3275:7 present 3101:10 3110:22 3160:5,8 3170:6 3179:11 3180:21 3181:5 3211:8 3345:15 3387:3,6 presentation 3160:17 3168:6,21 3169:19 3170:20 3172:19 3173:5 3192:11 3377:20 3415:5 presented 3179:22 3180:12 3260:4 3331:20 president 3235:1,2 3241:6 3246:11 3248:1 3387:10 press 3085:3 3318:17 presumably 3310:21 3334:12 presume 3314:2,2 3319:12 3348:6 presumed 3224:19 3348:7 presuming 3101:20 3224:21 presumption 3338:12 pretty 3138:8 3143:6 3201:1,2 3212:7 3213:10 3238:12 3344:22 3362:11 3370:3 prevent 3295:2 previous 3114:15 3172:12 3282:21 3283:11 3341:11 previously 3214:14 3276:13 3280:5,6 3281:13 3284:2 3286:1 3304:5 3313:2,16 3341:7 3368:13 primarily 3128:5 3203:18 3397:17 primary 3334:9 3360:2 Primus 3112:11 3129:21</p>	<p>3205:21 3206:2,15 3207:11 3208:9 3272:3 3277:5 3281:19 3282:2 3282:6,7,9 3366:14 principle 3234:11 3235:17 3236:12 principles 3180:1 3226:1 print 3171:14 3172:8 3173:4,11 printed 3173:14 prior 3119:3 3122:18,21 3172:16 3174:2 3181:6 3185:2 3191:16 3209:7 3214:4,8,15 3232:4,16 3233:3 3245:1 3247:6 3252:21 3256:2 3285:9 3324:5 3333:3 3348:10 3368:13 3401:6 priorities 3294:10,17 prioritizing 3297:1 priority 3116:16 3294:3 3294:7,12 3336:15 priveledged 3378:5 privilege 3349:15 3392:19 privileged 3249:6 3379:16 privity 3277:15 probably 3103:1 3118:18 3150:22 3160:7 3215:19 3231:19,19 3238:22 3327:6 3334:14 3363:8 3403:19,21 3413:22 3421:8 problem 3099:10 3188:7 3271:3 3293:11 3332:9 3367:9 problems 3238:6 3264:19 3265:6 3397:6,7 procedure 3250:6 procedures 3087:21 proceed 3086:21 3137:9 3138:6 3151:21 3153:19 3155:5,13 3158:22 3159:12 3162:21 3164:7 3177:6 3186:17 3191:14 3193:8 3201:5 3203:4 3216:9 3225:14 3230:17 3240:3 3259:5 3279:17,17 3286:8,8,14 3379:3 3404:8 3405:4 proceeding 3188:7 3225:13 3227:20 3336:4 3378:20</p>	<p>3379:17 3392:21 3426:3 proceeding's 3404:16 proceedings 3128:21 3378:5 3387:20 3404:4 process 3094:7 3096:11 3116:13,14,18,21 3118:11 3119:15 3121:6 3172:2,3 3179:3 3206:10 3228:10 3232:4,6 3243:13 3252:20 3253:16 3262:19 3263:10 3282:22 3283:12 3292:10 3294:16 3348:18 3349:2,12 3353:8 3376:4 3380:11 3380:12,14,15 3387:13 3387:19 3388:4 3418:22 processes 3275:8 produce 3191:19 3324:18 3357:7 produced 3156:7,19 3158:10 3218:6 3315:19 3346:2 3356:20 3357:6,20 producible 3379:1 producing 3414:10 production 3156:9 productive 3202:21 program 3228:13 3292:14 3324:10,12,18 3327:8,9,10 3328:3 3340:8 programs 3325:10 3329:7 3340:8 progress 3087:15 3158:17 3159:3 3372:14 3404:2 progressed 3306:6 progressing 3215:3 progressive 3325:14,15 project 3098:8 3105:22 3119:22 3138:6 3149:22 3184:3 3189:17 3192:17 3206:8,22 3207:6 3210:4,5,6 3214:22 3215:3 3219:16,21,22 3220:2 3228:19 3229:5 3233:9 3242:20 3251:3 3254:13 3255:3 3256:3 3288:3 3301:20 3302:1 3311:19 3325:3 3328:4 3330:21 3331:15</p>	<p>3332:12 3372:16 project's 3331:1 projected 3127:18 3139:21 3141:1 3160:15 3161:4,13 3194:4,11,20 3317:5 3318:7 3321:10 projecting 3134:21 3135:1,11 3317:15 3318:3 projection 3161:19 3185:21 3187:2 3188:17,19 3191:6 3192:8,13 3193:4,10,16 3194:7 3199:17 3200:9 3200:13 3264:16 3314:19 3315:12,18 3317:3,18 3357:9 projects 3134:17 3188:18 3191:8 3192:2 3194:15 3202:7 3314:8 3315:3 3316:10 3380:22 3382:13,20 3383:4,7,9 projects 3090:9 3094:17 3095:2,5,6 3097:8,10 3097:13 3098:3 3100:3 3100:6,11,20 3101:4,14 3101:18,20 3103:1 3119:18 3122:17,21 3244:8,9,11,17 3245:1 3253:12 3272:10,12 3273:14 3274:17 3275:10 3287:16 3288:5 3289:13 3290:2 3290:14 3292:4,8 3323:22 3324:7,11,17 3325:14,15,20 3326:19 3327:12,16,17,18 3328:1,2 3329:18,22 3330:2,5,14 3331:10 3332:15 3352:8,15,16 3357:5 3374:8,12,14 3392:13 promote 3229:7 3275:10 promoting 3196:8 proper 3307:22 properly 3422:21 properties 3356:3 property 3304:20 3305:1 3305:12,16 3306:8,9,16 3366:3 proportion 3124:4 proposal 3109:16 3141:6 3200:8 3378:1 propose 3101:17 3167:16</p>
--	--	--	---

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3453

<p>3223:8 3287:6 3288:18 3308:7 3334:11 3337:22 3364:8 proposed 3090:8 3096:1 3096:5 3114:8 3119:13 3147:1 3183:4 3199:12 3287:16 3290:15 3302:18 3316:19 3317:6 3319:4,17 3336:13 3337:8,11 3338:8 3339:19 3343:6 3350:10 3361:12,17,22 3362:13 3390:9 3407:11 proposing 3113:3 3119:15 3161:9 3194:12,12 3199:2 3291:20 3295:16 3302:16 3342:9,16 prosecute 3219:22 prospective 3217:16 3228:11 protective 3355:14 proved 3362:11 provide 3128:5 3146:22 3180:16 3194:9,9,22 3209:6 3220:22 3225:19 3226:12 3239:3 3253:6 3323:8 3352:5 3382:14 3399:17 3408:19 3409:3,4,10,13 3414:20 3415:1 provided 3143:1 3170:3 3180:2 3200:3,3 3208:3 3218:9 3250:18 3285:17 3294:4 3304:5 3315:18 3390:10 3407:2 3408:8 3410:9 3411:2 3414:14 3415:8 provides 3145:15 3146:12 3408:21 3409:7 3410:3,5 providing 3128:1 3145:11 3152:13 3252:9 3374:9 provisions 3277:12 PTC 3093:1 public 3083:3 3087:3,7 3091:9 3110:7,17 3123:16 3124:16 3125:10 3128:21 3129:2 3142:20 3143:7 3143:21 3151:13 3155:22 3156:20 3157:1,6,12,13,14</p>	<p>3158:12 3159:11 3163:9,14 3164:4 3200:21,22 3203:5 3213:16,16 3216:2 3221:17 3258:21,22 3259:3 3279:10 3286:3 3313:20 3357:22 3365:17 3426:1 publication 3272:19,20 3304:6 publicly 3422:17 published 3095:9 3127:11 3334:8 3357:21 publishing 3116:19 pull 3091:8 3278:1 3285:14 3365:8,9 3382:6 pulled 3381:17 3382:2 pulling 3279:14 pure 3360:3,16,19 purpose 3248:20 3276:18 3395:6,16 3415:12,21 purposes 3097:6 3166:10 3297:12 3362:12 pursue 3358:20 pursued 3138:19 pursuing 3246:19 put 3095:13 3106:13 3111:4 3122:21 3162:19 3163:16 3190:17 3202:11 3211:1 3219:13 3223:3 3265:21 3278:6 3296:10 3297:15 3299:11 3311:19 3321:19 3357:4,11 3358:8 3363:1 3371:16 3421:21 3422:8 3423:12,14 putting 3084:18 3093:5 3118:14 3119:3 3291:13 3371:18</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quadruple 3260:15 qualification 3236:20 quantified 3344:12 quantify 3344:10 question 3085:9,14 3091:4 3094:19,22 3095:20 3098:6,7 3100:13,21 3101:9 3102:8 3104:14,21 3105:8,12 3106:20 3109:8 3111:4 3114:15</p>	<p>3116:6 3117:17 3128:16 3132:1,5,6 3135:21 3136:4,9 3138:18 3141:20 3144:13 3147:4 3153:3 3153:21 3154:2 3161:18 3162:3,12 3168:15,17 3172:7 3173:15 3178:20 3181:5 3184:19 3185:4 3186:22 3187:16,21 3188:3,7,13 3189:9,10 3189:15 3190:22 3191:2,22 3192:4 3193:18 3195:15 3202:21 3203:7 3205:11,22 3207:11 3213:7 3216:20,21 3219:9 3221:7 3227:19 3232:20 3233:13 3234:4 3235:11 3242:19 3246:4,17 3248:12 3249:9 3255:15,16 3256:2,6,15 3262:6 3263:2 3268:4 3273:4,6 3281:19 3291:16 3307:17 3311:6 3312:2 3313:1 3316:8 3322:2 3328:13 3329:4 3331:6,6 3334:4 3337:1 3344:16 3346:21 3347:1 3355:8 3356:18 3359:6 3363:9 3382:8,10 3388:16,17 3389:3,4 3392:4,6 3395:22 3423:9,21 question-and-answer 3402:2 questioned 3084:21 3209:2 questioning 3084:22 3089:6 3143:11 3187:12 3202:3 3306:19 questions 3089:3 3115:4 3162:7 3173:11 3176:11 3191:16,19 3257:21 3258:18 3268:21 3269:1 3282:8 3318:11 3328:10 3335:17 3349:9 3351:13 3366:13 3376:11 3379:21 3380:1,3,7 3396:13 3417:7 3421:8 quick 3205:21 3281:19</p>	<p>3372:18 quicker 3365:6 quickly 3303:19 3305:3,5 3338:22 3343:15 3377:17 3412:15 3421:17 quite 3275:22 3298:7 3313:2 quizzical 3351:4 quote 3351:17 3398:14 3407:6 quoted 3407:17 3409:21 quotes 3410:19 quoting 3398:4 3408:10</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R 3084:1 radius 3338:7 rail 3117:7 3120:14 3122:12 3128:13,18 3131:3,15 3135:9,20 3136:13 3140:2,22 3141:16 3142:1 3145:11 3159:16 3163:2 3166:14,15 3169:22 3196:6 3219:11 3285:18 3295:14 3324:16 3334:10 3343:7,12 3373:3 3374:7 3377:21 3378:11,21 3379:8 railroad 3083:4 3135:13 3142:21 3148:19 3170:15 3182:8 3184:22 3197:6 3212:9 3213:15,21 3227:21 3241:12 3261:8 3319:14 3337:3 3356:3 3362:22 3371:7 3380:19 3400:3,6 railroad's 3196:20 3237:15,17 3344:20 railroading 3213:13 railroads 3095:8 3106:14 3106:21 3107:8 3113:19 3118:12 3196:13 3211:9 3212:11 3218:9,20 3219:5 3222:10 3223:19 3224:1 3225:9 3226:11 3230:1 3237:5 3238:9 3242:14 3251:3 3266:3 3281:14 3290:10 3296:10,22 3322:17,18 3335:20 3337:3 3338:19</p>
--	--	---	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3454

<p>3345:19 3347:15,21 3348:2 3352:6,18 3353:3,11,15 3354:7,9 3356:8 3357:20 3361:18 3363:3 3370:19 3371:1 3377:22 3383:6 3394:5 3397:13 railroads' 3356:11 3362:8,14 rails 3344:1 Railway 3083:7 raise 3212:10 3233:3 3369:19 3392:2 raised 3215:4 3226:4 3299:18 3351:3 3353:12 3359:7 3391:11 raising 3397:13 ramped 3120:15,19,20 ran 3255:1 3256:5 Randy 3266:12 range 3196:6,10 rates 3382:13,14 ratio 3330:6 3411:16 raw 3357:2 3417:11 raw-data 3417:4 Ray 3089:13 3090:14,18 3091:1 3240:13,16 3258:7 3268:22 3269:10 3279:1 3286:7 3286:8 3306:18 3307:14 3318:12 3379:18 re-enforce 3207:8 reach 3391:9 reached 3323:17 3386:18 3387:20 3391:13 reaching 3197:4 reactivated 3377:17 read 3105:3 3126:20 3131:6,8 3143:7 3147:10 3148:13 3152:15 3162:4 3166:11 3168:10,14,15 3169:2 3187:4,6 3188:15 3195:8,9 3209:16 3211:17 3216:14,16 3225:19 3235:7 3243:14 3244:1 3246:2,3,3,5 3264:6 3271:2 3280:11 3284:12,13 3322:5 3392:5 3401:15 3411:4 3413:18 3414:1 3418:18,20 3420:14</p>	<p>reading 3125:3 3177:11 3189:7 3235:14 3255:6 3280:6 reads 3242:11 3321:21 ready 3089:2,8 3146:22 3155:6,7 3176:20,22 3177:2 3280:10 3286:9 3286:11 3363:22 real 3319:21 3372:18 3397:6 real-world 3414:12 realize 3162:11 3255:22 3380:7 realized 3121:17,18 really 3084:17,18 3088:13 3109:8 3128:1 3150:12,12 3189:6 3222:14 3225:5 3227:8 3279:12 3302:22 3325:2 3333:14 3354:6 3354:16 3369:13 3370:4,8 3372:4 3376:2 3377:3 3404:9 3421:15 reason 3094:15 3140:5 3149:21 3156:4 3160:20 3162:9 3163:16 3256:15 3316:14 3326:16 3392:1 3415:18 reasonable 3331:4 3332:12,20 3333:5 3335:4 3394:11 reasonableness 3331:15 3332:21 3333:4,7 reasonably 3414:11 reasons 3244:15 rebuilding 3205:6 rebuilt 3262:11,12 rebuttal 3355:12 3397:7 rebutted 3398:7,11,16 recall 3099:9 3105:18 3109:6 3110:9 3115:16 3133:18 3149:5 3152:4 3163:5 3165:7,8 3179:1 3183:15 3185:18 3193:19,21 3206:6 3232:12 3238:5 3252:7 3259:7 3260:18 3271:15 3275:18,19 3280:4,6 3292:22,22 3294:6,14 3311:12 3314:15,17 3330:16 3354:3 3359:14 3363:2 3391:5,6 3393:17 3399:22 3400:13 3401:14,17,18 3402:3</p>	<p>3405:10,17 3410:11 3413:19 3415:4 recap 3388:12 receive 3115:8 3179:14 3213:4 3226:3 3274:19 received 3113:21 3137:15 3212:19 3217:20 3253:4 3262:22 3274:15 3316:5 3345:9 3346:16 3355:8,15,15,18 receives 3250:5 receiving 3336:17 receptive 3283:15 recess 3424:9,13 recite 3143:15 recited 3200:19 recognize 3219:19 3259:16 3327:16 recognized 3218:7 recognizing 3092:20 recollection 3108:8 3115:19 3294:8 recommend 3303:10 recommendation 3229:8 3303:5 3309:14 3323:19 recommendations 3091:22 3092:17 3097:11 3107:12,18,20 3207:15 3247:9 3272:16 3273:3 3274:5 3301:4,9,11,12 recommended 3095:5,7 3096:17 3097:8 3100:3 3108:6 3145:8 3229:4 3288:15 3291:10 3301:17 3303:11,14 3308:13 3340:9 3374:4 3394:14 recommends 3272:10 3273:13 reconvene 3258:20 3404:4 reconvening 3239:17 record 3099:10 3111:22 3129:3,19 3145:4 3149:12 3153:17 3158:8,8 3159:8 3163:16 3197:18 3200:16 3239:14 3240:2 3259:1 3269:12 3273:7 3278:5 3315:17 3315:22 3318:13 3335:15 3350:1 3387:14 3426:5</p>	<p>record's 3114:20 3129:14 3382:4 recorded 3099:4 3205:17 recording 3084:9 recovered 3123:20,21 recovery 3320:1 3359:10 3359:12 3360:8,15,18 3360:21 3361:2,8 3362:2 redesignate 3156:20 3158:12 redesignated 3313:20 redirect 3258:3,4 3366:12 3405:6 reduce 3324:16 3337:22 3338:13,14 3340:5 3342:3 3374:20 3377:14,15 reduced 3341:8 3426:7 reducing 3338:18 reduction 3341:15,16 reestablish 3293:4 refer 3177:12 3316:1 3317:13 reference 3260:11 3355:2 3406:5 referenced 3182:15 3405:17 3422:19 references 3406:19 3410:18 referencing 3419:18 3422:18 referred 3173:6 3319:12 3376:13 3387:10 3410:1 referring 3098:11 3102:9 3105:9 3111:18 3114:16 3115:2 3142:11 3186:8 3190:6 3192:22 3195:6 3234:12,21 3251:10,22 3273:21 3277:3 3319:9 3380:12 3381:19 3406:14,17 refers 3316:17,18 refine 3334:14 3367:17 refining 3325:2 reflect 3173:1 3201:16 3260:3 3299:15 reflected 3119:20 3152:18 3172:22,22 3204:13 3210:1,20 reflecting 3394:3 reflection 3209:22 reflects 3113:13 3414:11 refresh 3115:19 3270:5</p>
--	--	---	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3455

<p>3270:19 refused 3348:3 regard 3303:13 3408:14 3409:14 regarding 3185:4 3250:21 3276:17 3408:12 3409:12 region 3138:22 3160:3 Regional 3160:21 regular 3217:22 3232:10 3232:14 3353:19,22 regularly 3261:1 regurgitate 3143:8 rehabilitation 3312:21 reimbursed 3231:7 reimbursement 3370:7 reinstate 3362:21 reinstating 3320:6 Reiterates 3408:18 rejected 3144:15 3145:1 3145:6 3370:19 relate 3193:4 related 3191:2 3192:2 3229:14 3313:10 3328:20 3426:9 relates 3359:17 3416:18 relating 3377:22 relationship 3160:19 3200:12 relative 3412:7 releasing 3413:18 3414:1 relevance 3161:15 3190:15 relevant 3191:19 3193:5 reliability 3324:16 3340:5,14 3374:21 reliable 3142:10 3240:18 relied 3202:15 relocate 3309:11 relocated 3146:13,14 rely 3088:10 3137:8 3154:11,14 3247:2 relying 3405:12 remain 3088:11 3237:6 3422:22 remaining 3171:21 3174:1 remains 3273:1 remarks 3306:18 remedy 3395:21 remember 3138:2 3149:5 3199:1 3260:9 3282:2 3293:5 3351:22 3353:20 3355:10 3376:22 3396:16 3405:16</p>	<p>REMOTE 3083:3 remove 3087:16 3088:6 renew 3345:17 renovate 3146:1 repeat 3084:10 3085:16 3091:4 3143:8 3311:5 3331:5 repeated 3238:15 3314:10 3322:3 repetitive 3268:4 rephrase 3104:14 3213:7 3268:7 replicate 3345:4 replicates 3303:1 reply 3422:4,17,18 3423:6 report 3091:12 3093:8 3094:18 3095:9,18 3096:8 3098:2 3099:4 3099:20 3103:21 3109:18 3116:19,20 3119:20 3120:1,8,13 3127:13 3145:9 3148:8 3148:12,13,14,17 3162:5 3168:5,16,21 3169:3,14 3172:5,5 3188:22 3193:21 3197:20,21 3198:3,4,9 3198:10,11,14,15,18,22 3199:16,21 3200:2 3204:12 3206:14 3207:10,13,17 3208:1,2 3250:7 3252:18,19 3256:13 3257:1,3 3269:17,21 3270:1,9,12 3272:13,17,19,21,21 3273:3,9,13,16,18 3288:2 3289:14 3291:11 3292:3 3301:18 3304:7 3318:16,18,20 3324:4 3325:8,21 3326:7 3328:22 3329:6 3331:22 3337:13 3338:6 3340:10 3342:1 3346:18 3352:17 3364:17 3367:13 3372:15 3373:20 3374:10,17 3386:20 3387:1 3394:12,18 report's 3290:13 reported 3115:18 3121:14 3127:12 3142:4 3175:9,12 3193:20 3374:10 3378:21 3379:8</p>	<p>3400:17 reporter 3085:19 3124:6 3156:17 3311:3 3336:2 3384:8 3392:7 3426:21 REPORTER-NOTARY 3426:1 reporting 3164:19 3165:13 3166:5,7 3167:15 3174:14 3241:13 3242:1 3250:11,13,14,15 3287:5 reports 3304:4 3357:22 3390:18 reposition 3365:7 represent 3123:15 3124:22 3137:17 3140:19 3147:13 3422:16 representative 3131:17 3132:14 3137:14,20 3138:10 3160:3 3183:19 3184:21 3387:5 3417:18 representatives 3130:17 3170:12 3387:3,8 representing 3183:1 3328:5 represents 3141:11 reprieve 3157:11 request 3211:2 3215:9 3226:7,8 3236:22 3237:1,3,14,15,17,17 3237:20 3263:6,7 3306:5 3345:8 3396:3 requested 3211:6 3237:4 3262:19,22 3263:11,17 3322:17 3335:19 requesting 3179:19 3180:7,17 3210:15 3214:13 3411:2 requests 3180:4,11,22 3215:6 3421:22 3422:13 require 3204:4,20 3205:6 3205:12 3319:5 3321:12 3357:13 required 3119:7,11 3135:5 3233:5 3256:20 3276:9 3366:5 3388:7 3412:21 3415:1 3421:5 requirement 3172:2 3217:4 3303:22 3304:3 requirements 3171:22 3229:15 3250:12,22 3253:14 3275:5,7</p>	<p>3411:17 3412:1 3419:7 requires 3323:11 3408:17 requiring 3209:3 reread 3143:2 reservation 3138:8 3153:6 reservations 3138:1 3152:20 reserve 3223:12 reserved 3220:1 3222:20 resigned 3372:1 resolve 3395:10 respect 3110:5 3113:20 3180:13 3368:6 3370:2 3405:14 3406:17 3415:3 3417:16 3419:1 3420:9,12 respectfully 3190:16 respecting 3163:22 respond 3265:3,10,15 3351:13 3393:12 responded 3397:1 respondents 3260:20 3326:1 3398:4 response 3188:16 3284:11 3290:8 3397:12 3414:18 rest 3326:19 restart 3204:3,19 3206:19,20 3304:10,11 restarted 3205:14 3206:6 restarting 3205:11 3304:3 restate 3290:8 3307:16 restoration 3229:7 3329:10,12 restore 3274:10 restored 3093:18 3094:3 3094:6 3096:10 3393:21 3394:16,21,22 restrict 3371:19 restricted 3402:14 restricting 3340:21 restriction 3295:18 restrictions 3358:16 3412:20 result 3222:6 3262:17 3332:4 3391:8 3421:4 results 3351:20 3358:4 3369:16 3413:5 3414:11 resume 3153:13 retained 3264:11 3266:16 return 3245:1 3256:18 revealing 3249:9</p>
--	---	---	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3456

<p>revenue 3123:21 review 3090:12 3091:5 3094:8 3096:13 3161:6 3238:15 3270:8 3278:16 3280:3 3355:14 3401:19,22 reviewing 3407:19 reviews 3238:15 Richard 3184:20 3235:1 3235:2 Ricky 3302:6 3311:1,9 rider 3318:2,3,4 riders 3161:4 3185:21 3187:2 3188:20 3189:17 3193:16 3317:16,20 ridership 3125:1 3160:11 3160:22 3161:14 3190:21 3194:7,11 3195:1 3201:18 3313:10,16 3314:8,19 3315:3,12,18,20 3316:9 3317:5,18 right 3086:6 3090:4 3100:9 3126:3 3127:8 3129:9 3136:4 3146:12 3151:2,8 3153:11 3154:11 3155:3,13 3157:5 3158:5,21 3159:4,7 3162:13 3169:4 3175:15 3176:2 3176:17,21 3177:5 3178:21 3186:5 3195:10 3198:22 3199:13 3200:15 3201:4 3202:11 3216:9 3220:7 3221:6 3230:15 3231:19 3235:13 3239:11 3240:10,18 3242:3 3243:6 3249:17 3257:16 3258:1,15 3259:5 3279:1,15 3285:19 3286:2,7 3296:3 3300:21 3307:18 3314:18 3317:22 3318:21 3319:2 3334:19,19 3335:12 3344:4 3347:12 3348:11 3352:21 3358:20 3366:10 3370:20 3378:19 3379:10,13 3388:5 3392:3 3402:7 3403:20 3405:3,4 3406:22 3421:14 right-hand 3112:9</p>	<p>3286:22 risk 3218:8 3244:6,12,14 risks 3246:15 River 3385:3 Riverfront 3384:4,5 3385:2,3,7 Rob 3257:20 Robert 3215:17 3366:13 Roberta 3154:18 3157:16 3240:17 role 3315:10 3366:21 Roman 3182:20 room 3084:5 3087:4,5,16 3087:22 3088:2,7,9,14 3154:12,19 3155:8,12 3163:7 3175:14 3176:3 3176:5,10,19 3240:14 3277:11 3348:15 3372:19 3378:7 rooms 3087:20 Ross 3292:20 3353:21 3382:15 roughly 3323:19 3393:2 round 3289:18 round-trip 3161:8 round-trips 3161:9 rounded 3102:15 route 3099:21 3118:9 3119:5 3121:4 3125:9 3146:21 3193:5 3198:20 3200:7 3205:4 3255:1 3256:5 3261:7 3317:13 3341:8 3343:18 3361:20 routes 3117:11,13,18 3118:13 3125:15 3198:19 3314:21 3317:11 3324:14 3337:20 3356:11 routine 3319:14 RTC 3096:21 3097:4,7 3097:13 3098:8 3107:13,18 3108:9 3118:16,19,21 3120:16 3122:17 3164:10 3166:11 3168:2 3169:1 3169:22 3171:15 3173:2 3180:8 3206:9 3207:5 3210:8 3211:5 3218:20 3220:11 3226:2 3227:2 3230:12 3232:9,22 3241:12 3252:1,6 3263:4,8,13 3285:16 3287:19 3292:14 3294:4,16,20 3295:1 3299:19 3300:5</p>	<p>3300:6,15 3320:17,20 3320:21 3321:5,15,19 3322:8,21,22 3323:11 3332:3 3345:4,10,19 3346:4,6,17 3347:2,8 3347:11 3355:11,22 3356:1,2,2,9,13,15,19 3356:19 3357:1,6,10,15 3357:18 3358:4,4,17 3359:8 3366:17 3380:11,12,14,15,18,21 3381:4 3405:13 3407:4 3407:7,9,17,19,20 3408:12,19 3409:12,19 3410:15 3416:17 3417:17 3418:22 3420:8,18 3421:20 3423:16 rule 3131:21 ruled 3422:5,20 3424:4 rules 3224:11 3378:17 3404:5 run 3252:16,16 3263:4 3267:12 3288:13 3312:17 3335:20 3336:5,11 3337:9 3358:12,12 3359:11 3360:3 3365:2 3369:15 3370:3,18 3371:21 3419:5 3422:9 running 3136:6 3190:4,8 3360:4,16,19 rush 3314:1</p> <hr style="width: 20%; margin: 10px auto;"/> <p style="text-align: center;">S</p> <hr style="width: 20%; margin: 10px auto;"/> <p>S 3084:1 3425:1 S.W 3083:13 safe 3208:6 safety 3332:16,19 3374:21 sake 3356:22 3404:3 satisfied 3369:16 satisfy 3331:19,19 save 3239:4 saved 3154:3 saw 3115:18 3192:10 3203:20 3207:14 3244:5 3307:7 3337:13 3343:19 3374:8,15 3381:2 saying 3126:19 3130:6 3147:12 3156:17 3172:8 3183:15 3197:8 3201:21 3204:19,21 3213:8 3236:1 3247:11 3252:7 3288:20 3293:1</p>	<p>3293:5 3294:11 3310:6 3325:2 3338:15 3354:8 3354:12,13,20,22 3357:18 3358:3 3362:3 3378:10 3386:3 3392:12 3396:19 3397:5 3403:10 says 3091:21 3092:16,20 3093:14,16 3094:3 3095:10 3096:10 3098:19 3103:7 3104:8 3104:22 3111:17,20,21 3117:12,14 3125:19 3127:4 3129:19 3134:11 3141:5,13 3160:21,22 3164:10 3171:21 3177:18 3182:6 3190:3 3195:16 3204:3 3205:6 3212:6 3227:10 3234:9 3236:6 3236:10 3251:11 3253:12 3254:21 3281:20 3282:17 3283:9,21 3284:14 3287:22 3288:17 3313:19 3319:3 3321:6 3321:7 3322:9 3343:6 3345:4 3359:10 3364:17 3394:13 3395:4 3402:2 3410:4 3423:19 scale 3412:4 scenario 3199:1 3252:15 3265:2 3288:9 3299:15 3420:17 scenario-ize 3337:1 scenarios 3183:20 3199:3 3210:9,11 3223:6,7,10 3252:13,15 3253:5 3289:8,12 3290:6,12 3293:14 3358:12,13 3369:15 3370:3 schedule 3119:13 3141:15 3142:1 3271:8 3295:8 3320:1 3329:18 3329:22 3336:13 3337:7,22 3341:10,11 3350:9 3360:1,9,14,20 3361:8,9,11,12,13,17 3362:1,2,10,12 3369:12 3411:9 scheduled 3145:22 3328:20 3359:22 3419:22 schedules 3181:20 3323:13 3337:6</p>
---	---	--	---

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3457

<p>3359:13 3408:3,7 scheduling 3142:10 3360:13 Schwartz 3208:17 3211:21 3213:8 3216:12 3217:13 scope 3221:20 3223:15 3227:4 3267:5 3406:3 scope-of-work 3230:13 score 3176:4 screen 3093:13 3094:1 3177:4 3212:2 seal 3426:13 search 3401:11 second 3084:4 3085:4,5 3087:1 3092:19,19 3098:18 3111:1,5 3157:18 3206:12 3216:15 3234:16 3236:8 3243:14 3271:5 3271:11 3272:8 3282:17 3283:7 3284:14 3287:8 3291:7 3319:2 3360:5 3370:12 3417:16 second-to-last 3394:2 secondary 3128:10 3334:9 section 3083:5 3098:15 3103:11,11 3104:1,2,4 3181:16 3250:3,19,20 3251:9,16 3253:8 3270:13 3326:22 3329:5 3343:5 secure 3308:8 3309:8 3378:15 3395:6,15 securing 3395:7 see 3087:7,12 3091:21 3092:12,16 3093:1,16 3094:2,4,10 3095:3,13 3096:13 3098:14,15,21 3100:6 3103:7,15,22 3104:2,4,5,10 3108:1,3 3108:6 3111:6,11 3113:5 3117:21 3122:5 3122:12 3123:10,11 3124:12 3130:6,16,18 3130:21 3131:4 3134:1 3134:9,10 3137:9,14,20 3139:21 3140:3 3141:18 3152:14 3154:16 3155:9 3159:22 3160:10,18 3161:1,6 3164:10,12,21 3166:1 3177:4 3178:8 3181:21 3182:9,20</p>	<p>3183:5 3185:3,5 3186:7 3186:14 3188:6 3190:14 3191:3 3192:19 3195:13,19 3200:10 3203:17,20 3204:2,5 3208:18 3209:4 3211:16,16,22 3212:3,12,19 3213:17 3214:5 3216:13 3218:18 3224:6 3228:3 3229:20,20 3230:6,7 3233:16 3235:9 3242:8 3242:16 3243:18,21 3251:12 3252:2 3270:3 3277:8,17 3279:7,13 3280:12 3283:6,13,14 3283:21 3284:5,16 3300:10 3314:5,5,8 3316:9,13 3318:8 3323:1 3340:7 3346:10 3347:5 3356:21 3357:3 3357:12 3358:9 3369:5 3371:12 3380:5 3387:21 3398:19 3415:9 3419:8 3421:2 3422:13 3423:12,13 seeing 3118:15 3152:4 3185:18 3186:1 3280:4 3415:10 seek 3393:7 seeking 3095:8 3165:9 3391:7 seemingly 3383:19 seen 3127:10,11,18 3152:2 3179:6 3185:7 3185:13,16 3226:21 3249:21 3262:14 3267:2,17 3314:13,15 3314:16 3315:9,11 3326:17 3374:5 3401:21 Sees 3243:13,20 segment 3261:5 segments 3261:4 Seldom 3258:11 select 3248:11 Senate 3354:5 senator 3246:12 3248:3 3354:18 send 3155:8 3157:12 3176:19 3177:1,4 3279:18 3404:22 senior 3281:13 3282:4 sense 3132:16,17 3259:13 3259:16 3260:1 3334:1 sensitivity 3212:3</p>	<p>sent 3226:14 3227:8 3257:13 sentence 3092:19 3094:4 3095:10 3103:11 3130:22 3134:1,10 3152:11,15 3211:22 3212:5 3235:7,15 3242:9,11,17 3251:10 3251:12,13,14,17 3254:15,21 3271:5 3282:17 3283:8 3394:12 3395:4 sentences 3270:17,22 separate 3229:16 3417:16 September 3165:2,18 3166:3 3254:5 sequence 3208:4 3279:6 series 3272:10 3289:5 3324:7 3325:15 3367:14 3372:2 serves 3400:8 service 3093:18 3094:3,6 3095:16 3096:10 3106:19 3117:15 3118:15 3119:6 3120:2 3122:12,18 3126:14 3127:8,21 3128:1,10,18 3131:3,15 3132:17 3135:5,17 3145:12,16 3146:2,21 3147:1 3152:14 3161:9,13,14 3166:13 3171:9 3183:4 3188:1 3191:9 3192:3 3194:4,7,9,10,11,20 3195:1 3196:8 3200:12 3204:4,9,20 3205:12,15 3206:5 3208:4 3229:7 3244:19 3245:2 3255:1 3256:5,18 3259:18 3264:18 3267:9 3268:16,19 3274:10 3275:10 3284:3 3288:13 3289:20 3290:22 3294:17 3299:10 3302:2,7 3304:3,10,11 3313:3,14 3316:15,19,22 3317:6 3317:14 3320:6 3324:16 3333:2,9,11,21 3334:1,15 3337:17 3338:17 3339:15 3340:3,5,13 3342:4,6 3342:12 3343:8 3344:10 3362:21 3372:14 3374:20</p>	<p>3376:4,8 3388:19 3389:6 3392:10 3393:21 3394:16,21,22 3407:11 3421:2 services 3118:4 3222:19 3284:8 3314:20,22 3324:1 3330:8 3343:7 3343:12 3356:13 3408:12 3409:12 session 3087:2,7,11,14,15 3087:17 3088:4 3155:14 3157:6,13 3159:6,11 3239:15 3259:4 3278:11 3279:18,21 3286:3,6 3365:17 3402:20 3403:4,8,16 3404:20,22 3405:5 sessions 3088:3 set 3114:7 3272:12 3291:5 3350:9 3373:21 3426:12 setting 3247:22 settle 3378:9 3404:18 settled 3148:1 settlement 3148:5 3378:4 3378:15 seven 3305:7 share 3181:17 3226:2,15 3227:10 3276:11 3285:4 3349:6 shared 3232:13 3241:20 3242:15 3276:12 3305:21 3347:4 3368:13 3373:17 shareholder 3110:13,14 sharing 3368:4 3371:6,9 3390:16 3407:3,22 3408:10,12,17,21 shed 3331:14 shedding 3331:4 sheet 3111:19,22 shift 3369:5 shifting 3369:3 ship 3146:11 shippers 3265:12,14 3334:22 short 3088:21 3104:9,18 3105:13 3350:10 3375:8 3398:12 short-lived 3157:10 shorter 3228:19 Shorthand 3426:1,21 shout 3269:16 shovel 3259:15 show 3159:1 3227:21</p>
---	---	---	---

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3458

<p>3239:1 3276:22 3313:17 showed 3415:4 showing 3188:3 3344:19 shown 3171:6 3174:17 3205:8 3272:2,5 shows 3165:16 3315:20 3317:20 3387:15 Sibert 3383:17 3384:22 sic 3172:18 side 3136:6 3224:5 3334:6,20,21 3351:12 3384:3 siding 3104:9,18 3105:18 3106:5,9,15,22 3107:2 3107:4,9 3296:2 3297:9 3297:10,15 3298:2,10 3298:13,21 3338:4,11 3339:9 3340:19,20 3363:1 3365:9 3398:10 3398:10 3419:6,15 sidings 3104:5,13 3105:1 3105:13,22 3106:10 3295:2,9,19 3296:10,15 3297:6 3299:6,11,22 3300:1,10,12 3312:7 3332:1 3337:15 3338:2 3339:3,11 3343:16 3362:19 3398:12 3412:8 sight 3212:6,17 3213:9 sights 3213:17 sign 3087:15,17 signal 3205:7 3287:10,11 3340:22,22 3377:10 signals 3376:14 3377:8 3412:16 signatories 3321:1 signature 3177:16 3178:11 3321:17 signatures 3177:22 signed 3088:5 3118:3 3177:22 3179:19 3180:7,16 3183:8 3210:15 3211:12 3214:13 3218:13,15,20 3222:6,15 3223:15 3224:1,7,11 3225:7,9 3228:22 3229:14 3232:7,21 3236:15 3237:8 3250:17 3321:16 3366:17 3375:9 significant 3131:2,14 3134:21 3135:2,12 3142:6,12 3205:6</p>	<p>3250:21 3268:16 3339:13 3353:5 3411:17 significantly 3232:19 3241:20 3330:11 3421:3 signing 3177:19 3209:8 3214:4 3222:11 3232:4 3233:4 3237:7 3367:6 3371:17 signs 3123:14,15 3124:2 3124:5,7,8,13,13,14 similar 3098:3 3125:17 3199:14 3200:7,13 3201:2,3 3205:7 3259:18 3278:19 3290:12 3319:13 3324:13 3374:11 3398:9,10,15 simple 3084:14 3293:1 simply 3095:20 3128:16 3131:19 3187:20 3190:20 3193:14 3248:13 3255:12 3256:2 simulation 3212:8 3213:11 3217:5 3408:22 3410:6 3413:3 3413:4,13 3414:10,13 single 3161:8 3260:9,10 3397:17 3412:14 single-track 3261:8 Sinkkanen 3354:1 3382:17 sir 3092:1,16 3093:2,15 3098:17,22 3103:9,16 3109:8 3116:5 3117:16 3129:5 3134:9 3137:1 3164:9 3177:14 3181:15 3184:16 3216:21 3230:8 3240:7 3257:22 3319:1 3326:15 3348:21 3352:1 3359:15 3380:13 sit 3214:1,3 3363:16,22 site 3146:1 3308:11 sits 3363:15 sitting 3306:5 situation 3246:16 3248:8 3351:5 situations 3396:22 3397:8 six 3190:10 3209:13 3223:7 3252:14,15 3305:8 3369:11,12</p>	<p>size 3328:7 3412:11 skilled 3423:16 slide 3087:13 3287:22,22 slightly 3225:18 3362:1 3371:11 slot 3411:21 3415:14 3416:4 slots 3414:5 slow 3104:16 3362:6 slow-moving 3298:19 snowflake 3259:9,13 3396:13 snowflakes 3259:14 so-called 3099:18 3355:9 software 3291:5 3293:3 3356:16 3422:7 3423:18 sole 3321:13 sole-source 3276:9 solution 3117:7 3331:18 3332:9 solve 3332:9 somebody 3157:17 3162:19 3202:10 3223:21 3350:16 3376:18 3423:18 Somebody's 3131:21 someplace 3143:14 somewhat 3127:15 3280:7 sorry 3092:3 3097:19 3099:9 3102:6,10 3105:11 3108:11,15 3112:10 3117:5 3129:8 3131:10 3135:21 3136:8,17 3138:5 3139:12,12 3144:18 3145:2 3149:10 3157:8 3172:14 3181:1,14 3187:5 3189:12 3205:19 3210:18 3225:5 3234:15,16 3236:16 3258:20 3264:2 3275:6 3276:5 3280:16 3281:9 3282:9 3282:10 3290:7 3300:4 3300:4,4 3306:21 3309:5,15 3317:1 3331:5 3341:18 3353:6 3366:12,13,15,18 3379:22 3382:9 3384:13,15 3402:21 3403:5 sort 3114:18 3335:1 3369:22 3371:19 3411:6 3413:19</p>	<p>3417:12,13,19 sound 3240:15 sounded 3114:15 3365:12 sounds 3222:13 3224:12 3225:6 source 3220:13 sources 3231:14 3240:18 south 3136:10,11,12 3364:2 3385:11,12 southeast 3160:3 Southern 3083:7 3099:2 3099:6,12 3100:7,12 3120:14 3128:13 3159:16 3163:2 3169:22 3182:8 3196:5 3219:11 3266:13 3276:22 3285:18 3313:18,18 3353:22 3377:21 3378:11,14,21 3379:8 3381:13 Southern's 3271:17 Southwest 3205:4 3261:2 space 3364:17 spaced 3398:13 speak 3131:17 3162:15 3166:1 3297:4 3331:16 3346:11 3376:21 speaker 3086:7 3130:16 speaking 3258:9 3283:3 3297:13 3334:1 speaks 3099:10 3174:9 3402:5 special 3084:5 specific 3115:1 3139:20 3163:5 3179:1 3180:17 3209:2,7 3212:10 3218:12 3221:20 3229:5 3270:10 3283:18 3292:2 3296:11 3300:16 3314:17 3407:16 3411:17 specifically 3098:13 3099:21 3108:5 3130:21 3131:11 3133:8 3137:3 3138:4 3138:18 3139:10 3142:11 3152:10 3167:13 3177:12 3181:9 3195:6,10 3203:15,21 3211:15 3233:4,7 3242:7 3243:12 3251:10 3252:8 3283:18 3285:6 3298:17 3319:11 3340:11 3353:15</p>
---	--	--	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3459

<p>3394:8,13 3410:5 3415:3 speculate 3115:17 speed 3225:6 3337:14 3338:7 3340:19 3344:1 3412:7,19,20 speeding 3331:22 3332:1 speeds 3339:2,3,6 3342:2 3343:21 3412:15 3413:10 spelled 3326:20 spend 3222:14 3360:6 3370:13 spending 3097:13 3114:8 3326:10 3378:1 spent 3225:3 3285:15 spill 3135:13 split 3085:5 spoke 3389:10 3390:13 spoken 3138:16 sponsor 3128:2 3194:10 3313:13 sponsors 3123:19 sport 3213:13 spot 3151:7 spread 3360:22 SRC 3098:20 3170:3 3183:4 3198:16 3200:22 3204:14 3208:3 3219:20 3220:16,17,19,19,20,21 3221:8,12,16,21,22 3222:20 3229:2 3230:2 3231:13,22 3232:3,8,14 3232:15,18 3256:12 3305:19,22 3327:20 3386:17 3387:7 3407:11 SRC's 3170:9 3229:11 3327:17 3387:4 St 3259:22 staff 3084:6,7,18 3087:10 3088:2 3133:6 3153:14 3214:8 3242:16 3388:3 3389:1 3421:18 3422:16 staging 3273:14 stakeholder 3110:15 stakeholders 3138:1 stamp 3182:16,19 stamps 3156:11 stand 3132:5 3153:4 3189:11 3415:17 standard 3250:6 standing 3298:20 standpoint 3300:18</p>	<p>start 3089:8 3090:17 3120:2,10 3136:1 3144:20 3146:2 3176:22 3177:13 3206:18 3207:19 3208:4 3244:19 3377:2 start-up 3393:21 3394:17 started 3120:13,16 3121:6,8,11 3172:13 3180:7 3222:5 3230:21 3231:1,10 3330:8 3347:12 3370:9 3402:8 starting 3170:22 3204:8 3206:8 3283:4 3289:15 3301:14 starts 3212:1 3245:22 state 3105:6 3128:2 3131:4,18 3132:3,12,15 3137:4,8 3300:5 3313:13 3327:10 3366:1 3395:22 state-supported 3198:19 3198:20 3314:21 3316:11 3317:11 3324:1 stated 3103:20 3142:16 3201:2 3244:15 3295:21,22 3296:7 3333:1 3394:5 3407:22 statement 3113:8,8 3122:14 3139:4 3258:18 3260:3,8,12 3273:20 3285:9 3296:1 3298:5 3299:18 3322:4 3333:3 3350:7 3351:22 3355:4 3359:9 3368:9 3376:13 3391:3,11 3393:18 3394:2 3396:14,17 3397:2 3399:7 3400:2 3401:3,5 3401:9,13 3402:4 3406:1 3410:2,16 statements 3350:6 3393:14 states 3122:10 3123:19 3128:2 3137:4 3250:20 3272:6 3324:2 3409:1 3419:4 station 3109:10,11,15,21 3110:5 3120:5,11 3144:14,16 3145:7,20 3146:7,9 3147:7,8,15 3147:16 3264:13 3274:6 3290:17 3301:1 3301:15 3302:9,21 3303:12 3305:15</p>	<p>3306:2 3308:1,9,11 3310:18 3311:19 3312:9,14 3313:11 3326:19 3336:1 3361:5 3363:9,12,14,15,18 3364:5,12,20 3366:2 station's 3208:5 stations 3117:15 3120:5 3121:2,18 3145:19 3146:19,20 3147:20 3148:3,9 3149:4,17 3150:8 3336:8 statistics 3334:8 status 3232:11 3412:17 statute 3296:9 statutory 3333:12 3336:17 3337:4 stay 3319:20 STB 3247:17 3296:8 3299:4 Stennis 3160:1 3162:10 3162:10 3163:6 stenographically 3426:7 step 3320:11,15 3354:9 Stephen 3241:4,6 3276:17 3280:13,21 3283:5 3285:10 steps 3167:11 3236:7 3287:2,21 3288:17,18 3367:14,15,16 3372:15 Steve 3184:6 3282:15 stick 3124:20 3125:6 3126:17,18 3150:14 3203:7 3205:10 Stimpson 3138:14 3139:4 3139:7,10,19 3141:5,10 3141:18 3142:3,16 3144:7 Stockton 3261:7,12,16 stood 3424:13 stop 3197:15 3242:19 3377:2 3421:7,15 stopped 3252:9 storage 3310:9,10 3376:21 store 3308:15 strategic 3248:18,19 strategies 3246:18 3414:7 strategy 3248:11 streamline 3408:21 3410:5 3415:10 streamlines 3368:7 3371:13 3413:4 3415:4 3415:5,9,12,22 3416:3 Street 3083:13</p>	<p>strike 3100:17 3189:2 string 3171:7,10,11 3185:1 strings 3185:2 structure 3098:15 3127:16 3333:12 structured 3235:9 3236:7 studies 3218:21 3313:16 3355:11,16,18 3362:20 3381:14 study 3095:3 3120:17 3152:12 3164:11 3168:1,2,3 3170:1 3173:3 3180:8 3200:4,5 3200:21 3210:8 3220:13,18,20 3222:20 3222:21 3223:1,5,14 3224:20,21,21 3225:2 3226:2 3227:2 3230:12 3230:20,21 3231:1,3,10 3231:15,18 3232:1 3233:15 3235:19,21 3236:3,4,21 3237:3 3242:12 3243:15 3244:6,10 3247:3,5,10 3247:13 3251:6 3252:1 3252:12 3253:7,15 3275:15 3276:8,14 3284:8 3285:11,13,17 3320:20,21 3321:6,16 3321:19 3322:3,6,8 3324:5 3328:11 3343:5 3345:5,11,17,20 3346:5 3346:6 3347:6,11,17,21 3349:4 3351:19 3352:12 3356:20 3357:1,20 3359:8 3363:1,4,6 3366:22 3368:13 3373:14,15,18 3374:2 3381:4 3382:2 3382:15,19,22 3383:3,5 3386:14 3407:2,4,7,17 3407:20 3409:20 3410:15 3413:14 3416:17,19 3417:2 3419:11,19,20 3420:4,5 3420:8,13 3421:20 3422:8 3423:10,11 study's 3284:4 stuff 3212:6 3213:9 stupid 3404:21 Sub-targeted 3393:19 subject 3203:8 3275:4 3370:5 submitted 3151:14 3224:5 3294:21</p>
--	---	--	---

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3460

<p>3307:21 3405:22 subsection 3316:11 subsequent 3127:14 3217:10,12 3285:7 subset 3292:8 subsidy 3123:18 3221:12 3221:13 substance 3349:20 3379:6 substantial 3260:21 3339:13 substantially 3226:10 3329:21 3330:6 3408:8 3419:7 subtrack 3303:12 suburban 3145:8 3146:19 success 3147:3 3313:7 3373:2 successful 3122:11 3145:10,16 3146:10 3207:7 3362:11 3370:14 successfully 3260:5 sufficient 3345:9 3346:12 3346:15 3347:8 suggest 3174:1 3204:15 3330:5 3347:7 3349:8 3356:21 3363:20 3406:20 suggested 3094:17 3095:1,22 3100:2,10 3101:4,13 3108:2,9 3117:19 3119:19 3167:22 3274:9 3288:15 3367:14 suggesting 3104:13 3123:18 3136:9 3191:20 suggestion 3105:20 3309:3 suggestions 3309:1 suggests 3172:1 3209:22 suite 3288:5 3289:13 3290:2,9,13 3292:3 3410:14 suites 3405:13 summaries 3181:18 3408:13,20 3409:5,11 3409:14 summarize 3282:16 3413:19 summary 3112:21 3274:5 3274:6 3397:9 3408:1 summation 3141:8 supplied 3224:3</p>	<p>supply 3218:21 3375:8 supplying 3219:4 support 3097:22,22 3098:1 3128:3,12 3137:16 3139:6 3152:13 3247:12 3326:10 supported 3097:12 3272:21 3323:18 3324:21 3343:10 supporting 3414:2 supportive 3098:7 supports 3093:17 3138:22 supposed 3227:10 sure 3084:8 3087:11 3090:6 3099:6 3101:1 3104:15,16 3106:17 3115:6 3116:22 3131:7 3133:21 3134:7 3135:6 3135:7 3136:1,1 3139:19 3143:10 3144:22 3153:5 3154:15 3156:12,16 3157:1 3158:5 3161:15 3162:6,22 3168:12,20 3179:7 3185:9,14 3187:7 3188:12 3193:18 3197:2,14 3206:1 3209:18 3211:20 3214:21 3216:15 3228:7 3239:6 3243:11 3259:2 3283:22 3284:7 3298:5 3315:8 3317:21 3328:16 3330:9 3332:6 3378:18,22 3383:15 3396:9,11 3398:19,19 3416:12 SURFACE 3083:1 survey 3120:22 suspending 3246:7,20 sustained 3268:1,2,3 switch 3084:8 3344:4,6 3363:7 3372:17,18 switched 3238:7 switches 3335:1 switching 3151:3 3298:13,14 3338:11 3421:1 Sydney 3426:2,21 system 3086:16 3196:19 systems 3084:16 3205:7 3412:19</p> <hr style="width: 100%;"/> <p style="text-align: center;">T</p>	<p>T 3425:1,1 T-O-O 3386:3 table 3084:20,22 3085:22 3086:21 3089:7 3123:7 3123:8,9 3124:11 3125:3,9,16 3126:17 3192:10 3200:1 3273:21,22 3274:3 3314:17 3327:1,1 3408:9 tables 3086:1 tabular 3413:5 tactic 3375:22 take 3090:5 3099:16 3105:18,21 3106:9,10 3106:15,22 3107:9 3116:13,21 3131:7 3158:16 3164:2 3169:4 3179:18 3211:18 3228:16 3243:14 3247:20 3252:1,6 3253:1,5 3270:4,16,19 3280:9 3281:17 3282:11 3293:10 3295:9 3313:21 3320:15 3331:8 3335:13 3337:16,22 3338:11 3339:11 3341:3,3 3358:8 3359:4 3369:8 3370:12 3378:6 3406:16 3419:15 3422:7 taken 3085:12 3120:3 3150:7 3404:20 3426:3 3426:6 takes 3279:10 3310:20 3360:17 talk 3107:3 3206:17 3207:1 3267:3 3268:12 3275:14 3294:11 3319:15 3355:4 3424:5 talked 3149:16 3206:11 3295:11 3306:4 3357:8 3361:20 3368:9 3377:1 3389:13 3390:11 3413:13 talking 3106:18 3125:22 3161:7 3171:1 3186:9 3189:20,21,22 3197:4,5 3200:6 3228:4 3230:5 3243:8 3296:3 3316:16 3334:5 3341:14 3345:11 3352:7 3354:6 3364:3 3369:17 3381:4 3381:10,21 3383:21 3385:17 3398:17</p>	<p>3404:21 3417:3 3418:3 talks 3099:20 3235:8 tap 3287:11 targeted 3394:15 3395:2 TASD 3386:16 3400:21 3401:3 TASD's 3383:22 taxpayer 3323:21 taxpayers 3340:1 TBD 3171:22 TECH 3097:17 3154:20 3155:2,6 3176:20 3177:1 technical 3084:12 3098:21 3099:2,3 3101:7 3292:20 technically 3298:15 television 3086:14 tell 3084:11 3100:9 3105:9 3151:4 3155:3 3168:14 3193:11 3254:19 3267:15 3280:10 3281:11,21 3287:17 3292:15 3362:22 3366:21 3401:21 3403:18 3421:17 3424:5 telling 3243:1 tells 3153:14 temporarily 3312:9 temporary 3302:18 3303:16 3305:6 ten 3134:18,22 tenant 3380:20 tender 3337:2 tenure 3206:7 term 3133:2 3171:22 3213:12 3306:15 3407:12 termed 3288:10 terminal 3139:22 3144:8 3145:13,14 3146:12 terminals 3146:22 termination 3347:16 terms 3093:14,16 3150:19,19,20 3166:17 3176:3 3177:21 3196:9 3196:14 3216:20,21 3259:10 3306:12 3310:5 3330:22 3334:22 3338:18 3349:10 3353:9 3364:16 3369:20 3371:17 3372:18 3389:22 3398:3 3410:10</p>
---	---	--	---

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3461

<p>territory 3143:9 3171:4 3408:22 3410:6 3411:11 3414:13 test 3086:8 tested 3089:17 3362:10 testified 3099:5 3105:16 3121:6 3138:18 3142:21 3145:18 3165:4 3187:10 3202:13,15,17 3264:13 3274:14 3275:17 3296:13 3320:22 3331:12 3351:17 3383:11 3388:22 3393:19 3417:11,17 3419:20 testifies 3133:22 3137:4 testify 3133:15 3194:19 3252:4 testifying 3139:11,20 3141:5 3259:8 3276:1 3306:19 3349:20 3400:13 3417:8,21 testimonies 3213:14 testimony 3088:20 3090:7,13 3091:5 3099:11,13 3101:11 3105:18 3113:7 3119:17 3123:2 3133:12,14 3134:19 3137:2,22 3138:2,5,14 3142:22 3150:11 3153:2 3161:21 3165:7 3183:12 3189:2 3191:19 3206:11 3223:21 3265:16 3266:10,12,15,19 3275:18 3276:1 3292:19 3296:18 3302:5 3307:7,11,21 3311:1,8,12 3313:16 3350:3 3362:18 3363:11 3377:1 3383:10,14 3390:19 3391:2 3393:17 3399:20 3400:18,20 3416:14 3426:5,6 Testing 3145:5 thank 3084:6 3089:18 3091:14,20 3092:8 3107:11 3109:1 3112:4 3115:5 3117:9 3127:1 3128:20 3131:8 3133:20 3134:6 3136:17 3139:18 3144:3 3150:15 3151:9</p>	<p>3151:10 3153:8,16 3157:13,15 3159:14 3164:2,6 3166:20,21 3167:6 3169:2,2 3170:18 3184:14 3195:9 3197:10 3201:4 3201:6 3208:9 3211:19 3216:6 3230:7 3237:18 3239:20 3240:3,16,20 3243:21 3244:1 3258:17 3268:21 3270:15 3271:2 3274:14 3280:11 3282:6 3286:20 3311:8 3314:12 3316:7,13 3317:15 3318:12 3335:11 3342:19 3366:11 3369:17 3372:17 3376:9 3380:10 3384:5 3402:5 3410:11 3413:15 3414:18 3416:7 3418:10 3424:11 Thanks 3253:21 3344:13 3405:8 3421:6 then- 3276:17 then-Amtrak 3235:1 thereof 3344:17 thing 3084:20 3085:8 3089:13 3124:20 3216:17 3228:9 3280:8 3295:16 3320:18 3335:2 3375:9 3404:21 things 3179:15 3213:15 3214:18 3260:7 3278:22 3340:6,10 3341:21,22 3349:10 3358:5 3364:7 3367:20 3368:15,19 3371:8,9,21 3373:6,8,9,10,11 3411:4,20 3412:22 3413:14 think 3084:18 3086:5 3088:12 3095:16 3106:1 3108:20 3114:20 3116:7 3118:1 3119:4,5 3127:19 3129:6 3132:3,10 3136:16 3141:10 3143:2 3146:5,8,20 3147:2 3150:13 3151:3 3151:6 3153:9 3155:13 3162:17,20 3171:22 3172:21 3174:2 3175:17,22 3183:13 3187:15,16 3189:19</p>	<p>3190:12 3191:8 3193:6 3198:6,14 3199:8,10 3200:6 3202:19 3205:16 3209:1,21 3210:13 3212:20 3213:13 3214:22 3221:5,14 3226:20 3227:18,22 3230:6 3235:15 3238:21 3240:14 3255:16,22 3256:10 3258:2 3260:2 3260:11,17 3261:18 3264:20,22 3265:4,11 3266:22 3267:6 3269:19 3270:6 3272:3 3275:22 3277:20 3282:18 3295:22 3297:17,21 3299:8,13 3303:5,7 3308:17 3310:5 3314:10 3318:17 3321:1,2 3325:5 3326:12 3328:11,12 3330:17 3331:16,17 3332:15 3335:4 3337:6 3340:10 3346:4 3348:1 3349:10 3349:19 3363:8 3366:7 3366:10 3368:1,7 3371:3 3372:11,13 3373:4,13,16 3375:4,12 3375:14,16,19,21 3376:2 3381:7 3382:15 3382:16 3383:11,15,21 3393:13,18 3394:1 3395:9,12 3396:7,17,18 3397:3 3401:6 3402:8 3402:13 3404:2,19 3416:16 3418:2 3419:19 3421:14 3423:22,22 thinking 3215:21 3216:2 3333:18 third 3088:18 3251:10,13 3251:17 3321:3 3338:9 3370:12 3409:22 third-party 3360:11 thoroughly 3228:5 thought 3089:19 3095:12 3105:5 3114:13 3129:12 3225:2 3245:8 3350:6 3365:13 3367:12 3368:2,15 3372:15 3379:22 3386:3 3390:5 thousand 3125:20 3126:18</p>	<p>thousands 3125:2,20 thread 3280:15 three 3086:1 3123:14 3124:2,5,7,8,14 3137:3 3154:16 3223:6 3225:18,19 3226:22 3227:1,4,16 3230:9,9 3231:14 3232:1,5 3236:7 3247:5 3269:19 3269:19 3277:4 3288:21 3289:4,5 3292:4 3320:19 3330:7 3336:13 3341:10,11,18 3341:21 3342:5 3360:2 3361:11,12 3403:14 3407:1 3409:2 3410:14 three-year 3410:1 thumb 3303:6 tick 3411:3,5 tie 3161:16 3162:18,20 3190:12 3191:4,12,20 3193:6 tied 3160:17 3333:4 tight 3323:5,14 tightly-managed 3141:15 3141:22 time 3085:9 3093:4 3094:16 3095:2,20 3096:4,18 3113:3 3119:21 3126:10 3131:7 3143:13 3150:20,21 3153:10 3158:13 3162:11 3169:5 3179:13 3182:2 3206:3,14,21 3208:8 3211:18 3212:22 3217:1,18,21 3219:3 3220:9,12,14 3222:3 3229:13 3231:21 3232:21 3238:13,14 3239:4 3241:5 3243:14 3244:5 3246:16 3247:8 3248:13 3252:11,13 3255:17 3256:7,8,18 3268:18 3277:21 3279:10 3280:10,21 3285:15 3287:2,15 3288:21 3291:20 3293:7 3297:7 3300:1 3305:13 3310:13 3312:11 3320:1 3324:8 3324:16 3325:3 3326:17 3327:4 3331:8 3336:11 3337:9,15,18 3337:21,21 3338:1,14 3338:14 3340:6 3341:6</p>
---	--	---	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3462

<p>3341:8,17,18,21 3342:4 3342:6,7,11,12,15 3345:1,3 3347:21 3350:13,20 3352:19 3354:16 3359:10,11,12 3360:3,4,6,8,8,12,15,16 3360:18,19,21 3361:2,3 3361:5,9,15 3362:2 3364:22 3365:1,7 3367:8 3370:5,13 3372:5 3374:20 3375:20 3376:6 3377:14 3387:10 3402:9 3404:7,12 3411:17 3419:5 3423:8 3424:4 Timeline 3167:11 times 3099:22 3132:21 3133:7 3193:11 3200:19 3201:1,18 3213:14 3273:13 3302:13,14 3309:20 3310:1,2 3335:1 3342:13 3351:4 3353:12 3356:12 3358:10 3369:15 3386:19 3391:13 timetable 3412:10 timing 3150:19 3179:1 3207:4,7 3215:12 3257:1 3285:6 3295:13 3330:4 3368:22 title 3269:21 3280:19 3282:3 3287:22,22 titled 3117:7 3270:13 3287:1 today 3088:22 3089:14 3118:11 3120:18 3146:16 3205:9 3281:16 3305:21 3316:16,19 3343:16,18 3372:20 3377:7 3400:16,22 3421:5 Todd 3159:22 3160:2 told 3137:4 3156:2 3201:13 3240:18 3245:15 3252:5,8 3365:22 3376:19 tolerance 3323:15 tolerances 3323:5 tons 3139:1 3411:15 tool 3118:20 tools 3259:17 top 3092:17 3115:16 3129:9 3130:8 3139:13 3139:14 3140:16</p>	<p>3160:21 3183:21 total 3359:11 totality 3310:12 3314:7 totally 3286:5 touch 3269:18 touching 3292:12 town 3307:5,6 track 3095:4,13 3108:5 3109:11 3205:7 3260:9 3260:11,15 3261:3,4 3290:17 3296:17 3301:14,16,17 3304:9 3304:15,20 3305:11 3307:8 3308:1,9 3309:9 3311:14 3326:1,19 3363:10,12,15,18 3364:13,20 3366:3 3368:11 3376:21 3385:16,19,21 3386:1,2 3397:17 3412:3,4,5,18 tracks 3085:2 3117:20 3213:18 3363:12 3364:11,17 3385:12 3412:5,7,8 traditional 3144:16 3145:10 traditionally 3170:16 3171:8 3380:18 traffic 3131:1,13 3132:12 3132:14 3135:15 3136:10,11,13 3141:16 3142:1 3182:9 3183:17 3193:4 3321:9,11 3330:10 3383:12 3400:21 3408:14 3409:15 3414:3 train 3109:14 3119:15 3181:19 3197:4 3199:8 3201:9,14,22 3259:21 3294:4 3298:3,4,9,20 3302:3 3308:16 3309:13 3310:9 3319:17,18 3323:7,9 3332:5 3336:20 3339:7 3340:17,18,20 3341:1 3360:12,14 3361:22 3362:15 3363:14,19,22 3365:7,10 3369:5 3371:10 3398:15 3400:22 3408:2 3411:12,13,14,15,22 3413:3 3414:5 train's 3419:22 trains 3095:4,13 3103:13 3104:10,19 3105:1,13 3105:14 3106:10</p>	<p>3107:2 3117:20 3119:3 3119:9 3131:2,13 3141:14 3171:4 3189:21 3190:5,6,8 3191:2 3192:14 3193:5 3193:10,12 3198:20 3200:18 3201:17 3203:11 3213:18 3261:2,9 3265:7 3267:13 3293:21 3294:20 3295:2,3,7,12 3295:13,19,20 3296:2,4 3296:5,10,15 3297:2,7 3297:14,15,19 3298:14 3299:5,6,11,12,22 3300:9,9,11,12,13,14 3301:14 3302:15 3309:7 3320:2 3333:20 3335:21 3336:15,20 3337:2 3338:4 3339:3 3339:19 3340:14 3342:10,17 3343:15,17 3344:2,3 3362:19 3364:21 3366:4 3368:15 3369:4 3377:2 3400:14 3411:11 3412:15 3413:6,7,8,10 3413:12 3415:14 3416:4 3417:20 3420:22,22 transcript 3129:2 3143:1 3426:4 transferred 3305:14,16 transit 3335:1 3360:10 3361:16 translated 3345:14 translating 3116:17 transparency 3244:17 3284:20 3345:12 3351:19 3352:13,14 3369:9 transparent 3236:2 3353:7 transpired 3351:9 transportation 3083:1,6 3128:11 3145:12 3395:19 transporting 3362:15 travel 3128:11 3135:9 3192:14 3385:16,19 traveled 3133:9 travelers 3146:15 travels 3383:18 traverse 3295:3,20 3299:12 3302:15 3311:11</p>	<p>traversed 3302:13 traversing 3300:11 treat 3259:14 treatment 3368:10 triangulated 3326:3 trick 3235:6 tried 3176:14 3260:2 3341:5 3361:20 3363:10 3370:10 tries 3227:8 triggered 3289:10 trip 3324:16 3338:1,14 3340:6 3341:6,17,18,20 3342:4,15 3356:12 3374:20 3377:14 triple 3260:15 3261:4 trips 3125:4 3289:18 trouble 3173:20 3189:20 true 3101:13 3136:5 3163:4 3166:18 3246:21 3261:11,14 3262:2,6 3426:5 trust 3418:16 try 3090:4 3105:16 3111:3 3130:5 3150:13 3153:14 3191:15 3216:5 3217:14 3320:13 3353:20 3366:15 3369:10 3372:13 3402:11 3416:3 trying 3105:11 3171:3 3206:9 3215:22 3219:21 3221:4 3223:19 3224:10 3231:6,7 3233:9 3235:6 3282:15 3320:15 3328:6 3351:15 3365:15,18 3395:10 Tuesday 3195:12 3203:16 turn 3085:3,10,15 3086:6 3086:7 3091:16 3098:10 3102:5 3110:20 3117:2 3121:22 3123:5 3129:5 3129:15 3130:20 3133:19 3136:19 3138:12 3159:21 3164:9,16 3181:9 3222:9 3240:5 3241:7 3258:14 3273:15 3275:13 3284:10 3285:13 3294:18 3302:3 3304:17 3318:19 3416:7</p>
--	---	--	---

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3463

<p>turned 3226:9 3227:13 3233:20 turnout 3338:7 3412:13 turnouts 3339:2 3412:11 Twice 3133:1 twice-daily 3290:22 3302:2 two 3085:11 3091:17 3092:4 3124:12 3154:16 3161:16 3183:17 3192:18 3198:19,20 3228:18 3230:12 3270:17,22 3276:2 3289:18 3303:2 3309:1 3310:5 3313:7 3335:3 3338:5 3340:6 3340:10 3341:9 3342:6 3354:3,4 3360:4 3364:3 3381:14 3388:13 3390:13 3404:10 two-part 3331:6 two-second 3090:21 twofold 3271:6 type 3121:1 3127:20 3235:5 3314:13 3373:1 3411:12,15 3412:11 types 3217:2 3322:15 3412:19 typewriting 3426:8 typical 3294:16 typically 3128:12 3170:8 3170:9,12 3180:10 3194:16 3196:11 3201:11 3222:18 3250:11 3297:5 3298:22,22 3313:11 3324:2 3325:9,10 3332:6,17,17 3334:16 3337:5,19 3342:11 3356:4,6 3360:1,13,22 3419:6 typo 3314:10</p> <hr/> <p style="text-align: center;">U</p> <p>U.S.C 3083:5 Uh-hum 3131:9 ultimate 3237:7 ultimately 3211:6 3215:1 3217:8 3219:20 3220:5 3220:21 3226:9 3233:21 3246:13 3271:7 3325:7 3351:2 3375:13 unable 3165:10 3174:7 3308:8,10 unacceptable 3218:10</p>	<p>unattractive 3312:1 unavoidable 3414:8 unclear 3114:21 undergoing 3282:21 3283:11 underneath 3174:19 3234:9,16 3241:11 3243:19 understand 3105:12 3108:10 3126:13 3128:15 3143:18 3146:4 3191:1 3197:2 3200:17 3201:20 3211:10 3218:18 3221:4 3233:12,12 3237:13 3246:17 3248:4,12 3277:13 3282:19 3283:9 3284:1 3290:7 3291:17 3298:7 3300:17 3317:9 3321:21 3325:4 3344:22 3345:13 3346:7 3348:11 3352:2 3355:20 3365:3,15,19 3368:12 3371:22 3377:7 3384:6,9 3398:5 3423:7 understanding 3096:22 3134:16 3160:4 3161:18 3176:7 3192:7 3280:19 3284:1 3306:14 3319:8 3320:4 3320:10 3323:20 3331:11 3346:13 3348:5 3352:3 3355:17 3358:7 3367:8 3385:6 3385:15,19 3386:17 3387:7 3389:17,17,21 3390:15 3391:12 3417:5 3419:10,14 3423:16 understands 3192:2 understood 3231:16 3293:6 3302:20 3318:10 3424:2,7 undertaken 3320:7 undertaking 3168:3 undertakings 3088:6 undertook 3367:14 underway 3120:9 3121:14 unfortunately 3141:6 3153:20 3276:21 3315:6 3404:16 uniform 3226:13 unique 3259:16 3396:16</p>	<p>3396:19,21 unique 3259:10,20 3260:2 unit 3411:13 unloads 3363:19 Unmute 3097:17 unobstructed 3342:7 3360:4 3419:5 unreasonable 3271:22 3339:16,17,20 3393:4,7 3395:18 unreasonably 3103:14,19 3271:12 3321:14 unreliable 3340:13 unusable 3351:20 unusual 3222:1 3364:10 unusually 3398:1,5 update 3164:11,15 3172:4,16 3241:11 3354:17 updates 3169:21 3170:3 3172:12 3232:14 updating 3282:20 3283:10 uphold 3249:18 upper 3286:22 UPS 3411:18 usable 3353:9 use 3085:2 3104:13 3105:1,13 3114:3 3115:22 3128:6 3171:10 3196:2,15 3197:11 3222:19 3229:2,10 3275:20,21 3276:7,8,18 3284:21,22 3285:3 3290:16 3294:15 3298:21 3306:12 3364:18 3366:5 3374:3 3377:6 3416:2 3423:11 useful 3253:14 3376:17 useless 3377:11 uses 3118:21 usually 3360:1 utilize 3276:14 3303:17 3377:13 utilized 3377:9 utilizing 3320:17 3323:12 3364:16</p> <hr/> <p style="text-align: center;">V</p> <p>vacuum 3126:5 3192:1 vague 3173:11 valid 3118:20 validate 3164:3 3165:9 3165:13 3172:10</p>	<p>3174:7,20 3180:18,20 3215:5 3262:21 3345:4 3346:3 3411:7 3416:17 3417:2 validating 3172:20 3173:20 3175:5,8 variety 3137:16 3215:1 3274:20 3370:4 various 3133:4 3183:20 3227:15,16 3232:5 3305:22 3315:21 3334:10 3356:10 3369:10 3405:12 3406:20 3407:7 vary 3340:14 vein 3335:5 venture 3084:4 verbal 3294:15 verification 3418:17 verified 3258:18 3260:3,7 3260:12 3295:22 3299:18 3322:4 3350:6 3355:4 3368:8 3391:3 3391:11 3393:18 3394:2 3396:14 3397:2 3399:7 3400:2,18 3401:3,5,8,12 3406:1 verify 3353:8 versa 3111:5 version 3092:8,11 3156:13,14,18 3189:18 3190:1 3422:4 versions 3179:7 3369:12 versus 3193:22 3308:22 3333:8,10 3337:7 3342:11 3359:6,18 3421:4 vice 3111:5 view 3296:22 3322:7 3362:8 3365:21 3419:17 viewers 3403:18 viewing 3087:12 views 3307:22 violating 3392:19 Virginia 3122:6,9,17 virtual 3170:8 3238:11 vis-a-vis 3342:6 vision 3113:12,13 3114:14 3116:17 3117:9 3334:7 visits 3133:3 voice 3086:10 3303:7 voiced 3365:16 volume 3083:10 3135:2 3181:20 3260:22</p>
--	--	---	---

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3464

<p>volumes 3408:2,7 3414:3</p> <hr/> <p style="text-align: center;">W</p> <p>wait 3085:5 3087:5 3108:12 3157:20 3325:1</p> <p>waiting 3157:19 3259:3 3298:9 3337:21</p> <p>waived 3159:10</p> <p>Walden 3354:2</p> <p>walk 3397:11</p> <p>want 3084:5 3089:16 3090:6 3103:10 3142:18 3143:4 3147:6 3152:10 3156:4,20 3158:2 3193:8,9 3197:17 3206:2,3 3215:17 3216:1,11 3222:10 3224:8,14,17 3226:13 3228:6 3232:9 3233:16 3238:2 3239:1 3253:13 3258:21 3270:7 3272:22 3275:13 3276:5,6 3277:17 3280:2 3281:17 3282:18 3283:22 3291:21 3317:10,21 3328:13 3334:16 3336:22 3342:1 3344:15,17 3349:14 3350:1,2,21 3351:1 3352:20,22 3363:7 3365:17 3378:6 3383:10 3397:11 3401:19 3402:15 3403:9 3417:7,8</p> <p>wanted 3123:10 3159:20 3160:9 3166:21 3179:12 3188:8 3200:15 3203:20,22 3211:22 3214:5 3228:8 3241:19,21 3243:10 3273:4 3275:20 3276:7 3285:10 3345:16 3355:6 3367:21 3368:22 3369:21 3370:18 3388:7 3403:6 3418:9</p> <p>wanting 3355:4</p> <p>wants 3085:13 3284:7</p> <p>warrants 3412:18</p> <p>Warren 3277:11,19</p> <p>Washington 3083:14</p> <p>wasn't 3097:14 3098:6 3123:3 3167:20 3190:19 3288:14</p>	<p>3292:11 3378:15 3388:16 3422:11</p> <p>watch 3128:20</p> <p>way 3086:15 3095:15 3099:20 3105:10,16 3106:2 3114:15 3122:10 3130:6 3137:19 3138:10 3173:15 3180:10 3199:10 3202:12 3235:15 3297:4 3317:2 3317:19 3319:20 3321:20 3323:8 3325:3 3335:5 3336:21 3340:15 3345:14 3346:2,7 3348:14 3354:9 3359:22 3365:2 3367:11 3372:16 3377:11 3418:22 3420:17</p> <p>ways 3274:20 3297:21 3372:6,8 3374:20</p> <p>we'll 3087:4,10,16 3088:20 3110:11 3153:12,15 3154:17 3155:4 3176:5,9 3177:4 3180:5 3192:4 3198:8 3224:13 3239:12 3278:5 3301:22 3319:20 3331:8 3335:13 3337:22 3351:11 3360:5 3403:19 3404:11</p> <p>we're 3084:3,9,13 3086:19 3087:11,17 3090:15 3114:10 3116:7 3119:15 3129:6 3137:17 3147:12 3153:13 3154:5,6,12 3157:12,17,19 3158:15 3169:14 3171:10 3173:12 3176:17 3177:19 3186:4 3189:1 3190:13 3191:4,21 3196:3 3203:19 3205:4 3228:4 3239:4 3243:8 3297:8,9 3303:19 3304:16 3308:10,19 3310:7,8 3316:15 3322:9 3329:13 3332:17 3334:5 3335:12 3337:21 3338:3 3342:9 3353:17 3354:11 3358:17 3364:3 3365:22 3379:3 3395:9 3397:3 3403:19</p>	<p>3404:8,13,19 3424:5</p> <p>we've 3111:10 3171:1 3197:18 3206:11 3226:21 3272:21 3304:16 3308:17 3315:15 3336:13 3341:5 3364:6 3375:10 3404:5,12</p> <p>website 3200:22</p> <p>Wednesday 3402:15 3404:5,8,11,14,17 3421:9,16 3422:14 3424:6,11</p> <p>week 3085:11 3089:19 3116:20 3121:13 3125:21</p> <p>weekly 3294:9</p> <p>weeks 3090:13 3091:6 3252:2,14 3253:2,7 3293:7,10,12,18</p> <p>went 3087:13 3115:5 3224:12,22 3225:8 3233:19 3325:3 3345:19 3354:18 3408:16 3413:2</p> <p>weren't 3099:6 3256:1 3367:21 3371:21 3423:19</p> <p>WHEREOF 3426:12</p> <p>who've 3266:22 3267:1,1 3267:17,17,18 3268:10</p> <p>wholly 3180:20</p> <p>Wicker 3246:12 3354:18</p> <p>Williams 3354:2</p> <p>willing 3105:17 3107:9 3137:9 3231:12 3308:15,19 3352:15 3364:6 3409:4,9 3414:15</p> <p>WIMBUSH 3257:22</p> <p>window 3323:8</p> <p>windows 3411:19,19</p> <p>wish 3114:18</p> <p>wishes 3110:2</p> <p>withdraw 3264:9 3278:8 3307:16</p> <p>withheld 3321:14</p> <p>witness 3084:21 3085:11 3085:22 3086:20 3097:20 3105:11 3126:1,6,12,21 3142:20 3144:22 3145:5 3153:1 3153:5 3162:14 3167:7 3168:17 3169:6,13 3170:7,16 3171:20 3174:11 3177:19</p>	<p>3185:7,9,13 3186:11 3187:12,16 3188:15 3189:6,19 3191:12 3192:1 3193:19 3197:9 3197:22 3198:3,12,15 3199:1,6,14,19 3200:10 3200:14 3202:11 3203:10 3206:7,21 3207:20 3219:2,8 3220:15 3221:12 3222:17 3224:16 3225:17 3226:22 3228:17 3229:1,18 3230:8 3237:2,9,16 3239:2,19 3244:1 3249:5,11 3251:19 3255:19 3256:9 3269:7 3272:5 3281:22 3282:4 3282:12 3286:18 3311:5 3318:11 3328:12 3344:11 3382:5 3389:9 3393:13 3415:19,21 3426:12</p> <p>witness' 3088:20 3202:20 3203:8</p> <p>witnesses 3223:20 3265:17 3266:20 3344:20 3350:5,8 3404:10 3425:2</p> <p>wonder 3359:8 3403:17</p> <p>wondering 3150:6 3238:22 3239:3</p> <p>word 3165:21 3174:3 3401:11</p> <p>words 3123:21 3171:18 3171:19 3173:13,14,19 3173:22 3174:6,12,18 3174:22 3175:3,7 3200:11 3224:4,10 3275:20 3339:14 3345:15</p> <p>work 3084:17 3085:13 3086:9 3107:5 3111:3,7 3120:4,6,7,17,21,22 3121:1,19 3128:3 3145:18,20,22,22 3147:8 3148:11 3194:16 3200:18 3203:12 3204:13,14 3206:10 3207:9 3209:21 3210:1 3217:5 3217:14 3220:21 3221:16,16,20 3222:13 3227:4 3238:16 3242:22 3243:1,3,4 3246:8,20 3252:18</p>
--	---	--	---

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3465

3253:13,15 3267:5 3276:10 3284:3 3292:1 3292:3 3293:18 3308:20 3323:13,15 3327:6,17 3355:18 3356:6 3357:3 3368:17 3372:9 3373:21 3407:14 3410:2,16 3414:16 3422:20,21 workarounds 3372:2 worked 3084:8 3173:2 3180:11 3181:3 3238:12 3267:1 3268:11 3319:22 3355:21 3356:1 3369:10,13 working 3086:16 3090:10 3091:12 3092:12 3094:16 3095:1 3096:21 3098:1 3098:14 3099:7,13,16 3100:4,10 3101:2,7,17 3102:13,14,19 3105:21 3106:4 3109:17,20 3114:10 3116:14 3119:12,18 3120:8,10 3120:13 3127:13 3145:9 3188:22 3193:21 3199:16,20 3200:2 3202:14,16 3204:12 3206:14,17,22 3207:3,9,12,13,22 3257:3 3269:17,22 3270:8 3271:6,22 3272:9,16 3275:14 3285:18 3287:17 3288:4 3289:14 3290:3 3290:13 3291:11 3292:3 3301:4,11,13,18 3303:10,14 3304:6,16 3308:13 3318:16,18 3322:3,5 3323:18 3324:4 3325:8,18,21 3326:6 3327:1 3328:22 3329:6 3330:12 3331:21 3337:13 3338:6 3343:5,10 3352:17 3367:13 3372:14 3373:20 3374:17 3375:7 3386:6 3386:13,20,22 3387:12 3387:16 3394:12,18 3395:5,15 3407:8,13 workings 3142:7,13 works 3162:16 3234:6 3324:2	worth 3242:13 3327:9 3334:2 wouldn't 3095:15 3180:9 3180:9 3217:6 3222:10 3223:5 3224:16 3245:3 3248:17 3279:5 3309:22 3310:2,3 3315:12 3326:8,9 3367:10 3371:1 3390:1 wrap 3334:19 writing 3106:13 written 3171:14,17,19 3192:19 3208:1 3212:21 3276:16 3400:20 wrote 3205:17 <hr/> X <hr/> <hr/> Y <hr/> yard 3108:3 3302:16,22 3303:11 3305:3 3307:9 3309:4,5,6 3311:10,16 3311:20 3338:10 3363:21 3365:1 3376:15,22 3377:2,6,10 3377:15 3383:17,22 3384:2,10,12,14,16,18 3385:2,3,4,13 yeah 3086:12 3090:20 3107:15 3108:17,17 3134:10 3154:10 3155:6 3158:1 3177:3 3181:14 3185:9 3199:6 3199:6 3200:20 3203:19 3216:20 3234:8 3236:20 3245:18 3270:22 3281:8 3282:9 3286:16 3292:17 3328:16 3374:8 3418:1 3423:7 year 3120:7 3121:7,10 3144:7 3172:6 3188:20 3189:17 3205:5 3243:2 3243:6,8 3252:6 3262:20 3264:15 3313:21 3317:16,19 3318:4,5,7 3329:9 3345:2,7 3348:4 3377:21 3382:7 year's 3327:9 years 3113:5 3120:2 3121:17 3133:17 3134:18,22 3140:20 3147:21 3183:2,9 3184:2 3190:10	3192:18 3195:17 3235:13 3236:9,16,21 3247:6 3304:13 3305:7 3305:8,9,9,20 3306:4 3315:21 3318:9 3327:13 3330:7 3348:10 3376:15 YouTube 3111:1 Yup 3086:5 3176:20 3270:16 3271:3 3306:21 3317:21 3318:10 <hr/> Z <hr/> zero 3091:13,13 Zoom 3087:18,22 3088:1 3088:6,9,14 3089:14,17 3097:17 3101:11 3154:18,20 3155:2,6 3176:20 3177:1 <hr/> 0 <hr/> <hr/> 1 <hr/> 1 3140:16,18 3185:18 3199:22 3205:3 3234:16 3262:15 3310:15,16,21,22 3363:12,20 1:00 3088:19 3238:21 1:05 3239:12 1:35 3239:13 10 3133:16 3153:12 3154:8 3178:6 3215:19 3341:12 3359:13 3360:15,18,18,19,19,20 3361:11 10-minute 3341:14,15 100 3097:13 3101:19 3261:2 3323:19 3324:21 3326:10 3343:11 3357:12 3360:17 3361:8 3372:21 3374:4 3419:5 100,000 3126:15 3127:4 3127:16 11 3286:21 11:00 3153:12 11:10 3153:13 11th 3424:13 12 3138:17 3141:13 3171:20 3172:22 3173:22 3174:4,6 3269:21 3270:12 3397:4 12:30 3088:19	12:35 3215:12 128 3146:21 12th 3159:17 13 3167:2,5,7,9 3172:5 3286:22 139 3140:3 14 3126:7 140 3378:1 144 3362:5 148 3362:5 15 3098:10,11 3113:5 3133:16 3140:20 3215:20 3250:19,20 3319:19,19 3359:21 3403:22 3419:21 3426:22 15-year 3113:10,13 16 3139:10,17 3178:3,4 3251:9,16 160 3117:15 3378:1 3397:20 161,000 3138:22 167 3313:18 17 3164:20 3177:13 3208:16 3329:9 18 3130:21 3131:7 3142:5 3253:8 1985 3303:2 1990 3148:22 1996 3400:13,21 1997 3303:3 3400:14 1B 3091:8 3269:18 3318:19 1st 3152:3 3195:12 3254:5 <hr/> 2 <hr/> 2 3167:13 3188:20,21 3189:20 3195:7,9 3199:22 3203:18,22 3240:5 3254:15 3269:20 3270:12 3311:11 3363:13,21 3385:16,20 3386:1,2 3406:21,22,22 3409:9 2.12 3269:22 3270:14,21 3271:1 2.4 3098:16 20 3117:2,4 3130:15 3183:2,9 3184:2 3235:12 3236:9,16,21 3402:7,10 3403:21,22 20-year 3167:4 3237:3,4 3357:9 3408:14 3409:16 2001 3211:21
--	---	---	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3466

<p>2003 3314:9 2004 3314:9,10 2005 3268:20 2010 3149:3,6 2015 3197:20 3198:3,4,9 3200:4,20 3208:2 3257:2 2016 3097:16,21 3098:19 3102:19 3109:4 3197:20 3198:4 3254:5 3254:12 3255:17 3256:12,16 3257:11 3304:1 2017 3093:10 3095:21 3096:4 3098:20 3120:12 3121:6,8 3195:12 3247:2,9 3257:3 3304:8 3305:9 3329:11 2018 3192:18 3206:8,22 3234:10,20 3235:17 3281:7 3304:1 3320:13 2019 3159:17 3160:6,15 3161:5 3166:14 3191:7 3192:12 3203:16 3218:22 3355:5,5 3357:5,7,11 3370:19 2020 3120:16,19 3139:22 3140:10 3164:11,18 3165:14 3167:14 3168:3,6,22 3170:7 3172:15 3175:12 3208:16 3209:11 3219:1 3227:8 3234:2 3235:19,20,21 3236:5 3237:11 3241:10 3245:11,20 3276:14 3287:4 3292:16 3296:13 3345:11,17 3346:1 3347:16 3353:6 3353:6 3373:15 3375:9 3405:13,18 3406:10,19 3416:22 3418:6 3419:19 3420:4,5,13 2021 3111:16,17,21 3152:3 3172:18 3175:10 3191:12 3250:3 3263:17 3292:16,18 3317:8 3353:6 2022 3083:11 3314:8 3316:9 3317:16 3426:14 2024 3426:22 2025 3314:11 2026 3314:11 3317:19</p>	<p>2039 3357:6 20423 3083:14 21 3130:15 3140:1 3317:5 22 3115:19 3200:3 3234:2 3317:5,18 3359:11 3361:7,7 23 3318:20,20 3336:14 3337:11 3341:11 3342:5 3343:5 3359:11 3361:12 3362:4 23rd 3426:13 24 3160:10 24,300 3317:16 24308(e) 3083:6 25 3117:13 3140:21 250 3329:12 25th 3250:3 26 3121:22 3122:1 3129:5,8,9,18 3130:8 3190:5 3201:14,21 26.8 3139:2 26K 3155:16 3159:8 27 3129:19 3130:7 27th 3394:4,6 3395:14 28 3109:4 3252:1 3253:1 29 3133:19 3394:1 29th 3216:12 2nd 3165:2,18 3166:3</p> <hr style="width: 50%; margin: 10px auto;"/> <p style="text-align: center;">3</p> <p>3 3164:9 3182:13,19 3241:7 3321:6 3337:11 3362:4 3409:13 3418:16 3,000 3138:4 3:00 3190:9 30 3133:19 3239:12 300 3148:8 3149:17 3090 3425:4 31 3136:19 3273:17 317 3239:9 3249:20 318 3196:22 3203:14 319 3238:18 3239:9,21 3351:16 3416:9 3418:13 31L 3405:22 32 3091:17,18 3092:3,6 3136:21 320 3186:8 3205:20 3208:13 321 3215:10 3216:8 322 3195:3 3218:16 3234:1 323 3239:9 3253:19 324 3184:5,16 3186:3,8</p>	<p>326 3239:9 3253:22 3254:1,2 3270 3425:5 32B 3110:18 3111:11 33 3103:4 336 3318:3 337 3129:2 3380 3425:6 340 3150:17 3405 3425:7 35 3107:22 3108:16 3126:7 36 3126:7 3252:1 3253:1 3293:18 360 3276:22 361 3239:10 37 3109:7 38,000 3197:12 3200:13 3203:11 38,400 3160:15 3161:4 3185:21 3187:2,22 3188:20 3189:17 3190:19 3192:11 3193:16,22 3199:18 3200:9 3201:10 3202:14 39 3117:10 3118:13 395 3083:13 3C 3182:16 3321:7 3rd 3423:10</p> <hr style="width: 50%; margin: 10px auto;"/> <p style="text-align: center;">4</p> <p>4 3112:7,8 3164:16 3174:17,18 3182:4,16 3186:10,13 3211:14 3243:12 3283:4 3407:22 3412:14 4.5.2.3 3343:6 4:05 3335:13 4:15 3335:14 40 3261:14 3362:5 400 3372:21 400-foot 3309:12 40G 3163:14 3285:16 41 3273:18 42 3327:2 43 3397:4 440 3357:14 3393:2 45 3342:7 49 3083:5 3398:17 4A 3181:10,11</p> <hr style="width: 50%; margin: 10px auto;"/> <p style="text-align: center;">5</p> <p>5 3102:11 3134:5 3159:21 3163:8 3181:9 3181:11,13,14 3186:13</p>	<p>3273:22 3329:5,11 3360:15 3405:2 5.12 3273:19 5:00 3199:9 5:45 3199:11 50 3140:2 520 3352:20 58 3139:1 5th 3203:16</p> <hr style="width: 50%; margin: 10px auto;"/> <p style="text-align: center;">6</p> <p>6 3123:8,9 3124:11 3126:17 3170:22 3171:13 3173:1 3204:1 3204:3 3205:8,10 3329:17 6:00 3089:1 3402:8 3421:7 6:10 3424:12 60,000 3127:19 65 3138:12 65,000 3317:20 66 3115:8,15 3138:13 3139:12,14 3274:16,20 3327:19 67 3123:7 3139:14 3140:16 68 3140:15 3329:9 6887 3186:12 69 3144:5</p> <hr style="width: 50%; margin: 10px auto;"/> <p style="text-align: center;">7</p> <p>7 3171:6 3173:1 3326:22 3327:1 7:00 3199:9 70 3144:5 75 3113:4,14 3114:8,14 3115:4 79 3342:3 7G 3175:19 3184:12 3320:19 3410:13,19</p> <hr style="width: 50%; margin: 10px auto;"/> <p style="text-align: center;">8</p> <p>8 3141:4 3171:12 3173:1 3359:13 3360:15 3394:1 8:00 3199:10 80 3359:6,17 3362:7 3419:20</p> <hr style="width: 50%; margin: 10px auto;"/> <p style="text-align: center;">9</p> <p>9 3083:11 3250:3 9:10 3159:22 9:30 3083:12 3404:5 3421:16 3424:11,13 94 3102:11</p>
--	--	--	--

REDACTED - PUBLIC VERSION

Public Evidentiary Hearing
May 9, 2022

Page 3467

95 3195:17,21 3196:1,11
3196:16,17,18 3197:4,6
3359:7,18
97 3400:21
99 3097:3 3098:8
3102:10,19 3103:2