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DISCOVERY CONFERENCE

CSX CORPORATION AND CSX  
TRANSPORTATION, INC., NORFOLK  
SOUTHERN CORPORATION AND NORFOLK  
SOUTHERN RAILWAY COMPANY --  
CONTROL AND OPERATING LEASES/  
AGREEMENTS -- CONRAIL INC. AND  
CONSOLIDATED RAIL CORPORATION --  
TRANSFER OF RAILROAD LINE BY  
NORFOLK SOUTHERN RAILWAY COMPANY  
TO CSX TRANSPORTATION, INC.

Finance Docket  
No. 33388

Thursday,  
January 22, 1998

Washington, D.C.

The above-entitled matter came on for a  
oral argument in Hearing Room 3 of the Federal  
Energy Regulatory Commission, 883 First Street, N.E.  
at 9:30 a.m.

BEFORE: THE HONORABLE JACOB LEVENTHAL  
Administrative Law Judge

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Norfolk Southern Railway Company:

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On Behalf of Eighty-Four Mining Company:

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

(9:31 a.m.)

JUDGE LEVENTHAL: The discovery conference will come to order. At this time we'll take appearances. For the movant?

MR. BERCOVICI: Good morning, Your Honor. Martin Bercovici, law firm of Keller and Heckman for Eighty-Four Mining Company.

JUDGE LEVENTHAL: All right.

MS. BRUCE: Good morning, Your Honor. Patricia Bruce, Zuckert, Scoutt and Rasenberger for Norfolk Southern.

MR. HARKER: Drew Harker, Arnold and Porter, for CSX.

MR. NORTON: Gerald Norton, Harkins Cunningham, for Conrail.

JUDGE LEVENTHAL: All right. The only topic for this morning's conference is the matter brought on by Eighty-Four Mining Company. I have the materials you have furnished me: the letter to me of Eighty-Four Mining Company, and I guess the reply of Norfolk Southern.

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1 MR. BERCOVICI: I haven't seen a reply,  
2 Your Honor, but it was --

3 MS. BRUCE: Your Honor, are you referring  
4 to the letter from --

5 JUDGE LEVENTHAL: The letter of January  
6 20.

7 MS. BRUCE: Yes. That was just our -- I  
8 guess we could say it was a reply to Mr. Bercovici  
9 indicating when we would make Mr. Mohan available. I  
10 think that's the letter that --

11 MR. BERCOVICI: Yes. I've seen that one.  
12 I haven't see a reply.

13 MS. BRUCE: No. We have no formal reply.

14 JUDGE LEVENTHAL: Off the record.

15 (Whereupon, the foregoing matter went off  
16 the record at 9:43 a.m. and went back on  
17 the record at 9:33 a.m.)

18 JUDGE LEVENTHAL: Back on the record. I  
19 take it the parties haven't resolved their  
20 differences. All right. Mr. Bercovici?

21 MR. BERCOVICI: Thank you, Your Honor.

22 Our issue is very similar. In our

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1 comments, we address one of the issues concerning our  
2 service situation, post-transaction, involves some  
3 routing inefficiencies with Norfolk Southern as  
4 compared with the competitor situation being served by  
5 CSX as well as NS after the transaction is  
6 consummated.

7 In the rebuttal verified statement,  
8 Norfolk Southern through witness Mohan stated NS has  
9 concluded agreements with the Canadian Pacific Rail  
10 System and with Gilford Transportation to provide for  
11 efficient handling of traffic between Binghamton and  
12 New England points.

13 We understand subsequently that it's only  
14 one agreement and that's with Canadian Pacific. There  
15 is no separate agreement for Gilford. So that's not  
16 an issue.

17 CP has agreed to grant NS haulage between  
18 Harrisburg, Binghamton, and a GTI, Gilford, connection  
19 near Albany, enabling the same type of two-carrier  
20 service that a CSX-GTI routing would supply.

21 When we saw the rebuttal statement, we  
22 went to the depository and looked for the copy of the

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1 agreement of Decision Number 6. It says, "Immediately  
2 upon each evidentiary filing, the filing party will  
3 place all documents relevant to the filing other than  
4 documents that are privileged or otherwise protected  
5 from discovery in a depository open to all parties."  
6 We couldn't find the agreement to which Mr. Mohan  
7 referred.

8 At that point, we were preparing  
9 interrogatories. We had a couple of document  
10 requests. We were here two weeks ago. You denied our  
11 document request at that time. You ordered the  
12 applicants to make the witnesses available for  
13 deposition.

14 We then asked Norfolk Southern by letter,  
15 which you have before you, to make Mr. Mohan available  
16 for deposition. Since he talked about a document and  
17 described a document, we asked in that letter that he  
18 bring the document with him to the deposition so that  
19 we can find out what the document actually says.

20 All I want to find out is whether and to  
21 what extent this is an accurate representation of  
22 whether they have made our concern go away. I think

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1 that's a very legitimate issue. I'm not trying to do  
2 anything surreptitious here. We're simply trying to  
3 find out whether or not this issue has been taken off  
4 the table.

5 After a week, I got back the letter dated  
6 January 20, which Your Honor has before you, being  
7 supplied yesterday by fax, which says that Mr. Mohan  
8 will be available for deposition February 19 or 20,  
9 which are the Thursday and Friday before the days  
10 before the briefs are due. Briefs are due Monday,  
11 February 23.

12 It's not a convenient time in terms of  
13 taking the deposition and completing our brief and  
14 sending it to the printer for copying and for service  
15 and filing with the Board.

16 Secondly, they said he would not bring the  
17 document with him. He's referring and subscribing in  
18 his testimony to a document that is supposed to have  
19 been in the depository. And they're saying he won't  
20 bring the document with him to the deposition.

21 At that point I called counsel for  
22 applicants; not having a response, phoned your office

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1 for this hearing this morning. We're just trying to  
2 find out what the facts actually are because I think  
3 we're entitled to do it.

4 JUDGE LEVENTHAL: In their letter of  
5 January 20, which you furnished to me, they say they  
6 have submitted an errata which eliminates any  
7 reference to an agreement with Gilford Transportation.

8 MR. BERCOVICI: That's what I referred to  
9 in the beginning of my remarks. They originally said  
10 there were two agreements. They have now submitted an  
11 errata that said there's only one. So we're only  
12 dealing with --

13 JUDGE LEVENTHAL: And there's still one  
14 agreement.

15 MR. BERCOVICI: There's still one  
16 agreement. And that's with Canadian Pacific.

17 JUDGE LEVENTHAL: Now, when did you want  
18 Mr. Mohan to appear for examination?

19 MR. BERCOVICI: We've got some  
20 flexibility, but certainly the Friday before the  
21 briefs are due is not an appropriate day. We'd like  
22 him at least a week before.

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1 JUDGE LEVENTHAL: Give me a range. At  
2 least a week before the 13th?

3 MR. BERCOVICI: Well, we could work out  
4 arrangements sometime the week of the 13th or the week  
5 prior to that or next week. We've got a lot of  
6 flexibility.

7 JUDGE LEVENTHAL: All right.

8 MR. BERCOVICI: We're not trying to be  
9 difficult and impose upon Mr. Mohan's schedule.  
10 Simply we're trying to get to the essence of making  
11 sure that their representation does what it says it  
12 does.

13 JUDGE LEVENTHAL: All right. Mr. Harker,  
14 you're going to address this?

15 MR. HARKER: I'm going to address actually  
16 a related matter. I'll let Ms. Bruce speak on behalf  
17 of NS.

18 I have a concern on behalf of CSX as to  
19 one of the two issues that we're going to talk about  
20 today. I leave it to NS and Eighty-Four Mine with  
21 your assistance to sort out what is a reasonable date  
22 for Mr. Mohan to appear for his deposition.

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1           However, I do have a concern about the  
2 other issue that Mr. Bercovici is seeking relief on,  
3 and that is the requirement for a deponent to bring a  
4 document to a deposition.

5           The first time I saw Mr. Bercovici's  
6 January 21st letter was about ten minutes ago outside  
7 the hearing room. I notice that there's a cc on it  
8 that indicates that all parties on the restricted  
9 service list were served. As of this morning when I  
10 left my office about ten minutes after 9:00, I had not  
11 gotten a copy of the letter.

12           As you know, Your Honor, we do have a  
13 three-day notice rule in the proceeding. This letter  
14 is dated yesterday. By my count, that's less than a  
15 day.

16           I think that there is a significant issue  
17 as to the requirement of a deponent, as I said, to  
18 bring a document to a deposition. It's certainly  
19 something that CSX could be addressing, to find itself  
20 needing to address, in the next couple of weeks. And  
21 I think it's something that I would have liked the  
22 opportunity to have done a little thinking, if not

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1 research, to present argues we have an interest here.

2 And I would urge that, even if it's a week  
3 before, even if you move the deposition up -- and I'm  
4 not suggesting that that's what CSX would want.  
5 Again, I leave that to you and the other parties to  
6 work out.

7 It's not clear to me why that issue  
8 couldn't be taken up at next Thursday's discovery  
9 conference, the 29th. And you would have an  
10 opportunity to hear from us as well as the other  
11 parties as to why it's not appropriate under the  
12 circumstances to require a deponent to bring a  
13 document to a deposition, particularly in light of  
14 your ruling, Your Honor, that Eighty-Four Mine and the  
15 other commenters.

16 And indeed even at this stage, even the  
17 responsive applicants while they might be entitled to  
18 depositions, they're not entitled to written  
19 discovery. This is an end run around that. And we'd  
20 like an opportunity to be fully heard on that issue  
21 next week.

22 MR. BERCOVICI: Your Honor?

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1 JUDGE LEVENTHAL: Well, with regard to the  
2 issue of notice, when Mr. Bercovici called my office,  
3 I'm sure that -- and Ms. Schmidt advised him -- at  
4 least I was told that she did -- that if the parties  
5 agree, I would hear the argument this morning. If  
6 they don't agree, then you have to abide by the notice  
7 requirement of our rules. Isn't that so, Mr.  
8 Bercovici?

9 MR. BERCOVICI: Indeed it is, Your Honor.  
10 And I called Ms. Bruce and asked her. My concern was  
11 simply to get this before you as quickly as possible  
12 as what we viewed as a simple issue.

13 And in terms of the convenience of the  
14 witness and NS, we wanted to have as much lead time as  
15 possible in terms of any order that you may issue this  
16 morning responsive to our request.

17 I apologize to Mr. Harker. We've got an  
18 automatic fax server. I don't know why he hasn't  
19 gotten a copy. This went out yesterday midday. And  
20 certainly I would have expected it to have been there.

21 I did talk to Ms. Bruce yesterday, and she  
22 said that she had no objection to being here this

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1 morning.

2 And as far as the document is concerned,  
3 our request is very limited. It is a document that he  
4 testifies about. We're not asking for the documents  
5 --

6 JUDGE LEVENTHAL: We're going into merits  
7 now. We have a procedural question.

8 MR. NORTON: Your Honor, if I might?

9 JUDGE LEVENTHAL: We'll get to you, Ms.  
10 Bruce.

11 MR. NORTON: I think I want to --

12 JUDGE LEVENTHAL: In order for me to  
13 clarify the record, during our long tenure together,  
14 my policy has always been to stick to our rules unless  
15 the parties agree to waive them.

16 And, as you know, I've been very flexible.  
17 If you agree to come before me, I take you with or  
18 without notice. And that was my understanding that  
19 notice was waived. Of course, it was between  
20 Eighty-Four and NS.

21 MS. BRUCE: Yes, Your Honor, it was.

22 JUDGE LEVENTHAL: So we'll only hear their

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1 argument if that's where we --

2 MR. NORTON: And that relates to the  
3 question of the timing of the deposition, in which I  
4 think NS is really the only involved party. It's the  
5 document request that broadens it, as to which neither  
6 CSX nor Conrail has waived.

7 That puts us exactly in the situation that  
8 we were in with respect to EJE, as you'll recall, when  
9 there was insufficient notice. And Your Honor ruled,  
10 quite properly, that under the guidelines, the matter  
11 had to be heard later.

12 And there are substantial issues, as Mr.  
13 Harker indicates. So as to the consistency of this  
14 request with your ruling on the request for  
15 interrogatories and documents --

16 JUDGE LEVENTHAL: Well, let's see how NS  
17 feels about it. Ms. Bruce, are you prepared to argue  
18 the entire motion?

19 MS. BRUCE: Well, Your Honor, when Mr.  
20 Bercovici contacted our office yesterday, I did agree  
21 to waive the notice requirement as to NS only, not  
22 realizing the implication that it would have for CSX

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1 and Conrail as far as the document request.

2 And if you were to hear argument on the  
3 issue of the timing of the deposition, I would think  
4 it would be feasible for us to also go ahead and argue  
5 the issue at a later date within an acceptable time  
6 frame to everyone.

7 I mean, I did not realize the implication  
8 of the document request to CSX and Conrail, in all  
9 honesty.

10 JUDGE LEVENTHAL: All right. Without  
11 hearing further argument on the merits, let me just  
12 give you some observations. And then we'll deal with  
13 the issues that have been raised.

14 In our last session which dealt with  
15 Eighty-Four Mining Company, I ruled they weren't  
16 entitled to have written interrogatories at this stage  
17 of the proceeding. However, I ruled at that time that  
18 they could take depositions of a witness.

19 I was sort of surprised when I saw appeals  
20 by both sides because I thought there was no question  
21 or there was no argument raised against their taking  
22 of a deposition. So I was sort of surprised to find

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1 the appeal. But I don't object to your appealing from  
2 any ruling that I may make.

3 I have to tell you that off the cuff  
4 before I hear argument and before we deal with the  
5 issue of notice, in my long experience, I don't know  
6 of any rule that doesn't permit the parties seeking to  
7 take a deposition to require the witness to bring with  
8 him or her documents. I know of no rule that  
9 prohibits that.

10 I realize you're not prepared to argue the  
11 merits, but I think you're going to have a tough time  
12 convincing me otherwise. And if you really want the  
13 time, I have to give you time pursuant to our  
14 guidelines.

15 MR. NORTON: Your Honor, our copy shows  
16 the fax received at sometimes after 4:00 o'clock  
17 yesterday. I didn't get it until sometime after that.  
18 So I haven't had a chance to look at it or think about  
19 it sufficiently either.

20 JUDGE LEVENTHAL: All right.

21 MR. NORTON: But I do know one thing.  
22 Under the Federal Rules of Civil Procedures, if you

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1 want a witness in certain categories to bring a  
2 document to a deposition, you have to have a subpoena.

3 I don't think there's anything in the  
4 Board's rules for depositions that provides for  
5 bringing documents to depositions without a request  
6 for production in the ordinary course.

7 JUDGE LEVENTHAL: I think that's what  
8 we've been following during the course of this  
9 proceeding, haven't we?

10 MR. NORTON: Yes.

11 JUDGE LEVENTHAL: Do you mean that you  
12 require --

13 MR. NORTON: The first time --

14 JUDGE LEVENTHAL: -- the other party to  
15 file a subpoena duces tecum?

16 MR. NORTON: No, no, no.

17 MS. BRUCE: No, no.

18 MR. NORTON: You don't need a subpoena.  
19 You need a written document request to get documents.  
20 That's the only way you can get documents.

21 Now, I don't know that there have been any  
22 instances where people have asked for documents to be

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1 brought to a deposition and they have been provided  
2 voluntarily, but there certainly has been no issue  
3 raised before that has established that there is a  
4 right to require documents to be produced at a  
5 deposition. And that's a distinction that is I think  
6 clear in the rules.

7 JUDGE LEVENTHAL: All right. Well, let's  
8 go off the record.

9 (Whereupon, the foregoing matter went off  
10 the record at 9:48 a.m. and went back on  
11 the record at 9:56 a.m.)

12 JUDGE LEVENTHAL: Back on the record. In  
13 our off-the-record discussion, I attempted to see if  
14 I could obtain an amicable resolution of this dispute.  
15 And I failed totally to have the parties reach any  
16 agreement whatsoever.

17 Anybody wish to add anything to what we  
18 said off the record?

19 (No response.)

20 JUDGE LEVENTHAL: Mr. Harker and Mr.  
21 Norton have made a strong representation that they're  
22 not willing to waive the notice requirement of our

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1 guidelines. So I have to rule that you'd have to come  
2 back next week to argue over when and if you serve  
3 notices of deposition on them, whether or not they  
4 would have to bring documents with them.

5 That's really not before me this morning.  
6 There's no demand made of Conrail or CSX, is there?  
7 Are you going to produce a witness for deposition, Mr.  
8 Harker?

9 MR. HARKER: If a witness is noticed and  
10 --

11 JUDGE LEVENTHAL: There is no notice now?

12 MR. HARKER: That is correct.

13 JUDGE LEVENTHAL: And Mr. Norton?

14 MR. NORTON: That's correct.

15 JUDGE LEVENTHAL: Then what are you  
16 concerned about? Maybe there won't be any notice for  
17 you to bring --

18 MR. NORTON: Well, it's our understanding  
19 that NS is taking the same position. And we share a  
20 common interest as applicants in that issue because it  
21 may well come up in other depositions if we don't  
22 prevail in our appeal, if NS doesn't prevail in its

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1 appeal.

2 MR. HARKER: We certainly understand your  
3 views, Your Honor, that you looked at past rulings in  
4 this case for precedent. You found it all along.  
5 We've always supported you in doing that. And our  
6 concern is that were you to rule here that NS was  
7 required to bring a document to a deposition, that  
8 that would be cited against us and used as precedent  
9 against us if the issue should come up.

10 You've ordered us to produce witnesses for  
11 depositions. I've been told by counsel for at least  
12 one that he will notice the deposition depending on  
13 the outcome of the appeal.

14 Actually, I've been told that by and we  
15 have received notice from another party noticing a  
16 deposition, which we moved to quash and which we've  
17 put off pending the outcome of the appeal. But  
18 depending on how the appeal comes out, we could be  
19 facing that issue.

20 JUDGE LEVENTHAL: All right. Do you have  
21 any answer to that, counsel?

22 MR. BERCOVICI: Your Honor, as I said

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1 before, reading from the Procedural Order 6, "On each  
2 evidentiary filing, the filing party will place all"  
3 --

4 JUDGE LEVENTHAL: We're dealing now with  
5 notice only. They're saying they have an interest in  
6 this argument this morning. And they're correct.  
7 Whatever ruling I make would apply to any future  
8 notices to take depositions.

9 MR. BERCOVICI: Well, I --

10 JUDGE LEVENTHAL: Let me finish.

11 MR. BERCOVICI: Your Honor, I believe  
12 there are alternative grounds for granting our request  
13 even this morning. If necessary, we'll come back next  
14 week.

15 But the alternative grounds, as I said,  
16 are the procedural order, which states that "Upon  
17 filing, the party will place all documents relevant to  
18 the filing in a depository open to all parties." And  
19 this is clearly a document relevant to the filing  
20 because the witness refers to it. And it's not in the  
21 depository.

22 If they comply with the procedural order

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1 that the Board issued, that would certainly satisfy  
2 and move the issue of the request to bring documents  
3 to the deposition.

4 JUDGE LEVENTHAL: Ms. Bruce?

5 MS. BRUCE: Well, Your Honor, again, we're  
6 taking the position that although Mr. Mohan refers to  
7 the arrangement, he never saw the document. He didn't  
8 rely upon the document. And, therefore, we're not  
9 under an obligation either to put it in the depository  
10 or to make it available upon request of a deposing  
11 party.

12 And Mr. Mohan has previously testified in  
13 his November deposition that he never saw that that  
14 was beyond his responsibility to actually sit down and  
15 review the document. He understands the operational  
16 aspects of it.

17 And NS submits that if Eighty-Four Mining  
18 or any other party to the proceeding wishes to  
19 question him on the extent of his knowledge as to the  
20 operational effect of that agreement, they are free to  
21 because there are other aspects of the agreement that  
22 are irrelevant to the movement of traffic of the

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1 haulage by CP and the haulage agreement between CP and  
2 NS. And there would be no reason to go into those  
3 aspects of the agreement.

4 What Mr. Mohan testified to was a discrete  
5 traffic movement. And that's his knowledge of the  
6 agreement.

7 JUDGE LEVENTHAL: Is that your interest,  
8 Mr. Bercovici?

9 MR. BERCOVICI: We've not interested in  
10 anything beyond what Ms. Bruce described as "discrete  
11 traffic movement." We're not interested in the other  
12 parts of the agreement. And no, that's not referenced  
13 in his statement.

14 JUDGE LEVENTHAL: Well, then why can't you  
15 put in just those parts of the agreement that he has  
16 relied upon?

17 MS. BRUCE: That are referenced  
18 specifically in his --

19 JUDGE LEVENTHAL: Testimony.

20 MS. BRUCE: In his testimony?

21 JUDGE LEVENTHAL: Yes.

22 MS. BRUCE: Specifically that traffic will



1 move Albany, Binghamton, whatever? They only go to  
2 movement.

3 JUDGE LEVENTHAL: That's what you're  
4 saying is what you wanted?

5 MR. BERCOVICI: Yes, Your Honor. That's  
6 what he testified to, and that's what we're interested  
7 in seeing. We're not interested in the rest of the  
8 document.

9 JUDGE LEVENTHAL: It seems to me that  
10 you're obligated to do that, Ms. Bruce.

11 MS. BRUCE: And you would so rule?

12 JUDGE LEVENTHAL: It appears clear to me.  
13 Well, maybe we can resolve this whole matter.

14 MS. BRUCE: Could I?

15 JUDGE LEVENTHAL: Yes.

16 (Pause.)

17 MS. BRUCE: Your Honor, I guess what we  
18 could agree to do is keep the deposition or the date  
19 that we said, the 19th or 20th, at your choosing.

20 And then we would re-put in the cover  
21 sheet, which is already in the depository. And  
22 there's a term sheet that discusses that part of the

1 letter agreement that refers to the CP haulage in New  
2 York. And we would redact out everything except the  
3 part of the agreement that refers to the movement of  
4 traffic in New York.

5 MR. BERCOVICI: I'm not sure what Ms.  
6 Bruce is referring to in terms of the term sheet if  
7 it's the agreement --

8 MS. BRUCE: It's a letter that attaches  
9 what it calls "term sheets." Just for your knowledge,  
10 the term sheets that are attached, every point that's  
11 in the letter agreement, there's a term sheet that's  
12 attached.

13 What's in the depository now is the term  
14 sheet for the movement in Detroit and Kalamazoo  
15 because that was an interest that Amtrak had. And  
16 that's in the highly redacted form also.

17 MR. BERCOVICI: Is that the agreement  
18 itself? The term sheet, is that a part of the  
19 agreement with regard to this --

20 MS. BRUCE: There's a term sheet attached  
21 to that letter that describes the CP haulage in New  
22 York.

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1 JUDGE LEVENTHAL: And that's part of the  
2 agreement?

3 MS. BRUCE: And that's part of it. What's  
4 in the depository is the cover letter agreement that  
5 outlines what will be set in the term sheets. And the  
6 only term sheet that's in the depository is the  
7 Michigan to Kalamazoo, which was produced in redacted  
8 form with the agreement of Amtrak and CP in response  
9 to one of their discovery requests.

10 so what we would put in would be that part  
11 of the term sheet that dealt with the movement of  
12 traffic in New York State and only that part. We  
13 would redact out all the other parts of that term  
14 sheet. There are separate term sheets.

15 MR. BERCOVICI: If that's the agreement  
16 and, as I said, that deals with this issue, that  
17 satisfies me. I don't need to see it.

18 JUDGE LEVENTHAL: All right.

19 MS. BRUCE: I mean, it picks up on Mr.  
20 Mohan's description in his rebuttal verified statement  
21 and also his original description that laid out that  
22 there was an agreement between CP and NS to cover New

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1 York State.

2 JUDGE LEVENTHAL: All right. With that  
3 agreement, if we set the deposition for the 19th of  
4 February, does that satisfy your motion?

5 MR. BERCOVICI: It does, Your Honor, if  
6 that's the only date that Mr. Mohan is available.

7 I would like to clarify again on the  
8 record while we're here today. Ms. Bruce said that  
9 Mr. Mohan had not seen the agreement, that he had  
10 understandings of it. Off the record, I believe she  
11 said that those understandings came from Norfolk  
12 Southern's personnel. And I would just like to  
13 confirm that on the record.

14 MS. BRUCE: Yes. He has not seen the  
15 agreement. He was told about the agreement in  
16 preparation of the operating plan and the application.  
17 And he has never seen the agreement or reviewed it.

18 In fact, he testified in his November 19th  
19 hearing [sic.] that he had not seen the agreement,  
20 that that wasn't part of his responsibility to review  
21 the whole agreement.

22 JUDGE LEVENTHAL: All right?

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1 MR. BERCOVICI: Thank you.

2 JUDGE LEVENTHAL: All right. Then we have  
3 no problem with time and place; right?

4 MS. BRUCE: We'll work out the 19th or the  
5 20th, whatever.

6 MR. BERCOVICI: We'll make the  
7 accommodations between ourselves.

8 JUDGE LEVENTHAL: Very well. Then so  
9 ordered.

10 Anything else before us this morning?

11 MS. BRUCE: No, Your Honor.

12 MR. BERCOVICI: Not this morning, Your  
13 Honor.

14 JUDGE LEVENTHAL: Now we have not this  
15 morning scheduled anything for next Thursday, have we?

16 MS. BRUCE: No. No, Your Honor.

17 MR. HARKER: I don't believe so.

18 JUDGE LEVENTHAL: And if there is any  
19 argument for next Thursday, we follow the usual  
20 procedures.

21 MS. BRUCE: Yes.

22 JUDGE LEVENTHAL: Now off the record.

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1 (Whereupon, the foregoing matter went off  
2 the record at 10:07 a.m. and went back on  
3 the record at 10:08 a.m.)

4 JUDGE LEVENTHAL: Discovery conference  
5 stands closed.

6 (Whereupon, the foregoing matter was  
7 concluded at 10:08 a.m.)  
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