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BEFORE THE
ILLINOIS COMMERCE COMMISSION

THE DEPARTMENT OF TRANSPORTATION) DOCKET NO.
OF THE STATE OF ILLINOIS, for and) T09-0018
on behalf of the People of the)
State of Illinois,)
Petitioner,)
v.)
THE KANSAS CITY SOUTHERN RAILROAD)
COMPANY and the UNION PACIFIC)
RAILROAD COMPANY,)
Respondents.)

Petition to construct FAP Route)
310(ILL Route 255) near the)
Village of Godfrey, Madison)
County, Illinois, and to construct)
two grade separation structures to)
carry ILL Route 255 over and)
across the Respondents' mainline)
tracks at approximate UP milepost)
251.5)

Springfield, Illinois
Thursday, March 12, 2009

Met, pursuant to notice, at 1:00 p.m.

BEFORE:

MR. DEAN JACKSON, Administrative Law Judge

SULLIVAN REPORTING COMPANY, by
Carla J. Boehl, Reporter
Lic. #084-002710

1 APPEARANCES :

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5 (Appearing on behalf of the
Illinois Department of
6 Transportation)

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10 (Appearing on behalf of Kansas
City Southern Railroad Company)

11 MR. JOE VON DE BUR
12 Railroad Safety Specialist
527 East Capitol Avenue
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14 (Appearing on behalf of the
15 Illinois Commerce Commission)

16 MR. ROY FARWELL
Corporate Counsel
17 100 North Broadway, Room 5200
St. Louis, Missouri
18 Ph. 314/331-0566

19 (Appearing on behalf of the
20 Union Pacific Railroad

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
KIRK BROWN				
By Mr. Parrish	5			
By Mr. Jeffery		19		33
By Mr. Farwell		28		36
By Judge Jackson		29		35
WILLIAM J. FLEIS				
By Mr. Jeffery	37			
By Mr. Farwell		77		
By Mr. Von De Bur		83		86
By Mr. Parrish		84		

EXHIBITS

	<u>MARKED</u>	<u>ADMITTED</u>
IDOT Group 1	10	32
IDOT 2	11	32
IDOT 3	13	Reserved
KCS 1	42	76
KCS 2	46	76
KCS 3	48	76
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KCS 5	62	76
KCS 6	62	76
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PROCEEDINGS

JUDGE JACKSON: Pursuant to the authority vested in me by the Illinois Commerce Commission and the State of Illinois, I will call Docket Number T09-0018 for hearing. This is a petition filed by IDOT that involves Kansas City Southern and Union Pacific Railroad.

Appearances, please. Mr. Parrish?

MR. PARRISH: For IDOT, Lawrence Parrish, Office of Chief Counsel. My address is 300 West Adams, 2nd Floor, Chicago, Illinois 60606, and my telephone number is (312) 793-5737.

JUDGE JACKSON: Thank you. Mr. Jeffery?

MR. JEFFERY: For KSC, Steven Jeffery, Thompson Coburn, One US Bank Plaza, Suite 3200, St. Louis, Missouri 63101, telephone number (314) 552-6229.

JUDGE JACKSON: Mr. Farwell and Union Pacific.

MR. FARWELL: Roy Farwell, F-A-R-W-E-L-L, 100 North Broadway, Room 5200, telephone number (314) 331-0566, representing the Union Pacific Railroad.

JUDGE JACKSON: Mr. Von De Bur?

1 title?

2 A. I work for the Illinois Department of
3 Transportation as a project support engineer.

4 Q. Please provide your educational background
5 and include any professional degrees you hold.

6 A. I have a Bachelor of Science from Southern
7 University, Baton Rouge, Louisiana, and I am a
8 licensed professional engineer in the state of
9 Illinois.

10 Q. And what are your job responsibilities with
11 IDOT?

12 A. I manage the project support section which
13 encompasses railroads, utilities and local agency
14 agreements and are true base through areas involved
15 in projects.

16 Q. Are you familiar with the petition that was
17 filed by IDOT?

18 A. Yes.

19 Q. And what is your role in terms of the
20 project that is described in the petition?

21 A. I'm a liaison between our design team and
22 the railroads to make sure that the railroads'

1 concerns are addressed after we make our plan and
2 also that the designers have the information that
3 they need.

4 Q. Can you briefly describe what is the
5 subject of this petition?

6 A. Yes, this is dual structures proposed over
7 Illinois Rural Route 255 in Godfrey bridging the
8 Kansas City Southern and Union Pacific railroad
9 tracks.

10 Q. And you said this involves dual structures?

11 A. Yes, it does.

12 Q. Is that two grade separation structures?

13 A. Yes, it is.

14 Q. And in your opinion and in the opinion of
15 the Department is this project important to the state
16 and its citizens?

17 A. It is an important project, yes.

18 Q. And why is that so?

19 A. It is in a growing area and it ties into
20 several projects that we have to get Illinois 255 on
21 up past north of Jerseyville, Illinois.

22 Q. Is there a current estimate of how long

1 this project will take place once it is initiated?

2 A. I don't have the exact number. I believe
3 the estimate is two construction seasons.

4 Q. And what is the current estimate of the
5 total cost of this project, do you know?

6 A. It is \$6.7 million.

7 Q. What entity is responsible for payment of
8 the costs regarding this project?

9 A. IDOT is.

10 Q. And what is the funding source of this
11 project?

12 A. It is from federal funds.

13 Q. Now, this project involving grade
14 separations, it also involves the two separate
15 railroads, does it not?

16 A. Yes.

17 Q. And can you explain to the Commission how
18 those two separate railroads are involved in this
19 project?

20 A. There are three contiguous railroad lines
21 going beneath the structure as it is proposed. The
22 two lines to the east, as I understand it, are owned

1 solely by Union Pacific. The third to the west is
2 owned solely by KCS, and then there is a fourth that
3 ties into the southern project limits, what I would
4 call the spur rail or spur track that connects into
5 that third that I understand is jointly owned by
6 Union Pacific and KCS.

7 Q. And has IDOT had communications with both
8 railroads regarding this project?

9 A. Yes, it has.

10 Q. Do you have any recollection of when the
11 first communication took place regarding this
12 project?

13 A. I would say prior to 2003.

14 Q. 2003?

15 A. Yes.

16 Q. And has there been any objection by either
17 railroad regarding the terms and conditions of this
18 project?

19 A. There have been engineering issues that
20 were objected to, yes.

21 Q. And they were objected to by both or just
22 one?

1 Q. As far as you know has Union Pacific given
2 any revisions or offered any comments or
3 modifications to the plans that you have proposed?

4 A. I don't know that they have offered
5 revisions. I know that that coordination was done
6 prior to my being in this position. But approval of
7 the type, size and location plans was given by Union
8 Pacific prior to my taking this position.

9 (Whereupon IDOT Exhibit 2 was
10 presented for purposes of
11 identification as of this date.)

12 Q. I show you what's been marked as
13 Petitioner's Exhibit Number 2 which is also attached
14 to and part of the original filing. Do you recognize
15 that document?

16 A. Yes, this is the agreement.

17 Q. And this agreement is between IDOT and what
18 party?

19 A. This is a joint agreement between Union
20 Pacific, Kansas City and IDOT.

21 Q. For the purpose of this project?

22 A. Yes.

1 Q. Would you turn to the signature page of
2 this agreement? I believe it is the second page or
3 the third from the back. And is this an executed
4 agreement?

5 A. No, it is not.

6 Q. Do you have any idea why the agreement has
7 not been executed?

8 A. No. To my knowledge Union Pacific did make
9 comments and all of those were addressed in the
10 agreement and then it was sent to Kansas City
11 Southern and it was never signed or commented on.

12 Q. Do you know when it was sent to Kansas City
13 Southern?

14 A. Approximately September of 2008.

15 Q. And you have received no response from
16 Kansas City Southern since that time?

17 A. No.

18 Q. Regarding the agreement?

19 A. No.

20 Q. In your view do you know what the main
21 issues are that Kansas City might have with this
22 agreement?

1 A. Yes, I believe the main issue that Kansas
2 City Southern would have is that there was not room
3 provided in this structure for an additional rail
4 line to be placed in the future.

5 Q. And as far as you know does that remain the
6 issue?

7 A. That is still the issue, yes.

8 Q. You mentioned earlier about an issue
9 regarding vertical clearance?

10 A. Yes.

11 Q. That issue was brought up by Kansas City
12 Southern?

13 A. It was.

14 Q. Was that issue addressed?

15 A. Yes. We did not change our design. Kansas
16 City Southern sent back documentation saying that
17 they would accept the footage clearance.

18 (Whereupon IDOT Exhibit 3 was
19 presented for purposes of
20 identification as of this date.)

21 Q. I will show you what's been marked
22 Petitioner's Exhibit Number 3. And ask if you --

1 JUDGE JACKSON: All right. Why don't you
2 continue with your questions?

3 MR. PARRISH: Very good.

4 MR. JEFFERY: Your Honor, I would renew my
5 objections. Can I make a record for that?

6 JUDGE JACKSON: Yes, sure, absolutely.

7 MR. JEFFERY: We object to any ongoing
8 reference to the 2005 correspondence. Under
9 Commission's Rule 200.680, basically the document is,
10 quote, irrelevant and immaterial. As Your Honor
11 knows, relevancy in this case is framed by the issues
12 raised by IDOT in their petition. Clearly, on its
13 face Group Exhibit 1 attached to the petition is a
14 set of plans. On its face it says September 2008.
15 It was these plans which were transmitted to KCS in
16 an e-mail on November 12, 2008, requesting KCS,
17 quote, we appreciate an expeditious and thorough
18 review in order to try to meet our letting deadline.
19 And it was to these documents that KCS provided a
20 comprehensive response, which we will go into later.
21 That being the case, since the issues
22 framed by IDOT relate to these September 2008 plans,

1 how is a document from 2005 either relevant or
2 material to the issues which IDOT itself has framed?
3 And on the basis of that, we object to any reference
4 to that correspondence.

5 JUDGE JACKSON: All right. A good objection,
6 but I am going to let him continue with the
7 questioning and take the ruling under advisement.

8 Thank you. Continue.

9 BY MR. PARRISH:

10 Q. Very good. Mr. Brown, I show you what's
11 been marked Petitioner's Exhibit Number 3 and ask if
12 you recognize that document.

13 A. I do.

14 Q. And what is that document?

15 A. This is a letter from Kansas City Southern
16 stating that they do not completely agree with the
17 planned vertical clearance, but they would grant a
18 one-time variance.

19 Q. And had the vertical clearance been an
20 issue with Kansas City Southern during the formation
21 of this project?

22 A. My understanding is that it had been and

1 that this was a letter that resolved that issue.

2 Q. Thank you. Can you please describe what
3 you believe to be the relative positions of IDOT and
4 Kansas City Southern that remain issues between the
5 parties as far as this project is concerned?

6 A. My understanding is that Kansas City
7 Southern has objected to the basic scope of the
8 project that would have been included in the type,
9 size and location plans, that they feel that we have
10 not received approval of those plans and they feel
11 that additional space should have been included for
12 an additional track.

13 Q. So IDOT has sent the type, size and
14 location plans to Kansas City Southern as far as you
15 know?

16 A. Yes, we have.

17 Q. Do you know when that was done?

18 A. It was originally done in 2003. Several
19 requests were made after that for responses, and the
20 summation of those responses were in the 2005 letter.
21 Since -- more recently we did send more plans. I
22 identified them as type, size and location plans but

1 more accurately they were just prefiled plans. That
2 was last fall. And so, yes, that has been done.

3 Q. And I believe it was your earlier testimony
4 that this project was initiated on or about 2003?

5 A. Yes, yes.

6 Q. And there have been ongoing intermittent
7 discussions regarding the project since that time?

8 A. Yes, there have.

9 Q. And that there have been documents that
10 have gone back and forth in that period, correct?

11 A. There have, yes.

12 Q. And that the Petitioner's Group Exhibit
13 Number 1 which was appended to the complaint is
14 merely the latest -- the latest manifestations of
15 those plans, is that correct?

16 A. It is, yes.

17 Q. Is it your -- and as things stand now,
18 there has been no response from Kansas City Southern
19 Railroad regarding the agreement that was previously
20 sent to them, is that correct?

21 A. That is correct.

22 Q. Now, did IDOT send those plans to Kansas

1 City Southern Railroad or were they communicated by
2 some other entity?

3 A. IDOT sent them.

4 Q. And is it your recommendation that the
5 Commission require Kansas City Southern Railroad to
6 execute and comply with the terms and conditions of
7 the agreement that was sent, as part of the
8 Commission's overall approval of this project?

9 A. Yes.

10 MR. PARRISH: I have no further questions.

11 JUDGE JACKSON: Mr. Jeffery?

12 MR. JEFFERY: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MR. JEFFERY:

15 Q. Mr. Brown, I would like to direct your
16 attention to, I believe it is marked, Exhibit Number
17 3, the 2005 letter. What was the date of the TS&L, I
18 guess, is the acronym or the set of plans that that
19 letter was in response to?

20 A. Is it okay if I look at my notes?

21 Q. Well, do you know off hand?

22 A. Off hand it was like maybe summer of 2003.

1 Q. Did you know that for a fact or --

2 A. I have seen correspondence in the file.
3 That's the only way I know. That preceded my being
4 in this spot, this position.

5 Q. When did you assume your position with
6 respect to this project?

7 A. April of 2006.

8 Q. Of 2006?

9 A. Yes.

10 Q. Who had your position before then?

11 A. Gwen Logemann.

12 Q. And where is Ms. Logemann? Is she
13 currently employed with IDOT?

14 A. She is, yes.

15 Q. In what office and in what capacity?

16 A. She is currently the Mississippi River
17 Bridge Coordinator -- Programmer, I am sorry, is her
18 actual title.

19 Q. Was she available to attend this hearing
20 today?

21 A. I don't know.

22 Q. Do you know of any reason why she couldn't

1 have been available to attend this hearing today?

2 A. I do not.

3 Q. I would like to direct your attention to
4 January 7, 2009. Did you attend any meetings that
5 day with KCS?

6 A. Yes.

7 Q. What was the nature of that meeting?

8 A. We met to discuss this project to see what
9 issues remained for KCS and they were prohibited from
10 signing this agreement.

11 Q. How did that meeting come to be arranged?

12 A. There were a series of attempted -- by
13 e-mail both from central office and myself, we
14 attempted to contact various parties at KCS to ask if
15 they had any issues with the agreement, to find out
16 what those were. And out of that back and forth we
17 decided to have a meeting. I don't recall who
18 initiated the meeting.

19 Q. Could it have been KCS, a request from me
20 to you to set up the meeting?

21 A. It could have, yes.

22 Q. You just don't recall?

1 A. Not off hand, no.

2 Q. Do you recall on November 7, 2008, six
3 weeks or so prior to that meeting, transmitting a set
4 of TS&L for this project to KCS?

5 A. I do, on or about that time, yes.

6 Q. What did you do to do that?

7 A. I am sorry?

8 Q. What did you do to accomplish that?

9 A. To accomplish that?

10 Q. Yes. I mean, what happened on or about
11 November 12? What did you do?

12 A. I scanned in the project documents and
13 transmitted them.

14 Q. Who did you send those to, do you recall?

15 A. No, I don't recall off hand.

16 Q. Did you ever get -- and was it fair to say
17 in your e-mail you requested a thorough and
18 expeditious review of those plans?

19 A. That was not my wording. That actually
20 came from central office, I do recall.

21 Q. But that was the nature of the request made
22 to KCS?

1 A. It was, yes.

2 Q. Did KCS ever provide a response to that
3 e-mail? In other words, did you receive like for
4 example a list of 20 questions or 20 issues?

5 A. Not -- as I recall, not until after a
6 meeting date had been set. Now that you mention it,
7 I do believe that KCS requested the meeting. And
8 then we had several attempts to find out what you
9 guys wanted to discuss at the meeting, to be honest.
10 And then shortly prior to the meeting KCS did provide
11 a list of what the design issues were.

12 Q. And were those issues discussed at the
13 meeting?

14 A. They were, yes.

15 Q. Who all attended the meeting, do you
16 recall?

17 A. As I recall, yourself, Dave Reeves, Paul
18 Fetterman who was with KCS.

19 Q. Who attended for IDOT?

20 A. For IDOT I did. We had one of our SAAG
21 legal counsel who was -- Stan Morris was his name.
22 Not our consultant but our designer who is working

1 with our consultants, Art Waltfield (sp). My
2 supervisor who is the project support engineer Jeff
3 Keirn, and we had a land act representative who I
4 believe was Mike Mylar (sp).

5 Q. You mentioned an outside consultant. Was
6 an outside consultant used by IDOT for you to develop
7 these drawings?

8 A. Yes.

9 Q. Who was that?

10 A. Klingner.

11 Q. How do you spell that?

12 A. K-L-I-N-G-N-E-R.

13 Q. What was Klingner's role with respect to
14 the project?

15 A. They were to develop the plans.

16 Q. Did they have any subs for anything?

17 A. Not to my knowledge. That's more than I --

18 Q. To your knowledge did IDOT use any other
19 contractors on this project, for example to do
20 utility work?

21 A. In the development of the plans?

22 Q. Or any aspect of the project up to this

1 date?

2 A. Not for the design, no. The utilities are
3 a separate entity.

4 Q. Do you have any knowledge about any outside
5 contractors or consultants being used by IDOT to deal
6 with the utility issues?

7 A. Yes, I do.

8 Q. Who is -- what do you know?

9 A. I would say we have, let's see, Oates and
10 Associates is one of the consultants we have
11 currently under contract to help us. We have them as
12 a utility coordination consultant, but it is not from
13 our design unit. It is a completely different shop
14 than us that do the utilities.

15 Q. What are Oates and Company?

16 A. Oates and Associates.

17 Q. How do you spell Oates, do you know?

18 A. O-A-T-E-S.

19 Q. Where are they located?

20 A. They have an office in Collinsville.

21 Q. And what is their specific function with
22 respect to this project?

1 A. They will be utility coordinators to make
2 sure that the utilities that are in the areas are
3 included in the plans, that basically that the design
4 team is aware that the utilities are there and that
5 we can coordinate any moves, if necessary.

6 Q. Thank you. Going back to the January 7
7 meeting, was there in your opinion a discussion of
8 the issues which KCS had provided?

9 A. Yes, there was.

10 Q. Was there any resolution at the meeting
11 with respect to any of those issues?

12 A. Yes, several issues were resolved at the
13 meet.

14 Q. Would it be fair to say there were a few
15 issues which weren't resolved at the meeting?

16 A. Yes.

17 Q. What issues were not resolved, if you
18 recall?

19 A. There were only, as I recall, maybe two but
20 the most significant one was the fact that there was
21 no provision for an additional track of KCS.

22 Q. Did you ever -- did IDOT ever receive any

1 additional information from KCS concerning the
2 potential for adding an additional track?

3 A. Do you mean subsequent to the meeting?

4 Q. Yeah, subsequent to the meeting.

5 A. Yes, we did, recently.

6 Q. For example, on February 13 I believe you
7 received a packet with a letter and a drawing?

8 A. We did, yes.

9 Q. What did the letter and the drawing consist
10 of, if you recall?

11 A. It was a revision to our design posed by
12 KCS to, instead of presenting the slope wall as we
13 currently have it, they proposed on that side to have
14 a retaining wall and then leave room for an
15 additional KCS track.

16 Q. Has IDOT had the opportunity to review and
17 provide comments back to KCS concerning that?

18 A. It has been reviewed. We have not had an
19 opportunity to reply to it.

20 Q. Do you anticipate IDOT making a reply?

21 A. Yes, I do.

22 Q. If so, when?

1 A. I would anticipate within the next three
2 weeks.

3 JUDGE JACKSON: How many weeks?

4 A. Three.

5 Q. Do you have any information that's
6 available as to what the reply could consist of?

7 A. I don't believe the reply will be favorable
8 only because of basically the issues that were aired
9 at the meeting is that we believe that KCS did in
10 fact approve the type, size and location plans as
11 early as 2005 and the design was completed based on
12 those and that thereby no revisions to the plans
13 would be necessary for an additional track.

14 MR. JEFFERY: I think that's all I have right
15 now.

16 JUDGE JACKSON: Thank you. Mr. Farwell?

17 MR. FARWELL: Just one clarifying thing.

18 CROSS EXAMINATION

19 BY MR. FARWELL:

20 Q. This bridge is for a brand new road, isn't
21 it? There is no existing road already there; this is
22 replacing a grade crossing or something like that?

1 A. This is for a new route, yes.

2 JUDGE JACKSON: I am sorry, what was the
3 answer?

4 A. Yes, this is for a new roadway.

5 MR. FARWELL: That's all I have.

6 JUDGE JACKSON: Thank you. Mr. Von De Bur?

7 MR. VON DE BUR: I have no questions, Your
8 Honor.

9 JUDGE JACKSON: I have a couple.

10 EXAMINATION

11 BY JUDGE JACKSON:

12 Q. Is the -- are the federal funds, \$6.7
13 million project costs, at risk beyond fiscal year
14 2009?

15 A. Yes, they are.

16 Q. So the letting would preferably occur
17 before June 30, 2009, or the funds would be lost?

18 A. Yes. Well, it is tentatively scheduled for
19 June 30. We haven't looked at moving it up, but that
20 is the last day that we could let it and still retain
21 that funding source.

22 Q. If you know, from the January and February

1 meetings or discussions, has the issue of vertical
2 clearance been resolved?

3 A. Yes, I would say vertical clearance has
4 been resolved. That has not been contested. I
5 believe KCS has stuck with the conclusion of the July
6 2005 letter that they would accept the vertical
7 clearance.

8 Q. Again if you know, based on the January and
9 February meetings and discussions, have the utility
10 issues been resolved?

11 A. The utility issues have been addressed. We
12 have utilities that we know have to be moved. We are
13 in the process of completing agreements with some of
14 those utility companies. But as far as the State is
15 concerned, those issues are resolved.

16 Q. The major unresolved issue remains the
17 question of provision for an additional track?

18 A. Yes, sir.

19 Q. And that's the issue that IDOT has yet to
20 get back to the railroad, KCS, about, correct?

21 A. Yes, and reply to that letter.

22 Q. And you say three weeks?

1 A. Yes.

2 Q. Is there an issue of easements outstanding
3 in this case? In reading the petition I couldn't
4 tell.

5 MR. FARWELL: I can address that.

6 JUDGE JACKSON: Okay, sure.

7 MR. FARWELL: The railroads early on took the
8 position that, until the engineering details were
9 worked out, they didn't want to voluntarily provide
10 properties. IDOT went ahead and secured in a
11 separate earlier-filed proceeding condemnation
12 authority for the plans as they stood at that time.
13 And so that's kind of where we are right now.

14 JUDGE JACKSON: All right. So that issue isn't
15 in front of us here, correct?

16 MR. FARWELL: Right.

17 JUDGE JACKSON: Fair statement?

18 MR. FARWELL: Uh-huh.

19 JUDGE JACKSON: All right. Mr. Parrish, any
20 follow-up?

21 MR. PARRISH: Only, Judge, to ask for Group
22 Exhibit 1, Exhibit 2 and Exhibit 3 be entered into

1 the record.

2 JUDGE JACKSON: All right. Any objections to
3 Exhibit 1, the plan excerpts?

4 MR. JEFFERY: No.

5 MR. FARWELL: No, Your Honor.

6 JUDGE JACKSON: Exhibit Number 2, the draft
7 plan agreement, any objections?

8 MR. JEFFERY: No.

9 JUDGE JACKSON: You are still going to maintain
10 your objection on 3, I would assume?

11 MR. JEFFERY: Yes.

12 JUDGE JACKSON: I think we are going to keep
13 that under advisement. I think we are getting
14 together again in this case shortly after three weeks
15 is up. So I will keep that one under advisement.

16 (Whereupon IDOT Group Exhibit 1
17 and Exhibit 2 were admitted into
18 evidence.)

19 Any more witnesses in this?

20 MR. PARRISH: No, Judge, the Petitioner rests.

21 MR. JEFFERY: Your Honor, I did have a couple
22 follow-up questions in response to your questions.

1 JUDGE JACKSON: Sure, go ahead.

2 RE CROSS EXAMINATION

3 BY MR. JEFFERY:

4 Q. Mr. Brown, you testified concerning the
5 utility issues, that they had been resolved?

6 A. I would say, yeah, I would say from the
7 State's perspective they are resolved. We were
8 acquiring agreements with those utility companies.

9 Q. What were the utility issues that you are
10 referring to?

11 A. There are about four, I believe, fiber
12 optic lines that run parallel to the railroad tracks,
13 I believe, on the KCS side.

14 Q. Any other utility issues?

15 A. That I am aware of, not off hand. We do
16 have -- we have Oates and we have the utility section
17 that obviously does those, but I don't have a list of
18 any outstanding issues that have to be addressed.

19 Q. You indicated that these issues have been
20 resolved from the State's perspective. Do you know
21 when they were resolved? Like a month ago, two
22 months ago?

1 A. Earlier this month we had a meeting on site
2 regarding the fiber optic lines. The State's plan
3 was to put a retaining -- not a retaining wall, a
4 sheaf piling which is to project the location of the
5 closest fiber optic line to the railroads, and then
6 have it moved over. Through coordination of the
7 railroad at that meeting we decided that that is not
8 a viable option and the line might be abandoned in
9 place and moved further in place.

10 Q. The fiber optic line will have to be
11 abandoned?

12 A. The line closest to the tracks.

13 Q. Whose fiber optic line is that?

14 A. MCI.

15 Q. You say it is going to be moved to a
16 different location?

17 A. It is supposed to be moved farther away
18 from the tracks.

19 Q. What's the linear length of the amount of
20 fiber optic cable that is going to have to be
21 relocated, do you know?

22 A. I believe the number I heard was about 1800

1 feet?

2 Q. Do you have any idea what the cost is to
3 relocate fiber optic cable?

4 A. It is very expensive. I think probably one
5 estimate was \$30 a foot.

6 Q. I guess my next question is if you take \$30
7 a foot times 1800 feet.

8 JUDGE JACKSON: I went to law school on that.

9 Q. You should know that off the top of your
10 head?

11 SPEAKER: 54,000.

12 MR. JEFFERY: I have no other questions at this
13 point.

14 JUDGE JACKSON: Boy, that's awful low. I am
15 going to ask one more question real quick and then I
16 will give everyone else one more shot.

17 RE-EXAMINATION

18 BY JUDGE JACKSON:

19 Q. We were involved in a separate proceeding
20 this morning, T09-0015, a somewhat related project in
21 that they are both in Madison County, Godfrey,
22 Illinois. What distance -- give me an idea of where

1 this location is for the overpass compared to the
2 Route 111 work involved in the other case.

3 A. This location is slightly south and east of
4 the Illinois 111 project where it crosses or where
5 those structures cross over 111. And I would say it
6 is a distance of less than a mile.

7 JUDGE JACKSON: Thank you. Anyone else have
8 anything for Mr. Brown?

9 MR. JEFFERY: No, sir.

10 MR. FARWELL: I have a question on the funding
11 issue.

12 RE CROSS EXAMINATION

13 BY MR. FARWELL:

14 Q. I don't get involved in funding myself, but
15 your understanding is that if the letting doesn't
16 happen by June 30, that the funds are lost or that it
17 is just possible that they could be lost?

18 A. This project will not be able to go forward
19 on the federal funding. The plans are prepared, the
20 project is ready to be built, but if it cannot be
21 awarded in this fiscal year, then we would not have
22 that same funding source available.

1 MR. FARWELL: That's all.

2 JUDGE JACKSON: Thank you. All right.

3 Mr. Parrish, do you rest?

4 MR. PARRISH: Yes, Petitioner rests.

5 JUDGE JACKSON: Thank you. Mr. Jeffery,
6 anything for the railroad today?

7 MR. JEFFERY: Yes, we have a witness and some
8 documents.

9 JUDGE JACKSON: And your witness is here.

10 MR. JEFFERY: Yes, Mr. William Fleis.

11 (Whereupon the witness was duly
12 sworn by Judge Jackson.)

13 WILLIAM J. FLEIS

14 called as a witness on behalf of Kansas City Southern
15 Railroad, having been first duly sworn, was examined
16 and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. JEFFERY:

19 Q. For the record could you state your name
20 and address.

21 A. William Joseph Fleis, F-L-E-I-S. Home
22 address or business address?

1 Q. Business address is fine.

2 A. Design Nine Incorporated, 11166 Tesson
3 Ferry Road, Suite 100, St. Louis, Missouri 63123,
4 office number (314) 729-7600.

5 Q. Could you go over your educational
6 background?

7 A. I received a BS degree, a Bachelor of
8 Science Degree in civil engineering from the
9 University of Missouri at Rolla 1976.

10 Q. Could you go offer your employment history?

11 A. 1976 I was hired by the Missouri Pacific
12 Railroad. I worked in the construction department
13 for ten years until 1986, at which time with the
14 merger of the Union Pacific Railroad with the
15 Missouri Pacific Railroad I was part of a partnership
16 that formed Design Nine Incorporated. Since 1986
17 Design Nine Incorporated has performed engineering
18 services for railroads and related industries only.

19 Q. During the time you attended the University
20 of Missouri - Rolla did you co-op with any railroad?

21 A. Yes, I did, Missouri Pacific Railroad.
22 Since '72 through '76 I co-oped with them,

1 internshipped with them.

2 Q. And what basically did you do during those
3 periods of internships?

4 A. Engineering services with the railroads.
5 It would be railroad surveying, plan preparation,
6 document preparation related to railroads.

7 Q. During the period of time you were employed
8 by MoPac what was the nature of your job duties?

9 A. Design engineer. I worked in their
10 construction department designing projects, track
11 related projects, alignment, horizontal and vertical
12 alignments, document preparation with regard to
13 specifications, field surveys and project monitoring
14 of numerous construction projects ranging from auto
15 unloading facilities, trailer unloading facilities
16 and the like, and track projects, track-related
17 projects, track sidings, main lines, relocations.

18 Q. Have you ever had occasion to review
19 designs prepared by others for railroad overpasses or
20 highway overpasses?

21 A. Yes.

22 Q. Over railroads?

1 A. We presently are under contract with the
2 Kansas City Southern Railroad Company to perform
3 review of highway overpass projects as they relate to
4 their design guidelines. Kansas City Southern has
5 published guidelines for overpasses/underpasses
6 across their right-of-way.

7 Q. How many years of experience, of
8 professional experience, would you say that you have
9 in dealing with railroad design issues?

10 A. Well, I am not a professional engineer, so
11 I don't want to misinterpret that. But -- ask the
12 question again.

13 Q. How many years of experience do you have
14 dealing with railroad design issues?

15 A. Since my full time employment in 1976.

16 Q. Which is over 30 -- almost 33 years?

17 A. Thirty-three years, correct.

18 Q. Would you consider that knowledge and
19 experience you have specialized?

20 A. Yeah.

21 Q. Equivalent to what a normal civil engineer
22 would have or is it above and beyond that?

1 A. A civil engineering degree educates one on
2 all aspects of engineering in the civil field.
3 Unfortunately, most of our colleges do not offer
4 railroad related courses. There is a select few. A
5 general civil engineering degree, BS degree, does not
6 expose one to railroad engineering issues. But in my
7 time in doing railroad engineering services, I have
8 been exposed to numerous design issues, whether they
9 be track-related, facility-related and indicates a
10 review in overpasses for railroads.

11 MR. JEFFERY: Your Honor, at this point we
12 would offer Mr. Fleis as an expert in railroad design
13 issues.

14 JUDGE JACKSON: Any objections?

15 MR. PARRISH: No obligation.

16 MR. VON DE BUR: No, sir.

17 BY MR. JEFFERY:

18 Q. Are you familiar with a proposed FAP Route
19 255 project in Madison County, Illinois?

20 A. Yes, sir.

21 Q. How are you familiar with it?

22 A. We were placed under contract with the

1 Kansas City Southern Railroad to perform a review of
2 I-255 overpass plans dated September 2008. Prior to
3 that we were aware of the project because of our
4 involvement with the Route 111 project which is just
5 up the road from this project. But the Route 111 was
6 a separate project versus this. We were contracted
7 specifically to review these plans on behalf of the
8 Kansas City Southern.

9 (Whereupon KCS Exhibit 1 was
10 presented for purposes of
11 identification as of this date.)

12 Q. I would like to direct your attention to
13 what's marked KCS Exhibit 1, and I have previously,
14 Your Honor, given you copies of all of these exhibits
15 and I have a couple extra copies here for counsel.

16 Mr. Fleis, can you identify for the
17 record Exhibit Number 1?

18 A. Yes. It's an e-mail that began with an
19 e-mail from myself to Mr. Srikanth Honnur. He is
20 with the KCS Railroad.

21 Q. What is his position at KCS, do you know?

22 A. He is director of track and bridge design

1 for the Kansas City Railroad. And on December 29 I
2 sent him an e-mail in regards to his request for us
3 to review the September 2008 I-255 overpass plan.

4 Q. The September 2008 overpass plans that you
5 are referring to, is that the same document as
6 reflected in IDOT's Group Exhibit 1 that was attached
7 to their petition?

8 A. Show me that exhibit.

9 (Pause.)

10 Yes, pre-final plans September of 2008.
11 Because I always go by the dates on drawings to
12 review them.

13 Q. What was the purpose of your sending this
14 e-mail to Mr. Honnur?

15 A. I had been requested to do a quick
16 preliminary review. There was an issue with Kansas
17 City Southern giving us authority to proceed. You do
18 not work for the Kansas City Southern without a
19 purchase order or you risk not being paid. So we had
20 to wait for our purchase order to come in before we
21 could do anything on services. But we knew the
22 meeting on January 8 was forthcoming, and Mr. Honnur

1 asked for an expedited review of those September 2008
2 plans based on their design guidelines. So looking
3 at their design guidelines, I came up with a list of
4 20 -- I am sorry, 16 issues in relation to the set of
5 plans I reviewed.

6 Q. And what did you do with this list of 16
7 issues?

8 A. I forwarded them to Mr. Srikanth Honnur on
9 December 29, 2008.

10 Q. I would like to direct your attention to
11 Item Number 8 on your e-mail. Could you read what
12 Item Number 8 is?

13 A. "No provisions have been provided for a
14 future KCS track, and the service road to the west of
15 the KCS track. This requires a minimum of 45 feet
16 (20 foot plus 25 foot) from existing track center
17 line to near face from near pier."

18 Q. You testified about a January 7, 2009,
19 meeting. Did you attend such a meeting?

20 A. Yes, sir.

21 Q. Who else attended the meeting, if you can
22 recall?

1 A. Well, on behalf of the KCS it was Mr. Paul
2 Fetterman, Mr. Srikanth Honnur, Mr. Stephen Jeffery,
3 and I remember Mr. Kirk Brown. I remember Gwen
4 Logemann coming later, but unfortunately I do not
5 remember all the other names from the IDOT
6 engineering folks that were there. I just don't
7 remember all their names.

8 Q. What was the general substance that was
9 discussed at that meeting? Was it your list of 16
10 issues?

11 A. We did go over them. Yes, we did. We went
12 over them and we discussed, not at length, but some
13 were easy to accommodate. Others were going to be
14 taken under advisement by IDOT, and there was much
15 discussion on the future track provisions for this
16 overpass. We spent quite a bit of time on it, but
17 nothing was resolved at the meeting. And I jotted
18 down some of the answers, subsequently received a
19 reply from IDOT regarding that meeting, answered
20 those questions. But the bulk of that meeting was
21 the concern of no provision for a second track for
22 KCS.

1 (Whereupon KCS Exhibit 2 was
2 presented for purposes of
3 identification as of this date.)

4 Q. I would like to direct your attention to
5 KCS Exhibit Number 2. What is that document?

6 A. This is a response from Mr. Kirk Brown
7 regarding the issues we discussed at the January 7
8 meeting.

9 Q. And there is a document attached to the
10 e-mail that's captioned KCS Railroad Questions, is
11 that correct?

12 A. Yes, there is a document. It was an e-mail
13 from Kirk Brown to -- it went to Mr. Srikanth Honnur
14 dated January 26, 2009, and it referenced our meeting
15 of January 7, 2009, basically addressing the issues
16 raised in my preliminary review.

17 Q. I would like to direct your attention to
18 Item Number 8 on the attachment to Mr. Brown's
19 e-mail. Do you see where I am talking about, Item
20 Number 8?

21 A. Yes, sir.

22 Q. Could you read Item Number 8 and then can

1 you read IDOT's response?

2 A. Item 8 is "No provisions have been provided
3 for a future KCS track and a service road to the west
4 of the KCS track. This requires a minimum of 45 feet
5 (20 plus 25 feet) from existing track center line to
6 near face of near pier."

7 Q. And is there an IDOT response?

8 A. There is.

9 Q. What does it say?

10 A. "IDOT cannot accommodate a future track."

11 Q. Was there any explanation provided beyond
12 that in this document, why they could not accommodate
13 a future track?

14 A. I am not aware of it.

15 Q. Have you ever had any subsequent
16 communications with IDOT concerning an explanation of
17 why they cannot accommodate a future track?

18 A. No, not as to why they cannot accommodate.
19 The only thing, I did have a phone conversation with
20 Kirk Brown when I had a question about the, I believe
21 it was, the new drawings he sent me, and I suggested
22 have you had a chance to respond to the letter, which

1 we are going to get to later. Kirk said it hasn't
2 been responded to yet. But I did have a conversation
3 with Kirk in that regard.

4 (Whereupon KCS Exhibit 3 was
5 presented for purposes of
6 identification as of this date.)

7 Q. I would like to direct your attention to
8 KCS Exhibit Number 3.

9 A. Yes, sir.

10 Q. Can you identify that document?

11 A. It's an e-mail, I think since I had been --
12 no, it is an e-mail from myself to Kirk Brown copying
13 Srikanth Honnur, Stephen Jeffery and Paul Fetterman,
14 asking Mr. Brown as to when our office may receive a
15 revised set of I-255 overpass plans reflecting the
16 items discussed during our meeting of January 7,
17 2009.

18 Q. When did you send that e-mail?

19 A. February 13.

20 Q. Of 2009?

21 A. Yes, sir.

22 Q. Have you ever received a response to that?

1 prepared by Thompson Coburn.

2 Q. Who is it addressed to?

3 A. Addressed to Kirk Brown of IDOT from
4 yourself, Stephen Jeffery, author of the letter.
5 Attached to it is an exhibit prepared by our office
6 depicting a future KCS track within the elevation
7 view of one of the ramps of the I-255 overpass, one
8 of the structures, I should say, one of the
9 structures.

10 Q. Did you prepare this drawing of this cross
11 section?

12 A. Yes, I did. Our office prepared it.

13 Q. What did you base this drawing on?

14 A. Mr. Sri Honnur sent me an electronic copy
15 of a particular sheet within a set of drawings that
16 we then, using Auto cad, added a future KCS track to
17 create this electronic exhibit. So it started with a
18 marked up plan that I received from Srikanth Honnur
19 at issuance. And we cleaned it up to make it more
20 professional looking for submittal purposes.

21 MR. JEFFERY: At this time I am going to -- can
22 I get this marked as an exhibit? It will be KCS

1 Exhibit Number 9.

2 (Whereupon KCS Exhibit 9 was
3 presented for purposes of
4 identification as of this date.)

5 BY MR. JEFFERY:

6 Q. Mr. Fleis, I would like to direct your
7 attention to what's marked KCS Exhibit Number 9.

8 A. Yes.

9 Q. Do you recognize this document?

10 A. Yes, sir.

11 Q. What is this?

12 A. It's an exhibit our office prepared at the
13 request of the Kansas City Southern to indicate a
14 future KCS track in elevation view beneath the I-255
15 overpass.

16 Q. Let me give you this large one which is
17 marked as Exhibit Number 9. I would like to ask you
18 a series of questions about Exhibit Number 9.

19 A. I want to say it is dated 2/12/09 and it is
20 our drawing number 09007, "our" meaning Design Nine
21 drawing number.

22 Q. And it would be fair to say this is just an

1 enlargement and it is in color of the attachment
2 which was appended to the February 13 letter that
3 went to IDOT, correct?

4 A. Correct. Was their attachment eight and a
5 half by eleven or was it eleven by seventeen?

6 Q. It was the attachment to Exhibit Number 4.

7 A. Okay.

8 Q. In other words, Exhibit 9 and the
9 attachment to Exhibit Number 4 are the same document;
10 this is just a bigger version?

11 A. I would agree with that, yes, sir.

12 Q. I would like to direct your attention to
13 Exhibit Number 9. Could you indicate on that drawing
14 where the western concrete slope wall is located?

15 A. The western concrete slope wall, it is
16 identified as concrete slope wall on the right-hand
17 side of the drawing.

18 Q. Do you have a colored pen?

19 A. I do not.

20 JUDGE JACKSON: Blue?

21 Q. Could you draw a circle around the term
22 "western concrete slope wall" and then draw a line

1 out to the right-hand margin and label that as A?

2 A. Label it as A?

3 Q. A.

4 A. A, yes, sir.

5 Q. I would like to direct your attention to
6 the span, the proposed spans, across the top of the
7 overpass. Could you show me where the third span is?

8 A. I believe -- I don't have the plans, but I
9 believe the third --

10 Q. That's on Exhibit 9.

11 A. Yeah, I believe span three is the western
12 most span for this bridge.

13 Q. I think based on your understanding could
14 you draw two vertical lines which indicate the east
15 and west edges of the span number three?

16 A. Well, a span --

17 Q. Approximately?

18 A. A span is going to end in the middle of
19 that pier and it is going to go to your bearing seat
20 over here at the abutment itself. So it would be
21 these two lines here for span three.

22 Q. I would like to direct your attention again

1 to Exhibit Number 9. Where is the western abutment?

2 A. The western abutment would be right here.

3 Q. So would it be fair to say the right hand
4 of the western most vertical line is at the end of
5 the -- is at the eastern side of the abutment?

6 A. Well, it is the end of the beam for span
7 three. This whole thing is an abutment. But you
8 have got a bearing seat right here. But for
9 practical purposes that's almost the west edge, or
10 that would be the east edge of the west abutment for
11 what we are talking about, yes.

12 Q. Is Exhibit 9 depicting any H piles?

13 A. It depicts 14-inch diameter metal shell --
14 no, metal shell piles. It is cut off here, yeah.
15 Okay. It depicts 14-inch metal shell -- I can infer
16 that it is piles because it is the same thing under
17 this Bin 3.

18 Q. That's commonly known as an H pile?

19 A. Well, in this case these are round piles.
20 These are round ones versus H pile shaped like an H.
21 These are actually circumferential, 14-inch piles.

22 Q. What is the purpose of the round piles?

1 A. To support either a footing or in this case
2 it is supporting an abutment, the west abutment, for
3 proper support.

4 Q. Could you draw a circle around where the
5 term is, you saw before, where the sheet piles were
6 and then draw a line out to the right margin and
7 label that B?

8 A. B?

9 Q. B, yeah.

10 A. Yes, sir.

11 Q. Also, again directing your attention to
12 Exhibit Number 9, do you see a red -- a structure
13 shown in red and labeled "permanent retaining wall"?

14 A. Yes, sir.

15 Q. Where is that located?

16 A. Within span three east of the west
17 abutment.

18 Q. And what does that structure represent?

19 A. Well, if one was to remove the material
20 beneath the concrete slope wall, you would still have
21 material under and around the west abutment. When
22 you create a vertical face in soil, you need a

1 retaining wall to retain it, to keep it in place.
2 Because understand, you have got highway lanes coming
3 up here and all this dirt, you have got to retain it
4 when you don't have a slope wall.

5 Q. Based on your experience have you ever
6 encountered permanent retaining walls like that?

7 A. I have seen them, yes, sir.

8 Q. Where?

9 A. Powder River Basin, the Burlington Northern
10 Union Pacific joint tracks -- or not joint tracks,
11 the Powder River Basin tracks.

12 Q. Again referring your attention to Exhibit 9
13 and again that's span number three, looking at that
14 the best as you can tell, what's the approximate
15 horizontal distance between the near pier and the
16 western abutment?

17 A. It is not dimensioned here, but from what I
18 remember of the drawings, it is in the 51-foot range.

19 Q. So that would be approximately the distance
20 between the two vertical blue lines you drew?

21 A. Approximately, yes, sir.

22 Q. Could you draw a dotted line in between

1 those two blue lines?

2 A. Up here?

3 Q. Yes, that's fine. And then draw an
4 arrowhead at each end?

5 A. Yes, sir.

6 Q. And then label what you believe to be the
7 approximate distances there.

8 A. I am just putting 51 foot plus or minus.

9 Q. And what's the basis for saying that's
10 approximately 51 feet plus or minus?

11 A. Well, the plans specifically call out a
12 distance from center of this near pier to the bearing
13 seat at this west abutment, and it was 51 feet center
14 to center of variance.

15 Q. So you derived that 51 feet plus or minus
16 based on your review of IDOT's September 2008 plans?

17 A. I didn't review their span lines. That's
18 not my purpose. But I just noticed it on the plans.

19 Q. Again referring to Exhibit Number 9, in
20 your experience what is the KCS minimum clearance
21 requirement at overpasses to operate and maintain a
22 single track?

1 A. According to their current -- I am sorry,
2 according to their May 2006 design guidelines for
3 overpasses, the minimum site clearance is 18 foot
4 that they wish to have to a near pier.

5 Q. And the term near pier, again referring to
6 this Exhibit Number 9, where is the near pier
7 located?

8 A. Well, in this exhibit from their existing
9 track, okay, that would be the near pier.

10 Q. Okay.

11 A. From the future track --

12 Q. Since the record can't pick up the word
13 "that," can you draw a line from the near pier down
14 to the bottom of the document and label that "near
15 pier"? Just draw a line labeling where the near pier
16 is located.

17 A. Okay, but you have to let me clarify.

18 Q. Sure.

19 A. That would be the near pier to either the
20 existing KCS track or the future KCS track. I mean,
21 that's the near pier, because it is stated in KCS
22 guidelines that their minimum clearance is 18 foot to

1 a near pier. Their book says 18 feet.

2 Q. In your opinion based to a reasonable
3 engineering certainty, is there sufficient distance
4 in the proposed overpass structure shown in Exhibit
5 Number 9 which is based on IDOT Group Exhibit 1 to
6 accommodate a possible future KCS track?

7 A. I have to clarify my answer. You notice
8 this shelf steel pile. It is indicated as being
9 placed on the batter which means an angle. I don't
10 know the angle of that pile. I don't know how far it
11 extends east of the west abutment. So not knowing
12 that, I don't know where one could build a permanent
13 retaining wall. Because unless the retaining wall
14 was designed in accordance with the design of the
15 bridge, I don't know if the retaining wall -- until
16 you know where that H pile is, you don't know where
17 to place that retaining wall to where it will not
18 interfere with that H pile -- I am sorry, the steel
19 pile.

20 But in 51 feet, based on what the KCS
21 would accept clearance-wise -- and let me clarify
22 that, they are asking for 24 foot to build the track.

1 That leaves you 27 feet more or less from the west
2 abutment to accommodate that steel pile, okay. But I
3 don't know where that steel pile is going to end up.
4 And until you look at the design of that H pile, you
5 don't know how much space is available here, with the
6 bridge in its current design, okay.

7 Does that answer your question?

8 Q. Again looking at Exhibit 9, if you were to
9 assume that the round pile, you know the battern,
10 that was not an issue and the retaining wall was
11 built, would there be sufficient room, just assuming
12 that --

13 A. Let me clarify that. If this metal shell
14 pile was placed vertically, there would be ample --
15 there should be ample room to put a -- to leave a
16 space for a track with the retaining wall. Yes, to
17 answer your question.

18 Q. Again referring to Exhibit 9, do you see
19 shown in red there is a label that says "Future KCS"?

20 A. Yes, sir.

21 Q. Underneath the third span? What does that
22 represent?

1 A. The purpose of this exhibit was to indicate
2 where a future KCS track could be placed under the
3 structure as it is presently designed.

4 But I want to point something out,
5 though, as part of this exhibit. This was suggested
6 by KCS's Sri Honnur, a suggestion to reduce the
7 middle spans by five foot, the reason being if you
8 move that pier five foot closer to their track, they
9 would still end up with, not the 18 that they would
10 like to have, but they would have 14. It would
11 reduce the cost of that center span, could reduce the
12 cost if you could -- you know, depending on the depth
13 of the beams to support the highway there. That was
14 the purpose that Mr. Sri asked that this exhibit be
15 prepared, to offer a reduced center span but yet
16 possibly increasing the approach span to provide even
17 more distance for a potential future KCS track. I
18 just want to point that out. That's part of the
19 exhibit.

20 Q. And what you are talking about is what's
21 shown in the center span in red type face?

22 A. Correct, proposed five foot plus or minus

1 span reduction. Within parentheses, possible
2 increase in vertical clearance, because as a span
3 gets shorter, you can reduce their depth.

4 (Whereupon KCS Exhibit 5 was
5 presented for purposes of
6 identification as of this date.)

7 Q. I would like to at this point direct your
8 attention to KCS Exhibit Number 5. Can you identify
9 that?

10 A. It's an e-mail, the latest e-mail is from
11 you to Kirk Brown dated March 3, 2009. "Kirk, I
12 wanted to follow up to see if IDOT has had a chance
13 to review the revised Illinois 255 overpass drawing
14 that would afford KCS the capability to add an
15 additional future track."

16 (Whereupon KCS Exhibits 6 and 7
17 were presented for purposes of
18 identification as of this date.)

19 Q. I would like to direct your attention to
20 what's marked KCS Exhibits 6 and 7. What are those
21 two documents?

22 A. I was notified to contact -- I was notified

1 by Sri Honnur to contact a -- I can't -- his name is,
2 I have got to spell it, first name,
3 K-R-Z-Y-S-Z-T-O-F, last name, K-A-L-I-C-K-I. I was
4 asked by Sri Honnur with KCS to contact Mr. Kalicki
5 who was with apparently Verizon to attend a meeting
6 March 4, 2009, on cite of the I-255 overpass project.

7 Q. And these two documents, Exhibits 6 and 7,
8 they relate to --

9 A. That was Exhibit 7, the e-mail that
10 Mr. Kalicki sent out to myself, after I had called
11 him. He confirmed the date of this meeting. I
12 contacted him by phone at Mr. Sri Honnur's direction,
13 to coordinate when a meeting was possible. It was
14 picked for March 4, okay.

15 Prior to that, Exhibit 6, on February
16 25 a Ms. Sylvia Schmidt of Jones Lang LaSalle, it's
17 the name of the company, sent utility crossing
18 application and requirements information to
19 Mr. Kalicki because the discussions centered on the
20 relocation of a fiber optic line for the I-255
21 overpass. And it was Kansas City Southern's position
22 that if there was going to be a utility relocation on

1 their right-of-way, their policy is that new
2 agreements are to be put in place for the relocation
3 of a fiber line.

4 So that's what prompted Sylvia at the
5 direction of Sri Honnur to send this information to
6 Mr. Kalicki, and it is a series of information on how
7 an entity applies for a permit relocation or crossing
8 or what have you on KCS property.

9 Q. I would like to direct your attention to
10 KCS Exhibit 7, and it refers to a meeting, I believe,
11 on March 4, 2009?

12 A. Correct.

13 Q. Did you attend that meeting?

14 A. Yes, I did.

15 Q. What was the purpose for that meeting?

16 A. To discuss the conflict with an MCI fiber
17 line at the I-255 overpass project, conflict meaning
18 issues with its location in respect to at the time
19 the near pier to the Kansas City Southern railroad
20 track.

21 Q. Where did this meeting take place?

22 A. On site of the I-255 overpass crossing in

1 Godfrey, Illinois.

2 Q. Who attended the meeting, do you recall?

3 A. Oh, goodness, Mike Bush of Oates and
4 Associates, a young lady from Oates and Associates, I
5 forget her name.

6 Q. Excuse me, Oates and Associates is a
7 contractor working for IDOT dealing with utility
8 issues?

9 A. Well, they informed me -- well, they are an
10 engineering consulting firm, and they informed me
11 that they are responsible to coordinate the
12 adjustment of utilities associated with the I-255
13 project and the Route 111 project.

14 So there were Mike Bush and the young
15 lady from Oates and Associates, I do not remember her
16 name, Toby Tobias of the Union Pacific Railroad and
17 four or five representatives of MCI, Sprint were
18 there. No one had a sign-in sheet. Nobody passed
19 out cards. But it was a meeting to talk about the
20 MCI fiber line adjacent to the KCS track.

21 Q. Referring to what's marked KCS Exhibit
22 Number 9, based on your understanding, can you show

1 on that drawing the location of this MCI fiber optic
2 line?

3 A. It is just -- let's see, we are looking
4 south -- just west of what you see as temporary sheet
5 piling west of the KCS track, just to the inside of
6 that temporary sheet piling west of the KCS track --
7 inside -- I am sorry, it is to the west of that sheet
8 piling. They had it physically marked in the field.
9 It was painted. It was 10, 11, 12 feet off the
10 track. It wiggled through there, but my best
11 recollection is it is to the west of where that sheet
12 piling is shown.

13 Q. On this drawing could you label with a
14 small X your understanding of where that fiber optic
15 cable is located?

16 A. Sure. You want me to label it something?

17 Q. Then draw a circle around the X and then a
18 line down toward the bottom of the margin and label
19 that fiber optic cable.

20 A. Fiber optic cable.

21 Q. Again getting back, what was the purpose
22 for this on site meeting on March 4?

1 A. It was called by Verizon/MCI. Mr. Kalicki,
2 even though his e-mail says Verizon Business, it says
3 he is from MCI in his e-mail, wanted to have a
4 meeting to discuss the conflict at the I-255 overpass
5 of the fiber optic --the MCI fiber optic line and
6 the I-255, I guess it is, near pier.

7 Q. What was the precise nature of the
8 conflict?

9 A. The location as discussed in the field --
10 we didn't know what the conflict was until we showed
11 up -- as discussed in the field, everyone felt,
12 including MCI representatives, Toby Tobias of the
13 Union Pacific, that you could not safely drive those
14 sheet piles as shown and not interfere with that MCI
15 fiber line.

16 The reason for -- you must understand
17 the reasoning for that sheet pile, however. That
18 sheet pile as shown on the plans I believe to be
19 located 12 foot off the center line of the KCS track
20 which is a minimum for sheet piling next to a live
21 track, according to their design guidelines. Sheet
22 piling must be driven, however, in order to excavate

1 and construct the footing for that near pier. And
2 with the sheet piling inside where the fiber optic
3 line is, MCI was not -- is not going to let that
4 happen. They are not going to expose their line.
5 There is no way to safely expose their line to insure
6 that the sheet piling does not hit the line.

7 That was what was resolved at the
8 meeting. Because Oates and Associates had hoped that
9 fiber line could be relocated closer to the KCS
10 track. MCI said there is no good way to move this
11 line closer.

12 Now, to be fair, we need MCI here to
13 really have their stand on it, but I am just relating
14 what I heard at the meeting, okay. And everyone
15 standing there said there is no way a contractor will
16 drive that sheet piling that close to a live fiber
17 optic line.

18 Q. So in other words, would it be fair to say
19 that because of the presence of the MCI fiber optic
20 cable, it is not reasonable to construct that near
21 pier and the sheet pilings as depicted and as shown
22 on Exhibit 9?

1 A. Well, is it reasonable? I am not speaking
2 for MCI but if you can't drive your sheet piling to
3 excavate and build your footing, you either have to
4 redesign your pier for possibly a drilled shaft,
5 okay, to where you would not necessarily need sheet
6 piling, it could still be an issue, or relocate the
7 fiber line. But the nearness of where you have got
8 the sheet piling --

9 Now, one thing they asked and Oates
10 and Associates brought up at this meeting, could we
11 move that sheet piling closer to the KCS, in other
12 words, get further away from the fiber line. Toby
13 Tobias took charge and said you are not getting
14 closer than 12 foot because you wouldn't get closer
15 to the Union Pacific tracks at 12 foot and we are not
16 going to allow you to get closer than 12 foot to the
17 KCS tracks.

18 Q. And that was pursuant to this joint
19 facility agreement for these tracks?

20 A. I believe Mr. Tobias was speaking as a
21 representative of the owner of the property.

22 JUDGE JACKSON: Excuse me one second. Let's

1 take five.

2 (Whereupon the hearing was in a
3 short recess.)

4 JUDGE JACKSON: Back on the record.

5 BY MR. JEFFERY: Thank you, Your Honor.

6 Q. Mr. Flies, again referring to KCS Exhibit
7 Number 9, you marked on that exhibit and labeled as
8 fiber optic cable the location of the MCI fiber optic
9 cable which was presented during the meeting in the
10 field on March 4, 2009, correct?

11 A. That is correct, yes, sir.

12 Q. I would like to direct your attention to
13 IDOT Group Exhibit 1 which is the September 2008 set
14 of plans which attached to their petition, and I
15 would ask you, referring to IDOT's Group Exhibit 1,
16 where in their documents do they show the location of
17 the MCI fiber optic cable in that Group Exhibit 1?

18 A. It is not shown.

19 Q. So IDOT Group Exhibit 1, the September 2008
20 drawings which were provided in November of 2008 by
21 IDOT to KCS for review, do not depict the MCI fiber
22 optic line?

1 A. I do not see it depicted in the northbound
2 or the southbound ramp views. Unless there is a
3 specific drawing maybe we weren't provided, I don't
4 see a fiber optic line depicted on that side of the
5 track -- I am sorry, on the west side of the KCS
6 track. There is one east of the Union Pacific track,
7 but I don't see one west of the Kansas City Southern
8 track.

9 Q. Which is the one that's at issue here?

10 A. The one that the meeting was held on.

11 Can I add something? There is
12 actually two fiber optic lines west of the KCS track.
13 But the one further west of the one we have been
14 talking about apparently is not in conflict with
15 anything.

16 Q. Okay. In your opinion would it have been
17 prudent to show the location of that fiber optic
18 cable in those engineering drawings?

19 A. Well, from a review standpoint, yes, it
20 would have been prudent because we possibly could
21 have commented on it and maybe raised a question at
22 that point. But my review does not question the

1 design of their bridge, other than the clearances
2 provided and that specific requirements of the KCS
3 railroad are met with regard to the construction of
4 the bridge. My experience, normally construction
5 plans show utilities.

6 Q. Going back to this meeting which was held
7 on site on March 4, were any options discussed
8 concerning the disposition of the MCI fiber optic
9 cable?

10 A. I left the meeting with two possibilities.

11 Q. What were they or what were those?

12 A. Relocate four miles of fiber optic cable,
13 redesign the bridge to move the pier away from the
14 fiber optic cable.

15 Q. Concerning the first alternative, relocate
16 four miles of fiber optic cable, who presented that
17 alternative?

18 A. MCI stated that this line, because of its
19 age and the number of splices that have been
20 performed along apparently this four-mile line, it
21 cannot withstand two additional splices to relocate a
22 portion of fiber optic cable for the overpass. It

1 was stated to me that there only exists the
2 possibility of two more splices on this line without
3 impacting the integrity of the line. And they always
4 keep reserve splices in hand in case of a lightning
5 strike. If you were just to relocate a portion of
6 this cable for the bridge, it is my understanding
7 that would require two splices. That would leave
8 them no reserves on this line for a future lightning
9 strike. That's what was explained to me.

10 Because I had asked, well, couldn't we
11 just relocate 1500 feet or something. That's when
12 they said, no, this line is of such an age, we can't
13 do that. And that's when they said if you are going
14 to impact this line, it is four miles long.

15 Q. Based on your experience do you have any
16 idea of what the costs would be involved in
17 relocating four miles of fiber optic cable?

18 A. I have no idea. I do not know that number,
19 no, sir.

20 Q. What was the second alternative that was
21 discussed?

22 A. Moving the near pier farther away from the

1 fiber cable.

2 Q. How could that be implemented?

3 A. Redesign the bridge.

4 Q. In which direction would the pier be moved
5 or could the pier be moved to accommodate the fiber
6 optic cable?

7 A. In this case, as you can't encroach any
8 closer to the Kansas City Southern track, it would
9 have to go west, west of its shown location.

10 Q. So just so I understand, after the March 4
11 meeting, those were the two alternatives that have
12 been discussed. Based on your experience and your
13 expertise in railroad design and issues such as that,
14 do you see other alternatives to deal with this
15 issue?

16 A. The fiber?

17 Q. Yes.

18 A. I raised it at the meeting, could you
19 possibly design the pier for a drilled shaft. The
20 drilled shaft, depending on its diameter, would have
21 a smaller footprint at the pier than H pile -- I am
22 sorry, steel pile and a concrete footing.

1 But I am not a geologist. I don't
2 know what kind of drilled shaft or even if the soils
3 in Illinois can support the shafts to support a
4 bridge.

5 But the thinking being, if you can
6 reduce the footprint of this footing, it determines
7 where your shoring goes. The shoring as shown
8 conflicts with the MCI, but the shoring is required
9 to build the footing.

10 Q. Is it possible to design a bridge without
11 piers?

12 A. It depends on your span length. You have
13 got to have -- there are bridges that go from
14 abutment to abutment. In this case that would just
15 be one long bridge. In this case this is a three
16 span bridge.

17 So what was that question again? Is
18 it possible to build a bridge, design it?

19 Q. Is it possible, any other alternatives come
20 to mind, to eliminate this issue with the footing and
21 the fiber optic cable?

22 A. Increase the center span to move that pier

1 further away from the fiber optic cable, if that
2 option was chosen as a solution.

3 MR. JEFFERY: At this time I have no other
4 questions, and I would offer KCS 1 through 9.

5 JUDGE JACKSON: I did not see a Number 8. Is
6 there one? Exhibit 8. Maybe I did.

7 MR. JEFFERY: You know, I thought I had an 8,
8 but I guess I didn't, 9 should have been 8. So let's
9 just not have a Number 8.

10 JUDGE JACKSON: I will walk through them
11 individually if anybody wishes, but let's check the
12 floor first. Any objections to t the admission of
13 Kansas City Southern Exhibits 1 through 7 and 9?

14 MR. PARRISH: None from IDOT.

15 MR. VON DE BUR: No, sir.

16 JUDGE JACKSON: Mr. Farwell?

17 MR. FARWELL: No objection.

18 JUDGE JACKSON: Okay, they will all be
19 admitted.

20 (Whereupon KCS Exhibits 1, 2, 3,
21 4, 5, 6, 7 and 9 were admitted
22 into evidence.)

1 Mr. Farwell, do you have any
2 questions of the witness?

3 CROSS EXAMINATION

4 BY MR. FARWELL:

5 Q. On this, Mr. Flies, I think I have a
6 couple. You had mentioned there was a fiber line
7 east of the Union Pacific line. Is that what shows
8 up as an FO?

9 A. I would -- did you ask me that, Roy?

10 Q. Yeah.

11 A. That's the one I picked out of the
12 drawings, yes, sir.

13 Q. So you are reading the cross sections in
14 Exhibit 1, something that shows as FO as being a
15 fiber optic line?

16 A. East of the Union Pacific tracks.

17 Q. Right.

18 A. FO.

19 Q. What is the latest version of the plans
20 that you have from IDOT?

21 A. I believe -- they are later than December
22 15. I do know that. And it's the ones that I have

1 been waiting from Kirk to get, and I don't believe I
2 have downloaded them from my e-mail yet. But if I am
3 not mistaken, they have English units, and I don't
4 have a complete set of them, Roy.

5 Q. You think there is a set of -- at least
6 some substitute pages?

7 A. I believe there is 13 sheets.

8 Q. That have come out in December?

9 A. That were stamped or sealed, I want to say,
10 December 15, '08. Okay, I have a set right here.
11 December 15, '08, sealed by Eric Barnes, okay. But
12 even that set when I received them did not have the
13 English units in them yet, if that makes sense.
14 Because we wouldn't even talk about English units
15 until January 7. Kirk has sent me the English units
16 one. I don't have a copy of them with me. So I
17 don't know the exact date on those, Roy.

18 Q. So some sheets have come out in December,
19 but there is something more recent than that that has
20 the English units on it?

21 A. I believe Kirk mentioned they have a
22 February date on them. Is that correct, Kirk?

1 MR. BROWN: Yes.

2 A. I don't have a complete set of them, Roy.

3 Q. And the ones that came out in December, did
4 they address some of the other issues that you guys
5 discussed at the meeting?

6 A. The December ones don't, no, because we
7 didn't have the meeting until January 7.

8 Q. The December ones, were they different from
9 the September ones?

10 A. I haven't compared them. I can't say that
11 I have compared them to the September '08 ones.

12 Q. Okay, thank you.

13 A. It was a set I received, Sri Honnur of the
14 KCS -- this might have been the set, hang on, hang
15 on. Yep, they are the set I received from Kirk at
16 our meeting of January 7. That's what the December
17 15, '08, ones are, okay.

18 Q. That's something we don't have. That's all
19 I want.

20 On your Exhibit 9 -- I am sorry, was
21 there something you wanted to add?

22 A. Yes. I do have 13 sheets -- I am going to

1 correct myself -- from Kirk of project plan sheets --
2 well, these are still the December 15 ones. I have
3 got to find the February ones that have the English
4 units.

5 Q. On your Exhibit 9?

6 A. Yes, sir.

7 Q. Is everything in the red on that exhibit
8 something that you added as opposed to something that
9 you got from IDOT?

10 A. It's what our office added to the plans.

11 Q. And is everything in black basically what
12 you got from them, from IDOT?

13 A. I don't know what date of plans Sri Honnur
14 forwarded me the base plan. I used his electronic
15 version to create this drawing. Instead of scanning
16 my own sheet, he popped me a drawing with a markup
17 and said clean this up, make it look like this. So I
18 used his sheet. So I don't know what set of plans
19 this drawing began with, Roy.

20 Q. But the red is the stuff you added?

21 A. Yes. And it is -- you know, it's basically
22 the drawings that have been created to date, but I

1 don't know what the date of them was.

2 Q. You had indicated the possibility of
3 drilling shafts?

4 A. I just threw it out as a way to move -- as
5 a way to potentially eliminate driving sheet piling.
6 Because drilled shafts normally are smaller than the
7 footprint of a footer.

8 MR. FARWELL: Your Honor, Mr. McKernon has
9 handed me a note that I am not sure I understand.
10 May I have him ask the question and then we can see
11 if any of us understand it?

12 JUDGE JACKSON: Yes, you may. Of course. We
13 are pretty informal when we need to be.

14 MR. FARWELL: Thank you.

15 MR. MCKERNON: All I am saying is, with the
16 drilled shaft the excavation is the same. The
17 projects that I have seen where drilled shafts have
18 been utilized, even though the elimination of the
19 sheet piling or some sort of shoring is eliminated,
20 they still have to excavate in order to do the
21 drilled shaft. And so by excavation these fiber
22 optics on average are about 42 inches deep from the

1 top soil. And so they are still potentially going to
2 get into the fiber optic location even if they are
3 doing drilled shaft.

4 MR. FARWELL: I guess he is asking if you agree
5 or disagree with that concept.

6 THE WITNESS: Dependent on the diameter of the
7 drilled shaft, whether it would be 48 inch, 60 inch,
8 I don't know what this bridge would need and I don't
9 know the width of the footing, my thought when I
10 suggested that was, if a drilled shaft diameter was
11 smaller than the footing, okay, your center pier is
12 still center of pier, if the drilled shaft radius was
13 smaller than half the footing width, your hole you
14 are drilling moves further away from the track. If
15 you move further away from the track, you are pulling
16 further away from the fiber line.

17 Keep in mind, I stated the fiber line
18 is in conflict with the sheet piling. Sheet piling
19 is normally driven to where you have two or three
20 foot of space from the edge of the sheet pile to the
21 edge of the footing so your carpenters can do their
22 form work. The reason for the drilled shaft is

1 perhaps if -- I can't draw it -- but if your sheet
2 piling was here and your fiber is here but you are
3 drilling your hole here -- you can't put this down.

4 I am trying to get away from the fiber
5 optic line, still build a bridge but not drive sheet
6 piling, is the purpose of it, Dave.

7 MR. MCKERNON: Right. But all I am suggesting
8 is, not knowing what the shaft diameter is, that
9 there will still be the need for excavation.

10 THE WITNESS: I would agree with that.

11 MR. MCKERNON: And the depth of these fibers
12 which vary depending on the soil conditions when they
13 put them in could potentially still be there, be open
14 with the excavation, even with the drilled shaft.

15 THE WITNESS: Absolutely. I threw it out as an
16 option. I didn't know if it would work.

17 MR. FARWELL: That's really all I have got and
18 all Mr. McKernon has.

19 JUDGE JACKSON: Okay, thank you. Mr. Von De
20 Bur?

21 CROSS EXAMINATION

22 BY MR. VON DE BUR:

1 Q. Yes, one question, does the Kansas City
2 Southern anticipate adding new trackage at this time?

3 A. I can't answer that, Joe.

4 MR. VON DE BUR: That's all I have, Your Honor.

5 JUDGE JACKSON: Mr. Parrish, any follow-up?

6 MR. PARRISH: Yes.

7 CROSS EXAMINATION

8 BY MR. PARRISH:

9 Q. You were retained by Kansas City Southern
10 for the express purpose of reviewing the 9/2008
11 plans, correct?

12 A. September plans, yes, sir.

13 Q. And at the time you were retained were you
14 advised by your client how long they had been
15 involved in this project?

16 A. I was not, no.

17 Q. And were you advised by your client whether
18 earlier plans or documents regarding this project
19 were in effect or were in existence?

20 A. I was aware of some of those documents.

21 Q. And can you tell us what some of those
22 documents were?

1 MR. JEFFERY: Your Honor, I am going to renew
2 my same standing objection concerning other documents
3 without identifying what those other documents are.

4 JUDGE JACKSON: I have to believe there is a
5 lot. But I am going to let him go ahead and ask the
6 questions. If you can answer.

7 A. Yes, there were a letter from John Day
8 dated July, I want to say, 2005. I don't have the
9 exact date. There was an e-mail between us and Judy
10 Beaver of the Kansas City Southern back in '05, '06
11 that we had been provided with our work on the Route
12 111 project. Because at one time the KCS had both
13 projects all wrapped up in one. And we were working
14 on an '04 job number within our office, on the Route
15 111 project, the grade crossing improvement, that we
16 were forwarded certain documents by the Kansas City
17 Southern just to bring us up to speed on the project.
18 Because they retained us to review the Route 111
19 plans, assist with the design of the road crossing
20 surface, profile of the track, the KCS track -- I am
21 talking the at-grade crossing now. And at the same
22 time it was called, I believe, the I-255 project. It

1 was like they were both lumped into one. So back in
2 '04 we began work on the Kansas City Southern for
3 this 95 percent the Route 111 project. But we were
4 aware that there is an overpass here somewhere
5 eventually. And that's when we saw some
6 correspondence. We were provided correspondence on
7 letters by John Day back from '05 or what have you.

8 MR. PARRISH: I have no further questions.

9 JUDGE JACKSON: Thank you. Mr. Von De Bur?

10 MR. VON DE BUR: Yes, just one question.

11 RECROSS EXAMINATION

12 BY MR. VON DE BUR:

13 Q. In review of the plans that were submitted
14 by IDOT, were there any issues directly relating to
15 safety that were brought up?

16 A. In my review, no, no, sir.

17 MR. VON DE BUR: That's all I have, Your Honor.

18 JUDGE JACKSON: Thank you. Were you going to
19 have any other witnesses?

20 MR. JEFFERY: No, sir, I have no redirect,
21 either.

22 JUDGE JACKSON: I am going to make just two

1 quick comments before we move on.

2 Number one, before I accept it as
3 fact, undisputed, that MCI can only make two more
4 splices on that cable, I would have to have somebody
5 from MCI sitting right there, honestly. I don't
6 think I have seen a case that they haven't said able
7 to make one more, two more splices.

8 Number two, I think what we need to do
9 really is lock Mr. Brown, Mr. Flies, Mr. Hunter and a
10 number of other people in a room and lock the
11 attorneys out and let them continue to work on this.

12 Is there anything else, any other
13 evidence, to come before us today?

14 MR. FARWELL: I did have Mr. McKernon here to
15 give something on the Union Pacific side. At this
16 point I am a little concerned simply because there
17 has been a lot of activity now that's been going on
18 between IDOT and KCS. There are some new plans that
19 have come out. I don't think we have even seen them.
20 And if we are going to continue this matter for a
21 month or so anyway, I would really like to wait until
22 he has had a chance to look at those, until we have

1 had a chance to get more information about the MCI
2 situation, if we are dealing with four miles or a
3 quarter mile make a huge difference. If we are going
4 to have to do some or consider redesign in order to
5 avoid four miles of relocation, the Union Pacific
6 probably has some thoughts about some other things
7 that can be put into the redesign.

8 JUDGE JACKSON: That's exactly what we are
9 going to do. We are going to get back together in
10 about four weeks.

11 MR. FARWELL: I would like to hold off, and I
12 am guessing he can say his name, but I would just as
13 soon hold him off.

14 JUDGE JACKSON: Is that all right with you,
15 Mr. Parrish?

16 MR. PARRISH: That's fine.

17 JUDGE JACKSON: We need to get back together.

18 MR. FLIES: Your Honor, Toby Tobias should know
19 the name of that MCI representative who was in the
20 field that day. I didn't get his card.

21 JUDGE JACKSON: That's all right. You know,
22 they typically -- trying to remember if they bring in

1 the contractor that actually does the movement of the
2 cable. I think it is Woss (sp) or something. I am
3 not sure. But I think they use one or two people.

4 MR. FARWELL: Did we have this on the Sherman
5 case or something?

6 JUDGE JACKSON: We have had it on more than
7 that one. It was more like 500 to 750,000 dollars
8 for a mile.

9 MR. FARWELL: This is four miles.

10 JUDGE JACKSON: It was unbelievable. Of
11 course, then they put in, as I recall, new duct work
12 basically that had seven holes where they could use
13 for future, but it's an interesting -- how they do it
14 is interesting.

15 Okay. We are going to go off the
16 record, pick another day, encourage everyone to get
17 together, put their people together, and then find
18 out where we are in three or four weeks. There is
19 more engineering, more discussion that needs to
20 happen before we get anything finalized here. But we
21 will keep pushing it along, knowing full well that
22 the money might be at risk.

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All right. Off the record.

(Whereupon there was then had an
off-the-record discussion.)

JUDGE JACKSON: Back on the record. We are
continued to Tuesday, April 7, 2009, at the hour of
10:00 o'clock in the audio video room, second floor,
Commission office in Springfield. Mr. Parrish will
be on the 8th floor in Chicago. Thanks, everyone.

(Whereupon the hearing in this
matter was continued until April
7, 2009, at 10:00 a.m. in
Springfield, Illinois.)